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MARITIME TRANSPORT COMMITTEE**

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**MARITIME SECURITY – OPTIONS TO IMPROVE TRANSPARENCY IN THE OWNERSHIP AND  
CONTROL OF SHIPS**

**FINAL REPORT**

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## **Summary**

The Maritime Transport Committee considered a first draft of this report at its meeting in November 2003. At that meeting it decided that the report should be declassified and issued as a discussion paper in order to elicit views from as many interested parties as possible.

This final report, which takes into account comments received during the consultation phase, as well as those made by Delegates during the MTC meeting of 24-25 May 2004, proposes a range of measures to increase transparency in the ownership and control of ships that could be taken by jurisdictions and shipping registers. As well, the report examines some measures that could be taken by governments facing potential threats that may be made more serious by a lack of such transparency.

## **Action**

With the exception of those sections that address possible future action by the Committee, this report has been declassified, and will be made available to all governments and shipping registers for their information and consideration of the measures it contains that are aimed at increasing transparency in the ownership and control of ships.

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IN THE OWNERSHIP AND CONTROL OF SHIPS**

**FINAL REPORT**

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## EXECUTIVE SUMMARY

This report deals with the issue of increasing transparency of ownership and control of ships from a number of different perspectives:

- Increasing transparency in corporate vehicles that operate from jurisdictions that promote or permit anonymity.
- Increasing transparency of ownership in shipping registers.
- Self-protection measures that could be taken by governments at times of serious threat.

With respect to the first item, regarding transparency in corporate vehicles, the report acknowledges that progress in increasing that transparency will require the co-operation of administrations that may consider it appropriate, and commercially beneficial, to offer corporate vehicles and mechanisms that provide anonymity.

The report also acknowledges the key role played by other bodies, both inside and outside the OECD that have addressed the issue of transparency, including the UN, the Financial Action Task Force (FATF), the OECD Steering Group on Corporate Governance and the OECD Forum on Harmful Tax Practices. Because of the substantial work already undertaken by these bodies, and their special expertise in dealing with corporate governance and financial transparency, this report suggests that the MTC should not undertake any independent action to address issues at this level.

With respect to increasing transparency in shipping registers, the report provides a wide palette of possible measures for the consideration of administrations and of shipping registers.

The report notes that the successful implementation of many of these measures would require the support of shipping registers that for commercial or other reasons find it advantageous to facilitate anonymity, and this may hinder any widespread adoption of the measures outlined in this report. Indeed, the report notes that a substantial change of culture amongst these jurisdictions, and the clients they serve, will be needed if the issue of anonymity is to be successfully addressed in a global context.

As a pragmatic alternative the report suggests that shipping registry practices that provide confidentiality (as opposed to anonymity) may offer a possible way forward that could be acceptable to jurisdictions, shipping registers and beneficial owners alike. Such an approach, which is strongly commended, would mean that beneficial ownership details would be available to the appropriate authorities when necessary, but that commercial confidentiality would also be preserved.

Finally, the report notes that if transparency remains a serious problem, then governments facing security risks may at certain times need to take self-protection measures. These could be draconian and intrusive, and represent measures of last resort, but the reality remains that they could be seriously considered if security threats (or worse still, actual terrorist action) forced the hands of those governments.

However, such measures are the province of governments, and beyond describing them the report suggests that no action is required by either the MTC, or its members, at this stage.

## **OPTIONS FOR FUTURE ACTION**

The Maritime Transport Committee has a range of options to deal with the issues raised in this report on increasing transparency in the ownership and control of ships. They are not necessarily self exclusive, and some can be taken in combination with others.

### **Basic response**

At the very least it is suggested that the Committee needs to note the report and make it available for public dissemination, especially as it was the subject of public consultations. Therefore the following action is recommended as a minimum response.

- i) The Committee can note the report, and declassify it for public release.

### **Response without future action by the MTC**

Beyond this, the Committee may wish to endorse at least some of the report, and commend it for consideration by governments, shipping registers and others, but not actually undertake any further work in its own right. If this is the Committee's view then it could consider the following, as additional items beyond noting and declassifying.

- ii) The Committee could authorise the Chairman to write to his counterparts in the FATF, the Steering Group on Corporate Governance and the Forum on Harmful Tax Practices noting the synergy between the various activities, offering the MTC's support and co-operation where appropriate, and encouraging further efforts by those bodies to further increase transparency in corporate mechanisms and financial dealings.
- iii) The Committee could endorse some (if not all) of the options directed to shipping registers as enhancing transparency, and commend their implementation by all registers.

### **Response with further action by the MTC**

If Delegations consider that the issue merits additional efforts by the Committee to actively promote transparency in the maritime sector, they may wish to also consider the following additional activities.

- iv) The MTC could further develop the concept that rather than absolute transparency or absolute anonymity, it may be possible to provide a commercially acceptable level of confidentiality, while providing access to ownership details to appropriate law enforcement and security agencies.
- v) For those options that are endorsed (even if not all), instruct the Secretariat to seek ways of actively promoting them amongst shipping registers, for example by bringing them to the attention of registers or organising a workshop/seminar involving both OECD and non-OECD registers.
- vi) The MTC may wish to further pursue the suggestion made by a number of respondents that transparency would be enhanced by administrations not only focusing on their ship register, but also on their nationals when they are beneficial owners of vessels under other flags.

- vii) The MTC may also wish to consider the possibility of pursuing a proposal made by one respondent to take guidance from the Forum on Harmful Tax Practices for OECD members, and other like-minded economies, to reach some kind of agreement or understanding on transparency, which would then be used to seek undertakings from other administrations.

## SECTION I: BACKGROUND

### Work undertaken

1. The Maritime Transport Committee considered the first report, Maritime Security: Ownership and Control of Ships at its meeting in January 2003, and authorised the undertaking of the second phase of the study, which would look at actions that could be undertaken to increase transparency in the ownership and control of ships.
2. By way of introduction, the first report found that there are many mechanisms available to shipowners who wish to hide their identities, and that these are freely available in many shipping registers. The report also noted that the problem was not restricted to the actions of flag states, but that the problem was far more general, as those shipowners also have access to many jurisdictions, and especially established offshore centres, that openly offer corporate services that enable beneficial owners (whether involving ships or other commercial enterprises) to effectively hide their identities within those corporate structures.
3. Next, many flag states not only accept such corporations as owners of ships but actually promote anonymity as positive advantages of their flags, and this could facilitate the misuse of those registers by terrorists. It is presumed that those flags promote these services because they consider this gives them a commercial advantage over other flags.
4. The first report also noted that while open registers are more vulnerable to possible misuse by terrorists, because their *raison d'être* is to provide their services to virtually anyone, from any nationality, they are not alone in this vulnerability. The first report clearly pointed out that it is also possible for sophisticated and well-funded terrorists to misuse the traditional registers for such purposes, and hence they are not free from risk. The higher risk for terrorists involved in working through the more tightly controlled traditional registers may well be compensated by the more effective cover that would be offered by association with respected and well-known traditional flags.
5. The second report, considered by the Committee in November 2003, examined a number of possible responses that could be implemented by ship registers and governments to increase transparency in vessel ownership and control. These measures ranged from simple administrative actions to some quite draconian measures that would involve considerable disruption, and which would only be considered at times of serious and/or imminent threat.
6. In December 2003, the MTC made the report available as a discussion paper on its web site, as well as through direct contact with certain parties, to seek comments from a range of interested bodies and organisations. Details of this consultation can be found below.

