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Revisiting the 'Sovereignty' argument against the migrant workers convention: A view from the vulnerability of foreign 'Trainees' in Japan

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Abstract
The aim of this article is to reexamine the 'sovereignty' argument used by many countries in support of their objection to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Using a case study about the vulnerability of 'trainees' in Japan under its domestic labor policy, the Technical Intern training Programme, this article argues that the 'sovereignty' argument is no longer tenable, not only because policies and practices towards migrant workers have often contradicted the protection of rights guaranteed under the ICRMW, but also because the 'sovereignty' argument is nothing more than an excuse and a shield for human rights unfriendly domestic political economy. Therefore, a narrow conservative view that tends to contradict sovereignty and human rights needs to be reviewed as mutually complemented issues and a broader understanding of sovereignty that accommodates human rights is inevitable.

Keywords: sovereignty, human rights, migrant workers, Japan's foreign trainees, migrant workers convention

1. Introduction
This article aims to critically revisit the 'sovereignty' arguments raised by many countries in support of their objection to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) [1]. The ICRMW was the product of a global consensus based on (1) the recognition of migrant workers as a specific group among population who have become the most vulnerable to abused and exploitation and (2) the need to bring about the international protection of their rights [2]. However, since its adoption by the United Nations General Assembly on 18 December 1990, the ICRMW took 13 years until entering into force on 1 July 2003 and so far only 44 countries have ratified, making it the slowest pace of progress on record between date of adoption and entering into force [3] and the lowest number of state parties among international Conventions [4]. Furthermore, among the countries that have ratified, most of them are the sending countries plus very few countries of destination or of transit. None of the high income and developed counties in the West and in the East, including Japan, has signed or ratified the Covenant [5]. One of the main arguments for the objection to ratify is that, the ICRMW moves against the principle of state sovereignty [6].

Against this background, this article argues that the 'sovereignty' arguments are no longer tenable. This is not only because domestic policies and legal practices towards migrant workers have often contradicted the protection of rights guaranteed under ICRMW. But, also because the sovereignty argument seemed to have been used as an excuse and a shield for human rights unfriendly domestic political economy. The case study about the link between the reluctance of Japan to ratify the ICRMW on the basis of sovereignty argument and the continuing vulnerability of foreign 'trainees' under its domestic labor policy, the 'Technical Intern Training Programme' (TITP) backs up the point. It is worth noting that one may argue that 'trainees' are in the true sense excluded from the definition of migrant workers under the ICRMW and consequently the ICRMW is inapplicable for the protection of their rights. However, the manner in which in practice the trainees have been treated primarily as migrant workers (labor force) to overcome domestic labor crisis rather than people who are 'trained' for a certain skills (elaborated further below) reaffirms the relevance of the ICRMW. Not only does it clarify the real status and conditions of migrant workers that have been made obscure under the misleading term 'trainees', but also to expose any unfriendly domestic labor policy justified on the basis of sovereignty.

2. Background, contents and added values of the ICRMW
2.1 The background of the ICRMW
Non-nationals have traditionally had only very limited legal protection, because rights of citizens have been principally linked to nationality and citizenship [7]. This has gradually changed since the development of human rights standards that introduce the principle of non-discrimination [8]. The fact that the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural rights (ICSECR), which introduce the non-discrimination principle, have been widely ratified indicates that in principle the protection of rights has been extended to all people regardless of their status and nationality [9]. The difficulty however arises when the protection needs to be extended to vulnerable groups, such as women, children, detainees, victims of racial discrimination and migrants,

whose rights are often left out under the expressed wordings and interpretations of abovementioned core human rights documents. It response to that, specific legal instruments, such as the Covenant on the Elimination of All Forms of Racial Discrimination, Convention Against Torture, Convention on the Elimination of Discrimination against Women and Convention on the Rights of the Child, have been elaborated. [10]. The ICRMW was enacted with similar purpose, that is to extend the protection of the rights of vulnerable groups of migrants.

