



ST. VINCENT AND THE GRENADINES

MARITIME ADMINISTRATION

CIRCULAR N° ISPS 016 - Rev. 1

IMO RESOLUTION A. 1027(26) AND FAL.11 (37) GUIDELINES ON THE ALLOCATION OF RESPONSIBILITIES TO SEEK THE SUCCESSFUL RESOLUTION OF STOWAWAY CASES

**TO: SHIPOWNERS, SHIPS' OPERATOR, MANAGERS
AND CREW**
APPLICABLE TO: ALL VESSELS
EFFECTIVE AS FROM: Date of this Circular

7th November 2012

The aim of this Circular is to inform all concerned parties to implement the necessary security measures to prevent stowaways' access either at sea or on arrival. When a stowaway is discovered, it indicates a failure in the implementation of the Ship Security Plan (SSP).

Shipowners, ships' operators, Masters of St Vincent and The Grenadines flagged vessels are reminded that this Administration has to be informed when stowaways are found onboard. For this purpose Annex of FAL.2/Circ.50/Rev.2 should be used as reporting format to this Administration.

This Administration highlights the importance of the IMO Resolutions A.1027 (26) and FAL.11 (37) in prevention of access by stowaways and the allocation of responsibilities to seek the successful resolution of the stowaway cases.

Annexes to this Circular:

Circular Fal.2/Circ.50/Rev 2
Resolution Fal.11 (37)
Resolution Fal.7 (29)
Resolution A.1027 (26)
Resolution A.871 (20)
Resolution MSC. 312(88)



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REPORTS ON STOWAWAY INCIDENTS

1 In 1997 the Assembly adopted resolution A.871(20) – "Guidelines on the Allocation of Responsibilities to seek the Successful Resolution of Stowaway Cases", by means of which Governments were invited to develop, in co-operation with the industry, comprehensive strategies to prevent intending stowaways from gaining access to ships.

2 The above resolution also requested the Facilitation Committee to continue to monitor the effectiveness of the Guidelines on the basis of information provided by Governments and industry, to keep them under review and to take such further action, including the development of a binding relevant instrument, as may be considered necessary in the light of developments.

3 The Facilitation Committee, at its twenty-ninth session in January 2002, adopted Amendments to the Convention on Facilitation of International Maritime Traffic, 1965 (FAL Convention), as amended, which introduced a new section 4 on Stowaways in the Annex to the FAL Convention prescribing Standards and Recommended Practices on matters relating to stowaways and which entered into force on 1 May 2003. In accordance with Recommended Practice 4.7.1 of the Convention, public authorities should report all stowaway incidents to the Secretary-General of the Organization.

4 In December 2002, a Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 as amended, adopted the International Ship and Port Facility Code. These special measures to enhance maritime security (i.e. chapter XI-2 of the 1974 SOLAS Convention and the ISPS Code) entered into force on 1 July 2004. An objective of this Code, *inter alia*, is to prevent unauthorized access to ships, port facilities and their restricted areas.

5 Accordingly, Member Governments and international organizations in consultative status are invited to provide the Organization with:

- .1 statistical data on stowaway incidents on a monthly basis, using the annexed reporting form; and
- .2 information on experience gained with the provisions of the Convention or the Guidelines and the measures taken and obstacles encountered with their implementation.

6 Member Governments and international organizations are further invited to encourage shipping companies, shipowners, ship operators, ship masters and industry organizations concerned to report in the annexed form, any relevant information, for the purpose of assisting the Committee in its further work on stowaways. This may be submitted to either Member Governments or international organizations for transmission to the Organization.

ANNEX

**STOWAWAY INCIDENTS
REPORTED BY MEMBER STATES OR INTERNATIONAL ORGANIZATIONS IN CONSULTATIVE STATUS**

No	Name of ship Type of ship Flag Gross tonnage IMO number	Date* and Place* of embarkation Date* and Place* of disembarkation	Dates* and Places* of attempted disembarkations	Number and Nationality * of stowaways	Assessment of the effectiveness of the FAL Convention, section 4, and the associated guidelines on the allocation of responsibilities to seek the successful resolution of stowaway cases, and any other relevant information	FAL.2/Circ. ANNEX Page 1
						Reporting Authority or international organization
1	2	3	4	5	6	7

* Please indicate by using an asterisk "*" if the information is not confirmed.

** The following information can be provided when available: Particular data on embarkation, presence on board, reason for failed disembarkation, disembarkation, repatriation and legal status of stowaways.

ANNEX 1

RESOLUTION FAL.11(37)

(Adopted on 9 September 2011)

REVISED GUIDELINES ON THE PREVENTION OF ACCESS BY STOWAWAYS AND THE ALLOCATION OF RESPONSIBILITIES TO SEEK THE SUCCESSFUL RESOLUTION OF STOWAWAY CASES

THE FACILITATION COMMITTEE,

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

RECALLING the provisions of resolution A.1027(26) on Application and revision of the Guidelines on the allocation of responsibilities to seek the successful resolution of stowaway cases (resolution A.871(20)),

RECALLING ALSO 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,

RECALLING FURTHER that, in accordance with article VII(2)(a) of the FAL Convention, the Facilitation Committee, at its twenty-ninth session, adopted on 10 January 2002 resolution FAL.7(29) on Amendments to the Convention on Facilitation of International Maritime Traffic, 1965, as amended, which introduced a new section 4 on Stowaways in the Annex to the FAL Convention prescribing Standards and Recommended Practices on matters relating to stowaways (the FAL provisions on stowaways), which entered into force on 1 May 2003,

RECALLING IN ADDITION 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 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,

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,

NOTING ALSO that several Member States which are also Contracting Governments to the FAL Convention:

- (a) have notified the Secretary-General, in accordance with article VIII(1) of the FAL Convention (in relation to the Standards specified in section 4 of the Annex to the FAL Convention) either that they find it impracticable to comply with the above mentioned Standards or of differences between their own practices and those Standards; or

- (b) have not yet notified the Secretary-General, in accordance with article VIII(3) of the FAL Convention, that they have brought their formalities, documentary requirements and procedures into accord in so far as practicable with the Recommended Practices specified in section 4 of the Annex to the FAL Convention,

RECALLING that resolution A.1027(26) expressed conviction of the need to align, to the extent possible and desirable, the Guidelines with the FAL provisions on stowaways and to revise them in a manner that reflects developments in efforts undertaken to prevent stowaways, as well as to provide guidance and recommendations, taking into account the FAL provisions on stowaways, on measures which can be implemented by vessels to prevent cases involving stowaways,

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 considerable difficulties continue to be encountered by shipmasters and shipping companies, shipowners and ship operators when stowaways are to be disembarked from ships into the care of the appropriate authorities,

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,

AGREEING FURTHER that the provisions of this resolution should, in accordance with resolution A.1027(26), be considered as being of relevance only with respect to:

- (a) Member States which are not Contracting Governments to the FAL Convention; and
- (b) Member States which are Contracting Governments to the FAL Convention and which:
 - (i) have notified the Secretary-General, in accordance with article VIII(1) of the FAL Convention (in relation to the Standards specified in section 4 of the Annex to the FAL Convention) either that they find it impracticable to comply with the aforementioned Standards or of differences between their own practices and those Standards; or
 - (ii) have not yet notified the Secretary-General, in accordance with article VIII(3) of the FAL Convention, that they have brought their formalities, documentary requirements and procedures into accord in so far as practicable with the Recommended Practices specified in section 4 of the Annex to the FAL Convention,

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

BELIEVING FURTHER that, in normal circumstances, through such cooperation, 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,

NOTING that the Maritime Safety Committee, at its eighty-eighth session, adopted resolution MSC.312(88) on Revised guidelines on the prevention of access by stowaways and the allocation of responsibilities to seek the successful resolution of stowaway cases,

1. ADOPTS the Revised guidelines on the prevention of access by stowaways and 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 amended procedures recommended in the annexed Guidelines;
3. URGES ALSO Governments to deal with stowaway cases in a spirit of cooperation with other parties concerned, on the basis of the allocation of responsibilities set out in the annexed Guidelines as from 1 October 2011;
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 cooperation with the industry, comprehensive strategies to improve access control and prevent intending stowaways from gaining access to ships;
6. REQUESTS the Facilitation Committee to continue to monitor the effectiveness of the annexed Revised 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;

ANNEX

REVISED GUIDELINES ON THE PREVENTION OF ACCESS BY STOWAWAYS AND THE ALLOCATION OF RESPONSIBILITIES TO SEEK THE SUCCESSFUL RESOLUTION OF STOWAWAY CASES

1 Introduction

1.1 Masters, shipowners, public authorities, port authorities and other stakeholders, including those providing security services ashore, have a responsibility to cooperate to the fullest extent possible in order:

- .1 to prevent stowaway incidents; and
- .2 to resolve stowaway cases expeditiously and secure that an early return or repatriation of the stowaway will take place. All appropriate measures should be taken in order to avoid situations where stowaways must stay on board ships indefinitely.

1.2 However, no matter how effective port and ship security measures are, it is recognized that there will still be occasions when stowaways gain access to vessels, either secreted in the cargo or by surreptitious boarding.

1.3 The resolution of stowaway cases is difficult because of different national legislation in each of the several potentially involved States: the State of embarkation, the State of disembarkation, the flag State of the ship, the State of apparent, claimed or actual nationality/citizenship or right of residence of the stowaway, and States of transit during repatriation.

