

# Iran's Arbitrary Detention of Foreign and Dual Nationals as Hostage-taking and Crimes Against Humanity

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## Abstract

*This article examines, within the frame of international criminal law, Iran's arbitrary detention of foreign and dual nationals for leverage over the detainee's (other) country of nationality. It provides an overview of Iran's pattern of conduct since 2010, involving at least 66 victims, and analyses this in terms of hostage-taking and crimes against humanity. First, we argue that Iran's pattern of conduct constitutes hostage-taking within the meaning of the International Convention Against the Taking of Hostages. This gives rise to Iran's international responsibility for the breaches concerned and has important implications for victims' and their loved ones' perceptions of their experiences. Second, we assess the context elements of the definition of crimes against humanity as well as the gravity threshold and the compatibility of the pattern of conduct with the requisite elements of the relevant underlying offences: imprisonment or other severe deprivation of physical liberty, torture, and persecution. We conclude that the actions of certain Iranian officials reasonably satisfy the requirements for crimes against humanity. This is legally important for the application of crimes against humanity jurisprudence to this new context. It also opens avenues of accountability, given the aut dedere aut iudicare provisions for crimes against humanity enacted by many states and the growth of sanctions legislation in several states. It should be difficult for responsible officials to travel outside Iran for fear of arrest and sanction.*

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## 1. Introduction

Iran's arbitrary detention of foreign and dual nationals for political and economic gain began shortly after the 1979 Islamic revolution — which overthrew the last Shah of Iran and installed Ayatollah Khomeini as 'Supreme Leader' — with the phenomenon's most widely known example: the so-called 'Iran hostage crisis'. This was 'the Islamic Republic's original hostage-taking act, and the basis for their trademark brand of crimes against humanity moving forward'.<sup>1</sup> The hostage crisis began on 4 November 1979 when an Iranian student group stormed the United States (US) embassy in Tehran and took 52 American diplomats and staff hostage, demanding the US to return the exiled and Western-supported Shah to Iran to face revolutionary justice.<sup>2</sup> While this act was not initially attributable to Iran, the International Court of Justice (ICJ) determined that Khomeini's subsequent policy of maintaining the Embassy's occupation 'translated continuing occupation of the Embassy and detention of the hostages into acts of that State'.<sup>3</sup> In supporting the students, Khomeini 'captured the initiative, destabilized his opponents, and re-radicalized the revolution',<sup>4</sup> ultimately using the 444-day crisis to surmount opposition to the passage of a new theocratic constitution.<sup>5</sup> And so began a pattern of conduct by Iran that we argue constitutes hostage-taking and crimes against humanity under international law.

Iran's practice has evolved since 1979, in two interconnected respects. First, while the 1979 hostages were American, the Islamic Republic's primary objective in maintaining their capture was domestic: the consolidation of Khomeini's power within Iran. More recently, Iran has sought to use detainees' foreign citizenship to gain leverage in disputes or negotiations with the relevant country, as well as to discourage Iranians from engaging with the West. Second, the practice is now being carried out under the cover of law. Iran uses detainees' foreign citizenship to ground accusations of espionage or threats to national security, then subjects them to spurious criminal — often national security-related — charges, kangaroo trials, and arbitrary prison — or even death — sentences. The legitimacy afforded by these legal processes is superficial, but statements by the detainees' (other) country of nationality stoke the Iranian narrative of Western interference in its domestic affairs. Arbitrary detention under cover of criminal law also frustrates diplomatic responses, as states are reluctant to comment on another sovereign country's legal system.

- 1 J. Rezaian, *Prisoner: My 544 Days in an Iranian Prison — Solitary Confinement, a Sham Trial, High-Stakes Diplomacy, and the Extraordinary Efforts it Took to Get Me Out* (Anthony Bourdain/Ecco, 2019), at 134.
- 2 M. Bowden, 'Among the Hostage-Takers', 294 *The Atlantic* (2004) 76.
- 3 *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, International Court of Justice, 24 May 1980, ICJ Reports (1980) 3, § 74.
- 4 M. Axworthy, *Iran: What Everyone Needs to Know* (Oxford University Press (OUP), 2017), at 98.
- 5 M. Behrooz, 'Iran after Revolution (1979-2009)', in T. Daryaei (ed.), *The Oxford Handbook of Iranian History* (OUP, 2012) 365–388, at 371.

Additionally, criminalization directs focus to the allegations against the detainee, rather than to the systematic practice of the state. It has also undermined solidarity among detainees' families; some have been reluctant to cooperate with the families of detainees facing more serious charges, for fear this could negatively impact their family members.

The 2003 case of Zahra Kazemi was among the earliest examples of this phenomenon. Iran arrested the Canadian–Iranian photojournalist after she was found photographing Tehran's notorious Evin prison. Kazemi was accused of spying and brutally beaten, leading days later to her death in custody. Similar cases — in which foreign or dual nationals have been apprehended, falsely accused of espionage or threatening national security and arbitrarily detained under horrific conditions — have increased sharply since Kazemi's death, particularly over the last decade. The leverage and cover-of-law aspects are intertwined in these recent cases, which often involve Iran making implicit or explicit promises of release in exchange for monetary payments or concessions from the detainee's (other) country of nationality.

This article begins in Section 2 with background on the arbitrary detention of foreign and dual nationals in Iran since 2010, describing the pattern of conduct that emerges when relevant cases are considered together. We then go on to make two arguments. In Section 3, we argue that hostage-taking is an appropriate characterization of the practice of arbitrarily detaining, prosecuting, and punishing foreign and dual nationals to obtain some benefit from the (other) state of nationality. We argue that the International Convention Against the Taking of Hostages (the Hostages Convention) covers — albeit imperfectly — the circumstances faced by foreign and dual nationals arbitrarily detained in Iran. It provides a framework for accountability, which should engender a series of responses from states: from Iran, which acceded to the Hostages Convention on 20 November 2006 and has responsibilities regarding hostage-taking within its territory, from states whose nationals are taken hostage, and from the international community.

In Section 4, we argue that crimes against humanity are an additional and appropriate lens through which to understand the pattern. Iran's practice aligns with the definition of crimes against humanity under international criminal law, in particular the underlying offences of imprisonment or other severe deprivation of physical liberty, torture, and persecution. We assess Iran's practice against the context elements of the definition of crimes against humanity as well as the gravity threshold. We then consider the compatibility of the practice with the requisite elements of the respective underlying offences. We conclude that the actions taken by certain officials within Iran reasonably satisfy the requirements for crimes against humanity. This finding is legally important for the application of crimes against humanity jurisprudence to this new context. Crucially, and similar to but separate from the offence of hostage-taking, it opens new avenues of accountability given the *aut dedere aut judicare* provisions for crimes against humanity enacted by many states and the growth

of sanctions legislation and other tools for justice in a number of states. It should be difficult for the responsible officials to travel outside Iran for fear of arrest and sanction.

## 2. Foreign and Dual Nationals Arbitrarily Detained in Iran since 2010

This section provides context regarding the arbitrary detention of foreign and dual nationals in Iran for political and economic gain during the period 1 January 2010 to 30 November 2021. For completeness, an annexed table includes all relevant cases (66) within this period for which English-language information was publicly available. The annex does not necessarily include all cases, as families may decide not to publicize information for fear that this may jeopardize the detainee's safety and/or chances of release. To understand these cases, basic background information on Iran and its Islamic Revolutionary Guard Corps (IRGC) — the principal actor in the arbitrary detention of foreign and dual nationals — is essential.

### A. *The Islamic Republic and the IRGC*

Iran's government includes both democratic and Islamic elements. The country has an elected president and parliament as well as an unelected 'Supreme Leader' who heads the Islamic arm of government, which includes the IRGC. The IRGC was created in 1979 as a paramilitary force to protect the revolutionary government and remains 'in effect in order to continue in its role of protecting the Revolution and its achievements'.<sup>6</sup> The IRGC's power in Iran has been steadily increasing since the death of Iran's first 'Supreme Leader' in 1989.<sup>7</sup> In 2009, the IRGC's intelligence unit was upgraded to become the IRGC Intelligence Organization, which 'appears to have established itself as the leading security agency in repressing dissent and perceived threats to the autocratic control of the Islamic Republic's unelected political bodies'.<sup>8</sup> This includes the arbitrary detention of foreign and dual nationals. The IRGC also controls the revolutionary courts — established following the revolution to try ideological opponents of the new regime — where foreign and dual nationals accused of espionage or national security crimes are prosecuted. The IRGC's use of these courts to suppress dissent explains the increasing instrumentalization of criminal law by Iran. The Ministry of Intelligence — the main intelligence organization under the elected arm of the state — is also

6 1989 edition of the Constitution of the Islamic Republic of Iran, translated by the International Society for Iranian Studies and published in 47 *Iranian Studies* (2014) 159–200, s. 150.

7 Behrooz, *supra* note 5.

8 Human Rights Watch, 'Iran: Targeting of Dual Citizens, Foreigners', 26 September 2018, available online at <https://www.hrw.org/news/2018/09/26/iran-targeting-dual-citizens-foreigners> (visited 6 February 2022).

responsible for the arbitrary detention of foreign and dual nationals, though it has arrested fewer individuals than the IRGC.

The bifurcation of authority between secular-elected and theocratic-unelected arms of the Iranian state, coupled with the IRGC's control of Islamic justice, has important implications for detainees. The government of former President Hassan Rouhani — whose time in office (2013–2021) overlapped with many of the cases listed in the annex — was somewhat reformist and negotiated with governments whose citizens were or are arbitrarily detained in Iran. However, these demarches were of limited effect because the Rouhani — and indeed any elected — government had little, if any, control over the IRGC, its security prisoners and their trials in revolutionary courts. Whether the IRGC seizes and retains or releases detainees have little to do with what the elected arm of the government represents and agrees upon.

The risk for foreign and dual nationals escalated after September 2015, when 'Supreme Leader' Ayatollah Khamenei spoke about the threat of foreign interference in the wake of the July 2015 adoption of the Joint Comprehensive Plan of Action (JCPOA),<sup>9</sup> to the 21<sup>st</sup> Congress of Officials and Commanders of the IRGC. His speech defined the 'enemy' as 'global arrogance whose complete embodiment is America and whose agents are reactionary regimes, and dependent and weak individuals'; elsewhere in his speech, the 'enemy' can be understood more generally as the West. Khamenei articulated the objective of this 'enemy': 'to have a domestic [Iranian] ruler who thinks and acts like them and who makes decisions on the basis of their interests. This is political influence. Their goal is to penetrate decision-making'.<sup>10</sup> The speech concluded with a rallying cry against the perceived threat of foreign interference:

[t]hey are waiting to see a day when the people of Iran ... will fall asleep. ... We should not allow this satanic thought and hope to be hatched in the enemy's heart. The bases of the Revolution and revolutionary thinking should be so strong that the death and life of such and such a person will not influence the revolutionary movement of our country. This is the major responsibility of outstanding personalities in the ... [IRGC] and all other revolutionary personalities of the country.<sup>11</sup>

Foreign and dual nationals have been on the receiving end of this call to action.

### ***B. The Pattern of Conduct***

Foreign and dual nationals engaged or seen to be engaged in journalism, scholarship, business, and other fields perceived to link Iran to the West are at particular risk. American–Iranian Jason Rezaian was *The Washington Post's* Tehran correspondent when he was arrested in July 2014. He explains that the

<sup>9</sup> Also known as the 'Iran Nuclear Deal'.

<sup>10</sup> A. Khamenei, 'IRGC Blocks the Enemy's Infiltration', 16 September 2015, available online at <https://english.khamenei.ir/news/2155/IRGC-blocks-the-enemy-s-infiltration> (visited 6 February 2022).

