

# Accepting Nurse and Certified Care Worker Candidates in Japan<sup>\*</sup>

— How a Bilateral Policy Decision is Implemented at the Administration Level —

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## Introduction

There has long been an argument in policy studies on whether implementation failure comes from an initial political decision or other factors, including administrative activities. The author hypothesizes that failure in policy and programs are related to both initial policy decisions and their implementation process. In order to verify this, this study examines the acceptance of nurse and certified care worker candidates by the government of Japan from the Philippines as an illustrative case<sup>1)</sup>.

The Japan-Philippines Economic Partnership Agreement (JPEPA) is a formal bilateral agreement which was concluded on December 11<sup>th</sup>, 2008. One policy objective of the Japanese government is fair and smooth acceptance of the nurse and care worker candidates based on the articles of the JPEPA in order to ensure that the candidates can pass the national licensing examination in Japanese and continue to work as professional nurses and certified care workers. However, only one Filipino candidate passed the national examination in 2010 and 2011, respectively. Some candidates have even returned home despite the fact that their visa remains valid.

The purpose of this study is to find out the real reasons for this program failure by examining how the implementation gap between the acceptance policy decision under the JPEPA of the Ministry of Health, Labour and Welfare (MHLW) and its administrative activities in the implementation process came about. Previous studies on the JPEPA regarding the candidates are mainly focused on the working conditions and welfare of the candidates themselves (Ballescás 2010). However, implementation studies do not analyze policy objectives.

This study highlights issues which make it difficult to implement policy programs in line with policy targets at the policy implementation level. In addition, this paper argues that these gaps affected acceptance policy outcome and the following Economic Partnership Agreement (EPA) policy decisions with other countries.

The methodology employed is mainly through interviews with officials of the MHLW, the Japan International Corporation of Welfare Services (JICWELS), the Department of Labor and Employment (DOLE) in the Philippines and the President of the Philippines Nurses Association (PNA) as well as newspaper reports and government documents.

There are two main reasons for the implementation gap. One is the imperfections and ambiguities of the initial policy decision, which are the result of multilateral negotiations. Not only within the government of Japan but also between the two governments, there is a divergence of views on interpreting the policy target among officials involved. In particular, the Philippines had different views on interpreting the concluded articles of the JPEPA, which were intended to be the core guidepost of implementation. The second reason comes from 1) Japan's unique institutional setting and administrative culture of public administration at the MHLW and 2) patterns of its organizational activities that affect policy implementation process and policy outcome. In addition, 3) the gap between central and local

governments creates difficulties for implementing the program.

- 1) When accepting candidates, the MHLW prioritizes the protection of the labour market of Japanese nationals who are the core taxpayers. Especially after the Global Financial Crisis in 2008, the MHLW enforced measures to encourage unemployed Japanese nationals to work in the nursing care industry. The introduction of quasi-market mechanisms in social services based on neoliberal thinking changed policy outcome as well<sup>2)</sup>.
- 2) The abrupt change of the political party in power affected the conventional administrative culture of bottom-up policy making by bureaucrats and its relationship with lawmakers, especially when the new government introduced budget screening. It changed the conventional annual budgeting system and its incremental expansion of policy program through budget increase.
- 3) Finally, in policy implementation between the MHLW and local governments as well as a relation between the MHLW and JICWELS were misguided on the initial policy intent of the MHLW at the bottom line of implementation.

The implementation gap and its effect on policy outcome also had an effect on Japan's further EPA policy decisions with other countries including Thailand and Vietnam. Japan decided not to include the acceptance of nurse and certified care worker candidates in the EPA articles with other countries when negotiating with them because some implementation issues and poor policy outcomes were expected from experience with the JPEPA.

This study shows that there is a relationship between initial political decisions, implementation and future policy decisions. Political bargaining in the implementation process makes it difficult to smoothly implement the policy target. Once the JPEPA treaty had been concluded it was difficult to revise the articles.

After the decision making of the acceptance parameters, there was an implementation gap between the MHLW, which decided to accept Filipino candidates in order to respond to requests from the Philippines and accepting facilities. This gap caused a poor program outcome in which the number of candidates who passed the licensing exams was very low. Conflicts between stakeholders in the implementation process and difficulties for public administrators to coordinate them might constrain future policy making regarding the acceptance of workers from other foreign countries as well.

## I. Analytical Framework

Though the implementation process has a link to the initial policy decision, a policy does not always accomplish its first objective in its implementation process. The classical initial implementation study is *Implementation* by Pressman and Wildavsky, which examined the case of the Federal Government Program failure in its implementation process in Oakland (Pressman and Wildavsky 1973). In such implementation studies, the gap between government policy decision and its fulfillment in the implementation process are examined as 'implementation gap' or 'implementation failure.' The case studies are mainly focused on issues regarding administrative activities through which decisions made by the government are carried out. Logic of administrations, patterns of its organizational activities and its administrative culture are observed to determine how these factors affect the policy implementation process as well as policy outcome.

Public administration is driven by public philosophy, such as the state role in welfare services, relationship between benefits and burdens in medical and welfare services, as well as fairness among nationals. These factors affect policy decision and implementation at the central government level. In general, consensus building systems at deliberation councils (*shingikai*) composed of experts play key roles in the administrative policy-making in Japan (Koike 1994). Regarding the health care policy area, many complicated battles among, mainly, the MHLW, the Japan Medical Association (JMA), insurance carriers and their constituents, and the Ministry of Finance are seen (Campbell 1992).

The power of the JMA is especially prominent for policy making and implementation at the MHLW (Campbell 1998)<sup>3</sup>. Such particular patterns of the MHLW organizational activities are also seen in case of the JPEPA policy formulation.

Hargrove pointed out “policy and program analysis should be supported by new kinds of policy research to improve the quality of thought about program implementation” (Hargrove 1975). In the 1980’s, there was an argument whether implementation studies should be done using a top-down or bottom-up approach (Sabatier 1986).

When New Public Management (NPM) was introduced to improve administrative efficiency in the delivery of public services to enhance small government in the 1990’s, not much attention was paid to the dynamics of organizational process<sup>4</sup> (Barrett 2004). NPM is a ‘loose’, ‘shorthand name’ for ‘a set of broadly similar administrative doctrines’ that dominated bureaucratic reform agenda in many developed countries from the late 1970’s. The administrative doctrines include a shift to greater ‘competition’ in public sector by moving to term contracts and public tendering procedures. Another doctrine stresses on ‘private-sector styles of management’ practice (Hood 1990). NPM was first introduced in Western countries like Britain to reform public administration management.

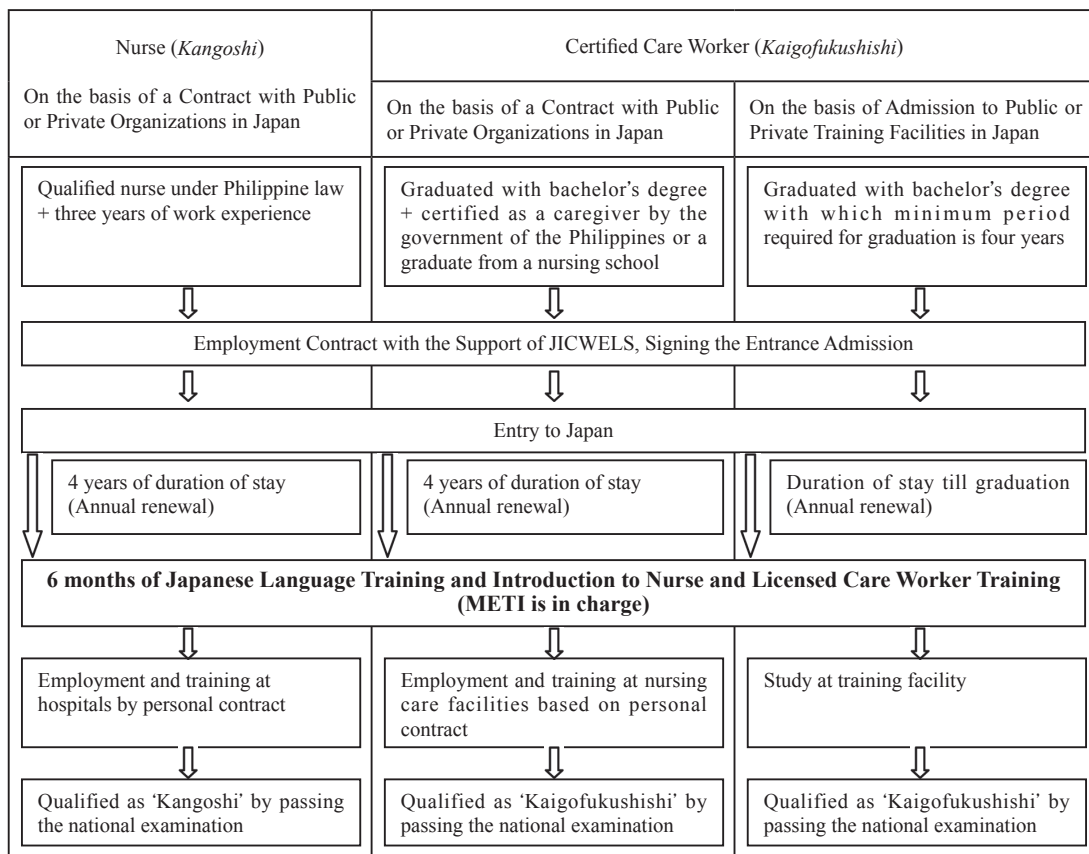
A doctrine of NPM is a shift to disaggregation of units in the public sector in order to create ‘manageable’ units inside and outside the public sector through such methods: public-private partnerships through devolution; contracting out of public service responsibilities to local ‘quasi-public’ and private partners and networks of organizations (Heinrich 2011). Main issues of implementation would be selections of providers and how to monitor them when public administration contracts out public services to private partners. Therefore, implementation study would be more diversified. In these times of globalization, there is a need for a revival in implementation study to carefully look at administrative activities for more qualitative study (Barrett 2004).

In the case of the nursing care industry in Japan, the government introduced a quasi-market mechanism, which allows the private sector to participate in the market so that citizens can choose services at their own discretions from selections of services. When the Nursing Care Insurance Act was introduced in 2000, competition among service providers was thought to be a gear to increase the quality of services because of market mechanisms. However, as for the payment of care workers, there are some standards regulated by insurance and their low salaries caused high turnover in the industry. In order to maintain the quasi-market mechanism, the MHLW has a role to improve the working environment of the whole nursing care industry, including pay standards. The NPM reform by the Japanese government further reduced the pay standards. However, there was a backlash from stakeholders who demanded an improvement in the working environment. Therefore, political bargaining and negotiations with the stakeholders were needed in the implementation process.

In this paper, the author hypothesizes that failure in policy programs is related to both initial political decisions and conflicting factors of administrative activities in the implementation process. This study examines the acceptance of candidates for nurses and certified care workers by the government of Japan from the Philippines as an illustrative case to have implications toward the missing link between a policy decision and its implementation.

## II. Decision-making Process for Acceptance

The acceptance of nurses and caregivers from the Philippines is the policy outcome of the formal bilateral negotiations for concluding the JPEPA. The basic agreement was made when it was signed between the then Prime Minister Junichiro Koizumi and the then President Gloria Macapagal-Arroyo on September 9<sup>th</sup> in 2006 in Helsinki, Finland. This is a formal treaty that was ratified by the Diet of Japan on December 6<sup>th</sup>, 2006 and the Senate of the Philippines on October 8<sup>th</sup> in 2008. Acceptance of the candidates was a controversial issue in Japan as it was the first occasion to accept foreign workers long term in the nursing care industry. At the time of negotiations, though the



Source: MHLW. 2009. Revised by the author.

**Figure 1 Conditions of Accepting Nurses and Certified Care Workers Candidates from the Philippines**

MHLW was reluctant to accept the candidates, the Ministry had to compromise and accept with certain conditions in the national interest of Japan to conclude the JPEPA (Hosono 2011). The detailed conditions for accepting the candidates are described in Figure 1.

Article 98-2 of the Constitution of Japan stipulates that treaties signed by Japan and established laws of nations shall be faithfully observed. The government of Japan has a duty to implement the JPEPA articles smoothly to be consistent with domestic laws and rules, as it is part of Japan's international legal obligation though there were conflicts between different ministries with regard to the decision-making of the JPEPA. Basically, the process of implementation is conducted in a top-down process as the political decision was already made at the summit level when signing the treaty. Bureaucrats of the MHLW consider the EPA scheme as an exceptional measure as a result of the bilateral negotiations and have no intent to link this scheme to long-term labor policy. However, an official from the MHLW, who is in charge of the acceptance, regards the policy objective as fair and smooth acceptance of the candidates based on the articles of the JPEPA so that they can pass the national license in Japanese and continue to work as professional nurses and certified care workers<sup>5</sup>.

The low number of the candidates coming in and the poor results in the national licensing examination are pointed

out as policy issues in the implementation process compared to its initial political goal. However, there has not been enough observation to conclude the real reasons for this policy outcome. Therefore, this case study examines where the implementation gap between the initial policy decision and administrative activities came from and how those gaps affect the policy outcome.

