

THE EXPANDING UNIVERSE OF BILATERAL LABOR AGREEMENTS

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In the seventy-five years since the end of World War II, pairs of countries have entered into over a thousand bilateral labor agreements (BLAs) to regulate the cross-border flow of workers. These agreements have received little public or academic attention. This is likely, in part, because there is limited data or easily available information on BLAs. This Article hopes to change that by introducing three new resources: (1) a dataset documenting the formation of over 1,200 BLAs; (2) a corpus including the texts of over 800 BLAs; and (3) a dataset coding whether over 500 BLAs mention twenty topics that the ILO has identified as best practices for these agreements. Using this data, we show that, unlike some other forms of bilateral agreements, the rate of BLAs being signed has remained relatively high during the first two decades of the twenty-first century. Additionally, we also show evidence that, although many BLAs were formed during this period, relatively few agreements include various worker protections advocated for by activists, scholars, and NGOs.

INTRODUCTION

Since the start of the postwar period, to facilitate international economic cooperation, countries have entered into a range of high-profile treaties and created a number of high-profile international organizations.¹ For instance, the GATT and the WTO facilitate cooperation on the trade of goods, the International Monetary Fund facilitates cooperation on exchange rates, the Basel Accords facilitate cooperation on banking regulation, and thousands of bilateral investment treaties (BITs) facilitate cooperation on the flows of investments. Fittingly, given their high profile, these

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¹ See generally Alan O. Sykes, *International Cooperation on Migration: Theory and Practice*, 80 U. CHI. L. REV. 315, 315-16 (2013) (discussing how international cooperation has flourished in many aspects of economic affairs during this period, but that there has been less cooperation on migration).

agreements and institutions have been the subject of considerable academic research by economists, historians, political scientists, and law professors.²

What is noticeably absent from the list of high-profile treaties and institutions regulating international economic cooperation are efforts to regulate migration.³ Perhaps the most standard explanation for why the movement of people has not been governed by these kinds of agreements or institutions is that there are several features of migration that make it difficult to fashion multilateral treaties where all countries can be net beneficiaries. Most notably, migration is typically asymmetrical (i.e., some countries largely send migrants and other countries largely receive them), and many receiving countries are likely to view themselves as better off by unilaterally setting their immigration policies instead of agreeing to coordinate with other countries.⁴ The result is that, when there have been multilateral efforts to push for cooperation on migration, leading destination countries for migrants have sat on the sidelines.⁵

It would be a mistake, however, to assume that because there are no high-profile agreements regulating migration, that they do not exist. Instead, there has been a large number of agreements signed to regulate one kind of migration: temporary labor migration. Over the last seventy-five years, pairs of countries have signed hundreds of bilateral treaties—known as “bilateral labor agreements” (BLAs)—to regulate the flows of migrant workers between each other. Although these agreements come in many forms, they typically govern the conditions under which migrant workers can move from countries that export workers to countries that receive workers.⁶ For instance, a BLA may call for sending countries to pre-screen migrant workers before they depart, for receiving countries to give migrant workers certain protections during their deployment, and for both countries to keep records, share information, and resolve disputes that arise related to the cross-border movement of workers.

But despite their frequent use, until a few years ago, these treaties received almost no public or academic attention.⁷ For instance, the World Bank and the

2 See, e.g., Beth Simmons, *Treaty Compliance and Violation*, 13 ANN. REV. POL. SCI. 273 (2010) (reviewing scholarship on compliance with international agreements); Gregory Shaffer & Tom Ginsburg, *The Empirical Turn in International Legal Scholarship*, 106 AM. J. INT'L L. 1, 30-8 (2012) (reviewing empirical research on international economic law); Kyle Bagwell et al., *Is the WTO Passé?*, 54 J. ECON. LITERATURE 1125 (2016) (reviewing scholarship on international trade agreements); Pierre-Olivier Gourinchas et al., *The International Monetary and Financial System*, 11 ANN. REV. ECON. 859 (2019) (reviewing research on international monetary policy).

3 See Jennifer Gordon, *People Are Not Bananas: How Immigration Differs from Trade*, 104 NW. U. L. REV. 1109 (2010).

4 See Sykes, *supra* note 1, at 317-32.

5 For example, when an international agreement to regulate the rights of migrant workers was developed in 1990, it was signed by 55 countries over a 30-year period—but none of them were major economically developed host countries of migrants, like the United States, Canada, or members of the European Union. See International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, G.A. Res. 45/158, art. 2(1), U.N. Doc. A/RES/45/158 (Dec. 18, 1990).

6 See generally JOEL TRACHTMAN, *THE INTERNATIONAL LAW OF ECONOMIC MIGRATION: TOWARD THE FOURTH FREEDOM* (2009).

7 See Tamar Megiddo, *Learning from the BITS: Bilateral Labor Agreements in Comparative Perspective* (Aug. 1, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3672931 (“Academic literature

International Labour Organization published reports discussing the potential of these agreements—which had been in use for decades—in 2013 and 2015, respectively.⁸ Similarly, these agreements have been the subject of just a handful of academic articles. This stands in stark contrast to the countless public reports and academic articles on the network of bilateral investment treaties that regulate the flow of capital or the network of preferential trade agreements that regulate the flow of goods.

One reason for the limited attention that has been paid to BLAs has been the lack of data on the specific agreements that have been signed and on the details of those agreements' contents. To our knowledge, just two projects have made data on BLAs publicly available. In 2017, Chilton, Posner, and Woda released a dataset that documented the existence of 582 BLAs (which we will refer to as the "CPW data"),⁹ and in 2019, Peters released a dataset that documented the existence of 779 BLAs (which we will refer to as the "Peters data").¹⁰ For the first time, these datasets made it possible to empirically explore why countries have signed BLAs and their effects on migration and other outcomes.¹¹ These datasets, however, have notable limitations. Importantly, their count of BLAs is likely both under-inclusive—because they failed to identify all relevant agreements—and over-inclusive—because they counted some agreements that were not about regulating the flow of workers. Additionally, these datasets provide limited information on the BLAs they identify, making it impossible to study the considerable variation in their contents.

In this Article, we report the results of a project that built on these prior data collection efforts in order to produce three new resources on BLAs. First, we built a more comprehensive dataset on the formation of BLAs. To do so, we began with the set of treaties identified by the CPW and Peters datasets, and then sought to track down any additional agreements that were signed and missed by these prior data collection projects. Through this process, we have found evidence of the existence of 1,219 BLAs. Second, we collected a corpus of the specific texts of the agreements that have been signed. That is, instead of simply producing a dataset that codes the existence of these agreements, we have also tried to obtain copies of the original agreements. So far, we have obtained copies of 807 agreements. Third, we are coding the contents of these agreements. To do so, we began with best practice guides developed by the International Labour Organization,¹² and then coded each

has not devoted much attention to BLAs.”)

8 See World Bank, *Let Workers Move: Using Bilateral Labor Agreements to Increase Trade in Services* (June 6, 2013); International Labour Organization [ILO], *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review* (July 2015).

9 See Adam Chilton et al., *Bilateral Labor Agreements Dataset*, HARVARD DATAVERSE, V1 (Aug. 30, 2017), <https://doi.org/10.7910/DVN/14YF9K>.

10 See Margaret Peters, *Bilateral Labor Agreements Dataset and Additional Replication Data for: Immigration and International Law*, HARVARD DATAVERSE, V1 (May 13, 2019), <https://doi.org/10.7910/DVN/9ADZUF>.

11 See Adam Chilton & Eric Posner, *Why Countries Sign Bilateral Labor Agreements*, 47 J. LEGAL STUD. S45 (2018); Margaret Peters, *Immigration and International Law*, 63 INT'L STUD. Q. 281 (2019).

12 See Piyasiri Wickramasekara, *Assessment Guide for Bilateral Agreements and Memoranda of Understanding on Labour Migration, with a Special Focus on Bangladesh* (2018) [hereinafter *Assessment Guide for BLAs*] (Piyasiri Wickramasekara is the former Senior Migration Specialist at the International Labour Organization); Piyasiri Wickramasekara, *Core Elements of a Bilateral Agreement or a Memorandum of*

agreement for whether it contained each of the 20 elements identified as key features of BLAs. Through this process, we have coded the contents of 571 agreements. All three of these resources are available to anyone interested in studying BLAs.¹³

In addition to introducing these resources, we also report new descriptive statistics on the number and contents of the BLAs that have been negotiated over the last seventy-five years. Perhaps most notably, our data suggests that roughly as many BLAs were signed in the twenty years from 2000 to 2020 as were signed in the fifty-five years from 1945 to 2000. In other words, at the same time that the pace of new international agreements on other topics—like international trade or international investment—has slowed,¹⁴ the pace of new BLAs has increased. We also show data from coding of the contents of BLAs suggesting that, although many new BLAs were signed after the year 2000, a relatively low share of these new agreements mention various kinds of worker protections that the International Labour Organization has advocated as best practice provisions to include in BLAs. This suggests that the BLAs that have been negotiated may not be the kind of deep commitments designed to protect migrant workers' rights that many activists, scholars, and NGOs have argued in favor of adopting.

Before continuing, it is important to note an important caveat: we do not claim to have identified the full universe of bilateral labor agreements. Although our research project has uncovered more agreements than prior efforts, we assume that there may be BLAs that have been signed that we have been unable to locate. Moreover, it is also possible that the sample of BLAs we have been able to locate is not representative of the full universe of BLAs. For instance, we may have been more likely to find certain kinds of BLAs, BLAs signed by certain countries, or BLAs signed during certain time periods. Future research is still needed therefore to continue to identify, document, and code international agreements related to the movement of workers. But despite these caveats, our project makes clear that the universe of bilateral labor agreements is more expansive than previously realized.

This Article proceeds as follows. Part II briefly describes BLAs and puts forward several hypotheses as to why data on BLAs has been so hard to collect. Part III explains our data collection efforts. Part IV introduces the three new resources we have created and uses them to present descriptive results on the expanding universe of BLAs. Part V concludes.

Understanding on Labour Migration (2018) [hereinafter *Core Elements of BLAs*]; Piyasiri Wickramasekara, *Good Practices and Provisions in Multilateral and Bilateral Labour Agreements and Memoranda of Understanding* (2018) [hereinafter *Good Practices and Provisions for BLAs*].

13 For access to our data, please visit <https://www.law.uchicago.edu/bilateral-labor-agreements-dataset>.

14 See Cree Jones & Weija Rao, *Sticky BITs*, 61 HARV. INT'L L.J. 357 (2020) (documenting the number of bilateral investment treaties signed over time).

II. BACKGROUND

A. BLA Basics

Bilateral labor agreements are a form of international agreements that are signed by pairs of countries to regulate the flow of workers between them. There is some evidence that the first BLAs were signed in the 19th century, but this form of agreement became common after the end of WWII.¹⁵

There is considerable variation in both the substantive scope of these agreements and the level of detail that they contain. With regard to the substantive scope of the agreements, some establish pathways to move a specific number of a certain kind of workers from one country to another (for instance, an agreement for 1,000 nurses to move from country A to country B), while other agreements set out guidelines to regulate all workers that move between the pair of countries (for instance, an agreement stipulating the protections that all workers from country A will receive while they are working in country B). In regard to their level of detail, some agreements are long, detailed treaties that lay out specific commitments that each of the countries pledges to uphold, while others are short documents that only lay out vague goals.

Given this considerable variation in scope and detail, it is difficult to generalize about the contents of BLAs. That said, there are some common elements that are important features of these agreements.¹⁶ First, BLAs typically will set the requirements that potential migrants must meet to be eligible to move between the countries. For instance, the BLA may establish requirements related to the health, criminal history, or professional qualifications of potential migrants. Second, BLAs typically will include obligations for the source state to facilitate the flow of workers. For instance, the BLA may require the source state to screen workers for their health or criminal history, or it may include a requirement that the source state will willingly repatriate any worker that is expelled from the host state. Third, BLAs typically will regulate the behavior of the migrant workers and their employers. For instance, it may require that the employer not retain the worker's passport. Fourth, the BLA typically will lay out how the treaty will be administered. For instance, it may provide for a series of regular meetings between the signatory countries, or establish a process for the resolution of any disputes that may arise.

B. *The Limited Public Information on BLAs*

Until recently, BLAs have received scant public or academic attention. This is likely, in part, because there has been limited publicly available information on the existence of BLAs. Although more research is needed to understand why BLAs have been overlooked, beyond data availability, our own research suggests that the limited attention to BLAs may be driven by at least five factors.

15 See generally Megiddo, *supra* note 7.

16 See TRACHTMAN, *supra* note 6, at 206-9.

First, there is not an international organization charged with keeping track of these agreements. For other kinds of treaties, there are specific international organizations that at least attempt to track the treaties that have been signed related to the organization's mission. For example, the World Trade Organization keeps track of the preferential trade agreements that its members have signed and the United Nations Conference on Trade and Development keeps track of bilateral investment treaties that have been signed. Due to the efforts of these organizations, there is likely more information on the treaties that have been signed than there otherwise would be. However, no international organization has consistently tracked bilateral legal commitments on international migration.

Second, many countries have a poor record of publicizing or disclosing their international agreements, in general. For example, two major research projects have sought to document the international agreements that have been entered into by the United States. One project by Oona Hathaway, Curt Bradley, and Jack Goldsmith set out to document the "executive agreements" entered into by the President of the United States with other countries.¹⁷ Many of these agreements were previously not public, and these authors were only able to obtain evidence of their existence after Freedom of Information Act lawsuits. In a similar project, Kathleen Claussen set out to document the trade executive agreements—a form of agreement less extensive than a full preferential trade agreement that covers some aspects of international trade—that the United States has agreed to with other countries.¹⁸ Claussen documented how information on many of the agreements was not publicly available. In fact, in some cases, members of the United States Trade Representative's Office had only handwritten copies of the agreements. Although these are just two examples, they are perhaps indicative of the low levels of transparency with respect to many international agreements between countries. As has been noted, given this lack of disclosure, it appears that many countries are failing to live up to their international legal obligations as members of the United Nations to register "[e]very treaty and every international agreement . . . as soon as possible."¹⁹

Third, in addition to neglecting to disclose international agreements generally, many countries may be hesitant to disclose BLAs specifically.²⁰ Immigration is a contentious issue and signing an agreement that facilitates the movement of foreign workers into a given country may not be politically popular with various domestic constituencies. If this is true, BLAs may be even less likely to be publicly disclosed than other agreements.

Fourth, many of the academics that study various kinds of international agreements—like trade treaties, investment treaties, or human rights treaties—

17 Oona A. Hathaway et al., *The Failed Transparency Regime for Executive Agreements: An Empirical and Normative Analysis*, 34 HARV. L. REV. 629 (2020).

18 Kathleen Claussen, *Trade's Mini-Deals*, 62 VA. J. INT'L L. 315 (2022).

19 U.N. Charter art. 102, ¶1. Hathaway et al., *supra* note 17, at 705.

20 See, e.g., Tamar Megiddo, *Obscurity and Nonbindingness in the Regulation of Labor Migration*, 23 THEORETICAL INQUIRES L. 95 (2022); Tijana Lujic & Margret Peters, *Informalization, Obfuscation and Bilateral Labor Agreements*, 23 THEORETICAL INQUIRES L. 113 (2022).

previously worked in professional positions related to those subjects. For instance, law professors that study bilateral investment treaties may have previously worked as lawyers involved in investment disputes. These academics then have gone on to produce data, resources, and information on the subjects they study. Given that there are relatively fewer professional positions related to international cooperation on migration, in either the public or private sector, it is perhaps unsurprising that there has been relatively little research on BLAs.

