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Insight Briefing Note

Stowaways: Background, Drivers & Human Consequences

Partnered with:

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INSIGHT BRIEFING NOTE
STOWAWAYS

TABLE OF CONTENTS

Glossary 2
Foreword 3
Author 3
Legal Review 3
Funding 4
Conflict of Interest 4
Disclaimer 4
Introduction 5
Aims and Objectives 5
The Nature and Modus Operandi of Stowaway Activity 5
Individuals, Groups and Organised Crime 5
LEDCs and MEDCs 5
Methods 6
Case Study: The Rudder Trunk 7
Complicity and Bribery 7
"Push" and "Pull" Factors 8
Economic 8
Social Infrastructure and Demographic 8
Religious, Ethnic/Racial and Sexual Orientation 8
Political 8
Environmental/Ecological 9
Criminal 9
International Law 9
Background & Context 9
FAL Convention 10
International Convention Relating to Stowaways, 1957 11
Distinction Between Stowaways and Piracy 11
Human Rights Law Protections 12
Refugee Law 12
Consequences of Stowaway Activity 13
Human & Social 13
Legal 13
Commercial 14
Stowaway Cases 14
Case Study: *Nave Andromeda* 15
Conclusion 16

GLOSSARY

CPS	Crown Prosecution Service
FAL	Convention on Facilitation of International Maritime Traffic, 1965
FAL Guidelines	Revised Guidelines on the Prevention of Access by Stowaways and the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases
HRAS	Human Rights at Sea
IG	International Group of P&I Clubs
IMO	International Maritime Organisation
ISPS CODE	International Ship and Port Facility Security Code
LEDC	Less Economically Developed Country
MCA	Maritime & Coastguard Agency
MEDC	More Economically Developed Country
NGO	Non-Governmental Organisation
OCG	Organised Criminal Groups
SME	Subject Matter Expert
STS	Ship to Ship
UNCLOS	United Nations Convention on the Law of the Sea

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INSIGHT BRIEFING NOTE
STOWAWAYS

FOREWORD

In a plain-English context, according to the Collins English Dictionary a stowaway is "a person who hides in a ship, aeroplane, or other vehicle in order to make a journey secretly or without paying". In the maritime context, the Convention on Facilitation of International Maritime Traffic, 1965, as amended, (The FAL Convention), defines a stowaway as: "A person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the Master or any other responsible person and who is detected 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". Stowaways have been taking such inherently dangerous risks and acting unlawfully to bypass established immigration routes and coastal state authorities for as long as ships have been sailing between destinations.

Today, stowaways continue to be found onboard commercial vessels causing disruption to the Master, crew, owner and the voyage. In some circumstances they may be a direct threat to the safety, security and well-being of the crew and vessel, but in other circumstances they may be compliant, of no threat, seeking economic betterment, or fleeing persecution and human rights' abuse.

At first instance, the intentions of a stowaway may well be unknown to those who locate and identify them. As such, reasonable crew safety and security precautions must always be taken and it is vital to inform flag state, port(s) of transit and the port of destination that stowaways are onboard. Nonetheless, stowaways retain fundamental human rights and must be treated accordingly.

Humanity, care and provision of basic welfare support must be provided throughout the remaining voyage until the stowaways can be handed over to immigration authorities. However, stowaways can become hostile thereby requiring deprivation of liberty measures to be taken if possible, although if this step is taken, it must be done so with care to avoid unnecessary force or harm whilst maintaining some degree of care and fundamental rights' protections. If this is not possible, then requesting external intervention through the flag, coastal or port state authorities may be necessary. Such intervention will be undertaken by professional law enforcement and/or military forces, to secure the vessel and crew.

Throughout any incident, there remains the core requirement for crew to always act lawfully and with humanity. However, there is an increasing tendency for automatic demonisation of individuals due to the inconvenience of finding such individuals onboard, a fear of violence from the stowaways, their effect on commercial operations and the reluctance in some ports for local authorities to take responsibility for stowaways, thereby causing further delay and inconvenience.

Nevertheless, stowaways may well themselves be victims fleeing persecution, violence or poverty, and to assume that all stowaways are violent criminals undeserving of care and attention must not be the starting point. As recently as the 9 February 2021, a stowaway incident off the coast of Dorset, UK, was publicly reported. The facts of the incident are yet to be confirmed at the time of writing, but it resulted in the arrest of seven individuals thought to be of Albanian nationality.[1] The earlier October 2020 *Nave Andromeda* case that involved the intervention of UK anti-terrorist units acts as a good case study highlighted later in this Note. This incident, like those before it and those which have since followed, re-emphasises the need for such events to be viewed in context with the majority of stowaways acting peacefully and being delivered without incident to the authorities at the next port of call.

AUTHOR

The author of this Insight Briefing Note (the Note) is the UK-registered charitable non-governmental organisation (NGO), Human Rights at Sea (HRAS)[2] which is regulated by the UK Charity Commission and overseen by a Board of Trustees under English law. It has been supported by instructed subject matter experts (SMEs) from within the civil-society community, maritime legal expertise provided by Norton Rose Fulbright LLP[3] and maritime security industry expertise from MIRIS International Ltd.[4]

1 https://www.telegraph.co.uk/news/2021/02/10/albanian-stowaways-arrested-found-tanker-coast-dorset/
2 https://www.humanrightsatsea.org
3 https://www.nortonrosefulbright.com/en-gb/people/121241
4 https://www.miris-int.com/

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CONFLICT OF INTEREST

There are no known conflicts of interest declared in the preparation, drafting or publishing of this Insight Briefing Note.