### 2-1 Background for Accepting Candidates

The MHLW created a new 'Office of EPA Acceptance' in the Employment Security Bureau in October 2006, six months after the signing by the leaders of both countries on September 9<sup>th</sup>, in 2006. During the formal negotiations of the JPEPA, officials from the International Affairs Division in the Minister's Secretariat were in charge of the diplomatic negotiations. After the 'Office of EPA' was established, the Health Policy Bureau, which is in charge of nurses, the Social Welfare and War Victims' Relief Bureau, which is in charge of licensed care workers and Labour Standards Bureau, which is in charge of employment of foreigners, started to arrange the budget from the fiscal year 2007. Under the supervision of the MHLW, the JICWELS was designated as a sole official coordinating organization of acceptance to implement fair and right matching between a Filipino applicant and an accepting hospital or facility. The JICWELS signed a Memorandum of Understanding (MOU) with the Philippines Overseas Employment Agency (POEA), which is the umbrella agency of the DOLE on January 12<sup>th</sup> 2009. The budget from those three Bureaus from the MHLW was disbursed to JICWELS as expenses for commission. In order to facilitate smooth implementation, the MHLW officially announced the Notification No. 509 of the MHLW in 2008<sup>6)</sup>. The Notification has the following three points:

- 1) The acceptance is an exceptional measure to be conducted through formal channels based on bilateral agreement in an industry where no foreigners were accepted as workers in the past. The JICWELS will be the sole institution for fair implementation of foreign candidates.
- 2) Based on the articles of the JPEPA, the candidates will be employed for the purpose of acquiring Japanese national licenses and engage in training to pass the exam while working at the accepting facilities. Each candidate will have a working contract with a facility and the facility needs to pay remuneration equivalent to that of Japanese workers or above. Japanese Labor-related laws as well as social insurance and employment insurance will be adapted for them.
- 3) The institutional setting of acceptance of the candidates under the JPEPA has a goal of allowing the candidates to pass the national licensing examinations in Japanese during the period they are permitted to stay in Japan. Therefore, each accepting facility has a certain responsibility to implement appropriate training aimed at acquiring national licenses.

The above mentioned three points of notification were set out in order to clarify the administrative role of the MHLW as well as the responsibilities of each accepting facility and candidates. This paper looks at the implementation process of the acceptance, how it differs from the above mentioned policy goal and government guidelines.

### 2-2 Imperfectness and Ambiguities of the Initial Policy Decision

This chapter examines the implementation gap caused by imperfectness and ambiguities of the initial policy. Although the MHLW announced the clear implementation guidelines, the implementation process can not solely be conducted by the government of Japan. As the JPEPA is a formal government-government treaty, the DOLE is involved in its implementation process as a counterpart of the MHLW. Besides the gap in the negotiations between the two countries, the DOLE has different interpretations of the articles for accepting the candidates to the government of Japan and this made it more difficult to implement the program.

### 2-2-1 Different Views between the Two Governments on Interpreting the JPEPA Articles

The DOLE has different views on interpreting the articles of the JPEPA from the officials of the government of Japan regarding the set quota of the Japanese government. In paragraph 3 of Article 110 of Chapter 9, it stipulates that “Neither Party shall impose or maintain any quantitative restriction on the number of natural persons to be granted entry and temporary stay under paragraph 1 above, without prejudice to any right of either Party to regulate the entry and temporary stay of natural persons of specific commitments under this Article. According to the interpretation by the government of Japan, specific commitments include the acceptance of the candidates and the government has the right to regulate the entry by setting a quota (Watanabe 2007). According to an official from the MHLW, who is in charge of the acceptance, there is a consensus in the government that, to regulate the entry includes the stopping of acceptance. The MHLW prioritizes the role to protect the domestic labor market of the nursing care industry for Japanese citizens as the government agency is operated using collected tax<sup>7)</sup>.

On the other hand, one of the undersecretaries at the DOLE, who was involved in the JPEPA negotiations, claims that Japan’s announcement of acceptable numbers is a violation of the law. In his view, as the JPEPA articles stipulate that there should be no quantitative restriction, Japan should not give the Philippines an exact number limitation on entries. He claimed that in the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO), no quantitative restriction is permitted. However, Paragraph 1 of Article 1 of Chapter 9 of GATS, Free Trade Agreement (FTA) and EPA are regarded as exceptional matters in most favored nation (MFN) articles. Therefore, Japan’s side utilized an EPA to regulate the domestic labor market of a specific country, while opening the labor market to nurses and care workers beyond the current immigration regulations.

In the negotiations, the then Arroyo administration offered to send professional health workers. The government of Japan only agreed to accept them as candidates and sends a note to inform the exact yearly acceptance number through the official channel of the Ministry of Foreign Affairs (MOFA)<sup>8)</sup>. There is a recognition gap between government officials on interpreting the JPEPA articles. Therefore, implementation process will be more difficult to conduct for them.

### 2-2-2 Insufficient Political Negotiations for Decisions of Acceptance

Between Japan and the Philippines, official negotiations for concluding the JPEPA were held five times from February to November in 2004, until both parties reached agreement in principle. The chief negotiators of movement of natural persons were the official of the MHLW, Takashi Minagawa and the Undersecretary of the DOLE, Daniel Cruz. At the negotiation table, Japan agreed to accept experienced Filipino nurses as *Kangoshi* candidates and Technical Education and Skills Development Authority (TESDA) caregiver holders or licensed nurses as *Kaigofukushishi* candidates. These candidates have to pass the national licensing examination in Japanese in order to continue to stay in Japan to work.

In addition, Japan offered the Philippines the acceptance of bachelors’ degree holders of four years as candidates to attend a training facility. At the formal negotiations, it was agreed that after one completes the whole course at a training institution for certified care workers, he or she would be a certified care worker without taking national examinations. However, *Shakaifukushishi oyobi Kaigofukushishi Houno Ichibu wo Kaiseisuru Houritsu* (Act to revise the part of Certified Social Workers and Certified Care Workers Act and so on), which was passed in 2007 resulted in the breaking of this negotiation outcome with the government of the Philippines. In the act, it stipulates that after five years of enforcement in 2012, if those students who finish the institutions fail to pass the national licensing examinations, they will not acquire the licenses and they will be given a new category of license, namely ‘*Jun Kaigofukushishi* (semi-certified care worker),’ instead. The director of the social welfare infrastructure, Kenshi Kinoshita, at the Social Welfare and War Victims’ Relief Bureau at the MHLW explained that there was an argument to revise the law to make it necessary

to pass the exam in order to acquire the license and the government had to make a semi-certified care worker license law in order for it to be compatible with the JPEPA treaty<sup>9)</sup>. This law has a supplementary provision that stipulates that the government of Japan has to take appropriate measures by considering further discussion on the JPEPA with the Philippines and make a decision by 2012. As the patterns of policy making by the MHLW are based on deliberation, the MHLW tried to create a revised law which will be suitable for opinions among stakeholders without deviating from the articles of the JPEPA.