## Consultations

7. Following the Committee's initial consideration of this report, it was placed on the MTC's Web site as a discussion paper in December 2003, and was open for comment by any interested person, organisation or government. At the same time the discussion paper was sent directly to 10 traditional and 10 open ship registers, covering the principal players in each group. Comments were requested by the end of February 2004.

8. These requests were met with a moderate response, with eight contributions received, regrettably none from open registers:

- 3 from OECD administrations [Greece, Korea and the Netherlands].
- 3 from non-OECD administrations [Hong Kong (China), Israel and the Philippines].
- 2 from industry [the International Chamber of Shipping and the International Transport Federation].

9. Wherever possible the comments received were taken into account in the revision of the initial report. There were also some common threads amongst the comments received that addressed matters already covered in the report, and these were noted and responded to in Annex 2 of this report.

10. This revised, final report takes into account comments received during the consultation phase, as well as comments received from MTC Delegates during the Committee's consideration of this report at its meeting on 24-25 May 2004.



## Terminology

As with all papers that deal with technical matters, this one also uses a variety of terms that are specific to its area of relevance. The following terms may provide greater clarity in reading the report.

<b><i>Beneficial owner</i></b>	The natural person(s) who ultimately owns or controls a corporation (or in our particular area of interest a vessel) and/or the person on whose behalf a transaction is being conducted. It also covers those persons who exercise ultimate effective control over a legal person or arrangement.
<b><i>Corporate mechanisms</i></b>	These mechanisms are used in conjunction with corporate vehicles to shape their nature and operation. These mechanisms can include corporate (or bearer) shares, nominee shareholders, and nominee and “corporate” directors.
<b><i>Corporate vehicles</i></b>	These are legal entities through which a wide variety of commercial activities are conducted and assets are held. They include corporations, trusts, foundations and partnerships with limited liability features.
<b><i>Flag states</i></b>	These are sovereign states that operate shipping registers. In accordance with the UN Convention on the Law of the Sea, ships on those registers will take on the nationality of the flag state, and its laws will apply to those ships.
<b><i>Offshore centres</i></b>	Jurisdictions that offer comprehensive corporate and financial services, and which are characterised by a high level of non-resident activity.
<b><i>Open registers</i></b>	This is an informal term applied to shipping registers where the nationality of the owner is not a factor in the registration of a ship.
<b><i>Traditional registers</i></b>	This is also an informal term applied to those shipping registers where the nationality of the owner(s) is a factor in the registration of the ship.

## SECTION II: THE STARTING POINT FOR THE SECOND-PHASE REPORT

11. The first report on the ownership and control of ships found that those who (for whatever reason), sought to hide their identity, relied on three principal mechanisms:

- i) Internationally available corporate mechanisms that permit the creation of complex webs of companies and interlinked arrangements whose beneficial owners are hidden from view.
- ii) Open shipping registers where in many cases reduced transparency is facilitated, and where the nationality of beneficial owners is not an issue.
- iii) Traditional shipping registers where nationality requirements are in place, but which may lack the legal power, resources or expertise to track through international corporate arrangements to uncover the ultimate identity of the beneficial owner or owners.

12. The earlier report outlined in detail the relative ease with which beneficial owners could hide their identities as they went about their business. The sheer number of jurisdictions that are willing to create corporate entities that hide ownership, and shipping registers that will register ships belonging to such obscure corporate vehicles, means that truly effective countermeasures would require the co-operation of dozens of states, some of which depend heavily on providing such services to attract corporate business and ship registrations.

13. The assumption made here is that while such jurisdictions and ship registers are seeking to be commercially successful they are not in the business of actively promoting or facilitating terrorism or other criminal and illicit activities. Therefore, it seems logical that they would want to do what they can to reduce their exposure to possible abuses by such groups, if for no other reason than to ensure the integrity of their commercial activities.

14. This report firstly looks at measures that could be put in place by jurisdictions that offer such corporate services to address those mechanisms that can facilitate anonymity. The report then turns to a range of measures that could be adopted by shipping registers to address the specific issue of anonymous shipowners, including the possibility of preserving confidentiality without necessarily providing total anonymity.

15. Finally, this report examines some measures that could be put in place by governments, if other measures fail and where they find themselves under a heightened security threat involving shipping, and where this threat is increased by a continuing and severe lack of transparency in the shipping sector.

### SECTION III: RELATED WORK IN THE OECD AND OTHER INTERNATIONAL ORGANISATIONS

16. The first-phase report listed a number of corporate mechanisms, freely available in a number of countries and jurisdictions, that enable beneficial owners of corporations and other entities (including entities that own ships) to effectively hide their identities.

17. These mechanisms are intended to “facilitate” doing business internationally, and were not specifically created for the purpose of hiding the true ownership of vessels, but nevertheless can be used by shipowners for that purpose.

18. Because these mechanisms are not unique to the shipping industry, but are also available to other sectors such as banking and finance, and can be used for illicit activities such as money laundering, they have come under increasing scrutiny from a number of international organisations such as the Financial Action Task Force (FATF)<sup>1</sup>, the United Nations<sup>2</sup> and the OECD.

19. As a result, a variety of international initiatives highlighting the need to comply with international regulatory and anti-money laundering standards are now underway. The common theme in all of these initiatives is the need for greater transparency, including transparency of ownership of corporate vehicles and information sharing. The most important initiatives are described in detail in Annex 1.

20. Clearly, there is a considerable convergence of interest between the Maritime Transport Committee and other international efforts to improve transparency and international co-operation, as all are concerned with the role played by international corporate vehicles and corporate mechanisms in facilitating the ability of those who wish to operate outside the law, both domestic and international.

21. The Committee supports the work under way in other agencies, including other parts of the OECD, directed at improving the availability of ownership information in the case of corporate mechanisms. If the measures promoted by all of these agencies were to be substantially implemented, and were to apply equally to ship-owning corporations, they would represent a substantial enhancement of the transparency of ownership and control of ships, and go a long way towards addressing the concerns of lack of transparency identified in the first report.

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1 The Financial Action Task Force is a separate international body whose secretariat is located in the OECD.

2 See, for example, “Financial Havens, Banking Secrecy and Money Laundering”, a 1998 report prepared on behalf of the United Nations under the auspices of the Global Programme against Money Laundering, Office for Drug Control and Crime Prevention.

#### **SECTION IV: IMPROVING TRANSPARENCY IN INTERNATIONAL CORPORATE VEHICLES**

22. International corporate vehicles, and the corporate mechanisms that shape their functioning, are available in many jurisdictions (both on-shore and off-shore) and are not directly linked to the operation of shipping registers, except insofar as such corporate vehicles may be the owners of ships on those registers.

