

SIGNALS

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Stowaways

An increasing problem

SPECIAL EDITION

The problem of stowaways has increased over the past few decades and it will get worse. Once an occasional nuisance, stowaways are now a major international problem in terms of human suffering, time and cost. As the numbers of refugees and migrants increase world-wide, many governments are hardening their attitudes and reducing the number of immigrants they accept. Some governments refuse to help repatriate stowaways from ships in their ports under any circumstances. Refusal has even been reported when there is insufficient life saving equipment for the total number of crew and stowaways on board.

The time and manpower spent on sorting out the practical and administrative consequences of a stowaway incident, as well as the delays to the ship, can be out of all proportion to the

initial problem. There have also been some worrying trends recently including the prospect of a threat to the security of ships' crews by hostile stowaways or large groups of stowaways.

This Signals Special will examine the problem in more detail, including where the geographical hot spots are and the different types of stowaways as well as the roles that the charterers and ship managers should play.

Ship operators may experience similar problems when trying to repatriate other persons, such as refugees who have been rescued at sea from unseaworthy craft. Immigration authorities will hopefully look upon these refugees more favourably than stowaways and assistance may be available from the United Nations High Commissioner

for Refugees (UNHCR). The P&I Club will of course provide as much help as possible to the Member, and seafarers should never hesitate to fulfil their obligation to assist persons in distress. Although this Special will concentrate on stowaways a lot of the advice given will be relevant to such refugees.

There does not appear to be much good news for ship operators, but despite all of these problems, the P&I Clubs are able to assist their Members to successfully resolve stowaway and refugee cases. It is hoped that this Special will provide further practical help as well as some reassurance to Members and their sea staff.

The United Nations High Commissioner for Refugees can be contacted at C.P. 2500, 1211 Geneva 2, Switzerland, Telephone: + 41 22 739 8111, Website: www.unhcr.ch

Types of stowaway

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.

Different types of stowaways present different problems to ships 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 to know who you 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 stowaways may simply be moving in an attempt to obtain a better standard of living.

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 have no intention of making their presence known to the authorities, hoping to enter a country undetected. 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 at a later date if an application for asylum is rejected by the immigration authorities.

Criminals

The last type of stowaway, and perhaps the most worrying, are the criminals. They may be violent and unco-operative and may be involved with drug transportation or other illegal activities. These stowaways often travel in groups and can present a serious threat to the ship's crew. They sometimes seek to profit by demanding money from the master or shipowner in return for co-operation.

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NORTH OF ENGLAND

The size of the problem

The size of the problem is difficult to ascertain, the IMO figures for 2000 show over 1,300 reported stowaway incidents, an increase from the 545 quoted for 1999. Many of the incidents involved more than one stowaway. Part of the increase in number is probably due to better reporting, but there were undoubtedly many incidents that were not reported.

UNHCR figures estimate that the number of people giving "cause for

concern" world-wide has risen from about 15 million in 1990 to over 22 million in 2000, causing a corresponding rise in the number of stowaways.

As an example, over 95,000 applications for asylum were submitted in the United Kingdom in 2000. All those persons had to arrive by air, the channel tunnel or sea, many illegally.



Fines

The Association, with the help of many of its P&I correspondents from around the world, has gathered information about the amount of assistance governments give to ship operators to repatriate stowaways. However, legislation in many countries also allows the authorities to impose fines on ships carrying stowaways.

Fines for having a stowaway on board

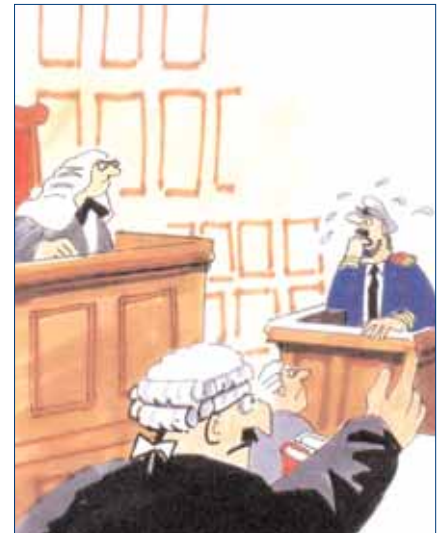
Many countries can impose fines for having stowaways on board a ship when it arrives. These fines may be mitigated in most cases if the ship operator and master have complied with all the immigration requirements of that particular country.

Fines if a stowaway escapes

Many countries impose fines if stowaways escape from a ship. These fines may be mitigated in some circumstances. Some countries also require financial security to be provided against the event of a stowaway escaping whilst the ship is in port.

Spain is top of the penalty league as it is able to impose a fine of over US \$160,000 if a stowaway escapes from a ship.