Finally, it is also possible that BLAs have limited actual importance. That is, if these agreements do little to facilitate the movement of people across borders or have limited effect on the treatment of those workers while they are employed in foreign countries, they may correspondingly receive limited public or academic attention. To date, there has been hardly any research on the effects of BLAs, but the limited research to date has been inconclusive. For instance, Chilton and Posner explored the effect of signing BLAs and did find a positive association with migration, but acknowledge that it appeared as if the trends towards increased migration may have pre-dated signing the BLA.²¹ Additionally, Peters examined the effect of 38 BLAs on migration and found that 13 of these BLAs resulted in an increase in migration of 200% or more, 10 BLAs resulted in an increase in migration of between 20% to 180%, and 15 BLAs resulted in between a 7% increase and a 95% decrease.²² Both of these analyses, however, had a range of qualifications and limitations. Given this limited evidence, it is possible that BLAs may or may not have large effects, but until more is known about them, they are an important subject to study. This is, in part, because facilitating labor migration is perhaps the most promising way to promote economic development.²³

It is also important to note that these factors may interact in various ways. For instance, the reason there is no international organization that tracks these agreements may be that countries are hesitant to disclose their existence. More research is needed, however, to fully understand the reasons why BLAs have not been more publicly disclosed or studied.

III. DATA COLLECTION

As previously noted, in 2017, along with Eric Posner, we released a dataset identifying 582 BLAs that had been signed by pairs of countries. At the time, this was the most extensive set of BLAs that had been documented.

However, two subsequent research projects made us realize that our list of BLAs was under-inclusive. Notably, Peters released a dataset that coded the existence of 779 BLAs, which was strong evidence that there might be hundreds of BLAs

21 Chilton & Posner, *supra* note 11, at S77-S80.

22 Peters, *supra* note 11, at 292.

23 See, e.g., Michael A. Clemens et al., *The Place Premium: Bounding the Price Equivalent of Migrating Barriers*, 101 REV. ECON. STAT. 201 (2019); Jess Benhabib & Boyan Jovanovic, *Optimal Migration: A World Perspective*, 53 INT'L ECON. REV. 321 (2012).

that we initially had not found. Additionally, we began work on a project on the Philippines' BLA program, and through that process we learned that the Philippines had signed at least 68 BLAs. This number was higher than the Philippine BLAs we had previously been able to identify, and higher even than the number of BLAs disclosed on the Philippine government websites.²⁴ We thus set out to redouble our efforts to document the universe of BLAs.

A. Defining BLAs

Collecting data on BLAs requires defining exactly what kind of agreements count as a bilateral labor agreement. For our data collection efforts, we define a BLA as any agreement between two countries that is focused on regulating the flow of workers between those countries.²⁵ This definition is purposefully broad in order to allow us to examine different channels through which cross-border employment and international labor migration occur. Thus, agreements on the recruitment of seasonal Mexican agricultural workers in the United States, Indian domestic workers in Saudi Arabia, Filipino nurses in the United Kingdom, a working holiday program between Belgium and Canada, and exchange of technicians between Brazil and Switzerland are all counted as BLAs in our dataset.

Within this definition, there are at least six common types of agreements.

1. **Agreements Related to Temporary Contract Work.** This kind of agreement specifically allows for workers from one country to travel to another country to complete a period of employment. For example, in 2016, Cambodia and Saudi Arabia signed an agreement which outlines the terms under which Cambodian workers can be legally employed in Saudi Arabia. This agreement also explicitly states that workers will be repatriated to their home country upon completing the contract.
2. **Agreements Related to Seasonal Work.** This type of agreement is designed to allow workers to visit another country for a few months to work in a position where the demand is seasonal in nature. For example, in 1992, France and Poland signed an agreement governing employment of Polish seasonal workers in France. The terms of the agreement were not limited to a specific industry, but instead set a general framework for cooperation between the two countries for the management of short-term migrant workers.
3. **Agreements Related to Exchanges of Interns/Trainees.** This type of agreement establishes a process for interns or trainees to travel to the other country to gain

24 The new data collection effort we undertook that is described in this Article has also made us realize that our initial data collection efforts may have been over-inclusive. This is because there are treaties in the CPW data and Peters data for which we still have not been able to locate evidence or copies.

25 We consider all agreements, protocols, and annexes signed on the same date by the same country to be a single BLA. In contrast, amendments or additional protocols signed after the date of the original BLA are treated and coded as separate agreements. However, our dataset also includes a variable which allows us to distinguish between those agreements which are new, original BLAs, and those which are amendments or supplementary protocols.

professional work experience. For example, in 1992, Estonia and Sweden signed an agreement that allows for several hundred individuals from each country to be employed in the other country for up to one year. The stated purpose of this agreement is improvement of occupational skills for the workers from a given country.

4. **Agreements Related to Permanent Migration.** This type of agreement allows individuals from the origin country to settle and work in the destination country. Unlike most other BLAs, these agreements foster *permanent* migration to the destination country. For example, in 1956, Australia and the Netherlands signed an agreement which outlines the selection criteria, travel, and employment procedures for Dutch emigrants to Australia. This agreement then allows for the Dutch emigrants to permanently settle in Australia.
5. **Agreements Related to Working-Holidays.** This type of agreement promotes the international exchange of young people. While employment is a secondary goal of those agreements, they often generate meaningful flows of individuals who work in the destination country. For instance, in 2015, Chile and the Czech Republic signed an agreement that allows individuals from each country to visit and work in the other country. However, the agreement states that employment must not be the primary reason for the visit.
6. **Agreements Regulating Travel that Include Worker-Specific Provisions.** These agreements regulate travel between countries generally, but they also contain worker-specific provisions. For example, in 1978, Cameroon and France signed an agreement that lists the requirements that nationals of each country must meet when traveling to the other country. But in addition to containing requirements for other types of travelers, such as tourists and students, it includes a specific set of provisions related to traveling for work in the other country.

Although we intentionally adopted a broad definition of BLAs for this project, there are several kinds of international agreements that in some way mention the travel of workers between countries but that we excluded from our data collection efforts. This is because we believe these to be agreements that have other focuses than facilitating the movement of workers between countries for the purposes of work. More specifically, we excluded the following four kinds of agreements from our data collection efforts.

1. **Agreements Related to the Employment of Diplomats' Family Members.** During data collection, we came across several treaties that regulate the employment of family members of certain diplomats or other foreign civil servants. For instance, in 1987, France and the United States signed an agreement that allowed for a limited number of dependent family members of government employees assigned to the other country's territory to legally work while there. We excluded these agreements from our data collection efforts because they cover relatively small numbers of select individuals and are unlikely to meaningfully impact international migration.

2. **Agreements on Technical Cooperation for Specific Projects.** We also came across a number of international agreements that laid out plans for technical cooperation for specific projects, and these agreements occasionally involve the exchange of a very small number of experts or consultants. For example, in 1977, Spain and Venezuela signed an agreement to establish a teacher-training institute in Venezuela. The agreement provides for 12 Spanish experts to spend 24 months in Venezuela in order to advise on establishing the institute. Similar to agreements on the employment of diplomats' family members, these treaties cover very small numbers of people. We therefore excluded them from our data collection efforts.
3. **Agreements Related to Cooperation on Social Security.** There are a number of agreements that govern the transfer of benefits acquired by workers in the destination country to their origin country. These agreements notably do not provide a channel to increase the number of migrants that travel between the two countries to work. Instead, they simply provide a process whereby the workers that do happen to travel between the two countries can transfer social security benefits. We excluded these agreements from our data collection efforts because they are concerned with public finances and do not regulate which workers are allowed to migrate or the terms and conditions of employment.
4. **Agreements Related to Improving the Protection of International Workers that Do Not Change the Opportunities of Workers to Migrate.** We came across at least one international agreement where two countries pledged to work together to improve the protection of international migrant workers, while not actually themselves in any way encouraging the bilateral movement of migrant workers. Notably, in 2003, Indonesia and the Philippines signed a memorandum of understanding on the rights of migrant workers. As two large source countries of migrant labor, they expressed a desire to learn from each other's experiences in sending workers abroad and cooperate on developing best practices in that area. However, the agreement did not explicitly increase the scope for greater migration flows between Indonesia and the Philippines, aside from an exchange of a very small number of experts. We therefore excluded this kind of agreement from our data collection efforts because it was not concerned with regulating the flow of workers between the two countries, but with discussing best practices for those flows.

B. Collecting Data on BLAs

The goal of our data collection process was to identify every international agreement that meets the above definition of BLAs, obtain a copy of the original agreement, and then code its contents. To do so, our first step was to try to identify the universe of BLAs that have been formed. However, we did not start this new effort from scratch. Rather, we began the data collection effort by combining the 582 BLAs from the CPW

data,²⁶ the 779 BLAs from the Peters data, and the 68 Philippine BLAs we identified as part of our ongoing research into the effect of these agreements. Together, this creates a list of 1,429 BLAs. However, many of these BLAs were signed by the same countries on the same dates, and we therefore treated them as duplicates. We were thus left with a list of 858 unique BLAs. Of those BLAs, from our prior research, we had copies of 382 of them.

We then divided the dataset into batches to be assigned to our research assistants (“RAs”). In order to facilitate RA specialization and minimize redundant effort stemming from multiple RAs’ using the same source, different BLAs involving the same country or countries were grouped into a single batch. For example, all French BLAs with African countries were placed into a batch, all Dutch BLAs were placed into a batch, and so on. Each RA was assigned to batches based on his or her language skills and the anticipated language of BLA sources. For each batch, we then had the RAs go through a three-step process.

First, we asked each RA to review the BLAs in their batch for which we had a copy and confirm that they matched the basic information recorded in the dataset. This included the countries involved and the date of signing. We also asked them to record a few basic facts about the agreement, including whether the copy of the BLA we had was complete, the language of the document, and the type of agreement (i.e., “agreement,” “memorandum of understanding,” “convention,” etc.) as listed in the title.

Second, we asked our RAs to locate copies of BLAs which we did not have, which they had identified as incomplete, or which were in languages other than English. We supplied a list of BLA databases we had used ourselves in the past. Further, we worked with an international law librarian at the University of Chicago Law School to identify more potential sources of missing BLAs. She created a research guide that outlined research techniques and provided a number of potential agreement sources, such as international treaty databases and official government gazettes.²⁷ In addition, we organized training sessions with the librarian and the RAs, during which we went over the process of searching for BLA copies. Additionally, in cases where our RA team could not obtain a copy of the BLA, we asked them to find evidence that it existed beyond just being listed in secondary sources that list treaties. For instance, such evidence may come in the form of another government document or report discussing the existence of the agreement, or a newspaper article announcing its signing. We asked them to save this evidence in cases where they were unable to locate a copy of the treaty.

Third, the RAs were tasked with identifying new BLAs not yet in the database, as they searched for missing copies of existing BLAs. For purposes of this step, we asked the RAs to keep their eyes open whenever searching through the databases

26 Peters, *supra* note 11.

27 We thank Lyonette Louis-Jacques for her work on this project and for creating this resource. The research guide she created can be found at <https://guides.lib.uchicago.edu/BLAResearchGuide> (last visited Feb. 16, 2022).

of BLAs discussed above or visiting the websites of governments that discuss their treaties. Additionally, beyond asking our RAs to seek out additional treaties whenever possible, we regularly communicated with other scholars researching topics related to BLAs, and asked them to share the lists of the agreements that they were studying.

Through this process, we have identified more than 350 additional BLAs and we were able to eliminate a few agreements that were included in those initial datasets by mistake. In total, this has resulted in a list of 1,219 BLAs. Two of those were signed before 1945: between Germany and Poland in 1927, and between Germany and Czechoslovakia in 1928. In addition, we were not able to determine the year of one BLA: an agreement between Ireland and New Zealand.

Of the 1,219 BLAs we identified, for 807 of them we have been able to obtain a copy of the agreement.²⁸ For a further 244 BLAs, we were unable to locate full copies, but found evidence of their existence, consisting of citations in databases, press releases, or mentions in various publications. For the remaining 168 agreements, we only know that the agreements have been included in other databases or discussed in academic research, but we do not have direct evidence of their formation.

C. Coding the Contents of the BLAs

In addition to documenting the existence of BLAs and obtaining copies of them, we also set out to code the contents of the agreements. As previously noted, the scope and details of BLAs vary widely. We therefore did not set out to document every article within every treaty. Instead, we relied on lists of issues that have previously been suggested as topics that model BLAs should include. More specifically, in 2015, the International Labour Organization released a report that outlined a set of provisions that it argued should be included in BLAs.²⁹ That report specifically built on a 1949 ILO Model Agreement on Temporary and Permanent Migration for Employment and other international agreements to document 18 topics that are “good practices” for BLAs to cover. In 2018, the ILO then released three related policy briefs that built on the 2015 report while discussing the set of core topics that should be included in a BLA.³⁰

There are some slight differences across the three 2018 ILO reports on BLAs, but they each outline roughly 20 core topics that they argued should be included in BLAs as standard best practices. These 20 core topics can be grouped into three categories: (1) governance and labor migration; (2) protection and empowerment of migrant workers; and (3) migration and development linkages.³¹ Although we

28 During our research, the most commonly used source for retrieving BLAs was the United Nations Treaty Series (UNTS) database. Individual countries’ law databases, such as Germany’s Federal Law Gazette (the “Bundesgesetzblatt”) and Indonesia’s Ministry of Foreign Affairs’ database, have also proved to be rich sources of agreement copies.

29 See ILO (2015), *supra* note 8.

30 See Wickramasekara, *Assessment Guide for BLAs*, *supra* note 12; Wickramasekara, *Core Elements of BLAs*, *supra* note 12; Wickramasekara, *Good Practices and Provisions for BLAs*, *supra* note 12.

31 See Wickramasekara, *Good Practices and Provisions for BLAs*, *supra* note 12. Given the slight differences across reports, we largely followed the topics and categories from this particular report when developing

made some slight adjustments to the wording of these topics to increase clarity and avoid redundancy, we decided to code the corpus of BLAs we collected for whether they mention each of these 20 topics. Table 1 lists our version of these core topics broken down by category.

It is important to acknowledge that our decision to base our coding instrument on these ILO reports has several notable limitations. Most obviously, these topics are the ones that the ILO believes are most important for BLAs to discuss, but there may be other important topics that organizations focused on issues other than workers' rights may have found important for all BLAs to include. Moreover, these four reports all had the same principal author, Piyasiri Wickramasekara. Although our own understanding from having researched BLAs is that Wickramasekara is a well-regarded, leading expert on BLAs, it is not ideal to elevate the status of a set of best practices developed by one researcher for one organization. That said, our goal in this case was not to engage in the normative project of deciding what BLAs should cover, but to tackle the empirical project of documenting the scope of existing BLAs. We therefore believed the best course of action was to develop a coding instrument based on this prior work published by the ILO; which, to our knowledge, was the most comprehensive effort to outline the elements that BLAs should include.