Regarding this matter, the Undersecretary of the DOLE, who was in charge of the initial negotiations, claims that despite the fact that the Philippine side did not offer this scheme, Japan offered to include the training institutions scheme in the agreement. Since the Philippine side agreed that when the students finish the scheme, they will be certified care workers in Japan without taking examinations, it is a violation of the agreement to change domestic law after the negotiations reached the agreement. He claims that there is a difference in working status, including pay of certified care workers and semi-certified care workers<sup>10)</sup>. Because of these gaps when interpreting articles between the two governments, the implementation process of the acceptance became more complicated.

### III. Political Influences in Implementation Process

Besides those bargaining in the negotiation process and imperfectness and ambiguity of policy decisions, **there is also political bargaining in the implementation process that causes difficulties for smooth implementation.**

#### 3-1 Relations of the MHLW with Client Groups Affected the Implementation Outcome

In the current situation, the Japanese government has a policy of accepting only highly skilled professional workers from abroad in the Japanese labor market. The acceptance as candidates was a compromised policy outcome of the MHLW. Client groups, including medical institutions, were reluctant to accept the foreign nationals into the medical and nursing care industry. However, the MHLW decided to accept opening the labor market in these times of globalization for international trade balance (Hosono 2011). The acceptance is an exceptional measure to be conducted through formal channels based on the bilateral agreement. The MHLW has no intention of linking this program to the long term policy of balancing the labor market in the industry. For long-term decision making, the MHLW has to go through a certain amount of deliberations to meet consensus among multiple stakeholders. There are some issues in the MHLW to include the acceptance under the JPEPA into the overall redistribution of social services<sup>11)</sup>.

According to the mentioned exception of paragraph 3, Article 110, Chapter 9, in August 2006, the government of Japan informed the government of the Philippines that Japan would accept 1,000 candidates maximum in 2009 and 2010. The MHLW claims that if there were more than 1,000 vacancies at accepting facilities, it would not approve acceptance. This quota was set to regulate the entries from the Philippines as well as to regulate the domestic market. The MHLW takes it as obligatory to set the quota by considering the effect of demand and supply in the labor market for Japanese nationals who seek to find jobs as nurses and certified care workers<sup>12)</sup>.

The Japanese government decision to prioritize protecting the labor market for Japanese nationals who are the core taxpayers resulted in less focus on the acceptance program mainly at the time of the Global Financial Crisis in 2008. Although, acceptance of the candidates was institutionalized, the Japanese government introduced new measures to increase the number of unemployed Japanese nationals working in the nursing care industry. Because of this new political decision, unemployed Japanese citizens found a new way to work in the industry. This political decision diluted some facilities' strong will to accept the candidates as a measure to assuage shortages in the workforce and they prioritized accepting Japanese nationals over the foreign candidates<sup>13)</sup>.



### 3-2 Quasi-market Mechanism in the Social Welfare Sector Brought about Confusion in Implementation

Based on the Social Welfare Structural Reform, the government introduced a quasi-market mechanism into the Nursing Care System in 2000. The involvement of market-based service providers who seek to alleviate shortages in the workforce makes it more difficult to implement the acceptance. The acceptance is based on an employment contract between each facility and a candidate. The reasons for acceptance are different from facility to facility and are not always consistent with the intent of the MHLW.

According to a survey conducted by the MHLW between January and February 2010 on fifty-nine facilities which accept candidates from Indonesia, heads of 39 facilities out of 59 answered a questionnaire regarding the reasons for accepting. Those who answered that the reason was 'international contribution', 'international exchange', 'test case to accept foreign workers in the near future', and 'activating working environment' accounted for 78 to 89 percent. Among them, those who answered that the purposes were 'achieved' or 'almost achieved' were 65 to 79 percent. On the other hand, those who answered that 'the reason for acceptance is to alleviate a shortage in human resources' were about 49 percent. Among them, those who answered that the purpose was 'achieved' or 'almost achieved' were around 39 percent<sup>14)</sup>. The results show that almost half of the accepting facilities intended to alleviate shortages, which is inconsistent with the policy target of the MHLW.

An official from the MHLW explains that nursing care facilities became reluctant to accept the candidates especially after the Global Financial Crisis in 2008<sup>15)</sup>. While securing the candidates the same amount of pay as Japanese workers, they are obliged to consume time and money for Japanese language education and study for licensing exams. They claimed that there are not many merits for the facilities in terms of cost-efficiency. In the current situation, the number of facilities, who are willing to accept the candidates, is decreasing<sup>16)</sup>.

After the oil crisis in the late 1970's, Japan lost its economic base to build a Welfare State and the role of the state focused on regulation and control over public and private service providers (Miyamoto 2008). After the introduction of market mechanisms into the welfare sector through quasi-market system, citizens are to select service providers of their own free will unlike the administrative order before. Facilities became more conscious about cost-efficient management. There was a gap between the MHLW who set the policy target and accepting facilities regarding expectation toward the acceptance program.

### 3-3 Political Influence in Implementation Process

One of the biggest implementation failures was poor results in the National Nursing Examination. The results were published in March 2010. While the total average passing rate was 89.5 percent, of the fifty-nine Filipino nurse candidates on the JPEPA program, only one candidate passed the exam mainly because of difficulties with the Japanese language. Though the MHLW made some adjustments by adding Romanized annotations to some difficult Chinese characters and technical terms, the results did not improve much. Of the forty Filipino nurse candidates on the JPEPA program, only one candidate passed in March 2011<sup>17)</sup>. The change of the leading political party (*Seikenkotai*) and the introduction of budget screening (*Jigyoshiwake*) made it difficult for the MHLW to start programs for smooth implementation as the new administration was concerned about the yearly cost-efficiency of the program itself.

Though the MHLW tried to expand the program to support Japanese language learning at accepting facilities, organizational activities, including the annual budgeting system and its efforts in incremental expansion of the program was prevented by the emergence of the new administration. In the provisions of the JPEPA, it is stipulated that the candidates have to go through Japanese language training which is done in Japan and paid for by the Japanese government before they start job training at accepting hospitals and facilities. The 675 hours of classes aim at teaching Japanese language skills. The candidates can master 300 to 400 Chinese characters<sup>18)</sup>.



