

Implications of Maritime Stowaways, Challenges and National Security of Host State

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Abstract—The paper examined the ways in which stowaways constitute a threat to maritime safety domain, the dangers they pose to seaborne cargo and the operational safety of ships, the legal and financial problems they cause to shipowners, the dangers stowaways unwittingly cause to themselves, and how they are treated when discovered. The paper also examined the legality or otherwise of the stowaway, removal process and the challenges encountered by shipowners during the disembarkation and repatriation. The paper critically reviews major international legal instruments in tackling the threats of stowaways. The paper evaluate the economic, political, social and environmental factors responsible for stowaways and proffered measures to put an end to the menace in International seaborne vessel carriage.

Index Terms—Shipowners, disembarkation, stowaway, unauthorized smuggling, vessel, P&I club, security.

I. INTRODUCTION

The most cost-effective way to move goods and raw materials in bulk around the world is across oceans and coastal waters. More than 90 per cent of the world's goods are transported by sea. A secure maritime environment is essential for the smooth flow of global trade and to maintain international peace and security.

Incidents of maritime crime in Nigeria waters have become of punctuated interest recently, with maritime criminals finding the water spaces of the country conducive for their activities, and these waters thus becoming some of the most dangerous in

the world.¹

It is no gainsaying that in Nigeria, the 'japa' mentality is on the rise despite the reported ill treatment meted on Africans abroad. Even professionals in Nigeria are not left out with resultant brain drain in the polity. Regrettably, resort is being had to illegal means even as stowaways. Over the years, this has undermined the reputation and goodwill of Nigeria and Nigerians who are legal migrants abroad.

Stowaways are an ever present problem facing the shipping industry. The desperation of stowaways is inexorably linked to the increase in unemployment, insecurity and an abysmal lack of safety nets in the society for vulnerable members of society. It is a manifestation of the seeming abdication of responsibilities by governments at all levels. A clement, safe and reassuring environment will drastically reduce the spate of unbridled desperation among the Nigerian citizenry.

1.1. STOWAWAY: HISTORICAL EVALUATION

The act of stowing away is not a new phenomenon. Stowaways have been written about as early as the early 1800s and probably came into existence shortly after the first commercial ships began international commerce. The act of stowing away is dangerous and costly as it undermines the safety of the ship, the crew members, and cargo on board the ship. It causes ship owners financial and legal problems.²

The verb phrase stow away meaning "conceal," from stow, or "stash". By the 1840s, stowaway was being used as a noun to mean "clandestine traveler". Anyone who sneaks onto a boat, plane, or train and hides out during the trip, stowing themselves someplace secluded, can be described as a stowaway. Stowing away is a means employed by people to get

from one place to another without detection and without paying for passage.

1.2. STOWAWAYS: MEANING

Jotham³ is of the view that, for an act of qualify as a stowaway, the person must have boarded the vessel; the boarding must have been without the consent of the shipmaster or ship operator; the person must have been discovered in the midst of the voyage or upon arrival at the next port; and the shipmaster must have reported the person as a “stowaway” to the appropriate authorities.

The following are key elements in stowaways:⁴

- i. The person or persons must have boarded the ship “without the consent” of the ship owner, or master or any other responsible person;
- ii. The person or persons must have been discovered “after the ship has departed” from a port; or
- iii. The person or persons must have discovered “in the port of arrival”.
- iv. The person or persons “must be reported as a stowaway(s)” by the master to the appropriate authorities.

In a bid to enhance maritime security, the IMO encourages, Member States to be fully prepared for stowaways.⁵

1.3. DEFINITION

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 ship owner 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.”⁶

The majority of stowaways come from impoverished or war torn countries or areas of conflict. The problem is global, but many stowaways are from the poorer Asian and African countries and are looking to build a new life elsewhere. Others may be poorly paid workers in or around port and dock areas who are looking for free transportation home either at the

end of contract, or even during national holidays such as Christmas or New Year. Unlike a seafarer who has undergone rigorous training and has experience working on a vessel, a stowaway will not only be in an alien environment, they will also be completely unprepared in the event of any issues. Add to that, months spent at sea without adequate food or drink spent in unsanitary conditions (taking a shower and using the bathroom are not really options) and in a strange and often dangerous environment can result in severe illness and drowning, starvation, dehydration, suffocation, hypothermia, and even death are real and present dangers.⁷

A. HOW STOWAWAYS GETS ONBOARD A SHIP

Stowaway’s want to remain undetected so they’ll choose the places which are rarely inspected by the ship’s crew. They also come equipped with enough food and water to last them for the duration of the transit. They can also access vessels by:

- a) Bribes: Although ports are restricted areas under the ISPS code. Stowaways always can pay bribes to port workers or crew to gain access to the jetty.
- b) False Identification: Stowaways can access the ship as stevedores or using faked supplier documentation before hiding in the ship.
- c) Containers: Stowaways can get inside shipping containers before they are loaded and create false walls within them to evade detection, these can stretch from side to side and from top to bottom. The false wall will be painted in that match the rear wall of the container.
- d) Rudder: Stowaways can jump into the water before climbing up the stern part or rudder of the ship.

Where an unauthorized person is discovered on board a ship while still in the port, such a person does not qualify as a stowaway but as an attempted stowaway.

1.4. LAWS REGULATING STOWAWAY

Immigration Act Chapter 171, Laws of the Federation of Nigeria 1990 Part II provide for the control of crew and stowaway.

Section 28(1)

“If any person arrives at a port in Nigeria as a stowaway in a ship or aircraft, he shall, subject to the provisions of subsection (2) of this section, be treated

*for the purposes of this Act as if he were a prohibited immigrant and was refused admission into Nigeria accordingly”.*⁸

There are currently, no international conventions on stowaways. In 1957, the International Convention Relating to Stowaways was adopted but never entered into force, owing to the fact that it received only nine out of the ten ratifications required to bring it into force.⁹ In order to fill the lacunae created by a lack of an international instrument relating to stowaways, the IMO in 2002 decided to amend the 1965 Convention on Facilitation of International Maritime Traffic (hereafter referred to as the FAL Convention) to include new Standards and Recommended Practices for dealing with stowaways.

B. FAL CONVENTION

The Convention on Facilitation of International Maritime Traffic, 1965, as amended, (the FAL Convention), sets out measures to prevent stowaway incidents as well as provisions on the treatment of stowaways while on board and on the disembarkation and return of a stowaway.

The amendment to the FAL Convention introduced a new section 4 to its Annex: Adoption of Amendments to the Convention on Facilitation of International Maritime Traffic, 1965, as Amended (Resolution FAL 7(29) which entered into force on 1 May 2003.³⁵ The Resolution FAL.7 (29) was amended by the Revised Guidelines on the Prevention of Access by Stowaways and the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases.

(Resolution FAL. 11(37) which was adopted on 9 September 2011 and became effective on 1 October 2011.¹⁰

This resolution specifically addresses both countries that are not parties to the FAL Convention and those that are parties to the FAL Convention, and have either notified or are yet to notify the Secretary-General in accordance with articles VIII(1) & VIII(3) of the FAL Convention. The Resolution FAL.11(37) was amended by the Revised Guidelines on the Prevention of Access by Stowaways and the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases (Resolution FAL. 13(42) which was adopted on 8 June 2018. Resolution FAL. 13(42) has not yet entered into force, and until it does, Resolution FAL. 11 (37)

remains applicable.

C. THE ISPS CODE

As a result of the September 11 terrorist attacks on the United States, the International Convention for the Safety of Life at Sea 1974 (hereafter referred to as SOLAS Convention) was amended to include the International Ship and Port Facility Security (ISPS) Code in order to enhance maritime safety and security.¹¹ The ISPS Code was adopted on 12 December 2002 and came into force on 1 July 2004.¹² The ISPS Code is implemented through chapter X1-2 of the SOLAS Convention and applies to ships and port facilities. It is made up of parts A & B: Part A contains mandatory provisions while part B contains guidance regarding the application of the provisions of part A. under security level 1, provision is made for the control of access to ships, control of embarkation of persons and their effects, and monitoring of restricted areas to ensure that they are accessed only by authorized personnel. The presence of stowaways on ships is a breach of the Ship Security Plan (SSP) and a clear violation of the ISPS Code.

D. Other international instruments applicable to stowaways:

- i. The United Nations Declaration of Human Rights.
 - ii. The United Nations Convention relating to the Status of Refugees.
 - iii. The United Nations Protocol relating to the Status of Refugees.
 - iv. Conclusions on the United Nations High Commissioner for Refugees Executive Committee on Stowaway Asylum-Seekers No. 53 (XXXIX).
 - v. The United Nations High Commissioner for Refugees Practical Guidelines for Shipowners, their Agents and Shipmasters relating to Stowaway Asylum-seekers.
 - vi. International Convention for Safety of Life at Sea.¹³
- A. The United Nations Declaration on Human Rights: Stowaways are protected under the UDHR by virtue of the fact that it contains, “inalienable rights of all members of the human

family". Stowaways like everyone else are entitled to the right to life, liberty and security of person.¹⁴ These rights are violated when stowaways gets killed or thrown overboard by masters and crew members to avoid the costs and hassles involves in entering ports with the stowaways. They are also violated (in the case of stowaway asylum seekers) when stowaways are inadvertently confined on board ships, for an extensive period, as a result of the disagreement among the countries as to which of them should accept the stowaways asylum seekers and refugees are especially provided for under the UDHR. "Everyone has the right to seek and to enjoy in other countries asylum from prosecution."¹⁵

- B. The United Nations protocols relating to the status of refugees: The 1967, protocol removed the refugees convention's temporal and geographical retractions so that the convention applied universally. Article 1 of the protocol says that countries that rectify it, agrees to abide by the refugee convention as well even if they are not a party to it.

The United Nations convention relating to the status of refugees: The Convention relating to the status of refugees also known as the 1951 refugees convention or the Geneva convention of 28th July, 1951 is a United Nations multilateral treaty that defines who a refugee is and sets out the rights of individuals who are granted asylum and the responsibilities of nations that grant it. The core-principle of this convention is "non-refoulment" which asserts that a refugee should not be returned to a country where they face serious threats to that life or freedom. This is now considered as a rule of customary international law. UNHCR serves as the 'guardian' of the 1951 convention and its 1967 protocol.

- C. The international convention of safety of life at sea (SOLAS), 1974: The SOLAS convention in its successive forms is generally regarded as the most important of all international treaties concerning the safety of merchant ships. The first version was adopted in 1914, in response to the Titanic disaster, the second in 1929, the third in 1948 and the fourth in 1960. The 1974 convention or version of it includes the tacit acceptance procedure, which provides that an

amendment shall enter into force on a specified date unless, before that date, objections to the amendment are received from an agreed number of partners. The 1974 convention as a result, have been updated and amended on several occasions. The convention in force, in contemporary times is sometimes referred to as SOLAS, 1974, as amended.

The main objective of the SOLAS convention is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety. Flag states are responsible for ensuring that ships under their flag comply with its requirements and a number of certificates are prescribed in the convention as proof that this had been done. Control provisions also allow contracting governments to inspect ships of other contracting sates, if there are clear grounds for believing that the ship ad its equipments do not substantially comply with the general requirement of the convention, this procedure is known as port state control. The current SOLAS convention includes Articles setting out general obligations, amendment procedures, etc. followed by an annex divided into fourteen (14) chapters. Its general provisions includes regulations concerning the survey of the various types of ships and the issuing of documents signifying that the ship meets the requirements of the convention

The United Nations Universal Declaration of Human Rights (UDHR): This is a milestone document in the history of human rights. It was drafted by representative with different cultural historical and legal backgrounds from all regions of the world, the declaration was proclaimed by the United Nations General Assembly in Paris on 10th of December, 1948 as a common standard of achievements of all people and all nations. It sets out for the first time fundamental human rights to be universally protected and it has been translated into 500 languages. It was made in response to the barbarous acts which outraged the conscience of mankind during the Second World War. Its adoption recognized human rights to be the foundation for freedom, justice and peace. The UDHR in all of its thirty (30) articles buttressed more of human rights which includes, "the right to life and liberty" freedom from slavery and torture" "freedom of opinion and expression", the right to work and education", "right to freedom of religion and not to be discriminated upon", etc. This

provision is important because it provides both a guide to present action and an evolving set of ideas for future implementation at the national level. Interestingly, these principles have been embodied in what states do, and it serves as the foundation for the International Bill of Rights and several other crucial human rights agreements.

D. Other International Instruments Applicable to Stowaways

1. Conclusions on the United Nations High Commissioners of refugees executive committee on stowaway Asylum seekers: In light of the fact that there were no general and internationally recognized rules dealing specifically with stowaway asylum-seekers, the UNHCR Governing Executive Committee on October, 1988 published some conclusions based on real cases of stowaway asylum-seekers. These conclusions recommended that the following guidelines be taken into consideration when dealing with stowaway asylum seekers:

- Like other asylum-seekers, stowaway asylum-seekers must be protected against forcible return to their country of origin.
 - On a normal, UNHCR would be requested to assist in finding durable solution for those found to be refugees, based on all relevant aspects of the case.
 - Without prejudice to any responsibilities of the flag state, stowaway asylum-seekers should, whenever possible, be allowed to disembark at the first port of call and given the opportunity of having their refugee status determined by the authorities, provided that this does not necessarily imply durable solution in the country of the port of disembarkation.
2. Under the practical guidelines for ship-owners, their agents and shipmasters relating to stowaways asylum-seekers: In January 1992, the UNHCR published a more comprehensive document titled, “practical guidelines for ship owners, their agents and ship masters relating to stowaway asylum seekers”. Its opening paragraph echoes the provision of Article 33(1) of the UN refugee convention, but this time makes reference to stowaway asylum-seekers. It

provides that

*“Under no circumstances should the stowaway asylum-seeker be returned to the country of origin or disembarked in any other country from where he/she would risk to be returned to the country of origin or where his/her life or freedom would be threatened on account of race, religion nationality, political opinion or membership of a particular social group”.*¹⁶

The disembarkation process at the next safe port of call should involve UNHCR representatives.¹⁷ Who shall be contracted by the ship owners or their agents with as much information as possible supplied by the stowaway to the reason for requesting refugee status.¹⁸ An interview to ascertain the stowaways claims should be carried out in the presence of a UNHCR officer or their attorney by immigration authorities qualified to handle asylum claims.¹⁹ At the conclusion of the interview, if a stowaway doesn’t qualify as a refugee, he would be treated like any other stowaways and remain the ship owner’s responsibility.²⁰

2.1. STOWAWAY AND MARITIME SECURITY

There is no definite meaning of the concept of maritime security.²¹ Bueger refers to it as, “one of the latest buzzwords of international relations”. Discourse on maritime security typically alludes to maritime threats. There are two approaches on how to determine what constitutes maritime security; the negative or the laundry list approach and, the positive approach.²² The negative approach identifies threats like “maritime inter-state disputes, maritime terrorism, piracy, trafficking of narcotics, people and illicit goods, arms proliferation, illegal fishing, environmental crimes, or maritime accidents and disasters”, and proposes that an absence of such threats constitutes maritime security.²³ The laundry list approach has been criticized as being insufficient and instead, creates problems as to which acts should be regarded as threats to maritime security. The positive approach on the other hand defines maritime security as, “good” or “stable order at sea”. The problem with this approach is that it neither explains nor specifies what comprises “good” or “stable order” or whose order it is supposed to be.

The researcher submits that the argument in support of the laundry list approach is flawed because it is rather restrictive and tends to exclude some acts

which would otherwise amount to a threat to maritime security, such as stowing away. The researcher advances the view that rather than creating a list of acts which constitute maritime threats or defining maritime security as the “good” or “stable order at sea”, maritime security should be regarded as any act or omission which, in any way, threatens or undermines, or has the potential to threaten or undermine shipping or the maritime industry.

This approach is much more encompassing and includes acts which otherwise would have been overlooked as threats to maritime security. The determining factor as to what constitutes a breach of maritime security should be whether an act or omission does in fact, endanger or affect, or has the capability to endanger or affect shipping in a negative manner. If it does, then such act or omission should be regarded as a threat to maritime security.

Stowaways do, in fact, affect shipping on a large scale as they can cause delays to ships resulting in disruption of shipping schedules, loss or damage to cargo, loss of revenue, legal issues, and human rights violations arising from repatriation issues such as non-acceptance of stowaways by some coastal countries for disembarkation in their ports. They also endanger the ship, crew members and themselves. They should, therefore, be recognized as a threat to maritime security.

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2.2. CLASSIFICATION OF STOWAWAYS

The main reason people stowaway is the need to escape impoverishment. McNicholas paints a very grim picture of the sordid and sub-human conditions some of these stowaways live in.²⁴ the desperation to escape these squalid living conditions fuels their determination to leave their countries and seek a better life elsewhere, no matter what or how long it takes.

It is very difficult to ascertain the status of a stowaway. Stowaways that do not possess the documents required to enter a country are deemed

illegal entrants and will as such, be dealt with according to the national legislation of that country. Stowaways can be categorized as refugees, asylum-seekers, economic migrants, illegal migrants, criminals or terrorists.

Refugees

A refugee is a person forced to escape their country of domicile, attempting the escape for reasons of war, civil unrest or religious persecution.²⁵ The term forced is used because in this case they have no choice or a really bad choice for fear of their life or of the state of the country.

The 1951 Convention defines as refugee to be someone who:

...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

As such, these individuals have had no choice but to leave their home State due to war or persecution on the grounds of ‘race, religion, nationality, membership of a particular social group or political opinion’.²⁶ Thus, they are forced to find way to flee their countries. These individuals usually travel with no passport or other form of identification. Individuals with this status, have international protection under both international refugee law and international human rights law.²⁷

Economic Migrants

The term “economic migrants” is sometimes erroneously used interchangeably with the term “refugees”. There is, however, a significant distinction between the two. This distinction is underscored by voluntariness. An economic migrant (for purely economic reasons) makes a choice to leave his or her country in pursuit of a better life elsewhere while a refugee is forced to leave his or her country to escape persecution. It is imperative to note yet another crucial distinction between refugees and migrants: whereas refugees enjoy the protection of

international law, migrants, on the other hand, do not. The 1951 Refugee Convention offers further protection by prohibiting the expulsion or return of refugees: “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.

Asylum Seekers

This is the case where an individual seeks asylum in a country without the hovering fear of repatriation. The idea is to avoid persecution in their home country which they may be trying to avoid because of political reasons such as an unwanted uprising against the Government or something along those lines.

The right to seek asylum is firmly entrenched in the UDHR. Resolution FAL. 11 (37) acknowledges stowaway asylum-seekers. It provides that, “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 Convention and of the United Nations Protocol relating to the Status of Refugees of 31 January 1967 and relevant national legislation”.²⁸

Irregular Migrants

There is a correlation between irregular migration and stowing away. Most of the time, their intention is to enter the state undetected, much like an ‘unannounced arrival’²⁹ and would want to avoid being noticed by authorities. They are usually travelling under a false nationality, with no socio-economic status and no proper documentation. These types of migrants are, more often than not, part of a human trafficking ring and are smuggled in undetected in containers.³⁰

Stowaways are usually treated as illegal immigrants at the port of disembarkation in accordance with the legislation of the countries involved.

Criminals

Some stowaways may be criminals who are the most likely to end up becoming violent and uncooperative in the event that they are discovered.³¹ They would be on board vessels either in an attempt to evade a

prison sentence or the authorities. It could also be the case that they were meant to be smuggled, however, being unable to afford payment, they volunteered to act as drug mules as a way to settle payment to these smuggling organizations.³²

2.3. THE ILLEGALITY OF BEING A STOWAWAY

Why being a stowaway is illegal?

Stowaways might be fined or imprisoned since it is illegal to embark secretly on a plane, boat, or ship. Airports, sea ports and train stations are “non-trespassing” or “private property” zones to people except customers and employees.

PENALTIES FOR BEING A STOWAWAY IN NIGERIA

Immigration Act 1963

The Act provides in Section 28 that:

1. If any person arrives at a port in Nigeria as a stowaway in a ship or aircraft, he shall, subject to the provisions of subsection (2) of this section, be treated for the purposes of this Act as if he were a prohibited immigrant and was refused admission into Nigeria accordingly.
2. Subsection (3) of section 27 of this Act shall apply in relation to any such person refused admission as it applies in relation to any who has landed or remained in Nigeria as mentioned in subsection (2) of the said section 27.³³

2.4. STOWAWAYS: THE NIGERIAN EXPERIENCE

Seaports are usually regarded as the economic gateway to every nation. They play crucial roles in economic growth, stability and sustainability as the nation relies on ports for exports and imports. In Nigeria, the Lagos Port Complex Apapa and Tin-Can island Port Complex are the busiest ports linking the nation with the globe for trade, but the influx of ships in and out of these ports also pose opportunities for stowaway and Lagos in among the top 10 cities of the global index of stowaway.

While the more deserving accomplishments for Lagos ports is to be the leading ports in the sub-

region and Africa, the reality is that Lagos ports are becoming more famous for numerous ills and challenges including stowaways which continues to record a higher number of cases over the years.

In 2022, the crew of a Chinese vessel allegedly dumped 12 Nigerian stowaways into the open sea off the coast of Liberia. During the incident, two of the stowaways reportedly died, while 10 others were later rescued by fishermen after being abandoned at sea by the Chinese cargo ship *Ophelia Panama*. After they were rescued the 10 Nigerians confessed to being stowaways who unlawfully boarded the Chinese vessel at Delta Port, Warri, in an attempt to escape to Japan and seek greener pastures.³⁴

In 2023, two of the four rescued Nigerian stowaways narrated how they survived 14 days on a ship's rudder by drinking their urine before being rescued off the coast of Brazil. A development that the stakeholders described as a national and international embarrassment.³⁵ The Director of Naval Information Commodore Aiwuyor Adams-Aliu, noted that between August 2023 and April 2024, no fewer than 75 stowaways had been apprehended, emphasizing that the arrests were in the line with the strategic directive of the chief of the Naval staff, Vice Admiral Emmanuel Ogalla, which enabled the deployment of Advanced Maritime Domain Awareness (MDA) equipment to direct Quick Response Teams (ART) to all parts of Nigeria's territorial waters.³⁶

Also, four Nigerians, who had been eager to travel broad beat the security network at the seaport to sneak into a ship preparing to leave the shores of the country. They hung on the rudder of the ship determined to brave the odds of travelling abroad. They found themselves in Brazil after journeying for 14 days in a condition that saw them hovering between life and death.³⁷ "It was a terrible experience for me", said one of the migrants, 38 year old Thank God Opemifo Matthew Yeye, in an interview at a Sapaulo church shelter. "On board, it is not easy. I was shaking, so scared. But I am here" Yeye, a Pentecostal Pastor from Lagos state, said his peanut and palm oil farm was destroyed by floods this year, leaving him and his family homeless.³⁸ He expressed hope that they would join him in Brazil.

His co-traveller, Roman Ebimene Friday, a 35 year old from Bayelsa state, said they made every effort during the journey not to be discovered by the ship's

crew, who they feared could throw them into the sea.³⁹ To prevent themselves from falling into the water, Friday said they rigged up a net around the rudder and tied themselves to it with a rope. He said each time he looked down from, the rudder, he could see "bit fish like whales and sharks. On their tenth day at sea, the four Nigerians stowaways crossing the Atlantic in a tiny space above the rudder of a cargo ship ran out of food and drink. They survived another four days according to their account, by drinking sea water crashing just metres below them, before they were rescued by Brazilian federal police in the southeastern port of Victoria.⁴⁰

In later 2020, the Aljazeera report said, Spanish authorities identified six travelling from Nigeria on the rudders of two tankers. "One of those who arrived in 2020 was a 14 year old boy who narrated his harrowing two week journey to the Spanish daily "El Pais" the report said. He described how the stowaways had to take turns to sleep because the available space was only enough for one person at a time.⁴¹ In 2018, four Nigerian stowaways Samuel Jolumi, 27, Ishola Sunday, 28, Toheeb Popoola, 27, and Joberto McGee, 21, were arrested in UK and jailed for a total of seven years. They reportedly hurled faeces at elite SBSS sailors while on the ship; and vowed to infect them with HIV during a tense standoff in the Thames Estuary. The stowaways also threatened to kill crew members with metal poles when they broke free from quarantine on the 78,000-tonne Italian merchant ship on 21 December 2018. They said they would steer it to the UK.⁴²

Nigerian Navy also disclosed that eight stowaways were arrested in separate operations since the beginning of 2026.⁴³ Incidents recorded between March and April 2026 involved stowaways intercepted on vessels and near the Lagos fairway Busy. In early April, the Navy arrested three Ghanaian national who had illegally boarded a European-bound vessel in Lagos.⁴⁴ The interception, also confirmed by the Navy in a briefing, highlighted the continued use of Nigerian ports as transit points for irregular migration likewise, the Nigerian Navy Ship (NNS) Beecroft, handed over two suspected stowaways to the Nigerian Immigration Service (NIS) after they were rescued from a merchant vessel along the Lagos waterways.⁴⁵

On the 29th of November, 2022, Spain's Maritime Rescue Service rescued three stowaways traveling on

a ship's rudder in the Canary Islands after the vessel sailed there from Nigeria. The men, found on the Alithini II oil tanker at the Las Palmas port, appeared to have symptoms of dehydration and hypothermia after spending about eleven days clinging to the rubber of the oil tanker.⁴⁶

The three were subsequently transferred to hospitals on the island for medical attention, Spain's Salvamento Marítimo said. According to the Marine Traffic website which tracks ships, the Malta-flagged vessel left Lagos, Nigeria on Nov. 17 and arrived in Las Palmas Monday. Though extremely dangerous, it is not the first-time stowaways have been found traveling on the rudder of commercial ships to the Canary Islands. Also, in 2021, a 14 year old Nigerian boy was interviewed by Spain's El País newspaper after surviving two weeks on a ship's rudder. He had also departed from Lagos.⁴⁷

Another case of stowaways was reported on the 9th of October, 2022, No fewer than 11 Nigerians and one Cameroonian were rescued from the Atlantic Ocean by Liberian fishermen, following their failed attempt to get to Europe illegally. The Guardian learnt that the survivors, who were repatriated to Lagos, at the weekend, stowed away on Ophelia Panama, "a cargo vessel that was returning to Europe, from Lagos. The 11 Nigerians and one Cameroonian arrived aboard an ASKY Airline Flight No KP062, with the help of the Liberian immigration officers.

The returnees whose age range from 24 to 40 are Seyi Popoola, Precious Uwa logo, Ayetimiye Kelvin, Stephen Junior, Emmanuel Benjamin, Balogun Gbenga, Temiotan Adewale, Igiebor Stephen, Hamza John, Alfred Ese, and Ogechi Chika. They all admitted to sneaking into the basement of the ship at Tin Can Island, Apapa, Lagos at about midnight on Wednesday, September 7, 2022, after transporting themselves on smaller boats to the ship. They entered with their personal belongings and some food items, with the hope of making it to any country in Europe. The ship set out for Europe without the crew's knowledge of the stowaways. However, on the fifth day, having exhausted their food and faced with starvation, they all decided to present themselves to the ship's crew to get food so as not to die of starvation. Upon their appearance before the crewmembers, they were all subjected to severe physical and mental torture. Thereafter, the crew

allegedly threw them into the waters in a threesome. Others sustained a lot of injuries and battled for their lives until they were rescued by Liberian fishermen, who tended to their injuries and alerted the Liberian immigration authorities. One of the returnees said: "We met each other on the ship. We are 14 with one Cameroonian. We moved from Niger dock entering the vessel through the rudder side. When the ship was moving after four days, our food finished and so we wanted help from the crew. Unfortunately, the crew started spraying us with chemicals, which burnt our skins while commanding us to jump into the high sea."⁴⁸

In October 2020, during a transit of the English Channel, the Nave Andromeda found itself at the forefront of international news when seven stowaways on board began threatening the crew. The vessel was stormed by British special forces who resolved the incident within 8 minutes, before handing the stowaways over to Hampshire Police. In the following days it emerged that a few days prior to the incident, European ports had refused to receive the stowaways. Attempts by the ship's Greek captain to disembark the stowaways in the Canary Islands on October 15th and in Saint Nazaire on October 20th were both refused by the Spanish and French authorities.⁴⁹

Perhaps the most unfortunate case is that of the eight African stowaways who were brutally murdered, and their dead bodies tossed overboard by the crew members of the MC-Ruby. The accused persons were tried in a French court and found guilty of various offences ranging from complicity to murder, extortion, kidnapping and acts of piracy.⁵⁰ The Captain and the ship officer were sentenced to life imprisonment whilst the other three crew members were each sentenced to twenty years imprisonment. The accused persons admitted to killing the stowaways because of the heavy fines imposed on carriers. The MC Ruby had been caught with stowaways four times in the previous two years, and the last captain demoted for his "failure to deal with them."

In 2018, a stowaway attempt was foiled on the Atlantic Pride vessel at the Petroleum Wharf Apapa (PWA) NNPC Jetty in Lagos. As seen in the viral video, 4 persons were seen disembarked by security operatives from the vessel with their belongings wrapped in clothes.⁵¹ Speaking with MMS Plus

newspaper, the Forum Chairman, Lagos Maritime Security Zone of the Port Facility Security Officers of Nigeria (PFSON), Dr. Ignatius Uche attributed the lack of stiffen penalty on stowaway as one of the problems in the country and therefore called for a review of stowaway penalty. He said: "The fine or penalty for stowaway in Nigeria is not severe. When they're caught, the perpetrators are asked to go sweep the court. Sometimes the lawyers will tell us that these people are still within Nigeria depending on the location where they're caught. In such situations, they argue that it's no longer regarded as stowaway. They will tell us it's an attempted stowaway because they're still within the Nigeria Explicit Economic Zone (EEZ). It becomes stowaway when the person crosses the nation's EEZ.

Uche explained a different scenario whereby an individual boarded a vessel from Tin-can port thinking the vessel's next port of call is Europe and it ended up going to Port Harcourt. Also, a case of a Ghanaian entering a vessel to stowaway and the next port of call is Nigeria.

"The jurisdictional issue as to where and how to categorize and classify stowaway is a major challenge. The government should do something about it, also the maritime stakeholders; port operators, port industry regulatory body and terminal operators must all put their hands on deck to tackle this menace."

The forum Chairman noted that the issue of stowaway is not only a teething problem bedeviling the maritime industry but it also portrays the porosity of the nation's maritime domain. He argued that the menace is a confirmation of the high rate of unemployment and the desperation of people that want to go for greener pastures. "The question is where and how do they have access, is it through the seaward or landward. It's a problem that is multifaceted and needs a multifaceted approach to address it. It takes two to tangle and usually maritime crime is through cartels and organized crimes. People who have access and tailgate use their privileged position to bring in miscreants and before you know it becomes a problem."⁵²

He added that stowaway cases can only be minimized and not completely eradicated as it evolves every day and because some people have tried and succeeded, also encourage others to give it a try. While speaking on repatriation of stowaways, he noted it is not

common in the country but concerted efforts should be made by all relevant agencies concerned as the cost implications of repatriation is very harsh.

"It's more than \$10, 000 to repatriate one stowaway and it has been laundering our image in the eyes of the international community. In the days of old we recommend joint stowaway search for every vessel that calls to our port and to what extent that is being done it needs to be verified because these people are not spirits, they're human beings.

"They at times join the vessel while the vessel is on its way to route. They use canoes to follow the vessel and use monkey jacks to get onboard. The risk they take is very high; some of them might even fall into the water and die by drowning. It's just the ones that we see that we are talking about. Nigeria Immigration Service has officers on arrival and departure, so they should do their work. All agencies concerned in the maritime industry should also do what they're supposed to do and perform their roles to curb this menace," he said.

Industry stakeholders have posited that having stowaways on board is evidence of breach in port security management and considered as the ship and ports not in compliance with the International Ship and Port Facility Security (ISPS) code. The forum Chairman however affirmed that the nation is in compliance with the ISPS code as the country has even surpassed the percentage required by the regulatory body.

"Nigeria is compliance to the code; it is just an indicator of level of compliance. As far as the code is concerned Nigeria has even surpassed the percentage required by the international community especially the IMO and the US code for mobilizing the implementation of ISPS. Each time they come they've always been giving us a clean bill and of course extend partnership beyond expectations.

2.5. STOWAWAYS AND THE SHIPPING INDUSTRY

Stowaways found aboard commercial vessels make it challenging for the shipping industry from both a practical and legal point of view.⁵³

Such incidents are mainly a problem for operators of ships, who are likely to incur economic losses, since these are the ones responsible for arranging and financing the maintenance, disembarkation, and repatriation of the stowaway. Moreover, certain

States enforce fines for having stowaways on board when the vessel arrives in their port and further fines if the stowaway escapes.⁵⁴ However, it's significant to note that these costs are usually covered by Protection and Indemnity ("P&I") Insurance.

Additionally, delays and diversions of the planned route may ensue, which not only incur more expenses for the ship operator but may potentially damage the cargo. There also lies the risk of cargo contamination. Moreover, the safety of the crew on board is also disputed, especially if stowaways outnumber the crew. Thus, it is evident that stowaways create massive liabilities on the shipping industry and present a risk to the safety and security of the ship.

Legal problems mainly arise when the States involved, these being, 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, must decide where to disembark and repatriate the stowaway. This process is never an easy task, it is often a lengthy procedure which is difficult to solve in a timely manner due to the different national legislations of the States involved, thus creating additional difficulties to the shipping industry.

III. THE DANGERS OF STOWING AWAY

Stowing away is a harmful practise which can be dangerous to the ship and its operational safety, cargo and crew members, and sometimes, the stowaways themselves.

Risk to cargo

Stowaways tend to cause damage to cargo when they hide amongst it. In *American Home Assurance Co. v Sletter M/V*,⁵⁵ the defendant vessel, laden with coffee from Santos, Brazil, on its way to the United States, made a stop at Puerto Cabello, Venezuela, where nine stowaways stole aboard the vessel and hid in the cargo holds. On arrival at New Orleans the stowaways were discovered, along with 800 plus bags of coffee which had been contaminated with their urine and faeces and therefore, had to be destroyed, causing a huge financial loss to the cargo interests. The risk to cargo is not always physical but can come about as a result of a lengthy voyage where the ship deviates to disembark stowaways.

Risk to the ship and its operational safety

Stowaways pose a risk to the operational safety of a ship when they stowaway on commercial ships which are neither equipped nor certified to carry passengers.⁵⁶ In *United Brands Co. v M. V. Isla Plaza*⁵⁷, stowaways snuck onto the defendant vessel and lit a fire, in a bid to keep warm. The fire got out of hand, destroying the cargo of bananas along with the ship and killing the stowaways in the process. Interfering with the proper manning of a ship can also jeopardise its operational safety. Because cargo ships do not have extra accommodation to detain stowaways, the crew members may have to move from their accommodation to guard them; and may get distracted from the duties which they are trained to perform.

Risk to crew members

There is a possibility of harm to crew members where stowaways outnumber them or exhibit violent behaviour. Some stowaways have violent origins and could injure or worse, kill a crew member. The health and sanitary conditions of stowaways often leave a lot to be desired, hence, crew members run the risk of being infected with diseases from sick stowaways. A case in point was an incident involving two stowaways that boarded a ship at Dakar, Senegal at the peak of the Ebola virus crisis. They were not discovered until the next African port where the port authorities denied them landing for the reasons that: (a) they may have the virus; and (b) they did not have any form of documentation on them. No port would allow them to be disembarked until finally, they were returned to West Africa, after being stuck on the ship for six months.

There are safety measures put in place to ensure the safety of passengers on board a ship. The SOLAS Convention 1974 provides for both passenger and cargo ships to be equipped with personal life saving appliances which should be readily available in cases of emergency.⁵⁸ All ships are mandated to carry on board a life-jacket for every person on board. Furthermore,

"Every cargo ship... shall carry of the ship of such aggregate capacity as will accommodate all persons on board, and in addition shall carry life-rafts [sic] sufficient to accommodate half that number. Provided that, in the case of such cargo ships engaged on international voyages between near neighbouring

countries, the Administration, if it is satisfied that the conditions of the voyage are such as to render the compulsory carriage of life-rafts [sic] unreasonable or unnecessary, may to that extent exempt individual ships or classes of ships from this requirement".⁵⁹

In essence, ships are usually equipped with sufficient life-jackets for all persons whose names are on the manifest and no more than that. Moreover, there is no strict requirement by law to carry additional life rafts to supplement the life boats. Thus, in emergency situations where everyone is required to abandon ship, the safety of the crew members or the stowaways could be compromised if the number of all on board the ship outnumbers the lifesaving equipment available because of the presence of stowaways.

Risk to self

Each time people stowaway, they unwittingly expose themselves to danger. Stowaways stand the risk of losing their lives in a number of ways. They could lose their lives in a fire, or from suffocation⁶⁰, or as a result of inhaling noxious gases used in fumigating cargo against infestation, or by being set adrift by crew members and left to the mercy of the unforgiving seas, or murdered and thrown overboard.

3.1. The Nigerian Regulation on Stowaways

Recently, The Nigerian Maritime Administration and Safety Agency (NIMASA) introduced new measures to check security threats in the Nigerian maritime domain and deter persons who may seek illegal means of entry into the country as stowaways.⁶¹ Under the new procedures, all Ship Captains are to submit the Security-Related Pre-Arrival Information, SRPA, forms to the Agency not later than 48 hours before the ship's arrival at any Nigerian port.

Ship Captains are also required to exchange the Declaration of Security, DoS, with the Port Facility Security Officer, PFSO, of their next port of call not later than 72 hours before the ship's arrival at that port for conveyance to NIMASA within 48 hours. Additionally, all ships are to maintain 24 hours vigilance and surveillance to detect strange movements, including small boats and skiffs that may not be captured by radar.

Other measures include proper pre-departure search and completion of pre-departure form before departure from any port; switching on Automatic

Identification Systems, AIS; close monitoring of communication channels and response to any VHF call from the Nigerian Navy or the Regional Maritime Rescue Coordination Centre (RMRCC). Director General NIMASA, Dr. Bashir Jamoh, said that the measures are consistent with the strategy of trying to keep one step ahead of the pirates, armed robbers, and anyone or anything that poses a danger to the country's maritime domain and Nigeria, in general.

"The procedures are easy to follow and deliberate steps have been taken to make the reporting process seamless, all for the good of the ship operators and the international shipping community. They are in keeping with NIMASA's statutory mandate to provide maritime security and implement special actions to enhance security in line with the ISPS Code Implementation Regulations, ICIR, 2014".

3.2. TREATMENT OF STOWAWAYS UPON DISCOVERY

Stowaways are usually treated as illegal immigrants at the port of disembarkation in accordance with the national legislation of the affected countries. However, they enjoy the protection⁶² of the international law in the sense that, they are to be treated in a manner consistent with international humanitarian principles.

In 2020, four stowaways were discovered by the Spanish port authorities sitting on vessel's rudder, in Champion PULA,⁶³ a ship which sailed from Lagos port in Nigeria. For over ten days, they had survived the open sea close to the propeller with minimal food and water. The shipmaster was not aware of their presence as it was not possible to access the rudder trunk. They were taken good care of, until they disembarked in Norway.

Beyond the jurisdiction of international law, the perception of stowaways varies according to national jurisdiction. In Nigeria, stowaway is criminalized⁶⁴ under municipal laws. In 2019, an Apapa magistrate's court⁶⁵ sitting in Lagos sentenced three stowaways to three months imprisonment for boarding a vessel without purchasing ticket at the Tin Can Island Port.

According to Gard, once stowaways are discovered, the master is advised to notify the shipowner, the P & I Club or their local correspondents right away.⁶⁶ The reason for this is to enable the CSO to notify the

authorities at the next port of call of the stowaway's presence, and to let their local correspondents kick-start the repatriation process. The stowaways should be searched for identification documents (which should be seized by the master if found as they tend to destroy or conceal them) and drugs. Where drugs are found on them, the master should take photographic or audio-visual evidence, and write down the circumstances under which they were found. Gard advises that threats or violence must never be resorted to when dealing with the stowaways. They should be treated humanely at all times. Masters are enjoined 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".

Some masters may mistreat their stowaways in utter disregard of this provision. There have been cases where stowaways have been thrown into the sea to avoid the payment of fines levied against ships with stowaways, and repatriation costs. In 2012, four stowaways from Africa were thrown overboard by a ship's crew members after it came to the captain's knowledge that repatriation costs could go as high as \$50,000 per stowaway, and the amount could double if cargo was delayed.⁶⁷

In extreme cases, stowaways have been murdered. There is a conflict between the rules on land and the realities at sea. Ship masters are penalised or fined for arriving at ports with stowaways on board their ships and yet they are prohibited from jettisoning them. Ships coming into a port with stowaways on board are liable to fines and fees.

3.3. REGULATORY FRAMEWORK, STOWAWAY, REPATRIATION AND DISEMBARKATION

Repatriation is a component of national immigration policy and as such, carried out by State governments. In the maritime industry repatriation may be carried out by non-state agencies like the P & I Clubs through their international network of local correspondents. These local correspondents possess the mastery required to facilitate the stowaway removal process. In the words of Walters, they are:

"Local problem-solvers based in the ports who know the right people, who 'call in favours' from Local

embassy officials, harbor masters, immigration officials, etc. Their task is to acquire the necessary emergency travel papers for the migrant, get them off the vessel as quickly as possible, and ultimately on a flight back to their, 'home' state. If a stowaway claims refugee status, the local correspondent will pressure the local authorities for a refugee hearing which, if successful, will often relinquish the ship owners of their burden".

The process of the disembarkation and repatriation of stowaways is provided for under the Resolution FAL. 13 (42), The 1951 UN Refugee Convention and its 1967 Protocol, Conclusions of the United Nations High Commissioner for Refugees Executive Committee on Stowaway Asylum-Seekers No. 53 (XXXIX) 1988,309 the United Nations High Commissioner for Refugees Practical Guidelines for Shipowners, their Agents and Shipmasters relating to Stowaway Asylum-seekers, and the United Nations Declaration of Human Rights. The position of Nigeria with regards to these regulatory frameworks is as follows;

1. A member of the international maritime/Organization (IMO) and it follows the guidelines under Resolution 13 (42) FAL.
2. Nigeria acceded or ratified the United Nations Refugee Convention and it's protocol
3. Nigeria is bound by the provisions of the United Nations declaration of human rights (UDHR) as a member of the community of states.

Under the Resolution 13 (42)

There are certain basic principles that should be followed in order to ensure the speedy resolution of stowaway cases under the Resolution FAL 11 (37), "Stowaway incidents should be dealt with in a manner consistent with humanitarian principles. Due consideration must always be given to the operational safety of the ship and to the safety and well-being of the stowaway". The master of a ship with stowaways on board is particularly urged, "To ensure that stowaways are treated humanely, consistent with the basic principles". It is very vital that stowaways be treated humanely, no matter how much they bother everyone on board or how difficult they get. Masters have a responsibility "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”. More of the basic principles are contained under Section 3 and include inter alia:

1. Stowaway incidents should be dealt with in a manner consistent with humanitarian principles. Due consideration must always be given to the operational safety 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. Ship owners, 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 Veil-timed searches minimize- the risk of having to deal 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, ship owners 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 stand on board ships for an unreasonable amount of time.
6. Stowaways arriving at or entering a State without the require 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.

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 the 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.

Port countries, starting with the first country on the voyage plan, (after a stowaway has been discovered) are charged with the responsibility to “accept the stowaways for examination”, and “favourably consider” permitting their disembarkation, subject, of course, to their national legislation. Where the stowaways do not have identity documents, the country of the first port, of call, the country of nationality or right of residence of the stowaways, and the ship’s flag State, should endeavour to verify their identity and their real countries or the countries they legally reside in. The country of embarkation is under an obligation to accept a stowaway that has been positively identified as their citizen or has the right to legally reside therein. It is not permissible to return such a stowaway to a country that had hitherto found them unacceptable.

Under the 1951 Refugee Convention and its 1967 Protocol, there are no internationally recognised rules dealing with stowaway asylum-seekers, but the 1951 Refugee Convention and its 1967 Protocol contain principles that are relevant to them.

Stowaway asylum-seekers are protected by the principle of non-refoulement under the 1951 Convention, “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would-be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

Refoulement is a principle of customary international law and thus binding on all countries irrespective of whether they assented to the 1951 Refugee

Convention and its 1967 Protocol or not. It is regarded as the bedrock of asylum and international refugee law. Stowaways seeking asylum or claiming refugee status must not be repatriated to their country or any other country where their lives could be in danger as doing so constitutes a violation of the refoulement principle. Refusal of admission of a refugee or asylum-seeking stowaway or disclaiming responsibility by a flag State where proceeding to the country of the next port of call could jeopardize his life or freedom is equivalent to refoulement. It is often difficult to obtain authorization from countries to disembark stowaway refugees and asylum-seekers thus compelling masters to leave them on board for an extended length of time, usually under unfavourable condition under the Conclusions of the UNHCR Executive Committee on Stowaway Asylum-Seekers No. 53 (XXXIX) 1988 In light of the fact that there were no general and internationally recognised rules dealing specifically with stowaway asylum-seekers, the UNHCR Governing Executive Committee on October 1988 recommended that the following guidelines be taken into consideration when dealing with stowaway asylum-seekers:

“Like other asylum-seekers, stowaway asylum-seekers must be protected against forcible return to their country of origin. Without prejudice to any responsibilities of the flag State, stowaway asylum-seekers should, whenever possible, be allowed to disembark at the first port of call and given the opportunity of having their refugee status determined by the authorities, provided that this does not necessarily imply durable solution in the country of the port of disembarkation. Normally, UNHCR would be requested to assist in finding a durable solution for those, found to be refugees, based on all relevant aspects of the case”. Under the Practical Guidelines for Shipowners, Their Agents and Shipmasters Relating to Stowaway Asylum-Seekers In January 1992, the UNHCR published a more comprehensive document titled, *“Practical Guidelines for Shipowners, Their Agents and Shipmasters Relating to Stowaway Asylum-Seekers”*. Its opening paragraph echoes the provisions of Article 33 (1) of the UN Refugee Convention, but this time, makes reference to stowaway asylum-seekers. It provides that, *“Under no circumstance*

should the stowaway asylum-seeker be returned to the country of origin or disembarked in any other country from where s(he) would risk to be returned to the country of origin or where his/her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion”.

The disembarkation process at the next safe port of call should involve a UNHCR representative who shall be contacted by the shipowners or their agents with as much information as possible supplied by the stowaway as to the reason for requesting refugee status. An interview to ascertain the stowaways' claims should be carried out, in the presence of a UNHCR officer or their attorney, by immigration authorities qualified to handle asylum claims. In the event that the immigration authorities are unable to conduct the interview, it should be conducted by a UNHCR officer or their attorney. Some countries will not allow the disembarkation of asylum-seekers at their port. Where that is the case, the stowaway will be interviewed on board the ship in the presence of the UNHCR's officer and attorney. At the conclusion of the interview, if a stowaway does not qualify as a refugee, he would be treated like any other stowaway and remain the ship owner's responsibility.

UNDER THE UDHR

Stowaways are protected under the UDHR by virtue of the fact that it contains, *“inalienable rights of all members of the human family”*. Stowaways like everyone else are entitled to the right to life, liberty and security of person. These rights are violated when stowaways get

killed or thrown overboard by masters and crew members to avoid the costs and hassles involved in entering ports with the stowaways on board their ship. They are also violated (in the case of stowaway asylum-seekers) when stowaways are inadvertently confined on board ships, for an extensive period, as a result of the disagreement amongst the countries as to which of them should accept the stowaways for return. Stowaway asylum-seekers and refugees are especially provided for under the UDHR: *“Everyone has the right to seek and to enjoy in other countries asylum from persecution”*.

IV. RECOMMENDATIONS

1. Several Maritime scholars⁶⁸ have discussed the challenges and considerations involved to prevent or limit instances of maritime stowaways. Experts are linking the trend to deepening poverty and weak enforcement of maritime laws, also the growing desperation among youths and gaps in port security systems. Experts also added the endemic challenges of illegal boarding of ships by stowaways at the ports in Lagos, Delta, and Port Harcourt, is giving Nigeria a bad image in the comity of maritime nations. Gbenga Leke Oyewole, former senior special Assistant on maritime services to the ex-president Goodluck Jonathan, said that “our economy should be robust and provide employment to people, and there should be good wages for any work that people do. “That is the number one thing that will stop it and under the ISPS code ports areas are international, most of our ports, especially in Lagos and some other ports, are international ports, whatever it is, to protect the perimeter of such ports must be done by NIMASA, who does not have business in the port should not gain access to the port”. He added that the port security officers, which include the Navy, the DSS and other security agencies in the port, including immigration to rise to the occasion as well to ensure that people who are not supposed to be found within the port premises are not found there.⁶⁹
2. Also, addressing irregular migration via youths education and innovation according to the National Bureau of Statistics (NBS),⁷⁰ Nigeria has a yearly rate of 40 per cent irregular cases of migrants from sub-sahara Africa to Europe,⁷¹ with economic reasons perceived to be the driver of irregular migration. In response to this development Nigeria’s Government took a lead role in the Rabat process, a key Euro-African dialogue on migration and development. In tackling the pressing migration challenges, the minister of Humanitarian Affairs and Poverty Reduction, Professor Nentawe

Yilwatda,⁷² identified key steps to take in addressing the menace of irregular migration, namely.

- (i) The need to create space for digital skills, ownership, and migration literacy across Africa and Europe.
 - (ii) Developing a harmonized migration policy framework to ensure qualification and reduce irregular migration.
 - (iii) Establish youth innovation funds to support enterprises and returnees.
3. To restore confidence in our maritime environment, it is of great importance that security and preventive measures at port should maintain a guard at the entrance gate, identify suspicious persons requesting entry on board, conduct a thorough search prior to departure, seal off rooms and compartments that are not to be used during the voyage and after checking that no persons remain in them.
 4. It is recommended that the responsibility for stowaways be apportioned between shipowners and the country of embarkation, if the shipowner can show that he took reasonable steps to prevent them from getting on board the ship. The reason for this recommendation is that the presence of stowaways on board a ship is as much a breach of the ship security as it is port security. Both shipowners and port authorities have equal responsibility of ensuring that necessary action is taken to prevent access of unauthorised persons into the port facilities or onto the ship.

It is also recommended that countries make national legislation which allows for the prosecution of stowaways, attempted stowaways, and individuals or groups that aid such stowaways or attempted stowaways. Making the act of stowing away a prosecutable offence, will to some extent, serve as a deterrent to would-be stowaways.

The problem of stowing away should not be viewed solely as one affecting the maritime industry alone, but as a human population -reassignment issue which affects a lot of countries and therefore requires the concerted efforts of all involved to resolve. Where the stowaway threat is solely perceived as a maritime

problem, the resultant effect is that the onus of repatriation is placed on the shipowner who then engages the services of non-government officials, namely P & I correspondents to carry out the repatriation of stowaways. Countries that have not already given effect to the amended FAL Convention through their national legislation are advised to do so and work together with shipowners and all the stakeholders involved, in resolving the problem.

5. PREVENTIVE MEASURES THAT VESSEL CAN TAKE IN PORT

The crew has little or no influence on port security and has to focus on preventing stowaways from gaining access to the ship. Ship owners should train their crews, issue the correct instructions and procedures to enable the ship to provide a determined deterrent, stopping stowaways from boarding. Escalated preventive measures can be employed when the risk analysis shows that a port's security is vulnerable to stowaways. These measures depend on crew capacity, but can include:

- (i) **WATCHKEEPERS:** Posting additional watch keepers at entry and exit points and those have to remain unlocked whilst the vessel is in port. Ensure the watchman understands procedures relating to the access of visitors, repairmen, stevedores etc.
- (ii) **ACCESS POINTS:** Ensure security is in place at all entry points. These can include; mooring ropes, access to the vessel from the sea using hooks etc.
- (iii) **PASS SYSTEM:** A huge amount of people surge on board when a ship arrives in port and a pass system can prove invaluable. Passes should be retrieved when visitors leave the vessel via controlled access points. The pass system can be developed to include the name of the visitor to be cross checked against identification cards which are exchanged for a pass on entry at the gangway.
- (iv) **ADDITIONAL PROTECTION:** Include specific terms in the contract whereby the security company would be held liable for all costs of disembarkation and repatriation should it later be discovered that stowaway(s) have managed to board the vessel in that particular port.

- (v) **CCTV:** Maintain vigilance through CCTV and alarm systems with infrared detectors, door contacts, motion sensors, etc. Surveillance should be monitored from the bridge. Brief the crew on the risks of stowaways gaining access to the vessel and the need for their co-operation in reporting anything abnormal and/or suspicious. All crew members should be aware of the advantages of preventing stowaways sailing with the ship.
- (vi) **RANDOM PATROLS:** Carried out with particular focus on unusual and isolated areas proactively and reactively in response to reports of abnormal activity.
- (vii) **LOCKS:** As a matter of routine access points should be locked and secured as long as cargo operations are not hampered; this restricts stowaways' access to potential hiding places. Tamper-proof or wire seals can be used where locks are inappropriate.
- (viii) **RUDDER TRUNK:** The ship's rudder trunk is a typical access point for stowaways and should be checked for stowaways by using the ship's small boats.
- (ix) **MISINFORMATION:** Masters can dissuade potential stowaways or flush out those that may already be in hiding by exhibiting misinformation about the ship's destination, announcing a "fire" or "emergency" drill followed by alarms and notifications in different languages. Alerts indicating that sniffer dogs will be used to carry out a full security search of the vessel or that fumigation will be carried out prior to departure.
- (x) **FINAL CHECKS:** Stowaways often hide shortly before the vessel leaves port. An extensive search of the ship prior to sailing is imperative. The vessel should be divided into search areas. Besides cargo holds and containers, stowaways have also been found in funnel casings, chain lockers, storerooms, cabins, crane cabs, mast houses, engine room bilges and in the rudder shaft space. If stowaways are discovered, immigration authorities should be notified and the stowaways removed.
- (xi) **VESSEL UNDERWAY:** While the

outbound pilot is still on board, another full search of the vessel should be conducted. If stowaways are found they can be repatriated using the pilot boat.

- (xii) **CREW REWARDS:** Stowaway interviews reveal crew can be involved in the safe passage of stowaways whereby they bribe a port official and pay a crewmember for a “ticket”. Financial rewards can be offered to crew members who discover and prevent stowaway incidents.
- (xiii) **MARITIME SECURITY OFFICER:** If there are doubts as to the efficiency of locally supplied guards consider a short-term contract for a professional maritime security officer.
- (xiv) **CONTINGENCY MEASURES:** Ships operating in areas where there is a high risk of encountering stowaways, should consider assigning a dedicated area for lodging stowaways. Simply furnished quarters with harmful items removed would be adequate. The ship should also carry handcuffs if the stowaway is a danger to him/herself or others.

V. CONCLUSION

It is an undisputable fact that stowaways constitute a threat to maritime security, disrupt international shipping and create liabilities and problems for shipowners and interfere with the smooth running of shipping operations. Their presence on board a ship is disadvantageous to all involved; from shipowners to cargo interests.

The cost of repatriating a single stowaway can run into thousands of US dollars, in addition to the loss of revenue resulting from lengthy delays, the risk of legal action against shipowners, and the unwillingness of most countries to accept them for disembarkation and repatriation. As a result, some unconscientious shipowners and crew members have resorted to desperate measures to circumvent the payment of fines and penalties levied against them and avoid the difficulty and cost involved in the stowaway removal process by getting rid of the stowaways by any means necessary.

The human element in the stowaway experience must always be dealt with in a manner consistent with

humanitarian principles. At the same time consideration must be given to the operational safety of the ship so as to safeguard the maritime industry.⁷³ The rights of lives involved must be protected. This due consideration to both the well-being of the stowaways and all stakeholders involved could prove to be a challenge, especially with the frequent occurrence of stowaways acting violently or erratically, as this would possibly spur crew members to approach the stowaways with unnecessary violence.⁷⁴ The lengthy process of disembarkation and consequent delay, further adds to the stress and hostility of the crew towards the stowaways on the vessel.⁷⁵ Nevertheless, the obligation to protect the fundamental rights of the stowaways while onboard, falls entirely on the ships’ crew and shipmaster.⁷⁶ It is also their responsibility to ensure that any requests for asylum is treated in accordance with international protection principles as delineated in international instruments.⁷⁷

It is impossible to completely eliminate stowaways incidents regardless of the amount of resources and effort channeled into combating this scourge. The reason is simple, stowing away is a means to an end; the end being the need to escape harm or unfavourable living conditions. Therefore as long as bad governance, poor leadership, poverty, conflicts, wars, places in distress either financial, political or religious persecution, people will always flee from such conditions (by any means necessary) to seek a better living elsewhere. Likewise, as long as the struggle for mobility continues to play itself out around the materialities and spaces of ports, shipping containers, trucks, goods trains and even aircraft, then it seems the stowaways needs to be more fully recognized as a figure of our time.

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