Discussion Document

Co-ordinating an International Approach to the Payment of Ransoms: Policy Options for Reducing Ransom Payments

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INTRODUCTION

This is the final paper in a series of discussion documents produced to stimulate debate among governments seeking to better coordinate their positions on the payment of ransoms in cases of maritime piracy\(^1\) 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 potential measures and to be cognisant of their possible outcomes.

This paper will set out a number of potential methods for reducing ransom payments. Ways to reduce both the amount paid in ransoms and the frequency of ransom payments will be discussed.

BACKGROUND

Attempts to identify methods to limit the amount paid out in ransoms are based on the belief that the financial reward that pirates garner from hijacking vessels and kidnapping seafarers can be reduced, thereby starving the pirate business model of cash, dissuading new recruits from embarking on piratical activity and convincing those already involved that the potential gains are not worth the risks involved.

While setting out methods that could be introduced to achieve this, this paper will also highlight the importance of understanding that a reduction in the financial reward available to pirates does not necessarily equate to a reduction in the physical cash which they receive in ransom. The inherent limitations in assumptions of how pirates will react to the introduction of new measures will also be noted.

\(^1\) 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.
POLICY OPTIONS TO REDUCE RANSOM PAYMENTS

Capping Individual Ransom Payments

Governments seeking to reduce the amount that is paid in ransoms in cases where private individuals or companies are faced with demands from pirates operating off the coast of Somalia could introduce legal measures setting a limit on the amount that can be paid to secure the release of captured vessels, crew or cargo.

Such a decision would be based on the hypothesis that after a number of negotiations had been made with the ransom cap in place, pirates would begin to realise that the potential economic gains of hijacking are limited, and that ransom payments can no longer reach the heights of previous years. This might cause a fall in attacks on ships, as those engaging in piracy decide that the potential financial gain is outweighed by the risk involved.

A state wishing to unilaterally introduce a cap could design legislation to prevent private individuals or companies based within that state’s jurisdiction from paying more than a specified amount in ransom to pirates. Penalties could be applied to those who have sanctioned payment, or against a financial institution that releases funds in excess of the ransom cap with the knowledge that it is going to pirates in Somalia.

The drafting of such legislation would be practically challenging. It would have to be rigorous enough to make clear the line between a legal and illegal ransom payment. There would need to be careful consideration of cases where payment has been made to pirates but termed as ‘expenses’, as in the recent release of Pakistani hostages held on the MV Albedo. Legislation would also face challenges because of its novel approach. Caps introduced by governments are most commonly used to limit the amount of money that a government body pays out, and are not introduced to monitor the private exchange of money. Oversight of such legislation would likely be implemented by the state’s agency responsible for dealing with serious and organised crime, which would need to be sufficiently equipped to deal with questions about and challenges to the legislation.

In situations where holidaymakers have been held by pirates, measures similar to those taken by states where ransom payments have been prohibited by law, such as freezing the assets of hostages’ families, could be taken to prevent them from exceeding the cap.

The nature of the cap would also have to be considered carefully by policymakers. There are a number of factors on which the decision of how much ransoms should be capped at could be based. Policymakers could decide to impose an absolute upper limit in the amount that could be paid in ransom for any hostage, vessel and/or cargo. A cap could be calculated in each individual case based on a percentage of the perceived monetary value of the vessel, cargo and crew. A sliding scale of caps could be introduced depending on the type of vessel in question, or the type of cargo it carries. Different caps could also be introduced depending on whether the hijacked vessel is commercial or private.
Limitations of a Cap on Ransom Payments

The great scale and complexity that would be involved in drafting, legislating and implementing a cap on ransom payments specifically targeting cases of Somali piracy is likely to make this option unattractive to governments. Objections might arise as placing a limit on the amount paid in ransom could imply that the lives of captured crew had a monetary value – an issue avoided when ransoms are paid as they are made in order to secure the release of the cargo, vessel and crew collectively. A hijacked vessel carrying multiple cargoes could also complicate the process of setting a cap based on cargo value.

An obvious limitation to the unilateral imposition of a cap by a government is the highly multi-jurisdictional nature of shipping and of banking. If it became more difficult to pay the total demanded by pirates in ransom from one state, a multinational company could process the payment in another jurisdiction. A lack of multilateral agreement over the idea of introducing a ransom cap could also have the unintended consequence of reinforcing pirates’ assumption that some nationalities make more valuable hostages, as higher ransoms can be received if they hail from states with no cap. The unilateral introduction of a cap could therefore inadvertently lead to the further abuse or neglect of hostages hailing from that state, and a longer duration of kidnap, as pirates increase the pressure in a bid to obtain a ransom higher than the cap allows.

Policymakers would have to consider the penalties that a government would be willing to impose if a cap were exceeded, including a serious assessment of the willingness of the judiciary to prosecute those who are essentially victims of pirates’ extortion. Legal challenges to a ransom cap, based on a citizen’s right to life and freedom from torture could also be made.

Any attempt to penalise banks for releasing excess funds in order to allow ransom payments would have to provide conclusive proof that the financial institution was aware of the intended use of those funds. The cost of associated services of securing the release of those hijacked – including payments for lawyers, professional negotiators and for the security team making the physical delivery of a ransom, means that banks do not necessarily know what proportion of funds requested in the wake of a hijack will go directly to pirates.

Most significantly, there is no guarantee that pirates will respond to the introduction of a cap on ransoms by reducing their attempted hijacks. Recent experience indicates that a more likely response could be a longer duration of kidnap and abuse of hostages in order to coerce ship-owners or families into meeting ransom demands.
Ransom Payments Matched Funding: Supporting On-Land Initiatives

The need to balance naval counter-piracy efforts and the avoidance tactics employed by the shipping industry with long-term on-land initiatives to combat piracy is commonly accepted. International initiatives such as the Counter-Piracy Programme of the UN Office on Drugs and Crime (UNODC) and Norwegian Church Aid’s Alternative Livelihoods to Piracy project operate primarily in Puntland, Galmudug and northern Somalia with the aim of increasing deterrence, strengthening local judicial capacity and offering opportunities for gainful employment to youth at risk of being drawn into piracy.

A method of matched funding of ransom payments would allow ransoms to be paid to secure the release of hostages and vessels, but a similar or equal amount of money would have to be paid into a fund or existing project in Somalia focused on counter-piracy on land.

The rationale behind such a method is that the prospect of their clients having to pay out twice the amount demanded in ransom could encourage negotiators to place tighter limits on the amount committed to the pirates. There would also be the additional benefit of more financial support for projects which seek to identify and support practical on-land solutions to piracy.

Policymakers could, for example, require commercial companies targeted by ransom demands to make a mandatory matched donation to the Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia. This Fund was set up in 2010 under the mandate of the UN's Contact Group on Piracy off the Coast of Somalia (CGPS), and is managed by the UNODC. Its objectives include the provision of financial support to the littoral states of the Indian Ocean for the prosecution of pirates and activities related to their detention, for legal capacity-building in these states and to enable the implementation of deterrence methods by Somalia’s authorities, including public communication initiatives. Money contributed is channelled to UN organisations only, and some funds have already been spent on counter-piracy measures in Kenya, Somalia and the Seychelles. As the Fund has an existing system in place to accept contributions from the private sector, it could be the best destination for a mandatory counter-piracy donation.

Limitations of Matched Funding

Commercial shipping companies could make a strong argument that improving the economic outlook of Somalia’s coastal communities and providing financial support for the rehabilitation of former pirates is fundamentally the responsibility of politicians, namely Somalia’s authorities and the international community which has committed to aiding Somalia’s development.

The example of Maersk, BP, Shell and Japan Shipping, who in February 2012 announced their joint contribution of $2 million to support community projects in Somalia, might be used to counter the argument that commercial entities do not consider it their responsibility to support on-land initiatives. However some commentators report that problems were encountered in
identifying suitable projects to donate these funds to. The majority of ship-owners who have a vessel taken by pirates have not been the victim of piracy before, and so many will be unfamiliar with the details of the projects in Somalia which are most worthy of support. The lack of financial transparency among some of Somalia's political authorities, and links which the Transitional Federal Government (TFG) is alleged to have maintained with known pirate leaders, as detailed in a recent report of the UN Monitoring Group on Somalia and Eritrea, could make commercial entities nervous as to where the money they are obliged to donate is being spent.

Ship-owners could also begin to insure themselves against the cost of having to make donations to an on-land initiative. This could drive insurance premiums up, potentially pricing out some operators, resulting in more vessels travelling through the high risk zone of the Indian Ocean without sufficient insurance coverage.

It could be argued that introducing a system of mandatory donation to a counter-piracy initiative on land in Somalia actually entrenches the current amount demanded and frequency of ransom payments, as in effect it would increase the reward that could be garnered from a hijack. Such concerns may be lessened if the donation were to go into the Trust Fund, rather than directly to a local project. However, policymakers would have to consult carefully with the UN agencies that currently receive funding from the Trust Fund to ensure that they would be happy to accept money made available to them because of piracy.

Regulation of Ransom Negotiators

The most recent report of the UN Monitoring Group on Somalia and Eritrea highlights concerns that some pirates are now presenting themselves as consultants or expert negotiators in order to continue profiting from piracy as actual hijacking becomes more difficult due to international counter-piracy measures. Experienced negotiators report that they are sometimes bombarded with proposals from members of the Somali diaspora offering to mediate. Policymakers could institute a regulatory framework for ransom negotiators in cases of Somali piracy, meaning that once a vessel is hijacked, a shipping company or the families of holidaymakers could only use the services of an authorised negotiator to obtain the freedom of the crew, cargo and vessel.

Individual states could implement independent guidelines and legislation, similar to that worked out between the shipping industry, private security companies and government representatives to regulate private maritime security companies offering armed guards aboard ships.

If regulation is deemed too difficult to implement, lessons could be learned from ongoing efforts at the International Maritime Organisation (IMO) to establish an internationally recognised set of standards for armed maritime security guards. The IMO aims to establish a universal standard in recognition of the rapid growth in the number of companies offering
armed protection for commercial vessels, and concerns over the limitations of self-regulation of the maritime security sector.

A similar set of guidelines could enhance transparency of the ransom negotiation companies, enabling those targeted by ransom demands to make use of negotiators most suited to their particular case. Policymakers could choose to make certain measures mandatory, such as the reporting of ransom payments to an international authority such as the IMO or the UN’s CGPS.

Such regulation of negotiators could help to reduce the amount paid out in ransom, as fewer deals would be made by less experienced negotiators.

**Limitations of Regulating Ransom Negotiators**

While regulation could be useful if applied to local negotiators or members of the Somali diaspora whose reputations are unknown to commercial shipping companies, the field of ransom negotiation in cases of Somali piracy is already somewhat self-regulating. Bad negotiators quickly gain a poor reputation and are unlikely to attract new business.

There are also practical limitations, including questions of how regulation could be implemented and what might happen if a government-sanctioned ransom negotiator performs poorly. Lessons can be learnt from the situation with privately contracted armed security personnel. Currently, if a client has concerns about the conduct or ability of the private maritime security personnel it has hired, it can only depend on the private maritime security company in question to have a rigorous internal procedure for dealing with complaints, or it can report these concerns to the IMO – there is no guarantee that the personnel in question will be punished or prevented from continuing to work. A similar situation with ransom negotiators would not be desirable.

Currently ransom negotiation is an opaque activity, and so the introduction of a regulated system for negotiators would likely be met with suspicion from parts of the shipping industry with concerns that such regulation could be tied to governments’ desire to gather information from the negotiation process – information which parts of the industry feel may be used against them if the legality of making ransom payments changes.

Policymakers would have to consider whether the use of negotiators which are not part of the regulated network should be prohibited. If this is forbidden in a system where governments had access to information collected by the designated negotiators, valuable intelligence could be lost if it was felt by those targeted by pirates that unregulated negotiators could do a better job.

If the regulation of ransom negotiators was embarked on purely out of policymakers’ desire to reduce the amount that pirates receive from hijack, this regulation could be tied to a cap on
ransom payments. This would mean that a negotiator could be penalised if a settlement exceeded the ransom cap. Such regulation would be subject to the drawbacks associated with a cap on ransoms.

**Drawbacks to a Reduction in Ransom Payments: Potential Unintended Consequences**

So far this paper has presupposed that reducing the amount paid in ransoms is desirable because it would lead pirates to reduce their attempts at hijacking. However the way in which pirates could adapt their operations, and the level of risk they are willing to take cannot be predicted. The commonly cited case of the *MV Iceberg*, where seafarers have been held hostage since March 2010 because the ship-owner has gone out of business and no party is able to meet ransom demands, demonstrates that pirates are willing to hold a vessel for as long as it takes to obtain payment. A reduction in ransom payments could result in systematic violence against hostages in order to place increased pressure on their families and employers to meet the ransom demand.

**Changing Thinking on Reduction: Proactive Measures to Reduce Rewards of Piracy**

Financial measures taken to retrieve money once it has been paid in ransom may be the most effective method of reducing the reward that pirates gain from hijacking. With better tracing of the financial flows relating to piracy, ransoms could still be paid to pirates in order to secure the safe release of vessels and crew, but this cash could be intercepted before it could be used by pirates to make purchases or investments. If policymakers allowed ransom monies to be drawn from recognised banks, it would ease the process of paying a ransom and allow it to happen more swiftly, thereby minimising the danger to hostages. It would also make it easier for law enforcement and financial intelligence agencies to identify the money and remove it from the market or use it to trace the financiers and bosses of pirate networks.

There is already a legal framework in place to track illegal financial flows, but in cases of Somali piracy, it is believed that intelligence is not always followed through by many international law enforcement agencies, and relevant legislation is not consistently implemented domestically to ensure that pirates are prosecuted. The UN states that at least 83 countries have been affected by hijackings since December 2008, but only a few of these have chosen to deal with piracy as they would any other international organised crime.

Trust and partnership is needed between international agencies such as Interpol and domestic financial intelligence agencies, especially those in Kenya and the Gulf region. The launch of the Regional Anti-Piracy Prosecutions Intelligence Co-ordination Centre (RAPPICCC) could provide a useful basis for building tighter relations between such organisations, These bodies could work together to keep cash paid in ransoms within existing well-regulated systems.
Questions have been raised as to why tracing of the cash paid in ransoms is not yet happening sufficiently. Working Group 5 of the CGPS is responsible for coordinating efforts to counter illicit funding and financial flows related to piracy. More transparency in its work and better two-way information-sharing between law enforcement and the shipping industry would facilitate tracing.

**Making Best Management Practices Mandatory**

The International Chamber of Shipping (ICS) and the International Shipping Federation (ISF) have led efforts to formulate a set of Best Management Practices (BMP) for vessels transiting the high risk area of the Indian Ocean. BMP are designed to provide commercial shipping companies and private individuals with guidance on how to avoid hijack through the introduction of self-protection measures, and it is estimated that vessels which have BMP implemented on board are four times less likely to be hijacked.

As many of the measures included in BMP guidelines involve changes of behaviour, not increased expenditure, smaller ship-owners from less developed countries can go some way in strengthening their defences against pirates without significant costs. One method to encourage greater take-up of BMP could be to link it to the insurance which a ship-owner is able to obtain for commercial vessels.

Insurers could use BMP compliance as a ratings factor in order to increase the incentive for all ship-owners to adopt measures for self-protection.

**Utilising Local Initiatives**

The international community has invested in increasing the capacity of judicial institutions within Somalia and in East Africa in a bid to improve local capabilities to prosecute and imprison pirates. This financial investment could be backed with increased political interest in making full use of this capacity.

For example, as the mandate of the TFG draws to an end and Somalia seeks to establish a new, more representative government, the international community could use this political juncture to place pressure on Somalia’s new authorities to establish an Exclusive Economic Zone in order to protect the fishing rights of Somalis and to introduce up-to-date legislation criminalising modern piracy. Somalia’s law enforcement agencies should be encouraged to take on the responsibility of making pirates aware of their vulnerability. This could be done by encouraging higher rates of prosecution and longer sentences for convicted pirates.

Somalia’s neighbours could also draw lessons from the efforts led by Singapore, Indonesia and Malaysia in reducing rates of piracy in the Malacca Straits. The launch of the Malacca
Straits Patrol in 2004 resulted from Malaysia and Singapore’s ambition to change their reputation for declining security and the association of their waters with criminal activity. The launch of the Patrol at sea was matched with on-land efforts to disrupt piracy. This understanding of the impact piracy was having on domestic concerns encouraged Singapore to galvanise other littoral states in the region to contribute to counter-piracy efforts.

Somalia’s neighbours may lack the naval capacity to counter piracy at sea, but initiatives such as EUCAP NESTOR could change this. East African states’ efforts are not limited to physically interrupting pirates at sea. Kenya’s recently launched anti-money laundering legislation could prove a useful tool in tracing financial flows relating to Somali piracy, but this requires the interest of Kenya’s law enforcement agencies in bringing pirate kingpins to court.

**Conclusion**

It is vital to acknowledge when considering how to reduce ransom payments in a bid to make piracy less attractive that both the amount paid in ransoms and the number of successful hijackings have already fallen in the first half of 2012. Ransoms are currently at about a third of the height of 2011, when ransoms are estimated to have totalled between $120 million and $135 million. The number of successful hijackings fell from 49 in 2010 to 28 in 2011, and this downward trend appears to be continuing.

While this may indicate that current counter-piracy measures (including naval presence in the Gulf of Aden and the Indian Ocean; increased implementation of Best Management Practices by vessels transiting the region and the use of armed guards) have been successful, the best result of efforts that address just the symptoms can only be a containment of pirate activity. Undermining the pirate business model requires serious investment in tracing and disrupting financial flows of the pirate kingpins.

Although tacitly allowing ransoms to be paid may seem to contradict the international community’s commitment to supporting a politically and economically stable Somalia, if this were coupled with real focus and investment in disrupting the flows of pirates’ money, then change could be achieved. There needs to be clearer understanding of the potential lag time before positive change can be seen, and acknowledgement that short term success does not necessarily lead to effective long-term solutions. Any such effort needs to be based on genuine collaboration between industry and government, and consultation with those working on-land to counter piracy.