

**“Globalisation, Labour Migration and State
Transformation in Contemporary Japan”**

Tomonori Taki

CSGR Working Paper No. 129/04

January 2004

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Globalisation, Labour Migration and State Transformation in Contemporary Japan

Tomonori Taki¹

College of International Studies, University of Tsukuba, Japan

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Abstract

This working paper discusses the impact of international labour migration to contemporary Japan. This is an issue which has been less frequently examined in existing studies on globalisation conducted from IR/IPE perspectives, both in terms of the kind of globalisation force and regions analysed. Particular attention is paid to the ‘language barrier problem’ in Japan’s criminal justice process, for this problem reflects the considerable changes in world politics of East Asia and Japan in the last three decades, and as such constitutes a force of globalisation. This study argues that the Japanese state has managed to respond to the language barrier problem and in doing so has transformed part of its sovereignty from a territory-based one to a partially transterritorial one.

Key words: globalisation, international labour migration, Japan, capital export, criminal justice, state transformation.

Address for correspondence

Tomonori Taki

College of International Studies, University of Tsukuba, Japan

Email: mttaki03@orion.ocn.ne.jp

¹ Tomonori Taki currently teaches at College of International Studies, University of Tsukuba, and was affiliated with Department of Politics and International Studies and Centre for the Study of Globalisation and Regionalisation, University of Warwick as a PhD student.

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I. Introduction

This study in International Relations and International Political Economy considers the impact of recent international labour migration to the contemporary Japanese state. By discussing international labour migration in East Asia in recent decades, this study will show that the Japanese state has been an active globalising agent, and that the state managed to transform a part of its capability and practice. Not only does it thus support the Transformationalist thesis of globalisation, this study also contributes to the existing body of globalisation studies by covering the following two issue and region that have been relatively less frequently discussed in the existing studies on globalisation: international labour migration as a force of globalisation (in contrast to such other forces as trade and capital mobility), and East Asia and Japan (in comparison to Western Europe and the Americas).

Conducting this study immediately raises at least two questions: why international labour migration, and why Japan? Behind these two questions exist the following facts and perceptions surrounding migration in the post-war world. First, there is the fact that the growth in the number of the migrants in the world in the last three decades is less than twice: this might give the impression that the impact of international migration is almost negligible in comparison to that of other forces of globalisation, such as the international movement of capital, flows of computer data, communications, environmental problems and policy coordination among states. Second, there exists a perception that the age of international labour migration ended by the 1970s. Third, there is another perception that would suggest that international labour migration to contemporary Japan deserves little attention, for it is relatively small in number – approximately two million migrants or less than two per cent of the entire population of the country – compared to the other post-war labour migration projects.

Contrary to the first assumption above, international labour migration matters to world politics today. Labour migration qualitatively affects all societies involved in the migration process, in particular that of the migrant receiving country, by contributing to the maintenance of the domestic political economy through supplying labour, and also by loosening the existing configuration and cohesion of society. Migration also matters greatly to the migrants themselves and the society of the migrant sending country. However, such an impact of migration – which also demands serious consideration – is beyond the scope of the

current study. As for the second assumption, the age of state-led official international labour migration was indeed over in West Europe and North America by the 1970s. Nevertheless, migration has continued to take place in different parts of the world since then, notable cases include those in the Middle East and in East Asia. Meanwhile, international migration organised by non-state actors keeps occurring, destinations being West Europe, North America and the other developing parts of the world, contributing to difficulties that state officials find in controlling their borders.

The third assumption merits closer consideration in three respects, namely the politico-economic context in which migration takes place, the international mobility of capital, and the role of the state in the migrant receiving country. (a) Between the experiences of international labour migration to West Europe and North America from 1945 to the 1970s on one hand, and the one to Japan since the 1970s on the other, there exists a qualitative difference that is more significant than the total numbers of migrants: whereas the migration projects of the former constituted a part of the reconstruction of national political economies and territorial states, current labour migration to Japan is taking place while the reformulation of the regional economy is occurring within a globalisation process. (b) Whereas the capital of the countries in West Europe was largely immobile internationally when they accepted migration, the capital invested in some of the manufacturing industries and financial sectors in Japan were internationally mobile after the 1970s. The significance in world politics of the relation between the facts that Japan exported capital and also received migrants, will be discussed in this paper. (c) The role that state institutions perform in international labour migration has changed substantially since the migration projects of the 1945-1970s period. In contrast to the state's official and active involvement in the migration projects during the 1945-1970s period, the non-state actors' role is considerable in the current Japanese case. The principle of Japan's 'immigration control' policy – there is no official 'migration' policy in Japan up until the time of writing this article – is to forbid international labour migration other than to those with particular work skills as acknowledged by the government.

Some similarities to West European and North American cases can be found in Japan's international labour migration project in the first half of the twentieth century from Korea and China, including the wartime forced labour mobilisation. Both Japan's international labour migration project prior to and during the war years on the one hand, and the migration projects in West Europe and North America in the post-war years on the other, aimed to

maintain or reconstruct national political economies. The aim of Japan's migration project, planned and implemented by the Japanese state and industry during the war years – which caused extreme suffering and the loss of thousands of lives of those who were conscripted – was to maintain Japan's domestic economy which desperately needed an alternative workforce due to the mobilisation of Japanese nationals (the fact that more than six million Japanese were repatriated from overseas after the war indicate the extent of the labour force shortage).

Against this backdrop, this study takes an interdisciplinary approach and aims to consider whether the Japanese state was able to respond to a challenge from one force of globalisation, namely, the consequences of international labour migration over the last three decades. In order to do so, the objective of this study is to investigate into the causes and consequences of a 'language barrier problem' in Japan's criminal justice process and the Japanese state's response to it. The language barrier problem refers to the difficulties in communication that emerged at the end of the 1980s between non-Japanese speakers who were brought into Japan's criminal justice process as suspects, defendants or witnesses – most of them were migrant workers who had arrived in Japan in recent decades – on the one hand, and Japan's criminal justice officials on the other, and more importantly, the subsequent legal and political problems that these communication difficulties caused. This problem matters to non-Japanese speakers staying in Japan because it could directly affect both their rights to a fair trial and their safety from the abuse of the state's penal power. Concomitantly, the barrier also wields considerable impact upon the Japanese state, questioning the legality and legitimacy of its administration of criminal justice to non-Japanese speaking residents and visitors. Being able to affect both the non-nationals' safety, and the migrant receiving state's sovereignty over the control of domestic order, the language barrier problem is certainly a challenge which has arisen from the progression of the current globalisation process.

There are two sections in the main body of this paper. Section II contextualises the recent international labour migration to Japan – the backdrop to the language barrier problem – within the recently changing international structure of East Asia and Japan, namely the transition from the Cold War world order to the ongoing globalisation process. The progression of globalisation is both the cause and consequence of the increasing degree of 'soft' regionalisation (Hook et al. 2001: 31-4) or 'informal economic' regionalisation (Breslin et al. 2002: 17) in East Asia, as against the fluctuated nature of the region under the bipolarity.

As a globalising agent, Japan has actively promoted this regionalisation process through capital export which has extended its politico-economic influence overseas. With some time lag, a globalising force from overseas, namely international labour migration, then influenced Japan. In other words, the closer interconnectedness between East Asia and Japan through the latter's capital export has been partially matched by an increased international interconnectedness of labour markets within the region. The consequences of such interconnections of regional labour markets are many, but the focal point of this study is the language barrier problem. Following the above discussion, section III shows how the language barrier emerged in Japan by the end of the 1980s, and how and why it affected the Japanese state. This section then demonstrates the state's response to the problem, through which the state reformulated its sovereignty.

This study argues that the Japanese state, despite being partially and temporarily constrained by the language barrier, managed to recover its capability to administer criminal justice legally and legitimately to foreigners whose first languages were other than Japanese, transforming its sovereignty over the administration of criminal justice from a territory-based one to a transterritorial one. There will be a brief consideration on implications of this finding to the Japanese state's capability as a globalising state, namely an emergence of the need to accommodate the safety of the globalising population within its territory.

