

STOWAWAYS AND ILLEGAL MIGRANTS BY SEA TO TAIWAN

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ABSTRACT: The first part of this paper delineates the development of stowaway and illegal migrant problem worldwide. It is believed that the problem induces public resentments because its negative impact on social order and the financial burden it imposes on the public and private sectors. In addition, stowaways and illegal migration have become part of organised crime because transnational organised criminal groups are involved in the smuggling and trafficking of migrants by sea. The second part of the paper presents the phenomenon of illegal Chinese migrants by sea to Taiwan. Major factors contributing to the phenomenon include political and economic differences, Taiwan's unique geographic features, Taiwan's lucrative sex trade, Chinese government's neglect and tolerance of smuggling migrants, and the lenient punishments handed out to smugglers and snakeheads. The influx of illegal Chinese migrants has resulted in threats to public security, the necessity for tighter disease control, and additional costs to taxpayers. Referring to the international guidelines, this paper suggests measures for tackling Taiwan' illegal migration problem should include imposing serve penalties, reinforcing cooperation relevant between domestic law enforcement agencies, and continuous patrolling and surveillance of sea areas. The promotion of cooperation between Taiwan and China is also advocated, however, long-standing political conflict between the two countries continues to impede resolution of the problem.

Key Words: stowaway, illegal migrant, smuggling of migrants, human trafficking

1. INTRODUCTION

The Convention on the Facilitation of International Maritime Traffic (FAL) of the International Maritime Organisation (IMO) defines a stowaway as follows:

“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. “Attempted stowaway”-- a

person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person, and who is detected on board the ship before it has departed from the port (IMO, 2000a).

However, the IMO's definition of "stowaway" does not cover all aspects of illegal entry to a country by sea, because migrants may be transported by a known responsible person. For example, the practice of Chinese people migrating illegally by sea to Taiwan, which will be discussed later, do not entirely follow the given definition of "stowaway" since, instead of being secreted on a ship, migrants presence is always known to those Taiwanese or Chinese fishing vessels transporting them, which are usually bought or hired by snakeheads. In practice, stowaways entering a country without the required documents are illegal migrants. Therefore, this study will use "stowaways and illegal migrants" to discuss the issue of illegal entry to a country by sea.

For the past decade, many countries have encountered a serious problem with respect to the entry of stowaways and illegal migrants, caused mainly by external factors and mainly due to political, social and economic changes that occurred worldwide, especially in Asian and African countries. Stowaways and illegal migrants not only impact on the society of the receiving countries but also become a major burden, resulting in huge financial losses to both the public and private sectors. In fact, the costs in time and manpower spent on sorting out the practical and administrative consequences of a stowaway or an illegal migrant incident, as well as the delays to ships, can be out of all proportion to the initial problem. Recently, there has also been an increasingly worrying trend, that is, a threat to the security of ships' crews by hostile stowaways or large groups of stowaways or illegal migrants. Furthermore, once an occasional nuisance, stowaways and illegal migrants are now a major international problem in terms of human suffering, time and cost. As the numbers of refugees and migrants increase worldwide, many governments are hardening their attitudes and reducing the number of immigrants they are willing to accept. Some governments refuse to help repatriate stowaways on ships in their ports under any circumstances. Refusal has even been reported when there is insufficient life saving equipment for the total number of crew and stowaways on board.

Taiwan has and is continuing to experience this problem, which arises from differences in the political and economic situations between Taiwan and Mainland China. The large number of illegal Chinese migrants is having a negative impact upon Taiwan at many levels, which is of increasing concern.

With the above context in mind, this paper first aims to delineate the types and trends in stowaway and illegal migrant incidents worldwide, based on IMO statistical data, and guidelines on the prevention of and solution to the stowaway and illegal migrant problem. It will then present trends in illegal migration by sea to Taiwan, outlining the current situation and the problem, the measures that have been implemented for tackling the problem, and recommended actions that should be taken in this field.

2. STOWAWAYS AND ILLEGAL MIGRANTS

2.1 Types and Trends

Shifting economic and political situations worldwide have an impact upon human migration. Migrants stow away on ships for many reasons but usually they are attempting to leave a region of conflict, instability, or social or economic deprivation for a country where they expect there to be stability, opportunity, and a better way of life. Many economic migrants are lured by the promise of a better future elsewhere, irrespective of the truth and the large sums of money demanded in advance.

Different types of stowaways present different problems and may require distinctive action to be taken. As considerable costs of investigation, identification and repatriation can be incurred, and they will be usually passed on to shipowners, it is useful to know who will be dealt with. According to the North of England P&I Association (NEP&I, 2001), types of stowaways are categorised as follows:

- 1) **Refugees:** Refugees will be attempting to escape war, civil unrest, or political or religious persecution. These stowaways tend to be impulsive and often have no papers.
- 2) **Economic migrants:** They are other stowaways simply moving in an attempt to obtain a better standard of living.
- 3) **Asylum seekers:** Asylum seekers are refugees trying to reach a country where asylum may be granted, or economic migrants claiming asylum so as not to be repatriated. They will often try to conceal their true identity or adopt the nationality of an area where there is conflict.
- 4) **Illegal migrants:** Most illegal migrants usually have no intention of making their presence known to the authorities, hoping to enter a country undetected. Stowaways are generally treated as illegal migrants at the port of disembarkation in accordance with the legislation of the countries concerned. However, stowaways who request asylum should be treated in accordance with the relevant United Nations' conventions. They may be declared to be illegal migrants at a later date if the immigration authorities reject their applications for asylums.
- 5) **Criminals:** The last type of stowaway, and perhaps the most worrying, is the criminals. They may be violent and uncooperative and may be involved in drug transportation or other illegal activities. These stowaways often travel in groups and can present a serious threat to the ship's crew. They sometimes seek to profit by demanding money from the master or shipowner in return for co-operation.

The Stowaways Seminar organised by the Nautical Institute and sponsored by the North of England P&I Association in 1997 made future predictions of stowaways as follows:

- 1) As a result of wars, economic problems, religious and racial pressures, the number of people who wish to move illegally to other countries will increase and smuggling techniques will become more sophisticated.
- 2) This increase in the number of illegal migrants will be resented by local

populations who will fear the impact of the immigrants on their own job opportunities, standards of living and culture.

- 3) Public resentment will result in more governmental legislation aimed at halting the influx of illegal immigration.
- 4) Blending with this pressure to limit illegal immigration, will be a strong and vocal sentiment that government procedures should ensure that asylum seekers are treated with dignity and compassion (NEP&I, 2001).

Therefore, given the complex economic and moral problems, the transport industry, and in particular the shipping industry will be put under great pressure to ensure their vessels do not carry illegal migrants, i.e. stowaways.

In 2001, four years after the seminar, the total number of stowaways had grown significantly. The IMO figures for 2001 show over 1,600 reported stowaway incidents, an increase from the 545 quoted for 1999 (IMO,2000b, 2002a). Many of the incidents involved more than one stowaway. In addition, according to United Nations High Commissioner for Refugees (UNHCR) figures, the number of people giving "cause for concern" worldwide had risen from about 15 million in 1990 to 19.8 million in 2001, causing a corresponding rise in the number of stowaways. Furthermore, stowaways become an international problem including the Far East, Middle East, Central Europe, Africa and South and North America. In 1997, stowaway incidents were mainly limited to the United States and European countries.

Although the total number of stowaway incidents reported since 1999 has shown an increasing trend, IMO annual statistical data on stowaways suggest an annual decline in the number of stowaway incidents as well as the persons during the 1999-2002 period (see Table 1 and Figures 1&2). Also, since December 2000, the IMO Maritime Safety Committee (MSC) has implemented a reporting procedure on a biannual basis to keep track of incidents related to unsafe practices associated with the trafficking or transport of illegal migrants by sea and urged Governments and international organisations to report promptly such practices they become aware of. According to the statistics, it appears there was an increase in the number of incidents of trafficking or the transport of illegal migrants between December 2000 and April 2001, which reversed after April 2002. The number of illegal migrants increased between December 2000 and October 2001, but decreased thereafter (see Table 2 and Figures 3 & 4). Reasons for the decrease in the number of stowaways and illegal migrants may partly arise from better precautions and prevention; however, some incidents may not have been reported.

Table 1 IMO Annual Statistics of Stowaway Incidents

1999		2000		2001		2002	
No. of incidents	No. of Persons	No. of Incidents	No. of Persons	No. of Incidents	No. of Persons	No. of Incidents	No. of Persons
545	2253	385	1259	254	583	216	485

Source: IMO (2000b, 2002b, 2003a), Reports on Stowaway Incidents: Annual statistics, for the years 1999, 2000, 2001 and 2002, International Maritime Organisation.

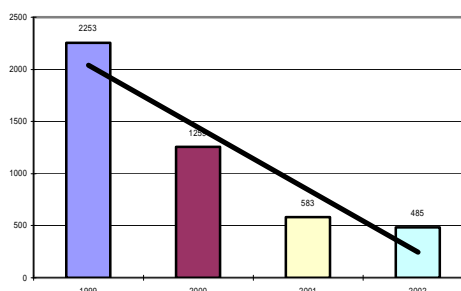
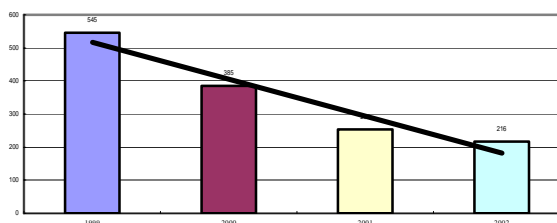


Figure 1 IMO Statistics of Stowaway Incidents - No. of Incidents

Figure 2 IMO Statistics of Stowaway Incidents - No. of Persons

Table 2 IMO Statistics of Trafficking or Transport of Illegal Migrants by Sea

Time	No. of Incidents	No. of Persons	Total No. of Incidents	Total No. of Persons
Until 30 April 2001	43	3,375		
Until 31 October 2001	57	5,541	100	8,916
Until 30 April 2002	176	3,510	276	12,426
Until 28 February 2003	108	2,948	384	15,374
Until 25 July 2003	47	1,051	431	16,359

Source: IMO (2001a, 2001b, 2002c, 2003b, 2003c), Trafficking or Transport of Illegal Migrants by Sea: biannual report, International Maritime Organisation.

