

# Maritime Labour Standards and the principle of 'no more favourable treatment'

Dr Alexandros Ntovas

*Queen Mary University of London, School of Law / CCLS*

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# Maritime Labour Standards & the Maritime Labour Convention, 2006

- Developed by the International Labour Organization
  - adopted on 23 Feb 2006 / entered into force on 20 Aug 2013 / 86 ratifications – 91% of world gross tonnage / implementation and review on a tripartite basis
- Main reasons for adopting the MLC 2006:
  - evolving nature of the maritime profession / industry
  - consolidation / codification / progressive development of labour standards
  - strengthening enforcement / compliance
- Increased substantive scope of standards (arranged in ‘4 titles’)
  - fundamental rights and principles
  - employment and social rights
- No applicability to ships engaged in fishing, or similar, pursuits
  - *C188 – Work in Fishing Convention, 2007*

# Maritime Labour Convention, 2006

## & the principle of ‘no more favourable treatment’

### ○ Enforcement regime

- ‘Title 5’: Compliance and enforcement
- flag-State / labour-supplying State(s) / port-State Control / seafarers complaint procedures
- certification-declaration as *prima facie* evidence of compliance / detailed inspections on ‘clear’ or ‘reasonable’ grounds / notification & rectification of deficiencies / detention in port

### ○ Article V, (Implementation and enforcement responsibilities)

7. Each Member shall implement its responsibilities under this Convention in such a way as to ensure that the ships that fly the flag of any State that has not ratified this Convention do not receive more favourable treatment than the ships that fly the flag of any State that has ratified it.

- enforced against flags of not ratifying States / directed to port-State Members / conditioned access to ports
- to ensure a ‘*level playing field*’

# Evolution in maritime-related treaties

- the *International Convention for the Prevention of Pollution from Ships, 1973*; Article 5 (Certificates and special rules on inspection of ships)

(4). With respect to the ship of non-Parties to the Convention, Parties shall apply the requirements of the present Convention as may be necessary to ensure that no more favourable treatment is given to such ships.

- the *Protocol of 1978 relating to the International Convention for Safety of Life at Sea of 1 November 1974, 1978*; Article II (Application)

3. With respect to the ships of non-Parties to the Convention and the present Protocol, the Parties to the present Protocol shall apply the requirements of the Convention and the present Protocol as may be necessary to ensure that no more favourable treatment is given to such ships.

- the *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978* (as amended 1995/2010); Article X (Control)

(5) This article shall be applied as may be necessary to ensure that no more favourable treatment is given to ships entitled to fly the flag of a non-Party than is given to ships entitled to fly the flag of a Party.

# Subsequent drafting in maritime-related treaties

- the *International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001*; Article 3 (Application)

(3) With respect to the ships of non-Parties to this Convention, Parties shall apply the requirements of this Convention **as may be necessary** to ensure that no more favourable treatment is given to such ships.

- the *International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004*; Article 3 (Application)

3 With respect to ships of non-Parties to this Convention, Parties shall apply the requirements of this Convention **as may be necessary** to ensure that no more favourable treatment is given to such ships.

- the *Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009* (not yet in force); Article 3 (Application)

4 With respect to ships entitled to fly the flag of non-Parties to this Convention, Parties shall apply the requirements of this Convention **as may be necessary** to ensure that no more favourable treatment is given to such ships.

# A subtle aspect for reflection

- nature of the commitment: ‘absolute’ or ‘discretionary’?
  - unclear textual inferences; *Cf.*, “...shall apply ...as may be necessary...” with “...shall implement its responsibilities...as to ensure...”
  - in various policy briefs/ information documents, *eg.*:
    - “the clause...means that working and living conditions on these ships may be subject to inspection by port States” (ILO *re* MLC2006)
    - “under the principle...port States...are obliged to apply these rules and standards...” (IMO *re* mandatory instruments)
    - *nb.*, potential conflict of principles between regimes; *eg.*, IMO Position (2009) at UNFCCC COP 15

A recurring debate within IMO is how the wording of Article 2.2 of the Kyoto Protocol should be interpreted and if the principle agreed under UNFCCC of ‘common but differentiated responsibility’ should apply by flag to a GHG regime for international shipping rather than IMO’s basic principle of non-discriminatory regulation of all ships in international trade irrespective of flag and the principle of ‘no more favourable treatment’ of ships flying the flag of a non-party to any mandatory IMO treaty instrument.



