

NOTE

MULTIFACETED MIGRATION MANAGEMENT: BILATERAL MOBILITY PARTNERSHIPS IN THE EUROPEAN UNION

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I. INTRODUCTION

Ahmed and Elias are both from The Gambia (Gambia), and they both had trouble finding work there.¹ Ahmed heard that there were job openings in Denmark and decided to try to get one; however, he encountered many difficulties and ultimately was not allowed to go there, despite Denmark's need for labor.

It is not easy being a foreigner in Denmark. Rules and requirements for foreigners who want to marry a Danish citizen are strict, including a requirement that foreigners must reach a minimum age of twenty-four to marry.² Rules prohibit state-funded homeless shelters from accepting foreigners who do not have permanent resident status, leading to people freezing to death in the cold winters.³ European and international bodies have accused Denmark of violating human rights legislation with these strict immigration laws.⁴ Politically, an anti-immigrant party made gains in recent years,⁵ strengthening a culture that is already hostile to people from other countries.

A change in leadership in Denmark in the latest election has helped the situation, and the new prime minister is working to roll back some of the strong anti-immigrant legislation.⁶ However,

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1. Ahmed and Elias are fictitious characters whose purpose is to illustrate the all-too-common stories of people in third-world countries like The Gambia (Gambia).

2. See Chris Bowlby, *Do Denmark's Immigration Laws Breach Human Rights?*, BBC NEWS (Feb. 9, 2011), <http://www.bbc.co.uk/news/mobile/world-europe-12366676>.

3. See *id.*

4. See *id.*

5. See *Denmark's Immigration Issue*, BBC NEWS (Feb. 19, 2005), <http://news.bbc.co.uk/2/hi/4276963.stm>.

6. See William Lee Adams, *A Blow to Europe's Far-Right: Denmark Reshapes Its Immigration Policies*, TIME (Oct. 6, 2011), <http://globalspin.blogs.time.com/2011/10/06/a-slap-to-europes-far-right-denmark-reshapes-its-immigration-policies>.

Denmark's international reputation concerning the human rights of immigrants remains on shaky ground.⁷

Elias, on the other hand, decided to go to Spain to get a job. He was able to get a job in an industry in which Spain had a shortage of workers through a comprehensive migration agreement that Spain has with Gambia, known as a bilateral mobility partnership.⁸ This partnership allows Elias to work in Spain for a specified period of time and gain skills that he can bring back to Gambia.

Like Spain, Denmark should show the international community that it is serious about changing its stance on immigration by entering into a bilateral mobility partnership with a third-world country. Doing so would also provide Denmark needed workers⁹ and may even change Denmark's culture and treatment of immigrants.

Denmark is not alone in its struggle with migration—many countries face the same issues.¹⁰ The debate is often virulent, with both sides arguing strongly for their viewpoints and making little progress.¹¹ Migration problems typically occur in both migrant-sending countries and migrant-receiving countries.¹² The problem of irregular immigration¹³ has caused extreme conflict across the

7. See Jennifer Buley, *New Government, Same Immigration Practices*, COPENHAGEN POST (Dec. 15, 2011), <http://cphpost.dk/news/making-cut-immigration-dk/new-government-same-immigration-practices>.

8. See generally Jean-Pierre Cassarino, *EU Mobility Partnerships: Expression of a New Compromise*, MIGRATION INFO. SOURCE (Sept. 2009), <http://migrationinformation.org/Feature/display.cfm?ID=741> (describing E.U. mobility partnerships).

9. See Jakob Weiss & Birgitte Rahbek, *Desperat Jagt På Nye Medarbejdere [Desperate Hunt for New Employees]*, BERLINGSKE TIDEN (May 9, 2008), <http://www.b.dk/danmark/desperat-jagt-paa-nye-medarbejdere> (stating that the labor shortage in Denmark is so severe that many companies are hiring employees without the necessary qualifications for the job); *Background Note: Denmark*, U.S. DEP'T STATE (Nov. 2, 2011), <http://www.state.gov/r/pa/ei/bgn/3167.htm> (noting Denmark's potential for future labor shortages).

10. See, e.g., Cameron Macgregor, *What America Can Learn from Europe*, WASH. TIMES (Dec. 16, 2010), <http://www.washingtontimes.com/news/2010/dec/16/what-america-can-learn-from-europe> (explaining some of the immigration problems in Europe and certain countries' responses).

11. See Didier Bigo, *Immigration Controls and Free Movement in Europe*, 91 INT'L REV. RED CROSS 579, 580 (2009), available at <http://www.icrc.org/eng/assets/files/other/irrc-875-bigo.pdf>.

12. See Sandra Lavenex, Univ. of Lucerne, *Venue-Shopping in Global Migration Policy: Multileveling EU External Governance 2-3* (Mar. 3, 2011), available at http://euce.org/eusa/2011/papers/3b_lavenex.pdf.

13. "The term 'irregular migration' typically refers to the cross-border flow of people who enter a country without that country's legal permission to do so." BASTIAN VOLLMER, MIGRATION OBSERVATORY UNIV. OF OXFORD, *IRREGULAR MIGRATION IN THE UK: DEFINITIONS, PATHWAYS AND SCALE 2* (2011), available at <http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/Briefing%20-%20Irregular%20Migration.pdf>. Other writing on this topic may use other terms such as "illegal immigration," but since this paper covers immigration into the European Union, it will use the term "irregular migration" or "irregular

political spectrum.¹⁴ It affects human trafficking,¹⁵ national sovereignty, national security, and human rights, among other issues.¹⁶ For some individuals, this has created life or death situations.¹⁷

This Note proposes that countries in the European Union engage in bilateral mobility partnerships with third world countries as a step toward solving the many problems with migration. Bilateral mobility partnerships allow countries to tailor their immigration policies to their specific security and labor needs, encourage cooperation with other countries, and cut back on irregular migration.¹⁸

This Note begins by giving background information on bilateral mobility partnerships. It then proposes specific terms that should be included in these agreements. This Note uses Denmark as a case study, showing how a bilateral mobility partnership would work there and how it would be an improvement over Denmark's current immigration policies.

II. BACKGROUND

This Part begins with a general definition of bilateral mobility partnerships, followed by a brief history of these types of agreements. Third, it explores the main aspects of the bilateral mobility partnerships that have already been entered into. Fourth, it addresses some arguments against bilateral mobility partnerships. Fifth, it looks at reasons for addressing the migration issue bilaterally. Finally, it gives a brief history of Denmark's recent immigration policies and controversy.

immigration" because that is the official terminology used by the European Union. See *Irregular Immigration*, EUR. COMMISSION, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/irregular-immigration/index_en.htm (last visited Jan. 21, 2013). Migration is movement from one country to another, while immigration is the act of entering a country of which one is not a native. BLACK'S LAW DICTIONARY 1082 (9th ed. 2009).

14. See Macgregor, *supra* note 10.

15. See Marion Panizzon, *Standing Together Apart: Bilateral Migration Agreements and the Temporary Movement of Persons Under "Mode 4" of GATS 13* (Univ. of Oxford Ctr. on Migration, Policy & Soc'y, Working Paper No. 77, 2010).

16. See Chantal Thomas, *Convergences and Divergences in International Legal Norms on Migrant Labor*, 32 COMP. LAB. L. & POL'Y J. 405, 412 (2011).

17. For example, many people have drowned trying to get to Spain from North Africa. See Victoria Burnett, *To Curb Illegal Migration, Spain Offers Legal Route*, N.Y. TIMES (Aug. 11, 2007), <http://www.nytimes.com/2007/08/11/world/europe/11spain.html>.