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5 https://www.gov.uk/find-charity-information
6 https://www.humanrightsatsea.org/reports/

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INSIGHT BRIEFING NOTE
STOWAWAYS

INTRODUCTION

Stowaways have been an expected, though unwanted feature of the maritime environment including within the shipping and fisheries industries since ships have travelled between countries and regions. The presence of stowaways on board commercial vessels, in particular, causes a plethora of legal, economic, and indeed political issues, the consequences of which come at cost in monetary and reputational terms to an array of interrelated industry stakeholders. These include owners, managers, insurers and the crew themselves. Yet, underlying these impacts lie human accounts behind the stowaways, each with its own set of unique human factors combining to impel the would-be stowaway to embark on such a perilous journey.

This Insight Briefing Note aims to look at the broader issue of stowaways on commercial ships with a particular focus on the 'push' and 'pull' factors influencing the individuals' decisions to resort to potential criminal means to achieve their ends.

The underlying causes of stowaway activity are not too dissimilar to those that fuel the seaborne migration pattern in the Mediterranean Sea. Often, stowaways are simply economic migrants. They may be migrating for economic, political, social, or ecological reasons. The means by which they facilitate their migration by circumventing the controls at national frontiers and by unlawfully boarding a vessel automatically criminalises them. However, boarding a ship is arguably safer than resorting to dangerous journeys across North, West and East Africa into Libya whereupon they put to sea in overcrowded rubber dinghies facilitated through criminal trafficking networks. Nevertheless, there is a tendency to look at these people first as criminals and potential threats to the safety and security of the vessel, and second as human beings with a story to tell and fundamental human rights protections.

AIMS AND OBJECTIVES

The Aim of this Insight Briefing Note is to expand the international public awareness of the circumstances behind stowaways making the decision to risk their lives by illegally boarding a vessel for transit to another State and the legal status of those individuals once they become stowaways.

The Objectives are threefold

1. Understand the drivers which compel individuals to stow away.
2. Understand the international legal instruments which govern and address the issue.
3. Review of applicable case studies for public awareness.

THE NATURE AND MODUS OPERANDI OF STOWAWAY ACTIVITY

INDIVIDUALS, GROUPS AND ORGANISED CRIME

Stowaways may act on an individual basis or as part of a group. Further, in both contexts, stowaways may utilise the 'services' of organised smugglers and/or traffickers to help facilitate their movement.[7] In the case of the latter, there are attendant physical dangers and financial costs invariably associated with dealing with organised criminal groups (OCG).

LEDCs AND MEDCs

The prevalence of stowaway embarkations in ports located in less economically developed countries (LEDC) unsurprisingly surpasses that of ports located in more economically developed countries (MEDC). The difference between LEDCs and MEDCs in terms of security resources are an underlying factor and it is these vulnerabilities in certain ports and terminals which are exploited by stowaways and/or the OCG elements assisting them.

7 https://www.independent.co.uk/news/world/europe/mafia-gangs-blamed-for-deaths-of-stowaways-123757.html

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METHODS

Notwithstanding how and where a stowaway comes into a position to board a commercial ship, there are a range of methods upon which a stowaway will ultimately rely to physically gain access. Many of the methods invite danger and once on board the danger does not stop there. Indeed, where a stowaway subsequently chooses to hide for the duration of their time on board incurs its own dangers. From hiding in stores, accommodation areas, holds, engine rooms, void spaces, cranes, and chain locks, the voyage of a stowaway is far from comfortable. Indeed, access to clean potable water and food become significant issues for stowaways too.

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CASE STUDY: THE RUDDER TRUNK

On the 21 May 2019, a stowaway incident was reported by the UK-registered international private security firm, MIRIS International,[8] concerning one of its client vessels off Togo's coast. At the time of the incident the vessel was located inside Togolese territorial waters approximately 4 nautical miles south-east of Lome, the capital city of Togo. The vessel was scheduled to carry out ship-to-ship (STS) operations the same day.

A stowaway search had been recently carried out and specifically included searches of the engine room, the bow and anchor, cabins, the stern, and all containers both inside and outside the vessel. Despite the crew's best endeavours, the stowaways were able to gain access to the vessel and evade detection by concealing themselves inside the rudder trunk.

It was only when the Togolese Watchkeeping Team came alongside ready to embark the client vessel that the stowaways were found.

In total five Nigerian stowaways were found inside the vessel's rudder trunk (see image 1). It is thought that the stowaways had been hiding in this part of the vessel for approximately four days. They were subsequently rescued and detained by Togolese immigration officers.

A ladder housed inside the rudder trunk exists for maintenance purposes only (see image 2). However, there is no access to the main vessel from the rudder trunk. It is highly likely therefore that during a sea passage anyone located inside the rudder trunk would be washed out and lost at sea.

As a result of this incident, MIRIS reviewed and updated its policy and attendant procedures regarding stowaway searches to include the rudder trunk. Inspections are now completed at the point of both embarkation and disembarkation of security teams in order to rule out the presence of stowaways in this part of the vessel.

Similar incidences of stowaway activity involving the same practice have been reported by other vessels operating in the Gulf of Guinea on the West Coast of Africa.[9] Indeed, the rudder trunk has been specifically highlighted by Gard,[10] one of the largest P&I Clubs, as representing a risk to commercial shipping insofar as stowaway methods are concerned. Gard also highlight the dangers such a hiding location presents to stowaways.[11]

Image 1: Stowaways on a carrier vessel trunk

Image 2: Internal ladder housing

COMPLICITY AND BRIBERY

In addition to enlisting the help of OCG, stowaways may be more direct in their methods. Through the complicity and/or bribery of crew members and/or port officials, stowaways may facilitate both access to the port and vessel via the assistance of 'insiders'. This may also be a method employed by OCG in the provision of their 'services'.

8 https://www.miris-int.com/
9 https://www.swedishclub.com/media_upload/files/Loss%20Prevention/MSS%20Cases/2019_June_Stowaways_steering_geartrunk.pdf
10 https://www.gard.no/web/content/an-introduction-to-the-international-group-of-p&i-clubs
11 https://www.gard.no/web/updates/content/30851739/the-dangerous-practice-of-stowaways-hiding-in-a-vessels-rudder-trunk

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"PUSH" AND "PULL" FACTORS

Stowaways are often a victim of circumstance and like many individuals want to improve their life chances, economic, social and education standards, and the associated opportunities available to them in more progressive societies. In reaching their decision to resort to a criminal act to facilitate their movement from one country to another by sea, stowaways are more than likely to have weighed up the costs and benefits of doing so based on a list of negative ('push') and positive ('pull') factors. It will not be a decision they have taken lightly noting the potentially deadly nature of the route. Some of these 'push' and 'pull' factors are highlighted below.

ECONOMIC

Unemployment, low wages, poverty, low consumption and living standards may push some people away from a country or region. Conversely, labour demand, higher wages, welfare provision, high consumption and living standards may pull people to a certain country or region in the world. Studies into the reasons why people might migrate from West African states to Europe have shown that economic opportunities are a key determinant.[12] In Nigeria, Cote d'Ivoire, Mali and Senegal, jobs and better pay consistently scored highly as the main reason why a person might migrate.

SOCIAL INFRASTRUCTURE AND DEMOGRAPHIC

Push factors such as inadequate educational provision and institutions, medical care and social security combined with a high population, population growth and a young age structure encourage migration. Indeed, both age and education level have been identified as key determinants in a person's willingness to migrate or not.[13] Conversely, countries with an established and functioning welfare and state benefits system, high performing educational institutions, free or highly subsidised advanced medical care and social security combined with a stable population, relative population decline and demographic ageing act as pull factors.

RELIGIOUS, ETHNIC/RACIAL AND SEXUAL ORIENTATION

Countries with poor human rights standards and protections and/or discriminatory laws for minority groups may act as push factors for many stowaways. Conversely, countries with more effective human rights standards and protections for minorities may act as pull factors. Many LGBT members are left with little choice but to migrate and seek asylum in other countries due to the draconian laws and criminalisation of, among others, homosexuality in their own countries.[14]

POLITICAL

Countries under effective dictatorship, shadow democracies, bad governance and/or experiencing political upheaval may act as push factors. Conversely, democracy, respect for the rule of law, pluralism, and political stability may act as pull factors. Similarly, countries experiencing international and non-international armed conflict, those susceptible to acts of terrorism, and/or those violating human rights and engaged in the oppression of minorities may act as push factors. Conversely, countries where peace and security, and the protection of human and civil rights and the rights of minorities are defining characteristics are likely to be pull factors. Countries like Eritrea where one-man dictatorship prevails have seen vast numbers of people escape the country's hard-line approach to religious freedom, abandonment of the rule of law, and clamp down on media and free speech. Indeed, in their final year at school, many of the country's secondary school pupils are forcibly taken from their families, put on buses and driven out to military camps to commence their national service. These experiences plant the seeds for future migration.[15]

12 https://www.oecd.org/swac/publications/2018-wap-17-identifying-the-factors-driving-west-african-migration.pdf
13 https://wol.iza.org/articles/demographic-and-economic-determinants-of-migration/long#:~:text=Demographic%20factors%20such%20as%20age,can%20lead%20to%20less%20migration.
14 https://www.bbc.co.uk/news/topics/c8nq32jwjp0t/lgbt-rights-in-africa
15 https://www.hrw.org/news/2020/09/11/eritrea-busses-thousands-students-military-camp

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ENVIRONMENTAL/ECOLOGICAL

Countries experiencing ecological disaster, desertification, lack of natural resources, water shortages, soil erosion and lack of or poor environmental policy may act as push factors. Conversely, countries with stronger environmental laws and policies, and which protect natural resources and the environment are likely to act as pull factors. The effects of climate change are a key driver for migration today. Academics and international agencies estimate that there are "several million environmental migrants, and that this number will rise to tens of millions within the next 20 years, or hundreds of millions within the next 50 years".[16]

CRIMINAL

There will invariably be people who resort to stowaway activity simply to evade law enforcement agencies in their country of origin. In June 2020, an Australian man was caught hiding in the air conditioning vent of a cargo ship. As a suspect in a sexual assault case, he was re-arrested after attempting to flee the country in breach of his bail conditions.[17] Genuine criminals resorting to further criminal acts to further their own ends can never be discounted.