The tables on this page are based on information given by P&I correspondents world-wide but are not exhaustive and are only intended as a guide. The Association is very grateful to all the correspondents who provided information. Members requiring information about any particular country should contact Karen Sackfield in the personal injury department at the Association.



Fines for having a stowaway on board

Angola	Philippines
Argentina	Poland
Australia*	Portugal
Bulgaria	Saudi Arabia
Canada*	South Africa
Chile	United Kingdom
China	USA*
Croatia	
France	
Lebanon	
Mexico	
Netherlands	
New Zealand	
Nigeria	

Countries amongst those that may impose fines of US \$1,000 or over per stowaway on board in certain circumstances. Countries marked * may impose fines of US \$5,000 or over.

Fines for escaping stowaways

Angola	Lithuania*
Argentina	Malaysia*
Australia	Netherlands
Belgium	New Zealand
Brazil	Phillipines
Bulgaria*	Portugal
Canada	Puerto Rico
China	Seychelles
Croatia	South Africa
France	Spain*
Gibraltar	USA
Greece	
Indonesia	
Italy*	
Korea	
Lebanon	

Countries amongst those that may in certain circumstances impose fines of over US \$1,000 per escaping stowaway. Countries marked * may impose fines of US \$10,000 or over.

IMO Guidelines

Shipowners have traditionally been made responsible for stowaways, but without assistance from governments and port authorities they and the ships' crews can often do little to prevent stowaways. Problems with repatriating stowaways are increasing and greater restrictions on movement without travel documents are making cases more difficult to resolve. More co-operation from governments would be very beneficial.

The IMO recognised the problem some years ago and issued guidelines that were adopted by an IMO Assembly Resolution in 1997. These appropriately named *Guidelines on the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases* ask governments to co-operate and share the responsibility for resolving stowaway cases. Governments are urged to implement the guidelines in national policies and legislation.

In the guidelines, governments at the port of embarkation are also urged to co-operate with industry to prevent stowaways. Governments at the ports after discovery are asked to co-operate to resolve the situation, while the shipowner pays any reasonable costs.

Shipowners and ships' masters have specific responsibilities under the guidelines which are summarised on Page 11.



FAL Convention

There has been some doubt as to whether the guidelines have had any practical effect in helping with the prevention and repatriation of stowaways. Many countries have even hardened their attitudes recently and acted in a way counter to the guidelines. As a result the IMO has proposed some amendments to incorporate standards and recommended practices for the resolution of stowaway cases into the Convention on Facilitation of International Marine Traffic (FAL Convention), which has already been ratified

by over 80 countries representing over 50% of the world fleet. These will be put to the IMO's Facilitation Committee in 2002 with an intended entry into force during 2003.

The FAL Convention proposals may be the first step towards actually requiring the immigration authorities, ports and ships of contracting governments to co-operate to resolve stowaway problems.

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, Tel: + 44 (0) 20 7735 7611, Fax: + 44 (0) 20 7587 3210, Website: www.imo.org



Hot spot summary

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, in the last 10 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 new and apparently very lucrative industry in the large scale movement of human cargo. It is clear that many economic migrants are lured by the promise of a better future elsewhere, irrespective of the truth and 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 of African origin 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



Chart courtesy of BIMCO

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, with the possible exception of Iran. Not many stowaways embark on Members' ships in Asian ports at present, although this can depend more on the local economic and political situation and will possibly be affected by the opening up of China.

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 are far greater.

Focus on Africa and Spain

The journey taken by a vast number of stowaways starts in Africa and ends in Europe. The articles on these pages give the views from the opposite ends of that journey, Africa and Spain. They may give a depressing picture of the situation,

but the P&I Clubs and their correspondents in the various countries are able to successfully resolve all stowaway problems eventually. The Association is very grateful to Aires Rodrigues and Mark Garcia Norris for their contributions.



Stowaways – An African perspective

Aires Rodrigues - A.R.M. International S.A.

“Undesirable Supernumeraries”, officially known as stowaways, have over the years become a major burden and a huge financial loss to ship owners. The hard-line approach from immigration authorities have been influenced by the ever-growing illegal trafficking / smuggling of African and other immigrants around the world.

Due to inadequate facilities in South Africa, where the unofficial number of illegal immigrants presently exceeds 8 million, illegal aliens found a loophole in the immigration system. A Section 41 Permit, a “Temporary Permit to a Prohibited Person” issued on the grounds of awaiting Immigration’s final decision on their case, permitted the bearer to seek employment and residence temporarily in the Republic. During the period set out on this permit the applicant was expected to report to the immigration office and was not permitted to leave the area of jurisdiction or the country. However, the majority of these “border line cases” never complied with these conditions and either moved on to other parts of the country, or even left South Africa altogether, at times as stowaways.

