

Health Worker Migration & Bilateral Agreements:

Reflections on Potential Role

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Background

- The **Health Worker Migration Initiative** began in 2006
 - Partnership of the World Health Organization, Global Health Workforce Alliance, and Realizing Rights
- Realizing Rights/Aspen Institute's Global Health and Development program serves as the secretariat for the **Health Worker Migration Global Policy Advisory Council**



Global Health Discourse

- National Priorities
- Mutual Responsibility
- Health Systems

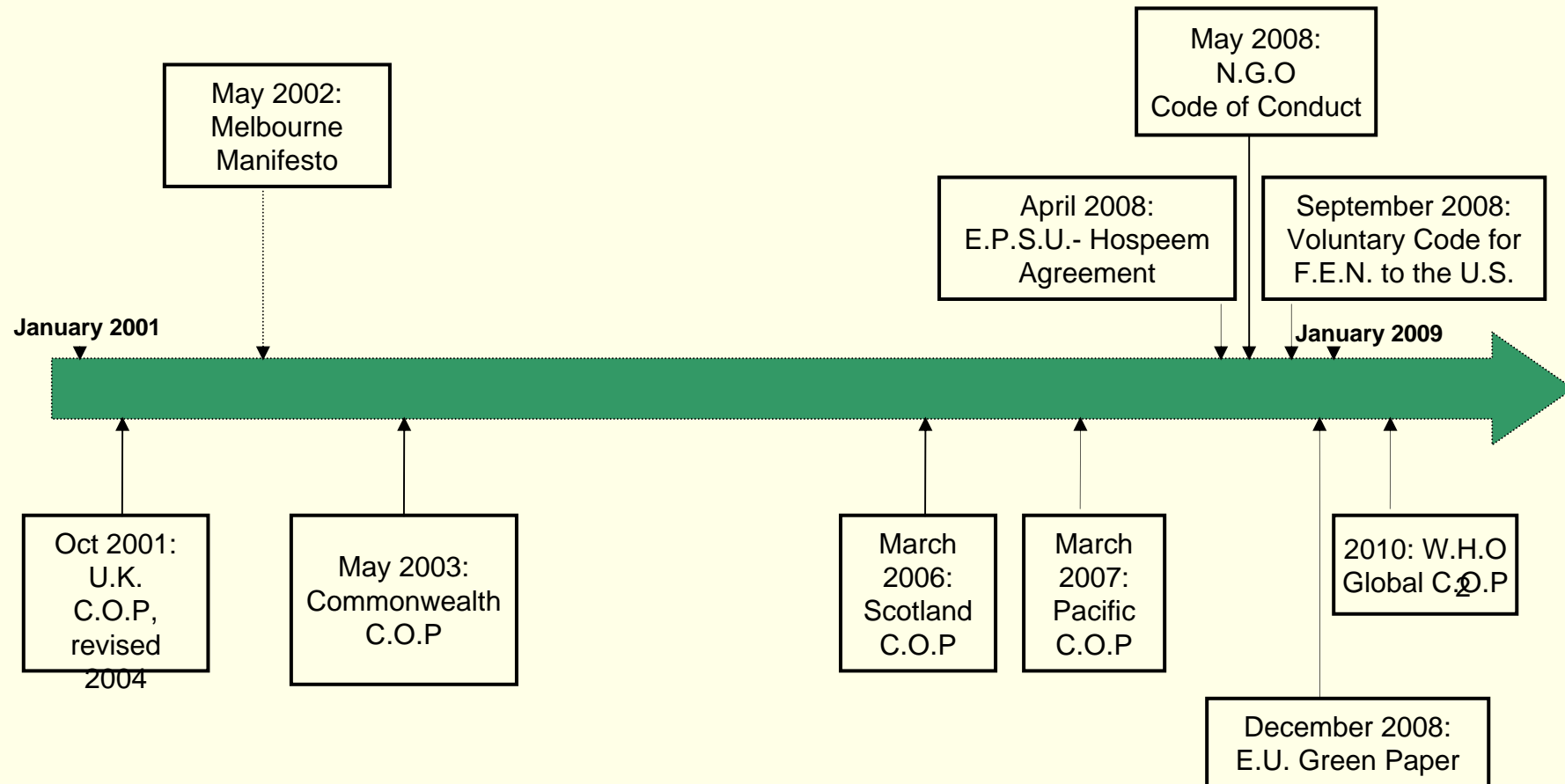
Fragmentation

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 ... have highlighted a gaping hole in the international institutional architecture. We have only a fragmented set of institutions to deal with flows of humanity. The International Labour Organisation looks after workers rights. The United High Commissioner for Refugees deals with forced migrants. The World Trade Organisation, 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 Organisation” (WMO) that could oversee the whole phenomenon, according to internationally agreed objectives and procedures.