# The Asia Pacific Region – Shipping importance

- a key region
  - leading world seaborne trade region
  - rising region of world's merchant shipping fleet
  - 60% of the 1.2 million world's seafarers
  - extensive network of international ports
- strong MLC 2006 ratification (appellation and region classification according to ILO – 35 States)
  - high regional concertation: 21/31 (plus 4 land-locked)
    - Non-parties: Cambodia; Cook Islands; Pakistan; Papua New Guinea; Solomon Islands; Timor-Leste; Vanuatu; Northern Mariana Islands; American Samoa; Brunei Darussalam (and Afghanistan; Lao People's Democratic Republic; Mongolia; Nepal)
- *Memorandum of Understanding on Port State Control in the Asia-Pacific Region, 1993*
  - expected MLC ratification to be entry requirement for new members



# The Asia Pacific Region

## UNCTAD, *Review of Maritime Transport (2017)*

Leading flags of registration by tonnage, 2017

Flag of registration	Number of vessels	Vessel share of world total (percentage)	Dead-weight tonnage	Share of world total dead-weight tonnage (percentage)	Cumulated share of dead-weight tonnage (percentage)	Average vessel size (dead-weight tons)	Dead-weight tonnage growth, 2016–2017 (percentage)
Panama	8 052	8.64	343 397 556	18.44	18.44	45 237	2.75
Liberia	3 296	3.54	219 397 222	11.78	30.23	66 706	5.66
Marshall Islands	3 199	3.43	216 616 351	11.63	41.86	67 968	7.76
Hong Kong (China)	2 576	2.77	173 318 337	9.31	51.17	68 695	6.23
Singapore	3 558	3.82	124 237 959	6.67	57.84	36 942	0.21
Malta	2 170	2.33	99 216 495	5.33	63.17	46 297	5.14
Bahamas	1 440	1.55	79 842 485	4.29	67.46	56 625	0.79
China	4 287	4.60	78 400 273	4.21	71.67	20 555	2.12
Greece	1 364	1.46	74 637 988	4.01	75.68	66 999	1.60
United Kingdom	1 551	1.66	40 985 692	2.20	77.88	30 495	10.42
Japan	5 289	5.68	34 529 405	1.85	79.74	8 574	6.60
Cyprus	1 022	1.10	33 764 669	1.81	81.55	33 798	1.82
Norway	1 585	1.70	21 900 458	1.18	82.73	16 319	6.89
Indonesia	8 782	9.43	20 143 854	1.08	83.81	4 269	7.58
India	1 674	1.80	17 253 564	0.93	84.74	10 899	5.34



# The Asia Pacific Region

## UNCTAD, *Review of Maritime Transport (2017)*

### Ownership of world fleet, 2017

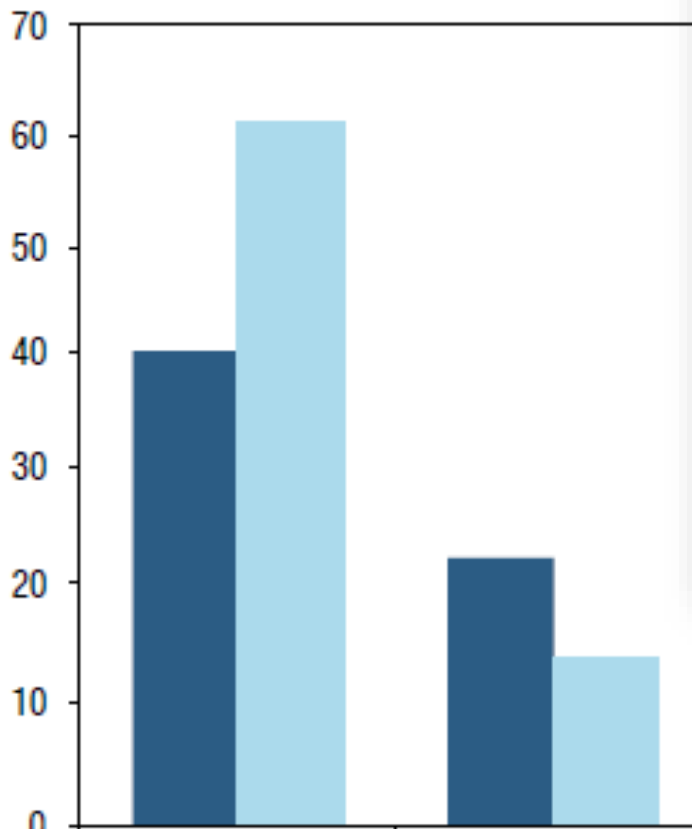
Rank (dead-weight tonnage)	Country or territory	Number of vessels	Dead-weight tonnage	Foreign flag as a percentage of total (dwt)	Rank (dollars)	Total value (million dollars)	Average value per ship (million dollars)	Average value per dead-weight ton (dollars)
1	Greece	4 199	308 836 933	78.76	3	72 538	17.3	235
2	Japan	3 901	223 855 788	85.89	2	77 898	20.0	348
3	China	5 206	165 429 859	53.97	4	65 044	12.5	393
4	Germany	3 090	112 028 306	90.77	8	38 412	12.4	343
5	Singapore	2 599	104 414 424	39.02	7	39 193	15.1	375
6	Hong Kong (China)	1 532	93 629 750	23.98	9	25 769	16.8	275
7	Republic of Korea	1 656	80 976 874	81.98	11	20 928	12.6	258
8	United States	2 104	67 100 538	85.73	1	96 182	45.7	1 433
9	Norway	1 842	51 824 489	64.62	5	58 445	31.7	1 128
10	United Kingdom	1 360	51 150 767	80.55	6	40 671	29.9	795



