

“Next steps at the international level on arbitrary detentions”

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Testimony by Michael Kovrig

Thank you for the opportunity to provide testimony on how the European Union and its members can help to halt the abhorrent practice of arbitrary detention.

I'll begin by summarizing my own personal experience of arbitrary detention, follow with some context on the problem and conclude with some policy recommendations.

My own experience with arbitrary detention began in Beijing in December 2018, when officers from the Beijing State Security Bureau abducted me and drove me to a secret black jail where they held me for months under an extralegal procedure known as Residential Surveillance in a Designated Location. The UN classifies this treatment as enforced disappearance, and for me it involved hundreds of hours of interrogation, solitary confinement without daylight, insufficient food, constant surveillance, stress and duress, and threats of worse treatment and dire consequences.

It became obvious almost immediately that I and another Canadian citizen had been wrongfully detained for the purpose of coercing the Government of Canada to release Meng Wanzhou, the Chief Financial Officer of Huawei, who had been arrested in Vancouver on a US extradition warrant.

Although I was clearly a political hostage, I was not merely detained. I was also denied access to a lawyer, denied books, letters or any other material except basic clothing, and denied contact with the outside world except through brief monthly consular visits. Meanwhile state security officers sought to brainwash me into confessing to crimes. The suffering my loved ones experienced was also extreme.

The pressure tactics they employed are consistent with methods described in the UN's Istanbul Protocol on Torture. For context, each year China's political-legal system appallingly subjects thousands of people to this and related forms of solitary confinement and torture, in violation of its own criminal procedure law.

In May 2019, I was formally arrested and transferred to the adjacent detention centre, where I was held in a single cell for a further two years. Conditions in the detention centre did not meet

the basic standards of the UN's Nelson Mandela Rules for such facilities. During the entire time I was only allowed to leave the cell for further interrogation sessions, meetings with Canadian diplomats and my lawyers, and once to be subjected to a day-long secret political show trial, during which I formally asserted my innocence.

China's Ministry of State Security violated my rights as an EU citizen to European diplomatic and consular protection by refusing to grant Hungary consular access to me during my entire detention and trial.

It violated the Vienna Convention on Diplomatic Relations by interrogating me about my previous work as a diplomat.

And it violated the Canada-China consular agreement by delaying or denying consular visits, refusing to transfer to me care packages delivered by the embassy, refusing to allow diplomats access to my trial, and failing to informing me of my rights under the consular agreement.

It also stole many months from my life the lives of loved ones, not to mention thousands of hours of time expended by everyone who worked to resolve this unnecessary crisis.

The Communist Party of China's objective with this theatre of torment was for me and my family to suffer so that the nation of Canada would feel pain and its politicians would feel pressured to intervene in Meng Wanzhou's extradition case. Each time there was a development in the case in Vancouver, the party-state took a new step in its politicized legal processes against me or other Canadians held in China, or imposed informal trade sanctions.

Meanwhile, my family, advocates and supporters worked tirelessly, together with the Government of Canada and likeminded states to rally global support for my release. After I had been detained for 18 months, the EU finally formally raised my case at its 22nd bilateral Summit with China in June 2020. Meanwhile the EU continued negotiating a Comprehensive Investment Agreement with Beijing. Still, several European politicians, ministers and diplomats persistently raised my case with the Chinese, and many European think tanks and China analysts forcefully called for my release, including in an open letter to Xi Jinping. I am deeply grateful to all of them and indeed to everyone who worked for my freedom.

Their efforts were not in vain, and thankfully, in September 2021, after months of advocacy and negotiations between the US, China and Canada, I was finally freed, simultaneously with the return of Meng Wanzhou to China. After grudgingly releasing me, China's government falsely stated that I had confessed to committing crimes. It clearly needed the fig leaf of legitimacy to cover its moral bankruptcy.

While Canada returned all of Meng Wanzhou's property and she is now free from any legal encumbrances, China's government still hasn't returned my or Michael Spavor's personal effects or formally closed my case.

To get Meng back, China sacrificed billions of dollars in trade and destroyed a diplomatic relationship with Canada and reputation with the Canadian people that it had spent decades developing. It's difficult to see how that was worth it.

China wanted to maintain the fiction of rule of law while signaling that the only way to free the detainees is do what Xi wants. Eventually that contradiction became unsustainable. In the end, its fiction of legitimacy collapsed, its credibility in coercion declined and any illusions that it could behave responsibly were shattered, at least in the West. All it has left is to be feared, and now smaller states are bandwagoning against it.

Let me now add some context.

When we use the diplomatic term “arbitrary detention”, what we mean is governments subjecting people to confinement and deep suffering for months and years, for political reasons. In state-to-state cases, those reasons are usually at least partially to coerce, extort, blackmail, and punish the target state, and to frighten other states. It is the politics of fear.

We should not let the polite language of diplomacy obscure our recognition that these are acts of thuggery of the sort usually perpetrated by terrorist groups and criminal networks. These states are ruthlessly treating humans as bargaining chips, violating their rights and dehumanizing them in the process. As the UK House of Commons recently observed, arbitrary detention is “not only a humanitarian outrage, but an attempt to undermine the Rules-Based International Order”. We need to see it as not only a human rights problem, but also as a hybrid security threat that requires enhanced deterrence. By weaponizing their security and judicial organs to create illusions of legitimacy for criminal acts, states that engage in arbitrary detention are undermining fundamental norms of international relations.

Confinement and uncertainty are a detainee’s greatest sources of suffering. You’re trapped in a psychological tunnel and can’t see the end of it. Every day of confinement is suffering. I remember feeling that if only the people with the power to resolve the dispute would spend a week in confinement, they’d be screaming to end it immediately. Solitary confinement is even worse. It is a lonely corner of Hell. The UN’s “Nelson Mandela” Standard Minimum Rules for the Treatment of Prisoners limit solitary confinement to 15 days. In China it tends to be six months, but it can be longer. A prisoner serving a sentence can at least count down the days to release. A state hostage can only guess how long the suffering will last and try to summon the will to endure it.

I think I’m the only Hungarian citizen the PRC has taken hostage, but not the only Canadian. It did the same to the Christian missionaries Kevin and Julia Garratt in 2014 and to the tourism businessman Michael Spavor in 2018. China has also arbitrarily detained and probably tortured citizens of Australia, Canada, Japan, Sweden, the UK, and United States, not to mention thousands of its own citizens. The governments of Iran, North Korea, Russia and Venezuela also arbitrarily detain.

If China hadn’t arbitrarily detained me, it would likely have grabbed another Canadian. And if it hadn’t been Canada caught in the middle of this dispute, it could well have been an EU member state.

What the Chinese party-state did to me could and probably will be done again to EU citizens —unless the EU and its members take strong and coordinated measures to deny and deter arbitrary detention.

So what can the EU and its members do about it? Let me briefly propose three means to deal with arbitrary detention.

1. First, build the institutional capacity to respond properly and forcefully to cases of arbitrary detention, including the ability to provide comprehensive assistance to detainees and their supporters, generate leverage and negotiate strategically for their release. That could include a European Commission focal point for arbitrary detention. The default approach should be to get the hostages back as soon as possible and then to deter further incidents through severe punishment and sanctions.

2. Second, develop the means of suasion. Promote and strengthen the Declaration Against Arbitrary Detention in State-to-State Relations to shape global norms, overcome collective action dilemmas, and make it clear that taking hostages just isn't worth the reputational cost.

3. Finally, sharpen the tools for deterrence with measures to deny perpetrators opportunities and punish them severely for wrongfully detaining your citizens. We don't need perfect deterrence. We only need to raise the costs, and decision-makers' awareness of those costs, far enough above the pain threshold that they calculate that arbitrary detention of foreign nationals is just not worth it. That can include a combination of formal sanctions, travel and visa bans, halting progress on things the offending state wants, and public shaming.

I deeply appreciate this opportunity to talk with you today about arbitrary detention, and would be pleased to elaborate on those recommendations in much greater detail if you so desire.

I would like to end on a positive note by again expressing my gratitude to everyone who supported me and my family and worked to end our nightmare. It was a truly global effort that included many Europeans, and my family and I are truly thankful.

Statement by Michael Kovrig at the High-Level Dialogue on the Initiative Against Arbitrary Detention in State-to-State Relations

20 September 2023

Check against delivery

Arbitrary detention is the opposite of diplomacy. It's a cruel weapon of coercion in which the perpetrators hide behind a sham of legality.

Why should you care? Many of you at this dialogue have diplomatic immunity. But you won't always. I was once a diplomat and worked at this mission to the UN, and that didn't protect me.

What if they came for you?

Imagine it: security forces abduct you, lock you in a cell, subject you to relentless surveillance, interrogation and pressure to confess to invented crimes. Deprive you of adequate food, sunlight, sleep, or anything to occupy your mind. Deprive you of your dignity, rights and identity. You spend years confined, isolated and disempowered, your loved ones traumatized, wondering why this happened.

Why? Because a government wasn't competent, reasonable or ethical enough to pursue its goals through diplomacy, and instead decided to use your suffering to blackmail your country.

You should care because arbitrary detention creates small tears in the fabric of international law through which innocent people are dragged into darkness. It's part of set of coercive state behaviours that threaten to unravel the norms and rules that keep us secure.

We need to work together to stop it.

Let me propose three areas of effort, drawing on my own analysis and a new Soufan Center report titled ***Citizens for Leverage***. One of its authors, Vina Nadjibulla, is here with us today. Vina's experience with arbitrary detention includes leading a campaign that relentlessly and successfully fought for my own release.

First, bring the detainees home. If your nationals are detained or at risk, then build dedicated institutional capacity to support detainees, partner with their families and resolve cases swiftly. Create an accountable government focal point with the policy framework, skills and authority to maximize leverage and minimize concessions while negotiating for detainees' release. The guiding principle should be Blackstone's ratio: better ten guilty persons go free than one innocent suffer. But to preserve deterrence, offset any concessions with coordinated costs and consequences for the offenders.

Second, sharpen the tools for deterrence. Currently the costs are asymmetric: low for perpetrators, high for targeted states and astronomical for victims. To invert that equation we must deny opportunities and punish violations. Build deterrence toolkits that include intelligence gathering, coordinated diplomacy, targeted sanctions, financial penalties, legal action, travel advisories and bans, and more. Create mechanisms to achieve justice for victims

and accountability for perpetrators. Include measures to deter arbitrary detention in broader anti-coercion efforts.

Third, strengthen global norms. Promote the *Declaration Against Arbitrary Detention* to rally collective action and raise the cost of violations. Let's broaden support for the declaration and do more to implement its Partnership Action Plan. Let's create a common repository of information on cases and a network of concerned actors to share good practices and coordinate responses. Governments, civil society, and media should work together to shape narratives and impose reputational costs by shaming detaining states.

Collective action is the key to ending arbitrary detention. During my own thousand days of confinement, it meant the world to me to know that so many people and governments were working for my freedom. My family and I are deeply grateful. Without coordinated advocacy, pressure and negotiation, I might still be sitting in a cell today.

Many other people are still trapped in similar political nightmares.

Let's work together to free them.

Let's work together to ensure that no-one has to suffer arbitrary detention.

Let's work together to strengthen the international norms that keep us all safe.

THE SOUFAN CENTER

SPECIAL REPORT

CITIZENS FOR LEVERAGE:

*Navigating State Hostage-Taking in
a Shifting Geopolitical Landscape*

September 2023



THE SOUFAN CENTER SPECIAL REPORT

CITIZENS FOR LEVERAGE:

*Navigating State Hostage-Taking in a Shifting
Geopolitical Landscape*

CO-AUTHORED BY
VINA NADJIBULLA & STEPHANIE FOGGETT

THE SOUFAN CENTER
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THE **SOUFAN** CENTER

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EXECUTIVE SUMMARY

- The use of human beings as political bargaining chips is an appalling practice that has no place in the twenty-first century. Often referred to as “hostage diplomacy,” or state hostage-taking, a number of states today—like Iran, Russia, and China—are unlawfully detaining foreign nationals within their criminal justice systems for use as foreign policy leverage.
- The following countries have been parties to publicly reported cases: Australia, Belgium, Canada, France, Germany, Japan, Sweden, the United Kingdom, and the United States, the latter of which has reported the largest number of such cases. A number of states, as well as the European Union (EU), have issued advisories to their nationals cautioning them about travel to countries engaging in the practice.
- The issue of state hostage-taking requires consistent attention and should not only be driven by headlines or high-profile cases. Each case of state hostage-taking is tragic, lengthy, and complex; and individual and collective cases require further research to inform evidence-based policy making.
- State hostage-taking exerts profound costs on the individuals detained and their families, as well as on the foreign policies of governments whose citizens are targeted. Last year, US President Joseph Biden declared hostage-taking and the wrongful detention of US persons a national emergency. In 2021, Canada launched the *Declaration Against Arbitrary Detention in State-to-State Relations*, endorsed by over seventy states, as well as the European Union.
- The rise of state hostage-taking has not taken place in a vacuum, but in tandem with shifting power dynamics and in a geopolitical climate where great power rivalry overshadows multilateral cooperation. Conditions remain ripe for the practice of state hostage-taking to thrive and endure.
- There is no single playbook for perpetrator states: every case of state hostage-taking is unique and requires a case-specific response. While only a handful of authoritarian countries engage in this practice, there is concern that if the practice is not strongly condemned, more states may see it as an effective tool or current perpetrators of the practice may choose to use it more often.
- In addressing state hostage-taking, governments need to focus on two equally important imperatives: to bring their detained citizens home and to deter the practice. While deterrence must be a priority, it cannot come at the expense of current hostages. Securing the release of individual hostages often requires engaging in difficult negotiations. To offset possible concessions, governments must do more to raise the costs on the perpetrator states outside of individual cases.
- Impacted countries will require strengthened national response capacities, including an accountable entity within government separate from regular consular work. Families should be treated as trusted partners working alongside their governments.
- Victims deserve justice, and perpetrator states must be held to account through greater use of existing tools such as Magnitsky sanctions, travel bans, financial penalties, and asset seizures.
- Each case of state hostage-taking is a human tragedy. Governments must prepare to manage hostage-taking in all its forms. Today’s complex geopolitical landscape provides the conditions for both state and non-state perpetrators to commit these crimes.

INTRODUCTION

A number of states today are unlawfully detaining foreign nationals within their criminal justice systems for use as foreign policy leverage. Often referred to as “hostage diplomacy,” or state hostage-taking, this form of coercive diplomacy is not new in international politics, but its growing prevalence has raised alarm bells among many states, especially Western nations and their allies. This cruel practice places individual citizens at the center of a complicated calculus where their own governments must balance the individual’s freedom against political, security, economic, and other national considerations. The issue is fraught with challenges and complexities, further compounded by the often opaque political and judicial systems of abductor states.

Although data on specific cases is limited, a number of high-profile cases in the United States, the United Kingdom, Belgium, France, Australia, Canada, and elsewhere have brought greater attention and much-needed scrutiny to the issue. Further, a range of actions at the national and multilateral levels underscores the growing concern from much of the international community. Last year, US President Joseph Biden declared hostage-taking and the wrongful detention of US persons a national emergency. His Executive Order (EO) 14078 noted how the practice posed an “unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.”¹ A range of other states—Australia,² Canada,³ France,⁴ the United Kingdom,⁵ as well as the European Union (EU),⁶ among others—have also issued warnings and advisories to their nationals in recent months warning about travel to certain countries known to engage in the practice.

This growing concern, largely among Western states and their allies, has also led to the development of an important multilateral framework. In 2021, the *Declaration Against Arbitrary Detention in State-to-State Relations* was launched by the Government of Canada. Endorsed by over seventy states from every region of the world, as well as the European Union, the declaration encourages like-minded nations to denounce the practice and provides a potential framework for multilateral cooperation.⁷ The Group of Seven (G7), made up of seven of the world’s most advanced economies, has also affirmed their support for the Canada-led multilateral declaration.⁸

¹ The White House, “Notice on the Continuation of the National Emergency with Respect to Hostage-Taking and the Wrongful Detention of United States Nationals Abroad,” The White House, July 19, 2022, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/07/12/notice-on-the-continuation-of-the-national-emergency-with-respect-to-hostage-taking-and-the-wrongful-detention-of-united-states-nationals-abroad/>.

² Department of Foreign Affairs and Trade, Australia, “Smartraveller: China,” Smartraveller, June 2, 2023, <https://www.smartraveller.gov.au/destinations/asia/china>.

³ Global Affairs Canada, “Travel Advice and Advisories for Iran,” Government of Canada, August 9, 2023, <https://travel.gc.ca/destinations/iran>.

⁴ Ministère de l’Europe et des Affaires étrangères, “Iran- Sécurité,” France Diplomatie - Ministère de l’Europe et des Affaires étrangères, June 12, 2023, <https://www.diplomatie.gouv.fr/fr/conseils-aux-voyageurs/conseils-par-pays-destination/iran/>.