INTERNATIONAL LAW

BACKGROUND & CONTEXT

The international law of the sea is a complex mix of national law, international convention, custom and practice. The following is a brief summary of the process involved.

Much international law is developed under the auspices of the International Maritime Organisation (IMO), an agency body of the United Nations (UN) which has responsibility for the safety and security of shipping and the prevention of marine and atmospheric pollution by ships. However, the UN Convention of the Law of the Sea (UNCLOS) 1982 which sets out a framework of law and order in the world's oceans and seas is not an IMO Convention having been passed at the General Assembly of the UN.

The IMO, through its technical committees, consider the issues facing the maritime community and look to develop law and regulation to be agreed by the delegates of the 174 member states and the many other bodies with consultative status such as non-governmental organisations (NGOs) such as Greenpeace and Friends of the Earth, and inter-governmental organisations (IGOs) such as the Council of Europe and the African Union.

The IMO develops international law and regulation through the development of international conventions. The most notable of these are the Safety of Life at Sea Convention 1974 (SOLAS) and the Convention for Prevention of Pollution from Ships 1973/78 (MARPOL) which are frequently updated. There are some 30 conventions that can mostly be divided into three broad groups: the first group is concerned with maritime safety; the second with the prevention of marine pollution; and the third with liability and compensation, especially pollution damage. Conventions are frequently modified and updated, sometimes by a formal protocol, so the convention remains current and deals with new issues that have emerged. The convention that deals with stowaways is the FAL convention discussed below.

Such conventions do not have direct legal effect. Once the IMO has adopted a convention, a certain number of states must agree to be bound by the convention and once sufficient states have done so, the convention will enter into force. The state that has agreed to be bound by the convention must then enact legislation so that the convention becomes the law of that state. Such process is known in short-hand for the purposes of this note by the term 'ratification', although in practice there are a number of ways for states to become bound by a convention.

16 https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/climatechange/morton-boncour-laczko.pdf ; https://ourworld.unu.edu/en/environmental-migrants-more-than-numbers

17 https://edition.cnn.com/2020/06/24/australia/australia-stowaway-yacht-intl-scli/index.html

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So, for instance, the Marpol Convention (73/78) has been ratified by 159 states representing 98.95% of world tonnage. Some conventions adopted by the IMO have not yet had sufficient state ratifications to come into force, for instance the Hong Kong Convention on ship recycling. A convention becomes enforceable by states through the process of their domestic law – either the flag state of the vessel or states where the vessel is calling (port states) and, sometimes littoral states where the safety and security of that state is threatened. The rights of coastal states are governed by the UNCLOS convention mentioned above.

However, an international convention, even where a state has enacted its terms, is only as effective as the state authorities enforcing it. The level and effectiveness of enforcement varies widely between states and becomes a huge challenge where the institutions of a state are failing or suffer from underinvestment or there is a lack of political will.

Against this background, this note looks at the key instruments relating to stowaways at sea.

FAL CONVENTION

The Convention on Facilitation of International Maritime Traffic, 1965, as amended (FAL), (ratified by 124 states) defines a stowaway as:

> ***"A person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the Master or any other responsible person and who is detected 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".***[18] [19]

There is also a definition of 'attempted stowaway' which includes stowaways who are detected on board the ship before it has departed from the port.

Notably, the definition of stowaway under the FAL Convention could be interpreted as requiring the unauthorised person who has boarded the ship to be both detected on board as well as reported as a stowaway by the master to the authorities to fall within the scope of the Convention. This highlights the importance of ensuring that there are appropriate practices in place for masters to follow in case of an incident involving stowaways on board so that stowaways are given appropriate protection.

In its latest Revised Guidelines on the Prevention of Access by Stowaways and the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases (FAL Guidelines),[20] and annexed to the FAL,[21] the IMO Facilitation Committee outlines several preventive measures to be carried out by certain parties, in particular the shipowner/master and the port/terminal authorities. The FAL Guidelines are further endorsed by the Maritime and Coastguard Agency (MCA) and reproduced in their Marine Guidance Notes.[22]

For instance, it is recommended practice for shipowners and masters to ensure there are appropriate security measures in place to prevent the risk of stowaway embarkation, including securing access points to the ship and keeping tallies of boardings and disembarkations.

18 https://www.imo.org/en/OurWork/Facilitation/Pages/Stowaways-Default.aspx
19 https://treaties.un.org/doc/Publication/UNTS/Volume%20591/volume-591-I-8564-English.pdf
20 https://wwwcdn.imo.org/localresources/en/OurWork/Facilitation/Documents/Resolution%20FAL.13%20(42).pdf
21 The basic principles contained in the Guidelines are now reflected in amendments to the IMO Convention on the Facilitation of International Maritime Traffic in the form of new standards and recommended practices, following their adoption at the 29th session of the IMO Facilitation Committee (7-11 January 2002) entering into force on 1 May 2003.
22 MGN 70 (M), Guidelines on the allocation of responsibilities to seek the successful resolution of stowaway case, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876476/mgn070.pdf

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In addition, this document describes the responsibilities of various parties in the event of a stowaway incident, among others, detailing the obligations of the master, shipowner, flag state, state of first port of call, subsequent ports of call, state of embarkation, and the state of nationality or right of residence of the stowaway. Combined, this complex set of obligations provided by national law which have been drafted to put into effect the provisions of the FAL Convention constitute a set of regulations to which most IMO member states are bound.

By virtue of the fact that there exists a binding set of regulations which sets out the responsibilities of certain parties in the event of a stowaway case, stowaways, if detected, can expect to be afforded certain minimum rights and protections for the duration of their time on board. The FAL Convention and the FAL Guidelines provide that the handling of stowaway incidents must be consistent with humanitarian principles with due consideration given to the safety of the ship and the safety and wellbeing of the stowaway. This will include the requirement that masters provide stowaways with adequate provisioning, accommodation, medical attention and sanitary facilities.

The FAL Convention also specifies that it must be applied in accordance with international protections, including international refugee law such as The Geneva Convention Related to the Status of Refugees 1951 which falls under the auspices of the UN High Commissioner for Refugees (UNHCR).

INTERNATIONAL CONVENTION RELATING TO STOWAWAYS, 1957

On the 10 October 1957, the International Convention Relating to Stowaways was adopted by the Diplomatic Conference on Maritime Law in Brussels.[23] To date, the Convention has been ratified by seven states and is complemented by four accessions. Consequently, the Convention has never come into force due to the requisite number of state ratifications not being met. Nevertheless, the signing of this Convention was an indication of the magnitude of the problem over 60 years ago and reflected the growing need for international cooperation. The document is still considered to carry persuasive authority in relation to defining a stowaway.

DISTINCTION BETWEEN STOWAWAYS AND PIRACY

Stowaways are not automatically classed as pirates under international law. A distinct legal instrument exists to address the act of piracy. Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS) defines piracy in express terms.[24] Piracy is a criminal act that, outside the jurisdiction of any other State, attracts universal jurisdiction.[25]

A stowaway is not subject to the same jurisdictional reach. Rather, prima facie, jurisdiction is limited to territory (i.e. flag State, port of embarkation, port/s of call) and nationality (i.e. State of nationality of the stowaway) in the case of stowaways. For example, the English courts have jurisdiction to try British citizens for offences committed on UK ships on the 'high seas' or in 'any foreign port of harbour' or committed 'on any foreign ship to which he does not belong'. The courts may also try foreign nationals for offences committed on UK ships on the 'high seas'. The UK courts have jurisdiction over any offence committed in UK territorial waters (which extends out to 12nm from the shore) regardless of the nationality of the offender or of the flag state that the ship is registered under.[26]

Importantly, the definition of piracy clarifies that piracy consists of illegal acts of violence or any act of depredation committed for private ends.

It is however possible for a stowaway to subsequently commit an act of piracy and therefore fall within the jurisdictional scope of piracy.

23 https://www.refworld.org/docid/3ae6b3a80.html
24 https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf
25 Ibid. Art. 105, UNCLOS
26 S. 281, Merchant Shipping Act 1995

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HUMAN RIGHTS LAW PROTECTIONS

Where States are obligated by treaty, stowaways are entitled to all the protections, rights and freedoms afforded to them under international human rights law. These include, among others, protection from slavery and servitude, the right to life, and freedom from torture or cruel, inhuman, or degrading treatment. Such human rights law has arguably become a feature of international customary law and may also apply in circumstances where States are not treaty bound to afford such protections, rights, and freedoms. When a master exercises his duty and responsibility to maintain the safety and security of the ship, cargo and crew, he must at the same time ensure the stowaway's human rights are not violated. To do so is likely to be an offence under the law of the flag that the vessel sails under as well as in any state at which the vessel calls.

REFUGEE LAW

International maritime law provides no definite principles governing the protection of stowaway asylum-seekers. However, where States are obligated by treaty, stowaways can expect to be afforded the protections enshrined under the 1951 Convention and Protocol Relating to the Status of Refugees.[27] In particular, stowaways falling under the definition of 'refugee' are entitled to the protecting principle of 'non-refoulement'.[28] In other words, no Contracting State can expel or return a person deemed to have refugee status to the borders of territories where the life or freedom of this person would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion. Importantly, the unlawful entry or presence of stowaways onboard a vessel or their subsequent arrival at a Port State should not affect the merit of their claim to asylum[29].

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27 https://www.unhcr.org/uk/3b66c2aa10
28 Ibid. Art. 33
29 Article 31, 1951 Convention relating to the Status of Refugees

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CONSEQUENCES OF STOWAWAY ACTIVITY

The consequences of stowaway activity are numerous and often complicated by the multi-jurisdictional nature of the shipping industry. The legal processes need to be deconflicted and the fall-out from a business reputational and profitability perspective managed accordingly. Brand protection, reputation protection and associated links to commercial safety standard auditing will play a significant factor into the willingness to profile incidents, as in the case of RightShip[30] and the Panama-flagged *MV Top Grace*.[31] Yet, aside from the legal and commercial consequences there are human and social consequences to consider too.

HUMAN & SOCIAL

Stowaways are often leaving behind families in poor, deprived countries in search of a better life for themselves and their family for reasons as highlighted in the 2016 HRAS report on African migrant movement.[32] Their intention is often to send money home once they reach the destination country. Providing a stowaway can do this undetected, some families will benefit from this arrangement. However, for those caught in the act it can often mean a custodial sentence in the country of embarkation or prosecuting country thereby disadvantaging the family's economic circumstances further.