2 Definitions

For the purpose of these Guidelines:

- .1 *Attempted stowaway.* A person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person, and who is detected on board the ship before it has departed from the port.
- .2 *Port.* Any port, terminal, offshore terminal, ship and repair yard or roadstead which is normally used for the loading, unloading, repair and anchoring of ships, or any other place at which a ship can call.
- .3 *Public authorities.* The agencies or officials in a State responsible for the application and enforcement of the laws and regulations of that State which relate to any aspect of the present Guidelines.
- .4 *Security measures.* Measures developed and implemented in accordance with international agreements to improve security on board ships, in port areas, facilities and of goods moving in the international supply chain to detect and prevent unlawful acts¹.

¹ Reference is made to chapter XI-2 of the International Convention for the Safety of Life at Sea, 1974, as amended (1974 SOLAS Convention) and the International Ship and Port Facility Security Code, as amended (the ISPS Code); and to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (1988 SUA Convention) and its 2005 Protocol (2005 SUA Protocol).

- .5 *Shipowner.* One who owns or operates a ship, whether a person, a corporation or other legal entity, and any person acting on behalf of the owner or operator.
- .6 *Stowaway.* A person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person and who is detected on board the ship after it has departed from a port, or in the cargo while unloading it in the port of arrival, and is reported as a stowaway by the master to the appropriate authorities.

3 Basic principles

On the basis of the experience thus far, the application of the following basic principles have been useful in preventing stowaway incidents and have been helpful in the speedy resolution of stowaway cases:

- .1 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 to the safety and well-being of the stowaway.
- .2 Public authorities, port authorities, shipowners and masters, should cooperate to the fullest extent possible in order to prevent stowaway incidents.
- .3 Shipowners, masters, port authorities and public authorities should have adequate 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 the ship leaves port or, at the latest, before it arrives at the next port of call.
- .4 Adequate, frequent and well timed searches 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.
- .5 Public authorities, port authorities, shipowners and masters, should cooperate to the fullest extent possible in order to resolve stowaway cases expeditiously and secure that an early return or repatriation of the stowaway will take place. All appropriate measures should be taken in order to avoid situations where stowaways must stay on board ships indefinitely.
- .6 Stowaways arriving at or entering a State without the required documents are, in general, illegal entrants. Decisions on dealing with such situations are the prerogative of the States where such arrival or entry occurs.
- .7 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 and relevant national legislation.²

- .8 Every effort should be made to avoid situations where a stowaway has to be detained on board a ship indefinitely. In this regard States should cooperate with the shipowner in arranging the disembarkation of a stowaway to an appropriate State.
- .9 States should accept the return of stowaways who have full nationality/citizenship status in that State, or have a right of residence in that State.
- .10 Where the nationality or citizenship or right of residence cannot be established, the State of the original port of embarkation of a stowaway should accept the return of such a stowaway for examination pending final case disposition.

4 Preventive measures

4.1 Port/terminal authorities

4.1.1 States and port and terminal owners, operators and authorities should ensure that the necessary infrastructure, and operational and security arrangements for the purpose of preventing persons attempting to stowaway on board ships from gaining access to port installations and to ships, are established in all their ports, taking into consideration when developing these arrangements the size of the port, and what type of cargo is shipped from the port. This should be done in close cooperation with relevant public authorities, shipowners and shore-side entities, with the aim of preventing stowaway occurrences in the individual port.

4.1.2 Operational arrangements and/or security plans should, inter alia, address the following issues where appropriate:

- .1 regular patrolling of port areas;
- .2 establishment of special storage facilities for cargo subject to high risk of access of stowaways, and continuous monitoring of both persons and cargo entering these areas;
- .3 inspections of warehouses and cargo storage areas;
- .4 search of cargo itself, when presence of stowaways is clearly indicated;
- .5 cooperation between public authorities, shipowners, masters and relevant shore-side entities in developing operational arrangements;
- .6 cooperation between port authorities and other relevant authorities (for example, police, customs, immigration) in order to prevent smuggling of humans;

² In addition, public authorities may wish to consider the non-binding conclusion of the UNHCR Executive Committee on Stowaway Asylum-Seekers (1988, No. 53 (XXXIX)).

- .7 developing and implementing agreements with stevedores and other shore-side entities operating in ports to ensure that only personnel authorized by these entities participate in the stowing/unstowing or loading/unloading of ships or other functions related to the ships stay in port;
- .8 developing and implementing agreements with stevedores and other shore-side entities to ensure that their personnel having access to the ship are easily identifiable, and a list of names of persons likely to need to board the ship in the course of their duties is provided; and
- .9 encouraging stevedores and other persons working in the port area to report to the public and port authorities, the presence of any persons apparently not authorized to be in the port area.

4.2 Shipowner/Master

4.2.1 Shipowners and masters should ensure that adequate security arrangements are in place which, as far as practicable, will prevent intending stowaways from getting aboard the ship, and, if this fails, as far as practicable, will detect them before the ship leaves port or, at the latest, before it arrives at the next port of call.

4.2.2 When calling at ports and during stay in ports, where there is risk of stowaway embarkation, security arrangements should at least contain the following preventive measures:

- .1 all doors, hatches and means of access to holds or stores, which are not used during the ship's stay in port should be locked;
- .2 access points to the ship should be kept to a minimum and be adequately secured;
- .3 areas seaward of the ship should be adequately secured;
- .4 adequate deck watch should be kept;
- .5 boardings and disembarkations should, where possible, be tallied by the ship's crew or, after agreement with the master, by others;
- .6 adequate means of communication should be maintained; and
- .7 at night, adequate lighting should be maintained both inside and along the hull.

4.2.3 When departing from a port, where there is risk of stowaway embarkation, a ship should undergo a thorough search in accordance with a specific plan or schedule, and with priorities given to places where stowaways might hide. Search methods, which are likely to harm secreted stowaways should not be used.

4.2.4 Fumigation or sealing should not be carried out until a thorough search of the areas to be fumigated or sealed has taken place in order to ensure that no stowaways are present in those areas.

5 Responsibilities in relation to the resolution of stowaway cases

5.1 Questioning and notification by the master

It is the responsibility of the master of the ship which finds any stowaways on board:

- .1 to make every effort to determine immediately the port of embarkation of the stowaway;
- .2 to make every effort to establish the identity, including the nationality/citizenship and the right of residence of the stowaway;
- .3 to prepare a statement containing all available information relevant to the stowaway for presentation to the appropriate authorities (for example, the public authorities at the port of embarkation, the flag State and any subsequent ports of call if relevant) and the shipowner. In this respect the reporting form provided in the Appendix should be used and completed as far as practicable;
- .4 to 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; with the understanding that when a stowaway declares himself/herself to be a refugee, this information should be treated as confidential to the extent necessary for the security of the stowaway;
- .5 not to depart from the planned voyage to seek the disembarkation of a stowaway discovered on board the ship after it has left the territorial waters of the State where the stowaways embarked unless permission to disembark the stowaway has been granted by the public authorities of the State to whose port the ship deviates, or repatriation has been arranged elsewhere with sufficient documentation and permission given for disembarkation, or unless there are extenuating safety, security, health or compassionate reasons;
- .6 to ensure that the stowaway is presented to the appropriate authorities at the next port of call in accordance with their requirements;
- .7 to take appropriate measures to ensure the security, general health, welfare and safety of the stowaway until disembarkation, including providing him/her with adequate provisioning, accommodation, proper medical attention and sanitary facilities;
- .8 to ensure that stowaways are not made to work on board the ship, except in emergency situations or in relation to the stowaway's accommodation on board; and
- .9 to ensure that stowaways are treated humanely, consistent with the basic principles.

5.2 The shipowner

It is the responsibility of the shipowner of the ship on which stowaways are found:

- .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 to comply with any removal directions made by the competent national authorities at the port of disembarkation; and
- .3 to cover any applicable costs relating to the removal, detention, care and disembarkation of the stowaway in accordance with the legislation of the States which may be involved.

