

In the matter of:

Nazanin Zaghari-Ratcliffe

Opinion

**The application of the Hostages Convention to the arbitrary detention of
Nazanin Zaghari-Ratcliffe in Iran**

I. Introduction

1. We are instructed by the Redress Trust, who act for Nazanin Zaghari-Ratcliffe and her husband, Richard Ratcliffe, to provide an Opinion on the application of the International Convention against the Taking of Hostages 1979 (“Hostages Convention”)¹ to Mrs Zaghari-Ratcliffe’s case. In particular, we are asked to consider whether the arbitrary detention of Mrs Zaghari-Ratcliffe constitutes “hostage-taking”, as defined by Article 1 of the Convention
2. In summary, it is our view that the arbitrary detention of Mrs Zaghari-Ratcliffe by Iranian officials constitutes hostage-taking within the meaning of the Hostages Convention. There are strong grounds to conclude that Mrs Zaghari-Ratcliffe has been targeted because of her British citizenship and is being used as leverage in an effort to compel the UK to pay a £400 million debt owed as a condition for her release. The debt, that is the subject of an arbitral award in favour of Iran, is owed to Iran by the UK pursuant to an arms trade deal between Iran and International Military Services (“IMS”), the then commercial arm of the UK’s Ministry of Defence. There is, therefore, a clear transnational element in this case. This act of hostage-taking is not “committed within a single State”, Iran, for the purposes of Article 13 of the Hostages Convention.²

II. Summary of Facts

3. Mrs Zaghari-Ratcliffe is a dual British-Iranian citizen. She has been arbitrarily detained in Iran since 3 April 2016.³ She has been subjected to two manifestly unfair trials, and to ill-treatment,

¹ International Convention against the Taking of Hostages, New York, 17 December 1979 (entry into force 3 June 1983) 1316 *UNTS* 205 (“Hostages Convention”).

² Article 13 excludes wholly internal or domestic cases from the scope of the Convention.

³ Report of the United Nations Special Rapporteur on human rights in the Islamic Republic of Iran, Javaid Rehman, 11 January 2021, A/HRC/46/50, para. 13; United Nations Working Group on Arbitrary Detention, Opinion 28/2016 concerning Nazanin Zaghari-Ratcliffe (Islamic Republic of Iran), 7 September 2016, A/HRC/WGAD/2016 (“WGAD Opinion 28/2016”).

including prolonged periods of solitary confinement and the denial of urgent medical treatment, amounting to torture,⁴ contrary to Iran’s obligations under Articles 7, 10 and 14 of the International Covenant on Civil and Political Rights 1966 (“ICCPR”).⁵ On 17 March 2020 she was released from Evin Prison and put under house-arrest, monitored by electronic tag, at her parents’ home in Tehran. Her first sentence of imprisonment expired on 7 March 2021. Immediately thereafter, Mrs Zaghari-Ratcliffe was summonsed to appear at court 7 days later, on 14 March 2021. On 26 April 2021 she was informed that she had been found guilty of “spreading propaganda against the regime” and was sentenced to one year’s imprisonment and a one-year travel ban. Her conviction and sentence were upheld on appeal on 16 October 2021.

4. Throughout her arbitrary detention, Mrs Zaghari-Ratcliffe has been told by members of the Iranian Revolutionary Guard Corps (“IRGC”) and the judiciary that she is being detained over the failure of the United Kingdom (“UK”) to pay an outstanding £400 million debt (the “IMS debt”) owed to Iran, pursuant to an arms trade deal between Iran and IMS, agreed before the Islamic Revolution. Iranian officials have also made public statements, and assertions have been made by state media, linking Mrs Zaghari-Ratcliffe’s detention to the IMS debt. On 8 November 2021 Iran’s Minister of Foreign Affairs, Hossein Amir-Abdollahian, linked the discussion with the UK Foreign Secretary, Liz Truss, on bilateral issues – including consular issues – with the “*repayment of long overdue UK debt to Iran*”.⁶
5. Iran’s arbitrary detention and ill-treatment of dual and foreign nationals has escalated since the signing of the Joint Comprehensive Plan of Action (“JCPOA”) in July 2015.⁷ This escalation in the practice of targeting of dual and foreign nationals, and arbitrarily detaining them, has been recognised by the United Nations Working Group on Arbitrary Detention (“WGAD”) as nationality-based discrimination.⁸ The WGAD has further noted that the systematic practice of arbitrary detention of dual and foreign nationals by Iran “*may constitute crimes against humanity*”.⁹ In most cases, these dual and foreign nationals have been prosecuted for broadly framed national-security related offences, most on charges of spying.¹⁰

