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*Regulations to Give Full Effect to the Facilitation of
International Maritime Traffic Convention with Specific
Focus on Stowaways*

**A Legislation Drafting Project submitted in partial fulfillment of the
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Table of Contents

Chapter	Topic	Page
	Introduction	3
1.	Historical Background of the FAL Convention	5
1.1	Articles of the FAL Convention	5
1.2	The Annex to the FAL Convention	8
2	Amendments to the Annex to the FAL Convention	13
3	Stowaways	17
3.1	Standards and Recommended Practices specified in Section 4 of the Annex to the FAL Convention	20
4	The Need for Incorporation of Regulations on Stowaways in Trinidad and Tobago	23
5	Incorporating the Stowaway Regulations as Amended into the Laws of Trinidad and Tobago	29
5.1	Dualism	29
5.2	The Enactment Process	30
6	The Need for Stowaway Regulations	32
7	Regulations to Give Full Effect to the FAL Convention with Specific Focus on Stowaways	33

INTRODUCTION

‘Even where good roads existed, or could be made with comparative ease, water-transport was always easier and cheaper than land transport for the carriage of bulky commodities over long distances. That is true even to-day...’ The growth in the use of the sea as a means of transport developed through ‘the sea-traders of Egypt, Phoenicia, and Greece linked together Europe and Asia, and gradually spread commerce, and with commerce civilization, over the whole of the Mediterranean Sea’.¹

As shipping and trade developed in the early part of the twentieth century, so did the paperwork involved. By the 1950s, the increased paperwork was being regarded not simply as an inconvenience, but as a threat to the economic growth of a country as delays have a direct impact on cost. The actual number of required separate documents varied from port to port; yet the information sought on cargoes and persons carried was often identical. Burdens existed that could hamper trade, such as the variety of forms and the number of copies required, local language translations, consular visa requirements, variations in document size and the necessity for authentication by the shipmaster of the information submitted.²

Furthermore, there existed a range of practical procedures and processes that must be followed in relation to the enhancement of maritime safety, as well as to the provision of general port services to ships due to national requirements or international conventions and agreements. These processes all required provision of numerous paper work to various agencies within different ports across the world.

By the early 1960s, the need for standardization and cutting of red tape was recognized by the Maritime Safety Committee very early on in the life of what was then called the Inter-

¹ Ernest Fayle, *A Short History of the World's Shipping Industry* (1st edn, Routledge 2015) 25.

² ‘History of Facilitation’ (International Maritime Organization)

<www.imo.org/en/OurWork/Facilitation/Pages/History-of-Facilitation.aspx> accessed 11 November 2020.

Governmental Maritime Consultative Organization (IMCO) – now International Maritime Organization (IMO).³

The process by which these myriad regulations, requirements and procedures are simplified and harmonized is known as “facilitation” and this simplification was achieved through the development of the Convention on the Facilitation of International Maritime Traffic, 1965, as amended (the FAL Convention). The FAL Convention was adopted on 9 April 1965 by members of the IMO and it has been in force since 5 March 1967.⁴

It has been noted that:

The issue of maritime stowaways is arguably as old as shipping itself as falls within the FAL Convention. Stowaways were a common feature when shipping was the main mode of international transport. The practice of stowing away on ships has served as a means of escape for many, including slaves... Insiders in the shipping industry keenly feel the presence of stowaways due to the delays, complications and costs they bring about disrupting the smooth operations of ships.⁵

As such, the explanatory note discusses the stowaway problem and the benefits to be derived by Trinidad and Tobago in preparing regulations to give effect to the FAL Convention, with specific focus on stowaways.

³ Jochen Erler, 'New Convention on Facilitation of International Maritime Traffic' [1967] McGill LJ 13(2) 323. Note that a suggestion was made in 1959 that IMCO adopt facilitation procedure comparable to those accorded to the International Civil Aviation Organization (ICAO). ICAO's objective was to secure world-wide uniformity of aviation law and the facilitation of international air traffic.

⁴ Convention on the Facilitation of International Maritime Traffic (adopted on 9 April 1965, entered into force 5 March 1967) 591 UNTS 265 (FAL Convention).

⁵ Amaha Senu 'The Global Assemblage of Multi-Centred Stowaway Governance' [2018] Cardiff University 7 <<https://orca.cf.ac.uk/109156/2/Senu%2C%20Amaha%202018.%20The%20Global%20Assemblage%20of%20Multi-Centred%20Stowaway%20Governance.pdf>> accessed 1 December 2020.

1. HISTORICAL BACKGROUND OF THE FAL CONVENTION

The International Maritime Organization (IMO) is a specialized agency of the United Nations, charged with the responsibility of improving safety and security in shipping.⁶ On 13 April 1961, the second IMO Assembly adopted resolution A.29 (II) which recommended that IMO address the matter concerning the requirements and procedures to facilitate efficient maritime traffic. An Expert Group was convened which recommended that an international convention be adopted to assist the facilitation of international maritime traffic. On 25 October 1963, the third IMO Assembly adopted resolution A.63 (III) which ratified the report of the Expert Group for a convention to be drafted.⁷

The FAL Convention was aimed at ‘facilitating maritime transport by simplifying and minimizing the formalities, data requirements and procedures associated with arrival, stay and departure of ships engaged in international voyage’ all in an effort to prevent unnecessary delays in maritime traffic while maintaining safety and security.⁸

1.1 Articles of the FAL Convention

The FAL Convention consists of sixteen Articles and one Annex. The Articles contain, *inter alia*, general provisions, the scope of the convention, and the notification and entry into force requirements.

An overview of the terms of the Articles of the FAL Convention is provided for a better appreciation of its objectives and scope and its application to stowaways.

⁶ ‘Introduction to IMO’ (International Maritime Organization) <www.imo.org/en/About/Pages/Default.aspx> accessed 1 December 2020.

⁷ Charles Alexandrowicz, ‘Convention on Facilitation of International Maritime Traffic and International Technical Regulation (A Comparative Study)’ [1966] 15 Int & Comp LQ 621; and History of Facilitation (n 2) > accessed 6 January 2021.

⁸ ‘FAL Convention’, (Trade Implementation Facilitation Guide) <<http://tfig.unece.org/contents/FAL-convention.htm>> accessed 24 November 2020 (Facilitation Guide). The Convention was held in London at the invitation of the parent body of the IMO the Inter-Governmental Maritime Consultative Organization. The Convention was signed by thirty-five States.

Article 1 requires Governments to adopt all appropriate measures to facilitate and expedite international maritime traffic and to prevent unnecessary delays to ships and to persons and property on board.

Article II requires an undertaking by Governments to cooperate with the FAL Convention by formulating and applying practicable measures according to particular requirements. It is accepted that the measures may vary. Article II (3) confirms that the provisions of the present Convention do not apply to warships or pleasure yachts.

Article III requires that Governments undertake to cooperate to keep any alterations to formalities, documentary requirements and procedures to a minimum in an effort to maintain uniformity.

Article IV requires that Governments undertake to cooperate with each other towards achieving the objectives at Articles I to III.

Article V is an interesting provision, in that it states that Governments still have the authority to implement wider facilities towards fulfilling the objectives of the FAL Convention. Further, the Contracting Governments are required to legislate on any matters not expressly provided for in the FAL Convention. It therefore does not seek to limit the role of the Governments and allows the Governments to use temporary measures in special circumstances, even if inconsistent with the international standards.

The definitions for Standards and Recommended Practices are inserted at Article VI and defines standards as internationally-agreed measures which are 'necessary and practicable in order to facilitate international maritime traffic' and recommended practices as measures the application

of which is ‘desirable’.⁹ ‘Recommended Practices are not immediately operative after they have passed but the Contracting Governments are urged to adjust their municipal laws to them’. On the other hand, ‘Standards are measures which become immediately operative after they are adopted by the Contracting Parties. They do not call for ratification’.¹⁰

Article VII addresses the process for amending the Annex to the FAL Convention and states the required number of Governments that need to support the amendment for it to be in force. It imposes a rather flexible amendment procedure and states that the Convention may be amended by the Contracting Governments, either at the proposal of one of them or by a conference convened for that purpose.

Article VIII is unique, in that it requires Contracting Governments to notify the Secretary-General if it finds it impracticable to comply with any Standard or if it has differing Standards that it has implemented. Additionally, in relation to the Recommended Practices, the Contracting Governments are urged to bring their formalities into accord and notify the Secretary-General.