International Migration Report 2017 has indicated that these last two decades alone, the number of international migrants worldwide has continued to grow from 173 million in 2000 to 220 million in 2010 and reached up to about 258 million in 2017. Of this, about 165 million (64%) migrants lived in high-income country, 81 million in middle-income countries and 11 million in low-income countries [11]. Migrant workers have significantly contributed to maintain sustainable economic growth and development both in their home and host countries. While providing capital to improve the livelihood of their families at home and to boost the economic development of their home countries [12] migrant workers have helped their host countries worldwide to overcome domestic labor crisis [13]. Despite such a crucial role in filling the labor gap, migrant workers have always been one of the most vulnerable group to be abused and exploited.

As indicated earlier, the adoption of the ICRMW aims to ensure that the rights of migrant workers in vulnerable conditions are protected from any forms of abuses and exploitations. Basic ideas of the ICRMW are derived from the work of the International Labor Organization (ILO), in particular the ILO Convention 47 (1949) and the ILO Convention 143 (1975) [14]. The former elaborates a set of standards that give "more flexible response to the needs of migrant workers," such as remuneration, working hours, age standard, membership of trade unions and social security [15], although it was limited only to documented migrants (Art. 6). The latter, besides upholding non-discriminative treatment to documented migrants in employment and other socio-economic rights, extends it to the protection of cultural rights (Art. 12 (e and f)). In addition, it calls for fighting against illegal migrants (Art. 2,3 and 6) and proposes conditions on free choice of employment (Art. 14(a)), which creates dissatisfaction among many sending countries (in particular Mexico and Morocco) and skepticism among quite few receiving countries in Europe, Australia and the United States. These few receiving countries worried that the ILO convention would discourage migration and undermine their 'temporary guest worker systems [16]. For many sending countries, however, this Convention was seen as threatening their interest in obtaining remittances and in reducing unemployment through illegal movement of cross-border employment. This dissatisfaction subsequently led to a campaign to elaborate a UN Convention, followed by the establishment of a working group to draft the Convention chaired by Mexico and Morocco in 1979. Through a long process that involved a half of the UN member states [17], the ICRMW was adopted in 1990.

2.2 The contents of the IRCMW

The ICRMW consists of nine main parts [18]. It begins in part I with a clarification of the scope of the Convention and relevant definitions. Article 2 (1) defines migrant worker as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national" [19]. As it underlines the significance of family union, Article 4 describes members of a migrant worker's family as persons who married or having legal relationship (equivalent to marriage) to migrant worker and lawful children and dependent persons of the migrant worker. Another significant aspect in this first part is the clarification of legal status of migrant workers. Migrant workers are documented (regular) "if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party." Otherwise they are undocumented (irregular) (Art. 5).

Part II calls for non-discrimination of treatment as "the overarching principle" of the Convention [20], which has been highlighted in Article 1 by obliging state parties to respect and to ensure rights in the Convention without distinction of sex, race, color, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status (Art. 1 and 7).

Part III provides a fairly broad set of rights to all migrants (regardless of their status), many of which have been spelled out in the ICCPR, ICESCR and other human rights instruments. They can be divided into the rights to (1) life and basic freedom (Art. 9-13), (2) privacy and property (Art. 14-15), (3) due process (Art. 16-20 and 24), and (4) decent work and social welfare (Art. 25, 27 and 30). The Convention also expands the scope of protection by including a set of rights that addresses specific needs and the vulnerability of migrant workers. They are the right not to have identity documents confiscated (Art. 21) and not to be subject to unlawful expulsion (Art. 22), the right to assistance by diplomatic authorities of their state of origin (Art. 23), taking part in trade union (Art. 26), emergency medical care (Art. 28), equal access to education for migrants' children 'Art. 30), and transfer of earnings and savings (Art. 32).

