

# **The use of migrant professional workers in IT**

## ***How companies are offshoring without going offshore***



A report for UNI by Andrew Bibby  
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## **A new take on IT outsourcing**

This report is about a particular type of offshoring in the IT sector, where companies take advantage of the benefits of moving work offshore and yet where the work (or some of it) is actually done in the home 'onshore' country.

How is this possible? It's possible because a growing number of IT professionals from lower-cost 'offshore' countries are being relocated to undertake the work onshore, in North America and in Europe. Although in most cases they should – in theory – be taken on with the same pay and conditions as resident workers, in practice there is often considerable scope for companies to save money by manipulation of the work permit system. This potentially creates an invidious split between home and overseas workers, both of whom in different ways can suffer from these arrangements.

There is a problem in knowing what term to use to describe this phenomenon. .. To the extent that it has already received attention, it has tended to be labelled rather clumsily as 'onshore offshoring' or 'onsite offshoring', (So-called 'bodyshopping', as we'll see, is closely related, but not quite the same thing.)

This report proposes a new term. Since this is a form of offshoring which can be undertaken without having to send work across the oceans of the world – a form of offshoring, in other words, where a company can doesn't need, metaphorically speaking, to get its feet wet – we are suggesting that this way of working be referred to as 'dry-foot offshoring'.

## IT migration in a globalised economy

Migration is particularly significant in the IT industry worldwide.

If at previous stages of the sector's development (for example, at the time of Y2K software concerns) the driver was primarily IT domestic skills shortages, the strong suggestion now is that the use of migrant labour has become integral to the commercial business models used by multinational IT companies.

In part, dry-foot offshoring can be seen as a preparatory step towards the full implementation of an offshoring strategy. For example, Peter Skyte of Unite union (UK/Ireland) makes the following point: "The import of migrant IT professionals is not so much driven by skill shortages/gaps as by knowledge transfer as a prelude to offshoring and export of work, jobs and skills. Without this process it would not be possible to offshore the work, as the necessary specific knowledge of company and proprietary skills, applications and processes would not be available."<sup>1</sup>

A similar argument has recently been advanced by the academic writers Jane Millar and John Salt, who write:

"The prevailing tension involved in remote service production is between the need to create proximity at the same time as retaining distance. Distance is necessary, for instance, to exploit the cost advantages of service relocation. Proximity is required, for example, to capture the (culturally situated, often tacit) knowledge that will ensure service delivery meets client standards and objectives. Work permit systems that provide support for the temporary presence of overseas national in client locations are, therefore, vital for competitiveness among remote service providers."<sup>2</sup>

Other people have suggested that the recent increase in the number of IT migrant workers is more than just a side-effect of the development of conventional offshoring, suggesting instead a fundamental shift in business models driven by a desire to undercut domestic labour costs. The justification that migrant workers are necessary because that there is a shortage of IT professionals in domestic labour markets (or because there is a shortage of IT professionals with the necessary skills) becomes arguably less plausible as the work permits numbers increase rapidly. Instead, this can look more like an ideologically motivated attempt to create a global free trade market in labour, with as few restraints as possible. In this context, it will perhaps be recalled that Bill Gates told a US Senate committee in March 2007 that US visa limits for the IT

sector should be entirely abolished: “Even though it might not be realistic, I don’t think there should be any limit,” he is reported as saying<sup>3</sup>.

More generally, the WTO’s General Agreement for Trade in Services, GATS, has opened up a connection between world trade agreements and work migration. Although GATS Mode 4 (the movement of people from their own country to another in connection with the supply of services) does not currently apply to the computer services sector, related sectors are covered. The current relationship between the (irreversible) pledges countries make under GATS Mode 4 rules and their work permit and immigration policies is often somewhat confused and unaligned, but this is an area where future initiatives can be expected. The Indian government, for example, is calling for the introduction of a dedicated GATS visa, a development which might be assumed to increase the opportunities for dry-foot offshoring.

## **The need for a union response**

It’s important for unions to focus on the business process involved, rather than on the particular workers who are affected. Some people have tended to suggest that this is an issue about ‘migrant workers’, an approach which unfortunately can lead to a situation where it is the individual migrant workers who end up in the spotlight and, often, bearing the criticism and blame. Such an approach is the wrong way to address the issue.

As with conventional offshoring, a union response to dry-foot offshoring clearly has to have two sides to it, both defending the interests of domestic IT workers whose jobs are at risk of offshoring and seeking to ensure that workers undertaking work which has been offshored are employed on good terms and conditions – or at the very least that core labour standards are upheld. Unions have to assert the fundamental commonality of interests between these groups of workers and to try to avoid any attempts to play one group off against the other.