Ship owners, on the other hand, were under the impression that the “Section 41 Permit” enabled the stowaways concerned to return to South Africa as accepted temporary-residing refugees. This, however, was not the case and the fact that these persons had left the country without prior notification or permission from South African immigration authorities meant that the permit was termed null and void.

On 1st April 2000 South African immigration authorities revised the Act concerning asylum / refugee seekers. It is now controlled under Section 22 of the Refugee Act No. 30 of 1998. This, together with the increasing level of xenophobia amongst South Africans, has contributed to a sudden increase in the number of stowaways boarding from South African ports. Ship owners should advise their masters and crews to take note of this risk, maintain a strict watch and control access to

their vessels, during their stay in South African ports.

South African immigration tightened up their controls further on the possible influx of illegal immigrants into the country by requesting a transit visa from all deportees / stowaways transiting through South African international airports. Any airline carrier landing inadequately documented passengers now risks receiving a fine from South African Immigration of up to R5,000 per passenger.

South African Airways, Kenyan Airways and Air Tanzania Corporation, to name just a few, have become very stringent on their onboard security requirements for controlling stowaways. Accompanying escorts has become standard. South African Airways also requests a full behavioural report on the stowaways and a 1:1 ratio of stowaways and their security.

The repatriation of African stowaways has been made more complicated and difficult to stowaway-handling P&I Correspondents by the strong action taken by certain African countries against returned stowaways / deportees. Tanzania, whose stowaways are undoubtedly the most well travelled and experienced in East Africa, and possibly the whole of Africa, has recently taken strong measures to attempt to discourage this illegal immigration method by fining all offenders a minimum of US \$150, or the equivalent time served in jail. The natural reaction from Tanzanian stowaways to this is to simply refuse to admit their Tanzanian nationality, and try to pass as nationals from other countries, such as the Democratic Republic of Congo, Rwanda, Burundi, Kenya, or even Mozambique. In the case of Rwanda, Burundi and the Democratic Republic of Congo, the idea is to attempt to derail the repatriation process by possibly applying for refugee / political asylum status in countries abroad. Stowaways will choose countries such as Mozambique and Kenya for their proximity to Tanzania. In this way, they will be able to sneak home quickly and affordably, without too much fuss or restrictions.



Nigerians and Ghanaians top the stowaways ranks in West Africa, whilst Sierra Leonean is their preferred nationality of choice. Fortunately though, the immigration authorities in those two countries do not impose any form of punishment or judgement to return stowaways, making their repatriation more manageable.

In North Africa, Moroccans and Algerians are the most well travelled stowaways. A great number of these often allege to being Palestinian in order to benefit from a refugee/political asylum advantage in that Middle East region.

All these hurdles and restrictions make P&I Correspondents’ work that much more difficult and complicated, hence increasing their exposure and related costs whilst handling or processing stowaways.

The smooth disembarkation of stowaways in Africa is becoming more delicate and costly to achieve. Whilst, in countries such as Nigeria, Mozambique and Angola, fines of up to US \$2,000 per stowaway are often imposed on vessels, other African countries demand that all stowaways be fully documented before being disembarked. It is the role of a P&I correspondent to deal with this increasingly more bureaucratic system in a way not to inconvenience or affect the trading schedule of the protected vessels, their crew and owners.

In most stowaway cases a practical, results driven, approach is often the most effective, especially if handled by a correspondent specialist.

Stowaways to Spain

Mark Garcia Norris

Spain is open minded

Spain has work available for unskilled foreigners

Spain employs 25,000 illegal aliens for agricultural purposes per season

These are only some of the phrases that can be heard at the ports of many depressed countries with lines sailing to Spain. In dire straits... would you have any doubt about risking everything to reach the land of acceptance?

The fact is that for many years the social acceptance of illegal aliens in Spain has been exactly as defined in the three phrases, and the organised criminal networks know how to exploit the hopes of the less informed. However, the tide has changed radically during the last two months.

What exactly is the situation in Spain?

1) The social picture

South East Spain is mainly an agricultural area, with crops that require a very large workforce prepared to work in hard conditions (heat, poor accommodation). In the area of Almeria alone, approximately 30,000 foreigners (legal and illegal) work in agriculture.

Police control in those areas is not too abundant due to budget limitations, meaning that organised networks have been able to maintain illegal aliens in Spain in a very successful manner. On the other hand, most employers have helped create such a situation by contracting with the immigrants for their industries in a fairly open manner, while public authorities have been very relaxed with regards to the issue in order to avoid any political repercussions.

