



Stowaways in Brazil

Practical Guidance and Statistical Review

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1. Foreword

As dedicated commercial correspondents and marine surveyors serving P&I clubs and other marine insurers in Brazil after forty years, we have acquired extensive expertise in handling shipboard stowaway incidents.

Based on hands-on experience, we prepared this report with an overview on how stowaways are generally processed in Brazil, the applicable legal regime and the liabilities involved along with practical advice on measures to be taken by the shipmasters and operators to conform to the relevant norms and regulations and bring the cases to a successful resolution. It includes a statistical review of data pulled from files on stowaway incidents our offices attended to on behalf of ship operators and P&I insurers in the past ten years.

We hope it is useful as a practical guidance to the shipmasters and operators and as a source of information to assist P&I liability insurers in identifying trends and loss prevention opportunities.

Whenever a stowaway is discovered on board, the Master must always promptly inform the shipowners and the P&I club or correspondent to obtain specific, timely advice on actions to be taken to best manage the situation.

REPRESENTAÇÕES PROINDE LTDA.

May 2015 (updated: October 2016)



Twenty Liberian stowaways revealing themselves on arrival at anchorage off Santos after enduring an 8-day ballast trip from Monrovia where they travelled in the rudder trunk of a Chinese-built bulk carrier. Dec 2005

2. The stowaway problem

2.1. Increasing complexity and costs

People secretly boarding vessels to hide as stowaways have existed ever since commercial shipping emerged several centuries ago. Over the last three decades or so, however, the frequency of this type of incident that once was just an annoyance of relatively easy and quick resolution has gradually increased reaching unprecedented levels by the turn of the century becoming a major burden to the vessels' crews who face first-hand the stowaways and causing significant impact on the safe operation of the vessel in addition to commercial disruptions and financial losses to the vessels' owners and charterers concerned.

The introduction of enhanced, comprehensive security regulations, such as the ISPS Code¹, has decisively contributed to a decline in the number of stowaway incidents; however, because of ever-stringent port regulations and heightening of health and immigration controls, the handling of such incidents became more complex and time consuming resulting in an overall increase in the associated costs and expenses. In fact, the average cost to handle one stowaway has nearly doubled in less than ten years.

2.2. Extent of the problem

The actual prevalence of shipboard stowaway incidents on worldwide basis lacks accurate data in terms of number of cases (vessels involved) and number of stowaways on each case, though the geographic hotspots for embarkation and hiding places on board the vessels are reasonably well known to the industry and authorities but remain largely unchanged after many years nonetheless.

The International Maritime Organisation (IMO) has recently issued its statistical analysis of the stowaway cases for 2014 (incidents arising in 2013), during which period there were 61 reported incidents involving 120 stowaways, about two stowaways per vessel, the vast majority originated from the African continent.

According to IMO figures for the last ten years, there has been a considerable decrease in the number of stowaways in recent years. The figures in table 1 indicate a major drop in relation to the figures for the preceding year by almost 40%. The number of reported incidents used to be much higher, particularly between 2007 and 2010, with huge spikes in 2008 and 2009.

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Number of cases	96	244	252	494	314	253	73	90	70	61
Number of stowaways	209	657	889	2052	1070	721	193	166	203	120

Table 1: IMO reported stowaway incidents. Source: IMO Facilitation Committee

It is more than likely that IMO figures are unreliable due to a number of reasons. These includes insufficient or no reporting by part of the ship-operators and/or the flag State and, more importantly, the lack of a binding, internationally accepted regulation to provide for uniform and coordinated reporting procedures.

¹ ISPS Code: "International Ship and Port Facility Code", 2004, mandatory since 2007.

The International Group of P&I Clubs (IG), which groups thirteen of the major P&I clubs altogether providing liability cover² to approximately 90% of the world's ocean-going tonnage, has certainly much more reliable statistics on the extent of the stowaway problem.

IG indicates the number of cases and stowaways involved is at least twice as much the numbers announced by IMO and although there has been a drop in the number of cases in the last few years, the costs to deal with these cases have significantly increased, with the IG clubs paying more than USD 15 million in claims per policy year³, net of deductible. Of course, this figure does not include operational costs, loss of hire and commercial frustrations incurred by the ship operators.

There are no official statistics on the number of stowaways arriving in Brazil. On the other hand, consistently with IG findings, our own database on stowaway cases indicate a reduction in the number of reported incidents in our region. That might not only reflect the current slowdown of our economy, but also an indication that improvements have been made in the standards of security measures adopted in the customary stowaway embarkation hotspots and on board the vessels, but at substantially higher costs and expenses.

In an effort to remove inconsistencies and inadequacies of the instruments in place for regulating the management of stowaway incidents, IMO adopted the 'Revised Guidelines on the Prevention of Access by Stowaways...'⁴ which principles have been incorporated in the FAL Convention to make them binding. However, as far as Brazil is concerned, we did not see any of its guidelines or principles being effectively implemented by the authorities concerned.



A Nigerian stowaway turning himself in to the crew after running out of water and food

² A typical P&I insurance covers ship operators for expenses of diversion of the vessel to land stowaways and refugees (excluding loss of hire) and legal liabilities incurred as a consequence of stowaways or refugees being or having been on board, subject to the terms and conditions of club rules.

³ According to IG data on stowaway cases submitted to the IMO Facilitation Committee (38/6/2) in January 2013.

⁴ IMO Annex 1 of Resolution Fal.11 (37) "Revised Guidelines on the Prevention of access by Stowaways and the Allocation of Responsibilities to Seek the Successful resolution of Stowaway Cases." FAL 37/17, 2011.

3. Legal duties and obligations

3.1. Legal framework

Brazil adopted the UN 1951 Refugee Convention⁵ and the UN 1967 Protocol⁶ as well as the IMO FAL Convention⁷ that deal with refugees and stowaways, though the guidelines issued by the latter, such as those devised for preventing access and allocating responsibilities were never implemented in practice in Brazil.

The main federal legislation governing immigration matters is the so-called Foreigner's Act (*Estatuto do Estrangeiro*)⁸, which defines the legal situation of all foreigners in Brazil and regulates a broad range of aspects relating to immigration, such as repatriation, deportation and extradition procedures, visas, and asylum status.

The Foreigner's Act is not a comprehensive law, so it is regulated by sparse legislation in forms of ordinances, service orders and procedures sometimes enforced at local level that in occasions leads to vagueness, ambiguities and inconsistencies of the procedures adopted in the different ports of the federation.

3.2. Carriers' liability

The Foreigner's Act establishes that the carriers answer at all times for the departure of the stowaway from Brazil. In case it is not possible, the stowaway will be allowed to stay in exchange of the carriers (or their agents) placing a bond of responsibility assuring the maintenance and welfare of the stowaway⁹. That includes but is not limited to victualing, lodging, private security, medical assistance, plus costs and expenses associated with his identification, documentation and repatriation, and a fine¹⁰ which base amount is increased exponentially in case of relapsing offence.

While the carriers are responsible for damages caused by the stowaway, he remains personally liable to criminal prosecution where applicable.

3.3. Master's duty to care and report

As far as measures for prevention of access and carriage of stowaways is concerned, the Master is expected to adhere rigorously to the relevant Ship Security Plan and international safety conventions, such as SOLAS Convention¹¹ and its appended ISPS Code.

⁵ UN Convention Relating to the Status of Refugees, 1951, as regulated by Law 9474, 1997 (Refugee Law).

⁶ UN Protocol Relating to the Status of Refugees, 1967.

⁷ IMO Convention on Facilitation of International Marine Traffic, 1965, as amended, enacted through Legislative Decree no. 73,1977 and Decree no. 80672, 1977.

⁸ Law 6815, 1980, as regulated by Decree 86715, 1981 (Alien's Act)

⁹ Article 27 and sub-article 1 of Law 6815/1980: "*The carriers shall at all times answer for the departure of the stowaways and disqualified persons; in case it is impossible for a stowaway or a impeded alien to depart, the Ministry of Justice may allow his/her conditional entry upon submission of a Bond of Liability signed by the carriers' representative, assuring his/her maintenance, fixing the period of stay and the place where he/she must be kept, and stowaways shall be under custody for a period not over thirty days, extendable for same period of time.*" (Free translation). Article 125 of Law 6815/1980, as renumbered by Law 6964, 1981: "*It constitutes infringement, submitting the offender to the penalties hereunder mentioned: (...) VI-to transport to Brazil foreigner without proper documentation. Penalty: fine and the responsibility for the costs with the removal of the foreigner from the national territory*" (free translation).

¹⁰ BRL 827.75 per stowaway, as at May 2015.

¹¹ International Convention for the Safety of Life at Sea (SOLAS) Chapter XI-2, 1974, as amended.

Although the Master is not competent to determine whether a stowaway on board his vessel is a refugee, asylum seeker, illegal immigration or a criminal, he must treat the stowaway fairly and humanely pursuant to the UN Refugee Convention and always consider and ensure the safety of the crew and the vessel.

Bringing a stowaway into Brazil is merely an administrative violation of the immigration law that results in a small fine being levied on the carriers in addition to their obligation to upkeep and remove the stowaway from the country as soon as feasible.

However, if it turns out there was omission, connivance or assistance from the crew in the stowaway entering the country, or if his presence was not timely or adequately reported, the Master and those involved in his secreting may be liable to administrative proceedings combined with criminal prosecution with penalties of imprisonment from one to three years or deportation. Where the stowaway was not treated humanely while under the legal custody of the Master, or anyone onboard has financially profited from the illegal immigration, the penalties are aggravated¹².

It is therefore essential that the Master always timely declare the presence of the stowaway to the relevant authorities as soon as possible.

3.4. Stowaway's status

Unlike the comprehending definition given by the FAL Convention¹³, the Foreigner's Act simply regards the stowaway as an unauthorised entrant subject to a penalty of deportation¹⁴.

Since illegal immigration is not a criminal offence, the stowaway would not be arrested unless he commits a crime, though the immigration authority may take him into custody for up to 60 (sixty) days while the deportation is not effected.

The carriers are responsible for the costs and expenses associated with the stowaway until his return (or granting of refugee status). In the situations where the vessel and its operators have not been identified by the immigration authority, the costs and expenses of return are paid by the National Treasury.

The stowaway is not allowed to work onboard the vessel (or after his disembark under carriers' legal custody) unless there is an emergency or he files an application for refuge that is entertained for hearing, in which case he is issued with a provisional identification card and a worker's book enabling paid work and social benefits while his claim is processed.

If the stowaway is granted a refugee status in Brazil, he will be allowed to seek permanent residence and carriers' liability will be relinquished otherwise they will be called upon to arrange and pay for his repatriation to the stowaway's home country, or to the point of his embarkation or to a country that may agree to receive him.

¹² Art. 125 and followers of Law 6815, 1980, as renumbered by Law 6964, 1981.

¹³ FAL Convention defines a stowaway as "a person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person and who is detected on board the ship after it has departed from a port, or in the cargo while unloading it in the port of arrival, and is reported as a stowaway by the master to the appropriate authorities."

¹⁴ Art. 125, I, of Law 6815, 1980, as renumbered by Law 6964, 1981.



Stowaways discovered in the access to the rudder trunking

3.5. Role of the intervening authorities

The presence of stowaway onboard vessels arriving in Brazil will necessarily trigger the intervention of the immigration authority and, depending on the circumstances of the incident, other parties, such as the maritime authority, port health authority and human rights organisations may intervene to deal with different aspects of the case.

3.5.1. Immigration authority

The control of ingress and permanence of foreigners into the country falls chiefly within the authority of the National Immigration Council (*Conselho Nacional de Imigração – CNIG*), a joint commission linked with the Ministry of Labour and Employment (*Ministério do Trabalho e do Emprego – MTE*), and the Federal Police Department (*Departamento de Polícia Federal – DPF*) of the Ministry of Justice (*Ministério da Justiça*).

CNIG is responsible for devising Brazilian Immigration policy and activities, granting of work and residence permits to foreigners, inclusive those enjoying refugee status. It would only come to play in a stowaway incident if the stowaway eventually applies for refugee status.

With a much wider and decisive role in immigration matters, the Federal Police are responsible, amongst other duties, for the border control and surveillance, port and airport security and maritime policing. As immigration authority and maritime police, the Federal Police have full jurisdiction to investigate immigration offences, including stowaway incidents.

Ultimately, the Federal Police decide whether a stowaway arriving in Brazil will remain onboard or be disembarked for return (or filing of a refuge claim).

3.5.2. Maritime authority

The maritime authority is the Navy Commander represented by the Directorate of Ports and Coasts (*Diretoria de Portos e Costas – DPC*), exercised at local level by the port captaincies and their delegacies and agencies in the various ports and terminals in Brazil.

The Port Captaincy (*Capitania dos Portos*) covering the first port of arrival following the discovery of the stowaway has an involvement to verify whether the relevant maritime regulations were complied with and launch administrative enquires in accordance with DPC's regulatory norm NORMAM 09¹⁵ with the aim of establishing the circumstances and safety factors involved as a basis for identifying the party responsible and making recommendations for promotion and improvement of safety practices.