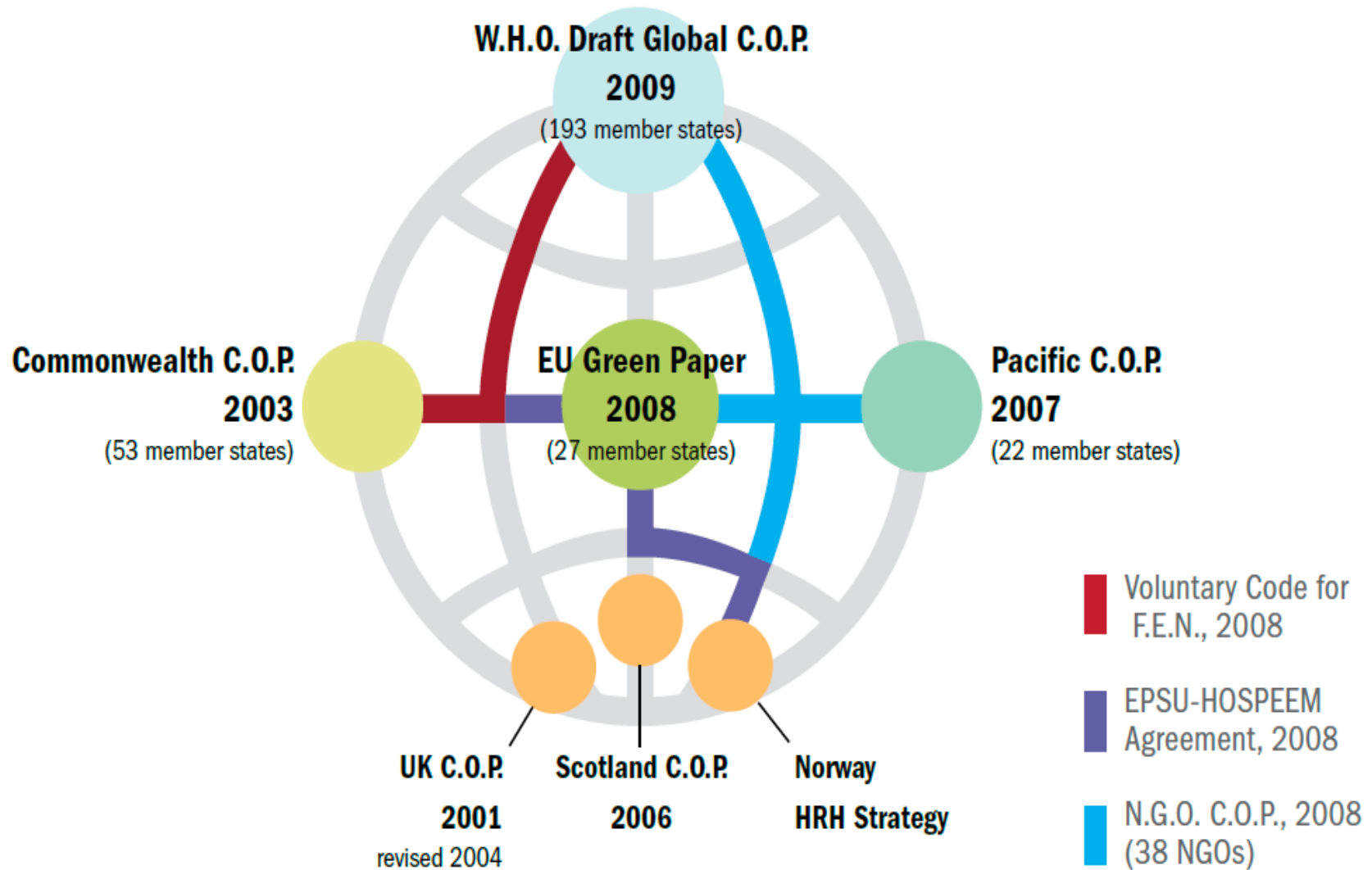
-Professor Jagdish Bhagwati, Financial Times, October 24, 2003

