Questions on notice

Dear Foreign Affairs, Defence and Trade Committee,

My name is Chith Weliamuna. I am a student researcher at the ANU Law Reform and Social Justice Research Hub, and I am the author of submission 21 to the inquiry on the wrongful detention of Australians overseas. I appeared before the References Committee on the 26th of August. There, I took two questions on notice from Senator Steele-John. I provide my responses to these questions below:

Can you explain 'some of the cases that you know of where dual nationals are not receiving adequate government support when wrongfully detained overseas'?

I preface my response by noting that there is naturally a lack of novel, publicly available information about this topic. As I noted in my appearance before the Committee, this is, in many cases appropriate, to the extent that it contributes to the rapid and safe return of the detainee back to Australia.

However, a case I encountered was that of Mr Shokrollah Jebeli. He is an 81 year old Australian-Iranian dual national. I have detailed in my submission (pages 15–17) that States like Iran simply ignore dual nationality. Thus far, this has meant that the Australian government has been unable to provide Mr Jebeli with consular assistance, diplomatic protection or other substantive means of support. You can read about him here.

I have no doubt that DFAT is doing everything in their power to secure the safe release of Mr Jebeli. However, as to the specific wording of the Senator's question of if these means are 'adequate' I must answer 'no'. There are a few reasons for this. First – and most importantly – there is the fact that Mr Jebeli has not been released. Second, as I and many others, including Dr Kylie Moore-Gilbert, have noted in our submissions, the current means of addressing this issue seem not to be deterring the practice of targeting dual nationals (see submission 21, footnote 25).

I have outlined in my submission what an 'adequate' response might look like – by no means asserting it is 'the' perfect approach to be pursued. I think the adequate response is something that frees Mr Jebeli and deters the practice into the future. That no doubt requires a whole-of-society and multilateral response. I think also not to be ignored is the importance of directly dismantling the doctrine of non-responsibility and Iran's views of nationality in international law (as outlined in my submission). In my view, this makes it much harder for States like Iran to target dual nationals on the operating presumption that no adequate support will be given to the hostage to secure their release.

There is also an interesting case here with hostages being taken while working for NGOs. It might be something worth noting in policy that in particular instances, it might be appropriate to not disclose someone's Australian identity (p137 of the 2008–09 Somalia case).

‘Are there any examples you can give us of the use of those sanctions in deterring or resolving cases of hostage diplomacy’?

The United States is the major user of sanctions as a tool of resolving, but perhaps more importantly deterring hostage diplomacy. An instance was their recent sanctions imposed on West African hostage takers, linked here.

The British government has also used sanctions, though not so religiously. For instance, since the release of Nazanin Zaghari-Ratcliffe, the UK has sanctioned one person (as of 16 March 2023 as linked here). They have also sanctioned others in prior cases, but neither of those designations recognised the role of the sanctioned actors in hostage taking. The British government has been roundly criticised, from civil society groups to the hostages and their families, for not using sanctions more comprehensively, and in a manner that deters and punishes the practice of hostage diplomacy to ensure it does not pay (as linked here).