Migration has risen rapidly up the international agenda. The ILO has tackled the issue in the context of its call for decent work, and in its report on the social dimension of globalisation. The International Labour Conference in 2004 produced a set of conclusion for a ‘fair deal for migrant workers’. The ITUC, among other trade union organisations, has prioritised the need to organise

migrant workers, defend and promote their rights, and improve their living conditions.<sup>4</sup>

Unions need to anticipate – and therefore develop a strategy to seek to prevent – the use of this issue by those who wish to promote xenophobia and racism. For example, in Britain (where popular newspapers have encouraged a upsurge of antagonism towards migrant workers) the far-right British National Party has chosen to run a feature on its website with the title “Indians flood Britain’s IT market”, using data on UK work permits issued to Indian IT professionals<sup>5</sup>.

In this context, the words we select matter. Because of the resonances (in different ways, in both the US and UK versions of English) which particular words can conjure up, this report will avoid talk of ‘alien’ or ‘foreign’ workers and instead will refer to *migrant workers*.

## **What’s happening where?**

It should not surprise us that most evidence of dry-foot offshoring at present comes from Anglo-Saxon countries. The US and Britain in particular were ahead of other countries in their embracing of conventional offshoring as well, for two key reasons – firstly, because procedures for employment protection are generally looser in these countries than in, for example, continental Europe and secondly because of the readily available pool of English speakers in offshore countries.

Much of this next section looks, therefore, at the current situation in the US and UK. Nevertheless, it will also be seen that dry-foot offshoring is beginning to become a recognised phenomenon in a number of other developed countries. As with offshoring more generally, this is a trend which is now spreading beyond its Anglo-Saxon origins.

### ***United States***

The US has a variety of visa schemes in force for migrant workers, including the EB (employment-based) admission scheme for permanent immigrants (the ‘Green card’, currently capped at 140,000 a year) and a special NAFTA-linked TN scheme for Mexican and Canadian professionals. For the IT industry, the H-1B and L-1 visas are the most frequently employed.

H-1B visas are issued to employers who wish to bring in migrant workers for a limited period. The use of H-1B is particularly closely associated with the IT sector and has been highly controversial, with union organisations criticising it as reducing jobs and pay for the US's domestic IT labour force. The number of H-1B visas was increased to 195,000 a year in 2001-3, as a response to the claimed shortage of IT professionals. It has now been brought down to 65,000 a year. Indian workers are particularly heavily represented in the H-1B scheme (about a third of all visas granted, according to 2005 data); Chinese workers are also over-represented (9% in 2005)<sup>6</sup>

The H-1B scheme is used by large employers such as Oracle, Lucent and Motorola, but has also been a feature particularly of the so-called 'body shops', where IT service companies act as agencies contracting out IT professionals to third party clients. It is illegal for US employers to replace existing workers with migrant workers; however, it is possible for workers to be replaced indirectly, by bringing in contract (agency) workers to undertake their work.

Applying for an H-1B involves completing a Labor Condition Application, designed to ensure that migrant workers are not employed on poorer wages and conditions than resident workers. The law says that H-1B visa holders have to be paid either the actual wage (that paid by the employer to all other individuals with similar functions and experience) or the prevailing wage. However this system is poorly monitored and pay data submitted by employers are not verified. Labour movement and other organisations have undertaken research which found that on average H-1B workers are in practice paid much less than their US colleagues. According to the Center for Immigration Studies, "applications for H-1B workers in computer occupations were for wages \$13,000 less than Americans in the same occupation and state"<sup>7</sup>. Another researcher has reported an H-1B visa holder working as a chief programmer with Accenture in Houston on pay of \$25,113, compared with a median wage of \$53,042<sup>8</sup>.

In practice, it appears to be very easy for employers to select 'prevailing wage' data which enable them to pay artificially low wages. Another device is to categorise an H-1B worker as a low-level generic IT worker, rather than possessing more specialised (and better remunerated) skills<sup>9</sup>.

The growth in the use of H-1B visas has been linked by some to a decline in the number of US students choosing to study IT and computer-related engineering courses at university level.

L-1 visas are for intra-company transfers (in other words, for companies who wish to move an existing member of staff to the US on a temporary assignment).

Employers can submit blanket, rather than individual, L-1 visa applications, and there is no annual cap in place. There is also no wage parity provision.

There has been less focus on L-1 than on H-1B visas. L-1 visas historically tended to be used by US companies to bring in workers from countries such as the UK and Germany. However the admission of L-1 visa holders from India rose tenfold between 1996 (about 2,000 people) and 2003 (about 22,000)<sup>10</sup>. As has been pointed out, about a quarter of the Indian IT sector is fully owned by US multinationals, whilst at the same time Indian companies have also established US subsidiaries. In 2002, the Indian IT company Infosys had 445 staff in the US on L-1 visas, as well as over 1500 on H-1B visas.<sup>11</sup>

### ***United Kingdom***

The British work permit system currently distinguishes between higher-priority 'Tier 1' applications (primarily available for occupations where skills are deemed to be in short supply in Britain, and for multinational companies transferring their own employees from another country to Britain) and 'Tier 2' applications, where employers are required first to seek to recruit from the existing domestic workforce.

IT skills were, in September 2002, reclassified as no longer considered to be in short supply. This would appear to suggest that employers seeking IT professionals would now be required to use the more rigorous Tier 2 procedures. It might also suggest a fall-off in the overall number of IT migrant workers.

In reality, however, the number of work permits issued for IT professionals (the vast majority from India) has increased dramatically since 2002: in 2006, 33,756 IT work permits were issued, up from 25,000 in 2005. These can be compared with the figure for 2000, at the height of the technology boom, of 12,726<sup>12</sup>.

The majority of these work permits continue to be issued under fast-track arrangements, using the intra-company transfer provision. This has led a number of organisations to suggest that intra-company transfers are being used as a convenient device by IT companies to drive down labour costs. Some observers have gone further, to suggest that temporary migration is becoming a key feature in the business models of software and IT service providers. This issue has begun to attract press attention, as for example in the article in the Financial Times in February 2007 (under the headline 'Call to curb influx of foreign IT workers')<sup>13</sup>.

The union Amicus (now Unite) has been among those to criticise the lack of transparency apparent in intra-company transfers. Amicus has also raised the general point about the high number of IT work permits issued: “The question needs to be asked whether the skills represented in these figures are not available in the UK, which would be a justifiable use of the work permit system, or whether these companies are bringing in non-resident work permit holders at below going pay rates in the UK, which would not.”<sup>14</sup>

Amicus’s own findings would imply the latter: “66% of IT work permit holders are paid less than the equivalent of £30,000 per year. Given that the average salary of an IT professional is £32,500 in the UK, on the face of it the majority of IT work permit holders would appear to be paid less than the industry average. Further detailed analysis suggests that 83% of IT managers and 90% of software engineers are paid less than the average salary for their job.”<sup>15</sup>

As in other countries, the work permit rules state that pay and employment terms for migrant workers should be at least equal to those given to resident workers. However, the authorities have been criticised for not being able to police this adequately and this condition is particularly hard to monitor in relation to intra-company transfers.

The results of research carried out by the UK Home Office (Interior Ministry) into salaries paid to migrant IT workers revealed that 15% of the applications sampled were approved for salary levels below agreed minimum pay ranges. The requirement for pay and conditions to be ‘at least equal to those normally given to a resident worker doing similar work’ was being routinely breached in nearly one in six of all cases. The union Unite points out that no employers have been prosecuted for paying below market wages.

Not every UK employer is abusing the work permit arrangements. The union PCS is able to give a good report of the way Capgemini in Britain has fully integrated about 100 Indian workers into the workforce. The union reports, “They receive a good support package whilst in the UK and are treated as an inclusive part of the UK workforce including qualifying for the UK bonus scheme. They often change assignments and are given the same training as UK staff would be to facilitate this.”

Unions are represented on the Advisory Panel for the ICT sector which advises the government’s work permit agency. The work permit system is currently under review, and may change shortly<sup>16</sup>.

## **Belgium**

Belgian trade unions have been instrumental in identifying and publicising abuses of the work permit system, particularly in relation to Indian workers working whilst purportedly undertaking 'training'.

Unions say that official statistics are not reliable, but it has been estimated that there are about 7000 Indian migrant workers in Belgium, of whom perhaps 1000-2000 work in IT<sup>17</sup>. A wide range of companies make use of IT professionals from abroad, among them HP, IBM, Capgemini, Proximus, Mobilstar and Alcatel. Several banks and financial institutions, including Citibank, Deutsche Bank and Mastercard, are also listed by unions as using IT workers from other countries<sup>18</sup>. As the unions point out, their presence is an issue only if they are treated less well than Belgian workers in relation to pay and conditions.

At the end of 2005, the case of a number of Indian employees of HP working on a project with mobile telephone company Mobistar came to light. As in the case of intra-company transfers in Britain, the problem appears to have been that they were remunerated by HP in India rather than HP in Belgium. According to reports, they were employed on the minimum wage in Belgium, much lower than comparable Belgian IT workers would have earned. The employer also saved by not making social security payments on their behalf<sup>19</sup>.

Also in late 2005 LBC-NVK publicised the case of Capgemini who were using Indian workers without work permits and allegedly in Belgium for training to undertake work with Capgemini clients. Press reports at the time cited one anonymous source within Capgemini as saying: "It's a real farce. All the ICT companies and banks in Brussels get Indians to come to our country because they are cheaper than Belgian workers. But nobody dares to tell the inspectors, so that they don't denounce their own company"<sup>20</sup>.

The ability of companies to save on social security payments for Indian workers has been formalised in the bilateral social security agreement signed between the Belgian and Indian governments in November 2006, under which Indian workers working in Belgium for five years or less will pay Indian rather than Belgian social security contributions. Similar agreements are reportedly being negotiated between Indian and the French and Dutch governments.<sup>21</sup>

On the other hand, the recent introduction of an on-line database of work permits issued should make it easier for unions to monitor whether 'trainees' are actually undertaking work whilst in Belgium.

## **Germany**

The use of migrant workers in Germany in the IT sector has been a live issue since March 2000, when the government introduced a work permit arrangement ('green card'), with a duration of 1-5 years, for non-EU IT professionals. The introduction of the green card scheme was linked to additional training being provided for IT workers in the domestic labour force. The continuation and development of the green card scheme is currently under discussion in Germany.

Generally, German immigration rules are clear that non-EU migrant workers are permitted by the Federal Employment Agency only if they receive the same benefits as a comparable German employee. Furthermore no work permits are granted for the sort of 'body shopping' arrangement (assignment of a migrant worker to a third party company) familiar, for example, in the US.

However, there seems legal scope for use of the intra-company transfer route – in other words, for workers from, say, an Indian subsidiary to be brought into Germany and assigned to work for the German sister company, whilst remaining on Indian terms and conditions. IBM is among IT companies which are known to have explored the legal possibility of undertaking this, though it is not clear the extent to which this is happening in practice. More commonly, it seems, IBM is bringing Indian employees to Germany for three months' training, using the three-month limit available under tourist visas<sup>22</sup>.

It can be added that 'nearsourcing' has been a particular feature of the German IT industry, with work outsourced to neighbouring countries in central and eastern Europe where costs are lower, as well as to more familiar offshore centres such as India. German immigration law currently treats citizens of new EU member states in a similar way to those of non-EU countries. Germany has a number of bilateral agreements with central and eastern European countries covering contract workers and other temporary workers.<sup>23</sup> These are subject to wage parity conditions; however workers recruited into Germany do so on employment contracts applying in their own country, even though they are supplying services in Germany to German companies.<sup>24</sup>

## **Denmark**

The message from Denmark is that the number of IT migrant workers from outside the EU has exploded in recent years, with numbers continuing to rise. The union HK says that the current Danish government, under pressure from employers, has liberalised the work permit system. Unfortunately, not all workplaces are covered by collective agreements or adequately protected under labour law and unions are unable to get information on all work permits issued.

HK says it has found numerous examples of wage dumping and other irregularities associated with the use of IT migrant workers. One example is that of foreign SAP specialists who are paid €3700 per month, less than half the €8000 pm typically paid to a Danish domestic SAP specialist. HK also has examples where companies have tried to exclude foreign IT workers from the provisions of collective agreements. Companies often claim that these workers are only posted temporarily on intra-company transfers, so that they remain 'employed' in their home country, for example India or Malaysia. The legality of these arrangements has yet to be adequately tested in the courts, but HK fears that legal judgment in favour of this approach by companies could open the flood-gates to a further massive increase in the use of IT migrant labour.

HK argues for foreign colleagues to enjoy the same wages, rights and employment protection as domestic IT workers. At present, the union says, unequal treatment is not limited to lower wages, but also extends to longer working hours, shorter holiday entitlements, no protection in cases of dismissal, as well as very restrictive employment terms. On occasions, the key legal safeguard of a written employment contract is not being fulfilled.

HK/Privat has estimated that 5000 or more non-EU IT professionals are currently working in Denmark, primarily engaged in SAP Enterprise resource planning (ERP) software, and also in game developing. These people are working both for major IT companies, including IBM, Oracle and Microsoft, and for smaller domestic companies.

IDA, the Danish engineering union, has a more positive message to convey. On the labour market for it-workers with education on postgraduate level there is very little taking unfairly advantage of immigrants. The union is consulted by the immigration authorities and is able to check that proposed conditions for migrant's workers seeking work permits are appropriate. The relative high level of unionisation also helps ensure that companies obey the rules; the IDA points out that major companies do not want to risk bad headlines in the Danish press<sup>25</sup>.

### **Sweden**

SIF reports that it has not found evidence of work permit rules being abused or evaded, although the union adds that there have been occasional cases of migrant workers paying themselves for work clothes and for the translation of training manuals. SIF says it has signed an agreement ensuring that Swedish labour laws apply to migrant as well as to domestic workers.

SIF adds that migrant IT workers in Sweden are primarily working for companies with offshore operations and that they are in Sweden for training purposes. Examples of these employees being paid less than Swedish colleagues have come to light.

Sveriges Ingenjörer, the Swedish engineers' union, suggests that recent months have seen a strong increase in work permits, particularly for the southern Swedish area of Skåne. IBM Sweden wants to see the number of Indian IT professionals in Sweden increase from 1000 to 1500<sup>26</sup>.

### ***Ireland***

The Irish government has recently announced a major change in the work permit system, which will allow migrant workers to apply for and own their own permits and to move between employers. The Irish Congress of Trade Unions has warmly welcomed the move: as its General Secretary has pointed out, "Previously, where the employer held the permit, the migrant worker was wide open to abuse and exploitation. Too many, being bound to an abusive employer, were powerless to change employment or even to complain as the employer could simply revoke the permit." Under the new arrangements, employers will no longer be able to hold passports and other key documents, or to charge migrant workers recruitment costs (previously a common practice).<sup>27</sup>

The ICTU came out firmly against some of these practices in a report on Offshore Outsourcing published in Spring 2006: "Onshore offshoring", where workers from low cost economies work for far less than the prevailing wage in the host country, must not be tolerated"<sup>28</sup>.

### ***Netherlands***

According to a report from FNV Bondgenoten, migrant workers in the Netherlands for more than a year are covered under normal employment rights and law. For shorter periods of time, migrant workers are not covered by Dutch tax and social security measures, and therefore are potentially a cheap source of labour<sup>29</sup>.

### ***Other European countries***

Returns to the questionnaire associated with this report have not been received to date from other European countries, and informal evidence would appear to suggest that dry-foot offshoring has yet to develop as a major phenomenon elsewhere.

Nevertheless, it is perhaps worth recalling that IT workforces here can be highly multinational in composition. Dell's facility at Montpellier, for example, employs about 250 non-French workers out of a total workforce of about 1000. A 2005 report speaks of twenty-nine nationalities employed.<sup>30</sup>

## **Defending domestic workers, defending migrant workers – what are the issues?**

Unions face the twin task of defending the interests of domestic workers and of protecting migrant workers from exploitation. Ideally, both are best tackled together: domestic workers' jobs and conditions will be under greatest pressure in situations where migrant workers are employed on poor pay and conditions.

For the home workforce, the key challenge is to ensure that existing pay levels and conditions are not subject to slippage – or in other words that, as much as possible, any potential race to the bottom is avoided.

As will be clear, there is already evidence from the UK and, especially, the US of lower wages, and therefore lower costs, becoming established as a central part of the business model employed by IT companies using migrant workers. This is achieved partly through evasion of the law on pay parity, and partly through use of the intra-company transfer route.

There have been examples of particularly bad practice. The case of Pat Fluno, previously working for Siemens in Florida, has been highlighted by the US Programmers Guild. Not only did her job and those of several of her colleagues disappear as a result of the work being undertaken by agency workers employed by an Indian-owned 'body shop': she also had to stay in the run up to her redundancy to train up the workers who were to replace her in this way.<sup>31</sup>

What of the position facing the workers who come in to a country as temporary migrants? Because of the workings of the work permit system, migrant workers are frequently tied to one employer, obliged to continue to work for this company for fear of losing their right to remain. One newspaper investigation in the US put it like this: "For many foreigners, the promises they hear on the streets of Bombay and New Delhi soon give way to harsh reality. Many who came in pursuit of a dream now find themselves indentured servants... Workers who challenge employers are routinely threatened with being sent back to their homeland."<sup>32</sup>

The article, written in 2000, quoted one former worker with Mastech who had been assigned to work with Wal-Mart, work which he claimed had involved working 50-55 hours a week: "I had a supervisor who was always harassing and threatening us. He said, 'If you don't work the 12 hours [a day], I'll throw you out of this country'" <sup>33</sup>. In fact, the situation facing migrant workers brought into the US on work permits can be even worse, since a number of IT firms have imposed significant financial penalties on employees who try to leave their jobs 'early'<sup>34</sup>.

The issue is not merely that established pay rates may be undermined. Philip O'Rawe of UK union Connect points out that migrant workers often work longer hours than is normal: "I would say in the areas where Connect operates the average weekly working time of a work permit holder is at least ten hours higher than that of resident workers. So, even if the pay rates were the same (which I strongly doubt), the hourly rate is something like 20% lower".<sup>35</sup>

A similar problem has been identified in Belgium where unions have highlighted the long hours worked by Indian workers, at an extreme working fourteen hours for pay based on a working day of seven hours 36 minutes. As one press report put it, "Since they're cut off from their families for three, six or even twelve months, Indian workers hardly have any opportunity to benefit from a life outside that of their work whilst they are living in Belgium. This is what drives them to work up to 12 or 14 hours a day."<sup>36</sup>

This raises issues of the mental well-being of workers who find themselves working abroad away from their families and friendship networks. The German writer and researcher Karin Hirschfeld, who has surveyed the experience of Indian IT workers living in Germany, reported her findings to the UNI IT Forum held in Sophia Antipolis in 2002. As the conference report makes clear, she identified a number of issues facing Indian migrant workers:

"Loneliness could be a major issue for staff working abroad. Softec [not the real name], for example, arranged for its Indian staff to live in hotels and furnished flats whilst in Germany, and these did not necessarily match individuals' personal tastes. A further problem was that Indians did not hold international driving licences, and therefore were unable to drive. One Indian software programmer had spent a winter effectively isolated in a snowed-in flat in the Black Forest."<sup>37</sup>

## Developing a union response

If the rush towards offshore outsourcing initially left unions hurrying to develop an improvised response, the past few years have seen a more sophisticated and finessed response to offshoring by unions internationally. UNI itself has contributed significantly to this work, most recently in the European project MOOS which has produced the practical handbook *Offshore Outsourcing: a handbook for employee representatives and trade unionists*.

Is there anything *more* problematic about the use of migrant IT professionals in a dry-foot offshoring situation than there is to offshoring per se?

The answer, surely, is that dry-foot offshoring does raise particular concerns over and above the issues raised by conventional offshoring. Firstly, it brings the risk that wages and employment conditions will suffer from a race to the bottom directly into developed countries' home economies, by raising the prospect of offshore staff being employed on significantly poorer conditions in developed countries themselves. This must represent a risk to the ability of workers and unions to negotiate and maintain standards.

Secondly, it allows companies to evade some of the disadvantages of offshoring – issues of geographical distance, of cultural differences, etc – which are already proving in some cases to be significant disincentives for businesses to follow the offshore route. Dry-foot offshoring can be seen as helping to deliver many of the cost benefits of offshoring with fewer of the snags.

These issues were raised in an extensive and comprehensive debate at the 2007 UNI ICT Forum, held in Ljubljana. As a result, a draft Statement on EU migration policy was drawn up, by members of HK (Denmark). This Statement – which is currently subject to consultation - begins by recognising the need for migration of skilled labour from countries outside the EU, and it adds “We welcome new colleagues with other backgrounds and the perspectives of having diversity in work life”. However, it goes on:

“Migration policy should not only be constructed from narrow and short-sighted employed interests. The participation of importance stakeholders as trade unions is crucial in reaching a sustainable migration policy.”

### ***A managed approach to migration***

As we have seen, there is strong pressure in several countries from business interests for the work permit system to be relaxed or even – as Bill Gates himself implied in his comment to the US Senate – abolished altogether. In response, the need is to continue to push for migrant labour to be *managed*, to reflect genuine skills shortages in home labour forces which cannot be readily met through training or in other ways.

The statement from Amicus (now Unite) on the impact of the UK work permit for IT professionals provides a clear model here of good practice: “Amicus supports a policy of managed migration. In principle, it is recognised that where it is not possible to find the necessary skills in the UK, then it is appropriate to seek to obtain those skills from outside the UK.... There is a need to strike the right balance between enabling employers to recruit or transfer skilled people from abroad and protecting job opportunities for resident workers... Migration can have an adverse impact on employment opportunities if it is not managed, and if the system is abused.”<sup>38</sup>

### ***Defending the principle of wage parity with domestic workers***

Almost universally, work permit regulations oblige employers, in theory, to remunerate migrant workers on the same basis as domestic workers. In some European countries, this safeguard is clearly working well. In other countries, despite the legal commitment to parity, there is a lack of monitoring and policing of the work permit system which is permitting widespread abuse.

In this context, it may be worth recalling the two ILO Conventions specifically linked to migrant workers. ILO Convention 97 (Migration for Employment Convention 1949) includes a commitment to equality of treatment of migrant workers in the following terms:

Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:

(a) in so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities--

(i) remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons;

This is reinforced by the ILO Migrant Workers (Supplementary Provisions) Convention of 1975 (no 143), which includes the following clause:

Each Member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory.

### ***Issues over the use of intra-company transfer***

The increase in the number of work permits issued for intra-company transfer has been a feature of several countries recently, most dramatically in relation to the UK. Unite (as Amicus) has called on the UK government to carry out a review of the intra-company transfer scheme to ensure that it is not being used to undercut pay rates of IT professionals in the UK, stifle investment in skills and training for the UK IT workforce or break world trade (GATS) rules.<sup>39</sup>

The opportunities for intra-company transfer are growing as western IT companies develop Indian subsidiaries and as Indian IT companies open up subsidiaries in Europe and north America. This trend should not be underestimated. Capgemini, for example, anticipates that in three years' time 40% of its employees will be Indian, double the number of staff in post in France<sup>40</sup>. Among other acquisitions, Capgemini has recently bought the American company Kanbay, which (although 90% of its clients are US-based) has 85% of its employees in India. The French magazine *Nouvel Observateur* has talked of Capgemini's 'bet on India'<sup>41</sup>.

Capgemini is not alone. Accenture anticipates by this summer that it will have more Indian than US employees. Dell plans to increase its Indian workforce from 10,000 at the end of last year to 20,000 by the end of 2010<sup>42</sup>. At the same time, Indian companies such as Wipro, Tata and Infosys are well established in major western countries. It may be recalled that it was Indian IT firms who led the use of H-1B visas in the US for 'body-shopping' purposes.

Intra-company transfer of staff can be a perfectly legitimate feature of the operation of multinational corporations. However, there is evidence that it can also be abused, to sidestep work permit rules. As one UK IT specialist has claimed, "When companies like Accenture, Logica, IBM etc announced that they were opening offices in India, they told us that it was to do work offshore. Now it looks as if this was in part a cover [to] bring cheap IT labour here."<sup>43</sup> Reports of abuses of the intra-company transfer system led the Irish government recently to ban this form of worker movement into Ireland altogether.<sup>44</sup>

One concern here is that ILO Convention 143 specifically exempts workers on intra-company transfers from the requirements for equal treatment with workers in the domestic labour force.

### ***Ensuring that IT professionals receive the training they need***

Given that UNI has frequently stressed the need to ensure that adequate resources are put by governments and employers into IT skills training, both for existing workers and for young people entering the labour force in the future, should unions be pushing for a direct link between work visas for migrant workers and training provision for the domestic labour force? In the US, for example, applications for H-1B visas are directly linked to a fund used for the purpose of training US domestic workers. Since 2005 this “Education and Training” fee, payable for each H-1B application, has been set at \$1500, with a reduced rate of \$750 for employers with fewer than 25 employees. Educational organisations and non-profit bodies are exempt.

It can be argued that such an arrangement is little more than a token provision, designed perhaps to reduce the hostility, which the H-1B visa system has attracted from labour and other sections of the community. On the other hand, this sort of direct linkage has the advantage of stressing that work permits for migrant workers are intended to compensate simply for a current lack of appropriately trained workers in the home economy.

Linked to this is a concern that the development of dry-foot offshoring may turn out to be a mechanism for knowledge transfer, away from developed countries to lower-cost destinations, replicating in many respects the transfer of knowledge in manufacturing processes and technologies which took place a generation ago. In an increasingly information-based world economy, knowledge is a highly valuable, if intangible, asset. The European Union and the US may wish to ask themselves if an overly liberal approach to work permit policies risks the loss of this asset pool.

### ***Promoting good practice***

Examples from the US quoted earlier demonstrate the abuses which can follow if migrant workers’ work permits are non-transferable between employers. At worst, an oppressive relationship close to that of indentured servitude can result.

Though this is not how employers tend to see it, if migrant workers are being given work permits because of skills shortages in the home labour force there should be little objection logically to these workers, once in their new host

country, being able to offer their services to the company offering the best terms or conditions.

The decision by the Irish government to abolish the tie between workers with work permits and their original sponsoring employer is to be welcomed.

More generally, we have the two ILO Conventions (97, 143) on migrant workers, both of which offer a framework of internationally agreed good practice, even if the numbers of countries having formally ratified these conventions is limited (46 and 22 respectively). As mentioned earlier, the International Labour Conference in 2004 extended this work with its discussions and agreement of the report *Conclusions on a fair deal for migrant workers in a global economy*. Among other things, this document reasserts the importance of dialogue between social partners on issues relating to migrant workers.

One of the issues mentioned in the 2004 ILO document is that of access by migrant workers to social security. Even when IT migrant professionals are receiving the same wages as their colleagues in the domestic labour force, there may be savings available to employers if they are exempt from requirements to pay social security contributions. The Indian-Belgian agreement, which now means that Indian workers in Belgium for up to five years will continue to be covered under Indian rather than Belgian social security arrangements, has already been mentioned, as has the Indian government's desire to extend this to other European countries. However, this issue needs to be approached carefully, for it is sometimes in the best interests of migrant workers on short overseas contracts to maintain their social security entitlement in their home country. Compulsory social security payments made to a foreign social security scheme for a very short period may bring few if any entitlements.

## **Conclusion : opening up the debate**

This report has focused on a particular aspect of the more general offshoring phenomenon, the use of migrant workers from 'offshore' countries to deliver aspects of an offshoring contract – at offshore prices – onshore. This facet of offshoring, particularly seen in the US and UK but now it would seem spreading to other countries, has been described in this report as 'dry-foot offshoring' .

The issue, therefore, is not the use of IT migrant workers per se, but only their use in ways which can undermine the working conditions and pay of the

domestic labour force. In most countries this should not be possible under work permit rules. Nevertheless, it has been seen that companies in some countries have been able to adopt a range of strategies to get round rules on wage parity. Intra-company transfers of employees, who remain on the contractual terms applying in their home country, appear to be a particularly fast-growing phenomenon, since most major IT companies have operations in both onshore and offshore locations.

Migrant IT professionals themselves are at risk from the way in which dry-foot offshoring is developing. By tying the granting of work permits to particular companies, individuals can be effectively obliged to remain with their sponsoring employer. This relationship can be abused. UNI can help coordinate union efforts to reach migrant workers, for example by seeking to give higher profile to the UNI Passport initiative.