<sup>11</sup> *Ibid.*

case they were trying to make against me was that, as a member of the American press writing what could only be perceived as neutral stories about Iran, I was attempting to soften American public opinion toward the Islamic Republic. My “mission” ... was that by improving this image America would somehow infiltrate the Iranian system, fill the halls of power of the Islamic Republic with like-minded Iranians, and worse yet Iranian dual nationals, in the process gutting Iran of its revolutionary ideals.<sup>12</sup>

Academics are also at risk, particularly if their work is seen to threaten Iranian Islamic precepts or, increasingly, relate to environmental conservation. Canadian–Iranian Concordia University anthropology professor Homa Hoodfar was detained in February 2016 and held for three months; her research covers the role of women in Muslim societies. Canadian–Iranian Imam Sadiq University sociology professor and prominent environmental activist Kavous Seyed Emami was arrested on 24 January 2018 along with six other environmentalists.<sup>13</sup> He died in custody about two weeks later from what the Iranian authorities describe as suicide; his family does not believe this explanation.<sup>14</sup> British–Australian Kylie Moore-Gilbert, a lecturer in Islamic Studies at the University of Melbourne whose research focuses on Middle Eastern political revolutions, was arrested in September 2018, sentenced to ten years in prison, mistreated there<sup>15</sup> and ultimately released in a prisoner swap in November 2020. The perceived threat is not, however, always clear. Chinese–American Xiyue Wang was in Iran researching the Qajar dynasty for his doctoral work at Princeton University when he was arrested in August 2016. His research ‘touched on neither the United States’ Iran policy nor any Iranian political reality less than a hundred years old’.<sup>16</sup>

In addition to targeting particular occupations, Iran has also targeted certain states. Over the past decade or so, citizens of Australia, Austria, Canada, China, Finland, France, Germany, Lebanon, the Netherlands, Russia, Sweden, the United Kingdom (UK), and the US have been arbitrarily detained in Iran. However, citizens of certain countries are particularly vulnerable. Of the 66 foreign and dual nationals listed in the annex, 20 were American or US–Iranian dual nationals. Secor explains that Iran views

12 Rezaian, *supra* note 1, at 103.

13 Centre for Human Rights in Iran, ‘Environmentalists Detained in Iran Denied Legal Counsel Weeks After Arrests’, 18 February 2018, available online at <https://www.iranhumanrights.org/2018/02/environmentalists-detained-in-iran-denied-legal-counsel-weeks-after-arrests/> (visited 6 February 2022).

14 T. Erdbrink, ‘Iran Finally Let Her See Her Husband. He Was Dead’, *The New York Times*, 22 February 2018, available online at <https://www.nytimes.com/2018/02/22/world/middleeast/kavous-seyed-emami-iranian-environmentalist-evin-prison.html> (visited 6 February 2022).

15 E. Yeomans and L. Fisher, ‘Kylie Moore-Gilbert: Jailed Briton Beaten for Forming Iran Prison Choir’, *The Times*, 17 June 2020, available online at <https://www.thetimes.co.uk/edition/news/kylie-moore-gilbert-jailed-briton-beaten-for-forming-iran-prison-choir-nmzx5qpxk> (visited 6 February 2022).

16 L. Secor, ‘Her Husband Was a Princeton Graduate Student. Then He Was Taken Prisoner in Iran’, *The New York Times*, 10 July 2018, available online at [nytimes.com/2018/07/10/magazine/american-civilian-hostages-in-iran.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news](https://www.nytimes.com/2018/07/10/magazine/american-civilian-hostages-in-iran.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news) (visited 6 February 2022).

'links to the United States with particular suspicion because of the Western-supported color revolutions in the former Soviet bloc and the George W. Bush administration's rhetoric about democracy promotion and regime change'.<sup>17</sup> Eleven detainees were British–Iranian, while one was solely British and two others British–Australian. The targeting of Britons may relate to the UK's debt to Iran for undelivered tanks, discussed below. More generally, the targeting of Western states likely relates to Iran's avowed disdain for the West, as well as to the West's relative wealth and hence perceived ability to deliver on Iranian demands of payment in exchange for release. Indeed, Canada and France are also overrepresented — five nationals or dual nationals from each country have been arbitrarily detained during the 11 years in question — despite the lack of any known major political dispute between Iran and each of these countries.

The cases follow a typical pattern, usually beginning immediately after arrest with a period of incommunicado detention often including solitary confinement. American–Iranian businessman Siamak Namazi was held practically incommunicado for a year following his arrest in October 2015.<sup>18</sup> During and following this initial period, mental and physical abuse — often amounting to torture — is common, including to obtain false confessions. Following his January 2019 arrest, Austrian–Iranian engineer and businessman Massud Mossaheb was interrogated and tortured for three days in a hotel room, followed by further abuse in Evin prison, where he remains. His mistreatment has included sleep deprivation, prolonged solitary confinement, and denial of medical care.<sup>19</sup> Detainees are held in cruel and inhuman conditions of imprisonment, including filth, overcrowding, pest infestation, and insufficient food, water, and medical care.<sup>20</sup> They are also unprotected from COVID-19.<sup>21</sup> Detainees, especially dual nationals, are often deprived of consular assistance, in large part because Iran does not recognize dual nationality.<sup>22</sup> French academics Fariba Adelpour and Roland Marchal were arrested together in June 2019; Marchal benefitted from consular assistance (and was

17 *Ibid.*

18 H. Esfandiari, 'Iran's Closed-Door Trial and Sentencing of Iranian-Americans Siamak and Baquer Namazi', *The Wall Street Journal*, 18 October 2016, available online at <https://www.wsj.com/articles/BL-WB-66090> (visited 6 February 2022).

19 Amnesty International, 'Urgent Action: Austrian-Iranian Prisoner at Risk', 5 November 2020, available online at <https://www.amnesty.org.uk/urgent-actions/austrian-iranian-prisoner-risk> (visited 6 February 2022).

20 *Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran*, UN Doc. A/HRC/43/61, 28 January 2020, §§ 60–67 (hereinafter '*Special Rapporteur on Iran 2020 Report*').

21 T. Kahn, 'Trapped in a Pandemic: Iran's Political Prisoners Face COVID-19 Behind Bars', *Just Security*, 24 September 2020, available online at <https://www.justsecurity.org/72529/trapped-in-a-pandemic-irans-political-prisoners-face-covid-19-behind-bars/> (visited 6 February 2022).

22 UK House of Commons Foreign Affairs Committee, *No Prosperity without Justice: The UK's Relationship with Iran, Fifth Report of Session 2019-21*, 16 December 2020, available online at <https://publications.parliament.uk/pa/cm5801/cmselect/cmfa/415/41502.htm> (visited 6 February 2022), § 51, at 19–20.

ultimately released in March 2020), but Adelkhah, who is now under house arrest, has been denied French assistance because she is also Iranian.<sup>23</sup> There are often significant delays before detainees are informed of the (unsubstantiated) charges against them. British–Iranian Nazanin Zaghari-Ratcliffe was held for around two months before being charged.<sup>24</sup> When charges are laid, they are often vague. Swedish–Iranian disaster medicine scholar Ahmadreza Djalali was charged with ‘corruption on earth’.<sup>25</sup> Many cases have involved propaganda attacks against the privacy, dignity, and reputation of the detainees in government-controlled media, including the publication of fabricated evidence and the televising of arrests and forced confessions.<sup>26</sup> Djalali’s ‘confession’ was broadcast on Iranian state television in 2017.<sup>27</sup>

Trials are rife with due process violations, such as being conducted in secret and without providing accused persons access to a lawyer of their choice or sometimes any lawyer at all. Austrian–Iranian Kamran Ghaderi’s trial was described by Amnesty International as ‘grossly unfair’; it relied on false confessions obtained by torture and Ghaderi was denied access to a lawyer until two days before his trial.<sup>28</sup> Some detainees are not even tried. American–Iranian businessman Emad Shargi was convicted in November 2020 of espionage and sentenced to ten years in prison without a trial.<sup>29</sup> The UN Secretary-General, commenting on the plight of detained foreign and dual nationals in Iran, expressed concern ‘at the reports received indicating that procedures against these dual or foreign nationals have been marred by due process and fair trial violations, including incommunicado detention, and

23 Sciences Po, ‘The Facts About Fariba Adelkhah and Roland Marchal’, 5 June 2021, available online at <https://www.sciencespo.fr/en/facts-about-fariba-adelkhah-roland-marchal-what-we-know> (visited 6 February 2022).

24 P. Wintour, ‘The Zaghari-Ratcliffes’ Ordeal: A Story of British Arrogance, Secret Arms Deals and Whitehall Infighting’, *The Guardian*, 23 January 2020, available online at <https://www.theguardian.com/news/2020/jan/23/zaghari-ratcliffes-ordeal-a-story-of-british-arrogance-secret-arms-deals-and-whitehall-infighting> (visited 6 February 2022) (hereinafter ‘The Zaghari-Ratcliffes’ Ordeal’).

25 Amnesty International, ‘Iran: Imminent Execution of Swedish-Iranian Academic Ahmadreza Djalali Must Be Halted’, 24 November 2020, available online at <https://www.amnesty.org/en/latest/news/2020/11/iran-imminent-execution-of-swedish-iranian-academic-ahmadreza-djalali-must-be-halted/> (visited 6 February 2022) (hereinafter ‘Iran: Imminent Execution of Ahmadreza Djalali’).

26 Justice for Iran and FIDH, *Orwellian State: Islamic Republic of Iran’s State Media as a Weapon of Mass Suppression* (2020), available online at <https://justice4iran.org/wp-content/uploads/2020/06/ORWELLIAN-STATE-ISLAMIC-REPUBLIC-OF-IRAN%E2%80%99S-STATE-MEDIA-AS-A-WEAPON-OF-MASS-SUPPRESSION-English-1.pdf> (visited 6 February 2022).

27 Amnesty International, ‘Iran: Imminent Execution of Ahmadreza Djalali’, *supra* note 25.

28 Amnesty International, ‘Urgent Action: Tortured Prisoner Needs Medical Care’, 16 September 2019, available online at <https://www.amnesty.org/ar/wp-content/uploads/2021/05/MDEI310212019ENGLISH.pdf> (visited 6 February 2022).

29 D. De Luce, ‘Iran Jails U.S. Businessman, Possibly Jeopardizing Biden’s Plans for Diplomacy with Tehran’, *NBC News*, 17 January 2021, available online at <https://www.nbcnews.com/politics/national-security/iran-jails-u-s-businessman-possibly-jeopardizing-biden-s-plans-n1254551> (visited 6 February 2022).

denial of access to a lawyer'.<sup>30</sup> Indeed, those 'watching Iran's judiciary see that it has shed all pretense at independence; it acts hand-in-glove with the security agencies. Iran's judiciary, security agencies and Revolutionary Guards are enabled by and report to Iran's supreme leader ... who is ultimately responsible for their behaviour'.<sup>31</sup> And serving out one's sentence does not guarantee freedom. In March 2021, less than a day before completing her five-year sentence, Nazanin Zaghari-Ratcliffe was summoned to court and ultimately taken there about a week later. The following month, she was sentenced to another year for 'propaganda against the Iranian government'.<sup>32</sup>

### 3. Arbitrary Detention as Hostage-Taking

The Hostages Convention refers to the offence of 'hostage-taking', defined as:

[a]ny person who *seizes or detains and threatens to kill, to injure or to continue to detain* another person (hereinafter referred to as the "hostage") *in order to compel* a third party, namely, *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* commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.<sup>33</sup>

In the context of international and non-international armed conflicts, the crime of hostage-taking is prohibited as a war crime.<sup>34</sup> The elements of the offence are the same as in the Hostages Convention in most respects, but require the standard linkages to an international or non-international armed conflict and to protected persons and specify that the intention to compel the

30 *Situation of Human Rights in the Islamic Republic of Iran: Report of the Secretary-General*, UN Doc. A/HRC/37/24, 4 September 2019, § 57, at 13.

31 Esfandiari, *supra* note 18.

32 'Nazanin Zaghari-Ratcliffe Sentenced to a Year in Iran Prison', *BBC*, 26 April 2021, available online at <https://www.bbc.com/news/uk-56888938> (visited 6 February 2022).

33 Art. 1, International Convention Against the Taking of Hostages (adopted 19 December 1979, entered into force 3 June 1983) 1316 UNTS 205 (emphasis added) (hereinafter 'Hostages Convention').

