



The Islamic Republic of Iran: Multidisciplinary
Analyses of its Theocracy, Nationalism, and
Assertion of Power

Department of History

11-8-2009

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Recommended Citation

Marcus, K. L. (2009). Iranian Incitement to Genocide. Scholars For Peace In The Middle East Conference 2009.

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Iranian Incitement to Genocide

Kenneth L. Marcus¹

Over the last several years, Iranian President Mahmoud Ahmadinejad was repeatedly proclaimed that Israel “should be wiped off the map.”² This has not been empty rhetoric, or political posturing, or a figure of speech. Rather, Ahmadinejad has directly and publicly urged the annihilation of the people of Israel. What gives weight and urgency to his words is the steady accumulation of nuclear capabilities in Iran. Ahmadinejad has proclaimed Iran to be a “nuclear state,” announcing that it has attained the capacity to enrich uranium to weapons grade if it chooses to do so.³ This paper argues that Ahmadinejad’s conduct, taken in context, constitutes the crime of incitement to genocide under international law.

I. Background: Ahmadinejad’s Threats

Ahmadinejad’s pronouncements regarding Israel frequently fall into the two categories that genocide scholars characterize as hallmarks of mass-murderous incitement: dehumanization and demonization. As Daniel Jonah Goldhagen has explained in his recent treatise on genocide, dehumanization impugns the target population with impaired biological capacity, while demonization charges them with a depraved moral condition.⁴ The former has been used, for example, against Slavs, Roma and the mentally ill, while the latter has been used against gay men and communists.⁵ The mass destruction of Jewry has characteristically been accompanied by both practices in virulent combination.⁶ This was the ideological means by which

the extermination of Jewry was attempted in Nazi Germany, and it is replicated today in Ahmadinejad's Iran.

Genocidal "dehumanization" has been defined as disseminating the view "that other people inherently lack qualities fundamental to being fully human in the sense of deserving moral respect, rights and protection."⁷ In a textbook example of this practice, Ahmadinejad lectured in 2006 that Israelis "are like cattle, nay, more misguided."⁸ Dehumanization is an important component of any incitement to genocide, because it prepares the dominant population to undertake actions that would normally be condemned. As Goldhagen has explained, the dehumanized subject population "is said to lack human capacities or powers and, as a definitional matter, do not need to be treated as humans."⁹

Genocidal "demonization" has been defined as the dissemination of a certain belief "about other people's moral quality, including their moral intentions [which] holds the people to be, literally or figuratively, demonic, morally evil."¹⁰ Again, Ahmadinejad has applied textbook examples of genocidal demonization, attributing to Jews a literally diabolical evil and criminality. "The Zionists are the true manifestation of Satan," he has lectured.¹¹ "Next to them," he has said, "all the criminals of the world seem righteous."¹² In attributing both subhuman and criminal characteristics to Jewry, Ahmadinejad reiterates the Nazi racial ideology: "All Jews were 'criminals,' in other words demonized, and all Jews were 'subhumans,' in other words dehumanized."¹³

Following a pattern of other world historical figures responsible for genocide, Ahmadinejad predicted in 2008 the consequences for the target people: “Thanks to God, your wish will soon be realized, and this germ of corruption will be wiped off the face of the world.”¹⁴ As if to dispel any ambiguities about his intentions, he paraded a Shahab-3 missile through the streets of Tehran in 2008 with the message, “Israel must be wiped off the map.”¹⁵ As historian Robert Wistrich has observed, “[t]here is a compulsive annihilationist dimension to these declarations.”¹⁶

II. Analysis: The Case for Prosecution

A. The Elements of Incitement to Genocide

There is legal significance to Ahmadinejad’s murderous charges. Several prominent international human rights lawyers and jurists have urged that Ahmadinejad be prosecuted for indictment to genocide. Notably, the Jerusalem Center for Public Affairs published in 2006 a 69-page document, endorsed by holocaust activist Elie Weisel and Ambassador Dore Gold, among others, titled, “Referral of Iranian President Ahmadinejad on the Charge of Incitement to Commit Genocide.”¹⁷

Nevertheless, some legal commentators have observed that it is “highly unlikely” that Ahmadinejad will be held accountable before either the International Criminal Court or the International Court of Justice.¹⁸ If this is the case, it is only because Ahmadinejad’s conduct has not been sufficiently scrutinized, and because the United Nations’ politics is so strongly biased against the Jewish State.