3.5.3. Port Health authority

The National Health Surveillance Agency (*Agência Nacional de Vigilância Sanitária – ANVISA*) is the regulatory body of the Brazilian Ministry of Health (*Ministério da Saúde*) with the duty of assuring the sanitary vigilance and health control of Brazilian ports, airports and borders with its technical framework largely in line with the IHR 2005¹⁶.

ANVISA is also responsible for granting permission (free pratique) to vessels calling at Brazilian ports and plays a key role in the clearance of vessels carrying stowaways.

3.5.4. Refugees agencies

The National Committee for Refugees (*Comitê Nacional para Refugiados – CONARE*) is a collegiate body linked with the Ministry of Justice that is composed by various ministries, the Federal Police, the non-governmental organisation Caritas Archdiocesan and the Brazilian branch of the Office of the United Nations High Commissioner for Refugees – UNHCR, with the purpose of analysing and processing the applications for recognition of refugee status in line with the refugee convention and relevant domestic legislation.

Caritas plays a very important role in the processing of refuge claims as it acts as the visible face of CONARE and UNHCR before the refuge seekers. Caritas takes care of their social wellbeing and education and help them finding lodging and employment. It also provides legal aid and assists the applicants throughout the process of their claim.

3.5.5. Port authority

Given that Brazil is a place of disembarkation of stowaways rather than embarkation, the port authority would rarely get involved in stowaway matters, not even in respect of compliance with the ISPS Code. In fact, it will usually be bound by directives issued by the Federal Police, Port Captaincy and ANVISA, in their respective areas of competence.

Each of the various authorities plays a distinct role in the management of stowaway incidents. However, the numerous controls and requirements involved may result in disruptions to the vessel's port schedule; so, it is important to ensure a proper coordination of efforts and sharing of information for a smooth processing of the incident.

In the next chapter, we provide practical guidance in steps to take to deal with the discovery of a stowaway onboard to ensure compliance with the local requirements and procedures.

¹⁵ Maritime Authority Normative NORMAM 09/DPC "Normas da Autoridade Marítima para Inquéritos Administrativos sobre Acidentes e Fatos da Navegação (IAFN) e para a Investigação de Segurança dos Acidentes e Incidentes Marítimos (ISAIM)" (Maritime Authority Standards for Administrative Inquiries on Casualties and Facts of Navigation (IAFN) and for The Safety Investigation of Maritime Casualties and Incidents (ISAIM), 2003.

¹⁶ World Health Organisation (WHO) "International Health Regulations", 2005 (IHR 2005), as approved by the Legislative Decree no. 395, 2009. May 2015 (updated October 2016)

4. Arriving with stowaways in Brazil

Brazil is traditionally a point of arrival of stowaways rather than embarkation – in most of the very few incidents involving stowaways boarding vessels in Brazilian ports, it transpired they were not nationals but Africans who had arrived as stowaways in one vessel and were found while stowing away (or attempting to) in another vessel out of the country. Given that the favourite destination of African illegal immigrants is still Europe and North America, it is likely that these transient stowaways ended up in Brazil by accident.

The preponderance of stowaway incidents is of bulk carriers that have called in African ports for cargo discharge and crossed the Atlantic in ballast towards new fixtures at ports in the East Coast of South America, mostly in the Southeast of Brazil.

The cases that were effectively investigated revealed that the stowaway gained access to the vessel due to lack of effective implementation or adherence the SOLAS Convention and the ISPS Code.

IMO and the P&I industry regularly produce advice and guidelines and provide wealth of information in respect of prevention of access of stowaways to vessel, so, this chapter will only cover specific procedures to be adopted after the discovery of the stowaway.



Liberian stowaways disembarked with the assistance of immigration authority (Federal Police)

4.1. Procedures following discovery

4.1.1. First actions

- a) Deal with the stowaway in a firm but fair and humane way and always give due consideration to the safety of the crew, the wellbeing of the stowaway and the safe operation of the vessel
- b) Wear disposable mask and gloves when handling a symptomatic stowaway (or a stowaway boarded at endemic zones for contagious diseases) until his health status can be determined

- c) Search the stowaway's clothing to confirm that he does not possess any items that may pose a danger to him or to others and look for documents or papers that may help identifying him
- d) Provide the stowaway with water and food and offer him toilet and medical facilities
- e) Perform a head-to-toe examination on the stowaway to check his general appearance, mental and physical condition (head, skin, eyes, mouth and throat etc.) and vital signs (blood pressure, heart rate, body temperature, etc.). If possible, take photographs or video of eventual bodily injuries before starting treatment
- f) If the stowaway displays any abnormal clinical condition or behaviour, seek shore medical advice where necessary and record all relevant details in the medical log
- g) Search the area where the stowaway was found and all other areas where he could have possibly concealed himself before he was discovered to look for other stowaways, drugs and papers. If possible, take photographs or video of the scene exactly as found
- h) Clean and disinfect the place(s) of concealment, if necessary
- i) Make an inventory and keep relevant items removed from the stowaway and/or from the place of concealment for surrender to the relevant authorities at next port
- j) Notify the existence of the stowaway to the Company Security Officer (CSO) and the ship operators and thereafter the agents and the P&I correspondents at the next port to seek advice on local procedures and prospects of disembark

4.1.2. Stowaway's lodging, victualing and welfare

- a) Allow the stowaway to shower and provide clean clothing
- b) Keep the stowaway locked in a tidy, well-secured cabin, ideally above the main deck level and away from the eyes of shore workers
- c) If there is more than one stowaway, accommodate them in separate cabins, if available
- d) Feed the stowaway with the same food and frequency as the ratings
- e) Allow the stowaway to go out to sunbath and exercise if his behaviour so warrants and weather permits and always accompanied by the crew
- f) If there is more than one stowaway, take one out at a time under crew strict surveillance
- g) Check medical condition of the stowaway regularly and record eventual noteworthy clinical symptoms and medicines administered in the hospital log. Seek medical assistance where necessary
- h) Except in emergency situations, do not permit the stowaway to work on board even if he is adequately remunerated

4.1.3. Safety and security issues

- a) Give the stowaway basic instruction on fire control and abandon ship, his muster station and duties in the emergency muster list
- b) Ensure that the cabin where the stowaway is accommodated is free from any objects that may potentially be used as instrument of self-inflicting punishment or harm to others (mirrors, lighting fixtures, sharp objects or furniture, cutlery etc.)
- c) Do not use handcuffs, chains, strips or any means of physical restraint on the stowaway unless his behaviour jeopardises the safety of the crew and the safe operation of the vessel
- d) Weld steel bars to the cabin's porthole where necessary to prevent escape

- e) If the cabin's door is not of sufficient strength, consider reinforcement always ensuring prompt and safe evacuation in case of emergency or abandon the ship
- f) Keep a crewmember guarding the cabin's door at critical times, especially when the vessel is at anchor or alongside the berth
- g) Consider hiring shore guards if there are no sufficient hands on board to ensure that the stowaway is kept secure until his formal disembark or departure with the vessel
- h) Record any safety or behavioural issues relating to the stowaway with the stowaway

4.1.4. Questioning the stowaway

- a) In case there is more than one stowaway, question them individually and separately
- b) Do not befriend the stowaway and limit the conversation to obtaining as much information as possible to help determine his true identity, nationality and reasons for stowing away
- c) Avoid intimidating attitude and bear in mind that regardless of whether the stowaway is a genuine refuge seeker or an opportunist, the objective is to establish his identity
- d) Collect a detailed questionnaire from the stowaway – there is no mandatory form, the Master should ideally use the form annexed to the FAL Convention¹⁷, the form described in the Ship Security Manual or the more detailed forms prepared by the P&I clubs
- e) If it is not possible to communicate with the stowaway due to language barrier, an interpreter must be arranged to conduct a telephonic interview to assist with the questioning and identification process

4.2. Incident reporting

The Master must issue a detailed statement to the authorities as soon as possible substantiating that all necessary security measures have been taken, explaining the circumstances of the discovery of the stowaway and providing his personal details, including his health status, current behaviour and conditions of lodging, victualing and security on board.

There is no defined timeframe for reporting the stowaway providing it is done before tendering the notice of arrival. Where the stowaway's presence is discovered after arrival, the notification must be made immediately.

The sooner the information is shared the earlier the P&I insurers and their correspondents can start dealing with the relevant authorities to arrange for disembark, identification and repatriation of the stowaway.

In circumstances where the vessel is so equipped, the process of identification of an undocumented stowaway can commence immediately after the stowaway is firstly questioned on board well before the vessel arrives. That would be achieved by way of telephone interviews with the stowaway by experts and consular representatives and exchange of documents, questionnaires and photographs to speed up identification of the stowaway and minimise potential delays to vessel's schedule.

¹⁷ Appendix of Annex 1 of Resolution Fal.11 (37) "Revised Guidelines on the Prevention of access by Stowaways and the Allocation of Responsibilities to Seek the Successful resolution of Stowaway Cases." FAL 37/17, 2011.

4.2.1. Minimum required information

While there is no mandatory reporting format, the Master must endeavour to include the following details in his formal statement:

- Details of operation performed at last port of call and cargo handled, if applicable
- Date and UTC time of drug and stowaway searches before and after departure
- Date, UTC time and port where the stowaway embarked
- Date, UTC time, position of the vessel and location where the stowaway was discovered, his place (s) of concealment if elsewhere – if the stowaway gained access from the shore to the vessel hidden within the cargo, the circumstances and exact location must be clearly documented and photographed as charterers may be liable towards the shipowners
- Name(s) and rank(s) of the crewmember(s) who firstly encountered the stowaway
- Procedures adopted by the vessel's after discovery (searches, findings, security measures)
- Treatment afforded to the stowaway (accommodation, food, security, medical etc.)
- Assessment of stowaway's mental and physical health and behaviour
- Identity and contact details of the agents and P&I correspondents who will handle the case before the local authorities
- ETA at the next port

4.2.2. Minimum required documentation

The Master's statement of facts must be accompanied by the following documents:

- Questionnaire signed by the stowaway
- Full body, profile and passport-size face photographs of the stowaway
- Copies of documents/papers retrieved from the stowaway
- Vessel's particulars
- Crew list
- List of port of calls for the past thirty days
- Drug and stowaway search checklists duly completed
- Visitor's logbook covering the period of vessel's stay in the port of embarkation
- Deck logbook covering day of departure, 24 hours before discovery and 24 hours after

4.3. Port health clearance

The technical regulation for the promotion of health and sanitary control of Brazilian ports and vessels calling at these ports is set forth in ANVISA's resolution RDC 72/2009¹⁸ and its subsequent amendments that regulates the ingress and permanence of vessels and enforces the health measures and documents foreseen in the IHR 2005.

¹⁸ Collegiate Directorate Resolution (*Resolução da Diretoria Colegiada*) – RDC no. 72, 2009, as amended by RDC no. 10, 2012, by ANVISA).

4.3.1. Granting of free pratique

Vessels arriving in Brazil are required to obtain a certificate of free pratique (*Certificado de Livre Prática*) issued by ANVISA to enter the port, perform cargo operations and embark or disembark passengers and stores¹⁹.

The request for the free pratique must be made within a maximum of 48 hours and a minimum of 24 hours before arrival (72 hours maximum in those ports where ANVISA station closes on weekends). Vessels deviating to land sick or injured persons or with sea passage shorter than 24 hours are exempted.

In most ports, the application and mandatory documents collected from the vessel are submitted by the agents to ANVISA electronically through the Paperless Port (PSP)²⁰ single-window system.

The free pratique may be granted either 'by radio', that is when it is issued without a sanitary inspection and based on a satisfactory evaluation of the information logged on the PSP system or delivered at ANVISA's station as may be the case; or 'on board', when it is issued after vessel successfully passes the sanitary inspection.

The granting of free pratique on board would normally be the mode for vessels arriving from so-called affected areas²¹ for transmissible diseases, or when there is evidence of a potential or actual public health risk, including sources of infection or contamination on board, or when the information provided by the vessel is incomplete or inconsistent.

Regardless of the method free pratique is granted, the vessel remains always subject to a sanitary inspection by ANVISA while in Brazilian waters.

4.3.2. Vessels arriving from affected areas

In addition to other sanitary and health controls, ANVISA demands travellers that have been in affected areas for yellow fever in past thirty days to carry a valid vaccination card in the format prescribed by WHO²².

Most of the vessels arriving with stowaways in Brazil have departed from ports in West Africa that are in or around endemic areas for yellow fever and other infectious diseases.

A typical West African stowaway would seldom carry any personal identification, let alone a valid vaccination card. Because his health status and potential public health risks to others are undetermined, ANVISA may – and often does – condition the granting of the free pratique to a sanitary inspection.

¹⁹ Articles 16 to 21 of RDC no. 72, 2009, as amended.

