Session 2: Employment Recovery with Quality jobs

The economic crisis and labour migration policy in European countries

Christiane Kuptsch

Abstract

This paper looks at changes in migration policies as a response to the 2008 financial and economic crisis and at governance issues. Countries in Europe opted to make new immigration more difficult, protect labour markets for native-born workers, clamp down on migrants in irregular situations and encourage the return of migrant workers. Clear patterns or reasons for variation in policy responses are not discernible, but it is safe to say that only countries with a significant recent influx of migrants have taken high profile measures at all. The crisis has highlighted labour market issues, and migrants are now increasingly portrayed as economic agents instead of security threats. This offers room for the State to assert its protective role vis-à-vis of migrant workers. The analysis has an International Relations/Political Economy perspective and is largely based on (official) news releases and secondary sources.
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1. Introduction

Migrants tend to be among the workers most hit by economic downturns for several reasons. From an economic perspective, migrant labour tends to be used as a cyclical buffer much like other macroeconomic policies aimed at maximizing growth and minimizing unemployment: migrants are often the last to be hired and the first to be fired; their employment relationships are frequently non-standard. From a social and political perspective, in times of economic insecurity migrants easily become scapegoats; xenophobic sentiments and discrimination against migrant workers rise.

This paper focuses on affluent migrant receiving countries in Europe, looking at changes in the content of migration policies and at governance issues. What type of policy changes have occurred since the onset of the economic and financial crisis in 2008? To what extent do the responses of various destination countries converge? What explains variations or similarities? These are some of the questions that will be addressed in the following sections.

2. The context of policy changes

In Europe as elsewhere, migrant workers are particularly concentrated in construction, manufacturing, agriculture, hotel and catering, and health and care work, including domestic services. Some of these sectors are also especially hard hit by the current crisis. Certain economic sectors are more sensitive to business cycles than others. The employment elasticity is particularly high in construction, wholesale and hotels and restaurants – most job shedding has taken place here – but less so in health, social work and education.

Unemployment of migrant workers does not mean that they will automatically leave their host countries. In fact, a September 2009 report by the Migration Policy Institute finds that roughly one year after the beginning of the crisis, “immigrants overwhelmingly are choosing to stay put in their adopted countries rather than return home despite very high unemployment and lack of jobs” (MPI, 2009, pp. 5). Whether the migrants wish to go back to their home countries or move on to a third country will largely depend on prospects in these countries. The migrants’ personal characteristics and situations will also determine their options, such as their educational attainment, their reasons for having migrated (e.g. to join a family member), their immigration status and their length of stay in the country of destination (Kuptsch, forthcoming).

3. Restrictive host country reactions

There is consensus in the economic literature that in the longer run new immigrants have very little or no impact on labour market outcomes for the pre-existing population (e.g. in terms of earnings or unemployment). For example, theoretical studies invalidate the replacement postulate, i.e. the frequent assumption that immigrants occupy the jobs of native workers. An economy tends to create jobs in proportion to the number of its residents and consumers, and immigrants eventually help to create a number of jobs in proportion to the size of their community. Empirical studies find

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1 This paper is based on a chapter in the edited volume Labour Administration and the Economic Crisis: Challenges, Responses and Opportunities. Eds.: J. Heyes and L. Rychly, forthcoming 2011.
2 Senior Specialist in Migration Policy with MIGRANT Department, ILO, Geneva.
that the overall economic impact of immigration is small, though opinions are mixed regarding whether the impact is small positive, small negative or zero.3

Yet, in the political arena these propositions keep being challenged. Research in European countries has also shown that different opinions about admitting migrants is impacted more by cultural perceptions, the effect that migrants may have on changing the neighbourhood (80 percent), than by economic cost-benefit perceptions (Card, Dustmann, Preston, 2009). In view of rising unemployment numbers among migrant workers and in line with increasingly protectionist attitudes in other areas such as trade, a number of authorities in destination countries rapidly reacted to the crisis by attempting to make new immigration more difficult, protect labour markets for native-born workers, clamp down on migrants in irregular situations and encourage the return of migrant workers.

