LEGAL ISSUES RELATING TO STOWAWAYS ON SHIPS: BALANCING MARITIME SECURITY AND HUMAN RIGHTS

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I. ABSTRACT

The issue of stowaways on ships presents complex legal challenges at the intersection of maritime security, immigration control, State responsibility, maritime safety and human rights protection. A stowaway is a person who secretly boards a vessel without the consent of the shipowner, master or other responsible person and is subsequently discovered aboard the ship. With increasing international maritime movement, stowaway incidents have created difficulties concerning their identification, detention, disembarkation, repatriation and the allocation of responsibility among shipowners, flag States, port States and other competent authorities. This research examines the legal framework governing stowaways under international maritime law, particularly the Convention on Facilitation of International Maritime Traffic 1965 (FAL Convention), the International Convention for the Safety of Life at Sea 1974 (SOLAS), the International Ship and Port Facility Security Code (ISPS Code), and relevant human rights and refugee-law principles. It analyses the responsibilities of States and maritime actors in maintaining maritime security while protecting the safety, dignity and fundamental rights of stowaways.

The study further examines issues relating to detention, financial responsibility, asylum claims, non-refoulement and repatriation, with reference to relevant judicial decisions and the current Indian legal framework under the Merchant Shipping Act 2025. The research identifies gaps arising from fragmented responsibilities, prolonged onboard detention, financial burdens and the absence of uniform procedures for protection screening and resolution of stowaway cases. It proposes a coordinated balancing approach under which preventive maritime-security measures are combined with humane treatment, appropriate governmental assessment and lawful resolution of protection and return claims. The paper ultimately argues that maritime security and human-rights protection should operate as complementary obligations within an effective and coordinated stowaway regime.

Keywords: Stowaways, Maritime Law, Maritime Security, FAL Convention, SOLAS, ISPS Code, Human Rights, Non-Refoulement, Repatriation, Merchant Shipping Act 2025.

II. INTRODUCTION

International maritime transportation operates through an extensive network of ships, ports, cargo terminals, shipping companies, maritime administrations, immigration authorities and security agencies. The safety and efficiency of this system depend upon the ability of States and maritime operators to control access to ships and port facilities.

The unauthorised boarding of a ship by a person who intends to travel without the consent of the shipowner or master is therefore not merely an immigration matter. It may create security, safety and commercial consequences for the vessel and its crew. A person may conceal themselves inside cargo, containers, engine rooms, accommodation spaces, machinery areas or other restricted portions of a ship. The consequences can be severe because the person may remain without food, water or adequate ventilation for considerable periods. The IMO recognises that stowaways may face risks such as suffocation while ships may suffer delays and incur substantial costs associated with their removal and repatriation.[1]

The FAL Convention provides the principal international definition of a stowaway. It essentially concerns a person who is secretly concealed on a ship or in cargo carried on the ship without the consent of the shipowner, master or another responsible person and who is detected after departure or during unloading.[2]

The legal problem becomes more complicated after discovery. From the perspective of the shipowner and master, an unauthorised person aboard the vessel represents a breach of the vessel's security arrangements. The master has duties towards the safety of the ship and crew and may need to restrict the person's movement to prevent interference with navigation, machinery, cargo or other persons.

From the perspective of human-rights and refugee law, however, the same person remains entitled to applicable fundamental protections. A stowaway may be a child, a victim of trafficking, a person requiring urgent medical treatment or an individual claiming that return

[1] International Maritime Organization, 'Stowaways' (IMO) <https://www.imo.org/en/ourwork/facilitation/pages/stowaways-default.aspx> accessed 22 September 2026. The IMO confirms that the 2026 Facilitation Committee adopted revised guidelines concerning prevention of access by stowaways and allocation of responsibilities for resolving stowaway cases.

[2] Convention on Facilitation of International Maritime Traffic 1965, as amended, Annex, section 4; International Maritime Organization, 'Convention on Facilitation of International Maritime Traffic (FAL)' <https://www.imo.org/en/about/conventions/pages/convention-on-facilitation-of-international-maritime-traffic-(fal).aspx> accessed 22 September 2026.

to a particular State would expose them to persecution or torture.

