Assessing the Code’s Effectiveness: Reflection on Emerging Evidence

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Context

The flood of illegal unskilled migrants into rich countries and the “brain drain” of skilled citizens from the poorest countries are two of the most critical current issues in international migration today.

These problems, as well as issues such as international trafficking in women and children, have highlighted a gaping hole in international institutional architecture. We have only a fragmented set of institutions to deal with flows of humanity. The International Labour Organization looks after worker’s rights. The United Nations High Commissioner for Refugees deals with forced migrants. The World Trade Organization, under its services agreement, manages the temporary access of professional and semi-professional workers – from builders to doctors – to other countries. The International Organization of Migration is a cross between a consulting body and an altruistic group. Besides its status is not defined by a treaty. Indeed we do not have a treaty-defined “World Migration Organization” (WMO) that could oversee the whole phenomenon, according to internationally agreed objectives and procedures.

- Jagdish Bhagwati, Financial Times, October 24, 2003
Theory

Compliance and Effectiveness: Definition and Interplay
- Malawi illustration
- Ticking the box vs. Speed limit vs. Complimentary

Why do states act upon international rules – Normative (as it ought to be) vs Realism (as it is; power)
Assessing Effectiveness: Premature

• Time Lag: Undertaking and Performance; Performance and Resulting Impact

• Fundamental Breakdown Related to the Iterative Process of Discourse
  – Key Stakeholders remain unaware of the Code.
Criticisms of the Code in Recent Literature

- Voluntary nature
- Failure in Code Dissemination
- Lack of Code Knowledge
- Lack of in country preparedness for Code implementation
- Little Publicity on Implementation Progress
- Ambiguity in terms
- Need for complementary guidance
- Lack of prioritization

Central Challenge: Weak WHO Leadership; Negative effect of WHO Reforms

EAG identified challenge related to transparency particularly troubling
Despite Real Challenges....

Meaningful successes in terms of both compliance and effectiveness

• High OECD nation compliance in reporting = added weight to Code legitimacy.
• European example of what could be possible- (enabled by EU construct, EC funding, WHO Euro leadership, and emergence of coordinated civil society)
• Movement in the US
• Also in others that actively participated in Code Negotiations (Philippines, Thailand, Kenya)
• SSA as a whole though, largely silent
Conclusion

• Overall, period post adoption marked by poor dissemination of the Code; limited support to Code implementation; and a lack of WHO leadership.

• Withdrawal of foundational resources at WHO negatively impacted Code implementation.

• Code’s normative frame has however been further legitimized during the period; potential to add moral weight to global discussions and decisions.
  – Requires active secretariat: prioritizing, clarifying and guiding, providing technical and capacity support.
  – One opportunity: better capture the quality and character of HRH support to low and middle income countries.