⁴ Istanbul Protocol Medico-Legal Report prepared by Dr Harki and Dr Heisler, Independent Forensic Expert Group, prepared in collaboration with the International Rehabilitation Council for Torture Victims (IRCT)22 February 2021, submitted to the UK Foreign Secretary on 11 March 2021; United Nations Special Procedures, ‘[Iran: Prisoners Nazanin Zaghari-Ratcliffe and Narges Mohammadi need appropriate health care urgently – UN experts](#)’, 16 January 2019.

⁵ International Covenant on Civil and Political Rights, New York, 16 December 1966 (entry into force 23 March 1976) 999 UNTS 1057 (“ICCPR”).

⁶ H. Amirabdollahian, [Twitter, 8 November 2021](#).

⁷ ‘[Held Hostage? A Legal Report on Hostage-Taking by States in Peacetime and the Victim Protection Gap](#)’, Thomson Reuters Foundation, 1 October 2019, p. 9; ‘[Iran: Targeting of Dual Citizens, Foreigners](#)’, Human Rights Watch, 26 September 2018; ‘Iran announces incarceration of Shahram Shirkhani and Masud Mosaheb in latest arrests of dual-nationals’, International Observatory Human Rights, 12 August 2020.

⁸ WGAD Opinion 28/2016, para. 54.

⁹ WGAD, Opinion No. 51/2019 concerning Nizar Zakka (Islamic Republic of Iran), 8 October 2019, A/HRC/WGAD/2019/51, para. 79; WGAD Opinion 28/2016, para. 54.

¹⁰ U.S. Virtual Embassy Iran, ‘[Hostages as bargaining chips: An Iranian tradition](#)’, accessed 8 November 2021.

6. In some cases, detained foreign and dual nationals have been released following negotiations between Iran and the other State of nationality, or State of permanent residence, for prisoner exchange, or financial payment. For example, in 2020, Australian citizen Kylie Moore-Gilbert was released after Australia negotiated the release of three Iranian nationals convicted of conspiracy to commit a terrorist bombing and imprisoned in Thailand. United States citizen Michael White,¹¹ French citizen Roland Marchal,¹² and a German citizen¹³ were also released on agreement of a prisoner exchange in 2020. In 2019, United States citizen Xiyue Wang was released as part of a prisoner exchange,¹⁴ and Australians Jolie King and Mark Firkin were released after an Iranian national detained in Australia pending extradition to the US was released and permitted to return to Iran.¹⁵ In 2016, United States citizen Jason Rezaian was released together with three other United States citizens as part of a prisoner exchange¹⁶ and the release of \$400 million in funds frozen by the United States since 1981, plus interest owed to Iran, as part of a settlement of claim brought by Iran in the U.S.-Iran Claims Tribunal.¹⁷
7. On 15 February 2021, in response to the increase in State hostage-taking by Iran and other States, 57 States endorsed the Declaration against Arbitrary Detention in State-to-State Relations. Since its launch, the Declaration has been endorsed by a further 9 States.¹⁸ The Declaration, the stated purpose of which is to “*enhance international cooperation and end the practice of arbitrary arrest, detention or sentencing to exercise leverage over foreign governments*”, affirms that this practice is contrary to international law.¹⁹ This Declaration has been endorsed by the United Kingdom but not by Iran.