Part IV stipulates additional rights to regular migrant workers. These rights include the right to be fully informed about their admission, stay, contract and temporary absence from the state of employment (Art. 37-38), freedom of movement and choice of residence (Art. 39 and 53), forming trade unions (Art. 40), participating in public affairs of their country of origin, such as voting in elections (Art. 41), equal treatment in various economic and social services (Art. 43 and 45), in the exercise of their remunerated activities(Art. 52 and 55) and in the protection from dismissal and enjoyment of unemployment benefits (Art. 54), minimum rights with regard to the authorization of residence (Art. 49 and 51), exemption from export and import taxes (Art. 46), prohibition of more onerous taxation (Art. 48) and right to family reunification (44, 50 and 56).

Part V addresses the rights particular to certain categories of

migrants, such as frontier workers, seasonal workers, itinerant workers, project-tied workers, specified-employment workers and self-employed workers. This is followed by part VI, which obliges states to promote "sound, equitable, humane and lawful conditions for international migration workers and their families." These include cooperation between states (1) to provide and exchange information about policies, laws and regulations with regard to migrant workers (Art. 65), (2) to restrict the recruitment operation of workers for employment abroad to public services or authorized agencies (Art. 66) and (3) to adopt measures for the orderly return of migrant workers to their state of origin. In addition, state parties are required to cooperatively take necessary measures to prevent and eliminate irregular migrants and to sanctions the employers who have done otherwise by trafficking or smuggling migrants (Art. 68 and 69). To ensure the implementation of the Convention, part VII provides for the establishment of a supervisory mechanism through a Committee [21] that monitors the compliance of state parties (Art. 73-74). The ICRMW also provides optional complaint procedures that allow states and individuals to file complaints to the Committee, if a state is not in compliance with their obligations (Art. 76-77). The remaining provisions of the Convention are general provisions in part VIII and final provisions in part IX. One significant provision is article 86, which calls on states to ratify in order to ensure their commitment of being bound by the obligations to protect the rights of the most vulnerable groups among migrant workers.

2.3 The added values of the ICRMW

Viewing generally in its present form, the ICRMW seems to give an impression that often leads to a misconception that it is simply a repetition of the set of rights that have been covered under other human rights covenants. Therefore, it may be considered insignificant or no added values to the protection of migrants' rights. Such a view, however, ignores the fact that the ICRMW addresses specific protection of migrants' rights that are not covered by other major human rights instruments, or they cover migrant's rights only in general term that is in practice not applicable to migrant workers. This hold true in particular when relevant human rights covenants generalised migrant workers simply as 'aliens', 'foreigners', or 'non-citizens' who may be hard to be defined, and therefore whose rights may not be applicable within the scope of protection under those covenants [22]. The ICRMW addresses this problem by providing a comprehensive and broader definition of migrant worker, which include both man and woman, documented and undocumented migrant workers and characterizes migrant workers into specific category [23].

Given that migrant-related issues are considered secondary in applying other human rights instruments, the ICRMW takes into account the relevant labor and human rights standards [24] in order to ensure that migrant workers' rights are human rights that deserve equal protection. Thus, the reintroduction of a set of rights that have been adopted by other human rights instruments in part III of the ICRMW is not mere a repetition, but a carefully focused reaffirmation of the significance of those rights that have to be equally applied to migrant workers just as to everybody else.

Of particular importance, the ICRMW specifically expands the non-discriminatory aspects of treatment that were not covered by other human rights instruments by including 'convictions', 'nationality', 'economic position' and 'marital status'(Art. 1(1)). This includes the non-discriminatory application of protections to undocumented (irregular) migrant workers whose rights are insufficiently protected by other human rights instruments. Since in most cases, they are more likely to be treated as criminals deserving punishment and inhuman treatment rather than as vulnerable groups that require protection, the expansion of rights to undocumented migrants through non-discriminatory treatment provides a necessary safety net that safeguards their basic rights [25].