18. See Uyen Do & Thomas Huddleston, *Negotiating Migration in the Euro-Mediterranean*, MEDITERRANEAN Y.B., 2009, at 277, 278.

A. *Definition of a Bilateral Mobility Partnership*

A bilateral mobility partnership is an agreement between two countries, an immigrant-receiving country (the host country) and an emigrant-sending country (the home country), seeking to facilitate the movement of persons between the two countries.¹⁹ “They are supposed to be living frameworks that are easily adaptable” to the host countries’ interests and the home countries’ needs.²⁰ These partnerships have progressed from simple guest worker programs to more comprehensive migration agreements.²¹

B. *History of Bilateral Mobility Partnerships*

1. Early Bilateral Mobility Agreements (1950s–1980s)

The guest worker or seasonal migration schemes of the 1950s–1980s were the earliest bilateral mobility agreements.²² These agreements did not comprehensively address migration issues and only provided for a labor flow between two countries.²³ They began in the mid-1950s when Western European countries, including Germany, the United Kingdom, and France, had a high demand for labor that could not be satisfied domestically.²⁴ Germany led the way, entering into guest worker agreements with Italy, Greece, Spain, Turkey, Morocco, Portugal, Tunisia, and Yugoslavia.²⁵ During the 1950s and 1960s, millions of migrant workers came to Western Europe to work in various sectors of the economy, including construction, mining, agriculture, and manufacturing.²⁶

In the United Kingdom, the Netherlands, and France, many workers came from former colonies and therefore already had citizenship rights.²⁷ By contrast, migrants coming into other countries, including Germany, had fewer rights.²⁸ They earned relatively low wages, worked in poor conditions, and were expected

19. See Cassarino, *supra* note 8.

20. Do & Huddleston, *supra* note 18, at 277.

21. See generally Stephen Castles, *Guestworkers in Europe: A Resurrection?*, 40 INT'L MIGRATION REV. 741 (2006) (relating history of guest worker programs).

22. See Panizzon, *supra* note 15, at 11.

23. See *id.* at 12.

24. See Randall Hansen, *Migration to Europe Since 1945: Its History and Its Lessons*, 74 POL. Q. 25, 25 (2003).

25. See *id.*

26. See PHILIP L. MARTIN, INT'L INST. FOR LABOUR STUDIES, *MANAGING LABOR MIGRATION: TEMPORARY WORKER PROGRAMS FOR THE 21ST CENTURY* 3 (2003).

27. See Castles, *supra* note 21, at 742.

28. See *id.*

not to get involved in labor struggles attempting to gain better working conditions.²⁹ The goal was to ensure that immigrants returned to their home countries after their term ended while new workers rotated in.³⁰ The host countries attempted to accomplish this by “recruiting workers for a limited period, restricting their rights, and minimizing family reunion.”³¹ One of the hallmarks of these guest worker programs was “the dominance of men who were abroad without their families,” because the countries would not allow wives and children to come along with the men who were working.³² The goal of these terms was to discourage workers from becoming permanent migrants.³³ The purpose of the agreements was for the workers to fill labor needs while they existed and then return to their home countries when there were no longer jobs available.³⁴ As one scholar explained: “When Germany experienced its first recession in 1967, the policy appeared to work: large numbers of guest workers returned home, knowing that they could come back when the labour market picked up again.”³⁵

However, these programs had certain negative long-term consequences and resulted in some labor migrants staying after the programs ended.³⁶ Often, the immigrants’ jobs ended as well, leading host country residents to associate immigrants with unemployment and welfare, thus creating a backlash against bringing more foreign workers in the future.³⁷

In the European Economic Community (EEC),³⁸ partnerships between EEC countries fit into the overall aim of the EEC. The offer of jobs in the EEC was “based on the free movement of goods, workers, services and capital, so that moving workers from surplus to shortage areas was expected to reduce economic differences within the EEC” when the migrants also came from EEC coun-

29. *See id.*

30. *See id.*

31. *Id.*

32. *See* MARTIN, *supra* note 26, at 3.

33. *See id.*

34. *See* Hansen, *supra* note 24, at 26.

35. *Id.*

36. *See* MARTIN, *supra* note 26, at 3.

37. *Id.* at 4.

38. The European Economic Community was the precursor of the European Union. *See Treaty Establishing the European Economic Community, EEC Treaty*, EUROPA, http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_eec_en.htm (last visited Jan. 21, 2013). It sought to bring together France, Germany, Italy, Belgium, The Netherlands, and Luxembourg “in a community whose aim [was] to achieve integration via trade with a view to economic expansion.” *See id.*

tries.³⁹ When these programs were created, they seemed logical because the host country welcomed the needed labor and the home country “welcome[d] the relief of unemployment and remittances afforded by emigration.”⁴⁰ Consequently, the guest worker programs were often started without much discussion of potential long-term impacts.⁴¹

In 1973, Germany suddenly ended its guest worker program. Although Germany cited the “Oil Crisis”—which was seen as leading to a period of economic stagnation and high unemployment⁴²—there were other reasons for ending the program.⁴³ Industries that had migrant labor were becoming dependent on it, leading to a breakdown of the “rotation” principle where workers would leave when no longer needed.⁴⁴ “Temporary workers were being recruited to meet permanent labor demand.”⁴⁵ Most Western European governments followed Germany’s lead and ended their guest worker programs by 1974.⁴⁶

The original programs were based on “the inferiority and the separation of the foreigner.”⁴⁷ The European societies that hosted these guest workers did not attempt to integrate the workers into their society, preferring instead to keep them as economically disadvantaged and racially discriminated minorities.⁴⁸ Nonetheless, instead of forcing these migrants to leave when the jobs ran out, this discrimination led many migrants who chose to stay to form ethnically distinct communities, leading to today’s ethnically diverse but socially divided European societies.⁴⁹

2. Recent Bilateral Mobility Partnerships (1990s–present)

A new wave of guest worker programs began in the 1990s, and these differed from earlier programs because they were justified on the basis of globalization and foreign policy and not only on the basis of labor shortages.⁵⁰ These justifications remain the basis for

39. See MARTIN, *supra* note 26, at 7.

40. *Id.* at 3.

41. *Id.*

42. Castles, *supra* note 21, at 743.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.* at 744.

50. See MARTIN, *supra* note 26, at 8.

the second generation of bilateral mobility partnerships, which includes the current version of bilateral mobility partnerships.⁵¹

These agreements are more comprehensive and address more than just temporary workers.⁵² They address the irregular migration problem by sharing responsibility for migratory flows, including irregular migration and its negative effects, such as human trafficking and smuggling, between the home and host countries.⁵³ These agreements were developed because many countries changed their immigration laws to focus on high-skilled immigrants.⁵⁴ This change negatively affected low-skilled potential immigrants from developing countries, who had previously been allowed to come in on a temporary basis to work through the previous guest worker programs.⁵⁵ Lower-skilled workers from developing countries no longer had a pathway to work legally in first-world countries, but there were still jobs available for them, so they began to cross borders illegally.⁵⁶

The second generation of bilateral mobility partnerships developed in response to the many irregular immigrants who were already working in first-world countries.⁵⁷ They provide a pathway for legal immigration to these lower-skilled workers in a way that is easier for the host country to control.⁵⁸

C. *Why Migration Should Be Addressed Bilaterally*

Migration is better addressed bilaterally than unilaterally for four reasons. First, there is an increasing gap in wages for unskilled workers between rich countries and poor countries.⁵⁹ That gap today is more than ten to one.⁶⁰ Having a mechanism for unskilled workers in poor countries to work in rich countries for a time would help ease this imbalance.⁶¹ It would give those workers a chance to earn higher wages, and the competition from jobs in

51. See Panizzon, *supra* note 15, at 11.

52. See *id.* at 13.

53. See *id.*

54. See *id.* at 14.

55. See *id.*

56. See *id.*

57. See *id.* (noting how border countries Spain, France, and Italy receive the large majority of the undocumented migrants who reach Europe each year).

58. See *id.*

59. See Lant Pritchett, *Bilateral Guest Worker Agreements*, CENTER FOR GLOBAL DEV., MAR. 2007, at 1, available at http://www.cgdev.org/files/13577_file_CGD_brief_migration_FINAL.pdf.

60. See *id.*

61. See *id.*

the rich countries could help increase wages in the poor countries.⁶²

Second, changing demographics are causing labor shortages in rich countries and labor surpluses in poor countries.⁶³ In developed countries, birth rates are falling while life expectancy is increasing, causing increasingly aging populations.⁶⁴ Meanwhile, developing countries are experiencing great growth in their working-age population.⁶⁵ This means that the amount of people in developed countries who are able to work is decreasing, while the labor force in developing countries is growing faster than employment opportunities.⁶⁶ If developed and developing countries were to work together bilaterally, they could solve this problem by distributing the labor where it is most needed.⁶⁷

Third, there are a growing number of jobs such as service jobs that require low skill level but cannot be outsourced.⁶⁸ For example, “[i]n the coming years, more than half of U.S. job growth . . . will be jobs such as home health care aides, janitors, cashiers, and fast food workers.”⁶⁹ European countries, as well, have seen large growth in the services sector, which now accounts for two-thirds of total output in the European Union and four-fifths of growth.⁷⁰ The total employment expansion in the European Union is now dominated by the service sector.⁷¹ Because developing countries have an abundant supply of labor, bilateral migration partnerships would help both the developed countries that need labor and the developing countries that can provide it.⁷²

Fourth, bilateral mobility partnerships are superior to unilateral migration policy because they allow countries to work together towards developing international norms in migration—an inherently international issue.⁷³ Because migration, by definition, involves more than one country, a country’s unilateral migration

62. *See id.*

63. *See id.*

64. *See id.*

65. *See id.*

66. *See id.*

67. *See id.*

68. *See id.*

69. *Id.*

70. *See* KRISTIAN UPPENBERG & HUBERT STRAUSS, EUR. INVESTMENT BANK, INNOVATION AND PRODUCTIVITY GROWTH IN THE EU SERVICES SECTOR 3 (2010), available at http://www.eib.org/attachments/efs/efs_innovation_and_productivity_en.pdf.

71. *See id.*

72. *See* Pritchett, *supra* note 59, at 1.

73. *See* Lavenex, *supra* note 12, at 2.

policy affects other countries, sometimes negatively. With a unilateral policy, a country does not have an incentive to take the other countries' interests into account.⁷⁴ Bilateral mobility partnerships can minimize these negative effects by taking into account both countries' interests.⁷⁵ Unfortunately, migration policy is still mostly created at the national, rather than international, level.⁷⁶ With the exception of international norms regarding refugees and human rights, there is little international cooperation regarding the movement of people.⁷⁷ By creating bilateral mobility partnerships, countries can move toward international norms in the migration context, an area that "demands international cooperation and shared responsibility."⁷⁸

D. *Where Bilateral Mobility Partnerships Have Been Attempted*

1. Spain

Various countries have attempted different versions of bilateral mobility partnerships. Spain has been at the forefront of the movement toward new types of bilateral migration agreements, in part because it is positioned on the border of the European Union.⁷⁹ Irregular immigration into Spain was creating problems with human trafficking, exploitation of workers, and social alarm, so Spain sought a way to remedy these problems.⁸⁰ Spain had been having particular troubles with irregular immigration from North Africa, and bilateral mobility partnerships with North African countries emerged as a way to help solve these problems.⁸¹

Spain's "cooperation agreements on migration" originally formed part of the Ministry of the Exterior's Action Plan for sub-Saharan Africa 2006–2008 (Plan Africa), which was then renewed

74. See JESÚS FERNÁNDEZ-HUERTAS MORAGA, THE CASE FOR INTERNATIONAL COOPERATION IN MIGRATION POLICIES 2 (2008), available at http://www.insidenet.org/wp-content/files_flutter/1264772470Inside_8.pdf.

75. See *id.*

76. See Lavenex, *supra* note 12, at 2.

77. See *id.* at 1–2.

78. *Id.* at 2.

79. See Gemma Pinyol i Jiménez, *La Política de Inmigración Española Como un Nuevo Instrumento de Acción Exterior 4* (Observatori de Política Exterior Europea, Working Paper No. 9, 2008).

80. See Aplicación Provisional del Acuerdo Marco de Cooperación en Materia de Inmigración Entre el Reino de España y la República de Gambia [Framework Agreement on Cooperation in Immigration Matters Between the Kingdom of Spain and the Republic of Gambia], Spain-Gam., Oct. 9, 2006, B.O.E. n. 310 [hereinafter Framework Agreement].

81. See Burnett, *supra* note 17.

and updated in 2009.⁸² Spain has entered into bilateral mobility partnerships with five North African countries as part of Plan Africa.⁸³ The Framework Cooperation Agreement on Immigration between Spain and Gambia is more comprehensive than the traditional bilateral agreement.⁸⁴ Because Gambia is a departure point of irregular immigrants as well as a country of transit for irregular immigrants, it was particularly well-suited for one of these agreements.⁸⁵

2. France

France has also engaged in bilateral mobility partnerships, or “pacts on concerted migration management.”⁸⁶ These agreements have two ways of granting preferential admissions to persons from the home country: (1) they allow the country signing the pact to add professions to a pre-existing occupational shortage list defined for non-EU countries,⁸⁷ and (2) they introduce annual recruitment quotas for the various visa types which France must meet.⁸⁸ In choosing which countries to partner with, France has given priority

82. Panizzon, *supra* note 15, at 15. Spain first introduced the Action Plan for sub-Saharan Africa (Plan Africa) in 2006, and came out with a new version in 2009 after the period for the initial Plan Africa (2006–2008) had been completed. See GOBIERNO DE ESPAÑA 2009-2012 AFRICA PLAN 9, *available at* http://www.maec.es/es/Home/Documents/PLANAFRICA09_12EN.pdf. Plan Africa:

[I]s structured into six operational principles designed around support for peace and security, consolidating democracy and institutions, combating hunger and poverty, promoting investment and trade relations, sustainable socioeconomic development, partnership on migration, reinforcing the multilateral relation between Spain and Africa and with the European Union, consolidating the political and institutional profile, and nurturing [Spain's] public diplomacy through Casa Africa.

Id. at 11.

83. Spain has signed bilateral mobility partnerships with Cape Verde, Gambia, Guinea, Mali, and Niger. See EUR. MIGRATION NETWORK, THE ORGANISATION OF POLICIES ON ASYLUM AND MIGRATION: SPAIN 65 (2009), *available at* http://extranjeros.mtin.es/es/Red EuropeaMigraciones/Estudios_monograficos/EMN-EN_The_Organisation_of_Policies_2008.pdf.

84. See *id.* at 37, 65.

85. See *id.* at 67, 79.

86. See Panizzon, *supra* note 15, at 16.

87. France has an occupation shortage list for all non-E.U. countries, which lists occupations that are particularly capable of utilizing an immigrant workforce; with these bilateral agreements, France and the home country can negotiate additional occupations to put on the list just between those two countries. See *Bilateral Agreements on Labour Migration and Exchanges of Young Professionals*, RÉPUBLIQUE FRANÇAIS, <http://www.immigration-professionnelle.gouv.fr/en/procedures/bilateral-agreements> (last visited Jan. 20, 2013).

