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ETF Policy Document on Stowaway Incidents:

**The Effects on Safety and Extra Burdens to which Crews
Are Exposed**



**EUROPEAN
TRANSPORT
WORKERS'
FEDERATION**

1. Introduction

The IMO Convention on Facilitation of International Maritime Traffic, 1965, as amended, (The 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 onboard 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"***.

Actually, a stowaway is a person who breaks into the ship's Safety Management System.

On the contrary, a person who is taken on board from the sea for safety reasons is a part of the ship's established Safety Management System.

According to maritime law, no ship or ship's crew member, nor any other personnel such as a passenger etc., can enter the authorised territorial water of any country without carrying valid documents. Though most countries are very strict about these laws, there are countries wherein local people are able to enter port areas and secretly climb aboard ships to travel illegally to different countries.

Stowaway incidents should be dealt with in a manner consistent with humanitarian principles. Due consideration must always be given to the operational safety and security of the ship and the safety and well-being of the stowaway.

Stowaway asylum-seekers should be treated in accordance with international protection principles as set out in international instruments, such as 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, as well as relevant national legislation.

Between 2010 and Oct 2020, more than 110 ports around the world were reported with stowaway incidents. Taking into account the increase in the number of incidents related to stowaways on ships, these incidents represent a serious problem for ships, their crew and by extension, the shipping industry as a whole and it is of major importance to find solutions.

2. Resolutions and Guidelines on stowaways

ETF has recognised that Resolutions and Guidelines on stowaways are not seriously taking into account the extra burden that crews are exposed to.

IMO strongly encourages Member States to fully implement the International Convention for the Safety of life at Sea (SOLAS) (Chapter XI-2 on measures to enhance maritime security), and the International Ship and Port Facilities Security (ISPS) Code, but there is no doubt that the safety and the health of the crew is not the centre of attention and prevention.

SOLAS, ISPS Code, as well as the guidelines developed from most of the P&I Clubs, focuses mainly on the

safety and the security of the ship. A big gap is obvious and there are no comprehensive regulations regarding the safety, security, and health of the crew. Existing International Conventions, Resolutions, Guidelines, and Guidance do not take into account the extra burden the crew is exposed to and they only deal with the problems faced by the **ship and industry**. Merchant ships are neither built nor equipped to facilitate groups of stowaways. This places much more pressure on the crews in providing humanitarian help.

It is taken for granted that the Master will clean up the complicated procedures for the repatriation of the stowaways, as well as any diplomatic mess and that the crew will work beyond the period agreed in their contracts to make sure that the stowaways stay on the ship safely and securely, whilst being dealt with a manner consistent to humanitarian principles. But when it comes to large groups of stowaways and/or their extended time on board, it will become very difficult for the Master and crew to comply with the requirements of human treatment of stowaways.

The crew, in order to act appropriately to ensure the security, general health, welfare and safety of the stowaway until disembarkation, should provide them with adequate provisioning, accommodation, proper medical attention and sanitary facilities. That means that most of the time, the crew will work in parallel with their main duties on board, resulting in the requirement to work with fewer hours of rest whilst being exposed to additional risks and dangers.

There is a great need for the development of concrete and comprehensive guidelines for the management of stowaway incidents, that will take into account the competencies and skills of the crew to face this challenge and at the same time to create a more solid preventive framework to ensure the necessary safety and security of the crew, the ship and the stowaways.

3. Key Issues

A ship can never be safe if the crew itself is not.

Key issues like:

- the ongoing fatigue;
- the physical and mental exhaustion of seafarers;
- the hours of rest and the need for safeguarding clauses, where seafarers are not required to work beyond the period agreed in their contracts;
- ensuring the fundamental social and employment rights of seafarers;

should be taken seriously into account, especially nowadays amidst the COVID–19 pandemic which has created an unprecedented crew change crisis, impacting upon hundreds of thousands of seafarers, with some of them approaching two years stuck at sea. In addition, the risk of contraction of infectious diseases from the stowaways should be taken seriously into account.

While the extra pressures of the COVID–19 pandemic are fully acknowledged, it remains vital that States fulfil their obligations to cooperate to find pragmatic and swift long-term solutions guaranteeing prompt disembarkations of stowaways.

4. The way forward

ETF strongly recommends that the relevant maritime stakeholders (IMO, European Commission, ICS, ITF, P&I Clubs, Classification Societies/RO's etc.) redesign and revise Resolutions, Guidelines, in concrete and comprehensive ways, ensuring that the extra burden crews are exposed to, are seriously taken into account.

