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LABOR MOBILITY IN THE GLOBAL SHIPPING INDUSTRY

A paper presented by
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INTRODUCTION

This paper aims to contribute to the search for positive business and policy models by drawing on the successful aspects of labor mobility in the shipping industry.

The tremendous global expansion of businesses and the changing demographics of population have brought about a new challenge to business:

Where will the managers and workers who know our business and its culture come from?

This question has become a loud resounding cry from every industry sector. Airlines do not have enough pilots; ships not enough crew; hotels do not have enough managers and personnel.

Canadian hotels have admitted closing rooms because they cannot find housekeepers to make the beds. Owners of small hotels in Australia and New Zealand have problems taking a vacation because they do not have people to take over. Resorts do not have staff during peak seasons. There is a lack of engineers, IT and healthcare workers and professionals, call center agents, accountants, auditors, welders, teachers, as well as butchers and milkmaids. Name it – whether high skilled or low skilled – there is a demand and shortage for people.

There was a time the response to a want ad for trained personnel brought a robust response.

Today, things are different because there are many options open to professionals, managers, workers, and young graduates. On one hand, there are opportunities for overseas placements with higher salaries, and the opportunity for remittances to their families back home. Then there is the option for immigration.

On the other hand, there are options at home brought about by general economic prosperity in Asia and the growth of services like business process outsourcing in labor rich economies.

The war for talent has begun.

Yet, there is no international policy regime on how labor mobility should be managed. Nor has there been a major region-wide discussion for cooperation to ensure that sending economies and receiving economies both benefit to achieve prosperity that globalization is supposed to bring.

This war for talent is being manifested in unilateral or bilateral regulations being implemented by receiving economies – one very different from each other, depending on each of their respective political concerns.

The war for talent is also being manifested in aggressive incentives by developed economies to attract, on a selective basis, the top talent they need, while placing barriers on the lesser skilled worker. These barriers, as some here have pointed out, are the very causes for the problems that make migration politically unpalatable.

This war for talent will make it increasingly difficult for sending and receiving economies to have open discussions with regard to the complex economic, political, and social implications that include the brain drain, social costs, overstaying workers, and abuses on human rights and other sensitive issues.

This war for talent is going to be an impediment to the growth of the global

economy and of business – with so few trained people filling the jobs, but actually millions untrained but eager to work.

It is therefore becoming imperative to design a system that will ensure the sustainability of talent needed not only by receiving but also by sending economies.

Sustainability can only be achieved by having:

- A regulatory structure within which the rules governing labor mobility give opportunity as well as protect the sending and receiving economies and, importantly, the worker.
- A standard of training, assessment and certification so labor is truly globally mobile.
- A system that gives the global worker career opportunities as well as protection, and rights as a human being and solutions that address social costs.
- A regulated process for placement and deployment that is just, fair, transparent and dependable.

Present Regulations and Practices

Because of the unilateral and bi-lateral regulations that are being designed by receiving economies – some to control foreign labor, others to attract talent – land-based industry migration faces a lot of challenges.

- There is a lack of common standards in training, licensing, testing and assessments, and certifications, resulting in a failure of making qualifications mutually recognized. In most cases no training is provided at all.
- No standard is followed in recruitment and placement regulations from economy to economy. Most receiving and sending economies turn a blind eye to high fees paid by workers for job placements, documentation, visas

and travel costs forcing workers to borrow and leave home in debt.

- Workers sometimes reach their destination only to find out that there is no job at all. This has resulted in illegal migration to receiving economies (like Taiwan, Japan, and Singapore).
- The practice of charging the job applicant exorbitant job placement and other fees creates a corrupt system with unscrupulous recruiters who mislead workers about job opportunities and benefits.
- Regulations that put a limit to a contract period encourage the worker to overstay as an illegal. This results in abuses and all the political sensitivities that come with it.
- There is no system to check unscrupulous employers who abuse or underpay workers. Many workers put up with abuses to support their families back home. Others who demand better treatment are deported and blacklisted.
- There is a tendency for regulations to link the legal status with an employer to create a control system even if the employer is a bad one.
- The longer term contracts without the possibility of going home to see the family encourage the worker to opt for permanent immigration which results in a brain drain for the sending economy.