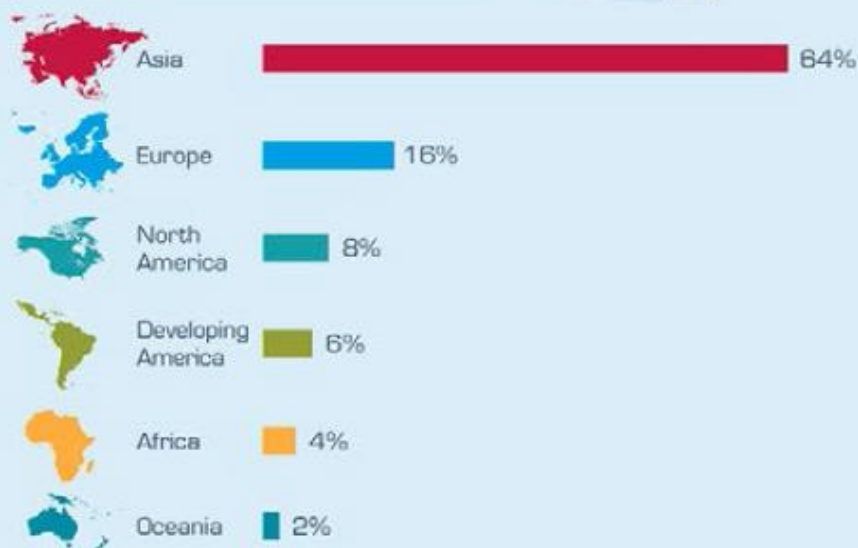
# The Asia Pacific Region

## UNCTAD, *Review of Maritime Transport (2017)*

World seaborne trade, by region, 2016  
(Percentage share in world tonnage)



WORLD CONTAINER PORT VOLUMES BY REGION



# MoU Tokyo, *Annual Report on Port State Control in the Asia-Pacific Region (2017)*

Nature of deficiency		Number of deficiencies		
		2015	2016	2017
Working and Living Conditions	Living Conditions	349	403	383
	Working Conditions	2,866	2,501	2,288
Labour Conditions	Minimum requirements for seafarers	35	38	73
	Conditions of employment	515	483	631
	Accommodation, recreational facilities, food and catering	998	1,025	1,354
	Health protection, medical care, social security	1,699	2,172	2,504

# Maritime Labour Standards and fisheries

- Of particular significance to the Asia/Pacific region
  - economic, social, and political reasons
- *C188 – Work in Fishing Convention, 2007*
  - ‘no more favourable treatment’ provided in art. 44

Each Member shall apply this Convention in such a way as to ensure that the fishing vessels flying the flag of any State that has not ratified this Convention do not receive more favourable treatment than fishing vessels that fly the flag of any Member that has ratified it.

- ‘General principles’ / ‘Implementation’ *per* art. 6

1. Each Member shall implement and enforce laws, regulations or other measures that it has adopted to fulfil its commitments under this Convention with respect to fishers and fishing vessels under its jurisdiction. Other measures may include collective agreements, court decisions, arbitration awards, or other means consistent with national law and practice.

- Not ratified, till date, by any State in the Asia/Pacific region

# Scope for further engagement in the region

- Maritime labour as a technical matter for cooperation
  - Agreement on Maritime Transport between the Governments of the Member Countries of the Association of Southeast Asian Nations and the Government of the People's Republic of China, Singapore, 2 November 2007
  - Memorandum of Understanding between the Governments of the Member States of the Association of Southeast Asian Nations and the Government of the People's Republic of China on Maritime Consultation Mechanism, Bandar Seri Begawan, 12 November 2010
  - Joint Ministerial Statement of 'The Tenth ASEAN and China Transport Ministers' Meeting, Phnom Penh, Cambodia, 16 December 2011
- As to fisheries
  - ASEAN Regional Forum

# Thank you for your kind attention

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