34 Art. 3, Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31 (hereinafter 'First Geneva Convention'); Art. 3, Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85 (hereinafter 'Second Geneva Convention'); Art. 3, Convention (III) relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135 (hereinafter 'Third Geneva Convention'); Arts. 3, 34 & 147, Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (hereinafter 'Fourth Geneva Convention'); Arts 8(2)(a)(viii) and 8(2)(c)(iii) ICCSt. Further, the International Committee of the Red Cross has determined that 'State practice establishes this rule [Rule 96: Hostage-Taking] as a norm of customary international law applicable in both international and non-international armed conflicts'. See ICRC, 'Rule 96. Hostage-Taking', Customary International Law Database, available online at [https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1\\_rul\\_rule96](https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1_rul_rule96) (visited 6 February 2022).

action can be for the purposes not only of releasing the hostage, but also ‘as an explicit or implicit condition for the safety ... of such person or persons’.<sup>35</sup> There is no equivalent framing of hostage-taking as a crime against humanity in the Statute of the International Criminal Court (ICC) or in the International Law Commission’s Draft Articles on Prevention and Punishment of Crimes Against Humanity.<sup>36</sup>

### A. *The Fit of the Pattern with Article 1*

The circumstances of many foreign and dual nationals arrested and detained in Iran are consistent with the definition of hostage-taking in Article 1 of the Hostages Convention. This requires that: (i) the individual is seized or detained; (ii) the reason for the individual’s continued detention is to compel a third party to do or abstain from doing any act; (iii) as a condition for the individual’s release. The first requirement of being seized or detained is clearly met. However, with respect to the second and third elements, most detainees have been detained, charged, and ultimately convicted of security-related offences. Thus the official narrative is that they are criminal suspects detained prior to trial or convicted criminals serving out sentences and not, on the face of it, detained for any ulterior purpose. However, there is nothing in the Hostages Convention to suggest that the intention of the persons carrying out the detention must be articulated openly by those persons or entities to which they are connected.

It is consistent with international law jurisprudence on the assessment of intent that it may be established by way of inference from the circumstances of other facts in evidence.<sup>37</sup> For example, as the Special Court for Sierra Leone held in *Sesay*, ‘the communication of the threat to a third party is, then, a means by which to evidence an element of the offence, but does not comprise an element itself in need of proof’.<sup>38</sup> Lambert is of the same view:

the words ‘in order to compel’ seem to relate to the motivation of the hostage-taker, rather than to any physical acts which he might take. Thus, while the seizure and threat will usually be accompanied or followed by a demand that a third party act in a certain way, there is no actual requirement that a demand be uttered. Thus, if there is a detention and

<sup>35</sup> Arts 8(2)(a)(viii)-3 and 8(2)(c)(iii)-3, Elements of Crimes.

<sup>36</sup> International Law Commission (ILC), ‘Draft articles on Prevention and Punishment of Crimes Against Humanity, with commentaries’, in *II Yearbook of the International Law Commission 2019 Part 2* (hereinafter ‘Draft articles on Crimes Against Humanity’).

<sup>37</sup> Judgment, *Akayesu* (ICTR-96-4-T), Trial Chamber I, 2 September 1998 (hereinafter ‘*Akayesu*’), § 523; Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, *Milošević* (IT-99-37-AR73; IT-01-50-AR73; IT-01-51-AR73), Appeals Chamber, 18 April 2002, § 31; Review of the Indictment pursuant to Rule 61 of the Rules of Procedure and Evidence, *Karadžić* and *Mladić* (IT-95-5-R61 and IT-95-18-R61), Trial Chamber I, 11 July 1996, § 94.

<sup>38</sup> Judgment, *Issa Hassan Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-A), Appeals Chamber, 26 October 2009, § 580.

threat, yet no demands, there will still be a hostage-taking if the offender is seeking to compel a third party.<sup>39</sup>

The circumstances surrounding the arbitrary detention, trial and sentencing of foreign and dual nationals in Iran support two inferences. First, their arrest, detention, prosecution, and sentence were meted out for reasons unconnected to the criminal charges laid against them. Second, these persons were targeted because of their foreign nationality, in order to compel the (other) state of nationality to act or refrain from acting in a certain way. Regarding the first inference, it is clear from the facts that the use of the criminal law had nothing to do with any breach of that law. In virtually all cases, no cogent evidence has been presented to connect the detainees to the offences with which they were charged and convicted. Many of their trials were determined by United Nations (UN) bodies to have been based on non-existent or fabricated evidence. The UN Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran has indicated that cases involving foreign and dual nationals 'are commonly related to the mere suspicion of anti-State activities with no detailed charge sheets made available nor any victim specified in any of the offences'.<sup>40</sup> In his 2020 report, the Special Rapporteur, referring to the phenomenon of prisoner exchanges involving foreign and dual nationals, notes that it 'has been raised by the Iranian Minister of Foreign Affairs as an option for the release of dual and foreign nationals, [and this] raises concerns about the veracity of the Government's allegations against the individuals detained'.<sup>41</sup> According to the UN Working Group on Arbitrary Detention (WGAD), in respect to the charges against American scholar Xiyue Wang, the '[g]overnment did not explain in its response how Mr. Wang had cooperated with a foreign State (which, from the indictment, appears to be the United States) against the Islamic Republic of Iran, nor how accessing historical archives relating to a period ... over 100 years ago could amount to an attempt to overthrow the Government'.<sup>42</sup> The WGAD makes clear that 'there was no evidence that he ... was intending to, or did in fact, conduct espionage or cause an ethnic crisis in the Islamic Republic of Iran'.<sup>43</sup> Similarly, in its consideration of the case of American-Iranian businessman Siamak Namazi and of his father Baquer, the WGAD confirmed that 'there is no evidence that [they] had a criminal record, including in relation to national security offences, and there is nothing to indicate that they had ever acted against the national

39 J. Lambert, *Terrorism and Hostages in International Law: A Commentary on the Hostages Convention 1979* (Grotius, 1990), at 85.

40 *Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran*, UN Doc. A/HRC/37/68, 5 March 2018, § 57.

41 *Special Rapporteur on Iran 2020 Report*, *supra* note 20, § 28.

42 United Nations Working Group on Arbitrary Detention (WGAD), *Opinion No. 52/2018 concerning Xiyue Wang (Islamic Republic of Iran)*, UN Doc. A/HRC/WGAD/2018/52, 21 September 2018, § 74.

43 *Ibid.*, § 81.

interests of the Islamic Republic of Iran. In fact, Siamak Namazi had been in the country for the sole purpose of visiting his family, while Baquer Namazi was a retired resident of Iran.<sup>44</sup> The WGAD found similarly in respect of British–Iranians Kamal Foroughi and Nazanin Zaghari-Ratcliffe.<sup>45</sup>

With respect to the second inference, it is clear from the facts that the individuals were targeted because of their status as foreign or dual nationals. This has been confirmed by the WGAD in relation to Wang,<sup>46</sup> Foroughi,<sup>47</sup> the Namazis,<sup>48</sup> and Zaghari-Ratcliffe.<sup>49</sup> In the case of Lebanese (and US permanent resident) businessman Nizar Zakka, the WGAD recognized that he ‘became the target of official persecution because of his foreign nationality and residence in a foreign State’.<sup>50</sup> In the Namazis’ case, the WGAD also drew attention to the use of anti-American propaganda to fuel public support for the trials, referring to the contention ‘that a video by the judicial news service of the Islamic Republic of Iran was posted online in which images of the arrest of Mr. Namazi were directly juxtaposed with an image of his United States passport and “a montage of anti-American-themed images”’. The WGAD notes that this was just before or at the time of the trial of Mr. Namazi and that ‘the Government of ... Iran had the opportunity but failed to provide an explanation to those allegations’.<sup>51</sup> Similar anti-foreigner propaganda featured in Nazanin Zaghari-Ratcliffe’s case.

[A] report was made public by the Iranian media on 15 June 2016 in which foreign media, particularly the British media, were accused of unspecified “evil”. Second, the statement released by the ... [IRGC] that day referred to Ms. Ratcliffe’s “English background”, her “membership of foreign companies and institutions” and her alleged role as “one of the key ringleaders connected to foreigners, who had performed various missions for furthering the malicious goals of the enemies of the regime”.<sup>52</sup>

Furthermore, releases have been made conditional (sometimes implicitly, other times explicitly) on certain acts by the (other) state of nationality. For example, American–Iranian journalist Rezaian recounts that his release was ‘a “point of negotiation” in the ... talks being held about Iran’s nuclear program’, which ultimately led to the signing of the JCPOA. This was, to Rezaian, clear evidence that he ‘was being held as leverage’.<sup>53</sup> Rezaian and three other Americans — Amir Hekmati, Matthew Trevithick, and Nosratollah Khosravi-Roodsari — were

44 WGAD, *Opinion No. 49/2017 concerning Siamak Namazi and Mohammed Baquer Namazi (Islamic Republic of Iran)*, UN Doc. A/HRC/WGAD/2017/49, 22 September 2017, § 45.

45 WGAD, *Opinion No. 7/2017 concerning Kamal Foroughi (Islamic Republic of Iran)*, UN Doc. A/HRC/WGAD/2017/7, 30 May 2017, § 40; *Opinion No. 28/2016 concerning Nazanin Zaghari-Ratcliffe (Islamic Republic of Iran)*, UN Doc. A/HRC/WGAD/2016/28, 7 September 2016, § 49.

46 WGAD, *Wang*, *supra* note 42, §§ 81–82.

47 WGAD, *Foroughi*, *supra* note 45, § 40.

48 WGAD, *Namazis*, *supra* note 44, § 45.

49 WGAD, *Zaghari-Ratcliffe*, *supra* note 45, §§ 47–48.

50 WGAD, *Opinion No. 51/2019 concerning Nizar Zakka (Islamic Republic of Iran)*, UN Doc. A/HRC/WGAD/2019/51, 8 October 2019, § 76.

51 WGAD, *Namazis*, *supra* note 44, § 49.

52 WGAD, *Zaghari-Ratcliffe*, *supra* note 45, § 47.

53 Rezaian, *supra* note 1, at 95.

ultimately released in a prisoner swap on 16 January 2016, right after the US refunded Iran US\$400 million for undelivered military equipment.<sup>54</sup>

On several occasions, Nazanin Zaghari-Ratcliffe has been told by members of the IRGC in charge of her detention, members of the judiciary, and others that she will not be released until the UK repays a decades-old military debt to Iran.<sup>55</sup> In 1976, the Iranian Ministry of Defence paid Millbank Technical Services — a UK government-owned company now known as International Military Services Ltd — £300 million for 700 tanks. The order was never fulfilled; however, Millbank did not refund Iran's money because it viewed this as prohibited by sanctions.<sup>56</sup> The International Chamber of Commerce arbitral court ruled in 2001 that the UK owes Iran a refund; a protracted legal battle to enforce the arbitral award ensued in the British courts.<sup>57</sup> The UK now concedes the debt; however, disputes remain over the interest.<sup>58</sup> Zaghari-Ratcliffe was arrested right before a London High Court hearing about the debt and during her initial interrogation in 2016, she was told of the link between it and her arrest.<sup>59</sup> Judiciary spokesperson (and former Minister of Intelligence) Gholamhossein Mohseni-Ejei<sup>60</sup> has drawn a connection between

54 Wintour, 'The Zaghari-Ratcliffes' Ordeal', *supra* note 24.

55 R. Oliphant, 'Britain "Examining" How to Pay £400m Debt to Iran as Nazanin's Freedom Almost Secured', *The Telegraph*, 8 March 2021, available online at <https://www.telegraph.co.uk/news/2021/03/08/britain-examining-pay-400m-debt-iran-nazanins-freedom-almost/> (visited 8 February 2022); P. Wintour, 'Zaghari-Ratcliffe: UK Acknowledges Debt Owed to Iran over Shah's Tank Order', *The Guardian*, 4 September 2020, available online at <https://www.theguardian.com/news/2020/sep/04/uk-defence-secretary-acknowledges-debt-owed-to-iran-over-shahs-tank-order> (visited 8 February 2022); S. Volpe, 'Nazanin Zaghari-Ratcliffe "Paying the Price" with New Court Summons Days After £400m Debt Hearing Delayed', *Ham & High*, 28 October 2020, available online at <https://www.hamhigh.co.uk/news/local-council/free-nazanin-zaghari-ratcliffe-summons-court-debt-iran-dominic-raab-6530248> (visited 8 February 2022).

56 R. Spencer, 'Britain to Pay Back Iran £400 Million', *The Telegraph*, 26 April 2010, available online at <https://www.telegraph.co.uk/news/worldnews/middleeast/iran/7632836/Britain-to-pay-back-Iran-400-million.html> (visited 6 February 2022).

57 See H. Hothi, 'When Arbitration, Politics and Sanctions Collide: The Iranian Ministry of Defence and Support for Armed Forces Logistics v International Military Services', *Practical Law Arbitration Blog of Thomson Reuters*, 19 August 2019, available online at <http://arbitration.blog.practicallaw.com/when-arbitration-politics-and-sanctions-collide-the-iranian-ministry-of-defence-and-support-for-armed-forces-logistics-v-international-military-services/> (visited 6 February 2022).