²⁰ *Porto Sem Papel – PSP (Paperless Port)* is an single-window electronic system managed by the Secretariat of Ports (*Secretaria dos Portos*), Ministry of Transport (*Ministério dos Transportes*), through which mandatory documents are provided by carriers and cargo interests to the intervening regulatory agencies and governmental authorities

²¹ According to IHR 2005 definition, an affected area "means a geographical location specifically for which health measures have been recommended by WHO under these Regulations"

²² WHO International Certificate of Vaccination or Prophylaxis, as appended to the IHR 2005.

4.3.3. Sanitary inspection

Where required, the sanitary inspection is scheduled according to the chronological arrival of the vessels, except in some circumstances that take precedent, such as the existence of a stowaway or a person in need of medical assistance.

The sanitary inspection can take place at the anchorage or alongside the berth, depending on the port or terminal involved. The Yellow flag (Quebec) must be hoisted until health clearance either by radio or on board is obtained.

Sanitary inspection at anchorage takes place depending on favourable weather conditions and availability of boat transportation for shipowners' account.

ANVISA may clear the vessel to come alongside for the sanitary inspection, but she will not be allowed to handle cargo or stores or to embark and disembark passengers or crew until the granting of the free pratique.

In case the vessel is allowed into an operative berth for the sanitary inspection, the port authority or terminal operators may charge double wharfage due to vessel remaining idle alongside a working berth. As an alternative, the vessel may proceed to a lay-by berth, if available, and later shift to the intended berth. Of course, the additional berthing and shifting costs can substantially aggravate the overall expenses involved.

The sanitary inspection may include a medical examination of the stowaway (usually by a physician arranged by the shipowners) and blood sampling for malaria tests in a public hospital.

If the stowaway is free from any symptoms – and the malaria test, where demanded, resulted negative – the certificate of free pratique is granted and the vessel can commence operations.

In case deficiencies or health offences are verified during the sanitary inspection, ANVISA applies health measures that involve drawing blood sample from the entire crew for malaria test, disinfection of the vessel and disembark of those fallen ill, all of the resulting costs for shipowners' account.



Stowaway during medical examination prior to port health clearance

4.3.4. Documentary requirements

This list below features the set of shipboard documents that must be available with the vessel for verification by ANVISA in the event of a sanitary inspection:

Category	Description
a) IHR 2005 documents	<ul style="list-style-type: none"> ▪ Maritime Declaration of Health²³ * ▪ Ship Sanitation Control Exemption Certificate (SSCEC) or Ship Sanitation Control Certificate (SSCC)^{24 25*} ▪ International Certificate of Vaccination or Prophylaxis²⁶ *
b) IMO documents	<ul style="list-style-type: none"> ▪ Crew List/ Passenger List/ Supernumeraries List/ Stowaways List * ▪ General Declaration ▪ Cargo Declaration ▪ Ship's Stores Declaration ▪ Dangerous Goods Manifest ▪ Crew Effects Declaration ▪ International Sewage Pollution Prevention Certificate
c) Management plans	<ul style="list-style-type: none"> ▪ Water Safety Plan (or Water Management Plan) ** ▪ Ballast Water Reporting Form*/ Ballast Water Record Book ▪ Waste Management Plan ▪ Food Safety Plan *** ▪ Integrated Vector Management Plan + ▪ Garbage Management Plan/ Garbage Record Book ▪ HVAC System Management Plan ++
d) ANVISA required documents	<ul style="list-style-type: none"> ▪ Notice of Arrival * ▪ Certificate of Free Pratique of previous Brazilian port, if any * ▪ Application for Certificate of Free Pratique * ▪ List of ports of call within past 30 days * ▪ ANVISA Ballast Water Reporting Form * ▪ Sewage plant manufacturer's instruction and operation manual ▪ Hospital Logs +++ ▪ Narcotics List/Medicines List

* Mandatory for granting of free pratique

** Including potable water analysis reports

*** Including temperature record logs

+ Including records and logs of vector and reservoirs control

++ Including records and logs of periodical maintenance

+++ Including records of health events on board, if any

4.3.5. Shipboard sanitary conditions

The existence of stowaways on board, particularly those embarked in affected areas, often leads to heightening of surveillance by part of ANVISA. It is therefore strongly advisable that the vessel be prepared for a stringent sanitary inspection for obtaining the free pratique and avoiding potentially heavy fines.

²³ Article 37 of IHR 2005.

²⁴ Article 39 of IHR 2005.

²⁵ WHO updated list of ports authorized to issue SSCEC/SSCC under IHR2005 can be consulted at the WHO IHR Website at:

http://www.who.int/ihr/ports_airports/portslanding/en/

²⁶ Article 36 of IHR 2005.

The non-exhaustive table below highlights items that are frequently verified during a thoroughly sanitary inspection that represent common sources of deficiencies leading to the need of corrections, re-inspections and potential fines for non-compliance.

Item/location	Situation
a) IHR 2005 documents	<ul style="list-style-type: none"> ▪ All persons on board must be in possession of vaccination certificates issued strictly in the WHO format, up-to-date and free from erasures and amendments ▪ Stowaways, events of death, illness and injuries and health measures performed during the voyage must be mentioned in the health declaration and schedule (see ▪ Vessel must carry an up-to-date SSC issued strictly in the WHO format, by an IHR authorised port listed in the WHO website
b) Quarters	<ul style="list-style-type: none"> ▪ All accommodations must be clean, free from vectors and reservoirs and maintained in good conditions of sanitation and hygiene ▪ Toilets must have potable water and be equipped with proper hand-washing facilities (preferably liquid soap) and hand-drying facilities (electric dryers or preferably disposable paper towels) ▪ Flushing systems must be maintained free from leaks, overflows and backups ▪ Trash bins must be equipped with pedal-operated lid
c) Hospital and medical care	<ul style="list-style-type: none"> ▪ All vessels carrying 15 persons or more and engaged in a voyage of more than 3 days must be fitted with a hospital accommodation exclusively for medical purposes and separated from food-storage and food-preparation areas and provided with at least one toilet, one washbasin with hand-washing (liquid soap) and hand-drying (disposal paper towels) station and one tub or shower ▪ Brazilian-flagged vessels (except Navy, leisure and sports) in deep sea trade must carry a nurse or a health aide on board; passenger vessels in cabotage longer than 48 hours and cargo vessels in cabotage longer than 72 hours must also carry a nurse or a health aide on board ▪ Medical facilities must be clean, ventilated and well lit, free from vectors and reservoirs and maintained in good conditions of sanitation and hygiene ▪ Hand-washing (liquid soap) and hand-drying facilities (disposable paper towels) must be available, ideally with hot and cold water ▪ Medical logs must be kept to record cases of all health and medical events with indication of medication and treatment dispensed) ▪ Expired medicines must be replaced with fresh ones, packaged, segregated in dedicated storage and disposed in accordance with the waste management plan ▪ Controlled pharmaceuticals must be well secured against unauthorised access

d) Galley, pantry, service areas and stores

- All areas must be clean, ventilated, well lit, free from vectors and reservoirs and maintained in good conditions of sanitation and hygiene and a cleaning, disinfection and maintenance programme with written logs of activities must be available for verification
- A food safety plan based on the HACCP principles for food procurement, preparation, storage, handling and distribution must be evidenced in written policies and logs
- Food contact surfaces, utensils and equipment must be made of corrosion-resistant, non-toxic, non-absorbent, easily cleanable, smooth, durable materials
- At least one dedicated hand-washing station (preferably with liquid soap) and means of hand-drying (preferably disposable paper towels) must be installed
- Food waste must be handled in accordance with waste management plan and the vessel must be equipped with facilities for safe storage of food refuse
- Food handlers and galley crew must adhere to safety practices of personal hygiene, wear adequate, clean clothes and PPE, and have appropriate training in safe food procedures and foodborne disease controls
- Food provisions must be supplied from reputable sources and purchase receipts, food storage in-out records and food management logs must be available for verification
- All foodstuffs, including those cooked and/or processed on board, must display the corresponding expiry date, be properly packaged, segregated and stored in dedicated food-storage places at least 15cm above the floor, away from sources of infection or contamination and in maintained in adequate temperature
- Raw and prepared food must be kept separated from each other and food and non-food stores must also be separated
- Foodstuffs must be checked regularly, with out-dated or spoiled food discarded in accordance with the waste management plan and control
- Refrigerators and freezers must have visible thermometers and temperature records (cooling logs and thermometers readings) must be available for verification
- Temperature of refrigerated food must be kept at 5° C or below, frozen food at 18°C or below and dry food between 10°C and 25°C
- Cleaning chemicals and materials must be duly labelled and locked in a dedicated storage outside food area

e) Main deck, holds and engine room

- The decks, cargo holds, cranes, ventilation ducts and engine room must be free from food waste, contaminated materials, gases, foreign materials and reservoirs
- The drainage system must be adequate with independent drain lines to discharge to open, unobstructed drain wells
- When alongside, the gangway ladder must be properly and safely landed on the quayside, fitted with a protective net underneath its entire bottom and sides and rat-proofing features
- Effective rat-proofing collars (rat guards) must be tightly installed in all tending lines at suitable distance from the vessel, able to withstand wind action and regularly monitored and adjusted
- Standing water on deck and in cargo holds open spaces, depressions and culverts that can hold insect larvae and vectors must be eliminated
- Service outlet of cold-air and hot-air systems extending from the deck directly into engine room must have both ends covered with vector-proof protections
- A washbasin with hand-washing and hand-drying station must be available in the engine room

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- f) Potable water**
- Constructional drawings for the potable water system, water safety plan, drinking-water analysis report must be available for verification
 - Water for human consumption processed on board by way of an approved water system cannot be collected from polluted areas, harbours or anchorage
 - When treated with chlorine, after disinfection the water must present a minimum residual free chlorine level of 0.5 ppm and be maintained between 0.2 ppm and 2 ppm – other disinfection procedures may be adopted, if efficiency
 - At least four potable water samples must be collected from different locations within the vessel every 15 days and analysed for the presence of pathogenic microorganisms – the records of potable water analysis must be kept for 1 year
 - The fresh water tank must be cleaned and disinfected before being placed in service, once a year and after repairs or dry-docking, with the logs kept for 1 year
 - Potable water, ideally hot and cold, must be delivered to all wash-bins, bathtubs, showers and other places where water is used for human consumption
 - Potable water tank(s) must be clearly labelled 'POTABLE WATER' and cannot be located adjacent to the hull plating or tanks not holding potable water
 - Potable water pipes must be in good operational and sanitary conditions, free from sources of contamination and colour identified
-
- g) Recreational water facilities**
- Water treatment procedures must be properly executed and documented through a management plan to control the risk of exposure to pathogens and water analysis records must be kept for 1 year
 - Water offered swimming pool and spas must meet international standards concerning safety, be clear, bright, colourless and free from irritants, infectious agents, algae, suspended and colloidal matters
 - Free chlorine must be in the range of 1 ppm and 7 ppm in swimming pools and between 3 ppm and 10 ppm in whirlpool spas; if treated with bromine, it should be maintained in the range 4 ppm and 10 ppm, with turbidity less than 0.5 NTU and pH maintained and regularly adjusted in the range 7.2 – 7.8, for chlorine disinfectants, and 7.2 and 8, for non-chlorine processes
 - Swimming pool can be filled with seawater or potable water and the respective supply system must have backflow preventers or other mechanisms to avoid cross contamination of the drinking water system
 - Seawater can only be collected at least 12 nautical miles away from the shore. If the pool is not drained before arrival in the port, the seawater filling system must be closed at least 12 nautical miles before reaching the shore, and the water recirculation system must be used with proper filtering and halogenation
 - Individual spas must be cleaned and disinfected after each use and those installed in single cabins must be cleaned and disinfected weekly or between occupancies, whichever comes first
 - Spas (and similar hot tubs) must be fitted temperature-control device to prevent the water from exceeding 40°C
 - Pool hygiene practices for the promotion of use of toilet and showering before entering swimming pools and spas must be properly documented and available for verification and signage posted around the pool and social areas
 - Faecal or vomit accident response procedures must be documented and records and logs of events and corrective measures available for verification