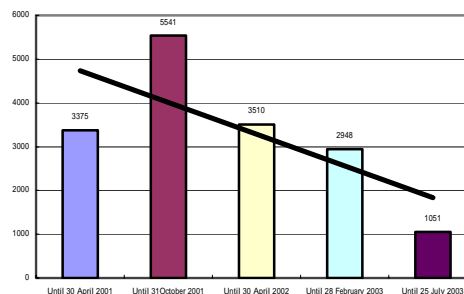
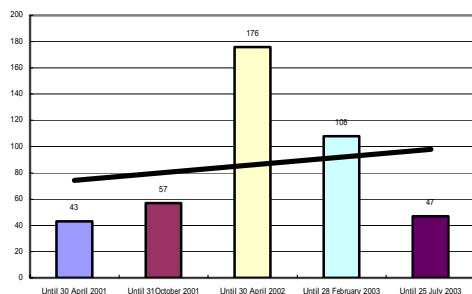


Figure 3 IMO Statistics of Illegal Migrants by Sea - No. of Incidents

Figure 4 IMO Statistics of Illegal Migrants by Sea - No. of Persons

2.2 Impacts

Increased stowaways and illegal migrants have induced public resentment, which will continue to act as a stimulus for governments to enact more and more preventative legislation. As a result, this legislation will impose further burdens on ship owners and masters and subject them to greater public accountability. In addition, there are expenses arising from the presence of stowaways on board a vessel which are normally the responsibility of the owners/operators of that vessel. Expenses incurred resulting from stowaways include fines due to stowaways being on board, cost of guards employed to prevent stowaways from escaping (a requirement in certain ports), victualling expenses, clean clothing, bedding and toiletries, embassy fees, jail detention expenses, repatriation flights for stowaways, flights and accommodation

expenses for escorts, and expenses incurred by agents, but only those expenses directly associated with the stowaways (NEP&I, 2001). In practice, subject to the vessel's terms of entry these costs will normally be covered by the P&I Club. However, cover may also be reduced or rejected if the Club's Directors consider that the Member did not take adequate steps to prevent the stowaways boarding.

The number and temperament of stowaways has also an impact on the safety of the crew. The likelihood of violent behaviour arising amongst the stowaways themselves, or being directed against the crew, should be considered. The number of stowaways on board is also a consideration, especially if that number is high in proportion to the number of crew. In all cases, the ship's crew should try to take appropriate security precautions.

Illegal migrants can have negative effects on the country's community. Morganelli (2003) indicated that the majority of illegal migrants in the U.S. are engaged in criminal activity. Identity theft, use of fraudulent social security numbers and green cards, tax evasion, driving without a license represent some of the crimes that are engaged in by the majority of illegal aliens on a daily basis merely to maintain and hide their illegal status. In addition, violent crime and drug distribution and possession is also prevalent among illegal aliens.

Another concern arising from the significant increase in stowaway and illegal migrant activities is that as a great deal of money can be made from smuggling people, there is growing evidence that transnational organised criminal groups are involved in the smuggling of migrants by sea, i.e. stowaway and illegal migration has become part of organised crime, which consequently brings great harm to the migrants themselves. For example, since the late 1980s, Chinese smugglers known as "snakeheads" have smuggled tens of thousands of illegal migrants into the US. Migrants looking for an escape from their economic and sometimes political hardship at home are willing to pay an increasingly high price (on average \$2,000-5,000) for a one-way ticket out, causing the trade in human cargo to flourish. Often entire families contribute to the cost of passage for one single-family member, in the hope that they too can soon follow. Frequently, victims indenture themselves to organised criminal groups, which provide them with illegal passage to the North American continent and Western Europe. In some cases, they enter into this smuggling agreement fully aware of its consequences, but often the illegal migrants are lured into the scheme not knowing what awaits them. Upon arrival they are enslaved and disappear in underground networks of dubious companies, where working conditions are deplorable and pay is minimal. With no legal recourse available, the migrants frequently suffer physical and mental torture by their employers (United Nations, UN, 2000).

3. ILLEGAL MIGRANTS BY SEA TO TAIWAN

3.1 Illegal Migration Trend

On 26 August 2003, the crew of two Taiwan-registered fast-moving boats, discovered to be involved in smuggling mainland women to Taiwan, tossed 26 women overboard in an effort to escape a Taiwanese coast guard's interdiction. Six women drowned and twelve were rescued, while eight others who swam ashore were arrested. The incident

shook Taiwan's public and attracted much attention in the media. In practice, human smugglers or snakeheads do not care for the migrants and put their life in danger by exceeding the maximum carrying capacity of the vessel or by forcing them to jump into deep waters to escape arrest. For example, in October 1999, the Italian police, navy and coastguard tracked down a boat, which they suspected of smuggling, making its way from Albania to the Italian coastline. In an effort to escape authorities and lighten his load, the helmsman, an Albanian smuggler, threw an estimated 100 migrants (Albanians, Turkish and Iraqi Kurds, Pakistanis and Kosovars) comprising of his human cargo overboard. Several victims were rescued, but many drowned (UN, 2000). In Greece, from September 1992 till the end of 2002, 21 such incidents were recorded in Greek territorial waters and 197 people lost their lives. There have also been many cases where Greek coast guard patrol boats have stopped their pursuit of the smugglers in order to rescue the lives of immigrants at sea (Ministry of Mercantile Marine, 2003).

Almost all stowaways and illegal migrants in Taiwan come from Mainland China. Such illegal migrants increased after the government allowed the interactions between both sides of the Strait at social level in 1987. Table 3 shows the number of illegal Chinese migrants between 1987 and July 2003 based on the statistical data reported by the Mainland Affairs Council. The figure increased dramatically between 1987 and 1990, and slowed down in 1991. However, it increased again in the following two years. After 1993, there was a decrease in the number of illegal migrants but an increase in 2002. The number of detained illegal Chinese migrants had reached 1,239 in August 2003. On average, the government arrested 225 illegal migrants every month. About 1,500 illegal migrants were detained every year during the five-year period 1997 to 2001. The average detention time of 172 days for every illegal migrant was more than the 20 days specified by the Kimmen Agreement, reached by Red Cross Chapters of both Taiwan and China in 1990 to serve as a benchmark for the repatriation of illegal Chinese migrants.

Table 3 Number of Illegal Migrants from the Mainland

Year	Number of illegal migrants	Number of repatriations	Frequency of repatriation
1987	762	760	-
1988	2,260	1,978	-
1989	3,384	3,664	-
1990	5,626	5,057	-
1991	3,998	4,409	-
1992	5,446	3,445	12
1993	5,944	5,986	25
1994	3,216	4,710	23
1995	2,248	1,427	7
1996	1,649	2,250	10
1997	1,177	1,216	6
1998	1,294	1,121	5
1999	1,772	1,166	6
2000	1,527	1,230	7
2001	1,469	1,948	12
2002	2,032	1,402	9
2003(Jan-Jul)	1,239	1,077	7
Total	44,944	42,543	129

Source: Mainland Affairs Council Statistics.

Table 4 shows the number of illegal migration incidents and persons arrested by Taiwan's Coast Guard in terms of months between 2001 and July 2003. On average, there were over 58 illegal migrants by sea arrested every month. Accordingly, it seems many illegal migrants had successfully evaded arrest or detention and remained hidden in the community for some time. As shown in Table 4, the total number of illegal migrants arrested by Taiwan's Coast Guard between 2000 and July 2003 was 2,499, which only accounted for 39.88% of the number of illegal migrants reported by the Mainland Affairs Council over the same period.

Table 4 Illegal Migrants by Sea

Month	2000		2001		2002		2003		Total	
	No. of Incidents	No. of Persons	No. of Incidents	No. of Persons	No. of Incidents	No. of Persons	No. of Incidents	No. of Persons	No. of Incidents	No. of Persons
January	n.a.	n.a.	29	70	17	32	10	51		
February	n.a.	n.a.	16	49	38	163	3	44		
March	n.a.	n.a.	29	146	27	77	3	30		
April	n.a.	n.a.	16	40	26	88	5	19		
May	n.a.	n.a.	23	47	23	96	2	6		
June	n.a.	n.a.	27	84	27	103	3	8		
July	n.a.	n.a.	18	78	20	39	5	51		
August	n.a.	n.a.	19	71	29	122	5	35		
September	n.a.	n.a.	16	31	21	66	4	33		
October	n.a.	n.a.	12	31	19	67	n.a.	n.a.		
November	n.a.	n.a.	12	24	26	61	n.a.	n.a.		
December	n.a.	n.a.	6	9	14	25	n.a.	n.a.		
Sum	235	671	223	680	287	939	40	277	785	2577

Source: Taiwan's Coast Guard Statistics.

3.2 Motivation for Illegal Migration

Initially, Chinese illegal migrants to Taiwan could be categorised as economic migrants looking for a better life as Taiwan was considered as a prosperous country with a well-developed and growing economy. The majority of illegal Chinese migrants were therefore male, seeking work opportunity in Taiwan to improve the living standard of their families in China. But such motivation had changed due to the economic recession during 2000-2003 and it is hard for illegal migrants to find jobs. The number of persons who stow away for such motivation has therefore decreased in recent years. Instead, because of the lure of Taiwan's lucrative sex trade, many Chinese women are attracted to migrate to Taiwan for prostitution purpose, and thus the number of illegal Chinese female migrants has increased. In 2002, for example, the number of illegal female migrants arrested exceeded that of illegal male migrants (Chiang and Lin, 2003). And as of August 2003, Taiwan's police and Coast Guard Administration had arrested 1,239 illegal Chinese migrants, of which 1,005 were women. As a consequence, Mainland women have emerged as the main source of Taiwan's thriving but illegal sex industry. However, it is worth noting that the profitable sex industry has also attracted the attention of organised crime groups and encouraged them to engage in the criminal activities of smuggling or trafficking of Chinese women. Although the majority of Chinese female migrants smuggled or trafficked to Taiwan by snakeheads are unaware of the real reason for their illegal trafficking, not all Chinese women smuggled into Taiwan for prostitution purpose are deceived by their smugglers. Many of them were prostitutes in China and are smuggled voluntarily or the hope of earning more money in Taiwan than they could at

home.

In addition, the deterioration of fishermen's livelihood as a result of the decrease in resource derived from the fishing grounds in Taiwan's sea area, coupled with the difficulty of finding alternative jobs and the attraction of substantial profits to be gained from human smuggling, have contributed to their involvement in transporting illegal Chinese migrants to Taiwan, requested by snakeheads. This has further promoted the development of human smuggling across the Taiwan Strait.

3.3 Methods and Route

The methods adopted by illegal migrants from China to Taiwan by sea are: (1) The migrants embark from the Chinese coast on a China- or Taiwan-registered fishing vessel, or speedboat, heading to the point of disembarkation in Taiwan. (2) The migrants embark from the Chinese coast on a China-registered fishing vessel. After reaching international waters, they change to a Taiwan-registered fishing vessel, speedboat or dinghy and continue their trip heading to the point of disembarkation in Taiwan; or continue their trip heading towards the near waters of Taiwan, then change to another speedboat or dinghy heading to the point of disembarkation. In practice, the latter method is most commonly adopted by most smugglers or snakeheads.

Taiwan is an island country with a total coastline of 1,139 kilometres. This geographic feature, creating an area of high accessibility through innumerable points as proved from reported incidents of disembarkation of illegal migrants at many places in Taiwan, putting Taiwan under considerable pressure from the continual invasion of illegal migrations.

Pintan, located in the Province of Fujian in China, is the major base for illegal migrants to embark because the distance between it and Northern Taiwan is the shortest. Northern Taiwan, which has a coastline with many twists and turns, is therefore the best and the major area for disembarkation. Keelung and Ruyefan, for example, are the most popular places for disembarkation. Elsewhere in Taiwan, such as Kaohsiung and Pindon, there have also been many illegal migration incidents reported.

3.4 Impacts

The problem of illegal migration in Taiwan has had several negative impacts. Firstly, human smuggling activity has hampered public security both in Taiwan and Mainland China because traffickers or snakeheads are usually organised criminal groups which often commit criminal activities, such as defrauding and abduction. In particular, the increasing number of illegal Chinese female migrants forced to become prostitutes in brothel in Taiwan has decreased public security and proved a very tough problem for Taiwanese law enforcement agencies to cope with. Secondly, illegal migrants pose a threat to Taiwan's disease control system. The tragedy of the Serious Acute Respiratory Syndrome (SARS), outbreak in China, is an example. Thirdly, the growing number of detained Chinese migrants is a drain on Taiwanese taxpayers since money has to be found to provide them with board and accommodation, health care and other essentials. In August 2003, there were more than 2,500 Chinese detainees awaiting repatriation, and the cost of repatriating these migrants amounts to more than

NT\$100million a year (*Taipei Times*, 29/08/2003). The huge number of detainees arises from the fact that the Chinese government has done little to curb human trafficking, thus encouraging further smuggling of migrants. In fact, it has been less than enthusiastic in facilitating the repatriation illegal Chinese migrants detained by the Taiwan authorities, thereby delaying the repatriation process, although in accordance with the Kimmen Agreement the Chinese government should provide help with this. The reason for the Chinese government's reluctance or refusal to do so is due to Taiwan's refusal to accept Beijing's "One China" principle.

4. PREVENTION AND SOLUTIONS

4.1 International Guidelines

In dealing with stowaways, an international convention, namely, the Brussels Convention relating to stowaways, was adopted in 1957, but has not yet entered into force. In recent years, owing to the problem of increasing stowaways, it is generally recognised that there is an urgent need for international agreement on the allocation of responsibilities to enable the successful resolution of incidents involving stowaways. In 2000, the IMO's Facilitation Committee agreed at its 28th session to include formalities for dealing with stowaways in the Convention on Facilitation of International Maritime Traffic (FAL Convention), adopted in 1965 to prevent unnecessary delays in maritime traffic, to aid cooperation between Governments, and to secure the highest practicable degree of uniformity in formalities and other procedures. Amendments to the FAL Convention to incorporate standards and recommended practices for dealing with stowaways were adopted in January 2002, with anticipated entry into force in 2003.

Further, Guidelines on the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases, issued by the IMO and adopted by an IMO Assembly Resolution in 1997, establish basic principles to be applied when dealing with stowaways. Although the resolution of stowaway cases is difficult because of different national legislation in the various countries involved, some basic principles can be applied generally. The guidelines advocate close cooperation between shipowners and port authorities. Where national legislation permits, national authorities should consider prosecuting stowaways concerning any damage caused. Countries should permit the return of stowaways who are identified as being their citizens or who have a right of residence, while the country where a stowaway originally embarked should normally accept his or her return pending final case disposition. Moreover, the guidelines establish in greater detail the responsibilities of the master, of the shipowner or operator, of the country of the first scheduled port of call after the discovery of the stowaway (the port of disembarkation), of the country where the stowaway first boarded the ship, of the stowaway's apparent or claimed country of nationality, of the flag State of the vessel, and of any countries of transit during repatriation (IMO, 1997)

Smuggling by sea brings harm to migrants and a highly complex legal area for the country authorities since crime at sea falls under international law. In 1998, the IMO approved an advisory Circular (MSC/Circ.896) outlining Interim measures for combating unsafe practices associated with the trafficking or transport of migrants by

sea, which notes that migrants often are transported on ships that are not properly manned, equipped or licensed for carrying passengers on international voyages. It also indicates that States should take steps relating to maritime safety, in accordance with domestic and international law, to eliminate these unsafe practices associated with the trafficking or transport of migrants by sea (IMO, 1998). The Circular was revised and updated in June 2001 (MSC/Circ.896. Rev.1) after the entry into force of the Convention against transnational organised crime, developed by the United Nations Commission on Crime Prevention and Criminal Justice (IMO, 2001c). Accordingly, relevant provisions of MSC/Circ.896 regarding combating illegal trafficking and transport of migrants by sea are reflected in chapter II, Smuggling of Migrants by Sea, of the Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organised Crime. The Protocol, adopted by the UN General Assembly on 15 November 2000 and officially signed at a ceremony in Palermo, Italy, in December 2000, provides Member States with an effective tool to combat and prevent the smuggling of human cargo. Moreover, it is designed to fight cross-border crimes by obliging signatories to adopt national legislative measures, open up information channels and promote international law enforcement cooperation. While they have been created to prevent smuggling, the new laws, however, do not aim to dictate domestic migration policy and migration flow. They recognise that migration in itself is not a crime and therefore not liable to criminal prosecution. Migrants are victims in need of protection; therefore emphasis is placed on the criminalisation of the smugglers and the organized criminal groups behind them (UN, 2001).

According to Article 10 of the Protocol, Member States ratifying the Protocol are required to strengthen cooperation between law enforcement agencies, prosecutors and other entities to prevent transnational organised crime. They are required to carry out information programmes to create public awareness that migrant smuggling is an illegal act in which criminal groups are frequently engaged. In addition, they are obliged to open up communication links between law enforcement agencies in Member States and exchange information on: (1) Embarkation and destination points, as well as routes, carriers and means of transportation known to be suspect or used by criminal groups; (2) The identity and methods of organised criminal groups known or suspected of being engaged in the smuggling of migrants; (3) The authenticity of travel documents, theft or related misuse of travel or identity papers; (4) Other smuggling techniques, including recruitment practices, trafficking routes and links between individuals and smuggling groups.

Also, they are obliged to provide special training to immigration and other officials in their treatment of illegal migrants and stay a step ahead of smugglers. Training is aimed at: (1) Detecting fraudulent travel or identity documents; (2) Gathering criminal intelligence, especially to identify criminal groups known or suspected of smuggling migrants as well as smuggling methods, the misuse of travel or identity documents and ways of concealing migrants; (3) Improving ways of searching for and finding concealed or improperly documented persons at conventional and non-conventional points of entry and exit; (4) Treating migrants humanely and upholding their human rights (UN, 2001).

In dealing with migrants, the State Party agrees to facilitate and accept without delay the return of a person who has been smuggled and who is a national of its territory or

has previously had the right to reside there.