58 P. Wintour, 'Court Ruling Over Tanks Debt Deals New Blow to UK-Iran Relations', *The Guardian*, 26 July 2019, available online at <https://www.theguardian.com/uk-news/2019/jul/26/court-ruling-over-tanks-debt-deals-new-blow-to-uk-iran-relations> (visited 6 February 2022).

59 Wintour, 'The Zaghari-Ratcliffes' Ordeal', *supra* note 24.

60 The Raoul Wallenberg Centre for Human Rights lists Mohseni-Ejei on its list of Iranian officials 'responsible for gross violations of human rights'. See Raoul Wallenberg Centre for Human Rights, *Realizing Rights over Repression in Iran: The Case for Canadian Magnitsky Sanctions*, December 2018, available online at [https://static1.squarespace.com/static/5ab13c5c620b859944157bc7/t/5c0ec1d44d7a9c5adb16652/1544471007318/Realizing+Rights+Over+Repression+in+Iran\\_The+Case+for+Canadian+Magnitsky+Sanctions.pdf](https://static1.squarespace.com/static/5ab13c5c620b859944157bc7/t/5c0ec1d44d7a9c5adb16652/1544471007318/Realizing+Rights+Over+Repression+in+Iran_The+Case+for+Canadian+Magnitsky+Sanctions.pdf) (visited 6 February 2022), at 11.

Zaghari-Ratcliffe and the debt,<sup>61</sup> as has the head of judicial affairs in Evin prison. He is reported as telling Zaghari-Ratcliffe, '[e]very time I request to review your case, this is the answer: "The UK has not paid" and that is why we cannot do anything'.<sup>62</sup> Wintour writes that the 'fact that Zaghari-Ratcliffe's fate is tied to the ongoing dispute over Britain's debt to Iran is, by now, hard to deny'.<sup>63</sup>

The seizure and release of other detainees show parallels with outside events such as the release of frozen assets,<sup>64</sup> prisoner swaps,<sup>65</sup> and other perceived benefits.<sup>66</sup> A spokesperson for Iran's former Foreign Minister has reportedly stated that the 'two sides can make a decision about this' and '[t]here are many Iranians across the globe that have been imprisoned due to the US demand. Decisions and measures are being adopted in this regard but we believe that as Foreign Minister Zarif has said, the problems regarding all those who have been imprisoned can be negotiated and the matter can be solved once and for all'.<sup>67</sup> Similarly, former Minister Zarif has reportedly stated, in response to a question about prisoner swaps: 'I can tell you categorically that yes we can. In fact there are several proposals by Iran on the table. . . . I have suggested a global exchange of Iranian prisoners'.<sup>68</sup>

61 R. Gladstone and T. Erdbrink, 'For Westerners Imprisoned in Iran, New Signs of a Deal', *The New York Times*, 29 November 2017, available online at <https://www.nytimes.com/2017/11/29/world/middleeast/iran-prisoners.html> (visited 6 February 2022).

62 Wintour, *The Zaghari-Ratcliffes' Ordeal*, *supra* note 24.

63 *Ibid.*

64 I. Mount, 'The US Sent Another \$1.3 Billion to Iran After Hostages Were Released', *Fortune*, 7 September 2016, available online at <https://fortune.com/2016/09/07/us-iran-billion-hostages-arms-deal/> (visited 8 February 2022).

65 D. Sanger, 'US Concedes \$400 Million Payment to Iran Was Delayed as Prisoner "Leverage"', *The New York Times*, 18 August 2016, available online at <https://www.nytimes.com/2016/08/19/world/middleeast/iran-us-cash-payment-prisoners.html> (visited 8 February 2022); 'Kylie Moore-Gilbert: Thailand Frees Iranians "in Swap with Academic"', *BBC*, 26 November 2020, available online at <https://www.bbc.com/news/world-asia-55086337> (visited 8 February 2022); 'Iran Says It Is Ready to Swap All Prisoners with U.S.', *Reuters*, 21 September 2020, available online at <https://www.reuters.com/article/us-iran-usa-zarif-prisoners-idUSKCN26C2GZ> (visited 8 February 2022); P. Wintour, 'US citizen Xiyue Wang Released from Iranian jail in Prisoner Swap', *The Guardian*, 7 December 2019, available online at <https://www.theguardian.com/world/2019/dec/07/us-citizen-to-be-released-from-iranian-jail-in-prisoner-swap> (visited 8 February 2022); 'Former Detainees In Prisoner Swap Return To France, Iran', *Radio Free Europe*, 22 March 2020, available online at <https://www.rferl.org/a/france-iran-former-detainees-return-home-country-marshal-fariba-rohollahnejad/30501971.html> (visited 8 February 2022).

66 Y. Torbati and J. Schectman, 'Special Report: America's Unending Hostage Crisis with Iran', *Reuters*, 1 August 2018, available online at <https://www.reuters.com/article/us-usa-iran-student-special-report-idUSKBN1KM4PT> (visited 8 February 2022).

67 M. Sinaiee, 'Iran Blames US for No Prisoner Swap While Many Call American Detainees "Hostages"', *Iran International*, 9 March 2021, available online at <https://iranintl.com/en/world/iran-blames-us-no-prisoner-swap-while-many-call-american-detainees-hostages?page=28> (visited 6 February 2022).

68 'Iran Open to Further Prisoner Swaps — Foreign Minister', *Reuters*, 3 December 2020, available online at <https://www.reuters.com/article/us-iran-prisoners-idUSKBN28D1L4> (visited 8 February 2022).

## B. The Transnational Element Requirement

The Hostages Convention 'only applies to hostage-taking which has a transnational element and does not apply to purely domestic acts'.<sup>69</sup> Article 13 of the Hostages Convention thus provides that the Convention does 'not apply where the offence is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State'. This is based on the view that there should be some third country involvement or concern internationalizing the matter to justify action by the international community. The arbitrary detention of foreign nationals by Iran clearly contains the necessary transnational element; this element is somewhat less obvious in relation to dual nationals.

Under traditional rules on the recognition of nationality, when individuals are located in the state of one of their active nationalities, they are recognized, for the purposes of the laws of that country, as a national of that state; the other state of nationality typically has little rights in such circumstances, consular or otherwise.<sup>70</sup> However, this position has evolved: a state of nationality can exercise diplomatic protection in a second state, of which the person is also a national, so long as the second nationality is not predominant at the date of injury and the date on which the claim is presented.<sup>71</sup> Indeed, with this principle in mind, the UK granted British–Iranian Nazanin Zaghari-Ratcliffe diplomatic protection in 2019.<sup>72</sup>

There are three principal factors which could, on their own or in some combination, bring the circumstances of dual nationals within the scope of Article 13. First, if the dual national's Iranian nationality is ineffective,<sup>73</sup> the predominant nationality should apply with all attendant rights.<sup>74</sup> The doctrine of predominant or effective nationality has been applied principally when an individual's citizenship has bearing either on jurisdiction to hear a case or on the merits of the claim itself,<sup>75</sup> and the same considerations apply when determining whether a second nationality should counter the claim that an act was purely domestic in accordance with Article 13. Second, an otherwise

69 B. Saul, 'International Convention Against the Taking of Hostages', UN Audiovisual Library of International Law (2014), at 5.

70 Art. 4, Convention on Certain Questions Relating to the Conflict of Nationality Law, 179 LNTS 89 (1930); *Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion)*, ICJ Reports (1949) 174, at 186.

71 See ILC, 'Draft Articles on Diplomatic Protection with commentaries', in II *Yearbook of the International Law Commission 2006 Part 2*, UN Doc. A/CN.4/SER.A/2006/Add.1 (2013), Art. 7 and commentaries thereto.

72 P. Wintour, 'Foreign Office Grants Zaghari-Ratcliffe Diplomatic Protection', *The Guardian*, 8 March 2019, available online at <https://www.theguardian.com/news/2019/mar/07/foreign-office-grants-nazanin-zaghari-radcliffe-diplomatic-protection> (visited 6 February 2022).

73 The concept of 'effective nationality' was established by *Case Concerning Nottebohm (Liechtenstein v. Guatemala)*, Judgment of 6 April 1955, ICJ Reports (1955) 4.

74 *Esfahanian v. Bank Tejarat, Iran-US Claims Tribunal (IUSCT)*, Vol. 2. (1983), at 166; *Ataollah Golpira v. Government of Islamic Republic of Iran, IUSCT*, Vol. 2 (1983), at 174.

75 See, e.g., D. Bederman, *International Law Frameworks: Concepts and Insights* (3rd edn., Thomson/West, 2010), at 89.

domestic act may come within the scope of the Hostages Convention if its purpose is to pressure another state.<sup>76</sup> Here, the transnational element derives from how the dual national is being used; if the purpose is to compel the other state of nationality to act or refrain from acting, this internationalizes what might otherwise be a purely domestic act.<sup>77</sup> Third, where the acts concern several individuals with different nationalities, the offence can come within the scope of the Hostages Convention. Lambert has argued that for ‘the offence to remain outside of the scope of the Hostages Convention, *all* the hostages and *all* the offenders must be nationals of the State in which the offence was committed’;<sup>78</sup> ‘the mere fact that one of the hostages is of a different nationality than all the others will be enough for this [Hostages] Convention to apply, even to an otherwise solely internal offence’.<sup>79</sup> The WGAD has recognized in a series of findings that dual nationals’ arbitrary detention is part of a wider pattern of Iran targeting foreign and dual nationals.<sup>80</sup> The pattern clearly involves a multitude of nationalities. Among detainees, many had no connection of nationality to Iran and many have a foreign nationality as their effective nationality. It is not plausible to consider any of the detainees outside of this pattern.

In sum, foreign and dual nationals arbitrarily detained, prosecuted, and punished in Iran are victims of hostage-taking within the meaning of Article 1 of the Hostages Convention. The purely domestic circumstances contemplated by Article 13, which would remove dual nationals from the scope of the Convention, do not apply because the purpose of the arbitrary detention is

<sup>76</sup> Lambert, *supra* note 39, at 302–303.

<sup>77</sup> This second argument is not, however, universally supported. Lambert raises this interpretation and sees its merit, but is ultimately unpersuaded that it reflects the state of the law in 1990 when he wrote his seminal text (*supra* note 39, at 302–308). Arguably, however, the position has evolved since 1990. Three transnational crime treaty instruments adopted after 1990 recognize an additional basis for the applicability of the instrument: when the criminal act was directed at the national of a (foreign) state. See Arts 3 and 6(2) International Convention for the Suppression of Terrorist Bombings (adopted 15 December 1997, entered into force 23 May 2001) 2149 UNTS 256; Arts 3 and 7(2) International Convention for the Suppression of the Financing of Terrorism (adopted 10 January 2000, entered into force 10 April 2002) 2178 UNTS 197; Arts 3 and 9(2) International Convention for the Suppression of Acts of Nuclear Terrorism (adopted 14 September 2005, entered into force 7 July 2007) 2445 UNTS 89.

<sup>78</sup> Lambert, *supra* note 39, at 312.

<sup>79</sup> *Ibid.*, at 300.

<sup>80</sup> See e.g. WGAD recent opinions on the arbitrary detention of foreign and dual nationals in Iran: WGAD, *Zakka*, *supra* note 50; WGAD, *Wang*, *supra* note 42; WGAD, *Opinion No. 92/2017 concerning Ahmadreza Djalali (Islamic Republic of Iran)*, UN Doc. A/HRC/WGAD/2017/92, 20 December 2017; WGAD, *Namazis*, *supra* note 44; WGAD, *Foroughi*, *supra* note 45; WGAD, *Opinion No. 50/2016 concerning Robert Levinson (Islamic Republic of Iran)*, UN Doc. A/HRC/WGAD/2016/50, 17 January 2017; WGAD, *Zaghari-Ratcliffe*, *supra* note 45; WGAD, *Opinion No. 44/2015 concerning Jason Rezaian (Islamic Republic of Iran)*, UN Doc. A/HRC/WGAD/2015/44, 11 March 2016; WGAD, *Opinion No. 28/2013 (Islamic Republic of Iran): Communication addressed to the Government on 27 June 2013 concerning Amir Nema Hekmati*, UN Doc. A/HRC/WGAD/2013/28, 14 January 2014; WGAD, *Opinion No. 18/2013 (Islamic Republic of Iran): Communication addressed to the Government on 21 June 2013 concerning Saeed Abedinigalangashi*, UN Doc. A/HRC/WGAD/2013/18, 14 January 2014.

to pressure another state and because the pattern involves multiple nationals including foreign nationals with no connection to Iran.