Realistically, the situation of illegal immigration did reach a breaking point during the summer months of 2000, when close to 300 entries in Spain were detected on a daily basis. At some places, the local population was less than the foreign workers. Obviously the tension could no longer be managed at both security and political levels, leading the newly elected Conservative government (with an absolute majority in Parliament) to take severe legislative action in order to reduce the problem.

2) The marine picture

Shipowners navigating to Spanish ports from third countries, or even travelling to or from the Canary Islands, Ceuta or Melilla to the Peninsula have suffered a continuous stowaway burden. Shipowners should be well aware of potential stowaways when their destination includes a Spanish port, especially if their port of origin includes Morocco,

Algeria, Ecuador, Colombia, or Rumania.

Police work has proved that some ports have a very developed and protected criminal network, including stevedores and public authorities which will insert the stowaways on board. This is especially true in ports of Morocco, and in the Moroccan frontiers towards the Spanish colonies of Ceuta and Melilla.

3) The legal picture

Three main laws apply to the stowaway problem:

i) The *State Ports and Merchant Marine Act* (27/1992, 24th of November)

With regards to stowaways:

- The shipowner is obliged to keep the stowaway on board, to feed, to maintain sanitary conditions, pay for a translator and repatriate him to his country of origin (understanding such country by the nationality of the stowaway).

- If the stowaway seeks political asylum, a temporary permission will be granted and the stowaway allowed to disembark, until an urgent court procedure decides on the reality of the asylum petition. If a permanent permission for asylum is not granted, the shipowner will have to finance the repatriation costs to the country of origin. Effectively, and unless the shipowner is working on a regular line which will return to the port of origin, this means that the stowaway will be repatriated by air.

- Rule 115.2.e) states that if a Master or Shipowner refuses to keep a stowaway on board when detected in Spanish Jurisdictional waters until the local authorities decide to accept him, the refusal will be considered as a very serious offence.

- Fines for shipowners for offences related to stowaways can reach a maximum sum of 30 million Pesetas (about US \$167,000), apart from repatriation and other costs charged (Rule 120).

ii) The *Immigration Act* (14/2000, 14th of December):

In combination with the above mentioned State Ports and Merchant Marine Act, the government introduced a new Act which effectively seeks to destroy the image of Spain as a flexible and uncontrolled promised land for illegal aliens. The main target of the Act has been the employers of illegal immigrants and the expulsion of undocumented residents, who can now be expelled within a period of 48 hours.



In theory, once the word of a tough control in Spain spreads, organised criminal networks will have fewer "clients", and the stowaway problem should be greatly reduced, taking into account that risking your life will no longer be compensated by an immediate job.

Also, and probably more importantly, the Spanish Foreign Ministry has set up several bilateral treaties with the countries of origin of the stowaways (even though some countries still have to reach an agreement). Treaties have been reached with Morocco, Poland and Ecuador, effectively translating into a greater control by local authorities of their citizens when leaving the country towards Spain, and a greater speed of acceptance when repatriation is involved.

iii) *Police Directives*:

These are established at local level and will greatly depend on the situation at each port. Most hot spots will have harsher procedures before stowaways are allowed to disembark.

Recommendations

When a stowaway is detected, the following steps are always recommended:

1) Inform local Spanish authorities at the earliest possible moment.

2) Transmit the following information with regards to the stowaway, as detailed as possible:

- Name
- Nationality
- Any documentation in power of the stowaway
- Port of origin of the stowaway
- Geographic location of the stowaway when detected
- Where the stowaway was found
- ETA of the vessel to Spain.

3) When informing the P&I Club, remember that Club Letters of Guarantee are not a listed Form of Guarantee (161/1997, 7th of February Act) in Spain, and therefore a bank guarantee might be required by local authorities.

Prevention by ships

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.

In practice ship operators need to provide masters with information that informs them of the ports where there is a high risk of stowaways and gives guidance on the methods for preventing stowaways getting on board and procedures for carrying out searches. The guidance and procedures should be issued as written instructions so that the master can use them to advise officers and ratings what is expected of them and how to carry out the company's procedures.

The Association has for many years published a set of stowaway search cards that can be used as a basis for organising and recording stowaway searches. To supplement these, this Special includes two new checklists to help ships' masters prevent stowaways and advise on the action to be taken if they are found.

There are many practical steps that the ships can take to prevent unauthorised persons boarding. A full-time gangway watch should be maintained, and access by other means such

as bunker barge ladders or mooring ropes monitored. If reduced crew sizes make this difficult, a shore watchman from a reputable company can be employed. Lighting should be used to illuminate the decks and means of access to the ship.

The ship may use a pass system for crew members and visitors and check the authority of people boarding. Some form of pass system for stevedores and other shore workers is also highly recommended.