Lessons from the Shipping Industry

There are great lessons that we can learn from the shipping industry which by its inherent nature is a global industry and has, over the years, found solutions for labor mobility that is beneficial and responsive to both sending and receiving economies, as well as to business and seafarers.

The structure that has been built by the international maritime community over the past 150 years has four key areas that form the framework for the development and the sustainability of the global shipping workforce. These are:

- 1) Governance
- 2) Training
- 3) Worker's rights
- 4) Job Placement

History

I would like to walk you through the history of how the present framework for shipping was developed. It makes for an interesting story.

Post-Industrial Revolution

The industrial revolution created opportunities for work in Europe, which became more attractive than a life at sea. This forced shipping companies to resort to foreign labor.

While in Asia without crew, ship Masters would go to the nearest bar and “kidnap” boys who were drunk and set sail. The most popular transshipment port in Asia at that time was Shanghai. Thus this practice became called “being shanghaied” regardless of the port where the poor boy was actually snatched.

Western seafarers referred to Asian labor that was recruited, whether voluntarily or forcibly, as the “yellow peril” and they were perceived to threaten job security of legitimate shipping and port labor of the West.

In order to protect western seafarers from the onslaught of foreign labor, the International Transport Workers Federation (ITF), a conglomeration of trade unions, was created in 1896. The ITF was created as a watchdog for ship and port labor

and forced ship owners to equalize wage scales and ensure the safety and welfare of seafarers.

Post-Titanic disaster

On April 15, 1912 the RMS Titanic sank in the North Atlantic. This accident brought about the creation of the 1914 Convention on the Safety of Life at Sea, or SOLAS, by the US, UK, France and Scandinavia. The Convention covered rules on the safety of navigation, radiotelegraphy, life-saving appliances, the North Atlantic ice patrols, ship construction, and fire protection. However its full application and impact on shipping operations was not felt because of World War I.

Post World War I – The ILO

The end of the First World War brought about the creation of the League of Nations and with it the creation of the International Labor Organization,¹ a tripartite body composed of government, employers and trade unions. ILO's fundamental aim was to seek to promote social justice and cope with the problem of labor conditions involving injustice, hardship and privation.

The ILO sets standards for both land-based and sea-based jobs. The first conventions of the ILO on seafaring were issued in 1920 and covered: minimum age for seafarers,² unemployment indemnity in case of ship wreck,³ and placing of seamen⁴ which was aimed at eliminating commercial agencies who charged seafarers placement fees.

¹ The International Labour Organization was created in 1919.

² C7 – “Minimum Age (Sea) Convention, 1920”.

³ C8 – “Unemployment Indemnity (Shipwreck) Convention 1920”.

⁴ C9 – “Placing of Seamen Convention 1920”.

Post WWI – Growth of protectionism: The national fleets

In 1920, the US sought to protect its own maritime fleet and American labor and enacted the Jones Act⁵ requiring that all American-flagged ships shall be built, owned, and crewed by American nationals. The cost of operations became prohibitive.

The Creation of the FOC's

The Jones Act prompted US ship owners to look for a flag of convenience (FOC) where they can register their ships free of tax, allow them to use a crew of their choice (crew of convenience), and have lower operating costs. The close ties of the US with Panama allowed for the creation of the Panamanian flag registry, which is today the largest Flag of Convenience, followed by the Liberian Flag registry. European ship owners faced with worsening political tensions in Europe in the 1930's followed suit.

The IMO

The convention creating the International Maritime Organization (IMO) was adopted in 1948⁶ but it took 10 years for the convention to enter into force. Its first task was to update the 1948 Safety of Life at Sea Convention in 1960.