The coding instrument we developed was a survey that included a separate question page for each of the 20 topics listed in Table 1.³² Each question page began by listing the topic and then providing the exact language the ILO reports used to explain why this topic was important for BLAs to include. To be clear, although we made some edits for clarity and brevity, we directly copied the language that the ILO used in their reports to describe the rationale for why these topics are best practices to discuss in BLAs. The question page then provided several examples (typically two or three) of the language used in actual BLAs that discuss that specific topic. These examples were also drawn from the ILO reports cited above, but in a few cases, we also supplemented the examples the ILO reports used with examples from other BLAs. The question page then finally asked whether the BLA being coded mentions the topic at hand. In some cases, we included notes to clarify exactly what should be "counted" for a given question, and for a handful of topics, we asked more than one question about whether and how that topic was addressed by the BLA. The supplemental appendix for this Article provides a copy of our coding instrument.

our survey instrument.

32 We hosted our survey instrument on Qualtrics. Also, in addition to asking about whether the BLAs mention each of the 20 topics listed in Table 1, we also asked a series of background questions on the agreements. For example, we also asked questions on the number of workers that the BLA mentions that are allowed to migrate under the agreement and whether the agreement would be automatically removed.

Table 1: Best Practice Topics for BLAs to Include Based on ILO Reports

#	Topic
Governance of Labor Migration	
1	References to migrant workers' rights in international instruments
2	Exchange of information between countries
3	Transparency and dissemination of information about BLAs existence
4	Defining clear responsibilities between parties
5	Establishing a joint committee
6*	Regulation of recruitment and recruitment costs
7*	Roles of unions, employers, organizations, and NGOs/civil society groups
Protection and Empowerment of Migrant Workers	
8	Provision of relevant information to migrants
9	Equal treatment and nondiscrimination of migrant workers
10*	Protections for women or other protected groups
11*	Employment contracts
12	Wage protection
13*	Provision and supervision of living conditions
14	Prohibition of confiscation of travel and identity documents
15	Social protection and healthcare benefits
16	Mechanisms for complaints and dispute resolution
Migration and Development	
17	Human resource development and skills improvement
18	Recognition of skills and qualifications
19	Transfer of savings and remittances
20*	Reintegration, circulation, and development

Notes. * = Multiple questions were asked on this topic

For each of these 20 topics, our goal was simply to code whether a given BLA “mentions” the topic. We did so because many BLAs only contain brief mentions of many issues, so we feared that setting a high bar for what counted as discussing a given topic may ignore the considerable variation in BLAs. For instance, for the first topic in Table 1, References to Migrant Workers’ Rights in International Instruments, our survey asked: “Does this BLA mention international instruments—these may be references to specific treaties or international instruments generally—related to the respect of migrants’ or workers’ rights?” The survey did specifically note that “a general reference to human rights or workers’ rights—without alluding to international treaties, agreements, or instruments—does not count as mentioning international instruments.” Importantly, however, we did not specify exactly which specific treaties or international instruments should be referenced, and we also

did not specify how extensive the discussion of these instruments should be in the BLA to count. Some treaties may have had multiple articles recognizing specific workers' rights from specific treaties, while other BLAs may have simply said "both countries recognize the rights of workers from prior international agreements." We would code BLAs that took either of these approaches as including this element.³³

IV. THREE NEW RESOURCES

We now turn to introducing the three new resources we have created through this project. Those resources are (A) a dataset documenting the formation of over 1,200 BLAs; (B) a corpus including the texts of over 800 BLAs; and (C) a dataset coding whether over 500 BLAs mention twenty topics that the ILO has identified as best practices for these agreements. We discuss each of these three new resources in turn.

A. Dataset on the Formation of BLAs

To illustrate our data on BLA formation, we examine the data in three ways: (1) the number of BLAs that have been signed over time; (2) countries that have signed BLAs; and (3) the characteristics of countries and dyads that have signed BLAs.

1. Number of BLAs Signed Over Time

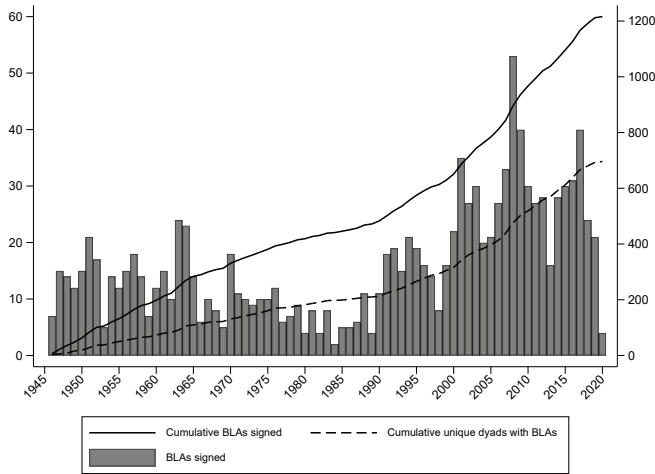
Figure 1 reports the evolution of the total number of BLAs signed over time.³⁴ The pattern in Figure 1 reflects the "three-period" pattern that has been identified by prior research on BLAs.³⁵ The first period of BLA formation was from the end of World War II in 1945 until roughly 1973. The second period of BLA formation extended from 1974, when a global economic slowdown led to less labor demand and fewer BLAs, until the end of the Cold War in 1989. Finally, the third period of BLA formation began when these treaties experienced renewed interest after 1990, when the end of the Cold War led to greater openness to trade and migration. In fact, the last 30 years have been a period of unprecedented BLA activity: 472 BLAs were signed in the 45 years between 1945 and 1989 (about 10.5 per year), but 744 were signed in the 31 years from 1990 to 2020 (24 per year).

33 To code our corpus of BLAs using this survey, we recruited a group of University of Chicago law students that expressed an interest in international law, migration, or human rights. This research team also intentionally included students with relevant language skills. After recruiting the students, we conducted trainings for them where we explained the background to BLAs and our project to document them, showed them examples of different types of BLAs, and walked them through each question of the survey, describing what it was asking and why. The students were then each assigned batches of BLAs to code. The students were also able to ask questions about how to code specific agreements or answer specific questions via email or during team meetings.

34 BLAs often expire after a set number of years, so the data in Figure 1 reflects the number of BLAs that have been signed and not the number of BLAs that are in force in a given year.

35 See Chilton & Posner, *supra* note 11, at 48-50; ILO (2015), *supra* note 8, at 17.

Figure 1: BLAs Signed Over Time



Notes. The y-axis on the left corresponds to the histogram reporting the number of BLAs signed in each specific year. The y-axis on the right corresponds to the lines graphing the cumulative number of BLAs signed over time.

Perhaps most notable is that Figure 1 suggests that the number of new BLAs being signed after the year 2000 has remained high. This trend is different than the rate of new preferential trade agreements being signed after the year 2000, which declined after reaching the high-water mark in the 1990s;³⁶ it also notably different from the rate of new bilateral investment treaties being signed, which also decreased sharply after the 1990s.³⁷ In other words, countries have continued to sign BLAs even after the rate at which other forms of new international agreements are being signed began to decrease.

Figure 1 also reports the number of unique country dyads (i.e., pairs of countries like “France-Algeria” or “Australia-Indonesia”) that have signed a BLA. The number of dyads with a BLA is about half the cumulative number of BLAs in any year, which indicates that many dyads sign multiple BLAs with each other—about two, on average. However, the number of unique dyads with a BLA also increased from 238 in 1989 to 686 in 2020, indicating that many new country pairs signed BLAs. It should be noted that many BLAs are unidirectional—i.e., they only allow for the movement of workers from one country to the other but not vice versa. This is typically the case when the objective of a BLA is to allow for guest workers to flow from a relatively low-income country with a large supply of labor to a high-income country with a scarcity of labor. However, other BLAs—e.g., those involving the exchange of trainees or interns—allow for movement in both directions.

36 Mira Burri & Rodrigo Polanco, *Digital Trade Provisions in Preferential Trade Agreements: Introducing a New Dataset*, 23 J. INT’L ECON. L. 187 (2020).

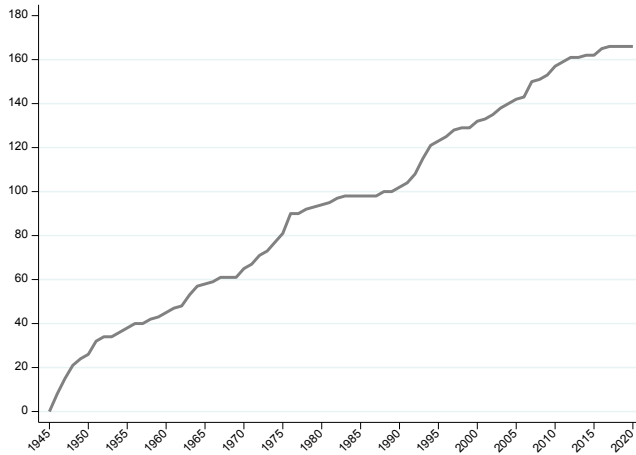
37 See Jones & Rao, *supra* note 14.

2. Countries that Sign BLAs

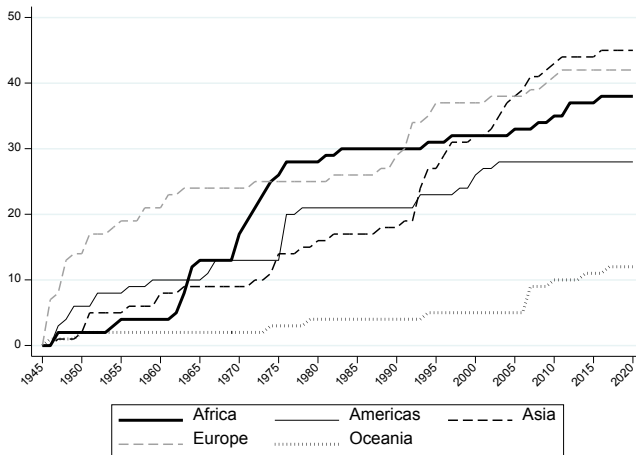
Figure 2 reports data on how many BLAs are signed by country. Panel A of Figure 2 reports the cumulative number of unique countries with at least one BLA over time. After an initial explosion of BLAs in the 1940s, the number of countries with a BLA went from 26 to 81 between 1950 and 1975. The number of new BLA signers then increased quite slowly until 1990, reflecting the fact that new BLAs were mostly signed by countries which had previously signed them, as well as a lower overall number of BLAs. After 1990, and especially in the early 1990s, many new countries signed labor agreements. By 2020, 166 different countries had signed at least one BLA.

Figure 2: Cumulative Number of Countries that Have Signed a BLA

A. Overall



B. By Region



Panel B of Figure 2 breaks down the cumulative number of countries that have signed at least one BLA by region. The early BLA signers were predominantly European countries that needed workers to rebuild after World War II and accommodate their rapidly growing economies. Africa experienced rapid growth in BLAs in the 1960s and early '70s, with primarily North and West African countries signing BLAs with France and other Western European nations. Another notable jump occurred in Europe in the early 1990s, when the Soviet Union's collapse created 15 new countries and allowed Eastern European nations to sign BLAs with their richer Western neighbors to facilitate migration. Finally, many Asian countries signed their first BLAs in the 1990s and 2000s. A large portion of these were signed by developing countries in South and Southeast Asia with the wealthy but labor-scarce Middle Eastern states.

Figure 3 reports the number of BLAs signed by country on a world map. The fewest BLAs have been signed by the relatively low-income countries in sub-Saharan Africa and Central America, as well as the sparsely populated countries of Central Asia. Western Europe, Canada, and Australia have signed the most BLAs. However, based on preliminary analysis, the nature of BLAs signed by Canada and Australia differs from those signed by Western European countries. Canada and Australia have a large number of the so-called "working holiday" agreements which provide a limited number of visas to people below a certain age (usually 30), allowing them to live in the country while working part-time. The primary goal of these agreements is to allow individuals to spend extended holidays in the host country and employment is only incidental. In fact, these agreements typically require applicants to show evidence of sufficient funds to support themselves during their stay.

Figure 3: Total BLAs Signed by Country (as of 2020)

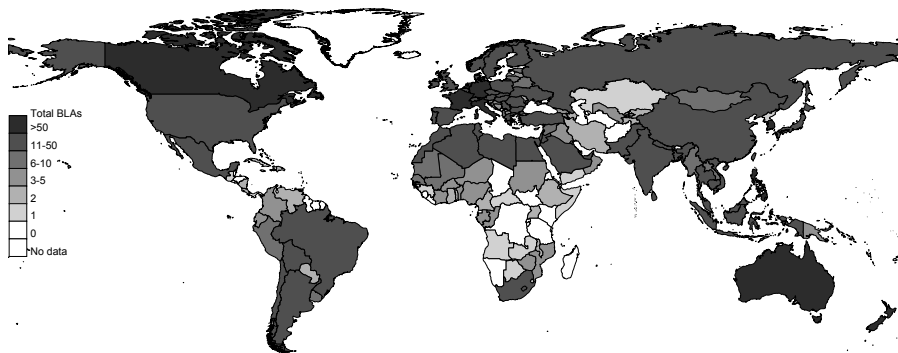
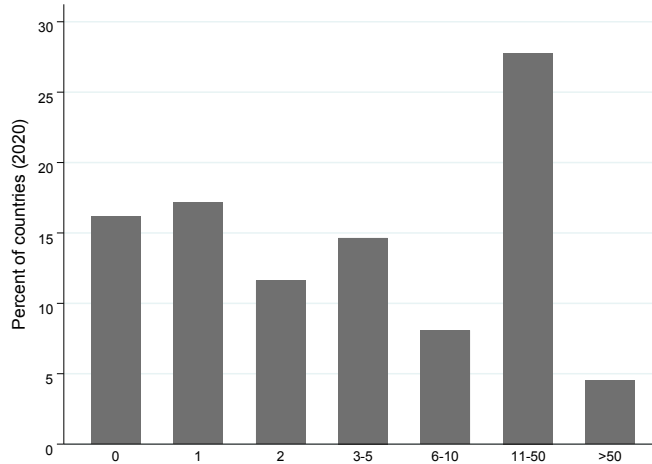


Figure 4 reports the distribution of countries over the cumulative numbers of BLAs they have signed as of 2020. As this data reveals, 16% of countries have never signed a BLA and 17.5% have only ever signed exactly one agreement. About 33% are frequent BLA signers with at least 11 agreements, out of which 5% have signed more than 50. Put another way, the probability of signing at least one BLA in a given

year between 1945 and 2020 is 0.13. That is, the share of country-year observations with at least one BLA is 0.13. However, BLAs are not randomly distributed across countries and years. In fact, signing BLAs is persistent in the sense that countries are more likely to sign a new agreement if they have signed one before. The probability of signing a BLA conditional on having signed another one in the past is 0.19. For countries that have never signed one it is 0.03.

Figure 4: Distribution of countries over number of BLAs (as of 2020)



3. Characteristics of Countries and Dyads That Sign BLAs

In order to analyze the data further, we turned our BLA dataset into a country-year format and a dyad-year format.³⁸ We then merged it with data on several factors that may influence a country's need for labor migration and its likelihood of signing treaties with other countries:

1. GDP, population, and employment from Penn World Tables version 10.0.³⁹
2. Polity2 scores which measure how democratic a country is, obtained from the Center for Systemic Peace.⁴⁰

38 For the country-year format, each widely recognized country in the international state system has an observation for each year (e.g., Albania 1946 is an observation, Albania 1947 is an observation, etc.). For the dyad-year format, each pair of widely recognized countries in the international state system has an observation for each year (e.g., Albania-Zambia 1946 is an observation, Albania-Zambia 1947 is an observation, etc.). For these datasets, we rely on the dataset template from the Correlates of War ("COW") Project, available at <https://correlatesofwar.org/data-sets/state-system-membership>. We use this as a starting point for our datasets because the COW project maintains a list of each widely recognized country that has existed in each year since 1816.