Article IX allows a Government to make a declaration in relation to any draft amendment or a revision.

Articles X¹¹ to XII state the procedure required for the FAL Convention to be brought into force and denounced, and the method for becoming a Party to the Convention.

⁹ ‘Convention on Facilitation of International Maritime Traffic’ (International Maritime Organization) <[www.imo.org/en/About/Conventions/Pages/Convention-on-Facilitation-of-International-Maritime-Traffic-\(FAL\).aspx#:~:text=The%20Annex%20of%20the%20FAL,%2C%20passengers%2C%20baggage%20and%20cargo](http://www.imo.org/en/About/Conventions/Pages/Convention-on-Facilitation-of-International-Maritime-Traffic-(FAL).aspx#:~:text=The%20Annex%20of%20the%20FAL,%2C%20passengers%2C%20baggage%20and%20cargo)> accessed 24 November 2020.

¹⁰ Alexandrowicz (n 7) 621.

¹¹ Implementation, Signature, Acceptance and Accession of Article X FAL Convention (Business Intelligence Informa) <www.i-law.com/ilaw/doc/view.htm?id=131684> accessed 11 January 2021. It is interesting that four States deposited declarations to the effect that the provisions of article X of the Convention, notwithstanding the fact that it deals with matters of interest for all States, are discriminatory in nature in that they withhold from a number of States the right of signature and accession, which is contrary to the principle of universality.

Article XIII allows the United Nations or a Contracting Government responsible for the international relations of a territory to extend the FAL Convention to that territory and outlines the required process.

Articles XIV and XV outlines the responsibility of the Secretary-General in relation to transmitting information to all signatory Governments, all Contracting Governments and all Members of IMO of the progress of the FAL Convention.

The last Article is XVI which states that the present Convention and its Annex shall be established in the English and French languages, both texts being equally authentic.

1.2 The Annex to the FAL Convention

The Annex to the FAL Convention contains ‘Standards and Recommended Practices on formalities, documentary requirements and procedures which should be applied on arrival, during their stay, and on departure to the ships, their crews, passengers, baggage and cargo’.¹² It also includes implementation procedures and appendices that provide additional information to the FAL Convention.¹³

The structure of the Annex is as follows: Definitions and general provisions; Arrival, stay and departure of the ship; Arrival and departure of persons; Stowaways; Arrival, stay and departure of cargo and other articles; Public health and quarantine, including sanitary measures for animals and plants; and Miscellaneous provisions.¹⁴

The Regulations to be implemented focuses on section 4 of the Annex labelled Stowaways. However, a general overview of the provisions in the Annex provides information on the burden

¹² Facilitation Guide (n 8).

¹³ Convention on International Maritime Traffic (n 9).

¹⁴ *ibid.*

that can be placed on the port administration particularly the variety of forms and matters that can hinder the smooth operation of maritime international trade.

Definitions and General Provisions

One of the main general provisions that underscores the Annex and supports the objective of the FAL Convention is the insistence that public authorities shall in all cases require only essential information to be furnished, and shall keep the number of items to a minimum. Further, when public authorities introduce systems for the electronic exchange of information, they must take steps to limit the required information to what is stated in the FAL Convention. If additional information is required, the public authority is reminded of the requirement to notify the IMO Secretary-General under article VIII of the FAL Convention.¹⁵

Arrival, Stay and Departure of the Ship

In the past, public authorities required a large number of different documents, developed for their specific national needs which impeded efficient trade. With the FAL Convention, some of the red tape has been removed. Now only eleven documents are required for all formalities on arrival and departure of a ship with a standardized set of data requirements.

Arrival and Departure of Persons

This section contains the provisions concerning the formalities required by public authorities from crew and passengers on the arrival or departure of a ship. A valid passport shall be the basic document providing public authorities with information relating to the individual passenger on arrival or departure of a ship.¹⁶

¹⁵ International Maritime Organization Facilitation Committee, 'Explanatory Manual to the Convention on Facilitation of International Maritime Traffic, 1965, as amended' FAL.3/Circ.215, 12 April 2019 (IMO, 2019) 3 <<http://shippingregs.org/LinkClick.aspx?fileticket=kXaNGU7HwzY%3D&portalid=2>> accessed 3 December 2020 (Explanatory Manual).

¹⁶ *ibid* 3.

Stowaways

As defined in the FAL Convention, a stowaway means:

A person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the ship-owner or the Master or any other responsible person and who is detected on board the ship after it has departed from a port, or in the cargo while unloading it in the port of arrival, and is reported as a stowaway by the Master to the appropriate authorities.¹⁷

Standard 4.2 is the core provision of section 4 regarding stowaways. It obliges all parties involved to cooperate in order to prevent persons from stowing away on board ships and, where stowaway cases do occur, to resolve them. The shared responsibility for all the parties involved continues until the stowaway is returned or repatriated, which should be undertaken as quickly as possible.¹⁸ A more detailed discussion on stowaways will be done later in the explanatory note.

Arrival, Stay and Departure of Cargo and Other Articles

The public authorities in charge of cargo are primarily customs, as well as veterinary and phytosanitary authorities. Public authorities should, with the cooperation of ship-owners and port authorities and port facilities and terminals, take appropriate measures to ensure that port time may be kept to a minimum. Minimum port time can also be achieved by good coordination between appropriate trade partners and subsequent cooperation with public and port authorities on the need for adequate port facilities.¹⁹ This will be based on the quantities of ships, passengers and cargo. Public authorities have to provide the necessary numbers of staff, efficient procedures and other facilities, including operating hours that reflect the 24/7/365 nature of shipping and electronic systems, with the highest possible rate of availability.²⁰

¹⁷ 'Stowaways' (International Maritime Organization) <www.imo.org/en/OurWork/Facilitation/Pages/Stowaways-Default.aspx> accessed 21 October 2020.

¹⁸ Explanatory Manual (n 15) 54.

¹⁹ The International Ship and Port Facility Security Code (ISPS Code), which contains detailed security-related requirements for Governments, port authorities and shipping companies should also be taken into account. The ISPS Code is a comprehensive set of measures to enhance the security of ships, ports and port facilities, including terminals. The Code is implemented through chapter XI-2 Special measures to enhance maritime security in the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended. Trinidad and Tobago is a signatory to SOLAS.

²⁰ Explanatory Manual (n 15) 66.

Public Health and Quarantine, including Sanitary Measures for Animals and Plants

With the Coronavirus pandemic (COVID-19), the standards provided in this section will no doubt take on a life of its own. In view of globalization and of technological improvement, the flow of travelers and of means of transportation has become faster and faster, generating the need to develop partnerships and identify common interests concerning the protection of the public and the prevention of the spread of disease and other threats to public health. Where Sanitary Certificates or similar documents are required in respect of shipments of certain animals, plants or products thereof, such certificates and documents should be simple and widely publicized and Contracting Governments should cooperate with a view to standardizing such requirements.²¹

Miscellaneous Provisions

Where public authorities require bonds or other forms of security from ship-owners to cover liabilities under the customs, immigration, public health, agricultural quarantine or similar laws and regulations of a government, they should permit the use of a single comprehensive bond or other form of security wherever possible. The measure aims at facilitating bureaucratic procedures carried out by the ship when a financial requirement is made by public authorities.

This section also deals with emergency assistance and the procedures to be implemented to minimize delays. It has also been suggested that each Contracting Government should consider establishing, in close cooperation with the maritime industry, a national maritime transport facilitation programme based on the facilitation requirements of the Annex and ensure that the objective of its facilitation programme be the adoption of all practical measures to facilitate the movement of ships, cargo, crews, passengers, mail and stores by removing unnecessary obstacles and delays.²²

Even with this condensed explanation of the various aspects of the FAL Convention and its Annex, one can more readily appreciate the varied processes that require documents, legislation and procedures as the impetus for the FAL Convention.

²¹ *ibid* 66.

²² *ibid* 66.

Delays have been stated to be generated by the fact that 'countries developed customs, immigration and other standards independently of each other'. This lack of uniformity of processes in the shipping industry undoubtedly led to duplication of procedures, lax procedures in some regard and increased delays.

Before a discussion on the issues with stowaway cases and the need for the Regulations to address the same, a review of the amendments to the FAL Convention is necessary.

