

Resolution A.871(20)

Adopted on 27 November 1997

(Agenda item 13)

**GUIDELINES ON THE ALLOCATION OF RESPONSIBILITIES TO SEEK THE SUCCESSFUL
RESOLUTION OF STOWAWAY CASES**

THE ASSEMBLY,

HAVING CONSIDERED the general purposes of the Convention on Facilitation of International Maritime Traffic, 1965, as amended, and in particular article III thereof,

NOTING with concern the number of incidents involving stowaways, the consequent potential for disruption of maritime traffic, the impact such incidents may have on the safe operation of ships and the considerable risks faced by stowaways, including loss of life,

RECALLING that the International Convention Relating to Stowaways, 1957, which attempted to establish an internationally acceptable regime for dealing with stowaways, has not yet come into force,

AGREEING that, for the purposes of this resolution, 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 departed from a port and reported as a stowaway by the master to the appropriate authorities,

TAKING INTO ACCOUNT that some stowaways may be asylum-seekers and refugees, which should entitle them to such relevant procedures as those provided by international instruments and national legislation,

BEING AWARE that, in the absence of an internationally agreed procedure for dealing with stowaways, considerable difficulties are being encountered by shipmasters and shipping companies, shipowners and ship operators in disembarking stowaways from ships into the care of the appropriate authorities,

APPRECIATING Member Governments' difficulties in accepting stowaways for examination pending repatriation and then allowing the vessels concerned to sail,

RECOGNIZING, therefore, the need to establish practical and comprehensive guidance on procedures to be followed by all the authorities and persons concerned in order that the return or repatriation of a stowaway may be achieved in an acceptable and humane manner,

AGREEING that the existence of such guidance should in no way be regarded as condoning or encouraging the practice of stowing away and other illegal migration, and should not undermine efforts to combat the separate problems of alien smuggling or human trafficking,

BELIEVING that, at present, stowaway cases can best be resolved through close co-operation among all authorities and persons concerned,

BELIEVING FURTHER that, in normal circumstances, through such co-operation, stowaways should, as soon as practicable, be removed from the ship concerned and returned to the country of nationality/citizenship or to the port of embarkation, or to any other country which would accept them,

RECOGNIZING that stowaway incidents should be dealt with humanely by all parties involved, giving due consideration to the operational safety of the ship and its crew,

WHILST URGING national authorities, port authorities, shipowners and masters to take all reasonable precautions to prevent stowaways gaining access to vessels,

HAVING CONSIDERED the recommendations made by the Facilitation Committee at its twenty-fifth session,

1. ADOPTS the Guidelines on the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases, set out in the annex to the present resolution;
2. URGES Governments to implement in their national policies and practices the procedures recommended in the annexed Guidelines;
3. URGES ALSO Governments to deal with stowaway cases in a spirit of co-operation with other parties concerned, on the basis of the allocation of responsibilities set out in the annexed Guidelines;
4. INVITES shipping companies, shipowners and ship operators to take on the relevant responsibilities set out in the annexed Guidelines and to guide their masters and crews as to their respective responsibilities in stowaway cases;
5. INVITES Governments to develop, in co-operation with the industry, comprehensive strategies to prevent intending stowaways from gaining access to ships;
6. REQUESTS the Facilitation Committee to continue to monitor the effectiveness of the annexed Guidelines on the basis of information provided by Governments and the industry, to keep them under review and to take such further action, including the development of a relevant binding instrument, as may be considered necessary in the light of developments;
7. REVOKES FAL.2/Circ.43.

Annex

GUIDELINES ON THE ALLOCATION OF RESPONSIBILITIES TO SEEK THE SUCCESSFUL RESOLUTION OF STOWAWAY CASES

- 1 Masters, shipowners,* port authorities, national Administrations, and other bodies including security operators all have a responsibility to co-operate to prevent illegal access to a vessel while it is in port. However, no matter how effective routine port and ship security is, there will still be occasions when stowaways gain access to vessels, either secreted in the cargo or by surreptitious boarding.
- 2 For the purposes of the Guidelines 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 departed from a port and reported as a stowaway by the master to the appropriate authorities.
- 3 The resolution of stowaway cases is difficult because of different national legislation in each of the potentially several countries involved: the country of embarkation, the country of disembarkation, the flag State of the vessel, the country of apparent, claimed or actual nationality/citizenship of the stowaway, and countries of transit during repatriation.
- 4 There are, however, some basic principles which can be applied generally. These are as follows:
 - .1 A recognition that stowaways arriving at or entering a country without the required documents are, in general, illegal entrants. Decisions on dealing with such situations are the prerogative of the countries where such arrival or entry occurs.

