



ODUMUNC 39

Human Rights Council

The Future of Hostage Support Programs and International Kidnapping

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Issue Brief for the UN Human Rights Council



***The Future of Hostage Support Programs
and International Kidnapping***

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“The enjoyment of the right to life, the right to liberty and security of person, the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment; the freedom of movement and residence, the freedom of thought, conscience and religion, the freedom of opinion and expression, the freedom of assembly and association, the protection of privacy, family and home, the right to political participation, to work under favorable conditions, to rest and leisure, food, clothing and housing, participation in cultural life, health care and social services, education, the special protections for children and the social and international order needed to realize rights are either fundamentally violated or restricted.”

---Report of the Human Rights Council Advisory Committee on the Taking of Hostages

Introduction

Kidnapping takes innumerable forms, but the growing pervasiveness of kidnapping crimes and their growing brutality has made the issue an important one for the international community. Always traumatic to the immediate victims, their families, friends and colleagues, kidnapping has grown into a criminal industry in some parts of the world, increasingly used by terrorist organizations to gain influence, funding and slaves.

Kidnapping is a difficult issue for the United Nations, where member states, as sovereign states, prefer to rely on their domestic law enforcement agencies and laws. But as an increasingly transnational problem, there are aspects that no one country can resolve alone. International cooperation is essential for more effective responses.

The issues on the international agenda include:

- Kidnapping for slavery, including sexual slavery, prostitution, and child soldiers.
- Kidnapping hostages for ransom as a source of income or influence over

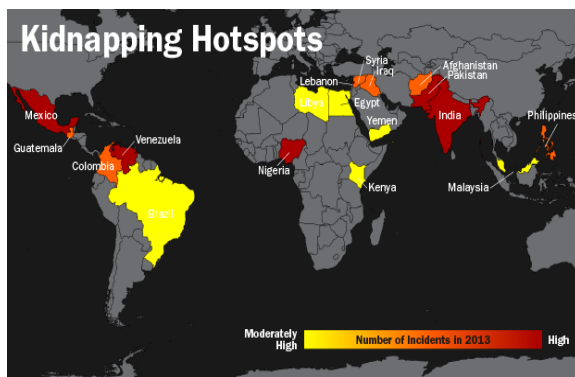
victims, their families, friends or colleagues.

- Kidnapping by terrorist organizations, organized crime, pirates, criminal gangs, as well as by family members.
- Kidnapping women and girls to become wives.
- Domestic kidnapping, often involving the children of divided facilities.

Not all these aspects are of equal priority for the international community. It tends to stress those areas covered by international law, especially crimes with a transnational aspect. In lieu of clear guidance from the Member States, the UN stresses ‘best practices’ for dealing with these situations.¹ Establishing clearer priorities, definitions and guidance for action are major issues for the UN Human Rights Council.

¹ *Hostage Support Programme (HSP) - Lessons from Piracy* (Vienna: UN Office on Drugs and Crime, 2014); <http://www.lessonsfrompiracy.net/files/2014/06/Hostage-Support-Programme-Lessons-Learned-Report-14-Apr-14.pdf>

So far the UN has focused largely on financial aspects of transnational kidnapping, since money making was the major driving force behind the wave of kidnappings in the 1990s and 2000s. This may be changing, as terrorist organizations like ISIS use kidnapping for other purposes, especially kidnapping for slaves and execution. Developing international agreement to deal with the expanding nature of the kidnapping problem is another major issue for the UN Human Rights Council.



Background

The total scale of kidnapping world-wide is poorly understood. The crime often is not reported to police, under pressure from the kidnapers. Ransoms also often go unreported. Total ransoms are estimated at USD 1.5, but this figure is little more than a guess.² The ransom money used to free hostages goes directly in the pockets of many of the world's most dangerous criminal and terrorist organizations, contributing to their capabilities and inviting others to imitate their crimes. With the average ransom for an international hostage estimated at USD 2 million, crime syndicates increasingly see

² "Estimated Amount of Ransoms Paid Out Worldwide in 2010." *Havocscope RSS*. 11 July 2011. <http://www.havocscope.com/estimated-amount-of-ransoms-paid-out-worldwide-in-2010/>

kidnapping as worthwhile and profitable enterprise.

