

The Illegal Employment of Foreigners in Europe

The illegal employment of immigrants, a phenomenon that appears to be on the increase in Europe, has raised a number of issues, such as the possibility of domestic workers being crowded out, the losses to national revenue resulting from the non-payment of taxes and social security contributions, and problems relating to the living conditions, legal protection and integration of the immigrants working illegally. Why have European governments so far failed to tackle the problem more effectively? What policy responses would be appropriate?

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The Illegal Employment of Foreign Workers: an Overview

As a recent European Commission communication points out, the problem of illegal employment of immigrants in Europe appears to be on the rise.¹ While any estimates of the phenomenon need to be treated with caution, commentators have suggested that around 500,000 migrants enter EU countries illegally every year. Estimates of stocks of illegal migrants in individual countries meanwhile put the number at around 500,000 in Germany, 300,000 in France, 200,000 in the UK, and up to 800,000 in Italy. It can be estimated that around 70% of these are engaged in illegal labour.² A large proportion of this stock of illegal migrants entered EU countries legally, but subsequently overstayed their visas or permits. In other cases, foreign illegal workers are legally resident, but are working without being in possession of relevant work permits.

The phenomenon of illegal employment has raised a number of concerns in west European states. Domestic workers – especially in low-skilled work – may fear being undercut by lower-cost labour. Others have argued that illegal work generates huge losses to national revenue, because of the non-payment of tax or social security contributions. Illegal employment is also politically sensitive, putting into question states' ability to enforce their migration rules. And it raises a number of other economic, social and humanitarian problems revolving around the living conditions, legal protection, and integration of immigrants working il-

legally.³ Given the many negative aspects of illegal employment, why do European governments appear to have failed to tackle it more effectively, and what can be done to curb the phenomenon?

Defining the Problem

Illegal employment is essentially a product of two factors: legislation which restricts possibilities for legal labour migration; and the incentives of employers to circumvent the costs of employing legal labour. In some industries – such as agriculture, construction, hotel and catering, tourism, or cleaning – the restriction of legal labour migration opportunities since the 1970s and a lack of supply of indigenous workers willing to do low-status, low-paid or seasonal work gives them little option but to hire illegal immigrants. But the problem also reflects the advantages for employers of minimising costs through non-payment of social contributions, lower salaries, and hiring workers willing to work more flexible hours or with sub-standard working conditions. Some economists see this as a product of increased global competition, which forces many small and medium-sized firms to draw on a supply

¹ Commission of the European Communities: Communication from the Commission to the European Parliament and the Council in View of the European Council of Thessaloniki, on the Developments of a Common Policy on Illegal Immigration, Smuggling and Trafficking of Human Beings, External Borders and the Return of Illegal Residents, Brussels, 3.6.2003, COM (2003) 323 final.

² For estimates see, for example, S. Djaji : Illegal Immigration Trends, Policies and Economic Effects, in: S. Djaji (ed.): International Migration: Trends, Policies and Economic Impact, London and New York 2001, Routledge, pp. 137-161.

³ See L. Katseli, T. Straubhaar, K. F. Zimmermann (eds.): Illegal Migration, in: Journal of Population Economics, Vol. 12, No. 1, 1999, pp. 1-182 (several contributions).

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of cheap, flexible labour in order to stay competitive.⁴ Others locate the problem in the rigidity of European labour markets: in some countries the costs of employing workers are more than double what they actually receive in wages. On this argument, more efficient labour markets would eliminate the need to employ people outside of the regular legal framework.⁵

Whatever the cause, illegal employment is a highly problematic issue for governments. On the one hand, it is clearly economically beneficial for employers of illegal labour and for the economy as a whole. Indeed, it has been argued that business-friendly governments have a strong interest in tolerating a substantial level of illegal labour, even if they cannot publicly acknowledge this goal.⁶ Moreover, efforts to combat illegal employment through border controls, internal checks and employer sanctions are expensive and difficult to enforce, and can conflict with civil liberties or even generate discrimination against legal foreign workers. Given the weighting of costs and benefits, from an economic perspective the optimal number of illegal employees is certainly above zero.⁷ On the other hand, governments are also under intense pressure to control the problem, and respond to concerns about competition with domestic workers, loss of fiscal revenue, or the exploitation of workers. While many of these negative impacts have been contested – indeed, there is little evidence of any significant impact on native wages, or indeed of a net welfare burden – governments risk losing legitimacy if they are not seen to be effectively enforcing legislation.

These conflicting interests have led many governments in Europe to adopt a somewhat ambivalent stance towards combating illegal employment. While condemning it in public, they have shown a less than robust commitment to tackling it in practice.

Shifting Interests?

Two sets of developments, however, suggest that European governments may need to get more serious about tackling the problem. First, the issue has

⁴ Henk Overbeek: *Globalization and Governance: Contradictions of Neo-Liberal Migration Management*, HWWA Discussion Paper 174, Hamburg 2002.

⁵ Andreas Jahn, Thomas Straubhaar: *A Survey on the Economics of Illegal Migration*, in: *South European Society & Politics*, Vol. 3, No. 3, 1998, pp. 16–42.

⁶ Wayne Cornelius, Philip L. Martin, James F. Hollifield: *Introduction: The Ambivalent Quest for Immigration Control*, in: Wayne Cornelius et al. (eds.): *Controlling Immigration: A Global Perspective*, Stanford, CA 1994, Stanford University Press, pp. 3–42.

⁷ Andreas Jahn, Thomas Straubhaar, op. cit.; Horst Entorf: *Rational Migration Policy Should Tolerate Non-Zero Illegal Migration Flows: Lessons from Modelling the Market for Illegal Migration*, IZA Discussion Paper 199, Bonn 2000.

become increasingly politicised over the past decade. This is manifested in the increasing number of organised interests – especially trade unions, human rights and church groups – who have been voicing concerns about the impact of illegal labour on employment, wages, welfare systems, or immigrant rights. More generally, public opinion in many states has become increasingly anxious about problems of illegal entry and trafficking, with illegal immigration perceived to be a serious threat to law and order and even internal security. Since the prospect of finding a job is often the major pull factor encouraging people to enter European states illegally, effective measures to prevent illegal employment may be seen as a good means of discouraging illegal entry and the nefarious trafficking and smuggling practices which often accompany it.

The second reason why states may begin to rethink approaches to illegal migration concerns the emerging legal labour migration agenda. Many European governments – notably Germany and the United Kingdom – have shown a readiness to make a positive case for expanded legal programmes. This explicit recognition of the need for migrant labour could encourage governments to do more to combat illegal foreign labour, and to attempt to meet demand through regular rather than illegal channels. In effect, it could provide an incentive to bring the employment of foreign workers “above board”.⁸

Is there any evidence that governments are more willing to combat illegal foreign labour than before? In the UK the government has launched a number of high profile initiatives to crack down not just on illegal entry and stay, but also to improve the enforcement of employer sanctions. To date, however, the number of prosecutions has been extremely low. Germany, the Netherlands and France all have tough legislation, and have stepped up efforts at enforcement since the early 1990s. In both Austria and Denmark the issue has become more politicised over the past two years, and both have launched concerted efforts to crack down on employers of illegal workers. Thus there are indications that governments are becoming more serious about reducing the problem.

What Works?

This raises the question of what sorts of measures are most likely to reduce illegal employment – and in a way that minimises any negative impacts on business, civil liberties, or migrant rights.

⁸ Christina Boswell: *European Migration Policies in Flux: Changing Patterns of Inclusion and Exclusion*, Oxford 2003, Blackwell's and RIA, pp. 35–36.