88. See Panizzon, *supra* note 15, at 16–17.

to “those migrant source countries that have a representative number of citizens residing temporarily or permanently in France[.]”⁸⁹

These comprehensive bilateral mobility partnerships are new; their success has not yet been determined.⁹⁰ Nevertheless, a growing number of countries are entering into them.⁹¹ This Note analyzes the benefits of these kinds of partnerships and recommends ways they could be improved.

E. Substance of Bilateral Mobility Partnerships

In recent years bilateral mobility partnerships have grown more comprehensive in the few countries that have entered into them and have begun to resemble trade agreements.⁹² They have two central objectives: managing and cutting back on irregular migration, and providing a supply of workers to the host country while promoting job opportunities for the citizens of the home country.⁹³ Although these two concerns inspired the creation of most bilateral mobility partnerships, the agreements have grown to address other migration issues.⁹⁴ This Section will concentrate on five main issues that most bilateral mobility partnerships address⁹⁵: (1) irregular migration, (2) labor supply and demand, (3) circular migration, (4) development of the home country, and (5) protections for the human and civil rights of migrant workers and their families.

1. Irregular Migration

All types of bilateral mobility partnerships address irregular migration.⁹⁶ The parties to these agreements agree to cooperate in fighting against irregular migration and the negative consequences of irregular migration such as human trafficking.⁹⁷ They also gen-

89. Natasha Ward, *Facilitating the Temporary Movement of Natural Persons: Economic Partnership Agreements Versus Bilateral Migration Agreements and Mobility Partnerships*, in *MULTILAYERED MIGRATION GOVERNANCE: THE PROMISE OF PARTNERSHIP* 143, 150 (Rahel Kuinz et al. eds., 2011).

90. See Do & Huddleston, *supra* note 18, at 277.

91. See MARTIN, *supra* note 26, at 27.

92. See Panizzon, *supra* note 15, at 11.

93. See *id.* at 13.

94. See *id.*

95. These issues are primarily derived from the agreements that Spain has entered into, along with some from France. See Panizzon, *supra* note 15, at 15–16.

96. See Cassarino, *supra* note 8, at 4–5.

97. Framework Agreement, *supra* note 80, art. 8.

erally agree to readmit nationals found in the country illegally.⁹⁸ In the European Union, “[a] readmission agreement facilitates the expulsion of third-country nationals. Contracting parties will readmit to their territory without any formality persons with the nationality of that country who are residing without authorisation in the other country.”⁹⁹

2. Labor Supply and Demand

The second main aspect of bilateral mobility partnerships is an agreement regarding labor supply and demand.¹⁰⁰ The Spain-Gambia agreement, for example, seeks to facilitate legal migratory flows by mostly focusing on labor market needs.¹⁰¹ The signatories agree—so far as opportunities and resources allow—to assist each other in hiring of workers who are citizens of the contracting party’s country.¹⁰² One way the Spanish government has done this is by encouraging Spanish firms and companies to go on prospecting missions into the partner North African home countries to directly recruit workers.¹⁰³

3. Circular Migration

Third, most of these partnerships seek to facilitate circular migration.¹⁰⁴ Circular migration allows migrants to work in the host country for a specified time, after which migrants must return home in order to be eligible for a new contract.¹⁰⁵ Circular migration “is designed to meet short-term demand for lab[or], whilst and rewarding legal migration.”¹⁰⁶ Circular migration has three

98. Spain has signed readmission agreements with many countries with whom they have not entered into mobility partnerships. See *Convenios de Readmisión*, MINISTERIO DE EMPLEO Y SEGURIDAD SOC., <http://extranjeros.mtin.es/es/NormativaJurisprudencia/Internacional/ConveniosBilaterales/ConveniosReadmision/> (last visited Jan. 21, 2013).

99. *Readmission Agreements*, EUROPA, http://europa.eu/legislation_summaries/other/l33105_en.htm (last visited Jan. 21, 2013).

100. See Cassarino, *supra* note 8, at 4.

101. Framework Agreement, *supra* note 80, art. 3.

102. *Id.* arts. 3, 6.

103. MARION PANIZZON, TRADE AND LABOR MIGRATION: GATS MODE 4 AND MIGRATION AGREEMENTS 43 (2010), available at <http://library.fes.de/pdf-files/iez/global/06955.pdf>; see also NCCR TRADE REGULATION, LABOUR MOBILITY: A WIN-WIN-WIN MODEL FOR TRADE AND DEVELOPMENT (2008), available at www.ideascentre.ch/documents/2.38_SummaryofAP.pdf.

104. Cassarino, *supra* note 8, at 1.

105. *Id.*

106. Ian Barnes & Cristina Cherino, The Role of Circular Migration and Mobility Partnerships: Integrating Legal Migration Opportunities into the Union’s External Policies 2 (paper presented at “Exchanging Ideas on Europe” Conference, Cambridge, U.K., Sept. 5–7, 2011).

aspects: (1) integration of immigrants into the culture of the host country,¹⁰⁷ (2) reintegration of migrants back into the home country,¹⁰⁸ and (3) voluntary return.¹⁰⁹

As part of the circular migration scheme, countries involved in these partnerships take measures to integrate the immigrants into the host country by making the host country more hospitable to the immigrants.¹¹⁰ For example, countries have worked to eliminate laws that discriminate based on race or national origin and tend to negatively impact immigrants from the home country.¹¹¹ The partnerships can include information programs for migrants of the home country to teach them helpful information such as the way the government works in the host country, the rights the migrants have as immigrants, and the public services to which they are entitled.¹¹² The partnerships also often include programs that help develop the language skills of immigrants.¹¹³ Many of these agreements incorporate the cooperation of private sector and civil society groups into migration policy.¹¹⁴

In addition to integrating immigrants into the culture of the host country, circular migration measures included in some bilateral mobility partnerships also assist migrants with reintegration into the home country.¹¹⁵ Some of these measures help migrants find jobs or start businesses.¹¹⁶ For example, in the Spain-Gambia agreement, both countries have agreed to collaborate with non-governmental agencies and organizations that help immigrants and returning nationals.¹¹⁷ The countries will investigate the possibility of providing microcredit to help returning nationals start businesses and further the economic development of the home country.¹¹⁸

107. See EUR. MIGRATION NETWORK, *supra* note 83, at 58–59.

108. See *id.* at 57.

109. See *id.* at 57–58.

110. See, e.g., Framework Agreement, *supra* note 80, art. 6.

111. See *id.* art. 2.

112. See *id.* art. 6.

113. *Id.*

114. See Dev. Research Ctr. on Migration, Globalisation, & Poverty, *Session One: Migration in Development Strategies 1–2* (paper presented at Migration DRC Conference, London, U.K., Apr. 28–29, 2008). For example, Bangladesh is proposing “support via NGOs to allow poorer workers to access safe, legal migration streams, and support returnee associations.” *Id.*

115. See Framework Agreement, *supra* note 80, arts. 4, 5.

116. See *id.* art. 5.

117. *Id.* art. 4.