The legal issue is consequently not whether maritime security or human rights should simply "win". Rather, the issue is how the two bodies of law can operate together.

The central question of this research is:

How can States and maritime actors prevent and manage stowaway incidents while ensuring that the individual rights and applicable protection claims of stowaways are respected?

The research therefore adopts a balanced doctrinal approach. It recognises that unauthorised boarding creates legitimate security and commercial concerns while also recognising that stowaway status does not automatically eliminate human-rights or protection obligations.

III. DOCTRINAL PERSPECTIVE

A. Meaning and Nature of a Stowaway

The concept of a stowaway contains both a factual and legal element. Factually, the person enters or remains on a ship secretly. Legally, the relevant international framework focuses upon the absence of consent and the circumstances in which the person is discovered and reported.

The FAL Convention's Annex contains a specific section dealing with stowaways.[3] The Convention distinguishes between ordinary passengers and persons who secretly enter ships without proper authorisation.

The nature of a stowaway incident may therefore involve several simultaneous legal relationships:

1. Shipowner and stowaway – concerning unauthorised presence aboard the vessel;

2. Master and stowaway – concerning immediate safety and control;

3. Port State and stowaway – concerning immigration and disembarkation;

[3] International Maritime Organization, 'Convention on Facilitation of International Maritime Traffic (FAL)' (n 2).

4. Flag State and vessel – concerning maritime regulation;

5. State of nationality and stowaway – concerning identification and possible return; and

6. Protection authorities and stowaway – concerning asylum and non-refoulement.

The complexity arises because no single actor necessarily controls all these relationships.

B. Development of the International Stowaway Regime

International regulation of stowaways has developed alongside the growth of international shipping and increasingly sophisticated port-security systems. The FAL Convention provides a specialised framework for facilitating international maritime traffic while addressing particular problems arising at the ship-port interface. Its Annex contains a dedicated section concerning stowaways.[4] The IMO subsequently developed guidelines addressing the prevention of access by stowaways and the allocation of responsibilities for resolving stowaway cases.[5]

The framework was further developed through amendments to the FAL Convention and the adoption of revised guidelines. In March 2026, FAL 50 adopted Resolution FAL.20(50), revising the guidelines concerning prevention and allocation of responsibilities. The IMO states that the revised guidelines refine definitions, basic principles, preventative measures and State responsibilities.[6]

This development demonstrates that stowaway law is not static. It continues to respond to practical problems encountered by ships, ports and governments.

C. The Need for Maritime Security

Maritime security is a legitimate component of the stowaway regime. Unauthorised boarding may expose the ship to:

- theft;

[4] ibid.
[5] International Maritime Organization, 'Stowaways' (n 1).
[6] International Maritime Organization, 'Facilitation Committee (FAL), 50th session, 23–27 March 2026' (IMO, 2026) <https://www.imo.org/en/mediacentre/meetingsummaries/pages/fal-50th-session.aspx> accessed 24 September 2026.

- sabotage;
- interference with machinery;
- interference with navigation;
- damage to cargo;
- violence;
- unauthorised access to restricted areas; and
- broader port-security risks.

The ISPS Code establishes an international framework for ship and port-facility security, including security assessments, security plans, security officers and access-control measures.[7] A maritime-security framework that failed to prevent unauthorised persons from accessing vessels would undermine the broader objectives of safe international shipping. Therefore, shipowners and masters are entitled to take reasonable preventive measures.

D. The Need for Human-Rights Protection

The existence of legitimate security concerns does not mean that a stowaway becomes legally unprotected. A stowaway may require:

- food and drinking water;
- medical treatment;
- safe accommodation;
- protection from violence;
- communication with competent authorities;
- identification procedures; and
- access to appropriate protection procedures.

[7] International Maritime Organization, 'SOLAS XI-2 and the ISPS Code' (IMO) <https://www.imo.org/en/ourwork/security/pages/solas-xi-2%20isps%20code.aspx> accessed 24 September 2026.