- Expand legal programmes. One approach recently adopted by the UK government is to increase the supply of regular migrants in the hopes that this will decrease the numbers coming illegally, and will encourage firms to switch to using legal labour. However, there are two reasons to doubt if expanding regular supply will significantly reduce illegal employment. First, many firms will continue to be dependent on lower cost labour and will have little incentive to switch to legal employees. And second, expanding regular channels for labour migration could generate increased or even chain migration, including flows outside of legal programmes. Where legal programmes expand or consolidate migrant networks, this can facilitate illegal migration. Moreover, experience suggests that those entering on temporary legal migration programmes often switch to illegal employment once their permits expire.⁹ So while expanded programmes may encourage some employers to switch to legal employees, it will certainly not be a panacea to the problem, eliminating neither demand for nor supply of illegal migrants.
- Regularisation. The same arguments apply to amnesties or regularisation programmes: creating a possibility to draw on regular labour will not in itself eliminate demand for illegal labour. And regular amnesties may act as a strong pull factor for would-be migrants, who may attempt to enter illegally or overstay and work illegally, in the expectation that their status will be regularised after some years. Moreover, experience of regularisations in countries such as the US, France, Italy and Belgium suggests that offering regularisations of short duration may mean that people slip once more into illegality once this period has expired. Having said this, such programmes can provide stability and increased rights for some illegal migrants who would in any case have stayed on in the host country. They are also popular with businesses keen to retain current (illegal) employees. Both these factors have been important in influencing the US government's recent revival of a pre-September 11th plan to regularise the status of millions of undocumented workers. In the US case, there is also a clear political bonus from attracting votes from ethnic minority – especially Hispanic – residents. Finally, from the perspective of researchers, regularisations provide an invaluable source of information on the scale and dynamics of illegal labour – data which is otherwise near impossible to procure.
- Entry controls. Many immigration countries, and Schengenland as a whole, have focused on border control as the main instrument for preventing illegal migration and employment. However, while visa requirements, tighter border control and entry checks may decrease numbers, they can also have a number of unintended consequences. First, the reinforcement of such controls has almost certainly contributed to the burgeoning of migrant smuggling and trafficking, and has prompted organised criminal networks to adopt increasingly sophisticated methods. As these latter become more expert in circumventing controls, governments become obliged to invest in more expensive equipment, and to control entry to an extent that can damage business and tourism. Second, more stringent border checks can encourage illegal migrants to stay longer in host countries, to minimise the risks of repeated entry.¹⁰ Moreover, for many host countries – including the UK and Scandinavian countries – most illegal residents did not enter illegally, but overstayed the permitted period of stay, rendering border controls besides the point.
- Employer sanctions. There is a good case for arguing that employer sanctions are the most efficient forms of control, as they are specifically targeted to reduce the incentives for hiring undocumented migrants. However, these are notoriously difficult to enforce.¹¹ This is partly because many firms have found ways of circumventing rules, for example through sub-contracting. The increased sophistication and availability of forged documents also makes it difficult to ascertain which employees are illegal. Effective enforcement requires not just watertight legislation, but a substantial investment of resources in personnel from police, immigration or labour ministries (including, for example, check-ups outside regular working hours). Even once caught, it is often impossible to prove that employers knowingly hired undocumented workers. Finally, penalties have to be sufficiently high to counterbalance the economic gains from hiring illegals – thus in some countries, penalties include not just fines and payment of arrears on tax or national insurance, but also costs of deportation, exclusion from bidding for any public contracts, or imprisonment.

⁹ G. S. Epstein, A. L. Hillman, A. Weiss: Creating Illegal Immigrants, in: *Journal of Population Economics*, Volume 12, No. 1, 1999, pp. 3-21.

¹⁰ S. Djaji : Dynamics of Immigration Control, in: *Journal of Population Economics*, Vol. 12, No. 1, 1999, pp. 45-61.

¹¹ P. Martin, M. Miller: Employer Sanctions: French, German and US Experiences, *International Migration Papers* 36, Geneva 2000, International Labour Office; OECD: *Combating the Illegal Employment of Foreign Workers*, Paris 2000.

- Financial incentives to employ legal workers. Economic liberals would argue that the solution lies in more efficient labour markets. If the costs of employing regular workers were reduced, there would be less of an incentive to draw on illegal migrants for labour. However, the US experience suggests that illegal employment can be a major problem even in more flexible labour markets: recent estimates put the number of illegals there at 6-8 million, despite the far lower costs of regular employment. Moreover, while many European states are currently attempting to flexibilise labour markets, any attempts to reduce minimum wages, or lower social payments or working conditions would face substantial resistance from organised labour and many sections of public opinion. One alternative option would be to introduce exemptions from these payments for specific jobs. In France, for example, employers can get tax rebates or reduced social charges for some domestic jobs; in Germany, unemployed people can take up some seasonal jobs without paying tax or social costs.
- Toleration. Finally, it could be argued that given the shortcomings of all of these approaches, a better route would be simply to tolerate illegal employment. This would be consistent with what some US scholars have called the “gap” hypothesis: the discrepancy between stated policy goals of reducing illegal

employment, and the toleration of the problem in practice.¹² The gap allows businesses to meet their demand for low-cost, flexible labour, and spares governments the task of having to fight the issue out in a highly politicised public arena. This approach has indeed characterised the policies of many receiving countries. But west European governments may find this is becoming less of an option, given continued public concerns about illegal migration.

Perspectives

West European governments will find themselves under increasing pressure to expand regular labour migration in the coming decades. This will make it more important than ever to develop better strategies for combating illegal employment. Far from reducing the supply of irregular workers, expanded legal programmes may well generate an increase in their supply: the expansion of migrant networks can facilitate migration outside of legal programmes, while temporary workers may overstay their permits and enter illegal employment. Efforts to limit the supply of irregular labour through entry controls or internal checks, meanwhile, are socially and economically costly. The best strategy would be to develop better ways of tackling the problem at the demand side: increasing the costs and probability of apprehension for employers, and lowering the costs of hiring regular workers.

¹² Wayne Cornelius et al., op. cit.

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The Demand for Illegal Migration and Market Outcomes

Migration is a source of economic growth in many countries. The USA, for instance, is growing more dependent on Mexican than on domestic labour. A large share of migrants have entered the USA as “illegal or unauthorised immigrants” by avoiding official inspection, passing through inspection with fraudulent documents, or by entering as a tourist and overstaying the term of their temporary visas. While it is extremely difficult to estimate the undocumented population, analysts place the figure at somewhere between 8 and 9 million in 2001, estimating growth at around

500,000 each year.¹ Mexico remains the leading country of origin, being the source of nearly half of the total. Estimates for the number of illegal migrants living in Germany given without reference and explanation in publications by unions, parties, churches, and other official institutions vary between 500,000 and 1.5 million. Schneider estimates a number of 1.2 million illegal immigrants in Germany.² Official and discretionary national policies reveal that illegal immigration is part of the nations’ labour demand. In particular the US practice of repeated amnesties to legalise unauthor-

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¹ See MPI Staff: U.S. in Focus, Migration Policy Institute, 2002, <http://www.migrationinformation.org/USfocus/> (3 January 2004).

² Friedrich Schneider: Der Umfang der Schattenwirtschaft des Jahres 2003 in Deutschland, Österreich und der Schweiz – Weiteres Anwachsen der Schattenwirtschaft, 2003.

ised immigrants shows the demand of the booming US economy for labour, irrespective of whether it is legal or illegal. Germany has never declared any amnesties for illegal immigrants, but nevertheless represents a second type of country with a high demand for illegal immigration, despite – or just because of – the rather recessionary situation of the German economy. As will be described in more detail in this article, among the most prominent reasons are the high incentives of firms and private households to avoid and circumvent pressures stemming from high labour costs, social security payments and taxation.

Illegal labour markets are highly regulated. Of course, the regulation is quite different from regulated legal European labour markets because of its clandestine and illegal nature. Notwithstanding this, tolerance towards illegal migration and the degree of regulation is dependent on time and location. Again, the USA provides a good example. While the time-dependency is obvious from the presence or absence of amnesties, country-specific regulation becomes evident from the different treatment of the Mexican and Canadian borders. According to MPI,³ there are currently approximately 9,150 border patrol agents working along the 2,000-mile US-Mexico border, while there are only approximately 334 agents working along the 4,000-mile US-Canada border. This example of asymmetry in border enforcement shows that countries like the USA would like to control the quantity of labour and the quality of labour skills in response to the prevailing economic and political situation.

Summarising problems associated with illegal migration, there are two main popular arguments. First, citizens of the home country may be concerned about an increasing number of crimes. Second, as indicated above, illegal immigrants could be attracted by (illegal) labour demand, enter national labour markets and push out domestic workers. In this article we are going to discuss the second issue,⁴ while the problem of crime and immigration is discussed elsewhere.⁵ Especially, we will describe the incentives of national entrepreneurs as well as those of immigrants and summarise important results concerning the consequences of the demand for illegal immigrants. Gary

³ MPI Staff, op. cit.

⁴ We do not consider problems associated with demand in the sense of "pull factors", e.g. due to achievements of the welfare state. Cf., for instance, Susanne Meyer: Sozialausgaben in OECD-Staaten: Ein Pull-Effekt der Migration?, Darmstadt Discussion Paper in Economics No. 124, Darmstadt 2003.

