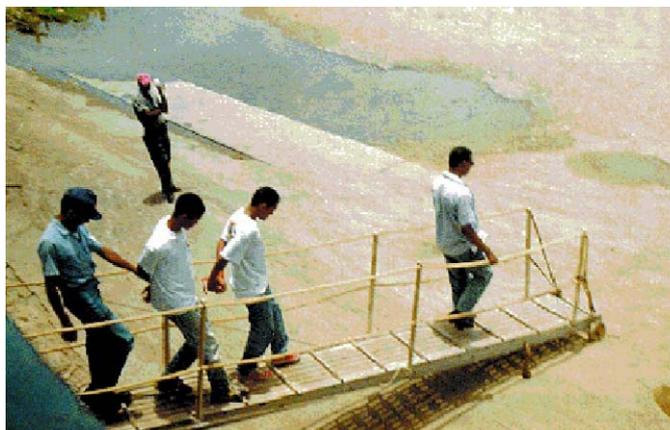


Stowaways

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Disclaimer

The purpose of this publication is to provide a source of information which is additional to that available to the maritime industry from regulatory, advisory, and consultative organisations. Whilst care is taken to ensure the accuracy of any information made available no warranty of accuracy is given and users of that information are to be responsible for satisfying themselves that the information is relevant and suitable for the purposes to which it is applied. In no circumstances whatsoever shall the Association be liable to any person whatsoever for any loss or damage whensoever or howsoever arising out of or in connection with the supply (including negligent supply) or use of information.

Unless the contrary is indicated, all articles are written with reference to English Law. However it should be noted that the content of this publication does not constitute legal advice and should not be construed as such. Members should contact the Association for specific advice on particular matters.

Stowaways

Introduction

With the implementation of the International Ship and Port Facility Security Code (ISPS Code) in July 2004 there was some optimism that, whatever else it might do, increased port security would reduce the number of stowaways that are so time-consuming and expensive to deal with.

In many ports the ISPS Code paperwork might be in order, but actual security may still be below standard and allow stowaways access to ships. Although some ports are striving to improve, existing deficiencies provide ample opportunity for potential stowaways to gain access to the port area, and thus the ship. Unfortunately, those ports with the least amount of security tend to be the ones that have traditionally supplied the greatest number of stowaways.

A gradual increase in related costs follows ever-hardening attitudes, mostly in Europe and North America, towards the handling of stowaways. To disembark and repatriate stowaways requires the co-operation and often the assistance of the local immigration authorities. Even though related expenses are paid for by the shipowner, the Association is finding more and more that the necessary help is not forthcoming.

Instead, stowaways are required to remain on board, the owner will often have to provide a security bond and the vessel may even incur a fine, which can be substantial. Worse still, under the ISPS Code, the presence of undocumented individuals on board can be construed as 'clear grounds' of a security breach so that port authorities that take their security obligations more seriously can delay the vessel's clearance for a berth while the matter is investigated.

This briefing will look at steps that Members and ships' staff can take to prevent stowaways, what to do if stowaways are found, and some of the insurance implications.

Types of stowaways

People stow away on ships for many reasons but usually they are attempting to leave a region of conflict, instability, or social or economic deprivation for a country where they expect there to be stability, opportunity and a better way of life.

As the number of refugees and migrants increases worldwide, many governments are hardening their attitudes and reducing the number of legal immigrants they accept, forcing migrants to travel illegally, often by ship. Although vessels may be far more vulnerable in hot spots such as some African ports, there is almost no port in the world that can be considered completely safe from stowaways.

The 1965 Convention on Facilitation of International Maritime Traffic (FAL Convention) defines a stowaway as;

"A person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person and who is detected on board the ship after it has departed from a port, or in the cargo while unloading it in the port of arrival, and is reported as a stowaway by the master to the appropriate authorities."

Different types of stowaways present different problems to ship's staff and may require distinctive action to be taken. Considerable investigation, identification and repatriation costs can be incurred, which are usually passed on to the shipowner. It is therefore useful for Members and seafarers to understand the type of people they are dealing with.

Refugees

Refugees will be attempting to escape war, civil unrest, or political or religious persecution. These stowaways tend to be impulsive and often have no papers.

Economic migrants

Other migrants may simply be moving in an attempt to obtain a better standard of living.



Stowaways

Asylum seekers

Asylum seekers are refugees trying to reach a country where asylum may be granted, or economic migrants claiming asylum so as not to be repatriated. They will often try to conceal their true identity or adopt the nationality of an area where there is conflict.

Illegal immigrants

In contrast, most illegal immigrants usually do not intend to make their presence known to the authorities, hoping to enter a country undetected.

Criminals

The last type of stowaway, and perhaps the most worrying, are criminals. They may be violent and uncooperative and may be involved with drug transportation or other illegal activities.

Stowaways are generally treated as illegal immigrants at the port of disembarkation in accordance with the legislation of the countries concerned. However, stowaways who request asylum should be treated in accordance with the relevant United Nations' conventions. They may be declared to be illegal immigrants later if an application for asylum is rejected by the immigration authorities.



Stowaway hot spots

It used to be that when shipowners requested advice as to where in the world they needed to be most diligent to prevent the boarding of stowaways, the simple response was 'anywhere in Africa'. Clearly this is very much a generalisation, but in the experience of the Association, the situation remains largely unchanged and African ports are still the most likely point of embarkation by far.

However, over the last few years a marked increase has been noticed in the number of illegal immigrants boarding in Europe, particularly the larger north European ports. The main reason for this appears to be the industry involving the large scale movement of human cargo. It is clear that many economic migrants are lured by the promise of a better future elsewhere despite the large sums of money demanded in advance. This improved organisation coupled with a general increase in experience and know how, means that a stowaway might have successfully completed part of his journey before he even attempts to board a Member's vessel.

Shifting economic and political situations world-wide can also have an impact upon human migration and since the early 1990's there has been a substantial increase in the numbers from former Eastern European countries, again much of it organised and often using containerised and ro-ro cargoes headed for Western Europe.

The North of England experiences far less activity in other areas of the world; occasionally the Association becomes aware of stowaways boarding in Central or South America, but only rarely in North America. In the Middle East there is also little activity. Not many stowaways embark on Members' ships in Asian ports at present, although this can depend more on the local economic and political situation.

Australasia remains an area in which there seems to be only marginal activity. Members should be aware however that whilst their vessels may be far more vulnerable to the problems of stowaways in African ports, there is almost no port in the world which can be considered completely safe and therefore it is necessary to remain vigilant at all times. Once African stowaways have boarded a vessel, they tend to be far easier to disembark and repatriate than say their Palestinian, Iraqi or Vietnamese counterparts, so although the risk of the latter may be less, the associated problems can be far greater.

Preventing stowaways

To minimise stowaway problems it is obviously better to prevent people getting on board a ship in the first place. Prevention should ideally take place both in the port and on the ship.

The problem of stowaways is in fact a very simple security problem - it is one of access control. Since July 2004, control of access to the ship has been an integral part of the Ship Security Plan required by the ISPS Code. The following paragraphs highlight examples of the sort of measures ship operators might include in Ship Security

Stowaways

Plans to implement the key areas of stowaway prevention - access and restricted areas.

Access

At any level of security, access to the ship should be tightly controlled. Initially this means establishing the ways by which access can be gained, for example using mooring ropes and cargo equipment, as well as by accommodation ladders, gangways and ramps.

Approved access routes should be kept to a minimum, if possible this should be limited to the accommodation ladder, which should be permanently manned and only authorised visitors should be allowed to board. All persons boarding and disembarking should be positively identified by an appropriate means of identification, such as an identity card or boarding pass including a photograph, which can be verified.

Having established controls on the authorised access routes, the unauthorised routes should be guarded. This can be achieved by closing and locking ship-side doors, removing over-side ladders, fitting guards on mooring ropes or anchor cables and ensuring that the deck and over-side areas are well lit. The deck areas need to be patrolled regularly, the timing of patrols should be staggered and security personnel may need to observe the land and sea approaches to the ship. Closed circuit television cameras could also be used.

Preventing stowaways boarding with the cargo, especially containers, is a particular problem that requires the co-operation of the port or terminal operators and perhaps the charterers. Ships staff can however take some precautions such as checking to make sure container seals are intact and paying special attention to empty, open-top or open-sided containers.



Restricted areas

Although access to the ship is controlled, there is still a possibility that unauthorised persons may get on board, or that authorised persons such as stevedores may try to hide. The second line of defence on the ship is to designate restricted areas to which no one has access except authorised members of the crew.

Examples of restricted areas are the bridge, machinery spaces, crew accommodation, cargo spaces and stores spaces. Store rooms and other spaces should be kept locked, and entrances into the accommodation and engine room may also be kept locked as long as fire and safety regulations are followed. If cargo is not being worked, hatches and cargo space entrances need to be closed and locked. The hatches, and hatch covers if landed ashore, should be checked before and during closing to make sure that no stowaways have concealed themselves.