23. This section deals only with the issue of increasing transparency in those corporate vehicles and mechanisms. Actions that may be taken by shipping registers are dealt with in the next section.

24. As was described in the first report on ownership and control, various types of strategies involving corporate vehicles, and numerous types of corporate mechanisms, can be used to create opaque ownership arrangements for a single legal entity, or an entire web of them, tied together by complex and difficult-to-pierce arrangements.

25. These services are available from a large number of jurisdictions that are widely spread across the globe, and this makes it extremely difficult to deal with them. Nevertheless, any reduction in the ability of beneficial owners to totally hide their identities would be helpful in enhancing maritime security, and a number of measures are examined here that may help in achieving that objective. The Maritime Transport Committee recognises the extensive work already undertaken by a variety of other international agencies (see Section III and Annex 1 of this report), and while the options below (synthesised from work already done by those agencies) are noted for information, it is not proposed that the Committee undertake any direct action on these matters.

#### **General approaches**

26. The OECD work on corporate governance has suggested that creating greater transparency in corporate vehicles could take three options, which are not mutually exclusive, and could be used in various combinations<sup>3</sup>:

➤ *Up-front disclosure to the authorities*

This requires the disclosure of the beneficial ownership and control of corporate vehicles to the authorities charged with the responsibility for the establishment or incorporation stage, and imposes an obligation to update such information on a timely basis when changes occur. The obligation to report to the authorities may be placed on the corporate entity, the ultimate beneficial owner, or on the corporate service provider involved in the establishment of the corporate entity.

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3 This material is in part drawn from the OECD Steering Group on Corporate Governance, the FATF and the Forum on Harmful Tax Practices.

➤ ***An obligation by corporate service providers to maintain beneficial ownership and control information***

Intermediaries involved in the establishment and management of corporate vehicles, such as company formation agents, trust companies, registered agents, lawyers, notaries, trustees and companies supplying nominee shareholders, directors and officers (“corporate service providers”), would be required to obtain, verify and retain records on the beneficial ownership and control of those entities that they establish and administer, or for which they provide fiduciary services.

➤ ***Primary reliance on an investigative system***

Under such a system, the authorities would seek to obtain (through compulsory powers, court-issued subpoenas or other measures) beneficial ownership and control information when illicit activity is suspected, when such information is required by authorities to fulfil certain functions (in our area of interest-security), or when such information is requested by other authorities, domestically or internationally, for security or other law enforcement purposes.

27. Each of these processes has its own strengths and weaknesses. While an up-front disclosure system would be suitable to jurisdictions with a high proportion of non-resident ownership and control of corporate entities, the second may better suit jurisdictions with a substantial pool of experienced service providers. The third would best suit jurisdictions with a strong legal system and with adequate resources to support an investigative system. In some instances, elements of two or more of these principles may offer the best solution.

28. All of the principles also imply that the jurisdictions are able to apply a proper oversight on the integrity of their systems, and that sufficient resources are made available to enable them to carry out their obligations.

**Specific options**

29. While the application of the above principles would provide greater transparency, they are nevertheless general in nature, and the options that follow are intended to provide guidance on some specific actions in support of the general principles outlined above.

***Registration of corporate vehicles***

- Jurisdictions should ensure that information on beneficial ownership of all corporate vehicles registered in their territory is available to the authorities in that jurisdiction. This requirement should extend to lawyers, notaries and other independent legal professionals and accountants when they prepare for, or carry out, transactions for clients that involve the creation, operation and management of companies, trusts and other legal persons and arrangements, and the buying and selling of business entities.

***Corporate (or bearer) shares***

- Options might include their abolition or the introduction of measures to ensure 1) their immobilisation (*e.g.* by requiring deposit of bearer shares with the authorities/licensed corporate service providers or by dematerialising shares) or 2) that their owners are known to the company or the authorities (*e.g.* mandatory reporting of identity of bearer shareholders as a condition to exercise voting rights or to receive dividends or upon attaining certain levels of control).

*Nominee shareholders and directors*

- Only licensed corporate service providers should be permitted to serve as nominees or fiduciaries, and they should have access to the identities of beneficial owners. This would protect the legitimate privacy interests of beneficial owners, while providing increased assurance that authorities would be able to discover the identity of beneficial owners in appropriate circumstances.

*Trust laws*

- Jurisdictions should avoid arrangements that allow trusts to be misused for illicit purposes, and that permit the trustee to change or name new beneficiaries in a non-transparent manner.
- Authorities should ensure that they are in possession of adequate, accurate and timely information on trusts, including the settlor, trustees and beneficiaries that can be obtained in timely fashion by competent authorities.
- Jurisdictions should either abolish, or at least severely restrict, the availability of flee clauses that allow a trust, and information about a trust, to be moved to a different jurisdiction on receipt of service of process or inquiry by the authorities.

30. As noted earlier, the purpose of these options is not to make ownership and control information generally available to the public at large, but to make such information available to appropriate government authorities investigating a corporate entity for security reasons.

## SECTION V: IMPROVING TRANSPARENCY IN SHIPPING REGISTERS

### Introduction

31. In order to operate internationally, vessels must be registered in a recognised ship register. The registration process therefore provides an important opportunity to identify the persons or corporate entities that are the beneficial owners of the ships being registered. This in turn would facilitate efforts to combat the threat of those ships being used for illicit purposes or for acts of terrorism.

32. The first-phase report indicated that there is an absence of any clear international standards or rules regarding the eligibility of particular classes of persons or corporate entities to register vessels. Furthermore, there are usually no requirements for registries to identify the beneficial owners of vessels entered on their registers. Even where registration is confined to nationals, there is usually nothing to prevent resident companies, owned by non-residents of the administration that operates the register, from registering a vessel.

33. This situation causes concern when consideration is given to the potential security risks associated with the shipping sector. The general practice in other sectors susceptible to abuse for illicit purposes, such as financial services (money laundering), is that corporate entities are not licensed to operate until the appropriate regulator is satisfied that the beneficial owners are known, and that they are fit and proper persons to carry out the licensed activities.

34. Although this level of regulation has been traditionally confined to financial service institutions such as banks and insurance companies, it is increasingly being applied to a wide range of businesses or professionals that act as service providers in the creation of companies, trusts and other legal entities. These entities and service providers are in turn required to demonstrate that they are engaged in effective due diligence, including having in place proper procedures for customer identification.

35. Accordingly, there is considerable precedent for regulatory authorities in sensitive sectors insisting on transparency of ownership before licensing service providers in these sectors. As well, there is considerable experience in identifying ultimate beneficial owners in an international context. These broad principles have been applied in the section of the paper dealing with options aimed at shipping registers, and it is noted that if the customer “due diligence” principles established by the FATF were equally applied by shipping registers, then this would substantially reduce (if not eliminate) the problem of anonymity in the shipping sector.

36. It is also noted that while responsible registers, be they traditional or open, may share a common objective of ensuring that potential terrorists and criminals do not find it easy to operate in their jurisdictions, the fact remains that these types of registers are inherently different, and may need some responses that are tailored to their particular characteristics, rather than attempting a “one size fits all” approach.