The individual may also raise an asylum or protection claim. This creates a crucial doctrinal distinction: The legality of the person's entry and the legality of the person's eventual removal are separate questions. A person may have entered a ship without permission and nevertheless have a claim that must be examined before removal.

III. INTERNATIONAL LEGAL FRAMEWORK

A. FAL Convention 1965

The Convention on Facilitation of International Maritime Traffic 1965 is central to the international regulation of stowaways. The Annex to the Convention contains a separate section entitled "Stowaways".[8] The Convention establishes standards and recommended practices intended to facilitate international maritime traffic and address procedural difficulties arising at the ship-port interface.[9]

The FAL framework seeks to encourage cooperation between:

- shipowners;
- masters;
- port authorities;
- immigration authorities;
- law-enforcement agencies; and
- other relevant governmental authorities.

The IMO explains that the Convention's stowaway framework addresses prevention, reporting and resolution of stowaway cases.[10] The 2026 revision is particularly relevant to contemporary research. Resolution FAL.20(50) concerns the prevention of access by stowaways and allocation of responsibilities for the successful resolution of stowaway cases.[11] The IMO's

[8] Convention on Facilitation of International Maritime Traffic 1965, Annex, section 4.
[9] International Maritime Organization, 'Convention on Facilitation of International Maritime Traffic (FAL)' (n 2).<https://www.imo.org/en/about/conventions/pages/convention-on-facilitation-of-international-maritime-traffic-(fal).aspx> accessed 22 september 2026.
[10] International Maritime Organization, 'Stowaways' (n 1).
[11] International Maritime Organization, Resolution FAL.20(50), 'Revised Guidelines on the Prevention of Access by Stowaways and the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases'

current data also illustrates the continuing practical importance of the issue. For 2023–24, the International Group of P&I Clubs reported 277 incidents involving 770 stowaways and total reported costs of approximately US$7.2 million.[12] Therefore, stowaway incidents are not merely theoretical legal problems.

B. SOLAS and the ISPS Code

The International Convention for the Safety of Life at Sea 1974 is one of the principal international maritime-safety Conventions. SOLAS Chapter XI-2 contains special measures to enhance maritime security and incorporates the ISPS Code.[13]

The ISPS Code establishes a security framework based upon:

- security assessments;
- security plans;
- security levels;
- ship-security officers;
- company-security officers;
- port-facility security officers;
- access controls; and
- monitoring and surveillance.

The purpose of these measures is to reduce the possibility of unauthorised persons gaining access to ships and port facilities. However, security measures should not be understood as creating unlimited powers over persons discovered aboard ships. Once a person is discovered, the question shifts from pure prevention to the lawful management of the individual.

(2026). The IMO identifies FAL.20(50) as the revised stowaway guidelines adopted at FAL 50.

[12] International Maritime Organization, 'Stowaways' (n 1). The IMO reports 277 incidents, 770 stowaways and approximately US$7.2 million in total costs for the 2023–24 P&I Clubs data.

[13] International Maritime Organization, 'International Convention for the Safety of Life at Sea (SOLAS), 1974' (IMO) <https://www.imo.org/en/about/conventions/pages/international-convention-for-the-safety-of-life-at-sea-%28solas%29%2C-1974.aspx> accessed 24 september 2026; International Maritime Organization, 'SOLAS XI-2 and the ISPS Code' (n 8).

C. UNCLOS 1982

UNCLOS provides the general international legal framework for maritime jurisdiction. The principle of flag-State jurisdiction is particularly important because ships operating on the high seas are generally subject to the jurisdiction of their flag State. However, stowaway incidents commonly involve multiple States. A person may board in State A, travel on a vessel registered in State B, be discovered while approaching State C and claim nationality or protection relating to State D. Therefore, flag-State jurisdiction alone cannot resolve the entire problem.

Article 98 of UNCLOS also recognises duties concerning assistance to persons in danger at sea.[14] This principle is relevant where a stowaway is found in a dangerous location or requires emergency assistance. The master must therefore consider both the safety of the vessel and the safety of the individual.

D. International Refugee Law

The Refugee Convention 1951 is important where a stowaway claims protection from persecution. **Article 33** establishes the principle of non-refoulement, subject to the Convention's terms.[15] The principle broadly prevents the return of a refugee to a territory where their life or freedom would be threatened on Convention grounds. The fact that a person entered a ship irregularly does not itself answer whether return is permissible. UNHCR has specifically addressed the position of stowaway asylum seekers and has emphasised the need for appropriate procedures to examine protection claims.[16] However, this should not be interpreted as meaning that every stowaway automatically qualifies as a refugee.

The appropriate sequence is:

Claim → assessment → determination → lawful outcome.

E. International Human-Rights Law

Human-rights law adds another layer to the legal framework. The Universal Declaration of

[14] United Nations, United Nations Convention on the Law of the Sea 1982, art 98 <https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf> accessed 24 September 2026.
[15] Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, art 33.
[16] UNHCR, 'Note on Stowaway Asylum-Seekers' (1988) <https://www.unhcr.org/publications/note-stowaway-asylum-seekers> accessed 1 October 2026.

Human Rights recognises rights relating to life, liberty and security of person and protection against cruel, inhuman or degrading treatment.[17] The International Covenant on Civil and Political Rights protects, among other matters, life, liberty and security and freedom from torture or cruel, inhuman or degrading treatment.[18] The Convention Against Torture contains an important non-refoulement provision in Article 3.[19]

Consequently, even where refugee status is disputed, return may still raise independent human-rights concerns if there is a substantial risk of torture or other prohibited treatment.

IV. MARITIME SECURITY AND HUMAN RIGHTS

A. Prevention of Unauthorised Boarding

The strongest point at which maritime security and human rights can operate together is prevention. A shipowner can reasonably be expected to implement appropriate security measures, including:

- perimeter checks;
- access control;
- surveillance;
- searches;
- cargo-security procedures;
- restricted-area controls;
- crew awareness;
- port-security coordination; and
- reporting mechanisms.

The objective is not to punish persons but to prevent unauthorised access to vessels. The IMO

[17] Universal Declaration of Human Rights, GA Res 217A (III) (10 December 1948).
[18] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 6, 7 and 9.
[19] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 3.

specifically encourages appropriate measures to reduce the risks of unauthorised persons boarding ships.[20] Therefore, a balanced human-rights approach should not undermine reasonable preventative security.

B. Duties After Discovery

The legal situation changes once the stowaway is discovered. The master may have to:

1. ensure the person's immediate safety;

2. prevent unauthorised access to dangerous or restricted areas;

3. report the incident to competent authorities;

4. record relevant information;

5. arrange necessary medical assistance;

6. cooperate with immigration and port authorities; and

7. preserve evidence concerning the circumstances of boarding.

The IMO framework recognises the need for cooperation between the ship, port authorities and governmental authorities.[21] The stowaway should not be exposed to unnecessary violence or degrading treatment merely because the original entry was unauthorised.

C. Detention and Restriction of Movement

One of the most difficult legal issues is whether a stowaway may be confined aboard the ship. A temporary restriction may be justified in particular circumstances. For example, it may be necessary to prevent the person from:

- entering machinery spaces;
- interfering with navigation;
- accessing weapons or dangerous equipment;

[20] International Maritime Organization, 'Stowaways' (n 1).
[21] International Maritime Organization, Resolution FAL.20(50) (n 11).

- harming themselves;
- harming crew members; or
- escaping before competent authorities take responsibility.

However, temporary security control is conceptually different from indefinite detention. A legally sustainable system should therefore require:

- legal authority;
- legitimate purpose;
- necessity;
- proportionality;
- humane conditions;
- medical care;
- communication with authorities;
- review; and
- transfer or disembarkation when legally possible.

A commercial vessel should not become a permanent substitute for a State's immigration-detention system.

D. Asylum and Non-Refoulement

The most sensitive stage arises when the stowaway states: **"I cannot return to my country because I will be persecuted or harmed."** At that point, the authorities must distinguish two issues. First, whether the individual entered the ship unlawfully.