II. Precursors to the Language Barrier Problem

This section puts current international labour migration to Japan, the backdrop from which the language barrier problem emerged, into the context of the progression of globalisation and regionalisation in East Asia in recent decades. To do so, the subsections below show the following three points. First, the international mobility of capital contributed to the relative decline of US economic power by the 1970s, leading to the beginning of a considerable degree of reformulation of the operating principles of the post-war world economy. Second, the above reformulation of the world economy affected Japan, as it did other countries, leading to the beginning of an export of capital for the first time in post-war years. The destinations of this capital export were many, and included East Asian countries, in particular Thailand. Third, the Japanese capital exported to Thailand contributed to the economic development and social transformation of the Thai domestic economy, notably an increased degree of labour mobility that eventually resulted in international labour migration to Japan.

a. International mobility of US capital and the beginning of the globalisation project

The international mobility of capital mediates different developments at distant places. By paying attention to the impact of the international mobility of capital to political economies in different locations, it is possible to identify linkages between developments in the international political economy that appeared to be unrelated (Cox 1987). This study discusses such a linkage between the international mobility of Japanese capital and the international mobility of labour from East Asia to Japan. To demonstrate such a relationship requires a brief overview on the considerable changes in the management of the post-war world economy.

The goal of national economic management of Western countries under the Breton Woods system was to stabilise ‘wage relation through rising investment (in mass production) and state subsidies (to promote full employment and rising consumption).’ Each country was held responsible for the management of its national economy. The planners of the Breton Woods system envisaged a stable trade environment in order to utilise trade as a ‘stimulus’ for the administration of national economies. Meanwhile, Third World countries were also held responsible for their national economic management. McMichael described this as ‘developmentalism’, in the sense that the development of those countries was a replica of First World countries. The above operation of the world economy was possible because of the availability of the US dollar as ‘the international reserve currency’ to provide financial aid to Europe, East Asia and Africa (McMichael 1996: 30-1).

In the early 1970s, however, the Breton Woods system collapsed because the US became unable to maintain its commitment to the world economic system. In the 1960s, the decrease in ‘the strength of the dollar and fiscal foundation of US hegemony’ was taking place, and subsequently a ‘transition in the hegemonic politics and the regional political economy of East Asia’ occurred in the 1970s (Selden 1997: 313-4). The gold reserves of the US had already begun to decrease since the end of the 1950s, because of several factors: aid, provision of export credit, the increase in trade deficit due to the declining competitiveness of US products, and foreign direct investment (FDI) in Europe. In addition, military spending in Germany, Europe, Japan and Vietnam also constrained the US economy. As a result of the above, the US terminated the gold-dollar convertibility in 1971, and then implemented exchange rate adjustments in 1971 and 1973 (Mendl 1995: 40-1; Selden 1997: 313-4; Strange

1996: 105-6). As the convertibility was terminated, foreign-exchange rates were set to float and became unstable, unravelling '[t]he fundamental monetary relations of the development project' (McMichael 1996: 33).

The collapse of the Breton Woods system indicated that management of the post-war world economy became stricter in the 1970s than before. 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 programmes on the defensive'. Meanwhile, the international impact of the introduction of Monetarist economic policies served as a precursor of the debt crises of the Third World countries. Having received an increasing amount of commercial lending from First World countries in the 1970s, the US interest rate rise in 1980 led to a surge in the dollar-denominated debt in those countries. McMichael saw these changes as the main driving factor of globalisation (McMichael 1996: 30-4).

The failure of developmentalism was 'both cause and consequence' of the globalisation project. In contrast to stabilising capitalism 'through national economic management' as was aimed in the preceding decades, the globalisation project 'seeks to stabilize capitalism through global economic management – this time along the lines of specialization, rather than replication' (McMichael 1996: 31). The participation of the newly industrialised countries in the world market through export-oriented industrialisation meant that developmentalism has effectively ended (McMichael 1996: 33). The economies of the developing countries are now subject to management from outside their countries, in other words, management by the countries of the First World and international organisations such as the IMF and World Bank.

It must be recalled here that despite the fact that US economy was considerably affected by the changes in the organising principles of the world economy, this does not necessarily imply that states in general were in 'retreat' in the face of globalisation. Contrary to the assertions made from the Hyperglobalist viewpoint, some – though not all – states were able to respond to the developments in the international political economy in the post-war years, and were capable of manoeuvring the globalisation process more than the above thesis suggests. Several findings support this point. First, states can actively participate in globalisation. The East Asian economic development experiences since the 1970s indicate that states could compile plans for economic internationalisation and implement them (Weiss 1997: 4), representative cases being South Korea, Taiwan and Japan (Weiss 1997: 21-3).

Second, states can reformulate the constituents of their functions, which is not necessarily a weakening of those functions. Some states managed to ‘reregulate’ the economy, not to ‘deregulate’ it (Zysman 1996: 165). ‘Reregulation’ here refers to ‘reconceptualization of the rule (of economic management) and redefining the role of government’ (Zysman 1996: 171). Similarly, many processes of globalisation involve ‘reorganization of the state’, thus it is not plausible to dichotomise the state and globalisation (Amoore et al. 1997: 186). Third, states’ responses to globalisation vary between countries (Mann 1997: 494). These findings about the capabilities of the state in globalisation are important for this study, because they suggest a possibility that states are capable of taking actions against changes in international structure.

This subsection has shown that the international mobility of capital is a key driving force of globalisation, and that the operating principle of the world economy since 1945 changed in the 1970s. The next subsection accounts for how the progression of globalisation affected Japan, and also how Japan responded to the force of globalisation.

b. International mobility of Japanese capital

One of Japan’s responses to globalisation in the 1970s was the beginning of the export of its capital. It is an important development for East Asia, as well as for Japan, because Japanese capital had been internationally immobile since Japan’s defeat in the Asia-Pacific War. The start of capital export in the 1970s therefore means that Japan’s influence on the political economies of other countries, in particular the countries in East Asia, increased afterwards. The process towards such re-start of capital export is explained below.

From 1945 to the 1970s

The framework for post-war Japan’s international economic environment was built in the 1945-1970 period. The US played a crucial role in the maintenance of the regional order in East Asia (Selden 1997: 306; Hoogvelt 1997: 210), with the main goals being the establishment of economic relations between Southeast Asia and Japan, and severing Japan’s pre-war economic ties with China. Having implemented an economic recovery programme from 1945 to 1947 to demilitarise and democratise the country, the next major goal of the rebuilding of Japan was ‘the reconstruction of Japan as the economic and financial linchpin of Asia within the framework of U.S. strategic and economic supremacy.’ Within the context of the 1947 Containment Doctrine, the US recognised that Japan had the potential to become

an 'engine of growth in East Asia'. It also considered that the economic recovery of Japan was necessary for the advancement of a free trade system in the region (Selden 1998: 308).

Japan's international trade framework in East Asia in the post-war years was built by the establishment of trade links between Southeast Asia and Japan, while keeping Japanese capital internationally immobile. First, the US planned the role of the Asian countries to be the providers of raw materials to Japan, as well as potential markets for Japanese products (Nester 1990: 22-3). In this process Japan had to abandon its hope for the maintenance of trading interests with mainland China. Second, the US promoted trade between Southeast Asia and Japan through the dollar aid tied to the purchase of Japanese goods, and by establishing government offices to promote Japan's trade interests in South East Asia (Nester 1990: 33-7). Meanwhile, Japan used war reparation, aid and FDI to establish economic linkages with the political economies in Southeast Asia (Kelly 2002: 81-4). Third, Japanese capital remained immobile internationally in the post-war years. The exchange rate of 360 yen to a dollar, introduced in 1947 as part of the Dodge Line economic reforms, was designed to encourage Japanese industries to produce export profit (Nester 1990: 26). Meanwhile, in order to secure its economy from international financial influences, the Japanese government controlled foreign exchange and banned capital export by the Foreign Exchange and Foreign Trade Control Law of 1949 and the Foreign Investment Law in 1950.

1970s Onwards

The destabilisation of the world economy since the 1970s substantially transformed Japan's international environment in comparison to the previous post-war decades, leading Japan to re-engage with East Asia through the exercise of international economic power. In other words, while the consequences of the international mobility of the US dollar affected Japan's political economy, Japan also influenced the international political economy, in particular in East Asia after the 1970s, by exporting its capital.