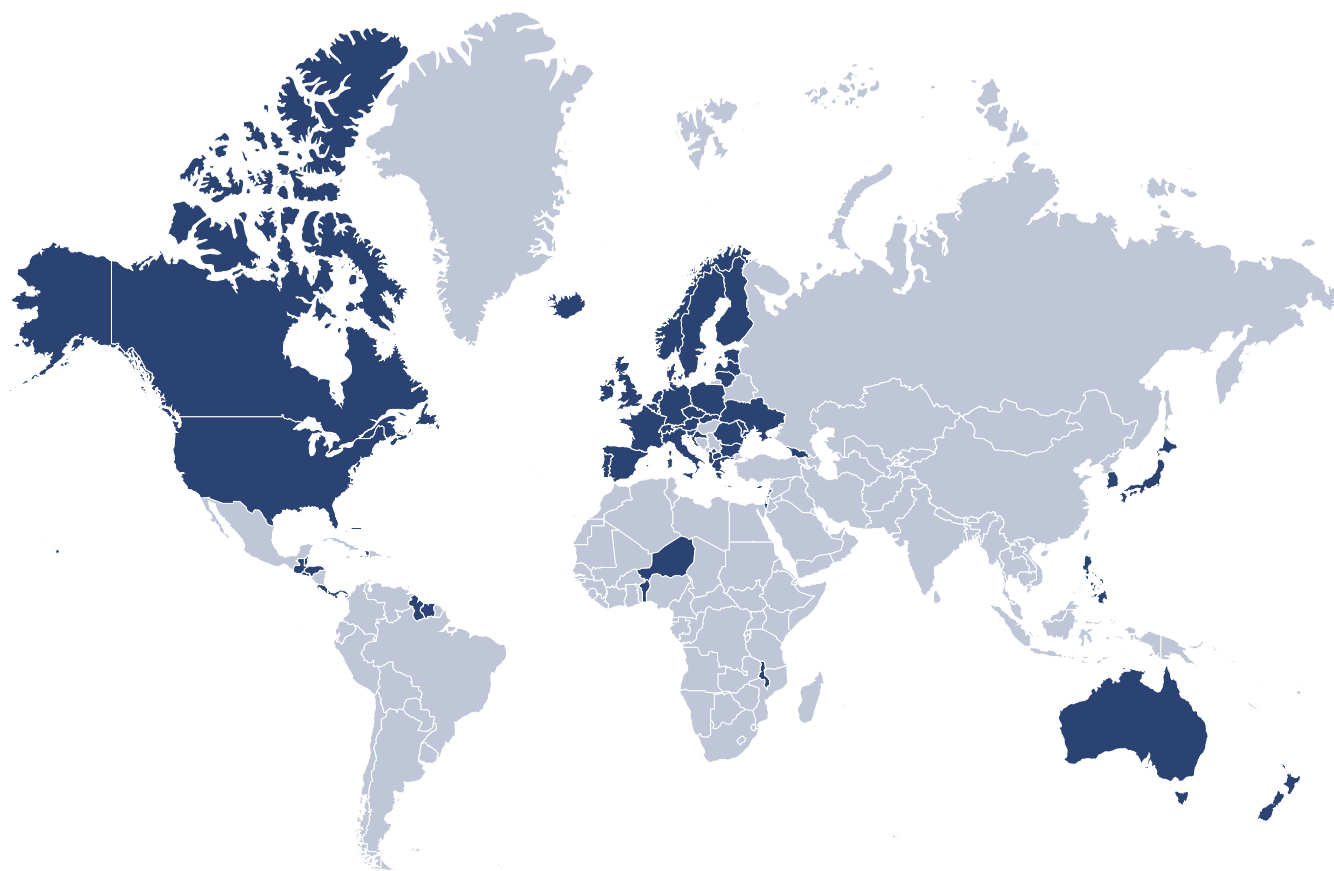
⁵ GOV.UK, “Iran Travel Advice,” GOV.UK, June 22, 2023, <https://www.gov.uk/foreign-travel-advice/iran>.

⁶ Council of the EU and the European Council, “Iran: Statement by the High Representative on Behalf of the European Union,” February 20, 2023, <https://www.consilium.europa.eu/en/press/press-releases/2023/02/20/iran-statement-by-the-high-representative-on-behalf-of-the-european-union/>.

⁷ Global Affairs Canada, “Declaration Against Arbitrary Detention in State-to-State Relations,” GAC, February 21, 2017, https://www.international.gc.ca/news-nouvelles/arbitrary_detention-detention_arbitraire-declaration.aspx?lang=eng.

⁸ Global Affairs Canada, “G7 Foreign and Development Ministers Communiqué,” GAC, May 5, 2021, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/g7/documents/2021-05-05-foreign_affairs_dev-affaires_etrangeres_dev.aspx?lang=eng.

Figure 1: List of Endorsements in the Declaration Against Arbitrary Detention in State-to-State Relations



Albania	El Salvador	Kosovo	North Macedonia	Suriname
Andorra	Estonia	Latvia	Norway	Sweden
Antigua & Barbuda	Finland	Kosovo	Palau	Switzerland
Australia	France	Latvia	Panama	The Bahamas
Austria	Georgia	Lebanon	Philippines	Tonga
Belgium	Germany	Lithuania	Poland	Tuvalu
Belize	Greece	Liechtenstein	Portugal	the United Kingdom
Benin	Guatemala	Luxembourg	Republic of Korea	Ukraine
Bulgaria	Guyana	Malawi	Romania	the United States
Canada	Honduras	Malta	Saint Kitts and Nevis	
Cook Islands	Haiti	Marshall Islands	Saint Lucia	
Costa Rica	Iceland	Moldova	Saint Vincent & the Grenadines	
Croatia	Ireland	Nauru	San Marino	
Cyprus	Israel	the Netherlands	Slovakia	
Czechia	Italy	New Zealand	Slovenia	
Denmark	Japan	Niger	Spain	

The European Union has also endorsed the declaration.
Endorsements as of May 11, 2023.

Source: Government of Canada

Citizens for Leverage: Navigating State Hostage-Taking in a Shifting Geopolitical Landscape

Global concerns about state hostage-taking must be understood in the context of the return of great power competition and rising geopolitical tensions between the United States and key authoritarian states like Russia, China, and Iran. In other words, the rise of state hostage-taking is not taking place in a vacuum, but in tandem with challenges emanating from the shifting power balances in the international system. The practice of state hostage-taking is becoming part of the foreign policy toolkit and statecraft of some authoritarian states that are increasingly challenging the rules-based international order established by the United States and its allies after the Second World War.

The UK government, in no uncertain terms, has noted the link between state hostage-taking and the politics of authoritarian rule: “Arbitrary detention is a hallmark of authoritarian regimes and its use is a tool of political intimidation.”⁹ In leveraging the liberties of foreign nationals, the practice serves as a tool for authoritarian regimes to assert dominance and recalibrate the international order in their favor.¹⁰ Reports on past agreements and conditions from abductor states for the release of foreign nationals in their detention have included high-level prisoner releases,¹¹ historic debt settlements,¹² and deferred prosecution agreements.¹³ In a geopolitical climate where great power rivalry overshadows multilateral cooperation, conditions remain ripe for the practice of state hostage-taking to thrive and endure.

Despite growing national and multilateral concern about state hostage-taking, data on the issue remains limited. States have not provided exhaustive figures on the number of cases they are managing related to state hostage-taking, and it is very possible many states do not know these figures themselves. A range of issues complicate data collection, including individual privacy concerns, as well as diplomatic and national security considerations regarding specific cases. Further, identifying and classifying these cases remains a challenge for most states.

Data limitations and knowledge gaps not only limit awareness and understanding of the scale of the problem, but also create accountability gaps around individual and collective cases. Crucial research from the not-for-profit and academic communities can shed some light on the scale of the problem. According to data from the James W. Foley Legacy Foundation, over the last decade, the number of American nationals wrongfully detained increased by 175 percent.¹⁴ At present, the advocacy group estimates there are fifty-nine publicly known cases of American persons held hostage or wrongfully detained abroad.¹⁵ Another study by Professor Carla Ferstman and Dr. Marina Sharpe focused on Iranian state hostage-taking found that sixty-six foreign and dual nationals were known to have been arbitrarily detained in Iran between 2010 and 2021.¹⁶

⁹ GOV.UK, “UN Human Rights Council 48: UK Statement on Arbitrary Detention,” GOV.UK, September 20, 2021, <https://www.gov.uk/government/news/un-human-rights-council-48-uk-statement-on-arbitrary-detention>.

¹⁰ The Soufan Center, “IntelBrief: Evan Gershkovich and the Rise of Hostage Diplomacy,” April 14, 2023, <https://thesoufancenter.org/intelbrief-2023-april-14/>.

¹¹ Patrick Reeve, Aaron Katersky, and Nadine El-Bawab, “Who Is Viktor Bout, the Convicted Russian Arms Dealer Swapped for Brittney Griner?,” *ABC News*, December 8, 2022, <https://abcnews.go.com/International/viktor-bout-convicted-arms-dealer-held-us-prison/story?id=86543907>.

¹² Danica Kirka and Jon Gambrell, “Zaghari-Ratcliffe, Ashoori Back in Britain after Iran Deal,” *AP News*, March 17, 2022, <https://apnews.com/article/boris-johnson-middle-east-iran-europe-united-arab-emirates-42beb8e089a144c218e8f61e76eba34d>.

¹³ BBC News, “China Frees Canadians Michael Spavor and Michael Kovrig after Huawei Boss Released,” *BBC News*, September 25, 2021, sec. US & Canada, <https://www.bbc.com/news/world-us-canada-58687071>.

¹⁴ Cynthia Loertscher, “Bringing Americans Home 2022: A Non Governmental Assessment of U.S. Hostage Policy and Family Engagement” (James W. Foley Legacy Foundation, September 2022), <https://static1.squarespace.com/static/5b9bff21ee17595f5ae7ca1e/t/6390acf3abbc9b72ea3f1edf/1670425849876/Bringing+Americans+Home+2022+Report+September2022V2.pdf>.

¹⁵ James W. Foley Legacy Foundation, “Supporting Hostages and Detainees,” James W. Foley Legacy Foundation, accessed August 15, 2023, <https://jamesfoleyfoundation.org/american-hostage-advocacy>.

¹⁶ Carla Ferstman and Marina Sharpe, “Iran’s Arbitrary Detention of Foreign and Dual Nationals as Hostage-Taking and Crimes Against Humanity,” *Journal of International Criminal Justice* 20, no. 2 (May 1, 2022): 403–35, <https://doi.org/10.1093/jicj/mqac011>.

Because of limited data and research, there are more questions than answers about contemporary state hostage-taking. For individual victims, the cost of inaction remains high. For states working to secure their release, these cases can be lengthy and costly to resolve. For abductor states, the risks and consequences of engaging in this practice are perceived as minimal compared to the gains from prisoner swaps or other policy concessions. Recent high-profile cases in the United States, United Kingdom, and Canada illustrate the seriousness and complexity of the challenge. These cases also demonstrate the need for democratic states to engage seriously on this issue given the profound costs to their citizens, as well as the impacts on their foreign and security policy.

This special report offers an analysis of contemporary state hostage-taking from an international perspective in terms of cases, trends, and policies. It builds upon the existing literature, much of which focuses on a specific dimension of the issue, like the legal protection gap, or offers a look at country-specific approaches or detailed analyses of particular state hostage-taking cases. This report provides a general overview of the topic that will examine definitions and the challenges states grapple with in classifying cases of state hostage-taking. The report will present the key players, from the abductor states utilizing the practice to the states and citizens impacted. Through an analysis of three countries—the United States, Canada, and the United Kingdom—this paper will also explore and compare national trajectories and policy responses. The report will conclude by offering recommendations for national and international action to prevent, deter, and respond to the growing challenge of state hostage-taking.

“The United Nations Universal Declaration of Human Rights made clear over 72 years ago that arbitrary detention in all its forms is to be abolished. Canada’s initiative against arbitrary detention in state-to-state relations, with support from every region of the world, is a welcome reaffirmation of these human rights principles. All states should abide by their obligations to end and deter arbitrary detention for diplomatic leverage, and all foreign nationals arbitrarily detained should be immediately released.”

- Ban Ki-moon, Former Secretary-General
of the United Nations

WHAT IS STATE HOSTAGE-TAKING?

State hostage-taking, where states use their judiciary to detain foreign citizens as a tool of foreign policy leverage, presents unique challenges from legal, moral, and international relations perspectives. While functionally hostages, victims of this practice are caught in the limitations of international law and norms of international relations where their home states are generally reluctant to weigh in on the internal functioning of another state's judicial system. This section explores issues of definitions and criteria and presents the key players, from perpetrator states to the states and citizens impacted by the practice.

Defining the Problem

The practice of states using their judicial systems to detain foreign citizens for diplomatic leverage or to extract political, military, or economic concessions from another state is fraught with competing definitions. Within both national and international contexts, a range of terminology is used by various actors to discuss the practice. Commonly used terms include wrongful and unlawful detention, arbitrary detention, arbitrary detention for diplomatic leverage, arbitrary detention in state-to-state relations, hostage diplomacy, and state hostage-taking. Each of these terms has advantages and disadvantages. Currently, there is no internationally agreed upon definition or criteria for external actors to determine that a state has engaged in this practice.

Although arbitrary deprivation of liberty is prohibited under international law,¹⁷ the challenge with using the term arbitrary detention when dealing with states detaining foreign nationals for leverage is that the perpetrators do so using their domestic laws and often hide behind baseless national security charges. In other words, perpetrator states try to create a veil of legitimacy or legality around their hostage-taking actions. Furthermore, while detaining foreign nationals for leverage or to extract concessions from their home governments clearly falls within the definition of hostage-taking under the *United Nations International Convention Against the Taking of Hostages*, the Convention only addresses hostage-taking by non-state actors and does not explicitly deal with the actions of states.

Given this international legal protection gap, the United States Congress in December of 2020 passed the *Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act*,¹⁸ codifying the term wrongful detention in US law and laying out eleven criteria which the Secretary of State can apply to determine if a US national is being held wrongfully by a foreign government. Once the designation is made, the US government has the responsibility to do everything possible to secure the freedom of the individual. The signing into law of the *Levinson Act* in the US is a landmark achievement, not matched by any other country to date. No other country has attempted to pass national legislation or put in place publicly available criteria to make a determination on whether its nationals are being detained by foreign states for leverage.

¹⁷ General Assembly resolution 2200A (XXI). "International Covenant on Civil and Political Rights (Entry into Force: 23 March 1976, in Accordance with Article 49)," December 16, 1966. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

¹⁸ *The Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act (the Levinson Act)*, signed into law on December 27, 2020, as part of the Consolidated Appropriations Act of 2021 (P.L. 116-260), codifies key elements of hostage and wrongful detention policy and provides a framework for the Secretary of State to review cases and make wrongful detention determinations where appropriate. The Levinson Act, named in honor of former FBI agent Robert Levinson, abducted in Iran and the longest held hostage in US history. (<https://www.state.gov/about-us-special-presidential-envoy-for-hostage-affairs/>)

Based on its own experience, Canada led an international effort to bring attention to the practice of states detaining foreign nationals for leverage by launching the *Declaration Against Arbitrary Detention in State-to-State Relations* in February of 2021. The declaration, which to date has been endorsed by over seventy countries, is an important political tool to condemn the practice and to build international cooperation and solidarity around deterrence and responses to the practice. However, it is not a legally binding instrument, does not spell out what defines arbitrary detention in state-to-state relations, and does not include any criteria or process to determine that a state has engaged in the practice.

Furthermore, the declaration implies a distinction between cases of arbitrary detention of foreign nationals by state actors without clear foreign policy objectives versus arbitrary detention cases linked to diplomatic leverage. In the former, arbitrary detention of some foreign nationals may be linked to the detainees' exercising of fundamental human rights, to the conditions of their detention, such as torture or lack of legal access, to forms of corruption, or due to soured business or personal relations with powerful entities in a foreign state, among other reasons. Though a clear diplomatic leverage element may not always be present, some caution is warranted in making these distinctions, as state actors are rarely forthcoming about their intentions in detaining foreign nationals for leverage.

In this report, the authors will use the term state hostage-taking. Hostage-taking falls under the broader category of "arbitrary" or "wrongful" detentions, where an individual is inappropriately seized or detained. In other words, a detention does not need to be carried out with the objective of attaining

"Arbitrary detention is detrimental to friendly relations among states and corrosive to the international human rights regime. It is also harmful to the free movement of people for business, trade, and tourism which are integral to our economies, development and prosperity. Belize relies heavily on the respect for international law for our security and protection. We welcome the Declaration as it strengthens the existing edifice of international law by bolstering the tenets of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights."

- Eamon Courtenay, Minister of Foreign Affairs,
Foreign Trade and Immigration of Belize

foreign policy concessions to be considered arbitrary or wrongful, but that condition is necessary for it to be considered a hostage-taking case. Using the term arbitrary detention, instead of state hostage-taking, also casts a veil of legitimacy over the actions of perpetrator states and ignores the primary driver for their action, which is deemed to be leverage over another state. The term "wrongful detention" in the US context is a detention that the Secretary of State has determined to be wrongful consistent with section 302(a) of the Levinson Act.¹⁹ This term would not necessarily have the same legal meaning when dealing with cases outside of the United States. Importantly, the term hostage also best describes the experiences of the victims and is also used within the growing community of advocates working on this issue.²⁰

While defining terminology is important, perhaps even more critical is the need for clear criteria and an expeditious and transparent process for designating cases of state hostage-taking. Such criteria can be established at the national level through the adoption of domestic laws, like the US Levinson Act, or at the international level, either through the UN Working Group on Arbitrary Detention or as part of the strengthening of the *Declaration Against Arbitrary Detention in State-to-State Relations*.

¹⁹ The White House, "Executive Order on Bolstering Efforts to Bring Hostages and Wrongfully Detained United States Nationals Home," The White House, July 19, 2022, <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/07/19/executive-order-on-bolstering-efforts-to-bring-hostages-and-wrongfully-detained-united-states-nationals-home/>.

²⁰ Daniel Sharp and Jason Rezaian, "Just Call Them Hostages" (Center for Strategic & International Studies (CSIS), July 20, 2023), <https://www.csis.org/analysis/just-call-them-hostages>.

Terminology on Wrongful & Arbitrary Detention



ROBERT LEVINSON HOSTAGE RECOVERY AND HOSTAGE-TAKING ACCOUNTABILITY ACT

“The Secretary of State shall review the cases of United States nationals detained abroad to determine if there is credible information that they are being detained unlawfully or wrongfully, based on criteria which may include whether—(1) United States officials receive or possess credible information indicating innocence of the detained individual; (2) the individual is being detained solely or substantially because he or she is a United States national; (3) the individual is being detained solely or substantially to influence United States Government policy or to secure economic or political concessions from the United States Government; (4) the detention appears to be because the individual sought to obtain, exercise, defend, or promote freedom of the press, freedom of religion, or the right to peacefully assemble; (5) the individual is being detained in violation of the laws of the detaining country; (6) independent nongovernmental organizations or journalists have raised legitimate questions about the innocence of the detained individual; (7) the United States mission in the country where the individual is being detained has received credible reports that the detention is a pretext for an illegitimate purpose; (8) the individual is detained in a country where the Department of State has determined in its annual human rights reports that the judicial system is not independent or impartial, is susceptible to corruption, or is incapable of rendering just verdicts; (9) the individual is being detained in inhumane conditions; (10) due process of law has been sufficiently impaired so as to render the detention arbitrary; and (11) United States diplomatic engagement is likely necessary to secure the release of the detained individual.”



DECLARATION AGAINST ARBITRARY DETENTION IN STATE-TO-STATE RELATIONS

“The arbitrary arrest or detention of foreign nationals to compel action or to exercise leverage over a foreign government is contrary to international law, undermines international relations, and has a negative impact on foreign nationals traveling, working and living abroad. Foreign nationals abroad are susceptible to arbitrary arrest and detention or sentencing by governments seeking to compel action from other States. The purpose of this Declaration is to enhance international cooperation and end the practice of arbitrary arrest, detention or sentencing to exercise leverage over foreign governments.”