⁵ Horst Entorf and Claus Larsen: Crime and Immigration in Denmark and Germany, in: Torben Tranaes, Klaus F. Zimmermann (eds.), Title tba (book on living conditions of immigrants in Denmark and Germany), 2004, forthcoming.

Becker's Nobel-prize winning theory explaining illegal individual behaviour⁶ will be used to understand the behaviour of participants of the market for illegal immigrant labour.⁷ Market outcomes and consequences in terms of costs and benefits of illegal migration are discussed in extra sections.

Demand for Illegal Immigrant Labour, Migration Decisions and Market Outcome

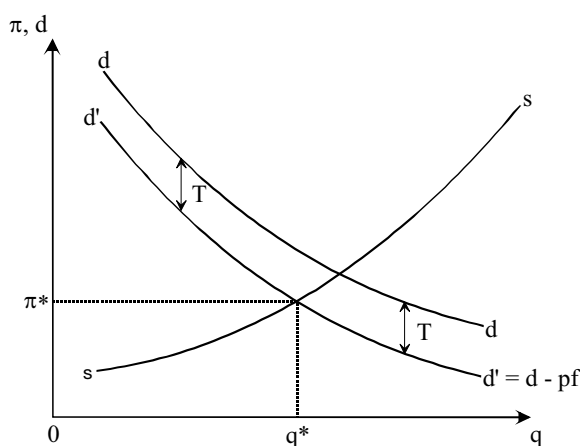
Immigrants weigh up their chances and risks before entering a host country to work illegally. We assume people try to make the best of their opportunities and abilities. They take into account restrictions caused by markets, institutions and other individuals. The most important incentive to work abroad is a boost in personal income. The expected income of an illegal immigrant is uncertain because possible apprehension and deportation by either the home or host country authorities is accompanied by a loss in real or potential earnings. The migration decision depends on the difference between the expected gain from the uncertain income in the host country and the relatively fixed income in the source country. In contrast to legal migrants, illegal migrants need to take into account the probability of being detected and the severity of the potential penalty. Information on such figures can be gathered from public media and from home-comers who are asked how successful or unpleasant the work abroad was. Gathering information means nothing else than estimating the detection probability, possible penalties, and the attainable wages in the host-country.

Explaining the behaviour of entrepreneurs in the host country is possible via the same maximising scheme. Wages for illegal workers are costs for the entrepreneur – without giving the state its piece of the cake. Furthermore, no job protection exists for clandestine workers. Hence, the entrepreneur has the opportunity to hire and fire in correspondence with current demand. In a ceteris paribus analysis where we fix product price, marketable amount and quality of a product, as well as the amount of input factors, the maximisation of earnings is identical to minimiza-

⁶ Gary S. Becker: Crime and Punishment: An Economic Approach, in: *Journal of Political Economy*, Vol. 76, March/April 1968, pp. 169-217.

⁷ Earlier examples are given by Ethier and Entorf, who formalised the market for illegal migrants. Ethier investigates the impact of different deterrence instruments in a general equilibrium framework, while Entorf studies the behaviour of illegal immigrants and policy implications in a partial model. Wilfried Ethier: Illegal Immigration: The Host-Country Problem, in: *American Economic Review*, Vol. 76, No. 1, 1986, pp. 56-71. Horst Entorf: Rational Migration Policy should tolerate non-zero illegal Migration Flows: Lessons from Modelling the Market for Illegal Migration, in: *International Migration*, Vol. 40, No. 1, 2002, pp. 27-43.

Figure 1
The Market for Illegal Migration



tion of the input price, i.e. minimising wages. All these assumptions are especially reasonable in markets for “low-skilled” products where the education and experience of workers are less important. However, if an entrepreneur employs illegal immigrants he faces additional expected costs due to the risk of being detected and punished. The probability of being detected and the sentence in the case of detection determine the demand for illegal workers in a company.

Thus, both entrepreneurs and illegal immigrants are deterred by a high detection probability and hard fines which can both be controlled by national governments. Frequent authorisation checks, for instance, make hiring illegal workers a risky business, and increasing sanctions for employers reduces the incentive to employ foreigners without work permits. As a consequence, the demand for illegal labour would decrease at given wages or, if illegal labour supply is rigid, “profitable” wages of illegal workers would drop, such that potential income opportunities from illegal migration would fall.

Other measures such as increasing minimum wages might lead to a higher demand for illegal immigrant labour, because higher minimum wages increase the pressure on employers to hire illegal immigrants. Labour market policy, therefore, might have some unintended influence on the number of illegal immigrants. In many EU countries the strong influence of trade unions has led to a rise in minimum wages. In a highly competitive economic environment, higher wages increase the incentive to hire illegal migrants and dismiss low-educated domestic workers. However, as low-skilled employees (and not low-skilled unemployed) represent typical union members, an increase in the size of the illegal workforce might negatively

affect the coverage rate of unions. Foreigners will become union members only if they are part of the official workforce. Thus, the raising of the minimum wage could be counter-productive not only for the number of profitable jobs but also for unions themselves.

In Figure 1 the arguments listed above are illustrated using the basic tools of economists and employing Becker's arguments of deterrence.⁸ Entrepreneurs' demand curve dd for illegal immigrant labour (which includes the demand by private households) is downward sloping, i.e. demand increases when the wage (wage costs for entrepreneurs), π , of illegal labour decreases. The supply curve ss symbolizes the manpower offered by immigrants. p represents the probability of detection and f the severity of sanction. If one or both of these policy variables is scaled up then the employment of illegal workers becomes more costly and thus less attractive to employers.⁹ This is shown by a shift in the demand curve resulting in the curve $d'd'$. This shift comes along with a lower wage π^* for illegal workers and a smaller number q^* of them in the labour market.

Parameters p and f , set by immigration policy, change the maximisation calculus of a risk-neutral entrepreneur. If both the supply curves of illegal immigrants and the demand curves of national entrepreneurs are elastic then the burden of fines is shared by both groups. Introducing fines on employers also reduces the profits for immigrants from illegal work. They are afraid of apprehension and the loss of their wages. Thus, similar to the shift of the demand curve, the supply of illegal migrants might be curbed by stronger controls or sanctions, such that equilibrium wages paid to illegal migrants might go up again. In Figure 1, however, we assume that the supply side is unaffected by deterrence measures (as is confirmed by the US-Mexican experience).

Consequences and Cost-Benefit Considerations

Both the national entrepreneur and immigrants benefit from the income differential between home and host countries. If entrepreneurs are risk-neutral and maximise their expected income then we should expect a high percentage of illegal immigrants in the EU workforce. Since illegal immigrants are always clandestine workers, taxes as well as payments to the

⁸ Cf. Susanne Meyer, *op. cit.*

⁹ In 2002 and 2003, the German government adopted some laws to stem the shadow economy (cf. Bundestagsdrucksache 15/726). In accordance with our model they have done this by increasing fines, by employing more officers, and some further measures. We could interpret the increasing number of officers who control persons on the job and employers as a measure to increase detection probability.

social security system can be retained by the employers. The estimation of the damage caused by illegal work is a difficult task. Experts agree that illegal work is gaining in importance. During the last 15 years, the size of the shadow economy has increased relative to the national income in most European countries. The estimated percentage of the shadow economy varies from 9.5 per cent for Switzerland to 28.3 for Greece.¹⁰ The most important EU countries have the following quotas: Germany 16.8 per cent, France 14.8 per cent, and the United Kingdom 12.3 per cent. In Germany there were 9.42 million illegal domestic workers and 1.225 million illegal immigrants in 2003, whereas these numbers were 7.32 million and 0.878 million in 1995. Of course, such numbers are pure "guesstimates" and are based on full-time equivalents of estimated working hours which in turn were calculated from figures of illegal production.¹¹ If Schneider's estimates are correct, then the demand for illegal immigrants accompanies the rise in demand for illegal domestic workers. Hence, it is reasonable to conclude that the number of illegal immigrants is more demand-driven than determined by the supply side, i.e. the conditions in the countries of origin. Otherwise, we should have seen a displacement of illegal domestic workers by illegal immigrants. Thus, we argue that factors which increase the informal economy likewise increase the flow of illegal immigration.¹²

When evaluating the consequences of immigration for the economy it is often distinguished between skilled and unskilled labour. As high-skilled immigrants typically are legal immigrants we omit this discussion here. Illegal immigrants typically are unskilled and compete with unskilled domestic workers. It is estimated that with a low unemployment rate the impact of immigrants is modest. This result can change in the presence of a high unemployment rate. Following Zimmermann,¹³ the loss of GNP in the presence of an unrestrained laissez-faire immigration policy could be up to five per cent.¹⁴ In a recent paper, Angrist and

