ANNEX 1

RESOLUTION FAL.11(37)

(Adopted on 9 September 2011)

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

THE FACILITATION COMMITTEE,

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

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

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

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

RECALLING IN ADDITION that, for the purposes of this resolution, a stowaway is defined as a person who is secreted on a ship or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person, and who is detected on board the ship after it has departed from a port, or in the cargo while unloading it in the port of arrival, and is reported as a stowaway by the master to the appropriate authorities,

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

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

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

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

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

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

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

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

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

(a) Member States which are not Contracting Governments to the FAL Convention; and

(b) Member States which are Contracting Governments to the FAL Convention and which:

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

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

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

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

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

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

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

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

2. URGES Governments to implement in their national policies and practices the amended procedures recommended in the annexed Guidelines;

3. URGES ALSO Governments to deal with stowaway cases in a spirit of cooperation with other parties concerned, on the basis of the allocation of responsibilities set out in the annexed Guidelines as from 1 October 2011;

4. INVITES shipping companies, shipowners and ship operators to take on the relevant responsibilities set out in the annexed Guidelines and to guide their masters and crews as to their respective responsibilities in stowaway cases;

5. INVITES Governments to develop, in cooperation with the industry, comprehensive strategies to improve access control and prevent intending stowaways from gaining access to ships;

6. REQUESTS the Facilitation Committee to continue to monitor the effectiveness of the annexed Revised guidelines on the basis of information provided by Governments and the industry, to keep them under review and to take such further action, including the development of a relevant binding instrument, as may be considered necessary in the light of developments.

ANNEX

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

1 Introduction

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

.1 to prevent stowaway incidents; and

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

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

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

2 Definitions

For the purpose of these Guidelines:

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

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

.3 *Public authorities*. The agencies or officials in a State responsible for the application and enforcement of the laws and regulations of that State which relate to any aspect of the present Guidelines.

.4 *Security measures*. Measures developed and implemented in accordance with international agreements to improve security on board ships, in port areas, facilities and of goods moving in the international supply chain to detect and prevent unlawful acts[1].

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

.5 *Shipowner.* One who owns or operates a ship, whether a person, a corporation or other legal entity, and any person acting on behalf of the owner or operator.

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

3 Basic principles

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

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

.2 Public authorities, port authorities, shipowners and masters, should cooperate to the fullest extent possible in order to prevent stowaway incidents.

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

.4 Adequate, frequent and well timed searches minimize the risk of having to deal with a stowaway case and may also save the life of a stowaway who may, for example, be hiding in a place which is subsequently sealed and/or chemically treated.

.5 Public authorities, port authorities, shipowners and masters, should cooperate to the fullest extent possible in order to resolve stowaway cases expeditiously and secure that an early return or repatriation of the stowaway will take place. All appropriate measures should be taken in order to avoid situations where stowaways must stay on board ships indefinitely.

.6 Stowaways arriving at or entering a State without the required documents are, in general, illegal entrants. Decisions on dealing with such situations are the prerogative of the States where such arrival or entry occurs.

.7 Stowaway asylum-seekers should be treated in accordance with international protection principles as set out in international instruments, such as the provisions of the United Nations Convention relating to the Status of Refugees of 28 July 1951 and of the United Nations Protocol

relating to the Status of Refugees of 31 January 1967 and relevant national legislation.[2]

.8 Every effort should be made to avoid situations where a stowaway has to be detained on board a ship indefinitely. In this regard States should cooperate with the shipowner in arranging the disembarkation of a stowaway to an appropriate State.

.9 States should accept the return of stowaways who have full nationality/ citizenship status in that State, or have a right of residence in that State.

.10 Where the nationality or citizenship or right of residence cannot be established, the State of the original port of embarkation of a stowaway should accept the return of such a stowaway for examination pending final case disposition.

4 Preventive measures

4.1 Port/terminal authorities

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

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

.1 regular patrolling of port areas;

.2 establishment of special storage facilities for cargo subject to high risk of access of stowaways, and continuous monitoring of both persons and cargo entering these areas;

.3 inspections of warehouses and cargo storage areas;

.4 search of cargo itself, when presence of stowaways is clearly indicated;

.5 cooperation between public authorities, shipowners, masters and relevant shore-side entities in developing operational arrangements;

.6 cooperation between port authorities and other relevant authorities (for example, police, customs, immigration) in order to prevent smuggling of humans;

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

.7 developing and implementing agreements with stevedores and other shore-side entities operating in ports to ensure that only personnel authorized by these entities participate in the stowing/unstowing or loading/ unloading of ships or other functions related to the ships stay in port;

.8 developing and implementing agreements with stevedores and other shore-side entities to ensure that their personnel having access to the ship are easily identifiable, and a list of names of persons likely to need to board the ship in the course of their duties is provided; and

.9 encouraging stevedores and other persons working in the port area to report to the public and port authorities, the presence of any persons apparently not authorized to be in the port area.

