



Insights
Malicious Detention

About the Authors

Samphire Risk is a subsidiary of CHC Global, an independent firm of strategic malicious risk advisors. CHC's Advisory Team offers advice to clients helping them understand and manage malicious risks. The team is staffed by an outstanding group of advisors, each with a specialist portfolio, and in addition to working in partnership with their own clients, offer expert insight and intelligence to the broader CHC business.



Richard Harris-Deans
Partner & Director of Advisory

Richard advises clients on their exposure to terrorism and political violence. With his deep analytical capability, Richard brings together a macro and a micro lens. Prior to joining CHC Global, Richard spent 13 years at the Ministry of Defence and the Foreign and Commonwealth Office. He focused on national security issues including geopolitical developments and strategic threats, such as terrorism, nuclear proliferation and the actions of hostile nation states.

Millie Brennan
Associate

Millie's academic background in Politics & International Relations had a particular focus on terrorism, political violence and international conflict studies. Her specialisms include Middle Eastern politics and US foreign policy, and her final postgraduate thesis focused on the role of women in violent extremist organisations. Millie supports the Advisory Team in the analysis and dissemination of data and intelligence to inform clients on risk management and operational resilience.



Overview

Increasing friction between the US and China has tested recent US administrations that are seeking to maintain global primacy in the face of an increasingly powerful Beijing. As the White House has sought to 'pivot' to Asia, the realities of the Middle East, primarily Iran, have continued to demand policymakers' time and attention. Most of these geopolitical tensions have been felt through diplomatic channels and at a national level, but over time businesses and individuals have increasingly been dragged into the contest.

A growing number of countries have sought to use the arbitrary and malicious detention of foreign nationals as a tool to extract specific concessions from other states. Despite the relatively small number of people involved, this has had a disproportionate effect on public opinion and, in a number of cases, has directly impacted government decision making. Each case has proved to be complex and often lengthy, with no certainty as to when or if a resolution will be found.

This could become an additional aspect of Russia's invasion of Ukraine. As the Kremlin feels the growing impact of economic sanctions, and its military progression continues to stall, they may seek alternative methods of pushing back against the West. This may include the malicious detention of international citizens, including those who live and work within Russia, who may be held as political leverage.

More broadly, economic strength and advanced technical prowess are increasingly recognised as key components of national security. As a result, companies operating in related sectors should expect that their staff may be considered a viable target in the contest to gain a political advantage.



Complexity of Malicious Detention

Being held against your will to extract a concession may be a form of kidnap, but the complexity of state-sanctioned malicious detention means it must be understood and addressed in a different way. A state that chooses to detain a foreign national for political ends will often have a short-term goal in mind, but which sits within a wider policy context. The intention in such cases is to extract some form of specific, limited concession from another state. A ransom payment alone will usually be insufficient.

In the case of ‘the two Michaels’ – Canadian nationals Michael Kovrig and Michael Spavor – it is widely believed they were detained in China on national security grounds to secure the release of Meng Wanzhou, CFO and daughter of the founder of Huawei, who had been arrested in Canada on a US warrant. In this instance, the short-term goal

may have been Meng’s release but the thornier issue of 5G rollout and the tech-uncoupling of the West from China provided the context.

Differences between malicious detention and criminal kidnapping

A key difference from criminal kidnapping is that with malicious detention, individuals are often held on legal grounds. Charges will be brought, usually on national security grounds, and a conviction and sentencing may follow. Over time, however, this legal basis will morph into a legal wrapper or mere fig leaf as the true motives for imprisonment become clear. In real terms this means the individual transitions from detainee to hostage.

At times throughout the case, that person may have a foot in both camps and how long they take to move from prisoner to political detainee depends on the state’s need for some plausible deniability. If a foreign national has genuinely committed a crime or transgression that can be exploited, then this is a further complication: ‘yes, they committed a crime, but the sentence is unduly harsh for political purposes’, is a far weaker position from which to secure government or international support.

