

# JAPAN LABOR BULLETIN

ISSUED BY THE JAPAN INSTITUTE OF LABOUR

**Vol.36 - No.02**

**February 1997**

## CONTENTS

### **Working Conditions and the Labor Market**

- ▶ Employment Rate of Disabled Registers Growth

### **Labor-Management Relations**

- ▶ Rengo Seeking ¥13,000 Wage-Hike in 1997 *Shunto*

### **International Relations**

- ▶ Synopsis: 6th Japan-EU Symposium and Japan-U.S. Employment Symposium

### **Public Policy**

- ▶ Labor Deregulation Urged
- ▶ Women Win Sex Discrimination Suit - Tokyo District Court Orders Bank to Pay ¥100 Million in Back Wages and Urges Immediate Promotions for 11 Women -

### **Special Topic**

- ▶ Globalization of Employment and Social Clauses

### **Statistical Aspects**

- ▶ Recent Labor Economy Indices
- ▶ Number of Those who Joined the Workforce by Channel of Employment

## Working Conditions and the Labor Market

### Employment Rate of Disabled Registers Growth

For 1996 the employment rate of the disabled, both physically handicapped and mentally retarded persons, registered 1.47 percent of all employees in private companies. Up 0.02 point over the year before, this was the highest level ever in the past years, said the Ministry of Labour in a report. The number of disabled workers was 247,982, which was 905 more than in the previous year. The actual employment rate means the proportion of disabled persons actually employed by enterprises (severely disabled persons are counted twice).

In the survey, 54,877 private companies, 95 special corporations and 4,280 national and local public entities were asked to report on how many disabled workers they had on their payrolls. They must hire at least one disabled person under the Physically Handicapped Persons' Employment Promotion Law. The Law requires private companies to select 1.6 percent of their workforce from among disabled job seekers. The actual employment rate, however, drops below 1.6 percent even if it did show an increase. Companies which failed to attain the legally set employment quota were 49.5 percent, or nearly half of the surveyed, up 0.1 point, as compared with the figure for 1995. The legally prescribed employment quota is 1.9 percent for statutory corporations, 2.0 percent for national and local public bodies in the non-operational sector and 1.9 percent for those in the operational sector. The actual employment rate for 1996 stood respectively at 1.96 percent, 2.01 percent and 2.21 percent for special corporations, national and local public entities in the non-operational sector and those in the operational sector. All surpassed the legally prescribed employment quota.

## Labor-Management Relations

### Rengo Seeking ¥13,000 Wage-Hike in 1997 *Shunto*

At its November 21, 1996, Central Committee meeting, Rengo (Japanese Trade Union Confederation) formally decided upon its a strategy to improve living standards in the forthcoming *shunto* or wage talks for 1997. The confederation set an average wage increase demand of around ¥13,000, the same amount as in the previous year, or about a 4.4 percent wage increase which is lower than last year's 4.5 percent. Rengo has made wage-hikes plus ¥2 trillion special tax cuts a constant demand. The ¥13,000 pay raise incorporates a ¥7,100 (2.4%) wage hike plus a ¥5,900 (2.0%) regular annual pay increase. For individual wage increases, the confederation will ask for ¥320,300, up ¥7,500 from wages before the revision, for the standard 35-year-old worker (with a high school degree and 17 years of service).

Rengo plans to expand its membership by 1.1 million over the next three years through September 1999. In its action plan, regional Rengo members will establish regional unions and regional craft unions, and will formulate a plan to expand these unions. Rengo's draft action program also incorporates financial support such as a grant for new additions and the organizing of workers. Rengo reports it currently has 7.87 million members; but with the ever-declining union memberships stemming from the growth in the number of part-time workers, it fears its uncertain prospects for union membership. The nation's largest labor organization seeks to realize its goal of a "10-million-strong Rengo" by tearing down the walls between regular workers and non-regular workers in the traditional makeup of union members.

## International Relations

### **Synopsis: 6th Japan-EU Symposium and Japan-U.S. Employment Symposium**

On Oct. 31 and Nov. 1, the Ministry of Labour, the Japan Institute of Labour (JIL) and the European Commission hosted the 6th Japan-European Union Symposium under the theme of "Diversification of Employment Forms and Employment." Participants raised as a common problem facing Japan and EU-member nations the issue that with the ongoing diversification of employment forms, the number of contingent workers such as part-time workers is increasing but employment legislation and social-security systems are directed mainly toward regular workers. Discussions focused on future job security for non-regular workers. The EU side approached the theme as an issue of flexible corporate organization and working hours; but the Japanese side referred more to policy-wise regulations. Addressing the participants on the final day of the symposium, Hywel Ceri Jones, Deputy Director General, Directorate-General for Employment, Industrial Relations and Social Affairs, the European Commission, said, "The new balance between job flexibility and job security will create a society in which both labor and management can enjoy advantages."

