

Ransom Payment for Hostage Release - between Permissibility and Criminalization- a Descriptive Analytical Study

دفع الفدية مقابل إطلاق سراح الرهائن - بين الإباحة والتجريم - دراسة وصفية تحليلية

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Abstract:

Kidnapping for ransom has created a severe conundrum for threatened countries in recent years, putting politicians and law enforcement in a difficult position: What is the best strategy to deal with and prevent hostage kidnapping without making compromises in the name of a life-saving operation?

In an analytical descriptive manner, we will investigate the risk to the hostages' lives in the event of non-payment, as there is no guarantee that the kidnapping groups will disband once the money is delivered, and payment reinforces kidnapping and extortion operations, and there is no guarantee that the hostages' lives will be preserved.

We concluded that, in contrast, some believe that paying the ransom is preferable because rescue operations are dangerous, so we recommend working on multiple lines at the same time by taking serious steps to search several solutions, alternative security and "new strategies because the lives are lost and the "hostages crises also pit the reactions".

Keywords:

criminalization –ransom – permissibility,...

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Introduction

Kidnapping is criminal act consisting of the illegal taking and carrying away of a person by force or fraud or the unlawful seizure and detention of a person against his will, thus it causes suffering and pain to the victim and society, and may sometimes end in death.⁽¹⁾ Kidnapping for the purpose of obtaining a ransom, which differs from kidnapping for political motives, is an economic crime aimed at enriching the perpetrators.⁽²⁾

The process of taking hostages is one of the serious criminal acts,⁽³⁾ whether it comes to ordinary cases such as in the kidnapping of children, in terrorist cases or in cases of piracy and there are those who divide them into two categories, the first category is political, sometimes referred to terrorism in order to achieve a political goal, the second one, which has increased in recent years, is the hostage-taking for ransom and is carried out by gangs financially benefiting from these activities.⁽⁴⁾

The objectives of kidnapping incidents differ between different groups of perpetrators of this crime.⁽⁵⁾ The attention lies in the aspect related to those perpetrators who aim to extort or achieve simple financial gains opposite to incidents involving terrorist kidnapping of hostages, to influence public opinion, and the majority of perpetrators of crimes "to obtain a ransom" work in a quasi-commercial manner and use this money to fund a full range of violent extremist activities.⁽⁶⁾

Combating these forms of illegal financing requires constant vigilance and an approach that adapts to the current situation, because the threat is constantly changing in light of the legal and procedural deficiencies, which makes things more difficult,⁽⁷⁾ because refusing to pay the ransom and refusing to make concessions to the kidnappers is the surest way to combat this crime, so we find as a policy issue both US and UK governments do not pay ransoms and do not make concessions to kidnappers⁽⁸⁾ unlike other countries that resort to negotiation as a safer and more effective decision, and research indicates that about 66 percent of victims are released with ransom, and only about 15 percent are released without payment, while about 10 percent are rescued through some method of intervention.

Today, it's certain that there have been important discussions about the serious threat posed by kidnapping for ransom, and trying to explore available policy options to counter this increasing form of illicit financing while providing an analysis of most security issues. Kidnapping for ransom is now embodied in piracy, then in the regular kidnapping from local criminals taking foreign nationals hostages and from there asking their governments, employers, or families to pay huge sums⁽⁹⁾ - and perhaps other concessions - to release them, and all this is common.

The problem of the study:

Paying ransom of course fosters unlawful behavior, but is its criminalization a solution, and what is the concept of "Saving Lives" in this situation?

Firstly: The ransom concept and legitimacy:

First, the origins of payments are very old.⁽¹⁰⁾ In times of conflict, many ancient cultures demanded ransom. When the combat is over, a list of detainees is supplied, and the opposing group is given the option of paying for the release of some of the hostages.

Prisoners who are not ransomed will be enslaved or killed, hence in conflict, only the upper classes are generally redeemed. Criminals who abduct high-ranking members of society and release them only when their demands are satisfied have also engaged in this behavior in civil life..⁽¹¹⁾

Pointing out that in the old German law, there is a similar concept of ransom that was called “Bad Influence”, where Julius Caesar was captured by pirates near a Greek island, so a sum of pure silver was paid by someone for his release.⁽¹²⁾ During medieval, ransom had become an important tradition in the equestrian war,⁽¹³⁾ However, East Germany, which built the internal German border to prevent immigration, recently practiced ransom with the population, allowing them to migrate through a semi-secret route after paying a ransom to the West German government in a process known as “Buying Freedom.” Thus, between 1964 and 1989, thousands of political prisoners were redeemed by West Germany in hard currency.⁽¹⁴⁾

1.Ransom in monotheistic religions:

The term ransom means “payment”, therefore, the word “ransom” is derived from the Latin word “redemption,” which means “repurchase” near “**redemption**”⁽¹⁵⁾ and in the old French language it derived from “rançon”, which all mean the equivalent paid for a redeemed life or freedom of a war captive. It also meant a town's promised exemption from plundering and robbery in the early centuries, the term ransom emerged and spread throughout the Middle Ages, and it may have a connection with the prevalent Teutonic (Germanic) pattern of committing crimes through money payments, but it may not have a historical significance.

According to all linguistic definitions, ransom is the practice of holding a prisoner or item in order to extort money or property to secure his release, as it may refer to the financial amount in question, and this word can also refer to the payment process, thus the practice of kidnapping or theft and demanding the payment of a ransom is an illegal work, and attempting to conduct such activities results in severe legal penalties, including imprisonment.⁽¹⁶⁾

Warfare between humans has sprung up over the years, leaving dead, injured, and captives, so that the treatment of prisoners varies from one age to the next. Previous civilizations shared the concept of ransom, which varied from doctrine to doctrine and religion to religion; hence, the root of the ransom is to make anything a safe place for something, so that ransom of a captive is a salvation with money, and the ransom or the redemption is what is offered of money and so on to rid the ransom, which was adopted by most legislations and regulations, unlike the Islamic Sharia that added that the ransom is a gift offered to Allah as requital for negligence in worship such as expiation for fasting and shaving and wearing sewn in ihram and sacrifice or for a sin.⁽¹⁷⁾

1.1.Ransom in Islam:

The ransom or atonement is an act mandated by Islamic law to erase a specific sin and emphasize to be avoided, by fasting, emancipation, or feeding the poor, and so on.⁽¹⁸⁾ For redemption of prisoners, the state of captivity, in Islam, ends with one of two things, either grace or ransom. The prisoners, upon the end of the war, are released free of charge or in exchange for money. The prisoners' theory of Islam is summarized in three elements, **first**, proper treatment until their matter is decided, **second**, grace,

"release" and "ransom" to those who are encouraged to do good, third, killing war criminals.⁽¹⁹⁾

The Battle of Badr was in the year 624 A.D, a victory for the Muslim army despite the numerical superiority of the Mecca army, many of whom were later released in exchange for a ransom, whereby the prisoners were redeemed by prisoners like them in number, less, or more, or could be with money, or education and other things that benefit the Islamic community. The prophet (PBUH), in his Islamic society, was an imam in establishing the "liberation of slaves" principle, so that prisoners of war not considered slaves, and they were allowed to pay ransom or teach the children of Muslims to untangle their captivity.⁽²⁰⁾

1.2.Ransom in Christianity:

Redemption in Christianity is to atone for sins, and the word means paying the price or emancipation, and this term was used when liberating slaves, according to Christianity, Jesus paid the price of liberation from the bondage of sin in the Old Testament, where a person who commits a sin offers a ransom for himself to save it from God punishment, and according to God's justice, the wages of sin is death.⁽²¹⁾

In Christianity, the payment of the ransom includes two basic things: **first**, ransom is a price paid for the liberation or recovery of something, and it can be likened to the price paid for the release of a prisoner of war, **second**, ransom is a price that covers the cost of a certain matter, it is similar to the price paid to cover the damage caused or compensated for a person or something, for example, when a person causes an accident, he must pay a certain amount equal to the value of the caused damage.⁽²²⁾

Christianity adds that since life that Adam lost was a complete human life, it was not possible to recover it with an incomplete human life, so there was a need for a ransom equivalent to the value of what was lost, which is fully consistent with the principle of complete justice mentioned in the word of God, which says: «Show no pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot».⁽²³⁾

1.3.Ransom in Judaism:

In Judaism, the term ransom is called "Kofernevich", which is a phrase in the Hebrew language used to denote a tribute estimated by half a shekel that must be paid by every male older than twenty years at the general census of the population,⁽²⁴⁾ and in Judaism, clearance from imprisonment is a religious duty to achieve the release of the unjustly Jew kidnapped or imprisoned by authorities, and the prisoner is usually released on a ransom paid by the Jewish community, considered an important command in Jewish law.

Moses Ben Maimon wrote: "The recovery of prisoners takes precedence over supporting the poor or their clothing". There is no greater ransom than ridding the prisoners of the problems such as captivity, hunger, thirst, and undress. They are at risk, and ignoring the need to retrieve the prisoners contradicts the laws of the Torah.⁽²⁵⁾

Currently, the ransom issue, especially the amount to be paid, is a controversial issue in Israel, especially when captured Israeli soldiers are freed or exchanged with Palestinian prisoners, and despite the importance of the ransom in Judaism, it must be given within a number of conditions, the most important of which are:

- One does not redeem prisoners of more than their value. One of the aims of this restriction is to avoid encouraging the kidnappers.
- If a person repeatedly apprehends him, he is not redeemed after the third time.⁽²⁶⁾

2. Conceptual similarities to ransom:

Extortion is a criminal crime that consists in unlawfully obtaining money, property, or services from a person, entity, institution, or via coercion; extortion is usually practiced by organized crime gangs,⁽²⁷⁾ and in the modern era, obtaining money or property does not require the commission of a crime, thus threat by violence, that requires money or property payment to stop violence in the future, is sufficient to commit the crime; blackmail does not only refer to the illegal requirement to claim and obtain something by force but in its official definition, it also means causing something like pain and suffering or making someone tolerating unpleasant things.⁽²⁸⁾

As nouns there are differences between bail, steal, ransomware and ransom, thus bail is security, usually a sum of money, exchanged for the release of an arrested person as a guarantee of that person's appearance for trial while ransom is money paid for the freeing of a hostage, also has a relation with stealing something from its owner with the intention of demanding a ransom such as “dognapping”,⁽²⁹⁾ and “ransomware” as a type of malicious software blocking computers’ systems until a sum of money is paid.

2.1. Bail:

Traditionally, bail is a form of property deposited or entrusted to the court to persuade it to release the accused from prison, on the basis that it will represent before the trial, or a confiscation of the guarantee.⁽³⁰⁾ In some cases, the bail is returned after the end of the trial, if all procedures for appearing before the court are completed, regardless of whether the person is guilty or not, and if the guarantor is used and a surety bond has been obtained, the bond fee is the fee for obtaining the purchased insurance policy and is not refundable.⁽³¹⁾

In some countries, granting bail is common, however, bail may be unacceptable by some courts in some circumstances; for example, if the accused was likely not to attend the trial regardless of the bail, the legislative councils also do not permit release on bail in some crimes such as murder, but if the court is satisfied that the interests of justice so permit.⁽³²⁾

2.2. Request a ransom as a steal:

The demand for ransom in exchange for the return of property may also constitute theft. "In the English Criminal Code, the basic definition of theft is that stipulated in Section 1(1) of 1968 Theft Act, which states that "A person is guilty of theft if he dishonestly appropriates property belonging to another, with the intention of permanently depriving the other of it".

Under this definition, hijacking a ship with the intention of returning the property to the owner cannot constitute theft because the owner has not been permanently deprived of it, and it has been said that withholding the ship with the intention of obtaining a ransom falls under the definition provided in Article 6(1), which states that "A person appropriating property belonging to another without meaning the other permanently to lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other of it if his intention is to treat the thing as his own to

dispose of regardless of the other's rights; and a borrowing or lending of it may amount to so treating it if, but only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal." (33)

2.3.Ransomware:

Also referred to in some cases as "scareware" (34) programs that include a class of malware that restricts access to computer systems, and demands ransom from the designer of malware in order to lift access restrictions and remove them, in a form of file encryption (35) on the system hard disk or in a form of system lock and display messages aimed at persuading the user to pay; (36) Recent attacks to extract ransom were initially in Russia, but in recent years have targeted other countries, such as Australia, Germany, and United States.