Second, whether return to the proposed destination would violate applicable protection obligations. The first issue does not automatically answer the second. The appropriate approach is therefore individual assessment. The claim may ultimately be rejected. But rejection should result from a lawful assessment rather than an assumption that stowaway status itself defeats every protection claim.

E. Responsibilities of Maritime Actors

1. Flag State

The flag State has responsibilities concerning the vessel's compliance with applicable maritime-safety and security requirements. However, it may not be reasonable to place the entire burden of an incident upon the flag State where the stowaway boarded in another jurisdiction.

2. Port State

The port State is often best placed to coordinate: immigration examination, identification, medical assessment, security arrangements, protection screening and communication with foreign authorities.

3. State of Nationality

The State of nationality may assist with: confirmation of nationality, identity documents, travel documentation and repatriation. However, repatriation remains subject to applicable legal obligations.

4. Shipowner

The shipowner has an important role in preventive security and cooperation with authorities. However, the shipowner should not be expected to exercise governmental immigration powers indefinitely.

5. Master

The master has immediate responsibility for the safety of the vessel and persons aboard. The master may secure the individual and provide basic assistance, but refugee status or other immigration determinations should remain matters for competent authorities.

V. JUDICIAL APPROACH

A. Yiu Sing Chun v Sava

In Yiu Sing Chun v Sava, two Chinese nationals travelled as stowaways aboard the American

Lark and sought political asylum in the United States.[22] The case demonstrates that the status of being a stowaway does not necessarily prevent an individual from invoking asylum procedures. The significance of the decision lies primarily in the need to distinguish unauthorised boarding from the separate question of protection. The case should not, however, be interpreted to mean that every stowaway automatically has a right to remain in the receiving State.

B. Marincas v Lewis

In Marincas v Lewis, a Romanian national arrived in the United States as a stowaway aboard the M/V Innovation and sought asylum.[23] The Third Circuit considered procedural issues concerning the applicant and the legal framework applicable to stowaway asylum seekers. The decision is relevant because it illustrates the procedural complexity that arises when the interests of the carrier intersect with those of a person seeking protection.

C. Dia Navigation Co Ltd v Pomeroy

In Dia Navigation Co Ltd v Pomeroy, Romanian stowaways arrived in the United States aboard the M/V European Senator and requested asylum.[24] The case considered questions concerning the responsibilities of carriers and the detention of stowaways. The decision demonstrates the commercial consequences of stowaway cases. Private shipowners may bear substantial expenses while governmental authorities determine the legal status of the individual. This creates a strong argument for clearer allocation of responsibility between private maritime actors and States.

D. Hirsi Jamaa and Others v Italy

In Hirsi Jamaa and Others v Italy, the European Court of Human Rights considered the interception of migrants at sea and their return to Libya.[25] The Court found violations of Convention rights in the circumstances of the case, including rights concerning protection against inhuman or degrading treatment and collective expulsion. Although the case did not concern conventional ship stowaways, it is significant because it demonstrates that maritime

[22] Yiu Sing Chun v Sava, 708 F 2d 869 (2d Cir 1983).
[23] Marincas v Lewis, 92 F 3d 195 (3d Cir 1996).
[24] Dia Navigation Co Ltd v Pomeroy, 34 F 3d 1255 (3d Cir 1994).
[25] Hirsi Jamaa and Others v Italy App no 27765/09 (ECtHR, 23 February 2012).

interception does not automatically place persons outside the protection of human-rights law.

E. Sharifi and Others v Italy and Greece

In Sharifi and Others v Italy and Greece, the European Court considered allegations concerning the return of migrants from Italy without adequate access to asylum procedures.[26] The case demonstrates the importance of individual examination and procedural safeguards. Its relevance to stowaway law is therefore found in the broader principle that immigration control should be accompanied by appropriate legal procedures.

F. M.S.S. v Belgium and Greece

In M.S.S. v Belgium and Greece, the European Court examined detention conditions, living conditions and deficiencies in asylum procedures.[27] The case demonstrates that a State cannot necessarily consider a transfer or removal decision independently from the conditions that await the person after transfer. For stowaways, this principle is relevant when authorities seek to determine where and how the person should be disembarked.