III. The Hostages Convention 1979

8. Both Iran and the UK are parties to the Hostages Convention. Iran acceded to the Hostages Convention on 20 November 2006. The UK ratified the Hostages Convention on 22 December 1982, without reservation.
9. Upon its accession to the Hostages Convention, Iran submitted a reservation to Article 16 of the Convention, stating that it does not consider itself bound by the provisions of Article 16 concerning the resolution of disputes. Iran also submitted the following interpretative declaration:

¹¹ [‘Majid Taheri: US releases Iranian doctor in prisoner swap’](#), BBC News, 8 June 2020.

¹² [‘Iran “frees” French researcher under prisoner exchange deal’](#), The Guardian, 21 March 2020.

¹³ [‘Iran frees jailed German citizen in prisoner swap’](#), Al Jazeera, 18 February 2020.

¹⁴ Patrick Wintour, [‘US citizen Xiyue Wang released from Iranian jail in prisoner swap’](#), The Guardian, 7 December 2019.

¹⁵ Ben Doherty, [‘Australian travel bloggers released in Iran were freed in apparent prisoner swap’](#), The Guardian, 6 October 2019.

¹⁶ Saeed Kamali Dehghan, [‘Iran releases Washington Post journalist Jason Rezaian in prisoner swap with US’](#), The Guardian, 16 January 2016.

¹⁷ [‘U.S. says payment to Iran used as leverage for prisoners’ release’](#), Reuters, 18 August 2016.

¹⁸ Government of Canada, [Arbitrary Detention in state-to-state relations](#).

¹⁹ [Declaration against Arbitrary Detention in State-to-State Relations](#), Ottawa, 15 February 2021.

The Government of the Islamic Republic of Iran declares its categorical condemnation of each and every act of terrorism, including taking innocent civilians as hostages, which violates human rights and fundamental freedom of human kind, undermines the stability and security of human communities, and hinders countries from development and progress. The Islamic Republic of Iran believes that elimination of terrorism requires a comprehensive campaign by the international community to identify and eradicate political, economic, social and international root causes of the scourge.

The Islamic Republic of Iran further believes that fighting terrorism should not affect the legitimate struggle of peoples under colonial domination and foreign occupation in the exercise of their right of self-determination, as enshrined in a variety of international documents, including the Charter of the United Nations, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, and Article 1 paragraph 4 of the Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts.

10. The preamble to the Hostages Convention invokes the right to life, and to liberty and security of the person, as set out in the Universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights 1966. According to the preamble, the Convention is a response to the urgent need to develop international cooperation in devising and adopting effective measures of the prevention, prosecution and punishment of all acts of hostage-taking, an offence of “grave concern to the international community”.²⁰ For this purpose, the Convention defines the circumstances in which an individual will be criminally responsible for the act of hostage-taking,²¹ and the obligations of States to take measures to prevent hostage-taking, and to prosecute or extradite individual perpetrators.²²
11. The Convention does not provide a discrete definition of a “hostage”. Rather, for the purposes of the Convention, a “hostage” is a person subjected to the offence of hostage-taking.
12. According to the terms of Article 1 of the Convention a perpetrator may be “any person”. The term “any person” refers to all persons, including State officials and persons acting on behalf of the State.²³
13. Article 1 of the Convention defines the offence of hostage-taking as follows:
 1. *Any 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*

²⁰ Preamble, Hostages Convention.

²¹ Article 1 Hostages Convention

²² Articles 3-6 and 8-13 Hostages Convention.

²³ Cases in which the United States have held that Article 1 of the Hostages Convention applies to the acts of members of the IRGC and other Iranian officials or agents include *Rezaian v Islamic Republic of Iran*, 422 F. Supp. 3sd 164, 176-177 (D.D.C. 2019); *Saberi v Islamic Republic of Iran*, No. 19-CV-1081 (DLF), 2021 WL 2117164, p. 14.

the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

2. *Any person who:*

a. Attempts to commit an act of hostage-taking, or

b. Participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking

likewise commits an offence for the purposes of this Convention.