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- h) Ballast water system**
- ANVISA Ballast Water Reporting Form and IMO Ballast Water Reporting form, ballast water record book, and ballast water management plan must be available for verification
 - Ballast water treatment plant not approved by IMO must be kept with the discharge lines and valves always closed while vessel is in a port or anchorage
 - No untreated or unexchanged ballast water can be discharged into the port basin, rivers and protected areas
 - Failure to comply with the relevant Brazilian ballast water management regulations may result in substantial fines by the maritime authority which may be cumulative with other sanctions by ANVISA, environmental agencies and public prosecutors
-
- i) Sewage system**
- Sewage system must fully comply with Annex IV of MARPOL 73/78 as amended
 - Discharge of non-treated sanitary effluents into the area of the ports is forbidden
 - Manufacturer's operation and maintenance manual must be available for verification
 - Vessels with approved sewage treatment plant and issued with a valid ISPP certificate can discharge effluents in ports and anchorages but only if all service valves and overboard valves are kept closed and sealed
 - Sewage treatment plant not certified by an authorised Classification Society must have its bypass valve, discharge line and valves closed and sealed while in is port – the system in operation on board must be the same as described in the certificate
 - Vessel over 400 GRT carrying more than 15 persons must have a sewage holding tank of sufficient size and capacity in isolated position, equipped with a level indicator, high level alert, cleaning access and an overflow system
 - If discharge of effluents from the holding tank is not effected into a proper land-based facility, it should be made at least 12 nautical miles away from the shore at performed at moderate flow rate with vessel underway
 - Equipment and utensils used in the operations of collection, storage and treatment of effluents must be fully operative, in good conditions of hygiene and subject to systematic procedures of cleaning and disinfection
 - The tablets of chorine used in the sewage plant must be of the same size and format as the inlet pipe, with broken or fragmented tablets taken out of use
-
- j) HVAC management**
- Heating, ventilation and air-conditioning systems (HVAC) must be kept in good conditions of maintenance, operation, control and cleaning and association records and logs must be available for verification
 - Permanent (non-disposable) filters must be cleaned as recommended by the manufacturer; in smoking areas or similar, the filter must be checked frequently on monthly basis, cleaned and disinfected as necessary
 - Disposable filters must be changed no later than every 3 months or earlier if recommended by the manufacturer
 - Intake air openings are located must be free and the respective areas must be used exclusively for the HVAC system the presence of any other materials forbidden
 - Public areas of the vessel should ideally be maintained at room temperature between 23-26°C, when occupied by passengers or crew

-
- k) Vector management**
- All areas of the vessel must be free from vectors and reservoirs
 - An integrated vector management plan (IVM) must be in place to define strategies for vector control, monitoring and inspection
 - Records and logs of the IVM, including details of application of approved pesticides and insecticides (methodology and technic applied, dosage, concentration and active substance) available for verification
 - Chemicals used in the IVM must be duly labelled with identification of the active substance, expiration date and manufacturer's recommendations for dilution
 - Sleeping quarters, mess rooms, dining rooms, indoor recreational areas, as well as food spaces must be effectively screened or protected against while the vessel remains in areas where flies and mosquitoes are prevalent
 - Refuse stores must be screened or protected with doors tightly closed and regularly inspected for elimination of breeding flies and other vermin
-
- l) Waste management**
- A garbage management plan, including procedures for medical and hazardous chemical waste handling, storage and disposal, must be in place and record books kept for at least 2 years and made available for verification
 - Removal of liquid and solid wastes in ports by approved companies must be authorised by ANVISA beforehand through the PSP system
 - Proper signage must be displayed in relevant areas notifying crew and passengers of the processes for garbage collection, separation, processing, storage and disposal
 - Waste containers must be watertight, non-absorbent, easily cleanable in accordance with Annex IV of MARPOL 73/78
 - No solid waste can be discharged into the estuary of the port
-
- m) Housekeeping**
- Procedures for systematic and periodic maintenance, cleaning and disinfection evidenced through a cleaning and disinfection plan
 - Housekeeping crewmembers must wear disposable PPE for cleaning cabins of ill passengers or crew after events of death, faeces, vomit, urine and other bodily fluids or contaminating materials
 - Cleaning equipment and materials used in the cleaning and disinfection (brooms, brushes, squeegees, gloves etc. must be disposed or submitted to disinfection after use and properly stored in separated area exclusive for this purpose
-

In case of doubt, the Master and crew should seek detailed guidance from authoritative reference publications issued by WHO such as Guide to Ship Sanitation and Handbook for Inspection of Ships²⁷ to ensure full compliance with the IHR 2005.

4.3.6. Sanitary offences

Apart from potential delays in the granting of the free pratique, eventual deficiencies verified during the sanitary inspection expose the shipowners to a penalty of rebuke or, more likely, a sanitary fine ranging from BRL 2,000 for light offences up to BRL 1.5 million for very serious offences²⁸.

²⁷ WHO "Guide to Ship Sanitation", 2011, and WHO "Handbook for Inspection of Ships and Issuance of Ship Sanitation Certificates", 2011.

²⁸ Art. 2, § 1, Law 6437, 1977: fines from BRL 2,000 to BRL 75,000 (light offence); BRL 75,000 to BRL 200,000 (serious offence); BRL 200,000 to BRL 1,500,000 (very serious offence).

ANVISA issues the notices of infringement against the shipowners through the local agents. An administrative defence can be filed within 15 (fifteen) days from the receipt of the notice of infringement with a right to an appeal to a higher administrative instance. A decision in respect of the defence can take years to be rendered.

It is only after completion of the administrative proceeding that an eventual fine is quantified and issued for payment within 30 (thirty) days from receipt. A 20% discount is given if the fine is paid within 20 (twenty days) waiving the right of appeal.

Since the amount of an eventual fine would rarely be known before vessel's departure, the agents involved might demand a cash guarantee from the shipowners to cover them for sanitary fines imposed by ANVISA that may be levied years after – the time bar is five years counted from the year after that of the offence.

The reason for the agents seeking security from the shipowners, particularly when they were appointed by the charterers, lies on the fact that despite long-established jurisprudence ruling that the agent is not liable for sanitary offences committed on board the vessels, which understanding has been well settled by the Office of the Attorney-General²⁹, ANVISA may occasionally issue the notices of infringement and fines against the agents instead of the shipowners.

Letters of undertaking issued by the P&I clubs (or by the correspondents on club's behalf) are widely accepted by agents as a form of security in respect of sanitary fines.



An open top container where four stowaways secreted themselves prior to the unit being loaded

4.4. Official investigations

The presence of the stowaway onboard triggers the involvement of various authorities. The immigration authority (Federal Police) and the maritime authority (Port Captaincy) are entitled to – and normally do – conduct administrative enquiries with different purposes and objectives.

²⁹ Súmula (Abridgement) no. 50 of 13 August 2010 issued by the *Advocacia-Geral da União* – AGU (Attorney General of the Union) establishes that “No liability should be attributed to the shipping agent for sanitary or administrative offences performed inside the vessels” (free translation). AGU is the institution that represents the Federal Union judicially and provides legal consultation and assistance to the executive power.

4.4.1. Immigration enquiry

The jurisdiction over stowaway and refugee incidents falls with the Federal Police that as a matter of course launch an enquiry to ascertain the circumstances surrounding the stowaway boarding the vessel, identify eventual contribution of the crew to the illegal immigration, and ensure that the stowaway was humanly treated while under the physical custody of the Master.

In the absence of any criminal offence, the Federal Police enquiry is usually very straightforward and tends not to cause substantial delays to the vessel's schedule.

The enquiry involves personal deposition of the stowaway and the Master. The officer on duty at the time of stowaway discovery and other witnesses may also be summoned to depose. All foreigners assisted by a sworn interpreter paid by the shipowners.

The Federal Police may carry out an on-site investigation where they deem appropriate or where there is evidence of a criminal offence having been committed on board the vessel.

In lack of any irregularity, the Federal Police levy a fine³⁰ on the carriers and decide whether the stowaway will be allowed to disembark or must remain on board to sail with the vessel.

4.4.2. Maritime enquiry and administrative proceedings

The Harbour Master at the first port of call is entitled to launch an administrative enquiry to investigate stowaway incidents, which is expressly defined as a 'fact of navigation' under NORMAM 09/DPC, with a threefold purpose:

- Define the nature, cause and extent of the casualty or fact of navigation and its circumstances;
- Establish the liability for the casualty or fact of navigation and impose eventual sanctions along with corresponding legal framework; and
- Indicate preventive measures for improvement of the safety of navigation

The Port Captainty takes depositions from the stowaway and vessel's personnel through sworn interpreters arranged by the shipowners and, if required, conducts an inspection on board of the vessel aiming at identifying the safety factors that were involved in the incident.

Although the deadline for the Port Captainty concluding an inquiry is 90 (ninety) days, extendable for successive periods where required, in practice a conclusion of an ordinary stowaway enquiry takes in average no less than six months or so to be completed.

Although the enquiry takes months, the vessel can depart on completion of the taking of depositions and collection of material evidences. The interested parties can have unrestricted access to all evidences collected by the Port Captainty but only after the enquiry is completed – the deponent or his lawyer is entitled to require a copy of his own deposition at once.

³⁰ BRL 827.75 per stowaway, as at May 2015.

Upon conclusion, the head of the enquiry issues his report on the parties liable for the casualty or fact of navigation and forward the evidences collected to the Maritime Tribunal (*Tribunal Marítimo*)³¹ in Rio de Janeiro.

Following allotment of the administrative proceedings at the Maritime Tribunal, the findings of the Port Captainty are remitted to the consideration of the Navy Special Prosecutor's Office (*Procuradoria Especial da Marinha – PEM*) that may uphold Port Captainty's findings and bring charges against those found responsible, if any, or return the records of the enquiry to the Port Captainty for further investigations or still move for the case to be archived forthwith.

Should PEM decide to bring charges, the indicted party will be summoned to appoint a lawyer entered with the Brazilian Bar Association (*Ordem dos Advogados do Brasil – OAB*) to present his defence. If the indicted party is unable to or unwilling to appoint a lawyer, the Tribunal will assign a public defender on 'ad-hoc' basis and free of charge to exercise his right to full defence under the Brazilian adversarial system.

The decision issued by the Maritime Tribunal does not address or bind civil or criminal liabilities since it aims solely at identifying the party responsible for the accident or fact of navigation with a view to improve safety and levy nominal fines and/or professional sanctions.

Nevertheless, the information collected during the administrative proceedings may be regarded as credible technical evidence by civil and criminal courts but are not binding and can be reviewed by the judiciary power.

The sanctions imposed by the Tribunal, if any, vary from a simple reprimand or a small, symbolic fine to, in the worst-case scenario, the cancelling of the seafarer's license or, in case of foreigner, the banning of the individual from professionally navigating Brazilian jurisdictional waters for a given period of time.

There is no timeframe for a final decision to be issued by the Maritime Tribunal but, in average, it would be circa of two years or thereabouts insofar as stowaway incidents are concerned.

In most of the stowaway incidents adjudged by the Maritime Tribunal to date, the Master and/or the SSO were found responsible for failure to adhere to the relevant ship security regulation required by the ISPS Code, resulting in fines against the individual for a maximum of BRL 1,000 or thereabouts plus legal costs and court fees not exceeding circa of BRL 300.

4.4.3. Application for asylum/refuge

The stowaway has the right to express his willingness to seek asylum/refuge in Brazil at any time and the Federal Police ascertain whether his request merits to be entertained for consideration by the relevant authorities.

³¹ The Maritime Tribunal - or Admiralty Court - (*Tribunal Marítimo*) is an autonomous administrative entity linked with the Ministry of Defence (*Ministério da Defesa*) in charge of issuing administrative judgements and imposing sanctions in respect of maritime casualties and incidents in the terms of Law 2180,1954, and regulating legislation.

In case the application for refuge is accepted, it is directed through bureaucratic channels to CONARE which board meets quarterly to hear the cases and decide upon the granting or cancellation of refugee status.

Once CONARE receives the claim, Caritas is prompted to render social assistance and take care of the lodging and victualing of the stowaway seeking refuge.

However, because of scarcity of financial resources and bureaucracy involved, the actual handover of the stowaway from the carriers' custody to the care of Caritas may take several weeks to be processed, during which time the carriers remain responsible for the stowaway.

CONARE takes the view that the liability does not cease until the refugee condition is granted by a final decision or ultimately rejected, in which case the stowaway's return to his home country must be arranged and paid by the carriers. CONARE grounds its views in the relevant provisions of the Foreigner's Act³². If a stowaway disembarks because he applied for refuge and his claim was entertained for hearing by CONARE, he would only be returned if the claim has been denied in appellate level. On this occasion, the shipowners will be summoned to arrange for his repatriation.

When the proceeding for the hearing of the refuge claim is commenced, the stowaway receives a provisional identification card and a worker's book enabling him to look for paid work and social benefits while his case waits to be heard.

It is difficult to determine for sure how long a claim for refuge takes to be heard. In our experience, the first instance hearing takes in average three to six months while the appeal may take up to two years in most cases.

If the stowaway is granted a refugee status, he will be allowed to seek permanent residence in Brazil and shipowners' liability over him will finally cease.

The stowaway that had his claim turned down is allowed to make only one appeal. If the first decision is upheld, the stowaway is ordered by Federal Police to leave the country in very short notice, normally eight days. At this point, the carriers are notified through the agents to arrange and pay for the stowaway's removal from the country within the legal term.

Since most of the stowaways arrive in Brazil unintentionally, many of them do not wish to stay and would rarely apply for refuge; instead, prefer to return to their country to try to stowaway again on another vessel. Indeed, in the last few years, an insignificant proportion of the stowaways have sought asylum/refuge in Brazil and only few of them were eventually accepted.