2. AMENDMENTS TO THE ANNEX TO THE FAL CONVENTION

The Facilitation Committee (FAL Committee) has been instrumental in the continuous amendment of the FAL Convention and the Annex which is amended and updated by Governments at the annual FAL Committee²³ meeting.

The FAL Committee met for the first time in September 1967. The FAL Committee involves a meeting of stakeholders who would discuss best practices towards fulfilment of the FAL Convention.²⁴ The FAL Committee seeks to ‘encourage the adoption and implementation of facilitation measures between government departments and other organizations as well as port authorities and ship-owners’.²⁵

As it relates to stowaways, there have been several impactful amendments to the Annex as follows: The 1990 amendments adopted on 3 May 1990 by Resolution FAL.2 (19) came into force on 1 September 1991 and addressed new recommended practices to deal with measures and procedures imposed by Contracting Governments to provide guidance when a stowaway has inadequate documents. It was recommended, whenever practicable, for issuance of a covering letter with a photograph of the stowaway and any other important information.²⁶

The 1992 amendments were adopted on 1 May 1992 and came into force on 1 September 1993 by Resolution FAL.3(21). The amendments made recommendation for the introduction of electronic

²³ Note that the FAL Committee originated from an ad hoc Working Group on Facilitation. It was established in May 1972 as a subsidiary body of the IMO’s Council, in recognition of the satisfactory work done and due to the Council’s wish to broaden the facilitation activities of the IMO.

²⁴ ‘Facilitation Committee’, (International Maritime Organization)

<www.imo.org/en/OurWork/Facilitation/Pages/FALCommittee-Default.aspx> accessed 27 November 2020.

²⁵ Rosalie Balkin, ‘The IMO and Global Ocean Governance: Past, Present and Future’ in David Attard and others (eds), *The IMLI Treaties on Global Ocean Governance Volume III* (Oxford 2018) 20.

²⁶ ‘Resolution FAL 2(19) Adoption of Amendments to the Convention on Facilitation of International Maritime Traffic, 1965, as Amended’ (adopted on 3 May 1990) (Facilitation Committee IMO)

<[wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/FALDocuments/FAL.2\(19\).pdf](http://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/FALDocuments/FAL.2(19).pdf)> accessed 11 January 2021.

data processing and interchange techniques to facilitate the clearance of ships to allow electronic data exchange.²⁷

The 1996 amendments was adopted on 11 January 1996 and entered into force on 1 May 1997 by Resolution FAL.5(24). The amendments referred to a new note that ‘notification of stowaways can be made, for example, by a notation in the "Remarks" area of the General Declaration or by using a Passenger or a Crew List, with the title amended to "stowaway list".’²⁸

The 1999 amendments was adopted on 9 September 1999 and entered into force on 1 January 2001 by Resolution FAL 6(27). These amendments called for the use of electronic data interchange techniques for the purposes of obtaining information in order to accelerate and simplify clearance processes.²⁹

The 2002 amendments were adopted on 10 January 2002 and came into force on 1 May 2003 by Resolution FAL.7(29). The amendments added new standards and recommended practices for dealing with stowaways and introduced a standard form of stowaway details.³⁰

²⁷‘Resolution FAL 3(21) Adoption of Amendments to the Convention on Facilitation of International Maritime Traffic, 1965, as Amended’ (adopted on 1 May 1992) (Facilitation Committee IMO)
<[wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/FALDocuments/FAL.3\(21\).pdf](http://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/FALDocuments/FAL.3(21).pdf)>
accessed 11 January 2021.

²⁸ ‘Resolution FAL.5(24) Adoption of Amendments to the Convention on Facilitation of International Maritime Traffic, 1965, as Amended’ (adopted on 11 January 1996, entered into force 1 May 1997) (Facilitation Committee IMO),
<[wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/FALDocuments/FAL.5\(24\).pdf](http://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/FALDocuments/FAL.5(24).pdf)>
accessed 11 January 2021.

²⁹ ‘Resolution FAL 6(27) Adoption of Amendments to the Convention on Facilitation of International Maritime Traffic, 1965, as Amended’ (adopted on 9 September 1999 and entered into force on 1 January 2001) (Facilitation Committee IMO)
<[wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/FALDocuments/FAL.6\(27\).pdf](http://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/FALDocuments/FAL.6(27).pdf)>
accessed 11 January 2021.

³⁰ ‘Resolution FAL 7(29) Adoption of Amendments to the Convention on Facilitation of International Maritime Traffic, 1965, as Amended’ (adopted on 10 January 2002 came into force on 1 May 2003) (Facilitation Committee IMO) [www.imo.org/en/About/Conventions/Pages/Convention-on-Facilitation-of-International-Maritime-Traffic-\(FAL\).aspx](http://www.imo.org/en/About/Conventions/Pages/Convention-on-Facilitation-of-International-Maritime-Traffic-(FAL).aspx)

The 2005 amendments were adopted on 7 July 2005 and came into force on 1 November 2006 by Resolution FAL.8(32). Some of the amendments included a Recommended Practice for public authorities to develop the necessary procedures in order to use pre-arrival and pre-departure information to facilitate the processing of information, and thus expediting release and clearance of cargo and persons; a Recommended Practice that all information should be submitted to a single point to avoid duplication; and encouragement of electronic transmission of information.³¹

The 2009 amendments were adopted on 16 January 2009 and came into effect on 15 May 2010 by Resolution FAL.10(35) where new IMO FAL Forms were approved.³²

The 2016 amendments were adopted on 8 April 2016 and entered into force on 1 January 2018 by Resolution FAL.12(40). Several new definitions were introduced such as the ‘International Ship and Port Facility Security (ISPS) Code’, and ‘single window’. All IMO FAL forms were revised except for Ship's Stores Declaration (IMO FAL Form 3). Three additional documents were introduced for a ship's clearance that may be required by the shore authorities, i.e. security-related information as required under SOLAS regulation XI-2/9.2.2, Advance electronic cargo information for customs risk assessment purposes, and Advanced Notification Form for Waste Delivery to Port Reception Facilities..³³

³¹ ‘FAL 8 (32) Adoption of Amendments to the Convention on Facilitation of International Maritime Traffic, 1965, as Amended’ (adopted on 7 July 2005 and came into force on 1 November 2006) (Facilitation Committee IMO) <[wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/FALDocuments/FAL.8\(32\).pdf](http://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/FALDocuments/FAL.8(32).pdf)> accessed 11 January 2021.

³² ‘Resolution FAL 10(35) Adoption of Amendments to the Convention on Facilitation of International Maritime Traffic, 1965, as Amended’ (adopted on 16 January 2009 and entered into force on 15 May 2010) (Facilitation Committee IMO) <[wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/FALDocuments/FAL.10\(35\).pdf](http://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/FALDocuments/FAL.10(35).pdf)> accessed 11 January 2021.

³³ ‘Resolution FAL.12(40) Adoption of Amendments to the Convention on Facilitation of International Maritime Traffic, 1965, as Amended’ (adopted on 8 April 2016 entered into force on 1 January 2018) (Facilitation Committee IMO) <[wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/FALDocuments/FAL.12\(40\).pdf](http://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/FALDocuments/FAL.12(40).pdf)> accessed 11 January 2021.

Notwithstanding the fact that the Regulations focus on stowaways, it was important to outline the general provisions and amendments of the FAL Convention to allow an overall understanding of the objective of the FAL Convention.

3. STOWAWAYS

The International Convention Relating to Stowaways (Brussels Convention) was the earliest recorded international convention dealing with stowaways. Article 8 (1) of the Brussels Convention stated that it shall come into force between the ten States which first ratify it, six months after the date of the deposit of the tenth instrument of ratification. This convention has, however, not been ratified by a sufficient number of states³⁴ and has not entered in force.³⁵

As previously stated, the FAL Committee adopted resolution FAL.7(29) to amend the FAL Convention,³⁶ by introduction of a new section 4 on Stowaways to include standards and recommended practices for dealing with stowaways. These amendments are the first binding regulations concerning stowaways.³⁷

The standards and recommended practices for stowaways are based on the Guidelines on the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases (the Guidelines),³⁸ adopted in 1997, which set out the basic principles to be applied in stowaway cases.

The purpose of the amendment to the Annex was stated as follows:

[E]stablish and obligate thorough search of ships for stowaways on leaving high-risk ports and tighten the measures for preventing stowaways from hiding on board. The new provisions also recognize and reinforce the rights

³⁴ Only six states ratified this convention Denmark, Finland, Italy, Norway, Peru and Sweden.