37. Therefore, while the suggested courses of action have been grouped together and commended to all registers, a small number of those options, because of their special characteristics, will not apply to all registers. The need to ensure the nationality of an owner in traditional registers is an example of such a specific characteristic that would have no relevance (in this instance) to open registers.

38. Shipping registers are invited to consider the proposed measures listed below for possible relevance and application to their individual circumstances and needs.

39. It is also suggested that if total transparency results in commercially unacceptable exposure, then the measures could be adjusted to provide for confidentiality, as opposed to anonymity, as this would provide protection from public enquiry but would enable ownership details to be made available to the appropriate authorities.

### **Specific measures available to shipping registers**

➤ ***Do not promote impenetrable anonymity as an advantage of your register***

Many registers use anonymity as a selling point, and promote this as an advantage over other registers. The implication that this carries (even if not intended) is that the identity of the beneficial owners will be protected from all comers and in all circumstances. Such a privilege should not be available to those who could use this advantage to perpetrate terrorist acts, or to engage in criminal activities. Confidentiality, which would protect details from general inquiry, but make those details available to appropriate authorities, would seem to be adequate for legitimate seekers of protection of their identities, without the need for absolute anonymity.

➤ ***Ship registers should have in place proper procedures for the identification of persons seeking to register ships***

Such identification procedures should identify the ultimate beneficial owner and/or controller of companies, partnerships and other legal entities, as well as the trustee, settlers and beneficiaries of trusts. This would ensure that shipping registers can exercise full legal jurisdiction over their vessels at all times. A system, whether intended or not, that allows anonymity to the extent that even the flag state jurisdiction does not have access to the beneficial owners under any circumstance, should not be considered as adequate.

➤ ***Personnel should be trained in procedures to identify beneficial owners, and provide them with adequate resources***

When corporate vehicles (such as companies or trusts) are listed as owners of vessels, genuine efforts should be made to trace their ownership arrangements, to establish whether they are open (*i.e.* lead to the beneficial owners) or closed (*i.e.* lead to a complex web of corporate structures and arrangements intended to hide their true identity).

It is likely that in many cases the corporate webs involved in the ownership of ships will quickly lead investigators outside the jurisdiction of the flag state, and into other jurisdictions scattered around the world. In those circumstances it will generally be well beyond the means available to shipping registration offices to be able to pursue those investigations for any period of time without access to the resources necessary to undertake intense, rigorous (and well-funded) searches. Registers should deal with such cases with caution.

➤ ***Avoid registering ships whose beneficial ownership cannot be adequately identified***

Flags should avoid registering vessels whose owners go to extensive lengths, such as the use of complex corporate mechanisms, to hide their identities.



In the event that a register decides to accept such vessels, even though ownership details are uncertain, it is strongly suggested that the vessels should be clearly identified as failing to meet transparency requirements, and for such details to be readily available to competent authorities.

- ***Scrutinise carefully ship-owning arrangements that involve foreign corporate vehicles, especially those from jurisdictions that promote anonymity***

Some corporate vehicles are established for the sole purpose of carrying on business outside the jurisdiction of incorporation, and can frequently be used as a means of preventing transparency of ownership. Such corporate vehicles should be carefully scrutinised to ensure that beneficial ownership details are available. While to some degree this advice applies to all registers, it is particularly applicable to open registers, where the great majority, if not all of their ships, will be foreign-owned.

- ***Ensure that nationality requirements are closely monitored***

If nationality requirements are in place, then these should be closely monitored to ensure that they are adhered to, and that details of majority beneficial ownership are known by the authorities.

- ***Pay particular attention to ships that are registered by corporations, , and undertake checks to ensure that corporations that may otherwise meet nationality requirements are not themselves subsidiaries of foreign corporate entities with obscure ownership details***

Most (if not all) registers permit ships to be owned and registered by corporate entities. Locally incorporated (but ultimately foreign-owned) entities may meet those local nationality requirements. In these instances, ship registers should check those corporate owners thoroughly, to ensure that they are not subsidiaries of foreign corporations (perhaps several layers removed) where beneficial ownership details may be hidden.

If such ships are found, serious consideration should be given to denying registration until those details are made more transparent. If registration is granted, such vessels should be clearly identified, and those details made available to competent authorities.

- ***Avoid the use of bearer shares in the ownership of ships, and eliminate, or strictly oversee the use of nominee Directors, office holders and shareholders***

These corporate mechanisms, and especially bearer shares, are easily accessible by terrorists and criminals that wish to hide their beneficial ownership from all scrutiny. Such mechanisms should be avoided where possible, and where they are accepted there should be special requirements put in place by the flag state to ensure that it can effectively discharge its responsibilities. Part IV of this report offers some guidance on how this might be done.

- ***Ensure that external dependencies cannot be used to circumvent nationality requirements***

The first report on ownership and control suggested that in some circumstances it might be possible for the external dependencies of some countries to be used by shipowners as a means of moving from one jurisdiction to another in an effort to cover their tracks. This could be done, for example, when corporate vehicles from one dependency are automatically accepted by another dependency in the same family. There may be instances where this could even apply to the home country.

Those administrative and legal arrangements between the countries concerned and their dependencies are complex, but that very complexity could provide a vehicle for sophisticated and well-funded terrorists or criminal elements to hide behind those legal, administrative, traditional (and often quite delicate) arrangements.

Therefore, traditional flag states (but also open registers where this might apply) that have external dependencies should critically look at their administrative and legal arrangements to ensure that such practices are not facilitated, and that terrorists and others could not use a combination of corporate structures and facilitated arrangements between administrations to gain legitimacy. Those countries might also consider discussing with their dependencies how to prevent the possible misuse of otherwise appropriate arrangements.

➤ ***Information should be made available to competent authorities when appropriate***

There should be proper provision for holding, sharing and making information available to appropriate authorities. In particular there should be no barriers to the flow of information to competent security and law enforcement agencies, even if this information is not generally available to the public.

➤ ***Require a substantive local presence by the shipowner in your jurisdiction***

While in some cases it is not necessary for shipowners to meet nationality or residency requirements, flag states should nevertheless ensure that there is a sufficiently substantial link between the shipping register and the shipowner to ensure that the flag state can effectively discharge all its legal obligations. A “brass plaque” presence, or a corporate presence based on nominee directors, nominee shareholders and/or bearer share ownership should not be accepted as a sufficiently robust presence.

Instead, flag state administrations should require a genuine and substantial presence by the shipowner, through a person located in the jurisdiction that, in the absence of the beneficial shipowner himself, would be fully responsible for all matters that involve legal responsibility, liability and security. The linkage between that person, and the beneficial owner, should also be clear.

### **Measures proposed by respondents during consultations**

40. Most of the comments received during consultations on the discussion paper related to alternative points of view on matters raised in the report. A number of these have been taken on board, while others have been responded to in Annex 2.

41. There were also two new proposals contained in the views submitted by the respondents, which although not analysed in depth by the Secretariat, offer alternative responses to enhance transparency in ship ownership that may be of interest to the MTC.

➤ ***Countries of owners that flag out vessels to take greater responsibility to ensure transparency***

This proposal has been included in this document because it was raised independently by three separate contributors during the consultation phase.