Other prominent commentators, including former Canadian Justice Minister Irwin Cotler and Harvard Law Professor Alan Dershowitz, argue that Ahmadinejad should be prosecuted under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention), the Rome Statute of the ICC, and universal jurisdiction statutes.¹⁹ Australian Prime Minister Paul Rudd has made similar arguments. Most importantly, perhaps, the U.S. House of Representatives passed a non-binding resolution in 2007 by a vote of 411 to 2, urging the U.N. Security Council to prosecute Ahmadinejad for incitement.²⁰ University of North Dakota Law professor Gregory Gordon has addressed these proposals in a full-length academic legal treatment in *Criminal Law & Criminology* (spring 2008).²¹ He concludes that it would be appropriate to try Ahmadinejad before the ICC. Moreover, he states that the charges should extend beyond incitement to genocide, and include the charge of crimes against humanity.

The Genocide Convention criminalizes, “direct and public incitement to commit genocide.”²² The Convention defines “genocide” to include, for example, killing, causing serious bodily or mental harm, or inflicting conditions calculated to effect the physical destruction of a group, with “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”²³ Similarly, the Rome Statute of the ICC also prohibits direct and public incitement to commit genocide.

Interpreting these statutes is difficult, particularly because there have been few cases applying their terms. However, since pertinent portions of the International Criminal Tribunal for Rwanda (ICTR) statute mirror the Convention and the Rome

Statute, the ICTR's cases have been viewed as persuasive authority for interpreting these authorities.²⁴ From the handful of major cases applying the ICTR statute, Gordon has demonstrated that an actionable incitement must meet certain criteria. First, the statements in question must be publicly uttered.²⁵ Second, they must be uttered in a sufficiently direct manner.²⁶ Third, it must be determined that what was stated can be viewed as actual incitement rather than protected speech.²⁷ Finally, the statement must have an underlying intent to provoke mass-murder.²⁸

B. Applying the Elements to Ahmadinejad

Do Ahmadinejad's attacks upon Israel qualify? There is no question that Ahmadinejad's statements have been sufficiently public. He has repeatedly, bluntly, and before large audiences urged Israel's annihilation. The question is whether Ahmadinejad's invective has been sufficiently directed at the Jewish people. The other question is whether the statements in question are intended to spur murderous action rather than merely to rattle his proverbial sabers.

1. The Directness Question

In an influential article published in the spring 2008 volume of the *Virginia Journal of International Law*, Benesch argued that Ahmadinejad has not committed incitement to genocide. Condemning Ahmadinejad's speeches as "despicable," Benesch nevertheless argues that, "[i]f his statements refer to the state of Israel or the Israeli

population rather than to another group of Jews... it seems that he did not commit incitement to genocide, since one cannot commit genocide against a state.”²⁹

Benesch is a thoughtful scholar-activist, but her argument misses the point that Ahmadinejad’s incitement is directed not only at Israel as a state, but also at the Jewish people in a particular corporate form. Under international law, it does not matter if genocidal inducement is concealed by euphemism or indirection.

As William Schabas, director of the Irish Centre for Human Rights, has observed, “The history of genocide shows that those who incite the crime speak in euphemisms.”³⁰ If Ahmadinejad’s audience understand that he is speaking about Jews, that is sufficient. Gordon explained that the Rwanda Tribunal “held that the ‘direct’ element of incitement should be viewed in the light of its cultural and linguistic content.”³¹ Thus, while a particular speech may be perceived as "direct" in one country, it would not be considered as such in another country.³² So it would be necessary to conduct a case-by-case factual inquiry to determine "whether the persons for whom the message was intended immediately grasped the implication thereof."³³