³⁵ International Convention Relating to Stowaways (UNHCR), 10 October 1957 <www.refworld.org/docid/3ae6b3a80.html> accessed 10 May 2021.

³⁶ Resolution FAL.7(29) (n 30). See also the most recent amendments to the annex to the FAL Convention (resolution FAL.12(40)), which included amendments to section 4 adopted by IMO on 8 April 2016.

³⁷ Pernilla Ljunggren, 'Amendments to the Convention on Facilitation of International Maritime Traffic' (Swedish Club Letter 2, 2003) <www.swedishclub.com/upload/Loss_Prev_Docs/Stowaways/Stowaways_-_Binding_regulations_TSCL_2-2003_.pdf> accessed 18 November 2020.

³⁸ Resolution A.871(20), 'Guidelines on the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases', adopted on 27 November 1997, entered into force on 1 May 2002 (IMO 1997) <www.refworld.org/docid/3ae6b31db.html> accessed 18 November 2020.

of stowaways notably by requiring humanitarian principles to be applied when dealing with stowaway cases.

On the topic of safety and security, the IMO has stated that:

[I]t is continuously working on appropriate measures to be taken to reduce risks of unauthorized persons boarding ships, which may have serious consequences for ships and, by extension, to the shipping industry as a whole. The presence of stowaways on board ships may bring serious consequences for ships and, by extension, to the shipping industry as a whole; the ship could be delayed in port; the repatriation of stowaways can be a very complex and costly procedure involving masters, ship-owners, port authorities and agents; and the life of stowaways could be endangered as they may spend several days hidden, with the risk of suffocation and without any water/provisions.³⁹

Resolution FAL.11(37) adopted on 9 September 2011 accepted the Revised guidelines on the prevention of access by stowaways and the allocation of responsibilities to seek the successful resolution of stowaway cases. The most recent Revised Guidelines are annexed to resolution FAL.13(42) which was adopted on 8 June 2018.⁴⁰

In accordance with resolution A. 1027(26), the provisions of the most recent resolution continue to only be of relevance to Member States which are not Contracting Governments to the FAL Convention and the Member States which are Contracting Governments to the FAL Convention which have notified the Secretary-General that they find it impracticable to comply with the

³⁹ *ibid.*

⁴⁰ Resolution FAL.13(42) 'Revised Guidelines on the Prevention of Access by Stowaways and the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases' (Adopted on 8 June 2018) FAL 42/17 (Facilitation Committee IMO) 1
<[wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/FALDocuments/FAL.13\(42\).pdf](http://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/FALDocuments/FAL.13(42).pdf)>
accessed 11 January 2021.

Standards or of differences in the application of the Standards, or they have not yet notified the Secretary-General that they have brought their procedures into accord with the Recommended Practices.⁴¹ Notably, Trinidad and Tobago has not yet notified the Secretary-General that they have brought their procedures into accord with the Recommended Practices.

Shipping has been known to be one of the oldest modes of transporting passengers and cargo. Undoubtedly, the notion of stowaways would therefore be as old as the shipping industry. Stowaways continue to cost ship-owners considerable cost and delay, ‘Stowaways are an ever-present problem for the shipping industry, in particular to those trading off the coast of West Africa, in Central America, Colombia, Venezuela and in the Dominican Republic’.⁴²

Trinidad and Tobago is a twin island Republic trading with all the countries mentioned above. As such, it is no surprise that recently there was recorded one stowaway case details of which is mentioned later in this explanatory note. Additionally, on a clear day, it is easy to see parts of Venezuela from certain areas in Trinidad as ‘Trinidad is located 7 miles (11 km) from the Venezuelan coast at its nearest point and is separated from it by the Gulf of Paria and two narrow channels, where there are several small islands and rocks’.⁴³ Stowaways cases are more likely to occur than not.

‘Resolving stowaway cases is often difficult and time consuming because of the different national legislation in the countries involved...’⁴⁴ In an effort to generate uniformity in formalities and other procedures in the shipping industry on stowaways, it is worthwhile to implement regulations to give full effect to the FAL Convention and its obligations..

⁴¹ *ibid* 1.

⁴² Dryad Global <<https://dg.dryadglobal.com/stowaways>> accessed 21 October 2020.

⁴³ Arthur Napoleon Robinson and others, *Trinidad and Tobago* (Encyclopaedia Britannica 2020).

⁴⁴ Swedish Club Letter <www.swedishclub.com/upload/Loss_Prev_Docs/Stowaways/Stowaways_-_Binding_regulations_TSCL_2-2003_.pdf> accessed 21 November 2020.

3.1 Standards and Recommended Practices Specified in Section 4 of the Annex to the FAL Convention

It is reiterated that standards have been defined as internationally-agreed measures which are ‘necessary and practicable in order to facilitate international maritime traffic’ and recommended practices as measures the application of which is ‘desirable’. Standards do not require ratification but recommended practices require ratification. A summary of a few of the standards and recommended practices are outlined for general information.

The Annex reinforces the need for the humane treatment of stowaways during their time on board by providing adequate food and medical treatment. Further there should not be any deviation from the planned voyage except in certain circumstances such as for emergency reasons.

Problems arise when dealing with disembarking stowaways from ships into the care of appropriate authorities since they often do not hold any proper identification papers, which makes repatriation difficult. Further, some countries deny a stowaway from disembarkation. This however, should only be due to national security matters.⁴⁵

While the issues surrounding stowaways and the reasons for persons embarking on such a journey touch and concern human rights and humanitarian standards and is of immense significance, the main concern to be addressed by this regulation is limited to creating the standards and recommended practices towards addressing the safety and security of shipping with regard to stowaways.

Over the years, the definition of security measures has been expanded to include improving security on ‘facilities and goods moving in the international supply chain’. This caters for

⁴⁵ Nkechi Aguocha ‘Stowaways: A Threat to Maritime Security and the Curse of Shipowners’ (2018) <https://ukzn-dspace.ukzn.ac.za/bitstream/handle/10413/18406/Aguocha_Nkechi_Miriam_2018.pdf?sequence=1&isAllowed=y> accessed 10 January 2021.

stowaways who hide in storage containers of goods and require that measures be adhered to that also allow for searches to these areas.⁴⁶

In accordance with Standard 4.4.2 of the FAL Convention, Masters and crew of ships flying the flag of Trinidad and Tobago ought to be aware of their responsibilities under the FAL Convention. While honoring humanitarian principles in all their dealings with stowaways, Masters and crew are advised not to undertake anything to hide the fact that the ship has stowaways on board and are further advised not to engage in close relations with stowaways as this would be counterproductive to the prompt resolution of stowaway cases and could also lead to prosecution of the master and the crew involved.

All cases of stowaways detected in port while attempting to board a ship or ships should be reported to the appropriate port authorities and the masters of other ships. Ships should follow the guidance of the appropriate port and law enforcement authorities.

It is imperative that Trinidad and Tobago be encouraged to establish national databases with information that can be shared with INTERPOL and the local police, health facility officials and immigration including biometric information of persons known to repeatedly gain access to port facilities within Trinidad and Tobago by stowing away. There is continuous need for effective national and international/inter-agency cooperation as a prerequisite for the expedient resolution of stowaway cases.

Trinidad and Tobago, if it has to receive stowaways from ships, should inform the Government of the port of embarkation of the stowaway(s), if known, and the flag State of the ship in which the stowaway arrived. The designated authority of the port where the stowaway(s) embarked should undertake an investigation into how the stowaway(s) managed to gain access to the ship and consider modifying security provisions, as appropriate, and thereafter provide feedback to the port of disembarkation.

⁴⁶ Resolution FAL 13(42) (n 40).

For ships flying the flag of Trinidad and Tobago, upon detection of stowaways on board, the security plan of the ship concerned should be reviewed by the administration and the ship in order to determine if any weaknesses exist and make appropriate corrections.

In tandem with humanitarian measures, the status of a refugee, once recognized by the asylum country, remains valid indefinitely or until a permanent durable solution is found for the refugee's problem. The document recognizing the status of the refugee has permanent value and the public authorities concerned are advised to confirm the authenticity of the document with the issuing authority (i.e. IMO Member State or United Nations High Commission for Refugees-UNHCR, as the case may be), especially in cases where the document has expired.

