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Africa Programme Discussion Document

Coordinating an International Approach to the Payment of Ransoms:

Avoidance of and Alternatives to Ransom Payments

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Introduction

This paper is the second in three documents intended to stimulate discussion among governments seeking to better coordinate their positions on the payment of ransoms in cases of maritime piracy¹ emanating from Somalia.

These documents should not be considered as endorsements of the methods analysed, but tools for policymakers to more fully consider the likely effectiveness of such measures and to be cognisant of their possible outcomes.

This paper will set out a number of potential options for avoiding ransom payments, and will assess a selection of alternatives to ransom payments.

Avoiding Ransom Payments

Defining 'avoidance'

Piracy off the coast of Somalia remains a criminal activity embarked on for financial gain. Once a vessel is hijacked its owners will face demands for money in exchange for the freedom of the cargo and crew. Therefore in order to avoid being met with a ransom demand, methods to avoid being pirated must be employed. Here, consideration of avoidance will focus on methods currently used to avoid hijack.

Best Management Practices

Best Management Practices (BMP) formulated by the International Chamber of Shipping (ICS) and the International Shipping Federation (ISF) in coordination with other shipping industry organisations and navies are designed to provide commercial shipping companies and private individuals with guidance on how to avoid hijack.

The most recent version of BMP sets out how vessels transiting the high risk area (HRA) of the Gulf of Aden and the Indian Ocean can avoid hijack by introducing self-protection measures. Advice includes reporting to the UK's Maritime Trade Organisation in Dubai and EU NAVFOR's Maritime Security Centre of the Horn of Africa, avoiding detection by staying up-to-date with reports of pirate locations and increasing vigilance whilst in the high risk area. Ship operators are also advised to use ship protection measures such as razor wire, foam or high-pressure water sprays and citadels to decrease a vessel's vulnerability, and to avoid being boarded by increasing to maximum speed and manoeuvring the vessel.

It is estimated that ships which have implemented BMP are four times less likely to be hijacked than those which are unprotected. Many of the measures included in BMP guidelines involve

¹ Throughout this paper series, the term 'piracy' refers to the definition as specified by the United Nations Convention on the Law of the Sea (UNCLOS), but should also be taken to encompass acts of armed robbery at sea. Ransom payments for vessels captured by Somali pirates are the specific subject of this discussion.

changes of behaviour, not increased expenditure. This means that smaller ship-owners from less developed countries can go some way to strengthen their defences against pirates without significant costs.

Private Maritime Security Companies

The continued risk of hijacking in the Indian Ocean has inspired rapid growth in the number of companies offering private armed security personnel for commercial vessels travelling through the region. Conservative estimates state that 40% of journeys through the Indian Ocean are made by vessels with an armed security presence.

Internationally, governments do not share a position on whether vessels travelling under their flag are permitted to employ armed guards. States which actively prohibit the use of private maritime security are in the minority, and the existence of this prohibition does not necessarily indicate a state's willingness to take action against a ship-owner in breach of it. Maritime bodies including the International Maritime Organisation have maintained that flag states must decide whether armed guards are to be permitted on commercial vessels, but many governments have no stance on the issue at all.

Although there are documents which make recommendations on the conduct of private maritime security companies, including the Montreux Document on private military and security companies drafted by the Swiss government and the International Red Cross, the International Code of Conduct for Private Security Providers and interim guidance provided by the Maritime Security Committee of the International Maritime Organisation, none are legally binding.

The lack of a universal set of standards for the private maritime security sector has meant that efforts at self-regulation, such as the establishment of maritime security accreditation bodies, have not eliminated concerns about the standard of training, legality of weapons, and rules of engagement for armed security personnel.

Lack of government-led regulation has also meant that the maritime security sector has been permitted to grow unchecked into new areas. For example, the differing positions of the littoral states of the Indian Ocean on whether private weaponry is allowed on shore or within territorial waters has led to the deployment of a number of floating armouries. The UN estimates that there are eighteen floating armouries in the Red Sea, the Mozambique Channel and the Gulf of Oman, and has expressed concern that the lack of oversight over their operators poses significant safety risks.

Armed security presence has been introduced into commercial shipping with trepidation, as some ship-owners feel compelled to pay for security personnel in order to reduce their chance of being pirated. There remain concerns within the industry that governments will see benefits in institutionalising armed guards in a bid to make commercial ship-owners financially responsible for their own security. Estimates place the cost of engaging a four-man team for a journey from Asia to Europe through the Gulf of Aden at US\$50,000.

Some commentators have expressed concern that there could be an overreliance on armed guards. The commonly cited statement that no ship with armed maritime security presence on board has been successfully pirated may lead some to develop a false sense of security, and begin to take greater risks. For example, there are cases where a charterer has instructed the master of a vessel with armed guards on board to slow down when transiting the HRA of the Indian Ocean. Although this goes against BMP recommendations, the slower speed reduces fuel costs, and it has been assumed that the armed guards can deal with any attempted hijack.

As more commercial vessels are deployed with armed presence, pirates may shift their focus to attacking the less well-protected ships in the Indian Ocean which trade locally between ports in the region. This could impact on domestic markets and cause supply issues on-land for some East African states.

Re-Routing

Although the definition varies over time and for different shipping bodies and naval presences in the region, typically the area designated as a piracy high risk zone encompasses the Gulf of Aden and the western Indian Ocean, 400 nautical miles off Somalia's coast. The rest of the Indian Ocean, stretching from India's coastline, including the Arabian Sea and the territorial waters of Kenya and Tanzania is also considered to be of significant, but slightly less, risk.

Re-routing a vessel can be a safer, but more expensive, option for commercial vessels. The decision to re-route is taken by ship-owners or requested by charterers. When travelling between Asia and Europe, instead of taking the optimum route through the Indian Ocean, along the east coast of Africa and via the Suez Canal, some vessels reach Suez by travelling along India's western coastline and through the northern Arabian Sea. This adds a day, on average, to the transit time. Although rarer, vessels have bypassed the Suez Canal entirely by transiting the Cape of Good Hope in a bid to lessen the risk of pirate attack. There are also ship-owners who now avoid the HRA entirely because the risk of piracy is perceived to be too high.

Factors Affecting the Decision to Re-Route

Depending on the type of vessel and cargo, the decision to re-route is balanced between a careful analysis of risk and cost. For example, when major oil shipments are being made commercial factors predominate, and so the costs of increased fuel consumption and the potential for higher insurance premiums² associated with a longer transit time are primary concerns. The opportunity cost of taking longer for each transit would also be considered.

² Insurance captured costs could be higher if a vessel takes longer to reach its destination, as the risk exposures are higher for underwriters. Additional Premiums (APs) (where applied) are calculated on an individual voyage basis and take the specific vessel circumstances into account. Re-routing away from the Gulf of Aden may reduce such APs as are charged by the hull war market.

However for large shipping companies, ensuring the safety of their vessels and crew is not just a matter of moral responsibility, important though this may be. It is also a significant factor in remaining competitive, as a shipping company which gains a bad reputation among seafarers may struggle to raise sufficiently skilled crew.

The willingness of seafarers to travel through the high risk zone could affect the decision to re-route. There are reported cases of crews refusing to work on ships which are not protected by private maritime security personnel, and it is plausible that an increase in the perceived risk of hijack, of violence committed against hostages or of duration of kidnap when travelling through the Indian Ocean could result in some seafarers declining to work on vessels which traverse an area which they perceive to be too dangerous. This concern was raised by Efthimios Mitropoulos, a former Secretary-General of the International Maritime Organisation (IMO), who described a scenario where seafarers refuse to transit the Indian Ocean as one of the worst potential consequences of Somali piracy.