4.2 Shipowner/Master

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

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

.1 all doors, hatches and means of access to holds or stores, which are not used during the ship's stay in port should be locked;

.2 access points to the ship should be kept to a minimum and be adequately secured;

.3 areas seaward of the ship should be adequately secured;

.4 adequate deck watch should be kept;

.5 boardings and disembarkations should, where possible, be tallied by the ship's crew or, after agreement with the master, by others;

.6 adequate means of communication should be maintained; and

.7 at night, adequate lighting should be maintained both inside and along the hull.

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

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

5 Responsibilities in relation to the resolution of stowaway cases

5.1 Questioning and notification by the master

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

.1 to make every effort to determine immediately the port of embarkation of the stowaway;

.2 to make every effort to establish the identity, including the nationality/ citizenship and the right of residence of the stowaway;

.3 to prepare a statement containing all available information relevant to the stowaway for presentation to the appropriate authorities (for example, the public authorities at the port of embarkation, the flag State and any subsequent ports of call if relevant) and the shipowner. In this respect the reporting form provided in the Appendix should be used and completed as far as practicable;

.4 to notify the existence of a stowaway and any relevant details to the shipowner and appropriate authorities at the port of embarkation, the next port of call and the flag State; with the understanding that when a stowaway declares himself/herself to be a refugee, this information should be treated as confidential to the extent necessary for the security of the stowaway;

.5 not to depart from the planned voyage to seek the disembarkation of a stowaway discovered on board the ship after it has left the territorial waters of the State where the stowaways embarked unless permission to disembark the stowaway has been granted by the public authorities of the State to whose port the ship deviates, or repatriation has been arranged elsewhere with sufficient documentation and permission given for disembarkation, or unless there are extenuating safety, security, health or compassionate reasons;

.6 to ensure that the stowaway is presented to the appropriate authorities at the next port of call in accordance with their requirements;

.7 to take appropriate measures to ensure the security, general health, welfare and safety of the stowaway until disembarkation, including providing him/her with adequate provisioning, accommodation, proper medical attention and sanitary facilities;

.8 to ensure that stowaways are not made to work on board the ship, except in emergency situations or in relation to the stowaway's accommodation on board; and

.9 to ensure that stowaways are treated humanely, consistent with the basic principles.

5.2 The shipowner

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

.1 to ensure that the existence of, and any relevant information on, the stowaway has been notified to the appropriate authorities at the port of embarkation, the next port of call and the flag State;

.2 to comply with any removal directions made by the competent national authorities at the port of disembarkation; and

.3 to cover any applicable costs relating to the removal, detention, care and disembarkation of the stowaway in accordance with the legislation of the States which may be involved.

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

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

.1 to accept the stowaway for examination in accordance with the national laws of that State and, where the competent national authority considers that it would facilitate matters, to allow the shipowner and the competent or appointed P&I Club correspondent to have access to the stowaway;

.2 to favourably consider allowing disembarkation and provide, as necessary and in accordance with national law, secure accommodation which may be at the expense of the shipowner, where:

.1 a case is unresolved at the time of sailing of the ship, or

.2 the stowaway is in possession of valid documents for return and the public authorities are satisfied that timely arrangements have been or will be made for repatriation and all the requisites for transit fulfilled, or

.3 other factors make it impractical to remove the stowaway on the ship of arrival; such factors may include but are not limited to cases where a stowaway's presence on board would endanger the safe and secure operation of the ship, the health of the crew or the stowaway;

.3 to make every effort to cooperate in the identification of the stowaway and the establishment of his/her nationality/citizenship or right of residence;

.4 to make every effort to cooperate in establishing the validity and authenticity of a stowaway's documents and, when a stowaway has inadequate documents, to whenever practicable and to an extent compatible with national legislation and security requirements, issue a covering letter with a photograph of the stowaway and any other important information. The letter, authorizing the return of the stowaway either to his/her State of origin or to the point where the stowaway commenced his/her journey, as appropriate, by any means of transportation and specifying any other conditions imposed by the authorities, should be

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

.5 to give directions for the removal of the stowaway to the port of embarkation, State of nationality/citizenship or right of residence or to some other State to which lawful directions may be made, in cooperation with the shipowner;

.6 to inform the shipowner on whose ship the stowaway was found, as far as practicable, of the level of cost of detention and return of the stowaway, if the shipowner is to cover these costs. In addition, public authorities should keep such costs to a minimum, as far as practicable, and according to national legislation, if they are to be covered by the shipowner, as well as keeping to a minimum the period during which shipowners are held liable to defray costs of maintenance of a stowaway by public authorities;