5.3 The State of the first port of call according to the voyage plan

It is the responsibility of the State of first port of call according to the voyage plan after the discovery of the stowaway:

- .1 to accept the stowaway for examination in accordance with the national laws of that State and, where the competent national authority considers that it would facilitate matters, to allow the shipowner and the competent or appointed P&I Club correspondent to have access to the stowaway;
- .2 to favourably consider allowing disembarkation and provide, as necessary and in accordance with national law, secure accommodation which may be at the expense of the shipowner, where:
 - .1 a case is unresolved at the time of sailing of the ship, or
 - .2 the stowaway is in possession of valid documents for return and the public authorities are satisfied that timely arrangements have been or will be made for repatriation and all the requisites for transit fulfilled, or
 - .3 other factors make it impractical to remove the stowaway on the ship of arrival; such factors may include but are not limited to cases where a stowaway's presence on board would endanger the safe and secure operation of the ship, the health of the crew or the stowaway;
- .3 to make every effort to cooperate in the identification of the stowaway and the establishment of his/her nationality/citizenship or right of residence;
- .4 to make every effort to cooperate in establishing the validity and authenticity of a stowaway's documents and, when a stowaway has inadequate documents, to whenever practicable and to an extent compatible with national legislation and security requirements, issue a covering letter with a photograph of the stowaway and any other important information. The letter, authorizing the return of the stowaway either to his/her State of origin or to the point where the stowaway commenced his/her journey, as appropriate, by any means of transportation and specifying any other conditions imposed by the authorities, should be

- handed over to the operator effecting the removal of the stowaway. This letter will include information required by the authorities at transit points and/or the point of disembarkation;
- .5 to give directions for the removal of the stowaway to the port of embarkation, State of nationality/citizenship or right of residence or to some other State to which lawful directions may be made, in cooperation with the shipowner;
 - .6 to inform the shipowner on whose ship the stowaway was found, as far as practicable, of the level of cost of detention and return of the stowaway, if the shipowner is to cover these costs. In addition, public authorities should keep such costs to a minimum, as far as practicable, and according to national legislation, if they are to be covered by the shipowner, as well as keeping to a minimum the period during which shipowners are held liable to defray costs of maintenance of a stowaway by public authorities;
 - .7 to consider mitigation of charges that might otherwise be applicable when shipowners have cooperated with the control authorities to the satisfaction of those authorities in measures designed to prevent the transportation of stowaways; or where the master has properly declared the existence of a stowaway to the appropriate authorities in the port of arrival, and has shown that all reasonable preventive measures had been taken to prevent stowaways gaining access to the ship;
 - .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 facilitate the return of the stowaway either to his/her State of origin, to the State of the port of embarkation, or to any other State to which lawful directions can be made, by any means of transport;
 - .9 to provide the document to the transport operator effecting the removal of the stowaway;
 - .10 to take proper account of the interests of, and implications for, the shipowner 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;
 - .11 to report incidents of stowaways to the Organization³;
 - .12 to cooperate with flag State of the ship in identifying the stowaway and their nationality/citizenship and right of residence, to assist in removal of the stowaway from the ship, and to make arrangements for removal or repatriation; and
 - .13 if disembarkation is refused, to notify the flag State of the ship the reasons for refusing disembarkation.

³ Refer to FAL.2/Circ.50/Rev.2 on Reports on Stowaway Incidents, as may be amended.

5.4 Subsequent ports of call

When the disembarkation of a stowaway has not been possible at the first port of call, it is the responsibility of the State of subsequent port of call to follow the guidance provided in paragraph 5.3.

5.5 State of embarkation

It is the responsibility of the State of the original port of embarkation of the stowaway (i.e. the State where the stowaway first boarded the ship):

- .1 to accept any returned stowaway having nationality/citizenship or right of residence;
- .2 to accept a stowaway back for examination where the port of embarkation is identified to the satisfaction of the public authorities of the receiving State; the public authorities of the State of embarkation should not return such stowaways to the State where they were earlier found to be inadmissible;
- .3 to apprehend and detain the attempted stowaway, where permitted by national legislation, if the attempted stowaway is discovered before sailing either on the ship or in cargo due to be loaded; to refer the attempted stowaway to local authorities for prosecution, and/or, where applicable, to the immigration authorities for examination and possible removal: no charge is to be imposed on the shipowner in respect of detention or removal costs, and no penalty is to be imposed;
- .4 to apprehend and detain the stowaway, where permitted by national legislation, if the stowaway is discovered while the ship is still in the territorial waters of the State of the port of his/her embarkation, or in another port in the same State (not having called at a port in another State in the meantime): no charge is to be imposed on the shipowner in respect of detention or removal costs, and no penalty is to be imposed;
- .5 to report incidents of stowaways or attempted stowaways to the Organization⁴; and
- .6 to reassess the preventative arrangements and measures in place and to verify the implementation and effectiveness of any corrective actions.

5.6 State of nationality or right of residence

It is the responsibility of the apparent or claimed State of nationality/citizenship of the stowaway and/or of the apparent or claimed State of residence of the stowaway:

- .1 to make every effort to assist in determining the identity and nationality/citizenship or the rights of residence of the stowaway and to document the stowaway, accordingly once satisfied that he or she holds the nationality/citizenship or the right of residence claimed;

⁴ Refer to FAL.2/Circ.50/Rev.2 on Reports on Stowaway Incidents, as may be amended.

- .2 to accept the stowaway where nationality/citizenship or right of residence is established; and
- .3 to report incidents of stowaways to the Organization⁵.

5.7 The flag State

It is the responsibility of the flag State of the ship:

- .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/her nationality/citizenship or right of residence;
- .2 to be prepared to make representations to the relevant authority to assist in the removal of the stowaway from the ship at the first available opportunity;
- .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; and
- .4 to report incidents of stowaways to the Organization⁵.

5.8 States of transit during repatriation

It is the responsibility of any States of transit during repatriation to allow, subject to normal visa requirements and national security concerns, the transit through their ports and airports of stowaways travelling under the removal instructions or directions of the State of the port of disembarkation.

⁵ Refer to FAL.2/Circ.50/Rev.2 on Reports on Stowaway Incidents, as may be amended.

APPENDIX

**FORM OF STOWAWAY DETAILS REFERRED TO IN RECOMMENDED PRACTICE 4.6.2
OF THE CONVENTION ON FACILITATION OF INTERNATIONAL MARITIME
TRAFFIC 1965, AS AMENDED**

<p>SHIP DETAILS</p> <p><i>Name of ship:</i></p> <p><i>IMO number:</i></p> <p><i>Flag:</i></p> <p><i>Company:</i></p> <p><i>Company address:</i></p> <p><i>Agent in next port:</i></p> <p><i>Agent address:</i></p> <p><i>IRCS:</i></p> <p><i>INMARSAT number:</i></p> <p><i>Port of registry:</i></p> <p><i>Name of Master:</i></p> <p>STOWAWAY DETAILS</p> <p><i>Date/time found on board:</i></p> <p><i>Place of boarding:</i></p> <p><i>Country of boarding:</i></p> <p><i>Date/time of boarding:</i></p> <p><i>Intended final destination:</i></p> <p><i>Stated reasons for boarding the ship:*</i></p> <p><i>Surname:</i></p> <p><i>Given name:</i></p> <p><i>Name by which known:</i></p> <p><i>Gender:</i></p> <p><i>First language:</i></p> <p><i>Spoken:</i></p> <p><i>Read:</i></p> <p><i>Written:</i></p>	<p><i>Date of birth:</i></p> <p><i>Place of birth:</i></p> <p><i>Claimed nationality:</i></p> <p><i>Home address:</i></p> <p><i>Country of domicile:</i></p> <p><i>ID-document type, e.g. Passport No.:</i></p> <p><i>ID Card No. or Seaman's Book No.:</i></p> <p><i>If yes,</i></p> <p><i>When issued:</i></p> <p><i>Where issued:</i></p> <p><i>Date of expiry:</i></p> <p><i>Issued by:</i></p> <p><i>Photograph of the stowaway:</i></p> <div data-bbox="820 1205 1078 1500" style="border: 1px solid black; padding: 10px; text-align: center;"><p>Photograph if available</p></div> <p><i>General physical description of the stowaway:</i></p> <p><i>Other languages:</i></p> <p><i>Spoken:</i></p> <p><i>Read:</i></p> <p><i>Written:</i></p>
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* If the stowaway declares himself to be a refugee or an asylum seeker, this information shall be treated as confidential to the extent necessary to the security of the stowaway.

Other details:

- 1) *Method of boarding, including other persons involved (e.g. crew, port workers, etc.), and whether the stowaway was secreted in cargo/container or hidden in the ship:*

- 2) *Inventory of the stowaway's possessions:*

- 3) *Statement made by the stowaway:*

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

Date(s) of interview(s):

Stowaway's signature:

Master's signature:

Date:

Date:

ANNEX 2

RESOLUTION FAL.7(29)

Adopted on 10 January 2002

**ADOPTION OF AMENDMENTS TO THE CONVENTION ON FACILITATION OF
INTERNATIONAL MARITIME TRAFFIC, 1965, AS AMENDED**

THE FACILITATION COMMITTEE,

RECALLING article VII(2)(a) of the Convention on Facilitation of International Maritime Traffic, 1965, as amended, hereinafter referred to as "the Convention", concerning the procedure for amending the Annex to the Convention,

RECALLING FURTHER the functions which the Convention confers upon the Facilitation Committee for the consideration and adoption of amendments to the Convention,

HAVING CONSIDERED, at its twenty-ninth session, amendments to the Annex to the Convention proposed and circulated in accordance with article VII(2)(a) thereof,

1. ADOPTS, in accordance with article VII(2)(a) of the Convention, the amendments to the Convention, the text of which is set out in the annex to the present resolution;
2. DETERMINES, in accordance with article VII(2)(b) of the Convention, that the amendments shall enter into force on 1 May 2003 unless, prior to 1 February 2003 at least one-third of Contracting Governments have notified the Secretary-General in writing that they do not accept the amendments;
3. REQUESTS the Secretary-General, in conformity with article VII(2)(a) of the Convention, to communicate the amendments contained in the Annex to all Contracting Governments;
4. FURTHER REQUESTS the Secretary-General to notify all Signatory Governments of the adoption and entry into force of the said amendments.

ANNEX

AMENDMENTS TO THE ANNEX TO THE FAL CONVENTION, AS AMENDED

Section 1 - Definitions and general provisions

A. Definitions

1 Add the following definitions:

"Attempted stowaway. A person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person, and who is detected on board the ship before it has departed from the port."