Meanwhile, at the Japan-U.S. Employment Symposium on Nov. 18 sponsored jointly by JIL and Work in America Institute, an American research organization, participants discussed the future of labor unions and industrial relations, while clarifying Japanese and U.S. differences in employment. They cited the following as major differences between the two countries. Under Japanese laws, there are few factors likely to interfere with the organizing of workers, and employers too are pro-union. Under U.S. legislation, however, the formation of a labor union requires the approval of a majority of workers at the workplace concerned, and employers are not pro-union, thus making it difficult to organize workers. Referring to

the circumstances in both countries, Prof. Tadashi Hanami at Sophia University, Research Director-General of JIL, noted, "The current situation is that with diversifying employment, there are calls for flexible industrial relations in both the U.S. and in Japan, but existing labor laws have failed to keep up with the realities of labor unions."

## Public Policy

### Labor Deregulation Urged

The Administrative Reform Committee and the Economic Council in their respective reports strongly urge labor deregulation to be undertaken. In response, the Ministry of Labour has established internal study groups to deal with reform work. The following are the major areas of discussion for labor deregulations.

First is the scrapping of protective provisions for female workers (ban on holiday and late-night work). Second is a marked expansion of the scope of job categories which fall under the "discretionary work-hour system" and the variable work-hour system to review paid holidays and overtime and work on holidays. Incidentally, under the discretionary work-hour system a worker can be regarded as having worked for given hours regardless of the actual hours worked, and under the variable work-hour system the worker is allowed to work beyond statutory daily working hours as long as average work hours in a given period are within the statutory limit. Third is a review of the job-placement system. The Ministry will expand or, in principle, liberalize, as occasion demands, those job categories, where private job-placement and manpower dispatch agencies can place workers, which are currently regulated under the Employment Security Law, to form a labor market on the basis of the principles of self-responsibility. Fourth is elimination of an employment agreement concerning hiring of new school graduates. The present agreement to hire college graduates stipulates that "every year's new crop of prospective college graduates and companies may begin interviews only after July 1 and companies may promise their recruits employment no earlier than October 1." The stipulation will be scrapped to encourage corporations to undertake free recruitment activities. In the debate over deregulation, the prevailing view is that "systems and laws established to prevent exploitation as their top priority no longer meet the today's conditions and have become an obstacle to free job selection and creation of a work environment in which people can work with ease" (remarks made by Minister of Labour Okano). On the other hand, however, many members of study groups express the view that, "in many cases deregulation is meant to remove restrictions on the employer and does not respect aspects of labor regulations such as social restrictions."

Consider expansion of the scope of jobs to be dealt with in discretionary work. The system may diversify the way workers work and may encourage a shift to an employment form with emphasis on a merit pay system, but on the other hand, it will likely bring about long hour and late-night work and work on holidays. These moves will likely hinder moves toward shorter working hours.

Liberalization as a facet of the job-placement system will spawn many private job-placement agencies to create a free and fluid labor market, but there is also a fear that their activities will spur the headhunting of engineers and the restructuring of middle-aged and older workers. What must be noted among other things is that it will degrade employees' skills and technologies and the system of fostering employees that Japanese companies have long maintained by keeping them employed long-term under stable labor-management relations.

---

### **Women Win Sex Discrimination Suit**

#### **- Tokyo District Court Orders Bank to Pay ¥100 Million in Back Wages and Urges Immediate Promotions for 11 Women -**

On November 27, the Tokyo District Court ruled that 12 women of the Shiba Shinkin (Credit) Bank, a small credit association in Tokyo, should be compensated for suffering sex discrimination on the jobs. The court battle over sex discrimination involving promotions and salary increases attracted much attention as the first case of sex discrimination filed following the enforcement of the Equal Employment Opportunity Law.