DAVID RUTLEY, PARLIAMENTARY UNDER SECRETARY OF STATE, UK FOREIGN, COMMONWEALTH & DEVELOPMENT OFFICE

“[T]he Government uses the term ‘arbitrary detention for diplomatic leverage’, rather than ‘state hostage-taking’, to describe the detention or use of individuals to exert leverage over the UK. That reflects the degree of international consensus around that term and the international condemnation which the UK has worked to reinforce.”



UNIVERSAL DECLARATION OF HUMAN RIGHTS, ARTICLE 9

"No one shall be subjected to arbitrary arrest, detention or exile."



UNITED NATIONS INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES (NEW YORK, 17 DECEMBER 1979)

"The act of hostage-taking for the purposes of the Convention refers to any person who seizes or detains and threatens to kill, to 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 condition for the release of the hostage. 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."



UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

"The notion of 'arbitrary' includes both the requirement that a particular form of deprivation of liberty is taken in accordance with the applicable law and procedure and that it is proportional to the aim sought, reasonable and necessary. 'Arbitrariness' is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law."



INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, ARTICLE 9, SECTION 1

"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."



CENTER FOR JUSTICE AND ACCOUNTABILITY

"Arbitrary or unlawful detention occurs when an individual is arrested and detained by a government without due process and without the legal protections of a fair trial, or when an individual is detained without any legal basis for the deprivation of liberty."



TRIAL INTERNATIONAL

"Arbitrary detention is the violation of the right to liberty. It is defined as the arrest and deprivation of liberty of a person outside of the confines of nationally recognized laws or international standards. International treaties may be implored to guarantee the right to liberty if national laws protect the individual in an incomplete or partial manner."

Perpetrator States

There is no single playbook for perpetrator states, also referred to as abductor states, and every case of state hostage-taking is unique and requires a case-specific response. Even cases stemming from the same perpetrator state may require different response strategies. While currently only a handful of countries engage in this practice, there is concern that if the practice is not strongly condemned by the international community, more states may see it as an effective tool or current perpetrators of the practice may choose to use it more often.

Data and statistics on specific cases of state hostage-taking are very limited. Research from the US not-for-profit community offers some information on the primary perpetrators of this practice and the possible spread of the practice globally. The James W. Foley Legacy Foundation found that detentions in China, Iran, Russia, and Venezuela accounted for 79 percent of US nationals detained in 2022, and that over 90 percent of the captors of Americans are now nation states.²¹

In July 2022, the United States listed six countries—Iran, Russia, China, Venezuela, North Korea, and Myanmar—under its newly created travel risk indicator (“D”) highlighting the elevated risk of wrongful detention of Americans by these countries.²² Both the US Department of State list and the Foley Foundation data are notable in that the perpetrator states identified are all authoritarian regimes and have strained relations with the United States.

However, US hostage advocates have argued that wrongful detentions do not exclusively happen in countries with strained or adversarial relations with the West, but also in states that are seen as Western allies and strategic partners, such as Egypt, Türkiye, and the United Arab Emirates (UAE).²³ The United Kingdom is, likewise, working to understand the complexities around the detention of some of its citizens in the UAE, where some British nationals have been recognized as being arbitrarily detained.²⁴ Therefore, it is important to remember that perpetrator states can differ significantly in how they utilize the practice, who they target, and their motivations for doing so. Sometimes they are seeking publicity, prisoner swaps, or leverage for other concessions. Alternatively, they may engage in the practice to retaliate for an action they perceive as an affront to their national interests (like in the case of China).

There are both commonalities and differences in the ways different authoritarian regimes use this tool. In Iran, North Korea, and Venezuela, the practice can be seen as a form of asymmetric warfare, given that these regimes may feel they lack power or other tools to achieve their goals or exert leverage over the United States or its allies, especially given their pariah status within the international system. These states exploit the fact that the United States and other democracies may feel pressure or a greater obligation to protect the rights and well-being of their citizens, and will face moral pressure to secure the release of their nationals.

Iran stands out, in particular, as a country with a large number of publicly known cases of detentions of American, Australian, Canadian, British, and EU citizens for diplomatic and political leverage. It has also

²¹ Cynthia Loertscher, “Bringing Americans Home 2023: A Review of the Hostage and Detainee Landscape,” James W. Foley Legacy Foundation, September 2023.

²² “Be Informed Before Takeoff: Travel Advisories Define Country-Specific Risks,” United States Department of State, July 22, 2022, <https://www.state.gov/be-informed-before-takeoff-travel-advisories-define-country-specific-risks/>.

²³ Loertscher, “Bringing Americans Home 2022: A Non Governmental Assessment of U.S. Hostage Policy and Family Engagement.”

²⁴ Dominic Dudley, “UK Parliament Starts Inquiry Into UAE’s ‘Scandalous’ Treatment Of Foreign Business Execs,” *Forbes*, accessed August 21, 2023, <https://www.forbes.com/sites/dominicdudley/2023/06/21/uk-parliament-starts-inquiry-into-uaes-scandalous-treatment-of-foreign-business-execs/>.

engaged in the practice consistently since fifty-two American diplomats and citizens were taken hostage for 444 days in 1979. A strong case can be made that there is now an opportunistic and permissive environment for state hostage-taking of American and other Western nationals in Iran. This is underscored by the fact that the United States, United Kingdom, and a number of other countries as well as the EU advise their citizens to avoid travel to Iran because of an elevated risk of wrongful or arbitrary detention. Further, the risk of wrongful and arbitrary detention is especially high for dual nationals of Iran and Western states.

Russia's use of this practice has almost exclusively targeted the United States in pursuit of prisoner exchange deals and is best understood through the prism of US-Russian bilateral relations. In a report in the *Wall Street Journal* in March of this year, Brett Forrest documented the recent history behind Russia's turn to hostage-taking of American nationals. In particular, Forrest notes that the road to today's hostage diplomacy between the two countries began with the arrest of the Russian arms dealer Viktor Bout in Thailand and his subsequent extradition to and conviction in the United States, where he received a twenty-five-year prison sentence. Forrest argues that Bout's case and the case of Konstantin Yaroshenko, a Russian pilot accused of drug trafficking and extradited to the United States from Liberia, after which he was convicted and sentenced to twenty years in a US prison, made Russia "furious that the U.S. had applied its own laws to Russian citizens in foreign lands ... Russian officials considered the Bout and Yaroshenko cases a diplomatic affront ... and accused the U.S. of kidnapping."²⁵

For nearly ten years, Russian officials pressed the United States for the release of these prisoners. Then in 2018, the United States arrested a Russian national, Maria Butina, on charges of acting as an unregistered foreign agent. According to Forrest's report, "Butina's case appeared to prompt Russia to chart a new course and seize American Paul Whelan, a former U.S. Marine, on charges of espionage, which he denied. He was convicted and sentenced to a sixteen-year sentence." Failing to secure a trade for Paul Whelan from the Trump administration in 2019, Russia seized another ex-Marine, Trevor Reed, sentencing him to nine years. In February 2022, Russia arrested US professional basketball player Brittney Griner on trumped up charges.²⁶ In April 2022, Russia and the United States agreed on a prisoner swap which saw the United States free Yaroshenko in exchange for Russia freeing Trevor Reed. In December 2022, the United States and Russia agreed on another prisoner swap which saw Brittany Griner return to the United States and Viktor Bout to Russia.

In March 2023, Russia increased its "reserves of American detainees" by arresting Evan Gershkovich, a *Wall Street Journal* reporter, on spying charges which the Journal and the US government have denied. One week after Gershkovich's detention, the United States designated him as wrongfully detained and has since been advocating for his release. Russia has now detained at least two Americans, Paul Whelan and Evan Gershkovich, that the United States considers wrongfully detained. Discussion of the recent history of Russia's hostage-taking of American citizens and its intention for doing so should in no way be seen as trying to justify Russia's illegal and immoral behavior. Understanding why Russia is engaging in this practice is needed out of practical considerations and to find ways to bring these Americans home. Eric Lebson makes this point: "work can and should be underway to understand Russian thinking on this issue, including the basis for the arrest of Gershkovich and the formula that will bring him and Paul Whelan

²⁵ Brett Forrest, "How Russia Turned to Imprisoning Americans," *Wall Street Journal*, May 31, 2023, sec. Life, <https://www.wsj.com/articles/how-russia-turned-to-imprisoning-americans-7dc28d92>.

²⁶ Michael D. Shear and Peter Baker. "Inside the Prisoner Swap That Freed Brittney Griner." *The New York Times*, December 9, 2022, sec. U.S. <https://www.nytimes.com/2022/12/09/us/politics/brittney-griner-prisoner-swap.html>.

back home.”²⁷ The United Kingdom is also grappling with the case of Vladimir Kara-Murza, a Russian opposition politician and a British-Russian national, whose case has been discussed by parliamentarians in the context of state hostage-taking and who is recognized to be arbitrarily detained.²⁸

In the last few years, China has been more aggressively using coercive diplomacy tools, including arbitrary detentions of foreign nationals.²⁹ China has detained foreign nationals to retaliate against what it perceives as hostile actions by the nationals’ home countries or to coerce those governments to take desired actions. Since the adoption of new Chinese national security and counter-espionage laws in 2014 and 2015, at least fifteen Japanese citizens have been detained in China on national security charges.³⁰ There are currently two publicly known cases of Australians detained in China on national security grounds: Yang Hengjun and Cheng Lei. The Australian government considers these cases of arbitrary detention, and for the last few years, its travel advisories for China have warned of these risks.³¹ Increasingly, China has targeted the citizens of smaller countries like Australia, Canada, and Japan, all of which are close allies of the United States. China’s detention of Canadians Michael Kovrig and Michael Spavor in retaliation for the arrest of a Chinese citizen, Meng Wanzhou, in Canada on a US extradition warrant epitomized this trend and put a global spotlight on China’s turn to hostage-taking for diplomatic leverage.³²

Impacted Countries & Citizens

While no comprehensive database of past and current cases of state hostage-taking currently exists, the following countries have been parties to publicly reported cases: Austria, Australia, Belgium, Canada, France, Germany, Japan, the Netherlands, Sweden, the United Kingdom, and the United States, which has reported the largest number of such cases. Because of limited data and limited research, there are many aspects of state hostage-taking that require further study.

Impacted countries need to engage with the issue seriously when cases of state hostage-taking occur. What is evident from the publicly available information on past cases is that the practice exerts profound costs on the detainees and their families, as well as on the foreign policies of governments whose citizens are targeted. Recent high-profile cases in the United States, United Kingdom, and Canada illustrate the costs, severity, and complexity of the challenge. Responses

“State hostage taking and arbitrary detention are heinous and destructive crimes. For the detainees and their families, years of their lives have been stolen. But for abductor states, hostage taking is a powerful source of leverage that has been shown to force the hand of governments.”

- Alicia Kearns, Chair of the Foreign Affairs Select Committee, British House of Commons

²⁷ Forrest.

²⁸ “Hansard Record of the Item ‘Vladimir Kara-Murza’ on Monday 17 April 2023 - UK Parliament,” UK Parliament, April 17, 2023, <https://hansard.parliament.uk/commons/2023-04-17/debates/A18176DF-C8DD-4A45-B3A9-FAF32AE3F5CF/VladimirKara-Murza>.

²⁹ Fergus Hanson, Emilia Currey, and Tracy Beattie. “The Chinese Communist Party’s Coercive Diplomacy.” Australian Strategic Policy Institute, September 1, 2020. <https://www.aspi.org.au/report/chinese-communist-partys-coercive-diplomacy>.

³⁰ “Japanese Man Detained in China since July on Possible Espionage Charge,” *South China Morning Post*, November 27, 2019, <https://www.scmp.com/news/asia/east-asia/article/3039590/japanese-man-detained-china-july-possible-espionage-charge>.

³¹ *South China Morning Post*. “Japanese Man Detained in China since July on Possible Espionage Charge.” November 27, 2019. <https://www.scmp.com/news/asia/east-asia/article/3039590/japanese-man-detained-china-july-possible-espionage-charge>.

³² BBC News. “China Frees Canadians Michael Spavor and Michael Kovrig after Huawei Boss Released.” *BBC News*, September 25, 2021, sec. US & Canada. <https://www.bbc.com/news/world-us-canada-58687071>.

have included national policies and legislation like the Levinson Act in the United States, as well as collective actions like the Canada-led declaration, the declaration's Policy Action Plan, and relevant United Nations frameworks.

Any foreign citizen is at risk of being taken hostage by a state. The practice exposes nationals of all countries who travel, work, and live abroad to some degree of risk. Not only is this practice contrary to international law, but it also undermines global cooperation, travel, and trade. Among the victims and survivors of state hostage-taking, there are marked vulnerabilities for journalists, aid workers, academics, business travelers, and human rights defenders. All that said, foreign nationals with a range of backgrounds have found themselves victims of the practice.

Dual nationals also make up a significant number of victims and are especially vulnerable, particularly in the case of Iran. Countries that do not recognize dual nationality can more easily invoke legal sovereignty as a justification and deny dual nationals consular access and services. Additionally, those with links to a foreign government or those engaging in perceived anti-government activities in a foreign country, such as participating in protests or pro-democracy movements, may be at greater risk of false charges related to espionage, endangering national security, and even terrorism. This can provide a cover for governments to subject victims to closed-door trials, to withhold evidence, and to deny detainees access to legal counsel or even consular officials.

Again, the data on this topic remains limited and non-exhaustive. According to the James W. Foley Legacy Foundation, over the last decade, the number of American nationals wrongfully detained increased by 175 percent.³³ At present, the advocacy group estimates fifty-nine publicly known cases of American persons held hostage or wrongfully detained abroad (by both state and non-state actors).³⁴ There are reports that hundreds of American cases are kept private.³⁵ These reports are not surprising, as privacy issues, desires to handle the case through quiet diplomacy, or fears that publicity might "raise the price" of a hostage's release or complicate negotiations may discourage victims and their families from going public with state hostage-taking cases. Another study by Professor Carla Ferstman and Dr. Marina Sharpe focused on Iranian state hostage-taking and found that sixty-six foreign and dual nationals were known to have been arbitrarily detained in Iran between 2010 to 2021.³⁶ Hostage advocacy group Hostage Aid Worldwide (HAW) offers a more comprehensive global perspective and has been collecting data on hostages and unlawfully detained persons held since 1979.³⁷ The Thomson Reuters Foundation also offers a non-exhaustive selection of cases of potential state hostage-taking as of 2018 and within the preceding ten years.³⁸

"The European Union strongly rejects Iran's practice of arbitrary detention of foreign citizens, including dual nationals, and calls upon Iran to end the distressing practice of detaining innocent foreign civilians with a view to making political gains. The European Union reminds Iran of its international obligations under the Vienna Conventions on Diplomatic and Consular Relations and urges the Iranian authorities to abide by these obligations."

- Council of the European Union

³³ Loertscher, "Bringing Americans Home 2022: A Non Governmental Assessment of U.S. Hostage Policy and Family Engagement."

³⁴ James W. Foley Legacy Foundation, "Supporting Hostages and Detainees."

³⁵ Diane Foley, "President Biden, It's Time to Bring Our Hostages Home," *The Hill*, August 19, 2023, <https://thehill.com/opinion/civil-rights/4158760-president-biden-its-time-to-bring-our-hostages-home/>.

³⁶ Ferstman and Sharpe, "Iran's Arbitrary Detention of Foreign and Dual Nationals as Hostage-Taking and Crimes Against Humanity."

³⁷ "Current Hostages - Hostage Aid Worldwide," Hostage Aid Worldwide, June 26, 2023, <https://hostageaid.org/currenthostages/>.

³⁸ Thomson Reuters Foundation, "Held Hostage? A Legal Report on Hostage-Taking By States in Peacetime and the Victim Protection Gap" (Thomson Reuters Foundation, October 1, 2018), <http://www.trust.org/publications/i/?id=33235268-ff46-4110-9c4d-ef7e129253a6>.

Outside of what can be gleaned from a limited number of high-profile cases documented by the media, much remains to be learned about contemporary state hostage-taking. The evidence for whether state actors target individuals based on their nationality (i.e. based on their home government's concessions policies or political relationship with the perpetrator state) is mixed.³⁹ There is evidence that some perpetrator states engage in opportunistic "hostage-taking" and that victims' nationality may not play into their targeting, though more research is required. Furthermore, impacted states differ in their framing of the issue. Some discuss it as primarily a human rights matter, while others have suggested it predominantly needs to be understood through the lens of geopolitics and national security. For example, under the Biden administration, the United States has leaned towards the latter, declaring the wrongful detention of Americans by state actors a national emergency.⁴⁰ The US government even included the issue in its National Security Strategy for the first time in 2022.⁴¹ The Canadian-led initiative on arbitrary detention in state-to-state relations, on the other hand, frames this as a human rights and rule of law issue.

³⁹ Brian Michael Jenkins, "Does the U.S. No-Concessions Policy Deter Kidnappings of Americans?" (RAND Corporation, January 8, 2018), <https://www.rand.org/pubs/perspectives/PE277.html>.

⁴⁰ The White House, "Executive Order on Bolstering Efforts to Bring Hostages and Wrongfully Detained United States Nationals Home."

⁴¹ "The Biden-Harris Administration's National Security Strategy" (The White House, October 12, 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/11/8-November-Combined-PDF-for-Upload.pdf>.

NATIONAL RESPONSES

Presently, no country has an effective approach for deterring and responding to state hostage-taking. Effectively managing and responding to the practice will require countries to shore up their national policies and capacities, as well as develop effective frameworks and strategies for international collaboration. Deterrence, the act of raising the cost of hostage-taking for perpetrators to reduce its prevalence or eliminate it as a tool of coercive diplomacy, remains paramount. This section presents three assessments of national policies and practices from the United States, Canada, and the United Kingdom. It aims to better understand how responses have developed in specific national contexts, as well as what can be learned from similarities and differences in national postures.

At this time, the United States has the most advanced legislative framework and government decision-making structures to address this issue. Known collectively as the US hostage recovery enterprise, this model offers many countries with more nascent national frameworks an example to study and consider. In the American context, elements of the same hostage recovery enterprise are leveraged whether a US national is taken hostage by a non-state or a state actor, a feature which stands out among the country studies. Much of the United States' hostage policy and response capacity was borne out of reforms following failures to rescue Americans from non-state hostage takers. An assessment of Canada's response to cases of arbitrary detention illustrates how the country has focused on internationalizing the issue by seeking solidarity and support from like-minded countries, as demonstrated through the Canada-led initiative against arbitrary detention in state-to-state relations. In the United Kingdom, a recent and robust parliamentary review process signifies efforts to review and reform existing British practices. A range of recommendations were identified and presented to the government to improve how the UK manages these cases. All the countries assessed are endorsers of the Canada-led declaration, working to develop a collective defense capacity to better coordinate responses among allies and partners in the face of contemporary state hostage-taking.