"Port. Any port, terminal, offshore terminal, ship and repair yard or roadstead which is normally used for the loading, unloading, repair and anchoring of ships, or any other place at which a ship can call."

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

Section 2 - Arrival, stay and departure of the ship

2 In 2.1 **Standard**, a note should be added as follows:

"Note:

The following FAL forms have been developed, as presented in Appendix 1:

- General declaration - FAL Form 1
- Cargo Declaration - FAL Form 2
- Ship's Stores Declaration - FAL Form 3
- Crew's Effects Declaration - FAL Form 4
- Crew List - FAL Form 5
- Passenger List - FAL Form 6
- Dangerous Goods Manifest - FAL Form 7."

3 Add two renumbered new paragraphs after the existing paragraph 2.7.5 as follows:

"2.8 The Dangerous Goods Manifest shall be the basic document providing public authorities with the information regarding dangerous goods.

2.8.1 In the Dangerous Goods Manifest public authorities shall not require more than the following information:

- Name of ship
- IMO number
- Nationality of ship
- Master's name
- Voyage reference
- Port of loading
- Port of discharge
- Shipping agent
- Booking/reference number
- Marks and numbers:
 - container ID. No(s).
 - vehicle Reg. No(s).
- Number and kind of packages
- Proper shipping name
- Class
- UN Number
- Packing group
- Subsidiary risk(s)
- Flashpoint (in °C, c.c.)
- Marine Pollutant
- Mass (kg) – gross/net
- EmS
- Stowage position on board"

4 Renumber existing paragraphs 2.8 to 2.26 accordingly from 2.9 to 2.27 and amend the associated footnote under paragraph 2.13.

5 Delete paragraphs 2.7.6 and 2.7.6.1 and associated notes.

6 In renumbered paragraph 2.11 **Standard**, insert a new bullet as follows:

- "• 1 copy of the Dangerous Goods Manifest"

7 In renumbered paragraph 2.12 **Standard**, insert a new bullet as follows:

- "• 1 copy of the Dangerous Goods Manifest"

8 In the footnote under paragraph 3.3.1 replace “appendix 4” by “appendix 2”.

9 New Section 4 should be added as follows: "**Section 4 – Stowaways**

A. General Principles

4.1 Standard. The provisions in this section shall be applied in accordance with international protection principles as set out in international instruments, such as the UN Convention relating to the Status of Refugees of 28 July 1951 and the UN Protocol relating to the Status of Refugees of 31 January 1967, and relevant national legislation.*

4.2 Standard. Public authorities, port authorities, shipowners and their representatives and shipmasters shall co-operate to the fullest extent possible in order to prevent stowaway incidents and to resolve stowaway cases expeditiously and secure that an early return or repatriation of the stowaway will take place. All appropriate measures shall be taken in order to avoid situations where stowaways must stay on board ships indefinitely.

B. Preventive measures

4.3 Ship/Port preventive measures

4.3.1 Port/terminal authorities

4.3.1.1 Standard. Contracting Governments shall ensure that the necessary infrastructure, and operational and security arrangements for the purpose of preventing persons attempting to stow away on board ships from gaining access to port installations and to ships, are established in all their ports, taking into consideration when developing these arrangements the size of the port, and what type of cargo is shipped from the port. This should be done in close co-operation with relevant public authorities, shipowners and shore-side entities, with the aim of preventing stowaway occurrences in the individual port.

4.3.1.2 Recommended Practice. Operational arrangements and/or security plans should, *inter alia*, address the following issues where appropriate:

- a) regular patrolling of port areas;
- b) establishment of special storage facilities for cargo subject to high risk of access of stowaways, and continuous monitoring of both persons and cargo entering these areas;
- c) inspections of warehouses and cargo storage areas;
- d) search of cargo itself, when presence of stowaways is clearly indicated;
- e) co-operation between public authorities, shipowners, masters and relevant shore-side entities in developing operational arrangements;
- f) co-operation between port authorities and other relevant authorities (e.g. police, customs, immigration) in order to prevent smuggling of humans;

* In addition, public authorities may wish to consider the non-binding conclusion of the UNHCR Executive Committee on Stowaway Asylum-Seekers (1988, No. 53 (XXXIX))

- g) developing and implementing agreements with stevedores and other shoreside entities operating in national ports to ensure that only personnel authorized by these entities participate in the stowing/unstowing or loading/unloading of ships or other functions related to the ships stay in port;
- h) developing and implementing agreements with stevedores and other shoreside entities to ensure that their personnel having access to the ship is easily identifiable, and a list of names of persons likely to need to board the ship in the course of their duties is provided; and
- i) encouragement of stevedores and other persons working in the port area to report to the port authorities, the presence of any persons apparently not authorised to be in the port area.

4.3.2 Shipowner/Shipmaster

4.3.2.1 Standard. Contracting Governments shall require that shipowners and their representatives in the port, the masters as well as other responsible persons have security arrangements in place which, as far as practicable, will prevent intending stowaways from getting aboard the ship, and, if this fails, as far as practicable, will detect them before the ship leaves port.

4.3.2.2 Recommended Practice. When calling at ports and during stay in ports, where there is risk of stowaway embarkation, security arrangements should at least contain the following preventive measures:

- all doors, hatches and means of access to holds or stores, which are not used during the ships stay in port should be locked;
- access points to the ship should be kept to a minimum and be adequately secured;
- areas seaward of the ship should be adequately secured;
- adequate deck watch should be kept;
- boardings and disembarkations should, where possible, be tallied by the ships crew or, after agreement with the shipmaster, by others;
- adequate means of communication should be maintained; and
- at night, adequate lighting should be maintained both inside and along the hull.

4.3.2.3 Standard. Contracting Governments shall require that ships entitled to fly their flag, except passenger ships, when departing from a port, where there is risk of stowaway embarkation, have undergone a thorough search in accordance with a specific plan or schedule, and with priorities given to places where stowaways might hide. Search methods, which are likely to harm secreted stowaways shall not be used.

4.3.2.4 Standard. Contracting Governments shall require that fumigation or sealing of ships entitled to fly their flag may not be carried out until a search which is as thorough as possible of

the areas to be fumigated or sealed has taken place in order to ensure that no stowaways are present in those areas.

4.3.3 National Sanctions

4.3.3.1 Standard. Where appropriate, contracting Governments shall, according to their national legislation, prosecute stowaways, attempted stowaways and persons aiding stowaways in gaining access to ships.

C. Treatment of the stowaway while on board

4.4 General principles – Humane treatment

4.4.1 Standard. Stowaway incidents shall be dealt with consistent with humanitarian principles, including those mentioned in Standard 4 .1. Due consideration must always be given to the operational safety of the ship and the safety and well being of the stowaway.

4.4.2 Standard. Contracting Governments shall require that shipmasters operating ships entitled to fly their flag, take appropriate measures to ensure the security, general health, welfare and safety of the stowaway while he/she is on board, including providing him/her with adequate provisioning, accommodation, proper medical attention and sanitary facilities.

4.5 Work on board

4.5.1 Standard. Stowaways shall not be required to work on board the ship, except in emergency situations or in relation to the stowaway's accommodation on board.

4.6 Questioning and notification by the shipmaster

4.6.1 Standard. Contracting Governments shall require shipmasters to make every effort to establish the identity, including nationality/citizenship of the stowaway and the port of embarkation of the stowaway, and to notify the existence of the stowaway along with relevant details to the public authorities of the first planned port of call. This information shall also be provided to the shipowner, public authorities at the port of embarkation, the flag State and any subsequent ports of call if relevant.

4.6.2 Recommended Practice. When gathering relevant details for notification the shipmaster should use the form as specified in appendix 3.

4.6.3 Standard. Contracting Governments shall instruct shipmasters operating ships entitled to fly their flag that when a stowaway declares himself/herself to be a refugee, this information shall be treated as confidential to the extent necessary for the security of the stowaway.

4.7 Notification of the International Maritime Organization

4.7.1 Recommended Practice. Public authorities should report all stowaway incidents to the Secretary General of the International Maritime Organization.

D. Deviation from the planned route

4.8 Standard. Public authorities shall urge all shipowners operating ships entitled to fly their flag to instruct their masters not to deviate from the planned voyage to seek the disembarkation of stowaways discovered on board the ship after it has left the territorial waters of the country where the stowaways embarked, unless:

- permission to disembark the stowaway has been granted by the public authorities of the State to whose port the ship deviates; or
- repatriation has been arranged elsewhere with sufficient documentation and permission for disembarkation; or
- there are extenuating security, health or compassionate reasons.

E. Disembarkation and return of a stowaway

4.9 The State of the first port of call according to the voyage plan

4.9.1 Standard. Public authorities in the country of the ship's first scheduled port of call after discovery of a stowaway shall decide in accordance with national legislation whether the stowaway is admissible to that State.

4.9.2 Standard. Public authorities in the country of the ship's first scheduled port of call after discovery of a stowaway shall allow disembarkation of the stowaway, when the stowaway is in possession of valid travel documents for return, and the public authorities are satisfied that timely arrangements have been or will be made for repatriation and all the requisites for transit fulfilled.

