WORKING FOR FILIPINO SEAFARERS: STATE PREFERENCE AS DETERMINANT TO THE SUCCESS OF INTERNATIONAL STANDARDIZATION

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Abstract - The negative effects of globalization led ship own- ers to inadvertently abuse the market. Too much competition created a market imbalance, hence, the need for legitimacy and governance in the shipping sector. Seafarers are faced with the reality of having minimally tangible protection against the terrors of the sea. Cases, which resulted to physical injuries, disability or death caused by harmful hazards and accidents, maritime terrorism, labor malpractice and piracy, call for a legitimacy of establishing minimum working standards. Countries do not abruptly raise their labor standards without the just cause. This study explored the concept of state preference as determinants to understanding how a state improve and meet international standards. Motivations compel states to become part of an international convention. The Philippines was used as a case study as it was the first top labor-supplying state that ratified the convention. The research posed the question, how does state preference contribute to a country's membership to international cooperation, specifically, does labor representation contribute to the success of membership of the Philippines to join international maritime cooperation.

Keywords - State Preference, Filipino Seafarers, Maritime Labor Convention, Labor Standards, Liberal Institutionalism

I. INTRODUCTION

The industry has long been characterized by its significant contribution to the world economy. Despite its relevance, there are still unsolved issues that transnational organizations endeavor to resolve such as the exploitation of cheap labor and the imbalanced market structure. Market imbalance occurred at the highlight of global economic crisis and the rise of technology. Ship investors opted for cheaper options, i.e. hired non-nationals on lower wage agreements and managed the maritime labor market according to their [1]. Ships were originally registered or flagged in their home countries and followed the required domestic regulations. The oil crisis arose during the economic liberalization pressured ship owners to look for cheaper ways to operate their ships. Cutting costs is the primary strategy to gain competitive advantage in the market. Ship owners started to flag their vessel in a country with substandard regulations to escape from high taxes. The system of ship registration under a different flag or state is commonly known as the flag of convenience [2]. Potential threats to maritime labor increased given that FOC system was being used generally for commercial interests. Most ship owners that find their own countries flag registries inconvenient shifted to FOC system. This kind of deviation from the standard maritime regulation became a trend which resulted to inadvertent cheap labor exploitation. Most ship owners chose a country that has poor labor standards. Once a ship is registered under an FOC, ship owner is not obliged to impose adequate working and living conditions and to provide training requirements to the seafarers. Even if the FOC countries have labor standards, they simply do not make effort to implement the regulations on ships. The main challenge of FOC countries is the cost of implementing the international laws into their domestic parameters. In 2000, ILO reported that 64 percent of the globally registered ships were sailing under 30 FOC registries [1]. Greece, for example, has the largest percentage of ship owners and was the first to hire non- nationals as most of their ships were under FOC system. They started hiring seafarers from the Philippines which began the inception of the rise of the Filipino seafarers in the maritime labor market. Other Asian countries like China, Vietnam, Indonesia and Myanmar also gained comparative advantage in cheap maritime labor [1].

Seafarers are faced with the reality of having minimally tangible protection against the terrors of the sea. Cases, which resulted to physical injuries, disability or death caused by harmful hazards and accidents, maritime terrorism, labor malpractice and piracy, call for a legitimacy of establishing minimum working standards. The complexity of the working and living conditions nested upon the seafarer's nature of work and the international laws and regulation that they are subjected to depending on the flag under which they sail for [3]. Additionally, seafarers have an exceptional place in the labor migration structure. Seafarers nature of employment differentiates from a typical migrant worker's employment and does not usually appear under the migrant issues. The issues surrounding the malpractices at the workplace often times not being tackled by labor unions and human rights advocates. Social, cultural and political considerations gear the market to maneuver from its conventional setting. Transnational movements arose and called for standardization of the quality of working and living

conditions of this sea-based labor sector. The International Labor Organization (ILO) adopted the Maritime Labor Convention (MLC) on 23 February 2006 (entered into force in August 2013) with the aim of setting a minimum decent work standard for seafarers.MLC, hailed as the seafarer's bill of rights, complements the other three maritime key conventions adopted by International Maritime Organization (IMO) on safety and security at sea, namely, the International Convention for the Prevention of Pollution from Ships (MARPOL) adopted in 1973, the International Convention for Safety of Life at Sea (SOLAS) in 1974 and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) in 1978. MLC consolidated more than 68 international labor standards related to improving labor and social protection in the maritime sector [4]. From the efforts of tripartite consensus among the government representatives, employers and seafarers, the MLC agreement is designed to solve the issues of labor protection, fair trade and quality control in the shipping industry by setting minimum international requirements for all maritime stakeholders [5].