The impact of the exchange rate adjustments and the oil crises in the 1970s led Japanese industries to restructure their operations. Having undergone an increase in production costs after the oil crises, the Ministry of Trade and Industry (MITI, now the Ministry of Economy, Trade and Industry (METI)) encouraged Japanese multinational corporations in 1974 to implement FDI in order to identify cheaper and more stable supplies of raw materials, to shift labour-intensive industries to foreign countries, and to locate a cheaper labour force (Nester

1990: 71). Prior to the above shift in its industrial policy, Japan had already cleared the ground for making its capital internationally mobile. After accumulating a foreign exchange surplus during the 1960s, the Bank of Japan relaxed the regulations on FDI in 1969, and effectively removed them in 1971 (Nester 1990: 65-6). Thus Japan's FDI, which had begun in the mid-1950s, increased in the 1970s (Kelly 2002: 84). Japan's light industries, most severely hit by the first oil crisis, first began foreign investment in the 1970s. FDI from other sectors of the Japanese economy, such as the car, electric and electronic industries, did not take place at this time because they managed to increase exports and to carry out manifold cost-cutting measures. Nevertheless, the impact of the 1986 exchange rate adjustment, which followed the Plaza Accord in the previous year, was substantial to the Japanese economy. The 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. Japan tried to compensate for the loss of these export markets by expanding its domestic market, but it eventually failed to do so (the burst of the 'bubble' economy), and consequently began exporting its capital. It was against the above backdrop that Japanese business started to advocate 'internationalisation' and FDI (Steven 1996: 58-69).

Having shown in this subsection the process towards the beginning of Japan's capital export in the 1970s as a response to globalisation, the next subsection reports how capital export to East Asia, notably to Thailand, contributed to generate structural conditions for international labour migration – an unintended consequence for Japan.

c. International labour migration from Thailand to Japan

Research indicates that international labour migration tends to be considered as, in particular from the viewpoint of the migrant receiving country, a 'flow of water' and as such is unable to be controlled. Such a characterisation is based on the following assumptions about the migration process. The first assumption is that migration is the result of an instantaneous decision of the migrants themselves to take advantage of an income difference between the origin and destination of the migration. The second is that migrants manage to reach their destination by themselves alone. However, a closer look into the theories of international labour migration reveals that the above economic and individualistic views of migration are much less plausible than often supposed, in particular in two points. First, migrants make a decision to move under various structural conditions. Second, the migration industry is

instrumental to, and in many cases indispensable for, the movement of migrants. The migration industry refers to interpersonal ties between ‘migrants, former migrants, and non-immigrants [who are in both the] origin and destination’ of the migration. Effective operation of the industry reduces the costs and risks of migration over time, while increasing the possibility of successive migrations. Due to the working of this network, migration becomes ‘a self-sustaining diffusion process’ over time. Wage differentials – which are often cited as the core cause of migration – and migration will not be totally irrelevant, but they are ‘not strongly correlated’ (Massey et al. 1993: 448-50; Boyle et al. 1998: 76). In addition, it is likely that the migration policy of both the sending and receiving countries matters more to the operation of the migration industry than to the individual migrants’ choice or preference. Therefore, migration is a result of a complex combination of structural factors (though, of course, prospective migrants make decisions to go or not to go under the influence of those factors). In this sense international labour migration is fundamentally different from a ‘flow of water’ (Boyle et al. 1998, Castles and Miller 1998, Cohen 1987, Massey et al. 1993, and Sassen 1988 and 1998). Whereas the theoretical works cited above are primarily written for the Western context (except for Sassen 1998), a number of scholars researching about Japan have noted the significance of capital export to international labour migration, in particular Iguchi (2001), Iyotani (2001), Komai (1997), Kuwahara (1991), Ogura (1997) and Sellek (2001), among others.

It is possible to explain international labour migration in terms of the generation of domestic labour mobility, the extension of domestic labour mobility to the international sphere, and the perpetuation of the above flow. The international mobility of capital primarily affects the generation of the migratory flow. Applying the above framework, this subsection explains as an empirical case international labour migration from Thailand to Japan after the 1980s. This research pays particular attention to Thailand because capital export from Japan to Thailand was substantial among the countries in Southeast Asia, and also international labour migration from Thailand has been considerable in particular in the early 1990s.

Three issues are discussed: demographic conditions in Thailand; changes in the production process and the subsequent reconfiguration of the society arising from the Thai economic policy; and, the influence of foreign capital on the above socio-economic changes, particular the influence of the Chinese-Thai business community that settled in the 1950s, the states and/or businesses of the US and Japan, and international financial institutions. The author of

this study is aware of the various structural factors such as peer pressure and patriarchy that affect the migration process, however, the analytical focus of this study is on the economic factors in the conventional meaning of the term. The description is divided into two parts: from 1945 to the early 1970s, and the 1970s onwards, corresponding to the chronological division for analysis in the previous subsection.

1945-1970s

Two demographical factors constituted a precursor for labour mobility in post-war Thailand. First, the discontinuation of the supply of Chinese migrants, who had engaged in non-agricultural wage work in Thailand since the 1880s, after the establishment of the People's Republic of China in 1949 (Falkus 1995: 30; Hewison 1997: 99; Yamklinfung 1995: 31). Second, the continued growth of the Thai population at more than 3 per cent per annum during the post-war years up to the 1970s. By 1986, the growth rate dropped to 1.7 per cent. (Yamklinfung 1995: 43, 265).

Economic development in Thailand, in particular in the 1960s and 1970s, concentrated on urban and industrial development at the expense of rural and agricultural sectors (Hirakawa 1987: 327-8; Poapongsakorn 1995: 133; Yamklinfung 1995: 42). This is evident in Thailand's GNP figures. Agricultural output in the entire GNP was 38.9 per cent in 1960 but continued to decline to 28.5 per cent in 1970, 25.8 per cent in 1980, and 16.9 per cent in 1988. In contrast, manufacturing output in the entire GNP, which was 10.6 per cent in 1960, increased to 16.0 per cent in 1970, 20.0 per cent in 1980, and then to 23.0 per cent in 1988 (Yamklinfung 1995: 27, Table 1). As a consequence of such an economic policy, the domestic income gap in Thailand widened in the post war years. Income per capita in the northeast region – technically an agricultural area – against that of Bangkok was one-fifth in 1960, but this ratio decreased further to one-sixth in 1980. Income per capita of an agricultural worker was 38 per cent of the national average in 1980, and the gap widens to one ninth when compared to the highest income group in the country (Yamklinfung 1995: 43-4; Hirakawa 1987: 318).

These demographical background and economic conditions were instrumental to the generation of labour migration. The extent of industrial restructuring and the mobilisation of labour from the agricultural to industrial sectors is evident in the following figures. First, the urban population – in particular in Bangkok – increased, while the rural population decreased.

Thailand's total population was 26.3 million in 1960, and grew to 44.8 million in 1980, then 55.9 million in 1989. The population in Bangkok was 1.70 million in 1960, increased to 4.70 million in 1980, and then to 5.83 million in 1989. Between 1950 and 1980, the Bangkok population grew by 3.2 times, and 61 per cent of this increase was due to the population mobility from the central and northeast regions of Thailand. Correspondingly, agricultural workers in the entire working group continued to decrease: while they occupied 82.3 per cent in 1960, the figure continued to decrease to 79.3 per cent in 1970, 72.3 per cent in 1980 and 58.9 per cent in 1989 (Hirakawa 1987: 309-15; Yamklinfung 1995: 27, Table 1). According to Yamklinfung, ethnic Thai workers replaced the Chinese migrants who engaged in waged work in the Thai economy until the beginning of the industrialisation in post-war Thailand. Since then, 'the stable supply of labour that always met demand was available, as a result of the increasing population pressures on arable land and low agricultural income' (Yamklinfung 1995: 31).

Foreign capital operating in Thailand also contributed to changes in the production process, and thereby to the mobilisation of the work force described above. Hirakawa argues that the modernisation and diversification of agriculture were accompanied by a disintegration of the agricultural population (Hirakawa 1987: 327-8). Meanwhile, even though the Chinese-Thai population have been incorporated into Thai society today, this study characterised Chinese-Thai businesses as 'foreign' capital for the 1950s, as some of them settled in Thailand after the establishment of PRC in 1949 and were 'encouraged' by the Thai government to invest (Falkus 1995: 28-9). Chinese-Thai capital was instrumental for the restructuring in agriculture, and the founding provincial business (Phongpaichit and Baker 1997: 29-30). It also worked as 'a principal channel' of joint ventures with overseas companies (Suzuki 1993: 85), and was a pioneer in manufacturing in the country (Yoshihara 1994: 3-4).

The role that US capital performed was economically beneficial to Thailand as it provided economic, military and technical assistance to the latter from the 1950s (Bowie and Unger 1997: 135). The destination of the aid was concentrated in the northeast region, a representative case being the Friendship Highway (Muscat 1994: 120; Bowie and Unger 1997: 131). Such a reliance on US aid leads to detrimental effects to the region when the US departed there in the 1970s, as will be shown later in this subsection.