As a Party to the FAL Convention, Trinidad and Tobago has to put measures in place to facilitate documentation for the disembarkation and repatriation of stowaways. This is necessary if stowaways are to be repatriated from Trinidad and Tobago or from another country, while using Trinidad and Tobago as a transit for the passage of the stowaways.

Owing to the importance of statistics on stowaways' incidences, Trinidad and Tobago will be required to report stowaway cases using IMO's designated Global Integrated Shipping Information System (GISIS) module. It is therefore necessary for the relevant authorities such as the port administration and immigration officers, to have access to the shared single window database and be familiar with its use.

The need for national legislation to provide for prosecution of stowaways by establishing stowing away as an offence in national law, including provisions for repeat offenders is required to curtail the occurrences of such situations.

4. THE NEED FOR INCORPORATION OF REGULATIONS ON STOWAWAYS IN TRINIDAD AND TOBAGO

The FAL Convention has one hundred and eighteen countries and three associate members as contracting parties.⁴⁷ Trinidad and Tobago signed the FAL Convention on 9 April, 1965, submitted its acceptance on 16 March, 1967 and it came into effect on 15 May, 1967.⁴⁸ However, Trinidad and Tobago has not implemented regulations to give full effect to the FAL Convention and its obligations.

The IMO continues to advocate for States to accede to the FAL Convention. The plea is premised on uniformity and to ‘assist the Organization's efforts to promote wider acceptance of the Convention and adoption of measures contained therein and work towards the universal implementation of measures to facilitate international maritime traffic.’⁴⁹

‘It is difficult to accurately predict which ports are considered particularly high risk...There are certain geographical areas which generally are high risk. These include all of Africa, parts of Central America, Venezuela, Colombia and the Dominican Republic’.⁵⁰

Trinidad and Tobago has three major seaports which are among the most highly developed in the Caribbean - the port of Port of Spain the Point Lisas port, and the port of Scarborough, and eleven minor seaports. In 2016, there was one reported occurrence of a stowaway within Trinidad and Tobago.⁵¹ Based on this, it is assumed that such occurrences may be more frequent, but unreported.

⁴⁷ United Nations <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/083/55/PDF/G1708355.pdf?OpenElement>> accessed 12 January 2021.

⁴⁸ FAL Convention <<https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280129d04>> accessed 20 December 2020.

⁴⁹ Explanatory Manual (n 15).

⁵⁰ ‘*Gard Guidance on Stowaways*’ <www.gard.no/Content/13385148/Guidance%20on%20stowaways.pdf> accessed 25 November 2020

⁵¹ International Association of Dry Cargo Ship Owners, Stowaway Incidents and Ports <www.intercargo.org/wp-content/uploads/2017/08/ic17120.pdf> accessed 5 May 2021.

As such, measures ought to be implemented to protect the port facilities and ultimately ensure that the productivity of the ports' services are kept at an optimum.

The maritime sector is a major contributor to the economy of Trinidad and Tobago and plays a key role in supporting both the energy and non-energy sectors. Trinidad and Tobago's connectivity to regional and global markets, healthy export base, highly educated work force, vibrant energy sector, low fuel rates and political stability are some of the factors that make this country an attractive location for maritime services.⁵²

The presence of stowaways on board ships creates a negative image for the countries concerned and may also have an adverse commercial impact if port facilities and ships fail to exercise proper access control. 'One of the biggest challenges to the effective implementation of maritime security and maritime law enforcement measures is that they are seen as departmental issues... rather than being part of a national, multi-agency response...'⁵³

The creation of Revised Guidelines specific to stowaways confirm the significance that is imposed on this particular issue. Stowaways can affect the growth of the economy since time has direct impact to the increase of transport costs. Additionally, streamlining maritime security can ultimately create stability in the economy of Trinidad and Tobago and achieve sustainable development.

The incorporation of the regulations for stowaways will force rapid technological improvement within Trinidad and Tobago. A significant aspect of the Annex on stowaways is the introduction of the GISIS through which shared data on shipping information as well as on stowaway cases can be updated. The stowaway module allows users to submit stowaway reports via a standard form and conduct stowaway inquiries easily.⁵⁴

⁵² Ministry of Trade and Industry <<https://tradeind.gov.tt/commercial-maritime/>> accessed 12 January 2021.

⁵³ Chris Trelawny 'The International Maritime Organization (IMO) and civil maritime security in ports' (2017) <<https://hal.archives-ouvertes.fr/hal-01792094/document>> accessed 12 January 2021.

⁵⁴ Stowaways (n 17).

Trinidad and Tobago should implement collaborative efforts towards addressing matters that can hinder port operations. A significant issue that must be addressed is the duplication of resources. Trinidad and Tobago has several institutions that will have a substantial role to play in relation to administering the Regulations. Maritime related matters are dealt with by the Maritime Services Division of the Ministry of Works and Transport, and the Port Authority of Trinidad and Tobago. Other institutions involved in maritime matters include the Trinidad and Tobago Coast Guard, the Ministry of National Security, Immigration Department, and the Trinidad and Tobago Police Service. Collaboration will create uniformity and allow for resources to be efficiently used. Further, the Annex stipulates that a national maritime transport facilitation committee should be created. This central body will allow easy transmission and retrieval of information and cooperation among agencies.

Failure to implement the Regulations that guides the process when dealing with stowaways will lead to delays, inefficiencies and extra costs. Statistics show that commonly countries with more efficient FAL infrastructure have better import and export figures. There's a clear link between reducing red tape and competitiveness. Efficient trade facilitation can help reduce transport costs and thereby contribute to sustainable development.⁵⁵

The Regulations will complement universal responses towards facilitating international maritime traffic. These measures are to improve the efficiency of completing transactions within the shipping industry, without hampering or minimizing the importance of optimum safety.

There will be an obligation to improve the infrastructure for safeguarding the ports and storage facilities towards maintaining security. Incorporation of the Regulations will undoubtedly mean that safety standards for the port facilities will be improved along with the technological aspects such as CCTV and shared database among maritime authorities. This shared database would help

⁵⁵ FAL What is it? Why does it matter? Why should you care? (IMO) <wwwcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/IMO%20-%20FAL%20Flyer%20hi-res%20single3.pdf> accessed 11 January 2021.

to create a seamless flow of information and reduce unnecessary bureaucracy when dealing with the sensitive topic of stowaways.

The Regulations would create an increased maritime security and efficiency that would result in decreased waiting time for the loading and unloading of cargo from ships thereby increasing the viability of Trinidad and Tobago as a major player in the maritime trade industry.

With the Covid-19 pandemic comes a greater responsibility on public authorities and port administrators to develop processes to minimize vulnerabilities in port facilities and on ships. There is a greater responsibility on port administration, owners of ships, and charterers to not only safeguard seafarers, workers and customers, but also to minimize any situation that will lead to delays. The pandemic has proved that safety and security are of utmost necessity in the maritime industry, due to the amount of persons involved in the processes.

Trinidad and Tobago must not be seen as a reactive nation but rather as proactive. Putting measures in place to meet the demands of the stowaway issues is aimed at fulfilling the objectives of the FAL Convention to which Trinidad and Tobago is a party:

Critical to the success of port and port facility security regimes, be they for protecting port infrastructure against terrorist attack, countering theft and other criminal activity, or preventing access to ships by terrorists, drug smugglers or stowaways, is a well-coordinated, risk based preventive strategy.⁵⁶

The compliance of Trinidad and Tobago with the incorporation of regulations on stowaways will provide evidence to the larger maritime industry of an acceptance of the highest standard of cooperation and thus increased economic growth.

⁵⁶ Chris Trelawny (n 53) 53.

‘Effective security systems require effective procedures, appropriate equipment and, above all, adequately trained and motivated people. At the lowest level this includes the need to implement frameworks and develop tools for raising security awareness amongst all employees.’⁵⁷ With the essential role the port plays in the economy of Trinidad and Tobago, the development of the people of the nation will go hand in hand with any development that is to emanate from increased security facilities. As the system is developed, so too will be the persons employed within the maritime sector. This will also have a positive impact on maritime transport activities as well as job creation.

By improving Trinidad and Tobago’s standards in the shipping industry and improving port infrastructure and efficiency a corollary of this will be the promotion of seafaring as a career and encouraging investment in Trinidad and Tobago. A sustainable transport sector facilitates the global economy which will also help achieve the UN Sustainable Development Goals to end poverty and hunger, expand access to health, education, justice and jobs and promote inclusive and sustained economic growth, while protecting our planet from environmental degradation.⁵⁸

There have been complaints by the general public in Trinidad and Tobago that the processes to access services at the port facilities are inordinately tiring and time consuming. With the overall improvement in the infrastructural and technological facilities towards security of the ports it is likely that it would lead to improved services within the general ports.

