



MARITIME SAFETY COMMITTEE  
75th session  
Agenda item 17

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## **PREVENTION AND SUPPRESSION OF ACTS OF TERRORISM AGAINST SHIPPING**

### **Consideration of proposals and information on maritime security issues**

#### **Intersessional Working Group on Maritime Security**

#### **Transparency in regard to the ownership of vessels**

**Submitted by ICFTU**

#### **SUMMARY**

- Executive summary:*** This paper proposes measures to ensure total transparency within the shipping industry to enhance maritime safety and port and ship security against terrorism. The primary measure would be the introduction of a mandatory requirement to provide details of a vessel's beneficial owner prior to entry into port.
- Action to be taken:*** Paragraph 8
- Related documents:*** Resolutions A.924(22) and A.923(22)

#### **Introduction**

1 The twenty-second session of the Assembly adopted resolution A.924(22) which requested appropriate measures to assist Governments to access, put in place or enhance, as the case may be, appropriate infrastructure and measures to strengthen port security to prevent and suppress terrorist acts directed against ports and port personnel as well as ships in port areas, passengers and crews. The Resolution also urged States to become party to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol.

2 At the Assembly it was agreed that an intersessional MSC Working Group on Maritime Security should be established with the following terms of reference to:

- start work on the review requested in paragraph 1 of the resolution;
- Prepare a list of subjects to be further discussed which, according to their nature, should then be forwarded to the MSC and, if appropriate, the Legal and Facilitation Committees for further elaboration;

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- Consider proposals and information on maritime security issues submitted by Member Governments and international organizations concerned;
- Prepare a work plan and timeframe for the work to be undertaken on this matter; and
- Submit its report to MSC.

### **Terrorist Activities**

3 At the Assembly a number of Governments also expressed concern about the possibility that ships themselves could be used as weapons and therefore this aspect of ship and port security must be addressed. There has recently been a considerable amount of comment about the use of ships, directly or indirectly, to support terrorist activities. These discussions and commentaries have identified the difficulties that exist in detecting and dealing with the problem.

4 The Assembly also adopted resolution A.923(22) on Measures to Prevent the Registration of “ Phantom” Ships that relates to the practice of registering a ship using false or inaccurate information and is associated with criminal activities. In doing so the Assembly has pointed to a need for greater vigilance in registering ships and clearly suggests the need for greater transparency in the process. The various quality shipping events that have been held have all called for greater transparency within the shipping industry, a view that has been expressed at both the Maritime Safety Committee and the Marine Environmental Protection Committee.

### **Transparency**

5 It has been suggested that uncovering bank accounts and front companies is “child’s play” compared to piercing the “corporate veil” of secrecy that protects some shipowners and that this secrecy equally facilitates criminal activities. Clearly this lack of transparency is counterproductive when endeavouring to introduce anti terrorist measures. We would suggest that consideration should be given to measures that would overcome this problem and address the issue of transparency within the industry. The measures should include the identification of:

- the ‘beneficial owner’ of a ship; and
- the company ultimately in ‘ control’ of the ship.

6 It should be noted that a generally accepted definition of the terms “beneficial ownership” and “control” can be found in an OECD 2001 Report entitled *‘Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes’*. The report, inter alia, states that in order to effectively combat and prevent the misuse of corporate vehicles for illicit purposes, it is essential that the authorities have the capacity to obtain, on a timely basis, information on the beneficial ownership and the control of the corporate vehicles. The definitions can be found in the following citations:

*“In this report, “beneficial ownership” refers to ultimate beneficial ownership or interest by a natural person. In some situations, uncovering the beneficial owner may involve piercing through various intermediary entities and/or individuals until the true owner who is a natural person is found. With respect to corporations, ownership is held by shareholders or members. In partnerships, interests are held by general and limited partners. In trusts and foundations, beneficial ownership refers to beneficiaries, which may also include the settlor or founder.”*

*“In this Report, “control” means effective control by an individual or a group of individuals over a corporate vehicle. Thus, with respect to the types of corporate vehicles examined in the report, the relevant inquiry will be who exercises effective control (rather than legal control ) over the corporate vehicle. In many misuses of corporate vehicles, the beneficial owner or settlor/founder controls the corporate vehicle despite outward appearances suggesting control by a third party. For example, directors of a corporation could merely be “nominees” who pass on the duties required of a director to the beneficial owner and accept instructions from the beneficial owner. With respect to trusts, the settlor may continue to exercise effective control over the trustee through the use of a trust “protector” and a letter of wishes.*

## **Proposal**

7 In order to provide for complete transparency of ownership, with consideration of the definitions in paragraph 6 which takes into account the considerable expertise of the OECD in such matters, there should be available onboard at all times details of the;

- **beneficial owner of the ship; and**
- **individual or corporation which has effective control of the ship.**

Moreover, this information should be made available to the relevant authorities prior to the vessels arrival in port.

## **Action requested of the Working Group**

8 The Working Group is invited to consider the proposal and draft a suitable amendment for insertion in chapter XI of SOLAS

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