Scareware programs include several varieties of extracting ransom or fraudulent malware and are usually of limited or no benefit, which are sold to consumers through some unethical marketing practices; the social engineering sale approach is used to cause shock and anxiety, or make perceiving a threat to the director in general in one of the Unsuspecting users. Some forms of spyware and adware also use horror software (Scareware) tactics. (37)

The predominant tactic used by criminals involves convincing that a virus has infected private computers, and then they point to downloading fake antivirus software to remove it with a price tag of course (38) and the virus is usually fictional and the program is not functional or the software stay themselves. (39)

3.Ransom-related crimes:

A greater understanding of the payment of ransom has evolved in cases of piracy, in order to formulate policy recommendations to the international community on how to avoid, reduce or prevent the payment of ransom, and the ultimate goal of those efforts is to reach a point where pirates will not be able to benefit from paying ransom, thus abandoning Kidnapping to get it.

Piracy, kidnapping, illegal restraint, terrorism and hostage-taking fall under categories of designated serious offences for money laundering; According to specialists and analysts, proposing aggressive responses to pirate attacks and kidnappings will lead to an escalation of the risk of revenge by the pirates and thus an increase in the trend towards this type of risk related to violence, kidnapping and detention, and then retaliation in cases of failure of diplomatic efforts and negotiating methods. (40)

Kidnapping involves taking a person by force without consent with the motive of holding him hostage to earn a financial profit, and it can have a number of reasons, such as benefiting from the person himself and is often associated with blackmail, especially during kidnapping of children.

The aims of kidnappings differ between different criminal gangs. In the first place, attention was focused on those perpetrators who aim to blackmail or achieve simple financial gains, unlike terrorist foreclosure incidents. Terrorist incidents, in general, are integral component of a specific pattern of violence with political motives with the goal to influence more people, the majority of perpetrators of «ransom» operations operates in a semi-commercial manner in selecting potential targets to attract

high ransoms, initiate incidents, capture, contacts, negotiations conclusion and then subsequent incidents.

3.1.Piracy:

Nowadays, the topic of modern piracy has become known and involves an old crime of kidnapping in order to obtain a ransom, and according to the annual report on piracy issued by the ICC International Maritime Bureau's Piracy Reporting Centre (IMB PRC), more than four hundred piracy and armed robbery took place in 2009, ⁽⁴¹⁾ so ship-owners have advocated resorting to industrial management best practices such as crew training, implementing a ship security reporting system, using military escorts...to thwart pirate attacks, however, in the case of successful hijackings, paying ransom is almost always the only way to save crew lives and free up the ship.

The recent events related to piracy, especially in the Gulf of Aden, have aroused the concerns of the international community, shipping companies, as well as maritime insurance industries, as piracy incidents and associated costs have increased, generating broad discussions on the coverage of piracy in light of recent marine insurance policies and recurrent terrorist attacks.⁽⁴²⁾

The pirates, especially the Somalis, have introduced a new form of piracy, which is a new goal seen in paying required ransoms in the exchange of ships,⁽⁴³⁾ or the members of the hijacked crew. Therefore, such claims must be absorbed quickly as obtaining the ransom instead of stealing the ship or the cargo is the overriding goal, which creating problems and widespread legal debates, thus it has been said that paying the ransom may be illegal, and therefore, the ransom cannot be recovered under marine insurance policies.⁽⁴⁴⁾

3.2.Terrorism:

Both piracy and maritime terrorism exist separately, and the two cannot be equated, as they are separate and distinct phenomena of non-international violence at sea. Commentators distinguish between the two, where piracy is based on financial gains while the motives of terrorism are political goals through immediate action by attacking a maritime target, Piracy also avoids interest and aims to preserve its trade as for maritime terrorism, it brings judicial attention and tries to cause the greatest possible harm.

Pirates may be enemies of all countries, but not the same for terrorists,⁽⁴⁵⁾ but there is speculation and guesses about the relationship between piracy and terrorism raising from the legality and legitimacy of ransom payments, but convincing evidence to support this supposed rapprochement has not yet emerged, especially in light of the total variation in the discriminatory aims of the two, thus acts of piracy depend on the booming and active global shipping industry, in contrast, acts of terrorism, in the context of the contemporary global navy, seek to create a global maritime imbalance in the trade network to advance its political goals.⁽⁴⁶⁾

The Under Secretary for Terrorism and Financial Intelligence, David Cohen, traveled to Europe to discuss the importance of preventing terrorist organizations from using kidnapping and ransom demand as a means of financing their operations,⁽⁴⁷⁾ and in meeting with senior officials, he stressed that kidnapping to obtain ransom was becoming a threat and pressure, noting that payment of ransoms leads to more and to

additional ransoms amounts in the future, then all this builds the ability of terrorist organizations to carry out attacks...so the ransom money will be used to help finance a full range of activities, including the recruitment and indoctrination of new members, paying salaries, setting up training camps, possessing weapons and ammunition, communications and...helping to support the next generation of violent extremist groups.

3.3.kidnapping

The phenomenon of kidnapping and the holding of hostages is not one of the peculiarities of this era, as man knew it in previous historical stages, but today it has become remarkably huge, due to the great injustice inflicted on the weak peoples by the dominant powers, and for not having the weapon equivalent to repel aggression on their behalf. Some resorted to these methods and expanded them; they went out the legal limits because kidnapping and holding hostages are deemed military actions in Islam and are only permissible during wartime against the enemy or its allies.⁽⁴⁸⁾

Kidnapping is an assault on others, and it is a type of prostitution that God forbade and prohibited; kidnapping is considered a military act. If it is permissible as an exception during the actual war, it is not absolutely allowed outside the scope of the war, so the detained would be considered a prisoner of war.⁽⁴⁹⁾

Kidnapping is taking a person or forcibly transporting him against his will and detaining or imprisoning him without legal authority, and it is usually motivated by or for ransom; it's an act or instance or the crime of seizing, confining, inveigling, abducting, or carrying away a person by force or fraud often with a demand for ransom or in furtherance of another crime.⁽⁵⁰⁾

While it is generally considered that such tactics are dramatically increasing and worrying in some areas, there are fundamental difficulties in accurately articulating the actual problem of kidnapping, its growth, its causes, its existence and its continuity.⁽⁵¹⁾

4. Legitimacy of ransom payment:

The question of the legitimacy of the ransom payment was discussed in many cases where it was stated that "it must be noted that there is no legislation against the payment of ransom, which is therefore it is not illegal", moreover, the cases also established that the payment of ransom was not inconsistent with public policy in countries such as U.k., so it would not be appropriate to classify the payment of ransom contrary to public policy, since it is true that "ransom payments encourage recurrence".