G. Saadi v Italy

In Saadi v Italy, the European Court considered removal in circumstances involving an alleged risk of treatment contrary to Article 3 of the European Convention on Human Rights.[28] The decision is relevant because national-security and immigration interests do not, by themselves, eliminate the prohibition against returning a person to a real risk of prohibited treatment. The case therefore reinforces the importance of assessing the consequences of removal independently from the reasons for immigration control.

VI. INDIAN LEGAL POSITION

A. Merchant Shipping Act 2025

India's statutory maritime framework has undergone an important change with the Merchant Shipping Act 2025. The Act contains section 109 entitled "Stowaways and seafarers carried

[26] Sharifi and Others v Italy and Greece App no 16643/09 (ECtHR, 21 October 2014).
[27] MSS v Belgium and Greece App no 30696/09 (ECtHR, 21 January 2011).
[28] Saadi v Italy App no 37201/06 (ECtHR, 28 February 2008); see also Soering v United Kingdom App no 14038/88 (ECtHR, 7 July 1989) Series A no 161.

under compulsion."[29] The official India Code text places section 109 within Part V and Part VI subsequently deals with safety and security.[30] The current statutory position should therefore be distinguished from the former Merchant Shipping Act 1958. **Section 205 of the 1958 Act** previously addressed stowaways. The 2025 legislation now provides the contemporary statutory framework. This distinction is particularly important for a research paper submitted in 2026. A paper relying upon section 205 as though it were still the primary current provision would fail to reflect the present statutory position.

B. Safety and Security under the 2025 Act

Part VI of the Merchant Shipping Act 2025 is concerned with Safety and Security. It includes sections concerning: application of the Part, definitions, safety and security requirements, reporting of incidents, assistance to persons in danger, search and rescue, safety and security certificates, and safety and security management.[31] The Act therefore approaches maritime security within a broader framework of vessel safety. This is important for stowaway incidents because unauthorised access can create both security and safety problems. The statutory framework must consequently be read alongside India's international maritime obligations.

C. Article 21 and Foreign Nationals

The Indian Constitution provides an additional layer of protection. Article 21 provides:

"No person shall be deprived of his life or personal liberty except according to procedure established by law." [32]

The wording is significant because the protection is extended to "persons" rather than being expressly limited to citizens. In **National Human Rights Commission v State of Arunachal Pradesh**, the Supreme Court recognised that foreigners are entitled to protection of life and personal liberty under Article 21.[33] The case does not create an unrestricted right for foreigners to enter or remain in India. Rather, it demonstrates that immigration control and constitutional protection operate simultaneously. Therefore, if a foreign stowaway reaches an Indian port, the

[29] Merchant Shipping Act 2025 (Act No 24 of 2025), s 109
[30] ibid, pt VI, ss 114–130. The India Code text identifies section 109 as concerning stowaways and Part VI as "Safety and Security".
[31] ibid, ss 114–130.
[32] Constitution of India 1950, art 21.
[33] National Human Rights Commission v State of Arunachal Pradesh (1996) 1 SCC 742.

person cannot simply be treated as completely outside the protection of Indian constitutional law.

D. Non-Refoulement and Indian Jurisprudence

India is not a party to the 1951 Refugee Convention or the 1967 Protocol. India consequently does not operate a comprehensive statutory refugee framework identical to the Convention system. Nevertheless, Indian courts have considered the principle of non-refoulement in constitutional proceedings. In **Ktaer Abbas Habib Al Qutaifi v Union of India**, the Gujarat High Court considered the position of refugees and the relationship between non-refoulement and Article 21.[34]

The decision is relevant to stowaway situations because it demonstrates that the protection consequences of removal may require consideration even in the absence of India's accession to the Refugee Convention. However, the case should not be interpreted as establishing an unrestricted right of every foreign national to remain in India. The appropriate approach remains one of balancing constitutional protection, immigration control, national security and the facts of the individual case.