The MHLW was concerned about insufficient Japanese language ability of the candidates to pass the exam and thought that it is the role of the government of Japan to strengthen the support for the candidates already in Japan so that they can improve their Japanese language proficiency to pass the national tests. In addition to the six months Japanese language training already mentioned, the MHLW sought to implement a new policy program to support the candidates during their working hours at hospitals and facilities regarding Japanese language proficiency to help them obtain the national license. In October 2009, for the 2010 budget, an MHLW official proposed to allotting 8.6 hundred million yen, which is 10.5 times the budget of 83 million yen in the previous year, in order to give assistance to accepting facilities regarding Japanese training<sup>19)</sup>. Because of the abrupt change in the administration in September 2009 from the leading Liberal Democrat Party (LDP) to the Democratic Party of Japan (DPJ) in the general election on August 30, 2009, annual budgets of all ministries became targets for review from the zero base due to the efforts of the Cabinet to reduce the budget of all ministries by thirty percent. In the fiscal year of 2009, fortunately the budget was approved by the Diet on March 27 in 2009. However, because of the change in the administration (*Seikenkotai*), now the new government is aiming at lawmaker-led policy making. Therefore, the conventional administrative culture to expand the budget of programs in need based on bureaucrats' discretion will be more difficult. To increase the yearly budget, in order to achieve program objectives will be a more complicated implementation process, which will be affected by bargaining among lawmakers and bureaucrats<sup>20)</sup>.

Furthermore, the implementation agency became the target of a budget screening system (*Jigyoshiwake*) in the MHLW under the DPJ administration. The members of *Jigyoshiwake* questioned the cost-benefit relationship of the acceptance program under the EPA at the JICWELS and the responsibility of the MHLW for supervising the JICWELS harshly on May 18, 2010<sup>21)</sup>.

Though the JPEPA treaties define the mandatory six months language training before going to institutions, and the budget is shouldered by the government of Japan, there is no law to define which ministry must shoulder the budget. In the case of the Philippines, the Official Development Assistance (ODA) budget of the Ministry of Economy, Trade and Industry (METI) is allotted for six months training. Although the MHLW was reluctant, the METI agreed to accept the candidates, offering six-month post-arrival Japanese training sessions, financed by the ODA budget of the METI, to be in favour of the government of the Philippines in the negotiation process<sup>22)</sup>. The above mentioned new budget by the MHLW is a part of the yearly budget of the MHLW and at that time the cabinet asked the entire ministry to cut thirty percent of the budget of each ministry. Such budget constraints and the budget screening limited the conventional administrative culture and their bureaucratic efforts to expand the program to achieve a goal which is sustainable in the long run.

### 3-4 Difficulties in Implementation at Local Governments and at Implementation Organization

The action, policy decisions and implementation of how each local government supports the candidates differs from government to government. Despite of the MHLW's intent to separate the acceptance under the JPEPA to alleviate shortages, each local government has its own political reasons to accept the candidates in their community. The gaps between local governments made it difficult to implement fair acceptance across the nation by the MHLW.

Since the 1990's, municipalities are obliged to make a Plan on Health and Welfare for the Elderly, and then, since the introduction of Nursing Care Act in 2000, the plan has to be in line with the Nursing Care Plan. Each municipality has to be responsible for implementing policy along with these reforms. Besides this, because of the change in inter-governmental relations (IGR)<sup>23)</sup> based on the Omnibus Decentralization Act enacted in 2000, 'Agency Assigned Function (*Kikan Inin Jimu*) (AAF)' imposed upon local governments by central governments were eliminated and transferred to the activities of local governments and legally prescribed transactions entrusted to local municipalities.

The decentralization reform enabled the offices of governors and mayors to have more autonomy in decision making.

The AAF was a system to transfer an IGR between the central and local governments into a hierarchical structure (Takechi 1996). The elimination of the AAF and the enforcement of decentralization brought more horizontal relationship between the central and local governments. Therefore, the MHLW literally does not have the power to force local governments to implement the acceptance.

For example, a program to support the candidates under the EPA was included in the fourth 'Yokohama City Plan on Health and Welfare for the Elderly as well as a Nursing Care Program from 2009 to 2011'<sup>24)</sup>. The city offered financial assistance to accepting facilities along with the plan. However, this kind of action is only taken at municipalities that have large budget volume. Some facilities criticized the MHLW for unfairness giving special financial support to some facilities<sup>25)</sup>. The policy set at the central level now creates inter-local governmental gaps in the name of local autonomy.

The structural reform of the central administration in Japan is not only decentralization but also privatization. While the government agency, the DOLE and its affiliate POEA, take roles to recruit, match and send the candidates to Japan under the JPEPA, the agency to coordinate the acceptance in Japan is the JICWELS, which is under the jurisdiction of the MHLW. What makes it more difficult to implement this acceptance is the limitation of the JICWELS as a non-governmental organization, meaning it does not have any decision-making authority without the supervision of the MHLW.

When the agreement of the JPEPA was made, the MHLW did not have enough capacity or human resources in its administrative organization<sup>26)</sup>. Because of this reality, the JICWELS became the sole organization of implementation under the supervision of the MHLW. Though it is namely a non-governmental organization, the top management of the JICWELS is generally former high-ranking officials from the MHLW and the organization has some kind of link similar to intra-organizational relations with the MHLW. Besides JPEPA, other policy programs of the MHLW are assigned to the JICWELS by allotting the budget from the ministry. However, room for decision-making is only left to the MHLW in the implementation process; the officials of the DOLE had difficulties arguing effective implementation with the JICWELS<sup>27)</sup>. In Japan, it is quite common administrative culture to outsource government jobs to such non-governmental agencies. This creates a 'principal-agent' relationship between them, resulting in a confusion of responsibilities. In case of the JPEPA, it causes time lags and slow decision-making in the implementation process between the two governments.

#### IV. Difficulties for Reviewing the JPEPA in 2011

When the Senate, by a vote of sixteen to four, ratified the controversial JPEPA on October 10, 2008, the then Senator Benigno Aquino III, who was one of the four, who opposed, later won the presidential election in May 2010. He voted against the JPEPA because he believed the treaty was one-sided, benefiting Japan more than it would benefit the Philippines, and wanted a renegotiation of the treaty which was much more advantageous and beneficial to the Filipino people<sup>28)</sup>. The incumbent President Aquino honored the agreement and sought some improvements in implementation.

However, his strong will to renegotiate the JPEPA will not likely be achieved. 2011 is the year for reviewing the JPEPA between the two states as it is stipulated in the articles. As the acceptance is part of formal international law, there is no room in the contents of the bilateral treaty to renegotiate and the two states will only review the articles.