In England, for instance, it was said that if the payment of the ransom was unlawful, there could be a breach of the legal guarantee specified in Chapter 41 of the Marine Insurance Act of 1906, which states that "There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner".⁽⁵²⁾ However, if the adventure is marine, the payment of ransom may not be part of it; in addition, the condition "as far as the insured can control the matter" may also indicate that the payment of the ransom will not violate the legality guarantee.⁽⁵³⁾

Paying ransom was legally prohibited, in England, under the Ransom Act of 1782, which prohibited British nationals from concluding ransom contracts, however, according to this law, British pirates who seized a ship of an enemy, were allowed to

request and receive ransom money, and this law was repealed in 1864 and since then there is no direct payment ban.⁽⁵⁴⁾

In England, Under Article 15(3) of the Anti-Terrorism Act of 2000, a person commits an offence if he provides money or other property, and knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.⁽⁵⁵⁾ Therefore, if an attack is considered a terrorist and not an act of piracy, it may be illegal to pay the ransom and the insured person is not entitled to a refund under the insurance law.

4.1.Payment of ransom in the name of the rescue operation:

Directing a "**No Concessions**" policy should be binding on every government and working to implement it despite recognizing that this option may be painful and cost a heavy price, especially with regard to the lives of innocent people. There is, of course, a very important human dimension to this issue thus governments must have a formal obligation to preserve lives and welfare of citizens are just as employers have a duty to protect their employees, and families of the detainees must be seen as hostages while seeking the release of their relatives.

In this sense, governments, employers, and the families of the hostages all face a real dilemma by deciding not to pay ransoms to terrorists, which endangers lives of innocent people, but payment, on the other hand, helps to supply terrorist groups in the consecration of taking other numbers of innocent lives. This dilemma - and this tragic choice - leads to a policy of "**No Concessions**" because there are so many people whose lives are at risk from terrorist violence around the world.⁽⁵⁶⁾

The definition of rescue can be found in Article 1(a) of the 1989 Salvage Convention which states that "Salvage operation means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever".⁽⁵⁷⁾ "It is therefore necessary to verify whether the payment of the ransom might constitute a rescue or not, and it appears clear that the ransom payment to the pirates for the release of the ship could be considered an act of assisting a ship in danger, in addition, piracy activities certainly create this great risk of the rescue operation required."⁽⁵⁸⁾

As a result, to determine whether the ransom payment can be recovered as a rescue fee, it is necessary to determine the rescue act and whether the payment falls under its definition; the basic definition suggests that three elements are required to claim a rescue bonus:

- There must be a service to maritime ownership that is at risk.
- The service must be voluntary in nature.
- At least the rescue efforts should be partially successful.⁽⁵⁹⁾

4.2.In the name of insurance

4.3.Moral principles

By the 17th-century, Thomas Hobbes notably argued that self-preservation is the basic function of and justification of civil society. It seems plausible to say that the state has a duty to try to uphold the human right to life of each of its citizens and to try to protect them from illegal violence wherever it occurs and whatever its source.⁽⁶⁰⁾

The state has a prima facie moral duty to rescue its citizens by paying ransom to their captors - a presumption in favour of paying if all other things are equal, but

payment could encourage further hostage taking and the money paid might be used to further terrorism, although ethically, it must be said that it matters not merely what is done and what the outcomes of actions are.⁽⁶¹⁾

But if a kidnapper threatened to kill, not pay a modest ransom, the threat still realistic, and there were no other feasible way of securing safe release, it would surely be morally obligatory to pay the money, thus to others die in order that further acts of kidnapping would not be encouraged might be considered by some people to be a breach of the moral duty of care of a parent.⁽⁶²⁾

In a similar way, it might seem reasonable that a state has, by virtue of its power and authority, a moral duty of care towards its citizens; it should not let them die unnecessarily if it can take reasonable steps to prevent their deaths and preserve its political face, but here are various factors as exceptions:

- Sometimes, there will be no basis for confidence that the payment of a ransom would actually secure the safe release of a hostage.
- Sometimes the price demanded will be too high more than what the state can reasonably be expected to pay.
- The state is not morally obliged to always do all that might be required to save its citizens lives.
- If someone breaches his state advice, he'll forfeit his right to protection.⁽⁶³⁾

Secondly :Ransom payment ban and combat:

Criminalizing the payment of ransom makes the beneficiary in a situation described as "not winning" and exaggerates the effect of this policy on the kidnappers. The first request of the kidnappers is not to contact the police, which endangers the life of the kidnapped victim at risk, and it seems harsh when individuals claim this great risk, often ransom cases occur precisely because the chances of disclosure are low or because of lack of confidence in the police and security forces, it may be preferable for ransom victims to contact police, but this is best achieved through no coercion.⁽⁶⁴⁾

Moreover, the involvement of police withdraws the negotiations abroad, making this quasi-trade generally less profitable for the kidnappers for whom it represents time, and the African Union adopted in 2009 such a decision, ‘condemning the payment of ransom’ to terrorist groups to secure the freedom of the hostages.⁽⁶⁵⁾

Paying ransom rewards criminal behavior but is considered the lesser of two evils, as it guarantees both the release of prisoners without harm and prevents criminals from committing other crimes that may be more serious, and, moreover, criminal behavior is not the recipient's "mistake", and therefore cannot be blamed either because of kidnapping or any crimes at a later time, and the police alone is responsible for preventing the crimes that occur in the first place.