39 Robert C. Feenstra et al., *The Next Generation of the Penn World Table*, 105 AM. ECON. REV. 3150 (2015).

40 MONTY G. MARSHALL ET AL., POLITY IV PROJECT: POLITICAL REGIME CHARACTERISTICS AND TRANSITIONS 1800-2000 (2011).

3. International trade flows from the IMF's Direction of Trade Statistics and the Correlates of War Trade Data.⁴¹
4. Numbers of deaths in armed conflicts from the Uppsala Conflict Data Program.⁴²
5. Geographic distances for the country-pairs in the dyad-level data with data from the CEPII.⁴³

Using the data described above, we also explored the country and dyad characteristics of countries that had signed BLAs.⁴⁴ Table 2 presents a comparison between countries and dyads which had signed a BLA within the previous 10 years (columns 1-4) and those that had not (columns 5-8). Panel A shows country-level characteristics and Panel B dyad-level ones. Figure 5 reports the same information graphically by showing the standardized differences for the countries, or dyads, that signed a BLA within the previous 10 years to those that did not.⁴⁵

41 Katherine Barbieri & Omar M.G. Keshk, *Trade Data Set Codebook, Version 4.0*, CORRELATES OF WAR PROJECT (2016), <https://correlatesofwar.org/data-sets/bilateral-trade>; Katherine Barbieri et al., *Trading Data: Evaluating Our Assumptions and Coding Rules*, 26 CONFLICT MGMT. & PEACE SCI. 471 (2016).

42 Therese Pettersson & Magnus Öberg, *Organized Violence, 1989-2019*, 57 J. PEACE RES. 597 (2020); Ralph Sundberg & Erik Melander, *Introducing the UCDP Georeferenced Event Dataset*, 50 J. PEACE RES. 523 (2013). Armed conflicts might make it more difficult to maintain institutions required to ensure smooth implementation of BLAs. In some cases, they may also change the demand for and supply of workers in the country afflicted by a conflict.

43 Keith Head et al., *The Erosion of Colonial Trade Linkages After Independence*, 81 J. INT'L ECON. 1 (2010).

44 For a more in-depth exploration of the determinants of signing a BLA, see Chilton & Posner, *supra* note 11; Peters, *supra* note 11.

45 These are differences in mean outcomes between the countries with and without BLAs, standardized by a parameter which depends on the standard deviations of the outcomes in the two groups. Specifically,

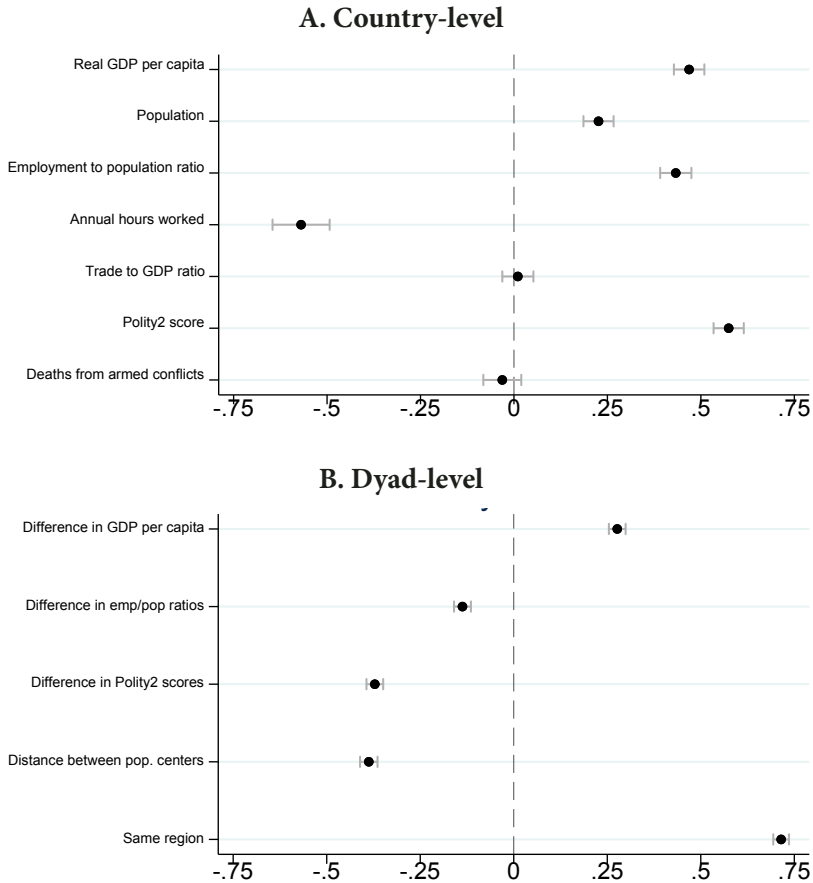
we report *Cohen's d*, which is equal to $\frac{(\bar{x}_Y - \bar{x}_N)}{\sqrt{\frac{(n_Y - 1)s_Y^2 + (n_N - 1)s_N^2}{n_Y + n_N - 2}}}$, where, \bar{x}_Y and \bar{x}_N are the mean outcomes in the two groups, s_Y^2 and s_N^2 are the variances, and n_Y and n_N are the sample sizes.

Table 2: Country and Dyad Characteristics

	Signed a BLA in the past 10 years				Did not sign a BLA in the past 10 years			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Mean	SD	10 pct	90th pct	Mean	SD	10 pct	90th pct
A: Country-level								
Real GDP per capita	16753	19140	1933	40054	8584	15646	1052	20674
Population (millions)	48	148	1.6	82	20	86	0.28	32
Employment to population ratio	0.40	0.09	0.28	0.51	0.37	0.08	0.27	0.47
Annual hours worked	1945	263	1617	2266	2101	306	1668	2486
Trade to GDP ratio	0.64	1.4	0.19	1	0.63	1.3	0.18	0.96
Polity2 score	3.1	7.5	-8	10	-1	6.8	-9	9
Deaths from armed conflicts	312	2735	0	243	537	9743	0	538
N	5196				6477			
B: Dyad-level								
Difference in GDP per capita	20445	23676	2132	41009	14799	20368	894	35200
Different in emp/pop ratios	0.09	0.08	0.01	0.19	0.10	0.07	0.02	0.20
Difference in Polity2 scores	5.3	6.4	0	17	7.7	6.3	1	17
Distance between pop. centers	6484	3777	1895	11901	8246	4553	2258	14604
Same region	0.53	0.5	0	1	0.23	0.42	0	1
N	8758				949947			

Notes. Panel A presents country-level characteristics and Panel B dyad-level characteristics. Columns (1)-(4) summarize the listed variables for countries or dyads which signed at least 1 BLA within the past 10 years and columns (5)-(8) for those without a BLA in the past 10 years.

Figure 5: Country and Dyad Characteristics of BLA Signers
(in standardized differences)



The results in Figure 5 reveal that, on average, BLA-signing countries have a higher GDP per capita and larger population than non-BLA-signing ones. This is consistent with Peters, who finds that the probability of signing a BLA increases with (1) higher productivity (positively correlated with GDP per capita) in the receiving country, and (2) the size of both receiving and sending countries, as measured by their overall GDP levels.⁴⁶ In our data, BLA signers have higher employment to population ratios, consistent with the idea that labor-constrained host countries are more likely to engage in BLAs. At the same time, BLA signers have lower average annual hours worked, possibly reflecting underemployment in BLA source countries. Interestingly, both groups of countries have similar trade to GDP ratios, which have been used in the literature to measure openness to trade. Finally, BLA signers tend

46 Peters, *supra* note 11.

to be more democratic and less likely to suffer deaths from armed conflicts than BLA non-signers.

At the dyad-level, there were 19,680 country dyads in 2020, out of which 686 have signed a BLA at some point.⁴⁷ Signing BLAs is similarly persistent at the dyad-level: the probability of a dyad's signing a new BLA conditional on having signed one in the past is 0.022 but less than 0.001 conditional on not having signed one before. Also, BLA-signing dyads have a greater disparity in GDP per capita, which may be because, empirically, labor tends to flow from relatively poor countries to relatively rich ones. In addition, dyads with BLAs that are closer in terms of their political systems, as indicated by the difference in their Polity2 scores, are more likely to have signed BLAs. They also have larger gaps in employment to population ratios, are closer geographically, and much more likely to include countries from the same geographic region. That said, the results in Figure 1 suggest that more BLAs have been signed over time, so it is possible that these patterns in the countries and dyads that sign are in part simply driven by time trends (e.g., if there are changes in the relative wealth of countries over time and more countries sign BLAs in later years, looking at the raw data may suggest patterns in the formation of BLAs that are spurious).

We are also use our new data to re-examine theories about the determinants of signing BLAs. Specifically, Chilton and Posner argue that the conventional wisdom on BLAs is that they are signed by dyads where the host state is relatively wealthy as compared to the source state (which would suggest promising economic opportunities for labor migrants), and where the host state is relatively less concerned with the protection of rights as compared to the source state (which would suggest possible migration channels where the source state would take steps to protect its citizens).⁴⁸ In contrast to this conventional wisdom, Chilton and Posner argue that this account of why BLAs are signed accurately describes the BLAs signed with countries in the Middle East, but does not account for the full set of agreements that have been formed. They found strong support for these claims in their dataset of 582 BLAs, but it is possible that their theory was a product of their more limited universe of BLAs.

We thus decided to reexamine Chilton and Posner's results with our more extensive data on the formation of 1,219 BLAs. For this analysis, we directly replicate the variables, data structure, and regression specification used by Chilton and Posner. More specifically, we focus on the role of three specific variables in predicting the formation of BLAs: *GDP Per Capita Ratio*, *Higher Source Polity Score*, and *Middle Eastern Host*. For *GDP Per Capita Ratio*, we calculated the ratio of GDP per capita between dyads as the log of the host countries' GDP per capita divided by the log of the source countries' GDP per capita. For this variable, higher values indicate that the host state is relatively wealthier than the source state in a given dyad. For *Higher Source Polity Score*, we coded an indicator variable for dyads for whether the

47 In total, 696 dyads have ever signed a BLA, but 10 of them no longer existed in 2020 because they involved countries such as East Germany and Czechoslovakia.

48 Chilton & Posner, *supra* note 11.

source state had a higher Polity2 score in a given year as compared to the host state in a given dyad. For this variable, being coded as one suggests that the source state is more democratic than the host state. Finally, for *Middle Eastern Host*, we coded an indicator variable for potential host countries in the Middle East.⁴⁹ For all three variables, we follow Chilton and Posner's approach of defining host states as the country in a given dyad that has the higher GDP per capita in the first year in which data on GDP per capita for both countries are available. We adopt this approach because in many BLAs, it is not clearly specified who the host is. However, migrant labor generally flows from poorer countries to richer ones, so defining the host as the country with the higher GDP per capita is intuitively appealing. We chose to focus on the first year of data because GDP differences tend to be persistent and because adopting a separate definition of a host country for each year would make the interpretation of results substantially more complicated.

For the data structure, we use a version of our dataset where the unit of observation is the dyad-year. That is, there is a separate observation in the data for each pair of countries in the dataset in each year of the dataset (e.g., Albania-Zambia 1946, Albania-Zambia 1947, and Albania-Zambia 1948 are all separate observations). The dependent variable is coded as one if a dyad signs a BLA in a given year. Since we are estimating the "onset" of signing a BLA, a dyad drops out of the dataset after it signs the first BLA. We then model the onset of BLAs using logit models⁵⁰ that include the variables time, time², and time³—with time measured as "Year-1946."⁵¹ The advantage of this approach is that it can account for the possibility that observations are temporally dependent, but it produces logit coefficients, which are more familiar than the results produced by survival models. We also clustered the standard errors by dyad in order to account for autocorrelation and heteroskedasticity.⁵²

Table 3 reports the results of this exercise. Panel A reproduces the results reported in the main table of Chilton and Posner⁵³ and Panel B reports the results from running this analysis while using our new dataset on BLA formation. Importantly, the direction, size of effects, and levels of significance are largely similar. In other words, using this new dataset, our results are consistent with the claim in Chilton

49 We specifically code the following countries as being "Middle Eastern" hosts: Bahrain, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Palestine, Qatar, Saudi Arabia, Syria, Turkey, the United Arab Emirates, and Yemen.

50 Logit models are frequently used to estimate a regression where the dependent variable is binary (i.e., it is coded as a 0 or 1). They offer certain advantages over linear models in this context, most notably that predicted values do not fall outside the unit interval.

51 Chilton & Posner, *supra* note 11, adopted this approach following Carte & Signorino (2010): see David B. Carter & Curtis S. Signorino, *Back to the Future: Modeling Time Dependence in Binary Data*, 18 POL. ANAL. 271 (2010). This approach has also been used in other international law scholarship. See, e.g., Pierre-Hugues Verdier & Erik Voeten, *How Does Customary International Law Change? The Case of State Immunity*, 59 INT'L STUD. Q. 209 (2015); Adam S. Chilton, *The Political Motivations of the United States' Bilateral Investment Treaty Program*, 23 REV. INT'L POL. ECON. 614 (2016).

52 Autocorrelation and heteroskedasticity are violations of the assumption that observations are independent and identically distributed, and they are frequently encountered in the type of panel data we are using. Not correcting for them leads to invalid inference about the statistical significance of the estimated coefficients.

53 See Table 3 in Chilton & Posner, *supra* note 11, at S67.

and Posner that the conventional explanation for the formation of BLAs—i.e., that they are formed when host countries are relatively rich and when source countries are relatively democratic—may only describe agreements reached with host countries in the Middle East. This is not entirely surprising, however, given that Chilton and Posner used a subset of the dataset introduced in this paper.

Table 3: Regressions Estimating the Onset of Initial BLAs

	(1)	(2)	(3)	(4)	(5)	(6)
A. Results from Chilton & Posner (2017)						
GDP Per Capita Ratio (host/source)	-1.198*** (0.286)		-1.428*** (0.318)	-2.206*** (0.278)		-2.800*** (0.292)
Higher Source Polity Score		-0.429*** (0.120)	-0.455*** (0.131)		-0.952*** (0.170)	-1.129*** (0.174)
GDP Per Capita Ratio x Middle East Host				4.416*** (0.580)		4.500*** (0.568)
Higher Source Polity Score x Middle East Host					2.117*** (0.443)	2.188*** (0.438)
Middle East Host				-4.850*** (0.733)	-0.895** (0.384)	-6.049*** (0.850)
Observations	775,181	635,376	605,231	775,181	635,376	605,231
B. Results with New BLA Data						
GDP Per Capita Ratio (host/source)	-0.861*** (0.237)		-1.108*** (0.269)	-1.961*** (0.233)		-2.710*** (0.257)
Higher Source Polity Score		-0.388*** (0.099)	-0.441*** (0.110)		-1.101*** (0.159)	-1.342*** (0.163)
GDP Per Capita Ratio x Middle East Host				4.352*** (0.481)		4.612*** (0.501)
Higher Source Polity Score x Middle East Host					1.667*** (0.310)	1.783*** (0.310)
Middle East Host				-4.565*** (0.600)	-0.150 (0.242)	-5.417*** (0.671)
Observations	682,245	670,364	542,830	682,245	670,364	542,830

Notes. Unit of observation is the dyad-year. Logit regressions with dependent variable coded as 1 if dyad signs first BLA in given year. Dyads are dropped from the dataset after the first year coded as 1. Robust standard errors clustered by dyad in parentheses. All regressions include Time, Time², and Time³ (Time is measured as Year-1946). *** p<0.01, ** p<0.05, * p<0.1.