The social cost to stowaway activity is akin to that of other migration patterns. Often, stowaways will be part of a relatively young age cohort. This has an impact on the social dimension and make-up of the country of origin. It also carries with it socio-economic (brain drain) and demographic (ageing population) disadvantages.

LEGAL

There are legal consequences for both the master of the ship, its crew, and the stowaway and the presence of a stowaway also causes issues for the ship owner, the charterer, the cargo interests, the vessel's insurers, particularly the Protection and Indemnity insurer (P&I), flag State, and port State. There have been instances of vessels stranded outside ports because the port state will not allow the vessel permission to enter with stowaways onboard. In the case of the *Nave Andromeda*, (mentioned in our case study below) both France and Spain refused to allow the vessel to enter port with the stowaways resulting in the incident involving the UK authorities. This has serious commercial repercussions for a ship operator.

The Master carries a particular burden and will be legally bound to manage the incidence of stowaways on board according to the law of the flag state, in line with the FAL Convention and any contractual obligation he/she may have with his/her employer. The Master will also have legal duties to fulfil with respect to the state of embarkation, the nationality of the stowaway and the port states where the ship calls. Failure to fulfil these legal duties may result in criminal prosecution and possibly litigation against the master. However, the master is able to call upon the great experience of the ship's P&I insurer to advise him/her in dealing with these incidents.

However, it is the burden of these legal duties and the attendant bureaucracy together with the genuine fear of the stowaways and the commercial pressures and consequences of arriving at a port with stowaways that has led some masters to derogate from their obligations and knowingly commit criminal offences.

Further, the presence of a stowaway on board is a reflection of the master and crew's failure to detect the stowaway and is sometimes perceived as an indictment of their professional standards and mean that unsympathetic ship managers opt not to renew contracts of employment for the master and some of the crew in question. There are a few instances where these pressures have led to criminal behaviour where masters and crew have opted to throwing the person overboard. Notable cases in point include the *MC Ruby*[33] and *MV Top Grace*,[34] but of course, there are likely to be cases that go unreported and therefore unprosecuted.

30 www.rightship.com
31 https://www.humanrightsatsea.org/2020/05/02/rightship-acts-decisively-to-address-attempted-murder-of-tanzanian-stowaways/; https://gcaptain.com/bulk-carrier-crew-charged-with-attempted-murder-after-allegedly-throwing-stowaways-overboard-off-south-africa/; https://www.marineinsight.com/shipping-news/panama-bulk-carrier-detained-in-south-africa-released-with-stern-warning-samsa/
32 https://www.humanrightsatsea.org/wp-content/uploads/2016/06/HRAS-MIGRANT-Report-LR-dps-1.pdf
33 https://www.independent.co.uk/news/world/life-terms-for-stowaway-massacre-1525209.html
34 https://www.thetimes.co.uk/article/stowaways-dumped-in-shark-infested-waters-ng5nvjs26

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Yet the burden of managing stowaways on board cannot be underestimated. Indeed, not all countries will allow stowaways to disembark in their ports, as in the recent case of the *Nave Andromeda*.[35] Some port states, with all the machinery of government at their disposal, are not prepared to manage the legal burden and attendant bureaucracy of dealing with illegal immigrants and it seems grossly unfair to place the burden of dealing with stowaways on the master and the ship owner. It is never the intention for the law to deter lawful practice. However, where deliberate acts and omissions are made in breach of such legal duties, questions should be asked of the government framework and decision-making relied upon to manage such incidences.

A whole raft of legal permutations potentially exists with respect to the stowaway. The act of gaining unauthorised access to a port and subsequently a ship is, in most jurisdictions, an illegal act. In the United Kingdom, for example, the Merchant Shipping Act 1995 provides that anyone who seeks to stow away "shall be liable on summary conviction to a fine"[36]. In the United States, a stowaway "shall be fined ... or imprisoned not more than one year, or both"[37].The port of embarkation and flag State may therefore choose to prosecute the stowaway that may result in a fine or custodial sentence. Attempting to enter a country illegally and as an undocumented economic migrant also carries legal consequences for the stowaway. The relevant authorities may choose to prosecute under their immigration laws.

In the UK, a stowaway could face criminal charges under the Aviation and Maritime Security Act 1990 (AMSA). This legislation brings into force the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the SUA Convention), an international legal instrument regulating unlawful acts which threaten the safety of navigation of ships, such as the hijacking of ships or endangering their safety. All these offences require a general level of violence or threat of violence. These offences sit alongside the more 'common' offences found in criminal law, such as affray and assault.

However, there may be circumstances where the stowaway may avoid prosecution. For instance, if the stowaway claims asylum or has refugee status he or she will be subject to a different set of rules and may be afforded certain protections according to the merit of his or her case.[38] Additionally, in the absence of violence or threat of violence to the ship or the people on board, it would appear that the main elements of the relevant offences are missing.

COMMERCIAL

Invariably there are commercial consequences to flow from an incidence of stowaway activity. These may be reputational in nature or profit related. The reputation of shipping companies is at play during a stowaway incident as they come under greater scrutiny from the authorities and any media alerted to the fact of the presence of stowaways on board. It is therefore important that ship owners, charterers and any associated ship and crew management companies perform their duties in accordance with the law and are seen to do so.