The basic premise (as understood by the Secretariat) is that administrations should not only look to enhance transparency in their own register, but should also act to increase transparency in the fleets owned and operated by their nationals, but flagged out to other registers.

As explained by the proponents such an approach would have two principal benefits. Firstly, the owners of vessels that are flagged out generally come from richer countries (in fact, mostly from the OECD), which means that their administrations would be better placed to ensure transparency, and this would produce a more effective enhancement of transparency.

As a secondary effect this would also avoid passing responsibility for transparency to the open registers (the destination of the flagged out vessels), which are generally less able to put in place effective mechanisms to ensure transparency.

Such a measure has already been put in place in one non-OECD jurisdiction, which suggested that its ability to extend its rules and regulations to *all* vessels owned and operated by its nationals (and not just those who flag their vessels in their home registry), greatly enhanced transparency, and its ability to trace any ship owner for security purposes.

➤ ***MTC could establish guidelines and seek adherence by registers that fail to meet the standards***

This proposal was made by one respondent, and has been included because it mirrors similar action already undertaken in the OECD by the Forum on Harmful Tax Practices, and outside the OECD by the Financial Action Task Force (FATF).

The proposition is that the MTC should take a leaf from these sister organisations and formulate an agreement, policy statement or understanding on transparency in shipping that could set the standard for effective transparency in ship ownership. This could then be extended to other jurisdictions by seeking commitments from them, in much the same way that it has been done for financial transactions and harmful tax practices.

This process has proven to be very difficult but relatively successful, with a number of jurisdictions providing commitments to enhance transparency and exchange of information in those sectors. The activities of those bodies would also provide a precedent, and a sound body of knowledge and experience, should the MTC decide to explore this option.

## SECTION VI: SELF-PROTECTION MEASURES FOR GOVERNMENTS

42. The rather extensive list of measures provided above is aimed at jurisdictions that provide anonymity through the availability of certain corporate mechanisms, and at shipping registers whose registration procedures may facilitate and protect the anonymity of shipowners.

43. If a sufficient number of those jurisdictions and shipping registers were to implement those measures, then this would certainly make it more difficult for terrorists and criminals to operate. This in turn would give the intelligence, security and law enforcement authorities of all countries greater opportunities to thwart possible terrorist attacks, or at least to track down and apprehend perpetrators if they were successful in implementing their plans.

44. However, this preventative approach is fraught with difficulties. The reality may be that despite efforts to achieve greater transparency, some administrations, for their own reasons, may choose to maintain corporate mechanisms that provide anonymity. Also, it is possible (perhaps even likely) that a significant number of flag states will continue to promote, or at least accept, anonymity because they consider that to do otherwise would render their registers uncompetitive. If either of these circumstances eventuate, then the task of reducing anonymity (especially tracking ownership through complex corporate webs scattered around the globe), will continue to be beyond the ability of even the most careful and security conscious shipping registers.

45. In these circumstances, it would be left to governments to respond to threats, on their own or in concert with like-minded partners. The concerns over security, ever present since 9/11, would grow considerably if the threat of terrorist action involving shipping increased for any reason, or if a terrorist incident actually took place.

46. By their very nature, and the circumstances in which they might be invoked, these measures are comparatively intrusive and disruptive, and would clearly only be considered by governments when the threat of possible terrorist action became very serious indeed. However, from a policy perspective these actions offer a measured and progressive response that could be considered if maritime based risks increase, and/or there is an inadequate response from administrations and flag states to satisfy states under threat that they have adequate opportunities of detecting and neutralising potential threats.

➤ ***Co-ordinated action against jurisdictions that provide corporate mechanisms that facilitate anonymity***

Those administrations for whom transparency is important might be able to band together to encourage, or otherwise pressure, the administrations of jurisdictions that offer corporate services that facilitate anonymity to abandon or modify those corporate services. This is clearly a top-down approach, as it would involve lifting the corporate veil on all international corporate entities, not just those involved in the ownership of ships.

Such actions by the international community are already under way in other sectors, and have achieved a measure of success. For example, the OECD Task Force on Harmful Tax Practices, has (amongst other things) received commitments from a number of administrations to transparency and exchange of information for tax purposes (see Annex 1).

This kind of action may provide a reduction in the availability of corporate mechanisms that provide anonymity.

➤ ***Encourage flag states to address transparency of ownership***

If there is insufficient response from the individual flag states, then those that promote and provide transparency could work together to encourage the more reluctant flag states to join them in providing for such transparency.

This could be done by engaging those flag states that promote anonymity in discussions aimed at demonstrating the alternatives available to those registers to improve transparency without necessarily risking their standing amongst responsible shipowners. There are encouraging signs amongst flag states of the recognition that continuing to avoid the issue of beneficial ownership is not necessarily conducive to the operation of an effective shipping register. Such sentiments may offer fertile ground to gather together like-minded flag states, both traditional and open, to further promote the concepts of effective flag state control, and greater openness in beneficial ownership.

➤ ***Target ships where beneficial ownership is obscure***

If certain flag states continue to promote and provide for total anonymity of beneficial owners, then other governments may need to move to protect themselves against the possibility of threats involving those ships. One way of doing this would be to submit ships whose beneficial ownership is obscure to intensive investigations by appropriate authorities.

While anonymous ownership is not of itself evidence of terrorist involvement, it would nevertheless provide a trigger to treat such vessels with caution. This is a proactive and cautious approach that would undoubtedly also snare innocent vessels and shipowners with innocuous reasons for wishing to be anonymous. However, where there are serious threats of possible terrorist action, such responses should not be discounted.

➤ ***Target ships from flag states that promote/permit anonymity***

If the threat escalates even further, and the opportunity of inspecting individual ships disappears, governments may then take an even broader approach by targeting entire flags, when these are known to permit or promote virtually absolute anonymity. This would mean that all ships from those suspect flags would be targeted for much closer scrutiny before being permitted to proceed to the ports of the inspecting country. Again, this net would probably also capture ships whose ownership details may be relatively transparent, but which would be targeted by virtue of their association with a seriously suspect flag.

➤ ***Restrict access to ports only to flags and ships where ownership and control is known***

As an ultimate measure, in cases of extreme threat, or perhaps following a terrorist attack, governments could move to restrict access to their ports only to vessels from flags where it is known that ownership and control of their ships is transparent, and ships whose ownership is known. This would be virtually a measure of last resort when all other measures are exhausted. It would provide governments with a breathing space and/or window of secure opportunity to either address the threat, or if an incident has occurred to minimise the likelihood of a follow-up attack.

There is a precedent for such action with respect to the application of the IMO International Ship Management (ISM) Code and the International Ship and Port Facilities Security (ISPS) Code, where the US and the EU, among others, are understood to have legislated the denial of access to ports when vessels cannot provide proof that they adequately meet the requirements of those Codes. Therefore, while such actions would be serious and draconian, they would not be without precedent.

47. In both of the last two measures, prior assessment of which flag states have unacceptable transparency measures in place, would enable the measures to be rapidly implemented in the event of a threat that was sufficiently serious to prompt the affected government(s) to take such protective action.