The failure by Iran to secure the release and facilitate the departure of hostages, to take all practicable measures to prevent preparations for the commission of those offences within or outside their territories, to investigate, and — where the circumstances so warrant — to enable any criminal or extradition proceedings to be instituted, are breaches of Articles 3, 4, 6 and 8 of the Hostages Convention. This constitutes internationally wrongful acts for which Iran incurs the secondary obligations to cease the wrongful conduct if it is continuing and to offer appropriate assurances and guarantees of non-repetition, if circumstances so require. It must also make full reparation for the injury caused by the internationally wrongful act.<sup>81</sup> In the *Iran Hostages* case before the ICJ, the Court held that the appropriate remedies included immediately terminating the unlawful detention, ensuring that all the said persons have the necessary means of leaving Iranian territory, and making reparation for the injury caused.<sup>82</sup>

### C. Stakeholder Perceptions

This hostage-taking characterization has been adopted by stakeholders to varying degrees. Detainees and their families have begun to label their experiences in this way. American–Iranian journalist Jason Rezaian, for example, refers to his experience as ‘hostage taking wrapped in judicial packaging’.<sup>83</sup> The hostage label has also appeared in affected families’ joint advocacy. In a December 2018 open letter, the families of six detainees explained that the ‘evidence is conclusive, and we should call this what it is: hostage taking . . . Over several agonizing years, our loved ones’ cases have each been treated individually, but while they are all unique and complicated cases, this is not an individual problem, it is a pattern’.<sup>84</sup> Additionally, in March 2021, former detainees, family members of current detainees and victims of more classic forms of hostage-taking launched Hostage Aid Worldwide to assist ‘fight for the release of hostages globally while aiming to prevent this inhumane act of hostage taking from occurring against other innocent people’ and to ‘address the hostage taking “business model”’.<sup>85</sup>

81 ILC, ‘Draft Articles on Responsibility of States for Internationally Wrongful Acts’, in II *Yearbook of the International Law Commission 2001 Part 2*, UN Doc. A/CN.4/SER.A/2001/Add.1 (2007) (hereinafter ‘Draft Articles on Responsibility of States’).

82 *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, *supra* note 3, § 95. Note however that this case was determined on the basis of the Vienna Conventions of 1961 and 1963 on Diplomatic and Consular Relations.

83 Rezaian, *supra* note 1, at 90.

84 Families of Robert Levinson, Nizar Zakka, Saeed Malekpour, Kamran Ghaderi, Ahmadreza Djalali and Baquer and Siamak Namazi, ‘Open Letter by Six Families of Dual and Foreign Nationals Imprisoned in Iran’, Center for Human Rights Iran, 3 December 2018, available online at <https://www.iranhumanrights.org/2018/12/open-letter-by-six-families-of-dual-and-for-eign-nationals-imprisoned-in-iran/> (visited 6 February 2022).

85 ‘About Us’, Hostage Aid Worldwide, available online at <https://hostageaid.org/about-us/> (visited 8 February 2022).

The hostage label is an important part of how detainees and their families construct at least a part of their identity during or in the aftermath of the events and how they continue to relate to their experiences of detention, trauma, and harm.<sup>86</sup> It serves to signify their personal experiences and builds a sense of solidarity with others. Additionally, at least for some, it is a route towards making sense of those experiences and building political consciousness.<sup>87</sup> The label of 'hostage' is also a shorthand to explain what happened and address misperceptions, as if proclaiming '*no, I didn't do anything to end up detained; no, there was no truth to the charges against me*'. Also, given the international commitment to address hostage-taking, recognizing the pattern of arbitrary detention as hostage-taking ensures the phenomenon is addressed with appropriate seriousness and that, at least in principle, the accountability framework embedded in the Hostages Convention is realized.<sup>88</sup>

There is emerging recognition among some Western states that the conduct described here constitutes hostage-taking, though they sometimes highlight the leverage dimension of arbitrary detention rather than explicitly characterizing such detention as hostage-taking. For example, in February 2021, Canada launched its international 'Declaration Against Arbitrary Detention in State-to-State Relations', which as of September 2021 has been endorsed by 67 states and the European Union. While not aimed at Iran,<sup>89</sup> the Declaration addresses the pattern of conduct in which Iran has engaged. It explains that 'arbitrary arrest, detention, or sentencing to exercise leverage over foreign governments undermines the development of friendly relations and cooperation between States, international travel, trade and commerce, and the obligation to settle international disputes by peaceful means' and expresses alarm 'by the abuse of State authority, including judicial authority, to arbitrarily arrest, detain or sentence individuals to

86 Several studies show the important role that identity formation plays in constructing meaning for traumatic events experienced collectively (e.g., R.F. Baumeister, *Meanings of Life* (Guilford, 1991)). Gilad Hirschberger ('Collective Trauma and the Social Construction of Meaning', 9 *Frontiers in Psychology* (2018) 1–14) focuses on responses to mass conflict or societal-level upheaval. Our view is that there are similar impetuses for victims of international or political crimes such as torture or hostage-taking. Recognition of the crime and the acknowledgment that the crime applies to what the victims experienced is more than simply about the attribution of responsibility to perpetrators; it helps to construct meaning for the victims of what they experienced and connects them in meaning and solidarity to other victims.

87 T. Jacoby, 'A Theory of Victimhood: Politics, Conflict and the Construction of Victim-based Identity', 43 *Millennium: Journal of International Studies* (2015) 511–530.

88 Art. 5, Hostages Convention, *supra* note 33. Art. 5 establishes a jurisdictional basis for states to investigate and prosecute individuals for hostage-taking. The Convention also addresses state responsibility. Pursuant to Art. 3 of the Convention, a state will be responsible where the criminal acts are perpetrated by state agents and/or where the state where the hostages are located does not take all appropriate measures to ease the situation of the hostages by, for example, securing their release and, after their release, facilitating their departure.

89 In adopting the Declaration on 15 February 2021, the UK's then Foreign Secretary Dominic Raab explicitly mentioned the pattern of conduct by Iran: a video of his remarks is available online at <https://www.gov.uk/government/news/uk-backs-canadian-initiative-against-arbitrary-detention> (visited 6 February 2022).

exercise leverage over foreign governments'.<sup>90</sup> The US has been more willing to use the terminology of hostage-taking. In 2020, it passed the 'Robert Levinson Hostage recovery and Hostage-Taking Accountability Act', named to honour the American who disappeared in Iran in 2007 and died in Iranian custody sometime prior to March 2020.<sup>91</sup> The Act aims to provide assistance for Americans 'taken hostage or unlawfully or wrongfully detained abroad' and applies in circumstances including when an individual is 'being detailed solely or substantially to influence United States Government policy or to secure economic or political concessions from' the US.<sup>92</sup> The UK, in contrast, has refused to use the 'hostage' label,<sup>93</sup> a stance victims' families have criticized. Richard Ratcliffe — the husband of British-Iranian Nazanin Zaghari-Ratcliffe — maintains that there 'is a problem with how the West deals with hostage diplomacy. The current approach has been to pretend it doesn't happen. We need to collectively talk about hostage taking and talk about how to stop it'.<sup>94</sup>

UN bodies have yet to apply the 'hostage' label; they instead use 'arbitrary detention'.<sup>95</sup> While this label is accurate, it does not reflect the targeted nature of the practice, the extreme suffering it engenders, the pattern of the cases, the degree of state involvement, and the leverage dimension. UN bodies have, however, recognized the pattern of Iran targeting foreign and dual nationals. The pattern of abuse has been recognized by the WGAD in several recent opinions.<sup>96</sup> Additionally, in his most recent report, the UN Special

90 Government of Canada, 'Declaration Against Arbitrary Detention in State-to-State Relations', 12 February 2021, available online at [https://www.international.gc.ca/news-nouvelles/arbitrary\\_detention-detention\\_arbitraire-declaration.aspx?lang=eng](https://www.international.gc.ca/news-nouvelles/arbitrary_detention-detention_arbitraire-declaration.aspx?lang=eng) (visited 6 February 2022), at §§ 3–4. In May 2021, Canada announced a Partnership Action Plan to give effect to the Declaration: Government of Canada, 'Arbitrary detention in state-to-state relations – Partnership Action Plan', 3 May 2021, available online at [https://www.international.gc.ca/world-monde/issues\\_development-enjeux\\_development/human\\_rights-droits\\_homme/arbitrary\\_detention-detention\\_arbitraire-action\\_plan.aspx?lang=eng](https://www.international.gc.ca/world-monde/issues_development-enjeux_development/human_rights-droits_homme/arbitrary_detention-detention_arbitraire-action_plan.aspx?lang=eng) (visited 8 February 2022).

91 J. Hansler and N. Gauette, 'Family of American Robert Levinson, Who Disappeared in Iran, Say They Believe He Is Dead', *CNN*, 25 March 2020, available online at <https://www.cnn.com/2020/03/25/politics/robert-levinson-dead/index.html> (visited 6 February 2022).

92 U.S.C.S. 712 (2020), s. 2(a)(3).

93 See, for example, the 25 October 2021 House of Commons statement by junior Foreign Office minister James Cleverly, in which he uses the phrase 'arbitrarily detained dual British nationals'. 'Nazanin Zaghari-Ratcliffe – in the House of Commons at 5:24 pm on 25th October 2021', available online at <https://www.theyworkforyou.com/debates/?id=2021-10-25a.57.0&s=nazanin#g57.1> (visited 6 February 2022).

94 D. Dudley, "'Alienated but Streetwise" Hunger Striker Demands UK Does More to Rescue Wife from Iran', *Forbes*, 27 October 2021, available online at <https://www.forbes.com/sites/dominicdudley/2021/10/27/alienated-but-streetwise-hunger-striker-demands-uk-government-does-more-to-rescue-wife-from-iran/?sh=501cf16242d7> (visited 6 February 2022).

95 See e.g. WGAD recent opinions on the arbitrary detention of foreign and dual nationals in Iran, *supra* note 80; *Special Rapporteur on Iran 2020 Report*, *supra* note 20, § 13.

96 WGAD recent opinions on the arbitrary detention of foreign and dual nationals in Iran, *supra* note 80.

Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran noted that foreign and dual nationals have been targeted.<sup>97</sup>

#### 4. Arbitrary Detention as a Crime Against Humanity

The prohibition of crimes against humanity is recognized as a principle of *jus cogens* that reflects and protects fundamental values of the international community, is hierarchically superior to other rules of international law and is universally applicable.<sup>98</sup> Unlike the prohibition of war crimes or genocide, however, there is no stand-alone treaty outlawing crimes against humanity (though one is under discussion).<sup>99</sup>

Iran has neither signed nor ratified the ICC Statute nor does it have domestic legislation outlawing crimes against humanity. Nevertheless, analysis of whether the arbitrary detention of foreign and dual nationals in Iran amounts to a crime against humanity is more than a theoretical inquiry. The UN Security Council is empowered to refer a situation in which crimes against humanity appear to have been committed to the ICC Prosecutor, irrespective of the territorial state's consent,<sup>100</sup> when international peace and security are threatened. In all, 67 states (so far) have recognized that arbitrary detention in state-to-state relations 'undermines the development of friendly relations and cooperation between States ... and the obligation to settle international disputes by peaceful means'.<sup>101</sup> The Security Council's international peace and security mandate is thus arguably engaged. Further, the ability of states to entertain prosecutions of persons accused of crimes against humanity based on universal jurisdiction,<sup>102</sup> as well as the customary international law prohibition of crimes against humanity, make the crime relevant for Iran, in terms of both state and individual criminal responsibility.

The precise contours of crimes against humanity may be difficult to ascertain outside of a specific treaty framework,<sup>103</sup> but the core elements are well established. First, the prohibition and the obligations to establish national jurisdiction and to investigate with a view to prosecuting are

97 Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, UN Doc. A/HRC/46/50, 11 January 2021, § 3.

98 Draft articles on Crimes Against Humanity, *supra* note 36, Preamble; ILC, *Peremptory Norms of General International Law (jus cogens): Text of the Draft Conclusions and Draft Annex Provisionally Adopted by the Drafting Committee on First Reading*, UN Doc. A/CN.4/L.936, 29 May 2019, Draft conclusion 3.