Despite such obvious added values of the ICRMW in order to protect the rights of migrant workers, many countries, including Japan, decline to ratify it on the ground of concern over sovereignty. To what extent this argument is justifiable will be considered in the next section. Although the analysis in this article is based on the view from the context of Japan, it is expected that the outcome will also mirror the attitude of other countries that have refused to ratify the ICRMW on the basis of similar argument of sovereignty.

3. Examining Japan's sovereignty argument against the ratification of the ICRMW

Japan has been in a great need of migrant workers in dealing with the problems of labor force crisis due to increasing number of aging people and shrinking population [26]. For this, Japan has been hosting growing number of migrant workers, from 717,504 in 2013 to about 1,28 million in October 2017 [27]. The number of 'trainees' under the TITP reached up to 228,588 in the beginning of 2017. It is predicted that the total number of migrant workers in Japan will increase sharply prior to the 2020 Tokyo Olympic as the construction works during preparation stage require a large number of workers [28]. Despite such a crucial role in filling the labor gap, migrant workers in Japan experience a sad condition that is common for all migrant workers around the world, of becoming the most vulnerable group to be abused and exploited [29]. However, so far Japan has shown its reluctance to ratify the ICRMW. Like other countries that refused to ratify the ICRMW, Japan did so mainly on the basis of, among other thing, concerns over sovereignty.

3.1 Sovereignty Argument: A shield for human rights unfriendly political economy?

3.1.1 Conservative view that contradicts sovereignty and human rights

To some extent, the justification for the reluctance to ratify the ICRMW on the ground of sovereignty is understandable in the context of maintaining domestic security and social order pre-entry or post-entry of the migrant workers. States have "supreme authority and independence" to manage and control its own territory [30]. However, the period post World Wars marked a new era where the notion of sovereignty has been understood more broadly within the prism of strengthening international system that emphasizes the sovereign equality of states by means of (1) non-intervention of unwarranted use of force against other states and (2) the protection of human rights [31].

Worth noting that it is the states that create international standards to protect human rights through a cooperative manner and to exercise their sovereign power whether to implement or not to implement in their jurisdiction. On the one hand, international human rights standards require states to ensure that human rights under their jurisdictions are protected regardless of nationality or status. States become the primary duty holder of human rights protection within its jurisdiction and territory. On the other hand, the universal application of this obligation may be considered by government of certain states as a foreign intervention that may erode sovereignty which traditionally should be regarded inviolable right of states [32]. It is at this implementation stage that sovereignty may conflict with human rights [33]. The states may maintain their sovereignty in such a way that obstructs the implementation and enforcement of international human rights norms. Nonetheless, in this interdependent globalized world where most nation-states recognise the universality of human rights, though it remains a contentious issue, some have argued that there has been a shift in the attitude of the international community in favor of collective cooperation for transnational human rights protection [34].

Article 79 of the ICRMW recognized the sovereignty rights of states in term of establishing "the criteria governing admission of migrant workers." However, Article 79 also insisted that the states' right concerning matters related to legal situation and treatment of migrant workers "shall be subject to the limitations" by the state's duty to protect rights of migrant workers set forth in the ICRMW. In other words, the states' sovereignty rights concerning treatment of migrant workers are not unlimited. This duty requires states to implement its sovereignty rights in such a way that respect human rights of all people within its jurisdiction and territory [35].

The reluctance of Japan to ratify the ICRMW on the basis of sovereignty were expressed early on in a statement of concerns in response to the adoption of the ICRMW. It argues that: 1) the ICRMW allows migrant workers to enjoy more favorable treatment compared with nationals or other documented foreigners. 2) It may lead to legal clashes between the Constitution and other fields of law related to migrant workers, such as criminal law and legal provisions on education or election. 3) It has ramifications on domestic immigration policy [36]. For Japanese government that has been for more than half a century holding conservative views on domestic issues under the dominant leadership of the Liberal Democratic Party (LDP or Conservative Party), all these concerns are considered as sovereignty issues that should be treated on a case by case basis. Ratifying the ICRMW would be in conflict with the domestic interests of Japan and may impinge on Japan's sovereignty [37].

