

# GAINING CONTROL? BILATERAL LABOR AGREEMENTS AND THE SHARED INTEREST OF SENDING AND RECEIVING COUNTRIES TO CONTROL MIGRANT WORKERS AND THE ILLICIT MIGRATION INDUSTRY

Yuval Livnat\* and Hila Shamir\*\*

*Countries increasingly have been entering bilateral labor agreements (BLAs) as a tool for the regulation and governance of short-term temporary labor migration worldwide. However, these are often confidential legal instruments, and consequently we know relatively little about their actual content and impact, and why countries choose to enter them. This Article complements existing explanations in the literature regarding the reasons why countries enter BLAs and their potential to create and improve migrant workers' rights. Based on a detailed content analysis of 81 recent BLAs signed largely over the last 20 years, and on a wide literature review and interest analysis, we introduce a "control thesis." According to the control thesis, the popularity, confidentiality and unenforceability of BLAs can be explained, at least partially, by their ability to promote a key shared interest of sending and receiving countries in controlling and policing the mobility and actions of migrant workers and also, at times, aspects of the illicit migration industry that develops around labor migration. We reach this conclusion, and elaborate on its meaning and the potential it may hold for migrant workers and their advocates, in strategically seeking to use BLAs to improve temporary migrant workers' rights and protections.*

## INTRODUCTION

Migration, specifically labor migration, is an issue that often requires international cooperation.<sup>1</sup> The entry and exit of migrant workers, their recruitment and selection, hiring and mobility are all issues that receiving or sending countries cannot often aptly regulate on their own.<sup>2</sup> Notwithstanding, few cooperative, multilateral legal

---

\* Academic Supervisor, Refugee Rights Clinic, Faculty of Law, Tel Aviv University; Research Fellow, TraffLab (ERC) research group.

\*\* Professor of Law, Tel Aviv University and PI TraffLab (ERC) research group. We are deeply grateful to our wonderful and thorough research assistants, Mais Abdallah, Noemie Amar and Yosef Brander, for their superb research assistance, and to Debbie Siton for her editing and thoughtful comments. We would like to thank participants of the Bilateral Labor Agreements conference at Tel Aviv University (2021) for their comments and ideas, and particularly Nicola Piper for her helpful comments. This research was conducted with the support of the TraffLab research project ([www.trafflab.org](http://www.trafflab.org)) funded by the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (grant agreement No 756672).

1 Alan O. Sykes, *International Cooperation on Migration: Theory and Practice*, 80 U. CHI. L. REV. 315 (2013); Jennifer Gordon, *People are not Bananas: How Immigration Differs from Trade*, 104 NW. U. L. REV. 1009 (2010).

2 Stephen Castles, *The Factors That Make and Unmake Migration Policies*, 38(3) INT'L MIGRATION REV. 852 (2004); Press Release, Economic and Social Council, No Country Can Deal with Migration Issues

instruments for the governance of migration have been adopted in the international arena.<sup>3</sup> The Global Compact on Migration,<sup>4</sup> approved in 2018 in Marrakech, is perhaps the most ambitious attempt to date. However, the Compact is nonbinding and as such, some scholars argue, will most likely not significantly impact the existing legal migration frameworks.<sup>5</sup> Other multilateral agreements or frameworks are also regarded as having had similarly limited success. While some scholars may be hopeful that multilateral cooperation better reflects the interests of weaker countries and may offer greater protection to migrant laborers, others note that multilateral frameworks are often adamantly opposed by potential signatory states, which are unwilling to limit their sovereign power over entry into and exit from their territory by commitments to the larger international community.<sup>6</sup> A legal tool that has proliferated in recent decades to enable collaboration between nation states around temporary labor migration—yet has often been overlooked by legal scholars in this field—is the bilateral labor agreement (BLA).<sup>7</sup> In this Article, we argue that one reason for the proliferation of BLAs is that unlike multilateral agreements, rather than signaling a loss of control of sovereign power, BLAs enable tighter control of the parties over their borders, migrant workers and the migration industry (e.g., recruitment and placement agents). Such control, at times, may benefit workers

---

Alone: Population Commission Told, U.N. Press Release POP/944 (Apr. 4, 2006), <https://www.un.org/press/en/2006/pop944.doc.htm>.

- 3 For discussion on multilateral agreements, see, for example, Ryszard Cholewinski, *Evaluating Bilateral Labour Migration Agreements in the Light of Human and Labour Rights*, in THE PALGRAVE HANDBOOK OF INTERNATIONAL LABOUR MIGRATION: LAW AND POLICY PERSPECTIVES 231 (Marion Panizzon et al. eds., 2015); Graziano Battistella & Binod Khadria, *Labour Migration in Asia and the Role of Bilateral Migration Agreements: Market Access Facilitation by Informal Means*, Geneva Global Forum on Migration and Development, WORLD TRADE INSTITUTION (2011); Marion Panizzon, *Temporary Movement of Workers and Human Rights Protection: Interfacing the “Mode 4” of GATS with Non-Trade Bilateral Migration Agreements*, 104 PROCS. ASIL ANN. MEETING 131 (2010); Nathan R. Blank, *Bilateral Labor Agreements*, in THE ENCYCLOPEDIA OF GLOBAL HUMAN MIGRATION 706 (Immanuel Ness ed., 2013).
- 4 G.A Res. 12113, The Global Compact for Safe, Orderly and Regular Migration (Dec. 19, 2018), <https://undocs.org/A/CONF.231/3>.
- 5 Anne Peters suggests that the compact’s legal function can be understood as “pre-law, para-law and law-plus functions.” See Anne Peters, *The Global Compact for Migration: To Sign or Not to Sign?*, EJIL:TALK! BLOG (Nov. 21, 2018), <https://www.ejiltalk.org/the-global-compact-for-migration-to-sign-or-not-to-sign/>; see also Maria Gavouneli, *Legislation by Compacts?—The Legal Nature of the Global Compacts*, EJIL:TALK! BLOG (Feb. 28, 2019), <https://www.ejiltalk.org/legislating-by-compacts-the-legal-nature-of-the-global-compacts/>.
- 6 Jürgen Bast, *Bilateralism and Multilateralism in International Migration Law*, 105 PROCS. ASIL ANN. MEETING 412 (2011); Tomer Brode, *Explaining the Normative Duality of Trade and Migration Agreements*, 105 PROCS. ASIL ANN. MEETING 419 (2011); see also Cholewinski, *supra* note 3, at 231.
- 7 We use the term BLA to refer to any agreement between two countries that deals with labor migration. For the purpose of this Article, we do not distinguish between BLAs and MOUs. Although MOUs are generally considered less binding, we use this generalization because we believe this difference does not impact our argument for two reasons. First, the literature as well as our own research suggests that most BLAs similarly do not include enforcement mechanisms. See Peters, *supra* note 5; Battistella & Khadira, *supra* note 3. Second, according to international law there is no reason to think that MOUs should be considered less valid or binding. See, e.g., Tamar Megiddo, *Learning from the BITs: Bilateral Labor Agreements in Comparative Perspective* (Aug. 1, 2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3672931](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3672931); see also Maritime Delimitation in the Indian Ocean (Som. V. Kenya), Preliminary Objections, 2017 I.C.J. § 50 (Feb. 2).

and enhance their rights, but in many cases it restricts their movement, actions and opportunities.

In this Article we seek to propose that one motivation for countries to sign BLAs is the desire to gain control over migrants and the migration industry. In this proposition we seek to contribute to the ongoing conversation in globalization and migration studies about the changing role of the nation state in an era of globalization. In one of the most important contributions to this conversation, Saskia Sassen, in her book “Losing Control? Sovereignty in an Age of Globalization,”<sup>8</sup> traces different ways in which the global economic order transforms sovereign power. In relation to migration, she examines the tension between “denationalizing economic space and renationalizing political discourse”<sup>9</sup> and suggests that state participation in implementing the human rights of non-nationals “reduces the autonomy of states in controlling immigration”<sup>10</sup> and should lead us to ask: “Under these conditions, what does it mean to say that the state is sovereign in the control of its borders vis-à-vis people?”<sup>11</sup> Building on Sassen, we argue that in an age of globalization and increased migration, states are using BLAs to mediate the tensions posed by globalization: through BLAs nation states gain, enhance and enforce their control over work migration, while simultaneously ceding some control to their agreements’ counterparts.

BLAs are not new legal instruments. Countries have been entering into them at least since the 1930s.<sup>12</sup> A BLA is an agreement entered into by two countries in order to reach agreed upon terms of entrance, temporary work, and departure of the citizens of one country (the sending country) into another (the receiving country). Although some BLAs include terms regarding mutual migration, most do not.<sup>13</sup> The first BLAs were signed between capital-rich countries of the Global North and developing countries of the Global South, but South-to-South BLAs have become increasingly more prevalent.<sup>14</sup> The content and scope of BLAs is diverse and multifaceted—and may encompass different types of agreements.<sup>15</sup> Indeed, rarely do two BLAs look alike.<sup>16</sup> However, at their core are provisions that grant access to a certain number of workers (usually not specified in the agreement) into

---

8 SASKIA SASSEN, *LOSING CONTROL? SOVEREIGNTY IN THE AGE OF GLOBALIZATION* (1996).

9 *Id.* at xxiv.

10 *Id.* at 80.

11 *Id.* at xxii.

12 Jenna L. Henneby et al., *Bilateral Labor Agreements as Migration Governance Tools: An Analysis from a Gender Lens*, 23 *THEORETICAL INQUIRIES L.* 184 (2022); PIYASIRI WICKRAMASEKARA, *BILATERAL, AGREEMENTS AND MEMORANDA OF UNDERSTANDING ON MIGRATION OF LOW SKILLED WORKERS: A REVIEW*, GENEVA, INTERNATIONAL LABOUR ORGANIZATION 17 (ILO 2015), [https://www.ilo.org/global/topics/labour-migration/publications/WCMS\\_385582/lang--en/index.htm](https://www.ilo.org/global/topics/labour-migration/publications/WCMS_385582/lang--en/index.htm).

13 Blank, *supra* note 3, at 1; *see also* Adam S. Chilton & Eric Posner, *Why Countries Sign Bilateral Labor Agreements*, 807 *J. LEGAL STUD.* S45, S55 (Jan. 2018).

14 Margaret E. Peters, *Immigration and International Law*, 63 *INT’L STUD. Q.* 281, 282-83 (2019).

15 *See* Blank, *supra* note 3, at 2. Blank lists the following types of BLAs: social security agreements (SSAs) or totalization agreements, guest worker programs, MOUs: bilateral maritime agreements (BMAs), anti-trafficking agreements (ATAs).

16 *See* WICKRAMASEKARA, *supra* note 12; *see* Cholewinski, *supra* note 3, at 239; *see also* Peters, *supra* note 14, at 282.

labor market sectors in the receiving country for a limited period of time, provide some protection of migrant workers' rights by the receiving country, and include a commitment by sending countries to monitor and regulate the recruitment and screening process of migrant workers.<sup>17</sup> Moreover, BLAs usually include the consent of both signatory countries "to monitor the workers, share information, keep records, and engage in other good-governance practices,"<sup>18</sup> as well as establish a joint action committee between the two countries.<sup>19</sup>

A conundrum often discussed in the literature is why countries sign BLAs, and what explains their growing popularity. A common answer suggested by the existing literature focuses on the power imbalance between sending and receiving countries that characterizes BLAs, with the former competing against one another in order to open up labor markets to their citizens and increase the flow of remittances, and the latter setting the terms of BLAs at their almost complete discretion.<sup>20</sup> This analysis tends to downplay or disregard altogether the role that sending countries play in BLAs,<sup>21</sup> besides minimizing the responsibility of sending countries in securing rights for their citizens. In this sense, the existing BLA literature intertwines with the literature on the broader field of multi- and bilateral collaboration on migration, in which "agency is attributed almost exclusively to powerful destination states."<sup>22</sup>

This Article seeks to advance the understanding as to why countries sign BLAs and to offer complementary answers to those presented in the literature thus far, proposing the "control thesis" as an additional and important reason for such bilateral cooperation. To answer this question, we first sought to understand what contemporary BLAs include. To this end, we conducted a content analysis of 81 BLAs in English, Arabic, and French, signed between 1990 and 2020.<sup>23</sup> We complemented this analysis with a thorough review of the budding interdisciplinary literature on this topic.