14. Article 3 of the Hostages Convention provides that:

1. The State Party in the territory of which the hostage is held by the offender shall take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his release and, after his release, to facilitate, when relevant, his departure.

15. Article 4 of the Hostages Convention provides that:

States Parties shall co-operate in the prevention of the offences set forth in article 1, particularly by:

a. Taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts of taking of hostages;

b. ...

16. Article 13 of the Hostages Convention provides that:

This Convention shall not apply where the offence is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State.

17. The UK enacted the Taking of Hostages Act 1982 in order to implement the UK's obligations under Article 2 of the Hostages Convention to make the offence of hostage-taking, as set out in Article 1 of the Convention, a criminal offence in domestic law. Pursuant to section 1 of the Taking of Hostages Act, the offence of hostage-taking may be committed by a person "whatever his nationality", who, in the United Kingdom or elsewhere, "(a) detains any other person ("the hostage"), and (b) in order to compel a State, international governmental organisation or person to do or abstain from doing any act, threatens to kill, injure or continue to detain the hostage".

18. We note that the Taking of Hostages Act does not exclude from its application offences of a "wholly domestic nature". i.e. hostage-taking committed "within a single State", in circumstances where the hostage and the alleged perpetrator are nationals of that State, and the alleged offender is found in the territory of that State. Pursuant to section 1 of the Act, the English courts have jurisdiction to prosecute any person, whatever their nationality, alleged to have committed hostage-taking against any other person, in the UK or abroad.

IV. Application of the Hostages Convention to Mrs Zaghari-Ratcliffe's case

19. The offence of hostage-taking, as defined by Article 1 of the Hostages Convention, has three elements: (i) the seizure or detention of any person (ii) for the purpose of compelling a third party to do or abstain from doing any act (iii) in order to secure the person's release.
20. Article 1 refers to compulsion to do or abstain from doing "any act". There is no requirement that the third party must be compelled to do or abstain from doing an act that it would not otherwise be under a duty to do or abstain from doing. Therefore, although hostage-taking is often colloquially associated with demands for ransom, the performance of a legal obligation, such as the payment of an outstanding debt, may constitute "any act" for the purposes of Article 1.
21. In our view, the on-going arbitrary detention of Mrs Zaghari-Ratcliffe in Iran by the IRGC meets the definition of hostage-taking under Article 1 of the Hostages Convention for the following reasons:
 - a. First, Mrs Zaghari-Ratcliffe is detained within the meaning of Article 1 of the Hostages Convention. For the purposes of the Hostages Convention "detention" is not limited to physical constraint or confinement, but "*can extend to threats, coercion, or deception which causes the person to remain under another's control*".²⁴ Mrs Zaghari-Ratcliffe was seized by members of the IRGC on 3 April 2016. She has remained in detention since that date. She is currently residing at her parents' address but may be taken back to prison to serve her sentence of imprisonment at any time, following the Court of Appeal confirmation of her conviction on 16 October 2021. Thus, her liberty and security remains under the control of the Iranian authorities, and she is under the threat of a further period imprisonment.
 - b. Second, Mrs Zaghari-Ratcliffe's continuing detention is clearly arbitrary.²⁵ There are strong grounds to conclude there is no legal basis for her detention under domestic or international law, with respect to both her first sentence and her second sentence of imprisonment. The conditions of her detention have fallen far below international standards, and she has been denied the most basic guarantees required for a fair trial under international law.²⁶ These conclusions are supported by the United Nations Working Group on Arbitrary Detention in its Opinion 28/2016,²⁷ and shared by the

²⁴ B. Saul, *Introductory Note: International Convention against the Taking of Hostages*, New York, 17 December 1979.

²⁵ Prof. John Dugard SC, Alison Macdonald QC, and Tatyana Eatwell, Legal Opinion I: Violations of International Human Rights Obligations by the Islamic Republic of Iran, 16 October 2017.

²⁶ *Ibid.*

²⁷ WGAD Opinion 28/2016.