Potential Consequences of Re-Routing

The states of East Africa would suffer significant economic impacts if commercial activity to, from and along Africa's eastern coast slows. Income from tourism for Tanzania, Kenya and Seychelles in particular has been affected as cruise ships are re-routed. Between 2008 and 2012, the number of cruise ships docking at Kenyan ports fell from 35 to zero.

The port at Mombasa in Kenya links landlocked countries in the region – including South Sudan, the Democratic Republic of Congo, Uganda, Burundi and Rwanda – to the rest of the world. The independence of South Sudan and increased consumption rates linked to better incomes through the rest of East Africa helped Mombasa port to increase its container traffic by almost a quarter in 2012, however piracy remains a considerable threat to the sustainability of such growth. According to 2011 UNCTAD estimates, the costs of imports to Kenya could increase by US\$23.9 million per month, with the cost of exports rising by US\$9.8 million per month because of the impact of piracy on supply chains. The Kenyan government is aiming to make Mombasa one of the world's top twenty ports, and has made efforts to solve the port's congestion problems with US\$59 million invested in increased capacity, and the installation of a US\$21 million security system part-funded by the World Bank. The effectiveness of such efforts could be undermined if a significant proportion of commercial vessels begin to bypass East Africa's coast completely.

Infrastructure development is also a key aim for East Africa, but the attractiveness of investment in projects such as the Lamu Port and Lamu Southern Sudan-Ethiopia Transport Corridor project (LAPSSET), which would help South Sudan export oil from Lamu port in Kenya, could be adversely impacted if commercial activity to Africa's east coast declines.

Economic consequences would also be severe for Egypt if Suez Canal transits reduce significantly. Revenue from the Canal constitutes 1% of Egypt's GDP each year, and as Suez generated US\$5.2

billion in revenue was generated in 2011, significant sums could be lost if transits reduce dramatically.

At the moment, ship-owners and charterers are covering the cost of re-routing, but prices could be transferred to consumers of the goods being freighted if the trend for avoiding the HRA rises. According to UNCTAD, on average less than 6% of the shelf price of goods is due to freight costs, but if transits begin to take longer and become more expensive, these costs could be passed onto consumers, raising the price of goods.

It is necessary to also note the high adaptability of pirates. Re-routing of vessels means that the risk of hijack is lessened, but it cannot be completely eliminated as the entire Indian Ocean is considered to be within pirates' area of operation. It is plausible that if a significant proportion of vessels are re-routed, pirates could follow this trend and begin to concentrate their efforts on the new shipping routes. Even if this does not transpire, the political implications of surrendering the Indian Ocean to pirates and allowing them to act with impunity calls into question the international community's commitment to the freedom of the seas and willingness to protect commerce. This could also set a precedent for other groups, who see that maritime criminality can go unpunished.

The combined success of the presence of armed private security personnel on commercial vessels, the work of naval missions in the Gulf of Aden and the Indian Ocean and the implementation of the BMPs has caused the rate of hijacking to fall and so re-routing is currently less economically attractive.

There are few novel ideas for methods to avoid being met with ransom payments. Self-protection measures as embodied and regularly updated in BMP guidelines, the employment of armed guards and the re-routing of vessels all limit the chance of being hijacked.

Alternative Options

Non-Traditional Negotiation Methods

A representative deemed to hold weight with the pirates, such as an imam or community elder, could negotiate on the behalf of families of captured seafarers or their employers to convince hostage-takers to release the captured vessel and crew. Such intervention could persuade pirates to release hostages more quickly, or for less ransom money than originally demanded.

The involvement of a British Somali, Dahir Abdullahi Kadiye, in the freeing of Rachel and Paul Chandler, a British couple taken hostage in 2009, offers a useful example of both the positive effects and the limitations of the involvement of the Somali diaspora in retrieving hostages. Kadiye was reported to have led a group of community elders to secure the Chandlers, but the primary negotiation role was played by experienced legal negotiators and a ransom was still paid for the couple's freedom.

It is also important to note that the Chandlers were holidaymakers, and not crew of a commercial vessel. In a situation where a merchant vessel is captured with potentially valuable cargo and seafarers, the influence wielded by community representatives will be lessened.

Limitations of Non-Traditional Negotiation

The example of the Youth at Risk Initiative, an on-land counter-piracy programme run by the UN Development Programme, the International Labour Organisation and UNICEF, shows that community representatives could play a positive influential role at the lower ranks of pirate networks. The initiative involves mentoring by community elders, and has led a number of pirate 'foot soldiers' to renounce piracy, start businesses and reintegrate into society.

However, pirate bosses with experience of negotiating for large ransoms, and who may enjoy political protection within Somalia, are unlikely to be influenced by diaspora members concerned with the community and reputational damage which piracy does to Somalia. A recent report by the UN Monitoring Group on Somalia and Eritrea demonstrated the impunity with which such pirate leaders can act, in detailing the close links between Somalia's Transitional Federal Government (TFG) and a pirate leader known as Afweyne who was granted a TFG diplomatic passport endorsed by Somalia's President.

Attempts to retrieve a vessel through negotiation, but without payment, are most likely to be successful if a vessel is captured whilst trading into Somalia, if its cargo contains livestock, or is of a relatively low value. In such situations, businessmen within Somalia with an interest in a vessel's goods can apply direct pressure to pirates to secure its release.

Naval or Military Intervention

This method would involve the extraction of hostages and freeing of vessels from pirates' control through the use of force deployed by one of the missions patrolling the HRA. Naval interception is most likely to be successful if it occurs soon after a hijacking, as captured vessels are being transported to Somalia's coast. Depending on where the hijack has occurred, there is often only a small window of opportunity for intervention, meaning the decision to take such action must be made quickly. For naval ships in the region as part of multilateral missions, such as NATO's Operation Ocean Shield or the EU's Operation Atalanta, swift action would be hampered by the need for political consensus amongst member states backing such intervention.

Even in a situation where the hijacked vessel and the majority of its crew hail from the same state proposing naval intervention, political considerations behind the decision to intervene would still be complex. Past examples of attempted naval rescue demonstrate the difficulty of conducting such operations without posing significant risk to lives of hostages or subjecting a vessel and its cargo to extensive damage. The financial cost of such intervention may also be a restraining factor.

Some commentators predict that pirates will increasingly conduct kidnappings on land, as counter-piracy measures enacted by naval missions and the shipping industry in the Gulf of Aden and the Indian Ocean make it more difficult to successfully hijack at sea. If there is an observable rise in on-land kidnappings, the option of deploying military forces to free hostages may be considered more frequently by governments.

Limitations of Naval or Military Intervention

Policymakers express serious concerns about whether naval intervention places hostages at too great a risk. Estimates place the chance of a successful military intervention to free the hostages of pirates at 50%. A Drum Cussac report on Danish naval intervention to free the *Jelbut 37* in February 2012, during which two hostages were killed by friendly fire, noted that, 'the incident highlights the inherent complexity and risk associated with proactive counter piracy operations conducted by naval forces'. The shipping industry is divided on the issue. While some argue that the swift payment of ransoms is the safest method to ensure the release of hostages unharmed, others appreciate that military intervention holds inherent risks, but maintain that it is a government's responsibility to ensure that its citizens are not subject to criminality using force if necessary.

An unintended consequence of more robust action by naval missions may be a corresponding increase in the violence used by pirates against hostages, and in their use of heavy weaponry. Examples where pirates have killed hostages during naval intervention, such as during the attempted freeing of four American hostages in the *Quest* case in February 2011, could indicate this.

Few governments independently possess the military capacity necessary to launch an intervention to free hostages held overseas, and this would factor considerably into the amount of political will which governments have for naval intervention. Past incidences where a hijacked vessel was known to have sensitive or very valuable cargo, or when the flag-state of a hijacked vessel had strong naval presence in the vicinity, have not proved strong enough incentives to warrant naval action.

Government-endorsed intervention after hijack may be seen by policymakers as requiring too great an effort to gain consensus among the states affected, and to ensure that current rules of engagement are not violated by the navy in question. Intervention by militaries once a vessel has reached Somalia's shore or hostages are taken on-land would require the endorsement of Somali authorities, may risk violation of the UN arms embargo on Somalia and the lives of innocent Somali citizens, meaning that such operations would only occur in extraordinary circumstances. The proactive naval attacks on pirate mother ships which currently occur, where navies destroy pirate paraphernalia and warn merchant vessels of the location of said suspicious vessels are both politically easy to endorse and reduce the danger of damage to cargo or the death of innocent seafarers. Policymakers could consider prosecuting more cases involving allegations of conspiracy

to commit piracy. This would encourage navies to take stronger and more consistent action against mother ships.

Intervention by a Private Security Company

This method would involve the employment of a private security company to free captured hostages and vessels. Although such action is unprecedented, the UN has reported of an incident where a private maritime security company offered to rescue a hijacked crew and vessel from Somalia using force if paid US\$1.5 million in cash. This demonstrates the plausibility of some companies currently providing maritime security seeking to expand their action in this way.

Intervention would result in legal and contractual complexities. Whereas navies have permission to act within Somalia's territorial waters to take 'all necessary means to repress acts of piracy and armed robbery at sea', as embodied in UN Security Council Resolution 1846, a private security firm would risk violating the UN arms embargo set in place in 1992 as a result of Security Council Resolution 733. Unlike a navy with existing presence in the Indian Ocean, a private company would not have the capability to act speedily to free hostages. Finding a willing port in one of Somalia's neighbouring states from which to launch would prove difficult for a private firm as the Indian Ocean's littoral states differ on whether they allow private companies to bring arms onshore. Such considerations could make the overall cost of an operation much higher than simply paying the ransom.

There would also be a question of when those employing a private security firm would cease to be responsible for the firm's actions. Such issues could arise if injury or death occurs during the rescue. Insurers will differ in their views, but any commercial risk appetite for such action would only be seen if intervention by a private firm is proved to be legal. Establishing legality in all of the jurisdictions that would be affected by private intervention would not be guaranteed in every case, and could take too much time to make this option viable.

Prisoner Exchange

Following a hijack, negotiations could be focused on establishing a deal to exchange those taken hostage for pirates imprisoned in Somalia or in one of the twenty other countries currently detaining suspects. The introduction of a prisoner exchange method as an alternative to the payment of a cash ransom could mitigate concerns about the pattern of 'catch and release' of pirates apprehended by navies patrolling the Indian Ocean. In an exchange scenario the release of those alleged to have engaged in piracy would be of some benefit to captured seafarers.

Israel's long experience of exchanging prisoners for its captured citizens could be instructive for policymakers wishing to explore this option in cases of Somali piracy. Prisoner exchanges involving Israelis are the result of political negotiations. For example, in 2011 negotiations between the Israeli government and Hamas resulted in the release of Gilad Shalit, an Israeli soldier who had been held hostage for five years. Shalit was exchanged for 1027 Palestinian prisoners. This

exchange was contested in Israel's High Court of Justice, but the challenge was rejected as the Judge ruled that it was not for the judiciary to interfere with what it deemed to be a political decision based on the Israeli government's need to carefully consider security, ethical and moral issues.

As the decision to release convicted pirates would ultimately be a political one, a prisoner exchange system would require significant increase in the level of involvement of governments when their citizens, or vessels flying under their flag, are taken by pirates. Situations where the flag state or the country from which the vessels' crew hail do not have any pirate prisoners to exchange could prove politically difficult, and would require persuading other governments who have prosecuted and imprisoned pirates to find space within their own domestic legislation to justify the pirates' release.

Cases of prisoner exchange from the western Sahel are instructive for this scenario. European citizens taken hostage by Al Qaeda in the Islamic Maghreb (AQIM) have reportedly been released after authorities in Mali, Mauritania and Niger met kidnappers' demands to free AQIM members held in their prisons³. Some of these exchanges have been viewed unfavourably by neighbouring states in the region.

Limitations of prisoner exchange

Past examples indicate that a prisoner exchange process is unlikely to be popular with Somali authorities. In September 2009, three Seychellois sailors who had recently been released from the captivity of pirates were detained by Puntland's authorities. It was alleged that the sailors had been freed in exchange for the release and repatriation of 23 pirates imprisoned in Seychelles, and that this deal had been arranged without the knowledge of Puntland's government. This case demonstrates that widespread buy-in amongst states and an understanding of the possible effect which the release of convicted pirates could have within Somalia would be necessary for prisoner exchange to work.

There is also a danger of escalation in the demands of pirates. In Israel, exchanges at first happened on a 'one for one' basis. However the Shalit case raised questions among some commentators about whether the state's commitment to maintaining the safety of its citizens had been sufficiently weighed against the potential negative impacts of a large-scale release of prisoners. Israel's Defence Minister acknowledged that the policy had placed Israel on 'a slippery slope' and launched an inquiry into the country's prisoner exchange policy in response to these concerns.

In piracy cases, if a precedent of prisoner exchange is established, politicians and the shipping industry could face pressure from the families of seafarers to use this method, making it difficult to make politically expedient decisions based on considerations of long-term security to keep senior

³ For example, prisoner exchange is alleged in the cases of Austrian citizens Wolfgang Ebner and Andrea Kloiber, kidnapped in Tunisia in February 2008; French citizen Pierre Camatte, kidnapped in Mali in November 2009; Spanish and Italian citizens Enric Gonyalons, Ainhoa Fernandez and Rossella Urru, kidnapped in October 2011, among others.

and influential pirates incarcerated. Conversely, prisoner exchanges could be met with opposition from families of those who have been killed or injured by incarcerated pirates. Policymakers would have to consider how palatable it would be to face bereaved families aiming to block the release of imprisoned pirates in court.

The exchange of hostages for those accused of piracy could also harm efforts at deterrence. Further hijack could be incentivised as pirates wishing to secure the release of their comrades could begin to target specific vessels or subject crewmembers of certain nationalities to particular abuse in an effort to goad a country to release certain prisoners. Incidences such as the retention of South Korean crewmembers following the release of the *Gemini* tanker, and of Indian crew after the *Asphalt Venture* was released in 2011 show that some pirate networks have already used this tactic.

Israel has made exchanges where living prisoners have been released for the return of the bodies of Israelis killed by hostage-takers. If prisoner exchange in a Somali piracy context escalated to a similar situation, pirates would have less incentive to offer basic care to hostages.

A significant limiting factor, which differentiates potential prisoner exchange in a Somali context from other examples, is the involvement of cargo. In making ransom demands in the millions of dollars, pirates are demonstrating their understanding of the worth of the cargo being transported on commercial vessels. While an exchange of prisoners could secure the freedom of a vessel's crew, it does not sufficiently address how to secure the release of valuable cargo.

Conclusion

Any attempt to test alternative options to ransom payments would depend on close collaboration between the shipping industry and policymakers. In cases of kidnapped holidaymakers, or aid workers and journalists taken hostage on-land, the potential for success in utilising alternative methods to ransoms may be greater than for commercial vessels. None of the methods suggested here are without risk, but their effectiveness could be enhanced if they are introduced within a framework of counter-piracy measures which carefully balances methods for short-term, temporary success against pirates, such as naval patrols, and long-term disruption of the pirate business model, such as tracing pirates' financial flows.

An assessment of the viability of alternative methods for the extraction of hostages must also take into account those seafarers who have been held by pirates after negotiations have broken down. Policymakers must seriously consider how freedom can be obtained for those with little chance that a ransom will be paid for their release, many of whom have been held by pirates for far longer than the average eight months.