



Analysis

Securitising maritime transport: shipping merchandise and dealing with stowaways

Yasha Maccanico

Pressure arising from international, EU and national measures implemented to counter “illegal” migration has led to changes in maritime transport practices. Shipping companies and ports are motivated to get rid of stowaways quickly and by any means possible, and have adopted informal operational practices to this end. Increasingly, stowaways are becoming pawns in a game managed on the basis of practical considerations rather than the law.

Migreurop’s annual report for 2010/2011, entitled *At the Margins of Europe; the externalisation of migration controls*, analyses the security infrastructure that has developed in response to attempts to securitise the maritime freight sector against the risk of carrying stowaways. Carrier sanctions and strict regulation including the International Ship and Port Facility Security (ISPS) code, alongside procedures that can force ships to remain moored in port until a decision is made about any stowaways or asylum seekers found on board, causing considerable losses, have led to the widespread implementation of informal practices. These include a growing role for private sector actors in holding, processing and repatriating migrants, despite the fact that they have a shared interest with immigration authorities in ensuring that they do not apply for asylum.

Maritime freight and “illegal” migration

The report describes how pressure arising from international, EU and national measures adopted to counter “illegal” migration - particularly the problem of stowaways - and to protect key infrastructure in an anti-terrorist vein, has resulted in a number of changes to maritime transport. These include the transformation of ports and port facilities, procedures to prevent unlawful boarding and operational practices developed by shipping companies and their mutual civil insurance agents (Protection and Indemnity Insurance clubs, hereafter P&I clubs) that seek to cut economic and time losses to a minimum, with far-reaching implications for migrants who are caught on board.

The low number of recorded stowaways, mainly on so-called RO-ROs (Roll on/Roll off bulk carriers), has decreased further following the introduction of measures including tighter security in and around port facilities to limit access to people who are involved in loading and unloading operations, the physical separation of ports from urban centres, surveillance of a ship’s entry points and checks on containers prior to departure, most of which are now sealed. Stowaways are viewed as “grains of

sand” that undermine the smooth running of maritime freight operations, but their numbers, for which there are scant and often unreliable statistics, are low in comparison to the scale of the procedures implemented to counter them. The report features field research conducted in ports around Europe, including statements from migrants and members of migrant support associations, port officials and border police officers, sailors, shipmasters and ship owners, as well as directors and employees of companies whose services to ship owners in the maritime sector are expanding.

Using a sledgehammer to crack a nut?

After noting that figures provided by the International Maritime Organization (IMO) regarding stowaways worldwide are unreliable, the report uses them in a chart to indicate general trends which show that the figure has never risen to the level of 1999, when there were 545 cases in which one or more people arrived unlawfully, totalling 2,253 recorded stowaways. There was a decrease in the number of stowaways arriving in ports worldwide in the early 2000s which reached its lowest point in 2004-2005 (when there were 98 and 96 cases involving 210 and 209 people respectively), before rising again to 2,052 and 1,070 in 2008 and 2009. Limited information for recent years obtained through field research in ports is different from that provided by the IMO. The latest official figures for Spain date back to 2003 and 2004, when 502 and 387 stowaways arrived. In Barcelona, 72 stowaways arrived in 2007, whereas they were 197 between 2005 and 2007. A border police officer in Bilbao claimed that at least three or four stowaways used to arrive every week in 2005 and 2006, whereas only two or three of them now arrive every year. Data is also limited for Italy, although figures for Genoa indicated that there were 93 arrivals in 2009, a 30% increase compared with the previous year. Testimonies in the French ports of La Rochelle and Saint-Nazaire note a decrease, from “between 20 and 30 in the 1990s” to “between 15 and 10 in the 2000s”, according to a former border police officer in La Rochelle, and less than ten people per year in Saint-Nazaire. In northern Europe’s three largest ports, Antwerp, Rotterdam and Hamburg, the decrease is evident. In Antwerp, from 199 in 1989, 218 in 1995, 164 in 1996, 102 in 2005 and 37 in 2009. In Rotterdam hundreds arrived in the late 1990s and early 2000s dropping to a few dozen per year during the last few years. In Hamburg it has gone from between 60 and 80 in the early 2000s to around 10 as of 2005. Noting that the figure was around 170 during the 1990s, a Hamburg maritime police officer noted that:

This is nothing, if you consider the number of people arriving across the green [land] borders at the time...The figure is ridiculous, isn't it? Obviously, they gave us some work to do, but you cannot really talk about migratory pressure.

