

BANNING RANSOM PAYMENTS TO SOMALI PIRATES WOULD OUTLAW THE ONLY METHOD A SHIPOWNER HAS TO REMOVE HIS CREW FROM HARM'S WAY AND RESCUE HIS VESSEL AND CARGO

This article was first published in Lloyd's List on 1 November 2011 and is reproduced with their kind permission. www.lloydslist.com



The payment of a ransom to pirates, to allow them to profit from their criminal conduct, feels wrong on so many levels. So, why is it permitted? Surely, if the payment of ransom was banned, the problem would be solved? Well, wouldn't it?

One thing is clear: it is intolerable that shipowners are compelled to pay ransoms to Somali pirates for the release of their vessels and crew. Moreover, it is intolerable that safe passage cannot be guaranteed through some of the world's principal shipping lanes.

Let us be clear about something else, absent intervention by a state, a shipowner who has his ship hijacked has no option but to pay a ransom. Much is rightly written about preventative measures that can be deployed in an attempt to avoid being hijacked, but once you are caught, the game is up. You are then left to select from a short list of very unappealing options: (1) Refuse to negotiate and/or refuse to pay. Select this and you will not get your ship and crew back; (2) Rely on your national military or private military

- there seems no appetite for a risky military solution once a vessel has reached the Somali coast and a private military solution is impractical and probably illegal; or (3) negotiate and pay a ransom. Option 3 is your only move; your only hope of securing the release of your crew and your vessel.

Yet despite this, we often hear calls to ban ransom payments - to outlaw the only method a shipowner has to remove his crew from harm's way and rescue his vessel; a point well observed by Mr Justice Steel in the English High Court decision *Masefield v Amlin* (2010). Frequently, calls to ban ransom payments come from people who have little knowledge of the shipping industry and the issues at stake. But worryingly, the calls sometimes also come from well-intentioned politicians who wield real influence.

If a shipowner is prohibited from paying a ransom, the consequences are likely to be as follows: First, we condemn the seafarers held hostage - currently about 250 - to an ugly and uncertain future. In debriefs that my colleagues



and I have undertaken following the release of vessels, we have taken evidence from seafarers who have been subjected to degrading treatment, humiliating treatment, torture, sexual assault, and from seafarers who witnessed the death and execution of their fellow hostages. This will be their future.

Second, vessels and cargo will be lost. I do not wish to state in an open forum the estimated combined value of the nine commercial vessels and their cargoes that are currently held, but those in the industry will know that this is a very substantial figure. This loss will fall on the shipowners and possibly their insurers, and ultimately on the public. The risk of losing vessels is not fanciful. We have already seen the loss of several major commercial vessels.

Third, consider the impact on the environment of the loss of a vessel. If a ship is lost, its cargo is lost. The last very large crude carrier that was captured carried approximately two million barrels of crude oil. That is about eight times the amount of crude oil that is estimated to have been lost from the Exxon Valdez which devastated the Alaskan coast in 1989. That is about 40% of the crude oil that is estimated to have been lost from the Deepwater Horizon incident in 2010 - reportedly one of the worst pollution incidents in history.

If a tanker is lost and crude oil pollutes the East African coast there is unlikely to be an oil major on hand to spend billions of dollars on clean-up costs, and there will be no ability to mobilise the world's fleet of antipollution and salvage vessels. The impact to the coastline of Somalia is likely to be catastrophic.

“If a tanker is lost and crude oil pollutes the East African coast there is unlikely to be an oil major on hand to spend billions of dollars on clean-up costs, and there will be no ability to mobilise the world’s fleet of antipollution and salvage vessels. The impact to the coastline of Somalia is likely to be catastrophic.”

Fourth, let us say the US or the European Union passes a law which bans ransom payments, what would happen in practice? Pausing here, I question whether such a law would violate the European Convention on Human Rights. Would outlawing the only viable method of removing a seafarer from harm's way not be in breach of Article 2 (the right to life) and Article 3 (the right to freedom from torture, inhumane and degrading treatment)? I will leave it to the US lawyers to argue whether such a ban would also violate the US constitution.

Such a ban would probably result in US and EU companies being unable to pay a ransom. Even the optimistic lawmaker must recognise that it would take time for a ban to take effect. It would take time before the message got through to the pirates that no more money could be paid. If we consider the current average length of detention, such lead time is probably going to be in excess of nine months. Statistics suggest that by then, a further 35 ships would be captured, and a further 750 seafarers, and perhaps a further four million barrels of oil.

Alternatively, some shipowners will probably consider themselves beyond the reach of the US and EU prosecutors. Or they will have the support of their governments and crown immunity. These shipowners will continue to pay. Their ships and crew will continue to be released. The pirates will not then believe that some shipowners cannot pay and the pirates will not be discouraged from capturing more ships. We will have a two-tier system with one tier of shipowners having to witness the sacrifice of their crew and vessels, while others are released. The policy will fail.

I should add, I support the UK government's stance that it does not and should not pay ransoms. And I say that even after having represented the family of Paul and Rachel Chandler for 13 months on a pro bono basis in the full knowledge that the British government would not and did not provide financial support to secure the Chandlers' release. However, I also support private individuals' rights to act within the law to resolve a kidnapping and hijacking on commercial terms. As Mr Justice Steel solemnly observed in *Masefield v Amlin*, “this conclusion is fortified by



the wider implications of any contrary conclusion”.

If the international community is to continue to sit by and allow pirates to hijack vessels it would be unconscionable for lawmakers to take away a shipowner’s only prospect of rescuing its personnel and assets and to prevent a potential environmental catastrophe.

I read with some dismay the calls, no doubt well-intentioned, of Puntland’s President Abdirahaman Mohamud Farole to ban the payment of ransoms (Lloyd’s List, 20 October 2011). I wonder how much crude oil from a forsaken tanker would have to wash up on the beaches of Puntland before President Farole and others like him realised that it is possible they may have been mistaken.

[Richard Neylon](#) is a Partner in the Admiralty Department of international law firm Holman Fenwick Willan. Together with [James Gosling](#), Richard has assisted in resolving over 80 Somali hijacking cases.

For more information, please contact [Richard Neylon](#) (pictured right), Partner, on +44 (0)20 7264 8100 or richard.neylon@hfw.com, or [James Gosling](#), Partner, on +44 (0)20 7264 8382 or james.gosling@hfw.com, or your usual contact at HFW.



“If the international community is to continue to sit by and allow pirates to hijack vessels it would be unconscionable for lawmakers to take away a shipowner’s only prospect of rescuing its personnel and assets and to prevent a potential environmental catastrophe.”

Lawyers for international commerce

HOLMAN FENWICK WILLAN LLP
Friary Court, 65 Crutched Friars
London EC3N 2AE
T: +44 (0)20 7264 8000
F: +44 (0)20 7264 8888

© 2012 Holman Fenwick Willan LLP. All rights reserved

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice.

Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please contact Craig Martin on +44 (0)20 7264 8109 or email craig.martin@hfw.com

hfw.com