B. Corpus of BLAs

In addition to creating a dataset that codes the existence of BLAs, our goal was to obtain copies of as many agreements as possible. In cases where our research team was unable to find a copy of the agreement, we alternatively tried to find and save “evidence” that the BLA existed. That is, in cases where we could not obtain a copy of the agreement, we tried to obtain copies of some documentation that the BLA had been signed.

Figure 6 reports the share of BLAs for which we have copies or evidence across different time periods. Each dark bar represents the percentage of BLAs signed in the time period on the x-axis for which we have a full copy. Thus, we were able to locate copies of about 70% of BLAs signed in the period from 2006 to 2015, but less than 50% for the period from 1966 to 1975. However, for even older periods, we were still able to locate over 60% of copies. This likely reflects the fact that BLAs in the 1940s and ‘50s were signed primarily by Western European countries, such as France and Italy, which has made those documents relatively easy to access. The light bars indicate the share of BLAs for which we have some evidence, either in the form of a full copy or a citation. We have evidence for 100% of the BLAs signed after 2015 because these BLAs were not previously in any of the BLA datasets; rather, they are entirely new BLAs uncovered by our RAs.

Figure 6: Shares of BLAs with Copies or Evidence (by Time Period)

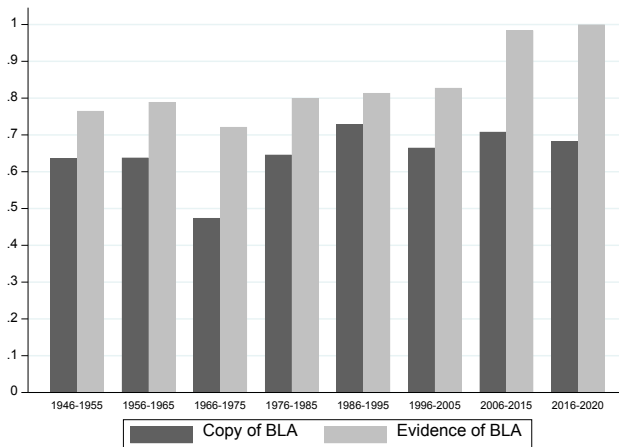
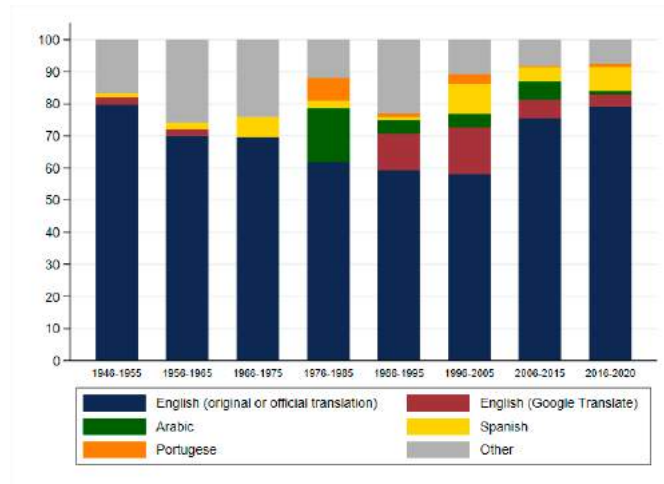


Figure 7 reports the breakdown of the BLAs for which we have copies by language. For approximately 70% of our copies, we were able to obtain an official English copy. For another 6.3%, we were able to translate a non-English copy into English, using Google Translate. For our coding project, we were able to hire fluent or native speakers of Arabic, Spanish, and Portuguese: nearly 10% of our copies are in one of those languages. The other most common languages are French and German.

Figure 7: Copies of BLAs by Language (by Time Period)



The results in Figures 6 and 7 help to illustrate the BLAs in our corpus, but they do little to illustrate how the corpus can actually be used in future research. This corpus is intended to serve as a resource which will allow researchers to actually read and evaluate the text of individual BLAs. This will make it possible to study a range of topics about BLAs, including the provisions included in these agreements, as well as the way they are written, and their level of specificity. Researchers will also be able to code the contents of BLAs for provisions beyond what we have done as part of our own coding efforts, which are described in Part III.C.

C. DATASET ON THE CONTENTS OF BLAS

Our research team has coded the contents of BLAs for whether they included the topics listed in Table 1 using the survey instrument and process described in Part III.C. At the time of publication of this article, we have completed the coding of 571 BLAs.

To explore our data on the contents of BLAs, Figure 8 begins by reporting the number of BLAs that we have coded by the year that the agreement was signed. As the figure shows, the share of BLAs that we were able to contain copies of and code was fairly flat for agreements signed roughly between the years 1945 and 2000. After 2000, however, we were able to successfully code a larger number of agreements. This reflects both the fact that agreements signed since the internet age are easier to find—we have 70% of BLAs signed after 2000 but only 63% of those signed before 2000—and the increase in the number of BLAs signed over time.

Figure 8: Number of BLAs Coded for their Content (by Year)

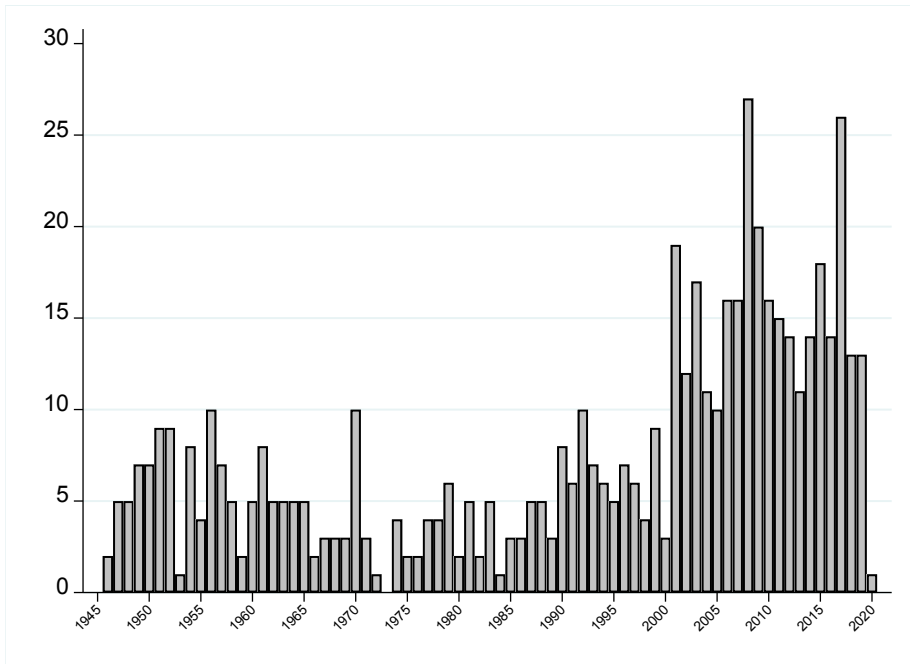
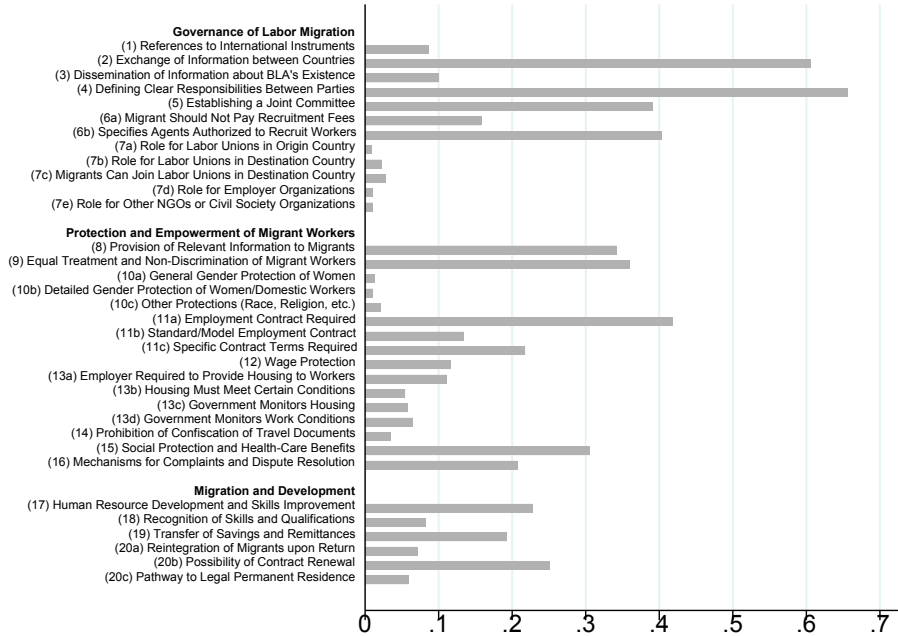


Figure 9 further explores the data by plotting the share of the agreements we coded that include each of the 20 core topics introduced in Table 1. Of these topics, only two were mentioned in a majority of the agreements: exchange of relevant information between countries and defining clear responsibilities between parties. These two topics were mentioned in 60.4% and 65.5% of BLAs, respectively. Most of the 20 topics we coded, however, were only mentioned in a relatively small fraction of the agreements. For instance, less than 10% of the agreements discuss specific protections for women and the right of migrants to keep their passport, which is perhaps noteworthy given that both of these issues have been priorities of migrant rights activists.

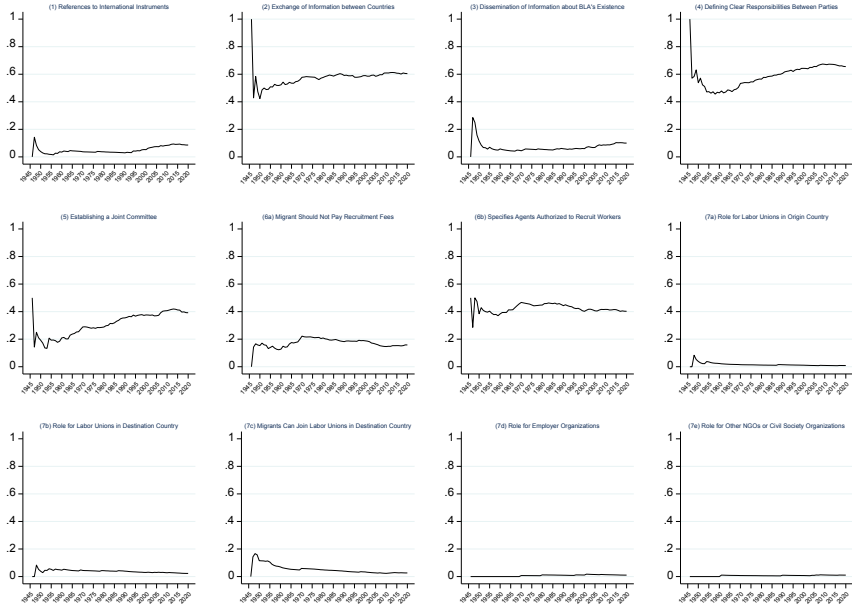
Figure 9: Share of BLAs that Mention Each Topic



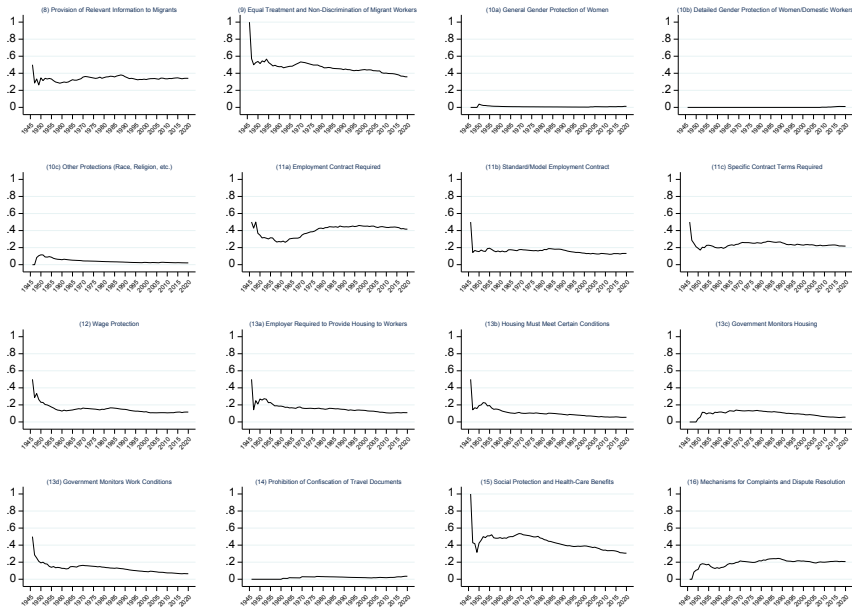
That said, we coded agreements signed over a 75-year period, but many of the topics we were coding for may have only recently been pushed as best practices to be included in BLAs. In other words, some of these topics may not have been mentioned in many BLAs overall, but still have been mentioned more frequently in later years. Given this possibility, to explore whether there are time trends in the coverage of these topics, Figure 10 reports the cumulative share of coded BLAs over time that include each of these provisions.

Figure 10: Share of BLAs that Mention Each Topic

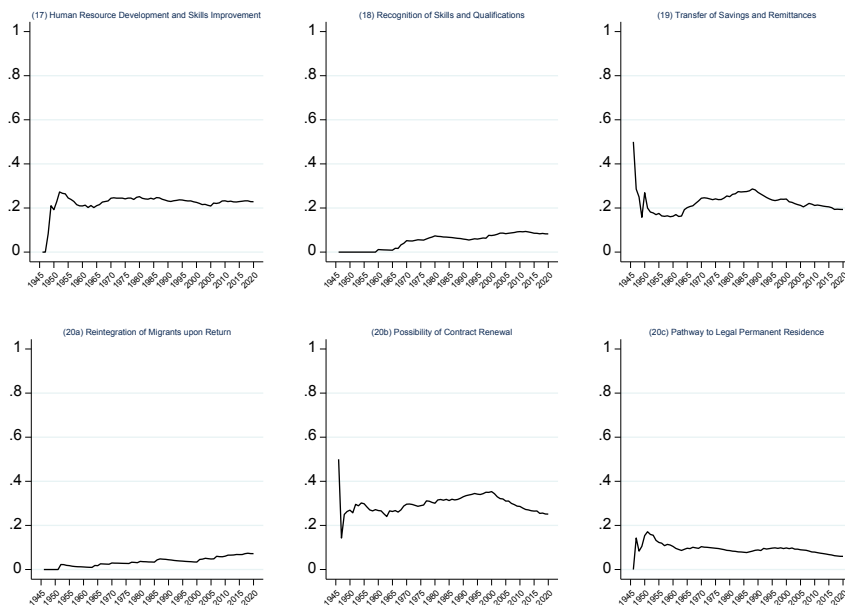
A. Governance of Labor Migration



B. Protection and Empowerment of Migrant Workers



C. Migration and Development



Panel A of Figure 10 reports the share of BLAs that mention topics related to the governance of labor migration. For this category of topics, one notable trend is the increase in the share of BLAs that provide for the creation of a joint committee between the two parties to the treaty to implement the agreement, from about 20% to 40%. Additionally, another noteworthy trend is that the share of BLAs that mention a role for labor unions and other civil society organizations has been consistently low through all years. Finally, in spite of well-known problems with unethical recruitment of migrant workers, the share of BLAs which say that migrants should not be charged recruitment fees has hovered around 20% and, if anything, has declined in recent years. Similarly, only about 40% of agreements specify who should conduct recruitment.