Kugler also found a strong negative impact on the unemployment rate if the share of immigrants in the EU increases.¹⁵

Illegal immigration could have positive effects on the wealth of nations. In addition to the argument backed by US experience that illegal migration might fill the gap of significant labour shortages in booming economies, it could be argued that illegal immigrants are substitutes for low-skilled workers and complements for high-skilled workers.¹⁶ In the short-run we could also expect that the employment of illegal immigrants is a mechanism to erode inefficient regulation and bureaucracy. Moreover, a high number of foreigners in a host country could increase cultural diversity. In the long run we could expect a positive effect on foreign trade because of well settled cultural and ethnic channels between receiving and sending countries. After all, the impact of illegal immigrants crucially depends on the unemployment rate as well as on the behaviour of unemployed domestic workers. The results of empirical studies estimating the effect of legal and illegal immigration in Europe are rather mixed.¹⁷

Our previous discussion is based on economic arguments. However, social costs are also important. In European countries with dominant labour migration citizens have rather negative sentiments towards immigrants, in contrast to the situation in traditional countries of migration (Australia, Canada, New Zealand and the USA) where most immigrants are selected according to education and skill needs (with the exception of the USA). In particular, low-educated employees who compete with immigrants for scarce jobs tend to have strong negative sentiments.¹⁸ Thus, the employment of illegal immigrants might cause xenophobic movements which could hinder the integration of legal immigrants and thus finally lead to high economic as well as to intangible costs.

¹⁰ For all the numbers quoted cf. Friedrich Schneider, op. cit.

¹¹ All figures are based on the currency demand approach. Schneider calculates current figures (ibid.) Schneider and Enste present a long-run perspective on a smaller sample: Friedrich Schneider, Dominik H. Enste: Shadow Economies: Size, Causes, and Consequences, in: Journal of Economic Literature, Vol. 38, March 2000, pp. 77-114, here p.81.

¹² A comprehensive survey is given in Friedrich Schneider, Dominik H. Enste, ibid., Section 3 ("The Main Causes of the Increase").

¹³ Klaus F. Zimmermann: Immigration und Arbeitsmarkt: Eine ökonomische Perspektive, IZA Discussion Paper No.7, 1998.

¹⁴ Similar figures are calculated by Borjas for the US labour market. George J. Borjas: The Labor Demand Curve is downward sloping: Reexamining the Impact of Immigration on the Labor Market, in: Quarterly Journal of Economics, November 2003, pp. 1335-1374.

¹⁵ Joshua. D. Angrist, Adriana D. Kugler: Protective or counter-productive? Labour Market Institutions and the Effect of Immigration on EU Natives, in: The Economic Journal, Vol. 113, 2003, F302-F331.

¹⁶ Cf. Klaus F. Zimmermann, op. cit.; as well as Daniela DeI Boca, Alessandra Venturini: Italian Migration, IZA Discussion Paper No.938, 2003. DeI Boca and Venturini conclude that foreign workers complement the Italian work force.

¹⁷ Cf. Klaus F. Zimmermann: Tackling the European Migration Problem, in: Journal of Economic Perspectives, Vol. 9, No. 2, 1995, pp. 45-62 and the references therein.

¹⁸ Cf. Thomas K. Bauer, Magnus Lofstom, Klaus F. Zimmermann: Immigration Policy, Assimilation of Immigrants and Natives' Sentiments towards Immigrants: Evidence from 12 OECD-Countries, IZA Discussion Paper No.187, 2000. For the United States the results are similar. Cf. Kenneth F. Scheve, Matthew J. Slaughter: Labor Market Competition and Individual Preferences over Immigration Policy, in: The Review of Economics and Statistics, Vol. 83, No. 1, February 2001, pp. 133-145.

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Do Illegal Migrants Compete with National Workers?

Most economic literature focuses on the effect that *legal immigrants* have on the wages or employment of native workers (sections A and B of Table 1). The reason for this is very simple: in such cases the analysis is more standard and data and theory are available. Very little attention is devoted to what effect the *immigrants working irregularly* have on the wages and employment of native workers, not only because data are very scarce but also because the issue is very complex.

Two kinds of effect emerge: one within the irregular labour market in the possible competition with natives working irregularly (section D of Table 1) and another in the possible competition with natives working legally in the formal labour market (section C of Table 1). Fundamentally the first case can be compared to the traditional possible competition between immigrants and native workers in the formal labour market, while the second illustrates the competition between two sectors which pay different labour costs.

Two further effects of immigration exist which are studied even less and are created by either legal or illegal foreigners: the push or pull effect on the internal mobility of native workers and the push or pull effect on production relocation or decentralization (Table 1, E and F).

Definition of Illegal/Irregular Migrant Workers

Migrants working in the black economy belong to two groups. The first group consists of foreigners who are irregular in their presence in the destination country. Fundamentally, either they do not have either a residence permit or a work permit, and are usually called *illegal workers*. The second group comprises foreigners who hold a residence permit of some kind (work, family reunion, tourism or student) but they do not have a formal contract of work, usually named *irregular workers*.¹

However, the issue is complex. Migrants leave their countries in search of better economic opportunities and are attracted not only by the official and formal life in the destination areas but also by the possibility of

making money in the irregular economy. Many of them come from far-away countries where the difference between official and irregular work does not exist, and thus they lack the concept of illegal or irregular work; others come from much closer areas but do not care about the irregularity of their status.

Especially in Southern European countries where frequent amnesties have legalised illegal entrance and illegal work, the illegal entrance and illegal work were just temporary phases (1-5 years) in the process of becoming a legal foreign resident. Irregular positions are low-skill positions. Migrants when they arrive in the destination country are ready to accept any job whatsoever, even jobs which demand long hours and have poor working conditions (e.g. lack of freedom), for example work in agriculture, in the family etc. When the foreigners become legal, they request family reunion and therefore they are no longer willing to accept the working conditions they had accepted previously and switch to other kinds of job, frequently in the same sector but with different characteristics.

The foreign migratory project has just an initial phase of illegality, replaced by a subsequent phase of legal residence in the destination areas. Thus the immigrants who are illegal and work illegally are not always the same persons, even if fundamentally they hold the same kind of position, which is usually characterised by a high turnover.

Occasionally legal migrants lose their legal status and their legal job, or even if they keep their legal status as a resident, they lose their legal job and thus go back to irregular work. These groups of people are a less serious problem for the destination country, because at least they are registered as residents, but they are a very serious problem for the economy because they feed the informal production sectors. Some of these workers will work permanently in the informal economy because they want a flexible job which gives them the freedom to go back home whenever they want, or because, especially for women, their duties in the house are not compatible with the

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¹ In the USA, but very rarely in Europe, there are workers who have a social security number, and can thus take up regular employment, but do not have a residence permit. This case is not central to our analysis.

Table 1
Competition or Complementarity by Categories

Competition between:
A. regular immigrants and native workers of equal skill level
B. regular immigrants and native workers of different skill level
C. regular native workers and irregular immigrants
D. irregular native workers and irregular immigrants
E. effects on internal mobility (USA, EU, Southern Europe)
F. effects on production decentralisation

Source: Based on: A. Venturini: PostWar Migration in Southern Europe, 2004, CUP, p.96.

duties of a legal job, but most are repeatedly entering and exiting from irregular work.

Does the demand for labour in the irregular economy encourage illegal entrance or do illegal foreigners stimulate irregular employment? Both. Immigrants are certainly attracted by the possibility of receiving an income in any case but they also feed irregular production. The case of Southern European countries is an interesting example, in that they hold the leadership in the extent of irregular labour among the native workers and are also leaders in the number of regularisation programmes implemented in the last 15-20 years.

The demand for workers in the irregular economy relies on a continuous inflow of illegal workers, because legalisation turns illegal into legal workers. If the government is able to reduce the number of illegal new entrants there will be either a radical adjustment in the sector or there will be an increase in the supply of foreigners with legal residency status but working irregularly. This is what happens in Northern Italy, the area of the country which has fewer illegal immigrants and where there are fewer firms which are completely illegal.²

In Veneto inspections by the Labour Office have revealed a constant share of illegal workers (which represented 7% of regular foreign workers employed), but a growing share of irregular ones which represented 8% of the legal foreign workers employed in firms in 2000 and 17% in 2002.³ These results should be taken only as an indication of the phenomenon because the inspections are not randomly selected, but the growth discovered is very large. In South Italy where illegal

² The ISAE (Istituto di Studi e Analisi Economica, Rome) Quarterly Report for April 2002 shows the results of their survey in which in the North total evasion is absent, and also unregistered tax evasion and the employment of irregular workers is very limited, while in the Center and in the South the number of firms not registered is much larger, as is irregular employment.