As a consultation mechanism for reviewing the JPEPA, there is a Joint Committee which meets once a year. According to Attorney Ann Claire C. Cabochan, Director of the Bureau of International Trade Relations of the Department of Trade and Industry (DTI) in the Philippines, in reference to the Article 161 of the JPEPA, the agreement

is the subject to periodical review and both governments look at the review as an opportunity to improve the implementation of the JPEPA in order to achieve benefits from the agreement. She mentioned that the government of the Philippines seeks to keep sending nurses as professional health workers to Japan under the JPEPA<sup>29)</sup>.

The meetings have been held for three times since the JPEPA came into force on December 11, 2008<sup>30)</sup>. The second meeting of its Joint Committee, which was held on December 20, 2009, was co-chaired by Japan's Shigeru Nakamura, ambassador for International Trade and Economic Affairs, and Dr. Thomas G. Aquino, Philippines senior undersecretary of the DTI. At the second yearly review, a key point of satisfaction for the Philippines was the smooth implementation of Chapter 9 of the JPEPA on the Movement of Natural Persons; nurses and certified care workers to Japan. Edsel T. Custodio, Philippine undersecretary of Foreign Affairs for International Economic Relations, said at the meeting that Manila is "pleased" with the present results and noted that 313 Filipino nurses and caregivers had gone to Japan in 2009 under the JPEPA framework to undergo training and practice their skills while benefitting from non-discriminatory treatment. She added that they will be of great help to the aging population of Japan<sup>31)</sup>. At the meeting both countries stressed that they will continue to further promote, review and assess the implementation of the JPEPA, by making full use of the Agreement's consultative mechanisms represented by the Joint Committee and Sub-Committees<sup>32)</sup>.

At the third meeting, which was held in Tokyo on February 28, 2011, both sides exchanged views on the operation and implementation of the JPEPA, expressing general satisfaction for the overall achievements under the JPEPA<sup>33)</sup>. The detailed content of the review was not disclosed to the public. However, regarding the acceptance of the candidates, there are voices to seek improvement in implementation among various stakeholders in the Philippines. As Attorney Cabochan of the DTI mentioned, there is no room for renegotiation, only that for review. The overall review is controlled by one of the Undersecretaries of the DTI from the Philippine side and the MOFA from the Japan side. Unlike the MOFA, who is the top runner for the foreign diplomacy and EPA negotiation, the DFA in the Philippines has the main role of implementing processes that have already been stipulated in the legislation, though it hosts the Joint Committee<sup>34)</sup>.

One of the Undersecretaries of the DOLE points out that setting a quota and the establishment of a semi-certified care worker license are violations of the agreement. In addition, the implementation agency should be government to government instead of the government side of the Philippines and the JICWELS, the semi-government side of Japan<sup>35)</sup>. Besides this, the President of the PNA says that the association is against sending nurses under the JPEPA as the article does not secure the professional status of Filipino nurses. The organization encourages Filipino nurses not to apply for the candidates under the JPEPA. However, as it is a formal government-government treaty already ratified by the Diet of Japan and the Senate of the Philippines, it might be difficult to change the articles of the JPEPA<sup>36)</sup>.

## V. Learning from Experience of the Acceptances

The experience of accepting nurse and certified care worker candidates from the Philippines as well as Indonesia changed Japan's strategy to negotiate EPAs with other Asian countries. The implementation process of accepting became a lesson for the Japanese government on how it should avoid the continuous acceptance stipulated in the EPA articles. When the government of Japan formally negotiated with Vietnam for the Japan-Vietnam Economic Partnership Agreement (JVEPA), seven times from 2007 to 2008, there was a strong request from Vietnam to send nurse and certified care worker candidates under the JVEPA. The government of Japan offered to postpone the negotiation results until within two years of the coming into force of the Agreement on October 1 in 2009<sup>37)</sup>. When the government of Japan decided to bring the agenda into constant consultation, it aimed at not including the acceptance in the article immediately. Instead of this, it offered to give support to improve health situations as well as support for those studying

Japanese in Vietnam through technical assistance of the ODA. As the ODA is to implement at the request of the counterpart country, Japan waited for a concrete request from the Vietnam government<sup>38)</sup>.

According to a high-rank official from the MOFA, four reasons for not including acceptance in the JVEPA articles are as follows<sup>39)</sup>.

- 1) Vietnam still needs to improve the overall domestic health situation and the nationwide nurse and certified care worker examinations are not institutionalized.
- 2) Nurses in Vietnam do not have enough experience working as health professionals abroad like those from the Philippines and the nurses and certified care workers were not trade items that have comparative advantage in the whole JVEPA negotiations.
- 3) When it was controversial whether to open or close the domestic labor market, the candidates from Indonesia and the Philippines became test cases. Further acceptance as test cases was not desirable in that situation.
- 4) The government was concerned about being criticized by the public over accepting candidates further from developing countries to alleviate the shortage in domestic labor market.

The MHLW was reluctant to accept the candidates from the beginning of the negotiations with the Philippines. Basically, it was prudent to accept from any countries, including the Philippines, Indonesia and Vietnam. On the other hand, the MOFA, which is in charge of the whole negotiation, was quite positive about accepting when negotiating with the Philippines and Indonesia. However, the Ministry refrained from pushing acceptance due to opposition from the MHLW when negotiating with Vietnam. In the end, acceptance was not included in the JVEPA articles in 2009<sup>40)</sup>. The MOFA learned the lesson that it is not appropriate to accept health workers as a trade-off of other trade items in EPA negotiations from the policy outcome in implementing the acceptance from the Philippines and Indonesia. After the change in the administration, the administration led by Prime Minister Naoto Kan plans to accept the candidates under the JVEPA by incorporating pre-arrival programs on Japanese language and Japanese nursing systems into its basic policy. The government plans to give Vietnamese a chance to work as nurses and certified care workers in Japan and will make a final decision by September 2011<sup>41)</sup>.

### **Conclusion — Implications for Further Theoretical Study —**

This study shows that program failure in the implementation process is related to both the initial political decisions and political bargaining in the implementation process. The central government has difficulties with policy implementation according to program goals with a top-down approach, as actors involved in the implementation have multifaceted opinions.

After the decision-making for the acceptance, there were some implementation gaps between the MHLW and accepting facilities. While the MHLW decided to accept Filipino candidates in order to respond to demands from the Philippines in this globalized era, many of accepting facilities, including hospitals and facilities, were not quite ready to accept. This gap led to a poor program outcome in which the number of candidates who passed the licensing exams was very low.

The MHLW and the Ministry of Justice has adopted a strict policy of opening labor markets to foreign workers (Koike 1996). With regard to the nursing care industry, it was difficult to open the market because of opposition from stakeholders, who criticize the decline in quality of services, especially when the Japanese language abilities of the candidates were not high enough to acquire Japanese licenses. In the policy process of the JPEPA, domestic groups, including the JMA, pursued their interests by pressuring the government to adopt favorable policies. The Japanese government sought to maximize their own ability to satisfy domestic pressures, while minimizing the

adverse consequences of foreign developments. This is an illuminating example of the entanglements of domestic and international politics<sup>42</sup>. Decision-making process of the government of Japan was a little irresponsible because it made decisions of acceptance despite the fact that it is obvious for foreign nationals to pass the national licensing exam and continue to work will be difficult at the implementation level.

The implementation process would constrain the future decision making as well. The political decision between the two countries under the JPEPA has already led to a formal international treaty. The decision-making for acceptance by the Japanese government brought many issues into the implementation process. The experiences of accepting under the JPEPA might be 'internalized' by lawmakers as well as bureaucrats and negatively affect future decision-making in reviewing and implementation to further open the labor market to foreign nationals<sup>43</sup>. Or the approach of new institutional theory might be effective in order to analyze how gaps would come about in implementation processes and how 'institutions' would constrain domestic policy decision-making in accepting foreign workers<sup>44</sup>.

The movement of health human resources in a global perspective is an issue to be discussed in the context of international cooperation in an international regime such as the Global Health Workforce Alliance<sup>45</sup>. The interorganizational network management would be effective for creating better policy by empowering multiple stakeholders<sup>46</sup>. The interorganizational network, how organizations, which are involving in implementing public policy for resource, money and authority allocation, has significance for governing the implementation process. The more comprehensive interorganizational network management between public administration and contract-out private providers is expected in policy making of health human resources. For deeper understanding of politics and administration in the implementation process of the acceptance, detailed implementation process should be examined through policy network studies which clarify the actual influence of intergovernmental actors who dominate the policy formulation<sup>47</sup>.

### Notes

- \* The field research of this study in the Philippines in January and February 2011 was supported by the Research Practicum Program at the International Graduate School of Social Sciences at the Yokohama National University.
- 1) In Japan, certified care worker implies *Kaigofukushishi*. In the Philippines, caregiver is the license to be given to those who have finished a course of care giving offered at a government agency, the Technical Education and Skills Development Authority (TESDA). While the licensed care worker takes care of the elderly and people with disabilities, the care-giving course of TESDA includes child care. In this paper, the author describes *Kaigofukushishi* as a certified care worker and those who finished the TESDA care-giving course in the Philippines as caregivers.
- 2) The notion of quasi-market was first referred to by Julian Le Grand, who is one of the principal architects of the UK Government's current public service reforms introducing choice and competition into health care and education.
- 3) The strong tie between the Liberal Democratic Party and the JMA is now transforming with the change of the leading party to the Democratic Party of Japan.
- 4) The term NPM was first referred to by Christopher Hood in his paper titled 'A New Public Management for All Seasons' (Hood 1991).
- 5) An interview was held with high-ranking officials of the MHLW at the office of the MHLW on October 1<sup>st</sup>, 2009.
- 6) Website of the MHLW. <http://www.mhlw.go.jp/bunya/koyou/other22/index.html>. Accessed on March 9, 2011.
- 7) See note 5.
- 8) An interview was held with one of the Undersecretaries of the DOLE at the office of the DOLE on January 31<sup>st</sup>, 2011.
- 9) This statement was made at the Welfare Group of Social Security Deliberation on May 30<sup>th</sup>, 2011.
- 10) See note 8.
- 11) The setting quota is just another form of restriction of foreign workers by the MHLW. In reference to Rowi's category of politics (Rowi 1989), the distribution of health and care workers should be included in the government's redistribution policy

for Social Security by looking at the future prospects of supply and demand in long-term policy planning.

12) See note 5.

13) If the agreement of the JPEPA had been made earlier and facilities started accepting the candidates in 2007, more facilities would have been willing to accept the candidates and the MHLW would have pushed those facilities to accept the candidates to fulfill the set quota (See note 5).

14) The MHLW. 2010. The results of a survey on actual conditions of the candidates of certified care workers from Indonesia (*Indonesia Jin Kaigofukushishi Kouhosei Ukeire Jittai Chousa no Kekka nitsuite*).

<http://www.mhlw.go.jp/stf/houdou/2r98520000054my.html>. Accessed on March 22<sup>nd</sup>, 2011.

15) See note 5.

16) The number of the candidates coming from the Philippines is as follows.

Number of the Candidates Coming from the Philippines	2009	2010
Nurse Candidates	93	46
Care Worker Candidates Training at Facilities Course	190	72
Care Worker Candidates Training at Education Institutions Course	27	10

Source: MHLW. <http://www.mhlw.go.jp/bunya/koyou/other07/index.html>. Accessed on September 6th, 2011.

17) Website of the MHLW. <http://www.mhlw.go.jp/stf/houdou/2r98520000016bot.html>. Accessed on May 31<sup>st</sup>, 2011.

18) Accepting facilities bear the cost amounting to 6,000 yen to accept the candidates as an initial fee. Because of the difficulties in the government of Japan to cover the cost of six months language training, the training site for the Japanese language has changed to Indonesia from 2009.

19) The content of the program is to implement training for the nurse and certified care worker candidates and to implement visits to accepting facilities, Japanese language programs, as well as support to accepting facilities for Japanese language training.

20) Charles Lindblom first referred to incremental budget increase in the public sector based on the previous year's budget (Lindblom 1959). Aaron Wildavsky argued that annual rational budget planning after reviewing the cost and benefit is not feasible in the politics of pluralism through the study on budget planning by the Federal government of the United States (Wildavsky 1964).

21) The JICWELS was examined regarding the following factors in relation to the JPEPA candidates:

- 1) Whether the matching system between accepting facilities and the candidates are appropriate in implementation process and whether the organization is working on to reduce the cost
- 2) Whether the program assigned by the national government to visit the accepting facilities where the candidates are working by the JICWELS staff members is organized effectively

22) An interview was held with a high-ranking official of the MOFA at the office of the MOFA on October 30th, 2009.

23) The roots of intergovernmental relations (IGR) is an interdependent "systems" of governance in an interjurisdictional context in the US federal system. For historical development of IGR and Intergovernmental management (IGM), see (Wright 1990). 'IGR' in this paper indicates an interjurisdictional relation at every level of government (Central, Prefectural and local) in a nation-state (Japan).

24) Website of the city of Yokohama <http://www.city.yokohama.jp/me/kenkou/kourei/kyoutuu/jourei/jigyokeikaku/dai4ki-keikaku/jigyokeikaku.html>. Accessed on March 30, 2011.

25) See note 5.

26) See note 5.

27) See note 8.

28) Senate Press Release.