* Including any persons or party acting on behalf of the owner of the vessel.

- .2 Stowaway asylum-seekers should be treated in compliance with international protection principles as set out in international instruments* and relevant national legislation.
- .3 The shipowner and his representative on the spot, the master, as well as port authorities and national Administrations, should co-operate as far as possible in dealing with stowaway cases.
- .4 Shipowners and their representatives on the spot, masters, port authorities and national Administrations should have security arrangements in place which, as far as practicable, will prevent intending stowaways from getting aboard a ship or, if this fails, will detect them before a ship arrives at port. Where national legislation permits, national authorities should consider prosecution of stowaways for trespassing upon or damaging the property of the shipping company, or the cargo.
- .5 All parties should be aware that an adequate search may minimize the risk of having to deal with a stowaway case and may also save the life of a stowaway who may, for example, be hiding in a place which is subsequently sealed and/or chemically treated.
- .6 Countries should admit returned stowaways with full nationality/citizenship status of that country or a right of residence.
- .7 The country of the original port of embarkation of a stowaway should normally accept the return of such a stowaway for examination pending final case disposition.
- .8 Every effort should be made to avoid situations where a stowaway has to be detained on board a ship indefinitely. In this regard countries should co-operate with the shipowner in arranging the return of a stowaway to an appropriate country.
- .9 Stowaway incidents should be dealt with humanely by all parties involved. Due consideration must always be given to the operational safety of the ship and to the well-being of the stowaway.

5 As a first step in addressing the issue, a framework of the various responsibilities, rights and liabilities of the parties involved needs to be identified and agreed. The following allocation of responsibility is suggested:

.1 *The master*

- .1.1 to make every effort to determine immediately the port of embarkation of the stowaway;
- .1.2 to make every effort to establish the identity, including the nationality/citizenship, of the stowaway;
- .1.3 to prepare a statement containing all information relevant to the stowaway, in accordance with information specified in the standard document annexed to these Guidelines, for presentation to the appropriate authorities;
- .1.4 to notify the existence of a stowaway and any relevant details to his shipowner and appropriate authorities at the port of embarkation, the next port of call and the flag State;
- .1.5 not to depart from his planned voyage to seek the disembarkation of a stowaway to any country unless repatriation has been arranged with sufficient documentation and permission given for disembarkation, or unless there are extenuating security or compassionate reasons;
- .1.6 to ensure that the stowaway is presented to the appropriate authorities at the next port of call in accordance with their requirements;

* Reference is made to the provisions of the United Nations Convention relating to the Status of Refugees of 28 July 1951 and of the United Nations Protocol relating to the Status of Refugees of 31 January 1967.

- .1.7 to take appropriate measures to ensure the security, general health, welfare and safety of the stowaway until disembarkation;
- .2 *The shipowner or operator*
 - .2.1 to ensure that the existence of, and any relevant 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;
 - .2.2 to comply with any removal directions made by the competent national authorities at the port of disembarkation;
- .3 *Country of first scheduled port of call after discovery of the stowaway (port of disembarkation)*
 - .3.1 to accept the stowaway for examination in accordance with the national laws of that country and, where the competent national authority considers that it would facilitate matters, to allow the shipowner and his named representative and the competent or appointed P&I Club correspondent to have access to the stowaway;
 - .3.2 to consider allowing disembarkation and provide, as necessary and in accordance with national law, secure accommodation which may be at the expense of the shipowner or agents, where:
 - .3.2.1 a case under .3.1 is unresolved at the time of sailing, or
 - .3.2.2 national authorities are satisfied that arrangements have been made and will be effected for the early return or repatriation of the stowaway by other means (which may be at the expense of the shipowner or agents), or
 - .3.2.3 a stowaway's presence on board would endanger the safe operation of the vessel;
 - .3.3 to assist, as necessary, in the identification of the stowaway and the establishment of his or her nationality/citizenship;
 - .3.4 to assist, as necessary, in establishing the validity and authenticity of a stowaway's documents;
 - .3.5 to give directions for the removal of the stowaway to the port of embarkation, country of nationality/citizenship or to some other country to which lawful directions may be made, in co-operation with the shipowner and his nominated representative;
 - .3.6 in co-operation with the shipowner and his nominated representatives to discuss repatriation or removal arrangements or directions with the master/shipowner or their appointed representatives, keeping them informed, as far as practicable, of the level of detention costs, while keeping these to a minimum;
 - .3.7 to consider mitigation of charges that might otherwise be applicable when shipowners have co-operated with the control authorities to the satisfaction of those authorities in measures designed to prevent the transportation of stowaways;
 - .3.8 to issue, if necessary, in the event that the stowaway has no identification and/or travel documents, a document attesting to the circumstances of embarkation and arrival to enable the return of the stowaway either to his country of origin, to the country of the port of embarkation, or to any other country to which lawful directions can be made, by any means of transport;
 - .3.9 to hand over the document to the transport operator effecting the removal of the stowaway;
 - .3.10 to take proper account of the interests of, and implications for, the shipowner or agent when directing detention and setting removal directions, so far as is consistent with the maintenance of control, their duties or obligations to the stowaway under the law, and the cost to public funds;

