



## **Barking up the wrong tree - ransom payments and sanctioned organisations**

### **Summary**

With the laudable aim of denying funds to sanctioned organisations, some governments and the United Nations (UN) have committed themselves to criminalising the payment of ransoms to groups such as Al Qa'ida, its affiliates and splinter groups.

Rather than obstructing their citizens from paying ransoms when it is their only reasonable option to obtain the safe release of the victims, the various legislative and executive authorities should focus on using classic intelligence and policing methods to protect their citizens, arrest the kidnappers and recover the proceeds of their crimes. Besides putting the hostages at risk of death, criminalising the payment of ransoms risks driving the negotiations underground, out of sight of the authorities, and perversely reducing the risk of detection for the kidnappers.

Some governments have been responsible for the recent, extraordinarily large ransom payments to sanctioned groups. For reasons discussed in the paper, governments are ill-suited to negotiating with kidnappers. The US and the UK claim that they do not pay ransoms and that they intend to ban the payment of ransoms by the families of hostages, or the companies that employ them. This has led to the deaths of innocent US and UK citizens. Other governments, such as the Australian government, do not pay ransoms themselves but encourage families and employers of those held hostage to use the support of reputable kidnap response advisers, whilst the governments glean intelligence and evidence from any negotiation. This tends to protect the lives of hostages and reduce ransom payments, and allows governments to focus on the crucial task of arresting and prosecuting the kidnappers, and recovering the proceeds of the crime. It is time for a more open and collaborative approach between governments and kidnap response advisory companies.

## **Introduction**

Every now and again the issue of the payment of ransoms to kidnappers and especially sanctioned groups becomes a subject of interest and debate for governments and other official or semi-official bodies. Those debating the various issues involved often do not have the requisite experience to inform their contributions to the debate and any potential regulation or legislation affecting kidnap for ransom.

Terra Firma Risk Management has therefore produced this paper to provide the basic knowledge of how kidnaps and kidnappers work, and the role played by kidnap response advisory companies and insurance when they are involved. The paper then discusses the criminalisation of payment of ransoms to sanctioned groups, and makes recommendations.

## **Kidnap for ransom**

Kidnappers abduct their victims and hold them somewhere until a ransom or other concession is made by the victims' families, employers, governments, or another body which deems itself responsible for the welfare of the abducted people.

Kidnappers will usually bring severe psychological and sometimes physical pressure to bear on the victims and their families, and those responsible for negotiating the ransom. In these circumstances, and without professional advice from kidnap response advisers, it is very easy for those negotiating with the kidnappers to let their hearts rule their heads and make serious mistakes. These mistakes can include: failing to insist on Proof of Life (POL); paying for POL; increasing an existing offer as the result of a threat; making random, unstructured offers, and finally, paying too much and possibly too soon, resulting in the kidnap either lasting longer than it would otherwise have done, or in the victims not being released and a second or even third ransom being demanded, and paid<sup>1</sup>.

## **Kidnap response advisory companies**

There are a number of these, and they are nearly all retained by insurers. Their role is to provide the insured with advice based on experience: they do not take decisions, and the insured is not obliged to take their advice. They help the insured lower his risk profile wherever possible, and also prepare him for the management of a kidnap response should it prove necessary, usually by setting up and training a Crisis Management Team (CMT). The response adviser explains to the CMT how kidnaps and kidnappers work, the CMT's options, and how to structure a negotiation if one is to take place, as well as how to liaise effectively with all involved, such as the families and the authorities.

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<sup>1</sup> Paying too much too soon can have the adverse effect of convincing the kidnappers that the target has more money at his disposal. This can result in the kidnapper simply increasing the price mid-negotiation, or in taking the ransom but not releasing the hostage, and demanding more. Paying too much also 'inflates the market' – raising kidnap ransoms for victims that follow.