3.1. Reduced inflows and clamp down on irregular migration

The Home Office of the United Kingdom strengthened the labour market test for high demand occupations such as civil engineers and nurses. This will affect migrants who seek entry under Tier 2 of the UK Points-Based System (PBS), i.e. non EU-nationals with a confirmed job offer in a sector of labour market shortage.4 Employers must now advertise jobs to resident workers through the national employment service (JobCentre Plus) before being able to recruit a worker from outside of the European Union. The UK also tightened the criteria against which highly skilled migrants, eligible for coming to the country under Tier 1 of the PBS, are judged. The minimum qualifications were raised to a master’s degree and the required salary to at least £20,000 (MPI, 2009, pp. 57). Tier 3 of the PBS, covering low skilled workers to fill temporary labour shortages, was in any case suspended.

France responded to the crisis by making it harder for migrants to live and work in the country illegally. In September 2009, French authorities dismantled and bulldozed a camp for undocumented migrants outside Calais, rounding up almost 300 Afghans, Pakistanis and others who had gathered there for years in the hope of making clandestine journeys across the Channel to Britain. Earlier in the year, high-profile worksite raids had taken place in the region (New York Times, 22nd September 2009, and 21st April 2009).

Italy went further in this direction and passed legislation criminalizing unlawful presence, increasing the maximum period of detention of migrants in irregular situations and prohibiting access to public services such as emergency medical care and education to unauthorized migrants. In addition, citizen patrols got permission to assist police in responding to immigration violations (MPI, 2009, pp. 57). Italy also lowered its quota for entries. The 2009 ceiling for entries was capped at 150,000, 3 For a detailed analysis see Sweetman, 2010 (on North America) and Domingues Dos Santos, 2010 (on Europe).

4 In February 2008 the UK adopted a new points-based system for assessing immigration applications and planned for its roll out until March 2009. The points system has re-categorized over 80 different routes to employment and education in the UK to just five tiers:

  Tier 1: highly skilled individuals (previously Highly Skilled Migration Programme)
  Tier 2: skilled workers with a job offer to fill gaps in the UK labour force
  Tier 3: low skilled workers to fill temporary labour shortages (currently suspended)
  Tier 4: students wanting to come to the UK to study, including student nurses
  Tier 5: youth mobility and temporary workers.

Migrant workers and students must gain points to qualify for each specific tier before they can apply for permission to enter, or remain in, the UK. Points are awarded, depending on the tier, based on the qualifications, experience, age, earnings, maintenance and language competence of the candidate. For more information see: http://www.immigrationmatters.co.uk/uk-immigration.
i.e. 20,000 less than in 2007. Entry was essentially limited to domestic work and only taking applications from the backlog with the government arguing that most applicants were already in Italy without documents (OECD, 2009, pp. 25).

In Spain, the Contingente (the quota for workers to be recruited anonymously from abroad) was set at 901 for 2009 versus 15,731 in 2008. In October 2008, the Regime General (list of difficult to cover occupations) contained 32 percent fewer occupations than the previous list and the occupations which were taken from the list represented almost all hiring from abroad. Mostly specific qualified occupations (such as neurosurgeon, dentist, and physiotherapist) remained (OECD, 2009, pp. 26). Spain therefore is one of the countries where highly skilled migrants might be less affected by the crisis.

3.2. Return programmes

In response to increasing numbers of migrants applying for social benefits, Spain also introduced a voluntary return programme for unemployed legally resident migrants (from 20 non-EU countries having social security agreements with Spain). It was estimated that between some 90,000 and 140,000 people would re-migrate under this plan5 where unemployed migrant workers who are registered with the Public Employment Service commit to not returning to Spain for three years6. The payment is made in two lump sums, a first one in Spain (40 percent) and a second in the origin country (60 percent)7. So far few migrants have shown interest8. In addition, the Spanish Public Employment Service has started to work with its Romanian counterpart to recruit Romanians to return home (OECD, 2009, pp. 29).

Similarly, the Czech Republic set up a voluntary return programme where applicants must be legal, non-EU residents, holding a valid residence permit. Some analysts say that the economic crisis was one of the reasons to limit foreign workers’ presence in the Czech Republic but that irregular migration, especially from Vietnam and Mongolia, had already started to undermine foreign worker admissions before the crisis. Therefore, combating the factors leading to irregular migration, such a regulating scrupulous labour intermediaries, would make sense, especially since Vietnamese appeared to have well integrated into Czech society, having learned the language and occupying posts shunned by locals or being self-employed (Plewa, 2009).