Of course, in an industry with notoriously tight margins, any period where the ship is delayed will influence companies' profits. Having a stowaway on board may prevent cargo loading/unloading operations from being carried out or delay the vessel's schedule. Essentially, stowaways on board are likely to affect the commercial viability of the voyage and lead to claims for delay, deterioration of cargo and other breaches of carriage agreements which can lead to legal proceedings and costly claims.

STOWAWAY CASES

As discussed above, one source of advice and assistance for a master when faced with a stowaway problem is to consult with the ship's P&I insurer. The International Group of P&I Clubs (IG), a group consisting of 13 principal insurance underwriting member clubs which between them provide liability cover (protection and indemnity) for approximately 90% of the world's ocean-going tonnage, maintain records of all stowaway cases on board their members' vessels.[39] The data they produce comes at significant cost due to the complexity in compiling such records. Consequently, such data is only published periodically. However, the latest available data provides for some interesting comparisons.[40] The general trend is for fewer

35 https://www.thetimes.co.uk/article/france-refused-to-accept-nave-andromeda-oil-tanker-stowaways-cj2l3fsdk
36 Merchant Shipping Act 1995 Ch.21 s.103
37 US Code Title 18 (crimes and criminal procedures) Pt I Ch.107 s.2199
38 https://www.unhcr.org/4d9486c39.pdf
39 https://www.igpandi.org/
40 https://wwwcdn.imo.org/localresources/en/OurWork/Facilitation/Documents/FAL%2043-13.pdf

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cases of stowaways but the consequential economic losses per case is steadily increasing. That said, the overall cost to the industry is reducing because of the fewer cases. Many in the industry attribute the drop in the number of cases to the introduction of the International Ship and Port Facility Security Code (ISPS Code),[41] a set of measures passed to enhance the security of ships and port facilities and developed in response to the perceived threats to ships and port facilities in the wake of the September 11 attacks in the United States.

Despite this, it remains the fact that in many economically developing nations, from where the stowaway problem often originates, the enforcement of the ISPS code is insufficient. This allows unfettered access to the vessel which the ship's crew are neither equipped nor numerous enough to deal with. Organised crime, bribery and corruption no doubt further increases the numbers of stowaways gaining access to vessels. Not until port security is substantively improved in the parts of the world from where stowaways originate, or a technological solution operated onboard ships is developed which can detect such intruders will the problem be reduced, and the burden lifted from already stressed seafarers.

CASE STUDY: NAVE ANDROMEDA

The case of the *Nave Andromeda* (IMO: 9580405), a Liberian flagged vessel operated by Navios Tankers Management Inc, came to prominence on Sunday 25 October. Whilst positioned six nautical miles off the Isle of Wight, the Master of the vessel informed the flag State, along with Hampshire police, that stowaways on board had become aggressive and that urgent assistance was required. The Master put out a call to UK authorities[42].

There were seven stowaways of Nigerian nationality on board. They allegedly embarked the ship in Lagos, Nigeria on or around the 5 October. Early reports suggested that they had embarked with the intention of seeking asylum in the UK.[43]

The incident was swiftly ended later that day when, following a request by Hampshire police, UK authorities deployed elements from the Special Boat Service (SBS), the UK's maritime special forces contingent to retake the vessel, arrest and detain the stowaways. All crew were reported safe having been confined to the 'citadel', a purposely designated safe room, for the duration of the incident.[44]

The case of the *Nave Andromeda* is interesting for several reasons.

Firstly, up until the stowaways' alleged acts of aggression, they were subject to the laws and attendant procedures governing the management of stowaways. After their alleged act of aggression, the stowaways became subject to the criminal law of England and Wales and were treated as suspected hijackers or, more than likely suspected terrorists in UK waters. As they were within the territorial jurisdiction of the UK the stowaways' actions could not constitute an act of piracy.

Secondly, although uncorroborated, the stowaways were said to have embarked the vessel in Lagos, Nigeria with the intention to claim asylum in the UK. This is largely speculative and no information to support this contention is currently publicly available. If it is the case that the stowaways are to seek asylum in the UK, their alleged actions could prejudice any such claim.

41 https://www.imo.org/en/OurWork/Security/Pages/SOLAS-XI-2%20ISPS%20Code.aspx
42 https://www.facebook.com/itvnews/videos/nave-andromeda-emergency-call-released/673609106849195/
43 https://www.ft.com/content/5f6e476a-269a-4067-8e08-52881348d359
44 'Citadels' are recommended as part of Best Management Practice to Deter Piracy and Enhance Maritime Security in the Red Sea, Gulf of Aden, Indian Ocean and Arabian Sea: https://www.ics-shipping.org/wp-content/uploads/2020/08/bmp5-hi-res-min.pdf