The 12 current female employees, who have been with the bank for 28 to 40 years, and one retired employee, had filed a suit demanding that they be given the same qualifications and posts as male employees and that they be compensated for the wages which would have been paid if they had been promoted like their male counterparts. The 13 plaintiffs claimed that they continued to be treated unfairly on the grounds that "they could not pass the bank's in-house exams for promotion to section chief" and that "they were not promoted as quickly as their male peers and experienced the wide gap in wages between male and female employees." Presiding Judge Yutaka Hayashi determined that there was sex discrimination involving their treatment at the Shiba Shinkin Bank, saying there is clearly a wide gap in wages between the sexes, and urged immediate promotions to section chiefs for 11 of the 13 plaintiffs. He ordered the bank to pay the 12 women including one who since retired, a total of about ¥102.3 million in back wages, or wages that would have been paid to the women if they had been promoted. He also ordered the bank to pay each of the 11 women still working

increases of ¥49,200 to ¥93,800 in monthly wages from now on. The verdict finally came 9 years and 5 months after the women filed suit in June 1987. The bank balked at the court's ruling and on November 27 appealed the case with the Tokyo High Court.

The Shiba Shinkin Bank uses a personnel grade system under which employees are grouped into 6 different ranks ranging from the lower-level, the upper-level and the chief clerk to the section chief, the assistant division manager and the deputy division manager. Employees are promoted to managerial positions, such as section chief and branch manager, according to upgrades that come with pay hikes. The bank gives automatic promotions according to seniority up to the chief-clerk level. But promotions to the level of section chief or above are based on the company's promotion exams, therefore, employees must pass the exams in order to be promoted to section chief or above. The bank, however, gives employees subject and thesis tests plus personnel evaluation on a 50-50 basis, with a greater weight given to personnel appraisals.

The bank said male employees have been promoted in overwhelmingly large numbers, yet none of their female counterparts have ever been, claiming that personal skills is to blame for these women's failures to get promotions. The court, however, pointed out 99.6 percent of the bank's workers at the level of section chief or above are male and that almost all male employees, with an average 20-22 years on the job, are promoted to section chief largely according to seniority. "At the bank, it has been a labor-management practice for male employees to be promoted according to seniority, and therefore, under the current law, women should not be prevented from being subject to that same practice. It violates rules of employment which prohibit discriminatory treatment between the sexes in working conditions," the judge said.

## Special Topic

### Globalization of Employment and Social Clauses

Tadashi Hanami  
Research Director General  
The Japan Institute of Labour  
Professor of Law  
Sophia University



#### 1. Impact of globalization on labor law

International labor has been an important issue of labor law ever since the beginning of

the 19th century when Robert Owen, J.A. Blanqui and Ducpetiaux provided the idea of international regulation of labor matters.<sup>1</sup> As a matter of fact activities of the present International Labor Organization (ILO) and the body of international labor law in the form of the International Labor Conventions and Recommendations is a result of the historical development of these ideas.

"International labor" in this sense means international regulation of domestic (national) labor through international rules and instruments such as those developed by the ILO.

Globalization of labor is very different from such international aspects of labor in the sense that the globalization of the world economy has created completely new labor issues. These are mostly the result of global economic activities of multinational enterprises (MNEs) and the new wave of international migration. According to Gerald Lyon-Caen, "while the right to work in the past and sometime even today, is part of national law...(even if, by an almost secular effort, international conventions tend to impose a certain conformity in the rules) that towards which we navigate will be deliberately global law: global and not just international, labour law in the global concerns and not just the labour law of the states and of conventions between states."<sup>2</sup> "Non-localized economic activity which uses satellites, computers, and telematics no longer coincides with the application of laws which stop at borders and which convey constraints, some of which (but not all) deserve to be reexamined."<sup>3</sup>

In my viewpoint, such global issues include three major areas: 1. employment relationships beyond national borders in case of expatriates of MNEs, 2. employment of domestic workers in host countries by MNEs and industrial relations between trade unions of those workers and their global employers, 3. issues of global labor to cope with a borderless labor market as a result of both international migration and global movement of workers employed by global MNEs. In labor law such global issues entail new legal agenda such as: 1. conflict of law, jurisdictional questions, territoriality or extraterritoriality of mother country vs. host country law over applicability of laws on MNEs and their expatriates or local employees, 2. right to bargain, information, consultation beyond borders, law of collective agreement, international runaway and industrial actions etc., 3. international labor market regulations including both domestic and international regulations on migration, international labor exchange, trans nationality of labor law and social security benefits etc..<sup>4</sup>

Aside from such legal issues, newly emerging issues of globalization are at the same time closely related to other issues typical to this *fin de siecle* which are creating tremendous challenges for labor into the next century; 1. changing industrial structures from manufacturing to information, from mass-, routine- production to creative inputs,<sup>5</sup> 2. reengineering, restructuring of operations as a result of greater international competition,

and 3. delocalization and export of employment to developing countries.<sup>6</sup>

In the following part we will examine the impact of globalization on employment.