The implementation of the stowaway regulations will also mean that seafarers would be trained to secure ships as thoroughly as possible to minimize any incidents of stowaways.

The government has expressed plans for building a port in the northeastern community of Toco. This initiative is expected to further boost trade within Trinidad and Tobago. However, without

⁵⁷ ibid 56 <<https://hal.archives-ouvertes.fr/hal-01792094/document>> accessed 12 January 2021.

⁵⁸ IMO and the Sustainable Development Goals (IMO_<www.imo.org/en/MediaCentre/HotTopics/Pages/SustainableDevelopmentGoals.aspx> accessed 14 January 2021.

the necessary security features, ships may be unwilling to use the ports as a haven for conducting business. Standardization and uniformity of formalities leads to certainty, stability and reduced costs in the shipping industry.

The Annex on stowaways includes standards and recommended practices for both eradicating and minimizing any stowaway cases. These measures are aimed at creating certainty of operations, guidance, and improved communication between masters, ports and the IMO due to the GISIS system.

Section 1.3 of the Annex states that

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

The issues that required the implementation of the FAL Convention remain relevant. As such, the processes for incorporation of the stowaway regulations into national law must be placed at the forefront of the national legislative agenda to enhance the efficiency and viability of the ports of Trinidad and Tobago for the growth of foreign trade and the national economy.

5. INCORPORATING THE STOWAWAY REGULATIONS AS AMENDED INTO THE LAWS OF TRINIDAD AND TOBAGO

5.1 Dualism

Mr. Eric Murray, on behalf of Government of Trinidad and Tobago, signed the FAL Convention, 1965.⁵⁹ The FAL Convention was signed subject to acceptance.⁶⁰ Being a dualist system, it was necessary for Trinidad and Tobago to incorporate the FAL Convention into national law for the Convention to have the force of law.⁶¹

The Parliament, by section 39 of the Constitution of the Republic of Trinidad and Tobago, Chapter 1:01, comprises the President and the two Houses, the Senate and the House of Representatives. All three constituent parts of the Parliament are involved in the process of making a law.⁶² When the Government ratifies or accedes to a treaty, be it regional or international, that treaty is not automatically incorporated into municipal law. A treaty becomes part of the municipal law only when it is incorporated into domestic statute (approved by Parliament) or if the terms of the treaty represent binding rules of customary international law. The Government, upon ratification or accession of a treaty, therefore has an obligation under international law to take positive action to incorporate the terms of a treaty into municipal law. If there is no existing domestic statute which corresponds with a provision of the treaty, new legislation is enacted to transform that provision into municipal law. The ratification process begins with the Attorney General who must lay a Bill before Parliament to enable the passage of the Act that would codify the Convention into the statute books.⁶³

⁵⁹ United Nations Treaty <<https://treaties.un.org/doc/Publication/UNTS/Volume%20591/volume-591-I-8564-English.pdf>> accessed 8 January 2021.

⁶⁰ The signature indicates that the state accepts that it will take steps to be bound at a later date see Article 11 Vienna Convention on the Law of Treaties done on 23 May 1969 entered into force on 27 January 1980, 1155 UNTS 331.

⁶¹ Curtis Bradley *'Breard, Our Dualist Constitution, and the Internationalist Conception'* (51(3) Stanford Law Review 1999) 529; and see Section 2 of the Constitution of Trinidad and Tobago stipulates that this Constitution is the supreme law of Trinidad and Tobago, and any other law that is inconsistent with this Constitution is void to the extent of the inconsistency.

⁶² Parliament of Trinidad and Tobago <www.ttparliament.org/publications.php?mid=66> accessed 14 January 2021.

⁶³ Sections 13, 53 and 54 of the Constitution of the Republic of Trinidad stipulate the power of Parliament to make laws and that the law making process requires votes of not less than two-thirds of all the members of each House <<https://rgd.legalaffairs.gov.tt/Laws2/Constitution.pdf>> accessed 12 January 2021.

5.2 The Enactment Process

The Shipping Act Chapter 50:10 makes provisions for the registration and licensing of ships, matters relating to crews, safety of life at sea and matters incidental thereto. The Shipping Act does not mention the FAL Convention. Notwithstanding this, Section 406 of the Shipping Act allows the Minister⁶⁴ to make Regulations generally for the administration of the Act, and in particular, for the different purposes including the enforcement of any international convention relating to the Act and all maritime matters.⁶⁵ In this regard, section 406 of the Shipping Act gives the Minister the power to make subsidiary legislation.

Parliament frequently delegates to the Executive Government a limited power of legislation, namely the power to make Regulations. This is often referred to as delegated or subsidiary legislation and done by means of a provision in an Act empowering the Executive Government (Minister responsible) to make laws in the form of Regulations, By-laws, Orders and Rules for matters prescribed in the Act or which are necessary to give effect to the Act.

What is required is that the Minister of Works and Transport communicate with the Honourable Attorney General for a team to begin drafting the Regulations. Since Trinidad and Tobago has ratified the FAL Convention, it is of great importance for the Parliament of Trinidad and Tobago to fulfil its obligations under the Convention. This can begin with the creation of regulations on stowaways.

The operations at the ports are administered by several agencies such as customs, immigration, coast guards, health workers, port administrators and seafarers. The Ministry of Works and Transport as the body with the overall responsibility for maritime matters would have to collaborate with these interrelated agencies to have an input in the drafting of the Regulations.

⁶⁴ Minister means the Minister to whom the responsibility for shipping is assigned, that is, the Minister of Works and Transport.

⁶⁵ Laws of Trinidad and Tobago <https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/50.10.pdf> accessed 11 January 2021.

The Minister for Works and Transport is required to submit the final Regulations to be laid before Parliament, it will be published in the Gazette on the day that it would be laid before Parliament and the Regulations will come into force on publication.

6. THE NEED FOR THE STOWAWAY REGULATIONS

The presence of stowaways on board ships creates a negative image for the countries concerned and may also have an adverse commercial impact if port facilities and ships fail to exercise proper access control. Institutions play an integral role in implementing measures that would bolster security. As such, each institution must understand its role and minimize duplication of already scarce resources. Masters and crew of ships carrying the flag of Trinidad and Tobago also need to appreciate their role in fulfilling the FAL Convention.

The Government remains obligated to conduct its international law affairs in a manner compatible with its national interest since it is a signatory to the FAL Convention. The Minister of Works and Transport has the mandate to ensure complete enforcement of the Shipping Act, and one step towards fulfilling this mandate, is by the creation of the stowaway Regulations.

7. REGULATIONS TO GIVE FULL EFFECT TO THE FACILITATION OF INTERNATIONAL MARITIME TRAFFIC CONVENTION WITH SPECIFIC FOCUS ON STOWAWAYS

The Shipping Act (Stowaways) Regulations 2021 comprises of 16 sections. The purpose of the Regulations is to prescribe and implement the guidelines on the prevention of access by stowaways and the allocation of responsibilities to seek the successful resolution of stowaway cases into the laws of the Republic of Trinidad and Tobago, in order to enhance safety and security to facilitate maritime traffic by simplifying and reducing to a minimum the formalities, documentary requirements and procedures on the arrival, stay and departure of ships engaged in international voyages. These Regulations have been prepared pursuant to section 406 of the Shipping Act Chapter 50:10. These Regulations are contained in Annex 1 to Resolution FAL.11(37) of the FAL Convention.

Regulations 1 and 2 contain the title of the Regulations and definitions to be applied in the Regulations.

Regulation 3 provides for the scope of application of the Regulations which shall apply to all seagoing ships on which a stowaway is found except warships and pleasure yachts.

Regulations 4 and 5 deals with the general responsibility for the prevention and detection of stowaways.

Regulation 6 provides that a stowaway is deemed an illegal entrant and addresses the appropriate measures to be taken when a stowaway enters Trinidad and Tobago.

Regulations 7, 8, 9 and 10 establishes the various processes to embark upon as the master of a ship with a stowaway on board, as the ship-owner, as the first port of call and as the original port of embarkation.

Regulation 11 stipulates the responsibility of Trinidad and Tobago as the receiving State, when the stowaway is a national or possesses right of residence.