3.3. A deviant case: Sweden

In December 2008, Sweden introduced a new immigration law that made it easier for non-EU migrants to work in the country. Decisions on the need for foreign workers will now be made by employers, and no longer a central government body. Under the new system, once a job vacancy has been advertised nationally and across the EU for two weeks, companies can choose to recruit from elsewhere and need only inform the Swedish Migration Board whose role it will be to ensure that working conditions and terms of employment for migrants are equal to those of Swedish employees. Previously, unions had to be consulted before workers were hired from abroad and the

5 The Economist, “Global Migration and the Downturn” 15/01/2009 cites a number of 87,000; the Migration Policy Institute says “The government estimated that 140,000 unemployed workers would be eligible to participate” (MPI, 2009, pp. 67).
6 The migrant worker is supposed to return together with all other family members who do not have an independent residence permit and who have used the family reunion policy to come to Spain and obtain a resident permit.
8 The Economist, “Global Migration and the Downturn” 15/01/2009. According to MPI, as of June 2009 less than 4,000 immigrants had returned home (pp. 67).
national employment agency required proof that the skills were not available at home. The new law opens up Sweden’s labour market to workers of all skill levels. The rules also allow asylum seekers whose applications have been refused to be granted work permits if they were employed in the country for six months at least and make it easier for foreign students to get work. Immigrants receive work permits for up to four years, after which they qualify for permanent residence. Migration minister Tobias Billström justified the policy changes by referring to the crisis and said: “It’s especially important during a downturn to ensure that businesses capable of expanding their activities are able to do so without being hindered by unnecessary bureaucracy.” (Sullivan, The Irish Times, 12th December 2008)

4. Assessment of policy responses

4.1. Different levels of change

Policy changes can come at different levels. They can be made by (i) introducing new rules, (ii) adapting existing rules without touching the overall structure of the system, and (iii) applying rules differently.

Table 1 gives examples of policy changes at different levels and categorizes the host country reactions described above under these aspects.
### Table 1: Categorization of policy changes

<table>
<thead>
<tr>
<th>Level of change</th>
<th>Examples of policy changes</th>
<th>Country examples</th>
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<tbody>
<tr>
<td>New rules</td>
<td>New legislation is introduced, policies are reversed</td>
<td>New Swedish immigration policy Italy’s new legislation on criminalizing migrants in irregular situations</td>
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<tr>
<td></td>
<td>New programmes are introduced</td>
<td>Return programmes in the Czech Republic and Spain</td>
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<tr>
<td>Adaptation of rules</td>
<td>Points systems raise the “pass mark”</td>
<td>United Kingdom: Tier 1 of the PBS</td>
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<td></td>
<td>Eligibility criteria, e.g. for family reunification, become more restrictive</td>
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<td></td>
<td>Criteria for labour market tests become tighter</td>
<td>United Kingdom: Tier 2 of the PBS</td>
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<td></td>
<td>Shortage occupation lists are reduced</td>
<td>Spain: Regime General</td>
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<tr>
<td></td>
<td>Numerical limits (quotas, targets, caps) are reduced</td>
<td>Italy: entry quota Spain: Contingente</td>
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<tr>
<td>Application of rules</td>
<td>Labour market tests are done with more scrutiny</td>
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<td></td>
<td>Labour inspection becomes more frequent / targets sectors and workplaces with a high concentration of migrants</td>
<td>French high profile worksite raids</td>
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<tr>
<td></td>
<td>Rules on service delivery are not applied, e.g. more backlogs are allowed with regard to visa procedures and work permit delivery</td>
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### 4.2. Policy space: Changes vs. stable policies

There is not enough evidence to state that structural or systemic differences such as a different organization of the welfare state (Esping-Andersen, 1990) explain or have influenced the types of crisis responses taken or that there are any other clearly discernible patterns.