## **2. Responding to employment issues**

One of the greatest challenges of the next century will be a worldwide crisis in employment. Among highly industrialized trilateral areas of the World, all EU countries have been suffering from higher unemployment rates than the United States and Japan (see Table 1). Particularly the serious nature of European unemployment can be seen in a heavy ratio of longer unemployment in comparison with its American and Japanese counterparts. Table 2 clearly shows that this difference can be to some extent attributed to the difference of unemployment counter measures including different amounts of severance payment, period of notification, different amounts and period of benefits under the unemployment insurance system between EU countries, the U.S. and Japan. Thus, the high rate of EU unemployment - and its regional concentration - is linked to generous and often open-ended welfare benefits, heavy constraints on dismissals and the relative rigidity of real wages when compared with the U. S. and Japan although in this context one should not ignore the diversity of labor market flexibility within the EU, particularly among the Northern, Mediterranean and Anglo-Saxon country groups (see Table 3).<sup>7</sup> Thus in Europe the most urgent concern seems to be focused on developing both internal and external flexibility. However, the future perspective in Europe is not very positive as "the only common trend across the EU is towards looser regulations and expansion of part-time and fixed-term contract."<sup>8</sup>

An expert of European social dimension, Martin Rohdes finds a typical example of the contradiction between the EU commission's twin aims of promoting competitiveness as well as solidarity in its policy of greater use of temporary or part-time contracts as a means of employment creation by the efforts to guarantee the same range of rights and entitlements as full-time regular workers, "defeating the purpose of these flexible forms of work for many employers." According to Rohdes one reason why deregulation or a less constraining re-regulation has not gone further in EU countries is because of the "reluctance of governments to take on the trade unions in certain member states and the difficulties involved in tampering with entrenched systems of social welfare and taxation."<sup>9</sup>



Table 1  
Unemployment Rates in Major Industrialized Countries (%)

	1991	1992	1993	1994	1995
Japan	2.1	2.2	2.5	2.9	3.2
United States	6.7	7.4	6.8	6.1	5.6
United Kingdom	8.1	9.8	10.3	9.3	8.2
Germany	6.3	6.6	8.2	9.2	9.4
France	9.5	10.4	11.7	12.5	11.7
Italy	11.0	11.6	10.2	11.3	12.0
Canada	10.3	11.3	11.3	10.4	9.5
Australia	9.5	10.7	10.8	9.7	8.6
Finland	7.5	13.0	17.7	18.2	17.2
Spain	16.0	18.1	22.4	23.8	23.3
Sweden	2.7	4.8	8.2	8.0	7.7
Netherlands	7.0	5.6	6.2	7.2	7.1
New Zealand	10.2	10.4	9.6	8.1	6.3

Source: OECD, *Economic Outlook 60*

However, this trend is not at all limited to the EU but is common in other post-industrial countries including the U.S. and Japan in spite of their different social welfare systems. It is thus related to the core issue of new challenges that all the post-industrial world is now facing. The cause of common trends is concerned with the implication of globalization of economy for "the world of work." Duncan Campbell in his analysis of labor institutions of globalizing companies indicates that globalization entails massive organizational changes that affect both intra- and inter-company relationships. One of the features of globalization is a change in the intra-company organization of work characterized by "flattened hierarchies, broader job descriptions, decentralization or devolution of authority, incentive-based and company-specific payment systems, and policies to build worker motivation and commitment."<sup>10</sup> One of the main implications of such changes in work organization is a more "closed" internal labour market with higher standards for core workers but a sharp divide between the core and periphery, with an increasing tendency to marginalize or exclude older, less skilled or otherwise less attractive workers. Obviously the spread of the "Japanese model" of work organization in such a form is one of many consequences of globalization which include intensified competition between national and sub-national economies to attract internationally mobile plans and the loss of autonomy of local plans consequent upon their increased integration into a global network of intra-company and inter-company activities.<sup>11</sup>

Table 2  
Employment System and Ratio of Longer Unemployment in Different Countries

Countries	Severance Allowance <sup>2</sup> (Months)		Period of Notice <sup>2</sup> (Months)		Ratio of Longer Unemployment Percentage <sup>1</sup>	Unemployment Insurance	
	Blue Collar	White Collar	Blue Collar	White Collar		Max. Period of Benefit (weeks)	Ratio of Supplement <sup>4</sup> (Percentage)
Germany* <sup>1</sup>	0	0	3	6	42.2%	52	42.2%
France*	1.5	1.5	2	2	41.5	130	41
United Kingdom	6	6	2	2	42.6	52	16
Netherlands	0	0	4	4	48.8	156	75
Denmark	0	3	0	6	33.5	130	47
Ireland	12	12	2	2	58.7	65	35
Spain	12	12	2	3	51.6	104	40
U. S.	0	0	0	0	8.7	26	36
Japan*	0	0	1	1	17.6	30	20

Notes: 1 Countries with \* allow payment of wages in lieu of notice.