³ A Study of Black Labour in Veneto: Avoiding and Evading Contributions, a survey by INPS (Istituto Nazionale della Previdenza Sociale), Veneto.

production is more widespread the share of completely illegal workers is larger, but little evidence exists of growth of irregular work. Frequently migrants legalised in the South go to the North in search of a formal job.

The sectors where the illegal employment of foreigners prevails are agriculture, construction and services (namely restaurants, shops and family services) but also some branches of industry, although only in small firms. Large companies in fact have a complex personnel organisation and a trade union organisation which protects the workers' interests, and thus do not use irregular labour. Large companies aiming at reducing costs turn to subcontractors which, given their small size, frequently use irregular labour. In Southern European countries the irregular workers do unskilled jobs even though some of the workers holding these positions are not unskilled. It is their lack of knowledge of the language that forces them at least temporarily into these positions.

Effect on the Domestic Labour Market

Even if the status of irregular workers usually is not permanent, the effects on the destination country's economy are not at all transient. Very little empirical research is available on this issue. Three types of evidence which tackle the topic in a very complementary way can be summarised as follows.

- In their excellent field work in Northern Greece, Lianos, Sarris and Katseli⁴ estimated by interviews the gross substitution of native workers by foreigners, i.e. how many jobs previously done by Greeks are now done by foreigners. The gross substitution rate was very high: 12% with reference to regular immigrants and 21% with reference to irregular immigrants, but taking into account the reduced willingness of native workers to do certain kinds of jobs and tasks, the net substitution rate is reduced to 0.5% for regular and 5.8% for irregular labour. These results suggest that in each labour market⁵ immigrants play a competitive role, but in the irregular labour market their role is much larger, as is to be expected from neoclassical theory, because the effect is larger where the market is more flexible. In addition these results suggest that irregular labour damages native workers more than regular labour and thus it is better to legalise immigrants.
- Venturini,⁶ studying the Italian case, analyses competition between irregular or illegal work done by

⁴ T. P. Lianos, A. H. Sarris, L. T. Katseli: Illegal immigration and local labour markets: the case of northern Greece, in: *International Migration Quarterly Review*, Vol. 34, No. 3, 1996, pp. 449-84.

⁵ Basically their analysis concerns sections A and D of Table 1.

native and foreign labour and regular work by using ISTAT estimates regarding non-regular and regular employment from 1980 to 1995.⁷ At the aggregate level the effect of irregular foreign labour is negative but very small (the long-run elasticity is -0.01), while the analysis by sectors reveals strong competition in the agricultural sector (-3.8), slight competition in the construction sector (-0.8) and a complementary effect in the growing non-tradable services sector. These results imply that the increase in the supply of irregular workers has reduced the “emersion” of the so-called underground economy and the increasing supply of irregular labour reduces the effectiveness of all the policies implemented to discourage the creation and the persistency of irregular forms of production. As would be expected, the effect of the irregular natives on the regular labour is always larger than the effect of foreigners working irregularly. This is because irregular natives are more similar to natives working regularly.

- The effect of foreigners working legally and illegally in Greece and in Spain is also studied using a computable general equilibrium model by Sarris and Zografakis⁸ and by Ferri, Gomez-Plana and Martin-Montaner.⁹ Basically, in their model, labour markets are flexible, and thus an increase in the supply of labour reduces wages, which reduces the prices of goods and if the demand for domestic and foreign goods increases enough, this can compensate the initial reduction with a rise in final wages and employment growth. Both regular and irregular immigrants can be competitive but the final effect depends on the structure of the demand for goods. If exports prevail over imports the effect is likely to be positive while if the country has a balance of payments deficit, the growth of the demand for goods will be not enough to offset the reduction in wages. Empirical tests in both cases show that the legalisation of illegal immigrants, establishing a higher average wage, will not increase the competitive effect of immigrants because they will not impact negatively on income growth.

⁶ A. Venturini: Do Immigrants Working Illegally Reduce the Natives' Legal Employment in Italy, in: *Journal of Population Economics*, Vol. 12, No. 1, 1999, pp. 135-154.

⁷ Section C of Table 1.

⁸ A. Sarris, S. Zografakis: A computable general equilibrium assessment of the impact of illegal immigration on the Greek economy, in: *Journal of Population Economics*, Vol. 12, No. 1, 1999, pp.155-182.

⁹ J. Ferri, A. G. Gomez-Plana, J. Martin-Montaner: General Equilibrium Effect of Increasing Immigration: the Case of Spain, University of Valencia, Departamento de Analisis Economico, Working Paper 01-02, 2000.

These results do not explicitly take into account rotation among the irregular workers but if immigrants are homogeneous, this is not relevant for the final effect. However, the homogeneity assumption is not confirmed by the data. Southern European countries experienced different waves of immigration coming from different countries. Basically, during the 1980s the immigrants mainly came from Africa and Asia, and a few from the Latin American countries, while in the 1990s large-scale East European emigration started with subsequent waves of migrants coming from different countries. These groups have different average human capital and thus different productivities and different effects on the economy. In addition, nationals reacted differently to immigrants of different origin. Again taking an example from Northern Italy, they offered East Europeans irregular jobs which had previously never been offered to Africans.¹⁰ That is to say, different immigrant flows can affect the economy in different ways, and if the more recent waves were better educated they were more similar to the native workers and therefore more competitive.

The presence of the illegal workers has an additional effect both on the internal mobility of nationals and on the location of a firm's production. If illegal immigrants or irregular foreign workers are available, firms do not have any incentive to offer a higher wage to attract native workers from other regions or to decentralise production to regions where there is an excess of labour. There is very little evidence available on this point, even though the distorting effect on resource allocation can be very important.

Conclusion

Some evidence regarding the effects of illegal or irregular immigrants on the receiving country's labour market is available but it is very limited considering the complexity entailed.

It is clear that foreign irregular labour damages native workers more than regular foreign labour, but irregularity in employment is very difficult to pursue in countries with a large informal sector. Destination countries should first fight complete illegality in the country and in the job at any cost, and leave the labour office with the responsibility of providing incentives to get a legal job through frequent controls and high penalties.

¹⁰ C. Borzaga, E. Renzetti, L. Covi: L'immigrazione extracomunitaria in provincia di Trento: dimensioni ed aspetti secondo i risultati di un'indagine sul campo, in: *Studi Emigrazioni*, Vol. 30, No. 110, 1993, pp.194-218.

Christiane Kuptsch*

The Protection of Illegally Employed Foreign Workers: Mission Impossible?

Although Boris holds a degree in political science, he is currently working as a labourer on a city of London building site. He came to the UK from Poland to earn some money and improve his English. He is not legally entitled to work but has been employed on the same site for almost two years. He does not get holiday pay or other benefits that his co-workers from the UK receive.¹

This note deals with the protection available to illegally employed foreign workers under international law and the dilemmas that migrant receiving states face in making this protection a reality.

Protection under International Legal Instruments

Human rights standards such as the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, or the International Convention on the Elimination of *all* Forms of Discrimination apply to all persons within the territory of a ratifying state and therefore also cover migrants in illegal situations.

In addition, there are several international legal instruments that were adopted in the framework of the United Nations (UN) and the International Labour Organization (ILO), which refer to irregular migration directly, albeit not exclusively, including ILO Convention no. 97 concerning migration for employment, adopted in 1949; ILO Convention no. 143 of 1975 concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment; and the 1990 UN Convention on the Protection of Rights of All Migrant Workers and Members of Their Families which went into force on 1 July 2003.

ILO Convention no. 97, which was enacted after World War II in a context of large-scale migratory movements, essentially aims to regulate and facilitate migration by encouraging states to sign bilateral agreements and detailing procedures for private and public recruitment and placement. Most provisions

of Convention no. 97 apply to migrants in an authorised situation, reflecting the view that the best way to protect migrants is to make sure that they are legally employed. As for irregular migration, Convention no. 97 is mostly about prevention. In order to curb irregular flows, states ratifying Convention no. 97 undertake to ensure that migrants for employment are provided with accurate information and not misled by false propaganda relating to emigration or immigration.