In the Middle East, kidnapping is associated most with major terrorist groups, as defined by the United Nations. Al Qaeda and its affiliates alone received nearly USD 125 million from kidnap and ransom operations, despite the UN Security Council's request in resolution 2133 (below) that states stop ransom payments to terrorist groups. UN expert Yotsna Lalji told the Security Council's Counter-Terrorism Committee that the Islamic State (ISIS or ISIL) received USD 35 to 45 million in ransom payments in 2014 alone. Increasingly, Islamist extremists seek ransom payments and sue kidnap victims to gain influence by public executions as well.³

The UN cannot act without agreement on the meaning of a terrorist organization or terrorist state. It is important to note that not all groups considered terrorist by specific governments are designated as terrorist by the United Nations. Hamas and Hezbollah, for example, are considered terrorist groups by some member states (especially in Europe and the United States), but not by others (especially members of the Arab League). This disagreement makes it impossible for the UN to act in such cases. Wider agreement on how to deal with terrorist organizations is a major issue for the UN Human Rights Council.

Similarly, states who are labeled terrorist by some governments (such as Israel according to the many members of the Arab League and Non-Aligned Movement or NAM) and Iran (according to the United States) are not accepted as such by all UN members, which also makes it hard for the UN to act in those cases.

Kidnapping for ransom is not a problem solely in the Middle East. Each year a reported 60,000

³ Oakford, Samuel. "Countries That Pay Ransoms for Islamic State Hostages Might Be in Trouble With the UN." *Vice News*. 25 November 2014.



child disappear in India, many kidnapped for ransom. Oil workers in Mexico are prime targets for many cartels because prosperous petroleum enterprises are quick to distribute payments for the safe return of their employees. According to the secretary-general of Mexico United Against Crime, there are 12 kidnapping every hour in the country. Venezuela saw on average 46 kidnapping per day from 2008 to 2009.

However, these numbers are decreasing along with the rate in Haiti and the previous 'kidnap capital', Columbia.⁴ With the rise of Boko Haram, an Islamist terrorist organization in Nigeria, who infamously kidnapped 276 girls in April 2014, Nigeria has seen a drastic rise in ransom demands from the organization that sells hostages to the highest bidder.

Humanitarian concerns create contradictions for all countries trying to deal with kidnapping. No one wants to pay ransoms, but humanitarian concern soften make it impossible not to. Countries that pay or allow their citizens, organizations and companies to pay ransoms for the release of their citizens usually do so covertly, both to avoid antagonizing the kidnapers—and risk violent reprisal—but also because of the legal tensions involved.

The countries that have been the course of the most money in recent years include Austria, China, France, Japan, Italy, Oman, Qatar, Saudi Arabia, South Africa and Spain. Some governments discourage ransom payments for transnational kidnapping, especially the United Kingdom and the United States, which have policies not to negotiate with terrorists. In practice, all states allow their citizens to negotiate with hostage takers and rarely prosecute their families or companies when ransoms are paid.

⁴ "Top Five Countries with the Highest Rates of Kidnapping." *International Business Times*. 24 March 2014. <http://www.ibtimes.co.uk/top-five-countries-highest-rates-kidnapping-1441648>

Everyone agrees that rigorous polices are needed to minimize the risk of future kidnapping, to deal with kidnapers, and minimize random payments. But there also is appreciation that some ransom payment will continue.

The International Convention against the Taking of Hostages

The basic source of insertional law on hostage taking is the 1979 *International Convention Against the Taking of Hostages*. Today the convention has 174 States Party, out of 193 UN Member States. This was a response to terrorist incidents of the time (such as the Red Army Faction in Germany and groups based in the Middle East), and establishes best practices for states to follow. This defines hostage and hostage taking. It sets the framework the HRC works with today.⁵

As one expert notes, 'hostage-taking was already prohibited under international humanitarian law, including as a war crime, there was not yet any international instrument addressing hostage-taking outside armed conflict'. Thought to be too controversial, because many states support groups that could be called terrorists, the word 'terrorism' was not included in the final document. The short, twenty article convention facilitates 'the maintenance of international peace and security and the promotion of friendly relations and co-operation among States...' Hostage-taking as defined in the convention

... refers to anyone who seizes or detains and threatens to kill, or injure or to continue to detain a hostage in order to compel a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit

⁵ International Convention Against the Taking of Hostages, New York, 17 December 1979. https://treaties.un.org/Pages/ViewDetails.aspx?src=ND&mtdsg_no=XVIII-5&chapter=18&lang=en



condition for the release of the hostage” and “any person also commits such an offence if that person attempts to commit an offence as set forth above or participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking.

State parties who adopted the convention are obliged to:

- make the offence punishable by appropriate penalties
- take all measures it considers appropriate to ease the situation of hostages and secure their release
- to cooperate with each other in the prevention of acts of hostage-taking, and are
- also required to take alleged offenders into custody, prosecute or extradite alleged offenders, cooperate in preventive measures, and exchange information and evidence needed in related criminal proceedings.

