

THE WALL STREET JOURNAL.

July 26, 2022

America Held Hostage: Day 15,606

Brittney Griner's captivity continues a trend Iran started when it seized the U.S. Embassy in 1979.



Baquer and Siamak Namazi, Photo: Babak Namazi/via Reuters

By Jared Genser and Skylar Gleason

Find a target, bring trumped-up charges, and use the case as leverage to extract something—or someone—in return. This is the playbook for foreign hostage-taking, which Vladimir Putin is using against Brittney Griner. The WNBA star has been detained in Moscow since February for drug possession and smuggling and faces 10 years’

imprisonment. But don't forget the playbook's final step. Russian authorities are interested in swapping Ms. Griner for Viktor Bout, a Russian-born arms dealer who is serving a 25-year sentence in U.S. federal prison. His crime? Conspiring to kill Americans. The injustice is on full display.

Ms. Griner's case is tragic but hardly novel. If the U.S. doesn't do more, it won't be the last.

The Biden administration last week introduced two measures to counter the wrongful detention and hostage-taking of Americans abroad. President Biden declared a national emergency via executive order, stating that such practices "constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States." Secretary of State Antony Blinken added a new designation to government travel advisories to warn Americans about countries that engage in the practice.

These are commendable first steps, but more aggressive action is needed. Mr. Biden should launch a new multilateral agreement with the ambitious goal of ending hostage-taking entirely.

The modern era of state-sponsored hostage-taking began with the 1979 Iran hostage crisis, during which Iranian revolutionaries seized the U.S. Embassy in Tehran and held 52 Americans for 444 days until the U.S. agreed to release \$7.9 billion in frozen Iranian assets, among other concessions. Today, dozens of Americans and countless more foreign nationals are wrongly held by countries such as Iran, Russia, China, Venezuela, Saudi Arabia, Cuba, Syria and Myanmar.

Given the nature of these detentions, hostages depend on their governments to negotiate their release. Although the U.S. has historically struggled to navigate these negotiations, recent administrations have attempted to improve its approach. President Obama issued a directive in 2015 creating a special presidential envoy on hostage affairs responsible for coordinating a cross-government response. President Trump in 2020 signed the Robert Levinson Act, which is meant to streamline State Department review of and action on such cases.

But progress on the ground has been limited. That's partly because detentions are typically resolved on a bilateral, case-by-case basis. The concessions for release tend to be narrow, too. The consequence of this approach is that in two of the Biden administration's recent

negotiations—one in Venezuela, the other in Russia—several American hostages were left behind.

This practice is merely an incentive for further hostage-taking. Take the case of Siamak Namazi, an Iranian-American imprisoned by Iran in October 2015. When Mr. Namazi was left behind by Mr. Obama during a 2016 prisoner swap, Iranian authorities arrested his then-79-year-old father, Baquer Namazi. Both were left behind after two more individual releases negotiated by the Trump administration. Eighteen months into the Biden administration, these men are still waiting.

Rogue nations must be convinced that they will face severe consequences. A new multilateral agreement could serve as an effective deterrent. Such an agreement should include several key elements.

First, it should be grounded in the principle of collective defense. Like the North Atlantic Treaty Organization's Article 5 commitment, this agreement would establish that a hostage taken from one signatory amounts to a hostage taken from all.

Second, the agreement should identify specific actions each signatory can take, individually and collectively, when a national of any signatory is taken. In February 2021, Canada led a constructive multilateral effort of 58 countries decrying the use of arbitrary detention in state-to-state relations. That served as an effective model—but its declaration failed to include specific responses.

Under a new agreement, countries would commit to considering options such as public condemnations, cancellation of official visits and imposition of targeted sanctions on individuals and entities conducting and supporting hostage-taking. And if a state were to engage in hostage-taking as a broad practice, countries would consider actions such as opposing the perpetrating state's candidates for positions in multilateral institutions, restricting government loans and suspending and blocking economic development or security assistance.

Mr. Biden has rightly proclaimed that state-sponsored wrongful detentions pose a serious threat to American national security. The next step must be disrupting the hostage enterprise at its source. That effort requires a multilateral agreement to impose such dramatic consequences that the cost of engaging in this practice would vastly outweigh the benefits.

Mr. Genser is an international human rights lawyer who has represented American hostages in countries including Cambodia, China, Cuba, Egypt, Iran and Nicaragua. Ms. Gleason is a student at Columbia Law School. Both work on the international legal team for Siamak and Baquer Namazi.

Proposal to U.S. Government **below**.