MLC 2006 is deemed to have a unique approach as it intends to contract the gap between fair competition and decent working condition. The convention calls for a validity of having a legal instrument that will support the workforce of the most globalized industry [6]. The challenge for the maritime industry is how to achieve equilibrium between the market and the social dimension. When a country internationalizes labor standards, it absolutely affects trade liberalization and limits its scope of interest [7]. International standardization requires full enforcement and implementation of regulations in a country's sovereignty which can be an austere task for developing countries. It is conceivably the same reason why not all labor supplying countries are members to the convention.

Another factor is the cost to upgrade labor skills. Additional training and education requirements are needed by the seafarers to comply with the international standards, making it difficult to employ seafarers in the market. If improving labor protection equates to increasing labor cost, it is difficult to compete internationally especially when a state is a developing country. Furthermore, standardizing labor standards may compromise the competitive advantage of labor abundant states as jobs would only be limited to high skilled workers. International labor standards marginalize substandard seafarers which would simply mean loss of opportunity for employment. This will likely become the loss of competitive advantage of the labor abundant countries. For countries that are economically rich, maintaining competitiveness associates to constantly restructuring their economies which means cost for creating infrastructures and for implementing new guiding principles [8]. It answers why developed countries have higher labor standards compared to developing countries.

When a country ratifies a convention, it must comply with the international standards regardless of its level of development. If we are to analyze the state preference in joining a labor convention, there is difference in the applicability and complexity of regulations affecting the state once it adopted the convention. If analyzing its preference in a state level, industrialized countries aim at having quality and skilled labor while developing states aim at having labor protection and fair competition in the market which both interests are outlined in the MLC 2006 agenda. Some state preferences were influenced by the decisions of other countries or (assuming) preconditions of international organizations where the country was previously registered to creating an external pressure to join because of high dependence on these actors [9].

II. METHODS

Various motivations compel states to become part of an international convention. In ratifying conventions, states must comply with the international codes and allow them to adopt and implement within their domestic structure. The Philippines was used as a case study as it was the only top labor- supplying state that ratified the convention. The research posed the question, how does state preference contribute to their membership to international cooperation, specifically, does labor representation contribute to the success of membership of the Philippines to join international maritime cooperation? It also raised the question, how does the Philippines maximize its benefits in joining maritime cooperation? It focused on the determinants of state preferences in joining the labor convention (from the perspective of state) and analyzes the cost and benefits of the ratification rather than the effectiveness of the convention.

A. Concept of State Preference

The central argument of the study lies in the liberal concept of state preference. Liberals claim that the societal ideas and interests influence the construction of domestic demands. These demands are transmitted through state behavior and then later shape the state preference [10]. When demands are deemed vital to the national agenda, it translates into foreign policy [11]. Therefore, societal pressures and demands contribute in the making of state policies. Liberals posit that state preference plays a significant role in understanding states action towards the international arena. For this reason, state preference is supported with history and evidences and is intended to use as an approach to identify the determinants on why a state involves itself in the international politics; in

this case, why the Philippines decided to ratify the Maritime Labor Convention. Moravcsik provides two assumptions on how state preferences are shaped by societal interests. First, societal actors provide differentiated interests which defines the state policy. Political action is embedded in domestic and transnational civil society who defines their ideational interests and advances their interests through collective action and / or political engagement [10]. Liberalism sees the importance of domestic politics and how they are understood in the outside world. The domestic policies are shaped by societal actors who assume that their demands contribute to the development.

Second, state acts as an agent of domestic representation. The state is not only a purposive actor to the outside world but a representative institution that is composed of societal actors and represented groups. The leverage of individuals and/ or interest groups is manifested in the drafting of the proposed bills and domestic policies. Moravcsik argues that domestic policy is regulated by the interest, demands and power of individuals and interest groups by pressuring the central decision makers to draft policies according to their preferences [10]. Domestic representation may create biases and tend to select leaders and interest groups that are consistent to the national goal. But even when the government is unfair and biased, when the central decision comes from a sector where there is a bigger need for change or action, there will likely be satisfaction and development achieved by the government.

B. The Philippine Maritime Industry

The Philippines is a flag, port, and labor supplying state. According to United Nations Conference on Trade and Development (UNCTAD), the Philippines ranked 32 from among the top 35 flags of registration [12]. As shipping becomes more globalized, the registration of vessel under a different flag is a common strategy for those countries that wanted to be free from tax compliance. It has become a constant issue, which led international organizations, like ILO, ITF and IMO, create a framework in eradicating the widespread malpractice of FOC system. The Philippines as a flag state is used three times more by foreigners as compared to Filipino ship owners. Moreover, the Philippine flag registry sums to 1,383 vessels with national ownership of only 26.36 percent. The condition of shipping in the country is relevant to identify the determinants of improving competitiveness in both domestic and international trade.

The Philippines also ranked five (after China, South Korea, Brazil and Japan) as the top ship building worldwide which accounted for having built 3 vessel types. Bulk carrier is the most common vessel type with 2,342 ships built as compared to 353 oil tankers and offshore vessels built [12]. The shipping and shipbuilding sectors relatively enjoy tax privileges. The Domestic Shipping Development Act (No. 9295) and the Philippine Overseas Shipping Act (No. 7471) were enacted into laws to further deregulate the domestic shipping activities in the country and removed the trade barriers. It is also a way of promoting merchant fleet manned, controlled and owned by Filipinos (or at least 60 percent of the ownership under its nationality).

The Philippines is considered the crewing capital of the world where Filipino seafarers make up more than 25 percent of global maritime workforce [5]. Filipinos first entered the merchant shipping in the early 1900s and worked in the lowest positions same with Chinese and Japanese. Jobs appointed to them were mainly in the pantry and galley sections.

According to Philippine Overseas Employment Administration (POEA), the government agency responsible for processing the employment contracts of migrant workers, there is a consistent increase in the deployment of seafarers between 2009-2015, with a number of 406,531 seafarers employed in the year 2015 compared to the 330,424 number in 2009, an increase of 19 percent in the number of seafarers deployed from 2009 to 2015 [13]. Among the positions, ratings or the low rank positions dominated the maritime labor market with a significant increase of 38 percent as compared to officers with 16 percent for the past 7 years (see Table I). On the other hand, there were also non-marine personnel who mainly work in cruise ships and/ or hotel and have leisure jobs onboard such as entertainers, servers, chambermaids and the like. It is otherwise stated that the industry has generated an increase of employment for Filipinos.

Filipino seafarers created a major contribution to the pool of migrant workers from the last ten decades as most of them were employed by both national and international ship owners [12]. Although ratings acquired the highest number
of deployment, the growing demands of Filipino officers are predominantly the contributing factor in the increase of rate. Remittances marked as the most important source of Philippine export earnings as it contributed to 10 percent of the country's gross national product [12]. The impact of overseas work or what is commonly known as temporary migration is evident in the inflow of gross remittances and alleviation of unemployment. In 2016, the remittances of overseas Filipino seafarers have increased by 5.1 percent and reached 5.5 million dollars [14] (see Table II).

The government sees shipping as an important asset thus remain at the top priority for investment activities listed in the Philippines 2012 Investment Priority Plan (IPP). To monitor the activities in the maritime sector, the Department of Transportation

and Communication (DOTC), through Maritime Industry Authority (MARINA), was designated as the Single Maritime Administration in the Philippines mandated under Executive Order No. 75 issued on 12 April 2012 and was passed into law, known as Philippine Republic Act 10635: Marina as the Single Maritime Administration and Enforcement of STCW and other related international conventions [12]. MARINA functions cover both the domestic and overseas shipping, focusing on developing mechanism for sustaining country's stance as source of globally competitive maritime professionals, becoming a major center for ship building and repair and an attractive ship registry yet legitimizing registry provisions.

III. RESULTS

A. Ratification of an International Labor Convention

The Philippines is among the first states to have ratified all the core ILO conventions. It has been a member to 37 ILO conventions of which 30 are in force and 6 have been denounced due to membership to a new convention. ILO requires members to automatically denounce their membership for effectiveness of a newer convention. The Philippines is signatory to four other maritime labor conventions not including the four key conventions namely SOLAS, MARPOL, STCW and MLC. These conventions were: Repatriation of Seamen Convention, 1926 (No. 23), Officers' Competency Certificates Convention, 1936 (No. 53), Social Security (Seafarers) Convention (Re- vised), 1987 (No. 165) and Recruitment and Placement of Seafarers Convention, 1996 (No. 179). The four maritime labor conventions were automatically renounced when it ratified the MLC [15].