Japanese capital was able to operate in Thailand from the 1950s, and contributed to industrial restructuring of Thai agriculture. Japanese trading companies managed to re-enter the Thai economy in 1951, one year prior to the normalisation of diplomatic relations in 1952 (Yoshihara 1994: 41-2, 54). This was much faster than Japan's restoration of relations with the other countries in East Asia, which Japan had invaded and occupied during the Asia-Pacific War. The Japanese capital that returned to Thailand in the 1950s soon began to collaborate with Chinese-Thai business to modernise Thai agriculture which became able to export non-rice products. According to Yoshihara,

'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' (Yoshihara 1994: 104).

The above accounts show that the Thai economy, including agriculture, had become connected to the international political economy with the influence of various foreign capital.

1970s onwards

The domestic migratory flow generated in the 1960s as shown above extended to the international sphere from the 1970s. In contrast to the population growth in the preceding decades, the increasing degree of industrialisation created conditions in which the Thai economy would seek labour migration. In the mid-1980s non-agricultural exports began to surpass agricultural exports (Yoshihara 1994: 47; Hewison 1997: 105). The significance of this development was twofold. The first was the decline in the number of agricultural workers: the percentage of waged (namely non-agricultural) workers in the entire Thai economy increased from 8.2 per cent in 1960 to 60 per cent in the early 1990s (Hewison 1997: 105-7). This indicates that the generation of labour mobility continued during these years. The second was the emergence of the need to identify additional sources of foreign exchange income. Even though non-agricultural exports became larger than agricultural exports, the total foreign exchange income was insufficient to sustain the industrialisation of the Thai economy, and alternative sources of income had to be sought. This is behind the beginning of Thailand's promotion of tourism and labour migration after the 1980s.

As already mentioned, the Thai economy's reliance on US aid was considerable from the 1950s. Bowie and Unger report the extent of the influence of the aid:

‘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. Increasing US military spending in Thailand after 1965 helped boost the construction sector through the 1960s’ (Bowie and Unger 1997: 135).

Because of such a degree of dependence, the departure of US aid in the 1970s forced the Thai economy to reorganise itself, in particular in the northeast region. After the ending of the Vietnam War, US military bases in Thailand were closed and aid was withdrawn as well, leading to a loss of income for residents in the northeast region. It is highly likely that these developments constituted an economic condition for labour mobility for the region. International labour migration to the Middle East began in 1974 and public and private migration agencies were established from then (Suzuki 1993: 83-93).

An expansion of Japanese investment in the textile, manufacturing, and service industries (Phongpaichit 2000: 186; Hewison 1997: 103; Yoshihara 1994: 42-4) was also likely to have contributed to the expansion of the domestic migratory flow that had already existed since the 1960s. Japanese investment in Thailand continued to grow in the 1970s and was only second to Indonesia in Southeast Asia. The amount was US\$13 million in 1970, which increased to 33 million in 1980, then 48 million in 1985, 1,276 million in 1989, 1,154 million in 1990, and 1,224 million in 1995 (Hook et al. 2001: 450-7, Table 2). Japanese FDI in the late 1980s was significant for the development of the Thai economy at a time when other developing countries were unable to continue investment after being seriously damaged by the oil crises and the currency and commodity price fluctuations (Bowie and Unger 1997: 14, 37-42).

International financial institutions were also influential to the population mobility in Thailand. In the 1980s the Thai government borrowed from the IMF and the World Bank to offset the increase in the foreign debt after the second oil crisis. As a part of its compliance with the structural adjustment policy recommendation by the World Bank, the Thai government withdrew the rice premium. This brought another detrimental effect on the agricultural sector, as this policy exposed the industry to the international commodity price fluctuation. The

subsequent decline in, or destabilisation of, agricultural income can again lead to mobilisation of labour (Hirakawa 1987: 327-8). Meanwhile, Thai government promoted labour migration in its fifth and economic development plans (Pongsapich 1995: 59). The importance of labour migration for the Thai economy is evident in the remittance by Thai emigrants in 1985. More than 300,000 Thai people who emigrated sent 2.35 billion baht this year, which is estimated to be an equivalent to 11.1 per cent of Thailand's commodity export (Yamklinfung 1995: 48).

It is against the above background that international labour migration of Thai people to Japan in the 1990s took place. Three points need to be noted concerning this decade in comparison to the migration in the previous decades. First, destination of the migration changed from the Middle East to other places in East Asia, including Japan. Second, the number of women who migrated overseas increased. Third, exploitation of the migrant workers increased after the 1980s compared to the 1970s when the migration began (Chantavanich 1997: 163-4). The migration industry, discussed earlier in this section, highly likely to have contributed to extending the distance of the labour migration from domestic to international. Such an extension creates additional room for some of the constituents of the industry to make more profit (for a description of the ubiquity of the migration industry in Thailand, see Hada 2001: 12-29).

As the above has shown, the progression of globalisation and the ending of the Cold War in East Asia contributed to an increased degree of interconnectedness between the political economies in the region. 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 (Selden 1997: 313). Consequently, the increased degree of interconnectedness was evident in terms of the 'intensification of diverse forms of intra-regional economic exchange, including flows of trade, loans, direct and indirect investment, technology, communications, transportation, labor, and travel' (Selden 1997: 321). Japan played a key role in the economic regionalisation of East Asia. This increased degree of Japan's involvement in the East Asian political economy matters to this study because that highlights the link between Japan's operations in the political economy and the generation of international labour migration. This link will show that Japan's capital export was both a cause and consequence of globalisation, and so was international labour migration from East Asia, notably from Thailand. In this respect, international labour mobility is not entirely an

external force that Japan cannot manage; Japan's political economy has, if unwittingly, contributed to the generation of labour mobility.

This section has demonstrated in what way the current international labour migration to Japan – out of which the language barrier problem emerged in Japan's criminal justice process – is a cause and consequence of the currently ongoing process of globalisation. In other words, it has been shown that the language barrier problem is for the Japanese state a force of globalisation.

III. The Language Barrier in Contemporary Japan

This section demonstrates how the language barrier problem – a manifestation of the changes in the international structure of East Asia, or a force of globalisation, as shown in the previous section – emerged in Japan's criminal justice process at the end of the 1980s, what its consequences were, and how Japan responded to the challenges brought about by this issue. The final subsection assesses the significance of the Japanese state's response to the language barrier problem in relation to the state's capability and practice to act in response to a change in its international structure.

a. Emergence of the language barrier

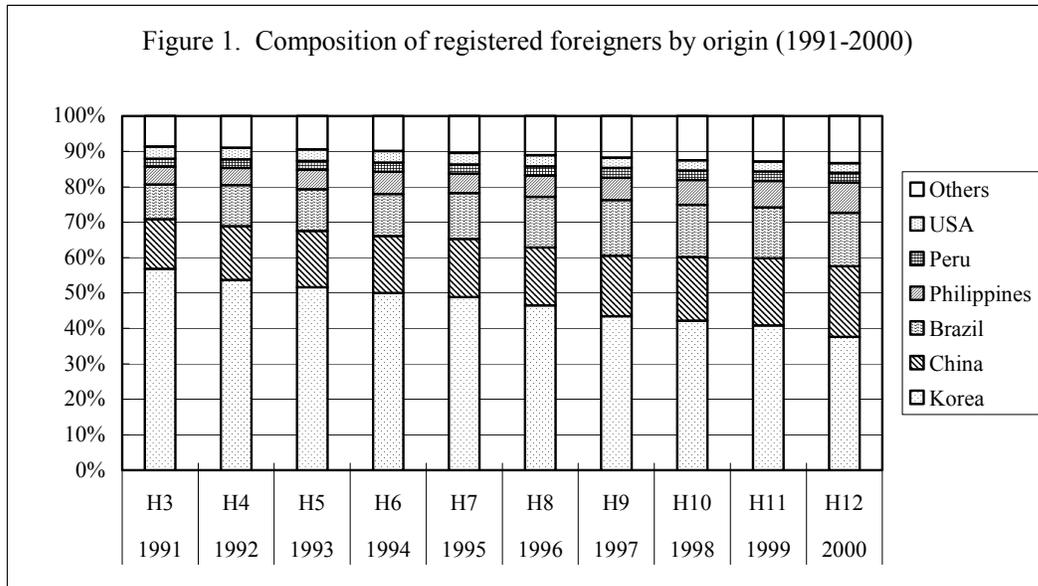
As has been already suggested, the language barrier matters to a study in IR/IPE because it highlights the change in Japan's international relations. In addition, Japan's response to the problem is a clear illustration of the capability of the Japanese state – which is often described as incapable of responding to external forces – to transform itself in accordance with its international structure. The language barrier emerged in Japan's criminal justice process, which used to be seen as a 'domestic' and 'political' sector of the state, with virtually no interference assumed from 'international' and 'economic' spheres. However, the emergence of the barrier suggests that the environment of the criminal justice process changed after the increase of labour migration, and the subsequent increase in the figures of detected crime committed by foreigners (for an interpretation of the official statistics of the crime committed by foreigners, see Nakashima 2001 and Friman 1996).