The United States

The present-day hostage recovery enterprise of the United States, which responds to the hostage-taking of Americans by both state and non-state actors, has been largely defined by events set into motion in 2014. Early that year, the world watched in horror as the so-called Islamic State (ISIS) terrorist organization publicly murdered American hostages, followed by British and Japanese nationals, among a series of other heinous crimes committed by the group. The captivity, torture, and eventual killings of James Foley, Peter Kassig, Kayla Mueller, and Steven Sotloff underscored the failure of the United States to recover its citizens from the grips of their captors. This failure stood in stark contrast to the outcomes of ISIS' continental European hostages, fourteen of whom were successfully released following likely negotiations and ransom payments by their governments.⁴²

In December 2014, US President Barack Obama established a team of senior officials to conduct a comprehensive review of the United States' hostage policy. A letter from then Homeland Security Advisor Lisa Monaco set out that an interagency review team would examine a range of issues raised by the families of current and former hostages during efforts to free their loved ones from captivity in the

⁴² Christopher Mellon, Peter Bergen, and David Stermann, "To Pay Ransom or Not to Pay Ransom? An Examination of Western Hostage Policies" (New America, January 2017), <https://d1y8sb8igg2f8e.cloudfront.net/documents/hostage-paper-final.pdf>.

preceding months and years. From the beginning, it was established that the country's long-standing no-concessions policy would not fall under the scope of work of the review team.⁴³

"Totally unacceptable," was how Obama described the experiences of some families in navigating their loved ones' cases with the US government.⁴⁴ In the lead-up to and throughout the 2015 review process, many American families expressed their frustrations with the government's management of their loved ones' cases. Among the criticisms raised by families were: a lack of timely and consistent information-sharing; a lack of coordination among the government entities managing their cases; poor communication and a lack of care and/or counseling; relentless bureaucracy with no centralized actor to support families; and threats of prosecution for exploring certain options to help their loved ones, among other concerns.

Families, alongside a range of government and non-governmental stakeholders, were invited to offer input for the review.⁴⁵ The review culminated in June 2015 with a series of reforms set out in Presidential Policy Directive-30 (PPD-30; *U.S. Nationals Taken Hostage Abroad and Personnel Recovery Efforts*)⁴⁶ and EO 13698 (*Hostage Recovery Activities*).⁴⁷ The administration set up a more agile American policy response to hostage-taking, alongside significant organizational and structural changes to ensure coordinated government action in the face of a hostage-taking event.⁴⁸

A key outcome of the reforms was to shore up the government's coordinated response to hostage-taking across policy, diplomatic, intelligence, law enforcement, and military strands of work. Notably, this established several new entities within the revamped hostage recovery enterprise: the Hostage Response Group (HRG), which worked in support of the National Security Council (NSC) and was based in the White House; the interagency Hostage Recovery Fusion Cell (HRFC), which was located within the Federal Bureau of Investigation (FBI) but received participation from across the federal government; and a Special Presidential Envoy for Hostage Affairs (SPEHA), designated to lead the government's diplomatic response and based out of the State Department. The review also addressed the lack of mechanisms for sharing and collecting intelligence linked to hostage cases, especially with families and third-party intermediaries. Finally, the new US policy marked a paradigm shift in the relationship between the government and the families of hostages by recognizing families' role as trusted partners in the hostage recovery process. With accountability paramount, a report on implementation was released one year later. The report included continued consultation with the families of hostages and set out further recommendations to assist implementation.⁴⁹

The comprehensive review and subsequent reform of US hostage policy introduced a much-needed improvement in how the government manages its response to state hostage-taking. Families of victims and non-governmental stakeholders have commended the good faith reforms, which have resulted in improved coordination and support for families. Former hostages and their families, nonetheless, have

⁴³ Lisa Monaco, "Letter from Lisa Monaco, Assistant to the President for Homeland Security and Counterterrorism, to the Families of American Hostages," December 17, 2014, https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2015/02/19/National-Security/Graphics/images.pdf?itid=ik_inline_manual_10.

⁴⁴ "Statement by the President on the U.S. Government's Hostage Policy Review," whitehouse.gov, June 24, 2015, <https://obamawhitehouse.archives.gov/the-press-office/2015/06/24/statement-president-us-governments-hostage-policy-review>.

⁴⁵ The White House, "Report on U.S. Hostage Policy," June 2015, https://obamawhitehouse.archives.gov/sites/default/files/docs/report_on_us_hostage_policy_final.pdf.

⁴⁶ "Presidential Policy Directive (PPD-30) on 'U.S. Nationals Taken Hostage Abroad and Personnel Recovery Efforts'" (The White House, June 24, 2015), <https://obamawhitehouse.archives.gov/the-press-office/2015/06/24/presidential-policy-directive-hostage-recovery-activities>.

⁴⁷ "Executive Order 13698 of June 24, 2015 on 'Hostage Recovery Activities'" (The White House, June 24, 2015), <https://www.govinfo.gov/content/pkg/FR-2015-06-29/pdf/2015-16122.pdf>.

⁴⁸ "Presidential Policy Directive (PPD-30) on 'U.S. Nationals Taken Hostage Abroad and Personnel Recovery Efforts.'"

⁴⁹ "Status Report on the Implementation of Executive Order 13698 Hostage Recovery Activities" (National Counterterrorism Center (NCTC), September 30, 2016), <https://www.dni.gov/files/documents/Newsroom/Reports%20and%20Pubs/EO13698StatusReport.pdf>.

been steadfast in their message that the ultimate measure of success of American hostage policy is the safe and swift return of all hostages. The first non-governmental review of US hostage policy was conducted in 2019, led by the James W. Foley Legacy Foundation and New America. Among its recommendations, the review called for: sustaining US leadership on and prioritization of the issue; maintaining hostage recovery efforts across changes in administrations and executives; providing greater support to returning hostages; and, particularly, giving greater attention to addressing disparities in the treatment of Americans held hostage by non-state actors and those unlawfully or wrongfully detained by foreign governments.⁵⁰

With the review and reform process having been largely viewed with regard to hostage-taking by non-state actors, former hostages and their families recognized the urgent need to expand the hostage reforms of 2015, as set out in PPD-30 and EO 13698, to include a more robust response to wrongful detention. Hostage-taking by terrorist and militant organizations, in particular, had underpinned much of the hostage policy and review process. For example, some funds were only accessible to former hostages considered victims of terrorism-related crimes.⁵¹ On assessing the rise of “hostage diplomacy” cases, the James W. Foley Legacy Foundation noted: “Even though they are being held by foreign governments and not terrorist groups or criminals, Americans wrongfully detained are being held for leverage against the United States, making their cases very similar to hostage cases.”⁵² Many of these disparities were addressed with the June 2020 passage of the Levinson Act,^{53 54} which sets out specific criteria by which the Secretary of State can determine whether a US national is deemed wrongfully detained. It also codified the 2015 hostage reforms into law in December 2020.⁵⁵ Subsequent policy documents on the topic have proceeded to include wrongful detention on the same footing as hostage-taking by non-state actors.

The US hostage recovery enterprise has, to date, largely enjoyed bipartisan support, including during the transfer of administrations. Throughout the Obama, Trump, and Biden administrations, the issue has remained an American priority regardless of the political party in power. Most recently, in July 2022, Biden issued *Executive Order 14078 on Bolstering Efforts to Bring Hostages and Wrongfully Detained United States Nationals Home*,⁵⁶ which reinforced existing commitments while also determining that “hostage-taking and the wrongful detention of United States nationals abroad constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.”⁵⁷ Alongside EO 14078, the State Department introduced a new risk indicator to its Travel Advisories warning

⁵⁰ Cynthia Loertscher, “Bringing Americans Home: The First Non-Governmental Assessment of U.S. Hostage Policy and Family Engagement” (The James W. Foley Legacy Foundation and New America, June 2019), https://static1.squarespace.com/static/5b9bff21ee17595f5ae7ca1e/t/633211a5ed3b6678fc7606a4/1664225704470/Bringing_Americans_Home-2019.pdf.

⁵¹ Loertscher. (Page 60)

⁵² Cynthia Loertscher, “Bringing Americans Home 2020: A Non-Governmental Assessment of U.S. Hostage Policy and Family Engagement” (James W. Foley Legacy Foundation, April 2020), https://static1.squarespace.com/static/5b9bff21ee17595f5ae7ca1e/t/633211e7189bea69fb3168eb/1664225767812/Bringing_Americans_Home-2020.pdf.

⁵³ The Levinson Act is named in honor of former FBI agent Robert Levinson, the longest-held hostage in American history.]

⁵⁴ Sen. Menendez, Robert [D-NJ], “Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act” (2020), <https://www.congress.gov/bill/116th-congress/senate-bill/712>.

⁵⁵ Cynthia Loertscher, “Bringing Americans Home 2021: A Nongovernmental Assessment of U.S. Hostage Policy and Family Engagement” (James W. Foley Legacy Foundation, June 2021), https://static1.squarespace.com/static/5b9bff21ee17595f5ae7ca1e/t/63321205f47fb037de67cdf4/1664225798719/Bringing_Americans_Home-2021.pdf.

⁵⁶ “Executive Order 14078 of July 19, 2022 on ‘Bolstering Efforts To Bring Hostages and Wrongfully Detained United States Nationals Home’” (The White House, July 19, 2022), <https://www.federalregister.gov/documents/2022/07/21/2022-15743/bolstering-efforts-to-bring-hostages-and-wrongfully-detained-united-states-nationals-home>.

⁵⁷ “Executive Order 14078 of July 19, 2022 on ‘Bolstering Efforts To Bring Hostages and Wrongfully Detained United States Nationals Home.’”

citizens of the risk of wrongful detention by a foreign government.⁵⁸ A bipartisan bill introduced in February 2023 (*Supporting Americans Wrongfully or Unlawfully Detained Abroad Act of 2023*)⁵⁹ aims to ensure former hostages and their families have access to the correct resources and financial assistance to advocate their cases.

A review of the US hostage recovery enterprise shows how, in the American national context, elements of the same hostage recovery infrastructure are leveraged whether a US national is taken hostage by a state or non-state actor. Since 2014, much of the review and reform process has been spearheaded by former hostages and the families of hostages, who have also worked to address disparities between hostages and wrongful detainees. The American government leverages experience, tools, and networks across both sets of cases in its effort to bring nationals home as swiftly as possible. Since the creation of the US hostage recovery enterprise nine years ago, the United States has brought home 122 American captives, held by both non-state and state actors.⁶⁰ While important strides have been made, hostage advocates have recently called for a comprehensive review to evaluate the efficacy of the 2015 hostage enterprise structure in today's detainee landscape.⁶¹

"I'm making it clear that these families are to be treated like what they are – our trusted partners and active partners in the recovery of their loved ones. We are all on the same team, and nobody cares more about bringing home these Americans than their own families, and we have to treat them as partners."

- Barack Obama, Former President of the United States of America

Canada

In Canada, the issue of state hostage-taking is closely associated with China's detention of Michael Kovrig and Michael Spavor in retaliation for Canada's arrest of Huawei Chief Financial Officer Meng Wenzhou on a US extradition request in 2018. That 1,019-day crisis in Canada-China bilateral relations and the high-profile diplomatic negotiations between China and the United States, which led to the eventual release of the Canadian hostages, highlighted the challenges and complexities of the issue and its costs and consequences, both in terms of human suffering and its impact on Canadian foreign policy and national security. It also underscored the limited policy options available to the Canadian government to secure the release of its citizens.

As a result, Canada's response to the arbitrary detentions of Michael Spavor and Michael Kovrig focused on internationalizing the issue by seeking solidarity and support from like-minded countries in the G7, EU, and NATO. That experience inspired Canada to launch the *Declaration Against Arbitrary Detention in State-to-State Relations* on February 15, 2021 as a political statement of opposition to the practice of arbitrary arrest, detention, and sentencing of foreign nationals for diplomatic leverage. Canada also

⁵⁸ "Issuance of Executive Order on Bolstering Ongoing Efforts to Bring Hostages and Wrongfully Detained U.S. Nationals Home," United States Department of State, July 19, 2022, <https://www.state.gov/issuance-of-executive-order-on-bolstering-ongoing-efforts-to-bring-hostages-and-wrongfully-detained-u-s-nationals-home/>.

⁵⁹ Robert [D-NJ] Sen. Menendez, "Supporting Americans Wrongfully or Unlawfully Detained Abroad Act of 2023" (2023), <http://www.congress.gov/>.

⁶⁰ Diane Foley, "President Biden, It's Time to Bring Our Hostages Home."

⁶¹ Cynthia Loertscher, "Bringing Americans Home 2023: A Review of the Hostage and Detainee Landscape." James W. Foley Legacy Foundation, September 2023.

developed a Partnership Action Plan to coordinate further action on the declaration, which was welcomed by G7 ministers in May 2021 and by G7 leaders in June 2021.⁶²

A conference aimed at further raising awareness of the issue and garnering additional diplomatic support for the declaration will take place on the margins of the Seventy-Eighth session of the UN General Assembly to be hosted in New York City in September 2023. Canada has also set up a dedicated team within Global Affairs Canada (GAC) to raise awareness and advocate for greater international cooperation on the issue and to secure additional endorsements for the declaration. The mandate letter of the current Canadian Minister of Foreign Affairs explicitly tasks the minister with “[c]ontinuing to expand the broad coalition of states supporting Canada’s initiative to condemn and eradicate the practice of arbitrary detention and advancing an action plan to coordinate collective international responses to specific incidents of arbitrary detention and the need to focus on the implementation of the Declaration.” It also mandates the minister to “[w]ork with G7, NATO and likeminded partners to develop and expand collective responses to arbitrary detention, economic coercion, cyber threats, foreign interference in democratic processes and egregious violations of human rights, including through the use of sanctions, support for international institutions and coordinated action to reinforce the rules of international trade.”⁶³

The United States and many other countries, as well as the EU, have been vocal supporters of this Canadian-led initiative to create a global norm against using citizens as bargaining chips for diplomatic leverage. US President Biden’s National Security Strategy in 2022 stated that the “U.S. is working with key international partners to promote and implement the Canadian-launched *Declaration Against Arbitrary Detention in State-to-State Relations* so as to turn the tide against this inhumane practice and forge international norms against it.”⁶⁴

Even though the Canadian prime minister, foreign minister, and other high-ranking officials publicly labeled the detention of Michael Kovrig and Michael Spavor as arbitrary, there is no formal mechanism for such a designation within the Canadian system. Unlike the United States, Canada lacks a legal framework or a public process to determine if its citizens are being held wrongfully or arbitrarily abroad. For instance, in a previous case involving China’s detention of two Canadian missionaries, Kevin and Julia Garratt, in retaliation for Canada’s arrest of the Chinese citizen Su Bin on an American extradition request in 2014, Canada refrained from publicly using the designation of “arbitrary detention” during their detention or even after their release in 2016.⁶⁵

However, GAC does have a classification system for “complex consular cases,” which are determined on the basis of “vulnerability; dual nationality, denial of consular access to a detainee; poor conditions of detention; death penalty; allegations of mistreatment or torture in detention; allegations of espionage or terrorism; and lack of documentation.”⁶⁶ Arbitrary detentions and detentions for leverage in state-to-

⁶² Global Affairs Canada, “Initiative against Arbitrary Detention in State-to-State Relations,” GAC, May 12, 2023, https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/arbitrary_detention-detention_arbitraire.aspx?lang=eng.

⁶³ “Minister of Foreign Affairs Mandate Letter,” Prime Minister of Canada, December 16, 2021, <https://www.pm.gc.ca/en/mandate-letters/2021/12/16/minister-foreign-affairs-mandate-letter>.

⁶⁴ “The Biden-Harris Administration’s National Security Strategy.”

⁶⁵ “Statement by the Prime Minister of Canada on Kevin Garratt’s Return to Canada,” Prime Minister of Canada, September 15, 2016, <http://www.pm.gc.ca/en/news/statements/2016/09/15/statement-prime-minister-canada-kevin-garratts-return-canada>.

⁶⁶ Global Affairs Canada, “Deputy Ministers before the Standing Senate Committee on Foreign Affairs and International Trade (AEFA),” GAC, January 12, 2023, <https://www.international.gc.ca/transparency-transparence/briefing-documents-information/parliamentary-committee-comite-parlementaire/2022-06-09-aeфа.aspx?lang=eng>.

state relations could fall under complex consular cases, but if a process or criteria for making that determination within GAC exists, it is not publicly known.

There are several issues that need to be examined to better understand the national context for Canada's approach to arbitrary detention in state-to-state relations. First is the legal framework. No Canadian law explicitly mandates the government of Canada to provide consular services to its citizens abroad. Unlike the United States and over forty other nations who view consular service delivery as a legal obligation, in Canada, provision of consular services is a discretionary prerogative of the government. The Foreign Affairs Royal Prerogative, outlined in the *Department of Foreign Affairs and International Trade Act* (1985), governs the provision of consular assistance to Canadians abroad. The act authorizes GAC to provide consular services to Canadians abroad and grants the foreign affairs minister discretionary authority to determine the level of consular assistance provided. Canada's consular services are also guided by the *Canadian Consular Services Charter*, a GAC policy paper that outlines the consular services the government may provide to Canadians abroad.⁶⁷

Critics have argued that this discretionary power can lead to unequal provision of services and discrimination, with dual nationals being especially vulnerable to such discrimination. In 2018, the Canadian House of Commons Standing Committee on Foreign Affairs and International Development published a report titled *Strengthening the Canadian Consular Service Today and for the Future*, based on written submissions and the testimony of various witnesses. This report highlighted the contentious debate about whether a legal framework for consular services should be established or remain discretionary. The committee did not reach a consensus on this question and recommended that "the Government of Canada should continue to review its legal and policy regime governing Canadian consular services, with an aim to ensure no arbitrary treatment or discrimination in service provision."⁶⁸

The report also included significant findings about weaknesses in Canadian consular services, especially related to cases of kidnappings of Canadians abroad, providing support to families in complex consular cases, training consular personnel to conduct detention and prison visits, and managing cases of alleged torture of Canadians detained abroad. These capacity issues were also highlighted earlier in 2018 in the report of the Auditor General's first-ever independent audit of Canada's consular services. Among other issues, this report pointed out that GAC needed to be much more vigilant and timely in issuing updates of travel advisories to Canadians about risks of travel to certain countries.⁶⁹

Given the timing of these reports and their findings, it is clear that Canada was dealing with the high-profile detention cases of Michael Kovrig and Michael Spavor while also trying to address key gaps in its provision of consular services, especially in its response to complex consular cases. Because of the high-profile nature of the cases and their implications for Canada's relations with China and the United States, and given the absence of a *SPEHA-type*⁷⁰ capacity in the Canadian government, the Canadian Ambassador to China, Dominic Barton, ended up playing a key role in the negotiations that led to the eventual release

⁶⁷ House Committee Standing Committee on Foreign Affairs and International Development, *Strengthening the Canadian Consular Service Today and for the Future*, 42nd Parliament, 1st session, November 2018 <https://www.international.gc.ca/gac-amc/assets/pdfs/publications/evaluation/2018/cap-pac-eng.pdf>

⁶⁸ Michael Levitt, "Strengthening the Canadian Consular Service Today and for the Future: Report of the Standing Committee on Foreign Affairs and International Development" (House of Commons, November 2018), <https://www.ourcommons.ca/Content/Committee/421/FAAE/Reports/RP10186936/faaerp21/faaerp21-e.pdf>.