Fitting suitable locks, surveillance monitoring equipment and devices that detect intruders automatically can provide protection. Restricted areas should also be patrolled regularly and guarded in times of heightened security.

Stowaway search

As a final precaution, and to supplement the measures taken under the Ship Security Plan, a stowaway search should be carried out before the ship sails.

Rudder trunks

There has been a recent trend of stowaways hiding in rudder trunks on deep-draft vessels, where they are not often found until they present themselves in search of food.

Some authorities have recommended that owners install metal gratings above the openings to their rudder compartments in addition to carrying out the usual thorough search before departing.



Courtesy of USCG

Disembarkation and repatriation arrangements

In the event stowaways are found on board a Member's vessel, the Association will of course be willing to assist Members in attempting to arrange disembarkation and repatriation. To enable this to happen as soon as possible it is vital that Members advise the Association as soon as they become aware of the presence of stowaways on board an entered ship.

If stowaways are found while the ship is in port or as the result of a stowaway search then they should obviously be sent ashore. However, this may be difficult if they do not have identification or are not of the nationality of that country.

Disembarkation of stowaways can be extremely difficult. A successful outcome depends largely on the nationality of the stowaways, the availability of identification documentation, the vessel's future schedule and most importantly the co-operation of the immigration authorities and port officials at the vessel's future ports of call.

The following paragraphs summarise the steps that need to be taken for the successful resolution of a stowaway case.

Reporting

The master should contact the ship operators and the agent at the next port of call. The shipowners must contact the P&I club as soon as possible, but the master should also carry details of P&I correspondents so that he or she can contact the correspondent at the next port directly.

Whilst the stowaways are on board the master should ensure that they are declared to the authorities at each port. Failure to declare may result in serious consequences for the master and the vessel. It is possible that failure to declare the presence of the stowaways in certain ports may result in criminal charges against the master, delay to the vessel and/or a substantial fine. The agent should be able to advise on local procedures and obligations and ensure the appropriate parties are properly notified.

In many countries the authorities will give no assistance, such that getting a stowaway repatriated is impossible even if the necessary travel documents have been arranged. The immigration authority at the next port should then be notified. The Association will coordinate with the P&I correspondents at the vessel's scheduled ports until the stowaways are successfully disembarked and repatriated.

The stowaways should be searched to determine whether they are carrying any documentation which may assist in their identification. A number of crew members should be present, ready to assist if the stowaway reacts violently or unexpectedly.

The person carrying out the search of the stowaway and his belongings should wear protective latex gloves and take care to avoid any sharp items, such as a knife, needles, etc. Look into pockets first, before putting your hands inside.

It is then recommended that the master interviews the stowaways individually to obtain as much information as possible in respect of the stowaway's alleged identification. Ideally, the master should utilise an appropriate stowaway questionnaire such as that provided by the Association, and which accompanies this briefing. Masters should however be aware that a high percentage of stowaways will deliberately provide false details in order to hamper repatriation. A passport-size photograph of each stowaway should be taken and included with their completed questionnaire.

At the next port of call the Club representative may be instructed to board the vessel to obtain further details of the stowaways, in addition to obtaining the stowaway's photographs and finger prints.

Obtaining travel documents

Immigration authorities will only grant permission for a stowaway to be repatriated if he or she has the correct travel documents, or temporary travel documents have been issued by a national embassy or consulate. Before the P&I correspondent can approach an embassy or consulate for travel documents, the identity of the stowaway must be established. This is not always an easy matter and further questioning using an interpreter may be necessary. It may require skilled interviewers to obtain truthful answers from the stowaway. In addition, passport-size photographs of the stowaway and a full set of fingerprints will often be required.

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Once all the information has been obtained, the P&I correspondent can apply at the national embassy or consulate of the stowaway. Embassy officials may sometimes interview a stowaway to satisfy themselves that he or she is one of their nationals before they will issue temporary travel documents. Arrangements would then be made for the documentation to be sent to the appropriate embassy or consulate in order that identification can be verified and hopefully an emergency travel document can be obtained. Often several embassies are contacted before a stowaway's true nationality and identity is confirmed.

Invariably, unless a stowaway makes a claim of refugee status or political asylum very few authorities will allow their disembarkation without a travel document. Under no circumstances should a stowaway be forced into making a claim for political asylum against his will. If, however he expresses a wish to make an application the stowaway should make a written request in his own language stating reasons why he cannot return to his home country and this application should be provided to the immigration authorities at the next port of call.

Repatriation

Once emergency travel documents have been obtained it is then necessary to obtain the consent of the immigration officials, to agree to the disembarkation and repatriation of the stowaway. This can be difficult due to the attitude of immigration officials in a number of jurisdictions who are not willing to assist.