³² Law 6815, 1980, as reissued in accordance with Law 6964/1981, article 27: "The carriers shall at all times answer for the departure of the stowaways and disqualified persons; in case it is impossible for a stowaway or a disqualified person to depart, the Ministry of Justice may allow his/her conditional entry upon submission of a Bond of Liability signed by the carriers' representative, assuring his/her maintenance, fixing the period of stay and the place where he/she must be kept, and stowaways shall be under custody for a period not over thirty days, extendable for same period of time."; Article 21: "upon receipt of an application for asylum the Federal Police Department will issue a document in favour of the applicant and his/her family group that is in the national territory authorizing him/her/their stay until a final decision is reached thereon", sub-article 1: "sub-article 1" This document will allow the Ministry of Labour to issue a provisional worker's book allowing said applicant to have a paid work in country"; article 22: "while said asylum application proceeding remains pending at court, the applicant will be subject to the Foreigner's Act, observing any specific provisions as contained therein"; (Free translation).

4.5. Prospects of disembarkation

Although the main legal regime remains unaltered since it came into force more than three decades ago, there is still no uniformity in the application of subsequent immigration regulations to an extent that the approach of the Federal Police to the stowaway problem varies considerably depending on the port where the vessel arrives.

As a rule of thumb, most Federal Police stations along the Brazilian coast consent to – or actually demand – disembark of stowaways whether documented or not. On the other hand, the police may exercise their discretionary power not to allow disembark of stowaways from those vessels visiting the port solely with the purpose of landing the stowaways, or from vessels carrying recidivist stowaways that are known to have caused trouble during their last stay or while being returned to their countries of origin.

The consideration as to whether the stowaway should be kept on board or disembarked must be made by the shipowners in light of Master's opinion and critical assessment of the safety of the crew, stowaway's behaviour and health condition, adequacy of stowaway's accommodation, future itinerary of the vessel and prospects of disembarkation at other jurisdictions.

In principle, the shipowners may choose to keep the stowaway on board provided the vessel is returning to the port of origin or to a nearby port wherefrom direct repatriation can be arranged.

The shipowners may also be able to transfer the stowaway to another vessel of their ownership that happens to be in the port as long as that vessel will head to the port where the stowaway boarded or nearer to that port than the original vessel.

If return on board the same or an associated vessel is allowed, the Federal Police may require written evidence of acceptance by the relevant authorities at the port of disembark. They may also seek to obtain confirmation (through the local agents) that the stowaways were duly surrendered to their counterparts at that port.

While the costs involved in returning the stowaway on the vessel may be lower than if he were disembarked for repatriation by air, it is essential to consider his willingness to remain on board and never underestimate his underlying determination.

Another factor to consider is the number of stowaways on board – there is usually more than one stowaway per incident – and whether the crew can cope with the situation without prejudice to their regulation duties on board.

When the stowaways travel in groups, whether they knew each other before boarding or not, their drive and motivation get stronger. If they are to remain on board against their will, the chances are that they will angrily resist and resort to violent means to force an emergency disembark, that includes vandalising their quarters, self-inflicting injuries, hunger striking, fighting with each other or even jumping overboard.

Therefore, should the vessel sail with stowaways on board, the security measures should be enhanced and the shipowners must consider hiring security guards to sail with the vessel and help the crew watching the stowaways until they are landed in the next port.

Finally, whichever is the shipowners preferred course of action, the fate of the stowaway is always subject to Federal Police's final deliberation and approval.

4.6. Financial security and undertakings

In case the stowaway remains on board to sail with the vessel, the Master will have to sign a bond of liability to the Federal Police undertaking to ensure the bodily integrity and wellbeing of the stowaway and his safe surrender to the immigration authorities at the port of his return.

Should the stowaway be disembarked, whether at shipowners' request or by order of the Federal Police, the agents must sign a bond of liability taking full responsibility for the maintenance and bodily integrity of the stowaway during his stay in Brazil and ensure his removal from the country.

Some agents would require a guarantee, usually in the form of cash deposit, as a condition to sign the bond to the Federal Police and defray the various costs generated with the incident, particularly in circumstances where the vessel is not a regular caller and the agents were appointed by the charterers and have no commercial relationship with the visiting shipowners.

Club letter of undertaking is an acceptable form of security for the vessel's agents in respect of liabilities for stowaways. Alternatively, the P&I club may authorise the correspondents to place the bond with the Federal Police in the stead of the agents and meet the costs and expenses in first instance for later reimbursement by the shipowners or club as may be agreed.

4.7. Detention ashore

Unless the stowaway commits a crime, he will not be taken into police custody. Besides, there are no facilities in Brazilian ports for temporary detention of inadmissible passengers or stowaways.

Following the disembark in the presence of immigration officers, the stowaway must be lodged in a hotel or a boarding house acceptable to the Federal Police and guarded by private security guards taking duty round the clock to prevent escape.

Although the law does not demand employment of private security, this procedure has been adopted by Federal Police stations in all ports over the years due to reduced workforce and absence of detention facilities to keep the stowaway while he is documented for return or else allowed to seek asylum/refuge.

In case the stowaway escapes from local detention, heavy fines may be levied by the Federal Police on the shipowners who will remain liable to compensate eventual third party damages caused by the stowaway while on the loose.

5. Returning stowaways from Brazil

5.1. Identification and documentation

In principle, stowaways who carry a valid passport and are otherwise not eligible to seek refuge may be promptly repatriated as they are considered deportees on voluntary departure, though the Federal Police and/or the airline involved may require employment of escorts.

When the stowaway does not hold any identification, which is typically the case for the African stowaways, the relevant diplomatic representation is contacted to provide the required emergency travel document to enable travel.

Some embassies will require a face-to-face interview with the stowaway by a consular representative attending on site to consider issuing the travel document, the associated costs falling on the carriers.

It is somewhat common that undocumented stowaways, particularly the more experienced ones, repeatedly provide false information about their real identity to delay their identification and put off repatriation. Indeed, some repeat stowaways will openly attempt to extort substantial amounts of money as payoff in exchange of their cooperating and telling the truth, their rationale being that it is cheaper for the shipowners to give them the money than to indefinitely incur in substantial costs of maintenance and upkeep.

Most African nations with high prevalence of boarding of stowaways, such as Nigeria, Cameroon, Ghana and Ivory Coast to name a few, have embassies in Brasilia that are generally very responsive and cooperative.



A Cameroon stowaway is interviewed by the consular authority of his country for documentation

Documents for nationals of other African countries sourcing stowaways that do not have consular representation in Brazil, notably Liberia and Sierra Leone, have to be procured from overseas diplomatic channels, often through the assistance of the worldwide network of P&I correspondents.

The length of time that will be required to arrange and obtain a travel document largely depends on the level of cooperation afforded by the stowaway and the responsiveness of the diplomatic representation of his claimed nationality. All costs incurred with documentation and attendance of consular representatives are for shipowners' account.

5.2. Repatriation

Once an undocumented stowaway has been provided with a temporary travel document, vaccinated and issued with transit visas, where required, he will be ready for repatriation, there only remaining the repatriation route to be chosen and Federal Police approving of the repatriation plan.

The easiest – and often cheapest – repatriation route to West African countries is through South Africa, though some European hub airports also offer convenient connections to countries in the North Africa.

We traditionally work in close cooperation with P&I correspondents in Africa and Europe to procure the necessary transit permits or visas and clearance from the airport security and airlines involved and provide extra escorts where required.

5.3. Escorting

Whilst the Alien's Act is silent about the obligation of the carriers to engage escorts in the repatriation of a stowaway, in practice the Federal Police decide whether escorts should be engaged to accompany the stowaway.

Regardless of Federal Police decision, the airline concerned is entitled and usually demands engagement of escorts, unless the deportee is a national of the same country as the airline and is willingly returning on a direct non-stop flight.

Ultimately, the decision on the use of escorts is made by the airline concerned following a risk assessment by its aviation security department in line with the airline's security policy and IATA's relevant guidelines³³.

In most Brazilian ports, stowaways are repatriated with Federal Police officers travelling as escorts until at least the last point of transit before stowaways' home country, where relieve escorts arranged by the shipowners or P&I correspondents take over the duty.

Federal Police officers on escorting duty must obtain a permission from the Ministry of Justice to leave the country and delays of several weeks are frequent due to the bureaucracy involved in the process and the lack of police manpower in most Brazilian ports.

The notable exception to the otherwise lengthy clearance process is in the Ports of Santos, the nation's largest port with the highest incidence of stowaway arrivals, as well as in the Port of Rio de Janeiro. In these ports, repatriations can commence shortly after the stowaway is properly documented and is usually undertaken by private escorts arranged by the shipowners.

³³ International Air Transportation Association (IATA) Guidelines for the Removal of Deportees, Ver, 3, 2010.

Whether travelling with police or private escorts, each stowaway must be escorted by at least two escorts and airlines' security department normally allow no more than two stowaways plus escorts in each flight. For safety reasons, the Federal Police or the airline may limit the repatriation to one stowaway per flight.

The Federal Police will accompany the repatriation party until the last point of departure from Brazil to certify that the stowaway has been repatriated.

All costs associated with the repatriation of the stowaways and employment of escorts whether police or civilians are to be borne by the shipowners, even if the repatriation exercise is frustrated (because the stowaway misbehaves and is denied boarding by the pilot-in-command, for instance) and has to be repeated.

The carriers will only be discharged from liability once the removal has been completed to the satisfaction of the Federal Police.

6. Financial exposure

It is not possible to determine in advance how much the processing of a stowaway incident would cost for sure as it depends on a number of factors, length of detention, need of medical assistance, identification and documentation, repatriation routes available and number of escorts required.

6.1. Basic expenditures

We estimate that the basic, unavoidable expenditure directly arising from the presence of the stowaway would in average be somewhere between 20,000 and US\$ 30,000 per stowaway, typically including the following costs, expenses and fines, listed in the order they are incurred:

- Fine from immigration authority
- Clean clothing, bedding and toiletry
- Lodging and victualing
- Private security
- Consular fees and expenses
- Stowaway's one-way ticket and transit visa, if required
- Stowaway's pocket money
- Escorts' return tickets, accommodation abroad and professional fees

6.2. Extra expenditures and losses

The following expenditures of variable nature may also be incurred in some stowaway incidents:

- Medical examination and blood sampling for port health clearance
- Port health clearance expenses (fees, transportation costs)
- Sanitary fine
- Medical expenses and medicines
- Maritime authority fine

Apart from the above direct disbursements, the shipowners incur in additional losses, some of which are not recoverable under a typical P&I insurance cover, such as:

- Deviation to land stowaways
- Loss of hire
- Additional wharfage and expenses with tugs, pilot and mooring gangs for lay-by berth
- Damage to the vessel and/or cargo caused by stowaways

Some charter parties contain a "Stowaway Clause"³⁴ stipulating that where the stowaway has gained access to the vessel hiding in the cargo and/or container or by any other means related to the cargo operation, the charterers are liable towards the shipowners for the consequential costs and expenses and the vessel remains on hire during the time lost.

³⁴ The full text of the Stowaway Clause for Time Charter Parties 2009, issued by The Baltic and International Maritime Council – BIMCO reads: "Stowaways Clause for Time Charter Parties 2009 – "(a) If stowaways have gained access to the Vessel by means of secreting away in the goods and/or containers or by any other means related to the cargo operation, this shall amount to breach of charter. The Charterers shall be liable for the consequences of such breach and hold the Owners harmless and keep them indemnified against all claims; costs (including but not limited to victualling costs for stowaways whilst on board and repatriation); losses; and fines or penalties, which may arise and be made against them. The Charterers shall, if required, place the Owners in funds to put up bail or other security. The Vessel shall remain on hire for any time lost as a result of such breach. (b) Save for those stowaways referred to in sub-clause (a), if stowaways have gained access to the Vessel, all expenses, including fines or penalties, shall be for the Owners' account and the Vessel shall be off hire for any time lost."

7. Review of stowaway incidents

7.1. Statistical analysis

We reviewed our files on stowaway incidents we attended as P&I correspondents in the past ten years and conducted statistical analysis of the data collated that revealed some clear trends and developments that might be useful for loss prevention initiatives.

Of course, since the information is based solely on the universe of cases that we handled, the figures are not a full representation of the total number of stowaways that arrived in Brazilian ports during the period of the review.

7.1.1. Number of incidents and stowaways per year

Between January 2005 and December 2014, we attended 177 vessels bringing 401 stowaways to various Brazilian ports, as shown in table 2. There were, in average, two stowaways per vessel, meaning a reduction from previous ratio that was 2.5.

It is worth pointing out that a single incident in 2005 comprising the arrival of 20 Liberian stowaways, possibly the largest number of stowaways ever to arrive in one vessel in Brazil, has had some impact on the vessel x number of stowaway ratio.

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
Number of incidents	22	26	19	29	22	18	16	12	8	5	177
Number of stowaways	63	58	39	65	46	33	30	36	22	9	401
Stowaway per case ratio	2.9	2.2	2	2.2	2	1.8	1.9	3	2.7	1.8	2.2

Table 2: number of incidents (vessels) and number of stowaways 2005-2014. Source: Proinde database

Chart 1 indicates that the busiest year for stowaways in the period under review was 2008, when we had 29 incidents involving 65 stowaways. A very welcoming tendency is a continuing, steady reduction in the number of incidents as from 2009 culminating in a decline in excess of 40% when comparing the figures of last year against the historic average of the period. However, at the same time the handling costs per stowaway have increased.

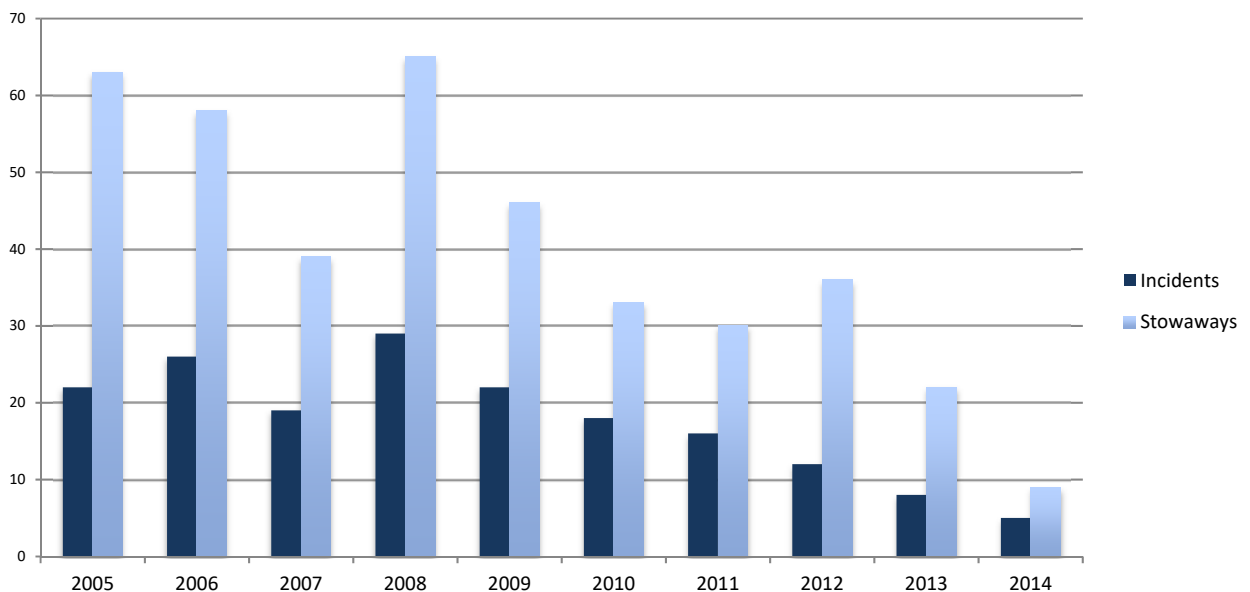


Chart 1: number of incidents (vessels) and stowaways 2005-2014

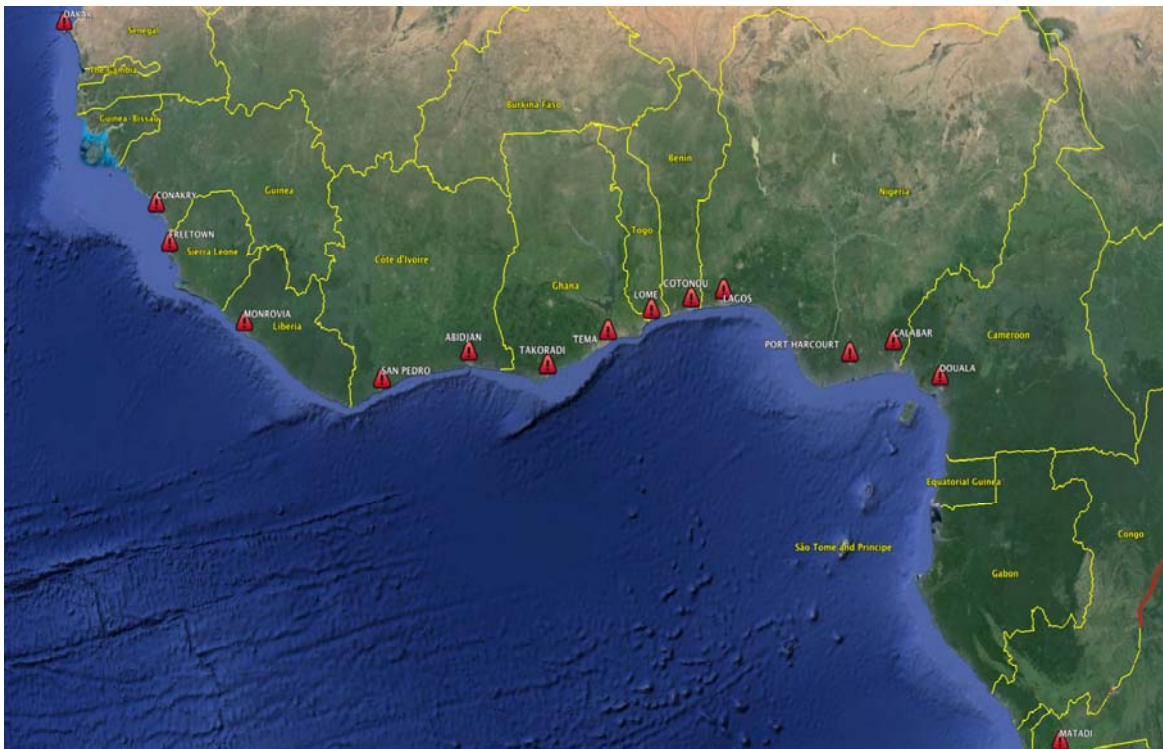
7.1.2. Incidents by country of boarding

The maps below illustrate the geographical sources of the stowaways who have arrived in Brazil in the last ten years. They clearly indicate that there were two distinct, well-defined regions where embarkations take place. These are western Africa and the southeastern part of the Caribbean.

Map 1 shows that the stowaways departing from West Africa have boarded in countries within the stretch between Senegal in the northwest and the Democratic Republic of Congo in west central Africa.

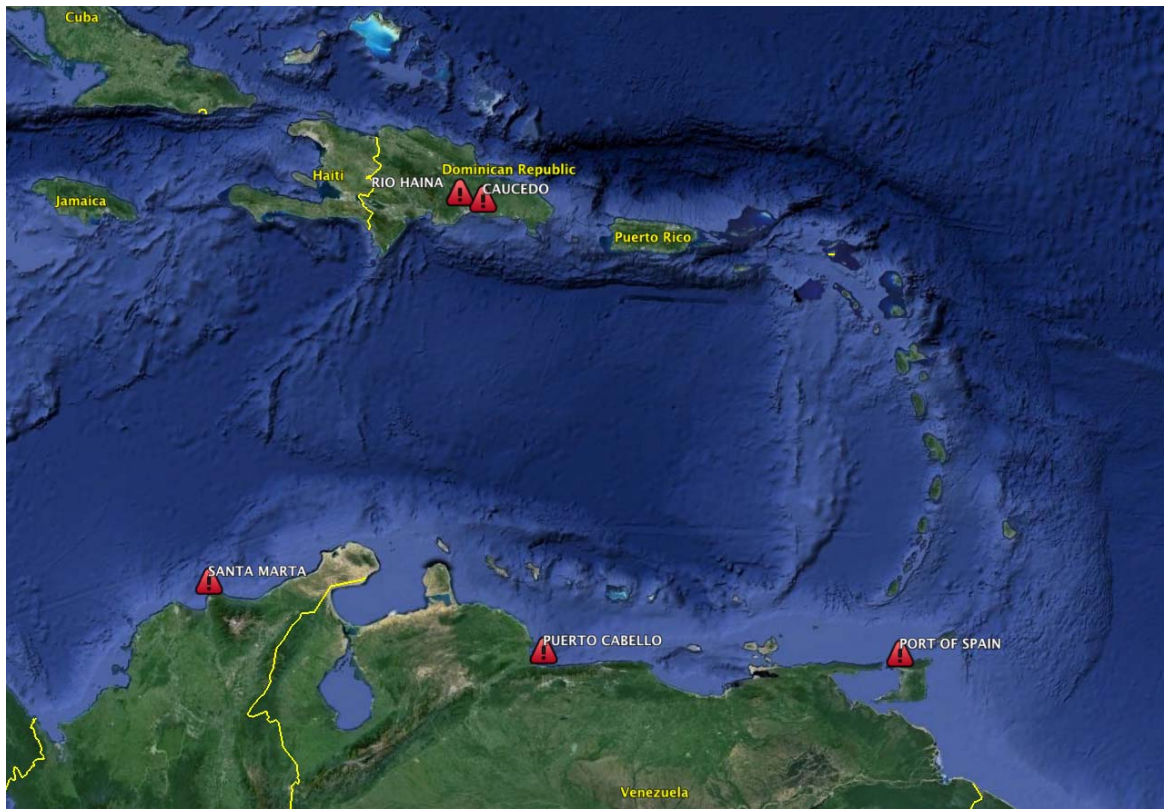
To a much lesser extent – and not shown in the map – there were also embarkations in Morocco (represented by the ports of Jorf Lasfar and Safi) and South Africa (Saldanha Bay and Cape Town, in western coast, and Richards Bay, Durban and Saldanha Bay, to the east). Notably, all stowaways boarded in the South African ports are actually nationals from other countries in central and western African countries who arrived there stowing away on vessels on crossing land borders.

The vessels originating from Africa were mostly tramp bulkers and vehicle carriers, with some general cargo vessels and all tankers, the latter have all departed from Morocco.



Map 1: countries of stowaway boarding in West Africa (the ports of embarkation are marked with a warning sign in the map)

The only hotspot for embarkation of stowaways outside Africa was the region in the north of South America and east of the Caribbean where we had episodic incidents of stowaways boarding vessels in Colombia (Santa Marta), Venezuela (Puerto Cabello), Trinidad (Port Spain) and the Dominican Republic (Rio Haina and Caucedo), as illustrated in Map 2, mostly in liner containerships.



Map 2: countries of stowaway boarding in South America and the Caribbean (the ports of embarkation are marked with a warning sign)

The top ten positions of countries of embarkation are taken by African nations. Nigeria by far leading the rank as the most prevalent country of departure of stowaways to Brazil, with 59 vessels in the last ten years, that is 33% of all cases, figures nearly four times higher than Senegal, Guinea, Ghana, Sierra Leone, Ivory Coast and Cameroon that follow with an average of 15 cases (8%) apiece.

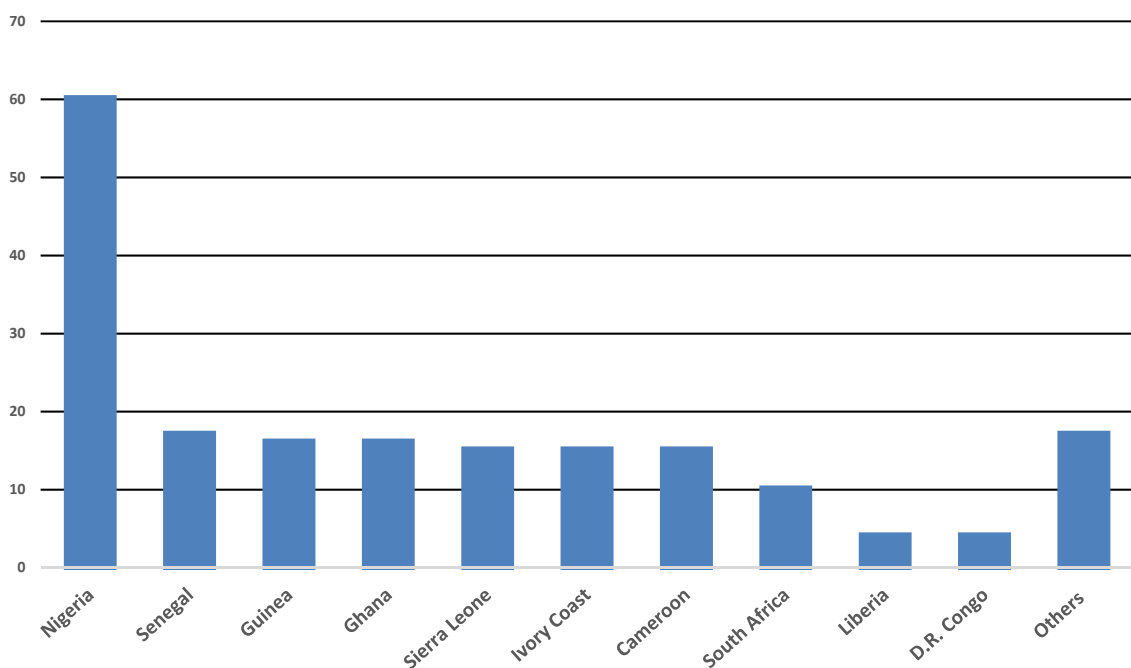


Chart 2: number of incidents (vessels) by country of boarding 2005-2014

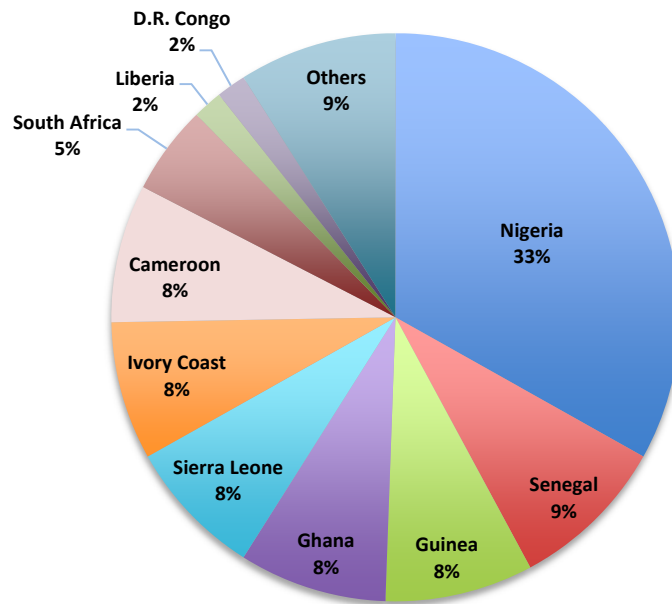


Chart 3: percentage of incidents (vessels) by country of boarding 2005-2014

7.1.3. Stowaways by nationality

Apart from being the main geographical area of embarkation of stowaways into Brazil, the African countries are also the top ten in terms of nationality of the stowaways, together with a minor participation of the Dominican Republic and Colombia. Nigeria leads the rank as the home country of 160 individuals, representing 40% of the nationalities involved. Some Nigerians embarked outside Nigeria at the same time that nationals from other African countries boarded at Nigerian ports.

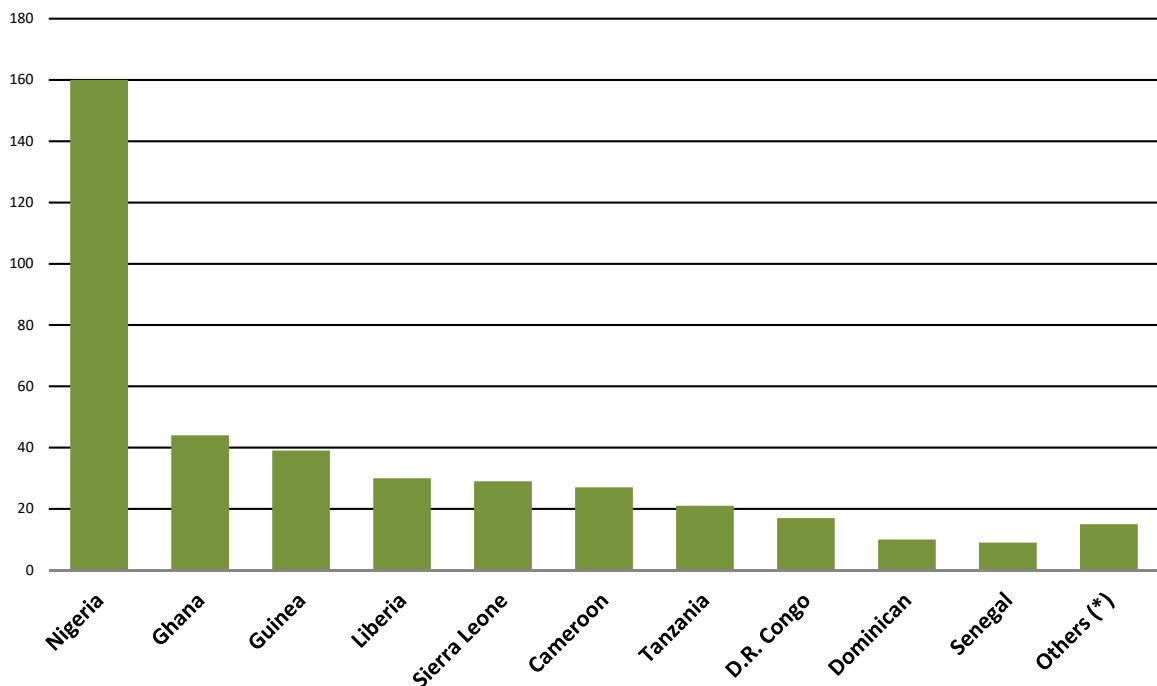


Chart 4: nationalities of stowaways in numbers 2005-2014 (* Togo, Colombia and Trinidad)

Nigeria is by far the most prevalent nationality with 160 individuals, 40% of all stowaways in Brazil, followed from a far distance by 46 Ghanaians (11%) and 39 Guineans (10%). Other regular nationalities are Cameroon, Sierra Leone and Liberia with 7% of contribution apiece.

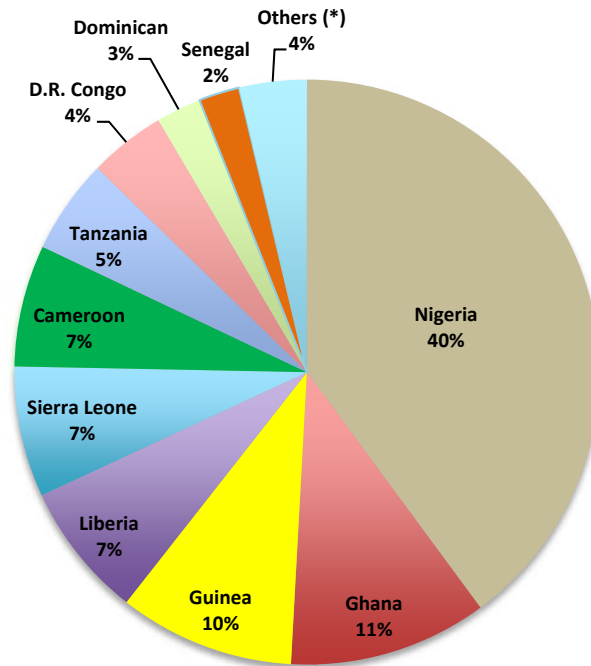


Chart 5: top 10 nationalities of stowaways in percentage 2005-2014 (* Togo, Colombia and Trinidad)

7.1.4. Stowaways by port of boarding

Nigeria is not only the main nationality of stowaways by also the leading place of embarkations with a massive contribution of its main port, Lagos, where 129 stowaways have boarded (32% of the incidents). There was also a significant contribution of Port Harcourt with 22 stowaways (6%), the two Nigerian ports together representing 38% of all embarkations in the last ten years.

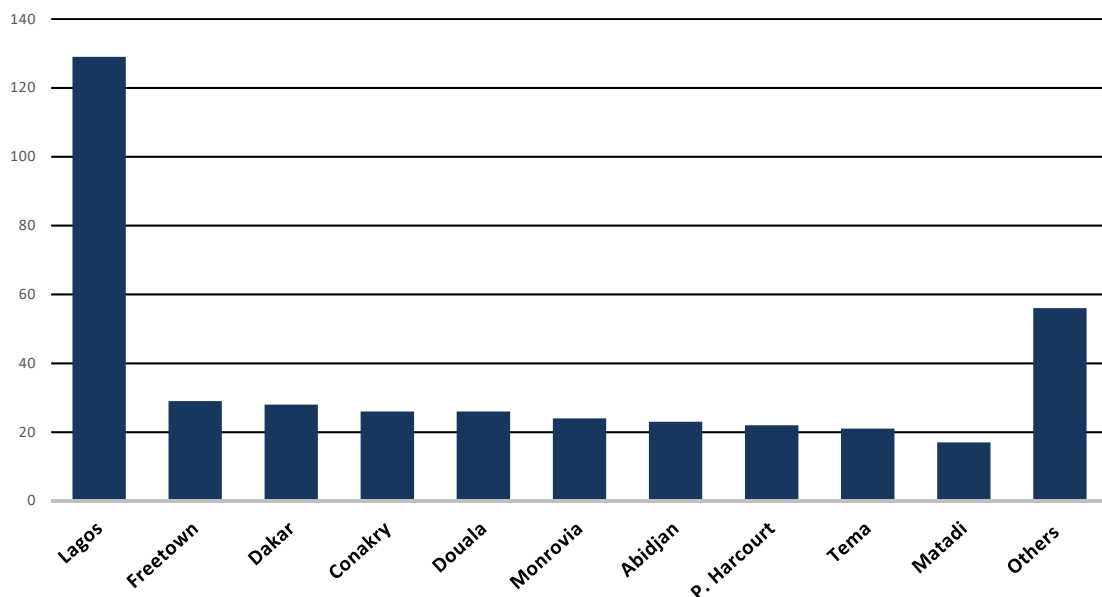


Chart 6: ports of boarding in number of incidents 2005-2014

Following from a distance comes the ports of Freetown (Sierra Leone), Dakar (Senegal) and Conakry (Guinea), each one of them with a 7% participation, then Douala (Cameroon), Monrovia (Liberia) and Abidjan (Ivory Coast) with a 6% contribution each.

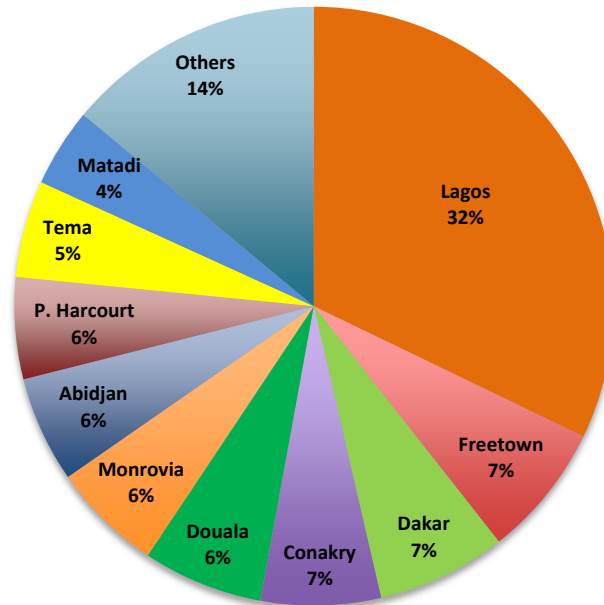


Chart 7: ports of boarding in percentage of incidents 2005-2014

7.1.5. Incidents by type of vessel

Nearly 60% of the stowaway incidents (105 vessels) involved bulk carriers, usually departing in ballast from West Africa towards the East Coast of Brazil to load agriculture products.

The other most prevalent type of vessels carrying stowaways were car carriers on liner service between West African and Brazilian ports with 30 incidents (17%) and general cargo vessels accounting for 24 incidents (13%).

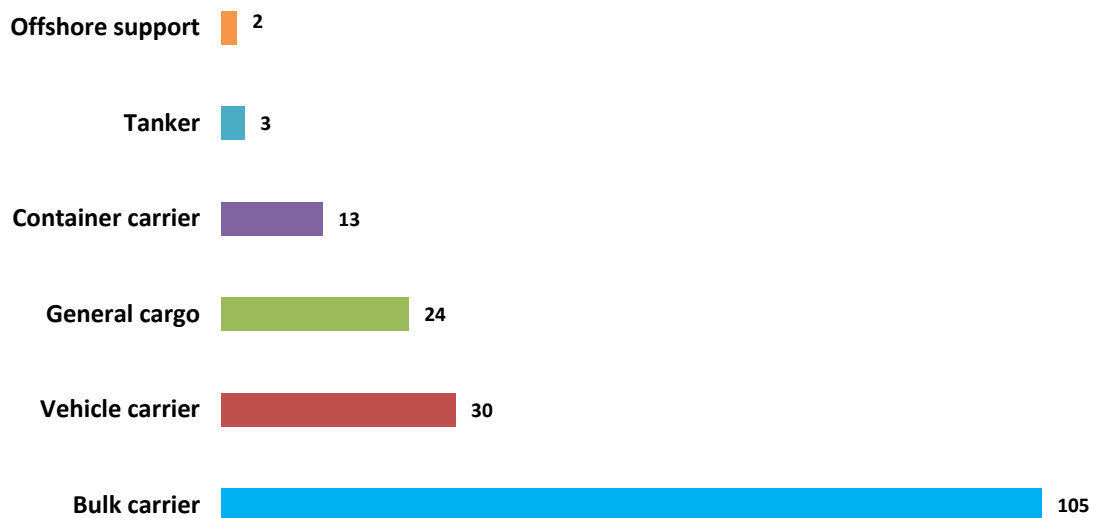


Chart 8: number of incidents by type of vessel 2005-2014

7.1.6. Incidents by port of arrival

The Port of Santos in the Southeast of Brazil had alone received 104 vessels, out of 177, that brought stowaways from various countries. That accounts for 59% of all cases in the period. Rio de Janeiro comes in second with 21 incidents (12%) followed by Vitoria with 15 cases (8%).

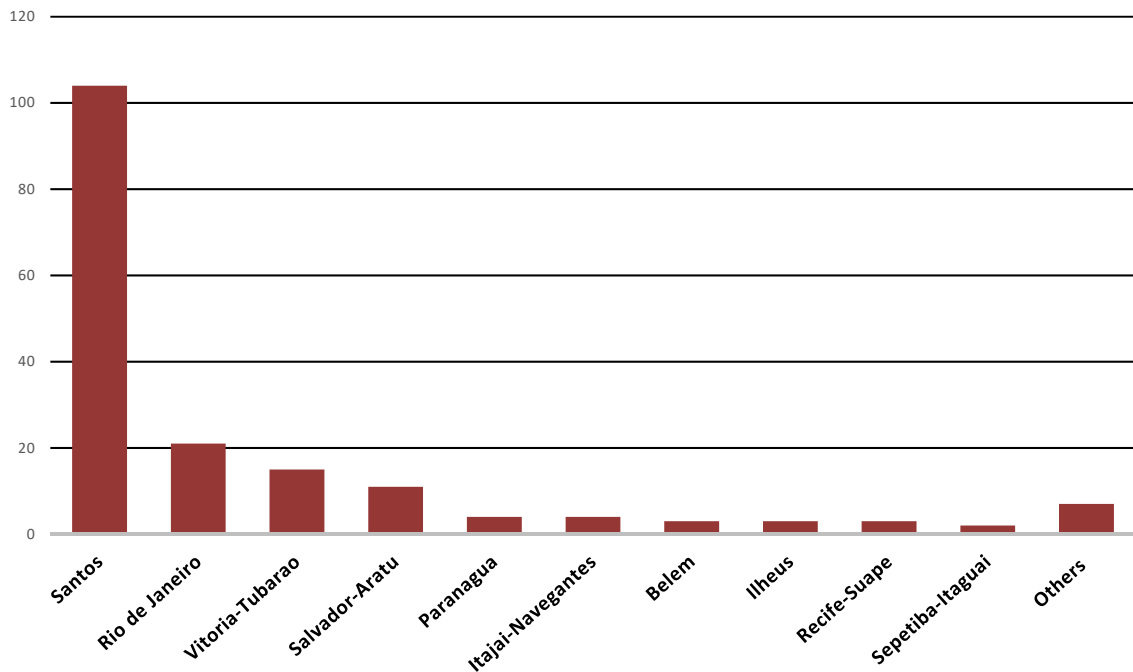


Chart 8: number of incidents by port of arrival 2005-2014

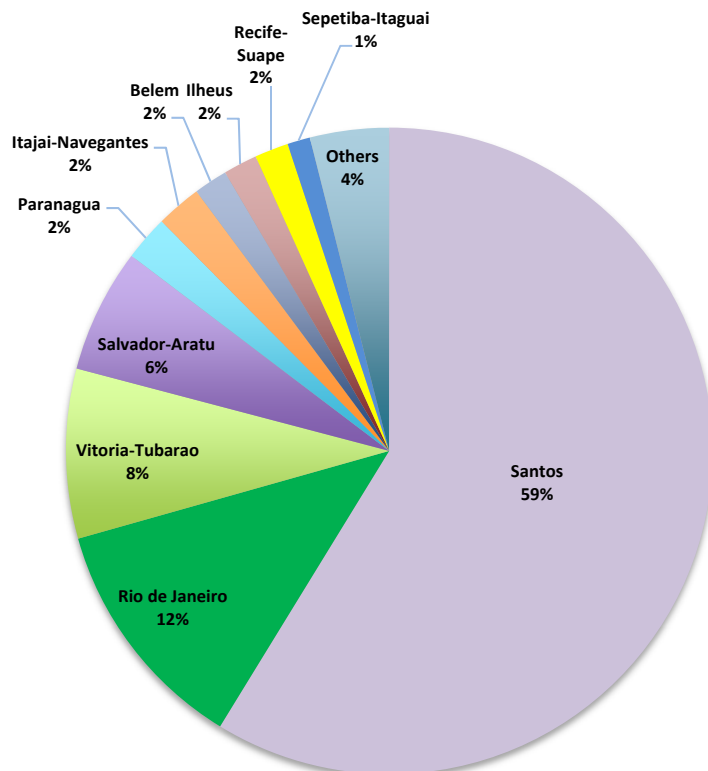


Chart 9: number of incidents by port of arrival in percentage 2005-2014

7.1.7. Stowaways by port of arrival

Again, Santos leads the rank of ports of arrival with 252 stowaways (62%), followed by Rio de Janeiro with 44 individuals (11%) and Vitoria with 34 (8%).

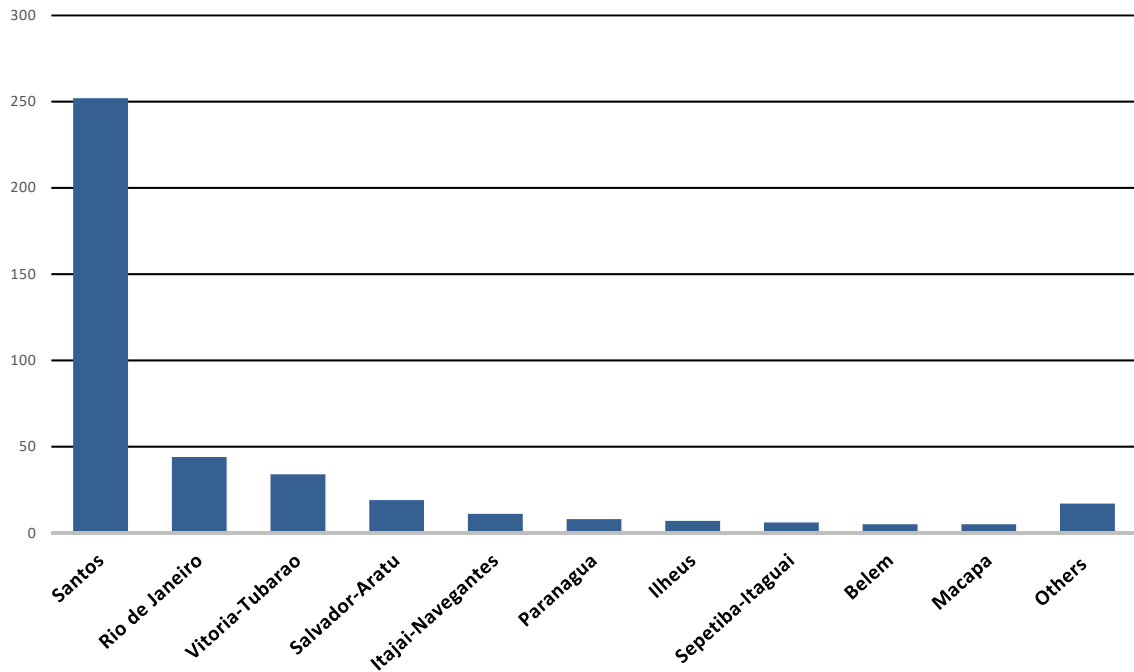


Chart 10: number of stowaways by port of arrival 2005-2014

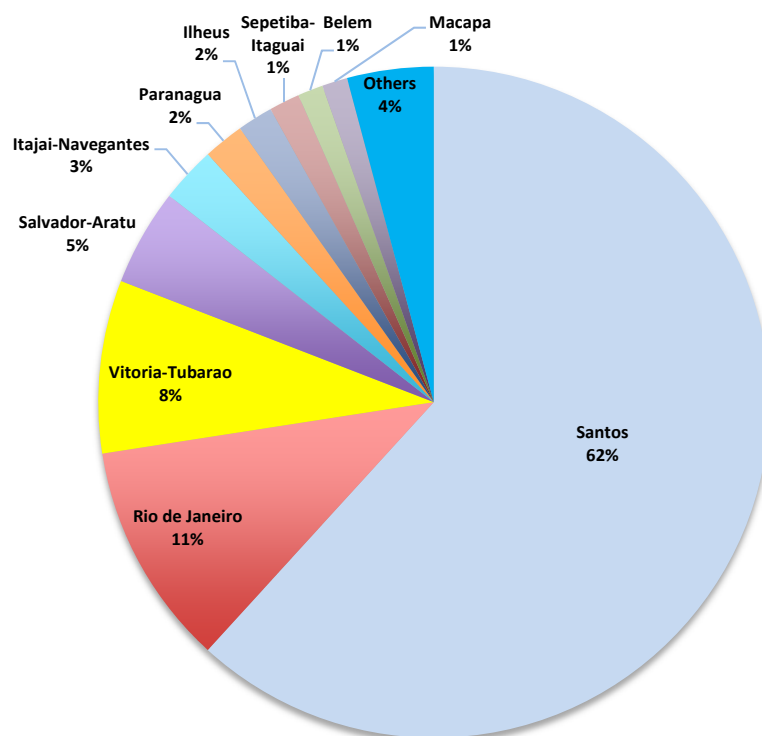


Chart 11: percentage of stowaways by port of arrival 2005-2014

7.1.8. Fate of the stowaways

As discussed earlier, stowaways arriving in Brazil may remain on board to sail with the vessel to be landed elsewhere or disembarked for later repatriation or application for refuge claim.

Amongst 177 incidents that we have reviewed, the fate of the 401 stowaways involved was the following:

- 337 stowaways repatriated with civilian or police escorts at shipowners' expense;
- 56 stowaways sailed with the vessel whether because disembark was denied or the vessel was due to return to the port of stowaway's embarkation; and
- 8 stowaways disembarked to apply for refugee status

7.2. Areas of concern

7.2.1. Professional stowaways

Along with the usual economic migrants and refuge seekers that make up most of the illegal sea travellers, the last decade has seen the rise of a new type of stowaway: the "professional" stowaway. He is an economic migrant who repeatedly stows away onboard vessels with the intent of making a profit of the situation for himself, sometimes with the successful completion of the intended immigration becoming his secondary goal.

It became more and more frequent to see recidivist stowaways within very short periods. We have recently dealt with a case where the same man arrived as stowaway in four different vessels that departed from different West African ports within a span of few months.

These stowaways would make every endeavour to reach their intended destination, habitually Europe or North America, no matter how many times they fail to get across or the risk they run when hiding in inhospitable locations with the vessel. They are aware of the somewhat lenient local system and know that they will not be arrested unless they cross certain boundaries.

The professional stowaways would systematically refuse to collaborate with the process of their identification to hamper their return and ensue greater maintenance costs in the expectation this would lead the shipowners into offering inducements to them – well beyond what one would term a 'pocket money' – to win their good behaviour and cooperation.

7.2.2. Tightening of port health controls

Apart from the opportunistic stowaways, another factor that significant adds to the increase in delays and costs is the tightening of port health requirements, particularly if the vessel arrives from so-called affected areas for infectious diseases, which is the case for most of the vessels bringing stowaways to Brazil.

8. Summary

8.1. Negative developments

- Increase of number of incidents (between 1995/2004 we had an average of 12.5 incidents per year; between 2005/2014, the average rose to 17.7 incidents per year)
- Increase of number of stowaways (between 1995/2004 we had an average of 31.2 stowaways per year; between 2005/2014, the average rose to 40.1 stowaways per year)
- Increase in the average cost of disembarking/returning stowaways
- Crackdown of port health authorities in respect of procedures adopted for issuance of port health clearance, particularly those arriving with stowaways from affected areas, even in situations where there have not been any records of illness or suspected cases on board
- Rise of the so-called professional stowaways directly impact the overall handling costs
- Increase in the numbers of stowaways from Ghana and Guinea that now occupy the second and third places in the rank of stowaways' nationality
- The number of embarkations at the ports of Freetown (Sierra Leone) and Dakar (Senegal) has increased and these countries now appear in the second and third positions, respectively

8.2. Positive developments

- Although the average number of incidents and stowaways increased during the past ten years, the last four years has shown a continuing and steady tendency of reduction in the number of incidents
- Average number of stowaways per vessel decreased from 2.5 to 2.2 stowaways per vessel
- Substantial reduction in the number of stowaways from Sierra Leone and the Democratic Republic of Congo which ranked second and third in the previous review
- There was also substantial reduction in the number of embarkations at the ports of Douala (Cameroon) and Abidjan (Ivory Coast) that used to rank in the second and third positions

8.3. Unchanged issues

- West Africa remains by far the most prevalent source of the stowaways boarding
- Nigeria remains the leading nation not only in terms of home country of the stowaways but also as the main place of boarding, particularly from the Port of Lagos
- Bulk carriers are still the main type of vessels carrying stowaways to Brazil
- Santos continues as the main port of arrival of stowaways
- There has been no impact whatsoever in the binding regulations adopted by the FAL Convention
- The Maritime Tribunal usually finds the shipmasters and/or SSO responsible for the boarding of the stowaways due to breach of ISPS Code ship security requirements
- The levels of fines levied by the authorities (Federal Police, ANVISA and Maritime Tribunal) remains unaltered

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Stowaways in Brazil

Practical Guidance and Statistical Review