Panel B of Figure 10 reports the share of BLAs that mention topics related to the protection and empowerment of migrant workers. The results reported in this figure suggest that many provisions identified as best practices to protect workers have actually become less common in BLAs over time, likely due to a shift in the composition of BLA-signing countries. For instance, the share of BLAs that mention the provision of social/health insurance has gradually decreased over time from over 50% to about 30%, and the share of BLAs that mention standards for housing for workers has gradually decreased over time from 15% to 5%. Additionally, the inclusion of a clause about equal treatment of migrant and native workers has also become less common: from nearly 50% of BLAs signed before 1960 to just over

20% of those signed after 2010. Specific protections for female workers and other vulnerable groups are almost nonexistent in our data.

Panel C of Figure 10 reports the share of BLAs that mention topics related to migration and development. As these results reveal, the share of BLAs that mention these provisions has remained lower than roughly 20% over time. In fact, measures encouraging longer-term migration, such as a possibility of contract renewal and a pathway to permanent residence, have become less frequent. A few of the provisions—like provisions related to the reintegration of migrants into their home country—have become more common over time, but the share of agreements that include these provisions is still very low in an absolute sense. This suggests that although scholars, activists, and international organizations have argued that BLAs can be designed in a way to use labor migration to promote development in the sending states, relatively few BLAs have incorporated these ideas.

It is important to note that we have only been able to code roughly half the BLAs that our dataset on the formation of these agreements suggests exist. This has been due to difficulties obtaining copies of agreements and finding research assistants with the required language skills to code the agreements. And, of course, it is quite likely that there are many other agreements that we simply have not been able to identify. As a result, it is possible that the patterns we report in Figures 9 and 10 may not reflect the true universe of BLAs that have been signed.

CONCLUSION

The gains from reducing barriers to migration from poor countries to rich countries represent a potentially substantial increase in world GDP.⁵⁴ Finding ways to encourage developed countries to bring down these barriers thus represents one of the most promising paths to promote world development.⁵⁵ Until now, however, very little research has explored whether the increasing use of bilateral labor agreements offers a promising way to encourage safe, legal, and fair labor migration. This discrepancy is in part due to the need for better data on the BLAs that countries have signed.

This Article introduced three new resources that we hope will be used by scholars interested in studying bilateral labor agreements. Our dataset on the formation of BLAs includes information on over 1,200 agreements—hundreds more than have been identified by prior research; our corpus of the texts of BLAs includes copies of over 800 agreements; and our dataset coding the contents of BLAs has detailed data on whether over 500 agreements include the provisions the ILO has identified as best practices to incorporate into these agreements.

We used this data to show two new descriptive facts about BLAs. First, using our dataset on the formation of BLAs, we report data suggesting that, unlike some other forms of bilateral agreements, the rate of BLAs being signed has remained

54 See, e.g., Michael Clemens, *Economics and Emigration: Trillion-Dollar Bills on the Sidewalk?*, 25 J. ECON. PERSPECTIVES 83 (2011).

55 See Clemens et al., *supra* note 23; Benhabib & Jovanovic, *supra* note 23.

relatively high during the first two decades of the twenty-first century. Notably, our data suggests that there were roughly as many BLAs signed between 2000 and 2000 as there were in the entire second half of the twentieth century. Second, using our dataset coding the contents of BLAs, we report new evidence that relatively few agreements include various worker protections advocated for by activists, scholars, and NGOs. For instance, in the sample of BLAs we have coded, less than 10% include specific provisions discussing protections for women or providing migrant workers the right to keep their passport. Taken together, these facts suggest that BLAs have continued to be used, but they have not included many of the provisions intended to protect the rights of workers that activists and scholars have been advocating.

The analysis we reported in this Article only scratches the surface of the trends that can be explored in this data. Instead of trying to fully document the evolution in the formation and contents of BLAs, we have simply tried to illustrate the scope of the resources that we have assembled. We hope that other researchers will use these resources to explore topics including the history of BLAs, why they were formed, their contents, and their potential for facilitating labor migration.

SUPPLEMENTAL APPENDIX: SURVEY INSTRUMENT

Below is a copy of the survey instrument we used to code the contents of BLAs. Our goal was to document whether individual BLAs included the topics identified by the ILO as best practices. We therefore directly used language from the BLA reports we built on to provide the rationale of each of the 20 topics.⁵⁶ We also included many examples of BLAs that included those topics from the ILO reports. Thus, we are deeply indebted to the research, writing, and work of Piyasiri Wickramasekara and the International Labour Organization.

BLA Coding Project

Our goal is to code the contents of bilateral labor agreements (“BLAs”). We specifically are coding whether the text of individual BLAs addresses specific topics that have been recommended by the International Labour Organization as “good practices” for all BLAs to include.

Please attempt to answer each question as either yes or no. We know that it may be ambiguous whether certain treaties address certain topics, but please use your best judgment to decide whether the BLA can fairly be said to include a provision, article, or discussion, or mention of a specific topic.

A few notes about the survey:

- We typically ask whether the BLA “mentions” a given topic. This is because we want to know if the issue is discussed at all, and do not want to require there be an independent article on the topic.
- BLAs, and international treaties generally, often only use noncommittal language. For instance, instead of saying that the parties “are required” to take a certain action, it will say things like “will endeavor to” take a certain action or “recognize the importance of” a certain issue. We want to code BLAs as including provisions even if they are only discussed in this kind of noncommittal way.
- We occasionally refer to the country of origin (COO) and the country of destination (COD). The COO is where the migrant worker is originally from, and the COD is where the migrant worker is going to work.
- We typically call the people who are moving between countries “migrants,” but the BLAs may refer to them as laborers, workers, etc.

56 See Piyasiri Wickramasekara (former Senior Migration Specialist, International Labour Organization), *Assessment Guide for Bilateral Agreements and Memoranda of Understanding on Labour Migration, with a Special Focus on Bangladesh* (2018) [hereinafter Wickramasekara, 2018a]; Piyasiri Wickramasekara (former Senior Migration Specialist, International Labour Organization), *Core Elements of a Bilateral Agreement or a Memorandum of Understanding on Labour Migration*, (2018) [hereinafter Wickramasekara, 2018b]; Piyasiri Wickramasekara (former Senior Migration Specialist, International Labour Organization), *Good Practices and Provisions in Multilateral and Bilateral Labour Agreements and Memoranda of Understanding* (2018) [hereinafter Wickramasekara, 2018c].

If you have questions, please email them to: adamchilton@uchicago.edu and woda@uchicago.edu.

Adam Chilton & Bartek Woda

Background Questions

What is your name? Please type as first initial and last name (e.g., “A. Chilton”).

What is the ID number of the BLA you are coding?

▼ ID1 ... ID1500

In the file name, what is the name of the FIRST country listed as part of the BLA?

▼ Afghanistan ... Zimbabwe

In the file name, what is the name of the SECOND country listed as part of the BLA?

▼ Afghanistan ... Zimbabwe

In the file name, what is the year that the BLA was signed?

▼ 1900 ... 2021

What is the exact title of the BLA?

Notes:

- (1) *We are not looking for the file name; we want the title of the actual agreement (e.g., “Memorandum of Understanding Between the Government of Nepal and the Government of the Republic of Mauritius on the Recruitment and Employment of Workers from Nepal”).*
- (2) *Some of the PDFs we have collected are from country gazettes / official registers of documents. In these cases, we do not want the title of the gazette entry, we want the title of the agreement itself (see BLA “ID587” as an example of a gazette).*
- (3) *Write the title in English (even if you are working from a BLA in another language).*
- (4) *You are allowed to make reasonable abbreviations to especially long titles.*
- (5) *Even if it is included at the end of the title, language like “Signed on January 1, 2010” can be excluded. What is the original language of the BLA you are coding?*

What is the original language of the BLA you are coding?

Notes:

- (1) If you are working from a version we did not translate using Google Translate, select the language in the document that you are using to code it.
- (2) If you are working from a version we translated using Google Translate, list the language we translated from. If you are unaware what language we translate the treaty from, select the most “common” language among the official languages of the treaty.

▼ English ... Other

Are you coding the BLA from its original language or a version we translated (e.g., we said it was translated using Google Translate)?

- Original language
- Translation

Duration of the BLA

We’re going to ask a few questions about the duration of the BLA.

Does the BLA automatically renew?

- Yes
- No

How long is the BLA valid for?

- The BLA is valid for a specified number of years
- The BLA is valid until terminated
- The BLA does not mention when it terminates
- Other _____

Duration of the BLA

You just said the “BLA terminates after a specified number of years.” How many years is the specified number of years before termination?



Reference to Prior Agreements

Is this agreement a protocol/amendment modifying a previously signed BLA?

- Yes
 No
-

Does the BLA specifically reference a prior BLA that the two countries have signed?

- No prior BLA
 One prior BLA
 More than one prior BLA
-

Does the BLA state that it **fully replaces** a previously signed BLA?

- Yes
 No

Migration Quotas

Does the BLA specify a quota for the number of migrants that will be allowed to enter the country of destination under this agreement?

- Yes
 No
-

If yes, what is the size of the quota per year?

Notes:

- (1) *Please enter a single number without commas, e.g., “500,” “10000” or “200000.”*
- (2) *If the agreement specifies a quota for workers going in each direction (e.g., 3000 workers can go from country A to country B, and 1000 workers can go from country B to country A), add the totals together.*
- (3) *If the quota is not expressed on an annual basis, please note in the box like as follows: “5000, does not specify if annual.”*

Governance of Labor Migration

The next 7 topics cover the inclusion of provisions related to the governance and administration of the agreement.

Start of Block: Topic 1

Topic #1

Evidence of respect for migrant workers' rights based on international instruments

Rationale

“International instruments constitute a solid normative foundation for drawing up bilateral labour agreements. These cover UN universal human rights instruments, core ILO Conventions, migrant worker specific instruments, and all other labour standards. These have been explained in a separate complementary report on assessment criteria. The reference to instruments highlights the respect of the two signatory parties for international norms on good migration governance and protection of migrant workers. Some agreements refer to instruments that have been ratified by both parties. There are also international or regional instruments and frameworks related to migration and migrant workers that can be cited as relevant.”⁵⁷

Examples

Nepal–Jordan, 2017

*Recognizing the international commitments of both parties on human rights and labor rights, in particular the **Universal Declaration of Human Rights** and the **International Covenant on Civil and Political Rights**, the **International Covenant on Economic, Social and Cultural Rights** and the **international instruments on the rights and welfare of labor***

Colombia–Peru, 2012

*Encouraged by the objective that Colombian workers who arrive in Peru and the Peruvian workers who arrive in Colombia effectively enjoy the rights recognized by the **international instruments** to which both states are parties.*

Question

Does this BLA mention international instruments -- these may be references to specific treaties or international instruments generally -- related to the respect of migrants' or workers' rights?

57 Wickramasekara, 2018c, *supra* note 56, at 16.

Note: a general reference to human rights or workers' rights -- without alluding to international treaties, agreements, or instruments -- does not count as mentioning international instruments.

Yes

No

End of Block: Topic 1

Start of Block: Topic 2

Topic #2

Exchange of relevant information between countries

Rationale

“This good practice refers to exchange of information between the country of origin (COO) and the country of destination (COD) on a regular basis. Article 1 of the 1949 Model Agreement contains detailed provisions relating to this exchange of information: a) legislative and administrative provisions relating to entry, employment, and residence of migrants and of their families (COD) and information relating to emigration (COO); b) the number, the categories, and the occupational qualifications of the migrants desired (COD) and available (COO); c) the conditions of life and work for the migrants relating to remuneration, housing, and living conditions; and d) social security laws and their applicability to migrant workers. The information should also cover arrangements for protection of those not usually covered by labour laws, such as workers in agriculture and domestic work.”⁵⁸

Examples

India–Denmark, 2009

*This memorandum of understanding shall apply to cooperation between the **two countries** concerning the following branches of labor and employment within their national objectives and the relevant laws as may be applicable:*

- (i) Labor market expansion;*
- (ii) Employment facilitation;*
- (iii) Organized entry and orderly migration;*
- (iv) **Exchange of information and cooperation** in introducing best practices for mutual benefit*

Bangladesh–United Arab Emirates, 2011.

*With a view to rendering better service, **the two parties agree to exchange information on skill, technical know-how and training and share their experiences.** The UAE will*

provide Bangladesh with necessary assistance including IT data base system in this respect.

Philippines–Manitoba (Canada), 2010

ART. 7a: LIM [The Department of Labour and Immigration of the Government of Manitoba, Canada] will provide the DOLE specific orientation information that highlights the attributes of living and working in Manitoba including information on workers' rights and benefits under provincial legislation.

Question

Does this BLA mention the exchange of information between the countries that are party to the agreement?

Notes:

- (1) *We are referring here to information shared between two governments and not information shared directly with migrants.*
- (2) *Sharing CVs or job postings between the countries counts as mentioning exchange of information.*
- (3) *Language about exchanging instruments referring to the process of ratifying the treaty DOES NOT COUNT as mentioning exchange of information. This is because we are asking about the sharing of information between countries after the treaty goes into effect.*

Yes

No

End of Block: Topic 2

Start of Block: Topic 3

Topic #3

Transparency and dissemination

Rationale

“The first major step in transparency is to make the text of agreements publicly accessible. It is most important to adequately brief the major stakeholders in migration – workers, employers, recruitment agencies, and NGOs concerned with migrant worker welfare – on the provisions of agreements; how they affect them, their rights, and their obligations; and on the follow up to be undertaken. For the sake of transparency, it is important for the country of origin to make the text of all agreements translated and easily accessible on websites, and also to disseminate them to their migrant workers and employers in destination countries. The pre-departure training programmes should explain and highlight how workers can

benefit from the agreements with the countries they migrate to. A dissemination plan should be included as part of the agreement.”⁵⁹

Examples

Colombia–Spain, 2001

Article 17 refers to “Facilitating the **dissemination** in both countries of timely information about the contents of the Agreement.”

Italy-Egypt, 2011

The Contracting Parties undertake to **disseminate**, on their national territory, the provisions of the present Memorandum

Question

Does this BLA mention the need to disseminate information about the existence of the agreement?

Note: We are specifically interested in promises to make the existence of the treaty public. Commitments to make information about jobs opportunities that arise under the treaty DOES NOT count as information about the existence of the treaty.

- Yes
- No

End of Block: Topic 3

Start of Block: Topic 4

Topic #4

Defining clear responsibilities between parties

Rationale

“The concerned stakeholders are the two State parties, employers in the COD, recruitment agencies in both countries, migrant workers, and relevant civil society organizations. Agreements need to identify the primary parties responsible for implementation. While the central government has overall authority, the line ministry responsible for migration for employment (usually labour ministries or a dedicated ministry such as the MEWOE in Bangladesh or the Ministry of Foreign Employment in Sri Lanka) would normally sign the agreement. The two parties to the agreement may be designated as the first party and the second party.