Once a kidnap has occurred and the CMT has been established, the first step is to insist on POL from the kidnappers. While this is being obtained, the CMT and the kidnap response adviser will examine the options available. If a ransom is to be paid, then the CMT, assisted by the adviser, will decide how to structure the negotiation. This usually consists of fixing a Target Settlement Figure (TSF), i.e., the amount the CMT is prepared to pay for the release of the victims, and then the Initial Offer that will be made upon receipt of POL. The CMT then responds to reductions in demand (but not threats) from the kidnappers by making an increase in the offer until the TSF is reached. By this time the kidnappers will have realised where the CMT is heading and the combination of time, increasing offers, and, above all, resistance from the CMT will normally have convinced them that it is time to bring the kidnap to a close.

Helping to fix the TSF is one of the vital contributions the response adviser makes to the CMT's decision-making. Establishing the TSF and subsequent offers on a rational basis will normally ensure that the maximum degree of protection possible is given to the victims while at the same time avoiding payment of a larger ransom than is necessary to secure their safe release. The advice of the response adviser will also take into consideration the need to protect the family or organisation from becoming a target again in the future.

Most response advisory companies also work on uninsured cases and sometimes work pro bono.

Response advisers will always look for alternatives to the payment of a ransom. In some cases, it might be possible to secure the release of the victim without the payment of a ransom, for example by bringing wider community influence to bear on the kidnappers. This is sometimes the case with aid and development organisations, if there is strong community acceptance of their work.

### **Kidnap for ransom insurance**

These policies usually cover the ransom up to the amount insured, the fees and expenses of the kidnap response advisers, and other sundry expenses, such as rehabilitation costs. The insurer does not pay the ransom up front, but only reimburses it. Thus the families or employers have to find the ransom from their own resources. A key advantage of insurance is the support of the specialist adviser and unfortunately, in uninsured cases, where professional advice is not automatically available, it is quite common for the family or employer, with the lively encouragement of the kidnappers, to equate the victims' welfare with the maximum amount they are capable of paying. In other words, the kidnappers persuade them that proving their love or duty of care is directly related to the amount of money they can pay. This can often result in their financial ruin and, as mentioned above, the payment of a much larger ransom to the kidnappers than would have otherwise been necessary.

Policies have a non-disclosure clause (preventing the use of the policy as a collateral against ransom loans), a criminal acts exclusion and also require the assured to advise the authorities of the kidnap. Most policies come with

an allowance for pre-incident training and advice to raise awareness and minimise exposure, helping to make the insured less likely to become a victim.

## **The theory of legislation against paying ransoms to sanctioned organisations**

Al Qa'ida and many of its affiliates and splinter groups are on the UN Al Qa'ida Sanctions List. A number of member states have stated that Al Qa'ida and its affiliates – particularly Al Qa'ida in the Islamic Maghreb (AQIM) and Al Qa'ida in the Arabian Peninsula (AQAP) - are encouraging the practice of kidnap for ransom in order to bolster income for terrorist operations. The UN Security Council adopted Resolution 2133 in early 2014, calling upon member states 'to prevent terrorists from benefiting directly or indirectly from ransom payments or from political concessions and to secure the safe release of hostages.'<sup>2</sup> This is an extension of long-standing attempts to freeze Al Qa'ida and affiliates' assets.<sup>3</sup>

The theory behind this is that, if the payment of ransoms is criminalised, kidnaps will eventually stop and terrorist groups will have less income to spend on operations (including further kidnaps). Proponents of this argument admit that this may lead initially to the deaths of kidnap victims, but argue that a limited number of deaths will stem kidnapping and save lives in the long run.

There is no evidence to back the argument that banning ransoms prevents kidnaps, or that it leads kidnappers to find other targets. There is evidence to show that, despite the UK and US approach of banning ransoms to sanctioned organisations, Al Qa'ida-affiliated and other radical Islamist groups still find US and UK citizens to be attractive targets for kidnap.<sup>4</sup> It is possible that some radical Islamist groups consider that the propaganda value of a kidnap victim that they can murder is as high as that of a victim they can release alive for a ransom.

## **What has happened in practice**

Common sense and experience show that regulation or legislation that criminalises ransoms does not result in families or employers desisting from trying to negotiate and pay a ransom, if that is what they 'choose' to do. In fact, such regulation or legislation often makes the kidnappers' work easier, as the families or employers feel strongly compelled to keep the authorities at arm's length and thus they become complicit with the kidnappers.