UK Government in its exercise of diplomatic protection in her case,²⁸ and in parliamentary statements.²⁹

- c. Third, Mrs Zaghari-Ratcliffe’s case does not sit in isolation but is part of a wider pattern of targeting of dual and foreign nationals by Iran.³⁰ As noted above, the practice of arbitrary detaining dual and foreign nationals by Iran has increased since the signing of the JCPOA in 2015. There are clear similarities between Mrs Zaghari-Ratcliffe’s case and the cases of other dual and foreign nationals arbitrarily detained in Iran, whose freedom has been conditional upon prisoner exchanges or the payment of sums of money owed to Iran by the other State.
 - d. Fourth, although diplomatic communications and the content of any negotiations between the UK and Iran for Mrs Zaghari-Ratcliffe’s release are confidential, there are strong grounds to conclude, based upon the statements made directly to Mrs Zaghari-Ratcliffe by members of the judiciary and the IRGC, other Iranian officials and in the state media, linking her continuing arbitrary detention to the UK’s failure to repay the IMS debt, that her release is conditional upon the UK repaying the debt.
22. The limitation on the scope of application of the Convention provided by Article 13 means that the Convention will only apply to hostage-taking “which has a transnational element” and will not apply to “purely domestic acts”.³¹
23. The facts of Mrs Zaghari-Ratcliffe’s case clearly supply the requisite transnational element, and the offence cannot be said to be committed within “a single State” for the purposes of Article 13 of the Convention:
- a. The IRGC and other Iranian officials’ statements linking Mrs Zaghari-Ratcliffe’s continuing detention with the UK’s failure to repay the IMS debt support the conclusion that Mrs Zaghari-Ratcliffe has been, and continues to be, detained for the purpose of compelling the UK, another State, to do something (i.e. to repay the IMS debt). This purpose has a clear transnational element, since it involves one State seeking to compel another State to do something.³² We consider that this is clearly sufficient to bring the act within the scope of the Hostages Convention, and that to interpret Article 13 as applying to this situation would rob the Convention of much of its utility.³³ This position is supported by decisions of the United States courts that

²⁸ Former Foreign Secretary, Jeremy Hunt MP, ‘[Statement on the exercise of diplomatic protection for Nazanin Zaghari-Ratcliffe](#)’, Twitter, 7 March 2019.

²⁹ Hansard, Answer to Commons Urgent Question, ‘[Nazanin Zaghari-Ratcliffe](#)’, Volume 815, debated on Wednesday 27 October 2021.

³⁰ WGAD Opinion 28/2016, paras.

³¹ Article 13, Hostages Convention; B. Saul, *Introductory Note: International Convention against the Taking of Hostages*, New York, 17 December 1979.

³² J. Lambert, *Terrorism and Hostages in International Law: A Commentary on the Hostages Convention 1979* (Grotius 1990) 302-3.

³³ The United States courts have affirmed that the Hostages Convention will apply to the seizure and detention of any person, including persons who hold the nationality of the State in which they have been detained, for the purpose of compelling another State to do something. See *Rezaian v Islamic Republic of Iran*, 422 F. Supp. 3d 164,

have held expressly that the Hostages Convention is applicable to the arbitrary detention of dual US-Iranian citizens by Iran for diplomatic leverage.³⁴

- b. There are strong grounds to conclude that Mrs Zaghari-Ratcliffe has been targeted because of her British citizenship. This discriminatory motivation for her arbitrary detention has been acknowledged by WGAD.³⁵ It is Mrs Zaghari-Ratcliffe's British citizenship, and her links to the UK, that provides the 'hook' upon which the IRGC has sought to use her detention as leverage over the UK.

24. To conclude, the conduct of the individuals involved in Mrs Zaghari-Ratcliffe's arbitrary detention falls within the scope of Article 1 of the Hostages Convention. For completeness, we note that the conduct also constitutes the offence of hostage-taking under UK law.