## CONCLUSIONS

48. If effectively implemented, the measures contained in this report (including those covering corporate mechanisms that are dealt with by other international bodies) would go a long way towards eliminating anonymity, but the reality is that there will inevitably be resistance to their adoption by some jurisdictions, ship registers and their clients.

49. This report suggests that promoting the provision of confidentiality (as opposed to anonymity) may offer a workable compromise that could perhaps be acceptable to jurisdictions and beneficial owners. This less intrusive option is recommended for serious consideration by all parties, and especially by shipping registers, as this offers a genuine compromise between security imperatives and commercial considerations.

50. Other international agencies have already made considerable progress with respect to measures addressing *corporate vehicles and mechanisms* that facilitate anonymity. These developments are welcome, and no doubt the effectiveness of their implementation will be carefully monitored.

51. This paper has postulated that *all shipping registers*, be they traditional or open, are vulnerable to potential misuse by terrorist or criminal interests, although a number of alternative options, not mutually exclusive, are available to registers to increase transparency and thereby reduce their exposure to possible misuse of their flags by terrorists and other criminal or illicit interests.

52. While traditional registers are probably more difficult to penetrate, they are not risk free and should not become complacent, and they should remain vigilant at all times.

53. By their very nature, open registers are inherently more vulnerable to possible misuse by terrorists; especially those registers that promote the fact that they are committed to protect the identity of beneficial owners. This is not intended to castigate open registers, but simply to alert them to their greater vulnerability, and to urge them to greater vigilance to try to avoid being misused in this way.

54. There is some evidence that even open registers themselves are starting to think along these lines, for example a view was recently expressed by the International Registries Inc (which administers the Marshall Islands register) when a spokesman was reported as noting that “flag states should be the front-runners in ensuring greater transparency in the shipping industry”.<sup>4</sup> This report would wholeheartedly endorse that view, and would commend all of the measures listed in the section on shipping registers to both traditional and open registers as a means of achieving that objective.

55. Finally, *governments* at some point in time may have to think of what approaches they could take for self protection, if other responses have not provided a satisfactory level of protection. A number of possible responses are outlined in this paper, some are relatively intrusive and disruptive, and there is no easy way of specifying when (if ever) they may be justified. This would be a decision that only governments could make when confronted with serious circumstances.

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<sup>4</sup> A speech given by Mr. Clay Maitland, managing partner of International Registries Inc, as reported in the *Lloyd's List* of 2 October 2003.

56. Such intrusive measures would not be welcomed by anyone even, we suggest, by the governments that may feel compelled to resort to them. However, the reality is that if there is a serious escalation of risk involving the maritime sector, or worse, if an incident actually occurs, then it may well be inevitable that governments may resort to such responses.

57. It is suggested that a genuine and substantial move towards greater transparency, to reduce the burdens on security agencies and governments charged with the protection of their citizens and their assets, might go a long way towards reducing the possibility of such measures being seriously considered.



## ANNEX 1

### RELATED WORK UNDERTAKEN IN OTHER FORA

To our knowledge, those corporate mechanisms that can be used to provide anonymity to beneficial owners have been investigated by the:

- Financial Action Task Force on Money Laundering (FATF, an independent international body whose Secretariat is located at the OECD).
- OECD Steering Group on Corporate Governance (the authors of the report “Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes”).
- OECD Forum on Harmful Tax Practices.

Each of these activities has their own areas of concern and objectives. Many of them (such as the debate on tax practices) are of no concern to this report, which is focused solely on the implications for maritime security of the lack of transparency in the ownership and control of ships.

The principal convergence of interest between the Maritime Transport Committee and these other areas of investigation is that all are concerned with the role played by international corporate entities and mechanisms in facilitating anonymity.

A second important area of convergence is in the work being undertaken by the FATF on Terrorist Financing, as it was shown in the first-phase report (*Ownership and Control of Ships*), that it is possible that shipping could also be used by terrorists to finance their activities, as well as using ships directly used for terrorist activities.

Each of the groups mentioned above have investigated and reported on corporate entities and mechanisms, and have made recommendations on how to possibly deal with the problems that arise from the misuse of those entities or mechanisms.

#### **Financial Action Task Force**

The FATF is the standard-setter in the international effort to combat money laundering. It first produced a set of Forty Recommendations to combat money laundering in 1990. These were updated in 1996, by which time they had been endorsed by more than 130 countries. They were updated again in 2003 to reflect changing money laundering practices. The Recommendations set minimum standards for countries to implement according to their particular circumstances and constitutional frameworks. More recently, the FATF has also been leading international efforts to combat terrorist financing. In October 2001, it took the step of creating the Eight Special Recommendations on Terrorist Financing. These Recommendations contain a set of measures aimed at combating the funding of terrorist acts and terrorist organisations and are complementary to the Forty Recommendations.

The revised Forty Recommendations agreed by the FATF in June 2003 provide for a definition of beneficial owner and set up a standard on access to beneficial ownership and control information. They call on countries to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons and legal arrangements (*i.e.* express trusts or other similar legal arrangements) that can be obtained or accessed in a timely fashion by competent authorities. Countries are also called on to take appropriate measures to ensure that bearer shares cannot be misused for money laundering purposes and to be able to demonstrate the adequacy and effectiveness of those measures. As regards express trusts, information on the settlor, the trustee and the beneficiaries should be accessible to competent authorities in a timely fashion.<sup>5</sup>

The revised Recommendations also specifically require banks and other financial institutions to identify their customers and to verify their identity, and to apply similar requirements to beneficial owners. This requirement means that they are under an obligation to identify the natural persons that are the ultimate owners or controllers of a company, trust, etc. Moreover, the Recommendations now apply similar requirements to a number of non-financial businesses and professions, such as lawyers, accountants, and trust and company service providers. In many countries, these types of firms create, manage and administer companies, foundations, trusts and other types of legal persons or arrangements, and would thus be in a position to provide national competent authorities with the information they might require on beneficial ownership and control.

All FATF members are committed to implementing the revised Recommendations where their domestic rules do not already meet them. There will be a process of mutual evaluations by the FATF and FATF-style regional bodies starting before the end of 2004. Assessments conducted by the International Monetary Fund and the World Bank as part of their Financial Sector Assessment Programme and their Offshore Financial Centre Assessment Programme, have also been an important mechanism for helping to ensure that the FATF Recommendations are being implemented in all countries. The Fund and Bank have agreed to continue these programmes, using the revised Recommendations. The evaluation and assessment programmes of the FATF, FATF-style regional bodies, and of the IMF and World Bank cover a significant majority of countries and territories around the world.

Since 1999, the FATF has also engaged in a major initiative to identify non-cooperative countries and territories (NCCTs) in the fight against money laundering. The NCCT process has sought out critical weaknesses in anti-money laundering systems which serve as obstacles to international co-operation. The goal of the process is to reduce the vulnerability of the financial system to money laundering by ensuring that all financial centres adopt and implement measures for the prevention, detection and punishment of money laundering, according to internationally recognised standards. Part of this process has meant that countries reviewed under the NCCT process must show that they have adequate systems to identify the beneficial owners and controllers of legal persons and arrangements.