4.9.3 Standard. Where appropriate and in accordance with national legislation, public authorities in the country of the ship's first scheduled port of call after discovery of a stowaway shall allow disembarkation of the stowaway when the public authorities are satisfied that they or the shipowner will obtain valid travel documents, make timely arrangements for repatriation of the stowaway, and fulfil all the requisites for transit. Public authorities shall, further, favourably consider allowing disembarkation of the stowaway, when it is impracticable to remove the stowaway on the ship of arrival or other factors exist which would preclude removal on the ship. Such factors may include, but are not limited to when:

- a case is unresolved at the time of sailing of the ship; or
- the presence on board of the stowaway would endanger the safe operation of the ship, the health of the crew or the stowaway.

4.10 Subsequent ports of call

4.10.1 Standard. When disembarkation of a stowaway has failed in the first scheduled port of call after discovery of the stowaway, public authorities of the subsequent ports of call shall examine the stowaway as for disembarkation in accordance with Standards 4.9.1 , 4.9.2 and 4.9.3 .

4.11 State of Nationality or Right of Residence

4.11.1 Standard. Public authorities shall in accordance with international law accept the return of stowaways with full nationality/citizenship status or accept the return of stowaways who in accordance with their national legislation have a right of residence in their State.

4.11.2 Standard. Public authorities shall, when possible, assist in determining the identity and nationality/citizenship of stowaways claiming to be a national or having a right of residence in their State.

4.12 State of Embarkation

4.12.1 Standard. When it has been established to their satisfaction that stowaways have embarked a ship in a port in their State, public authorities shall accept for examination such stowaways being returned from their point of disembarkation after having been found inadmissible there. The public authorities of the State of embarkation shall not return such stowaways to the country where they were earlier found to be inadmissible.

4.12.2 Standard. When it has been established to their satisfaction that attempted stowaways have embarked a ship in a port in their State, public authorities shall accept disembarkation of attempted stowaways, and of stowaways found on board the ship while it is still in the territorial waters or if applicable according to the national legislation of that State in the area of immigration jurisdiction of that State. No penalty or charge in respect of detention or removal costs shall be imposed on the shipowner.

4.12.3 Standard. When an attempted stowaway has not been disembarked at the port of embarkation he/she is to be treated as a stowaway in accordance with the regulation of this section.

4.13 The flag State

4.13.1 Standard. The public authorities of the flag State of the ship shall assist and co-operate with the master/shipowner or the appropriate public authority at ports of call in:

- identifying the stowaway and determining his/her nationality;
- making representations to the relevant public authority to assist in the removal of the stowaway from the ship at the first available opportunity; and
- making arrangements for the removal or repatriation of the stowaway.

4.14 Return of stowaways

4.14.1 Recommended Practice. When a stowaway has inadequate documents, public authorities should, whenever practicable and to an extent compatible with national legislation and security requirements, issue a covering letter with a photograph of the stowaway and any other important information. The letter, authorising the return of the stowaway either to his/her country of origin or to the point where the stowaway commenced his/her journey, as appropriate, by any means of transportation and specifying any other conditions imposed by the authorities, should be handed

over to the operator affecting the removal of the stowaway. This letter will include information required by the authorities at transit points and/or the point of disembarkation.

4.14.2 Recommended Practice. Public authorities in the State where the stowaway has disembarked should contact the relevant public authorities at transit points during the return of a stowaway, in order to inform them of the status of the stowaway. In addition public authorities in countries of transit during the return of any stowaway should allow, subject to normal visa requirements and national security concerns, the transit through their ports and airports of stowaways travelling under the removal instructions or directions of public authorities of the country of the port of disembarkation.

4.14.3 Recommended Practice. When a port State has refused disembarkation of a stowaway that State should, without undue delay, notify the Flag State of the ship carrying the stowaway of the reasons for refusing disembarkation.

4.15 Cost of return and maintenance of stowaways

4.15.1 Recommended practice. The public authorities of the State where a stowaway has been disembarked should generally inform the shipowner, on whose ship the stowaway was found, or his representative, as far as practicable, of the level of cost of detention and return of the stowaway, if the shipowner is to cover these costs. In addition, public authorities should keep such costs to a minimum, as far as practicable and according to national legislation, if they are to be covered by the shipowner.

4.15.2 Recommended Practice. The period during which shipowners are held liable to defray costs of maintenance of a stowaway by public authorities in the State where the stowaway has been disembarked should be kept to a minimum.

4.15.3 Standard. Public authorities shall, according to national legislation, consider mitigation of penalties against ships where the master of the ship has properly declared the existence of a stowaway to the appropriate authorities in the port of arrival, and has shown that all reasonable preventive measures had been taken to prevent stowaways gaining access to the ship.

4.15.4 Recommended practice. Public authorities should, according to national legislation, consider mitigation of other 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."

10 Sections 4, 5 and 6, and corresponding paragraphs should be renumbered as sections 5, 6 and 7.

11 In renumbered paragraphs 5.16, 5.17 and 5.18 replace "Standard 4.8" by "Standard 5.15".

12 In renumbered paragraph 7.5 replace "Standard 6.2" by "Standard 7.2".

13 In renumbered paragraph 7.9 replace "Standard 6.2" by "Standard 7.8".

14 Appendices should be renumbered as follows:

.1 Appendix 1 to be kept as Appendix 1;

.2 Appendix 2 to become Appendix 6;

- .3 Appendix 3 to become Appendix 4;
 - .4 Appendix 4 to become Appendix 2;
 - .5 Appendix 5 to be kept as Appendix 5; and
 - .6 Appendix 6 to become Appendix 7.
- 15 Add the following new Appendix 3 – *Form referred to in Recommended Practice 4.6.2:*

“APPENDIX 3**Form of Stowaway Details referred to in Recommended Practice 4.6.2**

SHIP DETAILS	
<i>Name of ship:</i>	<i>ID-document type, e.g. Passport No.,</i>
<i>IMO number:</i>	<i>ID Card No. or Seaman’s book No.:</i>
<i>Flag:</i>	<i>If yes,</i>
<i>Company:</i>	<i>When issued:</i>
<i>Company address:</i>	<i>Where issued:</i>
<i>Agent in next port:</i>	<i>Date of expiry:</i>
<i>Agent address:</i>	<i>Issued by:</i>
<i>IRCS:</i>	<i>Photograph of the stowaway:</i>
<i>INMARSAT number:</i>	
<i>Port of registry:</i>	
<i>Name of the Master:</i>	
STOWAWAY DETAILS	
<i>Date/time found on board:</i>	<i>General physical description of the stowaway:</i>
<i>Place of boarding:</i>	
<i>Country of boarding:</i>	
<i>Date/time of boarding:</i>	
<i>Intended final destination:</i>	
<i>Stated reasons for boarding the ship*:</i>	
<i>Surname:</i>	
<i>Given name:</i>	
<i>Name by which known:</i>	
<i>Gender:</i>	

* If the Stowaway declares himself to be a refugee or an asylum seeker, this information shall be treated as confidential to the extent necessary to the security of the stowaway.

<i>Date of birth:</i>	<i>First language:</i>
<i>Place of birth:</i>	<i>Spoken:</i>
<i>Claimed nationality:</i>	<i>Read:</i>
<i>Home address:</i>	<i>Written:</i>
	<i>Other languages:</i>
<i>Country of domicile:</i>	<i>Spoken:</i>
	<i>Read:</i>
	<i>Written:</i>

Other details:

1) *Method of boarding, including other persons involved (e.g. crew, port workers, etc.), and whether the Stowaway was secreted in cargo/container or hidden in the ship:*

2) *Inventory of the Stowaway's possessions:*

3) *Statement made by the Stowaway:*

4) *Statement made by the 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: ”

17 At the end of Form 6 in Appendix 1 delete the entire text starting with “Example of a form...”.



ASSEMBLY
26th session
Agenda item 14

A 26/Res.1027
18 January 2010
Original: ENGLISH

Resolution A.1027(26)

**Adopted on 2 December 2009
(Agenda item 14)**

**APPLICATION AND REVISION OF THE
GUIDELINES ON THE ALLOCATION OF RESPONSIBILITIES TO SEEK THE
SUCCESSFUL RESOLUTION OF STOWAWAY CASES
(RESOLUTION A.871(20))**

THE ASSEMBLY,

HAVING CONSIDERED the general purposes of the Convention on Facilitation of International Maritime Traffic, 1965, as amended (“the FAL Convention”), in particular article III,

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, at its twentieth regular session, it adopted on 27 November 1997 resolution A.871(20) on *Guidelines on the allocation of responsibilities to seek the successful resolution of stowaway cases* (“the Guidelines”),

RECALLING ALSO that, in accordance with article VII(2)(a) of the FAL Convention, the Facilitation Committee, at its twenty-ninth session, adopted on 10 January 2002 resolution FAL.7(29) on *Amendments to the Convention on Facilitation of International Maritime Traffic, 1965*, as amended, to introduce a new section 4 on Stowaways in the Annex to the FAL Convention prescribing Standards and Recommended Practices on matters relating to stowaways (“the FAL provisions on stowaways”), which entered into force on 1 May 2003,

NOTING that several Member States which are also Contracting Governments to the FAL Convention:

- (a) have notified the Secretary-General, in accordance with article VIII(1) of the FAL Convention (in relation to the Standards specified in section 4 of the Annex to the FAL Convention) either that they find it impracticable to comply with the above-mentioned Standards or of differences between their own practices and those Standards; or