V. State Responsibility

25. The law of State responsibility provides that the conduct of State organs and agents is attributable to the State.³⁶ Acts of hostage-taking by organs or agents of Iran are, therefore, attributable to Iran. For Iran to be internationally responsible for the acts of hostage-taking committed by its organs or agents, Iran must be under an international obligation not to commit hostage-taking.

26. According to the terms of the Hostage Convention, States undertake to prevent and punish the offence of hostage-taking. The terms of the Convention do not expressly provide for State responsibility for the commission of acts of hostage-taking. However, the courts of the United States have held that State responsibility is engaged in circumstances where the acts of hostage-taking, as defined by Article 1 of the Hostages Convention and in domestic law, are committed by a State's organs or agents or are otherwise attributable to the State.³⁷

27. Moreover, the preamble to the Hostages Convention invokes the right to liberty and security of the person, as guaranteed by Article 9 ICCPR, and thereby clearly links States' obligation not to arbitrarily detain individuals with the act of hostage-taking. As noted above, the WGAD has found that Mrs Zaghari-Ratcliffe's detention is arbitrary and constitutes a violation by Iran of its obligations under Article 9 ICCPR. Iran is internationally responsible for Mrs Zaghari-Ratcliffe's continued arbitrary detention. As stated above, there are strong grounds to conclude that she has been seized and detained in order to compel the UK to pay the IMS debt.

176-177 (D.D.C. 2019); *Saberi v Islamic Republic of Iran*, No. 19-CV-1081 (DLF), 2021 WL 2117164, p. 14; *Frost et al v Islamic Republic of Iran*, 383 F. Supp. 3d, 47 (D.D.C. 2019) finding that “*Political leverage in the context of a country's relationship with the United States is a sufficiently coercive purpose to establish hostage-taking.*”

³⁴ *Ibid.*

³⁵ WGAD Opinion 28/2016, para. 47.

³⁶ Articles 4 and 8 of the International Law Commission's draft Articles on the Responsibility of States for Internationally Wrongful Acts, *Yearbook of the International Law Commission*, 2001, vol. II (Part Two).

³⁷ E.g. *Rezaian v Islamic Republic of Iran*, 422 F. Supp. 3d 164, 176-177 (D.D.C. 2019); *Frost et al v Islamic Republic of Iran*, 383 F. Supp. 3d, 47 (D.D.C. 2019).

28. There are also strong grounds to conclude that Iran is in violation of the obligation to take all appropriate measures to secure her release and return to the UK, and to prevent and prohibit hostage-taking, as provided by Articles 3 and 4 of the Hostages Convention. Iran has clearly failed to take any measures to prevent the commission of hostage-taking in this case. No steps have been taken by the Iranian authorities to put a stop to the practice of hostage-taking by members of the IRGC and other organs or agents of Iran. No steps have been taken to prosecute the individuals concerned. Indeed, there are strong grounds to conclude that Iran has encouraged and facilitated individuals in the commission of acts of hostage-taking for the purpose of compelling third States to act or abstain from acting in a way that is considered to benefit Iran itself.

VI. Conclusion

29. For the above reasons, there are strong grounds to conclude that the continuing detention of Mrs Zaghari-Ratcliffe in Iran by members of the IRGC and other Iranian officials or agents constitutes “hostage-taking” within the meaning of Article 1 of the Hostages Convention, and Mrs Zaghari-Ratcliffe is a hostage. The offence is not wholly domestic in nature. It involves using Mrs Zaghari-Ratcliffe in an effort to exert leverage over another State, the UK. There is therefore a clear transnational element to the offence. Therefore, the Hostages Convention is applicable. The acts of members of the IRGC and other Iranian officials involved in Mrs Zaghari-Ratcliffe’s detention are directly attributable to Iran and as such, Iran is responsible for Mrs Zaghari-Ratcliffe’s continued arbitrary detention and for its ongoing failure to prevent the hostage-taking, and to secure her release and return to the UK, in violation of its obligations under the Hostages Convention.

Prof. John Dugard SC
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Doughty Street Chambers

18 November 2021