59 Wickramasekara, 2018c, *supra* note 56, at 21.

This is a good practice because it facilitates accountability and smooth implementation. Assignment of specific responsibility is an important aspect for proper monitoring and evaluation.”⁶⁰

Examples

Sri Lanka–Italy, 2011

Article 1 of this agreement on “Competent Authorities” defines clearly the competent authorities responsible for enforcement of the agreement in both countries.

Philippines–Manitoba (Canada), 2010

It states that the Philippines Department of Labor and Employment (DOLE) is the lead agency but responsibility would include its associated agencies: the POEA, the Overseas Workers’ Welfare Agency (OWWA), the Technical Education and Skills Development Authority (TESDA), and the Professional Regulation Commission (PRC), as appropriate.

Question

Does this BLA specify primary government agencies that are responsible for implementation of the agreement?

Note: Here we are not referring to joint committees created by representatives of both countries; we are referring to domestic agencies within each country.

- Yes
 No

End of Block: Topic 4

Start of Block: Topic 5

Topic #5

Establishing a joint committee

Rationale

“An integral part of any agreement is the establishment of a joint committee to monitor and implement the agreement. The most common practice in this regard is to establish a committee with a combination of officials from the two signatory parties under labels such as ‘Joint Commission,’ ‘Joint Committee,’ ‘Joint Working Committee,’ ‘Joint Technical and Committee,’ ‘Joint Common Committee,’ ‘Working Committee,’ and ‘Bilateral Working Group,’ etc. The committees consist of senior

60 Wickramasekara, 2018c, *supra* note 56, at 22.

officials from both parties, and the agreements should mention the functions of the committees and the frequency of meetings in general. Given that most agreements are poorly implemented, it is very important to build in concrete implementing, monitoring, and evaluation procedures.”⁶¹

Examples

Philippines–Lebanon, 2012

*“Both Parties agree to **establish a Joint Working Group** within three (3) months after the signing of this Memorandum of Understanding” “A Joint Committee, constituting at the Joint Secretary level comprising of three representatives from each side shall be established within three months of entry into force of this agreement.”*

Nepal-Jordan, 2017

*“Both states **agree to constitute** within 3 months of the signing of this memorandum of understanding **a Joint Working Group** with 2–3 members from each side to be nominated through diplomatic channels.”*

Question

Does this BLA mention the creation of a joint committee, joint working group, or other body with officials from both countries to monitor or implement the agreement?

- Yes
- No

End of Block: Topic 5

Start of Block: Topic 6

Topic #6

Regulation of recruitment and recruitment costs

Rationale

“Recruitment issues have emerged as one of the most important factors in labour migration, with major efforts underway at the international level to ensure fair recruitment. The ILO has recently adopted the General principles and operational guidelines for fair recruitment (GPOGFR) (ILO, 2016b). One indicator of Sustainable Development Agenda Goal 10 – reducing inequality within and among countries – is the recruitment cost borne by employee as proportion of yearly income earned at country of destination (IAEG-SDGs, 2017). The objective is to reduce this ratio

61 Wickramasekara, 2018c, *supra* note 56, at 23.

significantly so that workers benefit from labour migration. The ILO has also launched a Fair Recruitment Initiative (ILO, 2015a). The general principle in ILO instruments is that ‘no recruitment fees or related costs should be charged to, or otherwise borne by workers or jobseekers’ (ILO, 2016b, p. 3). However, laws in most countries, including those of Bangladesh, allow for the charging of recruitment fees subject to ceilings.”⁶²

Examples

Nepal–Jordan, 2017

This agreement has several specific provisions related to the regulation of recruitment. First, article 3 asserts the obligations of both parties to regulate, monitor, and enforce action on recruitment agencies. Article 3(a) marks an important commitment: “Control and regulate costs related to recruitment and employment in both countries.”

Second, the agreement controls recruitment fees by making employers liable for costs of visas, travel expenses, insurance, medical expenses, and other procedures related to the recruitment of workers.

Third, Article 10 dealing with the recruitment process refers to a commitment to adopt “legal measures to assure a smooth, fair, transparent and legal recruitment process.”

Question

Does the BLA mention that the migrant should not pay recruitment costs?

Note:

Costs associated with direct expenses like travel or visas should not be considered recruitment costs, so the treaty may still allow workers to pay these while prohibiting migrants paying recruitment costs.

- Yes
- No

Question

Who does the BLA specifically authorize to undertake recruitment and placement activities? PLEASE SELECT ALL THAT APPLY.

- Private recruitment agencies
- Government recruitment agencies
- Employers
- Other
- Does not mention

62 Wickramasekara, 2018c, *supra* note 56, at 30.

End of Block: Topic 6**Start of Block: Topic 7****Topic #7**

Roles of unions, employer organizations, and NGOs/civil society groups

Rationale

“While the ultimate responsibility for migration policies and inter-State cooperation lies with government, these policies and practices are likely to be more effective when based upon social dialogue involving social partners and broader civil society (ILO, 2010a). Reference has been made above to ILO Multilateral Framework on Labour Migration, principles 6 and 7 of which stress the role of social dialogue. Cholewinski (2014, p. 16) points out:

The key actors in the real economy, namely employers’ and workers’ organizations, need to be involved in the negotiation and implementation of BLMAs, which would make them more effective, for example by being more responsive to real labour market needs and improving protection of migrant workers.

Employers—both public and private—hire workers, and trade unions are concerned with the welfare of workers. Employers’ organizations play a useful role in promoting skills recognition of foreign workers. Consultation with employers helps in matching labour market needs with migrant supply; ensures better compliance with national labour laws in the treatment of migrant workers; and minimizes the need to resort to workers with irregular status. Support of workers’ organizations is essential for effective protection of both migrant and native workers and for the prevention of conflicts within the working population. Workers’ organizations also monitor workplace practices and organize both foreign and local workers.

At the same time, it is important to recognize the role of civil society organizations who offer support services to migrants, especially to vulnerable groups such as those who are trafficked and/or in irregular status. NGOs are quite active in the Republic of Korea in supporting migrant workers. In origin countries, employers’ and workers’ organizations usually play a major advocacy role in promoting appropriate policies and structures for regulating emigration. Employers impart skills to workers that help in securing foreign jobs. Trade unions support good governance in migration to ensure better protection to workers. Both unions and NGOs play a key role in mobilizing and organizing migrant workers to better articulate and defend their rights and dignity.”⁶³

63 Wickramasekara, 2018c, *supra* note 56, at 35.

Examples

Nepal–Jordan, 2017

Trade Unions and Collective Bargaining:

a. Any worker who wishes to affiliate a registered Trade Union of their sector in Jordan shall be allowed in accordance with the Jordanian laws.

b. The employer shall: 1. Respect the worker's right to freedom of association and collective bargaining as stipulated in the Jordan Labour Law, and its amendment, including the right to join a Trade Union in Jordan without harassment, interference or retaliation. 2. If the worker is member of a Trade Union of their sector in Jordan, the employer shall provide the Union with the name of the worker and his/her passport number in the first month of every year for the whole duration of the employment relationship.

Papua New Guinea–New Zealand, 2013

*These agreements carry the following provision: "Workers may bring any concerns arising from the conduct of their RSE to the attention of their team leader (where one exists), employer, **union representative**, Honorary Consul, and/or the Ministry staff."*

Fiji–New Zealand, 2014

*Fijian RSE Workers will enjoy the full protection of New Zealand employment and workplace legislation, in particular legislation concerning safe conditions of work and the payment of minimum wage rates will apply. **Fijian RSE Workers are eligible to join unions in accordance with those laws.***

Question

Does this BLA mention a role for labor unions from the country of origin (COO) in negotiating, monitoring, or implementing the agreement?

- Yes
 No

Question

Does this BLA mention a role for labor unions from the country of destination (COD) in negotiating, monitoring, or implementing the agreement?

- Yes
 No

Question

Does this BLA mention that migrants are allowed to join or form labor unions in the country of destination (COD)?

- Yes
 No
-

Question

Does this BLA mention that employer organizations should be allowed to participate in committees or meetings related to monitoring or implementing the agreement?

- Yes
 No
-

Question

Does this BLA mention that NGOs or civil society organizations—other than labor unions or employer organizations—should be allowed to participate in committees or meetings related to monitoring or implementing the agreement?

- Yes
 No
-

End of Block: Topic 7

Start of Block: Protection Question

Protection and empowerment of migrant workers

The next **9 topics** cover provisions related to the protection and empowerment of migrant workers.

End of Block: Protection Question

Start of Block: Topic 8

Topic #8

Provision of relevant information to migrants

Rationale

“International instruments have recognized this to be a priority need for migrant workers who are moving to another country where they are not nationals. They are in a vulnerable position as non-citizens in the country if destination where origin country laws do not apply.

The ILO Migration for Employment Convention (Revised), 1949 (No. 97) highlights the obligation of ratifying governments to provide a free service to assist migrants with employment, and provide migrant workers with accurate information:

Article 2: Each Member for which this Convention is in force undertakes to maintain, or satisfy itself that there is maintained, an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information.

Article 3: (1). Each Member for which this Convention is in force undertakes that it will, so far as national laws and regulations permit, take all appropriate steps against misleading propaganda relating to emigration and immigration.

The ILO Model Agreement, Article 8 elaborates on this matter by highlighting the shared responsibility of the COO and the COD:

The migrant accepted ... shall receive, in a language that he understands, all information he may still require as to the nature of the work for which he has been engaged, the region of employment, the undertaking to which he is assigned, travel arrangements and the conditions of life and work including health and related matters in the country and region to which he is going... On arrival in the country of destination, migrants and the members of their families shall receive all the documents which they need for their work, their residence and their settlement in the country, as well as information, instruction and advice regarding conditions of life and work, and any other assistance that they may need to adapt themselves to the conditions in the country of immigration (ILO, 1949).

The ILO recruitment principles and guidelines state: ‘Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment’ (ILO, 2016, p. 8).⁶⁴

Examples

Gambia–Qatar, 2010

Recruitment applications shall state the required qualifications, experience and specialization, the probable duration of contract, detailed conditions of employment, especially the wages, end of service gratuity, probationary period and facilities regarding transportation and accommodation as well as all basic information that may enable the workers to decide on signing the employment contract.

Philippines–Republic of Korea, 2009

*The POEA will upon receipt of the labor contract offered by the employer from the HRD Korea review the terms and conditions, and if the same are compliant with the minimum standards, **explain it to the jobseeker** so that he/she can fully understand it and decide whether or not to accept the offer based on his/her own free will.*

Question

Does this BLA mention that information about employment conditions, living conditions, or cultural conditions should be provided to the migrants by the employer, a government agency, or other body?

Notes:

- (1) *Providing information to recruitment agencies alone – without mentioning workers – DOES NOT count.*
- (2) *Disseminating information about the existence of the treaty DOES NOT count.*
 - Yes
 - No

End of Block: Topic 8

Start of Block: Topic 9

Topic #9

Equal treatment and nondiscrimination of migrant workers

Rationale

“The principles of equality of treatment and non-discrimination are key features of international instruments concerning migration, as reflected in two core ILO Conventions – the Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Article 17 of the Model Agreement spells out in detail the elements to be included: Such equality of treatment shall apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within the territory of immigration. Migrant workers should enjoy equality of treatment in respect of wages and working and living conditions, social security, and trade union rights on par with national workers in the destination country.

In practice, temporary migrant workers rarely enjoy equality of treatment with national workers. There is disparate treatment between workers from different countries and according to gender in many of the destination countries for Asian workers as reflected in the wages offered.”⁶⁵

Examples

Philippines–Germany, 2013

*Filipino health professionals **may not be** employed in the Federal Republic of Germany under working conditions less favorable than those for comparable German workers.*

Bangladesh–Libya, 2008

*The employee shall enjoy **all rights and privileges** enjoyed by the employees of the **host country** in accordance with the labour laws in force in the host country.*

65 Wickramasekara, 2018c, *supra* note 56, at 39.

Question

Does this BLA mention that migrants should enjoy protections comparable to workers from the country of destination?

- Yes
 No

End of Block: Topic 9

Start of Block: Topic 10

Topic #10

Protections for women or other protected groups

Rationale

“In order for BLAs/MOUs to achieve their aim of promoting ‘fair migration’ for regulated and orderly cross-border movement of workers and protecting the human rights of all migrants, they must incorporate a gender perspective and give particular attention to the groups of vulnerable migrant workers including MDWs [migrant domestic workers]”. (ILO, 2016c, p. 3). Parties can draw upon general human rights and migrant worker instruments, CEDAW General Recommendation 26, ILO Convention No.189, and Committee of the Protection of the Rights of all Migrant Workers and Members of Their Families General Comment 1 in providing protection for women workers.”⁶⁶

Examples

Nepal–Jordan, 2017

“... create mutual understanding between two governments to protect the rights of all workers, with special consideration to the **specific vulnerabilities of female migrant workers**” (article 1(c)).

This article provides for:

- addressing specific vulnerabilities of female workers and their protection;
- prohibition of conditions of forced labor, unlawful holding of passports, and restriction of movement and communication with their families and the embassy/consulate;
- provision of mechanisms for justice;
- provision of appropriate privacy to female workers, including a separate room;
- provision of all necessary medical care by the employer.

66 Wickramasekara, 2018c, *supra* note 56, at 42.

Ukraine–Argentina, 2001

Immigrants and members of their families who are in the territory of the Parties shall enjoy the protection of the State against all acts of violence, intimidation or other forms of discrimination based on race, color, position or political beliefs, and other religious, gender, ethnic and social origin, language or other characteristics.

Question

Does this BLA mention **the protection of women** based on gender? This could be a reference to gender in a general nondiscrimination clause (i.e., “there shall not be discrimination based on race, religion, or gender”) or a more detailed set of protections for women (as in the Nepal-Jordan example above).

- Yes
 - No
-

Question

Does this BLA include a **detailed reference to the protections of women** based on gender (as in the Nepal-Jordan example above) or detailed protections for **domestic workers**?

- Yes
 - No
-

Question

Does this BLA mention the protection of any **categories of workers other than women** (like protections based on race, religion, or sexual orientation)?

- Yes
 - No
-

End of Block: Topic 10

Start of Block: Topic 11

Topic #11

Employment contracts

Rationale

“The employment contract plays a central part in a bilateral agreement because it defines the returns to employment (wages and other remuneration), and conditions of work for migrant workers. ILO Model Agreement Article 22 provides detailed guidelines on the formulation of an employment contract. For domestic workers,

Article 7 of Convention No. 189 lists detailed provisions. Wage protection is critical, since most complaints relate to non-payment, deferred payment, discriminatory wages, unlawful deductions, non-payment of overtime, and non-issue of receipts. The BSR Good practice guide on global migration also provides valuable guidance to employers and business on all aspects of the employment contracts (BSR, 2010). The following can be considered important good practices regarding employment contracts:

1. making a copy of the contract in understandable language available to the worker before departure;
2. explaining the employment contract to the worker before they take up employment;
3. standard employment contracts;
4. elaboration of the scope of the contract (in the absence of an attached standard contract);
5. wage protection measures;
6. reference to applicable laws;
7. specification of working and living conditions;
8. access to complaints mechanisms and dispute resolution procedures;
9. non-retention of travel and identity documents;
10. duration of contract, and conditions for renewal and premature termination;
11. provisions for return and repatriation.”⁶⁷

Examples

India–United Arab Emirates, 2011

The terms and conditions of employment of manpower in the UAE shall be defined by an individual labour contract between the worker and the employer. This contract shall clearly state the rights and obligations of the two sides in conformity with the UAE Labour laws and authenticated by the UAE Ministry of Labour. The terms and conditions of employment shall not vary from those contained in the original application except for alterations that are favourable to the worker.