99 Draft articles on Crimes Against Humanity, *supra* note 36.

100 Art. 13(b) ICCSt.

101 Government of Canada, *supra* note 90, § 3.

102 T. Meron, 'International Criminalization of Internal Atrocities', 98 *American Journal of International Law* (1995) 554–577.

103 W. Schabas, 'Customary Law or Judge-Made Law: Judicial Creativity at the UN Criminal Tribunals', in J. Doria, H. Gasser and M. Cherif Bassiouni (eds), *The Legal Regime of the International Criminal Court: Essays in Honour of Professor Igor Blishchenko* (Brill, 2009) 75–101.

reflected in the Nuremberg Principles,<sup>104</sup> have been affirmed by UN Security Council<sup>105</sup> and General Assembly resolutions,<sup>106</sup> and are the consistent position of *ad hoc* international criminal tribunals.<sup>107</sup> The prohibition and obligations to establish national jurisdiction and to prosecute have also been recognized under human rights law in relation to several of the underlying offences such as torture, as they have been recognized in relation to the Genocide Convention (ratified by Iran on 14 August 1956) and the Convention Against Apartheid (acceded to by Iran on 17 April 1985).<sup>108</sup> Iran has not ratified the Convention Against Torture, but it has ratified the International Covenant on Civil and Political Rights (on 24 June 1975), which outlaws torture.<sup>109</sup> The Human Rights Committee has commented that, where investigations reveal violations of certain Covenant rights recognized as criminal under either domestic or international law (including torture), states parties must ensure that those responsible are brought to justice.<sup>110</sup> It would be logically and legally inconsistent to recognize the obligation to prosecute single acts of torture, for instance, but not to recognize the obligation when torture simultaneously amounts to crimes against humanity because it is widespread or systematic and directed at a civilian population.

Second, the obligation to extradite or prosecute (*aut dedere aut judicare*) alleged perpetrators of crimes against humanity is considered a principle of customary international law by a small but growing number of states,<sup>111</sup> the purpose of which is to preclude safe havens for crimes under

104 ILC, 'Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal', in II *Yearbook of the International Law Commission* 1950, UN Doc. A/CN.4/SER.A/1950/Add.1 (1957), § 97.

105 See e.g. SC Res. 138, 24 June 1960; SC Res. 1738, 23 December 2006; SC Res. 2021, 29 November 2011; SC Res. 2379, 21 September 2017; SC Res. 2556, 18 December 2020; SC Res. 2567, 12 March 2021.

106 The authors count at least 10 resolutions adopted between 1946 (GA Res. 95(1), 11 December 1946) and 2020 (GA Res. 75/136, 22 December 2020).

107 See e.g. Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, *Tadić* (IT-94-1), Appeals Chamber, 2 October 1995, § 141; *Akayesu*, *supra* note 37, § 465; Judgment, *Kunarac et al.* (IT-96-23; IT-96-23/1-A), Appeals Chamber, 12 June 2002, § 98 (hereinafter '*Kunarac*, Appeals Chamber').

108 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85; Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277; International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entered into force 18 July 1976) 1015 UNTS 243.

109 Art. 7, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

110 *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add. 13, 26 May 2004, § 18.

111 UNGA Sixth Committee, *Summary Record of the 22nd Meeting*, UN Doc A/C.6/62/SR.22, 4 December 2007, §§ 33, 58, and 62.

international law.<sup>112</sup> In 1946, the UN General Assembly recommended that Member States extradite and try persons accused of crimes set out in the Nuremberg Charter.<sup>113</sup> The *aut dedere aut judicare* principle has been incorporated into the ILC's draft Code of Crimes against the Peace and Security of Mankind<sup>114</sup> (Draft Code of Crimes) and the 1949 Geneva Conventions,<sup>115</sup> and is reflected in the ILC's Draft Articles on Crimes Against Humanity.<sup>116</sup> It is also reflected in other treaties that outlaw acts such as apartheid, torture, enforced disappearances, slavery and slave-like practices, forced labour, hijacking, hostage-taking, aircraft sabotage, terrorism and piracy, some of which may constitute crimes against humanity when the relevant context elements are present.

Given how crimes against humanity have developed, they are usually and appropriately associated with individual criminal responsibility. This should not detract from state responsibility for crimes against humanity, whether because the machinery of the state was central to the commission of the acts or because the state planned or orchestrated the attacks or failed in its obligation to prevent.<sup>117</sup> For example, the Commission of Inquiry on North Korea determined that 'the security and justice apparatus of the State as well as local and central Workers' Party of Korea institutions, ... the National Defence Commission and the Supreme Leader, have been, and continue to be, implicated in human rights violations, including those amounting to crimes against humanity'.<sup>118</sup> Other fact-finding processes have found reasonable grounds to believe that the governments or government factions in other countries, such as Myanmar,<sup>119</sup> South Sudan,<sup>120</sup> Sudan<sup>121</sup> and Syria,<sup>122</sup> were responsible for crimes against humanity.

112 *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, International Court of Justice, 14 February 2002, ICJ Reports (2002) 3, Joint Separate Opinion of Judges Higgins, Kooijmans and Buergenthal, § 51.

113 GA Res. 3(I), 13 February 1946.

114 ILC, 'Draft Code of Crimes against the Peace and Security of Mankind', in II *Yearbook of the International Law Commission* 1996, UN Doc. A/CN.4/SER.A/1996/Add.1 (1998) Art. 21(2) (hereinafter 'Draft Code of Crimes').

115 Art. 49, First Geneva Convention, *supra* note 34; Art. 50, Second Geneva Convention, *supra* note 34; Art. 129, Third Geneva Convention, *supra* note 34; Art. 146, Fourth Geneva Convention, *supra* note 34.

116 Draft articles on Crimes Against Humanity, *supra* note 36, Art. 7(2).

117 Draft Articles on Responsibility of States, *supra* note 81, Art. 15 and official commentaries thereto.

118 *Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea*, UN Doc. A/HRC/25/CRP.1, 7 February 2014, § 1167.

119 *Report of the Independent International Fact-Finding Mission on Myanmar*, UN Doc. A/HRC/42/50, 8 August 2019, § 18.

120 *Report of the Commission on Human Rights in South Sudan*, UN Doc. A/HRC/40/69, 12 March 2019, § 74.

121 *Report of the International Commission of Inquiry on Darfur to the UN Secretary-General, Pursuant to Security Council Resolution 1564 of 18 September 2004*, 25 January 2005, available online at [https://www.un.org/ruleoflaw/files/com\\_inq\\_darfur.pdf](https://www.un.org/ruleoflaw/files/com_inq_darfur.pdf) (visited 6 February 2022), at 3.

122 *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, UN Doc. A/HRC/46/55, 11 March 2021, § 87.

State responsibility for crimes against humanity constitutes an international wrongful act giving rise to the state's secondary obligations of cessation, guarantees of non-recurrence, and reparation. As serious breaches of peremptory norms, the state commission of crimes against humanity also requires all states to cooperate to bring the breaches to an end through lawful means.<sup>123</sup> This may result in the engagement of the UN Security Council or other bodies to impose sanctions or other enforcement measures, including a referral to the ICC.

### A. The Definition of Crimes Against Humanity and Key Context Elements

The definition of crimes against humanity has evolved over time. There is no longer a requirement of a nexus with armed conflict,<sup>124</sup> as affirmed by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY)<sup>125</sup> and the Supreme Court Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC).<sup>126</sup> The requirement has been omitted from Control Council Law No. 10<sup>127</sup> and subsequent statutes of *ad hoc* tribunals,<sup>128</sup> and does not feature in the ICC Statute<sup>129</sup> or the ILC's Draft Code of Crimes<sup>130</sup> or its Draft Articles on Crimes Against Humanity.<sup>131</sup>

The requirement that crimes against humanity involve a widespread or systematic attack directed at a civilian population was first introduced in the Draft Code of Crimes<sup>132</sup> and subsequently incorporated into the statutes of the International Criminal Tribunal for Rwanda (ICTR)<sup>133</sup> and several

123 ILC, 'Draft Articles on the Responsibility of States for Internationally Wrongful Acts', *supra* note 81.

124 See Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (London Agreement), 82 UNTC 280, 8 August 1945.

125 *Tadić*, *supra* note 107, § 141. Consistent with this jurisprudence, Art. 1(b) of the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity recognizes crimes against humanity committed 'in time of peace' (adopted 26 November 1968, entered into force 11 November 1970) 754 UNTS 73.

126 Appeal Judgment, *NUON Chea and KHIEU Samphân* (002/19-09-2007-ECCC/SC), Supreme Court Chamber, 23 November 2016, § 721. See also The Republic of Kosovo, 'Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office', 3 August 2015, Art. 13 of which specifies that 'under customary international law during the temporal jurisdiction of the Specialist Chambers, crimes against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack'.

127 *Tadić*, *supra* note 107, § 140.

128 See e.g. Art. 3 ICTRSt; Art. 2 SCSLSt; Art. 5 ECCCSt.

129 Art. 7 ICCSt.

130 Draft Code of Crimes, *supra* note 114, Art. 18.

131 Draft articles on Crimes Against Humanity, *supra* note 36, Art. 2.

132 Draft Code of Crimes, *supra* note 114, Art. 18, and official commentaries thereto.

133 Art. 3 ICTRSt. Note that while this language did not appear in the ICTYSt., several ICTY decisions maintained that the requirement is implicit (discussed in Draft articles on Crimes Against Humanity, *supra* note 36, commentary to Art. 2, § 10).

internationalized tribunals,<sup>134</sup> the ICC Statute,<sup>135</sup> and the ILC Draft Articles on Crimes Against Humanity.<sup>136</sup> The terms ‘widespread’ and ‘systematic’ are disjunctive.<sup>137</sup>

‘Widespread’ refers to the attack being conducted on a large scale and with a high number of victims.<sup>138</sup> The attack should be ‘massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims’.<sup>139</sup> While the assessment as to whether an attack is widespread is ‘neither exclusively quantitative nor geographical, [and] must be carried out on the basis of the individual facts’,<sup>140</sup> clearly numbers are relevant. Given restrictive prosecutorial policies and the international caselaw, it is not obvious that 66 victims arbitrarily detained over a more than ten-year period satisfies the criterion of ‘widespread’. Nevertheless, it should be noted that the victims come from 11 countries and that for each case of prolonged arbitrary detention, with many of the detentions ongoing, a whole family is victimized. Further, the crimes have been designed to intimidate the entire Iranian expatriate community on account of the fear of arbitrary arrest and ill-treatment engendered, should they return to Iran.

‘Systematic’ refers to the degree of organization or planning of the attack,<sup>141</sup> undertaken pursuant to ‘a preconceived plan or policy’;<sup>142</sup> it thus excludes purely random, accidental, or isolated acts. Thus, ‘it is in the “patterns” of the crimes, in the sense of the deliberate, regular repetition of similar criminal conduct that one discerns their systematic character’.<sup>143</sup> The (non-exhaustive) factors which may demonstrate the widespread or systematic nature of the attack include the ‘existence of an acknowledged policy targeting a particular community, the establishment of parallel institutions meant to implement this policy, the involvement of high-level political or military authorities, the employment of considerable financial, military or other resources and the scale or the repeated, unchanging and continuous nature of the violence committed against a particular civilian population are among the factors which may

134 Art. 2 SCSLSt.; Art. 5 ECCCSt.; Art. 13 Kosovo Law on Specialist Chambers and Specialist Prosecutor’s Office.

135 Art. 7 ICCSt.

136 Draft Code of Crimes, *supra* note 114.

137 *Ibid.* commentary to Art. 18, § 4. See also *Akayesu*, *supra* note 37, § 579, fn. 144.

138 See Draft Code of Crimes, *supra* note 114, commentary to Art. 18, § 4 ([o]n a large scale’ means ‘that the acts are directed against a multiplicity of victims. This requirement excludes an isolated inhumane act committed by a perpetrator acting on his own initiative and directed against a single victim’).

139 See e.g. Decision Pursuant to Article 61(7)(a) and (b) of the Statute, *Bemba Gombo* (ICC-01/05-01/08-424), Pre-Trial Chamber II, 15 June 2009, § 83; Judgment, *Akayesu*, *supra* note 37, § 580.

140 Decision pursuant to Article 15 of the Statute, *Situation in the Republic of Kenya* (ICC-01/09-19-Corr 01-04-2010), Pre-Trial Chamber II, 31 March 2010, § 95.

141 *Akayesu*, *supra* note 37, § 580; Opinion and Judgment, *Tadić* (IT-94-1-A) Trial Chamber, 7 May 1997 (hereinafter ‘*Tadić*’), § 648.