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- (b) have not yet notified the Secretary-General, in accordance with article VIII(3) of the FAL Convention, that they have brought their formalities, documentary requirements and procedures into accord in so far as practicable with the Recommended Practices specified in section 4 of the Annex to the FAL Convention,

NOTING ALSO that the parallel existence of the Guidelines and the FAL provisions on stowaways has raised questions in relation to the procedures to be followed for dealing with stowaways by Member States which are also Contracting Governments to the FAL Convention – in particular those referred to above,

CONVINCED of the need to align, to the extent possible and desirable, the Guidelines with the FAL provisions on stowaways and to revise them in a manner that reflects developments in efforts undertaken to prevent stowaways, as well as to provide guidance and recommendations, taking into account the FAL provisions on stowaways, on measures which can be implemented by vessels to prevent cases involving stowaways,

RECOGNIZING that the revision of the Guidelines should be done in a manner that does not duplicate the existing provisions of the Special measures to enhance maritime security contained in chapter XI-2 of the International Convention for the Safety of Life at Sea, 1974, as amended, and in the International Ship and Port Facility Security (ISPS) Code, but augments and supplements them in the context of preventing cases involving stowaways,

BEING AWARE that considerable difficulties continue to be encountered by shipmasters and shipping companies, shipowners and ship operators when stowaways are to be disembarked from ships into the care of appropriate authorities,

APPRECIATING the difficulties faced by Member States in accepting stowaways for examination pending repatriation and then in allowing the vessels concerned to sail,

AGREEING that the existence of the Guidelines and the FAL provisions on stowaways should in no way be regarded as condoning or encouraging the practice of stowing away and other kinds of illegal migration, and should not undermine efforts to combat alien smuggling or human trafficking incidents,

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

URGING national authorities, port authorities, shipowners, shipping companies, ship operators and shipmasters to take all reasonable precautions to prevent stowaways gaining access to vessels,

ALSO RECOGNIZING that a comprehensive revision of the Guidelines may entail their complete replacement and the need eventually to revoke resolution A.871(20),

HAVING CONSIDERED the recommendation made by the Facilitation Committee at its thirty-fifth session:

1. AGREES that the provisions of resolution A.871(20) should henceforth be considered as being of relevance only with respect to:

- (a) Member States which are not Contracting Governments to the FAL Convention;
and
 - (b) Member States which are Contracting Governments to the FAL Convention and
which:
 - (i) have notified the Secretary-General, in accordance with article VIII(1) of the FAL Convention (in relation to the Standards specified in section 4 of the Annex to the FAL Convention) either that they find it impracticable to comply with the aforementioned Standards or of differences between their own practices and those Standards; or
 - (ii) have not yet notified the Secretary-General, in accordance with article VIII(3) of the FAL Convention, that they have brought their formalities, documentary requirements and procedures into accord in so far as practicable with the Recommended Practices specified in section 4 of the Annex to the FAL Convention;
2. ALSO AGREES that there is a need that the Guidelines be revised as a matter of priority and, to that end, requests the Facilitation Committee and the Maritime Safety Committee to work jointly and expeditiously on such a revision;
3. AUTHORIZES the Facilitation Committee and the Maritime Safety Committee to adopt jointly any necessary amendments to the Guidelines resulting from the aforementioned revision and to promulgate them by appropriate means;
4. DECIDES that, as from the date of the joint adoption of the said amendments by the Facilitation Committee and the Maritime Safety Committee, resolution A.871(20) shall be deemed as revoked;
5. INVITES Member States, intergovernmental organizations and non-governmental organizations in consultative status to participate actively in the revision of the Guidelines, as requested above;
6. REQUESTS the Facilitation Committee and the Maritime Safety Committee to report on action taken in compliance with this resolution to the twenty-seventh regular session of the Assembly.
-



ASSEMBLY
20th session
Agenda item 13

RESOLUTION A.871(20)
adopted on 27 November 1997

**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,

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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 cooperate 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.
- .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 cooperate 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.

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

**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.

- .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;
- .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 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 cooperated 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): [names 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

ID Card No:
 When issued:
 Where issued:
 Date of expiry:
 Issued by:

Other languages:
 Spoken Read Written

Seaman's Book No:
 When issued:
 Where issued:
 Date of expiry:
 Issued by:

Marital status:
 Name of spouse:
 Nationality of spouse:
 Address of spouse:

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

Master's signature

Date:

Date:

ANNEX 6

**RESOLUTION MSC.312(88)
(adopted on 2 December 2010)**

**REVISED GUIDELINES ON THE PREVENTION OF ACCESS BY STOWAWAYS AND THE
ALLOCATION OF RESPONSIBILITIES TO SEEK THE SUCCESSFUL RESOLUTION OF
STOWAWAY CASES**

THE MARITIME SAFETY COMMITTEE,

RECALLING Article 28(b) of the Convention on the International Maritime Organization concerning the functions of the Committee,

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

RECALLING the provisions of resolution A.1027(26) on Application and revision of the Guidelines on the allocation of responsibilities to seek the successful resolution of stowaway cases (resolution A.871(20)),

RECALLING ALSO 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,

RECALLING FURTHER that, in accordance with article VII(2)(a) of the FAL Convention, the Facilitation Committee, at its twenty-ninth session, adopted by resolution FAL.7(29) Amendments to the Convention on Facilitation of International Maritime Traffic, 1965, as amended, which introduced a new section 4 on Stowaways in the Annex to the Convention, prescribing Standards and Recommended Practices on matters relating to stowaways (the FAL provisions on stowaways), which entered into force on 1 May 2003,

RECALLING IN ADDITION that, for the purpose 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 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,

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 and secure operation of ships and the considerable risks faced by stowaways, including loss of life,

NOTING FURTHER that the Assembly, at its twentieth regular session, adopted, by resolution A.871(20), Guidelines on the allocation of responsibilities to seek the successful resolution of stowaway cases (the Guidelines),

RECALLING that resolution A.1027(26) expressed conviction of the need to align, to the extent possible and desirable, the Guidelines with the FAL provisions on stowaways and to revise them in a manner that reflects developments in efforts undertaken to prevent stowaways, as well as to provide guidance and recommendations, taking into account the FAL provisions on stowaways, on measures which can be implemented by vessels to prevent cases involving stowaways,

RECOGNIZING that the revision of the Guidelines should be done in a manner that does not duplicate the existing provisions of the Special measures to enhance maritime security contained in chapter XI-2 of the International Convention for the Safety of Life at Sea, 1974, as amended, and in the International Ship and Port Facility Security (ISPS) Code, but augments and supplements them in the context of preventing cases involving stowaways,

RECALLING that one of the functional requirements of the ISPS Code is to prevent unauthorized access of any kind to ships, port facilities and their restricted areas, and that ship security assessments and port facility security assessments should consider all possible threats, including the presence of stowaways,

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 considerable difficulties continue to be encountered by shipmasters and shipping companies, shipowners and ship operators when stowaways are to be disembarked from ships into the care of the appropriate authorities,

AGREEING that the existence of the present 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,

NOTING that several Member States which are also Contracting Governments to the FAL Convention:

- (a) have notified the Secretary-General, in accordance with article VIII(1) of the FAL Convention (in relation to the Standards specified in section 4 of the Annex to the FAL Convention) either that they find it impracticable to comply with the above-mentioned Standards or of differences between their own practices and those Standards; or
- (b) have not yet notified the Secretary-General, in accordance with article VIII(3) of the FAL Convention, that they have brought their formalities, documentary requirements and procedures into accord in so far as practicable with the Recommended Practices specified in section 4 of the Annex to the FAL Convention,

NOTING ALSO that the parallel existence of the Guidelines and the FAL provisions on stowaways has raised questions in relation to the procedures to be followed for dealing with stowaways by Member States which are also Contracting Governments to the FAL Convention, in particular those referred to above,

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 cooperation, 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,

RECALLING ALSO resolution A.1027(26), adopted by the Assembly at its twenty-seventh regular session, by which the Assembly, *inter alia*, authorized the Facilitation Committee and the Maritime Safety Committee to adopt jointly the necessary amendments to the Guidelines and to promulgate them by appropriate means,

HAVING CONSIDERED the work done by the Facilitation Committee, at its thirty-sixth session,

NOTING that the Facilitation Committee, at its thirty-seventh session, is expected to adopt a resolution on Revised guidelines on the prevention of access by stowaways and the allocation of responsibilities to seek the successful resolution of stowaway cases, in which it will adopt identical amendments to the Guidelines,

1. ADOPTS the Revised guidelines on the prevention of access by stowaways and the allocation of responsibilities to seek the successful resolution of stowaway cases, set out in the Annex to the present resolution;

2. AGREES that the provisions of this resolution should, in accordance with resolution A.1027(26), be considered as being of relevance only with respect to:

- (a) Member States which are not Contracting Governments to the FAL Convention; and
- (b) Member States which are Contracting Governments to the FAL Convention and which:
 - (i) have notified the Secretary-General, in accordance with article VIII(1) of the FAL Convention (in relation to the Standards specified in section 4 of the Annex to the FAL Convention) either that they find it impracticable to comply with the aforementioned Standards or of differences between their own practices and those Standards; or
 - (ii) have not yet notified the Secretary-General, in accordance with article VIII(3) of the FAL Convention, that they have brought their formalities, documentary requirements and procedures into accord in so far as practicable with the Recommended Practices specified in section 4 of the Annex to the FAL Convention;

3. URGES Governments to implement in their national policies and practices the amended procedures recommended in the annexed Guidelines as from 1 October 2011;

4. URGES ALSO Governments to deal with stowaway cases in a spirit of cooperation with other parties concerned, on the basis of the allocation of responsibilities set out in the annexed Guidelines;
5. INVITES shipping companies, shipowners, ship operators and other stakeholders 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;
6. INVITES Governments to develop, in cooperation with the industry, comprehensive strategies to improve access control and prevent intending stowaways from gaining access to ships;
7. AGREES that the Maritime Safety Committee should 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;

ANNEX

REVISED GUIDELINES ON THE PREVENTION OF STOWAWAY INCIDENTS AND THE ALLOCATION OF RESPONSIBILITIES TO SEEK THE SUCCESSFUL RESOLUTION OF STOWAWAY CASES

1 Introduction

1.1 Masters, shipowners, public authorities, port authorities and other stakeholders, including those providing security services ashore, have a responsibility to cooperate to the fullest extent possible in order:

- .1 to prevent stowaway incidents; and
- .2 to resolve stowaway cases expeditiously and secure that an early return or repatriation of the stowaway will take place. All appropriate measures should be taken in order to avoid situations where stowaways must stay on board ships indefinitely.