E. Need for Coordinated Indian Procedures

The Merchant Shipping Act 2025 provides a contemporary maritime statutory framework, but stowaway incidents can involve several authorities. Depending upon the circumstances, coordination may be required between: port authorities, maritime authorities, immigration authorities, customs authorities, police and security agencies, shipowners, masters, and foreign diplomatic authorities. A practical Indian stowaway protocol could establish a clear sequence:

Detection → Immediate safety → Reporting → Identification → Security assessment → Protection screening → Governmental decision → Disembarkation/return/protection.

Such coordination would reduce uncertainty and prevent the shipowner from being left with responsibilities that properly belong to governmental authorities.

[34] Ktaer Abbas Habib Al Qutaifi v Union of India, 1999 Cri LJ 919 (Guj).

VII. LEGAL GAPS AND BALANCING THE SCALES

A. Fragmentation of Responsibility

The principal legal problem is fragmentation. A stowaway incident may simultaneously involve: maritime law, immigration law, refugee law, human-rights law, criminal law, port-security law and private maritime contracts. No single legal regime completely resolves the entire problem. The FAL Convention focuses upon facilitation and stowaway resolution. SOLAS and ISPS address safety and security. Refugee law addresses protection. Human-rights law addresses fundamental rights. The challenge lies in making these regimes operate together.

B. Prolonged Onboard Detention

Prolonged detention aboard a ship represents one of the clearest practical gaps. If the port State refuses responsibility, the flag State does not want to assume responsibility and the State of nationality cannot immediately provide travel documents, the stowaway may remain aboard. This can create: psychological distress, health problems, security difficulties, additional expenses, crew-management problems and commercial delay. The law should therefore establish reasonable time limits and procedures for governmental intervention.

C. Financial Responsibility

Stowaway cases may impose costs upon shipowners for: food, accommodation, medical care, security, legal proceedings, deviation, delay and repatriation.The IMO's current statistics demonstrate that the financial consequences can be significant.[35] A fair system therefore requires greater clarity concerning which costs should be borne by: the shipowner, the port State, the State of nationality, the State where the stowaway boarded or another responsible authority.

D. Protection Screening

A further gap concerns the identification of genuine protection claims. A person may not use formal legal terminology. A stowaway may simply state: **"If you send me back, I will be killed." S**uch a statement may nevertheless indicate a potential protection claim. Masters and

[35] International Maritime Organization, 'Stowaways' (n 1).

crew therefore require basic training to recognise indicators of: persecution, trafficking, torture, serious medical vulnerability, childhood and other humanitarian concerns. The master should not decide the legal merits of the claim. The objective is simply to ensure that a potentially relevant claim reaches the appropriate authority.

E. Proposed Balancing Framework

A practical balancing model can be divided into four stages.

Stage One: Prevention

The principal objective should be maritime security. Ports and ships should maintain: access control, surveillance, searches, perimeter protection, cargo-security procedures and crew training.

Stage Two: Discovery

The objectives become both security and welfare. The stowaway should be secured in a manner that protects: the vessel, crew, cargo, the individual and evidence relevant to the incident.

Stage Three: Governmental Assessment

Once the authorities become involved, responsibility should progressively move from the private shipowner towards competent governmental authorities. Authorities should determine: identity, nationality, age, health, immigration status, protection concerns and appropriate destination.

Stage Four: Final Resolution

The final outcome may include: lawful admission, disembarkation, transfer, repatriation or another lawful protection arrangement. Any return should comply with applicable non-refoulement and human-rights obligations.

VIII. FINDINGS OF THE RESEARCH

The research identifies the following principal findings.

1. Stowaway incidents are not exclusively immigration problems. They simultaneously

involve maritime security, maritime safety, commercial interests and human rights.

2. Shipowners and masters possess legitimate interests in preventing unauthorised access to ships and in protecting crew, cargo and navigation.

3. The existence of a security concern does not automatically authorise indefinite detention, degrading treatment or unlawful removal.

4. The principal practical difficulty occurs after discovery because responsibility is divided among private maritime actors and several States.

5. Stowaway status and refugee status are legally distinct questions. A person may have entered a ship without permission and nevertheless raise a claim that requires assessment.