Category	2009	2010	2011	2012	2013	2014	2015
Officer	78893	81761	90506	84836	86636	93686	93992
Rating	92,027	124,765	140,681	136,505	139,211	154,963	148,283
Non-Maritime	158,808	133,082	136,971	129,822	132,396	151,402	161,480
Others	696	7,542	946	15,702	8,923	1,175	2,776
TOTAL	330,424	347,150	369,104	366,865	367,166	401,226	406,531

TABLE I. FILIPINO SEAFARERS BY RANK

Category	2010	2011	2012	2013	2014	2015	2016
Land based	14,956,881	15,776,576	16,555,991	17,768,656	19,124,879	19,814,372	21,327,692
Sea based	3,806,108	4,340,416	4,835,342	5,215,378	5,503,179	5,792,459	5,572,148
TOTAL	18,762,989	20,116,992	21,391,333	22,984,034	24,628,058	25,606,831	26,899,840

TABLE II. OVERSEAS FILIPINO CASH REMITTAN

Effectiveness relies on the proper implementation of the countries that ratified MLC by incorporating the international codes to their national laws. Domestic regulatory framework or mechanisms must be created to ensure compliance to the minimum standard set by the convention. These laws and mechanisms would then apply to all participants of the maritime industry like government agencies, ship owners, seafarers, manning representatives and other stakeholders. The Philippines signatory to MLC signifies its readiness for global competitiveness. Notwithstanding being a labor supplying state, the country is equipped to ensure all maritime activities within and outside its boundary are in strict compliance. Seafarers hailed the government's commitment to improve the labor standards of its migrant workers. Through the organized groups such as the top Philippine maritime union, AMOSUP, and the Filipino Shipowners Association (FSA), seafarers expressed their favor in validating governments commitment for labor protection for seafarers by joining the MLC. Moreover, Labor Secretary Rosalinda Baldoz affirmed that the Philippines ratification of MLC 2006 increased productivity and competitiveness of the Filipino maritime professionals [16]. In 2011, Former Secretary Baldoz made a statement during the 4th Plenary Maritime Industry Tripartite Council meeting that the efforts to improve the welfare and rights of seafarers were in line with the 22- point labor and employment agenda of Former President Benigno Aquino which echoed the goal to invest in our country's top resource, our human resource, to make us more competitive and employable while promoting industrial peace based on social justice. The meeting of the tripartite body which composed of labor, employers and government agency partner, was adjourned with two approvals of resolution that endorsed the issuance of an appropriate document order for the rules and regulations governing the employment conditions of seafarers and the country's ratification of MLC [17].

AMOSUP membership counts to more than 100 Filipino maritime professionals. These seafarers expressed their support to the government in pushing for its ratification of MLC. AMOSUP chairman and president, Dr. Conrado F. Oca, commended all his industry partners for becoming an instrument in pushing for its ratification. He reiterated that the seafarers shall have more access on their rights under the convention. He further cited how his father, AMOSUP founder Master Mariner Capt. Gregorio Oca, had worked at ILO in crafting and drafting the text of the MLC [18].

Apart from the several advantages of becoming a member to MLC 2006, it also poses some challenges that may hamper its effectiveness in the future. On 3 May 2011, Dr. Cleopatra Doumbia- Henry, ILO Director of International Labor Standards Department, told at the Asia- Pacific Regional Dialogue in Australia that one of the main issues that have emerged as creating a barrier for some countries to move to ratification relates to legislative drafting capacity [15]. It presents challenges especially for countries having poor labor rights. Most of these countries are the LDCs with high reserve of cheap labor. It is not only an issue on the implementation of MLC provisions but rather a general challenge for all countries that ratify any international convention. The state must ensure that it has proper legislative mechanism to enable the international provisions into domestic laws and create a legal framework that will

sustain the effectiveness of its enforcement.