Regulation 12 addresses the actions of Trinidad and Tobago where the stowaway is on board a ship to which it is the flag State.

Regulation 13 states the offences under the Regulations.

Regulation 14 states the responsibility of Trinidad and Tobago when its ports and airports are being used for transit of a stowaway.

Regulation 15 repeals section 36(1) of the Immigration Act which addressed stowaways but not in any detail. As such the section was lacking in its application to the FAL Convention.

Regulation 16 states the date when the Regulations will come into operation.

**REGULATIONS TO GIVE FULL EFFECT TO THE FACILITATION OF
INTERNATIONAL MARITIME TRAFFIC CONVENTION WITH SPECIFIC FOCUS
ON STOWAWAYS**

Legal Notice No.

REPUBLIC OF TRINIDAD AND TOBAGO

THE SHIPPING ACT, CHAP. 50:10

REGULATIONS

Made by the Minister under section 406 of the Shipping Act and subject to negative resolution of Parliament

**THE SHIPPING ACT
(STOWAWAYS) REGULATIONS, 2021**

- Citation 1. These Regulations may be cited as the Shipping Act (Stowaways) Regulations, 2021.
- Interpretation 2. In these Regulations –
- Chap. 50:10
- “Act” means the Shipping Act;
- “Annex” means the revised guidelines contained in the Annex to Resolution FAL.11(37);
- “Convention” means the Facilitation of International Maritime Traffic Convention, 1965;
- “Minister” means the Minister to whom responsibility for Transport has been assigned;
- “Public authorities” The agencies or officials in Trinidad and Tobago responsible for the application and enforcement of the laws and regulations which relate to any aspect of the Annex;
- “Security measures” Measures developed and implemented in accordance with international agreements to improve security on board ships and in port areas and facilities, and of goods moving in the international supply chain, to detect and prevent unlawful acts;
- “Stowaway” A person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of

the shipowner or the master or any other responsible person and who is detected on board the ship after it has departed from a port, or in the cargo while unloading it in the port of arrival, and is reported as a stowaway by the master to the appropriate authorities.

Scope of application

3. These Regulations apply to all seagoing vessels except warships or pleasure yachts.

GENERAL RESPONSIBILITY FOR STOWAWAY

Responsibility of masters and authorities

4. Masters, shipowners, public authorities and port authorities including those providing security services ashore, have a responsibility to cooperate to the fullest extent possible in order:
 - (a) to prevent stowaway incidents;
 - (b) to resolve stowaway cases expeditiously and secure that an early return or repatriation of the stowaway will take place; and
 - (c) to ensure that all appropriate measures should be taken in order to avoid situations where stowaways must stay on board ships for an unreasonable amount of time.

PREVENTION AND DETECTION OF STOWAWAY

Prevention of stowaways

5. For the prevention of stowaway incidents, the following measures should be adhered to:
 - (a) Shipowners, masters, port authorities and public authorities should have adequate security arrangements in place which, as far as practicable, will prevent intending stowaways from getting aboard a ship or, if this fails, will detect them before the ship leaves port or, at the latest, before it arrives at the next port of call;
 - (b) Adequate, frequent and well-timed searches must be performed to minimize the risk of having to deal with a stowaway case and may also save the life of a stowaway who may be hiding in a place which is subsequently sealed and/or chemically treated;
 - (c) The port authorities should ensure that the necessary infrastructure and operational and security arrangements for the purpose of preventing persons attempting to stowaway on board ships from gaining access to port installations and to ships are established in all their ports, taking into consideration when developing these arrangements the size of the port, and what type of cargo is shipped from the port;

- (d) a ship should undergo a thorough search in accordance with a specific plan or schedule and with priorities given to places where stowaways might hide taking into account the specific ship type and its operations. Search methods which are likely to harm secreted stowaways should not be used. Fumigation or sealing should not be carried out until a thorough search of the areas to be fumigated or sealed has taken place in order to ensure that no stowaways are present in those areas.

STOWAWAYS AS ILLEGAL ENTRANTS

Stowaways as
illegal entrants

- 6. Stowaways arriving at or entering Trinidad and Tobago without the required documents are, in general, illegal entrants, the following appropriate measures should be taken:
 - (a) public authorities, port authorities, shipowners and masters should cooperate to the fullest extent possible in order to resolve stowaway cases expeditiously and secure that an early return or repatriation of the stowaway will take place;
 - (b) avoid situations where stowaways must stay on board ships for an unreasonable amount of time;
 - (c) stowaway asylum seekers should be treated in accordance with international protection principles as set out in international instruments, such as the provisions of the United Nations Convention relating to the Status of Refugees of 28 July 1951 and of the United Nations Protocol relating to the Status of Refugees of 31 January 1967;
 - (d) every effort should be made to avoid situations where a stowaway has to be detained on board a ship indefinitely. In this regard public authorities should cooperate with the shipowner in arranging the disembarkation of a stowaway to an appropriate State; and
 - (e) where the nationality or citizenship or right of residence cannot be established, the State of the original port of embarkation of a stowaway should accept the return of such a stowaway for examination pending final case disposition.

RESPONSIBILITY OF THE MASTER

Responsibility
of the Master

- 7. It is the responsibility of the master of the ship which finds any stowaways on board:
 - (a) to make every effort to determine immediately the port of embarkation of the stowaway;
 - (b) to take practical steps to establish the identity, including the nationality/citizenship and the right of residence, of the stowaway;

- (c) to prepare a statement containing all available information relevant to the stowaway for presentation to the appropriate authorities and the shipowner, the reporting form provided in Appendix 1 should be used and completed as far as practicable;
- (d) to notify the existence of a stowaway and any relevant details to the shipowner and appropriate authorities at the port of embarkation, the next port of call and the flag State, with the understanding that when a stowaway declares himself or herself to be a refugee, this information should be treated as confidential to the extent necessary for the security of the stowaway;
- (e) to ensure confidentiality in cases of refugee or asylum seeker and to ensure that no information should be forwarded to authorities public or private in the country of origin or residence of the stowaway;
- (f) not to depart from the planned voyage to seek the disembarkation of a stowaway discovered on board the ship after it has left the territorial waters of the State where the stowaways embarked, unless permission to disembark the stowaway has been granted by the public authorities of the State to whose port the ship deviates, or repatriation has been arranged elsewhere with sufficient documentation and permission given for disembarkation, or unless there are extenuating safety, security, health or compassionate reasons, or attempts to disembark in other ports on the planned voyage have failed and deviation is necessary in order to avoid that the stowaway remain on board for a significant period of time;
- (g) to ensure that the stowaway is presented to the appropriate authorities at the next port of call in accordance with their requirements;
- (h) to take appropriate measures to ensure the security, general health, welfare and safety of the stowaway until disembarkation, including providing him or her with adequate provisioning, accommodation, proper medical attention and sanitary facilities;
- (i) to ensure that stowaways are not permitted to work on board the ship, except in emergency situations or in relation to the stowaway's accommodation and provisioning on board; and
- (j) to ensure that stowaways are treated humanely, consistent with the basic principles.

RESPONSIBILITY OF THE SHIPOWNER

Responsibility
of the
shipowner

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

- (a) to ensure that the existence of, and any relevant information on, the stowaway has been notified to the appropriate authorities at the port of embarkation, the next port of call and the flag State;
- (b) to comply with any removal directions made by the competent national authorities at the port of disembarkation; and
- (c) to cover any applicable costs relating to the removal, detention, care and disembarkation of the stowaway in accordance with the legislation of the States which may be involved.