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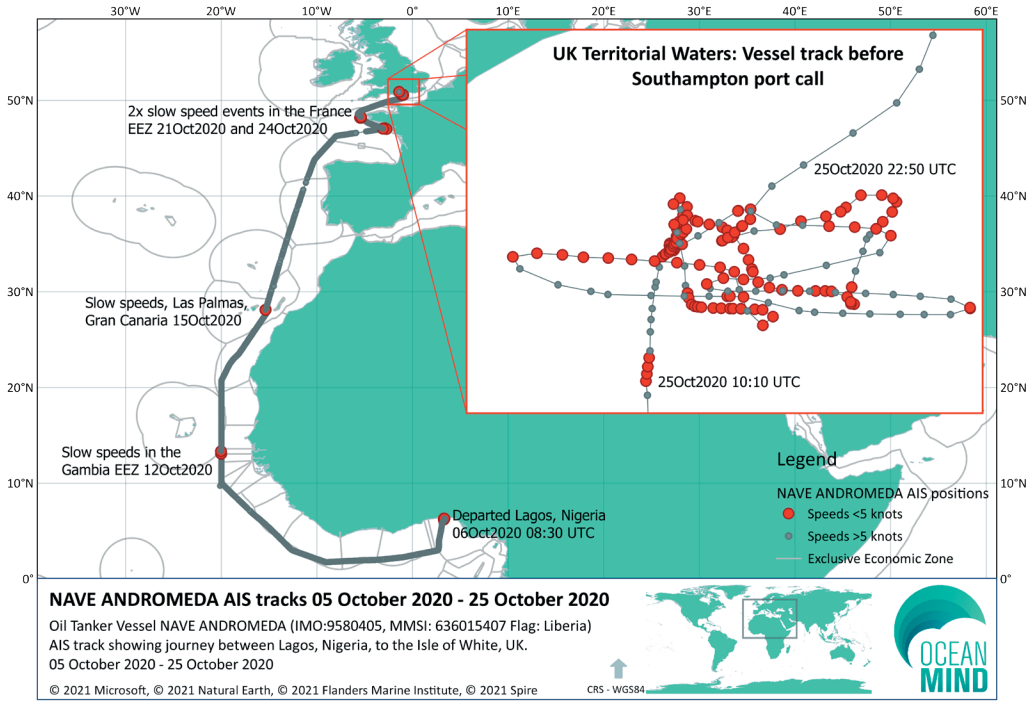

Thirdly, the ship called at ports in both France and Spain on its way to the UK. Both countries are said to have denied the ship entry into port by virtue of the fact that stowaways were on board. This raises questions in relation to the responsibilities of the first and subsequent ports of call. According to the FAL Guidelines, France and Spain should both have allowed disembarkation of the stowaways.

Two of the seven men had the charges brought against them relating to conduct endangering ships under the Merchant Shipping Act 1995 dropped.[45] It seemed surprising that they were charged under this section of the Act as the legislation applies to masters of and seamen employed in a ship, neither definition of which seemingly applies to the Nigerian stowaways. Nevertheless, the two men were charged and remanded in custody and, until Friday 8 January, were due to appear at Southampton Crown Court on the 29 January 2021.[46]

The Crown Prosecution Service (CPS) took the decision to discontinue the prosecution based on new evidence coming to light.[47] In particular, mobile phone footage and witness evidence "could not show that the ship and crew were threatened" as alleged and there was no evidence to suggest that the men had any intention of seizing control of the ship. Subsequently the legal test for the offence as charged was no longer met.[48]

Police investigations in respect to the five remaining men have subsequently stopped based on the same information. All seven men now remain in detention under immigration regulations but will not face any further police action.[49]

CONCLUSION

The problem of stowaways is not going to stop while vessels continue to transit oceans and coastal regions. The related issues of how they are perceived, legally and lawfully engaged with, challenged where necessary and supported in their basic humanitarian needs will therefore remain for the foreseeable future.

Assurance of access to and protection of their fundamental human rights remains a core requirement in addressing their situation in which they become part of the crews', charterers' and owners' responsibility for howsoever long they may be onboard.

45 https://www.legislation.gov.uk/ukpga/1995/21/section/58?view=plain
46 https://www.bbc.co.uk/news/uk-england-hampshire-55453660
47 https://www.telegraph.co.uk/news/2021/01/08/stowaways-arrested-hijacking-oil-tanker-isle-wight-face-no-prosecution/
48 https://www.cps.gov.uk/cps/news/cps-statement-decision-discontinue-prosecution-two-men-merchant-shipping-offences

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Who We Are

BACKGROUND

Human Rights at Sea was established in April 2014. It was founded as an initiative to explore issues of maritime human rights development, review associated policies and legislation, and to undertake independent investigation of abuses at sea. It rapidly grew beyond all expectations and for reasons of governance it became a registered charity under the UK Charity Commission in 2015.

Today, the charity is an established, regulated and independent registered non-profit organisation based on the south coast of the United Kingdom. It undertakes **R**esearch, **A**dvocacy, **I**nvestigation and **L**obbying specifically for human rights issues in the maritime environment, including contributing to support for the human element that underpins the global maritime and fishing industries.

The charity works internationally with all individuals, commercial and maritime community organisations that have similar objectives as ourselves, including all the principal maritime welfare organisations.

OUR MISSION

To explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.

THE GLOBAL COMPACT WE SUPPORT

ico. Information Commissioner's Office

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STAY IN CONTACT

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Human Rights at Sea
Insight Briefing Note

Stowaways: Background, Drivers & Human Consequences

Human Rights at Sea is a Registered Charity in England and Wales No. 1161673. The organisation has been independently developed for the benefit of the international community for matters and issues concerning human rights in the maritime environment. Its aim is to explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.

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