Emergence of Architecture



***1968: United Nations General Assembly Resolution “Outflow of trained professional and technical personnel at all levels from the developing to the developed countries, its causes, its consequences and the practical remedies for the problems resulting from it”.**

GLOBAL ARCHITECTURE FOR ETHICAL MANAGEMENT OF HEALTH WORKER MIGRATION



Call for Bilateral Agreements as a Health Solution

- Commonwealth Code of Practice
- Pacific Code of Practice
- EU Green Paper on Health Workforce
- UK Code of Practice

“To provide guidance that may be used where appropriate in the formulation and implementation of bilateral agreements and other international legal instruments”

- Objective (3), WHO Global Code

Innovations in Cooperation:

A Guidebook on Bilateral Agreements to Address Health Worker Migration



Available online:

<http://www.aspeninstitute.org/policy-work/global-health-development>

Or Google Search

Guidebook on HWM related Bilateral Agreements

Objective

Through analysis and the presentation of Model Bilateral Agreements:

- Clarify the potential form and content bilateral agreements can take to address the challenges associated with HWM;
- Illuminate existing and innovative efforts in terms of both substance and process;
- Further adherence to and implementation of the WHO Code of Practice on the International Recruitment of Health Personnel;

Basic Research Steps

- Collection of existing instruments and background literature review
- Textual analysis of instruments
- Development of Model Bilateral Agreements.

Collected Agreements

1. Philippines and Bahrain MOA
2. Philippines and the United Arab Emirates MOU
3. Philippines and the Province of Saskatchewan, Canada MOU
4. Philippines and the Government of Manitoba, Canada MOU
5. Philippines and the Government of British Columbia, Canada MOU
6. Philippines and United Kingdom MOU (no longer in force)
7. United Kingdom and South Africa MOU 2003 (no longer in force)
8. United Kingdom and South Africa MOU 2008
9. Namibia and Kenya MOU
10. Sudan and Saudi Arabia Co-operative Agreement
11. India and Denmark Labour Mobility Partnership MOU
11. France and Senegal Accord on Concerted Management of Migratory Flows
12. France and Benin Accord Concerning Migratory Flows and Co-development
13. ASEAN Mutual Recognition Agreement on Medical Practitioners
14. ASEAN Mutual Recognition Agreement on Nursing Services
15. ASEAN Mutual Recognition Agreement on Dental Practitioners
16. Japan and Philippines Economic Partnership Agreement
17. *US – China Climate Change MOU*

Introduction to Bilateral Agreements

- Pillar of Modern International Relations
 - Structured, Relatively Formal, Ongoing Relations
- International Legal Status
 - ICJ: Intent of both parties to be obligated (title only suggestive)
 - Caution: *“drawing a formal distinction between soft and hard obligations is less important than understanding the processes at work within the law-making environment and the products that flow from it” - Christine Chinkin*
 - Model Bilateral Agreement I vs. Model Bilateral Agreement II

Addressing HWM Challenges through BAs

- Body of BAs to serve this purpose not fully developed
 - Addressed tangentially through piecemeal agreements in the sectors of labour, social security, trade, and sometimes health
 - Recent innovation as present in comprehensive bilateral migration agreements
 - Recent innovations in process

Regional Variation: Immigration History and Policy

- Admission: Sector-based, Skill based, or Bilateral Agreement based
- Western Europe: Bilateral Agreements a central part of facilitating admission and recruitment
 - Historical context: Guestworker agreements post WWII
 - Focus on temporary/circular migration.
- Anglo-phone “Settler Nations” (AU, CA, NZ, US): Unilateral Quality Selective, Non-Discriminatory policies
 - View to permanent migration
 - CA - mixed form: quality selective and non-discriminatory, but accelerated process for select developing countries as formalized in BA.
- Draft Article 5.3: No Active Recruitment unless bilateral agreement.

Innovation in Managing Migratory Flows through BAs

20th Century

Largely Unilateral in Development

Destination Country Objectives: Address labour shortages, protect post-colonial relations, further cultural ties/ broader economic integration.

Source Country Objectives: Ensure better living and working conditions for migrant workers, promote acquisition/enhancement of skills, combat unemployment.

Examples: Philippines - UAE, Philippines - Saskatchewan, etc.

21st Century

Much more collaborative in development

Objectives of Migration and Development/Co-development gain primacy alongside facilitating labour mobility and social protection of migrant workers.

- Challenges associated migration/“brain drain” explicitly addressed.

Shared responsibility of source country, destination country, as well as of migrant workers to maximize benefits and mitigate harm of migration incorporated.