We began our research with a hypothesis that BLAs manifest a commitment to protecting migrant workers' rights, either as a reflection of the shared interest of the sending and the receiving countries in this regard, or as the receiving country's concession to the sending country. We were therefore prepared to map and understand the ways in which BLAs enhance and protect migrant workers' rights. However, our research and analysis led us to reassess our preliminary hypothesis. In fact, we did not find that BLAs include strong language and a commitment to protecting migrant workers' rights, nor do they generally include an effective enforcement mechanism

17 See Chilton & Posner, *supra* note 13, at S46.

18 *Id.* at S46.

19 See Cholewinski, *supra* note 3 at 231, 238.

20 Blank, *supra* note 3, at 4; see also Battistella & Khadria, *supra* note 3, at 3.

21 Notable exceptions are Peters, *supra* note 14; Chilton & Posner, *supra* note 13—both articles discuss the sending countries' contribution.

22 Nicole Ostrand & Paul Statham, 'Street-Level' Agents Operating Beyond 'Remote Control': How Overseas Liaison Officers and Foreign State Officials Shape UK Extraterritorial Migration Management, 47 J. ETHNIC & MIGRATION STUD. 25, 28 (2021).

23 Chilton and Posner shared their BLA archive with us for the purpose of this Article, and we are grateful for their generosity.

to guarantee that workers de-facto receive these rights. Approximately half of the BLAs we reviewed (40 out of 81) included some form of a general clause granting migrant workers the same or similar rights and protections available to all workers in the receiving country, and some others (34 out of 81) included a “model contract” that provided more detailed elaboration of these rights. However, in relation to all workers—particularly migrant workers—it is widely understood that due to workers’ weak bargaining power, absent an effective enforcement mechanism, the protective employment and labor rights declared “on the books” will not be translated to protected rights “in action.”<sup>24</sup> And indeed, in most BLAs, we did not find significant tools to improve and enhance workers’ rights, nor did we see effective enforcement mechanisms for guaranteeing workers’ rights.

Based on this analysis, we argue in this Article that a motivating factor in many BLAs is the shared interest of migrant-receiving and sending countries in controlling and policing the movement and actions of migrant workers, as well as, at times, to curtail the negative spillovers from the unlawful or exploitative migration industry that develops around labor migration. This “control thesis,” we suggest, can explain various elements common in BLAs, namely, their secrecy and their nonbinding and unenforceable character, as well as the increase in their numbers. Furthermore, the control thesis explains the interests of *both* sending and receiving countries. We emphasize in our analysis the interests of sending countries in control, and seek to re-center sending countries’ interests—interests often described in the literature as subsidiary or insignificant—in the design of BLAs. We highlight the relatively underexplored role and interests of sending countries in controlling both their citizens while abroad and the exploitative recruitment industry that may harm their development goals. We found strong indications for this overlapping interest in control in the BLAs we analyzed. Furthermore, we argue that an understanding that control of migrant workers and the migration industry is an underlying shared motivation of parties to BLAs can assist activists, workers and policymakers who aspire to use BLAs to protect workers’ rights, to make the most out of this tool, as well as understand its limits. Using the Israeli case study, we show how such control can, under certain circumstances, translate to protection.

The Article proceeds as follows. Part I maps the reasons provided in the literature as to why countries sign BLAs, focusing on a literature review of interest analysis in BLAs. The literature review suggests that despite attempts to explain the rise of BLAs, the available responses remain partial and unsatisfactory because they do not manage to fully explain the interests of both sending and receiving countries in BLAs or the content of BLAs and some of their common characteristics, such as secrecy and non-enforceability. Part II proceeds to develop an additional and complementary explanation for the rise of BLAs. We provide examples that demonstrate the way BLAs reflect the shared interests of sending and receiving countries in controlling

---

24 See ILO, *INTERNATIONAL LABOUR MIGRATION: A RIGHTS-BASED APPROACH* 18-20 (2010); see, e.g., MARTIN RUHS, *THE PRICE OF RIGHTS: REGULATING INTERNATIONAL LABOR MIGRATION* 126-27 (2013); see also Battistella & Khadria, *supra* note 3, at 8.

migrant workers, and at times also the illicit migration industry that develops around international labor migration, and discuss the different reasons why this becomes a shared interest of both countries. We do not deny the power disparity between receiving and sending countries reflected in many BLAs, yet we also identify the interests of sending countries that are manifested in such instruments. Part III seeks to reimagine BLAs as an instrument that goes beyond the entrenchment of existing power relations and state interests to control migrants, as one that has the potential to transform them. We chart the potential of BLAs beyond control of migrant workers and towards their protection and empowerment. We discuss three examples of mechanisms that BLAs can include in order to further this potential, as well as identify the limits of BLAs in protecting migrant workers' rights.

## I. WHY COUNTRIES SIGN BLAS

Why are governments increasingly entering bilateral instruments to govern labor migration? Specifically, why are receiving countries willing to “lose control” and relinquish some of their unilateral power over migration in order to enter bilateral agreements? Why are sending countries interested in such instruments? There is a relative dearth of *legal* literature in this field<sup>25</sup>—a gap that this volume seeks to address—yet in other disciplines, we see a small but growing interest in BLAs, with a budding literature that analyzes their characteristics and the reasons why countries enter them, and has made some preliminary attempts to identify their impact. In this Part, we map some of the answers provided to the questions posed above in the interdisciplinary literature that has developed around BLAs in recent years. We begin by discussing the common assumption in the literature that BLAs serve predominantly the interests of receiving countries and reflect the power imbalance between sending and receiving countries. We then move on to discuss whether BLAs serve sending countries' interest to protect the rights of migrant workers, and attempt to explain some common features of BLAs: namely their non-uniformity, secrecy, and the absence of an enforcement mechanism.

### A. *BLAs Reflect the Power Imbalance between Sending and Receiving Countries*

A common explanation offered in the literature is that BLAs are signed mostly between wealthy countries of the Global North that are experiencing labor shortages and developing countries seeking to protect the rights of their nationals in the migration process.<sup>26</sup> BLAs reflect these interests by including some protections of workers' rights by receiving countries and by controlling the migration flow—including

---

25 Chilton & Posner, *supra* note 13, at S45 (stating that these agreements “have been almost entirely ignored by legal scholars and social scientists”).

26 *Id.* at S46 (“The standard account is that BLAs are most attractive to wealthy countries that need labor and poor countries that are concerned with the rights of their nationals working abroad.”).

recruitment and screening—in sending countries.<sup>27</sup> A basic premise that animates this analysis is that BLAs reflect the power imbalance between receiving countries, mostly the more powerful and wealthy countries of the Global North, and sending countries, mostly developing countries of the Global South.<sup>28</sup> Under this analysis, from the perspective of sending countries, multilateral agreements may lead to better outcomes than BLAs because in a multilateral negotiation process, Global South countries may be able to pool their power to make more exacting demands and thus gain greater negotiating power.<sup>29</sup> BLAs, in contrast, due to both their one-on-one negotiation process as well as their softer enforcement tools, are more convenient and easier to dominate for receiving countries.<sup>30</sup> According to this account, BLAs can be expected to represent mostly the interests of receiving countries, with possibly some minimal concessions to sending countries, and to include clauses related to those elements that receiving countries cannot achieve independently, mainly, facilitating the “timely movement of suitably qualified workers to those areas or industries for which they have a critical need as efficiently as possible.”<sup>31</sup>

The dominance of receiving countries’ interests in the literature can be seen, for example, in two key empirical articles in this field. One, conducted by Margaret E. Peters, uses a large dataset of BLAs to understand the reason for the proliferation of BLAs. Peters finds the answer in receiving countries’ need to “generate new migrant networks” and recruit migrants with relevant skills. BLAs, she argues, help receiving countries reach sufficient migration flows and recruit the “right kind” of migrants.<sup>32</sup> In another groundbreaking article focusing on this question, legal scholars Adam Chilton and Eric Posner examined 582 BLAs, seeking to explain the rise in their use.<sup>33</sup> Their important analysis reveals the complexity of this tool and does not provide a conclusive answer to the question as to why countries sign BLAs. They find that no one set of attributes characterizes countries which enter BLAs. Specifically, they disprove the claim that countries enter BLAs where the receiving country is *dramatically* wealthier and more repressive than the sending country. They find that this is true for receiving countries in the Middle East, but

---

27 *Id.* at S45-S46; see also WICKRAMASEKARA, *supra* note 12; Blank, *supra* note 3, at 3; Rupa Chanda, *Mobility of Less-Skilled Workers under Bilateral Agreements: Lessons for the GATSA*, 43 J. WORLD TRADE 479, 483 (2009); Xinying Chi, *Challenging Managed Temporary Labor Migration as a Model for Rights and Development for Labor-Sending Countries*, 40 N.Y.U. J. INT’L L. & POL. 497 (2008); Stella Go, *Fighting for the Rights of Migrant Workers: The Case of the Philippines*, in MIGRATION FOR EMPLOYMENT: BILATERAL AGREEMENTS AT A CROSSROADS 187 (OECD ed., 2005).

28 While there is an increasing number of South-to-South BLAs, most of the writing about BLAs deals with South-to-North temporary migration programs. See Philippe Martin, *Towards Effective Temporary Workers Programs: Issues and Challenges in Industrial Countries*, in 89 INT’L MIGRATION PAPERS 13 (ILO ed., 2007).

29 See, e.g., Bast, *supra* note 6; Cholewinski, *supra* note 3, at 238; Blank, *supra* note 3.

30 Cholewinski, *supra* note 3, at 238; Battistella & Khadria, *supra* note 3, at 9; Panizzon, *supra* note 3; Marion Panizzon, *Introductory Remarks*, 105 PROCS. ANN. ASIL MEETING 407 (2011).

31 Blank, *supra* note 3, at 4; see also Peters, *supra* note 14, at 281 “BLAs help fill the gap when a state’s unilateral policy fails to bring either the number or kind of workers that it needs . . . BLAs help solve two problems that receiving states may face when opening their borders to labor unilaterally.”

32 Peters, *supra* note 14, at 281.

33 Chilton & Posner, *supra* note 13.

does not hold for other countries. They do, however, find evidence that countries party to BLAs experience greater migration flows than those who do not enter BLAs. However, they were unable to determine whether BLAs are a cause or an effect of increased migration flows. They concluded that there are “advantages to bilateral relationships, which allow countries to tailor legal obligations to their needs,” and that shared interests between countries create a “better chance of success than moral pressure and multilateral treaties.”<sup>34</sup> They further emphasize that they “cannot be sure that BLAs improve outcomes” of migration and call for further research on the causes and effects of BLAs.