In ports where disembarkation is allowed, there are often strict conditions attached, for example, repatriation must be completed prior to the vessel's departure or alternatively the authorities may require a guarantee in respect of potential costs involved. It is then necessary to consider the most direct and cost effective flight schedule. In most circumstances either the immigration or airline authorities will insist that stowaways are escorted. It is essential that when arranging flights, consideration needs to be given as to whether visas will be required for transit airports. It is also necessary to obtain the approval of the airline.

Once all the necessary arrangements have been made repatriation of the stowaways can at last take place.

Stowaways to the United States

In the United States, the USCG requires that "Masters of all vessels confirm before entry into territorial waters of the US, that there are no individuals on board other than those listed on the Advanced Notice of Arrival. Should stowaways be discovered aboard any vessel, the stowaways must be detained on board and properly cared for until the proper authorities take the individuals into custody". Because the US authorities consider the presence of stowaways on board vessels to be a potential security threat, every effort should be made to prevent their boarding in foreign ports. If stowaways are found on board prior to a vessel entering US waters, their presence should be made known immediately to the US authorities, and they should be carefully guarded until they are disembarked from the vessel.

Stowaways to Brazil

In Brazil the problem is becoming increasingly complex. In the Association's experience, Brazilian authorities will rarely allow stowaways to remain on board and sail with the vessel, insisting instead that stowaways are disembarked and repatriated from Brazil. In some instances this can seem an ideal solution, but the reality is that the authorities will usually insist stowaways are removed to a hotel, which is an expense in itself, and supervised by security guards.

Frequently stowaways are not repatriated until some months after their initial disembarkation, making the cost of their stay in Brazil potentially exorbitant. A variety of reasons are given for the delays, ranging from problems with travel visas to a lack of properly qualified security escorts. The actual costs of repatriation are similarly expensive. In a recent case, expenses of almost US\$150,000 were incurred for the repatriation of two stowaways from Salvador.

Dealing with stowaways on board

If stowaways are found, the master needs to take action that follows the company's procedures. Ship operators and ships' crews have a duty to treat stowaways in their care humanely, whilst having due regard for the safety of others on board.

Security

The temperament of the stowaways has an impact on the safety of the crew. The likelihood of violent behaviour arising amongst the stowaways themselves, or being directed against the crew, should be considered. The number of stowaways onboard is also a consideration, especially if that number is high in proportion to the number of crew. In all cases the ship's crew should take appropriate security precautions.



A thorough search of the stowaways' possessions should always be conducted and any items that could pose a threat to the ships crew removed. These might include pen-knives, razors, and other objects that could be used as weapons.

Stowaways should always be kept in a secure part of the vessel such as a cabin or other suitable space where the doors can be locked and any windows secured to reduce the risk of escape. The stowaways may feel sufficiently desperate to jump overboard, so the added precaution of patrolling the remainder of the accommodation should also be taken wherever possible.

Consideration might be given to dividing up a group of stowaways, especially if there are a large number in relation to the size of the crew.

After the vessel arrives in port the Port Facility Security Officer and immigration authorities will determine what measures should be undertaken to secure the stowaways and prevent them escaping. They may even insist that stowaways are placed ashore in a custodial area and guarded.

When the vessel does near port, the stowaways may be more tempted to jump ship, especially those who have stowed away previously and are familiar with the process of repatriation and the unlikelihood of being granted political asylum. Should they manage to escape, heavy fines are often imposed by the authorities.

During these periods the levels of security and awareness should be increased. To reduce the risk of stowaways receiving help to escape from crew members that they have befriended, contact with the crew should be kept to a minimum.

Health and welfare

Whilst the Master is not a doctor, the mental or physical health of the stowaways should be monitored. Risk of infectious diseases should also be considered and suitable precautions taken. These might include confining the stowaways to their quarters, reducing contact with the crew to a minimum and separating any cutlery, crockery, bedding and clothing from that provided for the crew. The condition of the stowaways and any treatment or medicines administered should be recorded.

The stowaways should always be provided with sufficient food and water, although this need not include preferential treatment when compared to the normal crew meals.

Work

There may be a temptation to put stowaways to work, and avoid the additional inconvenience of the crew guarding them, but this is strongly discouraged. Claims for wages and associated crew benefits are often reported to the authorities when the vessel next arrives in port. This can aggravate the problem and cause delays to the ship, including suspicion about how the stowaways' originally gained access to the vessel.

The ship is a dangerous place to live and work and stowaways have no training in health and safety awareness. If put to work they, or the accompanying crew, are much more likely to be injured, and this is likely to result in an

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obligation to provide future care and maintenance, and possibly greater claims.

Emergency procedures

Due consideration should be given by the master to how a stowaway will be handled in the event of an emergency. It may be that a person is identified in the ship's crew to fetch and conduct the stowaway to the appropriate place of safety in an emergency situation. Likewise, a place will have to be made for the stowaway in the ship's lifeboat. If possible, these provisions should be explained to the stowaway, with instructions to follow and obey the nominated crewman. If appropriate, the procedure can be rehearsed at a normal ship's drill, thereby confirming to the master and to the stowaway that adequate steps have been taken to provide for his safety.

Stowaway checklist and questionnaire

North of England produces checklists and questionnaires to be kept on board ship and photocopied when needed. The checklists provide masters with guidance on prevention of stowaways and the action to take if stowaways are found. The questionnaires will help them prepare and send the stowaway information required by the Flag State, the authorities at the next port of call and the P&I Club. Copies are available in Arabic, Chinese, French, Portuguese and Swahili. Copies of the checklists and English version of the questionnaire are included at the end of this briefing.

Members requiring additional copies of the checklists or questionnaires should contact the Risk Management Department at the Association or download them from the Association's website: www.nepia.com

International Ship and Port Facility Security (ISPS) Code

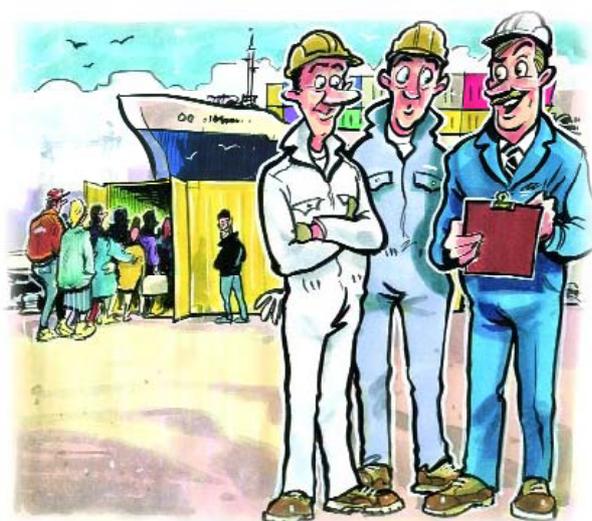
Under the ISPS Code, if there are "clear grounds" that a ship is not in compliance with the Code, the authorities may apply security control measures to ensure compliance. Part B of the Code gives some examples of "clear grounds". Having stowaways on board may well be seen as evidence of a breach in the ship's security arrangements and "clear grounds" that the ship is not in compliance with the ISPS Code. This may well lead to further difficulties in disembarking stowaways and additional delay and cost to the Member. P&I cover may be reduced or rejected if the club's Directors consider that the Member did not take adequate steps to prevent the stowaways boarding.



Role of the charterer

The expenses arising from the presence of stowaways on board a vessel are normally the responsibility of the owners or operator of that ship. However, it is possible that a charterer may also have an interest in, and responsibility for, some or all of the expenses involved, depending on the circumstances of the incident. For example, stowaways may have boarded by secreting themselves away in the cargo, a particular risk in the case of containers. They may, as another example, board as stevedores, for whom charterers may also be responsible.

It may be possible to argue from the point of view of basic legal principles whether the owner or charterer, should be liable under the charterparty for the consequences of stowaways being found on board the vessel. However the position will not always be clear. It is therefore advisable to include a suitable clause in the charterparty. This will then introduce a degree of certainty into the contractual



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relationship and the possibility of disputes can be reduced if not avoided altogether. One such suitable clause is the *Stowaways Clause for Time Charters* published by BIMCO reproduced below. This sets out in an as fair and even handed manner as possible to divide responsibility between owners and charterers depending on how the stowaways came on board the ship.

Under the terms of this clause, the charterers accept responsibility for all costs, expenses and delays arising out of the presence of stowaways on board the vessel where they have boarded by secreting themselves away in the charterer's goods, for example, in a container or hidden in a bundle of logs.

If this can be proven to be the case, then the charterers become responsible for the costs of guards and any fines imposed by immigration authorities for the presence of the stowaways or in the event of their escape. They are also responsible for all victualling and maintenance costs, diversion costs and the cost of repatriation of the stowaways. Costs of damage to the vessel and any delays and expenses arising from this, such as berth shifting costs, demurrage and hire would also be for the charterers account. They are also responsible for the provision of any security required to release the vessel. Equally, the same clause specifies that where the stowaways board otherwise than in the charterer's goods then the owners still bear these responsibilities.

This clause is desirable for owners as they may have no effective way in which to thoroughly check the contents of the goods being loaded. Such security measures are within the domain and responsibility of the charterers and it is therefore proper that the charterers should be responsible for any costs arising from any failure in that system. The owners on the other hand remain responsible for the security of the vessel itself.

It is therefore important that a record of the precautions taken to prevent stowaways, and the searches made to find them, are kept to provide evidence of how the stowaways boarded the ship.

Charterparties should now also include clauses to deal with the impact of the ISPS Code. Depending on the wording of the clause used (e.g. the BIMCO ISPS *Clause for Time Charter Parties*), notwithstanding that it does not refer specifically to stowaways it may be capable of applying to stowaways and apportioning liability between the owner and charterer. Nevertheless it is recommended that even where there is an ISPS clause in the charterparty, the BIMCO stowaway clause should also be incorporated to avoid any uncertainty and argument about who is to bear the consequences of stowaways being on board.

BIMCO stowaways clause for time charters

Courtesy of BIMCO

- (a) (i) *The Charterers warrant to exercise due care and diligence in preventing stowaways in gaining access to the Vessel by means of secreting away in the goods and/or containers shipped by the Charterers.*
- (ii) *If, despite the exercise of due care and diligence by the Charterers, stowaways have gained access to the Vessel by means of secreting away in the goods and/or containers shipped by the Charterers, this shall amount to breach of charter for the consequences of which the Charterers shall be liable and shall hold the owners harmless and shall keep them indemnified against all claims whatsoever which may arise and be made against them. Furthermore, all time lost and all expenses whatsoever and howsoever incurred, including fines, shall be for the Charterers' account and the Vessel shall remain on hire.*
- (iii) *Should the vessel be arrested as a result of the Charterers' breach of charter according to subclause (a) (ii) above, the Charterers shall take all reasonable steps to secure that, within a reasonable time, the Vessel is released and at their expense put up bail to secure release of the Vessel.*
- (b) (i) *If, despite the exercise of due care and diligence by the Owners, stowaways have gained access to the Vessel by means other than secreting away in the goods and/or containers shipped by the Charterers, all time lost and all expenses whatsoever and howsoever incurred, including fines, shall be for Owners' account and the Vessel shall be off hire.*
- (ii) *Should the vessel be arrested as a result of stowaways having gained access to the Vessel by means other than secreting away in the goods and/or containers shipped by the Charterers, the Owners shall take all reasonable steps to secure that, within a reasonable time, the Vessel is released and at their expense put up bail to secure release of the Vessel.*

IMO Guidelines

Problems with repatriating stowaways are increasing and greater restrictions on movement without travel documents are making cases more difficult to resolve. More cooperation from governments would be very beneficial.

The IMO recognised the problem some years ago and issued guidelines - *Guidelines on the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases* - that were adopted by an IMO Assembly Resolution in 1997.

However, many countries have hardened their attitudes recently and acted in a way counter to the guidelines. As a result, the IMO incorporated standards and recommended practices for the resolution of stowaway cases into the Convention on Facilitation of International Marine Traffic (FAL Convention) in 2003.

The measures require ships to undergo a thorough search in accordance with a specific plan or schedule when departing from a port where there is a risk that stowaways may have boarded.

They also urge shipowners to instruct their masters not to deviate from the planned voyage to seek the disembarkation of stowaways, unless permission has been granted by the authorities of the state of the port to which the ship deviates or there are extenuating security, health or compassionate reasons.

Summary of responsibilities under the IMO Guidelines

Shipowners and ships' masters have specific responsibilities under the IMO *Guidelines on the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases*. These are summarised below.

Masters responsibilities

- 1 Make every effort to determine immediately the port of embarkation of the stowaway.
- 2 Make every effort to establish the identity and nationality of the stowaway.
- 3 Prepare a statement containing all information relevant to the stowaway for the appropriate authorities.
- 4 Notify the existence of a stowaway and any relevant details to the shipowner, and appropriate authorities at the port of embarkation, the next port of call and the flag State.
- 5 Do not depart from the planned voyage to seek disembarkation of a stowaway to any country unless repatriation has been arranged and permission given for disembarkation, unless there are extenuating security or compassionate reasons, such as injury or illness.
- 6 Ensure that the stowaway is presented to the appropriate authorities at the next port of call.
- 7 Take appropriate measures to ensure the security, general health, welfare and safety of the stowaway until disembarkation.

Shipowner's or operator's responsibilities

- 1 Ensure that the existence and information on the stowaway has been notified to the appropriate authorities at the port of embarkation, the next port of call and the flag State.
- 2 Comply with any removal directions made by competent national authorities at the port of disembarkation.

Further information about the "Guidelines on the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases" (Resolution A.871(20)) and the FAL Convention can be obtained from the IMO at 4 Albert Embankment, London, SE1 7SR, United Kingdom, telephone: +44 207 735 7611, fax: +44 207 587 3210, website: www.imo.org

P&I cover for stowaways

Stowaway costs

The cost of having stowaways on board can be considerable. As shipowners will be aware, they are responsible for arranging and funding the disembarkation and repatriation of any stowaway who boards their vessels. In addition to the costs of looking after the stowaways, some countries impose fines for having stowaways on board a ship when it arrives in port and additional fines should any stowaways escape. In some countries the immigration authority may also request a guarantee to cover the costs of detention and repatriation as a condition of allowing a stowaway to disembark.

The Association provides insurance cover for Members in respect of their losses and liabilities relating to stowaways. Like other clubs, North of England has a specific rule concerning stowaways, Rule 19(5), which states that the risks covered are

“Expenses other than those covered under Rule 19(6) - see diversion expenses below - incurred by the Member as a consequence of stowaways being or having been on board an Entered Ship.

Provided always that in Rule 19(5) the Directors may in their absolute discretion reject or reduce any claim if it is considered that adequate steps have not been taken to guard against the Ship being boarded by stowaways.”

The costs incurred by Members in respect of stowaway claims may include the following:

- fines due to stowaways being on board
- cost of guards employed to prevent stowaways from escaping (requirement in certain ports)
- victualling expenses
- clean clothing, bedding and toiletries
- embassy fees
- jail or detention expenses
- repatriation flights for stowaways
- flights and accommodation expenses for escorts
- expenses incurred by agents, but only those expenses directly associated with the stowaways.

Although P&I cover is very wide in its scope, it is important to note that certain expenses may be specifically excluded. An example of this would be repairs to damage on an entered ship that has been caused by stowaways.

Cover may also be reduced or rejected if the club's Directors consider that the Member did not take adequate steps to prevent the stowaways boarding.

Diversion expenses

Another important issue is that of diverting the ship to land stowaways. Cover is again provided by P&I Clubs for this purpose. North of England Rule 19(6) covers the diversion expenses of an entered ship to the extent that those expenses *“...are incurred solely...for the purpose of landing stowaways or refugees...”*

Although the net operational costs resulting from a diversion to land a stowaway are covered, certain expenses incurred may be specifically excluded from P&I cover. An example would be any claim for loss of hire that has occurred.

It is also important to note that if Members wish to divert the vessel to land the stowaways, the Association must be contacted beforehand to confirm whether the diversion is deemed reasonable. If cargo is on board the vessel a diversion may, in certain circumstances, be deemed an unreasonable or unjustifiable deviation under the contract of carriage. It may then be necessary for Members to arrange additional shipowner's liability (SOL) insurance cover to ensure that their position is fully protected if a breach of the contract of carriage occurs.

Conclusion

Although the IMO has issued guidelines to governments regarding the prevention of stowaways, port security in many parts of the world has remained extremely lax and it remains to be seen whether the ISPS Code will improve the situation.

In the meantime Members must not rely on port security as a means of prevention. More than ever, and in line with the ship's own ISPS procedures, it is advisable to take all precautions to prevent stowaways boarding and to make sure that any who succeed are removed before sailing.

The Association will of course continue to work with Members to get stowaways disembarked when they do manage to board.

Further information

The Association is able to provide more information to Members than has been possible to include in this briefing.

Any Member who requires further information or advice about stowaways should contact the loss prevention department or any member of the personal injury team at the Association.

CHECKLIST - Action to be taken to prevent stowaways

This checklist should be used in conjunction with the ship operator's procedures for the prevention of stowaways, including those within the Safety Management System required by the ISM Code, and the North of England P&I Association Stowaway Search Checklist cards.

General

1. Access to the ship restricted to the gangway only.....
2. Security personnel from a reputable shore company employed if necessary.....

Gangway

3. Full-time gangway watch kept.....
4. All embarkation and disembarkation movements tallied.....
5. Pass system in operation for visitors.....
6. Pass system in operation for stevedores.....

Deck

7. Full-time watch kept at loading arms, ro-ro ramps and other potential access points.....
8. Roving deck patrol.....
9. Decks and potential access points well illuminated.....
10. Mooring lines fitted with rat guards.....
11. Covers fitted and locked over hawse pipes.....
12. Pilot ladders and other ladders turned inboard.....
13. Accommodation entrances locked and sealed where safe to do so.....
14. Engine room entrances locked and sealed where safe to do so.....
15. Store room entrances locked and sealed where safe to do so.....
16. Internal cabins, storerooms and other spaces locked.....

Cargo spaces

17. Cargo space accesses locked and sealed where safe to do so.....
18. Hatch covers closed when cargo work has stopped, or been completed, and safe to do so.....
19. Pontoon type hatch covers that have been landed ashore inspected before being replaced on the ship.....
20. Warning notices posted about fumigation of cargo spaces.....
21. Audible warning given before fumigation of cargo spaces.....

Containers and ro-ro trailers

22. Seals checked prior to loading to ensure they are intact.....
23. Empty units inspected and sealed prior to loading.....
24. Open-sided and / or open-topped units inspected prior to loading.....

Stowaway search

25. Simultaneous stowaway search of the accommodation, engine room, cargo spaces and main deck carried out immediately prior to sailing.....
26. Second stowaway search carried out after sailing.....
27. Details and results of the searches recorded in the log book.....

CHECKLIST - Action to be taken if stowaways are found

This checklist should be used in conjunction with the ship operator's procedures, including those within the Safety Management System required by the ISM Code.

Search

1. Area in vicinity of where the stowaways are discovered searched for other stowaways.....
2. Area in vicinity of where the stowaways are discovered searched for papers and personal belongings.....
3. Stowaways searched for papers and personal belongings.....

Security

4. Objects that could be used as weapons confiscated.....
5. Larger groups of stowaways separated into smaller groups.....
6. Appropriate measures taken to ensure the security of the stowaways by locking them in suitable cabins or storerooms.....
7. Guard(s) posted.....

Health & welfare

8. General health check of stowaways carried out.....
9. Expert medical advice sought if necessary.....
10. Stowaways provided with food and water.....
11. Stowaways provided with clothing and bedding.....

Repatriation arrangements

12. Stowaways landed before ship leaves the embarkation port or harbour waters (See Note 1 below).....
13. Ship operator notified.....
14. P&I Club notified.....
15. Stowaway questionnaire completed for each stowaway (See instructions below).....
16. Statement prepared for the appropriate authorities containing all relevant information.....
17. Relevant details notified to the authorities at the port of embarkation.....
18. Relevant details notified to the authorities at the next port of call.....
19. Relevant details notified to the authorities at the flag State.....

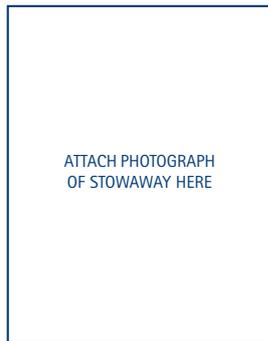
Notes

1. Except in an emergency, do not depart from the planned voyage to seek disembarkation of a stowaway unless advice has been sought from the ship operators.
2. Stowaways should not be put to work.
3. Keep contact between stowaways and crew members to a minimum.

Instructions for completing stowaway questionnaire

- Keep the original laminated questionnaires in a file and photocopy them when required.
- Do not write on the originals.
Arrange for the stowaway to complete the questionnaire in the appropriate language themselves, using black ink or black ball pen.
- Take four passport type photographs of the stowaway and attach one to the questionnaire in the space provided.
- Send a copy of the completed questionnaire for each stowaway to the P&I Club.

This form can be used to record details of stowaways or persons in distress rescued at sea.



Signature

Description

01 Age

02 Height

03 Weight

04 Complexion

05 Hair

06 Eyes

07 Form of face

08 Marks / Characteristics

Details

09 Full name

10 Place of birth

11 Date of birth 12 Nationality

13 Religion 14 Gender

15 Language(s) spoken

16 Home address

17 Father's name

18 Father's birth-place

19 Mother's name

20 Mother's birth-place

21 Parent's address

22 Marital status

23 Name of spouse

24 Nationality of spouse

25 Spouse's address

26 Occupation

27 Employer's name

28 Employer's address

29 Date & time found

30 Place of hiding

31 Port of boarding

32 Date & time of boarding

33 Method of boarding

34 Reasons for boarding

35 Type of ID - Passport ID Card Seaman's card Other

36 Number

37 Place of issue

38 Date of issue 39 Date of expiry

Other Information (Previous record, possessions, contacts in other parts of world)

Note – This questionnaire is also available in Arabic, Chinese, French, Portuguese and Swahili. Contact the Risk Management Department at the North of England P&I Association for details, or download copies from the Association's website www.nepia.com