For example, after Rwanda’s Taba Commune mayor Jean-Paul Akayesu told his audience to kill the “Inkotanyi,” the International Criminal Tribunal for Rwanda relied upon both fact witnesses and linguistics experts to confirm that in fact he meant Tutsis.³⁴ Indeed, given the frequency with which Rwandan murderers relied upon euphemisms; the ICTR insisted on piercing linguistic evasions to infer the targeted group from socio-political context. As Gordon

has painstakingly shown, this was the ICTR's method in sentencing Belgian national Georges Ruggiu, whose radio broadcasts used the term "Inyenzi" [cockroach] to designate Tutsis for extermination.³⁵

Ahmadinejad's audience understands that he speaks about annihilating Israel, he means the annihilation of the Jewish state. With this in mind, the Jerusalem Center for Public Affairs published an analysis by scholar Joshua Teitelbaum on the reception of Ahmadinejad's anti-Israeli remarks to Iranians. The report concluded that Iranians understand Ahmadinejad to be calling for the destruction of both Jews and Israel.³⁶ As Hassan Nasrallah, Secretary General of the Iranian-sponsored Hizbullah explains, "if they [the Jews] all gather in Israel, it will save us the trouble of going after them worldwide," he proclaimed in 2006.³⁷ He calls for, "an open war until the elimination of Israel and until the death of the last Jew on earth."³⁸

2. The Effectiveness Question

Benesch's faulty argument also posits that if Ahmadinejad's speeches "were directed at the Iranian public, it seems that he did not commit incitement to genocide ... since his civilian audience does not have the capacity to commit genocide against the population of Israel." This argument assumes that to be considered incitement, inflammatory rhetoric requires an audience primed to carry out its directives. Benesch posits that someone who stands up today in Times Square and shouts out the most

inflammatory lines from Rwanda's infamous 1992 or 1994 anti-Tutsi broadcasts would not provoke genocide and would not be guilty of incitement.³⁹

Her argument, however, misstates the function of Ahmadinejad's anti-Israel proclamations. Indeed, they are aimed at developing a public consensus to provide "legitimacy" for genocidal state actions, including the use of weapons of mass destruction, against the Jewish people. First, Ahmadinejad, as president of a repressive regime, has significant influence over his audience. Second, his audience has previously been subjected to hate speech. Indeed, Ahmadinejad is not ranting in the middle of Times Square. Rather, he is instigating an audience that has been fed a steady diet of anti-Israel and anti-Semitic rhetoric that extends at least to the founding of the Islamic Republic in 1979.⁴⁰ For example, former president Akbar Hashemi Rafsanjani happily observed in 2001 that "even one atomic bomb inside Israel will wipe it off the face of the earth....." Indeed, three successive Iranian presidents have called for the annihilation of Israel and the mass-murder of its people.⁴¹ Today, the elimination of Israel has been described as a "consensual goal" of the Iranian regime, uniting its otherwise clashing factions.⁴² In this context, Ahmadinejad is inciting an audience which has been long primed to comply with lethal intentions. Thus, as Wistrich has argued, "Ahmadinejad's speeches can no more be considered as empty threats than the words of Adolf Hitler on January 30, 1939, prophesying that a new world war would bring about 'the annihilation of the Jewish race in Europe.' The same genocidal intent is plainly there."⁴³

Finally, Ahmadinejad uses what genocide scholars call “accusation in a mirror,” a technique previously refined by Nazi, Serbian, and Hutu propagandists.⁴⁴ A Rwandan propaganda theorist, for example, counseled his co-conspirators to, “impute to enemies exactly what they and their own party are planning to do.”⁴⁵ The International Criminal Tribunal for the Former Yugoslavia observed this phenomenon in Serbia as well: “In articles, announcements, television programs and public proclamations, Serbs were told that they needed to protect themselves from a fundamentalist Muslim threat... that the Croats and Muslims were preparing a plan of genocide against them.”⁴⁶ In a strikingly similar vein, Ahmadinejad has repeatedly accused Israel of the crimes that he appears eager to commit: “They have no boundaries, limits, or taboos when it comes to killing human beings.”⁴⁷ Accusation in a mirror.