### *B. Do BLAs Serve the Interests of Sending Countries?*

As the research suggests, although some power imbalance between sending and receiving countries, and receiving countries’ dominance, may be a defining feature of BLAs, it does not fully explain various elements of BLAs. First, although BLAs tend to be skeletal and narrow agreements, we do find that some of them contain a more diverse set of issues, such as social security arrangements, reference to protections of workers’ rights, allocation of migration and employment-related costs to employers in receiving countries, regulation of remittances, and at times reference to additional economic and development goals.<sup>35</sup>

Second, there is evidence that some sending countries initiate, encourage and sometimes demand BLAs. Such is the case, for example, with the Philippines, a major sending country to the service and care sectors which, as of 2019, had signed at least 68 BLAs.<sup>36</sup> Another example is Ethiopia, which in response to growing reports of rights violations and exploitation of Ethiopian migrant domestic workers in the Gulf countries, passed legislation limiting the deployment of migrant workers only to countries with which Ethiopia has signed a BLA.<sup>37</sup> A similar strategy was adopted, albeit less successfully, by Indonesia, which in response to cases of abuse of migrant workers in Malaysia, froze migration until a better, more protective

---

34 *Id.* at S82.

35 See WICKRAMASEKARA, *supra* note 12, at 24.

36 Bernard Paul M. Mangulabnan & Carl Rookie O. Daquio, *A Review of Bilateral Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation*, 1 PHIL. J. LABOR STUD. 1, 1 (2019); John Paolo R. Rivera et al., *Bilateral Labor Agreements and Trade in Services: The Experience of the Philippines*, in *Let Workers Move* 109 (World Bank Publications ed., 2013); see also Go, *supra* note 27; Adam Chilton & Bartosz Woda, *The Effect of Bilateral Labor Agreements: Evidence from the Philippines* (Mar. 26, 2021), at 1, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3867881](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3867881). The Migrant Workers and Overseas Filipinos Act provides that the state shall allow the deployment of OFWs only in countries where the Philippines has concluded a bilateral agreement or arrangement with the government of the receiving country on the protection of the rights of OFWs.

37 In 2016, after several cases of harsh treatment and human rights violations of Ethiopian migrant domestic workers, the Ethiopian legislature adopted The Overseas Employment Proclamation No. 923/2016. Article 12 of the proclamation provides, “Deployment of workers for overseas employment . . . shall be effected only if there is a bilateral agreement concluded between the Federal Democratic Republic of Ethiopia and the receiving country.”



BLA was negotiated between the countries.<sup>38</sup> Nepal also barred its citizens from going to work in Indonesia due to the exorbitant visa fees, and lifted the five-month moratorium only once a new BLA was signed between the countries, designed to eliminate such high fees.<sup>39</sup> To the extent that these cases can serve as an indication, we can assume that some sending countries find BLAs highly beneficial.

Third, this characterization of BLAs does not provide an explanation of additional characteristics of BLAs, including their non-uniformity, a general lack of enforceability, and the secrecy surrounding many BLAs. Researchers studying BLAs have found that unlike other types of bilateral agreements, such as bilateral trade<sup>40</sup> or investment<sup>41</sup> agreements, BLAs do not have one uniform template.<sup>42</sup> This is somewhat puzzling because presumably if these were agreements controlled by receiving countries, we would expect to identify their use of a more or less standard template, with some adaptations and deviations, to best promote their relatively similar interests. This, however, is not quite the case. We did find that the BLAs signed by a single receiving country with different sending countries do have significant similarities (this is the case, for example, in relation to the BLAs signed by Qatar, Canada, South Korea and Israel as receiving countries, to name a few). However, they are rarely identical and often contain significant deviations, thus suggesting that BLAs encapsulate different interests, and that at times negotiations with sending countries may impact the content. Similarly, if BLAs were mainly concerned with the interests of receiving countries, we would expect the more powerful party, who made minimal—if any—concessions, to have ensured that its rights under the agreement would be enforceable. Yet this is not the case.<sup>43</sup> Finally, there is the question of secrecy. BLAs, unlike trade and investment treaties, are often kept secret and are not transparently shared.<sup>44</sup> As a result, the different stakeholders impacted by them—notably, employers, workers and recruiters—are unable to use them to understand their rights and obligations. Presumably if BLAs were to provide benefits to employers in receiving countries, or, for that matter, even to workers from sending countries, it would seem to follow

---

38 Nisha Varia et al., *Labor and Migration in International Law: Challenges of Protection, Specialization and Bilateralism*, 105 PROCS. ANN. ASIL MEETING 407, 411-12 (2011). Panelist Nisha Varia describes this attempt as an example of a race to the bottom because Malaysian brokers turned to recruiting domestic workers from Cambodia.

39 Choo Chin Low, *De-commercialization of the Labor Industry in Malaysia*, 9 J. SOUTHEAST ASIAN STUD. 27, 44, 55 (2020).

40 Gordon, *supra* note 1, at 1129.

41 Megiddo, *supra* note 7.

42 WICKRAMASEKARA, *supra* note 12, at 32. The report includes a model agreement that as far as we know was never fully adopted.

43 Peters, *supra* note 11, at 283 (“A final aspect of BLAs is that they lack enforcement mechanisms, but they often have mechanisms to help implementation.”).

44 For a comparison with investment agreements, see Megiddo, *supra* note 7. For the lack of transparency in BLAs generally, see Tamar Megiddo, *Obscurity and Nonbindingness in the Regulation of Labor Migration*, 23 THEORETICAL INQUIRIES L. 95 (2022); Tijana Lujic & Margaret E. Peters, *Informalization, Obfuscation and Bilateral Labor Agreements*, 23 THEORETICAL INQUIRIES L. 113 (2022); Adam Chilton & Bartosz Woda, *The Expanding Universe of Bilateral Labor Agreements*, 23 THEORETICAL INQUIRIES L. 1 (2022). For the need for transparency in BLAs, see also WICKRAMASEKARA, *supra* note 12, at 24.

that the parties would seek transparency in order to enhance the agreements' impact and the access to rights they grant.

Indeed, scholars do add caveats and complicate this asymmetrical power analysis, suggesting that sending countries are not always merely contract takers, but rather do benefit somewhat from BLAs and may take part in shaping them. The literature identifies several main potential benefits to sending countries, including the increased flow of migration and remittances,<sup>45</sup> the protection of migrant workers' rights,<sup>46</sup> and an opportunity to advance other development and economic goals.<sup>47</sup> However, there is hardly any systematic research on the actual impact of BLAs that shows that these benefits are reaped by sending countries. For example, Chilton and Posner, in their extensive analysis of BLAs, are unable to conclusively demonstrate that BLAs increase migration flows. They find that there is "a positive trend in migration after the signing of a BLA," but that "the trend appears to start in the few years before a BLA is signed." They therefore conclude that BLAs either do have a causal role in increased migration, or that "BLA[s] might be an afterthought or a symbolic recognition of the increasing role of migration in the countries' relationship."<sup>48</sup> Similarly, in-depth case studies' analysis tends to suggest that BLAs have minimal impact on both migration flows and migrant workers' rights.<sup>49</sup>

One country that has been extensively studied to explore the benefits of BLAs to sending countries is the Philippines.<sup>50</sup> Work migration is seen as a key development strategy in the Philippines, and migrant workers from the Philippines migrate to various areas around the world to work in different labor sectors, mostly in care, service and hospitality.<sup>51</sup> As noted above, the Philippines sees BLAs as a strategy to protect its workers while abroad.<sup>52</sup> In one study of BLAs in the Philippines, Rivera et al. show that the content of BLAs depends "on the economic development and

45 Peters, *supra* note 11, at 287.

46 Clara van Panhuys et al., *Migrant Access to Social Protection Under Bilateral Labour Agreements: A Review of 120 Countries and Nine Bilateral Arrangements* (ESS – Working Paper No. 57, Int'l Lab. Off., 2017), <https://www.social-protection.org/gimi/gess/RessourcePDF.action?ressource.ressourceId=54405>; see Piyasiri Wickramasekara, *Something is Better than Nothing: Enhancing the Protection of Indian Migrant Workers Through Bilateral Agreements and Memoranda of Understanding*, MIGRANT FORUM IN ASIA [MFA] (2012), [http://mfasia.org/migrantforumasia/wp-content/uploads/2012/02/FINALFormat\\_Wickramasekara\\_MOU%5EFeb2012\\_V4.pdf](http://mfasia.org/migrantforumasia/wp-content/uploads/2012/02/FINALFormat_Wickramasekara_MOU%5EFeb2012_V4.pdf); see WICKRAMASEKARA, *supra* note 12; PIYASIRI WICKRAMASEKARA, *GOOD PRACTICES AND PROVISIONS IN MULTILATERAL AND BILATERAL LABOUR AGREEMENTS AND MEMORANDA OF UNDERSTANDING* (ILO 2018), [https://www.ilo.org/wcmsp5/groups/public/---asia/--ro-bangkok/---ilo-dhaka/documents/publication/wcms\\_683740.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/--ro-bangkok/---ilo-dhaka/documents/publication/wcms_683740.pdf); see also Cholewinski, *supra* note 3.

47 Peters, *supra* note 11, at 288.

48 Chilton & Posner, *supra* note 10, at S77.

49 See Battistella & Khadria, *supra* note 3; see also WICKRAMASEKARA, *supra* note 12, at 37-44.

50 See, e.g., Chilton & Woda, *supra* note 36; Go, *supra* note 27; Mangulabnan & Daquio, *supra* note 33; Molly-Siyu Liu, *Exploitation of Overseas Migrant Labor: Analysis of Migration Policy in Nepal and the Philippines* (SIRE, Working Paper, 2015); Nathan R. Blank, *Making Migration Policy: Reflections on the Philippines' Bilateral Labor Agreements*, 3 *ASIAN POL. POL'Y* 185 (2011); Rivera et al., *supra* note 36.

51 Anna Romina Guevarra, *Supermaids: The Racial Branding of Global Filipino Care Labour*, in *MIGRATION AND CARE LABOUR: MIGRATION, DIASPORAS AND CITIZENSHIP SERIES 130* (Bridget Anderson & Isabel Shutes eds., 2014).

52 See Go, *supra* note 27.

labor needs and on the labor market situation in the Philippines and its labor-receiving countries.”<sup>53</sup> The authors add that BLAs are longer and more detailed when entered into with receiving countries with fewer protections, suggesting that the Philippines’ interest in BLAs, among others, is to gain better protections for its workers. However, as previously mentioned, thus far scholars have not managed to assess the impact of BLAs on the rights of Filipino migrant workers, for example, in relation to other migrant workers in the same receiving country. Moreover, in recent research (that did not explore migrant workers’ rights), Chilton and Woda studied the effect of BLAs on migration flows and remittances in the Philippines and found that in most cases, BLAs did not increase the flow of migrants, nor did they increase remittances.<sup>54</sup>

Our review of BLAs and of the secondary literature leads us to put forward a complementary explanation as to why countries enter BLAs: a “control thesis.” We suggest that the *shared* interest of sending and receiving countries in policing and controlling the movement of migrant workers and curtailing the illicit recruitment industry that has developed around migration is a key, and mostly hidden, motivation for countries to enter BLAs. To be clear, this motivation does not contradict the power relations and interest analysis already identified in the literature and reviewed above, but rather complements and adds an additional dimension to our understanding of BLAs.

The following Part develops and exemplifies our control thesis in various examples from the BLAs we have reviewed and offers an interest analysis, mostly of the less self-explanatory interest of sending countries in controlling their citizens while abroad as well as the exploitative migration industry.