⁶⁹ Office of the Auditor General of Canada Government of Canada, "Report 7—Consular Services to Canadians Abroad—Global Affairs Canada," May 29, 2018, https://www.oag-bvg.gc.ca/internet/English/att__e_43057.html.

⁷⁰ The Office of the Special Presidential Envoy for Hostage Affairs (SPEHA) based within the State Department. The Office was established by President Obama through an Executive Order and later included in the Levinson Act (2020). It now employs more than 20 staff members.

of these two Canadians after more than one thousand days in detention. The ambassador's role (which was especially critical given the high turnover of foreign ministers; Canada had 4 different ministers during the 2018-2021 period) and the global campaign of solidarity and support launched by the Canadian government around these cases were highlighted in the UK Parliamentary Committee Inquiry on State-led Hostage Taking as examples of innovations that other countries should study and consider.⁷¹

However, two years since the release of Michael Spavor and Michael Kovrig from China, GAC has not publicized any findings from its own lessons learned exercises on the government's handling of their cases and what changes, if any, it has made to better respond to future cases of arbitrary detention. The need to strengthen the Canadian government's capacity to respond to cases of arbitrary detention in state-to-state relations was highlighted by the Canadian House of Commons Special Committee on the Canada-Peoples Republic of China Relationship in its report on the *National Security Dimensions of Canada-PRC Relations*. The report called on GAC to "designate an individual to serve as a dedicated advocate for Canadians, regardless of where they were born and Canadians who hold dual citizenship, who are arbitrarily detained abroad, whose responsibilities include but are not limited to: Working with countries and multilateral organizations to promote the *Declaration Against Arbitrary Detention in State-to-State Relations* to more jurisdiction; assisting with consular affairs regarding Canadians who are arbitrarily detained abroad; and exploring ways to protect Canadians from the practice of arbitrary detentions, more particularly in state-to-state relations."⁷²

Another key issue in understanding the context for Canada's approach to arbitrary detention for diplomatic leverage or state hostage-taking is Canada's approach to hostage-taking by non-state actors. US policies on wrongful detentions draw on and expand existing US government policies on hostage-taking by non-state actors. Canada cannot rely on a similar institutional, legal, or knowledge foundation because it has not developed one for itself.

GAC is charged with leading the government's response to hostage-taking of Canadians abroad. Over the last twenty years, the department has attempted to develop a policy framework to manage international terrorist hostage-taking. Despite these efforts, no formal policy has ever been adopted. In 2016, the *Toronto Star* published a series of investigative reports on Canada's approach to hostage-taking. The reporting—which was based on interviews with more than 50 individuals, including government and security officials, and former hostages and their relatives—revealed a range of obstacles, including lack of leadership, lack of continuity, unnecessary secrecy, and political paralysis.⁷³ The reporting also noted that while allies like the United Kingdom, the United States, Australia, and others have refined how they work to secure the release of citizens taken hostage abroad, Ottawa's policy has suffered from neglect under Conservative and Liberal governments alike.⁷⁴

A 2022 review by the National Security and Intelligence Committee of Parliamentarians (NSICOP) of GAC's intelligence and security capacity also highlighted concerns about the department's capacity to effectively respond to critical incidents, such as terrorist hostage-takings. The NSICOP found "Global Affairs Canada's

⁷¹ House of Commons Foreign Affairs Committee, "Stolen Years: Combatting State Hostage Diplomacy" (London, UK: House of Commons, April 4, 2023), <https://committees.parliament.uk/publications/40750/documents/198593/default/>.

⁷² Ken Hardie, "A Threat to Canadian Sovereignty: National Security Dimensions of the Canada-People's Republic of China Relationship - Interim Report of the Special Committee on the Canada-People's Republic of China Relationship" (House of Commons, May 2023), <https://www.ourcommons.ca/Content/Committee/441/CACN/Reports/RP12430173/cacnrp03/cacnrp03-e.pdf>.

⁷³ Mitch Potter and Michelle Shephard, "Canada's Hostage 'War Room' Is More like a Leaderless Boardroom," *Toronto Star*, December 1, 2016, https://www.thestar.com/news/canada/canada-s-hostage-war-room-is-more-like-a-leaderless-boardroom/article_e276a618-a9a3-5c50-aa3b-7d12e5569d0e.html.

⁷⁴ Mitch Potter and Michelle Shephard.

role to be one of facilitation and information sharing, rather than leadership or coordination.”⁷⁵ The committee found that “[s]uccessive governments have failed to establish a general policy framework to guide departmental activities and to provide specific direction at the start of each case. While GAC and its partner departments should improve their approach to these critical incidents by developing formal policies and procedures and a clear model of centralized leadership, those efforts will reach a point of diminishing returns absent accompanying systemic reforms driven from the political level. Critical incidents occur infrequently, but when they do, they have a dramatic effect on the organizations responsible for responding and the victims and their families.”⁷⁶

The committee noted that “over the last decade, Global Affairs Canada has not developed the necessary policy, operational and training mechanisms for relevant government organizations to respond to such events coherently and effectively.” The NSICOP report also identified that the Canadian Department of National Defence, the Royal Canadian Mounted Police (RCMP), and the Canadian Security and Intelligence Service (CSIS) lack a shared framework for coordinating a response to the hostage-taking of Canadians abroad. The NSICOP recommended that the government “establish a clear framework to respond to terrorist hostage takings, including to establish principles to guide the Government’s response, identify triggers for Ministerial direction and engagement, establish leadership for whole of government responses to specific incidents, and provide sufficient resources to support operational requirements during critical incidents.”

“Canada helped to establish this rules-based international order and we will not stand by while others bend the rules for political expediency. The practice of arbitrary detention puts all citizens at risk, especially those who travel, work or live abroad. We must stand together to denounce all forms of coercive arbitrary detention. This is how we keep all our citizens safe.”

- Mélanie Joly, Minister of Foreign Affairs of Canada

While the government agreed with all the NSICOP recommendations,⁷⁷ no action appears to have been taken as neither the NSICOP’s findings nor its recommendations are addressed in the 2023-2024 GAC Departmental Plan.⁷⁸ Interestingly, in speaking to the media after the release of the NSICOP’s report, the Committee Chair, Liberal MP David McGuinty, said the committee highlighted the issue of hostage-taking because GAC brought it to their attention, noting that “Deputy ministers have been saying they know that the way in which we deal with these hostage-taking incidents is inadequate.” He also stressed that “when these critical incidents occur, we need clearer and more robust political leadership.”⁷⁹

While Canada has taken a commendable leadership role on the issue of arbitrary detention in state-to-state relations multilaterally, its handling of such cases domestically has been mixed and leaves much room for improvement.

⁷⁵ The Honourable David McGuinty, P.C., M.P., “Special Report on the National Security and Intelligence Activities of Global Affairs Canada” (National Security and Intelligence Committee of Parliamentarians, 2022), <https://www.nsicop-cpsnr.ca/reports/rp-2022-11-04/special-report-global-affairs.pdf>.

⁷⁶ The Honourable David McGuinty, P.C., M.P.

⁷⁷ Hon. David McGuinty. “National Security and Intelligence Committee of Parliamentarians’ Special Report on the National Security and Intelligence Activities of Global Affairs Canada Tabled in Parliament,” March 9, 2023. <https://davidmcguinty.libparl.ca/2023/03/09/national-security-and-intelligence-committee-of-parliamentarians-special-report-on-the-national-security-and-intelligence-activities-of-global-affairs-canada-tabled-in-parliament-2/>.

⁷⁸ Global Affairs Canada. “Departmental Plan 2022–23.” Government of Canada, February 16, 2022.

<https://www.international.gc.ca/transparency-transparence/departemental-plan-ministeriel/2022-2023.aspx?lang=eng>.

⁷⁹ Catherine Lévesque, “‘Up Your Game,’ Global Affairs Told as Report Blasts Weak Governance in Areas of National Security, Intelligence,” *National Post*, November 5, 2022, <https://nationalpost.com/news/up-your-game-global-affairs-told-as-report-blasts-weak-governance-in-areas-of-national-security-intelligence>.

The United Kingdom

As with other national contexts, the matter of state hostage-taking was brought to the forefront of national attention in the United Kingdom through the human tragedies of publicized cases; this included those of Nazanin Zaghari-Ratcliffe, Anoosheh Ashoori, Morad Tahbaz, Mehran Raoof, and many others. The public and political attention on Zaghari-Ratcliffe's case, in particular, has profoundly influenced the United Kingdom's conversation around state hostage-taking in the subsequent years.

Nazanin Zaghari-Ratcliffe was detained by the Iranian government following a family visit to the country on April 3, 2016. She was detained at the airport in Tehran before her departure back home to the United Kingdom, commencing an almost six-year-long ordeal in Iranian detention. Falsely accused of spying by the Iranian government, her case was linked to Iran's demands that the United Kingdom pay off a decades-old £400 million debt.⁸⁰ Zaghari-Ratcliffe's case was but one of a growing number of foreign and dual nationals detained by the Iranian authorities in the past years. The latest research suggests that at least sixty-six foreign and dual nationals have been detained by Iran since 2010. Of those detentions, fifteen have links to the United Kingdom.⁸¹

Following the release of Zaghari-Ratcliffe in March of 2022, the Labour MP Tulip Siddiq and the detainee's husband, Richard Ratcliffe, sought a Foreign Affairs Select Committee (FAC) inquiry to review the case and explore wider lessons for the government.⁸² Launched in April 2022, the committee reviewed the UK approach to contemporary state hostage-taking to better understand Britain's handling of state-level hostage situations. The inquiry set out to understand the challenges faced by the Foreign, Commonwealth & Development Office (FCDO) when "handling countries which use extra-judicial detention as a tool for diplomacy."⁸³ Of note, the committee issued a global call for evidence from diverse voices and perspectives. As with other high-level hostage review processes, the inquiry was borne out of past mistakes and failures toward victims and their families.

The FAC report concluded that "[h]ostage taking represents both a growing threat to UK nationals and a significant challenge to Government in terms of how it coordinates an effective response in individual cases, adequately supports hostages and their families, and works with allies both to resolve individual cases and strengthen deterrence." It also presented several key recommendations to the government to shore up its response in the future. Among its recommendations, the committee called on the FCDO to pursue a way forward that "formalizes and publishes guidance outlining criteria for determining whether the detention of a UK national by a foreign state is considered arbitrary and at risk of being used for state leverage."⁸⁴ Similar to the criteria the United States set out in the Levinson Act, the United Kingdom could look to formalize its own criteria to classify these cases, offering more clarity and transparency for detainees and their families. Further, the FAC report recommended that the United Kingdom establish a position of Director for Arbitrary and Complex Detentions (DACD),⁸⁵ which may better anchor the management of the arbitrary detention agenda around a single figure or office.

⁸⁰ Matthew Weaver, "The Detention of Nazanin Zaghari-Ratcliffe in Iran – a Timeline," *The Guardian*, March 15, 2022, sec. News, <https://www.theguardian.com/news/2022/mar/15/the-detention-of-nazanin-zaghari-ratcliffe-in-iran-a-timeline>.

⁸¹ Ferstman and Sharpe, "Iran's Arbitrary Detention of Foreign and Dual Nationals as Hostage-Taking and Crimes Against Humanity."

⁸² Patrick Wintour and Jessica Elgot, "Zaghari-Ratcliffe: MPs to Hold Inquiry into Delay over Iran Debt Payment," *The Guardian*, March 22, 2022, sec. News, <https://www.theguardian.com/news/2022/mar/22/nazanin-zaghari-ratcliffe-jeremy-hunt-inquiry-iran-debt-delay>.

⁸³ "Inquiry into the Handling of State Level Hostage Situations Announced - Committees - UK Parliament," accessed July 20, 2023, <https://committees.parliament.uk/committee/78/foreign-affairs-committee/news/165268/new-inquiry-into-the-handling-of-state-level-hostage-situations-announced-by-foreign-affairs-committee/>.

⁸⁴ House of Commons Foreign Affairs Committee, "Stolen Years: Combatting State Hostage Diplomacy."

⁸⁵ House of Commons Foreign Affairs Committee.

The inquiry also demonstrated that the government had not been consistent in its use of terminology on the subject. David Rutley, Parliamentary Under Secretary of State (Americas and Caribbean), noted the FCDO's preferred use of the term "arbitrary detention for diplomatic leverage."⁸⁶ In its response to the FAC report⁸⁷ in July 2023, the UK government described itself as adopting a "multi-disciplinary task force approach to complex consular cases," one that is able to draw on political, consular, legal, and human-rights expertise across government to inform and develop approaches on a case-by-case basis. The response also noted that in the current approach, cases are "led by Ministers, and supported by Ambassadors and senior officials who hold the necessary political and geographic expertise."⁸⁸ The government's response also highlighted that cases are allocated across the Consular Assistance Department. With respect to strategy, the government pointed out that the United Kingdom works to deter the practice by limiting concessions to abductor states, as well as highlighting the risk of arbitrary detention in travel advisories to British nationals, and through bilateral and multilateral cooperation with partners.⁸⁹

However, the Chair of the Foreign Affairs Committee, MP Alicia Kearns, and a number of advocacy groups expressed their disappointment at the government's decision to reject several of the key recommendations made in the inquiry. The government, specifically, rejected the recommendation to establish a centralized position or office to oversee British cases, as well as the need for greater parliamentary oversight of such cases.⁹⁰ At a parliamentary debate following the release of the government's response, Kearns expressed her frustration by noting that "the Government did not sufficiently engage with our recommendations and the evidence and experience of detainees and their families. There were some recommendations where there was no response at all from the Government; it was almost as if they wanted to pretend that the recommendation did not exist. That is not the sort of response we normally see from the Government, so I was deeply frustrated by it."⁹¹

While the FAC inquiry represented an important milestone, the United Kingdom's arbitrary detention policy and response model has been the subject of review for several years. A number of non-governmental organizations have also identified several challenges for the United Kingdom, offering recommendations to improve support for victims and families.^{92 93} In the years preceding the FAC inquiry, a range of complaints were raised by former detainees and their families about the management of their cases and the plight of Britons arbitrarily detained abroad. In 2019, then Foreign Secretary Jeremy Hunt requested that Judith MacGregor conduct a review on how the United Kingdom manages what it called 'complex consular cases.'

⁸⁶ Foreign Affairs Committee, "Oral Evidence: The FCDO's Approach to State Level Hostage Situations, HC 166," March 13, 2023, <https://committees.parliament.uk/oralevidence/12817/html>.

⁸⁷ House of Commons Foreign Affairs Committee, "Stolen Years: Combatting State Hostage Diplomacy."

⁸⁸ "Stolen Years: Combatting State Hostage Diplomacy: Government Response to the Committee's Sixth Report" (London, UK: House of Commons Foreign Affairs Committee, July 6, 2023), <https://committees.parliament.uk/publications/40750/documents/198593/default/>.

⁸⁹ "Stolen Years: Combatting State Hostage Diplomacy: Government Response to the Committee's Sixth Report."

⁹⁰ Redress, "UK Government Fails to Learn From Past Mistakes in Addressing State Hostage-Taking," July 6, 2023, <https://redress.org/news/uk-government-fails-to-learn-from-past-mistakes-in-addressing-state-hostage-taking/>.

⁹¹ "Hansard Record of the Item: State Hostage Taking, Volume 735, Debated on Thursday 6 July 2023," UK Parliament, July 6, 2023, <https://hansard.parliament.uk/commons/2023-07-06/debates/069B6326-2618-4046-B9D6-4F40445FB5DE/StateHostageTaking>.

⁹² Redress, "Beyond Discretion: The Protection of British Nationals Abroad from Torture and Ill-Treatment" (London, UK: Redress, January 2018), https://redress.org/wp-content/uploads/2018/01/3CADP-Report_FINAL.pdf.

⁹³ Human Rights Watch, "Iran: Targeting of Dual Citizens, Foreigners," Human Rights Watch, September 26, 2018, <https://www.hrw.org/news/2018/09/26/iran-targeting-dual-citizens-foreigners>.

The *Review of Complex Consular Cases*⁹⁴ (MacGregor Review) made a number of recommendations, including on information sharing and relations with families. Similar to the complaints made by American former hostages and families during the Obama administration's review in 2015, the British families in 2019 noted room for improvement in several key areas, including: the recognition, speed, and handling of these cases; the means by which cases are joined up across the FCDO and government more widely; the need for a revised relationship paradigm between families and officials; information sharing; and, the public and media dimensions of these cases.⁹⁵ Families, at times, "found the government to be secretive, inflexible and more intent on containing an issue politically than agreeing a strategy to resolve it."⁹⁶

Similar to Canada, for the UK government, there is no legal obligation in international or domestic law to provide consular assistance,⁹⁷ which raises similar concerns around whether discretionary power can lead to the unequal provision of services and discrimination among Britons.

Where the United States' initial hostage recovery enterprise was built in response to hostage situations by non-state actors, the British context has kept a greater separation between responses to hostage-taking by state and non-state actors. This is evident in several ways. The killings of American hostages by ISIS since 2014 spearheaded both the hostage review and reform process in the United States. American and British hostages of ISIS were held captive together, and Britons David Haines and Alan Henning were executed, along with Americans, by the terrorist group in 2014. The fate of Briton John Cantlie remains unknown.⁹⁸ In the United States, the ISIS killings prompted a government-wide review of national hostage policy led by the president.⁹⁹ An equivalent high-level reform did not take place in the United Kingdom. The differing national responses between the United States and the United Kingdom to the ISIS hostage killings may have contributed to some of the differences in each country's present-day approach to state hostage-taking.

Further, the United Kingdom may have missed an opportunity to shore up its response to state hostage-taking by not sufficiently addressing past failures or working to implement lessons learned, such as in the aftermath of the ISIS hostage killings in 2014. As such, the United Kingdom may have found itself with a more robust response model to state hostage-taking had it engaged in a review process similar to that of the United States, which laid the foundations for the current American response to hostage-taking in all its forms.

At the same time, it is worth noting that in separating the issue between state and non-state perpetrators, the UK approach may afford some advantages. Given the unusual circumstances of dealing with states that use their judicial systems to detain foreign nationals for leverage, the language that impacted states, like the United Kingdom, use to discuss the practice may allow for a degree of 'plausible deniability' that is not afforded when negotiating with non-state hostage-takers. This plausible deniability can in turn be leveraged when negotiating for the release of detainees held by state actors. Separating the issue of state

⁹⁴ Dame Judith Macgregor, "Review of Complex Consular Cases," June 6, 2019, http://data.parliament.uk/DepositedPapers/Files/DEP2020-0750/Macgregor_review_of_complex_consular_cases.pdf.

⁹⁵ See, Dame Judith Macgregor. See, Nigel Adams MP, Minister of State for Asia, "Letter from Minister of State for Asia, Nigel Adams MP, to the Chair of the Foreign Affairs Committee, Tom Tugendhat MP.," November 19, 2020, http://data.parliament.uk/DepositedPapers/Files/DEP2020-0750/Nigel_Adams_to_Tom_Tugendhat.pdf.

⁹⁶ Patrick Wintour, "Ministers Often Kept in Dark over Britons Held Abroad, Inquiry Finds," *The Guardian*, December 15, 2020, sec. Politics, <https://www.theguardian.com/politics/2020/dec/15/ministers-often-kept-in-dark-over-britons-held-abroad-inquiry-finds>.

⁹⁷ "Stolen Years: Combatting State Hostage Diplomacy: Government Response to the Committee's Sixth Report." (Page 13)

⁹⁸ Frank Gardner, "John Cantlie: Ten Years since IS Kidnap of British Journalist in Syria," *BBC News*, November 22, 2022, sec. UK, <https://www.bbc.com/news/uk-63711446>.

⁹⁹ "ISIS Beheadings Prompt Obama to Review Hostage Policy," *NBC News*, November 19, 2014, <https://www.nbcnews.com/storyline/isis-terror/isis-beheadings-prompt-obama-review-hostage-policy-n251426>.

and non-state hostage-taking may also be connected to the UK government's well-known no-concessions policies vis-à-vis hostage-taking by terrorist actors. States, ultimately, negotiate with other states, including hostile ones, and the term state hostage-taking may complicate both negotiations with perpetrators as well as optics with home audiences when concessions or agreements are made.

Regardless of what terminology is used by the United Kingdom, careful attention must be paid to how the issue is positioned within the government. Consular services support the major life events of Britons abroad (i.e. births, marriages, and deaths), the issuing of documents, and efforts to ensure just treatment for lawfully detained Britons, among other benefits and offerings. State hostage-taking is not a routine or complex consular issue, but a cruel form of coercive diplomacy. Britons caught up in state hostage-taking will require political, diplomatic, and other government services and efforts to secure their release.

"Despite their common elements, each case was highly individual—happening in different political circumstances, within particular bilateral relationships and with varying views from family members on how they should be resolved."

- Judith Macgregor, Former British High Commissioner to South Africa

A GLANCE AT THE EUROPEAN UNION



At the end of May 2023, six European citizens (two Austrian-Iranian, one Belgian, one French-Irish, one French, and one Danish) returned home after being released from detention in Iran.¹⁰⁰ Among those released was Belgian aid worker Olivier Vandecasteele, who spent fifteen months imprisoned on espionage charges and was sentenced to forty years in prison on four different charges, including spying on Iran and cooperation with the United States against Iran, which the Belgian government had called “fabricated.”¹⁰¹

His release was secured through a prisoner swap that saw the repatriation of Asadollah Assadi, an Iranian diplomat convicted of terrorism and sentenced to twenty years in prison by a Belgian court in 2021.¹⁰² Critics of the prisoner swap deal say it paves the way for a policy of appeasement that would embolden Iran to continue using European nationals as leverage. In a statement, the National Council of Resistance of Iran, an Iranian dissident group, called Assadi’s release “a shameful ransom to terrorism and hostage-taking.”¹⁰³

The number of EU citizens held by Iran is thought to be in the dozens. According to *Le Monde*, the Belgian government estimates at least twenty-two Europeans remain detained in Iran. France estimates more than thirty EU citizens are held there.¹⁰⁴ The recent high-profile releases of EU citizens from Iran has opened a debate in Brussels on whether the European Union has the appropriate measures in place to counter “hostage diplomacy” and to prevent hostile regimes, like Iran, from using European citizens as bargaining chips. In June 2023, at the initiative of Dutch Member of the European Parliament (MEP) Samira Rafaela and Belgian MEP Hilde Vautmans, the European Parliament held a debate on whether the EU should develop a collective strategy against hostage diplomacy.¹⁰⁵

At the debate, Rafaela called on “the Commission to implement a European strategy to counter hostage diplomacy, including a specialised task force that can effectively respond and coordinate when EU citizens are being held hostage by Iran and other regimes because the consulates and the embassies cannot do it alone. So a special task force is needed with special expertise coordinated among the twenty-seven Member States to respond to hostage diplomacy and the blackmailing of EU Member States.” She further noted that “Iran and other regimes using hostage diplomacy can only be stopped through cooperation at the EU level and we can only protect our

¹⁰⁰ “EP Plenary: Speech by High Representative/Vice-President Josep Borrell on EU Citizens Detained in Iran | EEAS,” European Union, June 15, 2023, https://www.eeas.europa.eu/eeas/ep-plenary-speech-high-representativevice-president-josep-borrell-eu-citizens-detained-iran_en.

¹⁰¹ Nicolas Camut, Barbara Moens, and Pieter Haeck, “Belgium Swaps Convicted Terrorist to Free Aid Worker Jailed in Iran,” *POLITICO*, May 26, 2023, <https://www.politico.eu/article/iran-releases-olivier-vandecasteele-jailed-belgian-aid-worker-prisoner-swap/>.

¹⁰² Clement Rossignol and Robin Emmott, “In First for Europe, Iran Envoy Sentenced to 20-Year Prison Term over Bomb Plot,” *Reuters*, February 4, 2021, sec. Middle East & Africa, <https://www.reuters.com/article/iran-plot-verdict-int-idUSKBN2A418N>.

¹⁰³ Secretariat of the National Council of Resistance of Iran (NCRI), “The Release of the Bomber Terrorist Diplomat 15 Years Before the End of His Sentence Encourages Terrorism and Betrays Human Rights by Violating the Ruling of the Constitutional Court,” NCRI National Council of Resistance of Iran, May 26, 2023, <https://www.ncr-iran.org/en/ncri-statements/terrorism-fundamentalism/the-release-of-the-bomber-terrorist-diplomat-15-years-before-the-end-of-his-sentence-encourages-terrorism-and-betrays-human-rights-by-violating-the-ruling-of-the-constitutional-court/>.

¹⁰⁴ AFP, “European Detainees Released by Iran in Prisoner Swap Arrive in Belgium,” *Le Monde*, June 3, 2023, https://www.lemonde.fr/europe/article/2023/06/03/european-detainees-released-by-iran-in-prisoner-swap-arrive-in-belgium_6028922_143.html.

¹⁰⁵ “Verbatim Report of Proceedings - Call for a European Strategy to Counter Hostage Diplomacy (Debate) - Thursday, 15 June 2023,” European Parliament, June 15, 2023, https://www.europarl.europa.eu/doceo/document/CRE-9-2023-06-15-ITM-010_EN.html.

citizens if we work together. We must realise that the impact is for the whole EU and not only one single country.”¹⁰⁶

In a speech delivered on behalf of High Representative Josep Borrell in the same plenary session, the EU’s top diplomat welcomed the release of EU citizens from Iran, but also noted that “these recent releases happened in the context of a growing number of illegitimate detentions involving European Union citizens in Iran.” He further stressed that “these consular cases are under the national competence of each Member State ... It is also worth stressing that these consular cases are all quite different, often require discretion and that, unfortunately, there is no one size-fits-all solution.” Finally, he observed that “in order to have consular access, be able to intervene, and work for the release of all European Union citizens, we must keep our critical engagement with Iran. The European Union and Member States must keep diplomatic channels open.”¹⁰⁷

The debate on whether the EU needs a more robust and coordinated strategy to deal with “hostage diplomacy” or whether action has to necessarily be focused on the Member State level need not result in an either-or situation. More can be done both by EU Member States to respond to cases of their nationals detained, and at the level of the EU to coordinate action, lessons learned, and develop collective deterrence and prevention mechanisms. The EU is a strong supporter of the Canadian-led multilateral effort on arbitrary detention in state-to-state relations and has commissioned a study on the legal dimensions of the issue.

In September 2023, the *New York Times* reported that a Swedish national called Johan Floderus, who worked for the European Union, has been detained in Iran for more than 500 days.¹⁰⁸

A GLANCE AT JAPAN



In March 2023, China detained a senior executive of the Japanese pharmaceutical company Astellas. The detention was the seventeenth such detention of a Japanese citizen by China since 2015. Five Japanese nationals are currently held in China—two already sentenced, one on trial and two, including the Astellas executive, under arrest or in detention, according to the Ministry of Foreign Affairs of Japan.¹⁰⁹ Japanese Prime Minister Fumio Kishida has called for the executive’s early release. China has said it handles such cases “in accordance with the law.”¹¹⁰

While more attention is being paid to these detentions amid a surge in cases of arbitrary detention of Japanese citizens in China, the issue is not new. In 2010, China

¹⁰⁶ “Verbatim Report of Proceedings - Call for a European Strategy to Counter Hostage Diplomacy (Debate) - Thursday, 15 June 2023.”

¹⁰⁷ “EP Plenary: Speech by High Representative/Vice-President Josep Borrell on EU Citizens Detained in Iran | EEAS.”

¹⁰⁸ The New York Times, September 4, 2023, sec. World. <https://www.nytimes.com/2023/09/04/world/europe/iran-sweden-prisoners-johan-floderus.html>.

¹⁰⁹ Miho Inada, “China’s Repeated Detention of Japanese Citizens Raises Tensions,” *Wall Street Journal*, April 9, 2023, <https://www.wsj.com/articles/chinas-repeated-detention-of-japanese-citizens-raises-tensions-3edc7b3d>.

¹¹⁰ Miho Inada.

arrested four Japanese citizens after Japan had taken a Chinese ship captain into custody near islands disputed by the two countries.¹¹¹

Many China analysts attribute the recent surge in detentions to China's 2014 adoption of new national security laws that expanded the scope of possible espionage charges. Chinese law takes a broad view of what constitutes a state secret to include information that would be considered innocuous in other countries. This point was also made by Hideji Suzuki, a Japanese citizen who recently returned to Japan after serving six years in a Chinese prison on spying charges, which according to the *New York Times*' coverage of his account, "stemmed from small talk at a dinner party with a Chinese academic about North Korea."¹¹² For the last few months, Suzuki has been raising the alarm about "seemingly arbitrary" detention of Japanese citizens in China. He has also been critical of the Japanese government's "weak efforts to help him." By speaking publicly, he wants to "shame the Japanese government into taking strong action to aid others who find themselves at Beijing's mercy ... and to create a strong system for crisis management."¹¹³

In April 2023, Japanese foreign minister Yoshimasa Hayashi during a visit to Beijing told reporters that he had raised the detention of a Japanese national with his Chinese counterpart, noting that he "made a protest against the recent detention of a Japanese person in Beijing, and made a strong point of our position on the matter, including the early release of this national." Hayashi further stressed that "Japan is seeking transparency over the legal process regarding detentions of its citizens in China and has asked for China to secure a fair and safe business environment."¹¹⁴

Japan has endorsed the *Declaration Against Arbitrary Detentions in State-to-State Relations* and has been active in developing a more coordinated G7 response to China's coercive diplomacy, especially around economic coercion.

¹¹¹ Ian Johnson, "China Arrests Four Japanese Amid Tensions," *The New York Times*, September 24, 2010, sec. World, <https://www.nytimes.com/2010/09/24/world/asia/24chinajapan.html>.

¹¹² Ben Dooley and Hisako Ueno, "Lonely Cry for Action as China Locks Up Japanese Citizens on Spy Charges," *The New York Times*, April 13, 2023, <https://www.nytimes.com/2023/04/13/world/asia/china-japan-spying-espionage.html>.

¹¹³ Ben Dooley and Hisako Ueno.

¹¹⁴ Laurie Chen, Kiyoshi Takenaka, and Sakura Murakami, "Japan's Foreign Minister Urges China to Release Detained National," *Reuters*, April 2, 2023, <https://www.reuters.com/world/asia-pacific/japans-foreign-minister-calls-early-release-detained-national-during-talks-china-2023-04-02/>.

RESPONSE & DETERRENCE

The issue of state hostage-taking requires consistent attention from impacted countries and their citizens. Government approaches to the practice should not only be driven by headlines or high-profile cases in the United States, Canada, United Kingdom, or elsewhere. Each case of state hostage-taking is tragic, lengthy, and complex; and individual and collective cases require further scholarship to inform evidence-based policymaking. This special report set out to analyze contemporary state hostage-taking dynamics and examine key cases, trends, and policies. Through an analysis of three countries, it has sought to present the distinct national experiences, conversations, and priorities that drive national trajectories and policy responses. This final section of the report identifies some key areas of importance regarding response and deterrence with a view to offering recommendations for national and international consideration.

Punishing Perpetrators, Protecting Detainees

In addressing state hostage-taking, governments need to focus on two equally important imperatives: to bring their detained citizens home and to deter and prevent the practice. While deterrence must be a priority, it cannot come at the expense of current hostages. Deterrence through denial of concessions to perpetrator states has clear limits and has been unevenly applied by the United States, United Kingdom, Canada and other countries facing detentions of their nationals for leverage.¹¹⁵ At the end of the day, securing the release of individual hostages often requires engaging in difficult negotiations and concessions. To offset these concessions, governments must do more to raise the costs on the perpetrator states outside of individual cases. In other words, government policies should focus on punishing the perpetrators without denying protection to the detainees. Deterrence through punishment—ensuring high costs for countries that engage in this practice—should become the focus of response efforts.

Currently, there are limited costs imposed on perpetrator states, and collective action in this area is lacking. In recognition of this reality, US President Joseph Biden has mandated the United States to develop “deterrence strategies to raise the cost of hostage taking so that it is no longer used as a tool of diplomacy by states engaged in the practice.”¹¹⁶ Biden has also authorized the Secretary of the Treasury to impose financial sanctions and visa bans on individuals responsible for wrongful detentions using powers granted to the president by the *International Emergency Economic Powers Act* (IEEPA).

Deterrence through punishment will require governments to be creative when developing new tools to raise costs on perpetrator states and to be more courageous in applying the tools that already exist, such as Magnitsky sanctions,¹¹⁷ legal action, travel bans, and financial penalties. When appropriate—and while working closely with civil society organizations, the media, and the business community—governments should also use public messaging and narratives to inflict reputational costs on perpetrator states. In developing new deterrence tools, governments need to look across the entire spectrum of national power

¹¹⁵ Gilbert, Danielle. “The Prisoners Dilemma.” *Foreign Affairs*, August 24, 2022. <https://www.foreignaffairs.com/united-states/prisoners-dilemma-america-adapt-hostage-taking>.

¹¹⁶ The White House, “Executive Order on Bolstering Efforts to Bring Hostages and Wrongfully Detained United States Nationals Home.”

¹¹⁷ Alex Horton. “Analysis | The Magnitsky Act, Explained.” *Washington Post*, July 14, 2017. <https://www.washingtonpost.com/news/the-fix/wp/2017/07/14/the-magnitsky-act-explained/>.

and bring to bear not just diplomatic tools, but also law enforcement, legal, financial, and military intelligence tools.

In April 2023, the United States imposed sanctions on Russia's domestic security service (FSB) and the intelligence unit of Iran's Revolutionary Guard Corps (IRGC) in the first application of sanctions under EO 14078.¹¹⁸ In announcing the sanctions, a senior US official told reporters that "this was the first of multiple rounds of sanctions in the works to punish and deter those who would hold Americans hostage."¹¹⁹ These important first steps show that the United States is willing to assume a leadership role in developing deterrence tools and levy costs on perpetrator states. But for these national efforts to succeed, they need to be coordinated with allies among the Five Eyes and G7 and collectively applied. A coalition response must recognize that the United States will most likely remain the primary target of state hostage-taking, with close US allies and partners next in line. Only by acting together can impacted states make the cost of taking their citizens hostage unpalatable for abductor states to continue to engage in the practice.

Another key tool in the deterrence and prevention toolbox is travel advisories and travel bans. The United States, Canada, Australia and other states as well as the EU now issue travel warnings about the risk of arbitrary or wrongful detention in countries like Russia, Iran, China, Venezuela, and others. The introduction by the US Department of State of a specific risk indicator of wrongful detention that has been applied toward six countries is an important innovation that other countries should consider adopting. In extreme cases, countries have also instituted complete travel bans, like the United States has done for travel to North Korea.¹²⁰ Some NGOs have called for a complete ban on travel to Iran given its systematic hostage taking of US and EU citizens as well as those of other citizens of Western countries. Others have cautioned that such a ban would negatively impact dual nationals who must travel to Iran because of family ties, as well as journalists and others who must travel there for work.

Finally, deterrence of state hostage-taking should be included in the broader discussion on coercive diplomacy, its growing use by authoritarian regimes and the various counter-coercion tools that are currently under discussion in the United States, the EU, and among G7 countries.

With respect to bringing hostages home, negotiations to secure their release are complicated by the fact that many perpetrator states are already heavily sanctioned (like Iran, Russia and Venezuela) and in many cases, diplomatic relations are tense, requiring third party interlocutors such as Qatar and Oman.¹²¹ There is also an evolving debate concerning the moral, legal, and political questions related to whether concessions and ransom payments should be used to secure the release of hostages.