This conservative view also often singles out Japan as a being "mono-ethnic and culturally homogenous" [38]. This is in line with popular traditional view that features Japan as a country of homogenous people who live in a culturally unique and group-oriented society [39]. However, a close and careful look at the reality of Japanese society, in particular the variety of its language and culture, and the diversity of its population, other scholars have respectively pointed out that the notion of Japan as culturally homogenous country is nothing more than a myth and an illusion [40]. In the context of the attitude of Japan toward migrant population, this notion of "Japanese ethnic homogeneity is part of the machinery of social hierarchy", in which migrant is considered underclass citizens, and therefore they are not recognized as part of the homogenous Japan [41]. As a result, related laws may do not cover rights of migrants (elaborated below).

These conservative attitudes in fact move in the opposite direction from the duty of states under international law to ensure human rights protection in their jurisdiction, including of migrant workers, regardless of their status (documented and undocumented) and country of origin. This conservative view also ignores the very fact that in this interconnected globalized world where most countries, including Japan, are facing domestic labor shortage, cross-border movement of migrant workers as labor force is inevitable. In this respect, the sovereignty argument is untenable if it is used simply as an excuse to avoid any responsibility for national labor policy and management that allow or encourage human rights abuses of migrant workers. In other words, it would be preposterous to justify sovereignty rights on the basis of labor policy and management that abuses human rights. Japan's domestic labor policy under the TITP might well illustrate the case in point.

3.1.2 The case of TITP: A human rights unfriendly labor policy

The supposed official purpose of the TITP that was started in 1993 was to provide young foreign workers with "industrial and vocational skills as technician intern trainees at companies in Japan" to help industrial development of their country of origin when they return home [42]. It is about helping foreign countries through the development of human resources and transfer of technology of their trainees in Japan. Nonetheless, by the nature of their status and job description as a group of migrants who came to Japan with a purpose of being 'trained' for particular job and technology skill, they are not legally defines as workers under relevant labor laws [43]. Consequently, "these non-citizens were the only people in Japan officially made exempt from Japanese labor laws, meaning they were not covered by legislation, guidelines, or protections in terms of full- and part-time hours [and] social safety-net benefits" [44]. In the absence of protection under relevant labor laws they were exposed to the vulnerability of being exploited and abused.

Thus, in practice, the TITP has been widely criticised as an official means to exploit migrant workers as cheap, slave and forced labor rather than trainees for particular professional skills, due to human rights problems such as depriving trainees of their passport, illegal overtime working hours, underpaid or unpaid wages and human trafficking [45]. After directly observing the dark picture of the 'trainees' under the TITP in Japan in March 2010, the UN Special Raporteur on the Human Rights of Migrants, Jorge Bustamante, once called for Japan to terminate the TITP:

"The Industrial Trainees and Technical Interns program often fuels demand for exploitative cheap labor under conditions that constitute violations of the right to physical and mental health, physical integrity, freedom of expression and movement of foreign trainees and interns, and that in some cases may well amount to slavery. This program should be discontinued and replaced by an employment program" [46].

Since then, Japan has yet to terminate the TITP, instead the government has tried to improve it. Nonetheless, in 2014 the UN Human Rights Committee raised similar concerns, noting that "despite the legislative amendment extending the protection of labour legislation to foreign trainees […], there are still a large number of reports of sexual abuse, labour-related deaths and conditions that could amount to forced labour in the TITP" [47]. The Committee then strongly recommended Japan to replace the existing program with a new one that focuses on its initial purpose for capacity building rather than for recruiting cheap labor, and to set up and enforce accountability mechanism in order to persecute labor trafficking cases [48].