Guidance on Stowaways needs a revision including:

- A direct connection to the provisions of the ISM Code. The Ship's Safety Management System (SMS) should include comprehensive stowaway procedures. The provisions of the ISM Code must be implemented. Applying an efficient Management System, can be an important factor in the reduction of the threats related to stowaways.

As is clearly provided by ISM Code: *"The safety-management system should ensure: compliance with mandatory rules and regulations; and those applicable codes, guidelines and standards recommended by the IMO, Administrations, classification societies and maritime industry organizations are taken into account."*

Also, it is the responsibility of the Company (ISM Code 6.2.2) to **ensure that the ship is appropriately manned in order to encompass all aspects of maintaining safe operations on board.**

- The routines that must be included in the ship's Safety Management System – include the PSC and P&I clubs;
- The need for a gaps analysis and a guidance to complement where necessary the ISPS Code. For example, there is a need to take into serious account that the ISPS Code underestimates the dangers of entry from the seaside of ships in port;

In any potential revision of the ISPS Code, ISM Code, or any complementary relevant Guidance, all the following elements should be taken into account:

- The manning, watchkeeping, hours of rest, fatigue and fear that must be considered;
- The criminalisation and cybersecurity threats;
- The facilities and emergency procedures that must be prepared, also for extra crew or hired guards;
- The necessary crew protective equipment and medication;
- The communications;
- The addition of safeguards, ensuring that the legislative frameworks in place provide sufficient clarity, in order to avoid any unnecessary legal issues and any acts of humanitarian aid are not criminalised. When ship's crew, dealing with a stowaway situation, they should be adequately protected and supported against any unnecessary legal troubles and associated expenses;

- Updates to the provided education and training of the crew to deal with stowaways. The next revision of the STCW must be updated and be implemented accordingly.

In Particular, Seafarers should be adequately trained in the face of challenging, potentially dangerous situations:

- A person might have chosen to be a stowaway for engaging in unlawful activities. They could be involved with the transportation of drugs or other illegal activities. These stowaways might be in groups, might carry/use force and weapons and pose a threat to the ship's crew;
- As there is a responsibility to monitor the mental and physical health of the stowaway, adequate relevant training and education should be provided to the seafarers;
- Any potential violent behavior from the side of the stowaway must be considered. In this case, the safety of the crew must be taken into account, and due to security concerns, the crew must be able to take full security precautions in this regard. For compelling reasons, a search of the stowaway can be carried out for any sharp objects or objects that may cause harm. The search should be strict but not violate the stowaway's rights;
- The stowaway must be kept at a secure location such as a cabin or store room to reduce the potential risk of escape and thus preventing legal risks for the Master in case of any attempt to disembark unsupervised;

5. References

1. [The Solas Chapter IX and the ISM Code.](#)

RELATED ACTS:

- [Regulation \(EC\) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships \(COSS\) and amending the Regulations on maritime safety and the prevention of pollution from ships \(OJ L 324, 29.11.2002, pp. 1–5\)](#)
- [Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations \(OJ L 131, 28.5.2009, pp. 47–56\).](#)
- [Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control \(OJ L 131, 28.5.2009, pp. 57–100\).](#)
- [Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships \(Recast\) \(OJ L 163, 25.6.2009, pp. 1–140\)](#)
- [Regulation \(EC\) 336.2006 on the Implementation of the International Safety Management Code within the EU.](#)

2. [The Solas Chapter XI-2 and the ISPS Code](#)

RELATED ACTS:

- [Regulation \(EC\) No 725.2004 on enhancing ship and port facility security](#)
 - [Port Security Directive 2005.65.EC on enhancing port security](#)
 - [Regulation \(EC\) 324.2008 on procedures for conducting Commission Inspections in the field of maritime security](#)
3. [IMO resolution A. 871 \(20\) – IMO guidelines of this publication.](#)
 4. [Stowaways' statistics](#)
 5. [FAL.2/Circ.50.Rev.3.](#)
 6. [RESOLUTION FAL.13\(42\) \(adopted on 8 June 2018\)](#)
 7. [FAL 43/13 1 February 2019](#)
 8. [Guidelines for the use of the module.](#)
 9. [Data on stowaway incidents collected by the International Group of P&I Clubs](#)
 10. [Gard Guidance on Stowaways](#)
 11. [Stowaways - North P&I Club](#)
 12. [<https://maritimecyprus.com/2021/04/18/ship-stowaways-guidance-and-checklists/>](#)
 13. [M/V CHAMPION PULA](#)