.7 to consider mitigation of charges that might otherwise be applicable when shipowners have cooperated with the control authorities to the satisfaction of those authorities in measures designed to prevent the transportation of stowaways; or where the master has properly declared the existence of a stowaway to the appropriate authorities in the port of arrival, and has shown that all reasonable preventive measures had been taken to prevent stowaways gaining access to the ship;

.8 to issue, if necessary, in the event that the stowaway has no identification and/or travel documents, a document attesting to the circumstances of embarkation and arrival to facilitate the return of the stowaway either to his/her State of origin, to the State of the port of embarkation, or to any other State to which lawful directions can be made, by any means of transport;

.9 to provide the document to the transport operator effecting the removal of the stowaway;

.10 to take proper account of the interests of, and implications for, the shipowner when directing detention and setting removal directions, so far as is consistent with the maintenance of control, their duties or obligations to the stowaway under the law, and the cost to public funds;

.11 to report incidents of stowaways to the Organization[3];

.12 to cooperate with flag State of the ship in identifying the stowaway and their nationality/citizenship and right of residence, to assist in removal of the stowaway from the ship, and to make arrangements for removal or repatriation; and

.13 if disembarkation is refused, to notify the flag State of the ship the reasons for refusing disembarkation.

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

5.4 Subsequent ports of call

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

5.5 State of embarkation

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

.1 to accept any returned stowaway having nationality/citizenship or right of residence;

.2 to accept a stowaway back for examination where the port of embarkation is identified to the satisfaction of the public authorities of the receiving State; the public authorities of the State of embarkation should not return such stowaways to the State where they were earlier found to be inadmissible;

.3 to apprehend and detain the attempted stowaway, where permitted by national legislation, if the attempted stowaway is discovered before sailing either on the ship or in cargo due to be loaded; to refer the attempted stowaway to local authorities for prosecution, and/or, where applicable, to the immigration authorities for examination and possible removal: no charge is to be imposed on the shipowner in respect of detention or removal costs, and no penalty is to be imposed;

.4 to apprehend and detain the stowaway, where permitted by national legislation, if the stowaway is discovered while the ship is still in the territorial waters of the State of the port of his/her embarkation, or in another port in the same State (not having called at a port in another State in the meantime): no charge is to be imposed on the shipowner in respect of detention or removal costs, and no penalty is to be imposed;

.5 to report incidents of stowaways or attempted stowaways to the Organization[4]; and

.6 to reassess the preventative arrangements and measures in place and to verify the implementation and effectiveness of any corrective actions.

5.6 State of nationality or right of residence

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

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

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

.2 to accept the stowaway where nationality/citizenship or right of residence is established; and

.3 to report incidents of stowaways to the Organization[5].

5.7 The flag State

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

.1 to be willing, if practicable, to assist the master/shipowner or the appropriate authority at the port of disembarkation in identifying the stowaway and determining his/her nationality/citizenship or right of residence;

.2 to be prepared to make representations to the relevant authority to assist in the removal of the stowaway from the ship at the first available opportunity;

.3 to be prepared to assist the master/shipowner or the authority at the port of disembarkation in making arrangements for the removal or repatriation of the stowaway; and

.4 to report incidents of stowaways to the Organization[5].

5.8 States of transit during repatriation

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

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

APPENDIX

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

SHIP DETAILS	*Date of birth:*
Name of ship:	*Place of birth:*
IMO number:	*Claimed nationality:*
Flag:	*Home address:*
Company:	*Country of domicile:*
Company address:	*ID-document type, e.g. Passport No.:*
Agent in next port:	*ID Card No. or Seaman's Book No.:*
Agent address:	*If yes,*
	When issued:
IRCS:	*Where issued:*
Inmarsat number:	*Date of expiry:*
Port of registry:	*Issued by:*
Name of Master:	
	Photograph of the stowaway:
STOWAWAY DETAILS	Photograph if available
Date/time found on board:	
Place of boarding:	
Country of boarding:	
Date/time of boarding:	
Intended final destination:	
Stated reasons for boarding the ship:[*]	*General physical description of the stowaway:*
Surname:	
Given name:	
Name by which known:	
Gender:	
First language:	*Other languages:*
Spoken:	*Spoken:*
Read:	*Read:*
Written:	*Written:*

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

Other details:

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

2) Inventory of the stowaway's possessions:

3) Statement made by the stowaway:

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

Date(s) of interview(s):

Stowaway's signature: *Master's signature:*

Date: *Date:*

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