[http://www.senate.gov.ph/press\\_release/2008/0417\\_pimentel2.asp](http://www.senate.gov.ph/press_release/2008/0417_pimentel2.asp). Accessed on August 28, 2010.

[http://www.senate.gov.ph/press\\_release/2008/1008\\_aquino1.asp](http://www.senate.gov.ph/press_release/2008/1008_aquino1.asp). Accessed on August 28, 2010.

The official Website of NoyNoy <http://www.noynoy.ph/v3/index.php>. Accessed August 28, 2010.

29) This statement was made by Attorney Ann Claire C. Cabochan, Director of the Bureau of International Trade Relations at the open discussion meeting with DTI officials and study team from the Yokohama National University at the DTI office, on January 28, 2011.

- 30) Foreign Affairs Secretary Alberto Romulo and the Japanese Foreign Minister Hirofumi Nakasone convened the inaugural meeting of the JPEPA Joint Committee on December 11, 2008. The committee adopted the operational procedures for trade in goods, rules of origin and mutual recognition, the first concrete act of the two countries to implement the JPEPA. (Phil Star com. <http://www.philstar.com/Article.aspx?articleId=534064>. Accessed on March 21, 2011.)
- 31) Baylon, Gloria Jane. December 20, 2009. Philippine News Agency <http://balita.ph/2009/12/20/jpepa-a-year-after-rp-pleased-with-smooth-implementation-re-nurses-deployment-dfa/>. Accessed on March 30, 2011.
- 32) Website of MOFA. December 18, 2009. [http://www.mofa.go.jp/announce/announce/2009/12/1218\\_02.html](http://www.mofa.go.jp/announce/announce/2009/12/1218_02.html). Accessed on March 30, 2011.
- 33) Website of DFA. February 28, 2011. <http://www.dfa.gov.ph/main/index.php/newsroom/dfa-releases/2563-the-third-meeting-of-the-joint-committee-of-the-agreement-between-the-republic-of-the-philippines-and-japan-for-an-economic-partnership-28-february-2011>. Accessed on March 22, 2011.
- 34) This statement was made by Mr. Enrico T. Fos, Special Assistant at the Office of the Undersecretary for Migrant Workers' Affairs at the open meeting with the study team from the Yokohama National University at the DFA on January 27, 2011.
- 35) See note 8.
- 36) An interview with Dr. Teresita R. Irigo-Barcelo, President of the Philippine Nurses Association (PNA) at the Office of the PNA on February 1<sup>st</sup>, 2011.
- 37) From Vietnam, there was also a request to include the current immigration regulation which permits Vietnam nurses who acquired Japanese nursing licenses to stay for seven years in total. This was reached in the agreement between the two countries.
- 38) In the attached document of the co-statement of signing the JVEPA, technical assistance for a licensing system of nurses and certified care workers in Vietnam in the cooperation plan. (The 171 Commission of the Diplomatic Defense in the House of Councilors on June 23 in 2009.) <http://kokkai.ndl.go.jp/SENTAKU/sangiin/171/0059/17106230059021a.html>. Accessed on March 22, 2011.
- 39) See note 22.
- 40) See note 22.
- 41) The Asahi Shimbun, June 22, 2011. 13 edition. p. 6.
- 42) The JPEPA case was an illuminative case of 'The Logic of Two-Level Games' by Robert D. Putnam. This conceptual framework for understanding how diplomacy and domestic politics interact highlights several significant features of the links between diplomacy and domestic politics, including: the paradoxical fact that institutional arrangements which strengthen decision-makers at home may weaken their international bargaining position, and vice versa; and the divergences of interest between a national leader and those on whose behalf he is negotiating (Putnum 1993, p. 459).
- 43) Kohno points out a political decision making process in which past experiences negatively affect decisions of individual actors in the cognitive psychological process. This process of 'internalization' and 'learning' would affect future policy decisions among the public, lawmakers and bureaucrats, avoiding following a historical path and leading to elimination of existing institutions (Kohno 2002, p. 61).
- 44) The 'New Institutionalism' in political science is widely accepted after James March and Johan P. Olson fundamentally reshaped it as 'normative institutionalism'. For them, an institution is not necessarily a formal structure but rather is better understood as a collection of norms, rules, understandings, and perhaps most importantly routines (March and Olsen 1989, pp. 21-6). In their theory, institutions tend to have a 'logic of appropriateness' that shape individual action and when individuals are motivated by the values of their institutions, they will make choices within the parameters established by the dominant institutional values (Peters 2002, p. 29).

Two main features of policymaking and implementing systems are 1) the interaction between a government's approach to problem solving in terms of either an anticipatory or a reactive approach and 2) a government's relationship to other actors in the policymaking and implementation process. The interaction between these two features is defined as 'policy style (Richardson and Jordan 1983, p. 247).' Every country has its own historical development of policy style. For a future analysis of rationality in a policy making of foreign workers in Japan, it might be effective to examine historically formulated policy style, cultural values and norms that affect its political decision making. 'Institutions' including formal and informal rules and orders might be factors that constrain policy making. Especially, historically developed political cultures and values such as conventional thinking that females should be involved in the nursing care at home and the obscure status of foreign workers in Japan, are



fundamental socio-cultural values developed historically. Therefore, the rationality of such 'institutions' would be a dynamic chronological drama of historical path dependency and might be difficult to bring in administrative reforms.

- 45) The Global Health Workforce Alliance was created in 2006 as a common platform for action to address the crisis of a chronic shortage in the health workforce. The Alliance is a partnership of national governments, civil society, international agencies, finance institutions, researchers, educators and professional associations dedicated to identifying, implementing and advocating for solutions. The Japan International Cooperation Agency (JICA) joined the Alliance as both a development and implementing partner in October 2008.
- 46) The interorganizational network is concerned with the distribution of two scarce resources (money and authority). "The network itself is linked to a larger environment consisting of authorities, legislative bodies, bureaus, and publics. The flow of resources into the network depends upon developments in the environment (Benson 1975, p. 229)."
- 47) In terms of 'the structural relationship between political institutions' at different levels, policy network concept is a 'meso-level' concept. It designates 'the variety of linkages between the centre and the range of sub-central political and governmental organizations (Rhodes 1997, pp. 36–37).' The 'policy network' concept is useful to analyze the dynamics of policy formulation. When intergovernmental policy is formulated in IGR, a lot of actors are involved in the process. Those actors include 'visible participants' like the chief executive, senior members of the parliament, high-ranking officials and the media. In addition, academics, governmental officials and members of professional associations are the 'invisible participants.' The difference between the IGR and the policy network is that policy networks include non-governmental actors like interest groups and citizens groups (Koike 1990b, p. 239).

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