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. Some shipowners weld doors to unused spaces closed whilst in port, taking care to follow the appropriate precautions for such hot work.

If cargo is not being worked, hatches and cargo space entrances need to be closed and locked and a deck watch operated. The hatches, and hatch covers if landed ashore, should be checked before and during closing to make sure that no stowaways have concealed themselves.



Notices warning that compartments contain poisonous gases can also be displayed as a deterrent. If a cargo space is to be fumigated, warning notices should be posted and a thorough search carried out prior to the fumigation taking place. Loud-hailers or loud-speakers, announcing in the appropriate languages that a space is to be fumigated, can 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. The 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.

Stowaways – the role of charterers

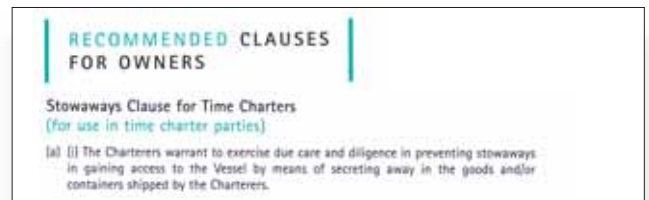
The expenses arising from the presence of stowaways on board a vessel are normally the responsibility of the owners / operators of that vessel but it is possible that the charterers may also have an interest depending on the exact circumstances of the incident.

This arises where the Bimco Stowaway Clause or similar is incorporated into the charterparty and under the terms of this, 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.

Certainly, in the case of such cargoes, this clause is desirable for owners as they 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. This includes ensuring that an adequate watch is maintained and adequate searches of the various compartments of the vessel are carried out to check for the presence of stowaways.

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. They will also have to bear any costs of damage to the vessel and any delays and expenses arising from this such as berth shifting costs, demurrage and hire. 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.

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.

The Association therefore recommends to all Members that such a clause is contained in all charterparties and this can be found in the recommended clauses section of the Association's current Rule Book.



Prevention by port operators

Preventing a stowaway boarding a ship is much easier if port security is good. Although many ports around the world do take the problem seriously, it would appear that many more take no responsibility for stowaway prevention.

In the following article, Hans Croon of Dart Line, explains the measures his company takes to prevent potential stowaways getting anywhere near a ship. Dart Line operates a terminal at Vlissingen in the Netherlands, from where many people attempt to reach the United Kingdom illegally. Dart Line are to be applauded for their efforts and in his article Hans provides a practical illustration of the sort of steps that many other port operators should be taking. The decline in the number of potential asylum seekers from Vlissingen in 2000 clearly illustrates the deterrent value of Dart's measures.

The Vlissingen asylum seekers problem

Hans Croon – Dart Line

Dart line operates ro-ro services from the Thames to Zeebrugge and Vlissingen (Holland). The problem of asylum seekers has been with us for many years but been particularly prevalent in the last 12 months.

Asylum seekers regularly tried to get abroad via unaccompanied units or by travelling amongst passengers on previous operators such as Olau lines from Sheerness. When Olau stopped in May 1994, Sally started a freight-only ferry to Ramsgate. A second ferry operator (named Ferrylink) started a freight-only service to Sheerness. Both ferries were attractive for asylum seekers (and the organisers behind it) as a lot of



CO2 detector in operation

unaccompanied traffic went through the Vlissingen port.

Ferrylink changed it's name to Euro Link and was involved in passenger traffic as well, which

for asylum seekers was now even more attractive due to limited times in port.

Sally (Vlissingen) was renamed Dart Line from 01.01.96 as it was taken over by Jacobs Plc. The UK port changed from Ramsgate to Dartford.

In mid 1996 Euro Link ended its ferry service due to lack of interest and high costs.

Dart Line remained alone as ferry operator to the UK and was able to expand.

With approximately 75,000 units shipped per year (and continuously growing) the route from Vlissingen to Dartford remains attractive for people who want to smuggle asylum seekers. Vlissingen has an excellent connection to the inland via the A58; no traffic lights or queues on this road. Thames Europort in Dartford is almost next to the M25.

Dart Line's terminal in Vlissingen is next to a company that trades sand and stone. This company, which is closed at night times, uses high 'gangways' on their compound which are excellent look-out posts for the smugglers. One of the smugglers climbs into a tower and acts as lookout while night-time security is out of sight. At that moment the fencing is cut and the organiser helps the asylum seekers through this fence. He then quickly opens a trailer or container (parked for export), closes it exactly as it was found and rushes off.

We at Dart Line take all reasonable measures to prevent asylum seekers. Initially dog patrols were used, although expensive, they were effective. A heart beat detector was tested various times, but due to problems with the software and the device itself, never seemed to be the best solution.