1.The bases of criminalization:

As mentioned above, paying ransom was legally prohibited in England under the Ransom Act of 1782, which prohibited British citizens from concluding ransom contracts, however, according to this law British pirates who seized a ship from an enemy were allowed to request and receive ransom money, and this law was repealed in 1864 and since then there was no direct payment ban.

International law prohibits the payment of ransom to terrorist groups, but continental European countries, such as France and Germany, have regularly paid ransoms to rescue hostages,⁽⁶⁶⁾ over the past decade, held hostage by groups linked to al-Qaeda in the Islamic Maghreb, and circumvented the ban by paying ransom by Mediators, which made these countries at odds with Britain and the United States, which refuse to pay ransoms, albeit indirectly.

1.1.Ransom payment a reward to criminal behavior:

Paying ransom rewards the criminals for their criminal activities, and achieves the desired goal, as it brings an end to the state of danger that they are, for part of ransom request is often a safe passage away from the authorities, in addition to being a great opportunity to escape, moreover, it is in places where insufficient security makes it almost certain to be paid, making the problem worse and worse.

This criminal act is often carried out by organized networks, and therefore the payment makes these organizations able to perform more than other crimes in the future, and accordingly, the police forces are trained in hostage kidnappings and ransom requests, perhaps that makes it good and the ability to find a way to settle the situation peacefully, or to detain the kidnapper without the risk to the hostages, moreover, there is no guarantee that the kidnappers will release the hostage when paying and it may simply increase pressure to obtain more money, or raise other demands, as much as killing the hostage is possible for fear of being identified later.

But opponents believe that when making something illegal, it places a barrier against it not only via law, but in the minds of people as well, and this would make calling the police unlikely because of fear of subsequent follow-up and revenge and thus resort to negotiation and then paying away from eyes of law.

Paying ransom is a means to achieving goals, and when used by criminal organizations, those ends are likewise criminal acts, so stopping the payment of ransom, and financing criminal activities drains these sources. When the African Union banned this practice in 2009, Algeria demonstrated one of its primary motives: in preventing the likes of al-Qaeda against "using ransoms received from neighboring countries to fund attacks on security forces inside Algeria".⁽⁶⁷⁾

1.2.Criminalization realizes more deterrence:

In cases where police forces are not sufficient, it is worse to stimulate the ransom by giving the kidnappers more apparent certainty of payment, and if the payments are criminalized, then the potential kidnappers will know that the payment will be likely less, and therefore some of them may decide not to risk which would allow police forces to focus resources on the remaining cases where the kidnappers are more determined.

The police forces may not deter the kidnappers, and these forces may be in a position that does not allow to concentrate the resources once the ransom payment may be criminalized. If law is just dead texts, they will have to take strict steps to monitor ransom victims and verify non-payment, and this would extremely harmful in a situation where full focus and police resources are needed elsewhere, moreover, it is likely that many victims will deter contact with the police in the first place and this may sometimes create more serious situations for victims of ransom.

Paying the ransom should be criminalized, while trying to arrest the payees, so the police should maintain a monopoly over all negotiations, both to ensure that the kidnapers are not materially rewarded and improve their efforts to stop this practice, while all kidnappings may not end peacefully, if the police are aware of everything, on the other hand, it may only take a few ways in some cases to break the kidnapping cycle and reduce the threat to society as a whole.⁽⁶⁸⁾

1.3.Paying ransom encourages kidnappings:

Paying ransom is exactly what the perpetrators wants by asking for it, because ransom helps them financially, and brings a quick conclusion to the dangerous situation, so each of these factors greatly reduce the chances of being detected and arrested; given the serious threat that these criminals pose, it makes sense for the state to prohibit measures such as paying ransom, that is, to a large extent, a reward for criminal behavior, and the potential rewards for kidnapping have also led to practices that are spreading across borders. In 1999, about 92% of all kidnappings occurred in only ten countries, and by 2007, these practices had spread in six additional countries, so as long as the ransom continues, the practice will not stop spreading.

Paying the ransom has real and serious practical detriments to society, in addition to helping to prevent these criminals from being detected, payment greatly increases their ability to carry out such actions in the future, as many cases occur within organized crime networks - funding from these payments can increase to a large extent the ability to commit acts of ransom and other crimes in the future.

In a state such as Mexico, where forty percent of the national population does not feel safe because of excessive kidnapping, more should be done to reduce or eliminate the kidnapers, and this provides a solid ground to criminalize actions that promote such activity; society is hurt not only by fears for one's safety, as financial fears remain about the extent of the piracy epidemic that began to spread, and despite more than \$80 million were paid to pirates in 2008 alone, the ransom value remains on rise, and with ships and shipments are constantly ready to pay, costs may pass to consumer.

2.The proactive measures:

Encouraging the implementation of anti-piracy measures, including more compliance with a better practice of management, under the leadership of world states and with the support of the private sector, including insurance companies, may reduce the potential risks of paying ransoms; standardization of various regional information exchange frameworks may establish a "one-stop shop" mechanism to publish relevant information immediately after the kidnapping phase, conduct negotiations with the knowledge of the relevant national and international authorities in order to enhance mutual assistance between this and the private sector, and develop a mechanism to increase the process of collecting evidence immediately after release.

In line with these goals, extensive policies must be developed to improve communication and coordination to prevent future hostage-taking and ransom cases by a number of institutions working in the area of anti-ransom, with more realities directly related to actual hostage-taking and ship hijackings, in particular, ransom cases.

The financial measures taken to recover the money paid as a ransom may be an effective way to limit the kidnapers' benefit from the rewards. If ransom money that

can be recovered from recognized banks is allowed to be retrieved, it facilitates the process of paying the ransom more quickly, thereby reducing the risk to the hostages, and it would also make it easy for law enforcement and financial intelligence agencies to identify and remove the money from the market or use it to track funders and employers in kidnapping.

2.1.Reducing ransom:

There is already a legal framework to track illicit financial flows, but in cases of piracy, especially Somali ones, it is believed that intelligence has not always been followed by international law enforcement agencies, and relevant legislation is not consistently applied locally to ensure that pirates are prosecuted. At least 83 countries have been affected by kidnappings since December 2008, but few deal with piracy as an international organization crime.