RESPONSIBILITY OF THE STATE OF FIRST PORT OF CALL

Responsibility of the first port of call

- 9. It is the responsibility of the Trinidad and Tobago authority, where it is the first port of call according to the voyage plan, after the discovery of the stowaway:
 - (a) to accept the stowaway for examination and, where the Minister considers that it would facilitate matters, to allow the shipowner and the competent or appointed Protection & Indemnity Club correspondent to have access to the stowaway;
 - (b) to favourably consider allowing disembarkation and provide, as necessary and in accordance with national law, secure accommodation which may be at the expense of the shipowner, where:
 - (i) a case is unresolved at the time of sailing of the ship; or
 - (ii) the stowaway is in possession of valid documents for return and the public authorities are satisfied that timely arrangements have been or will be made for repatriation and all the requisites for transit fulfilled; or
 - (iii) other factors make it impractical for the stowaway to remain on the ship; such factors may include but are not limited to cases where a stowaway's presence on board would endanger the safe and secure operation of the ship, the health of the crew or the stowaway;
 - (c) to make every effort to cooperate in the identification of the stowaway and the establishment of his or her nationality/citizenship or right of residence;
 - (d) to make every effort to cooperate in establishing the validity and authenticity of a stowaway's documents and, when a stowaway has inadequate documents, to whenever practicable and to an extent compatible with national legislation and security requirements issue a covering letter with a photograph of the stowaway and any other important information, or alternatively, a suitable travel document accepted by the public authorities

involved; the covering letter authorizing the return of the stowaway either to his or her State of origin or to the point where the stowaway commenced his or her journey, as appropriate, by any means of transportation and specifying any other conditions imposed by the authorities, should be handed over to the operator effecting the removal of the stowaway; this letter will include information required by the authorities at transit points and/or the point of disembarkation;

- (e) to give directions for the removal of the stowaway to the port of embarkation, State of nationality/citizenship or right of residence or to some other State to which lawful directions may be made, in cooperation with the shipowner;
- (f) to allow, during repatriation, subject to normal visa requirements and national security concerns, the transit through its ports and airports of stowaways travelling under the removal instructions or directions of the State of the port of disembarkation;
- (g) to inform the shipowner on whose ship the stowaway was found, as far as practicable, of the level of cost of detention and return and any additional costs for the documentation of the stowaway, if the shipowner is to cover these costs; in addition, public authorities should cooperate with the shipowner to keep such costs to a minimum, as far as practicable, and according to national legislation, if they are to be covered by the shipowner, as well as keeping to a minimum the period during which shipowners are held liable to defray costs of maintenance of a stowaway by public authorities;
- (h) to consider mitigation of charges that might otherwise be applicable when shipowners have cooperated with the Public authorities to the satisfaction of those authorities in measures designed to prevent the transportation of stowaways; or where the master has properly declared the existence of a stowaway to the appropriate authorities in the port of arrival, and has shown that all reasonable preventive measures had been taken to prevent stowaways gaining access to the ship;
- (i) to take proper account of the interests of, and implications for, the shipowner when directing detention and setting removal directions, so far as is consistent with the maintenance of control, their duties or obligations to the stowaway under the law, and the cost to public funds;
- (j) to report incidents of stowaways of which they become aware to the International Maritime Organization; and
- (k) if disembarkation is refused, to notify the flag State of the ship the reasons for refusing disembarkation.

RESPONSIBILITY OF THE ORIGINAL PORT OF EMBARKATION

Responsibility of the original port of embarkation

10. Where Trinidad and Tobago is the State of the original port of embarkation of the stowaway, it is responsible:
- (a) to accept any returned stowaway having nationality/citizenship or right of residence;
 - (b) to accept a stowaway back for examination and the public authorities should not return such stowaways to the State where they were earlier found to be inadmissible;
 - (c) to apprehend and detain the attempted stowaway, if the attempted stowaway is discovered before sailing either on the ship or in cargo due to be loaded;
 - (d) to refer the attempted stowaway to local authorities for prosecution, and/or, where applicable, to the immigration authorities for examination and possible removal; no charge is to be imposed on the shipowner in respect of detention or removal costs, and no penalty is to be imposed;
 - (e) to apprehend and detain the stowaway, where permitted by national legislation, if the stowaway is discovered while the ship is still in its territorial waters, or in another port in Trinidad and Tobago; no charge is to be imposed on the shipowner in respect of detention or removal costs, and no penalty is to be imposed;
 - (f) to report incidents of stowaways or attempted stowaways of which they become aware to the International Maritime Organization; and
 - (g) to reassess the preventative arrangements and measures in place and to verify the implementation and effectiveness of any corrective actions.

NATIONALITY, CITIZENSHIP OR RESIDENCE OF THE STOWAWAY

Nationality, citizenship or residence of the stowaway

11. Where Trinidad and Tobago is:
- (a) the State of nationality or right of residence or the apparent; or
 - (b) claimed State of nationality/citizenship of the stowaway; and/or
 - (c) the apparent or claimed State of residence of the stowaway:
- it is the responsibility of Trinidad and Tobago-
- (a) to make every effort to assist in determining the identity and nationality/citizenship or the rights of residence of the stowaway and to document the stowaway, accordingly once satisfied that he or she holds the nationality/citizenship or the right of residence claimed;

- (b) to accept the stowaway where nationality/citizenship or right of residence is established; and
- (c) to report incidents of stowaways of which it becomes aware to the International Maritime Organization.

RESPONSIBILITY OF THE FLAG STATE OF THE SHIP

Responsibility of the flag state of the ship

12. Where Trinidad and Tobago is the flag state of the ship with the stowaway, it is its responsibility:
- (a) to be willing, if practicable, to assist the master/shipowner or the appropriate authority at the port of disembarkation in identifying the stowaway and determining his or her nationality/citizenship or right of residence;
 - (b) to be prepared to make representations to the relevant authority to assist in the removal of the stowaway from the ship at the first available opportunity;
 - (c) to be prepared to assist the master/shipowner or the authority at the port of disembarkation in making arrangements for the removal or repatriation of the stowaway; and
 - (d) to report incidents of stowaways of which it becomes aware to the International Maritime Organization.

TRANSIT DURING REPATRIATION

Transit during Repatriation

13. It is the responsibility of Trinidad and Tobago, when being used as a transit during repatriation to allow, subject to normal visa requirements and national security concerns, the transit through its ports and airports of stowaways travelling under the removal instructions or directions of the State of the port of disembarkation.

OFFENCES

Offences

14. (1) The master of any ship arriving in Trinidad and Tobago from a foreign port shall report immediately on the arrival of the ship to the immigration officer in charge, the presence of any stowaways on board.
- (2) The master of such a ship shall be responsible for holding any such stowaway on board pending the departure of the ship from Trinidad and Tobago and shall not permit the stowaway to leave the ship without the written permission of an immigration officer.
- (3) A master of a ship—

(a) who permits any stowaway to leave such ship without the written permission of an immigration officer; or

(b) from which a stowaway escapes,
is guilty of an offence with respect to each stowaway.

(4) The master of a ship from which a stowaway escapes shall report the escape to the immigration officer immediately and such a master who fails so to do is, in addition to any other offence for which he may be liable, guilty of an offence under this paragraph.

Repeal
Chap 18:01

15. Section 36(1) of the Immigration Regulations under the Immigration Act Chapter 18:01 is repealed.

Commencement

16. These regulations come into operation on the day of
2021.

Made by the Minister this day of , 2021.

Minister of Works and Transport

APPENDIX 1

**FORM OF STOWAWAY DETAILS REFERRED TO IN REGULATIONS 7(c) OF THE
SHIPPING ACT (STOWAWAY) REGULATIONS**

SHIP DETAILS	Date of birth:
Name of ship:	Place of birth:
IMO number:	Claimed nationality:
Flag:	Home address:
Company:	Country of domicile:
Company address:	ID document type, e.g. passport no.:
Agent in next port:	ID card no. or Seaman's book no.:
Agent address:	If yes, When issued: Where issued: Date of expiry: Issued by:
IRCS:	Photograph of the stowaway:
Inmarsat number:	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> Photograph if available </div>
Port of registry:	
Name of master:	General physical description of the stowaway:
STOWAWAY DETAILS	
Date/time found on board:	
Place of boarding ⁶⁶ :	
Country of boarding:	
Date/time of boarding:	
Intended final destination:	
Stated reasons for boarding the ship ⁶⁷	
Surname:	
Given name:	
Name by which known:	

⁶⁶ Place of boarding should include port, port facility number, berth and terminal information.

⁶⁷ If the stowaway declares himself or herself to be a refugee or an asylum seeker, this information shall be treated as confidential to the extent necessary to the security of the stowaway.

Gender: First language: Spoken: Read: Written:	Other languages: Spoken: Read: Written:
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Other details.....

- 1) Method of boarding, including other persons involved (e.g. crew, port workers, etc.), and whether the stowaway was secreted in cargo/container or hidden in the ship:
- 2) Inventory of the stowaway's possessions:
- 3) Statement made by the stowaway:
- 4) Care provided to the stowaway (first aid, clothing, food):

Date(s) of interview(s):

Stowaway's signature:

Master's signature:

Date:

Date: