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Research Article

Legal issues on wage protection of seafarers held hostage by pirates

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Article information	Abstract
Received: January 29, 2021 Revised: March 7, 2021 Accepted: March 23, 2021	The issue of piracy against merchant vessels still poses a significant threat to world shipping, and people onboard continue to be targeted and held hostage by pirates for ransom. Seafarers expect and deserve to continue receiving wages if held by pirates. However, this entitlement remains unclear in the current legal framework and maritime industry practice. Traditionally, it was argued that seafarers held hostage by pirates did not have a right to continued payment of their wages. The world maritime community has made significant effort to reform the law and address the need to protect the wages of seafarers. Amendments made in 2018 to the Maritime Labor Convention 2006 (MLC 2006) aimed to ensure that, while seafarers are held captive as a result of piracy or armed robbery, seafarer employment agreements (SEAs) remain in force, and they must continue to be paid. While it is a significant move forward, there are no provisions for compulsory financial guarantees on captive seafarers' wages in the amendments. Through policy analysis on captive seafarers' wages, it is argued that the amendments of 2018 are not adequate guarantees of the wages of seafarers held hostage by pirates, and that true reforms are still far away.
Keywords Seafarers, Wages, Maritime Labor Convention 2006, Amendments 2018, Piracy	

1. Introduction

Seafarers face various risks at sea and their labor rights are not sufficiently protected (Exarchopoulos et al., 2018). They receive the special attention of the International Labor Organization (ILO). One historical achievement of the ILO is the adoption of the Maritime Labor Convention (MLC) 2006, with its official entry into force on 20 August 2013. One strength of the MLC 2006 is that it is a living instrument (McConnell et al., 2011). The convention has been updated by amendments made in 2014, 2016, and 2018, addressing some key issues which were not covered by its original version.

Although the international maritime community has taken active measures to reduce piracy accidents, kidnapping and armed robbery against ships still occurs frequently (Mejia et al., 2013). Once a ship is hijacked, very little attention is given to the issues related to seafarers' wages and other monetary entitlements during the period of being held hostage. Traditionally, it was argued that seafarers held hostage by pirates did not have a right to continued payment of their wages.

The amendments of 2018, which came into force on 26 December 2020, were brought about by the continuing occurrence of piracy and armed robbery against ships at sea. The changes require member states to ensure that seafarer employment agreements (SEAs) shall continue to have effect

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while seafarers are held captive on or off their ships as a result of acts of piracy or armed robbery against ships, and that shipowners must continue to pay wages and other entitlements during the entire period of being held hostage.

However, while the amendments represent serious advances over the current version of the MLC 2006 regarding seafarer protection, they provide only a modest benefit for seafarers. The new amendments lack provisions for enforcement or financial guarantees. Without this protection, the entitlement conferred to seafarers might be void or extremely difficult for them to claim. Also, in practice, there is no suitable legal mechanism of risk diversification for wage loss of captive seafarers, unless it is allowable in the maritime law principle of general average that can be covered by commercial insurance. This paper proposes that independent compulsory financial guarantees should be established to provide an adequate and fast payment track for seafarers' wages during the entire period of being held hostage.

2. Piracy issues and armed robbery against a ship

In order to better explore the legal issues on wage protection of seafarers held hostage by pirates, we must first make clear the definition of piracy. The amendments of 2018 mention armed robbery against ships; this is similar to piracy, but there are also differences.

Piracy is a long-standing problem. Since the establishment of the IMB Piracy Reporting Center (PRC), thousands of acts of piracy have been reported, usually along with some degree of maritime violence. These figures have increased gradually year by year. In the first half of 2018, the PRC reported 107 incidents of pirate and armed robberies against ships, with 102 crew members taken hostage, up from 63 for the same period in 2017. The number of crew kidnapped in the Gulf of Guinea rose in 2019, from 78 in 2018 to 121 in 2019, an increase of more than 50 %.

In the process of maritime development, piracy was not a definite illegal act under international law. Although piracy was regarded as immoral and inappropriate, it was not a criminal act under ancient Roman laws. In the 16th century, the authoritarian monarch developed legal privateers¹ for their own interests, and these government-sponsored privateers did no end until the 20th century (Li, 2010). At the same time, international law scholars began to agree that piracy is a crime against the international order and security of the high seas, and that it was a public enemy under universal jurisdiction (Carmino, 2013). Although the international community actively intended its treaties to define and regulate piracy, it was not until the United Nations Convention on the Law of the Sea 1982 ("UNCLOS") that the definition of piracy became clear. The UNCLOS followed the Geneva Convention on the High Seas 1958 and created many new instruments that included piracy content, which provided the framework for the repression of piracy under international law, specifically in Articles 100 to 107 and 110 (Eesha & Abhinav, 2013). Piracy consists of any of the following acts: (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b). The amendments of 2018 to the MLC 2006 adopted the definition of piracy under international law, inserting a new provision 7(a) in Standard A2.1 - seafarers' employment agreements to expressly stipulate that "piracy shall have the same meaning as in the United Nations Convention on the Law of the Sea 1982".

It is commonly agreed that this crime is a violent act against ships or persons in an area that falls squarely within waters under State jurisdiction. The Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships, adopted by the International Maritime Organization (the Code of the IMO), defines armed robbery against ships as "any unlawful act of violence or detention or any act of depredation, or threat thereof, other than the act of piracy,

directed against a ship or persons or property on board such a ship, within a state's jurisdiction over such offences". The amendments of 2018 adopted the definition of armed robbery against a ship in the Code of the IMO, and inserted a new provision 7(b) in Standard A2.1 - seafarers' employment agreements to expressly stipulate that "armed robbery against ships means any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea or any act of inciting or of intentionally facilitating an act described above".

Piracy and armed robbery against ships are roughly similar in terms of purpose and means. The main difference, from the perspective of international law, is that piracy takes place on the high seas or the sea outside the jurisdiction of any state⁴, while the armed robbery against ships takes place in the jurisdictional water of a state. Moreover, the principles of jurisdictions to treat the two crimes are different. The principle of jurisdiction over piracy is universal, and the principle of jurisdiction over armed robbery against ships is territorial. Universal jurisdiction over piracy has been developed through unwritten customary international law and has been codified in the UNCLOS. For armed robbery against ships, the coastal state has authority. The principle of territorial jurisdiction should be primary for the coastal state (Eesha & Abhinav, 2013).

Although the definition of armed robbery against ships is distinguished from the definition of piracy in the amendments of 2018 to the MLC 2006, the same legal liabilities are stipulated for the employer. The employer is required to continue to pay wages and other entitlements under the SEA, relevant collective bargaining agreement, or applicable national laws, during the entire period of being held hostage by piracy or armed robbery against ships, and until the seafarer is released and duly repatriated or dies while being held hostage. Seafarers' wages are the remuneration paid by employers and commonly constitute two kinds: basic wages and auxiliary wages. The amendments of 2018, Standard A2.2 Art.7, expressly precludes the shipowner the right to terminate the SEA during the period of being held hostage, which means seafarers can still get the same wages, inclusive of basic wages and auxiliary wages, as they would through their work on the ship.

3. Legal analysis of SEA and seafarers' wages while being held hostage

When a seafarer is held hostage by pirates, due to the limitation of personal freedom and the seafarer's failure to perform their labor obligations, whether the SEA should be kept effective or not is always argued, with wages being at the core of labor relations. The premise for the employer's wage payment is that the SEA should be effective.

Seafarers' labor rights should be protected when seafarers are captive by pirates, even while off their ships, mainly including receiving wages, proper repatriation, and obtaining compensation for their physical and mental damages (Chen & Shan, 2016). The SEA should continue to be effective during the entire period of being held hostage, and so, this is the chief revision in the amendments of 2018.

3.1 Before and after the amendments of 2018 to the MLC 2006

Seafarers' rights concerning their wages when pirates held them hostage were not clear under domestic laws and international conventions before they were clarified by the amendments of 2018. Regulation 2.2 of the MLC 2006 covers wages; the underlying purpose of the regulation is to ensure that seafarers are paid for their services. However, this purpose is argued when seafarers are held hostage ashore (Staniland, 2013). The MLC 2006 did not expressly preclude the termination of SEAs by the shipowner during the period of being held hostage before the amendments of 2018. The existence of an effective labor relationship between the shipowner and the seafarer is a prerequisite for the shipowner to pay wages when pirates hold seafarers as hostages.

The rights to terminate SEAs are the result of the combination of employers' business freedoms and employees' rights for survival. The current trend in comparative law is to broaden the

scope of the unilateral termination of a contract, which allows either party to terminate a contract where there has been a material breach by the other contracting party. This solution helps to decongest the administration of justice. Many domestic laws expressly stipulate the conditions for the termination of SEAs, including the unilateral termination of SEAs by the ship-owner.

For example, Article 40 of the Japanese Seaman Law stipulates the termination conditions of SEAs by shipowners, inclusive of the circumstances in which the seafarer is incompetent due to injury or illness, is negligent or grossly negligent in his or her duties, and in other circumstances, such as where the crew scorns the position or the position is significant at the time of negligence, or the crew does not board the ship within the prescribed time of the master, or the crew disturbs the order of the ship. Similarly, Article 38 of the Seaman Law of South Korea stipulates that the owner of the ship may terminate the contract under relevant circumstances. Under the Chinese Labor Contract Law, similarly, there are no definite provisions to regulate shipowners' rights to terminate SEAs when seafarers are held captive by pirates. According to Article 39 - 42, an employer may not terminate an employment contract if the employee has been confirmed as having lost or partially lost his or her capacity to work due to an occupational disease contracted or a work-related injury sustained while working with the employer or has contracted an illness or sustained a non-work-related injury and the set period of medical care has not expired.

Judging from the provisions of the above domestic laws, major conditions for shipowner to terminate SEAs are that the seafarers are not qualified for the job due to their negligence, illness, or poor ability. If a shipowner terminates SEAs without a justifiable reason, the shipowner shall pay corresponding compensation. The MLC 2006 Standard A2.5 Art.1(c) stipulates that SEAs can be rescinded when the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances. When a seafarer is held captive by pirates, his or her freedom is restricted and the third party determines his or her incompetence. Under the condition, when there are not definite provisions in the domestic regulations, there may exist different explanations. This may lead to uncertainty in judicial practices and be unfavorable for seafarers when they are pirates' hostages.

The amendments of 2018 created a new paragraph in Standard A2.1- seafarers' employment agreements, as paragraph 7:

Each Member shall require that a seafarer's employment agreement shall continue to have effect while a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, regardless of whether the date fixed for its expiry has passed or either party has given notice to suspend or terminate it.

It is unfavorable for seafarers to entrust shipowners the right to terminate SEAs when they are held hostages by pirates. The amendments of 2018 Standard A2.1 Art.7, which stipulates from the point of the seafarers' interests, expressly precludes the shipowner's right to terminate the SEAs. This kind of provision in the amendments of 2018 is not the first regulation. For example, if seafarers are held captive by piracy and are subsequently dismissed by their employers, the court will determine that the dismissal is unfair according to Norwegian legislation (ILO, 2016).

The legislative reform according to the amendments of 2018 to ensure the payment of captive seafarers' wages is supported by many states (Staniland, 2013). The Danish government has promised in the meeting of the Special Tripartite Committee that it would pass the relevant laws to stipulate that seafarers who are taken hostage cannot be dismissed during the period of being held hostage. Legislation to protect the continuing payment of captive seafarers has been drafted in Namibia. The Singapore government adopted new regulations in June 2020 to protect captive seafarers' wage payment according to the amendments of 2018 (Chong & Isnin, 2020).

3.2 Clarity regarding the automatic extension of fixed-term SEAs

Fixed-term SEAs should end automatically when they reach the agreed end date, and the shipowner does not have to give any notice to the seafarers unless otherwise provided by law.

According to Art. 44 of the Japanese Seaman Law, fixed-term SEAs should be extended and terminated when one of the following conditions has happened:

The employment agreements are continued during the voyage until the vessel enters the next port and unloads the goods and passengers at the port; or if the owner of the ship cannot replenish accommodations for the crew at the port, the agreements may continue to be valid until the ship reaches the port where the crew can be replenished.

The provision means that SEAs are automatically extended to and terminated at the time of the ship being parked and the goods unloaded, or the passengers landed, or seafarers' accommodations can be replenished at the port.

Similarly, according to Art. 35 of the South Korean Seaman Law, if the expiration date of the SEAs is during the voyage, the validity of the agreement is extended until the cargo is completely discharged, or the passengers have all disembarked. When the expiration date of the SEAs comes, and the ship arrives at a port that is not suitable for the crew to get on and off the ship, the duration of the agreement may be extended. If the expiration date of the SEAs is after the arrival of the ship at a port where it is suitable for the crew to disembark and the cargo unloading to be completed, or all passengers to depart, the extension shall not exceed 30 days.

Also, Art. 341 of the Italian Code of Navigation provides that, if the expiration date of SEAs is during the voyage, the agreement may be prolonged as far as the port of the last destination. In Taiwan, Art. 23 of the Seaman Law provides that the expiration time of fixed-term SEAs is during the voyage, they will be terminated after 48 h after the ship arrives at the first port.

According to Art. 38(1)(2) of the Merchant Shipping Act 1995 of the United Kingdom, a seaman's employment agreement is terminated before the date contemplated in the employment agreement under which he is so employed when a United Kingdom ship is wrecked or lost, or sold while outside the United Kingdom, or ceases to be a United Kingdom ship. Under the circumstance of a ship being hijacked by the pirates, the ship usually cannot be considered as wrecked or lost, or as ceasing to be a United Kingdom ship. Although the ship is hijacked and controlled by pirates, the ship usually does not suffer losses or damages physically and is not wrecked or lost. In the *Sivewright v Allen* case, it was held that the loss of a ship did not mean that it was merely captured by the enemy or hijacked by pirates unless physical damage to the ship had happened (Staniland, 2013).

It can be seen that there have not been definite provisions made as to whether a fixed-term contract can be automatically extended during the period of being held hostage, according to the above-mentioned domestic laws. The amendments of 2018 Standard A2.1 Art.7 expressly stipulates that fixed-term SEAs are automatically extended until the seafarers are rescued and duly repatriated or die while being held hostage. The agreement cannot be terminated by shipowners during the seafarers' captive period despite the expiration of the fixed-term SEAs. The amendments of 2018 attempted to resolve the uncertainty of and clarify the grey areas over the expiration of fixed-term SEAs during the period of being held hostage (IMCA, 2018).

3.3 Shipowner's payment obligations for captive seafarers' wages

According to the amendments of 2018, SEAs cannot be terminated during the seafarers' entire captive period, and the shipowner should continue to pay seafarers' wages. The seafarers fail to perform their obligations towards the SEAs under such circumstances, and payment will cause additional losses to shipowners, besides pirates' ransom payments and other sums.

The adoption of Best Management Practice is required as a minimum standard of protection. During the period of transit, high risk area seafarers shall be entitled to compensation amounting to 100 % of their basic wage and a doubled compensation payable in case of death or disability. This entitlement should apply on each day of the vessel's stay in the high risk area.

During the entire period of being held hostage, seafarers cannot be repatriated and cannot find new labor opportunities, which is different from other conditions, such as shipwreck or the ship being lost. Piracy restricts seafarers' freedom. The amendments of 2018 Standard A2.2 Art.7 expressly sets out the obligation of shipowners' wage payments for captive seafarers. This provision makes seafarers' wages unable to be reduced by the occurrence of piracy and makes them not different from remuneration for the normal performance of their labor obligations. The following Chinese arbitration case also supports seafarers' subsidiary wage payments during the whole period of being held hostage. The case was introduced as follows:

On May 21 of 2010, C, as the seafarer, signed the Seafarer Service Contract with T Company, and on May 26, he boarded T Company's "Vessel G". Pirates hijacked the ship on June 28, 2010, as it passed through dangerous waters. The ship was released on November 6, 2010, with the great help of various government departments and enterprises in China. Then C arrived at Port S of Oman and got off the ship on November 7. The ship took 132 days from entering the dangerous waters, being hijacked, and till being released. After all the seafarers returned to Shanghai, T company paid an additional 5 days' wages on board after the intervention of the Shanghai municipal government authorities. The additional 5-day on-board wages includes 3 days of base pay and 2 days of hazard area allowance. C submitted the arbitration request to the Shanghai Branch of the China Maritime Arbitration Commission for personal losses: A. T Company shall pay danger zone allowance \$29,040 according to the standard requested subsidies; B. Request T Company to compensate C for the property loss of RMB 17,226.6, and the accommodation on board and off board of RMB 506, as well as the interests of the above 2 items; C. Require T Company to compensate C's handling costs by 10 % of the winning amount, and the arbitration costs of this case shall be borne by T Company.

The arbitration tribunal held that hourly wages, piece-rate wages, bonuses, allowances, overtime wages, and subsidies paid under special circumstances are all part of the seafarer's wages. The hazardous area subsidies that were required by C were labor remunerations in the sense of the labor law, which are part of the wages and are supplemental to contractual remuneration. It is a legal obligation to pay the labor remunerations in full and on time. An employer shall pay wages according to the agreement of the labor contract. The applicant C was hijacked for 132 days. The applicant entered the country on November 10, 2010, and the contract should have expired on that date. In addition, the arbitration tribunal held that, since the extra 5 days' wages paid by the ship's owner included 2 days of subsidies, the 2 days of subsidies that had already be paid should be deducted from the 132 days, and T Company should give applicant C 130-day subsidies. The arbitration tribunal upheld Applicant C's claim for payment in accordance with the daily allowance stipulated in the labor law.

In the final ruling by the arbitration court, the Shanghai Branch of China Maritime Arbitration Commission held that "the subsidy is a recognized form of remuneration, the shipowner still has obligations to pay such auxiliary wages when seafarers are captive by pirates and the payment obligations should cover the whole captive period until seafarers are rescued and repatriated". In the case, during the period of being held hostage, the seafarers only asked for subsidies and did not ask for basic wages. Therefore, the court ruled that the company should only pay the subsidies without reference to the basic wages. However, it can be inferred that, since the subsidies covered the entire period of the pirates' hijacking, the arbitration tribunal's attitude to the

duration of basic wage payment should also cover the entire period of pirates' hijacking, regardless of the seafarer being on or off the ship. This ruling is inclined to protect seafarers' rights during the period of being held hostage, and confirms the effectiveness of SEAs indirectly during this whole period.

4. Legal analysis of insurances of captive seafarers' wages

The amendments of 2018 expressly set out the obligation of shipowners' wage payments to captive seafarers, which is beneficial for the wage protection of seafarers. In addition, insurance is also important to protect captive seafarers' wages, such as general average insurance and Protection and Indemnity (P&I) insurance (as employer liability insurance in the maritime industry).

4.1 Legal analysis of general average insurance

Whether the wages of seafarers held hostage by pirates can be allowable as extraordinary expenditures of general average depends on the satisfaction of the constitutive requirements. According to the York-Antwerp Rules of 1974, extraordinary expenditures of general average should be constituted by the following necessary conditions: firstly, the ship and goods or other property are involved in the common danger of the common maritime venture; secondly, the general average measures must be intentional and reasonable; thirdly, expenditures should be extraordinary and direct. Seafarers' wages during the period of being held hostage are different from seafarers' wages in a refuge port and cannot be evaluated as extraordinary expenditures of the general average.

During the period of being held hostage, a ship and cargo encounter a common danger, but payments of seafarers' wages are not intentional or extraordinary and, at the same time, the wages are not immediate expenses of the piracy. Therefore, the seafarers' wages during the period of being held hostage cannot be evaluated as an extraordinary expenditure of general average. They may be evaluated as substituted expenditures of general average⁶ in theory, if other special expenses of general average are substituted, such as saved pirates' ransom.

In the case of *Mitsui & Co Ltd & Ors v Beteiligungsgesellschaft LPG Tankerflotte MBH & Co KG & Anor* [2017] UKSC 68 (the *Longchamp* case), the Court of Appeal of the United Kingdom overruled the judgment of the High Court of the United Kingdom and determined that ship operating expenses during the whole period of negotiations with pirates could not be evaluated as extraordinary expenditures or substituted expenditures of general average. According to the judgment of the Court of Appeal, saved ransoms are not extraordinary expenditures of general average and, so, the ship's operating expenses during the whole period of negotiation were not substituted expenditures of general average in place of saved ransoms. The ship's operating expenses inclusive of seafarers' wages in the employment agreement during the period of negotiation could not be contributed to amongst the involved beneficiaries. The Court of Appeal of the United Kingdom stated that the payment of operating expenses incurred during the negotiation was not an alternative to the saved ransoms and should not be compensated as general average, according to the York-Antwerp Rules of 1974. Seafarers' wages during the period of being held hostage cannot be contributed to from others involved in the common venture. Then, the UK Supreme Court overruled the judgment of the UK appeal court. The Supreme Court made a judgment on additional expenses under the York-Antwerp Rules of 1974. It was determined in the *Longchamp* case that seafarers' wages, subsidies, and other operating expenses incurred during the period of negotiating a lower ransom could be allowable as substituted expenditures of general average. The UK Supreme Court answered the commercially-important question of whether operating expenses incurred whilst negotiating a lower ransom for the release of a hijacked vessel are allowable as general average, so that they are shared proportionately amongst all involved in the common maritime venture. By majority, the Supreme Court held that operating expenses, inclusive

of seafarers' wages during the period of negotiating a lower ransom, are allowable as general average under Rule F of the York-Antwerp Rules.

Seafarers' wages in the port of refuge can be evaluated as extraordinary expenditures of general average, according to the York-Antwerp Rules, except for the York-Antwerp Rules of 2004. But there is no stipulation in the York-Antwerp Rules on seafarers' wages during the period of being held hostage. In theory, some opinions support that such wages should be evaluated as substituted expenditures of general average and, in the judgment of the UK Supreme Court, the theoretic opinion is supported, but other states may have different judicial practices. Therefore, it is still uncertain whether seafarers' wages during the period of being held hostage can be evaluated as general average.

The shipowner usually disperses risks of general average by commercial insurance. The insurer will compensate for the shipowner's contribution of general average according to the insurance contract. If seafarers' wages during the period of negotiating a lower ransom are evaluated as substituted expenditures of general average, the shipowner may recover it from the insurers. However, general average insurance for wages of seafarers held hostage by pirates is not adequate. Firstly, it is still uncertain whether seafarers' wages in the SEAs during the period of being held hostage are allowable as substituted expenditures of general average. The decision in the Longchamp case is only applicable in the English law, although it may have a referential effect to other states' judicial practices. Secondly, it is commercial insurance, not compulsory insurance, for shipowners, and the shipowner may not insure the contribution of general average. Thirdly, seafarers cannot claim outstanding wages directly against the insurer except for legal special regulations. General average insurance is a powerful weapon for shipowners to disperse risks, but it cannot provide certain, adequate, and fast protection for wages of seafarers held hostage by pirates.

4.2 Legal analysis of other types of insurances

In most countries, seafarers' injuries or losses during the period of being held hostage may be recovered from different domestic insurances. For example, in China, there is social insurance, Protection and Indemnity (P&I) insurance (as an employer liability insurance in the maritime industry), and personal accident insurance. Social insurance, as work-related insurance, is usually a complex social and systematic project (Zhang & Wang, 2012). Employer liability insurance is non-compulsory and supplemental to work-related injury insurance. Personal accident insurance is usually an extra benefit for employees. It provides compensation on death or injury caused by an accident that is not within work-related injury or death and pays fixed compensation for death or disability. In the United Kingdom, the Employer Liability Compulsory Insurance Act of 1972 stipulates that, except for a few organizations (such as government agencies, state-owned enterprises, national medical institutions, etc.), the vast majority of employers must buy employer liability insurance for their employees. In the United States, each state has its own insurance and legal institutions, and the management method is not the same; only 3 states practice a system of social insurance of industrial injury compensation, only 4 states practice a system of social workers' compensation insurance and commercial insurance of industrial injury compensation system, and a total of 43 states have an employer liability without fault of the commercial insurance of industrial injury compensation system. Although there is no unified industrial injury compensation system in the United States, its social insurance and commercial insurance enable different organizations to undertake different compensation functions, which constitute the framework of the American occupational injury compensation system. However, none of these forms of insurance covers pure wage loss of seafarers held hostage by pirates without their injury, illness, or death.

P&I insurance for shipowners is commonly used to cover the third-party liability of those shipowners (WOE, 2019). Typical P&I policies cover illness, injury, and death of the crew, passengers, and other third parties on board. Work-related injury insurance normally does not indemnify losses of seafarers' wages in SEAs during the period of being held hostage, which

usually can be partially recovered from shipowners' P&I liability insurance. However, a P&I liability insurance clause requires the crew to be personnel employed onboard and serving the insured ship. When seafarers are held captive off the ship and cannot serve the ship anymore, they may be not considered as crew under the P&I insurance terms; then, the relevant insurers may refuse indemnity for their loss, inclusive of wage losses during the period of being held hostage.

The amendments of 2018 Standard A2.1 Art.7 stipulates that seafarers' SEAs continue to be effective during the whole period of being held hostage, no matter whether seafarers are on board or off the ship. Therefore, seafarers can be considered as the crew under the P&I liability insurance clause. However, if seafarers are not injured, ill, or dead during the captivity period, the loss of their wages cannot be recovered from this insurance. This means that the shipowner cannot diversify payment risks on pure wage losses of seafarers held hostage by pirates through the different types of insurances above. Meanwhile, except for work-related injury insurance, the above-mentioned insurances are all not compulsory. Similarly, seafarers cannot claim outstanding wages during the period of being held' hostage directly against these insurers.

5. Other legal analyses of seafarers' wages during the period being held hostage

Although SEAs can be effective during the entire period of being held hostage, according to the amendments of 2018, seafarers have no way to remedy the loss of their pure wages by these insurances. Therefore, we have to conduct other legal analyses, such as the joint and several liability of crewing recruitment agencies.

5.1 Legal analysis of the joint and several liability of crewing recruitment agencies

Seafarers may sign SEAs with recruitment agencies; then, their wages are paid directly by the recruitment agencies. The recruitment agencies should continue to fulfil their payment obligations of seafarers' wages during the entire period of being held hostage according to the amendments of 2018, even if they, as the employing units, do not receive labor compensation from the shipowner. The recruitment agencies now should have joint and several liability with the shipowner for captive seafarers' wages. At the Special Technical Committee (STC) meeting, observers from the Philippine government stated that, according to the terms of joint and several liability of their relevant domestic legislation, seafarers' recruitment agencies should be liable for paying the wages of seafarers held hostage by pirates together with the shipowners.

Although the parties start from different points of interest, joint and several liability for seafarers' recruitment agencies on wage payments with shipowners is better for protecting seafarers' wages during the period of being held hostage. Moreover, the seafarers often work under the laws of a country other than their own; there may be no legislation on the joint and several liability of seafarers' recruitment agencies in the country. Meanwhile, seafarers' recruitment agencies need a legal system to secure and expedite captive seafarers' wage payments and also to diversify the risks of joint and several liability for these payments. However, the amendments of 2018 do not provide any compulsory financial guarantee to achieve these purposes. Seafarers' wages during the period of being held hostage cannot be adequately protected, even if there is joint and several liability between shipowners and recruitment agencies, once these parties all refuse or delay payment, or cannot afford to pay.

5.2 Legal analysis of financial guarantees for captive seafarers' wages

The amendments of 2014 to the MLC 2006, which entered into force in 2017, require that a certificate or other documentary evidence of financial security has to be issued by the financial security provider of the shipowner. The shipowner is required to have compulsory financial guarantees to cover the abandonment of seafarers, as well as for claims for death or long-term disability due to occupational injury, illness, and hazard. This kind of compulsory financial

guarantee can give stronger security and expedite the resolution of outstanding claims (inclusive of outstanding wages of not more than 4 months) of abandoned seafarers.

However, when seafarers are held hostage by pirates, whether or not they meet the definition of abandonment is debatable. Seafarers may not claim wages during the period of being held hostage from compulsory financial guarantees on abandoned seafarers under the amendments of 2014. Moreover, the period of being held hostage is usually more than 4 months. The financial guarantee stipulated in the amendments of 2014 provides a wages guarantee for no more than 4 months once seafarers are abandoned. It usually cannot cover seafarers' wages during the whole period of being held hostage. The compulsory financial security in the amendments of 2014 for the death or long-term disability of seafarers due to occupational injury, illness, or hazard is usually in the form of work-related injury insurance. According to the previous analysis, work-related injury insurance does not cover seafarers' wages. Therefore, seafarers' wages during the period of being held hostage cannot be recovered from this financial security, even if SEAs are still effective, and seafarers are dead or are injured by piracy.

The amendments of 2018 Standard A2.1 Art.7 stipulates continuous validity of SEAs during the period of being held hostage and precludes the termination right of SEAs by shipowners. The shipowners should continue to pay seafarers' wages during the whole period of being held hostage, but seafarers' wages cannot be recovered wholly, or even partly, from compulsory financial guarantees in the amendments of 2014. The financial guarantee is a kind of expeditious and effective legal system to protect the adequate and fast realization of the wage rights of seafarers held hostage by pirates. The financial guarantee is a kind of legal system to guarantee the realization of creditor's rights by guaranteeing the payment of debts with financial credit. As an important means of diversifying risks, the positive roles of compulsory financial guarantees to secure and expedite the payment of seafarers' wages during the period being held hostage should be affirmed legally. This kind of compulsory financial guarantee can give stronger security and expedite the resolution of outstanding claims (inclusive of outstanding wages of no more than 4 months) of abandoned seafarers. The financial guarantors can also provide rapid and powerful help at the same time.

6. Conclusions

This article has discussed the protection of wages provided for seafarers who are unfortunately held hostage by pirates. Through legal analyses, we know that captive seafarers' pure wage losses cannot be covered by compulsory financial guarantees in the amendments of 2014 and other insurances unless they can be allowable as general average that may be covered by commercial insurance. Although there may be joint and several liability for captive seafarers' wages for recruitment agencies and shipowners, they need financial guarantee systems to deal with such risks. It is greatly regretful that the amendments of 2018 did not stipulate compulsory financial guarantees on seafarers' wages during the period of being held hostage.

There are various obstacles in the current legal framework for seafarers to realize their outstanding wages during the period being held hostage. The financial security shall be determined by the member states in the form of liability insurance or national funds. Liability insurance is a better choice for member states. The outstanding wages of seafarers held hostage by pirates covered by the financial security system should be limited to no less than 12 months. The system should also provide direct access for seafarers to claim outstanding wages against the providers of financial security directly, like the provisions in the amendments of 2014, which is more helpful for seafarers to claim wages expeditiously and effectively.

Notes

1. Privateer means a ship owned and manned privately but is authorized by a government to attack and capture enemy vessels during wartime, which is a species of legalized piracy.
2. Article 88 to 115 of the UNCLOS and other pertinent rules of international law apply to exclusive economic zones in so far as they are not incompatible with the provision of UNCLOS relating to exclusive economic zones. See Art. 58(2) of the UNCLOS.
3. Under the rules of the international law of the sea, internal waters, archipelagic waters, and the territorial sea all fall under the sovereignty of coastal states.
4. The international force patrolling the Gulf of Aden is authorized to enter the territorial waters of Somalia for the purpose of repressing acts of piracy, which essentially authorizes the use of foreign military forces in Somali territorial waters, under the explicit consent of Somalia's nominal transition government. See SC Res. 1816, 2 June 2008.
5. Basic wages mean the pay, however composed, for normal hours of work. It does not include payments for overtime work, bonuses, allowances, paid leave, or any other additional remuneration. See the Guideline B2.2.1 (b) of the MLC2006.
6. Substituted expenses of general average mean additional expenses of taking alternative measures in order to save expenses which should have been paid and could have been included in extraordinary expenditures of general average, mainly inclusive of provisional repair cost of ships, lighterage charges, and overtime pay.

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