Finding a solution to malicious detention

If the motives for detention are complicated, aside from a prisoner’s nationality, the route to a solution can be even more circuitous. Few states, even all-powerful governments untroubled by full democracy, exhibit monolithic decision making. Different factions within the government may have diverging views on the wisdom of using malicious detention, and how much political or economic pain they should bear as a result. In the case of various dual nationals detained in Iran, it is unlikely that the Islamic Revolutionary Guard Corp (IRGC) and the Foreign Ministry saw eye to eye on such naked hostage taking. In fact, the IRGC may have used such detentions as a tool to undermine and weaken the government of President Hassan Rouhani, which they saw as supine and naïve in its dealings with the West. For those seeking to secure a detainee’s release, understanding the motives and relative influence of different parties in such closed states will be complicated and time consuming.

Although the solution will be both diplomatic and legal, it is rarely bilateral. Detainees in China and Iran may be Canadian, Australian or British, but the solution often runs through Washington. This in part reflects the realities of power and the foreign policy preoccupations of Beijing and Tehran, but on occasion it also follows the extraterritorial reach of the US Treasury. If Nazanin Zaghari-Ratcliffe’s recent release from Iranian detention was enabled by the UK settling its historic IMS debt (£400million) for unfulfilled defence orders, it is hard to imagine such a payment could have been delivered without tacit or even explicit support of the US Treasury and its Office of Foreign Assets Control (OFAC).



Frequency and Targeting

The current state of geopolitics suggests that malicious detention will remain a tool that governments use to apply pressure on their adversaries. Alongside trade embargos, tariffs, sanctions and cyber means, numerous states are seeking to gain political advantage by means short of war. Despite the small number of people involved, such cases can have an outsized impact both in public opinion and government decision making.

While China has shown its willingness to use such tactics, it has largely stopped short of detaining American citizens. In most cases it has targeted nationals of mid-sized American allies such as Canada, Australia, Japan and the UK. This may reflect the perceived costs of tackling the US head on, but also China's wider strategy of seeking to peel off US allies and deter the creation of an 'anti-China' coalition. It is debatable to what extent this plan has worked, versus souring public and government opinion against China, even with close trading partners such as Australia that rode a resource boom based on Chinese demand. Canada's 2021 declaration against the use of arbitrary detention received 67 endorsements from other countries, including the US, Australia, Japan, UK and the EU.

Who is at risk?

The variety of roles and industries in which detainees have worked makes it hard to identify a specific target set that may be at greater risk of detention. In many cases nationality alone is the main criterion, with dual nationals being especially vulnerable. Neither China nor Iran recognises dual nationality and detainees born in these countries, or even with close ancestry, can be expected to be treated as mononationals of that state.

However, as long as a legal basis is required, it remains more likely states will pursue those working in jobs or sectors that have a plausible link to national security, even under a broad or tenuous application of the term. Journalists, NGO workers and even those with government or military backgrounds have traditionally been frequent targets. In 2020, Former US Marine Paul Whelan was sentenced to 16 years for espionage by Russia, with Moscow subsequently floating a prisoner swap which allegedly included infamous arms dealer Viktor Bout. As geoeconomic tensions rise around sectors such as pharmaceuticals and computing, and advances in these fields become intrinsically linked to national strength and prosperity, we should expect executives in such companies to be at potentially greater risk. The chance of securing a political concession from another state, while also obtaining high value IP transfer as a concession or through theft, may be too tempting to pass up.



Countries and Jurisdictions

Malicious detention remains a global issue, even if events in China and Iran have dominated media coverage over recent years. A number of states would even argue that the extraterritorial reach of US law enforcement, especially Treasury, has made the threat of US detention the most serious risk for some companies.

During periods of diplomatic tension, the UAE has detained British nationals on charges of espionage, with British academic Matthew Hedges requiring a Presidential Pardon in order to be released. Turkey has also been known to go through phases of arresting and deporting Iranian opposition figures back to Iran, depending on the ebb and flow of bilateral relations.

In 2016 Turkey detained American Pastor Andrew Brunson on charges of terrorism and espionage. During his two-year detention, Turkey allegedly attempted to negotiate a swap with US-based cleric Fethullah Gulen (President Erdogan's main US-based opponent, for whom he has a visceral dislike) and also halt US investigations into Turkey's HalkBank for sanctions evasion.