Therefore, policy options to reduce ransom payments are considered a last paper in the series of discussion documents produced to stimulate debate between governments seeking to better coordinate their positions on ransom payment in cases of maritime piracy⁽⁶⁹⁾ emanating from Somalia, but not as approvals about the means of their analysis, but as tools for decision-makers to consider in a more comprehensive picture in the effectiveness of measures and the realization of possible outcome⁽⁷⁰⁾ but as a suggestion of possible methods to limit the payment of ransom, and ways to limit both the amount paid in ransom form and the frequency of ransom payment.

Reducing the amount paid in ransom is desirable because it would lead to kidnappers to limit hijacking attempts, but it is not possible to know how kidnappers can adapt their operations, and the level of risk they are prepared for, since there are sailors held hostage since March 2010 because of the ship owner's departure from the business sector and the inability of any party to meet the demands, which indicates that the pirates are ready to reserve the ship until receiving payment, so reducing the ransom amount may lead to systematic violence against the hostages in order to increase pressure on their families and employers to meet the demands of the kidnappers.

Refusing to pay the ransom or making other concessions to the terrorists is the surest way to break the cycle, because if the kidnappers fail to get what they want, they will have a strong incentive to stop taking the hostages in the first place, and the recent kidnapping trends for ransom showing that the hostage-takers prefer not to take American or British hostages - and almost certainly, because they realize that it is impossible to obtain ransom, and because they fear the kinetic response But this doesn't mean that the concerned governments have abandoned their citizens who are taken as hostages.

2.2.Making best compulsory management practices

The efforts of the International Chamber of Shipping (ICS) and the International Shipping Federation (ISF) have led to the formulation of a set of best management practices for ships crossing the high-risk area in the Indian Ocean by providing guidance on how to avoid hijacking through the application of self-protection measures; estimates indicate that the hijacking rate is low four times by this measure, as many of them involve behavioral changes, not an increase in spending, that is, strengthening defense

without significant costs while linking with insurance companies in order to increase the incentive for all ship owners to take self-protection measures.

The need to balance the efforts to combat maritime piracy and the tactics used by the shipping sector with realistic and long-term initiatives to combat piracy are generally acceptable; international initiatives such as the anti-piracy program of the United Nations Office on Drugs and Crime and the Norwegian Church draft program on piracy operates primarily with a view to increasing deterrence in specific areas such as northern Somalia,⁽⁷¹⁾ strengthening local judicial capacity and providing profitable employment opportunities for young people at risk of being drawn into piracy.

A proportional financing method for paying the ransom would allow payment to secure the release of the hostages and ships, but the equivalent or equal amount must be paid to the fund or project in Somalia to combat piracy on land; the rationale behind this method is that the possibility of customers to pay twice the amount required in the ransom that could encourage negotiators to set stricter limits on the amount required from pirates; another benefit is the more financial support for projects seeking to identify and support practical solutions on the ground for piracy.

Policymakers can, for example, require commercial companies targeted by the ransom to make an obligatory mandatory donation to the trust fund to support countries' anti-piracy initiatives especially off the coast of Somalia, so a fund was created in 2010 by the United Nations Contact Group on Piracy off the Coast of Somalia (CGPS) directed by Drugs and crime Bureau with the objectives of providing financial support to countries bordering the Indian Ocean to prosecute pirates and the activities related to their detention, in order to build legal capacity in these countries, and to enable the implementation of deterrence methods by the authorities.

2.3. Use of local initiatives:

The international community has invested in increasing the capacity of judicial institutions in an attempt to improve local capacities⁽⁷²⁾ to pursue and imprison pirates. This financial investment can be supported by increased political interest in fully utilizing these capabilities enabling the international community to use this political juncture to put pressure on pirates, through administrative and operational support, introduction of legislation criminalizing modern piracy, establishing prosecution and enforcing rulings, **e.g.**, anti-money laundering law can be an effective tool in tracking financial flows related to Somali piracy, but this requires increased attention from law enforcement agencies to bring administrative, operational and judicial support.⁽⁷³⁾

3. Coordination on an international approach to ransom payment:

There are multifaceted efforts to confront kidnapping to obtain ransom, and of course, the efforts made by the states to confront this crime go well and in line with the policy of not making concessions; it begins before taking any hostage and continues until after the solution of any hostage crisis, which proves the commitment of states to combat this type of criminality by refusing this activity, seeking to release prisoners, policy changes, or other franchise acts.

Africa is among the most vulnerable regions to kidnapping for ransom, especially in the Sahel region, so governments must develop the legal and regulatory framework, as well as the operational capacity, to effectively combat money laundering and terrorist

financing systems, so these countries must criminalize terrorist financing in accordance with international standards and should be able to identify and freeze terrorist transactions and assets by the financial tools necessary to identify, track, and intercept terrorist funds that are vital to combating kidnapping.

Prevention, "no concessions," and denial of benefits, of course, are no less important than the rest of the other steps taken to combat the payment of ransoms, as they are part of the government's broader efforts, which in turn are a part of the global efforts that will be necessary to defeat the kidnappers. These measures can simply turn the hostage-takers and direct their attention elsewhere to be more likely to pay the ransom, and thus can be trapped and tracked.

Among the proposals are drafting, enacting and implementing legislation on a ceiling to pay the ransom, but this option is likely to make it unattractive for governments, objections may arise in this regard over the life of the crew and securing the release of goods and the ship or collectively; the hijacked ship carrying multiple shipments also complicates the process of setting a ransom cap based on the value of the goods.

The clear limitations of imposing ceiling by one government is the nature of the jurisdiction of freight and banking services. If payment becomes more difficult before one country, a multinational company can handle the payment process in the jurisdiction of another country, and the lack of a multilateral agreement on the idea of introducing a maximum ransom could also be an unintended consequence of reinforcing the pirates' assumption that some nationalities make more money to free their hostages, and a higher ransom can be obtained if the hostages come from countries that do not value the ransom.

3.1.Prevention:

Prevention is the most efficient and effective method for individuals and organizations than any other measure. Even the legislative text or decision per se depends on a level of precautions, planning and prevention before the occurrence of the risk, and certainly, organizations or individuals need to understand the risks and adopt risk management systems then training in the field of security awareness with carefully studied protection services.