Since then Dart Line uses a CO₂ detection device, which is very successful. This device picks up the air in the trailers by means of a special probe inserted between the sideboards and the sheet. The display on the device tells you the concentration of CO₂.

If it is above a certain figure, then immigration is called to check the unit. During night-time our security staff checks the trailers and containers twice using this special device.

Furthermore all containers are sealed with bolt seals, which are very hard to open or break. All trailers are sealed with Dart Line uniquely numbered seals.

Our compound is secured by means of a high steel fence, reinforced in the last 12 months by even thicker steel, which is hard to cut.

We also use camera's on various positions on our compound; connected to a 24-hours video system!

All these costs and expenses cannot be recovered from either governments or port owners.



Security fence at Vlissingen

Asylum seekers are often from Kosovo, Romania or Sri Lanka. Although most of them are men, we sometimes are faced with whole families! A couple of weeks ago – when it was very cold – a married couple was found inside a trailer prior to shipment with two kids, one 3 years of age and one of 6 months!!!

If we check a unit and people are found, they are arrested and taken to the immigration office. They take down their names and fingerprints; this is done to check whether they were previously found or are wanted by police for criminal acts. If immigration suspect that the person is not telling the truth regarding his nationality, a translator is requested to find out the original nationality. If all details are completed, the asylum seeker is brought to a centre for asylum seekers. From there this person is sent back to his land of origin, or he may request asylum in Holland. In some cases this asylum seeker leaves this centre and tries again to get abroad.

The problem of asylum seekers is a political problem. As long as there are countries who are faced with poor economical standards or dealing with (civil) war, people will be looking for a place where it is good and safe to live. Every tool currently used to prevent asylum seekers (like CO₂ devices, heartbeat and other scanners) will eventually be useless, as the organisers will look for an alternative way round the system. As long as people are willing to pay large amounts of money to smugglers an asylum seekers problems will remain. Gangs who smuggle these people are often well organized. Throughout the journey of the asylum seekers they have safe shelters for them. We were once informed by a Sri Lankan asylum seeker that even brochures exist in which the actual route planned is mentioned!

The figures of captured asylum seekers in Vlissingen were;

1999 : 275

2000 : 162

Of course our company is always looking for new tools to ensure that no asylum seekers use our crossing.

Exercising due diligence

The roles of the ship operator and ship's crew in preventing stowaways is critical. Governments and other parties may increasingly attempt to place the blame on the ship. In the following article, Brigadier Parritt examines the steps that companies can take to ensure that they do their best to prevent stowaways getting on board. He also suggests that taking these steps and keeping suitable records may be essential when the ship operator is required to demonstrate at a later date that due diligence to prevent stowaways had been exercised.

Stowaways - A problem of due diligence

Brigadier (Retd) BAH Parritt CBE – International Maritime Security (IMS)

Background

At the very successful Stowaways Seminar organised by the Nautical Institute and sponsored by the North of England P&I Association in 1997, the following predictions were made:

1. As a result of wars, economic problems, religious and racial pressures, the number of people who wish to move illegally to other countries will increase and smuggling techniques will become more sophisticated.
2. This increase in the number of illegal immigrants will be resented by local populations who will fear the impact of the immigrants on their own job opportunities, standards of living and culture.
3. Public resentment will result in more governmental legislation aimed at halting the influx of illegal immigration.
4. Blending with this pressure to limit illegal immigration however, will be a strong and vocal sentiment that government procedures had to ensure that asylum seekers should be treated with dignity and compassion.

The final conclusion was that, given this complex economic and moral problem, the transport industry, and in particular the shipping industry would be put under great pressure to ensure that their vessels did not carry illegal immigrants i.e. stowaways.

The current situation

Four years later it is appropriate to review the conclusions of this Nautical Institute seminar, to see if they have been proved correct:

1. The number of illegal immigrants has grown significantly.

2. Whereas four years ago stowaway incidents were mainly limited to the United States and European countries, now it is an international problem which involves the Far East, Middle East, Central Europe, Africa and South and North America.
3. As a great deal of money can be made from smuggling people, illegal immigration has become part of "organised crime", is large in scale, well organised and has established close links with illegal drug trafficking.
4. In spite of continued pressure to show compassion and understanding towards illegal immigrants, governments have steadily implemented tighter controls and heavier penalties.
5. There has been an increase in legislation which has caused more loss and delay to the shipping industry.

Commercial claims and maritime security legislation

In addition to these correct predictions made at the 1997 Nautical Institute seminar regarding the problem of stowaways, another factor has arisen which has caused loss to the shipping industry. This has been the application of maritime security legislation, originally designed to prevent acts of terrorism, to cases involving stowaways.