The countries that most hit the news with their policy changes were also the ones that had lately seen the biggest inflows of migrant workers and where migrants were having a significant effect on employment growth (the UK and Ireland, Southern European countries, the Czech Republic). The Migration Policy Institute reports that nearly seven in ten new workers in the United Kingdom were migrant workers for example (MPI, 2009, pp.6). This corroborates the thesis of migrant workers being used as cyclical buffers.

European countries that had not opened their doors to the 2004 EU-accession countries and had followed a “welcome the skilled and rotate the unskilled” policy (Kuptsch and Martin, 2011) kept this in place. In Germany, for example, where a new immigration policy favouring highly skilled
inflows had been introduced in 2005, this has not been touched. In the recent past, Germany has also relied substantially on migrants for seasonal agricultural work and introduced no changes to this programme. Indeed, rural employment tends to be relatively stable in affluent destination countries and seasonal agricultural programmes therefore unaffected by the crisis.

There are certain flows of migrants that countries cannot restrict rapidly or cannot restrict at all, as restrictions would imply human rights violations or non-respect of rights that migrants have acquired. Humanitarian flows and family reunification are cases in point.

Policy changes are also not always possible because of multilateral and bilateral commitments. Where countries have undertaken to accept the free movement of labour within regional integration areas such as the European Union for example, they cannot easily step down from their obligations. Similarly, a number of European countries have concluded bilateral agreements that fix (usually annual) quotas for temporary work of migrants in certain sectors of the economy. Where such agreements are based on memoranda of understanding (MoUs) between employment services instead of international treaties they might be more easily dissolved, nonetheless this requires negotiations, and recruitment stops cannot simply be announced unilaterally. Germany for example brings in nursing and care personnel from Croatia and Slovenia based on memorandum of understanding between the German Employment Service and its foreign counterparts. Austria, France, Germany and Switzerland all have trainee programmes in place, founded on either MoUs or bilateral agreements.

Labour migration policies do not exist in a vacuum and although labour shortages remain the principle reason for today’s temporary foreign worker schemes, foreign policy considerations loom large in several programmes as well as the wish to promote cultural exchange or development in the migrants’ countries of origin. Migration restrictions could reinforce the crisis in sending countries resulting in increased irregular migration, an extremely undesired outcome for destination countries. Trade relations and dependencies on supplies of particular commodities and/or energy from migrant sending countries may also cause receiving countries to refrain from adopting restrictive policies.

This shows that there are quite a few reasons for countries not to openly change their policies despite the economic and financial crisis. Nothing much is known how countries apply existing rules, though, and it could very well be that a different application leads to tighter de facto policies (as in category iii above). Where only administrative procedures change, these do not always have to be publicly discussed and be fully transparent to the social partners or the population. Labour market tests are an example. Public authorities exercise a significant degree of discretion in judging the good faith of employers in properly advertising their job offers. Another example is labour inspection. Labour inspection can be used to make sure that migrant workers benefit from equal treatment with local workers (e.g. concerning their wages and working conditions) but it can also be used to identify migrants in irregular situations for subsequent expulsion.

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9 Major changes in comparison to the “old system” include the following. The previous five titles of legal residence were reduced to two, a short-term residence permit (befristete Aufenthaltserlaubnis) and a settlement permit (unbefristete Niederlassungserlaubnis). While the recruitment stop persists for low and semi-skilled persons, highly qualified migrants have access to a settlement permit from the beginning. The same favourable conditions also exist for people who invest at least EUR 1 million or create at least ten jobs. Foreign students may stay up to one year after their graduation in Germany to find a job; previously, most non EU-students had to leave within 90 days. For more details and the history of the 2005 immigration reform in Germany see Martin, Abella, Kuptsch (2006), pp. 98 – 102.

10 For the programme rules see ZAV (2004).

11 For example, Poland made employment of its workers an issue during negotiations on the recognition of the Polish-German border.
4.3. The changes’ life-span

Shortage lists and numerical limits (so far as the latter are not fixed in bilateral agreements) can easily be adapted and can have a rapid impact on migration flows. Points systems can raise pass marks but also quickly bring them back down again. Where labour market tests become stricter either via tighter rules or because they are done with more scrutiny, this can also be rapidly reversed. And more or less staff and financial resources can be allocated to visa and work permit delivery, yielding expanded or reduced immediate inflows. The adaptation of existing rules and their different application tend to be less permanent in nature and more easily to be reversed than new pieces of legislation.