Philippines–Germany, 2013

The contract covers the aspect of equal standard of wages with German employees, details of overtime payments, payment for night work, payment for working on weekly holidays and public holidays, working hours, accommodation and amenities with amount of charges that the employee has to pay, condition on meals where employee has to bear the cost, leave entitlement, status of cost of return journey, settlement of disputes under the labor laws of Germany, etc.

Question

Does this BLA mention there must be an employment contract?

⁶⁷ Wickramasekara, 2018c, *supra* note 56, at 45.

Note:

- (1) *Assuming or implying the existence of a contract is not enough. The BLA must specifically say that a contract is required.*
- (2) *Saying that the work relationship shall, must, or will be “governed” by an employment contract COUNTS.*

- Yes
 No
-

Question

Does this BLA mention a standard / model employment contract? (Note: for instance, that the BLA might say that a model employment contract is included as an appendix or annex to the agreement.)

- Yes
 No
-

Question

Does the BLA mention any specific terms of employment that the contract should include (wage, length of the workday, pay for overtime, vacation, weekly days off, etc.)?

Note:

- (1) *Specifying that the contract discusses a certain topic is enough; we are not asking if the contract requires a specific term. For instance, saying that “the contract must specify the workers’ wages” would count, even if the BLA does not mention what the wages should be.*
- (2) *Specifying that workers are told certain facts or provided with certain information is not enough. For instance, saying “workers shall be told their wages” DOES NOT count; but saying “the employment contract shall specify wages” does count.*

- Yes
 No

End of Block: Topic 11

Start of Block: Topic 12

Topic #12

Wage protection

Rationale

“Wage protection is critical, since most complaints by women and men migrant workers relate to non-payment, deferred payment, discriminatory wages, unlawful deductions, non-payment of overtime, and non-issue of receipts.

The following features should be important to realize this criterion: stipulation of minimum wages where applicable; timely payment; allowable deductions; provision for overtime work; the issuing of receipts, and payment into personal bank accounts; the issuing of monthly pay slips to workers; provision of ATM cards so that workers can access their accounts; and readily accessible mechanisms for complaints in case of violations.

All GCC countries (except Bahrain) have introduced wage protection laws, and their inclusion in bilateral agreements should not pose a problem (Jureidini, 2017).⁶⁸

Examples

Jordan-Nepal, 2011

*The salary of the worker will be according to the employment contract. The **employer shall facilitate opening a bank account under the name of the worker** to deposit his/her monthly salary and provide the deposit voucher to the worker and a copy to the relevant labor inspectorate and the Nepali diplomatic mission, if requested.*

Question

Does this BLA mention any measures designed to protect against unlawful withholding of wages (e.g., provisions that the employer will set up a bank account for the employee, pay according to the contract, or not withhold from wages)?

Note:

- (1) Here we are not referring to required levels of wages; we are referring to provisions that ensure that the wage will be fully paid and not withheld.
- (2) Saying that migrants will receive the same wage protections as citizens in the destination country alone DOES NOT count.

Yes

No

End of Block: Topic 12

Start of Block: Topic 13**Topic #13**

Provision and supervision of living conditions

Rationale

“The responsibility for supervision of working and living conditions of migrant workers lies with the competent authorities of the COD, according to Article 15 of the ILO Model Agreement. It also calls for cooperation between the origin and destination country authorities for this purpose with regard to temporary migrant workers. The COD must guarantee an adequate labour inspection system for carrying out this supervision, especially with the entry into force of agreements. It would be important to insert text to this effect in agreements. The consular officials of the COO should be allowed access to visit workplaces and places of accommodation to assess existing working and living conditions.

The laws should include mechanisms for monitoring the workplace conditions of migrant women, especially in the kinds of jobs where they dominate, as recommended in CEDAW General Recommendation 26 (CEDAW Committee, 2008). Regarding domestic workers, Article 6 of Convention No. 189 states: ‘Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.’⁶⁹

Examples

Sri Lanka–Qatar, 2008

*The First Party undertakes to **provide appropriate free single-worker accommodation for the Second Party and supply the same with electric power, beds and toilettes in accordance with health conditions.***

Mexico–Canada, 2013

*The EMPLOYER agrees to: 1. **Provide suitable accommodation to the WORKER, without cost.** Such accommodation must meet with the annual approval of the appropriate government authority responsible for health and living conditions in the province/territory where the WORKER is employed. In the absence of such authority, accommodation must meet with the approval of the GOVERNMENT AGENT; 2. **Provide reasonable and proper meals for the WORKER and, where the WORKER***

69 Wickramasekara, 2018c, *supra* note 56, at 49.

prepares his own meals, to furnish cooking utensils, fuel, and facilities without cost to the WORKER and to provide a minimum of thirty (30) minutes for meal breaks.

Question

Does this BLA require the employer to provide the migrants with housing (e.g., accommodations, housing, living quarters)?

- Yes
 No
-

Question

Does this BLA mention any specific conditions that the housing must meet?

- Yes
 No
-

Question

Does this BLA mention any kind of government supervision or monitoring of that housing?

- Yes
 No
-

Question

Does this BLA mention any kind of government supervision or monitoring of **worksites or working conditions**?

- Yes
 No
-

End of Block: Topic 13

Start of Block: Topic 14

Topic #14

Prohibition of confiscation of travel and identity documents

Rationale

“A major cause of restrictions on freedom of movement and forced labour practices is the practice of retention of workers’ travel and identity documents by employers or private employment agencies.

The ILO General principles and guidelines on fair recruitment contain two references to this practice: Under ‘General Principles,’ paragraph 11 reads: ‘Freedom of workers to move within a country or to leave a country should be respected. Workers’ identity documents and contracts should not be confiscated, destroyed or retained.’

Under ‘Responsibilities of enterprises and public employment services,’ paragraph 18 reads: ‘Enterprises and public employment services should not retain passports, contracts or other identity documents of workers.’⁷⁰

Examples

Sri Lanka–Saudi Arabia, 2014

The “Special provisions” section of the standard employment contract, contains the following reference: “*The passport and work permit (iqama) of the DW shall remain in his/her possession.*”

Bangladesh–Malaysia, 2012

The Employer shall not keep the passport of the Worker in his custody.

Question

Does this BLA mention that the migrant has the right to keep their passport or other identity documents?

Note:

- (1) *This may be ensured by stating that the employer shall not keep the worker’s passport.*
- (2) *Stating that the worker has a right to keep their passport but may allow the employer to hold it for safekeeping does count, as long as it clarifies that the worker has the right to choose to keep it.*

Yes

No

End of Block: Topic 14

Start of Block: Topic 15

Topic #15

Social protection and healthcare benefits

Rationale

“The ILO Model Agreement recommends in Article 21 that the two parties shall determine in a separate bilateral agreement the methods of applying a system of social

70 Wickramasekara, 2018c, *supra* note 56, at 50.

security. Labour and social security legislation in Asian and Middle East destination countries usually exclude temporary migrant workers from comprehensive social security coverage (Panhuys, Kazi-Aoul, & Binette, 2017). As a minimum, migrant workers need to be provided with workplace insurance and health-care coverage by the employers. These should be clearly mentioned in the employment contract.”⁷¹

Examples

Philippines–Lebanon, 2012

*This agreement mentions “the **provision of an insurance coverage for the worker in accordance with the existing laws and regulations in the receiving country.**”*

Philippines–Germany, 2013

*This agreement states in its social security section: “**Filipino health professionals are subject to compulsory insurance in the German social security system (health and long-term care insurance, pension, accident and unemployment insurance).**”*

Question

Does this BLA mention that the migrant will be provided with either health insurance, accident insurance, unemployment insurance, or social security?

- Yes
 No

End of Block: Topic 15

Start of Block: Topic 16

Topic #16

Mechanisms for complaints and dispute resolution

Rationale

“This good practice covers settlement of disputes between employers and workers, and access to justice and effective remedies for workers. Many agreements also refer to dispute settlement on the interpretation or implementation of the agreement, which is a different issue.

The ILO General principles on fair recruitment state in Item 13: ‘Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their

71 Wickramasekara, 2018c, *supra* note 56, at 52.

rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred' (ILO, 2016b).

Clear guidelines on complaint and settlement mechanisms are needed and should go beyond the generic 'amicable settlement' phrases found in most agreements. Recourse to judicial means in the destination country is a difficult option for low-skilled migrant workers because of legal costs and language problems. Support by consular services is essential for gaining access to interpretation and legal services, labour courts, and judicial services as needed. A separate annex or protocol may be developed for detailed provisions."⁷²

Examples

Sri Lanka–Qatar, 2008

*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.*

Philippines–Alberta (Canada), 2008

*The Provincial Employment Standards Act provides standards for complaints and dispute resolution. The Province encourages employees and employers to solve problems without immediate government intervention. **If an employee is unable to resolve a dispute with an employer, an employee may make a complaint to the Province.** Although some matters are resolved through investigation, most are resolved through a process of education, mediation and/or adjudication.*

Question

Does this BLA mention a mechanism for the resolution of disputes that arise between migrants and their employers?

Note: Here we are not referring to clauses that provide for dispute resolution between the two countries that are party to the agreement; we are referring to the possibility of individual disputes brought on behalf of migrants or by migrants themselves.

- Yes
- No

End of Block: Topic 16

Start of Block: Migration Rights

Migration and Development

The next 4 topics cover provisions related to migration and development.

End of Block: Migration Rights

Start of Block: Topic 17

Topic #17

Human resource development and skills improvement

Rationale

“Provisions in agreements can promote human resource development (HRD) in two ways: 1) by requiring origin countries to train workers for specific skills demanded by the COD; and 2) by the COD provide training in specific areas.”⁷³

Examples

India–Denmark, 2009

Both states agree to cooperate in the fields of vocational training, standardize testing and certification especially training programs, methodology, studies and research, systems of measuring skill- level, and their methods of application in accordance with the requirements of the job market in both countries aimed at enhancing labour productivity. The Governments also agree to cooperate in mutually sourcing technically skilled personnel and benefiting from the training facilities available in both countries.

Moldova–Italy, 2011

The Contracting Parties shall encourage candidate migrant workers to attend vocational training and Italian language courses organized on the Moldovan territory, with a particular focus on employability in Italian companies or self-employment.

Question

Does this BLA mention any way that the migration will help promote the training of workers or their acquisition of new skills?

Note:

(1) Here we are not referring to provisions that stipulate the skills or qualifications that migrants must already have; we are referring to provisions that are designed to ensure that the migration process can help promote the migrants’ human capital.

(2) Referring to the migrants as “trainees” alone is not enough to count. There must be some mention of actually providing training or a process to improve the migrants’ skills.

Yes

No

End of Block: Topic 17

Start of Block: Topic 18

Topic #18

Recognition of skills and qualifications

Rationale

“Recognition of skills and qualifications across borders facilitates jobs and skills matching, leading to better labour market outcomes. Lack of skills recognition in destination countries leads to triple losses: to the origin country, which loses valuable human resources; to the destination country, which does not effectively utilize skills of migrant workers; and to the migrant workers themselves, who suffer deskilling and end up in exploitative work for low wages. The issue is more important for mobility of skilled workers, who suffer brain waste in destination countries. For example, some university graduates from the Philippines migrate to other countries as domestic workers to avail themselves of migration opportunities.”⁷⁴

Examples

Ukraine–Argentina, 1999

The Parties undertake to promote the mutual recognition of diplomas and transcripts. The institutions of the Parties shall consider the possibility of drafting a convention on the recognition of diplomas and certificates of study at all levels.

Question

Does this BLA mention the recognition in the country of destination of diplomas, credentials, or qualifications obtained in the country of origin?

Note:

- (1) It is not enough to mention that workers will be hired of a particular skill level (or that “skilled _____ workers” will be hired).
 - (2) We are specifically asking whether the BLA recognizes the diplomas, credentials, or qualifications awarded in one country as valid in another country; implying this is not enough.
-

⁷⁴ Wickramasekara, 2018c, *supra* note 56, at 60.

- (3) *Establishing a test to determine the qualification of workers DOES NOT count.*
 (4) *A provision noting “mutual” recognition counts as satisfying this requirement.*

Yes

No

End of Block: Topic 18

Start of Block: Topic 19

Topic #19

Transfer of savings and remittances

Rationale

“Remittances are the most tangible benefit of labour migration. In view of their development and poverty alleviation potential, one of the targets (10c) of Goal 10 of United Nations Sustainable Development Goals (on reducing inequality within and between countries) is: ‘by 2030, reduce to less than 3% the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5%’ (IAEG-SDG, 2017: p.14).

The standard provision with regard to remittances is that workers are free to remit their savings in accordance with laws and regulations of the destination country. Some agreements, particularly in Europe and the Americas, do not make a reference to remittance facilitation, but this may simply mean the absence of restrictions on remittance transfers.”⁷⁵

Examples

Sri Lanka–Italy, 2011

*“The Italian Party agrees to **disseminate information on the national remittances system, with the aim of aiding migrant workers in the choice of the most advantageous way.**”*

Guinea-Bissau–Spain, 2008

*Actions aimed at improving the impact of remittances on the development of the communities to which they are directed. With the latter aim, the **Contracting Parties undertake to cooperate with the financial institutions of the two countries in order to reduce transaction costs and to adapt the financial system to the reception and productive investment of remittances** through promotion of popular savings and credit entities that can provide their services in an accessible manner, both geographically and economically.*

⁷⁵ Wickramasekara, 2018c, *supra* note 56, at 61.

Question

Does this BLA mention the facilitation of sending remittances (i.e., money) back to the workers' home country?

- Yes
- No

End of Block: Topic 19

Start of Block: Topic 20**Topic #20**

Reintegration, circulation, and development

Rationale

“Labour migration frequently involves only temporary work contracts of two to three years’ duration for low-skilled occupations, generally in the Middle East and other Asian destination countries. There are some schemes for seasonal work, such as those in Europe, New Zealand, and Canada. There is also some circular migration in the sense of repeated migrations following one contract by the same worker. Most agreements relate to a temporary migration cycle. Therefore, special attention is needed for return and reintegration in order to optimize the benefits from migration.”⁷⁶

Examples

Fiji–New Zealand, 2014

Fijian RSE Workers, upon returning to Fiji will have access to support information, capacity building training and assistance to start up a small micro-business under the Fijian Government’s Foreign Employment Service.

Question

Does this BLA mention the reintegration of migrants returning to their countries of origin?

- Yes
 - No
-

Question

Does this BLA mention the possibility of renewing migrants’ contracts after their initial work contract expires?

76 Wickramasekara, 2018c, *supra* note 56, at 62.

- Yes
 No
-

Question

Does this BLA mention any pathway to legal permanent residence status or citizenship?

Note: The right to renew the employment contract many times by itself DOES NOT count. There has to be a way to live in the country without being subject to the terms of a contract under the BLA.

- Yes
 No

End of Block: Topic 20

Start of Block: Coding Issues

Issues Coding this BLA

Were there any issues coding this BLA that we should be aware of?

End of Block: Coding Issues