The general issue of offshoring has been the focus of considerable debate in the past few years, and UNI has played an important role in ensuring that international bodies, including the European Commission and the European Parliament, have taken it seriously. It is appropriate now to raise the particular case of dry-foot offshoring within these European organisations, as well as with the ILO.

It is also necessary to monitor current bilateral and multilateral trade negotiations, particularly any proposals to extend the existing scope of the GATS Mode 4 provisions.

There may be opportunities to raise these issues in other fora. Work migration is increasingly the subject of international discussion, for example through the recently established Global Migration Group, established in May 2006 and linking, among other organisations, the ILO, IOM, UN agencies and the World Bank.

Any tendency for a xenophobic response to the use of IT migrant workers in an onshore domestic economy must be firmly rebutted. The issue under scrutiny is not the presence of migrant workers but rather the way in which they are being used and abused to cut the costs and boost the profits of IT companies. Both domestic and migrant IT professionals will suffer from a cut-throat drive to the bottom, and the union approach must seek to demonstrate and establish common cause between both groups of workers.

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- <sup>5</sup> Webpage dated 30 Dec 2005
- <sup>6</sup> John Miano, Center for Immigration Studies, Backgrounder: The Bottom of the Pay Scale, December 2005
- <sup>7</sup> John Miano, op cit
- <sup>8</sup> Ron Hira, Offshore Outsourcing and Off-shoring of Technology Jobs, Impacts and Policy Dialogue, presentation to AAAS S&T Policy Forum, April 23 2004
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- <sup>10</sup> Catherine Mann, op cit
- <sup>11</sup> Ron Hira, 2003, Utilizing Immigration Regulations as a Competitive Advantage, March 3 2003
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- <sup>14</sup> Amicus, The impact of the work permit system on IT professionals in the UK
- <sup>15</sup> *ibid*
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- <sup>17</sup> Mathieu van Overstraeten, Ces informaticiens indiens que l'on cache, *La Libre Belgique*, May 22 2006
- <sup>18</sup> Source : Koen Dries (LBC-NVK), Dominique Borgers (BBTK-SETCa).
- <sup>19</sup> Mathieu van Overstraeten, op cit
- <sup>20</sup> Des informaticiens indiens sans permis de travail, January 4 2006. [www.ptb.be/scripts/article.phtml?lang=1&obid=29606](http://www.ptb.be/scripts/article.phtml?lang=1&obid=29606)
- <sup>21</sup> Hindu Business Line, 4 November 2006, India, Belgium sign bilateral social security agreement
- <sup>22</sup> Source: Rolf Schmidt (ver.di)
- <sup>23</sup> Torsten Christen, Federal Ministry of Economics and Labour, in *What is the Relationship between Trade and Migration*, IOM seminar, 2004, [www.iom.int](http://www.iom.int)
- <sup>24</sup> Background paper, report of IOM/World Bank, WTO Trade and Migration seminar, October 4-5 2004
- <sup>25</sup> Source: Morten Skov (HK), Fin Krogh Jørgensen (IDA)
- <sup>26</sup> Source: Åsa Stenhammar (SIF), Paul Lidehäll (SI)
- <sup>27</sup> <http://www.ictu.ie/html/news/releases/p240107.htm>
- <sup>28</sup> ICTU, 2006. *Offshore Outsourcing : the Implications for Ireland*.
- <sup>29</sup> Source: Carla Kiburg (FNV B)

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- <sup>30</sup> Andrew Bibby, Dell and *delocalisation* in France, [www.andrewbibby.com](http://www.andrewbibby.com)
- <sup>31</sup> Programmers Guild, op cit
- <sup>32</sup> Gary Cohn and Walter F Roche, 2000. Indentured servants for high-tech trade Labor, Baltimore Sun, February 21 2000
- <sup>33</sup> *ibid*
- <sup>34</sup> *ibid*. The article describes a number of cases where 'body-shopped' workers were sued through the courts for substantial damages by their Indian employers for alleged breaches of their contract. One case concerned a former woman employee of Tata Consulting, Veena Achar, who eventually paid Tata \$7500 in damages, in \$200 monthly instalments. (Ms Achar's contract, incidentally, had included the clause "Tata Consultancy Services will not incur any expenses arising due to pregnancy. Maternity is not encouraged.."). In another case, Mastech reportedly sought nearly \$50,000 from a former employee, including \$28,000 it claimed to have incurred in training costs.
- <sup>35</sup> Personal communication to author, May 2007
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- <sup>39</sup> Amicus, op cit
- <sup>40</sup> Julien Bouissou, En 2010 Capgemini aura deux fois plus d'ingénieurs en Inde qu'en France, Le Monde, March 8 2007
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