- .4** *The country of the original port of embarkation of the stowaway (i.e. the country where the stowaway first boarded the ship)*
- .4.1** to accept any returned stowaway having nationality/citizenship or right of residence;
 - .4.2** to accept, in normal circumstances, a stowaway back for examination where the port of embarkation is identified to the satisfaction of the authorities of the receiving country;
 - .4.3** to apprehend and detain the stowaway, where permitted by national legislation, if the stowaway is discovered before sailing either on the vessel or in cargo due to be loaded; to refer the intended stowaway to local authorities for prosecution, and/or, where applicable, to the immigration authorities for examination and possible removal: no charge to be imposed on the shipowner in respect of detention or removal costs, and no penalty to be imposed;
 - .4.4** to apprehend and detain the stowaway, where permitted by national legislation, if the stowaway is discovered while the vessel is still in the territorial waters of the country of the port of his embarkation, or in another port in the same country (not having called at a port in another country in the meantime) no charge to be imposed on the shipowner in respect of detention or removal costs, and no penalty to be imposed;
- .5** *The apparent or claimed country of nationality/citizenship of the stowaway*
- .5.1** to make every effort to assist in determining the identity and nationality/citizenship of the stowaway and to document the stowaway accordingly, once satisfied that he or she holds the nationality/citizenship claimed;
 - .5.2** to accept the stowaway where nationality/citizenship is established;
- .6** *The flag State of the vessel*
- .6.1** to be willing, if practicable, to assist the master/shipowner or the appropriate authority at the port of disembarkation in identifying the stowaway and determining his or her nationality/citizenship;
 - .6.2** to be prepared to make representations to the relevant authority to assist in the removal of the stowaway from the vessel at the first available opportunity;
 - .6.3** to be prepared to assist the master/shipowner or the authority at the port of disembarkation in making arrangements for the removal or repatriation of the stowaway;
- .7** *Any countries of transit during repatriation*
- to allow, subject to normal visa requirements, the transit through their ports and airports of stowaways travelling under the removal instructions or directions of the country of the port of disembarkation.

Appendix

Stowaway details

SHIP DETAILS

Name of ship:

IMO Number:

Flag:

Company:

Company address:

Agent in next port:

Agent address:

IRCS:

Inmarsat number:

Port of registry:

Name of master:

Photograph of stowaway

STOWAWAY DETAILS

Date/time found on board:

Place of boarding:

Country of boarding:

Time spent in country of boarding:

Date/time of boarding:

Intended port of destination:

Intended final destination (if different):

Stated reasons for boarding the ship:

Emergency passport No:

When issued:

Where issued:

Date of expiry:

Issued by:

Home address:

Home town:

Country of domicile:

Profession(s):

Employer(s): [name and addresses]

Address in country of boarding:

Surname:

Given name:

Name by which known:

Religion:

Gender:

Date of birth:

Place of birth:

Claimed nationality:

ID document type:

Height (cm):

Weight (kg):

Complexion:

Colour of eyes:

Colour of hair:

Form of head/face:

Marks/characteristics: [e.g. scars, tattoos, etc.]

Passport No:

When issued:

Where issued:

Date of expiry:

Issued by:

First language:

Spoken Read Written

Other languages:

Spoken Read Written

ID Card No:

When issued:

Where issued:

Date of expiry:

Issued by:

Marital status:

Name of spouse:

Nationality of spouse:

Address of spouse:

Seaman's Book No:

When issued:

Where issued:

Date of expiry:

Issued by:

Names of parents:

Nationality of parents:

Address of parents:

OTHER DETAILS

Method of boarding, including other persons involved (e.g. crew, port workers, etc.), and whether they were secreted in cargo/container or hidden in the vessel:

Inventory of stowaway's possessions:

Was the stowaway assisted in boarding the vessel, or assisted by any member of the crew? If so, was any payment made for this assistance?

Other information (e.g. names and addresses of colleagues, community leader, e.g. mayor, tribal chief, contacts in other parts of the world):

Statement made by stowaway:

Statement made by master (including any observations on the credibility of the information provided by the stowaway):

Date(s) of interview(s):

Stowaway's signature

Date:

Master's signature

Date: