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Working papers

NEGOTIATING LABOUR MIGRATION

A comparison of French and Spanish Bilateral
Labour Agreements with Morocco

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LIST OF ACRONYMS

ANAEM Agence Nationale d'Accueil des Etrangers et des Migrations

ANAPEC Agence Nationale de Promotion de l'Emploi et des Compétences

BLA Bilateral Labour Agreements

CCT Carte Compétences et Talents

CESEDA Code de l'Entrée et du Séjour des Etrangers et du Droit d'Asile

CODETRAS Collectif de défense des travailleurs étrangers dans l'agriculture des Bouches du Rhône

DCFTA Deep and Comprehensive Free Trade Agreement

DIRECCTE Direction Régionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi

EC European commission

ENP European Neighbourhood Policy

EU European Union

GAM Global Approach to Migration

GAMM Global Approach to Migration and Mobility

GATS General Agreement on Commerce and Services

HALDE Haute Autorité de Lutte contre les Discriminations et pour l'Egalité

ILO International Labour Organisation

MP Mobility Partnership

NGO Non Gouvernemental Organisations

OFII Office Français de l'Immigration et de l'Intégration

OMI Office des Migrations Internationales

ONI Office National de l'Immigration

ZSP Zone de Solidarité Prioritaire

1. Introduction: Some conceptual premises and hypotheses

This report on Bilateral Labour Agreements (BLAs) between Morocco, on one side, and Spain and France, on the other, will compare, in an historical perspective, diplomatic relations on migration issues, especially labour migration and bilateral labour agreements, between France and Spain, two major European countries (an 'old' and a 'new' immigration destination) with Morocco, one of the largest sending countries to the European Union. It is based on analysis of government documents, academic literature and interviews with policymakers, stakeholders and researchers carried out between April and December 2011 (see Annex 1 for a list of Interviews).

Bilateral Labour Agreements (BLAs) are tools for migration management and more specifically for labour migration. Promoting or regulating workers' mobility usually entails the facilitation of entry and exit, as well as the enhancement of migrants' skills, also for the benefit of their regions of origin, the creation of a legal framework which protects the mobile persons with respect to portability of social security rights, recognition of their qualifications, claims to transfers and holidays, among other elements. In what refers to labour migration management, two trends prevail: an open and universal policy on the one hand (commonly adopted in traditional immigration countries, namely Australia, United States, Canada), and a policy of preferential treatment based on specific international agreements, on the other hand (IOM, 2008).

Within the variety of existing foreign labour recruitment schemes, BLAs are one of the most widespread method though not the one involving the highest number of people. (Bobeva, Garson, 2004).

Beyond matters related to workers' recruitment and employment, BLAs usually have multiple and varied objectives. Host countries usually decide to adopt BLAs for two main reasons: to settle and regulate a pre-existing situation with a source country, and to set up new recruitment channels abroad. Apart from these reasons, others may be cited, such as the promotion of trade and economic relationships (agreements on regional integration), the preservation of historical and cultural ties, the integration of immigrants, or the attempt to prevent irregular immigration by facilitating readmission or enhancing legal entry channels. Source countries usually seek to broaden possibilities to access the international labour markets and, at the same time, to reduce unemployment in their domestic labour markets, to protect their own nationals abroad and to promote their national development for instance through

remittances, knowledge transfer, creation of small and medium transnational enterprises by their diasporas abroad.

The diversity of objectives influences BLA's design, coherence, scope as well as their effectiveness. Factors influencing their implementation are multiple, interdependent, complex and can vary from high financial costs or administrative slowness to the availability of skills in the source country. An agreement with multiple objectives is more likely to fail because of emerging inter-state conflicts, incoherencies, complexity of dialogue between partners, among other factors, so their primary objectives will determine the actual policy which will be ultimately adopted. Besides, the accomplishment of these objectives is often difficult to assess, especially since BLAs may exist in different forms: formal and legally binding arrangements (i.e. treaties), less formal arrangements like Memoranda of Understanding or agreements involving sub-national public bodies such as national employment agencies. At last, a wide range of actors such as government agencies (especially Ministries of Labour), workers' and employers' organisations or non-governmental organisations (NGOs), participate in bilateral agreements implementation. In some countries, regional authorities are becoming increasingly active in migrant workers' recruitment. In some cases, enterprises themselves are involved in the recruitment and training process. Actors diversity can generate an unclear distribution of competencies: this partly explains why France decided in 2009 to create a single operator for legal migration, the French Office for Immigration and Integration OFII (*Office Français de l'Immigration et de l'Intégration*¹).

When migratory policies have to serve long term objectives, a comprehensive and coherent policy is far more effective than bilateral agreements. In fact, BLAs are often described as more efficient for short term objectives, which imply shorter and simpler procedures: Durand (OECD, 2004) believes that BLAs' success is based on the principle of flexibility, which originates less bureaucratic, complex or costly arrangements, able to effectively tackle labour shortages and to respond to social and economic changes. This flexibility is generally better ensured by less binding agreements combined to intense political dialogue or consultation. A country may therefore opt for a formal agreement which preserves its interests by clear and well-defined procedures or for a less binding agreement which would assure discretion and flexibility.

¹ This reform put an end to former institutional immigration operators, the Foreigners Reception and Migration National Agency, ANAEM (Agence Nationale d'Accueil des Etrangers et des Migrations, 2005-2009) and Equal Opportunities and Social Cohesion Agency ACSE (*Agence pour la Cohésion Sociale et l'Égalité des Chances*).

In any case, the bilateral agreement is a good form of cooperation when an international regime regulating the mobility of persons is lacking and remain an important mechanism for inter-state cooperation in protecting migrant workers, matching labour demand and supply, managing irregular migration, and regulating foreign labour recruitment (OSCE, IOM, ILO 2007).

Most States are reluctant to be constrained by new international norms. Even the International Labour Organisation (ILO) Conventions 97 and 143 (adopted respectively in 1949 and 1975), the United Nations (UN) Convention on the Protection of Rights of Migrant Workers and their Families in 1990 and the WTO General Agreement on Commerce and Services (GATS²) are fragile. The UN Convention dates back from December 1990 but, so far, its ratification process has faced strong reticence from most host countries, including France and Spain, who have not yet signed it. As for the GATS, it proposes a Mode 4 which can be qualified as the only collective effort trying to establish a system of partial liberalization of temporary skilled migration in the service sector at the multilateral level (Panizzon, 2010). However, its ambiguous definition of services and the complexity of its procedures make it a mechanism hardly applied and relatively unknown.

As a matter of fact, migration policy remains under the control of national authorities, embedding BLAs in complex and often contradictory national interests: economic interest as well as internal security considerations and humanitarian commitments. This situation hinders possibilities of a greater international codification (Kunz, Lavenex, Panizzon, 2011) and BLAs opportunities of success and political visibility.

Nonetheless it must be underlined that new forms of cooperation and approaches have been promoted recently, especially at a bilateral or regional level, with an increasing trend towards a comprehensive approach (see chapter 3). This evolution has put bilateral and regional agreements at the core of migration cooperation, whose efficiency and usefulness have been regularly reasserted in a number of dialogue fora and platforms like the intergovernmental UN High-Level Dialogue on Migration and Development; the Berne Initiative; the Global Migration Group (GMG) or the state Global Forum on Migration and Development (GFMD).

² 'The creation of the GATS was in January 1995. The GATS objectives are: creating a credible and reliable system of international trade rules; ensuring fair and equitable treatment of all participants (principle of non-discrimination); stimulating economic activity through guaranteed policy bindings; and promoting trade and development through progressive liberalization⁷.

http://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm

We will try to demonstrate in this report that most BLAs pursue the same basic objectives, namely to promote legal migration, understood as measures to fight irregular migration, to foster temporary migration and return and to restrict permanent migration to high-skilled jobs. However, the negotiation processes and provisions actually adopted reflect different stakes. Morocco has established and maintains dense post-colonial relations with France. Legal arrangements affect a large range of migration situations and labour mobility but the broader cooperation frameworks tend to render BLAs use obsolete. In the case of Spain, BLA's are rather instruments essentially responding to labour shortages and irregular migration concerns. They are pragmatic answers to labour market needs although politically not less complex than the French ones to negotiate and implement. The Spanish strategy towards Moroccan labour migration is less diversified than the French one: BLAs are meant to manage labour migration, mainly seasonal migration in the agricultural sector, and do not really impact on other types of mobility. In fact, BLAs between Spain and Morocco are strongly focused on less qualified migration with a strong circular and temporary approach while also used as political instrument to stabilise diplomatic relations. Lastly, we will analyse the evolution of labour issues within the global approach on migration developed by France, Spain and the European Union.

The overall objective of this paper is to understand the ways bilateralism on labour issues evolve and redefine itself in the context of the European Union.

1.1 Franco-Moroccan and Hispano-Moroccan Bilateral Labour Agreements: an overview.

The bilateral cooperation on labour migration between France and Morocco is based on four agreements:

- The Labour Convention of 1963 (*Convention de main-d'œuvre*³) through which Morocco officially became a labour provider for France. The Moroccan Parliament ratification wasn't required.
- The Agreement on Stay and Employment (*Accord en matière de séjour et d'emploi*) of 1987⁴ which completed the 1963 Convention and included provisions relating to the French

³ 14 articles, one annex and a protocol on adults' training.

⁴ Decree n° 63/779 27th of July 1963 publishing the '*Convention de Main-d'œuvre entre la France et le Maroc*' 1st of June 1963 (*Journal Officiel*, 2nd of August 1963) and the '*Accord en matière de Séjour et*

nationals living and working in Morocco. It was ratified by the Moroccan Parliament the 10th of September of 1993 and came into force the 1st of January of 1994.

- The Agreement on Young Professionals Exchanges (*Accord relatif aux échanges de jeunes professionnels*) (younger than 35) of 2001⁵ which is relatively unimportant considering the small number of annually authorized workers (300 French and Moroccans in total) but politically important. The Moroccan Parliament ratification wasn't required.

- The General Convention on Social Security (*Convention générale de sécurité sociale*) of 1965, which has been substituted by that of 2007⁶. It came into force the 1st of June of 2011⁷.

The Spanish bilateral cooperation on labour migration with Morocco is based on six bilateral agreements:

- The Convention on Social Security (*Convenio sobre seguridad social*) of 1979⁸. It came into force the 1st of October of 1982.

- The Treaty of Friendship and Good Neighbourhood (*Tratado de amistad, buena vecindad y cooperación*) of 1991⁹.

- The Agreement on Circulation, Transit and Readmission of Foreigners entered illegally (*Acuerdo relativo a la circulación de personas, el tránsito y la readmisión de extranjeros entrados ilegalmente*) of 1992¹⁰. It came into force the 21st of October of 2012.

- Three agreements on labour migration: the Agreement on Residence Permits and Labour (*Acuerdo en materia de permisos de residencia y trabajo*) of 1996¹¹; the Administrative Agreement on Temporary Workers (*Acuerdo Administrativo entre España y Marruecos, relativo a*

d'Emploi”, 9th of October 1987 in Rabat (Morocco) published by the Decree n° 94-203, 4th of March 1994, 10 articles.

⁵ ‘*Accord entre le Gouvernement de la république française et le Gouvernement du royaume du Maroc relatif aux échanges de jeunes professionnels*’, May, 24, 2001 (*Journal Officiel*, October, 26, 2001)

⁶ ‘*Convention Générale de Sécurité Sociale*’, July, 9 of 1965 between France and Morocco, abrogated by the Convention of October, 22, 2007, published by the Decree n°2011-567 of May, 24, 2011.

⁷ French Decree n°2011-567 of May 24, 2011.

⁸ ‘*Convenio sobre Seguridad Social*’ of August, 11, 1979, (BOE 13-10-1982).

⁹ ‘*Tratado de Amistad, Buena vecindad y Cooperación*’ of July, 4, 1991 (BOE 26-2-1993).

¹⁰ ‘*Acuerdo relativo a la Circulación de personas, el Tránsito y la Readmisión de extranjeros entrados ilegalmente*’ of February, 13, 1992 (BOE 25-4-1992).

¹¹ ‘*Acuerdo en materia de Permisos de residencia y trabajo*’ of February, 6, 1996 (BOE 28 de mayo de 1996).

los trabajadores de temporada) of 1999¹² and the Agreement on Labour (*Acuerdo sobre mano de obra*) of 2001¹³. The last one came into force the 1st of September of 2005¹⁴. The Agreement of 2001 belongs to the category of Agreements called ‘first generation Agreements’ (non comprehensive approach). They are first Spanish BLAs signed with third countries between 2001 and 2004. The first ones were with Ecuador and Colombia.

Main characteristics are described in the tables below.

Table 1. Procedures of French and Spanish BLAs with Morocco (1963; 2001)

	<i>Labour Convention, 1963/ France</i>	<i>Labour Agreement, 2001/ Spain</i>
Vacancies Communication	French Authorities to Moroccan Authorities	*Spanish Authorities to Moroccan Authorities *Preferential information on labour demands
Recruitment in Morocco	*Pre-selection: Moroccan Labour Ministry *Selection: French authorities * simpler administrative procedures for residence and work permits	*Joint Selection Committee = Spanish and Moroccan administrations + possibility to include employers * simpler administrative procedures for residence and work permits
Competent Authorities	France: Labour Ministry, Public Health Ministry and the National Immigration Office (ONI) Moroccan Labour Ministry	*Spanish Ministries : Foreign Affairs/ Home Office/Labour *Competent Consular Authorities Moroccan Labour Ministry

Source: Personal elaboration based on the Franco-Moroccan and Spanish-Moroccans Agreements

NB: Selection committees include representatives from both the embassies of source countries and employers in the country of destination. Third party involvement, such as private intermediaries, is being

¹² ‘*Acuerdo Administrativo entre España y Marruecos, relativo a los trabajadores de temporada*’ of September, 30, 1999.

¹³ ‘*Acuerdo sobre mano de obra*’, July, 25 of 2001 (BOE 20-9-2001) o ‘*Acuerdos de Regulación y Ordenación de los Flujos Migratorios Laborales*’. Ministerio de Asunto Exteriores y de Cooperación, 2005.

¹⁴ This Agreement was signed on July 25, 2001 and came into force provisionally on August 24, 2001, but a few months later was suspended unilaterally by Aznar’s government after both countries’ rupture of diplomatic relations.

avoided to decrease the incidences of fraud and other bad practices and to ensure that the legal channels are being used.

NB: The National Immigration Office, ONI (*Office National de l'Immigration*) was created in 1946 then became the International Migration Office OMI, (*Office des Migrations Internationales*) in 1988 then became the Foreigners Reception and Migration National Agency, ANAEM (*Agence Nationale d'Accueil des Etrangers et des Migrations*) in 2005 then the French Office for Immigration and Integration, OFII (*Office Français de l'Immigration et de l'Intégration*) in 2009.

Table 2. Contents of French and Spanish BLAs with Morocco (1963 - 1987; 2001)

Provisions of the agreements		France	Spain
Equal treatment		x Article 8 Reciprocity Principle 'regarding hygiene conditions, security, housing, wage, paid holiday and unemployment benefit '	
Protection of workers' rights			X *Spanish Legislation *International Conventions * Claims mechanism: abuses and exploitation of can be addressed
Non-discrimination		x	x
Social security		x	x
Return incentives	Transfer of savings	x	x
	Written compromise to return ¹⁵		x
Right of family reunification		x	
Provision regarding recruitment		x	x
Possibility of taking another job with working conditions according to French/Spanish Law		x	x
Clause regarding vocational		x	x

¹⁵ To sign in front of Spanish authorities.

training		
Provisions laying down an annual quota of workers		
Provisions on seasonal workers		x

Source: Personal elaboration and OECD, 2004.

2. Spanish-Moroccan cooperation: traditional political answers to a new regional migration system

Spain has a long tradition in the use of bilateral agreements but the context is noticeably different from that observed in France. Until the 1980's, Spain has been an emigration country. The first bilateral agreements signed in the 1960's by Spain with South American and European countries had as main goal the return of Spanish workers. The situation evolved after the adhesion of Spain to the European Community in 1986. On 9 April 1991 a proposition was approved by the Spanish House of Representatives acknowledging Spain as a country dealing with immigration (Marquez Dominguez et al., 2009). Since then, immigration matters appeared on the political agenda and in public policies and were gradually institutionalized, object of a particularly intense legislative and regulatory activity. The Spanish legislation has been inspired by the European framework and other member states' experiences, with geographic proximity and labour market situation as key considerations whereas France has mainly established a post-colonial framework.

The geographic dimension is essential to understand Spanish-Moroccan cooperation patterns. It created a dense and intense regional migration system, highlighting the demographic and economic disparities between Spain and Morocco as a structural pre-condition of the increased migration flows to Spain (Finotelli, 2012).

Different approaches exist among the BLAs concluded by Spain. The agreements Spain has signed with Latin American countries in the early XXI century, such as those with the Dominican Republic and Colombia in 2001, are different from those concluded with Morocco. The Dominican Republic and Colombian agreements evoke, for example, the historical and cultural ties which link them with Spain. The situation with Morocco is different. The geographic proximity, the composition of the Moroccan labour force and the strong presence of Moroccan workers in irregular employment niches in Spain, drove Spain to conclude in the first place an agreement on 'Residence Permits and Labour' (1996) and 3 years later an administrative

agreement on ‘Temporary Migration’ (1999), regulating mainly seasonal work in agriculture. The latter has preceded a more general agreement on labour issues in 2001.

2.1 Between security concerns and labour needs: key drivers of bilateral cooperation on migration between Spain and Morocco.

2.1.1 BLAs as a rapid and flexible response to pressing labour market needs

Since the 1990’s, several stakeholders, such as the Spanish Confederation of Employers’ Organisations, CEOE (*Confederación Española de Organizaciones Empresariales*), stressed the necessity to implement mechanisms aimed at introducing foreign labour rapidly, such as entry quotas. A new instrument called ‘contingent’ (*contingente*) was adopted by the government in 1993 in parallel to the General Regime.

The ‘contingent’ consists of an annual quota for non-EU workers. It allows entry to Spain for work reasons on the basis of labour market needs. Besides, it specifies nationalities to which the offers would be made, as well as the types of occupation in which migrants can be employed. Hence, in 1995, 4,500 entry slots were reserved for Moroccans in seasonal farming jobs, and 1,000 for ‘other countries’. (Dominguez, Marquez and Delgado, 2009). However, until 2000, it has been called ‘false contingent’ (Cachon, 2009) because the ‘contingent’ has been mostly used to regularise irregular migrants in Spain rather than to admit migrants from abroad. The fraud was possible because at that time, recruitment within the ‘contingent’ scheme was on a nominative basis so most employers started to recruit migrants who were already living in the country in order to avoid the cumbersome recruitment procedures requested.

The ‘contingent’ instrument was institutionalized for the first time as a tool to recruit outside the country by the Regulation of the Organic Law (*Ley Orgánica*) LO/4/2000¹⁶, through the Royal Decree 864/2001, in which articles 78 and 89 outlined rules for seasonal permits. Since 2002, the ‘contingent’ is no longer based on nominal job offers but rather on generic requests presented by firms. In 2004, the reform of LO/4 redefined the ‘contingent’ emphasising on ‘interconnections among different policy fields related to immigration, such as the management of regular migration flows, the fight against irregular migration, the

¹⁶ The present Spanish immigration policy is based on the Organic Law 4/2000 (11th of January) relating to Foreigners Rights and Liberties in Spain and their Social Integration and its reform through the Organic Law 2/2009 (11th of December).

strengthening of border controls, the relationships with third countries and the integration of immigrants' (Finotelli, 2012). Besides, the temporary dimension of migration through the contingent was reasserted by imposing a legal duration of work permits for a maximum of 9 months within a 12 consecutive month period. The list of shortage occupations is published yearly since 2006 by the Ministry of Labour. Since the LO 2/2009 reform¹⁷, the term 'contingent' is substituted by the term 'collective management of recruitments in source countries' (*gestión colectiva de contrataciones en origen*), and a Tripartite Labour Commission is recognised as an institutional channel to set dialogue between the most representative Trade Unions and Employers' organisations.

Bilateral agreements play an important role in recruitment through the contingent. Spain has signed four different types of bilateral agreement with non EU countries: the agreements on the Readmission of Irregular Migrants; the agreements on the Regulation of Migration Flow (*Acuerdo sobre regulación y ordenación de flujos migratorios*); the Framework agreements on the Cooperation on Immigration Issues and the agreements on Operative Cooperation (Finotelli, 2012). Their pertinence and relevance as a tool for labour migration management have been outlined in 2001 by the Global Regulation and Coordination Programme on Immigration and status of Foreigners in Spain, GRECO (*Programa global de regulación y coordinación de la Extranjería y la Inmigración en España*¹⁸).

In the framework of the annual 'contingent', job opportunities are preferably offered to countries that have signed an agreement on Regulation of Migration Flow with Spain and the Spanish Ministry of Labour will maintain special relations with those source countries, by facilitating recruitments and communicating labour market information in a preferential way.

As for the recruitment process in itself, it is implemented according to the specific individual agreement. The Ministry of Labour can authorise a 'contingent' procedure with a country that did not sign an agreement, whenever the job position could not be filled or when circumstances justify it. In some cases, before a bilateral agreement is signed, a pilot project is carried out to test the likelihood of collaboration with the partner as it had been the case with Senegal in 2006/2007 (Finotelli, 2012).

Therefore, since 2000, the 'contingent' has begun to work as a quota system. This process is motivated by the political will to link the quota system with BLAs and workers admission with measures preventing irregular migration (Delgado, 2010). The progressive higher

¹⁷ Real Decree 557/2011, of the 20 of April, of the Organic Law 4/2000 after its reform by the Organic Law 2/2009.

¹⁸ The GRECO Programme was created in 2001 to coordinate, organize, integrate and protect migrants.

degree of migration policies' integration put BLAs at the core of the Spanish migration policy and cooperation with source countries, especially as far as temporary and circular migration is concerned. Several studies (Collyer, 2004; Enríquez and Ramón, 2011; Domínguez, Márquez and Delgado, 2009) underlined a shared perception concerning positive aspects of circular migration in the frame of the Hispano-Moroccan agreements, since 2004 when the bilateral agreement of 2001 was finally fully operative: 'All stakeholders, be they Moroccan or Spanish, are interested in guaranteeing the circular aspect of seasonal migration. Spanish employers benefit from the contracting of workers who have already been trained in previous years while the return of Moroccan workers in their country once each campaign finishes is a social and political precondition for the sustainability of the whole process' (González and Reynés, 2011, p.8).

The Hispano-Moroccan bilateral cooperation on migration is actually targeting mainly seasonal workers in agriculture, often within a circular migration scheme and through the '*contingent*' instrument. Concerning other forms of mobility, the agreement hampers their implementation by not offering substantial protection or sufficient incentives to would-be migrants. For instance, One cannot find specific measures targeting students or young professionals although the agreement of 2001 refers to employees training in general. Several institutional actors mentioned the necessity to renegotiate the BLAs in order to foster relationships, development and cooperation, to attract skilled-workers, to promote the exchange of students and young professionals, to improve mutual knowledge and perceptions and to effectively tackle the issue of return and reintegration in Morocco. Besides, they mentioned the necessity to set a much more comprehensive set of rights, especially of family reunification rights (Interview, MFA-MO, MLSS-SP).

2.1.2 BLAs as tools to fight irregular employment

2.1.2.1 Channelling regular labour into traditionally irregular employment niches...

Bilateral agreements have sometimes stirred controversies for introducing temporary migration which then became permanent and irregular. Indeed, a bilateral agreement is not always the most appropriate tool to fight irregular immigration: a report of the European Commission on Legal and Irregular Immigration in 2004 concluded that the majority of the European countries did not believe that bilateral agreements resulted in diminishing irregular

immigration and even argued that the former labour agreements in the 1950s and 1960s had increased migratory pressure by creating opportunities for illegal jobs (European Union, 2004a).

However, BLAs can prevent illegal employment by facilitating readmission and/or enhancing legal entry channels: 'Even if bilateral migration agreements facilitate the recruitment of migrant labour, they do so only to offer a valid alternative to migrating irregularly' (Hailbronner, 1996, p. 23)

Spain has concluded BLAs with Morocco mainly to that end. Spain was under pressure by EU member states for not adequately controlling its immigration (Finotelli, 2012) and while it was strengthening border controls and measures to fight irregular migration, BLAs were negotiated, which strongly influenced their terms.

Bilateral agreements aim at providing legal work in traditional irregular employment niches, namely in agriculture, and guaranteeing effective return in the case of temporary workers. Specific measures such as the possibility to transfer wages to Morocco or the lack of family reunification rights for seasonal workers are meant to incite workers to return to Morocco. In the agreement of 2001, new incentives were added such as the compulsory written compromise on stay and return that the worker has to sign in front of Spanish authorities before leaving his country. Moreover, the agreements enable migrants to be re-selected and re-enter Spain in the following year only if they complied with their obligation to return to their country of origin and report to the Spanish embassies there. Furthermore, seasonal workers who participated in the temporary work programme over the previous four years and each time returned to Morocco at the end of the season have access to a more stable work permit in a preferential way and prospect of obtaining long-term residence status in Spain upon employment offer (De Haas, 2007).

The first seasonal program implemented in 2004 in Huelva (Spain) is well-known for its failure. Around 60% of the workers recruited did not return to Morocco. Since then, in addition to the statutory return incentives, main institutional actors and employers agreed on preferential criteria in the hope of avoiding the 'Huelva experience'. Selection criteria currently are: women with family responsibilities (i.e. children back at home) and coming from rural areas (Gonzalez-Enriquez and Reynes, 2010). This profiling of workers has raised controversies. Employers for instance have feared that workers judged to be more likely to return are not sufficiently matching the required skills or the easiest to integrate due to the rising proportion of illiterate elderly rural women (Plewa, 2009).

2.1.2.2 ...while ensuring effective readmission

BLAs are linked to security issues wider than irregular employment. Nearly ten years before concluding the agreement on labour, the agreement on Circulation, Transit and Readmission of Foreigners entered illegally (*Acuerdo relativo a la circulación de personas, el tránsito y la readmisión de extranjeros entrados ilegalmente*) was signed (1992). It came into force the 21st of October of 2012 upon good and mutual relationships between Spain and Morocco and in the framework of a larger and more complex cooperation framework. The article 3 of the agreement evokes the situations when there is no obligation to readmit a foreigner. One point refers to irregular foreigners who were previously authorized to stay in the host country, hence the importance of return incentives for Spain. Spain has progressively implemented a tough approach to irregular migration from Morocco with the militarization of fences around Ceuta and Melilla, SIVE, or Operation Ulysses and its successors.

The readmission is therefore a key and cross-cutting issue, tightly linked to labour mobility management and other foreign policy issues:

'Readmission policies depend on the current political climate. Everything is mixed with the readmission issue. Sahara [Western Sahara] is mixed with readmission, labour, business, Ceuta and Melilla, etc. The readmission of one person can depend on our support to one United Nations resolution. Between Morocco and Spain, this is immediate action/reaction, even on very small and unimportant matters such as an authorization to fly above Ceuta. This is an intense relation and sometimes too intense' (Interview, MHA-SP).

2.1.3 BLAs challenged by multiple sources of tension

Seasonal migration between Morocco and Spain is restricted to a very narrow labour niche (i.e. agricultural sector). It is important to remind that the number of Moroccan workers included in the 'contingent' do not correspond in any way to the amount of Moroccans residing in Spain or working in agriculture. The latter is much higher, although the economic crisis affected both groups. Currently, any proposal of extension of temporary migration to new sector areas is unrealistic¹⁹. The Spanish Ministry of Labour admitted that:

¹⁹ In 2007, 47,000 Moroccans participated to the program and only 6,000 in 2010 (Interview, MLSS-SP).

'Collective recruitments create false hopes because the economic context is changing. The number of workers annually admitted is uncertain. [...] This situation can create political disappointments' (Interview, MLSS-SP).

This may also explain why Morocco has requested an enlargement in time and space of seasonal migration as a way to ensure minimum functioning of BLAs. When the economic crisis affected collective recruitments, the Spanish Ministry of Foreign Affairs reacted:

'We asked the Ministry of Labour to quickly find a solution. It is important to find a balance between our market needs and maintaining good relations with Morocco' (Interview, MFAC-SP).

The primary aim would be finding a balance between a strict dependence on the labour market situation and total flexibility by developing a new approach not solely based on labour, in order to satisfy employers' needs as well as fight against irregular migration, while avoiding bilateral political misunderstandings (Interview, MFAC-SP and DE-SP). BLA's uncertainty could be reduced by proposing measures like multiple entry visas for seasonal workers as requested by Morocco (González and Reynés, 2011) and similar to the "seasonal worker" permits issued by France²⁰.

In addition to these political aspects (i.e. market needs and return incentive), another tense debate took place on the nominative admission procedure blamed for bringing fraud and abuses. It generates not only competition among first-time workers reflected by more flexibility and sacrifice (so that they would be contracted for the next year) but also tensions with workers contracted for another time, Spanish workers and legalized foreign workers (Plewa, 2009).

Besides, nominative admissions tend to create a fixed 'pool' of seasonal workers. It has been blamed for allowing the social control of a community since it relies on local recruitments within closed networks like the family or village. This situation also tends to maintain under-qualification of workers by recruiting the same worker under the same criteria whereas he has previously gained experience. In the French case, it has been demonstrated that foreign workers

²⁰ The French Law of 2006 (24, July) relating to Immigration and Integration introduced such provisions for seasonal workers. It created a temporary stay card titled 'seasonal worker' (*Travailleur saisonnier*) (article L.313-10 – CESEDA²⁰). Granted for 3 years maximum and renewable, this card allows the worker to stay in France 6 consecutive month per year during three years. 'The primary purpose of these legal provisions is to encourage seasonal workers to return to their country at the end of the authorised work period in France, while allowing them to come back work to France the next year' (see: Circular N°NOR IMIM1000118C relating to agricultural seasonal workers for the 2010 campaign)

are carrying out more varied and qualified tasks and this is especially true for Moroccans which have a long experience in the French agricultural sector (CODETRAS, 2005). To that end, the French administration experiments since 2010 a way back to anonymous contracts in specific geographical areas for Moroccans first-time seasonal contracts in order to fight fraud while promoting effective return to Morocco²¹.

In fact, BLAs success is based on the possibility to overcome many frustrations, for the workers (regarding the selection process, working conditions, etc.), for the employers (lack of qualified persons, etc.) as well as for the governments (in terms of management costs). Pros and cons of temporary migration schemes are summarized in the table below on the basis of our overall assessment of the Spanish case.

Table 3. Circular Migration Assessment

Advantages	Disadvantages
<ul style="list-style-type: none"> • ‘Workers arrive after having passed previous controls, rather than arriving specifically to seek work’ • Human safety (‘their employers provide them with a means of transportation’) • Legal safety (‘proper working papers and legal authorizations’) • ‘Housing is provided’ • ‘Return trips are also organized, and if they comply with the terms regarding returning home, they are guaranteed work the following year’ • ‘Destinations can prepare support services in advance’ 	<ul style="list-style-type: none"> • ‘slow bureaucratic process, despite efforts’ • ‘understaffing of administrative bodies in charge of handling contracts, resulting in delays and withdrawal of job offers by employers • ‘coordination problems between the different agencies involved’ • ‘high level of uncertainty in forecasting labour demand ’ • ‘there are still seasonal workers without known working conditions’ • ‘Climate and market conditions hinder continuity’ • ‘Not all housing conditions are in compliance with law’ • ‘The stipulated return to source country is not always observed’ • ‘Corruption problems’

Source: Márquez Domínguez, Gordo Márquez and García Delgado, 2009

²¹ Circulaire IMIC1000118C du 26 juillet 2010 relative aux travailleurs saisonniers agricoles pour la campagne 2010.

2.2 Toward a stable bilateral cooperation

2.2.1 High dependence on broader diplomatic relations

The success of Spanish-Moroccan bilateral agreements implementation and the cost of defection or reneging on an agreement depend on diplomatic relations much more than the French-Moroccan bilateral agreements do. Territorial disputes over the Canary Islands, Ceuta and Melilla, the Western Sahara issue²², or the delimitation of fishing areas, still crystallize numerous tensions. Regarding the Spanish enclaves, the Moroccan sovereignty claim is constant and reappears according to developments or expectations in other aspects of the countries' mutual relationships (Gonzalez- Enriquez and Reynes, 2010). As for agricultural competition, it is ultimately exacerbated by the Deep and Comprehensive Free Trade Agreement (DCFTA)²³ negotiations between Morocco and the European Union since Moroccan exports are concentrated on the same type of fruits and vegetables than the Spanish one. The previous agreement on agriculture²⁴ and negotiations on fisheries²⁵ have triggered sharp tensions between Morocco and Spain. All these tensions have given rise to a climate of mutual distrust and rivalry (Del Pino, 2002; Planet and Ramos, 2005).

However, a change of political majority can greatly affect the nature of Hispano-Moroccan diplomatic relations, and therefore the implementation process as well as the enforcement of the bilateral engagements. De facto, the return to power of the left in Spain (PSOE, *Partido Socialista Obrero Español*) in 2004 improved the political climate and has led to the ratification of the agreement on labour in 2005 and the reactivation of the 1992 readmission agreement. The latter has been the one most prone to uncertain and difficult diplomatic relations. The

²² Since 1976, Spain has maintained its international support for the Polisario Front's vindication of Saharan independence from the Kingdom of Morocco. During the last few years Spain has supported for a referendum of self-determination (the UN's proposal to resolve the conflict) and Morocco's proposal of Saharan autonomy.

²³ The European Council authorized in 2011 the opening of trade negotiations with Morocco, Egypt, Jordan and Tunisia.

²⁴ The Agreement came into force in October, 2012, 1st.

²⁵ Spain and Morocco are involved in an international legal conflict involving fisheries due to Morocco's refusal to renew the Agreement allowing Spanish boats to fish in its waters in exchange for financial compensation.

agreement remained only partially applied until 2004. Between 1992 and 2004, only Moroccans were readmitted instead of both Moroccans and third country nationals (mostly from other African countries) as envisaged in the agreement. Besides, those readmissions were carried out on an individual basis and not on a collective one as agreed. In fact, the agreement only began to be fully operational in 2004. That year, Morocco decided to readmit nationals from third countries who had illegally passed through its soil. In 2012, the agreement finally came into force, 20 years after its signature.

Political instability has challenged recruitment in Morocco. The labour agreement of 2001 has been paralyzed soon after its signature by a series of political tensions and the breaking of diplomatic relations. Morocco decided unilaterally to stop the agreement whereas a selection of 20,000 workers for 2002 had been planned²⁶ (Marrero Rocha, 2005). Even though Morocco was the first source country with which Spain signed a bilateral labour agreement, cooperation on labour issues with Morocco remained pending until a series of favourable conditions emerged: stable diplomatic relations, difficulties of recruitment for Spanish employers in Eastern Europe and financial, logistical and political support of seasonal migration under the AENEAS programme²⁷ (Plewa, 2009).

At last, the economic crisis is currently changing Morocco's cooperation and labour migration patterns, which have consequences on workers profile and job opportunities characteristics. Before the economic crisis, job opportunities abroad linked to BLAs were mostly coming from the Spanish agricultural sector involving women. Since the outburst of the current economic crisis, a significant part of job opportunities for Moroccan nationals comes from the Gulf countries with which Morocco have signed BLAs, namely Qatar, United Arab Emirates or Bahrain. Those opportunities address mostly men, working in the retail or wholesale industry, or in other service industries (e.g security, computer industry, catering sector, etc.). Unlike agricultural jobs, contracts can be concluded for more than one year and, if renewable, lead to fixed-term contracts (Interview, MFA-MO).

²⁶ It is significant that the agreement can be cancelled by either side on 90 days notice whereas in the case of the French-Moroccan agreement of 1963, it is one year.

²⁷ The European Commission implemented between 2004 and 2006 a specific thematic instrument (the 'Aeneas' programme), with a view to assisting third countries in their efforts for better managing migratory flows.

2.2.2 Ensuring the respect of political commitments

The agreement of 2001 offers a wide range of possibilities and is very flexible: no mention of the sector of activity covered, no mention of the duration of the job contract or the number of migrants who will be allowed to enter Spain under the agreement, no upper limit specified. In such a way, the agreement provides significant leverages to renegotiate specific conditions according to specific situations and political demands and ensures transparency and trust. Those conditions can be the first foundations on which trust can be built as illustrated by the BLA between Ukraine and Spain. Indeed, Employers' organisations in Spain have feared that until the agreement with Ukraine is fully renegotiated, the ability of the Spanish government to intervene if things go wrong will be limited. Even though the agreement is signed, employers' organisations still expressed doubts about authorities' ability to guarantee the transparency of the selection (Plewa, 2009).

Private and public actors (ANAPEC, employers, etc.) have developed a number of practices linked to labour migration: facilitation of recruitment through information-sharing, creation of job opportunities, enhancement of informal exchanges, organisation of pre-selections, etc. They contribute to make labour migration management more dynamic, more flexible and best adapted to the changes while redefining bilateral agreements nature. Their direct or indirect participation to workers' placement in host countries play an important role in guaranteeing political commitment²⁸.

Likewise, the progressive enlargement of the cooperation framework has also ensured a greater respect of BLAs engagements: Spain is Morocco's second-largest investor after France and first commercial partner since 2012. Almost 800 Spanish firms are listed among industry, agriculture and services in Morocco and around 20,000 Spanish small and medium enterprises export to Morocco. Morocco needs the Spanish support by the European Union (i.e. European Neighbourhood Policy ENP), etc. These relationships have changed the nature of Spanish-Moroccan cooperation. By now, it is impossible to undermine the whole set of Hispano-Moroccan relations. However, the enlargement of the cooperation has not arisen just by chance and partly results from Spanish political will. Indeed, the Spanish foreign policy toward Morocco has been based since 2004 on developing interdependence of interests in several sectors in order to stabilize diplomatic relations. That way, economic and social networks created by

²⁸ Between 2001 and 2008, ANAPEC participated directly or indirectly to the placing of 22,572 workers abroad of which 95% in Spain (75% in agriculture, 15% in hospitality sector). Most of them were temporary workers (85%) (ANAPEC, 2009).

shared interests would actively participate to establish and maintain cooperation between Spain and Morocco.

This ambition can be found in official documents such as the Report on the Spanish external service reform (June 2005), in the objectives of the External State Action (EAS) assigned to the Ministry of Foreign Affairs or in the State General Budget (PGE, *presupuestos generales del Estado*). This policy orientation is the consequence of a long history created by a dense and complex network of shared interests, economic rivalry, political cooperation, territorial conflict and mistrust (Del Pino, 2002b).

'In this context of conflict, cooperation and mutual dependence, immigration is something more than a demographic movement with an impact on the labour market, the welfare state and cultural life: it is also a tool in the arena of international relations'. (Gonzalez-Enriquez and Reynes, 2010, p.2).

Therefore, beyond labour issues and in a context of economic crisis, stabilising and maintaining relations between Spain and Morocco may be BLAs primary objectives.

3. Franco-Moroccan Cooperation: from post-colonial relationships to extended cooperation framework

During the decade 1962-1972, the extent and geographical scope of Moroccan emigration expanded, due to strong economic growth in Europe. Morocco signed BLAs with several European countries like Former West Germany (1963), France (1963), Belgium (1964), or the Netherlands (1969) although, for their most part, outflows have been mainly directed to France.

France implemented BLAs already during the colonization period, broadened their number and scope during the period 1945-1974, and then progressively changed the nature of its cooperation on migration with source countries, offering new bilateral instruments since 2007. Labour agreements are meant to offer privileged provisions for recruitment and residence permit but are considered to be largely in line with the general regulative framework on immigration, embodied in the Code for Entry and Residence of Foreigners and Asylum Law, CESEDA (*Code de l'Entrée et du Séjour des Etrangers et du Droit d'Asile*). There are two exceptions with

Algeria²⁹ and Tunisia. Since 1968, Algerians' entry and residence are completely regulated and, since 1988, Tunisians' entry and residence are partially regulated by bilateral agreements (CICI, huitième rapport 2011).

The first agreements signed by France (1945-1974) had as primary goal to preserve historical and cultural bounds with the former colonies and protectorates, to control and reduce informal recruitments as well as to tackle labour shortages. Accordingly, the Franco-Moroccan agreement of 1963 had three main objectives: firstly, to better organize workers' mobility following the 'excesses' of the first legal act of immigration regulation, the Ordinance no.45-2658 of the 2nd of November 1945, which had permitted fraud and irregular recruitment; secondly, to respond to the pressing needs of an economy becoming fully industrialized; and thirdly, to maintain French influence over its former colonies and protectorates. It was therefore at the same time an instrument of administrative re-appropriation of immigration management, a tool for promoting legal labour migration and a traditional instrument of foreign policy.

The second phase of bilateral agreements during the 1980's aimed at renegotiating the first post-colonial agreements, addressing integration issues and access to the labour market with a more restrictive approach.

Finally, the new bilateral agreements on migration, proposed primarily to Francophone countries since 2007, fall within a broader framework, both geographically, since they are also negotiated with non Francophone countries, and in their content since they tackle a wider range of migration issues (including labour). Nevertheless, this last partnership does not fit the current cooperation framework between Morocco and France, characterised by broad economic, social and historical bounds where specific and operational agreements tend to be more adapted and effective than comprehensive ones.

3.1 BLAs as attempts to retrieve migration management

At the end of the Second World War, a new wave of immigration begun in France, accelerated on the aftermath of colonial independences and ended in May 1974 with the official halt to foreign labour recruitment. This lengthy and large-scale wave was characterized by the migration of non-European foreigners in a context of material and economic reconstruction and by the redefinition of identities and territories resulting from post-colonial independences incurred

²⁹ Algerian agreements are regulated by the Law 98-349 of May 11, 1998. Some provisions are not preferential like students' entry and residence.

during the 1950's and 1960's, as well as the establishment of intra-European free circulation regime.

During this period (1945-1974), the legislative framework was stable, fixed by the Ordinance no.45 that lied on three different logics: one security logic with contingents and collective repatriations; one of labour with the creation of the National Immigration Office ONI (*Office National de l'Immigration*) under the supervision of the Ministry of Labour and with the exclusive competence to recruit and promote admissions and, finally, a logic of population (Spire, 2005). However, the Ordinance allowed too wide legal interpretations, leaving some space for informal recruitment practices. Indeed, the government monopoly through the ONI has been rapidly threatened. The ONI administrative complexity, with its cumbersome hiring procedures, provoked reticence in the employers and political elites (Gastaut, 1999). This situation convinced the employers to by-pass the ONI and hire directly in the country of origin. Viprey explains that 'the importance of the flow of foreign workers is inevitably accompanied by the central power's loss of control over migration, and added to the current legal labour immigration, comes irregular immigration' (Viprey, 1998, p.26).

Henceforth, in reaction to the recruitments made outside of official procedures since 1948, the ONI carried out massive regularizations *a posteriori*³⁰ (Milza, 1988). Viet adds that 'a correlated deviation of the immigration policy resulted: the procedure of regularization gradually replaced the legal immigration procedure through ONI' (Viet, 1998, p.237). In Morocco for instance, collective seasonal recruitments for agriculture were carried out by the ONI, while at the same time French companies were hiring directly and informally through their networks (e.g through middlemen sent to Moroccan villages) (Belbah and Veglia, 2003).

The agreement of 1963 results from this context. It has to be understood as a State attempt to control workers' admission on its territory by limiting the role of non-State actors involved in the recruitment process such as economic entrepreneurs. Bilateral agreements concluded by France during the 1950's and 1960's proclaim the reinforcement of the State's control on the regulation of its foreign labour.

3.2 BLAs, as instruments for preserving post-colonial historical and cultural bonds

At present, France has a demand-led admission policy, even though it recently experienced a small experimental supply-side scheme with the 'Skills and Talent' card (*Carte*

³⁰ Regularisation rate: 28% in 1956, around 50% between 1957 and 1962, 61% in 1963, 69% in 1954 and 79% in 1965 (Schor, 1996).

Compétences et Talents) (Devitt, 2012). Hence, non-EU workers' admission depends on the availability of a job offer and the prospective employer has to prove that no French national or legally resident foreigner is available for that job. The Law of 2006 on immigration and integration reasserted the importance of prior evaluation of the national employment situation and created a list of 30 sectoral and regional shortage occupations³¹ available to foreign workers from third countries and exempted from the national employment situation check. High-skilled migrants, executives, workers with a strategic job, can claim to an exemption or benefit from priority consideration for employment.

Bilateral labour agreements, negotiated in priority with former colonies and protectorates, have an impact on the nature of the residence status ('temporary' or 'permanent'); the worker profile (high-skilled, etc.) or the recruitment procedure: the 'admission procedure' (*Procédure d'introduction*), which refers to direct admission of foreigners on the French territory and the 'status change procedure' (*Procédure de changement de statut*), which applies to foreigners, already settled in France.

If it is true that the 'first generation agreements' signed with Morocco are considered largely aligned with the CESEDA, since the 2006 reform, they still offer some preferential provisions.

The bilateral agreement of 1963 impacts labour admission by facilitating recruitment abroad and by financial support of the arrival of Moroccan workers. The bilateral agreement of 1987 impacts permanent migration with preferential provisions for family reunification and for workers with an employment contract. The latter can obtain a long-term residence permit with 10 years validity (and renewable for other 10 years) after 3 years of continuous residence, whereas the general regime requires 5 years. Knowing that a long-term residence permit frees the worker from the national employment situation check and improves integration perspectives, we can say that the Franco-Moroccan agreement of 1987 gives opportunity to plan livelihood strategies as well as to have a career perspective in France. The table below presents the advantages that the agreements provide to Moroccan workers.

³¹ Because of the crisis, the shortage occupation list was reduced to 14 occupations for the entire country (Decree of the 11th of August 2011) and restored by the State Council the 26th of December 2012.

Table 4. CESEDA (2006) and Franco-Moroccan Agreements (1963; 1987; 2001)

Nature of residence	Temporary residence linked to work contracts				Permanent residence – Work authorised
Worker profile	<i>Employee</i>	<i>Temporary Worker</i>	<i>Seasonal Worker</i>	<u>BLAs' benefit</u> <i>Young professionals</i>	<i>Skills and Talent</i>
Geographic area	Determined geographic area			Determined Institution or Enterprise	Entire territory
National employment situation check	YES <u>BLAs' benefit</u> Possibility to claim exemption or benefit from priority consideration for employment	YES	YES	NO Annual Quota (300 persons from which 100 in the health sector)	NO Renewable just once
ACTORS	DIRECCTE ³² <u>BLAs' benefit</u> Administrative formalities simplification Covering of some financial costs			OFII	OFII

Source: Personal elaboration based on Franco-Moroccan agreements and the CESEDA

Legend: in purple are the modifications induced by the bilateral agreements to the CESEDA.

The preservation of historical and cultural bonds is not only settled with preferential provisions facilitating residence and status change but also results from indirect and complex dynamics, partly and indirectly created by bilateral agreements. We could define those indirect processes as 'population logic'. Spire employed the term 'population logic' to highlight the existence of 'ethnic' criteria ruling immigration policies during the period 1945-1974. This logic

³² Regional Department of enterprises, competition, consumption, labour and employment, DIRECCTE (*Direction Régionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi*).

was impacting recruitments, imposing a non-official hierarchy according to the nationality and based on the 'assimilation principle' (Spire, 2005). The population logic disappeared to the profit of other criteria like French linguistic skills but somehow remained, through BLAs substantial influence on the origin of immigration flows.

In more recent agreements, some quantitative elements were introduced like a minimum number for the issuing of the 'Skills and Talent' card (settled in Pacts on concerted migration management with a number ranging from 100 to 1500 cards) or a maximum number for young professionals (from 100 to 1500 per year). Bilateral agreements also offer priority consideration for employment or enlarged shortage occupation list with respect to the general one. Indeed, foreign workers coming from a country that signed a Pact on concerted migration management with France may have access to other non-enforceable occupations previously negotiated on a case by case basis with individual countries and added to the list.

Those measures included in bilateral agreements tend to establish an indirect 'population logic' with Francophone countries, since immigration flows are still largely influenced by historical links. Indeed, between 2007 and 2010, among the ten major economic migration source countries to France, we systematically find Morocco, Tunisia, Mali and recurrently Algeria (Rapport au Parlement, 2012). The French Ministry of Home Office recognized that:

'BLAs could play this role [quota system]. By enlarging the shortage occupation list, they somehow provide the government with the possibility to introduce workers according to their origin since Pacts on concerted migration management have been proposed in priority to Francophone countries³³' (Interview, MHA-FR).

3.3 BLAs in the context of absent labour migration policy

3.3.1 Sudden halt of foreign labour admission and gradual loss of salience of labour migration issues

Labour migration issues have traditionally been at the core of historical Franco-Moroccan bilateral relations. However, under the joint effect of the process of Europeanization of migration

³³ In 2013, 14 Pacts have been signed with Benin, Burkina-Faso, Cape-Verde, Congo, Gabon, Mauritius, Russia, Senegal, Tunisia, Camerun, Lebanon, Macedonia, Montenegro, and Serbia.

policy, and the evolution of migration policies in France and Morocco, labour issues have been relegated to a secondary level.

In Morocco, labour migration issues did not disappear from the public agenda but have been embedded in a more general framework on emigration, thus becoming one objective among others. Moroccan public policies evolved from a 'Moroccan Workers Abroad' approach (*Travailleurs Marocains à l'Etranger*) to a 'Moroccan Residents Abroad' approach (*Marocains Résidents à l'Etranger*). This shift happened with the creation of a ministerial department specifically dedicated to Moroccan emigration issues (*Affaires de la Communauté Marocaine Résidant à l'Etranger*) in July 1990. Since then, Morocco has further focused on the interests of Moroccans abroad (i.e equal treatment, social integration, family reunification, social security, etc.), encouraged associational life and negotiated bilateral and multilateral agreements through the new institution (Belguendouz, 2009). A growing awareness of the interest of being close to the Diaspora to foster economy, development, return and political support by European countries has played a role in the recent change in policies, putting an end to years of tensions (De Haas, 2005a). Emigrants are now celebrated in official discourses and described as loyal to the Monarchy. In 2011, in the discourse for the 58th anniversary of the Revolution of the King and the People, Mohammed VI said: 'to those [residents abroad], we reiterate our tribute to their commitment to their national identity and their desire to keep and maintain relationships with their families and their country, by visiting, promoting development and growth and value the advocacy of just causes'.

This contributes to characterise Moroccans abroad as a Diaspora, 'thereby simultaneously stressing the settled nature of these communities (a shift away from the guest-workers ideology)' (De Haas, 2007, p.23). Therefore, Morocco is developing a policy towards permanent migration, fostering integration and naturalisation of its residents abroad, beyond the very restrictive framework of bilateral labour agreements and temporary migration.

This situation explains the contrast between negotiations of the agreements on labour of 1963 and 1987, never entirely renegotiated and the agreement on Social Security of 1965. The latter was amended several times, had several protocols and complementary agreements: between 1965 and 2007, more than 30 high level meetings took place on social security matters, before renegotiating a new agreement on social security signed in 2007. Morocco negotiates social security agreements with foreign countries since nearly fifty years³⁴. With

³⁴ France (1965); Belgium (1968); Netherland (1968); Spain (1979); Sweden (1980); Former West Germany (1981); Irak (1981); Qatar (1981); United Arab Emirates (1981); Denmark (1982); Romania (1983); Libya (1983); Jordania (1983); Tunisia (1987); Italy (1994); Portugal (1998).

France, there are still a number of points which need to be addressed such as the impossibility to transfer to Morocco the social minima of retired persons (Social Aid for the Elderly, *Aide Sociale aux Personnes Agées*, ASPA), or of disabled people (Disability Solidarity Fund). Changes concern family benefits and health costs with an enlargement of the protection to other insured categories like self-employed workers, job-seekers, civil servants, students and trainees but also to the retired French persons living in Morocco³⁵.

In France, labour immigration has suffered from a 30-years-long stop (1974-2005), even though migration flows have continued under other forms (mainly family migration). The decade after 1974 was characterized by the end of labour immigration, a rigorous control of entry and residence of foreigners, the encouragement to return to the country of origin, the substitution of French workers to foreign workers and incentive measures for integration and training. The situation substantially evolved in 1981 with the political alternance but foreign workers admissions were not reactivated, and the topic progressively disappeared from the political debate. Instead the latter concentrated on foreigners already present on the French territory by multiplying measures of integration and by reforming the nationality law (Hessel, 2008).

After 1974, bilateral labour agreements signed with former colonies and protectorates lost value and were reconsidered. In his speech in front of the National Assembly on the 8th of July 1981, Prime Minister Pierre Mauroy announced that ‘the rights of workers must be fully recognized. However, given the situation of the labour market, France cannot welcome a growing inflow of foreign workers. [...] As a consequence, the government will propose bilateral agreements to the countries of origin, regarding working, residence and return conditions of these workers in France and of French citizens abroad’³⁶.

Thus, the Franco-Moroccan Agreement signed in 1987 addresses both integration issues and access to the labour market. From the French perspective, this change was a reaction to the growing complexity of the migratory phenomenon which was accompanied by a particularly intense legislative and regulatory activity. The Moroccan perspective was more ambiguous. On the one hand, Morocco wanted to negotiate preferential provisions for Moroccans abroad. On the other hand, until the early 1990s and the creation of a Ministry dedicated to emigration issues, Morocco wasn’t actively defending Moroccans’ rights and was discouraging integration and naturalisation in host countries. At that time the Moroccan government wanted to prevent

³⁵ It covers nearly 800.000 Moroccans (from which 350.000 are bi-nationals) in France and 40.000 French in Morocco (Moroccan workers Association, ATIME).

³⁶http://archives.gouvernement.fr/villepin/acteurs/premier_ministre/histoire_chefs_gouvernement_28/pierre_mauroy_244/discours_politique_generale_pierre_50369.html

the Moroccan Diaspora from becoming a political threat and to limit their integration in the case that would negatively affect remittances (De Haas, 2003). It is thus no coincidence if the agreement of 1963 was never entirely renegotiated as we previously mentioned, and in spite of some amendments made in 1983 and 1986, the current version is very similar to its original version. The last Franco-Moroccan Commission on labour dates from 1994 (after those in 1976, 1988 and 1990) when the agreement of 1987 came into force.

Labour migration issues have been brought back into French public and political debate after a series of studies published at the beginning of the XXI century³⁷, which insisted on the need to admit foreign labour in France for the sake of economic competitiveness. Since 2005, through several speeches by the former Minister of Home Office Nicolas Sarkozy and in particular his Declaration of General Policy on ‘chosen immigration’ (*immigration choisie*³⁸), the issue of labour immigration obtained greater recognition.

3.3.2 Do BLAs have an impact on permanent economic migration?

Temporary economic migration refers to temporary workers with a residence permit valid for less than 12 month, seasonal workers, students, holders of the ‘Skills and Talent’ card and young professionals whereas permanent migration refers to several situations: ‘first-admission’ foreigners, those who have benefited from a ‘status change’ procedure or newly regularised foreigners with a residence permit of one year minimum. A variety of measures have been taken to ensure the temporary nature of migration and these have been largely adopted in the framework of bilateral agreements.

On the contrary, it is difficult to assess BLAs impact on permanent economic migration because a significant part of that impact is indirect and impossible to evaluate. Since 2003, most permanent workers are not ‘admitted’ in France but benefit from a ‘status change’ procedure. Therefore, even if BLAs could have facilitated temporary admission in the first place, it is impossible to evaluate the extent to which agreements affect permanent economic migration through the ‘status change’ procedure.

³⁷ ‘*Immigration, marché du travail, intégration*’ (Commissariat Général du Plan, November 2002); ‘*L’accueil des immigrants et l’intégration des populations issues de l’immigration*’ (La Cour des Comptes, November 2004).

³⁸ ‘I want to move from suffered immigration to chosen immigration’ (Prime Minister to the Parliament, 9th June 2005).

http://www.u-m p.org/sites/default/files/fichiers_joints/dates_cles/discours_nicolas_sarkozy_3.pdf

On the other hand, inflows are still largely composed by non-economic flows. In 2009, around 50% of Moroccans entered through family reunification (Interview, OFII-MO). A large proportion of migrants who enter France via family reunification and other non-labour channels are active in the labour market and, therefore, are indirect labour migrants. It is difficult to assess BLAs impact on this indirect labour migration but they may contribute to it by protecting and enhancing non-labour channels like family reunification (although since 2011, some restrictions have been introduced on family migration).

3.3.3 BLAs confronted to an increasingly diversified economic migration

3.3.3.1 The Agreement of 1963 progressively become outdated

The Franco-Moroccan agreement on labour of 1963 was negotiated in a specific economic context and conceived to respond to important labour needs, organizing *de facto* massive recruitments³⁹ (like a quota system). When the economic and political context evolved after 1974 making organised recruitment from abroad more difficult, the agreement lost part of its substance. It became simpler to recruit a foreigner already settled in France than to recruit abroad.

However, the agreement continued to organize seasonal migration, regardless of the national policies or economic and social trends. Employers' organisations in the agricultural sector asked to and obtained by the government to maintain seasonal migration because foreign labour couldn't be easily and automatically replaced by local labour. In certain departments (e.g. Bouches du Rhône, Gard, Vaucluse) the agricultural sector largely relies on foreign labour.

Therefore, after 1974, the only way to legally admit foreign workers was through the so-called 'OMI contracts' (*contrats OMI*) from the name of the International Migration Office (*Office des Migrations Internationales*). During the 1990's, employers continued to call for 'OMI contracts' although the government was trying to restrict them. In 1995, the government imposed to employers from the department 'Bouches du Rhône' an agreement limiting 'OMI contracts' to those already existing. Between 1995 and 2000, the number of 'OMI contracts' decreased, contributing to the leakage into irregular employment. In 2001, under the pressure of

³⁹ Per year and number: 1973 (15.405), 1974 (19.168), 1975 (10.515), 1976 (11.472), 1977 (11.247), 1978 (11.745), 1979 (12.597), 1980 (12.923), 1981 (12.771) (Kachani, 2008).

the Federation of Farmers Trade Unions of the Department Bouches du Rhône FDSEA (*Fédération départementale des syndicats d'exploitants agricoles*), the government authorized again first-arrivals of foreign workers. In 2001, 'OMI seasonal workers had become a crucial element for the functioning of local agriculture', which now 'depends on an external factor very difficult to control' (Mesini, 2009 p.106).

Table 5. Moroccan workers admitted to France, 2006-2011

	2006	2007	2008	2009	2010	2011
Seasonal Moroccan workers	6.169	5.651	5.916	5.774	5.192	5580
Total seasonal workers	17.204	19.064	11.645	7.955*	7.809	8.764
Moroccan economic migration	621	941	5031	2360	1597	1625 (in 2012: 6243)
Ranking for Economic admissions (without Romania and Poland)	3	3	1	1	2	3 (in 2012: 1)

Source: Personal elaboration based on SOPEMI, 2012 and OFII, 2011

*The decrease in number between 2008 and 2009 is related to the implementation of the three-year residence card (before, those workers had visas). Therefore, it is important not to mix the decrease in number with the seasonal immigration volume.

If we compare the ratio between seasonal Moroccan workers admitted to France and those admitted to Spain in 2010, it is respectively one over three. Two thirds of them were not subject to visa authorization (second or third time of their three-year residence card), and the remaining part had free visas. As for Spain, 6,000 Moroccans obtained a permit in 2010 whereas they were 47,000 in 2007: this reflects a clear impact of the economic crisis.

The regulative framework of seasonal migration has recently undergone some changes, which have had some impact on foreign labour admission through bilateral agreements, although it is difficult to evaluate exactly the scope of changes. On one hand, since the Law of July 2006, seasonal job contracts can be offered to foreigners holding a 'student' residence card

(*étudiant*), which allows them to work part-time. On the other hand, the Law of January 2005 withdrew the monopoly of recruitments from the Foreigners Reception and Migration National Agency, ANAEM. In 2006, restrictions related to recruitments in the agricultural sector were lifted up for shortage occupations. The last two measures combined with the free circulation of services in the EU⁴⁰, led to the proliferation of service-provider companies in the agricultural sector. Seasonal workers from third countries employed by one of those companies established in another EU country are exempted from work authorization in the country where they are posted.

‘The growth of foreign labour recruitment networks in the intensive agricultural sector relies on the divergences of interpretations and enforcement between states. Thus, the Court of Justice of the European Union (CJEU) sentenced that workers from third countries shouldn’t be subject to work authorization in the state where they are posted if they are ‘regularly and usually’ employed by the service company. The French administration considers that this stable employment condition is respected when the worker from a third country is employed for at least one year’ (Mesini, 2009, p.28).

As a consequence, Moroccan workers can work in France as a seasonal worker, employed by a service provider established in another EU country, therefore substituting *de facto* Moroccan workers admitted through BLAs in France. This proliferation is accompanied by a fragmentation of service providers. In this context, the bilateral agreements on labour are just ways of initiating and framing movements (Devitt, 2012).

As for seasonal migrants’ working and living conditions, the absence of renegotiation of the agreements’ provisions put Moroccan workers in a weak legal and social position. In march 2007, CODETRAS (*Collectif de défense des travailleurs étrangers dans l’agriculture des Bouches du Rhône*), an umbrella organisation gathering around ten associations and trade unions, decided to refer the case of migrants workers’ conditions to the High Authority for the fight against discriminations and for equality, HALDE (*Haute Autorité de Lutte contre les Discriminations et pour l’Egalité*). In its decision n°2008-283⁴¹, the HALDE highlighted ‘an excessive use of the seasonal card, a systematic extension of contracts beyond the legal period of 6 months with the objective to satisfy permanent needs and with the consent of the local administration’.

The Law of November 2007 changed the seasonal worker status (article L. 313-10-4, CESEDA), partly due to the excesses denounced by the HALDE. Since then, when foreign

⁴⁰ art 49, Treaty on European Union

⁴¹ Decision of the 15th December 2008.

workers hold a work contract of at least three months and commit to maintain their usual residence abroad, they can obtain a residence card called 'seasonal worker' (*Travailleur saisonnier*), issued for a maximum duration of three years and renewable. The card allows staying in France and working, in a limit of 6 months maximum per year. Each contract will have to be validated by the DIRECCTE and for the second and third years, the worker won't have to get a new entry visa. Based on the agreement of 1963 with Morocco, the OFII will cover Moroccans arrival costs.

3.3.3.2 The Agreement on Young Professionals unfit to new mobility patterns

Over the past eighty years⁴², France has concluded bilateral agreements with developed and developing countries on the mobility of young professionals, to boost French emigration or to increase employment opportunities and training schemes with source countries.

More recently, those agreements were signed through traditional bilateral agreements as it has been the case with Morocco (21 May, 2001) or as a clause included in the Pacts on concerted migration management. In general, they offer an opportunity to young people between 18 and 35 years, already engaged in working life, to deepen their professional, linguistic and cultural experience through international mobility and to gain work experience in a company established in France or in the partner country. The work contract is not subject to the employment situation check and must have a minimum duration of 3 to 12 months with the possibility to be extended until 18 months. The beneficiary must return to its country of origin at the end of the authorised work period since the change of status is not allowed. This is an instrument to promote temporary employment and training, preferably inter-enterprises, on the basis of reciprocity and annual quotas. The principle of reciprocity means that the enterprise considers the young professional as an employee who gets social security and the same working conditions and wages as the other workers. The Franco-Moroccan agreement of 2001 targets both flows (estimated to one third of the total of Moroccan young professionals) and stock (two thirds) but the young professionals already settled in the partner country are not included in the quota. The agreement is implemented by the ANAPEC in Morocco and by *Pôle Emploi International* PEI (Public Institution for Employment) in France.

At the beginning, the agreement was very successful in the hotel business and catering sector but rapidly lost its attractiveness for Morocco. It only concerns a very small number of young people (100 French and Moroccans per year at first) and despite the increase of quotas

⁴² First bilateral agreement signed with former Yugoslavia the 29th July 1932.

in 2004 up to 300 young people per year, from which 100 in the health sector, it did not attract more than 100 individuals per year since its creation. The agreement has been qualified as ‘derisory’ and ‘a failure’ (Interview, MFAC-MO).

‘The program is not attractive and not valued because candidates are presented as interns and not real employees. It does not fit with new mobility patterns. They [young Moroccans] all want to be students because of the new law, because they can work and stay after their studying. Mobility of young people is almost never accomplished through bilateral agreements. We are at the ‘end of the line’ regarding mobility of the young people’ (Interview, OFII-MO).

Table 8. Moroccan and French young professionals exchanges (2004-2009)

	2004	2005 ⁴³	2006	2007	2008	2009
Number (flows)	113	10	14	68	91	17

Source: Personal elaboration, European Migration Network 2011

NB: in 2006, a vast communication campaign was launched to reactivate the agreement. It can explain the gap between 2006 and 2007.

Indeed, the recent attractive measures designed for student immigration such as the possibility of working under certain conditions⁴⁴ or the multiplication of partnerships between schools and universities with training courses and grants⁴⁵, make the program for young professionals unappealing: in fact, mainstream student migration offers better prospects in terms of training and professional experience. The recent creation in 2010 of the public agency Campus France (*Agence Campus France*⁴⁶) under the supervision of the Ministry of Foreign

⁴³ Circulaire interministérielle DPM/DMI 3 no 2005-253 du 27 mai 2005 relative aux procédures applicables aux jeunes étrangers accueillis en France dans le cadre des accords bilatéraux relatifs à des échanges de jeunes professionnels.

⁴⁴ Law of 2006: students can work until 60% of the legal time work and benefit from a Temporary Residence Authorisation (APS, *Autorisation Provisoire de Séjour*) of 6 months if they are post graduate students for a first professional experience.

⁴⁵ Of which the multilateral pilot program, the Mediterranean Office for Youth is the most representative

⁴⁶ Created by the Law of the 27th of July 2010.

Affairs and the Ministry of Higher Education and in charge of promoting French universities abroad, of managing reception of foreign students in France and of delivering scholarships and fellowships offered by the French government or other partners, can contribute to exacerbate the unattractiveness of the Franco-Moroccan bilateral agreement on young professionals.

As the Former Minister of Immigration⁴⁷ communicated to the President and the Prime Minister in 2009: ‘the circulation of migrants’ skills doesn’t concern only trained professionals: it has to be prepared in advance, by a proactive policy to receive foreign students. We have to diversify the origin of foreign students admitted to France, recruit more students in the field of science and promote their access to graduate and post-graduate studies. We are going to take responsibilities towards the poorest countries, but we also want France to become attractive for the best students in the world’ (Engagement Letter, 9th of July of 2009). This vision was reasserted by the newly formed Ayrault government, with two statements made public in June 2013. The first one proposed to strengthen the French position regarding student mobility by diversifying the geographical zones of recruitment and by privileging the venue of the best students. The second statement was referring to the improvement, facilitation and simplification of the rules about the status change procedure from student to worker⁴⁸.

In 2011, 7,318 Moroccans were admitted in France for study purposes: they represented the second most important nationality in this entry channel after China (and before Algeria or Tunisia)⁴⁹. Increasing numbers of Moroccan students are registered in scientific and economic post-graduate degree and most of them wants a first professional experience in France⁵⁰.

Another explanation for the low success of the agreement on young professionals was given by an official of the French Ministry of Home Office interviewed:

‘The program has a limited success because it is difficult to set a dialogue with everyone and to coordinate between partners. You have the OFII [France], the ANAPEC [Morocco], the enterprises [France and Morocco], the young candidates [France and Morocco] and the services at the Embassy [France, for the issuing of visas]. It requires a strong political will’ (Interview, MHA-FR).

⁴⁷ Minister of Immigration, Integration, National Identity and Codevelopment.

⁴⁸ <http://www.gouvernement.fr/gouvernement/le-debat-parlementaire-sans-vote-sur-l-immigration-professionnelle-et-etudiante>

⁴⁹ Between 2010 and 2011, the number of Moroccans students admitted grew by 27%, reaching its highest level since 2003. In 2011 Moroccans represented the largest group of foreign students in France (32,482 students), reaching 11.3% of the total.

⁵⁰ Document préparatoire au débat au Parlement, April 2013

The multiplicity of institutional and private actors in both countries involved in the agreement's implementation has been underlined as a shared difficulty by both the French Ministry of Home Office and the Moroccan Ministry of Foreign Affairs and Cooperation (Interview, MHA-FR, MFAC-MO).

3.4 The shift towards a comprehensive approach to international migration management

Until the turn of the century, cooperation on labour migration issues has been characterized by fragmentation of measures and agreements. With the exception of the former programs for temporary or seasonal workers in the post-war years, implemented by some European countries one cannot find, historically, a classical example of bilateral agreement regulating labour migration. It will be necessary to wait for a more comprehensive approach on migration issues at the European level: in December 2005, the Council of the European Union adopted the 'Global Approach to Migration'⁵¹ and only since then, it is possible to observe some similarities in the contents of BLAs adopted by member states. The three pillars of the convergence are the organisation of legal migration, the fight against irregular immigration, and development (co-development). The Global Approach also put some emphasis on circularity of migration. Many elements of the EU Global Approach can be retraced in the second-generation agreements concluded by Spain (*Acuerdos Marco de Cooperación migratoria*⁵²), in France's Pacts on concerted migration management and solidarity development (*Accords de gestion concertée des flux migratoires et du développement solidaire*), and in the EU mobility partnerships. Since 2006, France and Spain are the countries which have particularly operationalized the Global Approach through their bilateral agreements and this has modified not

⁵¹ In December 2005, the European Union has adopted 'The Global Approach to Migration', a balanced, global and coherent approach, that promote policies to fight illegal immigration and to benefit of legal immigration. It introduces new political agendas (such as the Lisbon agenda) and relies on strong collaboration with the sending and transit countries for its implementation. It is implemented with Africa through the Euro-African Ministerial Conference (Rabat Action Plan) since 2006.

⁵² The Agreements result from the Action Plan for Subsaharan Africa of 2006 and called 'Africa Plan'. They include 18 Articles (8 Chapters) on labour, return, integration, irregular immigration, migration and development and readmission. *Plan África 2006-2008/ 2009-2012*. Spanish Ministry of Foreign Affairs and Cooperation.

only the privileged relations that France maintains with a certain number of countries but also the nature of bilateralism. Unlike the first labour agreements, there is now one single French approach which aims at improving dialogue between all partners on migration issues but negatively affects agreements' diversity in both contents and ways of implementation.

In spite of its long tradition in the use of bilateral agreements, France has been a good example of absence of a systematic and comprehensive policy regarding bilateral agreements. The traditional French strategy has been to negotiate agreements on seasonal migration with Maghreb countries, Turkey and other European countries⁵³ until 1968⁵⁴. Afterwards over 20 years passed before the final labour agreement on seasonal work with Poland was concluded (1992). During this period, several other bilateral agreements on young professionals were signed with European and other Western countries. France's migration environment has been governed by these bilateral agreements until 2007.

Six years ago, a new French bilateral cooperation instrument emerged, called Pacts on concerted migration management. Legally, they stem from a legislative reform⁵⁵ initiated in 2003 with the Law 1119 of 26 November 2003 and achieved with the Law 119 of 24 July 2006 and the Law 1361 of 20 November 2007. The Pacts aim at promoting a new partnership on migration issues with source countries, in line with what proposed in the Green Paper of 2005 of the European Commission on an EU approach to managing economic migration⁵⁶. The latter supports the idea that 'cooperation with third countries to facilitate legal migration and the social and economic integration of potential migrants must include a number of issues, such as the brain drain, the fact that the countries of origin invest in developing the skills of people who will then leave the home economy and society, the difficulties for migrants to keep social and cultural ties, etc.' (European Union, 2005a, p. 11)

The French partnership is based on an understanding of managing migration through win-win solutions and on the principle of 'shared responsibility' and has the following rationale:

⁵³ The first agreement was signed with Italy (1947), then Spain (1956), Morocco (1963), Portugal (1964), the former Yugoslavia (1965), Tunisia and Turkey (1964), Algeria (1968).

⁵⁴ That is before freedom of movement for workers between the six founding countries of the European Community was introduced

⁵⁵ The legal conceptual and operational approach adopted is maintaining and strengthening traditional objectives such as reducing unauthorised immigration and controlling migratory flows while setting new priorities such as reducing family migration (restrictive conditions for family reunification) and actively promoting economic migration.

⁵⁶ See http://europa.eu/legislation_summaries/other/c11331_en.htm.

the source country benefits from a facilitated circulation of its nationals with a better access to the French labour market and from enhanced development aid, in exchange for its contribution to the fight against irregular immigration. The linkage between migratory policies and development aid is encouraged by the International and development cooperation inter-ministerial Committee CICID (*Comité interministériel de la coopération internationale et du développement*⁵⁷) which decided on June 2009, that official development aid would preferably be granted to countries that signed a Pact on concerted migration management. In other words, enhanced possibilities of legal migration (above all for business men, traders, scientists etc) under short-term residence permits with multiple entries and development aid ease negotiations on readmission and intensive cooperation on migration control⁵⁸.

However, this restructuring of cooperation with source countries has raised strong reticence and criticism, particularly from Morocco. There is now one single French approach which, on one hand, improves dialogue on migration between diversified partners but, on the other, lessens the contents on labour issues and flexibility and decreases the potential of specific bilateral leverages due to the impersonal and integrated nature of the instrument. Those are admittedly negotiated on a case-by-case basis, but based on one single framework of cooperation. The three pillars which should function in a coherent manner are in fact in potential divergence, also due to their different weight and scope. Since Pacts on concerted migration management link migration to other issues of common concern, such as development, trade and security, a shift in the framing of migration was generated, relegating and limiting labour migration issues to a secondary level. Besides, the latter have become a complex and ambiguous stake at the service of migration control. As a matter of fact, the OFII, created in March 2009 is placed under the direction of the Ministry of Home Office, overseas territories

⁵⁷ Created by the Decree n° 98-66 of the 4th February 1998, the CICID defines international cooperation and official development assistance policies.

⁵⁸ This strategy of negotiation is called ‘asymmetric tactical issue linkages’ used to negotiate (Martin 1993). Sebenius (1983) defines issue linkage as the simultaneous discussion of two or more issues for joint settlement. Linkages secure the conclusion of an agreement either by creating benefits for a party that would otherwise find a treaty to be of little value or by incentivizing a party to commit to an agreement from which it would otherwise defect

and territorial authorities⁵⁹, which reveals a will to control immigration, and to boost return measures as a major interest.

Indeed, Pacts on concerted migration management mark a break from the traditional BLAs, because they are multi-functional, multi-target instruments. Negotiations initiated in 2007 with Morocco about the signature of a new partnership rapidly failed, suggesting not only an inappropriateness of this instrument for the issues at stake in the French relations with Morocco but also a competition with the EU instruments. The European economic partnership and negotiations on an EU mobility partnership were launched at the same time.

3.4.1 BLAs challenged by the extended and integrated cooperation framework

3.4.1.1 Private actors intervening in the management of migration and mobility

Bilateralism is redefining and recomposing itself at different levels. In a traditional bilateral way, the general cooperation framework between Morocco and France is increasingly integrated and dynamic. Bilateralism traditionally operates through bilateral agreements, high-level meetings and political fora. Nevertheless, Franco-Moroccan cooperation is increasingly undertaken and evolving beyond traditional political and diplomatic relations. It increasingly relies on the key role of individual or collective private actors. They modify bilateralism, expanding and re-structuring formal and informal networks, framing and initiating movements and cooperation initiatives.

A number of elements compete with BLAs, either by contradicting them or lessening their impact, like other bilateral agreements, the EU mobility partnerships or national general regimes on immigration. Yet the fiercest competition stems from the vitality of informal and private networks, which redefine the nature of bilateralism and states' cooperation on labour issues. Nevertheless, bilateral agreements still follow a strong State-centred logic. It is worth noting that, as Castles pointed out, the factors which affect the success of migration policies in general, also tend to affect BLAs as a specific labour migration policy tool (Castles, 2004). Indeed, social dynamics triggered by transnational networks (family, diaspora communities, etc), combined with globalisation effects and the influence of other fields (e.g. international trade)

⁵⁹ From 1945 to 2007, the former Office of Immigration was under the supervision of the Ministry of Labour. From 2008 to 2009 the Office was under the Ministry of Immigration, Integration and National Identity. Since November, 16th, 2010, the Office is under the supervision of the Ministry of Home Affairs.

have created powerful informal and private networks which counterbalance the action of migration policies, including bilateral agreements.

This assertion is especially true in the case of historical Franco-Moroccan relationships, recently reinforced by economic exchanges and Morocco's new partnership with the European Union. Those relationships are bound by an increasing diversity of arrangements between actors, forming a complex game between non institutional and institutional actors at a national, bilateral and multilateral level.

Private actors greatly influence labour migration issues. They can gain greater control over the recruitment process like it was the case with Spanish employers when they were able to persuade Spanish officials to authorize 'pilot programs' of seasonal workers outside of formal bilateral agreements (with Senegal, Philipinnes, etc.), (Plewa, 2009). As a matter of fact then, BLAs face great limitations and are challenged by the greater number of private and national actors who intervene in the selection, recruitment and training of workers. The political nature of bilateralism is less and less determined by the sole governments while sub-national, transnational or private actors (e.g. proliferation of arrangements between trade unions of different countries) and migratory circulation patterns play a much greater role. As the Moroccan Minister of Foreign Affairs stated in 2009: 'our cooperation [with France] is no longer the sole domain of political authorities but the one of actors like economic actors, NGO, national representatives, intellectuals, Moroccan communities in France and the French ones in Morocco⁶⁰.

In this context, would it be pertinent and would labour immigration be better enhanced with the signature of a Pact on concerted migration management? The Pacts offer preferential admission to workers coming from countries which have signed them. This is possible thanks to two main mechanisms: first by by-passing the 'shortage occupation list' through an enlargement of the list and secondly through ad-hoc entry quotas. Nevertheless, the possibilities of legal migration are in fact marginal and most of them already exist in the general immigration regime. For instance, the 'Skills and Talent' card is in fact proposed to all countries from the ZSP and not only to the countries that signed a bilateral agreement. Regarding the shortage occupation list, the negotiation on its enlargement is useful but high-skilled Moroccan workers can already benefit from an exception or preferential treatment in the general regime (CESEDA).

Bilateralism on migration issues is then increasingly fragmented, multiform and multi-centred (Panizzon, 2011).

⁶⁰ Foreign Affairs Commission, Wednesday 8 July 2009, French Parliament, Compte rendu n°72, Hearing of M. Taïb Fassi-Fihri, Moroccan Minister of Foreign Affairs and cooperation.

3.4.2.2 Diminishing power of co-development leverages

Co-development, renamed in 2008 'Solidarity Development'⁶¹, relies on official development assistance (ODA) and plays an important role in improving the management of migration flows. It aims first at reducing poverty in source countries with local development projects and other social and economic initiatives involving migrants. Co-development only refers to contributions of migrants whereas solidarity development covers all initiatives of development, carried out by migrants but also by States, territorial authorities, civil society organisations, businesses, etc. that may contribute to migration flows management⁶².

Through the general framework for partnership DCP (*Document Cadre de Partenariat*) signed in 2006 between France and Morocco and still in force, France's ODA allocated annually to Morocco is among the most important in the world. In 2011, 40% of the total ODA received by Morocco was from France (377 million Euros). Besides, the French Agency for Development AFD (*Agence Française de Développement*) signed in 2012, 8 agreements to fund sector plans (agriculture, industries, etc.) and infrastructure building programmes (electricity, water, etc.) with around 831 million Euros. Since November 2010, the French Ministry of Home Office is in charge of Solidarity development, therefore it has the competence of assessing the potential of migrants' investments in the country of origin and also the experiences and competences acquired in the host country. Morocco is part of this strategy without having signed a Pact on concerted migration management due to the importance of its community living in France, to the high degree of organisation of this community, which facilitates potential projects design and implementation, and to the Moroccan government implication in all processes. Therefore, official aid offered in the form of solidarity development through a Pact on concerted migration management, is not so attractive for Morocco. For instance, the Pact signed with Tunisia in 2008, budgeted an amount of 40 million Euros for 3 years for professional training and other projects and it is quite unlikely that France increases the budget for such projects. Indeed, public budget constraints encouraged France to turn to European funding: France is currently trying to pressuring multilateral institutions, and particularly the European Commission, to re-orient its actions towards French priorities. In this spirit,

⁶¹ Decree of the 18th March 2008.

⁶² See Former Ministry of Immigration Brochure. For more information: http://www.diplomatie.gouv.fr/fr/IMG/pdf/L_essentiel_sur_le_developpement_solidaire_Favoriser_le_developpement_solidaire_avec_les_pays_source_d_immigration.pdf

Nicolas Sarkozy declared to the Moroccan Parliament in Rabat in 2007: ‘I will do everything in my power so that Morocco remains the first beneficiary of European aid’. Besides, solidarity development projects could exacerbate the French official aid scattering. Dispersion and incoherencies related to such projects already led to some failures as it is illustrated by the suppression of the Franco-Moroccan co-development savings account⁶³ by the 2011 Budget Law.

Finally, the pertinence of the concept of solidarity development and its true aim are highly questioned. The report on co-development of the French Senate (Sénat de la République, 2007) is highly critical when it affirms, that ‘co-development seems more oriented towards an internal objective to stop immigration flow and encourage the return of migrants than to an external policy aiming to promote development’ (Sénat de la République, 2007, p.29). As a consequence, the concept of solidarity development is subject to many different interpretations (Ferrand, 2008). The same Senate report evokes the Moroccan interpretation of co-development in the following words: ‘The Moroccan authorities hold, as far as they are concerned, a very large definition of co-development and consider it a macro-economic partnership between two shores of the Mediterranean for the benefit of competitiveness through globalisation. Cooperation in the textile sector, a concerted approach to firms’ delocalization, facilitation of workers circulation between the two regions, have thus been evoked. [...] This conception is really not that far from the notion of privileged partnership proposed to Morocco in its relationship with the European Community [...]. It is nevertheless much more global than the one put in place in the country under the label ‘co-development’ and aims at constructing a space for exchanges [...] at several levels: Between Morocco and Europe, within the Mediterranean region, and also between Morocco and Africa’ (Sénat de la République, 2007, p.13). We find here, again, the idea that a tailor-made bilateral cooperation is sometimes incompatible with comprehensive and generic bilateral agreements. What seems to be more attractive to Morocco is a global partnership on a multilateral level with very specific and concrete agreements on a bilateral level.

⁶³ Created in 2006, this saving account was offering tax advantages for investments in Morocco.

3.4.2.3. Readmission issues increasingly managed outside bilateral agreements

Morocco is an important source country for irregular migration to France and is positioned in the top rank as for its nationals placed in detention centres, rejections, simplified readmissions or detentions of irregular migrants by the police. Morocco could thus sign a new partnership but the pillar on border securitization, would have important financial and political consequences. Even though France would cover some of the financial costs through official aid it would mean extra costs in addition to those already beared by Morocco in the framework of its joint cooperation with Spain and with the EU.

On the political front, readmission clauses could create tensions between the Moroccan government and its public opinion. The current procedure related to readmission is detailed in bilateral letters exchanged between 1983 and 1993, politically less visible. As a matter of fact, those letters were made public years after and only unilaterally by France. The idea of negotiating a bilateral readmission agreement was briefly envisaged, but never concluded. The current procedure of readmission is simple and conditioned by the *laissez-passer* (consular passes) of Moroccan consulates.

'This mechanism is the most advantageous for Morocco. Imagine that you have more than 650 000 Moroccans in France with residence permits. It is an important, influent and well-established community. You cannot readmit many people. It is a delicate issue. Besides, readmissions depend on the context in Morocco like when there is an election, so it doesn't just depend on relations between Morocco and France' (Interview, OFII-MO).

Moroccan consulates have to manage contradictory injunctions. On one hand, the International Law stipulates that a country has to readmit its nationals and Moroccan irregular immigrants are the second most important nationality in detention centres in 2011 in France (Cimade, 2011). On the other hand, countries also have to protect and defend their nationals' interests abroad. That is why the nature of bilateral diplomatic relations strongly influences cooperation on readmissions (Spire, 2004). Although Morocco is reluctant to readmit third country nationals, it cooperates on flows control from Sub-Saharan Africa and receives European financial support to reinforce its border police.

Leverages that France can use to fasten consular *laissez-passer* issuing is to facilitate and improve consular procedures, and to ease or restrict the issuing of visas. In 2007, the former French Minister of Home Office said during the 3rd prefectorial and consular meeting on immigration: 'our efforts to convince must redouble according to one simple and clear rule:

those [the consulates] who refuse to issue consular *laissez-passer* will be subject to more restrictions for the issuing of visas than in the past⁶⁴. This logic is based on the principle of shared responsibility and equal treatment between host and source countries.

Between 2007 and 2010, the number of visas issued to Morocco increased by 10,3%⁶⁵, maintaining the country in the top three in terms of visas issued (CICI, Reports from 2007 to 2011). Over this period, Morocco moved from the status of uncooperative country for consular *laissez-passer* (*pays dits peu coopératifs*) to the status of cooperative country (shift from 2008). France calculates a percentage of consular *laissez-passer* issued in the appropriate time period (the timing is linked to the statutory detention period of 45 days). It is estimated that about 30% of expulsion orders from the French territory fails because consular *laissez-passer* are not issued in due time. In 2006 and 2007, Morocco has an average of 38%, which means that more than 50% of the requests for consular *laissez-passer* made by France were either rejected, unprocessed (absence of replies) or unusable (replies beyond the deadline). In this respect, France pursues a proactive policy towards ‘uncooperative countries’, favouring close exchanges with consulates. The Circular on the issuing of consular *laissez-passer* of 2002 informs prefects of the necessity to maintain relationships on a regular basis with consulates in order to ‘establish a climate of mutual understanding conducive to the completion of formalities, subject to good and appropriate local relationship’⁶⁶.

Since the end of the 1990’s, the French administration has developed administrative arrangements between police authorities, considered as a good alternative to readmission agreements, because they are more flexible and easily adaptable to circumstances. They concentrate on the practical details of readmission: procedures for transfers of migrants, and sharing of responsibility for the transport and the surveillance between the different countries implicated. In most cases, these agreements also include provisions related to the exchange of police forces, as well as the training of Moroccan agents for border surveillance (Cassarino,

⁶⁴ 5th March 2007, the former Ministry of Home Office, Nicolas Sarkozy in Marseille.

⁶⁵ Per year, number and ranking: 2007 (142.985, 3rd), 2008 (151.909, 1st), 2009 (148.664, 3rd), 2010 (157.750, 3rd).

⁶⁶ Circulaire du 16 avril 2002 NOR/INT/D/02/00098/C relative à la délivrance des *laissez-passer* consulaire aux étrangers à l’encontre desquels est engagée une procédure d’éloignement du territoire français.

2007; El Qadim, 2010). Morocco adhered to this approach on May 30, 2000, by signing an agreement on cooperation in security matters (exchange of diplomatic letters⁶⁷).

Morocco doesn't need to sign a new partnership that includes security issues. Border control policies are already implemented; readmissions are effective and settled in a convenient, flexible way. The fragile balance of costs and benefits between readmissions and visas seems to be stable. French consulates in Morocco issue an average of 160,000 visas per year. In more of 40% of the cases, those are multiple entry visas. According to the Minister of French abroad, the refusal rate is one of the lowest of all French Consulates (average of 7%⁶⁸). Besides, security matters are increasingly taken up and carried out at the EU level as we will detail in the third part.

3.4.2.4 New ways of practising bilateralism within an interdependent and integrated framework

The last events in the Arab world have entailed some changes and adjustments of the French policy towards Morocco, refocusing the French cooperation to the promotion of good governance and inclusive economic growth. Employment and professional training as well as initiatives towards the youth are important parts of the 'new' cooperation. The last 8 agreements on higher education signed with Morocco reflect this ambition⁶⁹. Those initiatives and agreements challenge and complete bilateral labour agreements. Their specificity and technicality contrast with the general nature of traditional agreements, and might better fit an already strong and close cooperation framework.

Secondly, economic relations are shifting from interdependent relations to integrated relations. Around 750 French companies' subsidiaries are in Morocco, fostering training and recruitment (France is the first foreign employer in Morocco in 2011). In this case too, specific legal arrangements seem to be better appropriate and useful than global arrangements. This

⁶⁷ Decree n°2001-374, April, 25, 2001 publishing the agreement relating to cooperation in security matters signed in Paris, in May, 30, 2000.

⁶⁸ Interview with Hélène Conway-Mouret, Minister of French abroad in the Moroccan daily paper 'L'Economiste', 28th September 2012. Source: <http://www.ambafrance-ma.org>.

⁶⁹ Compte rendu n°50 de la Commission des affaires étrangères, Audition de Mme Bénédicte de Montlaur, Sous-Directrice d'Afrique du Nord (ANMO MAE), sur les relations de la France avec les pays du Maghreb, 2013

last statement was confirmed by the French Ministry of Foreign Affairs: ‘Unlike bilateral relations with other countries, our work on a daily basis consists of dealing with very concrete matters, as for instance the student migration, retired Moroccans who have worked in France; every technical aspects related to this specific human dimension⁷⁰’.

As it turns out, few bilateral high-level political dialogues took place the last years on global migration issues. The ‘specific human dimension’ is rather addressed on a segmented and sectoral basis (e.g. on social security matters). When global migration issues have been discussed, it always happened either under a wider approach on security (terrorism, criminality and drug trafficking), under cross-sectoral issues between migration and development or within the framework of the European Union (European Neighbourhood Policy (ENP), European Association Agreement (EAA) or the Union for the Mediterranean).

4. The Morocco-EU Mobility Partnership

4.1 Moroccan interest in signing a Political Declaration on a Mobility Partnership: international credibility and regime legitimacy

Since the Euro-Mediterranean Association Agreement (signed in 1996 and in force since March 2000⁷¹), Morocco has become a major partner for the EU. Morocco plays a key role in the Maghreb, reflected in the new EU Action Plan 2013-2017 in which the EU supports the idea of Maghreb economic integration, in the African continent and also in the wider Mediterranean region. The cooperation framework is based on the 2005 EU-Morocco Action Plan established as part of the European Neighbourhood Policy (ENP)⁷², the new joint

⁷⁰ Compte rendu n°50 de la Commission des affaires étrangères, Audition de Mme Bénédicte de Montlaur, Sous-Directrice d’Afrique du Nord (ANMO MAE), sur les relations de la France avec les pays du Maghreb, 2013

⁷¹ Association Agreement Morocco-European Union, OJ (Official Journal of the European Union) L. 70 18 March 2000.

⁷² European Neighbourhood Policy was developed in 2004. The ENP addresses EU neighbouring countries which cannot join the EU. It reinforces political ties and cooperation and promotes social and economic development. ‘The objective of the ENP is to share the benefits of the EU’s 2004 enlargement

document on strengthening bilateral relations (Advanced Status) adopted in 2008, and the Action Plan for the implementation of Advanced Status (2013-2017). The latter is an operational framework for all areas of cooperation with the UE, from the political and security cooperation to the important economic pillar and intense sectoral cooperation (especially on fisheries and agriculture). The Action Plan is close to the one planned for pre-adhesion regime to the European Union and is also meant to reflect the specific aspirations, needs, capacities and reform commitments of Morocco, under the principle of differentiation. Indeed, each Plan is designed according to the specific situation of each partner. The principle of differentiation (usually restricted to countries candidates to the EU adhesion) laid a foundation for a privileged partnership always claimed by Morocco. This principle defines the EU-Morocco cooperation since the beginning (Association Agreement) but the new ENP established in March 2013 (European Union, 2013a) mentions a much higher level of differentiation. Each comprehensive partnership is conditioned by the respect of human rights, democracy, civil society role, education, justice and acceptance of the *acquis communautaire*. The 2011 Dialogue for migration, mobility and security with the Southern Mediterranean countries (European Union, 2011a) which opens negotiations⁷³ on Mobility Partnerships (MPs)⁷⁴, the most comprehensive and advanced cooperation framework on migration issues between the EU, neighbourhood countries and the Member States involved, reflects this vision: ‘the EU stands ready to continue supporting all its Southern neighbours who are willing to commit to democracy, human rights, good governance and rule of law, and to enter into Partnerships with those countries to achieve concrete progress for the people’ (European Union, 2011a, p.2).

Democracy has always been a driver to foster bilateral cooperation with the European Union. In 2008, during the 7th Meeting of the EU-Morocco Association⁷⁵, the EU reminded that Morocco was engaged in modernisation and democratic transition and that the country was

with neighbouring countries in strengthening stability, security and well-being for all concerned. It is designed to prevent the emergence of new dividing lines between the enlarged EU and its neighbours and to offer them the chance to participate in various EU activities, through greater political, security, economic and cultural co-operation’ (European Union, 2003, p.3).

⁷³ EU's missions to Morocco on 13 October 2011, 6 December 2011, 28 May 2012, 18 and 19 October 2012, 14 and 15 February 2013 and 28 February 2013 in the framework of the Dialogue on Migration, Mobility and Security.

⁷⁴ To date, Five mobility partnerships are implemented at the moment: with Cape Verde, the Republic of Moldova, Georgia, Armenia and Morocco.

⁷⁵ http://europa.eu/rapid/press-release_IP-08-1488_en.htm

requesting more substantial financial and operational backing from EU. More recently, in February 2010, the Moroccan Parliament made an official request for being recognized the status of partner for democracy⁷⁶ to the European Parliament that was granted on 21 June 2011. However, democracy as a driver for cooperation took a new dimension since the Arab springs. In its communication on the Global Approach to Migration of 2011 (European Union, 2011c), the EU mentions the Arab political events, while confirming the necessity to build a coherent and global approach on migration, beneficial for all and based on the building and consolidating of democracy: ‘the more and the faster a country progresses in its internal reforms, the more support it will get from the EU. [...] For countries where reform has not taken place, the EU will reconsider or even reduce funding’ (European Union, 2011d, p. 3). In the context of the enhanced European Neighbourhood Policy (European Union, 2011d and 2013b), ‘democracy and stability’ somehow replaced ‘migration and security’ at the top of priorities, becoming the first leverage for differentiation. In this new environment, Morocco has gained a new central place⁷⁷ in the framework of the ENP due to its special position regarding democratic transition. The EU seeks to establish a partnership with Morocco that could serve as a model for other Mediterranean partners, while strengthening the Moroccan regime legitimacy.

This situation serves Morocco’s interests. While it strengthens the regime legitimacy, it is also a mean to move further in Morocco’s integration to the EU internal market, and its degree of alignment with EU policies and rules. The degree of integration of Morocco to the EU market and to a certain number of European programmes⁷⁸ in addition to its position of first beneficiary of funds under the envelope of the European Neighbourhood and Partnership Instrument (ENPI⁷⁹) puts Morocco in a privileged situation for further integration initiatives. In this regard, the EU is working on a draft resolution to create a new category of partnership called ‘associate

⁷⁶ ‘Partner for Democracy’ status: new status for institutional cooperation with third countries parliaments in neighbouring regions wishing to benefit from the European Assembly’s experience in democracy building and to participate in the political debate on common challenges (Resolution 1690 ,2009).

⁷⁷ As a result for instance, the EU allocated to Morocco 80 million Euros outside the National Indicative Program (NIP, 2011-2013) during the 10th committee of the Association Council, Luxembourg, April 2012.

⁷⁸ Three agreements recently signed in 2010: one on Morocco’s participation in European programmes (e.g. customs), one on agriculture and fisheries and one on business litigations. Besides, the Action plan of the Advanced Status was finalized in 2012 after two years of negotiations.

⁷⁹ 654 million Euros for the period 2007-2013 (increasing share for budget support). ENPI is the financial instrument since 2007 after the MEDA Programme I and II. Morocco is the first ENPI beneficiary.

country' for third countries which is less inclusive than adhesion but a more intensified form of institutional affiliation. Objectives would be supporting democratic transition processes and good governance under EU norms, mechanisms and instruments while strengthening and enlarging the EU regional cooperation on the fight against global threats and risks (trafficking, organized crime, terrorism, etc.).

Regarding migration issues, since December 2005, the ENP takes into account the Global Approach to Migration (GAM), adopted by the European Council and redefined in November 2011 as the New Global Approach to Migration and Mobility (GAMM) and which follows the European Commission communication on 'a dialogue for migration, mobility and security with the southern Mediterranean countries' of June 2011 (European Union, 2011a). The three axes of GAM were: organisation of legal immigration and mobility, fight against illegal immigration and human trafficking, maximization of the links between development and migration. In 2011, a fourth axis was added, namely the promotion of international protection and enhancement of the external dimension of asylum policy. The change from GAM to GAMM was explained by the EU as an important step towards migrants, as mobility was a way to take into consideration greater diversity of migration patterns. Shortly after the communication on a dialogue for migration, negotiations for a Mobility Partnership with Morocco opened, under the *'give more to get more'* principle as well as greater differentiation.

It is thus important to understand that when the MP negotiation started, Morocco's economic integration to the European market was already deep, the political cooperation on governance reforms, security, conflict-resolution matters and joint initiatives in international fora on issues of common interest (including migration) were already strong. Besides, some issues of great concern for Morocco like the links between migration and development were enhanced in GAMM like remittances facilitation, Diaspora empowerment, promotion of circular migration and fight against brain drain. In this regard, the Morocco-EU MP is drawn on 'the Moroccans government's priorities for migration and development' (European Union, 2013b, p.2).

It became thus difficult for Morocco, first neighbour partner in furthering the cooperation framework with the EU, to delay or reconsider the signature of the MP. In the progress report of the ENP 2013 for Morocco (European Union, 2013c), it is mentioned that the Moroccan government clearly expressed its interest for a Mobility Partnership, submitting proposals in April 2012 and a revised version of the Political Declaration in January 2013 (following two rounds of

negotiations). The Political Declaration⁸⁰ on a Mobility Partnership (MP) was signed by Morocco the 3rd of June 2013, after two years of negotiation, with the EU and nine participating Member States, namely Belgium, France, Germany, Italy, the Netherlands, Portugal, Spain, Sweden and the United Kingdom. Agreements on readmission and visa liberalisation, planned in the MP and consecutive to any MP, are still under negotiations.

4.2 Moroccan interest in negotiating a Mobility Partnership: favouring a multilateral framework.

The Morocco-EU MP has to be understood in the broad Morocco-European context. Dialogues on visa liberalisation, readmission and other migration issues (conducive to the MP) are part of a series of negotiations with Morocco, among which the significant Deep and Comprehensive Free-Trade Agreement (DCFTA) on freedom of services, protection of investments and greater harmonisation of legislations. The DCFTA is an instrument that deepens economic integration to the European market and creates a business environment more predictable and stable between partners. Morocco is the first Mediterranean partner to negotiate a DCFTA. Its harmonisation process with EU norms and regulations was already advanced, a partial free-trade zone is in force since 2012 and since the economic crisis of 2008, Morocco is increasingly solicited for economic and commercial exchanges.

As a consequence, economic issues prevail and are at stakes for both Morocco and the EU, and this has an impact on the MP negotiation process, its content and power relations. Moroccan economic actors are regularly pressuring the government to facilitate visas and extend trade with the EU while a number of Moroccan expectations have progressively been taken into consideration: investments, fight against brain drain, priority to temporary or seasonal workers programs, easing of short stay visas issuance. As a matter of fact, the MP plans to stimulate direct investments in regions characterized by important emigration, support development initiatives of Moroccan immigrants and mobilize the skills of those who have dual nationalities to foster Morocco's development.

As for the content, as we will detail later, the strong interference of economic issues generated an emphasis on mobility at the expense of migration, where mobility has to be

⁸⁰ A Mobility Partnership takes the form of a political declaration between the EU, interested member states, and the partner country. Annexed to this declaration is a list of anticipated projects, which are proposed by the Commission, an EU agency, a member state, or the partner country concerned.

understood in the context of human, economic and commercial exchanges between the parties. It is significant that the Morocco-EU MP is the only one mentioning the benefits migration has, by its contribution to the commercial exchanges between parties (European Union, 2013b).

Finally, it is important to remind that Morocco has acquired a key and an equal player position with Member States and the EU in migration talks, formulating expectations and imposing conditions (e.g. it actively insisted to renew the GAM). Morocco is displaying several cards (e.g. democracy, bilateral police cooperation and border controls, etc.) which places it in a strategic position on which it can capitalize. For example, during the 2006 Rabat conference⁸¹, Morocco called on the EU to conclude additional readmission agreements with other transit and origin countries instead of externalizing EU actions towards one country (Cassarino, 2009). Cassarino calls it *reversed conditionality*. The Morocco-EU MP begins significantly by 'recognising that the issue of migration is a key element of the exemplary partnership which has linked Morocco and the EU for several decades' (European Union, 2013b, p.1). None of the MPs mentions the efforts made by the partner, at the exception of the one with Morocco, which requested the EU to acknowledge the financial, operational and political effort that Morocco has provided. The MP subsequently insists and recalls the 'achievements made in the context of bilateral instruments and agreements' and 'Morocco's continued effort to tackle migration routes' (European Union, 2013b, p. 2-3).

It is important to remind that Morocco always had a proactive position with a proper vision for the ENP and the Action Plans. On migration issues, the Moroccan vision promotes a more balanced approach (i.e. emphasis on legal migration and development issues), shared interests and joint cooperation with visa liberalisation and EU financial and operational support. It has been regularly presented and defended in regional and international fora on migration, in particular the Euro-African Migration and Development Dialogue (the Rabat Process) and has

⁸¹ The Rabat process is an intergovernmental dialogue between European Union Member States and West African Countries resulting from the global approach on migration adopted by the European Council in 2005 and the Euro-African ministerial conference on migration and development organised first in Rabat the 11 of July of 2006. The 23 of November of 2011, the third Euro-African ministerial Conference on Migration and Development took place in Senegal, consolidating the previous three-year cooperation Paris Programme and adopting a new strategy, the Dakar Strategy 2012-2014. In this context, the European Commission (EC) lent its support to the process in 2013 while strengthening the leadership of the countries involved. The piloting committee is composed of Belgium, Burkina Faso, Spain, France, Equatorial Guinea, Italy, Morocco, Senegal, the EC and the ECOWAS Commission (The Economic Community of West African States).

influenced the EU agenda as traced in documents of JHA sub-committee meetings (Wunderlich, 2010). It is significant that the Morocco-EU MP begins by ‘emphasizing the need to work together in a spirit of partnership [...] based on a comprehensive and balanced approach, to the mutual benefit of the parties’ (European Union, 2013b, p.1) and reiterates regularly the ‘mutually beneficial management of migration’ whereas none of the other MPs is based on this approach.

The Moroccan internal strategy is based on the idea to promote the economy while beginning to adopt stronger positions against Moroccan illegal migration after the one previously adopted against illegal flows from Sub-Saharan Africa, both associated with negative perceptions and restrictive EU policies. Indeed, during several years, Morocco made the strategic political choice to separate immigration and emigration issues, refocusing attention on immigration issues (flows from Sub-Saharan Africa) in order to temporarily temper the most sensitive points regarding its own irregular emigration.

In this regard, the MP plans that the EU will provide capacity building support to Morocco to prevent and fight against irregular migration, smuggling and trafficking. A comprehensive approach has been progressively offered to Morocco to ease talks on security, broaden the scope of relations while guarantying certain level of commitment, even more in the case of ‘soft partnerships’ as it is the case for the Mobility Partnership. Indeed, the latter is a flexible partnership in which initiatives can be added on ad hoc basis, not legally binding as the Spanish and French BLAs are and ruled by conditionality. Referring to this integrative approach, the EC official Stefano Manservigi declared to Finance News in 2011⁸² ‘It is a question of creating trust between countries, based on data and exchange of experiences [...] It is not a question of upgrading the Moroccan system, since we start from a satisfactory situation. We are also receptive to Moroccan authorities if specific systems need capacity building’.

Regarding readmission, cooperation remains mainly bilateral (reciprocal obligations between Morocco and the EU Member States) and countries usually prefer the bilateral framework because it is more flexible and less visible. Nevertheless, we could interpret the MP as a compromise between both parties (EU and Morocco). The fundamental problem for Moroccan authorities resides in the acceptance to readmit citizens of other third countries that entered illegally in the EU through the Moroccan territory. For EU’s part, even though ‘the implementation of the partnership is conditional upon a genuine commitment to readmit irregular migrants and take effective action aimed at preventing irregular migration, establishing integrated

⁸² Finances News Hebdo, 20 October 2011.

border management, document security and to fight organized crime, including trafficking in human beings and smuggling of migrants' (European Union, 2011b, p. 17), the EU perceptibly changed its discourse towards Morocco. On one hand, after thirteen years of diplomatic action⁸³ through sub-committees, working parties and substantial financing on readmission, the EU relayed the matter to a secondary phase of negotiation in order to ease the signature of the MP with Morocco. On the other hand, circumstances and power relations, in their broader sense, have changed, leading the EU to reassess its priorities with Morocco. As stated in an October 2008 EC communication, mobility partnerships are expected to 'shift from a primarily security-centered approach focused on reducing migratory pressures to a more transparent and balanced approach' (European Union, 2008). In fact, the real shift happened in 2011 with the GAMM and the 2011 dialogue on mobility, migration and security. Since then, discourses have focused on other matters like facilitating legal migration through regular channels for the temporary migration and thus moved beyond EU security concerns. Before the 2011 dialogue on migration, readmission was regularly mentioned in all the progress reports on implementation of the European Neighbourhood Policy in Morocco. Afterwards, readmission is no longer mentioned or not in the former terms. The Mid-Term Review of the Country Strategy Paper Morocco 2007-2013 and National Indicative Program 2011-2013 just mentions that financial support for migration issues would be increased if Morocco finalised an agreement on readmission. This situation allowed the parties to speed up negotiations on other migration issues, leaving the agreement on readmission to a second phase, which concluded to the signature of the MP in 2013.

4.4 Common interests: targeted temporary labour migration

The EU-Morocco MP establishes a set of political objectives and a series of initiatives which are designed to ensure an effective legal and labour migration management.

Firstly, the MP introduced a clear differentiation between *migration* and *mobility*. It can be considered as an attempt to refocus the political debate on a neutral ground. Mobility, associated to selected economic migration (e.g. highly skilled and temporary) and 'shared' economic interests, doesn't display the security corpus and policies than the ones linked to migration. It was also an attempt to go beyond reservations of Member States on legal

⁸³ 3 informal negotiation rounds (till 2003), 15 formal negotiation rounds and 4 meetings (Belguendouz, 2013) <http://www.europe-maroc.com/relation/reflexions-sur-le-projet-de-partenariat-euro-marocain-pour-la-mobilite>

immigration, selecting only certain types of mobilities. The Morocco-EU MP follows, in that sense, the strategy adopted by the European Commission to avoid political blockage on this matter during the Hague Programme (2005-2010), namely the protection of economic interests upon consensual directives such as those on highly qualified workers and seasonal workers. This scheme accentuated the differentiation between *migration* (meant as family or other permanent migration as well as irregular migration) and *mobility* (meant as temporary and highly skilled migration).

As a consequence, the Morocco-EU MP reflects and defends mobility logic much more than migration logic in the view to create an economic and human zone where irregular immigration is fought and only certain categories of 'mobile' Moroccans can obtain visas more easily. Focusing on shared economic interests and targeting a labour migration, easily recognizable as 'positive', facilitates the adoption of strategic measures such as portable pension rights, training and mobilisation of skills and secures the effective cooperation of Morocco and the Member States involved.

This shift of perceptions is also claimed by Morocco.

'One cannot mix those who leave clandestinely and those who positively contribute to the European and Moroccan economies. It makes no sense to close borders to those people. It is too difficult to move to Europe whereas numerous Moroccans just go there to do business and then come back. It is time to change perceptions about Moroccans. There are not just migrants. They are businessmen and elites. Morocco is changing' (Ministry of Moroccans abroad, January 2013).

The economic logic is perceptible in political choices made by Morocco: fostering remittances and reorienting them towards economic activities, financing Diaspora training on financial issues, leading projects linked to migrants' employment. The promotion of highly skilled emigration is also perceptible. In that sense, the MP plans to improve the information available to qualified Moroccans on employment, education and training opportunities available in the EU as well as to make mutual recognition of professional and university qualifications easier. The latter is especially requested by the Moroccan government.

It is important to remind that while the Morocco-EU MP facilitates the access to labour markets with measures such as job-matching services and training programmes, it does not grant systematic access to national labour markets like quotas do. This is still a national competency. French and Spanish bilateral labour agreements on the contrary play this role. In that sense, the MP offers less than BLAs.

The MP is however intrinsically linked to visa policy as BLAs are. The agreement on visa facilitation planned by the MP would target flexible, less expensive and more long-term oriented visa. On one hand, the MP address consular services and procedures, ‘simplify the procedures for entry and legal stays (including the possibility of issuing multiple-entry and longer-term visas, and waiving administration fees for certain categories of people)’ (European Union, 2013b). On the other hand, the agreement on visa liberalisation under negotiation covers the idea to liberalise visa in two phases. The first phase would target Moroccan vocational trainees, students, academics, researchers and business professionals who need to circulate temporarily in the EU. In fact, the great mobility of Moroccan students and recent highly skilled graduates, Moroccan-trained doctors or low-skilled agricultural workers have been established as part of Morocco’s profile (Huddleston and Do, 2009). However, if international student mobility is a priority for Morocco and is part of visa liberalisation talks, the other categories previously mentioned as part of Morocco’s profile are either regulated through BLAs or other policies. This is explained by the fact that no BLA regulates student mobility whereas sensitive matters such as brain drain or low-skilled agricultural workers are more easily negotiated and usually addressed through bilateral schemes. The second phase (hypothetical at the present time) would be characterized by a gradual liberalisation of long-term visas only when the Moroccan economy is stable⁸⁴.

Furthermore, the agreement on visa liberalisation is linked to that on readmission. As the then European Commissioner for Justice, Freedom and Security Franco Frattini explained⁸⁵ about readmission agreements in 2006: ‘the success of the negotiations depends very much, therefore, on the ‘levers’ or should I say ‘carrots’ the Commission can offer, i.e. incentives that are strong enough to ensure the cooperation of the third country’. The problem with the visa liberalisation talks is that on this subject, European Commission leverages are very limited as main immigration countries like Spain and France, are particularly reluctant to loosen the visa policy for long-term visas (more than 3 month), which are not a Community competence.

Mobility appears to be associated to temporary labour-migration schemes and its corollary circular migration even though it is not explicitly announced as the first MP’s priority whereas the other MPs clearly emphasise on this dimension and stress the necessity to foster circular

⁸⁴ See: <http://missionmaroc.eu/relations-maroc-ue/politique-europeenne-de-voisinage-pev/>

⁸⁵ Discourse in front of the French Senate (March, 2006), quote in the briefing paper on ‘readmission agreements and respect for human rights in third countries, review and prospect for the European Parliament’, Directorate- General for External Policies of the Union Directorate B, October 2007,p.20.

migration: the EU-Morocco MP only refers to circular migration as a way ‘to prevent and deal with ‘brain drain’, [...] and (promote) the mobilisation of skills’ (European Union, 2013b, p. 9).

4.4 Moroccan interest in redefining bilateralism through complex trilateral games

Mobility Partnerships have acquired great political importance for the EU and are presented as promising tool for the integration of labour migration measures into the EU’s external relations (Carrera, Hernandez et al., 2009). The first time the EU formally mentioned MPs was in 2007, in the communication relating to circular migrations and Mobility Partnerships between the European Union and third countries (European Union, 2007b). MPs were described as new approach to manage legal migration with mechanisms to improve opportunities for labour migration based on the labour needs of interested Member States.

However, a common immigration policy towards third countries has been difficult, even impossible to promote. As the French Ministry delegated to European Affairs stated in 2006⁸⁶: ‘rightly pointed, our country is not in favour of a common European policy on legal immigration, (...) Indeed, States should have a margin of appreciation regarding legal immigration. (...) However if legal immigration should stay national competence, nothing forbid us to implement ‘specialised cooperation’, that is to say, cooperation with the Member States most affected by migration issues’. MPs are based on this idea. They are signed as political declarations and are implemented by the interested Member States on a voluntary basis through proposed projects. The European Commission negotiates MPs (based on political guidelines from the Council) with a third country but has no exclusive competence. It has to negotiate on behalf of a group of interested Member States, it coordinates with them for the decision-making process and implementation. The first objective of the Morocco-EU MP recalls that labour migration will be managed taking into account the labour market of the signatories (European Union, 2013b). Projects can be proposed by each party involved. MPs are tailored to the third country context and new projects are added on an ad hoc basis. On March 2013, 37 projects were proposed for the Morocco-EU MP.

MPs are presented as a mutually beneficial partnership or a ‘win-win-win’ partnership. Their content depend on offers made by the Member States involved but their scheme follow the GAMM and therefore link migration policy to other policies fields (e.g development policies). They cover ways to facilitate and better organise legal migration, in particular labour migration,

⁸⁶ Second session of the Parliament, Tuesday 12 December

measures to fight irregular migration, and concrete steps towards reinforcing the development outcomes of migration.

In view of these elements, already at the core of French and Spanish bilateral cooperation with Morocco, one of the questions would be: to which point the Mobility Partnership competes, reshapes, modifies, complements, contradicts bilateral labour migration management tools?

First, it is important to remind that Spain and France have the same positioning regarding the EU level decisions and the European migratory dynamics. Before the final adoption, the Spanish Embassy in Morocco stated that Spain would probably not renegotiate the bilateral agreements if Morocco was going to sign a Mobility Partnership (Interview, DE-SP). For the future, however the immigration policy outlook in the current context of economic crisis and freezing of new admissions is uncertain: the Spanish strategy seems to rely on further strengthening circular migration through mobility partnership while regulating other forms of mobility under the national law. As stated by the French Ministry of Home Affairs, France supports the same idea regarding its own labour immigration (Interview, MHA-FR). In fact, the French demographic situation, together with the effects of the economic crisis, does not push for urgent bilateral action. The benefits of labour immigration were even challenged by the former government. The then Minister in charge of immigration, in a statement released on the 15th of June, 2011, declared that ‘the continuing high unemployment rate, especially among non-EU citizens, as well as the growth of the French labour force, suggests that we should have a tighter control on the recruitment of foreign workers’⁸⁷.

In fact, the most sensitive matters (e.g. return and readmission) as well as the less sensitive (e.g. short stay of highly skilled), will be dealt on a EU level through the MP. The other forms of labour migration will be still controlled by Spain and France: bilateral relations are still the best setting for managing regular immigration since measures and basic requirements such as credentials recognition or job matching mechanisms remain Member States’ domains.

In this regard, French and Spanish projects planned in the MP clearly mirror their own bilateral relations with Morocco. France is the partner most committed to develop migration and development initiatives, in line with its policy on solidarity development as well as the most committed to tackle illegal migration. It is also the only partner to offer projects about the student mobility with mutual recognition of vocational and academic qualifications. Both Spain and France are the only partners proposing to simplify the procedures for legal entry and stays, which reasserts the high degree of politicisation of migration issues between Spain, France and

⁸⁷ Council of Ministries, 15th of June of 2011, Claude Guéant, Minister of Home Affairs and Immigration.

Morocco. By contrast, Spain emphasises more on labour and integration issues than France, proposing, for instance, projects to improve or create channels that provide information about real job prospects.

In all cases, France and Spain are not offering legal labour migration opportunities whereas the EC displayed in 2007 a large spectrum of labour migration initiatives that could be included in MPs, even possibilities of setting quotas (European Union, 2007a). In the case of the Morocco-EU MP, it seems that Member States only agreed to promote information and transparency about employment opportunities, which BLAs already provide in the case of France and Spain. In this case, the only value added of the Mobility Partnership would be to offer a common, comprehensive and broad framework on migration issues that could afterwards generate new legal initiatives under the MP framework or the bilateral one⁸⁸.

Therefore, we may argue that Spain and France joined the MP because they see it as a natural extension of their bilateral agreements and relations on migration issues and other political matters with Morocco. Their dense and intense relations with Morocco require them to participate to the MP, even though the impacts would remain on a symbolic level. Besides, the EC could not have gone further in the political decision process without the French and Spanish support, two major destination countries. It would have hampered the entire MP. France and Spain have always promoted Morocco's interests to the European Union. It seemed logic for them to participate to the MP. For instance, Spain pushed for the GAMM in the Council, which better accommodated Morocco's wish for a more balanced approach in the EU agenda (Wunderlich, 2010). On a larger scope, the Mediterranean region is France's and Spain's zone of influence, dense relations and source of immigration. They supported and lobbied to include Maghreb countries within European Projects and have been pressured by the EU to manage immigration issues. At last, France and Spain participation to the MP is important for their political credibility and legitimacy. As for Morocco, it regularly argued that migration issues shouldn't be managed on the sole bilateral level as stated by the Ambassador and chief of the EC in Morocco in 2008⁸⁹.

⁸⁸ See: <http://www.migrationpolicycentre.eu/mobility-partnerships-what-impact-do-they-have-on-legal-migration-and-mobility/>

⁸⁹ Interview of Bruno Dethmas in the newspaper «*Le Matin du Sahara*», 12 November 2008

5. Conclusion

When comparing the bilateral labour agreements signed by Morocco with Spain and with France, it emerges that they don't reflect the same stakes. The context of Hispano-Moroccan cooperation is noticeably different from that observed in the Franco-Moroccan one: while in the latter case post-colonial relationships largely explain the terms of the bilateral cooperation on migration, in the former case the geopolitical dimension is key to understand cooperation patterns. In the former case BLAs' terms represent pragmatic answers to labour market needs, mainly in agriculture within seasonal migration schemes, but also to irregular migration concerns and to pressures from the EU and other Member States. On the contrary, the Franco-Moroccan cooperation is undeniably shaped and redefined by dense post-colonial relations where legal arrangements affect a larger range of migration situations and labour mobility.

However, the Hispano-Moroccan BLAs are not less politically and technically complex than the French ones. Indeed, while in the case of France, BLAs have been used by the State to regain control of migration management and to maintain cultural and historical bonds with Morocco, Spain has used BLAs as a political instrument for stabilising broader diplomatic relations. In this context, BLAs have sometimes stirred controversies (on their role to fight irregular immigration for instance) or created bilateral political misunderstandings. For instance, in Spain, the balance between a strict dependence on the labour market situation and an enhanced flexibility obtained through a new comprehensive approach is difficult to reach. Indeed, the success of the agreements' implementation and the cost of defection or reneging on an agreement have been more dependent on the volatility of diplomatic relations, generating contradictions and tensions.

Beyond still relevant differences, strong similarities can be identified between the bilateral labour agreements signed by Morocco with Spain and with France. Indeed, we can observe that in both cases bilateral agreements on labour mobility have become one dimension of a much larger and complex multi-level cooperation on migration issues, that redefines bilateralism and the role that labour migration plays in this framework. Bilateralism is thus redefining and recomposing itself at different levels. The progressive enlargement of the cooperation framework and the involvement of new state and non-state actors in both cases has ensured a greater respect of BLAs engagements, on the one hand, at the same time progressively transforming the nature of bilateralism on the other hand. For instance, the general cooperation framework between Morocco and France is increasingly extensive and dynamic: while bilateralism traditionally operates through formal agreements, high-level meetings and political fora, current Franco-Moroccan cooperation is increasingly undertaken and evolving through key role of

individual or collective private actors: they modify bilateralism, expanding and re-structuring formal and informal networks, framing and initiating mobility flows and cooperation initiatives. As a consequence, labour issues tend to be more frequently negotiated and regulated outside traditional labour or general bilateral agreements.

The main question this report raises is however the viability of the bilateral labour agreements as attractive and effective tools for a major emigration country (Morocco) when the specific regional migration system it belongs to, incorporates new ways of governance, beyond traditional bilateral relations. Europeanization of migration governance is indeed substantially changing the framework into which bilateral cooperation on migration has traditionally operated. Labour migration governance is now disseminated across regional dialogue fora, national regulatory frameworks, specific bilateral agreements and new cooperation instruments such as the EU Mobility Partnerships. In such a context labour migration is more and more managed within a comprehensive framework that tends to cast it out on a secondary level. For instance, the Morocco-EU Mobility Partnership has to be understood in the broad regional cooperation context. Dialogues on visa liberalisation, readmission and other migration issues are now part of a series of negotiations of the European Union with Morocco. This situation complicates and blurs the role and legitimacy of bilateral labour agreements. It seems that the most sensitive matters (e.g. return and readmission) as well as the least ones (e.g. short stay of highly skilled), will be increasingly dealt on a EU level through the Mobility Partnership. The other forms of labour migration will be still controlled by Spain and France. In this context, while MPs are establishing a multi-level structure on migration and mobility issues, the bilateral level seems to remain so far a better fit for labour migration governance, which is at the same time loosing salience.

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Annex 1: List of Interviews (April-December 2011)

No. of Interview	Organisation	Place of Interview
1	French office for the protection of refugees and stateless persons, (OFPRA-FR)	Paris
2	Foreign Policy Observatory (OPEX), Alternatives Foundation (OPEX-SP)	Madrid
3	Ministry of home office (MHA-SP)	Madrid
4	General direction of planning and evaluation of development policies (DGPOLDE-SP)	Madrid
5	International foundation for Hispanic countries of administration and public policies (FIIAPP-SP)	Madrid
6	Researcher (RES-SP)	Madrid
7	Deputy (UMP) (MP-I-FR)	Paris
8	Researcher (RES-MO)	Morocco
9	Senator- Mayor (UMP) (MP-II-FR)	Paris
10	Ministry of foreign affairs and cooperation (MFAC-MO)	Morocco
11	Embassy of Spain (DE-MO)	Morocco
12	French bureau of immigration and integration, (OFII-MO)	Morocco
13	Ministry of foreign affairs and cooperation (MFAC-SP)	Madrid
14	Ministry of home office, overseas territories and territorial authorities and immigration (MHA-FR)	Paris
15	Ministry of labour and social security (MLSS-SP)	Madrid