III. CONCLUSION

In an overt reference to the Nazi Holocaust, the Genocide Convention is widely known as the “Never Again” Convention. But just what is it that the convention is intended to prevent? Given the prospect of nuclear capabilities, Ahmadinejad appears poised to eradicate the Jewish population of Israel, which is now approaching six million. Is there really any legal argument according to which the killing of six million Jews would not violate that agreement? And if the killing of six million Jews is precisely what the “Never Again” Convention was intended to combat, then how can the world turn its back on Ahmadinejad’s blunt incitements to do so? Irwin Cotler, who was involved as Minister of Justice in prosecuting the Rwandan incitement, has concluded “that the

aggregate of precursors of incitement in the Iranian case are more threatening than were those in the Rwandan one.”⁴⁸ The full name of the “Never Again” Convention is the “Convention on the *Prevention* and Punishment of the Crime of Genocide.” It is time for international institutions to take action to prevent unspeakable tragedy before it occurs rather than responding to it after the fact.

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² There has been, however, substantial debate over the translations of Ahmadinejad’s pronouncements. See, e.g., Ethan Bronner, *Just How Far Did They Go, Those Words Against Israel?*, N.Y. TIMES (Jun. 11, 2006) § 6, <http://www.nytimes.com/2006/06/11/weekinreview/11bronner.html>.

³ Alan Cowell and Michael Slackman, *Iran Controls Protests and Defies West on Nuclear Fuel*, N.Y. TIMES (Feb. 11, 2010), <http://www.nytimes.com/2010/02/12/world/middleeast/12iran.html>.

⁴ DANIEL JONAH GOLDHAGEN, *WORSE THAN WAR: GENOCIDE, ELIMINATIONISM, AND THE ONGOING ASSAULT ON HUMANITY* (2009) at 320.

⁵ *Id.* at 322.

⁶ *Id.* at 324.

⁷ *Id.* at 319.

⁸ Iranian President Ahmadinejad Addresses Rally & Warns the U.S. & England, 1229 Special Dispatch Series (Middle East Media Research Inst., Aug. 3, 2006), <http://www.memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP122906>.

⁹ See GOLDHAGEN, *supra* note 4 at 319.

¹⁰ *Id.*

¹¹ ROBERT S. WISTRICH, *A LETHAL OBSESSION: ANTI-SEMITISM FROM ANTIQUITY TO THE GLOBAL JIHAD* (2010) at 885.

¹² *Iranian President Ahmadinejad Addresses Rally & Warns the U.S. & England*, 1229 Special Dispatch Series (Middle East Media Research Inst., Aug. 3, 2006), <http://www.memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP122906>.

¹³ GOLDHAGEN, *supra* note 4 at 325 (emphasis deleted).

¹⁴ MEMRI TV, June 2, 2008, http://www.memritv.org/clip_transcript/en/1784.htm.

¹⁵ Irwin Cotler, *Iran’s Incitement to Genocide Can’t Be Treated as Bombast*, NATIONAL POST (Canada), <http://network.nationalpost.com/np/blogs/fullcomment/archive/2008/12/05/irwin-cotler-iran-s-incitement-of-genocide-can-t-be-treated-as-bombast.aspx>.

¹⁶ WISTRICH, *supra* note 11 at 885.

¹⁷ See Justus Reid Weiner *et al.*, Jerusalem Ctr. for Pub. Affairs, *Referral of Iranian President Ahmadinejad on the Charge of Incitement to Commit Genocide* (2006), <http://www.jcpa.org/text/ahmadinejad-incitement.pdf>. B’nai Brith Canada has also issued a proposed indictment. See David Matas *et al.*, B’nai Brith Canada, *Indictment of Iranian President Mahmoud Ahmadinejad for Incitement to Genocide against the Jewish People* (2007), <http://www.bnaibrith.ca/pdf/institute/IndictmentIranianPresidentMarch07.pdf>.