Both the new Swedish immigration policy and Italy’s new legislation on criminalizing migrants are likely to stay in place for some time. However, are they really products of the financial and economic crisis or has the crisis only been used to justify changes that would have occurred anyway given political constellations?

In Italy, the legislative changes are very much in line with pre-crisis policy stands on migrants and immigration taken by the Berlusconi government.

The Swedish reform with its liberal provisions on labour migration and its deferral to employers of immigration decisions, appears to be more the result of a particular political set up than a direct consequence of the crisis. Cerna (2009) convincingly explains how immigration policy in Sweden is the outcome of coalition building and shifting coalitions over time between native high-skilled labour, native low-skilled labour and capital. In 2006 the government changed with the centre-right coalition government presenting a more capital-oriented position, weakening the link between unions and the government (pp. 37).

Assisted voluntary return programmes, such as now implemented in Spain and the Czech Republic, tend to linger on as the historical experience of the Netherlands, France and Germany shows. European return programmes emerged for the first time after the 1973 oil crisis had led to a recession. All of them had a long life span and were considered unsuccessful. In 1974 the Netherlands launched their ‘Reintegration of Emigrant Manpower and Promotion of Local Opportunities for Development’ programme which lasted until the mid 1980s and focussed on entrepreneurial ventures. Around the time when the Dutch programme closed down, the German ‘Act to Promote the Preparedness of Foreign Workers to Return’ was passed, in 1983. The German scheme was discontinued in the early 1990s only, despite a low take up rate. It offered cash payments to returning migrants similarly to the French Aide au retour programme of 1977. The latter was aimed at migrants from North and West Africa, especially Algerians, but was mainly used by Portuguese and Spanish migrants in France. In the period 1977 – 1981 some 60,000 migrants returned (out of which only 4 percent were Algerians), not exactly meeting the declared target of 1 million returnees (Sward, 2009).

All in all, it seems fair to conclude that the crisis has not led to major system changes in European countries. It has mainly led to an adaptation of existing rules, and possibly to a different application of rules, which can both be reversed rapidly.

5. Policy implications and research gaps: The crisis as an opportunity

5.1. The role of the social partners

Did the social partners’ role in migration policy making decrease or increase with the crisis? This question is hard to answer lacking a survey with workers’ and employers’ organizations.
The institutional frameworks for the consultation with and participation by employers and workers and their organizations do not appear affected by the crisis. For example, in several countries the social partners are consulted concerning shortage lists. In Spain, shortage lists are based on job vacancy rates but are revised every three months if needed after consultations with the social partners and regional governments. Similarly, in Finland, the social partners are consulted in the establishment of regional shortage lists that take vacancy data as a basis. In Italy, the social partners are consulted before the Ministry of Labour decides on occupations with reserved quotas (OECD, 2009, pp. 27).

On the other hand, there is not much evidence of major tripartite discussions about the migration-related measures that were taken as a response to the crisis. News reports are silent about such issues. The speed in which regulations were adapted speaks against lengthy consultation but then again nothing much was at stake for the social partners because the new regulations can be as swiftly reversed as they were introduced. A different application of rules or the interpretation of regulations rests by definition opaque unless of course it becomes a matter before a court.

5.2. Ministries of Labour and their role in migration policy making

States have the responsibility for protecting migrant workers from abuses and ensuring that they actually enjoy the equal treatment and equal opportunity rights that exist under international law, as for example set out in ILO Conventions No. 97 and 143. In practice, it is the role of Ministries of Labour and employment services and other institutions supervised by Ministries of Labour to administer protective programmes and make sure that non-discrimination norms are respected.

The crisis may mean an opportunity as it has shifted perspectives and may lead to an expanded role of Labour Ministries in migration policy making. First, perspectives on the State and State action in general seem to have evolved; and second, as concerns migration policy, the crisis has brought more of a focus on labour policies and less on security issues.