It is part I of ILO Convention no. 143 entitled "Migrations in Abusive Conditions" which represents the first attempt at international level to secure certain rights for so-called illegal or undocumented workers and to combat clandestine migration and employment.² *Inter alia*, it requires of states to collect information on illegal migration, to take all necessary measures to suppress clandestine movements of migrants and to proceed against the organisers of illicit or clandestine labour migration and the employers of irregular migrants. One of the purposes of such measures is to ensure that traffickers in manpower can be prosecuted whatever the country they operate from. Article 6 of Convention no. 143 provides that the illegal employment of migrant workers shall entail sanctions including imprisonment; and the burden of proof that they acted in good faith lies with the employers.

Article 9 makes it very clear that irregularity does not strip migrant workers of all rights. It stipulates that in cases where immigration or employment legislation has not been respected and the workers' positions cannot be regularised, the migrants and their families shall enjoy equality of treatment in respect of rights arising out of past employment as regards remuneration, social security and other benefits. In case of a dispute arising over these issues, workers are granted the right to present their case to a competent body. Also, while irregular migrants are not free from the risk

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¹ Trades Union Congress (TUC): Overworked, underpaid and over here - Migrant workers in Britain, European Union and International Relations Department, July 2003, case study.

² Roger Böhnig: The Protection of Migrant Workers and International Labour Standards, in: International Migration, Vol. 26, No. 2, 1988.

of being expelled eventually, ILO “case law”³ makes clear that when someone files a complaint, even as an irregular worker, that person must be granted the right to stay in the country long enough to go through with their case.

It is worth noting that migrant workers in an illegal situation also enjoy the fundamental rights set out in ILO Conventions that cover issues other than migration. For example, the General Union of Workers of Spain (UGT) brought a case before the ILO’s Committee on Freedom of Association, alleging that a new law on foreigners adopted in 2000 restricted foreigners’ trade union rights by making their exercise dependent on authorisation of the foreigner’s presence or residence in Spain. The government argued that the purpose of the law had been to make a clear distinction between so-called “legal” foreigners, who would enjoy trade union rights on an equal footing with nationals, and “irregular” foreigners, to control migratory flows and combat the mafias who traffic in human beings. The Committee upheld the UGT, pointing to Article 2 of ILO Convention no. 87, Freedom of Association and Protection of the Right to Organize (1948), according to which workers, without distinction whatsoever, have the right to join organisations of their own choosing. The Committee also added that “unions must have the right to represent and assist workers covered by the Convention with the aim of furthering and defending their interests”,⁴ in this case the interests of foreigners illegally employed.

The International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families, adopted under UN auspices, builds on ILO Convention no. 143. Both instruments share the basic understanding that employers will no longer be able to benefit from cheap and docile labour if irregular immigrants are effectively protected, which in turn will eradicate one of the main reasons for irregular migration. Protection of irregular immigrants therefore goes hand in hand with combating irregular migration. Both instruments also make a distinction between those who are in a regular situation and those who are not. But the UN Convention goes beyond ILO Convention no. 143 in urging equal treatment for irregular migrants on more issues than Convention no. 143. From the

³ Cases that were before the ILO’s Committee of Experts or the Committee on Freedom of Association.

⁴ For details cf.: Reports of the Committee on Freedom of Association, Spain (Case No. 2121), The General Union of Workers of Spain (UGT), 23.3.2001, Denial of the right to organize and strike, freedom of assembly and association, the right to demonstrate and collective bargaining rights to “irregular” foreign workers, Report No. 327 (Vol. LXXXV, 2002, Series B, No.1).

late 1970s some emigration countries, in particular Mexico, had pressed for additional protection for long established communities of irregular migrant workers who were tolerated in their respective receiving country but remained in an illegal situation.⁵

Part III of the UN Convention not only sets out basic civil rights that must be granted to all migrant workers (including those in an irregular situation): freedom from torture and degrading treatment, forced or compulsory labour; freedom of thought, conscience and religion; freedom of expression; the right to liberty and security of person; etc. Part III also clearly states that all migrant workers shall enjoy treatment not less favourable than that which applies to nationals in respect of remuneration and other conditions of work (overtime, hours of work, holiday pay, etc.) and terms of employment (minimum age, restrictions on home work, etc.) (see Article 25). It is emphasised that this principle of equal treatment must not be refused to workers “by reason of any irregularity in their stay or employment”. Emergency medical care or public pre-school or school education must not be refused on those grounds either (see Articles 28 and 30). Union rights are granted (Article 26) and with respect to social security, equal treatment with nationals is also guaranteed (Article 27). An irregular migrant worker who contributed to a social security scheme would therefore have the right to the same benefits as a colleague with host country nationality and equal contributions. The relevant institutions should also consider refunding social security contributions upon departure, on the basis of treatment granted to nationals who are in a similar situation.

It is clear that migrant protections available under international norms and regulations are fairly encompassing, including procedural rights, employment rights, the right to be part of and represented by a trade union and so forth. Yet Boris’ case related in the introduction is not an exception. Why is this so?

Dilemmas in Providing Effective Protection

The illegal employment of foreign workers is “outlawed” at international level by virtue of the above international instruments. However, few states have ratified ILO Conventions nos. 97 and 143 and the UN Convention on migrant workers. ILO Convention no. 97 has been ratified by 42 states, Convention no. 143 by only 18 countries and, in both cases, the majority

⁵ Bimal Ghosh: *Hurdled Masses and Uncertain Shores*, International Organization for Migration (IOM) & Martinus Nijhoff Publishers 1998, Kluwer Law International.

are emigration countries. Similarly, all of the 22 states that have ratified the UN Convention are net emigration countries.

Non-ratification of the ILO Conventions is usually explained by technical hurdles. Periodically, ILO member states report on the reasons for non-ratification. One wonders, however, to what extent the reluctance of states to comply with the migrant conventions might stem from their inability to provide for their "own" (local) population. Possibly, few states have ratified the migrant conventions because many see themselves faced with dilemmas. Various actors have incentives to accept the illegal employment of foreigners, and structures have developed, especially in migrant receiving countries, which induce such employment.

Migrants' Reasons for Accepting Illegal Employment

International labour migration is fuelled by differences: differences in wages, in economic development between countries. These differences are widening which also means more incentives for people to migrate. In 1975, per capita incomes in the high-income countries were on average 41 times greater than in low income countries; in 2000 they were 66 times higher. The plight of farmers from developing countries, who have high costs for their farm inputs and receive low prices for their goods, also encourages international migration. Ex-farmers have to make large cultural transitions when they move to urban areas. Having to adapt to the life in a big city of their own country or moving on to an agglomeration abroad often makes no difference to them and they leave when the infrastructure is there to take them across the border.⁶ Usually, the farmers are used to hard work and long hours. They represent "ideal" employees in 3-D-jobs (dirty, dangerous and difficult) which workers in wealthier countries are no longer willing to occupy.

With increasing disparities between the first and the third world, little prospects for improvements in the developing countries, and at the same time closed borders of rich countries ("Fortress Europe"), migrants have strong incentives to accept illegal employment. Illegal employment is often their only channel of entry available, i.e. the only access to the labour market of a rich receiving country.

In recent years, there has been a proliferation of "micro guest worker schemes",⁷ usually begun by the

receiving country, and often geared at filling job vacancies in very limited segments of the receiving country's labour market. Frequently, the stated rationale of these new programmes is to combat illegal immigration. Increased border, identity and other controls come as a package with the new openness. One of the problems with this approach is that each legal flow is bound to create an illegal flow, as the sociological expectations rise faster than the legal opportunities for immigration. Another problem is that some migrants may find the prospect of having illegal employment, for as long as they stay undetected, more attractive than coming in under a short-term programme with strict exit controls. In other words, incentives for accepting illegal employment remain.

This is also why migrants in an irregular situation often collude with employers when labour inspectors show up at workplaces, which in turn renders the task of proving effective protection exceedingly difficult for the responsible receiving country institutions. The migrants' status makes them vulnerable to employer intimidation and exploitation. According to Boris from Torun, workers without legal status do not want to draw attention to themselves by asking for rights, "you just work where they pay you the best".⁸

Employers' Preferences for Clandestine Foreign Workers

Employers have three types of incentive to hire clandestine foreign workers: differences in pay, differences in social charges, and an increased flexibility in the production process. Clandestine immigrants are inclined to accept lower wages than nationals and regular immigrants because they usually have little incentives to prolong their job-searches, for fear of being detected, and their status renders them dependent on their employer.⁹ In terms of social charges, already a legal residence status combined with a semi-clandestine employment status can represent an advantage for an employer: part of the work undertaken by the migrant can go undeclared or the migrant can pass as self-employed for this share.¹⁰ The hiring and especially the firing of foreign workers in an irregular

⁷ Philip L. Martin: *Managing Labour Migration: Temporary Worker Programs for the 21st Century*, International Institute for Labour Studies, Geneva 2003.