While most states pursue such tactics for their direct, national benefit or to crudely send a message to rivals, the threat may emerge of states detaining foreign nationals to curry favour with another government. Substantial Chinese investment across Asia and Africa, as well as Russia's willingness to deploy the private military capability of the Wagner group to complex environments such as Mali and Libya, could secure them some influence over detentions and deportations in these states in the long-term. Whilst neither Bamako nor Tripoli are business hotspots, it speaks to a broader trend of major powers seeking to secure influence throughout much of the world, and the risk of private citizens and businesses being caught in the middle.

The enthusiastic use and abuse of Interpol red notices to harass and detain enemies of the state is a well-worn path for several countries. The checks and balances of a court hearing to review the merit of the warrant is only of value if the judge in question rules without maintaining one eye on bilateral relations.



Mitigations and Solutions

Resolving cases of malicious detention is usually complex, involves multiple governments and takes time. There are a number of key issues companies and individuals should consider to help mitigate the risk:

Risk assessments:

Many companies have policies and procedures to help understand the criminal kidnap and ransom threat, their potential vulnerabilities, and the current risk. A bespoke process for malicious detention may be required for some companies operating in higher risk sectors.

Local knowledge and awareness:

Understanding activities which may be legal at home but are illegal in a third country is an important first step in helping to avoid detention. Informing staff about how to behave is both a duty and also a low-cost mitigation. Thailand's lèse-majesté laws may appear archaic and unusual and therefore seem unlikely to be upheld, but the punishment for transgression is immediate and severe.

Standards:

Not every detention of a foreign national is politically motivated. There are numerous cases of bribery and cutting of corners where firms operating in new markets have sought to gain an advantage and have been caught out. Understanding who has been arrested legitimately (prisoner) vs arbitrarily (hostage) may take time to come out. Rigorous application of laws and processes, even in unregulated and emerging markets where competitors may not uphold such standards, is vital.

Legal process:

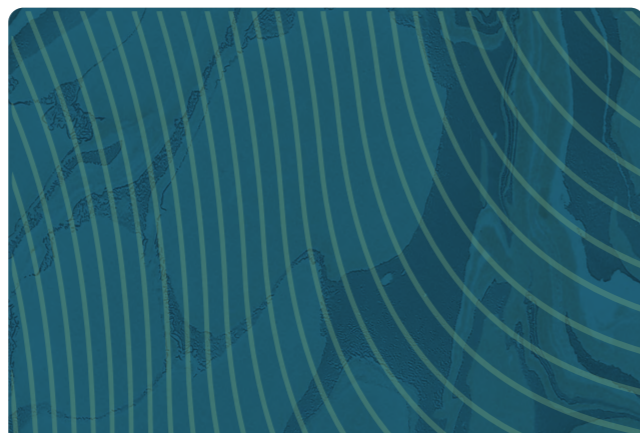
However flawed, a legal process underpins detention. Good, consistent legal representation with local knowledge will be vital in helping ascertain where an individual sits on the detainee to hostage path and securing some minor concessions regarding detention conditions.

Time:

These issues are rarely resolved quickly. The detainee and their family will require measured, consistent, expert support over a long period. This can be expensive.

Transfer of risk:

Kidnap and Ransom (K&R) insurance policies should be considered as part of a robust risk management approach to the threat of malicious detention. While often associated purely with the crime of kidnapping, these policies can play a very powerful role in supporting families and corporates caught up in the kind of scenarios touched on in this article.



Conclusion

While malicious detention often involves high levels of government attention and focus, private sector organisations can often feel disempowered and face severe financial implications, especially around legal fees when negotiating for release. Equally, there are often cases which don't attract the high-level of geopolitical attention highlighted above.

Even when cases do fall into the realm of government negotiations, there is a need for structure and management to the situation, as well as vital support to the families of the individual or individuals who have been maliciously detained.

About Samphire Risk

Samphire Risk was formed in 2021 and is headed up by Charlie Hanbury, one of the world's leading experts on malicious risks. Together with Mark Skinner and Hannah Catchpole, Charlie's aim is to build a world-leading independent Managing General Agent (MGA) focused on insuring people and companies against hostile actions. Through an expert team and exceptional technology, Samphire aims to create world-class products that insure against extortive crime, hostage-taking and kidnap; terrorism in all its guises; travel into, and within, insecure countries and locations.

To find out more about Samphire please visit our website www.samphirerisk.com or follow us on LinkedIn.

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