6. The FAL Convention provides an important international framework, but the protection dimension often depends upon national immigration, refugee and human-rights law.

7. The 2026 IMO revision demonstrates that the international regime continues to evolve. The revised guidelines specifically address prevention and allocation of responsibilities for successful resolution of stowaway cases.[36]

8. The Indian Merchant Shipping Act 2025 provides a contemporary statutory framework through section 109 and a wider safety-and-security framework in Part VI.[37]

9. Article 21 of the Indian Constitution remains relevant where foreign nationals are within Indian jurisdiction.

10. The most sustainable approach is a shared-responsibility model, rather than placing the entire burden either upon the shipowner or upon the State.

IX. CONCLUSION

Stowaways on ships present a distinctive legal problem because a single act of unauthorised boarding may simultaneously raise questions of maritime security, maritime safety,

[36] International Maritime Organization, Resolution FAL.20(50) (n 11).
[37] Merchant Shipping Act 2025, ss 109, 114–130

immigration control, commercial liability, refugee protection and human rights. The research demonstrates that maritime security is a legitimate and necessary objective. Ships and ports cannot operate safely without reasonable measures preventing unauthorised access. The FAL Convention, SOLAS and ISPS Code provide important international mechanisms for prevention and security. Shipowners and masters also have legitimate responsibilities towards the vessel, crew, cargo and passengers.

However, the discovery of a stowaway changes the legal character of the problem. The person must be treated humanely and safely. Medical needs must be addressed. Reasonable security restrictions may be necessary, but they should have a legal basis and remain necessary and proportionate. The most sensitive issue arises where the stowaway claims that return would expose them to persecution, torture or serious harm. In such circumstances, the legality of the original boarding and the legality of the proposed return must be treated as separate questions.

The case law demonstrates this distinction. Yiu Sing Chun, Marincas and Dia Navigation illustrate the procedural and commercial difficulties surrounding stowaway asylum cases. Hirsi Jamaa, Sharifi, M.S.S. and Saadi demonstrate broader principles concerning individual assessment, detention, removal and protection from prohibited treatment. The Indian legal framework has also undergone a significant change. The Merchant Shipping Act 2025 provides the current statutory framework and specifically addresses stowaways in section 109.[38] Part VI establishes broader safety and security obligations. The statutory regime must, however, operate alongside constitutional protections, including Article 21.

The research therefore does not support either an exclusively security-based approach or an exclusively humanitarian approach. A purely security-oriented system may fail to recognise genuine protection claims and may permit disproportionate restrictions upon individuals. Conversely, a system that disregards maritime-security concerns may expose vessels, crews, cargo and ports to genuine risks.

The more appropriate approach is a coordinated balancing model. Before boarding, the primary emphasis should be on prevention and security. After discovery, the emphasis should shift towards security combined with the immediate welfare and safety of the individual. Once governmental authorities become involved, immigration, asylum and protection decisions

[38] ibid, s 109.

should principally be handled by competent authorities rather than leaving private shipowners to perform governmental functions indefinitely.

Where return is proposed, the legality of that return should be assessed independently of the fact that the original boarding was unauthorised. The 2026 IMO developments reinforce this approach. FAL 50 adopted revised guidelines specifically concerning prevention of access by stowaways and allocation of responsibilities for successful resolution of stowaway cases.[39]

The central finding of this research can therefore be stated as follows:

Maritime security and human rights should operate as complementary legal obligations rather than competing absolutes. A sustainable stowaway regime should seek to ensure secure ships, secure ports, lawful procedures and protected persons. The objective should not be to treat the stowaway automatically as either a security threat or a victim. Instead, the law should require authorities to determine the circumstances of each case, protect legitimate maritime interests, respect fundamental rights and ensure that any decision concerning detention, disembarkation or return is supported by law.

Such an approach provides a more balanced solution because it recognises the legitimate interests of States and shipowners without allowing maritime-security concerns to become an automatic justification for arbitrary detention, inhuman treatment or unlawful return.

[39] International Maritime Organization, 'Facilitation Committee (FAL), 50th session, 23–27 March 2026' (n 6).

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