⁸ Trades Union Congress (TUC), *op. cit.*

⁹ Georges Tapinos: *Irregular Migration: Economic and Political Issues*, in: *Combating the Illegal Employment of Foreign Workers*, OECD, Paris 2000.

¹⁰ *Ibid.*

⁶ Philip L. Martin, Manolo I. Abella : *Globalization and Guest Workers: Migration for Employment in the 21st Century*, forthcoming.

situation is easier than that of anyone else, an obvious advantage as concerns a flexible production.

Structures that Foster the Illegal Employment of Foreigners

The illegal employment of foreign workers is only possible where a market for illegal labour exists.¹¹ The economic structures as well as the values of a society must be such that illegal employment is possible and tolerated. The emergence of a hidden or informal economy is usually seen as a complex process of labour market hierarchisation and explained by the bypassing of regulations in order to respond to competition.¹²

In times of globalisation, competition increases. Mobility is valued highly. The idea is widely accepted that individuals should take responsibilities for themselves in a competitive environment and that this should include a willingness to move, especially for the sake of work opportunities. Jordan and Düvell¹³ show that in new paradigms on the economics of collective goods, mobility becomes the key to allocations which are based on the active choices of the population and no longer represent the outcomes of government decisions. Mobility-based systems also create the niches for irregular migration. Niches arise partly as a result of new social relations that have developed in rich countries (e.g. demand for domestic help in two-earner households) and partly because of the unintended consequences of government schemes the purpose of which is to create flexibility in the supply of indigenous labour (e.g. benefits systems and training schemes). Illegal migrants, more mobile than indigenous workers, move in to take advantage of these opportunities.¹⁴

Migration represents a claim to be included in systems of distributive justice.¹⁵ This is true for internal as well as international migration. But in relation to international migration receiving country governments face difficult choices because welfare states distribute benefits to *members* and cannot easily deal with a sudden upsurge of new members.¹⁶ From this

perspective, governments have certain incentives not to turn irregular migrants into regular ones, to minimise “membership claims”.

Reducing Incentives – Overcoming Protection Gaps

Governments’ worries about increased “membership claims” could be reduced if they thought about rights less in terms of “all or nothing” and conceived of citizenship in a differentiated way. Often citizenship rights are conflated with nation states, which is not helpful when a balance has to be struck between principles derived from market economics and those derived from welfare economics (allocation according to differences or equality as the driving force?)

Engelen¹⁷ sees six layers of citizenship rights, from basic rights as an individual; through political citizenship rights which are gradually being freed from nationalistic and ethnicistic discourses; to ethnic, culturalistic or nationalistic conceptions of citizenship. In pointing to different types of social security systems,¹⁸ Engelen recalls that rights can be allocated according to different rules and criteria and be financed from different sources.

If “membership” is conceived in a differentiated way, states need not be afraid to accord membership rights of a certain type and for example do everything to effectively ensure the employment rights of illegal migrants.

Employers’ incentives to hire clandestine foreign workers could likely be reduced through increased peer control and stronger trade unions. Hjärno¹⁹ advances this argument in pointing to the Scandinavian countries where the incidence of illegal employment is much lower than elsewhere in Europe.

Finally, the migrants’ incentives to accept illegal employment would obviously be reduced if they had other opportunities. Creating those is probably the most difficult task of all. Closing gaps that remain despite comprehensive international protection standards should however not be an impossible mission.

¹¹ Jan Hjärno: *Illegal Immigrants and Developments in Employment in the Labour Markets of the EU*, Aldershot 2003, Ashgate.

¹² See Georges Tapinos, *op. cit.*

¹³ Bill Jordan, Franck Düvell: *Irregular Migration – The Dilemmas of Transnational Mobility*, Cheltenham UK, Northampton MA, USA 2002, Edward Elgar.

¹⁴ *Ibid.*

¹⁵ Michael Bommers: *Migration und nationaler Wohlfahrtsstaat: Ein differenzierungstheoretischer Entwurf*, Opladen 1999, Westdeutscher Verlag.

¹⁶ See for example the difficulties of Germany’s pensions system after the country’s re-unification, where new members received the right to claim benefits without having paid contributions.

¹⁷ Ewald Engelen: *How to Combine Openness and Protection? Citizenship, Migration, and Welfare Regimes*, in: *Politics & Society*, Vol. 31, No. 4, December 2002.

¹⁸ Bismarckian types with allocations according to occupation and insurance contributions vs. universal Beveridgean types with means tests.

¹⁹ Jan Hjärno, *op. cit.*

Philip Martin*

Policy Responses to Unauthorized or Irregular Workers

People who are outside their country of birth or citizenship for 12 months or more are considered to be international migrants. In a world of 190+ sovereign nation states, each of which issues passports and regulates who can cross its borders and work, the United Nations Population Division estimated there were 175 million migrants in 2000, including 60 percent in what the UN calls "more developed" nations. About 70 million migrants are employed, including 40 million in more developed countries; these migrant workers in developed nations include 25 million in the traditional immigration countries of Australia, Canada, New Zealand, and the US and 15 million in Western Europe. Migrant workers are about 10 percent of these rich OECD countries' workforces.

Between 1975 and 2000, the UN reported that the number of migrants doubled, with the fastest growth between 1985 and 1995, when the stock of migrants rose by six million a year.¹ These were the years that witnessed the fall of Communism, war in Yugoslavia, the approval of the North American Free Trade Agreement, wars and refugees in Africa and in Afghanistan, and the Asian economic miracle and crash. During the 1990s, there was speculation that globalization meant international migration could no longer be controlled by national governments.

Most migrants employed abroad are legal immigrants or guest workers, but much of the growth in migrant worker employment in the 1990s was in unauthorized or quasi-authorized migrant worker employment, as when foreigners legally enter a country, but then violate the terms of their stay by unlawfully working for wages. In the United States and other countries that share land borders with migrant-source and transit countries, there was also an increase in unauthorized entries of aspiring workers. The US Border Patrol, for example, apprehended an average 1.5 million foreigners a year just inside the US along the Mexican border in the 1990s, or an average of about three a minute.

There is a simple way to reduce irregular migration and employment: remove controls. Ruud Lubbers, United Nations High Commissioner for Refugees, has

suggested that legal immigration channels can substitute for illegal migration:² "What is needed is a system which is controlled by governments under a set of EU-wide immigration policies ... the lack of legal channels has the perverse effect of encouraging human smuggling." However, if countries do not open legal entry and employment doors wide enough, *partial* liberalization could increase unauthorized migration, at least in the short term.

Irregular migration and employment highlights the gap between the goals and the outcomes of migration control systems in the industrial democracies. There are three major responses to this gap, manifested in more unauthorized or irregular workers: preventing entries, preventing employment, and legalizing employment.

Preventing Unauthorized Entries

The first policy response to irregular foreign worker employment in most countries is to prevent entries. This response takes two major forms: more border patrol agents to intercept foreigners seeking irregular entry, and policies that expedite the detection and removal of irregular foreigners.

The classic immigration countries – Australia, Canada, New Zealand and the US – as well as island nations such as Ireland and the UK, generally put primary emphasis on border controls, aiming to prevent the entry of unwanted foreigners but allowing relative freedom within the country. Most continental European countries, by contrast, have population registers and some form of national identification card that must be presented to obtain housing, employment, or government benefits.

The world's most crossed international border, for both legal and irregular entries, is that between Mexi-

¹ The migrant estimate for 1990 was raised from 120 million to 154 million in 2002, largely to reflect the break-up of the ex-USSR, which increased the number of migrants as people crossed borders, e.g. Russians returning to Russia, and added to the stock of migrants even with no movement, as Russians who became foreigners in the newly independent Baltic states. Some sources put the number of international migrants at 145 million, and add 30 million for the ex-USSR.

² Lubbers in a July 5, 2002 Ditchley Park speech (<http://www.unhcr.ch/cgi-bin/texis/vtx/print?tbl=ADMIN&id=3d2ea6764>). Lubbers also urged more investment in source countries to deter unwanted migration: "It is irrational for governments to spend millions of Euros on reinforcing borders, various deterrence measures, custody and detention centers...without simultaneously investing in solutions at the source of the problem." (quoted in Financial Times, June 24, 2002).