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- ¹⁸ See, e.g., Susan Benesch, *Vile Crime or Inalienable Right: Defining Incitement to Genocide*, 48 Va. J. Int'l L. 485, 527 (Spring 2008) (predicting that it is "highly unlikely" that such an indictment could be brought successfully before either the International Criminal Court or the International Court of Justice).
- ¹⁹ *The Danger of a Genocidal, Rights-Violating and Nuclear Iran: The Responsibility to Prevent Petition*, <http://content.liberal.ca/fe9cf988-49a0-42eb-9e11-2a512494abd7/pdf/2010-01-07-r2p-petition.pdf>
- ²⁰ H.R. Con. Res. 21, 110th Congress (2007) (enacted).
- ²¹ Gregory S. Gordon, *From Incitement to Indictment? Prosecuting Iran's President for Advocating Israel's Destruction and Piecing Together Incitement Law's Analytical Framework*, 98 J. CRIM. L. & CRIMINOLOGY 853, 920 (Spring 2008).
- ²² G.A. Res. 260(III), at 174, U.N. GAOR, 3rd Sess., Part I (A/810).
- ²³ Convention, Art. II, III.
- ²⁴ Gordon, *supra* note 21 at 869.
- ²⁵ *Id.* at 870.
- ²⁶ *Id.*
- ²⁷ *Id.*
- ²⁸ *Id.*
- ²⁹ Benesch, *supra* note 18. For an example of the article's influence, see, e.g., Julian Ku, *Australia Considers ICJ Genocide Case Against Iran*, OPINIOJURIS, May 17, 2008 (blog posting deferring to Benesch's analysis of this question) <http://lists.powerblogs.com/pipermail/opiniojuris/2008-May/002404.html>.
- ³⁰ William A. Schabas, *Mugesera v. Minister of Citizenship and Immigration*, [93 AM. J. INT'L L. 529, 530 \(1999\) \[hereinafter, "Schabas, Mugesera"\]](#). See also WILLIAM A. SCHABAS, GENOCIDE IN INTERNATIONAL LAW: THE CRIME OF CRIMES, 2d ed. (2009) at 331 (discussing the euphemism problem)
- ³¹ Schabas, *Mugesera*, *supra* note 30 at 557.
- ³² *Id.*
- ³³ *Id.* at 558.
- ³⁴ See *Prosecutor v. Akayesu*, Case No. ICTR 96-4-T, Judgement, at 673 (Sept. 2, 1998).
- ³⁵ Gordon, *supra* note 21 at 873.
- ³⁶ Joshua Teitelbaum, *What Iranian Leaders Really Say About Doing Away with Israel: A Refutation of the Campaign to Excuse Ahmadinejad's Incitement to Genocide*, Jerusalem Center for Public Affairs (2008), <http://www.jcpa.org/text/ahmadinejad2-words.pdf>.
- ³⁷ Elena Lappin, *The Enemy Within*, NY TIMES, May 23, 2004, at 15, sec. 2.
- ³⁸ Michael Rubin, *Nasrallah Urges Arabs to Evacuate Haifa*, NATIONAL REVIEW ONLINE, Aug. 9, 2006.
- ³⁹ Susan Benesch, *supra* note 18 at 494.
- ⁴⁰ Weiner *et al.*, *supra* note 17.
- ⁴¹ GOLDHAGEN, *supra* note 4 at 502.
- ⁴² WISTRICH, *supra* note 11 at 886.
- ⁴³ *Id.* at 893.
- ⁴⁴ Benesch, *supra* note 18 at 511.
- ⁴⁵ *Id.* at 494 (2008) (quoting Alison Des Forges, "Leave None to Tell the Story": Genocide in Rwanda 66 (1999)).
- ⁴⁶ *Prosecutor v. Tadic*, Case No. IT-94-1-T, Opinion and Judgment, P 91 (May 7, 1997).
- ⁴⁷ IRINN, MEMRI, Aug. 3, 2006.
- ⁴⁸ Irwin Cotler, *Iran's Incitement to Genocide Can't Be Treated as Bombast*, NATIONAL POST (Canada), <http://network.nationalpost.com/np/blogs/fullcomment/archive/2008/12/05/irwin-cotler-iran-s-incitement-of-genocide-can-t-be-treated-as-bombast.aspx>.