1.2 However, no matter how effective port and ship security measures are, it is recognized that there will still be occasions when stowaways gain access to vessels, either secreted in the cargo or by surreptitious boarding.

1.3 The resolution of stowaway cases is difficult because of different national legislation in each of the several potentially involved States: the State of embarkation, the State of disembarkation, the flag State of the ship, the State of apparent, claimed or actual nationality/citizenship or right of residence of the stowaway, and States of transit during repatriation.

2 Definitions

For the purpose of these Guidelines:

- .1 *Attempted stowaway.* A person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person, and who is detected on board the ship before it has departed from the port.
- .2 *Port.* Any port, terminal, offshore terminal, ship and repair yard or roadstead which is normally used for the loading, unloading, repair and anchoring of ships, or any other place at which a ship can call.
- .3 *Public authorities.* The agencies or officials in a State responsible for the application and enforcement of the laws and regulations of that State which relate to any aspect of the present Guidelines.
- .4 *Security measures.* Measures developed and implemented in accordance with international agreements to improve security on board ships, in port areas, facilities and of goods moving in the international supply chain to detect and prevent unlawful acts¹.

¹ Reference is made to chapter XI-2 of the International Convention for the Safety of Life at Sea, 1974, as amended (1974 SOLAS Convention) and the International Ship and Port Facility Security Code, as amended (the ISPS Code); and to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (1988 SUA Convention) and its 2005 Protocol (2005 SUA Protocol).

- .5 *Shipowner.* One who owns or operates a ship, whether a person, a corporation or other legal entity, and any person acting on behalf of the owner or operator.
- .6 *Stowaway.* A person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person and who is detected on board the ship after it has departed from a port, or in the cargo while unloading it in the port of arrival, and is reported as a stowaway by the master to the appropriate authorities.

3 Basic principles

On the basis of the experience thus far, the application of the following basic principles have been useful in preventing stowaway incidents and have been helpful in the speedy resolution of stowaway cases:

- .1 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 to the safety and well-being of the stowaway.
- .2 Public authorities, port authorities, shipowners and masters, should co-operate to the fullest extent possible in order to prevent stowaway incidents.
- .3 Shipowners, masters, port authorities and public authorities should have adequate 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 the ship leaves port or, at the latest, before it arrives at the next port of call.
- .4 Adequate, frequent and well timed searches 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.
- .5 Public authorities, port authorities, shipowners and masters, should co-operate to the fullest extent possible in order to resolve stowaway cases expeditiously and secure that an early return or repatriation of the stowaway will take place. All appropriate measures should be taken in order to avoid situations where stowaways must stay on board ships indefinitely.
- .6 Stowaways arriving at or entering a State without the required documents are, in general, illegal entrants. Decisions on dealing with such situations are the prerogative of the States where such arrival or entry occurs.
- .7 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 and relevant national legislation.²

- .8 Every effort should be made to avoid situations where a stowaway has to be detained on board a ship indefinitely. In this regard States should co-operate with the shipowner in arranging the disembarkation of a stowaway to an appropriate State.
- .9 States should accept the return of stowaways who have full nationality/citizenship status in that State, or have a right of residence in that State.
- .10 Where the nationality or citizenship or right of residence cannot be established, the State of the original port of embarkation of a stowaway should accept the return of such a stowaway for examination pending final case disposition.

4 Preventive measures

4.1 Port/terminal authorities

4.1.1 States and port and terminal owners, operators and authorities should ensure that the necessary infrastructure, and operational and security arrangements for the purpose of preventing persons attempting to stowaway on board ships from gaining access to port installations and to ships, are established in all their ports, taking into consideration when developing these arrangements the size of the port, and what type of cargo is shipped from the port. This should be done in close cooperation with relevant public authorities, shipowners and shore-side entities, with the aim of preventing stowaway occurrences in the individual port.

4.1.2 Operational arrangements and/or security plans should, *inter alia*, address the following issues where appropriate:

- .1 regular patrolling of port areas;
- .2 establishment of special storage facilities for cargo subject to high risk of access of stowaways, and continuous monitoring of both persons and cargo entering these areas;
- .3 inspections of warehouses and cargo storage areas;
- .4 search of cargo itself, when presence of stowaways is clearly indicated;
- .5 cooperation between public authorities, shipowners, masters and relevant shore-side entities in developing operational arrangements;
- .6 cooperation between port authorities and other relevant authorities (for example, police, customs, immigration) in order to prevent smuggling of humans;

² In addition, public authorities may wish to consider the non-binding conclusion of the UNHCR Executive Committee on Stowaway Asylum-Seekers (1988, No. 53 (XXXIX)).

- .7 developing and implementing agreements with stevedores and other shore-side entities operating in ports to ensure that only personnel authorized by these entities participate in the stowing/unstowing or loading/unloading of ships or other functions related to the ships stay in port;
- .8 developing and implementing agreements with stevedores and other shoreside entities to ensure that their personnel having access to the ship are easily identifiable, and a list of names of persons likely to need to board the ship in the course of their duties is provided; and
- .9 encouraging stevedores and other persons working in the port area to report to the public and port authorities, the presence of any persons apparently not authorized to be in the port area.

4.2 Shipowner/Master

4.2.1 Shipowners and masters should ensure that adequate security arrangements are in place which, as far as practicable, will prevent intending stowaways from getting aboard the ship, and, if this fails, as far as practicable, will detect them before the ship leaves port or, at the latest, before it arrives at the next port of call.

4.2.2 When calling at ports and during stay in ports, where there is risk of stowaway embarkation, security arrangements should at least contain the following preventive measures:

- .1 all doors, hatches and means of access to holds or stores, which are not used during the ship's stay in port should be locked;
- .2 access points to the ship should be kept to a minimum and be adequately secured;
- .3 areas seaward of the ship should be adequately secured;
- .4 adequate deck watch should be kept;
- .5 boardings and disembarkations should, where possible, be tallied by the ship's crew or, after agreement with the master, by others;
- .6 adequate means of communication should be maintained; and
- .7 at night, adequate lighting should be maintained both inside and along the hull.

4.2.3 When departing from a port, where there is risk of stowaway embarkation, a ship should undergo a thorough search in accordance with a specific plan or schedule, and with priorities given to places where stowaways might hide. Search methods, which are likely to harm secreted stowaways should not be used.

4.2.4 Fumigation or sealing should not be carried out until a thorough search of the areas to be fumigated or sealed has taken place in order to ensure that no stowaways are present in those areas.

5 Responsibilities in relation to the resolution of stowaway cases

5.1 Questioning and notification by the master

It is the responsibility of the master of the ship which finds any stowaways on board:

- .1 to make every effort to determine immediately the port of embarkation of the stowaway;
- .2 to make every effort to establish the identity, including the nationality/citizenship and the right of residence of the stowaway;
- .3 to prepare a statement containing all available information relevant to the stowaway for presentation to the appropriate authorities (for example, the public authorities at the port of embarkation, the flag State and any subsequent ports of call if relevant) and the shipowner. In this respect the reporting form provided in the Appendix should be used and completed as far as practicable;
- .4 to 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; with the understanding that when a stowaway declares himself/herself to be a refugee, this information should be treated as confidential to the extent necessary for the security of the stowaway;
- .5 not to depart from the planned voyage to seek the disembarkation of a stowaway discovered on board the ship after it has left the territorial waters of the State where the stowaways embarked unless permission to disembark the stowaway has been granted by the public authorities of the State to whose port the ship deviates, or repatriation has been arranged elsewhere with sufficient documentation and permission given for disembarkation, or unless there are extenuating safety, security, health or compassionate reasons;
- .6 to ensure that the stowaway is presented to the appropriate authorities at the next port of call in accordance with their requirements;
- .7 to take appropriate measures to ensure the security, general health, welfare and safety of the stowaway until disembarkation, including providing him/her with adequate provisioning, accommodation, proper medical attention and sanitary facilities;
- .8 to ensure that stowaways are not made to work on board the ship, except in emergency situations or in relation to the stowaway's accommodation on board; and
- .9 to ensure that stowaways are treated humanely, consistent with the basic principles.