Following the attack on the cruise ship the Achille Lauro, the International Maritime Organisation (IMO) produced "guidelines" which suggested ways whereby passenger ships could "prevent illegal acts at sea". Subsequent to these guidelines, three countries, the USA, UK and Canada have enacted specific maritime security legislation designed to establish uniform protective procedures on passenger ships visiting their ports. Although only three countries have enacted this specific maritime security legislation, the result has been that there is now an internationally recognised frame-work of maritime security. This has made it much easier to judge whether or not a passenger shipping company is showing "due diligence" and that a passenger ship is meeting "reasonable standards".

The new development is that, in the absence of any maritime security legislation designed to establish uniform standards of protection against stowaways, in litigation cases where loss has been caused by stowaways e.g. by contamination, lawyers are using maritime security legislation designed to protect passenger ships, to judge the standards of security on non-passenger ships.

In the past, the absence of maritime security legislation concerning stowaways has made arbitration about commercial loss and who is to blame, a judgmental matter based on precedent and the arbitrator's experience. This is now changing. In cases of loss due to stowaways, lawyers are now assessing the standard of "due diligence" against parameters laid down in passenger ship maritime security legislation.

For the company and the master, the need to prevent stowaways has always been obvious. Stowaways are trouble – expensive trouble. The new development is that if, as a result of a stowaway incident there is a court case, standards of "due diligence" will be judged against newly emerging international maritime security standards.

Practical steps the company can take

Certain measures can help a company demonstrate "due diligence":

1. The production and circulation of clear standing orders on the measures to be taken to prevent illegal access to the ship.
2. The supply to the ship of manuals dealing with the stowaway issue such as the Bimco Shipmasters Security Manual and the Nautical Institute publication "Stowaways by Sea".
3. The provision of anti-stowaway training material for example the buying or renting of anti-stowaway training videos.
4. The production of specific threat warnings and information about ports known to be at high risk from stowaways.
5. Continued attention being paid to anti-stowaway measures by marine superintendents with particular emphasis being paid to the ship's search plan.
6. Interest being shown by the company to all log references concerning stowaway prevention.
7. Willingness to provide additional finance for local security guards.
8. Provision of security equipment.

The ship

For the master and chief officer however, a wealth of paper does not provide great comfort. They are faced with short times in port, limited crew numbers and intensive work and rest requirements. They are faced by a skilled "enemy" determined to board his ship and capable of using any ruse or subterfuge to do so.

The problem of stowaways is in fact a very simple security problem – it is one of access control. In many ways, it is an easier problem than many others, in that a ship is a limited area, enclosed by a steel hull with relatively few openings and generally protected by a water obstacle.

Whether a ship is secure or not depends predominately on the attitude and interest of the master. Anti-stowaway measures take time and are tedious. If the master does not make it a priority, neither will the chief officer and certainly not the sailors, greasers and cooks.

Security and search measures must be initiated, continuously implemented and then continuously recorded. It does not help to prove the implementation of “reasonable standards” if the only reference in the log book or deck log concerning stowaway prevention, begins after a stowaway incident has taken place.

In practical terms, “reasonable standards” on a ship can be categorised into four basic measures:

- Gangway control
- Roving patrols
- Locking
- Searching

Of these, gangway control is the most important. In recent court cases, the area shown to be most inefficient has been gangway control. There have been countless cases of stowaways boarding a ship by entering via the gangway and not getting off. Excuses for this happening have been various, colourful and imaginative but they are just that, ‘excuses’.

Security equipment

While undoubtedly the stowaway problem could be largely eradicated by spending money on more crew, hired guards, closed circuit television cameras, lights and alarms etc., it is the area of gangway control where the most cost effective improvement can be made. The gangway is the ships’ most vulnerable area and yet many ships provide nothing to help the crewman on gangway-watch carry out his most difficult task of regulating a continual stream of visitors and stevedores getting on and getting off.

One way this can be done is to provide the gangway-watch with a robust, easy to handle “Anti-Stowaway Kit”. This kit should contain



IMS Anti-Stowaway Kit

an appropriately designed visitors book, visitors passes, visitors pass case and several alternative ways of keeping control over stevedores where a conventional pass system is not appropriate. The kit should also provide an aid to searching and restraint.

The provision of such an anti-stowaway kit fulfils two functions: firstly it provides the master and chief officer with a genuine additional capability to deter and detect stowaways; secondly, it shows that the company and the ship have indeed taken positive measures, over a long period, to ensure a “reasonable standard” and demonstrate “due diligence”.

Conclusions

The predictions of the 1997 Nautical Institute seminar have proved correct. Stowaways have increased in number and will continue to do so. Public resentment, although tempered by compassion, will continue to act as a stimulus for governments to enact more and more preventative legislation. This legislation will impose further burdens on ship owners and masters and subject them to greater public accountability.