Such a change in the international environment is evident in three points concerning international migration to Japan in the last two decades. 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 (Hirowatari 1998: 81), but increased to 4-5 million annually in the 1990s (Immigration Bureau 2001: II and VII). Second, the number of foreigners who registered with local governments also expanded from 783,000 in 1980 to 1 million in 1990, reaching 1.5 million between 1997 and 1998. In 2000 the figure was 1.7 million (MOJ 2001: iii). Third, the composition of the origin of registered foreigners changed: in the 1990s the Koreans, who used to represent the majority of resident foreigners, were outnumbered by those from China, Brazil and the Philippines (Table 1 and Figure 1).

Table 1. Origins of foreigners registered in Japan, 1991 and 2000 (thousands)

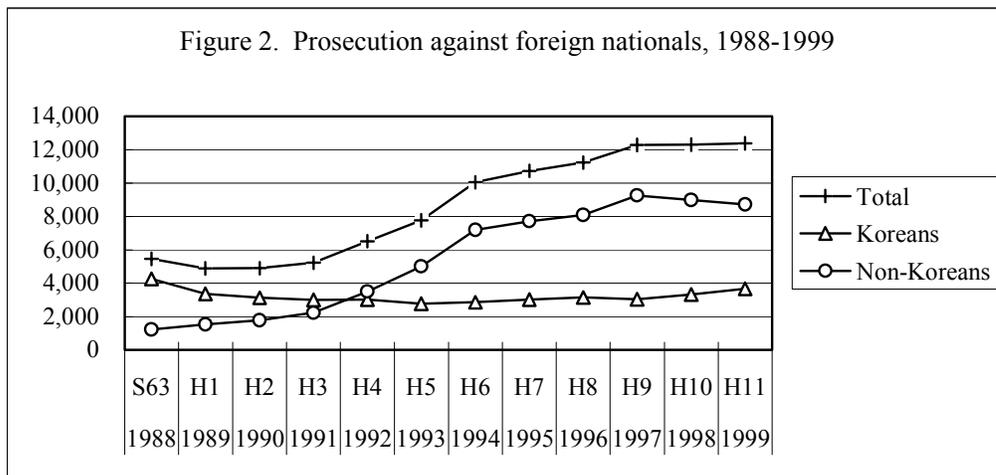
	1991 (H3)		2000 (H12)	
	Registration	(%)	Registration	(%)
Korea	693.1	56.9	635.3	37.7
China	171.1	14.0	335.6	19.9
Brazil	119.3	9.8	254.4	15.1
Philippines	61.8	5.1	144.9	8.6
Peru	26.3	2.1	46.2	2.7
USA	42.5	3.5	44.9	2.6
Others	104.8	8.6	225.3	13.4
Total	1,218.9	100.0	1,686.4	100.0

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.



Source: Immigration Bureau, Ministry of Justice, *Heisei 13 nenban zairyū gaikokujin tōkei (Statistics of registered foreigners in 2001)*. (Tokyo: Zaimushō insatsukyoku, 2001), p. viii, Table 4.

The above shift in the composition of the origin of foreigners in Japan is replicated in the following figure: at around 1992, the number of prosecutions against foreigners of non-Korean origins outnumbered those against foreigners of Korean origins (Figure 2). This is a clear illustration that the language barrier was finally revealed in Japan.



Source: Saikōsaibansho jimusōkyoku keijikyoku, ‘X nen ni okeru keiji jiken no gaiyō (General situation of criminal cases for the year X)’, *Hosōjihō (Lawyers Association Journal)*, various issues, 1987-1999. (‘Gaikokujin jiken no kokusekibetsu kiso jin’in (chi kansai sōsū)’)

An important implication of the above shift in foreigners’ origins is that an increasing number of foreigners in Japan are from the places where Japan had not carried out extensive Japanese

language instruction, in contrast to Korea and Taiwan where it had done so in the first half of the twentieth century.

The language barrier matters both to the foreigners involved in the criminal justice process as suspects and/or defendants, and also to the officials of Japan's criminal justice administration. Herbert, who studied the process in which the perception about crime committed by foreigners was socially constructed in Japan in the late 1980s, remarked about the significance of the language barrier problem that 'interpreting is the most demanding problem in criminal procedure for foreigners.' This is so because it matters to their rights to equality before the law and the rights to a fair trial (Herbert 1996: 247). In addition, for the Japanese state, the language barrier could constrain the legality and legitimacy of its criminal justice process. In order to elaborate the significance of the language barrier to the Japanese state, it is necessary to first discuss how does a migrant receiving state conceive and treat migrants.

Migrants are often, if not always, seen by societies and states that accept them as a possible cause of confusion. A migrant receiving state is perceived as considering the presence of migrants as a threat in at least four terms: (i) to domestic order and internal security (Weiner, Myron 1993: 11; Widgreen 1990: 749; Suhrke 1993: 179); (ii) to social cohesion and cultural integrity (Weiner, Myron 1993: 11; Bali 2001: 172); (iii) to the domestic labour market and public welfare (Bali 2001: 172; Weiner, Myron 1993: 11); and (iv) to the state's ability to maintain complete control of its borders (Bali 2001: 189). Behind these characterisations of migration exists a statist conceptualisation of the international mobility of population. Zolberg asserted that international migration was 'a deviance from the prevailing norm of social organization at the world level' (Zolberg 1981: 6-7). This makes a clear contrast with the theoretical findings of this study demonstrated in the previous section, namely international labour migration is a consequence of the operation of international political economy. Because of the above characterisation, the migrant receiving state would consider controlling the crime committed by foreigners as one of its important tasks.

Technically speaking, the language barrier exists because of the legal requirement that Japanese must be spoken during investigations and public trials (Article 175, Code of Criminal Procedure and Article 74, the Court Organization Law). Within the law itself, however, there is no explicit instruction on how to address problems arising from the language barrier. 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. A brief reference to the core principles of contemporary Japan's criminal justice system will help elaborate this point. The first is that 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 (Article 335-1, Code of Criminal Procedure (CCP)) (Nakane 2001: RA83). The second is that the judge recognises the offence-constituting fact based on evidence. Confession by the suspect or testimony of a witness without evidence will not be recognised as an offence-constituting fact (Article 317, CCP) (Nakane 2001: RA89; Ida 2002: 219). The third is that 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: (i) hearsay evidence is in principle prohibited (Article 320-1, CCP) (Nakane 2001: RA79; Ida 2002: 222), despite the fact that investigation protocols are accepted by the court as evidence in day-to-day practice on the condition that the suspect gave consent to such submissions; (ii) forced confessions are not recognised as evidence (Article 38-2, Constitution of Japan) (Hook and McCormick 2001: 194); (Article 319-1, CCP) (Nakane 2001: RA79; Ida 2002: 223)); and (iii) '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' (Ida 2002: 223-4).

From the above principles emerge the legal implications of the language barrier: the accuracy and neutrality of interpretation will affect the conviction or acquittal of foreign defendants. The reasons are twofold: first, evidence based on inaccurate interpretation will not be recognised as an offence-constituting fact, and, second, biased interpretation fails to form a crime-constituting fact.

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 (Ida 2002: 214) as 'representative[s] of public interests' (Johnson 2002: 237; Kamiguchi et al. 2002: 91). Similarly, only judges are granted the authority to make legal decisions as to whether the defendant is guilty or not guilty, and to decide to what extent a convict should be punished. Ida 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 (Ida 2002: 193-4). In other words, the Japanese state assumes that in the criminal justice system the state itself – *not* civil society – should control conviction and punishment, because they affect the maintenance of domestic order, one of the core tasks of the state.

However, shortcomings in investigations and public trials 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 (NPA 1999: 1), the failure to convict a foreign defendant could imply these 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 was demonstrated earlier in this article, being unable to control crime committed by foreigners due to the inefficient operation of the criminal justice system could suggest that the state is partially constrained by the language barrier.

b. Measures against the language barrier

Japan took three measures to solve the language barrier problem: recruitment of judicial interpreters, improving the quality of judicial interpretation, and the consolidation of the judicial interpretation policy.