B. State Preference on STCW Implementation

Strong influence of sectoral representation has reflected in most maritime regulation and provisions. One example is the STCW implementation. Behind the establishment of the R.A. 10635 or The Single Maritime Administration Act, is the relentless efforts from the ANGKLA Party through Former Senate President Franklin M. Drilon. Angkla Party, a party- list successfully got a seat in Congress on 1 July 2013 and has been lobbying to create a legislative backbone for Filipino seafarer's protection and to intensify Philippines role as one of the competitive maritime countries globally [19]. The party lobbied the significant role of Filipino seafarers in contributing to the development of the country. Prior to enactment of the law, the Philippines was placed in crucial position when the country failed from audit by European Maritime Safety Agency (EMSA) inspectors from 8 to 24 October 2013. The country failed to meet the minimum requirement of the STCW Convention i.e. having government agencies tasked to implement STCW provisions [18]. The supposed ban from EU may create job loss for 80,000 Filipino seafarers manning in EU-flagged vessels.

With the Philippines enactment of R.A. 10635 placing MARINA as the single maritime administration responsible for implementing and enforcing STCW provisions, the EMSA gave the Philippines a positive remark on its effort to improve the maritime sector [18]. MARINA is responsible in all functions of the government agencies such as Professional Regulation Commission (PRC), Commission on Higher Edu- cation (CHED), Technical Education and Skills Development Authority (TESDA), Department of Health (DOH) and National Telecommunications Commission (NTC) and ensures proper compliance, enforcement, validation, verification of proficiency and documentary evidence required of all seafarers.The passage of the law hailed as a milestone for the Philip- pine maritime industry. Not only it displays the political will and commitment of the government to support the industry, it also illustrates the efforts of sectoral representatives being instruments of change. It shows how the country recognize the importance of all stakeholders of the industry and when worked collectively, it forms a significant jigsaw in achieving the national goal embedded in the country's agenda.

C. Further Discussions

The shipping industry is now adjusting to the reality of the new economic structure. The exponential increase in world economy and trade two decades ago cannot be replicated at present. There are no closed economies like of China and of former communist states that will open and expand. The maritime players are in a crisis of how to balance the production, the labor, the consumption and the transport system as the demands and supply of commodities and transfer of goods and products shifted from North to South. This substantial reduction in the world trade is creating a more competitive environment and a pruning process of players in the industry as over capacity has developed. UNCTAD reported that the performances of the major state players were uneven in 2013. Players from developed economies marked growth in GDP while the countries from developing economies decelerated [20]. Large emerging economies like the BRICS have slowed down while China is in the process of transition to economic growth based on consumption rather than trade. For this reason, it is too early to say that the industry has already coped up with the losses as new threats and challenges arose.

Oil consumption is perceived as one of the threats to the shipping activity. Oil prices become inconsistent and ship owners tend to upgrade their ship technology. And when ships adopt advanced technology, menial jobs can be replaced with high skilled machineries with less supervision, thus creating a decline of employment of seafarers. This can be a real threat to the top labor supplier, i.e. the Philippines.

While the MLC provisions bring optimism and hope for a better shipping industry, its regulation does not guarantee effectiveness. The MLC guidelines are relative in context. The wordings of the guidelines of the maritime labor compliance are vague. The Regulation 5.2.1 on Inspection in port allows the ship owners to act upon their own discretion which may lead to regulations being ignored. The grey areas create prospects for breaching the international codes. The ambiguity of how the MLC text is written might undermine the effectiveness of the convention.

When corruption hits the industry, the social clauses of the MLC codes are affected. The authorized inspectors who ensure proper compliance of the codes are human and are vulnerable to corruption. There has been a long history of repeated cases of bribery and corruption in ports. Inspectors may fall into unethical actions and they can easily deviate from the standard regulating inspection required by the MLC. Corruption in the system also relates to avoiding taxes and additional regulatory requirements. ILO cannot be optimistic and complacent just because many states support the MLC. There may be some players that would find avenues to cut cost and to escape from the penalty of non- compliance.

CONCLUSION

Ratification of MLC signifies the Philippines' willingness to upgrade the quality of its maritime labor at the expense of cheap labor cost. Despite the number of issues and potential economic losses, it sees MLC as legitimate. A country like the

Philippines will likely to see benefit as more preferential than the cost. It can be a default labor supplier given that other potential competitors are not part of the Convention and should they pursue ratification, it will be difficult for new labor suppliers to enter as process of international standardization is complex and will take a matter of time to complete the process.

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