The authors of the report note a decrease in the arrival of stowaways following the introduction of the ISPS code and that more stowaways are caught in southern than northern European ports. Interviewees were convinced that the ISPS code’s impact has been due to its implementation in ports from which stowaways depart (particularly in Africa). As for the difference between northern and southern European ports, the report suggests that it may be because stowaways are made to disembark at the first port ships dock in.

Heightened difficulties, vulnerability and denial of migrants’ rights

The report highlights how journeys to reach EU countries often develop into endless odysseys for migrants. They travel with no guarantee of success in conditions that seriously endanger their wellbeing. It has become more difficult and expensive to board ships because of an increase in

surveillance, pre-departure controls and the sealing of containers. Migrants who hide on a ship often travel in conditions that endanger their lives due to dehydration, hunger, cold in unheated hiding places and asphyxia in cases where they are close to dangerous cargo such as certain chemical products. Even after they are found, stowaways may spend a long time waiting to disembark because few countries will allow them to enter their territory. Recalling cases where stowaways were unable to disembark and instances of large numbers of deaths during migration journeys (citing several examples, in particular the 58 Chinese who died during a crossing from Zeebrugge to Dover in June 2000), the report describes the vulnerability of stowaways and notes that there have been occasions when they died after jumping into the sea, hoping to swim to the shore, or were thrown overboard by crews. Professionals from the maritime transport sector did not level precise charges, but claimed that such incidents may happen. As a French port official observed: “on certain ships, the working conditions are so mediocre that, if the situation arises, the matter of nourishment is raised, and of the difficulty of feeding additional mouths”. A Romanian captain confirmed that “this can happen.” A famous case dates back to November 1992, when eight migrants (seven Ghanaians and one from Cameroon) were thrown overboard by a Ukrainian crew on the ship *MacRuby*. The captain and his deputy received life sentences and three other crew members were convicted and handed 20-year sentences after one stowaway who was not caught testified against them. The report highlights the growing competitiveness in this sector and the losses that stowaways may cause, adding that the *MacRuby*’s two previous captains were dismissed for failing “to manage the presence of stowaways” and that the companies that owned the ship did not face charges. The captain of the *Wysteria*, where a similar incident occurred in 2004 that resulted in four people dying before it reached Spain, was not tried in Spain because the events happened in international waters.

The report also looks at the frequent denial of the right to request asylum, noting that there is a “pact of silence” on this issue based on the assumption that stowaways are “economic migrants.” Although rules vary in different countries, if an asylum seeker files an application ship owners must commit to paying for their return if the application fails or face a fine of thousands of euros. Moreover, vessels are at risk of being immobilised until a decision is made about whether to initiate procedures that may lead to stowaways being recognised as refugees, which would cause financial losses due to delays in their scheduled deliveries. Thus, various actors have an interest in ensuring that stowaways do not apply for asylum, preferring to repatriate them quickly by aeroplane or to keep them on board until a solution is found or until the ship returns to the port from which it set off. Decreasing numbers of asylum applications at ports would appear to support this claim: in Spain, an ombudsman’s report published in 2005 noted that around 100 (4%) of the 2,303 *polizones* (stowaways) who arrived in Spanish ports filed a claim for asylum; between 2004 and 2010, the number of asylum applications lodged fell three-fold to 29. The report notes that out of 197 stowaways who arrived in Barcelona between 2005 and 2007, the lawyer’s association that deals with asylum law was only contacted three times to provide legal assistance to applicants.

