

ITF policy on stowaways

As adopted by the ITF Seafarers' Section Conference, Singapore, 8-10 October 1997

Introduction

1. Notes with concern the number of incidents involving stowaways, the consequent potential for disruption, the impact on the safe operation of a ship.
2. Recalls that the 1957 Brussels Stowaway Convention, which attempted to establish an internationally acceptable regime for dealing with stowaways, has not come into force.
3. Regrets that in the absence of an internationally agreed procedure for dealing with stowaways, considerable difficulties are encountered by ship's crews and shipowners in disembarking stowaways from ships into the care of the appropriate authorities.
4. Believes therefore that there is a need to establish practical and comprehensive guidance on procedures to be followed by all authorities and persons concerned in order that the return or repatriation of a stowaway may be achieved in an acceptable and humane manner.

An ITF Policy on Stowaways

Definition

5. A useful definition is provided in the 'Guidelines on the Allocation of Responsibilities to seek the successful Resolution of Stowaway Cases', adopted by the International Maritime Organisation (IMO):

"A stowaway is defined 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 after the ship has sailed, and is declared as a stowaway by the master to the appropriate authorities."

The nature of the problem

6. Stowaways can cause the following problems:

- inter-personal problems, especially for the master, the crew and the stowaways on board,
- legal problems,
- financial problems for shipowners and States' authorities in ports of call (i.e. costs of maintenance and repatriation of a stowaway and/or fines); and
- the number and/or behaviour of stowaways may endanger the safety of the crew and /or the ship.

7. While the legal and financial problems mainly have to be dealt with by the authorities and shipowners through international co-operation, the inter-personal problems must be resolved by the master, the crew and the stowaways. There have been cases where stowaways have remained onboard for months even years because the authorities refused to allow them to be landed, where stowaways outnumbered the crew and where stowaways were murdered or thrown overboard.

8. The reasons for the increasing problems faced by masters and shipowners when attempting to disembark stowaways are:

- the growing problem of refugees, immigrants and asylum seekers;
- the tightening of regulations by governments to reduce the number of illegal immigrants;
- the fines and costs imposed on masters and/or shipowners by some authorities when entering port with a stowaway onboard;

- the lack of identity documents of stowaways; and
- the lack of internationally agreed regulations.

Applicable international regime

9. The International Convention relating to Stowaways, Brussels adopted on 10 October 1957 has never entered into force and it is clear it is unlikely to do so. The IMO has, however, adopted Guidelines on the allocation of responsibilities to seek the successful resolution of stowaway cases in January 1996. These guidelines are only recommendations and as such there is still no internationally accepted regime for dealing with stowaways.

10. There are, however, international instruments stipulating international human rights which might be applicable to certain categories of stowaways, inter alia

- the United Nations Declaration on Human Rights,
- the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, Rome, 4.XI.1950,
- The United Nations Convention relating to the Status of Refugees of 28 July 1951,
- the United Nations Protocol relating to the Status of Refugees of 31 January 1967.

11. The above instruments provide for the following basic human rights:

- the right to life
- the right not to suffer torture, inhuman or degrading treatment or punishment
- the right not to be held in slavery or servitude, or forced or compulsory labour
- the right to liberty and security of person, no unlawful arrest or detention
- the right to a fair and public hearing
- the right to freedom of thought, conscience and religion
- the right to freedom of expression
- the right not to be discriminated against
- the right to political asylum.

12. The UN Convention relating to the status of refugees might also be relevant in certain stowaway cases since a refugee is defined as a person:

"who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

Status of a stowaway

13. The status of a stowaway is unclear. Onboard a vessel it is impossible to determine whether a stowaway is a refugee, an asylum seeker, an illegal immigrant or a criminal. A stowaway's status in relation to the Safety of Life at Sea Convention (SOLAS) whilst onboard the vessel is also unclear.

Need for an internationally binding instrument dealing with stowaways

14. The ITF believes there is a need to develop an international binding instrument dealing with stowaways. Such an instrument should set the principle that the country of first scheduled port of call after discovery of the stowaway (port of disembarkation) be required to take responsibility. It is unacceptable that due to the lack of such a requirement stowaways are often detained on board for months and even years. The responsibilities of the master, crew and shipowner for the humane and fair treatment of stowaways also needs to be clearly set out as to does the need to ensure that ships' personnel are not put in the position as action as quasi-immigration or law enforcement officers. That responsibility must remain with the port and/or the flag state.

15. Such an internationally agreed binding instrument could have the form of a convention concerning stowaways. The ITF supports all efforts towards the adoption and ratification of such an instrument at the earliest possible opportunity.

ITF guidelines for the treatment of stowaways on board

16. A person secreting him or herself on board a ship has reasons to do so. As these reasons are normally unknown to the master and the crew of the ship they should be reminded of basic human rights of all persons (see above) and should bear in mind that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law". In short, there is no reason whatsoever to treat a stowaway like a criminal. Remember, he/she might have fled their home country in order to survive.

17. A stowaway should be treated fairly and humanely whilst on board and his/her human rights must be respected by the master and the crew at all times. Such fair and humane treatment should include:

- Checks on a stowaway's physical and mental health;
- Provision of suitable food and lodging;
- Avoidance of actions or behaviour that might intimidate.

18. It is important to report and keep accurate records of the circumstances if you detect stowaways on board, namely:

- the time and position of detection of the stowaway. Also, the stowaways name, address, nationality, etc. will be useful (if you can make yourself understood);
- inform the vessel's owner and the relevant authorities;

19. And finally:

- Do not arrest or un-necessarily detain the stowaway (this does not affect the right of the master to maintain discipline and order on board) but bear in mind that the master may have to detain the stowaway(s) for their own safety or for the safety of the crew/ship;
- Give the stowaway basic training in case of emergency (fire or abandon ship); make sure he/she has got a lifejacket and has been allocated an emergency roster in case of abandon ship;
- Do not force a stowaway to work; if he/she wishes to work, make sure basic training is given on accident prevention and resolve the question of remuneration and liability;
- Be aware of flag state laws and regulations which might need to be taken into account.

20. The master has also to consider the status of a stowaway in relation to the 'Safety of Life at Sea (SOLAS) Convention, though according to national laws he/she might be a supernumerary onboard, according to SOLAS the person is to be considered a 'passenger', or if working, a 'seafarer', when additional regulations, e.g. the Convention on Seafarers Training and Certification of Watchkeepers (STCW) may apply.

21. When considering the question of work and remuneration the following points should be considered:

- the work must be suited to the stowaway and not reduce the remuneration of any other crew member(s),
- the necessary training must be in line with international standards and be given prior to commencement of work;
- the remuneration must be appropriate to the work performed, non discriminatory and in line with applicable collective agreements.

22. In addition the master should use a great deal of care and tact when trying to obtain information from a stowaway. The master is not an immigration officer and should always keep in mind that the stowaway may have suffered a great deal and be traumatised. The ITF therefore considers the interviewing of stowaways to be the responsibility of governments and their relevant authorities who are trained for that task.

23. All efforts should be made to have the stowaway disembarked at the earliest possibility. Until that happens, they should be treated in accordance with these guidelines.