In addition to above measures for preventing and dealing with smuggling migrants under the Protocol, in many countries, legislation allows the authorities to impose fines on ships carrying stowaways. Based on information given by P&I correspondents worldwide, these include: (1) Fines for having a stowaway on board: many countries can impose fines for having stowaways on board a ship when it arrives. These fines may be mitigated in most cases if the ship operator and master have complied with all the immigration requirements of that particular country. Countries, for example, New Zealand, France, United Kingdom, may impose fines of US \$1,000 or over per stowaway on board in certain circumstances. Countries such as Australia, Canada and USA may impose fines of US \$5,000 or over. (2) Fines if a stowaway escapes: many countries impose fines if stowaways escape from a ship. These fines may be mitigated in some circumstances. Some countries also require financial security to be provided against the event of a stowaway escaping whilst the ship is in port. For example, Spain is top of the penalty league as it is able to impose a fine of over US \$160,000 if a stowaway escapes from a ship. Countries such as Bulgaria, Italy, Lithuania, Malaysia, and Spain may impose fines of US \$10,000 or over (NEP&I, 2001).

4.2 Solutions to the Illegal Migration Problem in Taiwan

As discussed previously, the problem of illegal Chinese migrants to Taiwan has brought additional social costs to the public. Moreover, the problem of human trafficking in and through Taiwan has also raised international concern. In the third annual Trafficking in Persons Report, Taiwan was listed as a source, transit, and destination region for persons trafficked for sexual exploitation and forced labour. Victims of trafficking are brought to Taiwan from Mainland China, Thailand, Cambodia, Vietnam, Indonesia and the Philippines (*The Associated Press State & Local Wire*, June 14, 2003). Accordingly, the Taiwanese Government should make substantial efforts to prevent and eliminate these illegal activities. At present, the Government has adopted some measures for dealing with such problems, including the use of laws that criminalise general trafficking activity and the financial support of anti-trafficking public awareness efforts by non-governmental organizations. These measures in fact comply with the requirement under international legislation relating to stowaways and human-smuggling issues, discussed in the previous section.

The relevant regulations for criminalising snakeheads and dealing with illegal migrants are specified in the Act Governing Relations between the Peoples of the Taiwan Area and the Mainland Area. In order to eliminate smuggling and trafficking people activities, in October 2003, the government revised some clauses of the legislation and increased penalties for smugglers and snakeheads. The maximum penalty of imprisonment has increased from 7 years to 10 years, and fines increased from one million New Taiwan Dollars to five million. Additional penalty clauses have also been amended, for example, the ship owner, operator, or master or captain of any vessel will be severely penalised for involvement in transporting illegal migrants to Taiwan by cancelling or revoking the pertinent licenses or certificates, and/or suspending or revoking the professional license or eligibility of the said master, captain; and the competent authority will expropriate the vessel if the owner uses it to operate a transporting illegal Chinese migrants business. As regards illegal migrants,

they cannot be criminalised and punished in accordance with Taiwan's laws unless they commit a criminal offence. Nevertheless, according to clause 18 of the Act Governing Relations between the Peoples of the Taiwan Area and the Mainland Area, illegal Chinese migrants may be deported there from by the police authorities and may be put in temporary custody before deportation and may be ordered to perform labour services.

Although the existing penal sanction against human smuggling has been increased to a maximum of 10 years imprisonment, in order to effectively prevent and combat the smuggling or trafficking of illegal migrants crime, it is necessary for the courts to treat migrant smuggling as a felony. In the United States, for example, because lenient punishment had failed to deter smugglers, the U.S. Congress passed the Violent Crime Control and Law Enforcement Act of 1994, which dramatically increased the penalties for human trafficking. Persons who knowingly bring illegal migrants into the U.S. are subject to a possible imprisonment term of ten years (and/or fines) per illegal migrant, and the maximum penalty is increased to twenty years per alien when bodily injury occurs or life is placed in jeopardy in connection with the smuggling offence. When death results the death penalty or life imprisonment is allowed in accordance with the U.S. Commission on Immigration Reform 1994. Further, the U.S. Senate also passed the Foreigners Alien Smuggling Act in 1995; and the first RICO (Racketeering-Influenced and Corrupt Organizations) case against a Chinese smuggling organisation in Newark, New Jersey that same year. Fourteen defendants were indicted for bringing illegal Chinese to the United States between 1992 and 1994 (Chin, 1999). In light of the U.S. regulation, it seems there may be room for Taiwan government to increase penalties for human smuggling or trafficking, especially if death occurs as a result, for example, the incident of smuggling Chinese women to Taiwan reported recently.

In addition to legislative measure, several other measures against the smuggling migrants' activities by sea should be taken by the Government. As indicated in the Protocol against the smuggling of migrants, a measure for strengthening cooperation at national, regional and international levels should be introduced to prevent transnational organised crime. Therefore, it is important for the Taiwanese government to reinforce cooperation and strengthen communication network among relevant domestic law enforcement agencies so that the movement of illegal migrants can be effectively detected and controlled, and the smugglers and organised crime groups behind them may be traced. For example, relevant law enforcement agencies, such as the Police Authority, the Public Prosecutor, the Bureau of Investigation, and the Coast Guard, may organise a special team or security unit which is tasked with long-term investigating, supervising and tracking down of suspected organised criminal groups, which may coordinate with and hide illegal migrants.

The tide of illegal Chinese migrants may not in fact be stemmed without cooperation between Taiwan and China. In other words, the promotion of cooperation between law enforcement agencies across the Taiwan Strait by establishing a two-way communication scheme, whereby effective combating of illegal migration activities will be achieved, is needed. However, because the fact of political conflict has impeded bilateral cooperation for solving the illegal migrant problem, the measure of seeking cooperation with the Mainland is somewhat difficult to implement. Moreover, the Chinese government has been blamed for its tolerance of human smuggling, which

has also facilitated such activity. One of North America's leading experts on illegal Chinese migration said in an interview with the 'Vancouver Sun' in 2000 that the Chinese government is turning a blind eye to human smuggling because it benefits the country economically and politically, and the Beijing government would definitely like to keep it going. He interviewed 300 illegal Chinese migrants living in New York City for his book, *Smuggled Chinese*. From what he'd seen, Beijing appears reluctant to stem the human tide. With people smuggling, the Chinese government doesn't lose anything -- except lose face. Indeed, there are many benefits to China from the people-smuggling business because the country has more than one billion people and is trying to reduce the population (*The Vancouver Sun*, 11/01/2000). Nevertheless, Taiwan's law enforcement agencies should still seek cooperation directly or indirectly with Chinese Public Security and the Border Defence Bureau to combat and tackle the problem of illegal migration and human smuggling. Additionally, the Taiwan Government should seek international assistance to find solutions to the communication problem with the Mainland since the phenomenon of illegal migrants in Taiwan has become more intense and of growing concern internationally.

Illegal migration can also be prevented through constant air and sea surveillance, thus additional modern sea patrol vessels with the capability to sail under difficult weather conditions are needed to meet the increasing duty demands of the Coast Guard and to conduct patrols effectively. Also, advanced electronic equipment on patrol vessels and on shore is needed for the detection of suspicious boats so that the possibility of intervention becomes faster and more effective. Further, the adequate allocation of air patrol along the coastline and maritime area in conjunction with sea patrol should be planned to safeguard the sea border.

As regards the problem of Taiwan's fishermen's involvement in smuggling illegal migrants to Taiwan, in addition to imposing serve penalties, the Taiwanese Government must make a serious effort to educate fishermen about the risks and costs of engaging in smuggling and transporting illegal migrants. Further, the Government should provide assistance to improve their livelihood.

5. CONCLUSION

The stowaway and illegal immigration problem will not be completely solved as long as worldwide political, economic and social inequalities exist. Nevertheless, efforts must still be made by countries to prevent and tackle the problem. Since smuggling and trafficking migrants by sea is of high international concern as it results in a criminal threat, an immigration threat, a human rights threat, and a national security threat. Necessary measures, which have been taken worldwide to combat illegal migration by sea, include criminalisation of smugglers and snakeheads, complying with international guidelines and laws against smuggling migrants by sea, and cooperation among States.

The different political and economic situations between Taiwan and China, the unique geographic position and the feature of an extensive long coastline have contributed to the phenomenon of illegal Chinese migrants by sea to Taiwan. In particular, the lure of the profitable sex trade in Taiwan has contributed to more and more illegal migration incidents, which are usually organised and operated by smugglers and

snakeheads. Furthermore, the Chinese government's failure to take action against smuggling activities, the tolerance of them, and its failure to impose severe punishments on smugglers and snakeheads have encouraged these activities. As a consequence, the influx of illegal Chinese migrants has induced public resentment because it has had negative effects on Taiwan's society, for example, it has led to an increase in criminal offences and the loss of work opportunities for Taiwanese citizens. Also, human smuggling has reduced public security both in Taiwan and Mainland China because traffickers or snakeheads usually have connection with organised criminal groups.

The illegal migration across the Taiwan Strait is expected to continue unless China takes steps to improve its political situation, economic stability, and equality among its citizens. Nevertheless, some measures should still be taken into consideration by the Taiwanese Government in order to tackle the illegal migration and human smuggling problem to secure the stability of Taiwan's society. In the light of international guidelines and worldwide experience, defining migrant smuggling as a felony is expected to contribute substantially to the efforts made to tackle the problem. More efforts should be made to promote cooperation and exchange information between law enforcement agencies across the Taiwan Strait by establishing a communication link. Moreover, it is necessary to reinforce cooperation and strengthen communication networks among relevant domestic law enforcement agencies so as to detect illegal migrants and control their movement effectively, thereby halting the flow of the organised crime groups behind them. To safeguard the sea border, the Coast Guard's continuous sea patrolling, supplemented by air patrolling, should be conducted. Further, more modern sea patrol vessels with advanced electronic equipment should be increased so that the detection of suspicious boats and the possibility of intervention will become faster and more effective. Additionally, the Taiwanese Government should be deeply concerned about fishermen's livelihood to prevent them from being the middlemen for snakeheads to transport illegal migrants to Taiwan. Meanwhile, imposing severe punishment and providing moral advice are also needed to eliminate such activity.

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