This appears to indicate that stowaways who arrive in Spain do not wish to enter its territory or seek international protection. Valencia-based lawyer Paco Solans disputes this interpretation: “it does not seem very likely that a person who has risked their life to flee from their country declares not to want to at least enter the territory when they arrive in a Spanish port.” A member of a lawyer’s working group set up in Barcelona to examine the issue of stowaways argued that the police monopoly over access to asylum may provide a plausible explanation: “In ports, only the police is present to assess whether a person expresses their wish to enter Spain or not. How can we know if

what the *polizones* say is interpreted correctly? There is nobody there to observe the police controls.” In the view of Javier Galparsoro of refugee support organisation CEAR Euskadi, there is a “pact of silence” until the departure of the boat, which takes any problem away with it. In Germany, private companies acting on behalf of ship owners or their insurance companies are directly involved in dealing with the “problem” of stowaways. The director of one such company, Unicon, argued that most stowaways are economic migrants, noting that they conduct interviews on board with an interpreter present. He claimed that his employees can discern whether “they have reasons to seek asylum for religious or political reasons,” in which case they contact UNHCR, excluding those who claim they seek to improve their lives. The report questions whether employees of a private company (whose clients’ interest is contrary to the lodging of asylum applications) should be able to make this decision. Moreover, as a director of the seafarers’ mission in Hamburg notes, apparent compliance with procedures limits access to asylum procedures on the basis of the spontaneous utterance of the word asylum by stowaways: “people are not overzealous when it comes to information about the right to asylum. However, if they say the word asylum, then the procedure is transmitted to the authorities.” Private company employees interviewed in Atlantic ports said police officers told them “to say as little as they could about asylum.” Observing that hardly any applications are lodged in French ports and very few in the Netherlands, and that the procedure is very lengthy even in cases where asylum applications are well founded in Bulgaria, the report goes on to examine the presence of unaccompanied minors among the stowaways. In spite of the low number of minors concerned, it appears that formal rules are not followed if they are caught on board (for instance, that they should be separated from adults who are held). The report cites cases in Spain in which minors have not been granted legal assistance. Two Ghanaians who claimed they were 13 and 15 years old had x-ray scans taken of their wrists that were used against them to claim they were adults, without any additional tests due to the margin of error of this practice. Not having interpreters who speak the same language as stowaways can also be a problem, as can the fact that describing the circumstances that led them to leave and may qualify them for asylum are not considered if the word “asylum” is not spoken.

Security and financial stakes, ships and the transformation of ports and port cities

In the context of maritime trade, in which economic performance is the primary concern, the possibility of incurring penal and financial sanctions means that mutual civil insurance companies (P&I clubs) have “established the figure of the ‘stowaway’ as a risk against which carriers must be guaranteed” through a stowaway clause in their contracts. While fines for third-country nationals who travel as stowaways on boats are rarely enforced, carriers must follow several procedures to minimise the risk of fines. Firstly, they must inform port authorities in advance about the presence of any stowaways on board. The fines imposed for failing to do so vary, from 1,500 euros in Bulgaria to 5,000 euros in Rotterdam, where the port police (Rijmond Politie, ZHP) insists on being informed the moment a ship enters Dutch territorial waters, or 3,750 euros in France if the presence or disembarking of a stowaway is concealed or assisted. Fines may be imposed if stowaways are allowed to disembark, and may be reduced if cooperation by the ship’s crew is deemed satisfactory. Nonetheless, carriers consider the entire matter a nuisance, because “migrations across the world are none of their business and...they should not be the first responsible parties designated during migration controls.” A FAL convention (Convention on the Facilitation of International Maritime Traffic) circular issued by the IMO in 1996 “to promote the satisfactory regulation of cases of unlawful boarding” highlights the importance of “cooperation between all those involved”, from ship owners, crews and maritime agents to the authorities of the different countries that are

concerned. Cooperation with the authorities and the existence of adequate mechanisms to prevent stowaways from boarding are two key elements available to avoid incurring fines. However, the repatriation of migrants must be paid for by ship owners, whose insurance premiums may also rise once they take charge of stowaways. Further risks include delays in deliveries resulting from procedures to make a stowaway disembark and additional calls in ports that may be necessary to comply with control or disembarking procedures. An article in *Transport International Magazine* noted that “seafarers’ humanitarian instincts are placed under serious economic pressures” by the emphasis on swift deliveries and turnaround.

While security has gained importance in maritime trade since the 1980s, there has been a great effort aimed at “securitising” strategic facilities, including ports, after the September 2001 attacks in the USA. The International Ship and Port Facilities Security (ISPS) code was adopted in 2004 and ratified by 164 countries. Its purpose is to establish “an international framework that calls for the cooperation of contracting governments, public and private bodies, as well as actors of the maritime and port sectors to prevent and detect threats [such as piracy, terrorism and unlawful trafficking (smuggling of arms or drugs), so-called illegal immigration, sabotage and hostage-taking], and to enact customised measures to tackle security incidents.” A key feature of the ISPS code is to control access to ships and port facilities, requiring a “security plan that guarantees the implementation of the necessary measures to protect people, cargo, maintenance equipment, the ship or port facility against the risks of a security incident.” Once plans are approved, an ISPS certificate is issued to ships and ports alike. Since 2004, ISPS certification has become “an unavoidable door opener for the totality of operators.” Each time a ship attempts to dock there is communication between security officers on board and in ports, and disagreement may result in permission to dock being refused, or a ship refusing to dock, again, with important financial consequences for both sides.

The ISPS code has caused a transformation and an ideological shift in the management of port facilities, with “irregular” migration treated as a threat akin to terrorism and “an extension of the scope for the implementation of prevention techniques.” Authority in this field has passed from being an exclusive reserve of police, law enforcement agencies and private security firms in ports, to a competency of crews and maritime companies. P&I club representatives and border police officers claim that the ISPS code has been important in decreasing the number of stowaways. The geography of many ports has been transformed by the setting up of perimeters and controls at entry points and isolating them from urban centres, which also means that if a stowaway disembarks they are likely to be caught before they leave the port. Closing off a port often entails building work worth millions of euros (for example, in La Rochelle in northern France). Some ports have a wall surrounding them with two entry points that are under surveillance (San Sebastián, in the Basque Country) or are fenced off (Barcelona). The 18 million euro security plan provided by the European Aeronautic Defence and Space Company (EADS) for the Tangiers Med port in Morocco “includes high-security fencing topped by inclined panels equipped with an anti-intruder video-surveillance system and ‘small target’ sensors in the stretches of water.” Tangiers Med, opened in 2007 40 kilometres away from the city, is a key example of how ports are physically separated from cities and from local industries that used to serve them. Some of these businesses have shut down, and may end up moving near the new port facility that is tailored for international trade as a hub port. Securitising ports in cities where they are too large to seal off, like in Rotterdam or Genoa, involves the creation of closed areas within the ports and surveillance systems. The head of the seamen’s mission in Hamburg is quoted as saying that the ISPS code “has made life more difficult for seamen and has largely blocked irregular migration...Here, even the terminal where coal and timber are transported

has become a high-security zone. And the seamen themselves don't have the right to walk across this part of the terminal".

Controls are increased on the basis of prior "risk" assessments concerning boats, commercial lines or the ports of departure. The involvement of insurance companies in taking charge of the management of stowaways includes the production of maps that indicate "hot spots" and ports where stowaways are likely to embark, and organising prevention and control activities accordingly. Ports in Maghreb countries are deemed a source of "migration risk" and the arrival of stowaways on a ship is likely to result in heightened controls on other ships arriving from the same port. Measures adopted by companies include a threat by Comptoir Général Maritime (Cogemar) not to pay the wages of guards in Moroccan ports if stowaways embarked. Other P&I clubs have noted the improved means provided to guards (pointeurs) in charge of checking merchandise in ports, including laser guns that can detect people hiding in containers and sniffer dogs. Ports of departure have intensified controls to the extent that Tangiers Med port is now deemed the "most securitised port in the Mediterranean," according to a P&I club correspondent. Its authorities argue that the security system that has been implemented has made it more attractive:

At the port's entrance, lorries are checked by customs officers, particularly the seals on containers. Then the lorries enter what we call the lock where, at first, the cargo's radioactivity is verified. Afterwards, we auscultate each lorry with the help of heartbeat detectors. Finally, we examine the lorries using two scanners. We conduct between two hundred and one thousand controls every day and, in this way, we catch between six and eight stowaways every month.

A 2009 Frontex report argued that increased cooperation by Morocco resulted in a decrease in stowaways arriving at Spanish ports.

Three security levels have been defined on board ships, the second of which calls for additional measures against stowaways for limited periods, in view of "an increased risk of a safety incident." P&I clubs have advised maritime companies to adopt "stowaway search check lists" for rigorous ship searches to be conducted prior to every departure, with strict rules for boarding the boat and the registration of all those who board and disembark. Locking doors, lighting around the ship at night, the presence of crew members at the accommodation ladder, a vigilant attitude by the crew and the use of hired guards are further recommendations. While these developments have definitely made it harder for stowaways to board ships, they have not stopped the practice entirely, particularly if there is complicity by guards in ports of departure. Captains have been quoted expressing their discomfort at having to carry out a "policing role" on board their ships, which includes conducting interviews and ensuring that stowaways are held in a secure cabin which crew members must monitor, to ensure their arrival in good health. Previously, stowaways would often stay with the crew, but now insurance companies impose fines if they are found on board. Captains stress that they have nothing against stowaways but have been led to deem them a threat because "Having a migrant on board is synonymous with reprisals, additional responsibilities and workloads."

Detention on board, from an exception to the norm

Once a migrant is found on board the crew takes charge of them. The liberalisation of maritime trade has worsened working conditions for crews, and this does not ease relations between seamen and stowaways. Ships are turned into sites where the border resurfaces, with crews held responsible for interviewing stowaways, detaining them in a secure cabin and monitoring their wellbeing.

Shipmasters are entrusted with a similar role to judicial police officers if they are in international waters when a stowaway is discovered, and they have a questionnaire that is used to record relevant information that they are obliged to acquire, ranging from personal details to the port where they embarked and how they were able to do so. This information is then passed to a P&I club and in France to the administrator for maritime affairs, as well as the ship owner, the port of departure and the next port of call. The interview is also meant to enable P&I club correspondents in the following port of call to organise stowaways' repatriation upon arrival, for instance, by applying to their consulate for any travel documents that may be required. If key details (identity or nationality) are not disclosed during the interview, the maritime company remains responsible for the unwanted passenger and may have to keep them on board until this data is available. Thus, stowaways may be held on a ship for months and carted from port to port while locked in a cabin. The captain is the public authority on the vessel and cabins are fitted out for this purpose by removing any dangerous objects. In some cases bars were soldered onto portholes and the cabins were locked using padlocks.

Captains and border police officers are quoted referring to detention conditions as "disgraceful" and "really dirty." Upon arrival, stowaways sometimes only have dirty clothes, a toothbrush and a bible. A doctor in Antwerp port is quoted as saying that stowaways suffer "various illnesses connected to inadequate nourishment or the lack of warm clothing [in addition to] numerous cases of tuberculosis, pneumonia and scabies." If a relationship of trust between a stowaway and a ship's crew is built up, conditions may be relaxed and migrants may be allowed out of their cabins for a few hours, or they may eat with the crew, but shipmaster Jean-Paul Declercq noted that this may lead authorities to treat them as "accomplices." In the past, they were sometimes made to work on minor chores on board in order to earn their subsistence, but this no longer happens because they are isolated in cells. Roland Duriol, a seaman who served on merchant navy ships that rescued boat people in south-east Asia in the 1980s, spoke of his experience that contrasts greatly with current practices:

At that time, migrants from Vietnam who fled persecution in their home country were rescued by French crews and were also issued the necessary administrative documents required for their reception and residence in France ...fugitives of all ages and social conditions (fishermen, farmers, students, soldiers) were received by the crew. Exhausted men, women and children were treated, washed, clothed and fed...Ten years later, entirely different concerns framed the discovery of boat people in the Mediterranean Sea. The same applies to 'stowaways' discovered on ships. Both groups are perceived as a threat for the smooth completion of the crossing, and the priority is for them to disembark as soon as possible.

Detention on board during crossings may be followed by detention in ports, although spaces at border points conceived for this purpose (such as so-called "waiting zones" in France) are not used as often. Rules enabling detention on ships are more or less stringent depending on the country in question. Although linked to notions of "only for the time that is strictly necessary", it has become commonplace to accept this practice on the basis of a series of justifications. The report notes that:

In certain German, French or Italian ports, the authorities treat not allowing people who do not have valid documents to enter the territory as a matter of principle. Refusal to disembark the foreigner may have the search for information for the purpose of returning them more easily as its goal.

A Unicon company official in Hamburg stressed the importance of making stowaways aware of the fact that they will not be able to disembark unless they cooperate. In the Netherlands, it is standard practice to keep stowaways on board until their return can be organised. Crews also fear interventions by migrant support organisations, as stated by a P&I club agent in Marseille, who argued that they “systematically advise stowaways to apply for asylum.” Thus, a crew’s responsibility for monitoring stowaways increases and public authorities further relinquish responsibility through the use of private security firms on the quayside. Nonetheless, there are cases in which stowaways are disembarked and taken to detention facilities, waiting areas, prisons (in Hamburg) or even hotel rooms that are commandeered for this purpose (Cherbourg or Sète in France), while they await expulsion.

Privatisation of “stowaway” management and returns

The interaction between policing, which is charged with applying the law, and the maritime trade sector, in which economic losses are the driving force, have resulted in stowaways becoming pawns in a game managed on the basis of practical considerations rather than the law. Maritime insurance company representatives stress that practices are informal and good relations with all the parties involved are vital. Ship owners, insurance companies and public authorities in the port of arrival are the key actors involved, and close cooperation between them is deemed necessary by a 1997 IMO resolution to resolve stowaway cases. P&I clubs and insurance companies have developed a wide range of services as part of their policies covering the risk of “stowaways”, sometimes using local companies. The director of one such company, Bremen-based Unicon, explained this growing role at the behest of P&I clubs:

Insurance companies have correspondents in all the port cities. They call upon us as expert specialists in the field of identification and repatriation. We offer to provide them the "emergency documents" needed for repatriation, but also "airline security", and we have a large specialised team that accompanies the repatriation. We take care of all of that.

Maritime insurers and their representatives thus become intermediaries between ship owners and public authorities, trying to minimise any inconvenience. These agents are interested in finding “pragmatic” solutions and cooperating for political and economic reasons. This gives rise to a “triangle” of operations in managing stowaways between the ship owner’s P&I club, their maritime agent and the authorities. Arrangements between these agents are often detrimental for stowaways, resulting in an undue limitation of their right to seek asylum and in their rights being disregarded in order to enact swift repatriations without troubling ship owners or public authorities. Maritime agents have become experts in building up networks of contacts to ensure that necessary procedural steps are adopted and the relevant documents and aeroplane tickets are available in time for a swift resolution of cases involving one or more stowaways, and in the preparation of so-called “repatriation plans.” The goal is to get rid of the stowaways by any means possible without incurring any punishment. Their involvement is such that maritime agents sometimes even give stowaways ‘pocket money’ or buy them new clothes to convince them to return without causing problems.

At the Margins of Europe: the externalisation of migration controls Migreurop, 2010-2011 report, available at:

http://www.migreurop.org/IMG/pdf/Rapport_Migreurop_2011_Version_anglaise_27012012_pour_derniere_relecture_et_validation_FASTI-SM.pdf

This article was first published in Statewatch journal volume 22 no 1, June 2012

© Statewatch ISSN 1756-851X. Personal usage as private individuals/"fair dealing" is allowed. We also welcome links to material on our site. Usage by those working for organisations is allowed only if the organisation holds an appropriate licence from the relevant reprographic rights organisation (eg: Copyright Licensing Agency in the UK) with such usage being subject to the terms and conditions of that licence and to local copyright law.