Recruitment of judicial interpreters

Published figures indicate that Japan’s criminal justice process operated without a sufficient degree of interpretation in the late 1980s and the early 1990s. In 1988, only 40 per cent of *rainichi gaikokujin* suspects were investigated by the police with interpretation (Kitamura and Hayakawa 1993: 74; Mitsui 1996: 99). *Rainichi gaikokujin* is the term that the police first used in the early 1990s, referring to all foreigners in Japan excluding the US service personnel and long-term residents – namely Koreans and Taiwanese. Hence *rainichi gaikokujin* technically denotes migrants who began arriving in Japan from the 1980s. Similar to the police, there are also reports that the public prosecutors (Tsuda and Miyawaki 1993) and defence counsels (Tanaka Hiraku et al. 1993: 31-4) suffered from a lack of interpreters at this time.

Recruiting interpreters was the first measure that Japan's criminal justice institutions took. The timing and source of the recruitment of the judicial interpreters varied among the institutions. The police trained their officers internally (Mitsui 1996: 101): for example, at the end of the 1980s, officers who held the second grade certificate of the Society for Testing English Proficiency (STEP, or commonly known as *Eiken* in Japanese) examination were qualified to be police interpreters (Tanaka Hiraku et al. 1993: 19). The second grade of the STEP examination would be similar to those who can score 500 points in the TOEIC examination (Kokusai bijinesu komyunikêshon kyôkai 2003). In addition to relying on its internal resources, in the 1990s the police also recruited interpreters from the private sectors, because the number of the internal interpreters was insufficient to meet the entire demands for interpretation of the police (Tanaka Hiraku et al. 1993: 19-21). The public prosecutor's offices also recruited interpreters from the private sector. The prosecutor's offices contacted university lecturers or local leaders to identify suitable candidates (House of Councillors (HOC), 15 March 2000: 8). Alternatively, a public prosecutor's office would contact the police in the same jurisdiction, or the prosecutor's office in other jurisdictions, to ask for interpreters (Mitsui 1996: 101; Tanaka Hiraku et al. 1994: 19-21; Nakagawa 1993: 22). By the late 1980s, the courts also compiled and maintained their own interpreter rosters, including Cambodian and Filipino (House of Representatives, 16 September 1988: 6), and at the beginning of the 1990s they began searching for Chinese and Thai interpreters (Nakagawa 1993: 44). The courts also placed adverts calling for court interpreters in some of the mass media and court websites (HOC, 27 March 1997: 8)

As a consequence of these recruitment activities, the officially stated capacity for judicial interpretation expanded, making judicial interpretation a 'billion yen industry' by the end of the 1990s. The number of interpreters registered in the police roster in 2000 was 8,700, consisting of 3,400 internal interpreters (namely police officers) and 5,300 interpreters from the private sector (HOC, 18 May 2000: 14; 20 September 2000: 4). With the public prosecutor's offices, 1,900 interpreters registered in 1994, and 3,700 in 1997. (HOC, 4 December 1997: 6) Meanwhile, for the courts, 414 interpreters registered in 1990, a figure which increased to 2,703 in 2000 and 3,037 in 2001 (HOC, 11 April 2002: 10). The police reported in 2000 that the number of foreign languages for which interpretation was available was 70 to 80 (HOC, 18 May 2000: 14), whereas the similar figure for the courts was 44 (HOC, 11 April 2002: 10). The courts acknowledged, however, that for some languages the actual number of interpreters was extremely low, sometimes with only one or two interpreters

per language throughout the country (HOC, 20 September 2000: 4). In accordance with the expansion reported above, the Ministry of Justice allocated ¥82.2 million for judicial interpretation in 1993, increasing to ¥432.4 million in 1997, and ¥464 million in 1998. Its anticipated budget figures were ¥504 million for 1999, and ¥556 million for 2000. Similarly, the courts spent ¥167 million in 1993 for the same purpose, which grew to ¥580 million in 1997 and the same amount in 1998. The budget for 1999 was also ¥580 million (HOC, 15 March 1999: 15, 14 March 2000: 14).

Recruiting judicial interpreters was not sufficient to ensure the legality and legitimacy of Japan's criminal justice administration, however. As the following five cases illuminate, the inadequate degree of interpretation was questioned both by state and civil society actors, highlighting the need for judicial interpretation to be accurate and appropriate. Among those five cases, the first two cases explained below almost (or possibly actually) constituted a crisis for Japan's criminal justice administration. 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. In this case, the investigation failed to convict a suspect whom they thought was responsible for a suspected crime. 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 was made involuntarily, therefore it did not constitute valid evidence of an offence. According to the court, the investigators failed to inform the defendant in a practical manner that was understandable to him of the right to remain silent and to retain a defence counsel. The court found that, even though the investigators claimed that they had told of the above rights to the defendant, such notification was only a formality. In addition, the investigators took advantage of the defendant's misunderstanding of Japan's criminal justice system and led the suspect to make a false confession (Urawa chihô saibansho 1991: 40-2, 45). The court warned the investigators that such practices should be corrected immediately. Forcing a foreigner, who has at best a limited understanding of Japanese law and language, to make a false confession is unacceptable both on humanitarian grounds and according to international morality (Urawa chihô saibansho 1991: 53-4). In a similar case, the Osaka High Court quashed a first instance ruling in which the defendant – a migrant worker – was convicted for robbery and murder. The reasons for this decision were: that the interpretation in court was incomplete; that the interpreter was biased towards the public prosecutor; and furthermore, that it was impossible to re-examine the defendant's

testimony and interpretation during the first instance trial because audio recording of the original court hearings was not produced (Watanabe 1998: 285-7). Same as the Urawa case referred to above, this case also wielded considerable impact on Japan's criminal investigators.

The so-called Dôgo case (1989) (Fukami 1999; Mizuno 2001), Shimodate case (1991) and the case of N (1992) also deserve a reference here for two reasons. First, these cases made many people in Japan (including the author of this study) realise the existence of the language barrier problem in their society, a society which had been assumed for three decades (as against for centuries, as often considered) to be 'ethnically homogeneous'. Second, these cases highlighted a gap in the Japanese state's responses to different aspects of globalisation: on one occasion, the state was able to circumvent the force of globalisation by exporting its capital, as discussed earlier; on another occasion, it managed to maintain the legality and legitimacy of the operations of its criminal justice administration – this will be shown below. Moreover, it did not address – as much as it could – the issue of safety of foreign residents within its geographical territory. In the Dôgo, Shimodate and N's cases, Thai migrant women murdered their supervisors or colleagues, and although the defendants did not deny having caused the death of the victims, they – and also civil rights campaigners – argued that the circumstances that led the defendants to the commit the offences should be taken into consideration; in particular the fact that they were trafficked to Japan and were subjected to continuous surveillance, violence and exploitation.

The operation of the migration industry and the sex industry, and the physical and psychological violence that the constituents of those industries used against migrant women have been excluded from the legal-political agenda of the investigation, and therefore that of the court. This was because the suspects were 'illegal migrants' and 'offenders' of the anti-prostitution act. Offending this act constitutes a reason for deportation under Japan's Immigration Control Act. The defendants and their supporters called for these two issues to be dealt with separately and without cancelling them out, but in most cases this did not take place.

The core issues in each case were as follows. First, in the Shimodate case, 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. Second, 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. Third, in the Dôgo case, according to the civil rights campaigners observing the trial the interpreter appeared to be incompetent. For example, the interpretation did not always make sense and the interpreter spent one-third of a court hearing looking up words from a Thai-Japanese dictionary. In each case the court dismissed the defence's claim over the inaccuracy of the interpretation.

Quality of judicial interpretation

Having experienced a near crisis in its legality and legitimacy due to the language barrier problem, Japan's criminal justice institutions began to address the qualitative issues of judicial interpretation. In order to tackle the qualitative problems, various measures were carried out, five of which are reported below. This process involved a restructuring of the operation of Japan's criminal justice administration, indicating that the Japanese state's 'domestic' and 'political' sectors were able to respond to a challenge from the language barrier, a force of globalisation.

First, from around the mid-1990s, the police and the courts began issuing translations of legal documents which informed the suspects and defendants of the following points: the right to retain a defence counsel (Fujimoto 2001: 340); the implications of the pre-detention questions by the judge and the availability of a state appointed duty counsel; and, an outline of the indictment (Mitsui 1996: 103-4). The failure to inform suspects of their rights, as seen in the Misato and in the Shimodate cases above 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 no explanations were given in a comprehensible way pertaining to the rights of the suspect.¹ Likewise, a defence counsel pointed out that the police sometimes fail to notify non-Japanese speaking suspects of the reasons of their arrest (Tanaka Hiraku et al. 1994). In order to tackle this problem Japan Civil Liberty Union (JCLU) published a proposal for improving judicial interpretation, including the preparation and distribution of legal documents (JCLU 1991). Hashiba, a senior member of the Union, argues that after discussion between the supreme court and the JCLU over the proposal, the courts began providing

translations of some of the legal documents produced during public trials to the defendants (Hashiba 1993).

Second, training for judicial interpreters began to be carried out, because officials learned that interpreters did not know many of the legal concepts and terms necessary for the task. The police, public prosecutors and the courts compiled and distributed a glossary of legal terms. In addition, the criminal justice institutions organised and performed training sessions for the judicial interpreters (Mitsui 1996: 101-2; HOR, 16 September 1988: 4; 27 March 1997: 8; 4 December 1997: 7; 14 March 2000: 14; and 19 March 2001: 31). Civil society actors' involvement in this aspect is evident. For example, associations of judicial interpreters were formed at least in Kobe (Watanabe and Nagao 1998) and Tokyo. In 2003, the Osaka University of Foreign Languages launched postgraduate courses for judicial interpretation training (Kobayashi 2003).

Third, as the number of the interpreters has grown by the mid-1990s, the assigning of two judicial interpreters to one case has become increasingly possible. If two interpreters are separately assigned to the investigation and public trial of one case, that could possibly ensure that the defendant understands that those two legal stages are different, and that she/he could defend herself/himself better in the court (Mitsui 1996: 103; Yanagawa 1997: 283-4). In addition, the use of plain, clear and logical Japanese has been advocated by some legal professionals in connection with the language barrier problem. The use of such language could result in better interpretation, thereby increasing – at least theoretically – the possibility where defendants could better defend themselves. By the mid-1990s, public prosecutors in Tokyo began supplying a summary of evidence to interpreters before the court hearing, making possible a better understanding both for the interpreters and the non-Japanese speaking defendants of the contents of the evidence presented by the prosecutor (Watanabe 1998: 288-9). In addition, a judge, who was a senior instructor for Japan's legal professionals, remarked during an interview by the author that if all legal professionals attending a public trial – public prosecutor, defence counsel and judges – made fuller and better preparations in advance, the administration of the trial would be more transparent and comprehensible than was normally the case.²

Fourth, audio recording of the interpretation became possible for the court hearing, if and when the judge found it necessary to make one for the possible future re-examination

(Hashiba 1993: 63). However, similar recordings of interviews are unlikely to be made available in the near future. The police make audio recordings of key parts of their investigation, namely when suspects agree to the contents registered in the interrogation protocol (HOC, 18 May 2000: 16). It is possible to speculate that the current investigation practice which can last up to 23 days makes it difficult to record all interviews by the police and/or public prosecutors. In 1998, the MOJ told the Diet on behalf of the public prosecutors that it was not considering the making of audio recording of the interviews as proof of accuracy of interpretation, on the grounds that the transcription would be too time consuming (HOC, 22 September 1998: 20).

Fifth, the courts ordered the public prosecutor to pay court interpretation costs even if the state won the case. At the beginning of the 1990s, the courts used to order non-Japanese speaking defendants to pay the interpretation costs regardless of the judgement. In 1993, the Tokyo High Court ruled that the prosecution should bear the cost even if the defendant was found guilty. Civil rights campaigners welcomed this development as Japanese courts' compliance with international human rights norms (Nakayama 1993: 42; Nihon bengoshi rengôkai 1997: 97, 348; Watanabe 1998: 288-9; Tanaka Hiraku et al. 1994: 26-27).

Overall, some parts of the above developments reflect the advocacy of civil rights campaigners. One notable contribution would be the introduction of the Duty Counsel system, which enabled an increase in the degree of monitoring of investigations.

Consolidating the judicial interpretation policy

As discussed earlier in this article, the proof of the accuracy of judicial interpretation is critically important for foreigners investigated and tried, as well as for Japan's criminal justice administration. Because of cases in the early 1990s in which the accuracy of such interpretation was questioned, civil rights campaigners argued that at least two interpreters should be permitted to be present at a public trial of non-Japanese speaking defendants. Theoretically speaking, it would be ideal if there were four interpreters in the court: one each for the defendant/witness, public prosecutor, defence counsel and the judges. However, the limitation of the number of interpreters actually available, and the possible unwillingness of court interpreters to have other interpreter present in the court, could probably explain why the multiple interpreter format has not been widely discussed.

An alternative to the multiple interpreter format is to publicly certify the capability of judicial interpreters. From the late 1990s, Japan's legislature has been preparing a bill for the public qualification of judicial interpreters. This would fill a gap in the law that lacks specific instructions to criminal justice officials when non-Japanese speakers are investigated and tried in public trial, as referred to earlier in this section. The making of such a law, when it happens, will be of significance as Japan's response to a force of globalisation, because the legislature could assign a new authority to bureaucrats, namely the use of judicial interpreters in the criminal justice process (Almond et al. 2000: 14). The introduction of judicial interpreters has been a measure that state institutions have carried out within the legal framework that existed before the emergence of the language barrier. The making of the above law could imply that Japan as a whole will have made an official response to the language barrier problem. The Japanese government acknowledged the implications of the two-fold significance of the judicial interpretation: it is indispensable both for effective crime control, but also for guaranteeing the rights of foreigners within the criminal justice process. This was first confirmed by a senior MOJ official (27 March 1997), then by Jinnai Takao, Minister of Justice (15 March 1999), and also by Obuchi Keizô, Prime Minister (27 May 1999). Accordingly, the MOJ has begun research for compiling a bill on the public certification of the judicial interpreters (HOC, 8 August 2000: 34; *Yomiuri Shinbun* 2002, cited in *M-netto* 2002: 11). However, no bill has been submitted to the Diet as of October 2003.

As far as the overall capacity for judicial interpretation is concerned, it appears that the capacity of Japan's criminal justice process – in particular in the courts – had increased by the end of the 1990s, in comparison to the end of the 1980s and the beginning of the 1990s. According to the Supreme Court the frequency of interpretation to non-Japanese speaking defendants in trials has increased in the last decade. The figure was 29.0 per cent in 1988; 49.7 per cent in 1991; 85.4 per cent in 1997 (GSSC).

There is a certain degree of consensus among defence counsels that, though not yet ideal, improvements have been made with regard to the availability and quality of judicial interpretation (Daiichi Tokyo bengoshikai 1998: 182; interview with Miki⁴; interview with Kawaguchi⁵), and stricter assessments also exist (for example, Ohki et al. 1997). One of the problems that still remain concerning judicial interpretation is the uneven distribution of interpreters (Tanaka Hiraku 1994:11). If a foreigner is a speaker of a language less frequently

known in Japan and lives in a rural areas, she or he will be in disadvantageous position when in need of a judicial interpreter.

Having reported the response of the contemporary Japanese state to the language barrier problem, or a force of globalisation, the next subsection makes a brief assessment of the implications of such a response to the capability of the Japanese state to respond to its international structure.

c. Significance of the introduction of judicial interpretation

It is unlikely that the language barrier problem in Japan will disappear entirely in the foreseeable future. However, it is also the case that some progress has been made in the last decade. This subsection briefly considers the significance of the introduction of the judicial interpreters to the contemporary Japanese state by discussing the continuities and changes in terms of the Japanese state's capability and the practice of responding to a change in its international structure. This comparison will be made in terms of the availability of citizenship rights and the status of foreigners in Japan from three periods in its modern history: pre-war Japan; post-war Japan (1947-1970s) and contemporary Japan (1970s onwards).

In pre-war Japan, citizenship rights nominally existed (Mori 1996: 366; 384-9; Stockwin 1999: 195; Maruyama 1963: 12-3; Siddle 1997: 146-7). Foreigners were present in Japanese society as imperial subjects, and therefore visible on certain occasions, but 'racial inferiority justified legal inequality' (Siddle 1997: 146-7). Moreover, because the Japanese state was indifferent to international law (Maruyama 1963: 12-21; Young 1997: 158), it is probable that the language barrier was simply dismissed during these years. In post-war Japan, basic human rights of Japanese nationals were guaranteed by the Constitution of Japan, including the protection of nationals from the state's maltreatment in the criminal justice process. However, in contrast to pre-war Japan, during the three decades following the war foreigners – in particular Koreans and Taiwanese – became 'invisible' and 'absent' from mainstream Japanese society (Kajita 2001: 208-9; Fujiwara 2001; Dower 2000: 469-74). As a consequence, it was only Japanese nationals who were – theoretically, at least – able to benefit from citizenship rights; the benefits of those rights were effectively unavailable to foreign residents. In other words, the Japanese state became capable of extending citizenship

rights to foreign nationals within its territory, but in practice it did not (or was unable to) do so.

From the 1970s onwards, foreigners have become increasingly visible in Japan. The arrival of Indochinese refugees from May 1975 onwards has been an important development in this context: 10,133 refugees were granted permanent residency by September 1997 (Tanaka Hiroshi 1991: 144; Hatano et al. 2000: 137-9). Furthermore, in order to organise the domestic legal structure to accommodate the above refugees, Japan accepted international human rights standards relating to refugees. This unwittingly influenced the Japanese state to improve to a certain degree social welfare provision for long-term resident foreigners in Japan (Tanaka Hiroshi 1991). In other words, in contrast to the three decades up to the 1970s, the Japanese state actually practiced – if insufficient and untimely in several cases – its capability to extend the provision of its law to foreign nationals staying in the country.

Compared with the capability and practice of the modern Japanese state during the above first two periods, the introduction of judicial interpreters in the 1990s certainly bears some significance. If less than fully ideal, the Japanese state acknowledged that a political measure specifically designed to benefit a certain group of foreigners was necessary, and implemented such a policy. The introduction of judicial interpretation is a policy measure in the criminal justice process where the state can justify its ‘open exercise of state power’ (Ito 1998: 158) against the suspects and convicts. It is nevertheless a fact that foreigners are ‘incorporated’ – in the broadest sense of the term and not necessarily containing compassionate implications – in the Japanese society and state, in comparison to the pre-war Japanese state’s lack of capability and the post-war Japanese state’s lack of practice. The capability and practice of the contemporary Japanese state has clearly been transformed in comparison to its past practice in the previous two decades referred to above.

IV. Conclusion

The aim of this study has been to consider whether the Japanese state was able to respond to one challenge of globalisation, namely the language barrier. Section II placed the recent international labour migration to Japan, from which the language barrier problem emerged, within the context of the progression of globalisation and regionalisation in East Asia. This section has shown that international labour migration is a consequence of the operation of

international political economy involving East Asia and Japan. Section III showed that the language barrier problem reflects the changing international structure of East Asia and Japan; and explained how and why the language barrier affected the Japanese state, as well as non-Japanese speakers in the criminal justice process. Details of the Japanese state's response to the language barrier problem, namely the introduction of judicial interpreters, and the resulting consequences were reported next. The Japanese state's sovereignty over the administration of criminal justice was partially and temporarily constrained by the language barrier, but the state later managed to recover the legality and legitimacy of its exercise of penal power through the introduction of judicial interpreters into the process, ensuring that judicial interpretation was more accurate and impartial than previous practice. The state has thus been successful in executing criminal justice, though not necessarily in realising normative justice in individual case.

This article argues that within a decade the Japanese state was able to respond effectively to the language barrier problem. Moreover, the Japanese state transformed its penal power – part of its sovereignty, as explained in Section III – from a territory-based one designed for the nation with only one official language, to a partially transterritorial one organised for a population among whom more than one language is officially spoken. In other words, the political space where the Japanese state's penal power could reach has been extended to the non-Japanese speakers staying in the Japanese territory.

The implications of the findings of this research to studies on globalisation are threefold. First, the finding that the Japanese state transformed a part of its capabilities supports the Transformationalist thesis of globalisation, as against the so-called Hyperglobalist thesis (such as that of Omae), which tends to assert that states are in retreat from world politics in the face of the forces of globalisation. Second, that the Japanese state was able to respond effectively to a challenge from globalisation counters the argument that characterises the Japanese state as a non-active one, as for example advanced by Calder (Potter and Sudo 2003). This study therefore supports the argument that the Japanese state is capable of responding to international influences (Hook et al. 2001). Third, this article demonstrated that a sector of the Japanese state that had been primarily in charge of domestic and political matters was exposed to an international economic force, and was able to respond to a challenge from globalisation. This counters assumptions about the state in conventional

perspectives of International Relations, namely, the rigid analytical distinction between politics and economy, and between international and domestic spheres.

The findings of this study also highlight an emerging need that the contemporary Japanese state could and should address, namely accommodating interests of the constituent population within its territory, in particular their safety from crime. A comparison between the establishment of nation state and the conditions in which the states are currently placed will help clarify why there exists such a need. In the making of a modern nation state, the development of the national economy, state building, and the configuration of the social relations that bind a newly emerged political economy took place simultaneously in each country. Such a process is also happening in the globalising world today, in particular in East Asia and Japan, this time in transterritorial terms. This study has shown that through the export of capital, the Japanese state – alongside Japanese business – has become able to extend its economic influence overseas. The study also demonstrated that the arrival of international labour migration is an unintended consequence of Japan's extension of its economic influence. In other words, the development of a regional economy has been accompanied by the reconfiguration of Japan's population, one of the key constituents of the state. While some sectors in Japan as migrant receiving country do consider the arrival of migrants as economically beneficial, there are other sectors of the society and the state in Japan that see the presence of the migrants as a possible cause of domestic instability and a focus for crime control. The Japanese state has been, if partially and temporarily constrained by the language barrier problem, able to respond to a challenge of globalisation, namely the increase in the number of detected crime committed by foreigners as a natural consequence of the growth in the entire number of migrants in Japan.

Just as it was able to respond to a force of globalisation – the considerable changes in international economy in the 1970s – by exporting its capital, the Japanese state has managed to respond to another force of globalisation in relation to crime control at an age of migration, namely the language barrier problem. This is contrary to a perception that the state's sovereignty over controlling the border is eroding under globalisation. The introduction of judicial interpreters into the criminal justice process has enabled the Japanese state to extend its sphere of influence within the geographical territory where the state's penal power was previously unable to reach. This finding leads us to contemplate upon two aspects of state's activities in crime control: this study considers that the first aspect is the prevention of crime

and protection of the state's constituent population from crime, which will meet the state's long-term interest; and the second is investigation, conviction and punishment of the crime already committed, serving the state's immediate interest. The introduction of the judicial interpreters is a policy measure that is organised primarily for the second aspect of crime control.

Having seen that the Japanese state is able to respond to changes in its international structure several times in the recent decades, there is little reason not to expect that the state could also transform its capability in the prevention and protection aspect in crime control mentioned above. If such transformation takes place in the Japanese state (there are certain degree of indications of it, if not yet overwhelming), the Japanese state would engage in the activities designed for the 'hybrid' population (Scholte 2001: 180-1) that constitute the contemporary Japanese society – qualitatively different from the imagined 'homogenous' population in the previous three decades. The emerging need for ensuring such kind of safety of the population, including the migrant workers, is starkly illustrated in the Shimodate, Dôgo and the N's cases reported in the Section III. The handling of these three cases by Japan's criminal justice institutions suggest that assuring the migrant population the safety from crime related to the international labour migration was almost out of the institutions' consideration. This is the point that the civil rights campaigners advocated for. Even though this is not a study in law, a subsidiary objective of this article has been to describe and outline an emerging interest of individual persons that the contemporary Japanese state could be held responsible in accordance with its law.

Finally, there are at least two directions to which future studies concerning the language barrier problem can develop. First, research for this study has been able to shed light on the developments in court, leaving interpretation in immigration control, investigation, and correction stages untouched. Second, this study discussed general trends in addressing the language barrier problem. Whether and to what extent the language barrier was duly addressed and the rights of the suspects and defendants were protected in individual cases, demands separate studies.

Notes

¹ Interview with Ms P., Self-Empowerment of Migrant Women (SEPOM), Chiang Mai, Thailand, 10 March 2002.

² Interview with Judge Tanaka Yasurô, Senior Instructor, The Legal Training and Research Institute, Supreme Court, 19 June 2001.

³ Interview with Ms Kawaguchi Kazuko, attorney-at-law, 5 March 2002. Ms Kawaguchi was one of the defence counsels for the Shimodate case.

⁴ Interview with Ms Miki Emiko, attorney-at-law, 16 November 2002.

⁵ Interview with Ms Kawaguchi Kazuko, 5 March 2002.

Acknowledgement

Research for this study was partially funded by the Toyota Foundation (Grant Number D02-A-604). I would like to acknowledge the Foundation's generous assistance.

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