Working Draft/Proposal to the U.S. Government

Joint Declaration on Ending Hostage-Taking of Foreign Nationals^[1]

The Heads of State or Government of [list countries]:

Recalling that hostage-taking under international law is defined as when any person seizes or detains and threatens to kill, to injure, or to continue to detain a hostage in order to compel a State or other party to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage;

Emphasizing that the International Covenant on Civil and Political Rights, to which 173 countries are states parties, prohibits arbitrary detention and torture and also has extensive protections for due process rights of criminal defendants, such as having a fair and public trial by an independent and impartial judiciary;

Noting that 69 governments worldwide have now endorsed the *Declaration Against Arbitrary Detention in State-to-State Relations*, sponsored by the Government of Canada, which states that “the arbitrary arrest or detention of foreign nationals to compel action or to exercise leverage over a foreign government is contrary to international law, undermines international relations, and has a negative impact on foreign nationals working and living abroad”;

Observing that the Universal Declaration on Human Rights also prohibits arbitrary detention and torture.

Issue following Joint Declaration:

1. The taking of a hostage or otherwise unlawfully detained person by a government or its proxies of a national* of any signatory to this Joint Declaration shall be considered the taking of a such a person of all signatories. If a national of a signatory is taken hostage,
-

then each signatory will assist, individually and collectively with the other signatories, by taking such action as it, in its exclusive discretion, deems necessary to help secure the release of the hostage.

2. In response to the taking of a hostage of one signatory by a government, all signatories may consider taking one or more of the following actions, individually and collectively and in coordination with that signatory:

1. a demarche;
2. a public condemnation;
3. human rights reporting;
4. a public statement before organs of relevant multilateral organizations;
5. a private or public request for assistance to relevant U.N. special procedures, the U.N. High Commissioner for Human Rights, and/or the U.N. Secretary-General;
6. co-sponsorship of a joint statement or resolution referencing the case before organs of relevant multilateral organizations, such as the U.N. Human Rights Council;
7. a delay or cancellation of one or more working, official, or state visits;
8. the imposition of targeted financial sanctions and travel bans against individuals connected to the hostage-taking, including those with command responsibility, as well as their spouses, children, parents, siblings, grandchildren, or grandparents;
9. the imposition of targeted financial sanctions against organizations and entities responsible for hostage-taking by the government or its proxies;
10. the imposition of targeted financial sanctions against individuals, organizations, and entities supporting hostage-taking by the government or its proxies; and
11. any other action that it deems necessary to help secure the release of the hostage.

3. The signatories emphasize their unwavering commitment to take escalating and increasingly serious collective actions against any government and its proxies if, after the adoption of this Joint Declaration, they persist in hostage-taking of foreign nationals. If such a government and its proxies fail to release all foreign national hostages that are currently detained or persist in further hostage-taking of foreign nationals, the signatories may consider taking one or more of the following actions, individually or collectively,

including:

1. restrictions or bans on government loans, credits, and credit guarantees to the government;
 2. the withdrawal, limitation, or suspension of defense or security assistance;
 3. the withdrawal, limitation, or suspension of economic assistance;
 4. the withdrawal, limitation, or suspension of development assistance;
 5. restrictions or bans on the purchase or facilitation of the issuance of sovereign debt of the government, including government bonds;
 6. restrictions or bans on investments with agencies, entities, and instrumentalities of the government and its proxies the government's extractive industries sector;
 7. restrictions or bans on doing business with government banks;
 8. creating an exception to general foreign sovereign immunity law to enable foreign governments and their proxies to be sued in a domestic court for monetary damages by victims of the government's state-sponsored hostage-taking;
 9. a decision to oppose some or all candidates of the government for key appointments in multilateral institutions;
 10. a decision to oppose the election of the government to some or all executive bodies of multilateral institutions;
 11. a decision to oppose the election of the government to some or all key organs, agencies, commissions, and committees of international institutions such as the U.N. Human Rights Council, the Consultative Group of the U.N. Human Rights Council, the Commission on the Status of Women of the U.N. Economic and Social Council, the Committee on NGOs of the U.N. Economic and Social Council, and International Law Commission, among others;
 12. a decision to oppose multilateral lending to the government at international financial institutions;
 13. a decision to request the U.N. Security Council to hold an informal discussion, such as through an Arria-formula meeting, to consider options for responding to the government's hostage-taking of foreign nationals;
 14. a decision to request the U.N. Security Council to determine that the government's engagement in hostage-taking constitutes a threat to the peace and to place this situation on its permanent agenda so as to enable the Council to make
-

recommendations or decide what measures shall be taken to maintain or restore international peace and security; and

15. any other action that it deems necessary to help secure the release of the hostage.

This Joint Declaration remains open to additional signatories.

* Including dual nationals in accordance with signatory countries' laws on nationality.

Signed,

For [Country]:

FULL NAME

[President or Prime Minister]

For each signatory.

[1] Drafted by Jared Genser, an international human rights lawyer, whose specialty is arbitrary detention under international law and who has represented Siamak and Baquer Namazi, two Americans held hostage in Iran since 2015 and 2016 respectively. He is author of *The U.N. Working Group on Arbitrary Detention: Commentary and Guide to Practice* (Cambridge University Press, 2020). To provide input and feedback on this working draft, which is very welcome, please contact Jared Genser, jgenser@perseus-strategies.com or +1 (202) 320-4135.