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<sup>2</sup> Paragraph 3, page 3, UN SC Resolution 2133 (2014)

<sup>3</sup> These sanctions cover only ransoms to Al Qa'ida and certain of their affiliates and splinter groups, and it remains legal under most jurisdictions (including the UK and US) to pay a ransom under duress to those not on such statutory lists.

<sup>4</sup> <http://www.helsinkitimes.fi/finland/finland-news/domestic/11461-new-york-times-casts-new-light-on-ransom-allegedly-paid-for-finnish-couple.html>. One of the Finnish victims released after a ransom allegedly paid by Oman, presumably on Finland and Austria's behalf, said: "The abductors were very keen to find out if we were American or British. After discovering that we weren't, they were very disappointed."

In the past, the criminalisation of ransom payments has not worked. This was seen in Italy, for instance, when a law was passed in 1991, after years of kidnaps, barring victims' families from paying ransoms. The result in Italy was the same as it would have been elsewhere: families and companies (or people associated with them) paid ransoms, but did so secretly.<sup>5</sup> They were forced to conceal their actions from the police who thus gained little to no intelligence in order to arrest and prosecute the kidnappers; families and employers found it much harder to communicate with the kidnappers and therefore the victims were put in greater danger; and the kidnappers could rest assured that they were very unlikely to be brought to justice.

Clearly, ransoms are not paid willingly. Families or employers of those taken hostage do so only when there is no other option that is likely to lead to the safe return of the victim. Unfortunately, in cases where kidnappers' motives are financial, refusing to pay a ransom will most likely lead to the death, serious injury or permanent disappearance of the victim. This was the case with Edwin Dyer, a British citizen murdered by his captors (AQIM) in 2009. It should be noted that non-British hostages held by AQIM, including UN officials Robert Fowler and Louis Guay, were released by AQIM in the same year, after intervention<sup>6</sup> by the Mali and Burkina Faso governments.<sup>7</sup>

It is clear that some European governments have paid extraordinarily high ransoms for the release of kidnapped citizens in the last ten years. Recent reporting in the New York Times indicates that \$125m has been paid by or on behalf of some European governments to Al Qa'ida affiliates since 2008 as ransom for kidnaps<sup>8</sup>. Of this, France had reportedly paid more than \$58m, Qatar and Oman (presumably on behalf of European countries) over \$20m, Switzerland more than \$12m, Spain \$11m and Austria \$3m.<sup>9</sup> The sheer size of some of the supposed ransom payments – allegedly \$40m for the release of four French nationals alone - tends to support the insurance industry's claims that insurance has not reimbursed these exceptionally large ransom payments. Besides, most insurance policies have a 'sanctions clause' banning the reimbursement of any claim that breaches sanctions in any way.

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<sup>5</sup> For examples of cases where families were compelled by the authorities not to pay ransoms, see the case of Giuseppe Soffiantini (1998, Italy) and John O'Grady (1987, Ireland). Both were released, but only after having parts of their body severed by the kidnappers, and sent to the families.

<sup>6</sup> The Canadian government insists it did not pay a ransom for their release. The Burkina Faso and Mali governments have not made public the nature of their intervention.

<sup>7</sup> James Foley, a US citizen who had been kidnapped by Islamic State, was allegedly beheaded in August 2014 by his captors. It appears likely, however, that his captors never seriously expected a ransom to be paid, given the size of their initial demand (reportedly, \$132m).

<sup>8</sup> Of the more than \$125m allegedly paid, \$91.5m went to Al Qa'ida in the Islamic Maghreb, \$5.1m to Al Shabaab and \$29.9m to Al Qa'ida in the Arabian Peninsula).

<sup>9</sup> See "Paying ransoms: Europe bankrolls Qaeda terror" by Rukmini Callimachi, 29 July 2014, [http://www.nytimes.com/2014/07/30/world/africa/ransoming-citizens-europe-becomes-al-qaedas-patron.html?\\_r=0](http://www.nytimes.com/2014/07/30/world/africa/ransoming-citizens-europe-becomes-al-qaedas-patron.html?_r=0)

There are a number of reasons why governments are poorly suited to negotiating ransom payments: kidnappers know that governments have large amounts of money which they can pay (whereas even large corporates may be limited by financial or other factors in their ability to pay); and governments can be influenced by domestic or international political considerations into paying too much, too quickly. Ransom settlements negotiated by non-government, professional negotiators have historically been much smaller than those negotiated by governments – indeed, the extraordinarily high sums paid by some European governments recently have made it very difficult for professional negotiators to reduce the kidnappers’ demands to anything near an “acceptable” level.

The US and UK claim not to pay ransoms or make concessions to terrorist groups. This may often be the case, but is not always so. For instance, the US clearly made concessions to the Afghan Taliban in return for the release of the US soldier, Bowe Bergdahl, taken prisoner in June 2009 and released in May 2014. The US also reportedly paid \$500,000 in “bail” to the Iranian Government for the release of the US citizen, Sarah Shourd, in September 2010 after 14 months’ detention. In both cases, Oman was apparently the intermediary.

Much has been made of the importance of funds raised by kidnap to radical Islamist terror groups. The massive ransoms gained from European governments will have undoubtedly been ploughed back into terrorist operations, including more kidnaps. But this should be seen in the context of other vastly bigger “revenue streams”. Kidnap is not the only revenue stream for radical Islamist groups: for instance, Mokhtar Belmokhtar, the leader of a relatively small Al Qa’ida offshoot in the Sahel, has not only made money from kidnaps for ransom, but also has a long-established and very lucrative contraband, illegal arms, drugs and people-trafficking operation. It should be appreciated that ransom funding does not figure prominently in sustaining the larger radical Islamist groups. Take Islamic State (IS), for instance: this is a group that is firmly rooted in local economies. It owns oilfields and has captured large banks (it allegedly took \$429m from the Mosul Bank when it captured the city). Like any insurgency, it extorts from local commerce and industry. It also receives large, regular donations from individuals in countries like Saudi Arabia, Qatar and Kuwait. IS is believed to earn *at least* \$40m per month.<sup>10</sup>

Reducing the flow of funds to terrorists is vital, but the impact of small ransoms being paid to them should be balanced against the importance of the lives of hostages. Ransoms can be recovered and terrorists can be arrested: dead hostages cannot be brought back to life.

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<sup>10</sup> See BBC Newsnight 22 August 2014 <http://www.bbc.co.uk/iplayer/episode/b04fdcrr/newsnight-22082014> and “Mosul Bank isn’t the only thing funding ISIS” 13 June 2104 <http://www.ibtimes.com/mosul-bank-robbery-isnt-only-thing-funding-isis-1601124>

## Conclusion

UN Security Council Resolution 2133 (2014) and associated documents<sup>11</sup> contain some contradictions. They call for resolution of kidnaps without paying ransoms, and simultaneously for the safe release of the victims and for human rights law and international humanitarian law to be applied<sup>12</sup>. As we have seen, criminalising the payment of ransoms to terrorists, as is demanded by some member states such as the UK, is likely to lead to the death, injury or permanent disappearance of hostages, and is thus likely to be distinctly prejudicial to their most basic rights. In addition, it will compel some families and employees to pay ransoms without the knowledge of the authorities, thus depriving them of crucial intelligence and providing satisfaction only to one party – the kidnappers.

Indeed, currently, the United Nations and some member states are posing a set of false choices which can be summarised as ‘criminalise ransoms and reduce kidnaps, or pay ransoms and there will be ever more kidnaps.’ There is a third option, which was – until the advent of ‘the global war on terror’ – the established way that the UK and US governments dealt with kidnaps. The Australian government continues to use this tried and tested approach. The aim is to give primacy to the safety of the victims, and thereafter to arrest and prosecute the kidnappers, thus denying them the proceeds of their crime. The family or employers of the hostages negotiate responsibly with the kidnappers, while the authorities simultaneously collect intelligence, evidence and background on the kidnappers. If there is no other practical alternative, the ransom is delivered. As soon as the victims are released, the police and intelligence agencies do their utmost to arrest the kidnappers and recover the ransom. The national authorities of the ‘host nation’ are usually involved in the management of the kidnap response, but sometimes to differing extents.<sup>13</sup>

Clearly, this strategy will not always work. But in some, even many cases, it will. Interested governments have, over the last ten years, increased massively the technological and other intelligence resources available to them in ‘ungoverned spaces’ such as the Sahel. Crucial to all this is a

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<sup>11</sup> Such as the Global Counterterrorism Forum’s Algiers Memorandum on Preventing and Denying the Benefits of Kidnapping for Ransom by Terrorists.

<sup>12</sup> For example: UNSC Resolution 2133 – see first paragraph, page 2: ‘...States must ensure that any measures taken to counter terrorism comply with their obligations under international law, in particular international human rights law, refugee law, and international humanitarian law, as appropriate.’ And Algiers Memorandum paragraph 4, page 4: ‘[States should seek to] deny terrorists and terrorist organizations and their final beneficiaries the benefits of ransom – while seeking to secure the safe release of the hostage(s) – through financial, diplomatic, intelligence, law enforcement and other means and resources, as appropriate, not excluding use of force, in close cooperation with the State of nationality of the hostage(s) and in accordance with applicable international law, including human rights law and international humanitarian law.’

<sup>13</sup> In some settings, local and national security agencies do not have the technological or professional capacity to enforce the law and prosecute kidnappers. In some settings, too, local or national governments and their security forces, or parts of them, are either complicit with or are themselves the kidnappers.

government's will and capacity to use the resources necessary to save the lives of its citizens. It is simply too easy for governments now, under the UN and some national policies, not to meet their responsibilities to their citizens kidnapped by sanctioned organizations. It is neither right nor practical – and it is of dubious legality - for governments to obstruct their citizens from paying ransoms when it is their only reasonable option to obtain the safe release of the hostages. Some governments appear to be arguing that counter-terrorist legislation trumps the right to life of hostages.

## **Recommendations**

1. The United Nations' and international policy should be revised to allow the delivery of ransoms to sanctioned organisations where there is no other alternative, where the ransom amount is minimised as far as the safety of the victims will allow it, and where relevant authorities are provided access to the evidence and intelligence obtained during the negotiation.
2. Governments should continue with their policy of not paying ransoms, but assist their citizens in other ways:
  - Provide immediate support to the family or company, so that they do not start by taking ill-informed decisions about, for example, media management, which later complicate and prolong the case.
  - Where satisfied that no other reasonable option to obtain the safe release of the victim exists, allow the family or company to negotiate a ransom and pay it.
  - Recognize that reputable, professional kidnap advisory companies exist, and that they can assist families or companies to obtain the safe release of the victim, if necessary through delivery of a ransom. Governments should inform families or companies of the existence of such organisations, and assist them to find a reputable kidnap response advisory company. (The Australian Government, for example, specifically recommends in its travel advice that those travelling to at-risk areas should 'have personal security measures in place, seek professional security advice and take out kidnapping insurance.'<sup>14</sup>)
  - When possible, provide pertinent intelligence information to the family or company and their advisers to assist them in their decision-making.
  - Advise families or companies on the suitability of using any intermediaries who might offer their services.
  - Where necessary, assist the family and company move ransom money in accordance with any regulatory system and enable the delivery to take place.

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<sup>14</sup> See <http://smartraveller.gov.au/zw-cgi/view/TravelBulletins/Kidnapping>: "The Australian Government's longstanding policy is that it does not make payments or concessions to kidnappers. The Australian Government considers that paying a ransom increases the risk of further kidnappings, including of other Australians. If you do decide to travel to an area where there is a particular threat of kidnapping, you should ensure you have personal security measures in place, seek professional security advice and take out kidnapping insurance."

3. Families, companies and kidnap response advisers have a duty, within the framework of doing all they can to ensure the safe release of the victim, to pay no more than is required to do so and to provide the relevant authorities access to evidence and intelligence collected during the negotiation so that it may be used to arrest and prosecute the criminals or terrorists concerned.
4. From a more strategic perspective, states and international organisations such as the United Nations should do all they can to ensure that:
  - Those at risk take reasonable and appropriate precautions to avoid being kidnapped.
  - Effective security and an effective law and order framework are increasingly applied in kidnap-prone areas.
  - Criminals and terrorists stand an increasingly high chance of being brought to justice, and of their proceeds being taken from them.

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