Insurance, policy and travel procedures require special security assessment and incident management plans should be developed and tested accompanied by management training. These precautions are all preventive tools, but they must be applied collectively strategically and in conjunction with sound intelligence and information systems if it is to effectively mitigate risks.

Foundations have already been put in place for prevention, as more than 160 countries, including all members of the European Union, are obligated to cooperate in preventing hostage taking within the framework of the 1979 International Convention against the Taking of Hostages, as a practical necessity insofar as it is an international legal obligation with a more confrontational strategy adopted from preserving the victims in the first place.

In this context, shipping industry organizations and maritime forces from all parts of the world have collaborated to issue a set of "best management practices" to help

prevent hijackings. Ships that have implemented these practices - such as tracking and avoiding pirate boats, increasing speed near suspicious ships, equipping with barbed wire or high pressure spray to prevent going up - may be four times less likely to be hijacked than those that do not implement this preventive strategy.

The defensive measures have reduced kidnappings to nearly 50% of incidents involving Somali pirates compared to previous periods, and given this success, it seems very reasonable to develop a set of personal security best practices as deployment - accurate travel warnings about areas at risk, training staff to evade and escape from danger, challenging all new ways to mitigate risks and helping to discover or disrupt kidnapping plots and to delegitimize this practice.

Among the possible preventive solutions to kidnappings in the African Sahel region⁽⁷⁴⁾:

- Doing less (little effect)
- Reducing the number of victims
- Dialogue and Rehabilitation (Reform)
- Political and economic reform
- Using the force

3.2.Limiting-up individual ransom payment:

Governments that seek to limit the amount paid in ransom in cases where individuals or companies are in conflict with the demands of pirates must offer legal measures to limit the amount that can be paid to secure the release of ships, crew or cargo.

These decisions are based on the assumption that after a number of negotiations on a ransom limits, pirates begin to realize that the potential economic and financial gains for hijacking are limited and that ransom payments up to previous levels can no longer be paid, and this may lead to a decrease in attacks on ships, whenever those involved in piracy think that the financial gains outweigh the involved risks.

A country that wants a unilateral offer can enact legislation to prevent the individuals or companies with its headquarters from paying more than the specified amount for the ransom, and sanctions can also be applied to those who accept payment, or to financial institutions that issue funds in excess of the maximum Scheduled for the ransom, knowing that it passes on to the pirates.

Drafting such legislation is a practical challenge, as it has to be strict enough to clarify the line between legal and illegal payment of ransom,⁽⁷⁵⁾ and caution must be exercised when considering cases in which pirates are paid as "expenses", as in the case of release of one behind the Pakistani hostages, but legislations may also face challenges due to these novel approaches.

The maximum ceilings introduced by governments, usually used to limit the amount paid by a government agency, and not to monitor the private spending of money, is likely to implement oversight of such legislation by the state agencies responsible for dealing with organized and serious crime, which would need to be ready enough to deal with criticism and legislative challenges.⁽⁷⁶⁾

In cases of detention, similar measures can be taken by countries in which the payment of ransom is prohibited by law, such as freezing the assets of the hostage families, to prevent the ceiling from being exceeded and how to reduce it, so decision-

makers can decide to impose an absolute upper limit on the amount for any hostage, ship, cargo, and it can be calculated in each case separately depending on a percentage of the perceived monetary value of the ship, goods and crew, a graduated scale for the roofs that can be entered depending on the type Ships or cargo and whether the hijacked vessel is commercial or private.

3.3.Negotiators system:

Negotiation (often a long process) is the safest and the most effective decision, thus researches indicate that about 66 percent of ransom victims are released, only about 15 percent are released without payment and about 10 percent are rescued through some intervention method but deaths cases can occur, since kidnapping has become one of the most serious threats to anyone in his comfort, physical and financial safety and security, so adaptation and dealing with such catastrophic events must have been decisively needed to mitigate and reduce them and then eliminate them.

The UN Monitoring Group report on Somalia and Eritrea highlights fears that some pirates are presenting themselves as consultants or negotiating experts to continue to benefit from actual piracy since kidnapping has become more difficult due to international measures to combat piracy, so policymakers can create a regulatory framework for ransom negotiators, such as taking the permission of the negotiator to obtain the freedom of the crew, cargo and ship, and individual countries can implement independent guidelines and similar legislation in consultation with shipping companies, private security companies and government representatives to regulate maritime security and armed guards on board ships.

A similar set of guidelines can enhance the transparency of negotiating firms and enable those on which ransom demands focus to benefit from negotiators most appropriate to their particular situation, so decision-makers can choose to make some measures mandatory, such as reporting ransom payments to an international authority such as the International Maritime Organization or some organizations of the United Nations, and such organization for negotiators can help reduce the amount paid as the number of deals decreases.

Although regulation can be useful if applied to local negotiators or other members, the scope of ransom negotiation in Somali piracy cases is somewhat self-regulating, bad negotiators are vulnerable to rapid failure, and there are practical limitations including issues of how to implement regulation and enforce sanctions and then concerns regarding the behavior or ability of marine security personnel as it is an internal procedure for handling complaints and reporting concerns to The International Maritime Organization (IMO), so there is no guarantee that guards will be punished.

4.Mechanisms to combat Ransom-related financial crimes:

One of the biggest challenges in combating piracy in general and ransom in particular from a financial point of view is the lack of information for authorities in understanding how piracy networks and financial organizations operate.⁽⁷⁷⁾

For this reason, focusing enforcement efforts on piracy gang leaders can increase the chances of asset recovery because they often have to dispose of greater amounts of capital than engage in other types of criminal behavior, and hold leadership positions in piracy networks.⁽⁷⁸⁾

Assets associated with piracy most often arise from the payment of ransom, hence, it is generally believed that the proceeds of piracy are invested in weapons for future exploits of piracy, distributed to community investors, and potentially filtered through money laundering schemes using corrupt companies and financial institutions, and other methods transfer of capital, thus the use of international financial institutions to differentiate the proceeds of crime is particularly attractive given the ease with which funds can be transferred without scrutiny from the border authorities.

Moreover, given the fact that the United Nations estimates the annual cost of piracy in the Indian Ocean between \$ 5 and \$ 7 billion,⁽⁷⁹⁾ there is a great need to understand the ways in which these earmarked funds are transferred after receipt, but law enforcement faces a double challenge of locating the assets associated with the payment of the ransom, by international financial systems. To this end, there are a few agreements and treaties that should be beneficial to law enforcement in an effort to locate and track the proceeds of crime, successful disclosure and confiscation of assets that are transferred through international channels as a prompt action to accelerate the authorities intervene.⁽⁸⁰⁾

4.1. Bank Secrecy Act and the UN international Conventions:

The Bank Secrecy Act is a sub component of the Patriot Act in the USA that aims to enhance law enforcement capacity to combat terrorism and organized crime. These provisions impose several conditions on financial institutions and other entities that transfer money and have branches or do business in the United States.⁽⁸¹⁾

Because the United States is a major financial center with a stock market comprising 41.8% of market activity in the world and one of the largest financial markets,⁽⁸²⁾ there is a high possibility that the assets will find their way through this system, and therefore it could be one of the ways to obtain information related to the prosecution of piracy. Specifically, this law requires banks to:

- Developing internal policies, procedures and controls that prevent facilitating and enabling criminal acts.
- Establishing an ongoing staff training program.
- Implementing independent auditing programs aimed at auditing potential criminal activity.

For the UN Convention against Transnational Organized Crime, entered into force in 2003, is a major tool in the pursuit of piracy. The agreement has been drafted to facilitate international efforts to combat the growing international networks of organized crime. Currently, this agreement is one of the basic tools available for law enforcement working in the field of prosecution of organized criminals and the pursuit of money laundering and financing of illegal companies and require states parties to criminalize the act of laundering proceeds of crime, and create a legal basis for the confiscation of proceeds of crime.⁽⁸³⁾

The International Convention for the Suppression of the Financing of Terrorism and the United Nations Convention against Transnational Organized Crime are also tools to combat financial crimes related to ransom, stipulating the suppression of unlawful Acts against the Safety and focusing on cooperation with each other through “the greatest measure of assistance in connection with criminal investigations”, which

includes obtaining evidence and sharing information,⁽⁸⁴⁾ while United Nations Convention against Corruption addresses the issue of international corruption, and requires each party state to take "measures that may be necessary to allow its competent authorities to enforce any order or confiscation issued by a court in another party state⁽⁸⁵⁾ but assets can be recovered, and doing so requires a great deal of time, effort, and investigation.⁽⁸⁶⁾

4.2.Hawala and alternative transfer systems:

Hawala and other formal systems for transferring value are terms that include systems and networks, and the mechanisms through which funds are informally transferred from an individual in a geographical area to another⁽⁸⁷⁾ and these systems are usually based on mutual trust between hawala operators, since the transfer of funds is made using resources of the individual operator.

Hawala and other systems include a large amount of "hidden economy" in the global financial market and particularly attractive to criminal organizations because it is usually unknown, more efficient and economical than traditional transfers, and given that it is not proven to actually transfer money using this method, it can be more difficult to know the financial networks associated with these transfers.

Tracking assets that are transferred using these methods can be very difficult, and as indicated earlier there is a minimum of documentation, often the actual transfer does not occur and as a result, law enforcement must cooperate widely with financial institutions in the private sector that can help to track individual or a business account which show patterns of unconventional deposits consistent with a transfer.⁽⁸⁸⁾

Conclusion:

Combating kidnapping for ransom is a major practical difficulty and ethical challenge when it comes to human lives, because preventing kidnapping and denying kidnappers and terrorists from benefits are difficult practical challenges, but these difficulties are not insurmountable, so for the moral side, which is represented in the balance between commitment to securing the freedom and safety of detainees as hostages is the most difficult to solve, because abandon one approach is the approval and execution of a non-payment policy by consensus, as well as the creation of the requisite competencies.

The issue of kidnapping appears to be on the rise, particularly given the ease with which operations can be carried out and the ransom paid. Given the misunderstanding of these incidents and the lack of planning or precautions to mitigate or reduce them entirely, it is clear that simple precautions, in addition to other strategies, particularly confidential ones, can be effective.

Although governments are concerned about the problem of terrorism, piracy, and the payment of ransom, few have called for measures to be taken to solve the problem, particularly when it comes to sanctions, civil or criminal procedures that require more regulations, such as President Barack Obama's Executive Order No.13536 issued on April 12th, 2010, and the Algerian proposal to criminalize the payment of ransoms to terrorist groups in exchange for the release of hostages, With the acceptance of the idea by the UN Security Council through Resolution 1904, the latter asked governments to stop paying abduction ransoms to terrorist organizations.

Results:

The study came to the following results:

- ✓ Ransom payment is a double-edged sword.
- ✓ Duality of criminalization should be established to impose a sanction on this act.
- ✓ Paying a ransom for the hostages is a crime that causes prosperity.
- ✓ For some observers, paying a ransom still the best option in the short term.
- ✓ The vast majority of kidnappings end in negotiation and then release of the victim, but it is impossible to know how many cases a ransom is paid.
- ✓ Paying the ransom would increase victim targeting.
- ✓ Paying ransom to terrorists or kidnappers is an implicit concession.
- ✓ Paying the ransom is surrender to unlawful actions, and it is the same for negotiating.
- ✓ The legal option to criminalize the payment of ransom may raise concerns about the consequences.

Recommendations:

The study makes the following recommendations:

- ✓ Uniting and agreeing not to surrender to the extortion of terrorists and criminals.
- ✓ Taking collective action against ransom payment.
- ✓ Balancing the rights of hostages' lives and the consequences of payment.
- ✓ Providing technology networks to detect the perpetrator, supporting intervention as a deterrent and law enforcement strategy.
- ✓ Taking prevention and precautions by understanding the risks and providing training in security awareness and carefully studied protection services.
- ✓ Providing good security policies and quality information security through investigation and scrutiny of sources.
- ✓ Training staff on how to deal with kidnappings and formulating policies on how to respond.
- ✓ Attempting to secure the release of detainees without paying ransoms.

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