## II. THE CONTROL THESIS

We propose a “control thesis” as a key complementary explanation to the reasons stated in the literature, and discussed above, that countries sign BLAs. The control thesis highlights the fact that both sending and receiving countries *share* an interest in controlling, policing and monitoring migrant workers and their paths and process of migration, and that such a shared (yet not identical) interest requires cross-border collaboration, therefore serving as a strong motivation for both countries to conclude a BLA. This explanation became increasingly apparent to us in our close reading and analysis of BLAs. Admittedly, it is difficult to prove what leads countries to enter BLAs solely by reading them, absent qualitative research into the initiation and negotiation processes surrounding BLAs and without an assessment of their outcomes. We therefore discuss this idea of control as a possible “thesis.” To support this thesis, we explore the contours of this shared interest, based on

---

53 Rivera et al., *supra* note 36, at 14.

54 Chilton & Woda, *supra* note 36.

the secondary literature and on our analysis of BLAs, and provide below multiple examples of clauses in BLAs relating to such control.

We believe that identifying and recognizing this strong, shared interest of both countries in control can explain some of the more puzzling characteristics of BLAs. First, it could explain their growing popularity, despite the lack of evidence that they increase migration flows and remittances or improve migrant workers' rights. If such control is the objective, then, as migration flows increase, it makes sense that countries will seek out ways to guarantee their shared interest in cross-border control of migrants and recruiters. This could also explain why BLAs are nonbinding. Presumably when both parties share the same interest in control, enforcement mechanisms to hold the other party accountable are less necessary. Admittedly, sending and receiving countries may envision different types of control, which would still require parties to ensure that the agreements are binding. Yet we believe that the control thesis at least begins to provide an answer to this question. Finally, this explains the secrecy of BLAs. If one of the key interests, other than establishing a formal migration corridor, is to police and control workers and recruiters, and other issues such as migrant workers' rights are secondary, then these agreements are clearly not intended for public consumption, and the reasons for avoiding transparency are clearer.

#### *A. The Interests of Receiving Countries in Controlling Migrant Workers*

The entry of migrant workers into receiving countries under temporary migrant worker programs (TMWPs) is usually viewed by these countries as a "necessary evil" to fill the indispensable, low-skilled jobs which locals, for various reasons, refuse to take in an often stratified and dual labor market.<sup>55</sup> Based on the labor market needs in receiving countries, migrant workers are allowed into their territory, but under tight restrictions that condition their continued stay.<sup>56</sup> Migrant workers accept these restrictions because they believe the overall potential gain from migration might make it worthwhile. Such limitations commonly include restriction on labor market mobility (including tied visas, sectoral, and geographical limitations), familial restrictions, control of housing accommodations,<sup>57</sup> length of stay, minimal access to social rights, and the like.<sup>58</sup> The primary interest of receiving countries is therefore that a sufficient number of adequately skilled migrant workers will enter their territory to fill specific job vacancies—but only for a limited time (so that they do not settle permanently), and under strict limitations and restrictions as to the

---

55 See MICHAEL J. PIORE, *BIRDS OF PASSAGE: MIGRANT LABOUR AND INDUSTRIAL SOCIETIES* 187-205 (1979).

56 See RUHS, *supra* note 24, at 127.

57 Hila Shamir, *The Paradox of "Legality": Temporary Migrant Worker Programs and Vulnerability to Trafficking*, in *REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOR AND MODERN SLAVERY* 471 (Prabha Kotiswaran ed., 2017).

58 Martin Ruhs, *Temporary Foreign Workers Programs: Policies, Adverse Consequences, and the Need to Make Them Work* (U.C. Ctr. Compar. Immigr. Stud., Working Paper No. 56, Jan. 1, 2002), [https://ccis.ucsd.edu/\\_files/wp56.pdf](https://ccis.ucsd.edu/_files/wp56.pdf).

type of work they do and their labor market mobility. Receiving countries often establish mechanisms intended to ensure that such restrictions are maintained. BLAs are one such mechanism.

A key motivation for receiving countries to sign BLAs that is emphasized in the literature is the desire to curtail undocumented migration and to open new migration corridors. However, it is worth emphasizing that controlling the movement and actions of documented migrant workers, as well as curtailing an illicit migration industry, does not necessarily reduce or even impact undocumented migration, nor does it *necessarily* open new paths of migration or increase overall migration.<sup>59</sup> In fact, many BLAs are signed by countries between which a migration corridor already exists, and rely on the same quotas that existed prior to the agreements. The main impact of BLAs, to the extent this can be determined, is on documented migrants, but not on the scope of their migration, because the numbers tend to be capped by quotas that often remain unchanged by BLAs. Accordingly, in many cases, BLAs reach only the “tip of the iceberg” of illicit migration, while existing migration patterns remain mostly untouched by such agreements.

### B. *The Interests of Sending Countries in Controlling Migrant Workers*

What are the interests of *sending* countries in controlling migrant workers and the migration industry? The existing literature emphasizes that while sending countries may wish to protect their nationals’ rights and interests during their period of deployment as migrant workers, they often do not have much power to do so vis-à-vis receiving countries.<sup>60</sup> This is obviously the case, and one convincing thesis already mentioned above is that sending countries enter BLAs in order to extend such protections.<sup>61</sup> However, a point often overlooked is that sending countries may also wish not only to protect but also to *control* their citizens abroad, while deployed under TMWPs. As Tsinovoi and Adler-Nissen argue, “governmentality can often become entangled both with sovereign and disciplinary power,”<sup>62</sup> and this is particularly evident when the relationship between a sending country and its nationals who are deployed as migrant workers is analyzed “where the protection of citizens [the workers] abroad often becomes explicitly intertwined with other governmental goals.”<sup>63</sup> Furthermore, like receiving countries, sending countries sometimes also

---

59 As Chilton and Posner show, the causality between BLAs and increased migration is not clear. However, from the Israeli case study we can provide examples of migration corridors that opened up due to the signing of BLAs. On the Israel-Philippines migration corridor’s expansion from the care sector to the hospitality sector, see, for example, Agreement on the Temporary Employment of Filipino Home-Based Caregivers Between the Government of Israel and the Government of the Republic of the Philippines, Isr.-Phil., Sept. 3, 2018, <https://www.gov.il/files/mfa/amanot/otoo27jgf3o1.pdf>; Agreement on the Temporary Employment of Filipino Workers in the Hotel Sector Between the Government of Israel and the Government of the Republic of the Philippines, Isr.-Phil., Dec. 11, 2020 (on file with authors).

60 Blank, *supra* note 3, at 3.

61 See, for example, in relation to the Philippines, Go, *supra* note 27; Peters, *supra* note 11, at 288.

62 Alexei Tsinovoi & Rebecca Adler-Nissen, *Inversion of the ‘Duty of Care’: Diplomacy and the Protection of Citizens Abroad, from Pastoral Care to Neoliberal Governmentality*, 13 HAGUE J. DIPL. 211, 228 (2018).

63 *Id.* at 226.

have an interest in controlling and curtailing the illicit activities of stakeholders in the immigration industry, such as recruitment agencies and smugglers.

Undoubtedly, the primary interest of sending countries in the work migration of their nationals is to establish or maintain migration corridors in order to increase the amount of remittances sent back home.<sup>64</sup> Many sending countries are dependent on remittances for their economic subsistence or development.<sup>65</sup> This economic motivation leads sending countries to seek to create and maintain a good reputation for their nationals as migrant workers<sup>66</sup> and, therefore, at times, to seek to control their behavior, movement and actions when they are deployed abroad under TMWPs, in various ways that do not necessarily benefit or protect their nationals as workers. Indeed, various control measures adopted by sending countries relate to their situation vis-à-vis the capital-rich receiving countries, and the former's need to "please" receiving countries in order to sustain the migration corridor (which will, in turn, increase remittances). Sending countries attempt to control the whereabouts of their nationals in the receiving country in order to protect and enhance the country's reputation as a source of hard-working and efficient (not to say servile) laborers, and they often try to ensure the eventual return of their nationals back home in order to allow the entry of new ones in their place. This type of control is geared to promoting general national goals (e.g., to increase GNP through remittances) and the interests of receiving countries, rather than protecting the employment rights of individual migrant-nationals while abroad. BLAs serve receiving countries' interests in controlling migrants and migration and sending countries' subsidiary interest in "appeasing" receiving countries and increasing or sustaining remittances in two main ways that undermine migrant workers' rights:

*First*, BLAs include stipulations that make sending countries active in ensuring the timely return of their nationals back home upon completion of their restricted period of work under TMWPs.<sup>67</sup> Sending countries are concerned with timely

64 See RUHS, *supra* note 24, at 152-53; Peters, *supra* note 11, at 287.

65 Stephen Castles, *Development and Migration—Migration and Development: What Comes First? Global Perspective and African Experiences*, 121 THEORIA 1 (2009).

66 See, for example, in relation to the Philippines, Guevarra, *supra* note 51.

67 Memorandum of Understanding Between the Philippine Overseas Employment Administration and The Japan International Corporation of Welfare Services, Japan-Phil, Jan. 12, 2009, [https://www.poea.gov.ph/laborinfo/bilateralLB/BLA\\_PH\\_Japan%20\(JPEPA\)2009.pdf](https://www.poea.gov.ph/laborinfo/bilateralLB/BLA_PH_Japan%20(JPEPA)2009.pdf):

Art. 15: "Compliance with laws and regulations: 1) The POEA and the JICWELS shall undertake concerted efforts to ensure that all employees and their respective employers comply with the laws and regulations of Japan and the Philippines as applicable including faithful compliance with employment contracts. Such efforts shall include ensuring voluntary departure of employees from Japan within a reasonable amount of time before expiry of the period of stay as well as the prevention of illegal stay of employees. 2) The JICWELS shall consult with employees and coordinate their repatriation." See also Memorandum of Understanding between the Department of Labor and Employment, Republic of the Philippines and the Ministry of Employment and Labor, Republic of Korea on the Sending and Receiving Workers under the Employment Permit System of Korea, S. Kor-Phil., § 13, May 30, 2009, [hereinafter *MOU South Korea-Philippines*], Paragraph 13: "Employment and Sojourn management: 2) The parties will strongly cooperate to effectively manage the employment and sojourn of the Filipinos to prevent unnecessary absence without leave (AWOL) and absconding (running away) and to encourage their voluntary departure from Korea upon the expiry of their employment to reduce the number of irregular workers in Korea."

departures, because a massive overstay of workers from a specific sending country might prompt the receiving country to suspend the entry of workers from that country (and, consequently, suspend the transfer of remittances back home). Some sending countries have already employed (contentious) *unilateral* measures to prevent such overstay by their nationals on TMWPs. For example Philip Martin's research suggests that "[g]overnments in Nepal, Vietnam, and other countries from which some migrants overstay require their citizens to post bonds of \$5,000 to \$10,000 that are forfeited if migrants do not return when required, reasoning that too many overstays can lead to a reduction in the quota for the country, that is, reducing overstay rates is necessary for opening up job slots for more workers."<sup>68</sup>

Some BLAs have also incorporated similar and additional mechanisms to ensure the timely return of workers, although these seem to be initiated by receiving countries. For example, we found in a series of BLAs that South Korea is a party to a provision stipulating that a high rate of "overstayers" will result in a reduction in the allocated number of jobseekers on the roster or the temporary suspension of the sending of workers from that country.<sup>69</sup> Some South Korean BLAs also offer a "carrot" alongside the "stick," offering preferential treatment to those workers who leave voluntarily, by listing them first for an additional working period in the jobseekers roster.<sup>70</sup> Thailand's BLAs with Cambodia, Laos and Myanmar all include a provision dictating that workers from the sending country will be compelled to contribute 15% of their monthly salary to a "savings fund," which they can claim only upon a timely return to their home country. Deportation-associated costs can be deducted from the fund by the receiving country.<sup>71</sup> Similarly, the Canada-Jamaica BLA on seasonal agricultural workers establishes that 25% of the Jamaican workers' wages will be automatically deducted and deposited in a fund run by the Jamaican government.<sup>72</sup> The workers are required to register with the Jamaican government upon their return home as a condition for receiving the savings.<sup>73</sup>

---

68 PHILIP MARTIN, *MERCHANTS OF LABOR: RECRUITERS AND INTERNATIONAL LABOR MIGRATION* 158 (2017).

69 Memorandum of Understanding between the Department of Manpower and Transmigration of the Republic of Indonesia and the Ministry of Labor of Korea on the Sending of Indonesian Workers to the Republic of Korea under the Employment Permit System, Indon.-S.Kor., Sept. 9, 2008; *see also*, Memorandum of Understanding between the Ministry of Labour and Transport Management, Government of Nepal and the Ministry of Labor of the Republic of Korea on the Sending of Workers to the Republic of Korea under the Employment Permit System, Nepal-S.Kor., July 23, 2007 [hereinafter *MOU South Korea-Nepal*]; *see also* MOU South Korea-Philippines, *supra* note 67.