- *Examples: France-Senegal; France-Benin; Philippines-Bahrain*

Examples of Innovative Practice

- Philippines and Bahrain: Encourage joint ventures and investments in health facilities (training hospitals, research institutions etc); develop HRH educators through scholarships program
- Philippines and Saskatchewan: Saskatchewan companies employing workers under this MOU to support through contributions/donations to improve education and training of youth in Philippines.
- Philippines and Manitoba: Cooperate in exploring projects to support HR development in the Philippines.
- Kenya and Namibia: Kenya to facilitate admission of Namibian health related students at Kenya's academic institutions.
- Sudan and Saudi Arabia: Dialogue on number and specialization of health personnel recruited; work towards the tx of Sudanese in Saudi specialized tx institutions.
- France – Senegal / France - Benin: health sector cooperation, creation of migration observatory, exchange of information, reintegration of health workers, leveraging diaspora, reducing transaction costs of remittances, matching diaspora development contributions, broader development efforts in affected areas.

French Migration and Development BAs

- Emphasis on joint management of migratory flows and solidarity development
 - France – Senegal / France – Benin most health relevant
- France and Benin
 - 4.7 Million Euros committed under the health action program of the bilateral accord
- Responsibility not charity

Importance of Process and Transparency

- Number of Agreements put into place implementation/coordination bodies
 - Create space for meaningful dialogue and cooperation.
 - Further investigation necessary to identify if the implementation/coordination bodies operating as anticipated.
- Call for Transparency
 - Significant difficult in getting access to actual texts of bilateral agreements.
 - Multiple negative effects for developing countries:

Model Bilateral Agreements

- Developed in order to
 - To clarify the potential form and content bilateral agreements could take to comprehensively address the challenge of HWM.
 - To capture existing innovative efforts in terms of both substance and process
 - To further adherence to and implementation of the WHO Global Code of Practice
 - To serve as a guide for those, particularly developing countries, interested in developing bilateral agreements to address the challenge of HWM.

Coding of Arrangements

- **General Structure:** type of arrangement, number of state parties, name of state parties, purpose, binding, duration, distinguishes obligations of parties, bilateral as sole reference, MRA a goal
- **Substantive Provisions:**
 - Employment standards: equal opportunity in pay/working conditions, right to due process in relation to contract, provision/enforcement of contract, supervision, information on social services
 - Recruitment standards: identification of numbers/specialty to be recruited, requirement of certificate of freedom, in-country service requirement, length of stay, respecting contractual bonds in source country, equal opportunity in training/education/career development, explicitly mentions “ethical recruitment”
 - Shared responsibility: recognition of socio-economic impact of HWM, scholarships, exchange program, joint investment in training institutions, transfer of technology, training in source country, treatment of source country patients, reintegration support
- **Procedural Mechanisms:** monitoring provisions, monitoring/implementation body, monitoring purpose and schedule, dispute resolution system

Model Bilateral Agreements

Model Bilateral Agreement I

- Targeted at countries that utilize bilateral agreements for health personnel recruitment and admission purposes, specifically aiming to address the negative effects of health worker migration.
- Text based almost exclusively on existing practice.
- Links to recommendations presented in the WHO COP.

Model Bilateral Agreement II

- For those that utilize quality selective, non-discriminatory admission policies as well as decentralized recruitment policies.
- Relevant also for those that recognize the extent of the problem and the importance of international cooperation but unsure as to the precise steps forward.
- Based on the US-China Climate Change MOU

Potential Danger?

- GATS Mode 4 (Temporary Movement of Natural Persons)
 - Sole focus on economic development through liberalization of trade in services.
 - Unable to address cross-linkages outside of trade; movement of people not substantially bi-directional
 - Mode 4 commitments very limited - less than 4% of all GATS commitments, with 90% of Mode 4 commitments related to corporate executives and transfers.
- Yet underlying rationale for liberalization of trade in services has resulted in development of MRAs
 - Mutual recognition of qualifications viewed as “one of the most significant factors inhibiting the movement of labour across borders”.
 - Five of the collected BA texts hope to move towards MRA.
- Can/Should MRAs address the challenges associated with HWM?
 - I.e. Is the 5 year in country practice requirement as called for by ASEAN MRA for Medical Practitioners appropriate?

Concluding Thoughts

- BA's not *the* solution
 - However, important (and relatively easy) mechanism to advance meaningful conversation/cooperation
- Innovative models available to address HWM challenges
- Need for greater transparency and evaluation