### **OECD Steering Group on Corporate Governance**

The OECD has been one of the leading organisations on policy development in relation to transparency of ownership of corporate vehicles. In 2001, its Steering Group on Corporate Governance released a report “Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes”. Based on this Report, a Template “Options for Obtaining Beneficial Ownership and Control Information” was developed

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5 Recommendations 33 and 34 of the new FATF Forty Recommendations The full list of recommendations can be found at:  
[http://www.oecd.org/document/25/0,2340,en\\_2649\\_37453\\_2789401\\_1\\_1\\_1\\_37453,00.html](http://www.oecd.org/document/25/0,2340,en_2649_37453_2789401_1_1_1_37453,00.html).

The eight Supplementary Recommendations can be found at:  
[http://www.fatf-gafi.org/SRecsTF\\_en.htm#To%20download](http://www.fatf-gafi.org/SRecsTF_en.htm#To%20download).

and adopted in 2002, providing a practical tool for assessing current systems for obtaining information on beneficial ownership and control, and focusing on the menu of options identified in the Report. Both the report and the template called on governments to ensure that they can obtain and share information on the ownership and control of corporate vehicles to combat their misuse for illicit purposes.

In this regard, the report and the template proposed that countries should adhere to three fundamental objectives. These fundamental objectives also provide a means for measuring the operational effectiveness of the options to be used in a jurisdiction:

- Beneficial ownership and control information must be maintained or be obtainable by competent authorities.
- There must be proper oversight and high integrity of any system for maintaining or obtaining beneficial ownership and control information.
- Non-public information on beneficial ownership and control should be able to be shared with other regulators/supervisors and law enforcement authorities, both domestically and internationally, for the purpose of investigating illicit activities and fulfilling regulatory/supervisory functions, respecting each jurisdiction’s own fundamental legal principles.

The report suggested that the misuse of corporate vehicles could be countered by countries maintaining and sharing ownership information. It proposed three mechanisms or options by which such information could be obtained. The template was designed to assist in the process of identifying how jurisdictions relate to these three possible options. It describes issues that will indicate whether a particular option may be suitable or appropriate for the jurisdiction and addresses characteristics of the system. These three options are:

- **Upfront disclosure of ownership information to the authorities:** requires the disclosure of the beneficial ownership and control of corporate entities at the establishment or incorporation stage and imposes obligation to update such information on a timely basis when changes occur. The obligation may be placed on the corporate entity, the ultimate beneficial owner, or the corporate service provider involved in the establishment or management of the corporate entity.
- **Imposing an obligation on service providers to maintain ownership and control information:** requires intermediaries involved in the establishment and management of corporate entities, such as company formation agents, trust companies, registered agents, lawyers, notaries, trustees, and company supplying nominee shareholders, directors and officers (“corporate service providers”), to obtain, verify, and retain records on the beneficial ownership and control of the corporate entities that they establish, administer or for which they provide fiduciary services.
- **Primary reliance on an investigative mechanism:** the authorities seek to obtain (through compulsory powers, court-issued subpoenas, and other measures) beneficial ownership and control information when illicit activity is suspected, when such information is required by authorities to fulfil their regulatory/supervisory functions, or when such information is requested by other authorities domestically and internationally for regulatory/supervisory or law enforcement purposes.

These options are three broad categories that are, to a large extent, complementary. They could be tailored and/or combined to fit local conditions, legal systems and practices, provided there is full adherence to the fundamental objectives. They should not be construed as exhaustive or exclusive, and need to be viewed in the context of complementary available measures for combating and preventing the use of corporate entities for illicit purposes.

Regardless of the options adopted, there must be proper oversight and high integrity of any system for maintaining and obtaining beneficial ownership and control information. Each jurisdiction must ensure that there are credible sanctions that are sufficiently robust to deter misuses and to punish non-compliance and that these sanctions are vigorously enforced.

### **OECD Forum on Harmful Tax Practices**

The OECD's Committee on Fiscal Affairs (CFA) also undertakes extensive work on taxation; including on the topic of harmful tax practices. This work is being taken forward by the Forum on Harmful Tax Practices, a subsidiary body of the CFA. In 1998, the Forum issued a report *Tax Competition – An Emerging Global Issue*. This was followed by further reports in 2000, 2001 and 2004. A key objective of the Forum's work on harmful tax practices is to improve transparency and exchange of information for tax purposes within OECD member countries and in non-OECD countries.

Transparency in this context requires that ownership, bank and accounting information should be available to appropriate governmental authorities so that it can be retrieved in response to a request for information. As regards ownership information the standard that has been established is that authorities should have the power to obtain and provide information, regarding the ownership of companies, partnerships and foundations. In the case of trusts, information on settlers, trustees and beneficiaries should be available.

This standard is set out in the Model Agreement on Exchange of Information in Tax Matters [[www.oecd.org/taxation/](http://www.oecd.org/taxation/)]. Importantly, this agreement was developed by a group consisting of representatives from OECD member countries as well as delegates from non-OECD countries that had made commitments to transparency and exchange of information.

The standards set out in the Model Agreement on Exchange of Information are common standards intended to apply to OECD and non-OECD economies alike. In the course of its work on harmful tax practices, the OECD has worked closely with many non-member economies. Of particular importance, however, is its work with its participating partners. These are countries and jurisdictions that have made commitments to transparency and exchange of information for tax purposes.

To date, 33 countries and jurisdictions have made such commitments, many of which operate shipping registers. What this means in practice is that these jurisdictions have agreed to introduce, on a phased basis, the regulatory and administrative measures necessary to implement the agreed standards of transparency and exchange of information, including transparency of ownership. These countries and jurisdictions are identified in the list below.<sup>6</sup>

The OECD has also identified five un-cooperative tax havens, two of which, Liberia and the Marshall Islands, have significant shipping registers. These five jurisdictions have for the time being decided not to make a commitment to transparency and exchange of information.

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<sup>6</sup> The letters of commitment provided by these jurisdictions can be viewed at:  
[http://www.oecd.org/document/19/0,2340,en\\_2649\\_33745\\_1903251\\_1\\_1\\_1\\_37427,00.html](http://www.oecd.org/document/19/0,2340,en_2649_33745_1903251_1_1_1_37427,00.html).

**COMMITMENTS BY JURISDICTIONS**

The following countries or jurisdictions have made commitments to transparency and exchange of information for tax purposes:

• Anguilla	• Antigua and Barbuda
• Aruba	• Bahamas
• Bahrain	• Belize
• Bermuda	• British Virgin Islands
• Cayman Islands	• Cook Islands
• Cyprus	• Dominica
• Gibraltar	• Grenada
• Guernsey	• Isle of Man
• Jersey	• Malta
• Montserrat	• Mauritius
• Netherlands Antilles	• Niue
• Panama	• Samoa
• San Marino	• St. Christopher (St. Kitts) and Nevis
• Saint Lucia	• Seychelles
• St. Vincent and the Grenadines	• Turks & Caicos
• US Virgin Islands	• Vanuatu
	• Nauru

## ANNEX 2

### RESPONSES TO POINTS RAISED DURING THE CONSULTATION PHASE

*i) Focus should be on who is in operational control of ships*

The Secretariat accepts that this is extremely important, and notes that this is indeed the focus of the IMO's own examination of the control of ships.

The Maritime Transport Committee has decided that an examination of the ownership details would be a valuable complementary investigation to that of the IMO, by examining how to increase transparency of those who pull the strings behind the scenes, and who would benefit from the operation of those vessels.

This investigation will in no way interfere or cut across the IMO's own work on control.

*ii) Corporate mechanisms are widespread and are difficult to change globally, and there are other international agencies (such as the FATF) that are addressing this issue*

This is accepted, which is why the report suggests that the MTC should defer to those specialised agencies, and should strongly support their efforts to bring about more transparency in international corporate mechanisms.

It is also suggested in this report that if it is too difficult for the corporate fog to be dealt with, and the secrecy that surrounds the ownership and control of many ships is judged to be a serious security threat, then shipping registers and governments may need to look at alternative ways of dealing with those threats.

*iii) The shipping industry should have access to the same organisational arrangements available to others*

From a commercial perspective this is a reasonable and understandable request. However, the reality may be that if governments and the public consider that ships carry a sufficiently serious threat to security, then the shipping industry may find their requests overwhelmed by concerns about serious security threats.

There are precedents for this, and one need look no further than financial institutions which are already subject to more stringent requirements than other sectors in order to combat illicit drug trade and money laundering.

Similarly, as this section was being written in April 2004, the US government had just announced that it was extending its fingerprinting of all persons entering the US to all countries except for Canada. This included citizens of countries that the US called "friends and allies" such as the UK, other European countries and Australia, which had been the strongest supporters of US policy on terrorism.

The point here is that even in the course of writing these reports on ownership and control the security situation has worsened, and previously unthinkable practices are becoming the norm. For better or for worse, pleas from the shipping industry to simply be treated like other sectors may not succeed if there are heightened concerns, specific threats, or worse actual incidents, involving the maritime sector.

In the end it will be up to governments to make the judgement of just how many restrictions or how much freedom they will be willing to give to different parties, and the point of reports such as this is to give those governments as much foresight as possible, as well as a broad palette of possible responses. Judgements on those responses may be tempered by (verifiable) knowledge that those industries are doing everything possible to prevent their misuse by terrorists.

Therefore, a possible strategy by those sectors (one imagines the vast majority) of the shipping industry that have nothing to hide is to hide nothing, thus bringing those that do have something to hide into even sharper contrast.

*iv) Bearer shares are a feature of the global financial system which permit such structures to exist in other industries*

The potentially insidious impact of bearer shares on transparency in corporate mechanisms has been highlighted by other international agencies such as the FATF and the Steering Group on Corporate Governance, and as such these judgements are beyond the competence of the Maritime Transport Committee.

The only observation that can be made here is that the approach of those competent agencies has been that bearer shares are a cause of great concern, and that their past or present existence is of itself no reason why they should continue to be available, if their public cost is greater than the personal benefit to those who utilise them.

The report therefore suggests that the MTC members might add their support to global action aimed at reducing or eliminating the negative effects of bearer shares against increased transparency, without taking any independent action to address the issue at the global level.

*v) Some corporate responses (aimed at greater transparency) might contravene EU laws*

One comment suggested that some courses of action could not apply because they might contravene existing EU requirements, and would therefore require significant changes to the laws of the EU and its member states.

This point has not been tested by the Secretariat and it is therefore accepted on face value. There is no doubt that different (or at least specific) regulatory requirements in a legal, political and economic union such as the EU will add complexity both to the mechanisms, laws and available responses.

It is also observed that complexities and potential inconsistencies are precisely the environments that would be sought by those wishing to exploit any weaknesses in the system. Therefore, from an analytical (not political or national interest) perspective it is suggested that mechanisms and remedies should be objectively and thoroughly examined for their ability of dealing with the problem, before discarding them as too difficult.

As always, it is the task of analysts to point out potential weaknesses and possible responses to governments, and the task of those governments to make the judgement as to where the balance of interests lies before they decide whether, and how, to act.

**vi) *Shipping registers do not have the resources to track vessel registrations through complex organisational webs***

This point is accepted, and is already reflected in the report. International corporate mechanisms can be so complex and convoluted that it would require teams of well funded and skilled lawyers to pierce through them, and even then there is no guarantee of success. It is most unlikely that any shipping register would have anything like those kinds of resources available to them.

This is precisely why this report suggests that if a lack of transparency remains after a “reasonable” analysis (for example within a jurisdiction’s own legal system) then those shipping registers should either refuse registration, or if registration goes ahead then those vessels should at least be clearly identified in order to facilitate investigations by competent authorities.

This is a flexible response that recognises the difficulties of working through complex corporate mechanisms, frequently involving multiple jurisdictions, without necessarily declaring the problem as being so difficult that there is no point in considering any kind of response.

**vii) *Extra administration and bureaucracy should be avoided in order to avoid extra costs to the shipping industry***

This is a view that can be endorsed as being very desirable, but in the end perhaps impossible. There is no doubt that the best way to reduce costs for any industry is to remove as many regulations, administrative requirements and bureaucracy as possible, and much has been achieved in this direction in past decades.

However, while commercially desirable, such a *laissez faire* approach is unfortunately at odds with the need for greater scrutiny and tighter controls to reduce security risks. It is undeniable that such controls increase costs; one has only to read the report *Risk Factors and Economic Impact of Maritime Security Measures* to see the extent of these costs.

It is clear that greater security will cost money. However, it is also clear that additional costs should not be imposed on industry unless they are absolutely necessary, and part of the judgement to be made by the MTC (in a general sense), and governments (in a specific sense if they are considering certain responses) is whether the size of the threat is greater than the cost of the remedies should such an incident occur. Such judgements may change from time to time as circumstances alter.

**viii) *Traditional registers are not as vulnerable as open registers to possible misuse by terrorists***

The Secretariat does not agree with this point made by one of the contributors during our consultation. The original report “*The Ownership and Control of Ships*” [DSTI/DOT/MTC(2002)7] contains the Secretariat’s rationale for this point of view.

**ix) *Some administrations, for whom the operation of open registers constitutes a substantial proportion of their economies, may not co-operate with efforts to formulate international regulations without some form of support or compensation***

The Secretariat has viewed the contents of these reports as being beneficial to all registers, by enabling them to exercise better control over ships that carry their flag, as well as facilitating the international movements of their ships. From this perspective no additional carrots or incentives would appear necessary. However, the point made by this contributor is understood if actions by a flag to improve transparency were to reduce the competitiveness of that flag compared to those that still promoted secrecy and gained additional business by doing so.



If security remains a serious problem in the future then increased transparency may have its own benefits and carry its own rewards. However, in the interim perhaps some kinds of support or compensation would be helpful in convincing more flags to move towards greater transparency. No suggestions were made by the proponents regarding what such support/compensation could look like, and this point was not developed by the Secretariat, but this can remain as a topic for future discussion and consideration by governments that strongly support greater transparency.