It is important to note that the convention only applies to hostage situations that have a ‘transnational element’ meaning at least two or states must be involved however it is irrelevant in to ‘purely domestic acts’. Article 13 provides that the convention “shall not apply where the offence is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of the State”.

The convention allows states to use their own discretion when responding to a hostage situation. There are a variety of alternatives from negotiations to use of force in a rescue attempt. All are permissible under the convention. While some States refuse to negotiate with terrorists or to pay ransoms as a matter of policy, the Convention neither requires nor prohibits either step. Most controversially, ransom payment are permitted under the convention, although this was changed partially under UN SC resolution

2133 or 2014, which prohibits ransoms to terrorist organizations.

There remains controversy over the reach of the convention. States of the Non-Aligned Movement (NAM) and the Soviet Bloc maintained that the convention should not apply to legitimate national liberation movements (such as the Palestine Liberation Movement), reflecting a high priority to protect the rights of people engaged in violent struggle against colonialism, racism, and alien regimes to regain their legitimate rights or redress an injustice. Others, especially in Europe and North America, criticized this as ‘an open license for taking hostages’.

This dispute was partially resolved through a compromise in Article 12, which states that the convention does not cover hostage taking during times of war, which instead is governed the Geneva Conventions which already forbade the taking of hostages ‘at any place whatsoever, whether committed by civilian or by military agents’. The International Convention Against the Taking of Hostages in Article 12 left self-determination movements to be held accountable under the previously stated Geneva Conventions and humanitarian law.⁶ This dispute remains unresolved in the eyes of many, and leaves open a precedent that can easily be misused. To others, it is essential to international law

The United Nations and kidnapping

For the United Nations, the most immediate issue is kidnapping of its own personnel. UN humanitarian relief and aid personnel and peacekeeping soldiers are especially vulnerable, as are managerial personnel in countries where kidnapping is a serious problem. While the UN

⁶ Saul, Ben, International Convention Against the Taking of Hostages (December 9, 2014). United Nations Audiovisual Library of International Law, Historical Archives, 2014; Sydney Law School Research Paper No. 14/105.



has a strong interest in the security of its personnel, to insure their ability to perform their work and their personal security, resolving these cases involves many other actors, making them potentially complicated. Which agency has primary responsibility? Which negotiates with the hostage takers? Who pays ransoms and under what conditions?

The actors and agencies involved include the United Nations agency for which they work, the United Nations system, their home country (country of permanent citizenship) and the host country (the scene of the crime). The victims' families and colleagues also can be stakeholders, with a strong interest in resolution of the situation. The law and procedures of all these actors must be considered. Resolution of the crime affects them all and all expect to be involved in the process.

While it is easiest for the UN to act in incidents in which UN personnel are immediately involved, it also can establish rules to guide action by member states. The United Nations is limited on the problems of kidnapping, which usually is the responsibility of the member states as sovereign actors. The United Nations can establish *general principles* and *request* states to cooperate in general situations. Otherwise it is limited to *transnational* situations

The strongest statement by the UN came in January 2014 the United Nations Security Council (UNSC) passed resolution UNSC 2133.⁷ This was widely seen as a dramatic change for the international community, although it left many issues unresolved.⁸ This

⁷ Press release on UN Security Council resolution 2133,
<http://www.un.org/press/en/2014/sc11262.doc.htm>

⁸ 'UNSC resolution 2133 launches new phase in campaign against terrorist kidnap-for-ransom', *Interpreter*, 7 Februari 2014 2:07<http://www.lowyinterpreter.org/post/2014/02/07/A-new-phase-in-the-campaign-against-kidnapping-for-ransom-by-terrorists.aspx>

strongly condemns 'incidents of kidnapping and hostage-taking committed by terrorist groups for any purposes, including raising funds or gaining political concessions.' It specifically

3. Calls upon all 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;
4. Calls upon all Member States to cooperate closely during incidents of kidnapping and hostage-taking committed by terrorist groups...

The resolution also calls on all UN member states to halt all financial flows to terrorist organizations, and to meet regionally to coordinate action against terrorist groups that engage in kidnapping.

The resolution reaffirms what was already stated in previous resolutions (normal UN practice) but emphasizes the importance of international cooperation along with the starker language toward ransom payments. Not only does it bar States from disbursing ransom payments to terrorist organization, but it also encourages States to take measures to prevent private citizens and corporations from paying them as well to stop the funding of terrorist activity around the globe.⁹

Key Questions before the HRC

- What is transnational kidnapping?
- When should violators of UNSC Resolution 2133 be prosecuted?
- How can the taking of hostages best be prevented?
- What is the best method for returning hostages safely?