Prisoner swaps—which were used to resolve recent high-profile hostage cases of US and EU citizens—in particular have been debated publicly, with some analysts fearing that they may incentivize additional hostage-taking. The reality is that negotiations for the release of hostages require hard choices and prisoner swaps might be the right tool in certain cases. As in any negotiation, the goal should be to

¹¹⁸ "Executive Order 14078 of July 19, 2022 on 'Bolstering Efforts To Bring Hostages and Wrongfully Detained United States Nationals Home.'" The White House, July 19, 2022. <https://www.federalregister.gov/documents/2022/07/21/2022-15743/bolstering-efforts-to-bring-hostages-and-wrongfully-detained-united-states-nationals-home>.

¹¹⁹ Dave Lawler, "U.S. Sanctions Russian and Iranian Security Services for 'Holding Americans Hostage,'" *Axios*, April 27, 2023, <https://www.axios.com/2023/04/27/russian-iran-sanctions-wrongful-detention>.

¹²⁰ Holly Dagres, "Iran Has a Hostage-Taking Model. It's Long Overdue That the US Build a Policy around It." (Atlantic Council, August 22, 2023), <https://www.atlanticcouncil.org/blogs/iransource/iran-hostage-model-us-policy/>.

¹²¹ Farnaz Fassihi and Michael D. Shear. "U.S. Reaches Deal With Iran to Free Americans for Jailed Iranians and Funds." *The New York Times*, August 10, 2023, sec. U.S. <https://www.nytimes.com/2023/08/10/us/politics/iran-us-prisoner-swap.html>.

maximize leverage and minimize concessions. Securing the release of state hostages requires governments to move beyond rigid no-concessions policies and reliance on limited diplomatic tools and traditional consular case management approaches. States should employ policies that more creatively bring to bear both leverage and creative concessions. Creative thinking and shrewd diplomacy are needed to find whatever possible concessions or “carrots”—like lifting of select sanctions (in the case of Iran or Venezuela) or other mutually beneficial outcomes (especially around humanitarian issues)—could also unlock progress on hostage release negotiations, short of prisoner swaps and acquiescing to specific demands.

There is no one-size-fits-all solution when it comes to securing the release of hostages held by state actors. State hostage-taking remains a complicated policy area, without a clear playbook or well-tested solutions. The American example, in particular, shows that a whole-of-government approach, enabled through the Levinson Act and the establishment of the Office of the Special Presidential Envoy for Hostage Affairs, is needed to bring hostages home and to deter future cases. State hostage-taking cases cannot be dealt with like any other complex consular cases; they require dedicated capacity within government and a coordinated, complex, and tailored response involving all relevant stakeholders. SPEHA, a position currently held by Roger Carstens, serves as a focal point and an advocate within the US government on behalf of hostages and wrongful detainees. The office holder has the authority to work with other US agencies and departments to develop a strategy and a plan for securing the release of every single American designated as wrongfully detained. The office is a central repository of information, lessons learned, and data on past and current cases that assists in ensuring continuity and effectiveness in both deterrence and response efforts. But perhaps SPEHA’s greatest value has been its partnership approach to working with families of hostages and wrongfully detained Americans.

Criteria & Determinations

States should consider developing national criteria for identifying suspected cases of state hostage-taking. Only the United States, through the Levinson Act, has developed such criteria. This law also requires that, upon identification, such cases become the responsibility of SPEHA to resolve through a whole-of-government hostage recovery enterprise. The UK government, on the other hand, recently rejected the recommendation to formulate and publish criteria for determining such cases, as well as the recommendation to develop a dedicated government post to manage these cases.

Some detained individuals and their families, from a range of national contexts, have expressed frustration and disappointment in how their respective governments previously failed to recognize the nature of their cases. Former detainees and their families have raised concerns regarding the speed in which state hostage-taking cases were identified, the lack of knowledge about the issue among some consular teams, poor communication and coordination across government entities, and a lack of clarity on which entity or authority within their government was responsible for the management of their cases once recognized. Former Australian hostage Dr. Kylie Moore-Gilbert has remarked that “hostage diplomacy is only superficially a consular issue.”¹²² Shortfalls in identifying these cases result in critical time being lost when an individual is first detained, as these cases can languish with consular teams who are often managing a far larger number of lawful detention cases, among other routine consular business.

¹²² Kylie Moore-Gilbert, “Hostage Diplomacy: Who’s in Control?” (University of Sydney, September 29, 2022), <https://www.sydney.edu.au/engage/events-sponsorships/sydney-ideas/2022/kylie-gilbert-moore-hostage-diplomacy-and-government-reform.html>.

The lack of designation criteria also complicates multilateral cooperation. Although the practice is difficult to define, some shared criteria or definition is, ultimately, required to strengthen collective response. Beyond US citizens, other detained individuals and their families do not have access to clear criteria and procedures for identifying these cases. This, in turn, hampers the ability of states to discuss trends and collective cases, and makes it harder to hold them accountable for resolving them. Finally, survivors of state hostage-taking require and deserve access to support services once their ordeal is over. Former detainees have faced challenges related to unpaid bills, taxes, and loans,¹²³ with institutions and even some government entities claiming they lack authority to forgive debts or provide other relief. Former hostages may also face hardships associated with their criminal convictions, even if such convictions were based on false charges. From employment checks to travel visas, former hostages should not have to navigate the obstacles incurred by having a conviction on their record. Clear criteria will not only help bring victims and survivors home, but will also ensure they have access to dedicated support and funding after they return.

National Response Capacity

There is limited room for private action or negotiation by family members to resolve state hostage cases with perpetrator states. In some scenarios with non-state actors, especially entities that are not designated terrorist organizations, there is space for private action and negotiation, especially around financial concessions. For individuals taken hostage by states, there is no good-faith legal avenue they can pursue. Only political and diplomatic discussions between their own national government and the perpetrator state will move these cases to a resolution. For this reason, states have an obligation to their citizens to have a national response capacity to state hostage-taking in place. At present, most national response mechanisms and capacities are vague and opaque, with current and former hostages and their families pushing for states to provide clear guidance and resources. The United States offers a clear explanation of the tools and resources it offers families navigating these situations.¹²⁴ Ultimately, hostages and their families need to understand their respective state's response capacity and how they can mobilize the full machinery of government and bring to bear all relevant tools of national power to secure a release.

Without transparency and strong leadership, states cannot learn from individual and collective cases to strengthen future responses. Given that most national efforts to address state hostage-taking are relatively nascent, sharing experiences and lessons-learned among states is important. A common recommendation of the few hostage review processes that states have undertaken, as well as from requests made by former hostages and their families, is to designate an accountable figure (such as the United States' SPEHA) within government or a centralized national hostage response separate from foreign ministries' consular departments. There have also been calls to segregate state hostage-taking negotiations from wider bilateral political and diplomatic relationships and priorities with abductor states. From multiple national contexts, there have been criticisms of viewing state hostage-taking as a complex consular case only, rather than one whose resolution requires shrewd political, diplomatic, and economic elements beyond the capacity of consular officials. In other words, states require dedicated capacity

¹²³ Louise Radnofsky. "Why Do I Have to Pay Taxes on That? Wrongfully Detained Americans Face Bills, Fines and Fraud Back Home - WSJ." *Wall Street Journal*, July 5, 2023. <https://www.wsj.com/articles/why-do-i-have-to-pay-taxes-on-that-wrongfully-detained-americans-face-bills-fines-and-fraud-back-home-c8244c86>.

¹²⁴ "Resources for Families of Wrongful Detainees," United States Department of State, accessed August 25, 2023, <https://www.state.gov/resources-for-families-of-wrongful-detainees/>.

beyond regular consular services. Multiple cases have demonstrated the negative impact of diplomatic staff turnover, including at the highest political levels. To make the issue “transition-proof,” states should consider shoring up national capacities to afford hostages and their families continuity and leadership over the full duration of their cases, which can be lengthy and complicated to resolve.

Collective Action

State hostage-taking is not only an egregious violation of individual human rights and principles of international law but also an attempt by perpetrator states to undermine the rules-based international order. Given the complexities of both responding to and deterring the practice, no country can effectively face this challenge alone. The international community must come together to strongly condemn the practice and develop collective response and deterrence mechanisms to combat it. Finally, given the fact that some countries may deal with this practice sporadically, an effective multilateral response mechanism could helpfully augment their respective national response capacities.

Although the impact of these practices appears to currently be limited mostly to Western democracies, actions that seek to erode international order based on human rights and international law represent a threat to all states. That is one reason why Canada’s *Declaration Against Arbitrary Detention in State-to-State Relations* has been endorsed by over seventy countries to date. Smaller states, in particular, depend on a universal respect for international law and rules-based international order to guarantee their national security. This point was made clearly by the Minister of Foreign Affairs and International Trade of Belize at the launch of the declaration.¹²⁵

The declaration represents an important first step in marshaling a more coordinated and robust international response to the practice of state hostage-taking. Canada and other endorsers should garner additional political support for the declaration and its implementation. However, much more needs to be done to turn the declaration’s aspiration of ending state hostage-taking into a reality. In particular, greater action is needed on the five specific work areas identified in the declaration’s Partnership Action Plan, which was developed by Canada and endorsed by the G7 in April 2021.

The Partnership Action Plan calls on states to voluntarily share information on cases “to explore lessons learned, raise awareness and help in the resolution of future cases.” This point was also made by the UK FAC inquiry report on this matter, which noted that currently there is a “distinct lack of data on state hostage taking among the UK’s international partners. The formulation of effective strategies to both respond and to deter state hostage taking depends on adequate data.” The FAC report further recommended “a central repository be created for information on cases of arbitrary detention and hostage taking, both active and closed, detailing processes followed and learning gained. There should be a systematic approach applied to all cases, not simply a sample.” The FAC report also recommended “biennial meetings of Ambassadors and Deputy Heads of Mission of ‘Five Eyes’ countries in states with a record of state hostage taking to discuss live cases and lessons learnt, and to disseminate best practices.”

Greater international cooperation is also needed to better utilize the UN Working Group on Arbitrary Detention (WGAD) in addressing cases of arbitrary detention in state-to-state relations. The WGAD was

¹²⁵ “Minister of Foreign Affairs, Foreign Trade and Immigration Participates in Launch of Declaration against Arbitrary Detention in State-to-State Relations – Government of Belize Press Office,” Government of Belize Press Office, February 15, 2021, <https://www.pressoffice.gov.bz/minister-of-foreign-affairs-foreign-trade-and-immigration-participates-in-launch-of-declaration-against-arbitrary-detention-in-state-to-state-relations/>.

established by the UN Human Rights Commission in 1991 and has the mandate to investigate cases of deprivation of liberty imposed arbitrarily or otherwise inconsistent with international law standards, instruments, and principles.¹²⁶ The WGAD is the only international mechanism with a global mandate to consider individual allegations of arbitrary deprivation of liberty and the ability to render a legal opinion on the arbitrariness of the detention. The WGAD has adopted guidance around five categories of arbitrary detention, though these do not include arbitrary detention for diplomatic leverage or state-sponsored hostage-taking. Some non-government organizations like REDRESS have advocated for the WGAD to update its guidance to include such a category.¹²⁷

Nonetheless, in recent years, the WGAD has considered and issued opinions on a number of cases of nationals of one country arbitrarily detained in another country. In 2017, recognizing this growing trend, the WGAD devoted a thematic section of its annual report to “Consular assistance and diplomatic protection for persons deprived of liberty.”¹²⁸

The UK parliament’s Foreign Affairs Committee inquiry examined the role of the WGAD in the cases of UK citizens detained in Iran, finding that “the WGAD opinions are an underutilized resource in the UK Government’s efforts to secure the early release of state hostages and those at risk of being used as political leverage.” It further recommended “that the Government should as a matter of practice promote public acceptance of the opinion of the WGAD and consider promoting the concept of an additional category of “state sponsored hostage taking” to the criteria of the WGAD.”¹²⁹ The case of the United Kingdom demonstrates an important point: in the absence of national criteria for making a determination on whether a case of detention is arbitrary, the opinion of the WGAD should be used by the state of nationality in the strategy/efforts for their release. The UK government could lead discussions on this issue as part of its support for the implementation of the Canadian Partnership Action Plan on the *Declaration Against Arbitrary Detention in State-to-State Relations*.

Justice & Accountability

Victims of state hostage-taking deserve justice, and perpetrator states must be held accountable for their crimes. Pursuing justice has been a key priority for a number of former hostages and their advocates, who see it as an important way to restore dignity and find a sense of closure. There is also a growing recognition that accountability for perpetrators must be an important part of deterrence efforts.

However, current avenues for pursuing legal redress through national or international courts are extremely limited. With respect to national courts, options to hold states accountable for their hostage-taking actions are severely limited by the principle of state immunity, which does not allow individuals to sue or bring legal action against states. Some states, like the United States and Canada, have created exemptions for these state impunity laws in cases of terrorism. States most impacted by state hostage-taking should consider putting in place similar exemptions for this practice.

¹²⁶ UN Working Group on Arbitrary Detention, “Fact Sheet No. 26, The Working Group on Arbitrary Detention,” n.d., <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet26en.pdf>.

¹²⁷ Gissou Nia and Celeste Kmiotek. “Written Evidence Submitted by the Atlantic Council’s Strategic Litigation Project (SLH0011),” May 12, 2022. <https://committees.parliament.uk/writtenevidence/108545/pdf/>.

¹²⁸ Elina Steinerte. “Written Evidence Submitted by Dr Elina Steinerte (SLH0041),” November 29, 2022. <https://committees.parliament.uk/writtenevidence/113933/pdf/>.

¹²⁹ House of Commons Foreign Affairs Committee. “Stolen Years: Combatting State Hostage Diplomacy.” London, UK: House of Commons, April 4, 2023. <https://committees.parliament.uk/publications/40750/documents/198593/default/>.

Avenues for pursuing justice through international courts, such as the International Court of Justice or the International Criminal Court, and through various UN bodies face limitations given the absence of specific legal instruments that explicitly deal with the crime of state hostage-taking. In a study examining state hostage-taking by Iran, Carla Ferstman argues that given the systematic, sustained, and targeted way in which Iran engages in hostage-taking of foreign nationals, the actions of certain Iranian officials reasonably meet the threshold of crimes against humanity. Such a designation, if applied, would have important legal implications and would allow existing jurisprudence on crimes against humanity to be applied to the context of state hostage-taking. It also could open up additional accountability, given the legal obligations many states have enacted to address crimes against humanity, including through sanctions legislation.¹³⁰

There is a need for additional research into the applicability and legal protection gaps of existing international legal instruments with respect to state hostage-taking situations, especially for cases outside of Iran. The legal protection gap experienced by dual nationals deserves further study and attention in order to identify specific tools and approaches for more consistent application of the rights and protections established under the *Vienna Convention on Diplomatic Relations* to dual national cases.

To hold perpetrators accountable, governments should make greater use of existing tools such as Magnitsky sanctions, travel bans, financial penalties, and asset seizures. However, as with all sanctions, impact is most effective when applied collectively and in a coordinated manner. As in the case of Iran, once sanctions and travel bans are in place, there must be robust monitoring and implementation, and countries must ensure they have the necessary capacity to see to it that the sanctions are respected.

Supporting Hostages & Families

Among the complaints often raised by families whose loved ones get caught up in the cruel practice of state hostage-taking is that they receive poor treatment from their own governments. Across national contexts, families have stated their desires to be treated as “partners” by their governments and recognized as key stakeholders in the fight for their loved ones’ freedom, rather than simply being “managed” and kept at arm’s length. Data from US hostage advocates suggests that state hostage-taking results in longer negotiations and detentions; half of wrongful American detainees in 2022 had been held for more than four years.¹³¹ While the families and governments of citizens abducted by states may be joined together for years as they work to resolve individual cases, families have often felt let down and sidelined by their states. Moves to position families as trusted partners working alongside their governments, particularly those undertaken by the United States, are a step in the right direction. Further, independent organizations led by and supported by hostage survivors and their families have played a crucial role in understanding and documenting the practice of state hostage-taking more widely. These organizations are an important part of the whole-of-society approach to combating state hostage-taking.

Former hostages and their families have played an outsized role in sounding the alarm on the practice of state hostage-taking and in holding their own governments to account for poor and ineffective policies and strategies. States, therefore, also need to prioritize the myriad needs of families advocating for their loved ones detained overseas. In the United States, the proposed *Supporting Americans Wrongfully or Unlawfully Detained Abroad Act of 2023* aims to address these human needs, from financial support to

¹³⁰ Ferstman and Sharpe, “Iran’s Arbitrary Detention of Foreign and Dual Nationals as Hostage-Taking and Crimes Against Humanity.”

¹³¹ Loertscher, “Bringing Americans Home 2022: A Non Governmental Assessment of U.S. Hostage Policy and Family Engagement.”

families to care and support services for former hostages.¹³² Former hostages have noted that many of the government entities working on their cases are those with an external affairs mandate; however, once they return home, they have noted the absence of domestic government entities equipped to support post-release and reintegration following state hostage-taking. The whole-of-government approach required to manage state hostage-taking cases necessitates domestic government departments or entities equipped to support long-lasting needs and recoveries that can take years.

Media & Publicity

There are well-known media dimensions to all forms of hostage-taking. When it comes to state hostage-taking, there may be less public awareness of the practice compared to hostage-taking by non-state actors. In particular, the propaganda of terrorist groups, to include images and videos of hostages, has generated significant media and public attention in the past. More study is required on the media dimensions of state hostage-taking, especially regarding how abductor states view the importance of messaging and narratives around these cases. Across national contexts, victims' families have reported facing pressure from their governments to keep cases private and to trust quiet diplomatic efforts. Given that hostage-taking is a crime that denies a person their agency and autonomy, governments should respect and support whatever manner hostages and their families choose to manage the public dimensions of their cases. In retrospect, some families have expressed regret that they did not go public with their cases sooner. Others have noted that governments should be equipped to support both the private and public preferences and efforts of families.

There are several dimensions to consider regarding the importance of narrative. In some cases, engaging the media can increase public attention and keep pressure on home governments to address cases and engage with hostage-takers' demands. Further, media and publicity can play a role in creating reputational costs for perpetrator states and countering the false narratives they often employ about the foreign citizens they have detained. Media organizations should ensure their reporters interrogate abductor states' narratives and not amplify the falsehoods they use to justify their crimes. All observers need to understand the difficult decisions hostages and their families grapple with as they consider whether quiet diplomacy or a public campaign is the right approach in their own case. Families, especially, need greater access to media counsel and training, as media campaigns are most effective when they are integrated into a broader strategy, rather than used as ends in themselves.

