



## **Kidnapping at Sea: A View from the Insurance Industry**

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Modern piracy is traditionally referred to a band of men, armed with guns and machetes, boarding a vessel under the cover of darkness, violently restraining the crew, and searching through the cargo for easily transportable merchandise. The fact that this was done at sea was the only aspect that separated them from what would simply be known on land as robbery. Kidnap for Ransom (K&R), however, has suddenly become the new face of modern piracy, now accounting for the majority of attacks over the last several years. The consequences for individual ship-owners as well as the role of insurance to assist the private sector in mitigating these are vastly different today. While the international community has focused extensively on tactical and strategic counter-piracy methods as well as the financial costs of Somali piracy on global trade, the experience and needs of individual ship-owners, forced to manage a prolonged seizure of their vessel and kidnapping of their crew for ransom, has not received a similar level of attention.

The UN Convention on the Law of the Sea (UNCLOS) of 1982 includes both depredation and detention within its definition of piracy. The depredation, or robbery, aspect was historically the main concern of commercial shipping. The objective would typically be the personal belongings of the crew and contents of the ship's safe, which held cash needed for payroll, port fees and cargo, to a lesser extent. A successful operation would be best characterized by making a quick 'getaway' to a safe location, usually close to the scene of the crime due to the limited range and speed of equipment available. This scenario had become so prevalent in some regions that many shipping companies resorted to keeping an amount of cash in the ship's safe so the pirates would be immediately assuaged and therefore leave the vessel quickly without injury to the crew. These tactics represent the historical norm of modern piracy and can clearly be contrasted with those employed currently by Somali pirates.



This change in tactics has very serious implications for the ship-owner: When managing a robbery related incident it is irrelevant whether the target is the contents of a safe, crew possessions or cargo. The avenue for financial recovery and crew support are relatively clear in that it is largely a matter to be dealt through their existing marine insurance policies and crew support measures. Their responsibilities are largely passive in this context and the incident represents more of an administrative burden as opposed to a serious crisis. The rise of Somali piracy however has forced ship-owners into a new and more difficult role. They are now an active participant facing the prospect of lengthy interaction with the criminals themselves over much higher stakes. Owners are also forced to work with other interested parties such as the multiple governments representing the various crew nationalities, media outlets, cargo interests, naval task force representatives as well as family members, some of whom will judge the ship-owners' performance and hold them responsible for the outcome, perhaps even inadvertently hindering a successful resolution by attempting to influence their decision making. All of this can result in a serious disruption to their day-to-day operations. Managing such an event can also be an unprecedented strain on an owner's finances caused by having to bear the upfront costs of multi-million dollar ransoms and sizable expenses throughout a process that can take six months or more. Such a burden in a difficult shipping market, combined with demands on time and focus of key executives, has effectively shut down a number of smaller owners who were already operating under difficult financial circumstances.

With the life of the crew and potential environmental disaster hanging in the balance, coupled with few options for outside support, many owners have turned to private firms specialized in assisting clients with land-based kidnap for ransom and extortion threats in order to guide them through the crisis rather than attempt to manage the crisis on their own. These response consultants' have long been associated with a non-marine insurance policy, known as Kidnap for Ransom (K&R). These policies are generally triggered by demands made by criminal gangs who threaten to kill, injure or damage property unless a financial demand is met. The policies are designed to both provide the necessary expertise to resolve a kidnap situation without loss of life



and reimburse the ransom itself along with a wide range of expenses occurred during and after the successful release. K&R insurers do not front the ransoms; however, the owner receives reimbursement shortly after delivery and is compensated for many expenses as they are incurred, thereby relieving the financial strain during the process. While this financial element is important, the critical role this insurance has played in the context of Somali piracy has been to place those with the greatest understanding of the phases and mechanics of a kidnap for ransom incident at the disposal of the owners. Without access to such expertise, ship-owners are largely left to attempt to manage the crisis on their own, thereby increasing the potential for loss of life and environmental damage.

It is important to note that, while there are many in the security arena who claim to possess such knowledge, there are in fact few who actually have the necessary training and experience. For this reason, some insurers have retained the services of the most accomplished advisors exclusively for their clients. This is a danger for owners unfamiliar with the security industry in general, much less this niche profession in particular, because bad advice can produce the same result as no advice when lives are at stake. Those providing these services are dealing with the subject of crisis management, not security, and therefore the experience gained from former roles within the military or law enforcement cannot solely justify claims of having such expertise. First and foremost, the consultants should work for the owner with their interests in mind. The immediate goal is to fill a large information gap by providing the benefit of years of kidnap-specific case knowledge so that owners are making informed decisions. Consultants work in an advisory capacity only and therefore should seek to help the company in creating a crisis management team so that roles and responsibilities of those involved are clear and decision making orderly and decisive.

One of the most important of these roles is that of a “communicator” who should be trained by the consultant on responding to demands and threats as well as methods of communicating with the pirate negotiator. A good consulting firm will also help to identify key stakeholders such as government agencies, the media, crewing agents, family members and coalition authorities, before potentially conflicting interests arise. They will also inform the owner as to the logistical



difficulties related to raising, transporting and delivering ransoms before the negotiations reach their final phase, and will recommend those who can provide advice regarding the legal ramifications of the options considered. Finally, consultants should work with the owner to provide the necessary post-release support and crew debriefing.

The above should be considered a very basic summary of the many aspects of support afforded by a qualified kidnap response consultancy. Ultimately, these consultants serve to effectively reduce a highly complex and sensitive issue requiring careful coordination of multiple interests to a manageable event, with the end result being the safe release of the crew in the shortest possible time. It should be noted that many of the smaller owners who would benefit the most from this expertise and resources to deploy them are the least likely to have such a policy behind them. The public responsibility of states to ensure free navigation in international waters is not disputed and in the months and years ahead, much thought, energy and resources will rightly be directed at further reducing this threat and eventually eliminating it. However, it is the private responsibility of individual owners themselves to protect their crews, vessel and cargo while at the same time balancing human life against the demands of pirates, the financial resources at their disposal and the competing interests of state, non-state and private actors.

The insurance industry has at minimum helped limit the impact of Somali piracy through its traditional role of risk transfer. It can also be argued that it has contributed to an ultimate solution by incentivizing the use of best security practices on the vessels themselves. For those owners facing the prospect of a six months negotiation over the fate of their crew and vessel, the professional support and expertise that comes with a K&R policy has extended the role of traditional marine insurance by providing unique practical guidance. Until such time as this threat is completely eliminated, the shipping community in general and smaller ship-owners in particular, should be careful not to underestimate the level of support required to both ensure a successful resolution and enable them to continue their critical business operations throughout the process. This phenomenon of kidnap for ransom is not new; it has been a reality on land for organizations in many regions for decades. While there is understandably little knowledge



among ship-owners of the complexities and associated dangers posed by such an event, until they suddenly find themselves responsible for the outcome, the shipping community can greatly benefit from heeding the hard lessons learned by those outside of the marine industry and taking a closer look at the private sector solutions that have developed over time to support them.

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