70 *Id.* MOU South Korea-Nepal.

71 Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on Employment Cooperation, May 1, 2003; Memorandum of Understanding between the Royal Thai Government and the Government of Lao People's Democratic Republic on Employment Cooperation, Oct. 18, 2002; Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Employment Cooperation, June 1, 2003.

72 Clinton Beckford, *The Experience of Caribbean Migrant Farmworkers in Ontario, Canada*, 65 *SOC. ECON. STUD.* 153, 165 (2016).

73 Eleanor Marie Lawrence Brown, *Outsourcing Immigration Compliance*, 77 *FORDHAM L. REV.* 2475, 2502 (2009).

Another example is the 2020 Israel-Sri Lanka BLA, which provides that

Before departure to Israel, the Sri-Lankan workers shall sign a declaration whereby they shall undertake . . . to return to Sri-Lanka upon the conclusion of their legal employment period in Israel as well as fulfil any other procedure or sign additional declarations or provide any other guaranties as agreed upon by the Cooperating Authorities to ensure compliance with this Article.<sup>74</sup>

While details of the guaranties Israel will request from future Sri Lankan workers who arrive under this recently signed BLA are still unclear, the language of the provision “[b]efore departure to Israel” clearly indicates that Sri Lanka’s cooperation will be required to facilitate such guaranties. This provides a good example of cooperation between a sending and a receiving country, in which both countries promote their own interests at the expense of the individual workers, who are monitored by the BLA.

This mutual concern, of receiving countries and consequently of sending countries as well, to ensure the timely return of migrants to their home countries might also explain BLA provisions which stipulate that the receiving country will provide the sending country with information about deported nationals.<sup>75</sup> We could not find any research looking into how sending countries use such information, but this raises concerns with regard to authoritarian sending countries.

An alternative, and as far as we can tell rarely used, way to guarantee a low percentage of migrant workers who overstay their visa is to legalize their stay. Unlike the restrictive tools we have examined so far, such provisions do serve as an example of the ways in which BLAs can widen the scope of migrant workers’ rights. The BLAs which Thailand signed with Myanmar and Cambodia introduce such a scheme. Each of them identically provides that “[t]he authorised agencies of both Parties shall work together for the establishment of procedures to integrate illegal workers, who are in the country of the other Party prior to the entry into force of this Memorandum of Understanding, into the scope of this Memorandum of Understanding.”

*Second*, and also emanating from the sending country’s primary interest in ensuring the continued flow of workers abroad (and, thus, remittances back home), sending countries seem to express concern not only with regard to the timely return of their nationals under TMWPs, but also their overall “good behavior” while present in the

---

74 Agreement between the Government of the State of Israel and the Government of the Democratic Socialist Republic of Sri Lanka on the Temporary Employment of Sri-Lankan Workers in Specific Labor Market Sectors in the State of Israel, Isr.-Sri Lanka, Feb. 24, 2020, art. 10(2).

75 See, e.g., Protocol between the Ministry of the Interior of the State of Israel and The Romanian Ministry of Labour, Family, Social Protection and Elderly Regarding the Recruitment of Romanian Workers for Temporary Work in the Construction Sector in the State of Israel, Isr.-Rom [hereinafter *Israel-Romania BLA*], June 24, 2014; Agreement between the Government of the State of Israel and the Ministry of Commerce of the People’s Republic of China Regarding the Recruitment of Chinese Workers for Temporary Employment in Specific Labor Market Sectors in the State of Israel, China-Isr. [hereinafter *Israel-China BLA*], Mar. 20, 2017; Agreement between the Government of the Republic of Indonesia and the Government of the State of Qatar Concerning the Regulation of Indonesian Manpower Employment in the State of Qatar, Indon.-Qatar, Jan. 29, 2008, arts. 6 & 7.



receiving country. Some sending countries take great efforts towards branding their nationals as “law-abiding, diligent workers.”<sup>76</sup> The ethos they cultivate (e.g., in pre-departure orientation programs, training courses or public propaganda)<sup>77</sup> of their nationals as obedient workers and their portrayal as “the opposite of troublemakers” to stakeholders in the receiving countries sometimes lead them to offer insufficient protection to their own nationals, even in clear cases of exploitation.

Indeed, our content analysis of BLAs suggests that sending countries offer limited protections to their nationals while abroad. As mentioned in the Introduction, BLAs sometimes contain a “general equal treatment” clause, but most, if not all, do not provide for any meaningful mechanisms to ensure compliance therewith. Moreover, documented instances from around the world prove that sending countries often mishandle complaints they receive—e.g., through local embassies—by their nationals concerning wrongs perpetrated against them (e.g., by employers) in receiving countries,<sup>78</sup> dissuade their nationals from taking legal action against wrongdoers,<sup>79</sup> try to “amicably” resolve disputes, and sometimes outright suppress vocal acts of defiance by their nationals against employers in the receiving state.<sup>80</sup> This attitude is sometimes manifest in specific BLA provisions.

For example, the BLA between Sri Lanka and Jordan provides that

SLBFE [Sri Lanka Bureau of Foreign Employment] and the Jordanian Ministry of Labour . . . shall, in the first instance, act as intermediaries for resolving, in a friendly

76 ROBYN MAGALIT RODRIGUEZ, *MIGRANTS FOR EXPORT: HOW THE PHILIPPINE STATE BROKERS LABOR TO THE WORLD* 64 (2010); *see, e.g.*, the Memorandum of Understanding on Cooperation for the Management of the Migratory Flows between the Ministry of Labor and Social Affairs of the Kingdom of Spain and the Ministry of Labor and Employment of the Republic of the Philippines, Phil.-Spain, Mar. 20, 2017, had an attached note for press release which states: “For Release in Spain—The Philippines is a rich source of highly-trained diligent professionals whose skills are in demand all over the world . . . several countries prefer Filipino workers in service sectors as Filipinos are known for their diligence and caring ways.”

77 RODRIGUEZ, *supra* note 76, at 50.

78 *See, e.g.*, Arokkiaj Heller, *Blue-collar Emigration from India and Governance*, 49 *SOC. POL’Y & ADMIN.* 695, 711-2 (2015): “the EoI [Embassy of India] in Kuwait admitted that if a complaint is received from an Indian worker working in a reputable company, and if no previous complaints have been received against the company, then there will be no labour camp visits to investigate the complaint lodged by the worker(s). This practice by the EoI clearly showed how far the EoI distanced itself from workers in getting out of trouble.”

79 *See, e.g.*, SAMANTHA MCCORMACK ET AL., *THE OTHER MIGRANT CRISIS: PROTECTING MIGRANT WORKERS AGAINST EXPLOITATION IN THE MIDDLE EAST AND NORTH AFRICA* 49 (2015): “A concerning finding of this report is the number of victims who said they were encouraged by embassy/consulate staff not to pursue criminal cases against their employers because trials are lengthy, and there was no guarantee of a successful outcome or compensation.”

80 RODRIGUEZ, *supra* note 76, at 54-5, describes a case in which the Filipino consulate in Brunei compelled a group of Philippine garment workers to end their strike and accept the terms offered by the employer. Iskandar describes the pressure put by the Moroccan regime, through the Moroccan embassy in Paris, on Moroccan workers who participated in strikes in the automobile industry in France during the 1980s: NATASHA ISKANDAR, *CREATIVE STATE: FORTY YEARS OF MIGRATION AND DEVELOPMENT POLICY IN MOROCCO AND MEXICO* 103-17 (2011). Similarly, the Israeli National Labor Court documented attempts by the Chinese authorities to break a strike initiated by Chinese construction workers in Israel, *see CivA (National Labor Court) 1218/02 Xue Bin v. A. Dori Company, Nevo Legal Database* (Mar. 20, 2003) (Isr.).

manner, any disputes which may arise between the worker and the employer and whenever it is difficult to reach a friendly solution, it must be referred to the judicial authorities (the court).<sup>81</sup>

Similar provisions can be found in other BLAs, such as Kuwait-Syria<sup>82</sup> and China-Qatar.<sup>83</sup> It is unclear whether such referral of the dispute to a “diplomatic” rather than “judicial” channel, at least initially, works in favor of migrant workers or to their detriment. It might work to their detriment if the courts offer protections to migrant workers, and might not if the courts are hostile to migrant workers. The outcome clearly also depends on the nature of the diplomatic dispute resolution channel vis-à-vis the option of a lawsuit. Regardless, the diplomatic channel definitely proves an attempt to solve the matter “behind the scenes” in a less adversarial way, which is also less transparent and more difficult to scrutinize and appeal.

Particularly alarming are provisions, contained in several BLAs, in which the sending country undertakes to assist the receiving country in preventing instances of “runaways.” For example, the Philippines-Jordan BLA provides that “the Embassy of the Philippines undertakes to notify the Jordanian Ministry of Labour of the Domestic Workers who run away from their employers’ homes and seek refuge at the Embassy.”<sup>84</sup> Similarly, the Philippines-Taiwan BLA provides that “[the Philippines] shall ensure workers comply with the ROC’s laws and regulations, fulfill contract obligations and not run away while working within Taiwan.”<sup>85</sup> Another example is the Kenya-Saudi Arabia BLA, which provides that “[t]he implementing agency of the Republic of Kenya shall . . . [t]ake measures to ensure that domestic workers complete their contractual duration.”<sup>86</sup> Such provisions are a clear manifestation of

---

81 Memorandum of Understanding between the Government of the Hashemite Kingdom of Jordan and the Government of the Democratic Socialist Republic of Sri Lanka, Jordan-Sri Lanka, Feb. 7, 2006.

82 Prime Ministerial Decree No. 43, on the Ratification of the Convention on the Regulation of Employment and Manpower Development signed with the Government of the State of Kuwait, Kuwait-Syria, Aug. 10, 2008, art. XX: “In case of a dispute arising between the employers and the employees, a petition will be brought before the concerned government authority that shall work towards an amicable settlement of the dispute through negotiations and agreement. In the event that efforts to amicably settle fail, it shall be referred to the appropriate court to be settled as per the laws of the country of employment.”

83 Agreement between the Government of the State of Qatar and the People’s Republic of China Regulating the Employment of Chinese Worker in the State of Qatar, China-Qatar, June 23, 2008, art. 15(2): “In case of a dispute between the employer and the worker arising from the employment contract the complaint shall be lodged with the competent authority of the Ministry of Labour and Social Affairs for amicable settlement. If an amicable settlement is not reached, the dispute shall be referred to the competent judicial authorities in the State of Qatar.”

84 *Id.* at art. 19. The Article then goes on to provide that “The Ministry of Labour shall act to resolve any outstanding problems between the Domestic Worker, the employers and the Jordanian agencies through a committee formed for this purpose.”