Hostage-Taking in all Forms

The discourse on hostage-taking needs to account for the multifaceted nature of the practice and its evolution in today's complex geopolitical landscape. While this report has focused on the practice of state hostage-taking, the broader phenomenon is a complex one practiced by a range of actors. Discussions on deterrence and response must account for scenarios where both state and non-state actors can engage in the cruel practice. This paper's earlier discussion of the US system demonstrates how elements of the same hostage recovery enterprise can be leveraged to respond to hostage-taking in all its forms. However, the review of the United Kingdom's national discourse illustrates how shared language on hostage-taking can complicate both negotiations with perpetrators and optics with home audiences vis-a-vis concessions. Whether states choose to separate or align their efforts and strategies, they must be prepared to manage

¹³² Sen. Menendez, Supporting Americans Wrongfully or Unlawfully Detained Abroad Act of 2023.

all hostage-taking scenarios. High-profile hostage events over past decades have perhaps shaped public perceptions so that many observers associate the practice with non-state actors. In that vein, terrorist groups, militia organizations, criminal gangs, and drug cartels may be among the entities most associated with the crime of hostage-taking.

Based on limited research, state actors have now surpassed non-state actors as the primary entities holding US nationals abroad.¹³³ No such data is available for other countries, but the growing concern over state hostage-taking adds complexity to the discourse and demands a host of tools and solutions distinct from those used against non-state perpetrators. Further, the American trendline warrants caution. The downtick in hostage-taking of US nationals by non-state actors the past years may have been shaped by provisional factors.¹³⁴ For example, restricted and reduced travel due to the COVID-19 pandemic kept more American travelers at home and out of reach of violent non-state actors operating abroad. The return of pre-COVID-19 levels of travel may impact the data in the subsequent years. Additionally, extensive military gains against terrorist organizations holding territory, especially in Iraq and Syria, may have impacted the ability of some terrorist groups to capture and hold hostages. However, deteriorating security conditions today in several terrorism hotspots, especially following Western military withdrawals from the Sahel and parts of Central Asia, may provide violent non-state actors with under-governed or alternatively governed spaces for resuming their hostage-taking. Therefore, states must be prepared to prioritize the management of hostage-taking in all its forms in the future.

¹³³ Loertscher, "Bringing Americans Home 2021: A Nongovernmental Assessment of U.S. Hostage Policy and Family Engagement."

¹³⁴ Loertscher.

CONCLUSIONS AND RECOMMENDATIONS

Each case of state hostage-taking is a human tragedy. The practice violates the human rights of those impacted and undermines important strides toward global cooperation, travel, and trade. State hostage-taking is an especially cruel form of coercive diplomacy, one that weighs an individual's freedom against political, security, economic, and other complex national considerations. Abductor states act largely with impunity and see foreign citizens as pawns with which to yield leverage over other states. The practice has no place in international relations and perpetrator states deserve condemnation while being held accountable for their crimes.

Hostages and their families not only must navigate the hardships of arbitrary detention by abductor states, but often struggle to navigate the opaque response systems set up by their own governments. Former hostages and their families, across a range of national contexts, have faced the additional disappointment of being let down by unclear and inadequate national response efforts. As more states come to see the challenges posed by state hostage-taking, they must balance two equally important imperatives: to bring their detained citizens home and to deter and prevent the practice. While deterrence must be a priority, it cannot come at the expense of current hostages' safety and well-being.

State hostage-taking is best understood in the context of today's great power competition and geopolitical rivalries. Amidst the rising cases, states must shore up their national responses and multilateral efforts. Governments must prepare to manage hostage-taking in all its forms. Today's complex geopolitical landscape provides the conditions for both state and non-state perpetrators to continue to carry out these crimes. Whether states choose to separate or align their response efforts and strategies for hostage-taking by non-state actors and state actors, they must be prepared to manage all hostage-taking scenarios.

This special report presents the following recommendations:

- 1. Government policies should focus on punishing the perpetrators, not denying protection to detainees. Deterrence should not be achieved at the expense of people currently held hostage, and deterrence strategies should ensure that high costs are paid by countries that engage in state hostage-taking.** Currently, these states face limited costs and consequences for their actions. Urgent collective action is needed to make the cost of taking hostages unpalatable for perpetrator states. States need to be more creative in developing new tools for deterrence and more courageous in using existing tools such as Magnitsky sanctions, travel bans, and financial penalties. Deterring state hostage-taking should be part of the broader discussion on coercive diplomacy, its growing use by authoritarian regimes, and the various counter-coercion tools that are currently under discussion in the United States, in the EU, and among the G7 countries. Another key tool in the deterrence and prevention toolbox are travel advisories and travel bans. The US Department of State's introduction of a specific risk indicator to highlight elevated risk of wrongful detention is an important innovation that other countries should consider adopting.
- 2. To secure the release of state hostages, governments must move beyond rigid no-concessions policies and reliance on limited consular tools to implement whole-of-government policies that more creatively bring to bear both leverage and creative concessions.** Shrewd diplomacy and creative thinking are needed to find possible concessions or "carrots," recognizing that negotiating the release of hostages requires making hard choices and that prisoner swaps might be the right tool in certain cases. As in any negotiation, the goal should be to maximize leverage and minimize concessions. Whatever concessions

are made should be offset with the imposition of meaningful costs and consequences on the perpetrator states, ideally through a coordinated and multilateral application of such measures.

3. **Criteria should be developed for designating and managing cases of state hostage-taking. Criteria will assist national and multi-national responses, as well as ensure that detained individuals receive due care and support.** To date, only the United States has developed such criteria, which it achieved through the *Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act*. This law also requires that, upon designation, such cases become the responsibility of the Special Presidential Envoy for Hostage Affairs (SPEHA) to resolve through a whole-of-government hostage recovery enterprise. Shortfalls in identifying and designating these cases can result in critical response time being lost when an individual is first detained, as these cases can languish with consular teams without proper identification and designation. In the absence of national criteria, and in cases where the UN Working Group on Arbitrary Detention has issued an opinion on the arbitrariness of a case, impacted states should use that legal opinion as part of the efforts to secure a release.
4. **Governments should put in place a clear national response capacity that affected citizens know how to access and that such citizens can hold to account.** When an individual is taken hostage by a state actor, there is limited room for private action or negotiation by family members to resolve these cases with perpetrator states. Only political and diplomatic discussions at the state-to-state level can move these cases to a resolution. For this reason, states have an obligation to have a dedicated, accessible, and transparent capacity in place outside of regular consular services to work on securing the release of hostages. The US model, with clear case criteria through the Levinson Act and accountability through the SPEHA and the wider hostage recovery enterprise, presents a good example for other countries to draw on.
5. **The international community must come together to strongly condemn state hostage-taking and to develop collective response and deterrence mechanisms to combat it.** Canada and other endorsers of the *Declaration Against Arbitrary Detention in State-to-State Relations* should continue to garner additional political support for the declaration and its implementation. In particular, greater action is needed to implement the declaration's Partnership Action Plan, which calls on states to voluntarily share information on cases "to explore lessons learned, raise awareness and help in the resolution of future cases." Under the Partnership Action Plan, Canada should create a central repository for information on cases of state hostage-taking, both active and closed, detailing processes followed and lessons learned. A core group of impacted states should also consider engaging in regular meetings, better coordinating efforts around active cases, and sharing lessons learned and best practices.
6. **Justice for victims and accountability for the perpetrators must be made an important part of deterrence efforts aimed at bringing the practice of state hostage-taking to an end.** Victims of state hostage-taking deserve justice, and perpetrator states must be held accountable for their crimes. Current avenues for pursuing legal redress for state hostage-taking through national or international courts are extremely limited. Options to pursue legal recourse through national courts are limited by the principle of state immunity, which does not allow individuals to sue or bring legal action against states. States most impacted by the practice should consider the feasibility of putting in place exemptions to state immunity laws for state hostage-taking. Additional research and study should be undertaken to better understand

the existing legal protection gap with respect to state hostage-taking. Special attention should be paid to the legal protection gap experienced by dual nationals in order to identify specific tools and approaches for more consistent application of the *Vienna Convention on Diplomatic Relations* to dual national cases.

7. **Families should be treated as trusted partners working alongside their governments to release loved ones from perpetrator states.** A successful response strategy is one that includes partnership with and support to families. Families across national contexts have stated their desires to be treated as “partners” by their governments and recognized as key stakeholders in the fight for their loved ones’ freedom and not just “managed” and kept at arm’s length by their governments.
8. **Decisions to publicize state hostage-taking cases should be led by hostages (where possible) and their families. Governments should advise, not influence, families and should support their wishes to pursue quiet diplomatic efforts or public campaigns.** Governments and other stakeholders should respect and support the decisions families ultimately choose to pursue. Families should think strategically about media campaigns and should receive greater access to media counsel and training. News media organizations also have a role to play in interrogating the claims made by abductor states and should be mindful of amplifying false narratives perpetrator states use to justify their crimes.

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A seasoned activist and a passionate advocate, Vina has been a long-time champion for human rights, women's rights and social justice. Her most recent efforts focused on securing the release of Michael Kovrig and Michael Spavor who were being held as political hostages in China.

About The Soufan Center

The Soufan Center (TSC) is an independent non-profit organization offering research, analysis, and strategic dialogue on foreign policy challenges with a particular focus on global security, conflict prevention and resolution, and the rule of law. Our work is underpinned by an emphasis on prevention, mitigation, and a recognition that human rights and human security perspectives are critical to credible, effective, and sustainable solutions. As a bipartisan organization, TSC fills a niche role by producing objective and innovative analyses and recommendations that shape strategic policy and dialogue and equip governments, international organizations, the private sector, and civil society to act effectively.

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China's abductions of foreign nationals should carry costs and consequences

Governments must reinforce the basic international norm that responsible states don't abduct each other's citizens.

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Supporters of Michael Kovrig and his fellow Canadian detainee at a 2021 protest | Lars Hagberg/AFP via Getty Images

OPINION

JANUARY 30, 2024 4:00 AM CET

BY MICHAEL KOVRIG

Michael Kovrig is a former Canadian foreign service officer who previously served as a diplomat in China and at the United Nations. He's now an analyst, advocate, writer and consultant on international issues.

In 2018, I was arbitrarily detained in the People's Republic of China and held as a human bargaining chip for 1,019 days. Negotiations finally secured my release in Sept. 2021.

Recently, however, speculation in Canadian media — uncritically echoed elsewhere and opportunistically recycled by Chinese propaganda — has raised doubts about what happened to me and why, confusing legitimate research and reporting with espionage activities. I feel obligated to set the record straight.

What happened to me was an exercise in state hostage-taking, pure and simple. And unsubstantiated speculation to the contrary distracts from this ugly reality, creating openings for the Communist Party of China's propaganda and disinformation work.

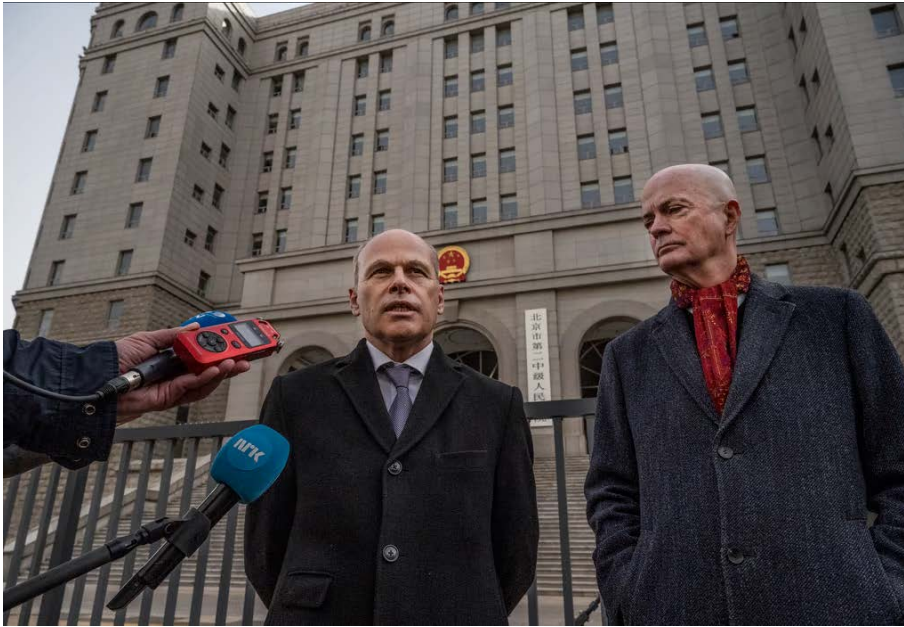
More dangerously, conflating the legitimate work I did in China with espionage, as these allegations do, jeopardizes the safety of all those whose jobs involve research, reporting and information-gathering in a foreign country. It also threatens to undermine an important Canada-led initiative against arbitrary detention in state-to-state relations.

The simple truth is that I was a foreign service officer who worked as an accredited diplomat at the Canadian Embassy to China from 2014 to 2016. My responsibilities included organizing officials' visits, representing Canada at diplomatic events, conveying Canadian policy and taking note of our Chinese counterparts' views. Mainly, however, I conducted research and wrote diplomatic reports on a broad range of topics relevant to Canada's foreign policy.

Then, in 2017, I began work as a senior adviser to the International Crisis Group — a respected nonprofit organization dedicated to preventing deadly conflict, conducting transparent research and providing free public reports and analysis.

In both these positions, my working methods were and are the same as those used by social science scholars, think-tank analysts and journalists — reading a lot of publicly available information and talking with knowledgeable and influential people, as well as politely and forthrightly engaging with governments, international organizations, civil society groups, businesses and private individuals. I strove to do this with candor, discretion, integrity and respect, always making clear who I was working for and the purpose of my work.

And in all my years in China, its government had given no indication that it objected to my diplomatic or subsequent research. I was regularly invited to meet Chinese officials, analysts and scholars and invited to conferences and seminars — all indications of welcome.



Representatives of the Canadian and U.S. embassies were denied entry to the closed 2021 trial of Michael Kovrig in Beijing | Kevin Frayer/Getty Images

Then, on Dec. 1, 2018, Canada arrested Huawei CFO Meng Wanzhou on a U.S. extradition warrant. And five days after news of the arrest broke, the Chinese government detained me in Beijing and a fellow Canadian in northeast China, using us as political hostages to blackmail the Canadian government.

The resulting geopolitical Gordian knot took nearly three years to cut through, tearing apart lives and aggravating worsening Sino-Canadian and Sino-American relations in the process. The hostage crisis also contributed to a sharp and enduring negative shift in perceptions of China among Canadians, Americans, Europeans and all around the world, arguably harming Beijing itself.

Since then, scores of colleagues have sought my advice on whether it's safe to travel to China for research, and with regret, many have concluded that it's no longer worth the risk.

And their fear isn't irrational. Last July, China drastically expanded its Counter-Espionage Law to define "intelligence" as any information "related to national security and interests." without specifying

parameters for any of these terms. To be sure, Beijing didn't need such an all-encompassing new law to detain a couple of Canadians on fabricated charges, but the law now formally empowers its security apparatus to go after anyone whose job involves seeking and conveying information — diplomats, journalists, academics, researchers and even business executives. Almost anyone could be targeted — making it even more arbitrary and unpredictable.

Increasingly, China and other authoritarian states have begun closing off and criminalizing access to previously public information that's essential for us to understand them. The standard justification is national security, but the real reason is usually to hide unflattering truths. Their preferred tools include censorship, propaganda, surveillance, political repression and restricting contact with foreigners. Meanwhile, the party-state is also sanctioning foreign individuals and institutions that displease it, so China analysts now worry about being refused entry to the country they study, prompting fear-driven self-censorship. (And this is only one dark dimension of an appalling human rights record that China's diplomats were working to hide and deny at the U.N. Human Rights Council's five-year review last week.)

All this creates a terrible outcome, making it much harder to maintain the crucial interpersonal relationships and candid discussions that enable us to understand China and manage tensions — even as Beijing's influence over our lives and societies keeps growing.

And it gets worse. The Chinese government has a long and dark history of detaining its own citizens for political purposes, but in recent years, it has been increasingly targeting foreigners: Citizens of over 10 countries have disappeared there in apparently arbitrary detentions. The Committee to Protect Journalists currently counts over 40 reporters detained in China, and they may need to add Minnie Chan of the South China Morning Post to that list too.

There's now a growing risk that any citizen who travels to countries like China could be arbitrarily detained and potentially used as a pawn to extract concessions from their government — just as I was.



Detained U.S. journalist Evan Gershkovich, pictured in Moscow, Jan. 26, 2024 | Alexander Nemenov/AFP via Getty Images

Worldwide, dozens of Australian, European, Japanese and American citizens have been arbitrarily detained in recent years, often for leverage. Scores still remain confined in heartrending conditions of humiliation, loneliness and uncertainty, all too often accompanied by human rights violations, including torture. We cannot let this stand.

Clarity about the truth is the first step. The media and civil society have crucial roles to play in pushing back against the toxic combination of excessive secrecy, propaganda and disinformation. And for their part, governments must reinforce the basic international norm that responsible states don't abduct each other's citizens. Canada has taken the lead on this with the Declaration Against Arbitrary Detention in State-to-State Relations — an important multilateral effort to rally collective action and raise the political costs of violations. The initiative has already attracted signatures from 74 countries and the European Union.

As we continue to broaden support for the declaration, governments must also do more to implement its Partnership Action Plan, while taking more effective measures to support political hostages and deter and deny state abductions. A recent report from the Soufan Center explains the scope of this challenge and charts a way forward. And progress will require

collective action within and between our societies and governments.

Some Chinese officials have, however, recently shown signs of interest in stabilizing relations with the West, even if only as a tactical shift. But to match words with deeds, the Chinese government ought to swiftly resolve all cases of arbitrary or political detention and exit bans, sign the Declaration Against Arbitrary Detention and provide assurances that journalists and researchers can freely visit and safely have candid discussions in China. And until they do, we've got to better protect our citizens, making clear that actions against them will carry costs and consequences.

During my own time in confinement, it meant the world to me to know that so many were working and praying for my freedom. Without coordinated advocacy, pressure and negotiations, I might still be locked in a cell today. Many others, including foreign correspondent Evan Gershkovich, remain trapped in similar nightmares.

Let's bring them home. Let's work to ensure that no one else must suffer

arbitrary detention. And let's resolutely reject conflation of normal diplomatic, scholarly and journalistic practices with spying.

Doubt only serves the agendas of authoritarian governments and endangers the citizens we count on to help us understand increasingly opaque states and formulate policies to meet the growing challenges they pose.

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