The Torrey Canyon

In 1967, a major oil spill by the Torrey Canyon⁷ destroyed the beaches of the UK and France. The accident was caused by an error in navigation. The IMO, with the Comité Maritime International (CMI),⁸ was forced to review the liability regime for

⁵ "Merchant Marine Act of 1920", a United States Federal Statute.

⁶ The Convention establishing the Inter-Governmental Maritime Consultative Organization (IMCO) was adopted on March 6, 1948 and met the conditions for entry into force on March 17, 1958. The name was changed to the International Maritime Organization (IMO) in 1982.

⁷ A Liberian flag tanker carrying 120,000 tons of crude oil from Kuwait to England.

⁸ The Comité Maritime International was created in 1897.

damage to property and the marine environment. It was also forced to re-assess competency of seafarers in order to address the issue of human error.

The Growth of the FOC

In the 1970's costs of national crew, taxes and oil prices after the oil crisis, forced ship owners to hire labor from third party crew-supplying countries and operate their ships under Flags of Convenience. In the early 1980's, it was estimated that if a ship hired British crew, as much as 50% of operating costs represented wages. If Hong Kong nationals were hired, the costs could go down to 30%. If Filipinos were hired, crew costs could be as little as 20% of operating costs.⁹ The ITF launched a campaign against FOCs to protect seafarers and to demand for higher wages.

To control safety standards of FOC ships, the IMO created conventions aimed at ensuring the safety of life at sea,¹⁰ the protection of the marine environment,¹¹ and the payment of compensation in case of damage to the environment.¹²

The Second Registries

In order to induce ship owners to register their vessels in their own national flags and away from FOCs, several countries, starting in the late 1980's, set up a second national registry, which offered the same tax benefits as FOCs and the same freedom to hire foreign crew. These included Denmark, Norway, Germany, Spain (in the Canary Islands), Great Britain (in the Isle of Mann), and Portugal (in Madeira). Ships in these second registries are considered national flag registered ships and

⁹ "Ship Registration Law and Practice," edited by Richard M. F. Coles, consulting editor, Nigel Ready, Lloyd's Shipping Law Library, c. 2002, paragraph 4.10, p. 46.

¹⁰ "The International Convention for the Safety of Life at Sea, 1974".

¹¹ "The International Convention for the Prevention of Pollution from Ships 1973" as amended by the Protocol of 1978.

¹² "The International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969" and "The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund), 1971"

have been successful in avoiding the control measures which ITF has instituted against FOC ships.

CBAAs were created, ships were free from ITF intervention and there were improvements to the STCW.

The Shipping Industry Today

The international shipping community today operates under four key areas that form the framework for the development and the sustainability of the global shipping workforce.

1. Governance

The IMO supervises the global standard under the STCW Convention.¹³ All IMO member countries, through their respective Maritime Administrations, ensure compliance by ship owners, seafarers, maritime academies, and training centers. All labor supply countries must prove compliance with the standards to be included in the IMO “White List”. All ships and ship managers must comply with the SOLAS and MARPOL Conventions and undergo International Safety Management audits.

2. Training

All seafarers must be trained and possess STCW certificates which is inspected and recognized by all Port State Authorities around the world. The STCW 1978 Convention training requirements, as amended in 1995/1997, provide the minimum standards on mandatory training areas, proficiency required for particular skills sets, assessment of competence, certification and recognition of certificates of

¹³ “The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978”.

competence, and medical fitness standards among other requirements, which seafarers manning international ships have to meet. The standards in the STCW are constantly under review and IMO is planning to adopt new requirements by 2010.

3. Workers Rights

The ILO has several conventions on maritime labor, most important among which are those enumerated in Convention No. 147¹⁴ and Protocol No. 147¹⁵ affecting seafarer's welfare and rights. These are subject to port State control inspection. The requirements of these two documents seek to ensure compliance by the ship owner and the adequate protection of the seafarer's social welfare rights. The areas of regulation covered include: minimum age, fair wages, hours of work, fatigue, illness and injury, sickness insurance, medical care, prevention of accidents, accommodation of crew, food and catering, competency certificates, articles of agreement, repatriation, safe manning, and seafarer's identification documents. In 2006, the member States of the ILO adopted the Maritime Labor Convention, which is a codification of a majority of all maritime labor conventions of the ILO. It is awaiting ratification.