In response, the Japanese government promised to take concrete measures to improve the TITP. These include measures to take public skill evaluation exams at the end of the TITP term, license for supervising companies, inspections and reports mechanism on the condition of the trainees, the setting-up of penalties for any human rights abuses and provision of guidance for supervising companies to implement programme that does not violate labor related regulations [49]. Nonetheless, two years later the US Department of State revealed in its Human Trafficking Report 2016 that "migrant workers, mainly from Asia, are subjected to conditions of forced labor, including some cases through the government's Technical Intern Training Program" [50]. The Report listed practices of human rights abuses such as payment up to $10,000 to get jobs, contracts that mandate forfeiture of a huge amount of dollars if they leave, burden of excessive deposits, confiscating trainees' passports, controlling their movements in order to prevent their escape or contact with outside world. While acknowledging Japan's significant efforts to eliminate trafficking and to increase the prosecution of traffickers in general, no persecution or conviction was taken towards labor traffickers related to TITP. The Report therefore recommended Japan to enact the TITP reform bill to increase enforcement on the prohibition of the aforementioned labor-related human rights abuses [51].

In November 2017 the government enacted Technical Intern Training Act which entered into force since 1 November 2017. The Act basically reemphasises the responsibility of intern trainees to ensure the acquisition of skills through their work with the supervising companies, extends the duration of TITP from 3 years to 5 years, makes technical skill test mandatory for trainees, prohibits supervising companies imposing any act that violates their rights, such as taking away passports and relevant documents while impose penalties if they do so, and envisages the setting-up of an oversight body to ensure that intern trainees' rights are protected from any form of exploitations [52]. In order to implement this new regulation, the government has proposed a new structure and mechanism of the TITP and elaborated responsibilities and requirements that must be met by relevant parties involved in the TITP, such as trainees themselves, supervising companies, oversight body and sending countries [53].

To what extent this new measure is effective in addressing trafficking, forced labor and other human rights problems under the TITP remains to be seen.

3.2 Ongoing pessimism and the need for bold measures to address the regulatory gap

Despite such new measures, pessimistic views among human rights activists and civil society organizations have raised concerns about lack of ambitions in the new regulation and indicated dissatisfaction with the increased maximum term of the TITP from three to five years, as it is seen as having a high risk of prolonging human rights abuses of victims [54]. This pessimistic views find support from the 2017 Human Trafficking in Person Report by the US State Department, which feature the failure of the government to address labor trafficking offences under the TITP. The Report noted that despite the risks of trafficking under the TITP had been reported by NGOs, "the government did not identify any TITP participants as trafficking victims or prosecute traffickers involved in the use of TITP labor as traffickers" [55]. Another reason to be pessimistic is the fact that "Japan's criminal code does not prohibit all forms of trafficking in persons as defined by international law; the government relies on various provisions of laws relating to …[for instance] employment to prosecute trafficking in persons crimes" [56]. As a result, there was no prosecution or conviction of any suspected traffickers in the use of the TITP labor as such, because it was reduce simply to the category of labor violation under law related to employment that only required lesser penalties.

The unwillingness and inability of Japan to enact and enforce laws that can effectively address human rights abuses of migrant workers, such trainees under the TITP, have created a regulatory gap that will continue to leave trainees and other migrants worker vulnerable to exploitation and abuse. This regulatory gap demonstrates that the sovereign arguments that move away from the state's international human rights obligations is no longer tenable for an excuse for the objection to ratifying the ICRMW. It is precisely because of such regulatory gap that allows for prolonged human rights abuses of migrant workers, that has prompted calls for Japan to ratify the ICRMW or to take bold regulatory measures, such as that of the UK's Modern Slavery Act (2015), in order to address the migrant workers' human rights abuses [57]. This is very crucial particularly when Japan will be in growing need of migrant workers to overcome its domestic labor shortage.

3.3 The inevitability of a broader view of sovereignty that accommodates human rights

In order to address this regulatory gap, a broader understanding of sovereignty that is not limited only to that of the traditional views is necessary. This presupposes a new way of framing the link between sovereignty and human rights in such a way that is not antagonistic, but mutually complemented, in which people within a country should become the center of sovereignty [58]. In this regard, protecting the rights of people within its territory, including the rights of migrant workers, may become a better way to enhance and strengthen the sovereignty of a state. By ratifying the ICRMW, a country would not in any way undermine its sovereignty, because the ICRMW, like any other international human rights norms, set up a general standard for the states' human rights obligations when managing matters related to

migrant workers. It remains a sovereign right of each state to enforce and implement the human rights standard under the ICRMW in the given human rights condition of migrant workers in its territory.