85 Memorandum of Understanding on Special Hiring Program for Taiwan between the Manila Economic and Cultural Office in Taipei and the Taipei Economic and Cultural Office in the Philippines, Phil.-Taiwan, Mar. 20, 2003: “the MECO shall have the following responsibilities: C-general responsibilities: 1) shall provide onsite services such as: [. . .] e) repatriation of workers whose employment contracts are expired or terminated. [. . .] 3) shall ensure workers to comply with the ROC’s laws and regulations, fulfill contract obligations and not run away while working within Taiwan.”

86 Agreement between the Government of the Republic of Kenya and the Government of Saudi Arabia on Recruitment of Domestic Workers, Kenya-Saudi Arabia, May 25, 2017, art. 5(e).

collaboration between countries to fully control migrant workers, as if they were commodities, “owned” by their employers.

To be clear, we do not argue that all or most sending countries are not concerned with the working conditions and human rights of their nationals while deployed as migrant workers abroad. Indeed, many sending countries are highly concerned about the terms of employment and sojourn of such nationals,<sup>87</sup> either because they value those individuals’ human and workers’ rights and sincerely wish to promote their wellbeing, or because bettering those rights (e.g., minimum wage laws and enforcement thereof) entails higher remittances. However, as we have seen, at times some sending countries sometimes agree to “sacrifice” these rights to some degree for the sake of what they perceive as “the bigger picture,” i.e., the national interest in increased migration and remittances.

So far we have discussed elements of control by sending countries that emanate from the receiving countries’ interests. However, there are additional reasons for sending countries to utilize control over their citizens while working abroad, other than to appease the receiving countries. For example, a sending country may wish to protect certain national interests (potentially influenced by the whereabouts of their nationals abroad), to affect the political participation and/or voting of nationals working abroad (in jurisdictions which allow out-of-country voting),<sup>88</sup> or—with respect to some countries—due to their authoritarian character.

A good example of a sending country’s effort to ensure that emigration of its citizens aligns with that country’s overall interest or normative position is the Indian Emigration Act of 1983. The Act provides that each Indian citizen, who wishes to work abroad, must obtain an emigration clearance prior to their departure. An application for an emigration clearance could, however, be rejected where “the employment which the applicant proposes to take up involves work of a nature which is unlawful according to the laws of India or offends against the public policy of India.” The Act further provides that the Indian government retains the power to prohibit the emigration of certain classes or categories of persons (e.g., based on age or sex).

Such general interests and agendas sometimes find their way into BLAs. For example, both China and Romania have included in the BLAs that they signed with Israel a provision referring implicitly to their foreign policy position regarding the occupied Palestinian territories (OPT).<sup>89</sup> The BLA with China provides that “it is agreed that Chinese workers, who are recruited according to this Implementing Protocol, will work in areas in Israel as designated and agreed by the parties to the Agreement from time to time.” This seemingly insignificant provision is a product of much diplomatic negotiation and maneuvering, which basically determines that

---

87 Patrick Ireland, *The Limits of Sending-State Power: The Philippines, Sri Lanka, and Female Migrant Domestic Workers*, 39 INT’L POL. SCI. REV. 322 (2018).

88 Ilke Adam et al., *West African Interests in (EU) Migration Policy: Balancing Domestic Priorities with External Incentives*, 46 J. ETHNIC & MIGRATION STUD. 3101, 3109 (2020).

89 Israel-Romania BLA, *supra* note 75, art. 17(1); Israel-China BLA, *supra* note 75, art. 10(3) to the Implementation Protocol.

Chinese migrant workers will not work in Israeli settlements in the OPT. We see here an example of a sending country which sets conditions in a BLA that stem from a position rooted in its foreign policy.<sup>90</sup>

A strikingly different example is the Bahrain-Philippines BLA on health services cooperation,<sup>91</sup> which regulates, among other issues, the recruitment of healthcare workers from the Philippines to Bahrain. This BLA provides that “[t]he Bahraini Government shall provide graduate and post-graduate scholarship programs” in “leading Bahrain Universities” for Filipinos wishing to undertake health studies. The BLA also provides that “[u]pon completion of the program, the scholars shall be required to return to the Philippines under the administrative guidelines of the Philippine Government where they shall be required to serve in hospitals, universities and other health institutions.” As Nathan Blank writes, this arrangement is mutually beneficial for both the Bahraini and Filipino governments:

The Philippines will gain valuable assets in those returning from postgraduate study in health-related fields . . . . From the Bahraini perspective, investing in top-notch education for health care workers and then requiring them to return home in order to educate others makes perfect sense as it will improve the skill levels of health care workers coming to Bahrain in the future.<sup>92</sup>

In the context of this Article, however, this serves as an interesting example in which a sending and a receiving country regulate not only what the nationals of the former will do while in the territory of the latter, but also their activities upon their return home. As the scholarships are conditioned on the students’ return home to work in a healthcare institution, the BLA, which sets the terms of the scholarship program, both ensures the return of the students to their home country and dictates their professional careers upon return, all in the service of the national interests of the sending and the receiving countries and linked to their labor market concerns.

Sending countries—particularly undemocratic ones—might also use BLAs to select candidates to work abroad based on their political affiliation or to oversee their political activities while overseas. Sending countries’ concern and interference with the political activism of their nationals abroad is well documented.<sup>93</sup> International human rights law seems to be still unsettled as to the scope of people’s right to political expression and activism while out of their country of origin, with some regional legal instruments overtly limiting such right.<sup>94</sup> This makes it somewhat

90 Chris Zambelis, *China’s Palestine Policy*, 9 CHINA BRIEF 9, MAR. 4, 2009, [https://jamestown.org/wp-content/uploads/2009/03/cb\\_009\\_5\\_04.pdf?x11483](https://jamestown.org/wp-content/uploads/2009/03/cb_009_5_04.pdf?x11483).

91 Memorandum of Understanding between the Government of the Republic of the Philippines and the Government of the Kingdom of Bahrain on Health Services Cooperation, Bahr.-Phil, Apr. 4, 2017, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/legaldocument/wcms\\_379026.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/legaldocument/wcms_379026.pdf).

92 Blank, *supra* note 50, at 196.

93 See, e.g., Mark Miller, *The Political Impact of Foreign Labor: A Re-evaluation of the Western European Experience*, 16 INT’L MIGRATION REV. 27, 44 (1982); ISKANDAR, *supra* note 80.

94 See, e.g., European Convention on Human Rights art. 16, Nov. 4, 1950, ETS 5. art. 16 of the European Convention on Human Rights (“Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.”); Article III of

easier for countries to incorporate in BLAs provisions which limit migrant workers' freedom of political speech and control their political activism. For example, the BLA between Malaysia and Vietnam incorporates a standard employment contract to be signed by the Malaysian employer and the Vietnamese worker, which provides that: "If the Worker is found by the competent authority concerned [to be] *creating social problems* or engages in any illegal, *subversive* or criminal activities, the Worker shall be dismissed from the job and shall be repatriated to Viet Nam at the Workers' own expense (emphasis added)."<sup>95</sup>

Similarly, as mentioned above, authoritarian (or corrupt) governments may wish to exercise their power to favor certain ("loyal") citizens over others, by using the opportunity for work migration as a "perk" for some while withholding it from others. By entering a BLA, such countries can retain their political power—or at least mitigate the depletion thereof—over their citizens before and while deployed as migrant workers abroad. While scholars have correctly pointed out that BLAs, which designate the operation of the screening processes for future deployed workers in the sending country, are beneficial to the receiving countries by saving them screening costs,<sup>96</sup> they have overlooked the benefits and power that such schemes concomitantly bequeath on sending countries. An illustrative provision is one included in the 2017 Israel-China BLA,<sup>97</sup> which enumerates "no criminal or *bad credit* record" among the list of threshold requirements which workers to be deployed to Israel must meet. While the lack of a criminal record is a common prerequisite in many BLAs, including all those signed by Israel between 2010 and 2020, the issue of "bad credit record" is unique to China. China's effort to establish a comprehensive "social credit" system<sup>98</sup> provides an explanation for the inclusion of this provision in the Israel-China BLA. This serves as an example of a sending country using the BLA as a vehicle to implement its sociopolitical policy and enhance its power.

### *C. The Shared Interest of Receiving and Sending Countries to Control Migration Intermediaries*

In addition to controlling the movement and actions of migrant workers in receiving countries, BLAs also allow sending and receiving countries to control the illicit

---

the Organization of African Union Convention governing the specific aspects of refugee problems in Africa (a refugee shall "abstain from any subversive activities against any Member State of the OAU"). See also Yuval Livnat, *Ideological Exclusion of Foreigners in Israel and in the United States*, 26 *BUFF. HUM. RTS. L. REV.* 81 (2020).

95 Memorandum of Understanding between the Government of the Socialist Republic of Viet Nam and the Government of Malaysia on the Employment of Workers, Aug. 7, 2015.

96 Aaditya Matto, *Services in a Development Round: Proposals for Overcoming Inertia*, in *TRADE, DOHA AND DEVELOPMENT: A WINDOW INTO THE ISSUES* 161, 172 (Richard Newfarmer ed., 2006); see also Peters, *supra* note 14, at 281.

97 Implementation Protocol, annexed to the 2017 Israel-China BLA, § 2(5), (2017) (copy in Hebrew with the authors).

98 See, e.g., Hans K. Hansen & Richard Weiskopf, *From Universalizing Transparency to the Interplay of Transparency Matrices: Critical Insights from the Emerging Social Credit System in China*, 42 *ORG. STUD.* 109 (2020).

and exploitative migration industry that tends to develop around international migration and creates various negative externalities for both countries. Both sending and receiving countries may have an interest in curtailing certain elements of this industry, such as private recruitment agencies.

Receiving countries have a mixed interest in controlling the migration industry that often thrives around work migration. Receiving countries may benefit from such illicit activity either because recruitment fees, while mostly collected in the country of origin, ultimately benefit local (and sometimes powerful) stakeholders in the receiving country, or because they guarantee a docile labor force, willing to work in substandard conditions in order to repay debts, and might even provide a positive signal regarding the workers' commitment and overcome information asymmetries.<sup>99</sup> Alternatively, receiving countries may seek to curtail such fees, for example when the industry's pursuit of its own interest in maximizing profits results in the entry of a number of workers exceeding the labor market's needs or the entry of unqualified workers, or creates incentives for workers to violate or overstay their visas.<sup>100</sup>

Sending countries sometimes also have an interest in controlling private actors involved in the migration industry, apart from controlling the migrants themselves. For example, they may want to curtail actors in the migration industry that collect large sums of money for their services to facilitate (documented or undocumented) migration, leading at times to insurmountable debt for workers. Such debt renders migrants more vulnerable to exploitation in the country of destination and reduces their overall profit from their work. Exorbitant debts can lead migrant workers to take black-market loans that in turn support and sustain other illicit and criminal markets. Sending countries may also seek to control the migration industry in order to increase the profits earned by migrant workers, thus increasing the amount of remittances they send home.<sup>101</sup> While some of the profits of the illicit migration industry remain in the sending country, they do not add value to the sending country's formal economy, nor do they tend to support local economic development.<sup>102</sup> Presumably, unless corruption or nepotism creates a competing interest in sustaining these practices, the straightforward interest of sending countries should be to control and restrain illicit elements of the migration industry.<sup>103</sup>

---

99 Moran Sadeh, *Global Reputation of Guest Workers*, 47 J. LEG. STUD. S247, S252 (2018).

100 *Id.* at S252; see also Low, *supra* note 39.

101 Chilton and Woda did not find that BLAs signed in the Philippines increased remittances, see Chilton & Woda, *supra* note 36. However, they did not check the overall impact of BLAs when remittances are sent and no underlying debt exists.