4. Recruitment and Placement

As early as 1920, the ILO set the minimum standards governing placement practices applicable to seafarers. The 2006 Maritime Labor Convention¹⁶ updates the standards and reiterates the requirement that placement agencies shall not collect a placement fee from seafarers. Agencies are subject to licensing, certification or other accreditation. They must:

- Be accountable to the ship owner for the quality of the recruit.

¹⁴ "Merchant Shipping (Minimum Standards) Convention, 1976".

¹⁵ "Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976".

¹⁶ Adopted February 7, 2006.

- Inform seafarers of their rights and duties and provide them a copy of their contract.
- Ensure that the contracts are in accordance with national law and collective bargaining agreements among other responsibilities.

Under existing practice, seafarers generally enjoy:

- Free travel,
- Free documentation and visas,
- Free uniforms,
- Tax free wages,
- Free room and board,
- No placement fees, these are paid by the employer,
- Free medical examination,
- Free medical insurance while on board,
- Contracts rotation and, in some cases, senior officers are granted wife's visitation fare,
- No charges on remittances of home or self allotments,
- More and more owners are paying for or subsidizing training,
- Seafarers are also able to benefit from the circulatory flow of employment, which allows for continuous shipboard assignment. This allows the seafarer to plot his career path and plan in advance the direction he must take to reach the top. Seafarers are also able to look forward to land-based career opportunities within the shipping industry in their home countries or abroad.
- Contracts are typically for a period of 8 to 10 months with a two-month vacation at home. In some cases, contracts can run for a maximum of 4 months with two months vacation. This regular period of vacation, allows the

seafarer to return home to his family regularly. Since the visa processing is efficient seafarers return to a new contract with ease.

- There are over one million seafarers of all nationalities who rotate between ship and shore, who earn top dollar and can benefit from low cost of living at home.
- Because of the system, the number of “jump ship” illegals is insignificant.
- Grave shortages are being experienced in the shipping business because of the robust growth in trade but the structure to address labor shortages is in place.

So what are the lessons learned?

A rational regional framework will take time but it is possible to achieve. It is interesting to note that the milestones in evolution of the shipping regulatory framework were reached each time there was a shortage of labor, during extraordinary high prices like the oil crisis of the 70's, and during a disaster. We have two of those conditions today. With the speed of economic development being so much quicker and the need for people becoming so critical, we have no option but to move quickly and deliberately.

Until such time we have a framework, we should aim to do away with the practice of collecting placement fees from workers. This key change would contribute significantly to removing one of the main reasons why workers overstay – because the worker is in debt and does not want to return home and have to pay the fee again.

Another practice which we can look into is the short circular contract program that would allow workers to return home periodically while maintaining a long-term employment relationship. This runs contrary to what many receiving economies are

doing of lengthening the contracts periods with no option for the worker to go home.

More deliberate efforts must be exerted for mutual recognition of training and certifications to cover not only professional but also non-professional levels – Canada's Temporary Work for caregivers, New Zealand's Pacific frontier plan and Columbia's Nosune. It will be necessary for employers and receiving economies to acknowledge that the responsibility for training and its costs must be shared by them.

Unlike the early shipping days when the world was round, this flat world gives us a greater challenge. We need to get together regionally to find a new model – that is outside any box we know – a global solution that is socially responsible for the future global worker.

The global solution needs to address specific areas like global taxation, social security, pension plans, insurance, communication and other support systems and infrastructure, and other issues that go beyond existing practices. There is for us in shipping an international protection and indemnity insurance system for illness, injury and death that provides global coverage for seafarers that we can look at together with the portable pension scheme of Chile and the US.

But most importantly, we need to remember we are not talking about the movement of goods nor capital but about people, with dreams to be fulfilled, with aspirations to become trained and to learn, and with these as assets, to have choices, not as a citizen of any country, but as a human being.