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co and the US. In 1970, when the Mexican population was about 50 million, there were 700,000 Mexican-born US residents; today, when Mexico's population is about 100 million, there are 8 to 9 million Mexican-born US residents, including half who are illegally in the US. Most legal Mexican-born US residents arrived illegally, and later had their status adjusted.

Until the mid-1990s, the US strategy on the Mexico-US border was to apprehend and return to Mexico unauthorized migrants, most of whom were caught near the border. Because the volume of apprehensions was so high – 2 or 3 a minute, 24 hours a day, 365 days a year – most of those apprehended were returned immediately to minimize detention costs. In the mid-1990s, the US built fences, added lights and positioned agents visibly along the border to deter entries. Those apprehended were still returned to try again, but everyone was fingerprinted and photographed, so that persons caught 10 or 15 times could be prosecuted.

This new enforcement strategy was expected to increase the direct costs of unauthorized entries, as reflected in smuggler fees, as well as the opportunity costs of illegal entries, as migrants had to make several attempts, or to make attempts along remote sections of the border, which meant more time to get to US areas with jobs. Smuggling costs did rise, and the cost of being smuggled from Mexico to the Los Angeles area rose from \$100 to \$200 in the early 1990s to \$1,000 or more by 2000-01. Most migrant entry attempts shifted to the Arizona deserts, which increased the number of migrant deaths.

With an average one migrant a day dying in the desert, the question is whether this deterrence strategy will eventually discourage unauthorized migration. The results so far suggest that the number of women and children attempting illegal entry has fallen, and that almost all of the men attempting illegal entry use smugglers. However, once in the US, unauthorized migrants stay longer, which has refocused attention on employer sanctions and legalization.

Employer Sanctions

Most migrant workers want to work, and thus governmental control over access to employment is a key factor in migration control: if migrants will not be able to obtain jobs, they may not try to enter or work illegally. The major goal of employer sanctions is to “demagnetize the labor market” or “close the labor market door” to irregular workers, and the major tool is fines on employers who hire irregular workers. Sanctions make employers a second-line defense against irregular migration and when they prove insufficient,

the second-round debate is whether fines should be raised, whether the labor market should be de-regulated to lower the cost of local workers, or both.

Most industrial countries adopted employer sanctions laws in the early 1970s, as guest worker recruitment was ending; the US adopted sanctions in 1986 and the UK in 1996. Sanctions have become less effective over time for three reasons. First, a combination of labor market regulations and payroll taxes plus ineffective enforcement made foreign workers considerably cheaper than local workers, as in Berlin construction in the mid-1990s. Second, the rise of subcontractors contributed to a layering in the labor market in which the beneficiaries of migrant labor can use contractors as risk absorbers for labor, tax, and migration violations, as in UK agriculture. Third, there has been a proliferation of guest worker programs, complicating enforcement, and anti-discrimination laws in countries such as the US often confuse employers about lawful and unlawful hiring behavior, as when it is unlawful to knowingly hire an unauthorized worker, but also unlawful to check the documents of minority workers too closely.

The construction industry in Berlin in the mid-1990s illustrates the challenge of effective sanctions enforcement. There were some 550,000 construction workers, including 200,000 foreigners, employed on 10,000 building sites in the mid-1990s, and 10 percent of German construction workers remained unemployed. The initial response was more enforcement, as extra labor inspectors were assigned to construction and inspections were publicized to encourage compliance.

However, a combination of employers contesting the fines levied on them, subcontractors going out of business without paying fines, and little cooperation from labor authorities abroad prevented effective enforcement. The next logical enforcement step would have been a joint liability law requiring the general manager at a construction site to assume liability for labor law violations committed by subcontractors, and to require subcontractors to post bonds that could be forfeited to pay back wages and fines. Many economists, on the other hand, noted that in a globalizing world in which construction is becoming a mobile industry, high wages for inflexible local workers explained employer preferences for foreign workers willing to work long hours to meet deadlines.

Even stepped-up enforcement efforts in labor markets with 25 to 50 percent unauthorized workers may have limited effects. In the US meatpacking industry, for example, a jury in March 2003 acquitted Tyson Foods, the largest US meatpacker, of violating em-

ployer sanctions laws even though undercover agents filmed Tyson managers paying them \$100 to \$200 for each worker brought to its plants. Tyson, with 120,000 employees in poultry, pork, and beef dis-assembly plants, has a worker turnover rate approaching 100 percent, meaning that two employees must be hired to keep one job filled for one year. Tyson offers all persons who bring workers who stay at least 60 days, current employees, recruiters, and others, a hiring bonus payment. The jury was convinced that a few managers may have stepped over the line in offering hiring bonuses to smugglers, but not Tyson as a company, thus erasing \$100 million in fines.³ The US government in October 2003 charged Wal-Mart, the largest US retailer, with similar violations in its hiring of janitors via subcontractors.

Legalization

Difficulties preventing unauthorized entries and the employment of irregular workers have led many to the third major policy response: legalization. Legalization can take many forms, from opening new entry doors in exchange for cooperation from sending countries to reduce unauthorized migration, as with agreements between Italy and Albania, or linking development and other aid to cooperation on migration management, and the proposals made by Britain and Spain at the EU leaders summit in June 2002. However, bilateral and regional agreements that exchange cooperation on migration management for aid are in their infancy.

A more common response is unilateral legalization of at least some irregular foreigners. The largest-ever legalization was the US residence and employment based legalization of 1987-88 – all foreigners who were continuously in the US as of January 1, 1982, or had worked at least 90 days as farm workers in 1985-86, were eligible to become legal immigrants, and 2.7 million did. However, this legalization coupled with ineffective border and sanctions enforcement increased irregular Mexico-US migration.

Today, it is more common for unauthorized foreigners to “earn” a legal status by finding a regular job, as in Greece, Italy, and Spain. Earned legalization aims to give legal status to those who want a “hand up, not a

hand out,” to those who can demonstrate an ability to get a job and earn wages. In the US, where the estimated number of unauthorized foreigners tripled from 3 million to 9 million in the 1990s, there were calls for some kind of legalization program, especially for the 4 to 5 million irregular Mexicans. The Mexican government in 2001 asked the US to embrace its “whole enchilada” proposal of legalization for unauthorized Mexicans, an expanded guest-worker program, cooperation to reduce border violence and deaths, and the US exempting Mexico from visa quotas.

The Mexican proposal was formulated in the heady days of 2000, when US unemployment rates hit historic lows. Historically, Republicans representing business interests have been in favor of large-scale immigration and against high minimum wages and other labor market regulations, while Democrats representing union interests have been against large-scale immigration and in favor of labor market regulation. However, “strange bedfellows” who normally oppose each other joined forces, as Hispanic and Asian ethnic advocates, unions, and so-called libertarian Republicans joined forces to argue for large-scale immigration and an end to employer sanctions. Law-and-order Republicans, cultural conservatives, and some environmental groups teamed up in opposition.

A US earned legalization program could affect 5 to 10 million irregular foreigners. President Bush, in what cynics call a bid for Hispanic votes in November 2004 elections, has tried to walk a fine line between the competing wings of the Republican party, promising some kind of earned legalization but not a “blanket amnesty that would reward law breakers.” A successful US earned legalization program could become a model for other OECD countries seeking to deal with rising numbers of irregular foreigners.

Conclusions

Managing migration is one of the key challenges facing nation states in a 21st century marked by closer connections and rising inequality between countries. In a world in which travel and tourism are becoming a major industry, and in which wages across borders can be 20 or 30 times higher, there are increasing incentives to cross national borders for employment. The industrial countries, which have about 12 percent of the world’s labor force but 60 percent of the world’s migrants, are struggling with the best ways to respond to rising numbers of irregular workers. Most responses are some combination of prevention, interior enforcement, and legalization: the challenge is how to include the fourth element, cooperation with migrant countries of origin.

³ The US government charged that Tyson “did cultivate a corporate culture in which the hiring of illegal alien workers” was condoned “to meet its production goals and cut its costs to maximize Tyson profits.” Tyson’s defense was that a few rogue managers hired unauthorized workers despite company policy to hire only legal workers. The company’s attorney said: “It is not the fault of this company that there are approximately eight million undocumented workers in the United States. It is not our fault that the systems that the government has set up for hiring employees is not perfect. If the prosecutors and the government want a perfect system, the government ought to be designing it.” (Sanctions: Tyson Acquitted, in: Rural Migration News, Vol 9, No 2, April 2003).