In addition to these government penalties, in litigation cases involving commercial loss due to stowaways, lawyers are now using maritime security legislation, initially designed to

protect against acts of terrorism, as a guideline to decide if the company has shown the correct level of “due diligence” and the ship has established “reasonable standards”.

The lesson of the recent past is that continuity of interest is a powerful answer to the accusation of negligence. Company standing orders should be clear, and their value enhanced by records proving continual attention focused on the subject. For the ship, the best defence is the dedication of the master to establish routine security measures and then to see that they are enforced and continually recorded.

The provision of security equipment will help the master, but this equipment can be expensive. One step which can be taken by ship owners is to provide their masters with an additional capability to improve the efficiency of their gangway watch and searching procedures. It is a small, inexpensive step, but in the current climate does make a great deal of sense.

Further information about Anti-Stowaway Kits can be obtained from International Maritime Security (IMS), The Garden House, Little Chilmington, Ashford, Kent, TN23 3DN, United Kingdom Tel: + 44 (0) 1233 643805 Fax: + 44 (0) 1233 635290. Email: intmarsec@clara.co.uk

P&I Club cover for stowaways

Stowaway costs

Insurance cover for ship operators in respect of their losses and liabilities relating to stowaways is provided by the P&I Clubs. Like other clubs, the 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 later in the article – 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.”

In certain cases 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. 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 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.

Subject to the vessel's terms of entry these costs will normally be covered by the P&I Club.

Although P&I cover is very wide in its scope, it is important to note that certain expenses incurred may be specifically excluded. An example of this would be expenses incurred to repair damage to an entered ship which 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 the 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

“represent the net loss to the member in respect of costs of fuel, insurance, seaman's wages, stores, provisions and port charges and are incurred solely for the purpose of securing treatment for an injured or sick person or while awaiting a substitute for such a person or 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 which has occurred.

It is also important to note that in the event that Members wish to divert the vessel to land the stowaways then the Association must be contacted beforehand to confirm whether the diversion is deemed to be reasonable. If cargo is on board the vessel a diversion may, in certain circumstances, be deemed to be a 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.

P&I Club cover for persons in distress

Occasionally refugees may try and escape by sea in small and vulnerable craft and end up in a perilous situation. Ship operators and their sea staff should have no doubts about their duty to provide assistance to such persons in distress at sea.

Insurance cover is provided by the P&I Clubs for ship operators in respect of their losses relating to persons in distress. The North of England has a specific rule concerning persons in distress, Rule 19(8), which covers the Member's net loss in searching for and rescuing persons in distress, the costs of having them on board and proceeding to an appropriate port to land them. The cover provided under this Rule is entirely at the discretion of the Club's Directors.

Stowaway checklists and questionnaires

This Signals Special contains two checklists and six questionnaires. They are laminated and punched so that they can be kept in a file on board ship and photocopied when needed.

The checklists provide the master with guidance on preventing stowaways from boarding and the action to take if any stowaways are later found.

The master can use the questionnaires to help him prepare and send the stowaway information required by the flag State, the authorities at the next port of call and the P&I Club. They are provided in Arabic, simplified Chinese, English, French, Portuguese and Swahili. The questionnaires have been designed by the Association with the help of ARM International in Durban and result from many years of practical experience in resolving stowaway cases. They should also meet typical IMO member state requirements for information.

Questionnaires in other languages are also available from the Association.

Members requiring additional copies of the checklists or questionnaires should contact the loss prevention department at the Association or visit its website at www.nepia.com



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.

Stowaways on board ship

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 number and 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

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 store room, 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.

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



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 try to 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

Disembarkation and repatriation

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.

Stowaway incidents can be very frustrating for all involved. In addition, owners can incur considerable costs. It is undoubted that extra time spent carrying out a thorough stowaway search prior to the vessel's departure from the port, will help prevent unnecessary costs and inconvenience later into the voyage. Stowaways will however continue to find more inventive ways of boarding vessels and they will, on occasions remain undetected prior to the vessel's departure from port.

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.

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

Search and question

The stowaways should be searched to determine whether they are carrying any documentation which may assist in their identification.

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 those provided by the Association, and which accompany this Signals Special. Masters should however be aware that a high percentage of stowaways will deliberately provide false details in order to hamper repatriation.

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

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.

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.



Further information

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

Any Member who requires further information or advice about stowaways should contact Karen Sackfield, or any other member of the personal injury team at the Association in Newcastle.

*In this publication all references to the masculine gender are for convenience only and are also intended as a reference to the female gender. 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 with appropriate cover should contact the Association's FD&D dept. for legal advice on particular matters.

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