118. See *id.* art. 5.

A third aspect of circular migration is voluntary return.¹¹⁹ Voluntary Return Plans are designed to help nationals who wish to return to their home country but are financially limited.¹²⁰ Host countries generally work with non-governmental organizations to provide resources to migrants who meet certain requirements so that the migrants are able to return to their home country with some resources to live on.¹²¹ This helps reduce the number of irregular immigrants in the host country.¹²²

4. Development of the Home Country

Some bilateral mobility partnerships also include mechanisms by which the host country will help the home country economically develop.¹²³ Parties to bilateral mobility partnerships desire to create a positive connection between migration and development of the home country in the partnerships, because migration is currently negatively affected by poor economic development.¹²⁴ The agreement between Spain and Gambia was a forerunner in this type of interaction between migration and development because it formed part of Spain's wider efforts to combat poverty.¹²⁵ Recognizing that irregular migration often stems from problems in the home country, Spain has agreed to use the "bilateral and multilateral mechanisms at [its] disposal"¹²⁶ to promote development in Gambia.¹²⁷ By helping promote economic development in Gambia, there will be less poverty there driving people to illegally cross borders into Spain, which is beneficial to both countries.

119. See EUR. MIGRATION NETWORK, *supra* note 83, at 14.

120. See *id.* at 14, 57.

121. See *id.* at 57. In Spain's Voluntary Return Plans, migrants must meet the following requirements: "a) not have economic resources and be in a socially vulnerable situation, as determined by specific circumstances, b) have resided in Spain for at least six months, c) present a report issued by the Social Services of the local authority where they reside or by a specialist NGO, d) present a declaration as to the voluntary nature of the desire to return." *Id.*

122. See *id.* at 57–58 (noting that to receive unemployment benefits, the foreign worker must pledge not to return to Spain for the next three years).

123. See, e.g., Framework Agreement, *supra* note 80, art. 7.

124. See *id.*

125. See *id.* art. 7 (stating that specific Spanish migration and development efforts in Gambia part of wider efforts to combat poverty).

126. See *infra* Part III.B (stating that one of the problems with the Spain-Gambia agreement is that it is not specific enough and does not list which specific bilateral and multilateral mechanisms are at its disposal to help with development).

127. See Framework Agreement, *supra* note 80, art. 7.

5. Protections for Human and Civil Rights of Migrant Workers

Another central aspect of many bilateral mobility partnerships is the protection of the migrant workers' human and civil rights.¹²⁸ Some agreements simply reference human rights agreements that the home and host countries are already parties to, such as the Universal Declaration of Human Rights, as a way of reaffirming those protections.¹²⁹ Protecting human and civil rights of migrants nevertheless emerges as one of the rationales for creating bilateral mobility partnerships—because irregular immigrants are not officially part of the political community, they are likely to neither seek nor receive the civil rights to which they are entitled.¹³⁰ Negative attitudes toward immigrants can cause people to treat them poorly and view them as not having certain human and civil rights.¹³¹ And, since most irregular immigrants are worried about being caught and sent back to their home country, employers and other citizens can treat immigrants poorly without fear of the immigrants reporting such behavior to authorities.¹³² By creating a legal way for these migrants to come to the host country, the countries are already helping to advance the rights of the migrants. If the migrants are in the host country legally, they will not be afraid to assert their rights, and employers and others will not have the opportunity to trample those rights.¹³³

Some agreements also have specific provisions that advance the rights of migrants. For example, part of an agreement between Spain and Senegal enables immigrants to bring over their immediate families after one year, which helps their quality of life by providing support and companionship.¹³⁴ This provision provides strong incentives for workers to pursue a legal route to Spain, because to be eligible to work with certain employers under the program, the worker must not have entered illegally in the past two years.¹³⁵ It also makes it more likely that wages earned by the immigrants after the first year are spent within Spain, since immi-

128. See, e.g., *id.* art. 2.

129. See, e.g., *id.* pmb. ¶ 5.

130. See EUR. MIGRATION NETWORK, *supra* note 83, at 75.

131. See, e.g., Bowby, *supra* note 2 (describing the negative attitude towards immigrants in Denmark and the potential human rights abuses committed against them).

132. See generally Thomas, *supra* note 16, at 423–25 (stating that there is no international regulatory regime to enforce the rights of undocumented migrant laborers).

133. See, e.g., EUR. MIGRATION NETWORK, *supra* note 83, at 75 (describing immigrants' access to fundamental protections of the Spanish legal system upon the acquisition of legal resident status in Spain).

134. See Burnett, *supra* note 17.

135. See *id.*

grants with family in their home countries often send money back to their families.¹³⁶

F. *Denmark's Immigration Policies*

Denmark is a useful case study for exploring what a bilateral mobility partnership should look like. Denmark's immigration and political history are important to understanding why a bilateral mobility partnership would be helpful in the country. In 2002, "the [Danish] Liberal-Conservative government introduced what it described as Europe's strictest immigration laws," in response to immigrants who were seen by some as a threat to Danish society.¹³⁷ In 1996, the Danish People's Party (DPP) was formed as a far-right, anti-immigrant party.¹³⁸ The party has slowly gained influence, winning 7.4% of the vote in 1998 and becoming "a significant player after the Conservatives and Liberals triumphed in November 2001 and formed a coalition government reliant on DPP support for a parliamentary majority."¹³⁹ The DPP was a driving force in passing strict anti-immigration laws in 2002 and has continued striving to tighten Denmark's borders.¹⁴⁰

Denmark's 2002 anti-immigration laws are just another way that Denmark has been less integrated with the European Union than other E.U. countries.¹⁴¹ It has opted out of many provisions of the European Union, citing sovereignty concerns.¹⁴² The 2002 laws scrapped the right to asylum on humanitarian grounds and cut the acceptable grounds for being granted asylum to the bare minimum required under the Geneva Convention.¹⁴³ The laws also cut social benefits for refugees by 30-40% for their first seven years in the

136. *See id.* (recounting one woman's reaction to Spain's program as "Thank God. I will be able to help my father and mother, my brothers and sisters.").

137. *Cf. Denmark's Immigration Issue, supra* note 5 (Pia Kjaersgaard, leader of the Danish People's Party, explained, "If they want to turn Stockholm, Gothenburg or Malmoe into a Scandinavian Beirut, with clan wars, honour killings and gang rapes, let them do it. We can always put a barrier on the Oeresund Bridge").

138. *See id.*

139. *Id.*

140. *See id.*

141. *See* Rebecca Adler-Nissen, *A Political Sociology of Sovereignty: Treaty Opt-Outs and the Doxa of an Ever Closer Union* 1-2 (paper presented at "Sovereignty and European Integration in the 'Post Constitutional' Era" Workshop, Edinburgh, U.K., May 29, 2009), available at http://ku-dk.academia.edu/RebeccaAdlerNissen/Papers/397867/A_Political_Sociology_of_Sovereignty_Treaty_Opt-Outs_and_the_Doxa_of_An_Ever_Closer_Union.

142. *See id.*

143. *See Denmark's Immigration Issue, supra* note 5.

country.¹⁴⁴ The goal of the DPP is to completely end immigration into Denmark from non-Western countries.¹⁴⁵

On September 15, 2011, after a campaign season focused largely on immigration, Denmark voters elected Helle Thorning-Schmidt as the new prime minister, showing their desire to liberalize immigration policies.¹⁴⁶ Thorning-Schmidt immediately sought to roll back the country's strict anti-immigration policies.¹⁴⁷

Denmark is facing an aging population, which is decreasing the overall supply of labor and causing a labor shortage.¹⁴⁸ In 2009, approximately 16% of the Danish population was sixty-five or older.¹⁴⁹ This number is projected to go up to about 25% by the year 2034.¹⁵⁰ This will likely lead to inflation and eventually cause damage to the economy as a whole.¹⁵¹ Immigrants could help ease this labor shortage, but under the tough anti-immigration laws introduced by the DPP, it is difficult for immigrants to enter the country.¹⁵²

This Note proposes that Denmark enter into a bilateral mobility partnership because it would be beneficial to Denmark and would help newly instituted Prime Minister Thorning-Schmidt demonstrate her commitment to liberalizing the country's immigration policies while also letting Denmark preserve its national sovereignty.