142 Draft Code of Crimes, *supra* note 114, commentary to Art. 18, § 3.

143 Judgment, *Prlić* (IT-04-74-T), Trial Chamber, 29 May 2013 (hereinafter ‘*Prlić*’), § 41.

demonstrate the widespread or systematic nature of an attack'.<sup>144</sup> Many of these factors are present in the arbitrary detention of foreign and dual nationals by Iran. The IRGC authorities' pattern of targeting foreign and dual nationals has been affirmed by the WGAD among other bodies.<sup>145</sup> As has already been described, the cases follow a tested trajectory of similar criminal conduct involving arbitrary arrests, incommunicado detention, ill-treatment spurious charges, and unfair trials.<sup>146</sup> The fact that these cases occur under the veneer of legality in which the IRGC-controlled Revolutionary courts play a key role, leaves no doubt as to the involvement of high-level IRGC authorities, operating under the overall authority of the Supreme Leader. Consequently, the attack is clearly systematic, if not also widespread.

The ICC Statute adds that the attack must be 'pursuant to or in furtherance of a State or organizational policy to commit such attack',<sup>147</sup> which has been taken to require that the organization or state actively promotes or encourages the attack against the civilian population, or exceptionally, deliberately fails to take action, which is consciously aimed at encouraging such attack.<sup>148</sup> In *Katanga*, the Trial Chamber noted that 'it is relatively rare, although cannot be wholly excluded, that a state or organisation seeking to encourage an attack against a civilian population might adopt and disseminate a pre-established design or plan to that effect. In most cases, the existence of such a state or organisational policy can therefore be inferred by discernment of, inter alia, repeated actions occurring according to a same sequence, or the existence of preparations or collective mobilisation orchestrated and coordinated by that State or organisation'.<sup>149</sup> Again, the orchestrated role of the IRGC-led Revolutionary courts in the implementation of the system of arbitrary detention of foreign and dual nationals presents little doubt that the 'attack' is 'pursuant to or in furtherance of a State or organizational policy to commit such attack'.

An attack 'directed at a civilian population' must not be directed at the entire civilian population in a given location; instead, it is meant to reflect the collective nature of the crime as an attack on multiple victims, not simply a limited or random number of individuals.<sup>150</sup> In *Katanga*, the ICC made clear that 'where the commission of crimes against humanity is at issue, the nationality of the members of such a population, their ethnic group or any other distinguishing feature is immaterial to the protection that attaches to

144 Judgment, *Jelisić* (IT-95-10-T), Trial Chamber, 14 December 1999, § 53. See also *Prlić*, *supra* note 143, § 41; Judgment, *Karadžić* (IT-95-5/18-T) Trial Chamber, 24 March 2016, § 477.

145 WGAD, *Namazis*, *supra* note 44; WGAD, *Zaghari-Ratcliffe*, *supra* note 45; WGAD, *Wang*, *supra* note 42; WGAD, *Zakka*, *supra* note 50.

146 See Section 2(B) of this article.

147 Art. 7(2)(a) ICCSt.

148 Art. 7, Elements of Crimes, § 3.

149 Judgment pursuant to Art. 74 of the Statute, *Katanga* (ICC-01/04-01/07), Trial Chamber II, 7 March 2014 (hereinafter '*Katanga*'), § 1109.

150 See *Tadić*, *supra* note 141, § 644; Judgment, *Gotovina et al.* (IT-06-90-T), Trial Chamber, 15 April 2011, § 1704.

“civilian”<sup>151</sup>. The pattern of arbitrary detention is directed at dual and foreign nationals who are civilians. Some have come to Iran to visit family, others to attend conferences or to conduct business. Though many of the charges levied against them are security-related, no basis has been provided to substantiate the charges. Many cases have involved propaganda attacks in government-controlled media, including the publication of fabricated evidence.<sup>152</sup>

While a particular motive has not been incorporated into the general law on crimes against humanity,<sup>153</sup> the accused’s specific knowledge is required. The ILC Draft Articles on Crimes Against Humanity,<sup>154</sup> the Kosovo Specialist Chambers<sup>155</sup> and the ICC Statute require that crimes against humanity must have been committed ‘with knowledge of the attack’.<sup>156</sup> This is consistent with the evolution of the case law, which recognizes that what is required is knowledge in general terms<sup>157</sup> of the circumstances that make the offence a crime against humanity: i.e., that there is a widespread or systematic attack directed against a civilian population and that the perpetrator’s acts form part of that attack.<sup>158</sup> Given that the acts occur openly under the veneer of Iranian law, there is no doubt that IRGC senior leaders and judges of the Revolutionary courts who have ruled on these cases have the requisite specific knowledge.

## B. Underlying Offences

### 1. Imprisonment or other Severe Deprivation of Physical Liberty

Imprisonment or other severe deprivation of physical liberty is recognized as one of the possible underlying offences of crimes against humanity in accordance with article 7(1)(e) of the ICC Statute and is reflected in the other statutes and principles setting out crimes against humanity. Imprisonment was not listed as a crime against humanity in the Charter of the International Military Tribunal, but it appeared in the definition in Control Council Law No. 10.<sup>159</sup> The underlying offence requires an act of imprisonment or severe deprivation of the physical liberty of one or more persons, in violation of the fundamental rules of international law.<sup>160</sup> This will occur when a deprivation of liberty is imposed arbitrarily, or without

151 *Katanga*, *supra* note 149, § 1103.

152 See Section 2(B) of this article.

153 *Akayesu*, *supra* note 37, § 464.

154 Draft articles on Crimes Against Humanity, *supra* note 36, Art. 2(1).

155 Art. 13(1) Kosovo Law on Specialist Chambers and Specialist Prosecutor’s Office.

156 Art. 7(1) ICCSt.

157 Judgment, *Kunarac* (IT-96-23-T and IT-96-23/1-T), Trial Chamber, 22 February 2001, § 434.

158 *Kunarac*, Appeals Chamber, *supra* note 107, § 102; Judgment, *Krnjelac* (IT-97-25-T), Trial Chamber, 15 March 2002 (hereinafter ‘*Krnjelac*’), § 59.

159 Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, Crimes against Peace and against Humanity, 20 December 1945, Official Gazette of the Control Council for Germany, No. 3, Berlin, 31 January 1946, at 50–55, Art. 6(c).

160 Art. 7(1)(e), Elements of Crimes, §§ 1 and 2.

due process of law.<sup>161</sup> Both the (il)legality of the initial detention (irrespective of its compliance with abusive domestic laws;<sup>162</sup> only international standards are relevant)<sup>163</sup> and the procedural safeguards pertaining to the subsequent detention will be relevant.<sup>164</sup> This point is made clear by the ICC Pre-Trial Chamber in its consideration of the situation in Burundi: 'there is a reasonable basis to believe that imprisonments that may have been initially lawful became subsequently unlawful, due to breaches of detainees' procedural rights and/or infliction of acts of ill-treatment and torture against them while in custody.'<sup>165</sup>

Not every infringement of liberty forms the material element of the underlying offence; the deprivation of liberty must be of similar gravity and seriousness as the other crimes enumerated as crimes against humanity.<sup>166</sup> Arbitrary detention of foreign and dual nationals in Iran is sufficiently serious to meet the definition. Most of the persons subjected to the practice have been detained for multiple years and subjected to cruel and inhuman conditions of imprisonment, including — as described above — incommunicado detention, long periods of solitary confinement, unhygienic and overcrowded wards, and inadequate access to medical treatment. Detainees were also frequently denied family visits and calls, due process, and consular visits.

Arguably, that the abuses took place under the cover of law exacerbates these violations, the 'conscious participation in a nation wide government-organized system of cruelty and injustice, . . . perpetrated in the name of law by the authority of the [government]. . . , and through the instrumentality of the courts. The dagger of the assassin was concealed beneath the robe of the jurist'.<sup>167</sup> In relation to Iranian Saeed Malekpour — a permanent resident of Canada who was detained for over a decade before he fled Iran while out on furlough — the WGAD expressed alarm 'at the source's allegation that the magistrate assigned to Mr. Malekpour's case had overseen many of the torture sessions' and noted with great concern the allegation that the court admitted Malekpour's confession at his first trial and subsequent re-trial, despite repeated claims that it had been extracted under torture.<sup>168</sup> The WGAD found that at 'best, these allegations suggest indifference by the authorities to the immense

161 Judgment, *Kordic and Čerkez* (IT-95-14/2-T), Trial Chamber, 26 February 2001, § 302. See also Judgment and Sentence, *Ntagerura* (ICTR-99-46-T), Trial Chamber, 25 February 2004, § 702.

162 *USA v. Alstötter et al.* ('The Justice case') (1948), 3 TWC 954 (hereinafter '*Alstötter*').

163 *Krmjelac*, *supra* note 158, § 114.

164 *Ibid.*, §§ 114, 302–303.

165 Public Redacted Version of Request for Authorisation of an Investigation Pursuant to Art. 15, (ICC-01/17-5-US-Exp), 6 September 2017, § 106.

166 Judgment, *Kaing Guek Eav alias Duch* (001/18-07-2007/ECCC/TC), Trial Chamber, 26 July 2010, § 349.

167 *Alstötter*, *supra* note 162, at 985.

168 WGAD, *Opinion No. 32/2019 concerning Saeed Malekpour (Islamic Republic of Iran)*, UN Doc. A/HRC/WGAD/2019/32, 9 September 2019, § 44.

suffering caused to Mr. Malekpour and, at worst, a determination to convict Mr. Malekpour and to have him executed'.<sup>169</sup>

It would be difficult for Iran to deny awareness of the factual circumstances establishing the gravity of the conduct, given that the system of arbitrary detention has been state-sanctioned and rubber-stamped by the revolutionary courts. It follows that there would be a *prima facie* case for the crime against humanity of severe deprivation of physical liberty.

## 2. Torture

Torture is recognized as 'the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused'.<sup>170</sup> It must be committed for a particular purpose, such as obtaining information or a confession, or punishing, intimidating, humiliating, coercing, or discriminating, and must not be 'arising from, inherent in or incidental to, lawful sanctions'.<sup>171</sup> There is no finite list of acts which may fall within the definition of torture. Instead, the definitions rely on the nature, purpose and severity of the treatment applied, which 'will depend on the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc'.<sup>172</sup> How a state treats the family members of the primary victim may constitute torture. For instance, the suffering arising from a state's refusal to inform next of kin of the victim's whereabouts and to conduct an effective investigation has been held to amount to torture or ill-treatment with respect to the victims' relatives.<sup>173</sup> Under human rights law, torture must take place by or at the instigation of, or with the consent or acquiescence of, public officials. This differs from how torture is understood when it constitutes one of the underlying offences for a war crime, a crime against humanity and/or genocide. Under international criminal law, it need not be committed by a public official.<sup>174</sup>

The IRGC has used torture and ill-treatment to pressure detainees to confess or to behave in a certain way. Swedish-Iranian scholar Djalali, who is currently detained under a sentence of death, was put under intense pressure to confess to spying for a hostile state.<sup>175</sup> The WGAD recounted how Malekpour was beaten with cables and batons, under the guise of 'interrogation'. During the beatings, he lost consciousness, at which point his captors would douse him with cold water to

169 *Ibid.*

170 Art. 7(2)(e) ICCSt.

171 *Ibid.*

172 *Selmouni v. France*, ECtHR (1999), Appl. No. 25803/94, § 100.

173 *Bazorkina v. Russia*, ECtHR (2006), Appl. No. 69481/01, § 139; *Kurt v. Turkey*, ECtHR (1998), Appl. No. 24276/94, §§ 133 and 134; *Maria del Carmen Almeida de Quinteros et al. v. Uruguay*, Communication No. 107/1981, UN Doc. CCPR/C/OP/2, 21 July 1983, § 14; *Blake v. Guatemala*, IACtHR (1998), 2 Series C, No. 36, §§ 114–116.

174 Judgment, *Brđanin* (ICTY-99-36-A), Appeals Chamber, 3 April 2007, §§ 244–252. See also *Kunarac*, Appeals Chamber, *supra* note 107, §§ 142 and 148.