2 Amount of severance allowances and period of notice is based on 1991 data.

3 Ratio of longer unemployment means the percentage of longer unemployment among the total unemployed persons on average between 1979-1989.

4 Ratio of supplement means the percentage of actually paid unemployment benefits per capita against the average amount of wages per capita in 1990.

Source: OECD, *Employment Outlook*, 1993; Kaigai Rodo Hakusho, 1993

Economists are divided in their opinions over the question of whether the increased competition as a result of globalization will lead to increased employment for the world as a whole. However, leading specialists in both Europe and the U.S.<sup>12</sup> seem to share a rather pessimistic view, assuming that routine or repetitive jobs in both production and services are definitely declining as a result of changes in industrial structure and cut-throat competition from cheap-labor countries in traditional development areas and former socialist countries that newly joined the global market economy. At the same time so-called "creative inputs" category of work will gain importance and be well paid but obviously produce only limited number of employment in spite of tremendous increase of productivity in the post-industrial era. Thus, both in Europe and the U.S. there is strong concern emerging over competition from such cheap-labor areas.

Indeed, the negative side of "the new economics of location" in Duncan Campbell's term derives from the loss of national autonomy over wages and working conditions - the "regulatory deficit."<sup>13</sup> Here also certain pessimism is observed regarding the extent to which international action, whether through the ILO or other institutions including the Social Chapter of the Maastricht treaty, will be able to bridge this gap.<sup>14</sup> The issue of social clause has emerged in this context.

Table 3  
Modes of Labour Market Management in the European Union

	State Intervention	Labour Organisation	Workers' Participation	Training	Labour Market Flexibility
Northern Country Group	Traditionally limited; bargaining important in setting rules; high level spending on active labour market policy	Low level of hierarchy in firms; union membership density high, little change in the 1980s	Important influence over decisions which affect organisation of work and training	High level of participation in vocational, professional, and continuing training	High level of skills allows organisational flexibility; restricted external flexibility
Mediterranean Country Group	Strong state role through legal systems; bargaining also important; low level of active labour market spending	High level of hierarchy in firms; union density lower, significant decline in the 1980s	Traditionally weak; of greater importance since 1980s, with shift towards northern model in France and expansion of quality circles	Lower level of participation, higher levels of education and training; poorer skills provision	Lower skill level restricts organisational flexibility; restricted external flexibility
Anglo-Saxon Country Group	State role traditionally weak; little legal regulation until the 1980s in the U.K.; decline in U.K. bargaining but not in Ireland; low active labour market spending in U.K., higher in Ireland	High level of hierarchy; union density traditionally high, but significant decline in the 1980s	No formal mode of participation; traditional defence of craft organisation/ demarcation significantly weakened since the early 1980s	Low levels of participation in higher levels of education and training, poor provision of skills	Collapse of apprenticeship system adds to deficiency in skills, reducing organisational flexibility and exacerbating employment problems; few restrictions on external flexibility in the U.K.

Source: Martin Roldes, "The Social Dimension after Maastricht: setting a New Agenda for the Labour Market", *The International Journal of Comparative Labour Law and Industrial Relations*, Vol. 9, Issue 4, Winter 1993, pp. 297 ff.

### 3. "Social clause" - international trade and labor standards

A leading labor lawyer has observed that globalization and information technology has enfeebled both positive law and autonomous trade unionism at the national level and has led workers' representatives to the ILO to propose making access to world trade through GATT conditional upon adherence to "social clause".<sup>15</sup> Indeed the power of multinational enterprise seems to require something more effective than international instruments such as developed through two Codes, the ILO Tripartite Declaration of Principles on Multinationals and Social Policy or the OECD Guideline on Employment and Industrial Relations which can do little more than ask for terms not less favorable than those offered by comparable employers in the host countries concerned and can be enforced only through moral sanction by merely identifying the fact of violation of the Codes.