⁹ "UNSC Resolution 2133 Launches New Phase in Campaign against Terrorist Kidnap-for-ransom." UNSC Resolution 2133 Launches New Phase in Campaign against Terrorist Kidnap-for-ransom. February 7, 2014. Accessed August 24, 2015.



- Should the UN establish a body or a specific office to act as a mediator or manager in hostage crises?¹⁰
- Child kidnapping is the most common form in most countries. Usually associated with divorce, not with ransom demands. This still may require attention of the HRC.
- Kidnapping for sexual slavery and prostitution is another form that needs reconciling with laws created to deal primarily with terrorist or pirate kidnapping.

Country Positions

China and some other Asian states have a reputation for pragmatism, a willingness to pay discretely to get its people out of situations beyond their control. In the UN China usually follows the lead of the Non-Aligned Movement (NAM). But with investments and large numbers of personnel exposed in Africa and the Middle East, it is increasingly vulnerable and may be more willing to act. Of greatest importance to China is respect for the sovereignty of host governments in any situation, China prefers consultation and mediation to aggressive action.

Europe: the 28 countries of the European Union and most others in the region see a need for firm international agreement to avoid a worsening situation. They also recognize the importance of action to strengthen affected governments to enable them to combat and suppress kidnapping.

India and Japan have been affected by international terrorism and are adamant about its suppression. While humanitarian concern for victims and their families matters greatly to them, so suppression of terrorist groups.

¹⁰ Brian Michael Jenkins, 'Should There Be a Hostage Czar?' *Rand Corporation*, 1 June 2015; <http://www.rand.org/blog/2015/06/should-there-be-a-hostage-czar.html>

Latin America: with a history of kidnapping by organized crime, especially illicit drug traffickers, Latin American countries are very sensitive on this issue. They want to maximize support from the international community.

United States: In the 1970s the United States established an official policy or never negotiating with terrorists. In practice, this left the job to families, their organizations and companies.¹¹ The policy remains controversial and is not rigorously enforced. The policy changed especially after groups like Islamic State began beheading and murdering hostages.¹²

¹¹ 'Why the U.S. Does Not Pay Ransoms for Americans Kidnapped by Terrorists', *Newsweek*, 23 August 2014; <http://www.newsweek.com/why-us-does-not-pay-ransoms-americans-kidnapped-terrorists-266315>
























































































¹² 'Obama Ordering Changes in U.S. Hostage Policies', *New York Times*, 23 June 2015; http://www.nytimes.com/2015/06/24/world/obama-ordering-changes-in-us-hostage-policies.html?_r=0



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Global kidnapping hotspots 2015	Global kidnapping watchlist 2015
Afghanistan     	CAR & DRC     
Iraq & Syria    	Colombia    
Libya    	El Salvador  
Mexico   	Guatemala  
Nigeria & Cameroon    	Haiti   
Somalia & Kenya    	Honduras 
Pakistan    	Lebanon    
Philippines & Malaysia    	Mozambique   
Sudan     	Papua New Guinea    
The Sahel (North Africa)     	Russia (The North Caucasus)   
Venezuela    	Turkey   
Yemen    	Ukraine   

Source: 'Looking ahead: Kidnapping', Threat Forecast 2015.dynamics in 2015



UN Security Council resolution [2133 \(2014\)](#)

Adopted by the Security Council at its 7101st meeting, on 27 January 2014

The Security Council,

Reaffirming that terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed and *further reaffirming* the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Recalling all its relevant resolutions and Presidential Statements concerning threats to international peace and security caused by terrorist acts,

Reiterating the obligation of Member States to prevent and suppress the financing of terrorist acts,

Recalling relevant international counter-terrorism instruments, including the International Convention for the Suppression of the Financing of Terrorism and the International Convention against the Taking of Hostages,

Strongly condemning incidents of kidnapping and hostage-taking committed by terrorist groups for any purpose, including raising funds or gaining political concessions,

Expressing concern at the increase in incidents of kidnapping and hostage-taking committed by terrorist groups with the aim of raising funds, or gaining political concessions, in particular the increase in kidnappings by Al-Qaida and its affiliated groups, and underscoring that the payment of ransoms to terrorists funds future kidnappings and hostage-takings which creates more victims and perpetuates the problem,

Expressing its determination to prevent kidnapping and hostage-taking committed by terrorist groups and to secure the safe release of hostages without ransom payments or political concessions, in accordance with applicable international law and, in this regard, *noting* the work of the Global Counterterrorism Forum (GCTF), in particular its publication of several framework documents and good practices, including in the area of kidnapping for ransom, to complement the work of the relevant United Nations counter-terrorism entities,

Recognizing the need to further strengthen efforts to support victims and those affected by incidents of kidnapping for ransom and hostage-taking committed by terrorist groups and to give careful consideration to protecting the lives of hostages and those kidnapped, and *reaffirming* that 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,

Noting the decision of the Group of Eight Summit in Lough Erne to address the threat posed by kidnapping for ransom by terrorists and the preventive steps the international community can take in this regard and to encourage further expert discussion, including at the Roma Lyon group, to deepen understanding of this problem, and *further noting* that paragraph 225.6 of the Final Document of the 16th Summit of the Heads of State or Government of the Non-Aligned Movement condemned criminal incidences of hostage-taking with resultant demands for ransoms and/or other political concessions by terrorist groups,

Expressing its commitment to support efforts to reduce terrorist groups' access to funding and financial services through the ongoing work of United Nations counter-terrorism



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bodies and the Financial Action Task Force to improve anti-money laundering and terrorist financing frameworks worldwide,

Expressing concern at the increased use, in a globalized society, by terrorists and their supporters of new information and communication technologies, in particular the Internet, for the purposes of recruitment and incitement to commit terrorist acts, as well as for the financing, planning and preparation of their activities,

Recalling its resolutions [1904 \(2009\)](#), [1989 \(2011\)](#) and [2083 \(2012\)](#), which, inter alia, confirm that the requirements of operative paragraph 1 (a) of these resolutions, also apply to the payment of ransoms to individuals, groups, undertakings or entities on the Al-Qaida sanctions list,

Reaffirming that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations,

1. *Reaffirms* its resolution [1373 \(2001\)](#) and in particular its decisions that all States shall prevent and suppress the financing of terrorist acts and refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;

2. *Further reaffirms* its decision in resolution [1373 \(2001\)](#) that all States shall prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

3. *Calls upon* all 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;

4. *Calls upon* all Member States to cooperate closely during incidents of kidnapping and hostage-taking committed by terrorist groups;

5. *Reaffirms* its decision in resolution [1373 \(2001\)](#) that all States shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts;

6. *Recognizes* the need to continue expert discussions on kidnapping for ransom by terrorists, and *calls upon* Member States to continue such expert discussions within the United Nations and other relevant international and regional organizations, including the GCTF, on additional steps the international community could take to prevent kidnappings and to prevent terrorists from benefiting directly or indirectly from using kidnapping to raise funds or gain political concessions;

7. *Notes* that ransom payments to terrorist groups are one of the sources of income which supports their recruitment efforts, strengthens their operational capability to organize and carry out terrorist attacks, and incentivizes future incidents of kidnapping for ransom;

8. *Encourages* the Counter-Terrorism Committee (CTC) established pursuant to resolution [1373 \(2001\)](#) to hold, with the assistance of appropriate expertise, a Special Meeting with the participation of Member States and relevant international and regional organizations



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to discuss measures to prevent incidents of kidnapping and hostage-taking committed by terrorist groups to raise funds or gain political concessions, and requests the CTC to report to the Council on the outcomes of this Meeting;

9. *Recalls* the adoption by the GCTF of the “Algiers Memorandum on Good Practices on Preventing and Denying the Benefits of Kidnapping for Ransom by Terrorists” and *encourages* CTED to take it into account, as appropriate, consistent with its mandate, including in its facilitation of capacity building to Member States;

10. *Calls upon* all Member States to encourage private sector partners to adopt or to follow relevant guidelines and good practices for preventing and responding to terrorist kidnappings without paying ransoms;

11. *Calls upon* all Member States to cooperate and engage in dialogue with all relevant United Nations counter-terrorism bodies, as appropriate, to improve their capacities to counter the financing of terrorism, including from ransoms;

12. *Encourages* the Monitoring Team of the 1267/1989 Al-Qaida Sanctions Committee and the Committee established pursuant to resolution [1988 \(2011\)](#) and other relevant United Nations counter-terrorism bodies to cooperate closely when providing information on the measures taken by Member States on this issue and on relevant trends and developments in this area;

13. *Decides* to remain seized of this matter.



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For further reading

‘Top Five Countries with the Highest Rates of Kidnapping’, *International Business Times*, 24 March 2014, <http://www.ibtimes.co.uk/top-five-countries-highest-rates-kidnapping-1441648>

‘Kidnap and Ransom’, *Havocscope*, n.d. (2014?); <http://www.havocscope.com/tag/kidnap-and-ransom/>

‘Obama Ordering Changes in U.S. Hostage Policies’, *New York Times*, 23 June 2015; http://www.nytimes.com/2015/06/24/world/obama-ordering-changes-in-us-hostage-policies.html?_r=0

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