III. ANALYSIS

This Part begins by delving into the Note's proposal, addressing the central purposes of a bilateral mobility partnership, the terms of a bilateral mobility partnership between an E.U. country and a third-world country, and why such an agreement would be helpful

144. *Id.*

145. See Adams, *supra* note 6. The Danish People's Party is motivated by nationalist sentiment and a desire to protect the history and culture of the Danish people. See Pia Kjærsgaard, *The Party Program of the Danish People's Party*, DANSK FOLKEPARTI, http://www.danskfolkeparti.dk/The_Party_Program_of_the_Danish_Peoples_Party.asp (last visited Jan. 21, 2013).

146. See *id.*

147. See *id.*

148. See Per H. Jensen, *Ageing and Work: From 'Early' Exit to 'Late' Exit in Denmark*, in AGEING AND THE TRANSITION TO RETIREMENT 41, 41 (Tony Maltby ed., 2004).

149. JULIE A. NORSTRAND, SLOAN CTR. ON AGING & WORK AT BOSTON COLL., DENMARK STATISTICAL PROFILE 8 (2009), available at http://www.bc.edu/content/dam/files/research_sites/agingandwork/pdf/publications/CP10_Workforce_Denmark.pdf.

150. See *id.*

151. See Jensen, *supra* note 148, at 41.

152. See *Denmark's Immigration Issue*, *supra* note 5.

to both countries. It concludes by exploring how a bilateral mobility partnership would work in Denmark and why it would be a good idea for Denmark to enter into one of these partnerships.

A. *Proposed Central Purposes of Bilateral Mobility Partnerships*

This Note proposes an agreement based on four central goals that should be the basis of a bilateral mobility partnership. First, an agreement should provide workers that are needed in the E.U. country and are available in the third-world country. Second, it should provide a cultural exchange, allowing those who participate to learn about the host country and its culture while helping citizens of the host country learn about the immigrants. This will help improve the discourse surrounding immigration by informing both sides of the immigration debate about who immigrants really are and where they come from. Third, it should cut down on irregular migration, which is a significant problem for many European countries. Finally, it should promote the development of the home country both by providing workers from that country with needed skills to bring back to improve their home country and through other efforts of the host country.

Bilateral mobility partnerships will be unique depending on the countries party to the agreement.¹⁵³ One of the benefits of a bilateral mobility partnership as opposed to a multilateral agreement is that the countries can tailor the agreement to their unique needs and problems.¹⁵⁴ This Note addresses broad areas that should be addressed by a bilateral mobility partnership and some specifics on a potential bilateral mobility partnership between Denmark and another country, but each country entering into such an agreement should look at its own resources, abilities, and needs to determine what should go into its specific agreement. This Note proposes that each aspect of the partnership address a specific migration problem or labor need of the participating countries.

B. *Deficiencies in Current Agreements*

One way in which the current agreements, including those in France and Spain, could be improved is through increased specificity. For example, the agreement between Spain and Gambia states that Spain will use the mechanisms at its disposal to help with the development of Gambia but does not say what those mechanisms

153. See Lavenex, *supra* note 12, at 17.

154. See *id.*

are or how they should be used to help Gambia's development.¹⁵⁵ It would be helpful to list specific organizations that could assist in the partnership as well as other mechanisms that are already in place that could be used.

Although a central purpose of a bilateral mobility partnership should be cultural exchange where the partner countries learn about each other's culture, the current agreements lack due coverage.¹⁵⁶ The partnerships should include provisions requiring the migrants to have certain interactions with nationals of the host country, including the creation of classes or social groups that get together and learn more about the different cultures of each country. It is important in developing a bilateral mobility partnership to improve the host country's view of immigrants, particularly immigrants from the home country, because negative attitudes toward immigrants can lead to civil and human rights abuses.¹⁵⁷ Including cultural exchange provisions would be one way of accomplishing this.

C. *Substance of Proposed Bilateral Mobility Partnerships*

This Section proposes that bilateral mobility partnerships include provisions addressing irregular migration, labor supply and demand, circular migration schemes, protections for human and civil rights of migrants, and cultural exchange and education.

First and foremost, the partnerships should address irregular migration. The goal of these partnerships is that, by increasing the possibility of reaching the host country legally, migrants will be dissuaded from entering illegally.¹⁵⁸ One argument against bilateral mobility partnerships is that they will actually lead to more irregular immigration because some of the workers will stay on in an undocumented status after the programs end.¹⁵⁹ However, this potential problem can be mitigated. For example, the host country could allow a certain number of the originally temporary immigrants from bilateral mobility partnerships to become permanent immigrants. The focus of most European countries' immigration policies is on employment immigration instead of family-based

155. See Framework Agreement, *supra* note 80, art. 7.

156. See generally Panizzon, *supra* note 15 (discussing current bilateral mobility partnerships without mentioning cultural exchange as part of the current agreements); Framework Agreement, *supra* note 80 (not including cultural exchange as part of the Spain-Gambia agreement).

157. See *supra* Part II.E.5.

158. See Burnett, *supra* note 17.

159. See Castles, *supra* note 21, at 743.

immigration.¹⁶⁰ Therefore, it makes sense for host countries to create room in their immigration policy for a certain number of immigrants who originally came on the basis of a temporary program through a bilateral mobility partnership to become permanent residents. Immigrants wanting to gain permanent status would have to meet certain standards such as having a permanent job and being sufficiently integrated into the society.

Host countries could also take measures to encourage temporary workers to return to their home countries. For example, they could tax the earnings of temporary employees while in the host country and offer to refund those taxes, or a portion of them, if and when the migrants return home. This would encourage voluntary return and promote saving money, which would help the migrants as well as the home country. It would also provide a kind of insurance for the host country if the migrant did not end up returning home, because the host country would retain the taxes.

Home countries that are parties to bilateral mobility partnerships should agree to help fight irregular migration by improving their own border security and controls as well as ensuring the integrity of their travel documents. The host country should use its resources and expertise to assist the home country in improving technology with regards to border security. By working together, the countries can reduce irregular migration from the home country and enable potential migrants to work in the host country legally. There should also be a readmission agreement as part of the partnership, in which the home country agrees to readmit nationals of that country who are residing in the partner country as undocumented workers without extra formality.

Second, the partnerships should address labor supply and demand. This would benefit the host countries by guaranteeing businesses a known supply of overseas labor for the industries that need it at that point in time.¹⁶¹ The agreements would provide a legal way for the migrants to work in the host country, while providing the host country with the labor force that it needs. The agreements would provide an avenue for the host country to admit workers based on its economic needs and the qualifications of the immigrants.

To successfully address labor supply and demand, a bilateral mobility partnership must include an information-sharing mecha-

160. See Rosemary Jenks, *European Immigration Reform*, 4 SOC. CONT. J. 249 (1994).

161. See *id.*

nism. The host country must provide information to the home country about its labor needs so that the home country can help recruit the needed workers.¹⁶² The partnerships should allow countries to permit conditioning of market access on migration control and prevention schemes, which give the home countries an incentive to help fight against irregular migration by putting market access—something they need—at stake¹⁶³

The agreements would allow the countries involved to take into account their own specific labor needs so they can have the kind of workers they need. Workers who come for a job on the basis of bilateral mobility partnerships should not receive unemployment benefits, since the point of them being in the host country is to work, and if they no longer have a job, they should return to their country of origin.

The host country should also specify a time period that the migrants are allowed to work in the country. After that time period expires, the host country would need to reassess its labor needs so it would always have workers in the industries that need them. The workers would need to reapply to the program again if they still qualify and want to stay in the country, but priority would be given to new workers so that migrants could return to their home country with the skills they have gained, thereby helping with the development of the home country. New workers could then get a chance to go to the host country. Building in periodic reassessments of the labor needs of the host country would help industries to not rely on immigrant labor when there are workers in the host country who are willing and able to do the work. Keeping the time period during which the immigrants are allowed to stay short would allow the system to function effectively by giving new industries a chance to take advantage of needed labor as well as giving new immigrants who have different skills access to the program.

Third, the countries that are parties to these agreements should focus on circular migration schemes, including integration and reintegration assistance. When a circular migration strategy is included in these agreements, it can help with the economic development of the home country by having the workers return to their home country with new skills, resources, and cultural awareness. Circular migration also helps cut down on “brain drain” from developing countries by providing incentives for migrants to return

162. The bilateral mobility partnership between Spain and Gambia includes this type of information sharing provision. See Framework Agreement, *supra* note 80, art. 3.

163. See Panizzon, *supra* note 15, at 16.

to their country of origin and use any skills they may have gained from the host country to help improve their home country.

A circular migration scheme should also include provisions under which the host country helps with the economic development of the home country. One way of doing this is for the host country to provide classes on business development so the migrants could then bring the knowledge they gain back to their home country. There should also be a provision for families of the workers to come to the host country after the worker has been there for a certain amount of time. The spouses and children of the migrant workers would gain necessary cultural awareness and skills that they could use in the future to benefit their home country. By providing for the host country to contribute to the development of the specific partner country, the agreement will reduce the incentive for migrants to come to the host country illegally and will benefit the home country immensely.¹⁶⁴ The goal is to help the people of the home country help their own country. This is superior to bringing outsiders in to provide aid, an alternative which home countries could see as another country encroaching on their sovereignty.

A circular migration scheme should also include a provision for voluntary return. Voluntary return programs are a way of reintegrating a worker into the home country by providing them with financial assistance. The reason the host country should help facilitate voluntary return is because if the country does not help, these people are more likely stay on in an undocumented status, which is good for neither the host country nor the migrant.

Fourth, the bilateral mobility partnerships should include protections for the human and civil rights of migrants. By providing a legal way for migrants to enter the host country and work, bilateral mobility partnerships may cut back on the amount of irregular immigrants, which would have humanitarian benefits.¹⁶⁵ There will be fewer deaths from people trying to get into the country illegally, and once the immigrants enter the country legally, they will have more rights and will be treated better than when they were forced to live surreptitiously as irregular immigrants to the country.

164. The Spain-Gambia agreement has a provision covering this, and it allows Spain to contribute to the African development agenda, something that Spain has been eager to get involved in, and which is very beneficial to Africa, and Gambia specifically. See Framework Agreement, *supra* note 80, art. 7.

165. See *supra* Part II.E.5.

Bilateral mobility partnerships help to eliminate some of the exploitive practices that accompany informal migration.¹⁶⁶ A bilateral mobility partnership should include provisions for the migrant workers to be part of a labor organization to ensure adequate working conditions. Bilateral mobility partnerships also make it easier to promote labor migrants' rights.¹⁶⁷ A partnership provides a form of accountability for both countries with regards to human rights and the treatment of migrants by basing certain desired portions of the agreement, such as combating irregular immigration or promoting economic development, on the human rights record of the countries.

Finally, bilateral mobility partnerships should include provisions for cultural and educational exchange between citizens of the two countries. Possible provisions would include classes in the host country that have a mix of home country nationals and citizens of the host country. In these classes each country's nationals could teach the others more about their country's history, culture, and language. Another potential provision would facilitate social groups that allowed for the interaction of citizens of both countries. These programs could be organized by existing non-profit organizations that already provide language classes and other help to immigrants. They would be subsidized by the host state.

Bilateral mobility partnerships also allow for better coordination and organization.¹⁶⁸ They can ensure more orderly temporary labor migration by making it a formalized process.¹⁶⁹ Part of this process involves making migration figures more predictable by stipulating the number of labor migrants allowed to enter the host country.¹⁷⁰ Uncoordinated migration policies are inefficient because each unilateral migration policy imposes externalities on other countries.¹⁷¹ Both countries can improve welfare if the host country allows in more immigrants while the home country helps to enforce the immigration laws in place.¹⁷² By implementing principles of co-responsibility and cooperation, the agreements ensure

166. See Panizzon, *supra* note 15, at 11.

167. See *id.*

168. See Lavenex, *supra* note 12, at 17–18.

169. See Dev. Research Ctr. on Migration, Globalisation & Poverty, *Session Six: Migration Partnerships 1* (paper presented at Migration DRC Conference, London, U.K., Apr. 28–29, 2008) [hereinafter DRC, *Session Six*].

170. See *id.* at 2.

171. See MORAGA, *supra* note 74, at 1.

172. See *id.*

both countries remain invested in the current migration problems and committed to solving those problems.

In addition, bilateral mobility partnerships allow the countries to tailor the agreement to their national security needs.¹⁷³ In today's age of terrorism and other national security threats, it is important for countries to be able to take national security into account when forming migration policies.¹⁷⁴ Irregular migration makes this difficult because so many people are entering the country illegally and unknown to the government.¹⁷⁵ By creating legal pathways that reduce irregular immigration, countries may be better able to control their borders and preserve their security.

Some critics have expressed concern that formalized agreements on migration will create political backlash in the host countries.¹⁷⁶ However, as more immigrants are able to come legally, fewer immigrants will come in illegally, thus minimizing a problem that has been the biggest source of political backlash.¹⁷⁷ Additionally, political backlash is sometimes a necessary byproduct of solving problems in a country.

D. *How a Bilateral Mobility Partnership Would Work in Denmark*

Ever since her campaign, Prime Minister Thorning-Schmidt has promised Denmark that she would liberalize its immigration policies, and she has begun to do so since she took office.¹⁷⁸ Entering into a bilateral mobility partnership would be a good way to encourage more legal immigration into Denmark while controlling how it happens.

Although "public information on the selection criteria" for partner countries in bilateral mobility partnerships is "dramatically lacking,"¹⁷⁹ looking to countries that have already entered into bilateral mobility partnerships with other countries is a good place to start, because those countries already have mechanisms in place

173. See Do & Huddleston, *supra* note 18, at 277.

174. See Thomas, *supra* note 16, at 437.

175. See Jan C. Ting, *Immigration and National Security*, FOREIGN POL'Y RES. INST. (Sept. 9, 2005), <http://www.fpri.org/enotes/20050909.americawar.ting.immigrationnationalsecurity.html> (indicating the difficulty of determining the exact number of illegal entrants to the United States each day).

176. See DRC, *Session Six*, *supra* note 169, at 1.

177. See *id.* ("Bilateral agreements between sending and receiving countries can potentially ensure more orderly temporary labour migration by attempting to make it a formalised process.")

178. See Adams, *supra* note 6.

179. Do & Huddleston, *supra* note 18, at 1.

to implement some of the potential provisions that would be in a bilateral mobility partnership.

When determining potential partners, Denmark should look to countries with a high amount of immigration into Europe. Two likely candidates are Morocco and Senegal. Morocco has a high rate of emigration, at 8.6%, and a large population, at thirty-three million.¹⁸⁰ Both of these characteristics would make it a good candidate for a mobility partnership. There are a large number of potential workers, and Moroccans have already shown a willingness to travel to other countries for work. In addition, 71.8% of Moroccans who were abroad in 2000 were in the European Union.¹⁸¹ Senegal also has a high rate of emigration, with 12% of its total resident population living abroad,¹⁸² and is an important country of transit for emigrants from other African countries.¹⁸³ These two qualities would make it a good candidate for a bilateral mobility partnership. People from Senegal are already emigrating, so it would not be out of the ordinary for them to go to Denmark. In addition, better enforcement mechanisms for helping curb irregular migration from Senegal could stop both nationals from Senegal and those traveling through Senegal from entering Europe without proper documentation.

Denmark would benefit from a bilateral mobility partnership because it could gain foreign workers only in the sectors where it needs them and control who comes into the country. A partnership would also help move Denmark closer to the rest of the European Union on migration policy, because they are currently far apart from most other E.U. countries.¹⁸⁴ In addition, many in the European Union criticized Denmark's previous immigration policies for facilitating human rights abuses.¹⁸⁵ A bilateral mobility partnership would begin correcting these potential abuses and improve Denmark's international reputation.

A mobility partnership between Denmark and another country should include a strategy by the home country to combat irregular immigration into Denmark. In the cases of Morocco and Senegal, improving travel documentation for the countries' nationals as well

180. *See id.*

181. *Id.*

182. *See* ANNA DI BARTOLOMEO, TAMIRACE FAKHOURY & DELPHINE PERRIN, CARIM – MIGRATION PROFILE: SENEGAL 2 (2010), available at http://www.carim.org/public/migrationprofiles/MP_Senegal_EN.pdf.

183. *See id.*

184. *See* Bowlby, *supra* note 2.

185. *See id.*

as working with Denmark to improve enforcement mechanisms for irregular immigration would be potential strategies.

The partnership should also include a readmission agreement where the home country agrees to readmit its nationals who are found to be illegally in Denmark. The agreement should also include increased security measures by the home country in coordination with Denmark to make sure that the immigrants from the home country are identified.

While general security measures are necessary for the entire country, a bilateral mobility partnership would allow Denmark to work with the partner country to create specific security measures. Depending on the location of the partner country and how most of its nationals are entering the country, security measures should be tailored to those specific migrants. Since neither Senegal nor Morocco border Denmark, immigrants would be entering either through neighboring countries or via airplanes. Knowing where the immigrants are coming from helps the countries to tailor the agreement to cut back on irregular immigration and have adequate mechanisms to help those immigrants who are in the country on the basis of the partnership program.¹⁸⁶ Keeping track of the immigrants who are part of the program can make it easier for Denmark to ensure that immigrants are being treated as they should, and cut back on human rights abuses.¹⁸⁷

A program of circular migration should include a provision for voluntary return, where both countries would partner in helping migrants who want to return to their home country but have financial difficulties doing so. This could include help with transportation back to the home country, as well as some financial help in the form of small business start-up loans when the migrants return. A circular migration scheme should also include help reintegrating the returning migrant back into the home country. It could do this, for example, by assisting returning migrants in finding jobs for which they are qualified with their newly acquired skills.

Denmark would have to commit to creating better and more opportunities for legal immigration into the country. This effort might help improve Danish attitudes toward immigrants and would be something Denmark could offer to the home country in exchange for its help on immigration enforcement and additional workers. Denmark would need to commit to developing a system

186. See Do & Huddleston, *supra* note 18, at 277.

187. See *supra* Part II.E.5.

for employing the immigrants in the sectors where they are most needed. This would entail sharing information with the partner country in order to facilitate hiring nationals of the home country. One way this can be done is to emulate Spain and encourage Danish companies to go on hiring expeditions in the home country to find the kinds of workers they need.¹⁸⁸ Another way is to create an organization that facilitates the sharing of market information and labor needs between the two countries, which is what the partnership between Spain and Gambia calls for.¹⁸⁹

The DPP and other Danish citizens have been concerned about the country retaining its sovereignty amidst the immigration controversy.¹⁹⁰ A bilateral mobility partnership would allow Denmark to retain its sovereignty while allowing it to handle migration in a humane and internationally sensitive way. If Denmark in cooperation with the partner country sets the terms of the agreement, it would not have to give up its sovereignty or agree to anything that it did not want. It would simply be creating a partnership with another country that would be beneficial to both countries.

In collaboration with the partner country, Denmark would set the parameters of the agreement, so it could only accept workers in areas where they have a shortage. This would help alleviate fears that foreigners are taking jobs that Danish citizens need. In addition, by including circular migration provisions, the migration would be more short-term and mitigate the fear that some in Denmark have of immigrants taking over their country. However, a bilateral mobility partnership between Denmark and another country should also include some flexibility for workers who want to stay in Denmark and become permanent residents. Those who wanted to stay permanently would have to meet standards set by Denmark, such as being proficient in Danish and sufficiently integrated into the society. A bilateral mobility partnership would also help improve Denmark's international reputation in human rights by making their migration policy more sensitive to the rights of migrants.¹⁹¹

In Denmark, cultural exchange is needed to help improve the current negative perception of foreigners. Because 97% of Den-

188. See NCCR TRADE REGULATION, *supra* note 103, at 1 (explaining how this practice represents a beneficial private sector-oriented approach to labor mobility).

189. See Framework Agreement, *supra* note 80, art. 3.

190. See *Denmark's Immigration Issue*, *supra* note 5, at 1–2.

191. See Bowlby, *supra* note 2.

mark consists of Danes,¹⁹² a program that adds foreigners to that population should be introduced carefully. A bilateral mobility partnership would be a good way to do this because it would be carefully crafted based on the needs of Denmark specifically and would include workers from just one other country. Including provisions that facilitate interaction between the immigrants and Danish nationals would help Danish people better understand the immigrant population and learn about the immigrants' cultures.

Another potential solution to the problem of negativity toward foreigners in Denmark would be to institute an educational exchange program between the partner country and Denmark. Under an educational exchange program, interested Danish students would spend some time in the partner country while interested students from the partner country would spend time in Denmark, possibly with their parents, and learn about the culture of the other country. Since the Danish language is not a widely used language, the partner country would need to establish programs to help potential migrants learn the language. An educational exchange program could include sending Danish teachers to the partner country to help educate future migrants on the language and culture of Denmark in order to prepare migrants for their time in the country.

IV. CONCLUSION

Bilateral mobility partnerships are a new way for countries to work together to fight against problems caused by irregular migration as well as to organize a labor force from one country to work in another country. While these types of agreements are newly developing and growing, they would be beneficial for E.U. countries. These types of agreements can benefit both the home countries and the host countries.

With all of the problems stemming from irregular migration and other migration issues, it is important for countries to work together to prevent further problems, without abusing the human rights of the migrants involved. A bilateral solution is a good way for countries to take control of their borders while respecting the human rights of potential immigrants and helping to provide jobs to those from less-developed countries. These agreements provide E.U. countries with a labor force they need, and the ability to control how the immigration happens.

192. NORSTRAND, *supra* note 149, at 8.

They would be particularly beneficial to Denmark, where such agreements would be a large improvement over its current immigration policy and a way for the new administration to show it is serious about reforming immigration policies. Spain's mobility partnership with Gambia provides a good framework off of which to base other mobility partnerships, including a potential partnership between Denmark and another country. One of the major benefits of mobility partnerships is that they provide for flexibility based on the needs of both countries involved. Since Denmark is concerned about preserving its national sovereignty, mobility partnerships would be a good way for new Prime Minister Helle Thorning-Schmidt to continue to roll back the strict anti-immigration policies of the previous coalition while still respecting the national sovereignty of her country.

E.U. countries entering into bilateral mobility partnerships would help more workers end up like Elias with a job in an industry that needs workers rather than like Ahmed, who remained unemployed in Gambia despite Denmark's need for his services.