Thus, "state sovereignty is not undermined when states develop migration management laws and practices that protect the rights of both regular and irregular migrants within their territory" [59] as stipulated under the ICRMW. Instead, such migrant management law can effectively strengthen sovereignty by helping to preserve national security and to maintain public order, both of which are considered among the core elements of sovereignty. This holds true in regard to the issues of transnational organized crime, such as labor trafficking. In the context of Japan, it can be argued that without regulatory measures and enforcement mechanism that oblige state to protect the rights of both regular and irregular migrants against labor trafficking in the TITP, it may create social tensions and conflicts that may obstruct national security and public order. By maintaining the TITP or similar labor program that allow for such organized crimes to flourish in the absence of such regulatory measures and enforcement mechanism, Japan in fact create an enterprise that may threat its own national security and public order (sovereignty). Therefore, it would be reasonable to assume that the reluctance to ratify the ICRMW may indicate the state's unwillingness that might be triggered by partial or unilateral agenda that has substantively nothing to do with the issue of sovereignty.

4. Conclusion

The effectiveness of the state's duty to protect the rights of migrant workers in its jurisdiction and territory depends on the willingness and commitment of each state to incorporate human rights standards related to migrant workers into its domestic legal system and policies, and to ensure their productive enforcement. The ICRMW was adopted by the UN General Assembly specifically to guarantee the protection of migrant workers' rights that are not available under other major human rights covenants, or available in these major covenants only in general terms that are ineffective in dealing with the vulnerability of migrant workers. Despite such obvious added values of the ICRMW, most states have shown their objection to ratify it on the ground of, among other thing, their exclusive right to sovereignty. Observing the link between the reluctance of Japan to ratify the ICRMW on the basis of the sovereignty argument on the one hand and its attitude toward the continuing vulnerability of migrant 'trainees' under its domestic labor policy, such as the TITP, this article has demonstrated that justification to object the ratification of the ICRMW on the basis of sovereignty is no longer tenable because of several reasons. Firstly, conceptually it is based on a narrow understanding of sovereignty that excludes human rights, or on a traditional view that contradicts the two. Secondly, policies and practices towards migrant workers, including those applied to the so-called 'trainees' under the TITP have often contradicted the protection of rights guaranteed under the ICRMW and other major human rights standards. Thirdly, the 'sovereignty' arguments seemed to have been used as an excuse and a shield for human rights unfriendly domestic political economy. Therefore, a narrow conservative view that tends to contradict sovereignty and human rights needs to be reviewed as mutually complemented issues and a broader understanding of sovereignty that accommodated human rights is inevitable.

5. References

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18. For detail explanation, see Office of the United Nations High Commissioner for Human Rights, 'The International Convention on Migrant Workers and Its Committee' Fact Sheet, No. 24 (Rev. 1), United Nations, New York and Geneva, 2005.
19. It excludes some persons, such as employees of international organizations, government officials, persons sent or employed by a state or on its behalf, investors, refugees, stateless persons, students, trainees, non-national non-resident seafarers and workers on offshore installations (ICRMW, Art. 3).
20. Edelenbos *supra* note 5: 94.
21. ICRMW, Art. 72. It is known as the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families [CMW], which consists of experts elected by the states parties for a term of 4 years.
22. Slinckx, *supra* note 6: 145.
23. ICRMW, Art. 2. Such as, frontier workers, seasonal workers; seafarers employed on vessels registered in a State other than their own; workers on offshore installations which are under the jurisdiction of a State other than their own; itinerant workers; migrants employed for a specific project; self-employed workers.
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