Key lessons from Global Health negotiations:
the WHO Global Code of Practice on international recruitment of health personnel

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Expert Advisory Group meeting
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Learn from history

**Soft law**: the 1981 Code of marketing breast milk substitute

- The international code of marketing of breast milk substitutes was adopted by the WHA in 1981
  - Encourage breast feeding and to protect mothers from pressure to use substitutes for breast milk.
  - At that time one member state (the United States) voted against the code and three abstained (Argentina, Japan and Korea);

- By April 2011,
  - 84 countries legislated (37 all provisions, 47 many provisions)
  - 19 have few provisions law,
  - 14 countries have draft law, awaiting for final approval

**Source:**
UNICEF [http://www.unicef.org/nutrition/index_24805.html](http://www.unicef.org/nutrition/index_24805.html)
Taylor A, Dhillon I, Global Health Governance 2011
Historical background

A long journey, 6 years from May 2004 to 2010

• May 2004 -- WHA57.19 resolution requesting DG to develop a voluntary code
  – to develop, in consultation with ..., a code of practice on the international recruitment of health personnel ... and to report on progress to the WHA58

• May 2005—WHA58.17 limited progress of drafting a Code

• May 2006—WHA59 two resolutions adopted
  – WHA59.23 rapid scaling up HWS production
  – WHA59.27 strengthening nursing and midwifery
Historical background

- May 2008 -- WHO develops initial outline of the Code; WHO starts process of formal Code development within procedures of Governing Bodies; web-based deliberations organized (September 2008)
- Jan 2009 -- EB124 -- first draft of Code presented to EB;
  - EB asks DG to organize regional committee discussions on the Code
- May 2009 – technical briefing on the Code cancelled in WHA62 because of H1N1 pandemic
- Aug-Oct 2009 -- Regional Committee deliberations on Code; regions are supportive;
  - 3 regions adopted RC resolutions: AFRO, EMRO, EURO
Historical background

- Oct-Nov 2009 -- WHO Secretariat produces second draft of code based on regional committee inputs
- Official comments and submission by member states on the 2nd draft
- Jan 2010 -- EB126 Decides to forward second draft of code to WHA63 for deliberation
  - WHA created drafting group to negotiate code;
  - It took 3 nights and 2 days deliberation, Viroj chaired drafting group; Consensus reached by drafting group; Committee A approves drafting group resolution and annexed code;
  - WHA63.16 adopts WHO Global Code of Practice on international recruitment of health personnel in plenary.
Historical background

• Parallel non state actions
  – May 2006 -- GHWA established
  – May 2007 -- Migration Policy Advisory Council led by Mary Robinson established; Code is an area for advocacy
  – March 2008 -- Kampala Declaration..
    • Para 7.. While acknowledging that migration of health workers is a reality and has both positive and negative impact, countries to put appropriate mechanisms in place to shape the health workforce market in favour of retention. The World Health Organization will accelerate negotiations for a code of practice on the international recruitment of health personnel
Voluntary or mandatory?

WHA57.19 International migration of health personnel: a challenge for health systems in developing countries

2. Request the Director-General (5) to develop, in consultation with Member States and all relevant partners, including development agencies, a code of practice \(^1\) on the international recruitment of health personnel, especially from developing countries, and to report on progress to the Fifty-eighth World Health Assembly

\(^1\) It is understood that, within the United Nations system, the expression “code of practice” refers to instruments that are not legally binding.
WHA63 May 2010: a procedural issues

Agenda 11.5 was pushed forwards to Monday 17 May PM, brief opening of the agenda and propose a drafting group,

- Chair of drafting group were entrusted to steer a successful negotiation
- Move up the agenda provides ample time for substantial discussion given several key controversies
- The time cost of consensus and the payoff are huge
  - 26 hr marathon negotiation,
  - Content of the Code + draft resolution
- Enabling factors: DG blessing to the Chair of drafting group + support from secretariat, Manuel Dayrit, legal council on stage throughout

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Who are negotiating partners?

• Gainer/loser analysis: 3 broad groups
  – Source countries who are losers of their trained personnel, sub-Saharan Africa: SA, Tanzania, Kenya, Zimbabwe, Ghana
  – Gainers: destination developed countries: US, Canada, Australia, NZ, UK, Switzerland, France, Spain. Some developing countries with limited HR production: Maldives, Morocco,
  – EU: headed by Spain, very tough but sensible acknowledging the problems and ethical solutions required
  – Norway: major intermediary fair minded
  – Neither destinations nor sources but like minded countries who support legitimate position of losers, Thailand, Brazil
    • Supporting the principles of equity and solidarity
Lessons from drafting group

– Ice breaking session among negotiating partners. “Do we need a Code?”
  • Consensus YES, we need one, unaffordable to return to capital without a Resolution
  • EU, on behalf of 26 countries clearly needs a Code,
  • Precedence of having bilateral code, e.g. the Common Wealth, European, → desensitize all partners, to go with consensus [learn from Milk Code]

– Kick off discussion: five overarching issues
  • Voluntary or mandatory basis of the Code
  • Monitoring and reporting is vital, foresee difficulty in implementation,
  • Key role of destination countries on data capturing of international migration, huge EU experiences on data capturing
  • Federal and state relationship in implementing the code, difficulties for some member states
  • Issues of mandatory compensation for each out-migrate health workers to source countries
Lessons from drafting group

– When overarching issues settled
  • Detail discussion on each article of the Code must follow these principles

– Agree to work on consensus,
  • Code is a soft power instrument,
  • Take every member states on board,
  • Voting is the enemy of consensus, creates “divide” between member states.
Lessons from drafting group

- Negotiation on the Content of the Code
  - Decision to use the secretariat text as working document,
  - Walk through each paragraph slowly,
  - First round of discussion, proposed amendment to the text by negotiating partners in track changes
    - Fair summary of the discussions by the Chair, then wraps up by cleaning the track changed text
  - Second or third rounds of discussions, wrap up discussion and cleaning in order to reach consensus,
  - If consensus was not reached, put two or three competing texts in square brackets, then revisit later to save time.
  - Agree not to reopening discussion on the consensus text
    - All partners comply with this
Lessons from drafting group

• Negotiation on the Content of the Code
  • Trust on Chair important to steer smooth process and reach consensus
  • Listen attentively and carefully on content and probe the mood of negotiating partners,
  • Produce a fair summary of discussion
Lessons from drafting group

• Negotiation on the Content of the Code
  – US delegations initially has objection to apply the term ethical in the Code, but finally compromise
    • Objective 1 to establish and promote voluntary principles and practices for the ethical international recruitment of health personnel, taking into account the rights, obligations and expectations of source countries, destination countries and migrant health personnel;
  – One contentious issues: circular migration advocated by EU, Norway and African blocks, but not agreed by others
    • Objective 3.8 Member States should facilitate circular migration of health personnel, so that skills and knowledge can be achieved to the benefit of both source and destination countries.

• Ensuring consensus in Committee A
  – Draft Code as of Thursday 20 May morning were discussed in all Regional meeting to seek full support in Committee A
  – Text in all six languages distributed at 16hr, Committee A adopted in consensus at its tenth meeting
Thank you for your attention