102 Dovelyn Agunias, *Guiding the Invisible Hand: Making Migration Intermediaries Work for Development* (Hum. Dev. Rsch. Paper 2009/22, UNDP, 2009), <http://hdr.undp.org/en/content/guiding-invisible-hand>.

103 However, corruption is, unfortunately, widespread in many sending countries and often is one of the reasons for excessive recruitment fees. See ILO, A GLOBAL COMPARATIVE STUDY ON DEFINING RECRUITMENT FEES DEFINING RECRUITMENT FEES AND RELATED COSTS: INTERREGIONAL RESEARCH ON LAW, POLICY, AND PRACTICE 72 (2020). Moreover, a unilateral measure taken by a sending country to limit the payment of recruitment fees to be paid by their citizens might lead employers and agents in the receiving countries to simply prefer recruitment of workers from other countries. This was the

This putative interest of sending countries to restrict excessive recruitment fees could meet a similar interest on the receiving countries' part; and this mutual interest could lead to the establishment of effective collaborations to tackle such fees, embedded in BLAs. Israel's BLAs with several sending countries, and particularly with Thailand, are a case in point.

Recruitment fees that migrant workers paid in their migration process to Israel were extremely high for several decades, significantly above the limit set by Israeli law.<sup>104</sup> Migration intermediaries, driven by the opportunity to make easy profits through fees, recruited more migrant workers than required by the Israeli labor market,<sup>105</sup> as well as unqualified workers, for the sole purpose of generating higher profits through illegal recruitment fees. In several cases, the Israeli judiciary criticized the government for its failure to enforce the law and prevent high fees. During litigation around migrant workers' rights, the judiciary "interfered" in governmental policy by, for example, preventing the deportation of migrant workers who failed to repay their migration-related debt.<sup>106</sup> Repeated court rulings criticizing the government for its inaction in this field, coupled with a shortage of skilled workers and overflow of unrequired workers who did not have a job waiting for them upon arrival, undermined the policies that aimed to restrict migration. Due to internal pressures by the court and civil society, as well as employers, and external pressures, such as Israel's low ranking in the U.S. State Department's Trafficking in Persons (TIP) Report, the Israeli government sought ways to regain control. In a report submitted to the OECD, the Israeli government acknowledged that private recruitment agencies had caused the "unnecessary arrival" of migrant workers and suggested that BLAs could serve as a policy tool that would help the government to resolve this matter.<sup>107</sup>

As a result of these processes, in the past decade Israel has signed BLAs with most of the countries from which it accepts migrant workers. Such BLAs have drastically transformed the recruitment process of migrant workers entering Israel, significantly decreasing the sums of money workers paid in fees. Under these BLAs, the recruitment process of migrant workers to Israel moved from a B-to-B (business to business) model to a G-to-G (government to government) model (seeking to push out private intermediaries), and a lottery component was added to the process (according to which 75%-90% of suitable applicants are randomly

- 
- case with Nepal and Malaysia, see Bassina Farbenblum & Justine Nolan, *The Business of Migrant Worker Recruitment: Who Has the Responsibility and Leverage to Protect Rights*, 52 TEX. INT'L L.J. 1, 34-5 (2017).
- 104 State Comptroller Annual Report 53B (2003); State Comptroller Annual Report 65C (2015); Gal Talit et al., *Implications of Collection of Excessive Brokerage Fees for Migrant Workers in the Domestic Care Sector in Israel*, 58 INT'L MIGRATION 219 (2019); Nonna Kushnirovich et al., *The Impact of Government Regulation on Recruitment Process, Rights, Wages and Working Conditions of Labor Migrants in the Israeli Construction Sector*, 16 EUR. MGMT. REV. 909, 912 (2019).
- 105 According to officials, sometimes "on the same [employment] permit ten and more foreign workers were brought in." Citation of Effi Tibi, deputy director of the Police's Immigration Unit, Knesset's Foreign Workers' Committee, May 11, 2004.
- 106 See, e.g., Admin. Pet. 735/03 Chen de Hu v. Ministry of Interior; Admin. Pet. 2031/04 Chen Sherin v. Immigration Bureau.
- 107 OECD, SECOND PROGRESS REPORT ON THE IMPLEMENTATION OF THE OECD RECOMMENDATIONS: LABOUR MARKET AND SOCIAL POLICIES—ISRAEL 69 (2015).

selected for work in Israel). Preliminary empirical data proves that the recruitment process under BLAs has significantly lowered the recruitment fees paid by migrant workers entering Israel.<sup>108</sup>

The Israeli case provides an example of a receiving country's interest to curtail the migration industry. To complement our argument regarding the centrality of *shared* control as an animating force for Israeli BLAs, a parallel detailed study of the interests of sending countries that have signed BLAs with Israel needs to be conducted. One such study is Yahel Kurlander's study of the first BLA that Israel signed, the Thai-Israeli BLA that came into force in 2012. According to Kurlander, the Thai government's willingness to enter a BLA with Israel was first and foremost in response to pressure exerted by Israel and its threat to "close the skies" and prevent the entrance of Thai workers altogether.<sup>109</sup> Yet in addition to this asymmetric power dynamic, Kurlander details the impact of the U.S. State Department's TIP Report on Thailand<sup>110</sup> and, more crucially, describes the Thai interest in controlling both the Thai and the Israeli side of the migration industry as critical to the process.<sup>111</sup> Kurlander writes that the BLA broke the

synergetic connection between recruitment agencies in Thailand and Israel, a connection that drew its power from the transnational space between the local and the global . . . [t]his power was created by the embeddedness of recruitment agencies on each side in the specific geographical and institutional settings in their country. Yet each agency needed its counterpart on the other side of the migration corridor . . . It is in this space, far from the regulatory power of the state, that the agencies could profit from migrant workers' recruitment fees. Both countries managed to change the migration industry only when they took control over this space.<sup>112</sup>

This inherently transnational, cross-border process, Kurlander notes, could occur only through a BLA.

Our analysis thus far has sought to demonstrate that sending and receiving countries have a shared interest in controlling migrant workers and elements of the migration industry, and that BLAs reflect that interest. This may seem a much darker explanation of countries' motivations to enter BLAs than the reasons commonly offered in the literature. Yet we believe that this analysis also holds some promise: an interest analysis that takes the control thesis into account can be used by migrant workers and their advocates to identify and utilize the (albeit limited) opportunities created by BLAs to improve migrant workers' rights and offer them greater protection and a more beneficial migratory experience in effective ways. To this we turn next.

---

108 REBECA RAIJMAN & NONNA KUSHNIROVICH, THE EFFECTIVENESS OF THE BILATERAL AGREEMENTS: RECRUITMENT, REALIZATION OF SOCIAL RIGHTS, AND LIVING & EMPLOYMENT CONDITIONS OF MIGRANT WORKERS IN THE AGRICULTURE, CONSTRUCTION AND CAREGIVING SECTORS IN ISRAEL, 2011-2018 (CIMI 2019); Kushnirovich et al., *supra* note 104.

109 Yahel Kurlander, *The Commodification of Migration: On the Growth, Prosperity and Transformation of the Recruitment Industry of Thai Farm Workers To Israel*. (Nov. 2020) (Ph.D. dissertation, Haifa University) (on file with authors in Hebrew), at 160-1.

110 *Id.* at 131.

111 *Id.* at 159.

112 *Id.* at 190.



### III. THE CONTROL THESIS AND THE POTENTIAL AND LIMITS OF BLAs TO ADVANCE WORKERS' RIGHTS

In this final Part, we suggest that an interest analysis that takes into account the control thesis can serve as a methodology to identify, exploit and create openings to benefit migrant workers through BLAs. We offer below three examples of such opportunities, focusing on the state interests in curbing human trafficking, improving training and orientation programs for migrant workers, and increasing remittances and funds transfer. Each of the three examples represents a combination of a boost to migrant workers' rights on the one hand, as well as elements that serve various state interests on the other, including (some) enhanced control over migrant workers or the migration industry. These are mere examples of the ways in which strategic activism, based on such interest analysis in BLAs, might highlight the tradeoffs it may entail.

#### A. State Interest to Address Human Trafficking

The last two decades have seen growing international commitment to combat human trafficking.<sup>113</sup> In the early 2000s, an international protocol was signed that expanded the definition of human trafficking beyond its traditional understanding that, until then, focused on the forced or deceptive movement of women and girls across borders for the purpose of prostitution. Today, trafficking encompasses severe forms of exploitation in different labor sectors, of persons of all ages and genders, both within and beyond borders.<sup>114</sup> Trafficking is therefore a multifaceted phenomenon that may be identified by a bundle of various violations of labor rights and human rights, adding up to a denial of one's freedom.<sup>115</sup> Implementation of the trafficking protocol in many countries has included the development of a set of rights geared to protecting identified victims of trafficking.<sup>116</sup> Rehabilitation schemes—in the case of noncitizens—often include the right to sojourn, work and receive certain social rights including shelter, and medical and psychological treatment.<sup>117</sup> Such rights, if granted, are given to a small number of identified victims of trafficking in what are often, otherwise, exclusionary migration regimes.<sup>118</sup> While in the past the majority

---

113 Anne T. Gallagher & Janie Chuang, *The Use of Indicators to Measure Government Responses to Human Trafficking*, in GOVERNANCE BY INDICATORS: GLOBAL POWER THROUGH QUANTIFICATION AND RANKING 317 (Kevin Davis et al. eds., 2012).

114 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, [hereinafter *Palermo Protocol*], Nov. 15, 2000, U.N.T.S. 55/25.

115 ILO, OPERATIONAL INDICATORS OF TRAFFICKING IN HUMAN BEINGS (2009); Hila Shamir, *A Labor Paradigm for Human Trafficking*, 60 UCLA L. REV. 76, 87 (2012).

116 *Palermo Protocol*, art. 6.

117 Daphna Hacker et al., *Ungendering and Regendering Shelters for Survivors of Human Trafficking*, 3 J. SOC. INCL. 35, 37 (2015).

118 For example, out of the rough estimate of 24.9 million individuals in forced labor (see ILO, GLOBAL ESTIMATES OF MODERN SLAVERY: FORCED LABOUR AND FORCED MARRIAGE 9-10 (2017), [https://www.ilo.org/global/publications/books/WCMS\\_575479/lang--en/index.htm](https://www.ilo.org/global/publications/books/WCMS_575479/lang--en/index.htm)) very few individuals are identified and assisted by the current national and international response to human trafficking. The

of identified victims of trafficking around the world were victims of trafficking for the purpose of prostitution, in recent years there is growing identification of victims of trafficking in other labor sectors, outside the sex industry, including documented workers that are part of TMWPs.<sup>119</sup>

When more documented migrant workers are identified as victims of trafficking—therefore eligible for extended stay in the receiving country and possibly even, in some countries, such as the U.S., a path to citizenship—governments may have an interest in addressing the root causes of their exploitation to prevent the number of identified victims from rising. Moreover, this may be the case due to international pressures to address human trafficking and severe forms of labor market exploitation, as was the case, for example, in Israel, India and Qatar.<sup>120</sup>

Following our interest analysis, it can be argued that if a government is required, due to international pressure or for internal reasons, to identify increasing numbers of victims of trafficking and extend their stays in the country or otherwise curtail the government's immigration control, then a window of opportunity can be identified to pressure for the improved governance of migration and protection of workers' rights. A rise in the number of rehabilitation visas to victims of human trafficking would not only assist individual victims, but might also spur a government interest in addressing the structural causes of human trafficking—such as tied visas, high recruitment fees, substandard living conditions, restrictions on freedom of movement, wage theft, etc.—by various measures, including BLAs.<sup>121</sup> Migrant workers and their advocates in civil society could initiate campaigns to encourage improved regulation of migration via BLAs in order to address such structural causes. This was the case, for example, in Israel, as mentioned above, where BLAs were signed after international pressures and civil society litigation and adopted explicitly as anti-trafficking measures, effectively reducing migrant workers' recruitment fees.<sup>122</sup> This may be the interest of receiving countries but, naturally, may also serve the interests of sending countries that either wish to protect their own citizens, or are

---

U.S. 2021 Trafficking in Persons Report stated that in 2020, only 109,216 victims of human trafficking were identified around the world, out of which only 14,448 individuals were identified outside of the sex industry. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 53 (2021).