However, the link of international trade and labor standards *per se* is not at all a new issue but has a rather long history in international labor starting from the issue of "social dumping" as early as the 1930s. More specific in the realm of the GATT the article 7 of the Havana Charter which was never adopted addressed fair labor standards. However, the present issue was raised by the U.S. Government at the end of the Uruguay Round and started to be discussed consequently in the ILO. Thus the present discussion on social clause started under an American initiative that succeeded in imposing "fair labor standards" in

trade agreements in both bilateral or multilateral arrangements after the 1970s and finally materialized in the NAFTA Agreement on labor Agreement.<sup>16</sup>

Discussions at various meetings of the ILO and related circles have raised several important theoretical issues which are significant for the further development of international labor regulations in the period of globalization. A few of these issues will be addressed in the following part of this paper.

First, one of the most controversial questions is what is meant by the term of "international labor standards" or which international labor standards will be incorporated into a given social clause? The ILO office appears to confine the notion to the minimum basic rights standards such as freedom of association and collective bargaining as laid down in ILO Conventions Nos. 87 and 98, and prohibition of forced labor as laid down in Nos. 29, 105. It could be extended to cover the prohibition of child labor.<sup>17</sup>

Second, the method of enforcement is another issue raised in connection with the American proposal to impose a social clause into the WTO. The linkage of human rights and economic development through a social clause hinges on the serious question of enforcement of the clause. This linkage itself means inevitably imposing economic sanctions against human rights violations. Third, closely connected with the method of enforcement is the issue of universalism and economic development.

After all, the very idea of social clause was raised in connection with the growing division of interest between advanced and developing economics which more or less overlaps with the conflict between the North and the South, and at the same time between the West and the former East or more precisely between the rich and poor in the contemporary world under globalization.

#### **4. Labor standards from an Asian perspective**

It is thus quite natural that the major criticism against the notion of social clause has been raised by non-Western countries particularly by Asian governments and employers, while Western governments and trade unions support this idea that was initiated by the U.S. Government. It is generally pointed out that the American trade union movement led by the AFL-CIO has been strongly protectionist and has used labor standards and labor costs as arguments in favor of restricting imports as well as American investments abroad.<sup>18</sup>

Thus "an immediate and volatile reaction among Asian countries" was observed as soon as the news spread in 1994 that a few Western industrialized countries proposed to include

the social clause into the new world trade regime.<sup>19</sup> Thus, the Association of Southeast Asian Nations (ASEAN) wrapped up two days of annual talks in Jakarta July 1996 without bridging differences over inclusion of labor standards and other issues on the agenda of global trade talks expected later in that year. ASEAN, comprising Singapore, Brunei, Indonesia, Malaysia, the Philippines, Thailand and Vietnam, has argued that linking issues such as labor standards to trade would constitute a new form of protectionism stifling the trade potential of developing countries.<sup>20</sup> However, Asian criticism against the "social clause" is related to the most basic problems of international regulation of labor in this era of globalization, namely the question of universality of international standards and the question of appropriateness of legal enforcement of such standards.

First, it is interesting to observe that many people in Asia consider that human rights as presented in various types of legal documents have their roots in the West and do not belong to them. Even a leading Western historian Samuel P. Huntington has raised a most fundamental question of clash of Western and non-Western civilization in his very controversial article in 1993. He observed that the very notion that there could be a "universal civilization" is a Western idea, directly at odds with particularism of most Asian societies and their emphasis on what distinguishes one people from another. According to him, the author of a review of 100 comparative studies of values in different societies concluded that "the values that are most important in the West are least important worldwide". He emphasizes that these differences are most manifest, in politics, in the efforts of the U.S. and other Western powers to induce other peoples to adopt Western ideas concerning democracy and human rights.<sup>21</sup>

In the anthology of essays of world-wide key persons collected by the ILO to celebrate its 75th Anniversary, some of the Asian contributors raised serious doubt about the universality of the function of the ILO. Mahathir bin Mohamad observed "the demand that the Generalized System of Preference (GSP) privileges be withdrawn from electronic products from developing countries is not because of concerns over the rights of the workers to form powerful national unions. It is intended only to stop investment by multinationals in manufacturing in the developing countries".<sup>22</sup> "It is time that the powerful Western labor unions and their governments cease their agitation for the so-called rights of workers in the developing countries... Strikes and industrial action do not encourage investments and job creation."<sup>23</sup>

However, criticism against the universality of international labor standards is not always confined to non-Western observers. For instance, Western employers such as Hans-Gorän Myrdal and Edward E. Potter argue that the bulk of ILO Conventions are not "universal,"

because they are not widely ratified.<sup>24</sup> Potter writes that "ratification of ILO standards may have the result of putting the workers and employers of the ratifying country at a competitive disadvantage."<sup>25</sup>

Asian criticism against the universality of international standards is also related to the changing picture of industrial relations and labor markets today. Ela R. Bhatt from India strongly criticizes the tripartite principle of the ILO based on the fact that in her country nearly 93 percent of employment is in home-based production, micro-enterprises or provision of services which have nothing to do with trade unions.<sup>26</sup> The discrepancy between the idea of tripartism of the most "representative" organization representing labor and the reality of the declining organization rate in major industrialized countries such as the U.S. and Japan is another factor that contributes to the declining appropriateness of "international standards" which have been build based on such assumption.<sup>27</sup>

Another important issue raised in the discussion on social clause is the enforcement of international standards. Opposition to social clause is to some extent related to the linkage of labor standards with economic penalties. From an Asian perspective it has been pointed out that the very concept of "legal rights" is alien to Asia.<sup>28</sup> As often pointed out human rights arguments do not work and moral arguments are more persuasive in some countries in Asia where families can survive only through child labor. However, more generally the issue has been already discussed rather extensively in connection with the growing social, economic and cultural differences between the ILO member states versus the goal of developing universal standards to promote workers' interests.

In order to cope with this problem the ILO has been developing a flexible approach that allows for options with reference to the scope of the standards or to the method of their application by leaving a choice between obligations of varying strictness or allowing for temporary exceptions. Manfred Weiss suggests that instead of focusing mainly on a legalistic approach, it might be desirable to fix on a more educational or political perspective. He emphasizes also the influence of non-ratified standards on the policy of many member states and the role of "promotional" Conventions.<sup>29</sup>

The author of this paper also pointed out the trend of move of international regulation through Conventions and Recommendations from direct establishment of standards to be enforced by the national authorities towards more flexible norms to be achieved through administrative steps including guidance, inducement and assistance.<sup>30</sup> Increasing number of Conventions have been adopted in recent years in the form of so-called programme-setting or promotional type rather than the traditional type of international labor Convention. Such a

tendency toward a more flexible approach rather than rigid enforcement of standards will predict the future pattern of regulation of labor in the era of globalization.

## 5. Conclusion

It is rather ironic that globalization of labor relations calls for emerging diversity of actors of industrial relations while eroding the universality of the traditional approach of international regulation of labor. The impact of globalization is closely related to contemporary vital issues of the changing industrial structure and changing nature of labor market and labor force which make more flexible approach inevitable to cope with such questions as universality of international standards and effective enforcement of such standards.

Crucial issues are: 1. declining labor organization rate and unions' influence in some of the major industrialized countries and the changing of their confrontational approach towards more a cooperative one, 2. how unions can cope with the declining prospect of opportunities of regular workers, the growing number and importance of contingent workers and the limited but very privileged employment opportunities for highly qualified labor force with extremely specialized skills, technology and expertise of transnational character, 3. how can established international arrangements such as the U.N., WTO, or ILO cope with the new challenge of globalization together with the dramatic changes in international relations as a result of the collapse of former Soviet Union's political and economic regime and persistent and serious economic stagnation of most advanced countries? The existing international systems do not work effectively anymore because they are based on Western superpowers with overwhelming economic, military, political influence that is now rapidly fading as a result of difficulties caused by technological innovation and globalization of business opportunities.

It is not at all possible to predict any solution to these serious questions or provide a ready-made answer to the tremendous challenge we are facing now. The only thing we can say at present is that new problems cannot be solved by the out-of-date established approach of legal enforcement of established rules that are based on what is assumed to be "universalistic" but is actually very Western therefore particularistic norms from non-Western perspective. If we cannot expect much from the established "international" arrangement in the future, possible alternatives will be found, in terms of venue, in some kind of regional or partial international arrangements such as EU, OECD, NAFTA or APEC because of more "common interests" among member states than "universal arrangements" such as the U.N. or ILO. In terms of the method of enforcement, some kind of moral, educational, or political "soft" and flexible enforcement such as persuasion, negotiation or

conciliation as found in some of the ILO enforcement procedures such as the Committee of Freedom of Association or OECD and ILO guidelines on MNEs would be suitable for a future mechanism of international arrangements in order to achieve the goals despite diversified confronting interests among the countries concerned.

#### Notes

1. N. Valticos, *International Labour Law*, (Kluwer, Deventer, The Netherlands, 1979), p. 17.
2. Gerald Lyon-Caen, "The evolution of labour law", in Lord Wedderburn et. al., *Labour Law in the Post-Industrial Era - Essays in Honour of Hugo Sinzheimer*, (Aldershot, Dartmouth, 1994), p. 102.
3. Ibid, p. 104.
4. Ryuuichi Yamakawa, "The Road Becoming More Traveled: the International Dimension of Japanese Labour Law", *Japan Labor Bulletin*, Vol. 35, No. 9, pp. 6 ff.
5. Robert Reich, *The Work of Nations*, (Random House, New York, 1993), p. 117.
6. Jeremy Rifkin, *The End of Work - The Decline of the Global Labor Force and the Dawn of the Post-market Era*, (Putnam, New York, 1995). See also Roger Blanpain, *Will we still have a job tomorrow?*, (Peeters, Leuven, 1994), p. 86.
7. Martin Rhodes, "The Social Dimension after Maastricht: Setting a New Agenda for the Labour Market", *International Journal of Comparative Labour Law and Industrial Relations*, Vol. 9, issue 4, pp. 309 ff.
8. Ibid., p. 319.
9. Ibid.
10. Duncan Campbell, "The globalization firm and labour institutions," in Paul Bailery et. al. (ed.), *Multinationals and Employment - The Global Economy of the 1990s*, (ILO, Geneva, 1993), p. 275.
11. Campbell, op. cit., pp. 272 ff.
12. Blanpain Roger, op. cit., pp. 83 ff., Reich, op. cit., pp. 113 ff. See also Jeremy Rifkin, op. cit.
13. Campbell, op. cit., p. 274.
14. Bailey et. al., op. cit., p. 319.
15. Wedderburn, op. cit., p. 35.
16. Steve Charnovits, "The influence of international labour standards on the world trading regimes", *International Labour Review*, Vol. 126, 1987, No.5, pp. 568-569, Gijbert van Liemt, "Minimum labour standards and international trade : Would a social clause work?", *International Labour Review*, Vol. 128, 1989, No.4, pp. 438-439.
17. *The social dimension of the liberalization of world trade*, GB261/WP/SLD/1, November 1994, p. 10.
18. Louis Emmerji, "Contemporary challengers for labour standards resulting from globalization", in Werner Sengenberger and Duncan Campbell (ed.), *International Labour Standards and Economic Interdependence* (ILO, Geneva, 1994), p. 325, Hans-Gorän Myrdal, "The ILO in the cross-fire: Would it survive the social clause?," *ibid*, p. 339.
19. Shinichi Ago, "The social clause in trade agreements - Asian context", unpublished paper, p. 1; see also Ago, "Fair labor standards in Asia", 1996 Asian Regional Conference on Industrial Relations, Tokyo.
20. The Japan Times, July 26, 1996.
21. Samuel P. Huntington, "The clash of civilization", *Foreign Affairs*, Summer 1993, p 41.
22. Mahathir bin Mohammed, "Workers' rights in the developing countries", in ILO, *Vision of the Future of Social Justice - Essays on the Occasion of the ILO's 75th Anniversary* (ILO, Geneva, 1994), p. 176.,
23. Ibid., p177.
24. Myrdal, op. cit., Edward E. Potter, "International labour standard, the global economy and trade", in ILO, *International.....*pp. 357ff.
25. Potter, *ibid*, p. 362.
26. Ela R. Bhatt, "Long way to go", ILO, op.cit.,pp. 41ff
27. Tadashi Hanami, "Industrial Relations and the future of the ILO", ILO, *Vision of.....* pp. 125ff.



28. Ago, "The social clause....", op.cit., p. 17.  
 29. Manfred Weiss, "Some reflections on the future of the ILO", in ILO, op.cit.,pp.315, 316.  
 30. Hanami, op. cit. p. 126.  
 \* This paper was originally submitted to the 1st World Law Congress "Motion in Law", Brussels, 9-12 September, 1996.

## Statistical Aspects

### Recent Labor Economy Indices

	November 1996	October 1996	Change from previous year
Labor force	6,709 (10thousand)	6,772 (10thousand)	52 (10thousand)
Employed	6,497	6,545	58
Employees	5,349	5,329	60
Unemployed	212	227	6
Unemployment rate	3.2%	3.4%	0.1
Active opening rate	0.74	0.73	0.01
Total hours worked	165.1 (hours)	161.5 (hours)	1.3*
Total wages of regular employees	287.7 (¥ thousand)	286.4 (¥ thousand)	1.6*

Source: Management and Coordination Agency, Ministry of Labour.

Notes: 1.\*denotes annual percent change.

2.From February 1991, data of "Total hours worked" and "Total wages of regular employees" are for firms with 5 to 30 employees.