Since approximately the 1980s (the Reagan-Thatcher years) neo-liberal thought with its particular vision of the State has dominated economic and social policy making in Europe. Neo-liberalism is very much a theory about economic arrangements, e.g. against State interference with private property and in market exchanges. The focus is on free markets. Liberalism in contrast is primarily about human freedoms, protecting individuals from unacceptable State incursions on their liberty, and ensuring that all individuals within the polity are able to enjoy these rights. Liberalism is also the theory that highlights the equal treatment of all individuals irrespective of their particular characteristics; the universal applicability of liberal rights; and the need to limit State power over the individual (Hansen, forthcoming).

Glivanos (2008) points out that current neo-liberal thought combines two strands of classical theory, especially to explain the function of private property: The Austrian tradition views market individualism as maintaining individual freedoms (Hayek, Ludwig von Mises, Schumpeter) while neoclassical economists emphasize the importance of markets to achieve efficiency (Chicago School of Economics). Ha-Joon Chang (2002) views this combination as an “unholy alliance” that results in an unfavourable perception of the State and its role. The State is no longer seen in its

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12 ILO Convention No. 97, adopted in 1949, in a context of (anticipated) migration flows in the aftermath of World War II is about migration management while protecting workers crossing borders. It aims to ensure equal treatment for them by encouraging countries to sign bilateral agreements. Convention No. 143 (1975) was enacted after oil-price hikes led to recessions in European countries that had been importing large numbers of guest workers and stopped recruitment as a response to the economic downturn. C143 deals with clandestine migration (to be expected with legal channels being closed) on the one hand (Part I) and with equality of opportunity and treatment and the integration of settled migrants on the other (Part II).
benevolent function, as under Keynesianism; it has lost its role as impartial arbiter and social
guardian. Instead, the State is perceived as an organization catering to self-interested bureaucrats
and politicians who work for their client groups and not in the general interest.

This vision of the State also goes hand in hand with the thought that there are ‘high politics’ and
‘low politics’, with sovereignty and security issues figuring at the high end, in contrast to economic,
labour and social policy. At most the State should be in charge of ‘high politics’ but preferably not
interfere in other issues and leave them to market regulation. Indeed, the State’s role in security
issues is less contested by neo-liberal thought. Labour Ministries, on the other hand, have been
accused of being “spending ministries” open to group interest pressure. For Labour Ministries this
has meant an erosion of their role: a shrinking of their responsibilities and cutbacks in budget
allocations. Their human, material and symbolic resources have increasingly paled (Minet, 2001).

One of the roll-back issues has been migration. At EU level the Directorate-General (DG)
Freedom, Security and Justice (under Justice and Home Affairs) and the DG External Relations
drive much of the migration policy making, not leaving this to their colleagues in the DG
Employment, Social Affairs and Equal Opportunities (which would correspond to the Labour
Ministry at the national level). France created a new Ministry for Immigration, Integration and
Identity in 2007. Migration had previously been a responsibility of the Labour Ministry. In the United
Kingdom migration issues are dealt with by the Home Office (the Ministry of the Interior); it is the
UK Border Agency that publishes approved shortage occupation lists.

5.3. Opportunities

The current financial and economic crisis is seen by many as the result of too much (neo-liberal)
market focus and neglect of (liberal) rights-based approaches. States have been essential in
stabilizing financial and economic systems, challenging the view that markets are best left alone.

As concerns migration, the crisis has highlighted labour market issues. Migrant workers made the
news as economic agents, not as security threats, criminals or potential terrorists as was often the
case before the crisis. The media and certain politicians have not always portrayed migrants as
positive economic agents (‘they take away our jobs and should be sent home - local workers first’,
Castles and Vezzoli, 2009). Nonetheless this type of headlines has shifted the discussion to
economic questions.

With a revival of the State in the economic arena, a renewed view of migrants as workers and
more liberal (rights-based) approaches to policy making in general, there should be room for
Labour Ministries to assert their protective role vis-à-vis of migrant workers. It will be interesting to
follow whether some countries will actually now endow Labour Ministries with greater responsibility
for migration policy making. If one found that both the social partners’ role and that of Labour
Ministries were strengthened during the crisis, this would implicitly also reinforce ILO’s mandate in
migration policy.

13 These concepts come out of the Realist school of thought in International Relations theory. For a
critique of this dichotomy see, e.g. Ripsman (2004).
References


http://www.sullivantom.com/index.htm