119 Shamir, *supra* note 57.

120 For Israel, see ASIF EFRAT, GOVERNING GUNS, PREVENTING PLUNDER: INTERNATIONAL COOPERATION AGAINST ILLICIT TRADE (2012); Daphna Hacker, *Strategic Compliance in the Shadow of Transnational Anti Trafficking Law*, 28 HARV. HUM. RTS. J. 11 (2015); Hila Shamir, *Anti-trafficking in Israel: Neo-abolitionist Feminists, Markets, Borders, and the State*, in GOVERNANCE FEMINISM: AN INTRODUCTION 149 (Janet Halley et al. eds., 2018). For India, see Prabha Kotiswaran, *Trafficking: A Development Approach*, 72 CURRENT LEGAL PROBS. 375, 407-9 (2019). For Qatar, see Amanga Garrett, *The End of Kafala? Evaluating Recent Migrant Labor Reforms in Qatar*, 21 GEORG. J. INT'L AFF. 201 (2020).

121 On BLAs as an anti-trafficking tool see Shamir, *supra* note 57 and Shamir, *supra* note 115; Tamar Megiddo & Yuval Livnat, *Bilateral Labor Agreements*, in AN ALTERNATIVE ANTI-TRAFFICKING ACTION PLAN: A PROPOSED MODEL BASED ON A LABOR APPROACH TO TRAFFICKING 57 (Hila Shamir & Maayan Niezna eds., TraffLab Research Group Policy Paper, Tel Aviv University, English version 2022) (Isr.).

122 Yuval Livnat, *Israel's Bilateral Agreements with Source Countries of Migrant Workers: What is Covered, What is Ignored and Why?*, IYUNEI MISHPAT, TEL AVIV U. L. REV. (forthcoming) (Isr.); RAJIMAN & KUSHNIROVICH, *supra* note 108; Kushnirovich et al., *supra* note 104.

looking to respond to international pressures around human trafficking, as in the case of the Thai-Israel BLA discussed above.

### *B. State Interest to Improve Training Programs*

Another opportunity for migrant workers and their advocates to use BLAs to promote migrant workers' rights and interests can be found in training and orientation programs for migrant workers. Skills development is one of the enumerated objectives of the Global Compact for Migration,<sup>123</sup> and such programs are indeed often part of TMWPs.<sup>124</sup> As the Bahrain-Philippines BLA discussed above demonstrates, in the area of training there could be "win-win-win" situations, where the interests of a sending country, a receiving country and the migrants themselves coincide. This could occur, for example, through the introduction of a scholarship program for higher education in the receiving country for citizens of the sending country. However, on a less ambitious level, migrant workers' skills could be enhanced, providing them with greater opportunities, by setting the content and structure of pre- and post-departure trainings and continued training on both sides of the migration corridor. Such training could improve productivity in the country of destination and provide migrant workers with valuable skills to assist them not only in the receiving country, but also upon their return or at other points in the migration cycle. Such programs can also benefit employers in the receiving country, and even serve the state interest in enhancing control over migrants through various restrictions related to their labor market mobility (e.g., limiting their employment to certain labor sectors in which they were trained) and length of stay (e.g., requiring workers to pay for their training if they do not return to the sending country). Such limitations may appear somewhat more legitimate when they are not unilateral steps taken by the state but rather are part of a "contract" in which the migrant worker gains transferrable skills and the country of destination (or the receiving country) gains enhanced control. BLAs are a natural avenue for collaboration between sending and receiving countries along the migration corridor, and, as we have seen in the Bahrain-Philippines BLA and other examples above, some indeed incorporate training elements that shape the rights and opportunities of migrant workers, and at times include a tradeoff between acquiring transferrable skills and state control.

### *C. State Interest to Improve the Transfer of Remittances*

Another key issue that could be effectively regulated via BLAs to the benefit of all sides is the transfer of funds (remittances) from receiving to sending countries. The market for remittance transfers, like the market for recruitment and placement of migrant workers, is governed in most countries by private entities, which frequently

---

123 G.A Res. 12113, *supra* note 4, objective 18.

124 See, e.g., AOMAR IBOURK, EXPLORING THE POTENTIAL FOR SKILLS PARTNERSHIPS ON MIGRATION IN WEST AFRICA AND SAHEL (ILO 2020), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---ifp\\_skills/documents/genericdocument/wcms\\_747727.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/genericdocument/wcms_747727.pdf).

charge excessive fees.<sup>125</sup> Also like worker recruitment, the transfer of funds operates through both formal and informal channels, and migrant workers frequently resort to informal channels because formal ones are legally or practically inaccessible to them or to their relatives back home, or charge even higher fees. Bilateral cooperation can ensure access to fair money transfer channels and reduce the fees associated with such transfers. Some attempts at such bilateral or multilateral cooperation can already be found,<sup>126</sup> but much more work can be done in this area. Here, too, the interest of migrant workers and sending countries alike to reduce transfer fees (at least the fees collected by the financial institution in the receiving country) seems clear, but receiving counties may also have an interest to control illicit or exploitative elements of this industry. First, a regulation that lowers the transfer fee could potentially work for the benefit of other stakeholders, including perhaps investors. Second, if civil society organizations could demonstrate to the receiving country's government that this industry funds or is controlled by criminal elements (as is the case in certain countries),<sup>127</sup> or could potentially implicate the government with liability under international anti-money laundering regulations,<sup>128</sup> then perhaps the receiving country's government could be convinced to address this matter in a way that also benefits migrant workers.

We have developed here some preliminary ideas concerning three areas in which bilateral collaboration can serve the interests of both sending and receiving countries—identified in light of the control thesis—and simultaneously improve the rights of and increase the benefits to migrant workers: preventing human trafficking, administering training programs and lowering the transfer fees of remittances. We believe that in different contexts, such an interest analysis could yield additional ideas for openings and opportunities to use BLAs to empower workers and enhance their rights.

However, this analysis also shows the limits of BLAs as tools to promote migrant workers' rights. If BLAs merely reflect the interests of sending countries, and

---

125 BIMAL GHOSH, *MIGRANTS' REMITTANCES AND DEVELOPMENT: MYTHS, RHETORIC AND REALITIES* (IOM 2006), <https://publications.iom.int/books/migrants-remittances-and-development-myths-rhetoric-and-realities> (transfer costs 10%-20% of the principal, and especially high for small amounts).

126 See, for example, U.S.—Mexico FEDAch, an automated clearinghouse system introduced by the United States and Mexico; and the World Bank's "5X5 objective." Korea's fruitful attempts to lower fees on remittances sent from it to other countries are also worth mentioning. It "has built the infrastructure that directly links remittance service providers in Korea with those in receiving countries to provide real-time remittance services at affordable costs. By removing intermediary services such as SWIFT and establishing bilateral partnerships between clearing and settlement institutions (e.g., the Korea Financial Telecommunications and clearing institutions), the remittance process became more efficient and cost effective." GPFI, Republic of Korea G20 National Remittance Plan (2017), [https://www.gpfi.org/sites/gpfi/files/GPFI%20National%20Remittance%20Plan%20Update%20Template\\_Korea\\_o.pdf](https://www.gpfi.org/sites/gpfi/files/GPFI%20National%20Remittance%20Plan%20Update%20Template_Korea_o.pdf).

127 Carlos Vargas-Silva, *Crime and Remittance Transfers*, 35 *EAST. ECON. J.* 232 (2009).

128 Cristiano d'Orsi, *Migrant Remittances and Money Laundering in Africa*, in *MONEY MATTERS IN MIGRATION: POLICY, PARTICIPATION, AND CITIZENSHIP* 223 (Tesseltje de Lange & Willem Maas eds., 2021); Livio Corselli, *Italy: Money Transfer, Money Laundering and Intermediary Liability*, *J. FINAN. CRIME* (2020); FINANCIAL ACTION TASK FORCE (FATF), *MONEY LAUNDERING THROUGH MONEY REMITTANCE AND CURRENCY EXCHANGE PROVIDERS* (2010), <https://www.fatf-gafi.org/media/fatf/ML%20through%20Remittance%20and%20Currency%20Exchange%20Providers.pdf>.

even more so of receiving countries, then these interests necessarily also limit the possibilities opened up by BLAs. The shared interest of sending and receiving countries to control various aspects of migrant workers' lives and of the migration industry, which we found in this Article to be a key factor in shaping the content of BLAs, does not necessarily lead to protection of migrants' rights. In fact, as the discussion and examples in Part II suggest, the control thesis often results in violations and curtailment of migrant workers' rights. Hence, according to the control thesis, migrant workers and their advocates must suffice with identifying (and perhaps generating) indirect interests to protect workers' rights, which may instrumentally motivate receiving and sending countries' shared interest in promoting some aspects of migrants' welfare collaboratively through BLAs. This analysis may be unsatisfactory in many ways for those who aspire to improve temporary migrant workers' rights because it includes tradeoffs and compromises. Nonetheless, we argue that given the background rule of state sovereignty, and in the absence of any effective international migration governance, such an interest analysis—centered around the control thesis—may provide a realistic and possibly effective way to use BLAs to provide new protections, rights and opportunities to migrant workers that states otherwise are not required to introduce.

## CONCLUSION

In this Article we have developed a key additional explanation as to why countries enter BLAs. Based on an extensive content analysis of BLAs and the secondary literature, we argued that an important motivation to enter BLAs is the shared interest of migrant-receiving and sending countries in controlling and policing the movement and actions of migrant workers, as well as curtailing the negative spillovers of the unlawful or exploitative migration industry that develops around labor migration. This motivation towards state control, we showed, can explain some of the more puzzling elements of BLAs—their secrecy, their nonbinding and unenforceable character, and their proliferation. We further argued that the control thesis relates to both receiving and sending countries, and can shed better light on the relatively under-theorized and under-studied interests of sending countries in demanding and shaping BLAs.

We further showed that BLAs are generally not legal instruments geared to protect workers' rights. Despite this less rosy view of BLAs, we hope our analysis offers a useful way for those seeking to utilize BLAs to protect migrant workers' rights to understand the potential, as well as the limitations, of BLAs. The multiple examples we have provided suggest that BLAs' potential to improve and protect the rights of migrant workers is hedged by the interests of sending and receiving countries and can be materialized when it coincides with those interests. We believe such an approach may assist advocates of migrant workers' rights in discovering paths to promote these ends by identifying where state interests and migrant workers' rights may potentially coalesce. However, our analysis also suggests that migrant

workers' rights advocates and those who seek to promote rights protection within governments should be aware of the "dark side" of BLAs and their common use as an additional tool of control of migrants, rather than a tool for their protection and empowerment. Through insisting on transparency, clear language about rights protections, and the introduction of enforcement mechanisms, which are accessible to workers themselves, such concerns may counterbalance the shared interest of sending and receiving countries in gaining control over migrants. Moreover, additional contextual case studies are required to better understand when, under what conditions and how BLAs do in fact improve migrant workers' rights.