175 WGAD, *Djalali*, *supra* note 80, § 32.

continue the beatings. One beating was so severe it left Malekpour paralysed on one side of his body. On another occasion, he was stripped and held down while an interrogator from the IRGC threatened a serious act of sexual violence.<sup>176</sup> An independent medico-legal evaluation of British–Iranian Zaghari-Ratcliffe, who has been arbitrarily detained since 2016, revealed that she is suffering from ‘serious and chronic post-traumatic stress disorder, major depression and obsessive-compulsive disorder due to her treatment in prison and under house arrest, and the continuing legal uncertainty and separation from her family. In addition, she experiences ongoing physical pain and impairment in her neck, right shoulder, and arm, which arose as a result of her mistreatment and the denial of medical care’.<sup>177</sup>

Detainees have been subjected to threats of violence; withheld information or provided with false information; denied medical treatment and family visits; and inhuman conditions of detention. The duration and conditions of detention has caused measurably severe mental suffering, including anxiety and depression that led many to engage in acts of self-harm, without adequate mental health care. In addition to these psychological tactics, some detainees have reported physical acts of violence.

### 3. Persecution

Persecution consists of the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of an identifiable group or collectivity.<sup>178</sup> The targeting of the group or collectivity must be based on a discriminatory ground, namely, national, political, ethnic, racial, or religious grounds.<sup>179</sup> In determining whether particular acts constitute persecution, the acts should be evaluated not in isolation but in context, by looking at their cumulative effect.<sup>180</sup>

IRGC authorities targeted dual nationals and foreigners on national grounds, because of their citizenship or residence status. The WGAD has determined that the arrests and detentions of foreign and dual nationals targeted people based on their ‘national or social origin’, as part of an emerging pattern in Iran.<sup>181</sup> The arbitrary detention of foreign and dual nationals in breach of their rights to liberty and security of the person and collective denial of due process rights, often accompanied by harassment, humiliation and physical and

176 WGAD, *Malekpour*, *supra* note 168, § 10.

177 REDRESS, ‘UK Government Must Recognise Nazanin as a Victim of Torture as New Medical Evidence Confirms the Severity of her Ill-treatment in Iran’, March 2021, available online at <https://redress.org/news/uk-government-must-recognise-nazanin-as-a-victim-of-torture-as-new-medical-evidence-confirms-the-severity-of-her-ill-treatment-in-iran/> (visited 6 February 2022).

178 Art. 7(2)(g) ICCSt.

179 *Akayesu*, *supra* note 37, § 578; Judgment, *Kupreškić et al.* (IT-95-16-T), Trial Chamber, 14 January 2000, § 621.

180 *Ibid.*, § 622.

181 WGAD, *Namazis*, *supra* note 44; WGAD, *Zaghari-Ratcliffe*, *supra* note 45; WGAD, *Wang*, *supra* note 42; WGAD, *Zakka*, *supra* note 50.

psychological abuse,<sup>182</sup> can amount to persecution.<sup>183</sup> For example, breaching the right to judicial process in conjunction with other fundamental rights breaches may constitute persecution, where the persons are being targeted because they belong to a particular group.<sup>184</sup>

The situation for detainees can amount to a crime against humanity because the phenomenon can be understood as either widespread — involving at least 66 individuals over the past eleven years — or systematic — the policy is directed by the Iranian security services, in particular the IRGC, and is designed to fulfil particular objectives; it is not random, and the results are not incidental. The attack, which is the arbitrary detention of scores of foreign and dual nationals to secure some advantage from the (other) state of nationality, is directed at a segment of the civilian population, which continues to be targeted because of characteristics they share. Because of the nature of the acts, they fall reasonably within the underlying offences of arbitrary imprisonment or other severe deprivation of physical liberty, torture, and persecution.

## 5. Conclusion

In this article, we have sought to show how Iran's practice of arbitrarily detaining foreign and dual nationals for political and economic gain constitutes hostage-taking and crimes against humanity. Hostage-taking and crimes against humanity are of course, legally speaking, distinct offences; they were analysed as such above. However, in terms of both Iran's strategy and detainees' experiences, the two offences — particularly the underlying crime against humanity offence of torture — are closely connected, because detainee mistreatment, which can amount to torture, is part of the leverage dynamic of hostage-taking. The worse a detainee is treated — for example, solitary confinement or the publication of propaganda — the greater the pressure on the individual's (other) state of nationality. Thus, while the offences are distinct, they are perpetrated in tandem by Iran in pursuit of its political and economic goals and they are experienced cumulatively by victims.

The labels of hostage-taking and crimes against humanity ascribe specific meanings to events, which are important for the victims and their families, because they convey extreme seriousness and open the door a little wider to the prospects for both criminal law accountability and state responsibility. Also, these labels negate Iran's official narrative that the detainees are simply being tried for security offences, and they prevent the detainees' other state of nationality from accepting this official narrative. In principle, if not always in practice, this should add pressure on the other state of nationality to act to secure the release of its nationals and to secure reparations. It should also provide further impetus for the international community to apply collective action to bring the crimes to an end through sanctions or other enforcement measures.

182 Judgment, *Kvočka et al.* (IT-98-30/1-T), Trial Chamber, 2 November 2001, § 190.

183 In *Blaškić*, the ICTY found that persecution can include both bodily and mental harm as well as infringements upon individual freedom, including the unlawful detention of civilians.

Judgment, *Blaškić* (IT-95-14-T), Trial Chamber, 3 March 2000, §§ 233–234.

184 Judgment, *Krajišnik* (IT-00-39), Trial Chamber, 27 September 2006, § 740.

## Annex

The table below lists cases of foreign and dual nationals arbitrarily detained in Iran during the period 1 January 2010 to 30 November 2021, for which English-language information was publicly available on or before 30 November 2021.<sup>185</sup> It is not exhaustive as some families elect not to publicize the detention.

	Name	Nationality	Detained on/in	Status at 30 November 2021
1	Mark Firkin	Australia	July 2019	Released 5 October 2019
2	Jolie King	Australia & UK	July 2019	Released 5 October 2019
3	Kylie Moore-Gilbert	Australia & UK	September 2018	Released 25 November 2020
4	Meimanat Hosseini-Chavoshi	Australia & Iran	December 2018	Released January 2019
5	Shokrollah Jebeli	Australia & Iran	January 2020	Detained
6	Kamran Ghaderi	Austria & Iran	2 January 2016	Detained
7	Massud Mossaheb	Austria & Iran	29 January 2019	Detained
8	Abdolrasoul Dorri-Esfahani	Canada & Iran	August 2016	Detained
9	Hamid Ghassemi-Shall	Canada & Iran	24 May 2008	Released 23 September 2013
10	Homa Hoodfar	Canada & Iran	6 June 2016	Released September 2016
11	Hossein Derakhshan	Canada & Iran	1 November 2008	Released 19 November 2014
12	Kavous Seyed Emami	Canada & Iran	24 January 2018	Died in custody 8 February 2018
13	Mohammad Reza Eslami	Canada & Iran	May 2020	Detained
14	Saeed Malekpour	Canada (permanent resident (PR)) & Iran	October 2008	Released on furlough July/August 2019 and fled to Canada
15	Ana Diamond	Finland & Iran at time of events	10 January 2016	Released August 2016

(Continued)

185 This table draws in large part on information contained in: 'Iran's Jailed Dual Nationals and their Uncertain Fate', *BBC*, 3 February 2021, available online at <https://www.bbc.com/news/uk-41974185> (visited 6 February 2022); Centre for Human Rights in Iran, 'Who Are the Dual and Foreign Nationals Imprisoned in Iran?', 24 May 2018 (last updated 4 October 2021), available online at <https://www.iranhumanrights.org/2018/05/who-are-the-dual-nationals-imprisoned-in-iran/> (visited 6 February 2022); Centre for Supporters of Human Rights and Iran Human Rights Documentation Centre, 'Universal Periodic Review: Submission Concerning the Islamic Republic of Iran, Joint Submission made by the Family Members of Arbitrarily Detailed Foreign and Dual Nationals', March 2019, available online at <https://iranhrdc.org/1000012696-2/> (visited 7 February 2022); Human Rights Watch, *supra* note 8; Thomson Reuters Foundation, *Held Hostage? A Legal Report on Hostage-Taking by States in Peacetime and the Victim Protection Gap*, 1 October 2018, available online at <https://www.trust.org/publications/i/?id=33235268-ff46-4110-9c4d-ef7e129253a6> (visited 6 February 2022).

(continued)

Name	Nationality	Detained on/in	Status at 30 November 2021
16 Benjamin Briere	France	May 2020	Detained
17 Clotilde Reiss	France	1 July 2009	Released 16 May 2010
18 Nelly Erin-Cambervelle	France	21 October 2018	Released February 2019
19 Roland Marchal	France	June 2019	Released 21 March 2020
20 Fariba Adelhkahl	France & Iran	June 2019	Detained under house arrest
21 Nazak Afshar	France & Iran	April 2016	Detained
22 Ruhollah Zam	France (PR) & Iran	October 2019	Executed in 2020
23 Jens Koch	Germany	10 October 2010	Released 19 February 2011
24 Marcus Hellwig	Germany	10 October 2010	Released 19 February 2011
25 Jamshid Sharmahd	Germany & Iran	July 2020	Detained
26 Nahid Taghavi	Germany & Iran	October 2020	Detained
27 Nizar Zakka	Lebanon & US (PR)	September 2015	Released 11 June 2019
28 Sabri Hassanpour	Netherlands & Iran	19 April 2016	Released May 2018
29 Zahra Bahrami	Netherlands & Iran	29 December 2009	Executed 2011
30 Yulia Yuzik	Russia	2 October 2019	Released 10 October 2019
31 Ahmadrza Djalali	Sweden & Iran	24 April 2016	Detained under sentence of death
32 Habib Chaab	Sweden & Iran	October 2020	Detained
33 Kamal Alavi	Switzerland & Iran	Since at least 2017	Detained
34 Andrew Barber	UK	21 June 2010	Released 18 August 2010
35 Abbas Edalat	UK & Iran	15 April 2018	Released December 2018
36 Anoosheh Ashoori	UK & Iran	August 2017	Detained
37 Bahman Daroshafaei	UK & Iran	3 February 2016	Released February 2016
38 Ghoncheh Ghavami	UK & Iran	20 June 2014	Released 23 November 2014
39 Kamal Foroughi	UK & Iran	5 May 2011	Released late 2018
40 Kameel Ahmady	UK & Iran	11 August 2019	Released on bail November 2019; convicted December 2020; fled prior to imprisonment
41 Mahan Abedin	UK & Iran	April 2018	Released 2018
42 Mehran Raof	UK & Iran	October 2020	Detained
43 Mohammad Reza Hashemi-Nabi	UK & Iran	23 December 2016	Detained
44 Nazanin Zaghari-Ratcliffe	UK & Iran	3 April 2016	Detained under house arrest (completed initial sentence March 2021; newly sentenced April 2021)
45 Roya Nobakht	UK & Iran	October 2013	Released 25 August 2017
46 Aras Amiri	UK (PR) & Iran	March 2018	Released on bail July 2021
47 Amir Hekmati	US	August 2011	Released 16 January 2016
48 Joshua Fattal	US	31 July 2009	Released 21 September 2011
49 Matthew Trevithick	US	September 2015	Released 16 January 2016

(Continued)

(continued)

Name	Nationality	Detained on/in	Status at 30 November 2021
50 Michael White	US	July 2018	Released June 2020
51 Robert Levinson	US	March 2007	Died in custody prior to March 2020
52 Sarah Shourd	US	31 July 2009	Released 14 September 2010
53 Shane Bauer	US	31 July 2009	Released 21 September 2011
54 Xiyue Wang	US & China	8 August 2016	Released 7 December 2019
55 Morad Tahbaz	US, UK & Iran	January 2018	Detained
56 Afsaneh Azadeh	US & Iran	13 May 2012	Released September 2012
57 Baquer Namazi	US & Iran	22 February 2016	Detained under house arrest
58 Emad Shargi	US & Iran	April 2018	Detained
59 Jason Rezaian	US & Iran	22 July 2014	Released 16 January 2016
60 Karan Vafadari	US & Iran	20 July 2016	Released on bail July 2018
61 Nosratollah Khosravi-Roodsari	US & Iran	May 2015	Released 16 January 2016
62 Reza Taghavi	US & Iran	May 2008	Released 16 October 2010
63 Robin Shahini	US & Iran	11 July 2016	Released on bail 21 March 2017
64 Saeed Abedini	US & Iran	September 2012	Released 16 January 2016
65 Siamak Namazi	US & Iran	13 October 2015	Detained
66 Afarin Neyssari	US (PR) & Iran	20 July 2016	Released on bail July 2018