5.2 The shipowner

It is the responsibility of the shipowner of the ship on which stowaways are found:

- .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 to comply with any removal directions made by the competent national authorities at the port of disembarkation; and
- .3 to cover any applicable costs relating to the removal, detention, care and disembarkation of the stowaway in accordance with the legislation of the States which may be involved.

5.3 The State of the first port of call according to the voyage plan

It is the responsibility of the State of first port of call according to the voyage plan after the discovery of the stowaway:

- .1 to accept the stowaway for examination in accordance with the national laws of that State and, where the competent national authority considers that it would facilitate matters, to allow the shipowner and the competent or appointed P&I Club correspondent to have access to the stowaway;
- .2 to favourably consider allowing disembarkation and provide, as necessary and in accordance with national law, secure accommodation which may be at the expense of the shipowner, where:
 - .1 a case is unresolved at the time of sailing of the ship, or
 - .2 the stowaway is in possession of valid documents for return and the public authorities are satisfied that timely arrangements have been or will be made for repatriation and all the requisites for transit fulfilled, or
 - .3 other factors make it impractical to remove the stowaway on the ship of arrival; such factors may include but are not limited to cases where a stowaway's presence on board would endanger the safe and secure operation of the ship, the health of the crew or the stowaway;
- .3 to make every effort to cooperate in the identification of the stowaway and the establishment of his/her nationality/citizenship or right of residence;
- .4 to make every effort to cooperate in establishing the validity and authenticity of a stowaway's documents and, when a stowaway has inadequate documents, to whenever practicable and to an extent compatible with national legislation and security requirements, issue a covering letter with a photograph of the stowaway and any other important information. The letter, authorizing the return of the stowaway either to his/her State of origin or to the point where the stowaway commenced his/her journey, as appropriate, by any means of transportation and specifying any other conditions imposed by the authorities, should be

- handed over to the operator effecting the removal of the stowaway. This letter will include information required by the authorities at transit points and/or the point of disembarkation;
- .5 to give directions for the removal of the stowaway to the port of embarkation, State of nationality/citizenship or right of residence or to some other State to which lawful directions may be made, in co-operation with the shipowner;
 - .6 to inform the shipowner on whose ship the stowaway was found, as far as practicable, of the level of cost of detention and return of the stowaway, if the shipowner is to cover these costs. In addition, public authorities should keep such costs to a minimum, as far as practicable, and according to national legislation, if they are to be covered by the shipowner, as well as keeping to a minimum the period during which shipowners are held liable to defray costs of maintenance of a stowaway by public authorities;
 - .7 to consider mitigation of charges that might otherwise be applicable when shipowners have cooperated with the control authorities to the satisfaction of those authorities in measures designed to prevent the transportation of stowaways; or where the master has properly declared the existence of a stowaway to the appropriate authorities in the port of arrival, and has shown that all reasonable preventive measures had been taken to prevent stowaways gaining access to the ship;
 - .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 facilitate the return of the stowaway either to his/her State of origin, to the State of the port of embarkation, or to any other State to which lawful directions can be made, by any means of transport;
 - .9 to provide the document to the transport operator effecting the removal of the stowaway;
 - .10 to take proper account of the interests of, and implications for, the shipowner 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;
 - .11 to report incidents of stowaways to the Organization³;
 - .12 to cooperate with flag State of the ship in identifying the stowaway and their nationality/citizenship and right of residence, to assist in removal of the stowaway from the ship, and to make arrangements for removal or repatriation; and
 - .13 if disembarkation is refused, to notify the flag State of the ship the reasons for refusing disembarkation.

³ Refer to FAL.2/Circ.50/Rev.2 on Reports on Stowaway Incidents, as may be amended.

5.4 Subsequent ports of call

When the disembarkation of a stowaway has not been possible at the first port of call, it is the responsibility of the State of subsequent port of call to follow the guidance provided in paragraph 5.3.

5.5 State of embarkation

It is the responsibility of the State of the original port of embarkation of the stowaway (i.e. the State where the stowaway first boarded the ship):

- .1 to accept any returned stowaway having nationality/citizenship or right of residence;
- .2 to accept a stowaway back for examination where the port of embarkation is identified to the satisfaction of the public authorities of the receiving State; the public authorities of the State of embarkation should not return such stowaways to the State where they were earlier found to be inadmissible;
- .3 to apprehend and detain the attempted stowaway, where permitted by national legislation, if the attempted stowaway is discovered before sailing either on the ship or in cargo due to be loaded; to refer the attempted stowaway to local authorities for prosecution, and/or, where applicable, to the immigration authorities for examination and possible removal: no charge is to be imposed on the shipowner in respect of detention or removal costs, and no penalty is to be imposed;
- .4 to apprehend and detain the stowaway, where permitted by national legislation, if the stowaway is discovered while the ship is still in the territorial waters of the State of the port of his/her embarkation, or in another port in the same State (not having called at a port in another State in the meantime): no charge is to be imposed on the shipowner in respect of detention or removal costs, and no penalty is to be imposed;
- .5 to report incidents of stowaways or attempted stowaways to the Organization⁴; and
- .6 to reassess the preventative arrangements and measures in place and to verify the implementation and effectiveness of any corrective actions.

5.6 State of nationality or right of residence

It is the responsibility of the apparent or claimed State of nationality/citizenship of the stowaway and/or of the apparent or claimed State of residence of the stowaway:

- .1 to make every effort to assist in determining the identity and nationality/citizenship or the rights of residence of the stowaway and to document the stowaway, accordingly once satisfied that he or she holds the nationality/citizenship or the right of residence claimed;

⁴ Refer to FAL.2/Circ.50/Rev.2 on Reports on Stowaway Incidents, as may be amended.

- .2 to accept the stowaway where nationality/citizenship or right of residence is established; and
- .3 to report incidents of stowaways to the Organization⁵.

5.7 The flag State

It is the responsibility of the flag State of the ship:

- .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/her nationality/citizenship or right of residence;
- .2 to be prepared to make representations to the relevant authority to assist in the removal of the stowaway from the ship at the first available opportunity;
- .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; and
- .4 to report incidents of stowaways to the Organization⁵.

5.8 States of transit during repatriation

It is the responsibility of any States of transit during repatriation to allow, subject to normal visa requirements and national security concerns, the transit through their ports and airports of stowaways travelling under the removal instructions or directions of the State of the port of disembarkation.

⁵ Refer to FAL.2/Circ.50/Rev.2 on Reports on Stowaway Incidents, as may be amended.

APPENDIX

**FORM OF STOWAWAY DETAILS REFERRED TO IN RECOMMENDED PRACTICE 4.6.2
OF THE CONVENTION ON FACILITATION OF INTERNATIONAL MARITIME
TRAFFIC 1965, AS AMENDED**

<p>SHIP DETAILS</p> <p><i>Name of ship:</i></p> <p><i>IMO number:</i></p> <p><i>Flag:</i></p> <p><i>Company:</i></p> <p><i>Company address:</i></p> <p><i>Agent in next port:</i></p> <p><i>Agent address:</i></p> <p><i>IRCS:</i></p> <p><i>INMARSAT number:</i></p> <p><i>Port of registry:</i></p> <p><i>Name of Master:</i></p> <p>STOWAWAY DETAILS</p> <p><i>Date/time found on board:</i></p> <p><i>Place of boarding:</i></p> <p><i>Country of boarding:</i></p> <p><i>Date/time of boarding:</i></p> <p><i>Intended final destination:</i></p> <p><i>Stated reasons for boarding the ship:*</i></p> <p><i>Surname:</i></p> <p><i>Given name:</i></p> <p><i>Name by which known:</i></p> <p><i>Gender:</i></p> <p><i>First language:</i></p> <p><i>Spoken:</i></p> <p><i>Read:</i></p> <p><i>Written:</i></p>	<p><i>Date of birth:</i></p> <p><i>Place of birth:</i></p> <p><i>Claimed nationality:</i></p> <p><i>Home address:</i></p> <p><i>Country of domicile:</i></p> <p><i>ID-document type, e.g., Passport No.:</i></p> <p><i>ID Card No. or Seaman's Book No.:</i></p> <p><i>If yes,</i></p> <p><i>When issued:</i></p> <p><i>Where issued:</i></p> <p><i>Date of expiry:</i></p> <p><i>Issued by:</i></p> <p><i>Photograph of the stowaway:</i></p> <div style="border: 1px solid black; width: 150px; height: 100px; margin: 10px auto; text-align: center; padding: 5px;"> <p>Photograph if available</p> </div> <p><i>General physical description of the stowaway:</i></p> <p><i>Other languages:</i></p> <p><i>Spoken:</i></p> <p><i>Read:</i></p> <p><i>Written:</i></p>
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* If the stowaway declares himself to be a refugee or an asylum seeker, this information shall be treated as confidential to the extent necessary to the security of the stowaway.

Other details:

- 1) *Method of boarding, including other persons involved (e.g., crew, port workers, etc.), and whether the stowaway was secreted in cargo/container or hidden in the ship:*

- 2) *Inventory of the stowaway's possessions:*

- 3) *Statement made by the stowaway:*

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

Date(s) of interview(s):

Stowaway's signature:

Master's signature:

Date:

Date:
