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State-Sanctioned Incitement to Genocide:

The Responsibility to Prevent

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Genocide is the most insidious and destructive threat known to humankind. It is the ultimate crime against humanity—the unspeakable crime whose name one should shudder to mention; a horrific and unspeakable act whereby state-sanctioned incitement transforms hatred into catastrophe.

Universal condemnation of genocide brought the international community together in 1948 to draft the *Convention on the Prevention and Punishment of the Crime of Genocide*,¹ thus signalling the world’s disdain for those who would perpetrate genocide in the strongest possible terms. To this day the *Genocide Convention* holds a unique place in international law. It is recognized as compelling and overriding law (*jus cogens*), articulating and establishing obligations owed by all members of the international community to all members of the international community (*obligatio erga omnes*).²

The objective of the Convention is as clear as it is compelling: that State Parties to the Convention are obliged to prevent genocide – the pinnacle of human criminality – and to punish those who orchestrate, carry out, advocate or perpetuate its destructive force.³ At Article 3(b), the Convention expressly prohibits direct and public incitement to genocide, demonstrating the international community’s recognition that incitement is both precondition to, and indicator of,

¹ Adopted by resolution 260 (III) A of the UN General Assembly, 9 December 1948 [the “*Genocide Convention*” or the “Convention”].

² See *Reservations to the Convention on Genocide*, Advisory Opinion: I.C.J. Reports 1951, p. 15, at p. 23. See also *Re Barcelona Traction, Light and Power Co. Ltd.*, I.C.J. Reports 1970, p. 3, at paras. 33-34.

³ Article 1 of the *Genocide Convention*, *supra* note 1.

genocide. The *Genocide Convention* thus articulates the intertwined principles of a *responsibility to prevent* and a *responsibility to punish* genocide.

Tragically, in the decades since that Convention was signed, the world has become witness to further genocides in the Balkans and in Rwanda, in addition to the genocide by attrition in Darfur, where the first genocide of the 21st century continues to this day. The ultimate horror of these unspeakable genocides is that they were preventable. Nobody could say that we did not know; we knew but we did not act.

Indeed, the enduring lesson of the Holocaust and the genocides since is that genocide occurs not simply because of the machinery of death but because of the state-sanctioned incitement to hate. It is this teaching of contempt, this demonizing of the “other”—this is where it all begins. As the Supreme Court of Canada recognized:

The repetition of the loathsome messages of Nazi propaganda led in cruel and rapid succession from the breaking of the shop windows of Jewish merchants to the dispossession of the Jews from their property and their professions, to the establishment of concentration camps and gas chambers. The genocidal horrors of the Holocaust were made possible by the deliberate incitement of hatred against the Jewish and other minority peoples.⁴

After the genocides in Rwanda and the former Yugoslavia, the International Criminal Tribunal for Rwanda (the “ICTR”) and the International Criminal Tribunal for the former Yugoslavia (the “ICTY”) were established to hold accountable those individuals who were responsible for these horrific human tragedies. These tribunals have echoed the words of the Supreme Court of Canada in recognizing that *genocide begins with words*: the founding statutes of both the ICTR and the ICTY make direct and public incitement to genocide punishable as an

⁴ See *R. v. Andrews*, [1990] 3 S.C.R. 870, 1990 CanLII 25 (S.C.C.), at p. 14 [cited to CanLII].

offense in its own right.⁵ Moreover, these statutes recognize the unique *jus cogens* and *obligation erga omnes* characteristics of the prohibition against genocide and its incitement by removing any possible head-of-state immunity for these crimes. Nonetheless, because such international tribunals are created to mete out justice once genocide has already occurred, they remain incapable of addressing genocidal threats before their destructive effects are wrought.

The preventative measures available through the *Genocide Convention* and the *Charter of the United Nations* are established in international law and ought not remain ignored in practice. Indeed, more than a half-century before the Security Council recognized the Responsibility to Protect (R2P) principle,⁶ the *Genocide Convention* had already confirmed a responsibility to prevent principle with respect to genocide.⁷

For these instruments of justice – and not after-the-fact prosecutions, however important they may be – are the ones that will save lives before they are taken. As the United Nations High Commissioner for Human Rights, Navanethem Pillay expressed, the *Genocide Convention* – along with the *Universal Declaration of Human Rights* – “grew out of the Holocaust, but we have yet to learn the lesson of the Holocaust, as genocide continues.”⁸ Indeed, the United Nations General Assembly was told bluntly, in September 2008:

The [Genocide] Convention was born out of the desire to prevent recurrence of genocide, yet it failed to achieve this purpose on several occasions thereafter. The rallying cry ‘Never again!’ can only be used so often before it loses credibility.⁹

⁵ *Statute of the International Tribunal for Rwanda*, at Article 2(3)(c). *Updated Statute of the International Criminal Tribunal for the former Yugoslavia*, at Article 4(3)(c).

⁶ See paragraph 4 of Resolution 1674 (2006), adopted by the Security Council at its 5430th meeting, on 28 April 2006.

⁷ *Supra* note 3.

⁸ “New UN rights chief stresses need to tackle discrimination, prevent genocide,” *UN News Centre*, 8 September 2008. Available at: <http://www.un.org/apps/news/story.asp?NewsID=27963&Cr=Pillay&Cr1=>

⁹ “Tackling impunity key to success of International Criminal Court – Liechtenstein,” *UN News Centre*, 29 September 2008. Available at: <http://www.un.org/apps/news/story.asp?NewsID=28348&Cr=General+Assembly&Cr1=debate&Kw1=tackling+impunity&Kw2=&Kw3=#>

In this context, the present article reviews the legal approaches to preventing genocide by addressing incitement to genocide, including: first, from an evidentiary perspective, the role that incitement plays in the genocide-fostering process is analyzed; second, from a juridical perspective, the mechanisms that exist in international law to take action against genocide are considered; third, specific legal principles and international and domestic jurisprudence confirming the specific evil – and criminality – of genocidal incitement are presented; and finally, the state-sanctioned incitement to genocide that emerges from contemporary Iran is provided as a case study in illegal hate speech—a case study that both highlights the impunity with which the legal prohibition on incitement to genocide is presently treated, and underscores the necessity to act.

Incitement to Genocide as a Component Part of the Genocidal Process

Genocide is a crime almost unfathomable in its cruelty and its scale. As defined in the *Genocide Convention*, “genocide” refers to five acts:¹⁰

- (a) Killing members of a group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on a group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within a group;
- (e) Forcibly transferring children of a group to another group.

As heinous as these acts are in themselves, the defining feature of genocide comes from its mental element: that the acts are “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”¹¹

¹⁰ Article 2 of the *Genocide Convention*, *supra* note 1.

¹¹ *Ibid.*

Genocide, then, is not at all indiscriminate. To the contrary, it is calculated. It involves the conscious and deliberate will to annihilate – to exterminate – a people.

As such, genocide is effectively impossible to perpetrate against victims that appear, to the *genocidaires*, as *human*—as moral entities deserving of life. Genocide scholar Helen Fein notes that potential victims of genocide must be seen in the minds of the *genocidaires* as beyond “the boundaries of the universe of obligation.”¹²

Moreover, for a genocide to be effectively carried out, this psychological element must be present in a sufficient number of people to actively perpetrate the physical acts of genocide, as well as a sufficient number of people to acquiesce in the genocide’s occurrence. It therefore is sensible to speak of a “genocidal process” through which a society’s capacity to engage in genocide is fostered. Genocide is not a spontaneous discrete act, as former US Secretary of State Madeleine Albright and former US Secretary of Defense William Cohen note:

Genocide is not the inevitable result of “ancient hatreds” or irrational leaders. It requires planning and is carried out systematically.¹³

In this context, addressing incitement to hatred as it leads into incitement to genocide – especially in its state-sanctioned form – becomes a form of genocide prevention. Albright and Cohen recently drafted a blueprint for American policymakers on preventing genocide in which they remark that both state-led discrimination and exclusionary ideology have been identified as factors associated with an increased risk of genocide or mass atrocities.¹⁴

Professor Gregory Stanton develops this idea even further in his analysis, devising a template of the eight stages of genocide. After identifying the initial steps of classifying the

¹² Helen Fein, *Accounting for Genocide* (New York: Free Press, 1979), at p. 33.

¹³ “Leadership key to preventing genocide”, Madeleine Albright and William Cohen, *CNN*, 10 December 2008. Available at: <http://www.cnn.com/2008/WORLD/europe/12/01/sbm.albright.cohen.commentary/>.

¹⁴ Madeleine Albright and William Cohen, *Preventing Genocide: A Blueprint for U.S. Policymakers*, 2008, at p. 25. Available at: <http://www.usmmm.org/conscience/taskforce/pdf/report.pdf>.

victim group as an “other” and developing a system to symbolize such difference, Prof. Stanton explains the transformative impact of demonization:

Classification and symbolization are fundamental operations in all cultures. They become steps of genocide only when combined with dehumanization. Denial of the humanity of others is the step that permits killing with impunity. The universal human abhorrence of murder of members of one’s own group is overcome by treating the victims as less than human. In incitements to genocide the target groups are called disgusting animal names – Nazi propaganda called Jews “rats” or “vermin”; Rwandan Hutu hate radio referred to Tutsis as “cockroaches.” The targeted group is often likened to a “disease”, “microbes”, “infections” or a “cancer” in the body politic.¹⁵

This insight – and the horrific history of genocide that testifies to its truth – has led former Secretary-General of the United Nations, Kofi Annan, to exhort:

We must attack the *roots of violence and genocide*. These are intolerance, racism, tyranny, and the dehumanizing public discourse that denies whole groups of people their dignity and rights.¹⁶

The former Secretary-General’s remarks underscore the fact that as offensive and inflammatory as intolerance, racism, tyranny and dehumanizing public discourse are, they also serve as warning signs—early indicators of a genocidal process that can still be stopped.

In this genocidal process, through stereotyping and singling-out, dehumanization and demonization, would-be victims of genocide are identified, segregated out and targeted. In the context of these precursors to genocide, genocidal incitement emerges almost as commonplace rather than offensive. The banality of evil is thus set in motion. In turn, the calls themselves become more and more inflammatory. The destruction of the victim population is made to seem natural—even pre-ordained.

¹⁵ Gregory Stanton, “The Eight Stages of Genocide,” first Working Paper (GS 01) of the Yale Program in Genocide Studies, 1998. Available at: <http://www.genocidewatch.org/8stages1996.htm>.

¹⁶ “Genocide is Threat to Peace Requiring Strong, United Action, Secretary-General tells Stockholm International Forum”, Press Release SG/SM/9126, 26 January 2004. Available at: <http://www.preventgenocide.org/prevent/UNdocs/KofiAnnanStockholmGenocideProposals26Jan2004.htm>. Emphasis added.

During the period that the genocidal incitement is ignored or dismissed as mere rhetoric, the would-be *genocidaires* exploit the opportunity to accumulate the means to carry out genocide. Indeed, as Prof. Stanton notes, the stage of dehumanization comes even before the *genocidaires* plan and organize the genocide. It is success during the stage of dehumanization that effectively empowers the *genocidaires* to continue the process:

Impunity breeds contempt for law, and emboldens genocidists, who can literally get away with murder.¹⁷

Despite the elaborate effort to orchestrate the genocide, would-be *genocidaires* are equally consistent in establishing a narrative that denies the intent or imminence of widespread destruction.¹⁸ Indeed, with all other conditions in place, the would-be *genocidaires* thus deny the reality that they have started down the road to genocide, implicitly recognizing that the international community which is outside the dehumanizing and demonizing process – the genocidal web of hate – would vehemently object to such genocidal intentions. Accordingly, the world finds itself duped into complicity until it is too late.

For the international community, the psychological effect of this protracted genocide-fostering process is that genocide never appears to be imminent. A false sense of security takes hold, as despite the objective warnings, it always feels as if no preventative action need be taken immediately. The would-be *genocidaires*' constant denials pray on this false hope, offering the world a reason to stand back. The seeds of hate, planted years ago, are ignored, sanitized or dismissed as unimportant, even though they will soon morph into tragedy; the physical threat of harm, which is proceeding apace, is dismissed as a fiction precisely because it has not yet materialized. Indeed, because the genocide has not occurred, the international community

¹⁷ *Supra* note 15.

¹⁸ Prof. Stanton explains that “[e]very genocide is followed by denial:” see *ibid.* The events in Darfur, however, where the horror of genocide has been drawn out for over five years under the world’s watch, confirm that denial does not only take place after the genocide is over.

continues to proclaim there is no genocide—thus ignoring the genocidal path that has been embarked upon and the responsibility to prevent before it is too late.

It is during this genocide-fostering period that the possibility of genocide transforms into reality. After this time frame has passed, the only remaining step is for the tragedy to actually unfold. Accordingly, it is during this developmental stage that the international community must learn to act. Solutions short of military intervention, once the genocide-fostering process nears an end, will be almost impossible to implement.¹⁹

Preventing Genocide in International Law

After 60 years, the *Genocide Convention* remains the bedrock international legal treaty on preventing genocide. The First Article of the Convention attaches legal significance to the moral imperative of preventing genocide by stating:

The Contracting Parties confirm that *genocide*, whether committed in time of peace or in time of war, *is a crime under international law which they undertake to prevent and to punish.*²⁰

The *Genocide Convention* thus declared that the international community could no longer acquiesce in genocide. It expressly imposed the obligation on its signatories to take action to prevent genocide. As then High Commissioner for Human Rights Louise Arbour stated:

[U]nder the Genocide Convention and its norms, which have been incorporated into international customary law, *States have a duty to prevent genocide.*

[...]

*[T]he prevention of genocide is a legal obligation, and it is a justiciable obligation that one State effectively owes to the citizens of another State, outside its own territory.*²¹

¹⁹ As Prof. Stanton states, once the preparation stage is over, “[e]xtermination whether carried out by governments or by patterned mob violence, can only be stopped by force:” see *ibid.*

²⁰ Emphasis added.

The effect of Article 1 extends beyond even the impressive list of State Parties to the Convention itself. Indeed, the preventative purpose of Article 1 has been elevated to a peremptory norm of international law – *jus cogens* – with the effect that no State, whether signatory to the *Genocide Convention* or not, may ignore its mandatory nature.²²

The obligation to take action to prevent genocide is also recognized as an obligation *erga omnes*: it is a responsibility owed to all members of the international community.²³ The combination of the *jus cogens* and *erga omnes* principles implies that the obligation to take action to prevent genocide in international law is overriding. Every State must prevent genocide, it must do so on behalf of every potential victim, and every State in the community of nations can hold its neighbours to account for their failure to join in upholding this obligation.

The International Court of Justice has recently explained that the “obligation on each contracting State to prevent genocide is both normative and compelling.”²⁴ It elaborated that this obligation means that State parties must “employ all means reasonably available to them, so as to prevent genocide so far as possible.”²⁵ Further, this obligation – “and the corresponding duty to act” – will arise not simply when genocide is on the cusp of materializing, but rather “at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed.”²⁶

²¹ “The Responsibility to Protect as a Duty of Care in International Law and Practice”, United Nations High Commissioner for Human Rights Louise Arbour (address delivered at Trinity College, Dublin, 23 November 2007). Available at:

<http://www.unhchr.ch/hurricane/hurricane.nsf/0/5F1298CB9E6043BEC125739C0058FB02?opendocument>.

²² See *Reservations to the Convention on Genocide*, Advisory Opinion: I.C.J. Reports 1951, p. 15, at p. 23. See also *Droit international public*, 3rd ed., J.-Maurice Arbour (Cowansville, Quebec: Éditions Yvon Blais, 1997), at p. 36.

²³ *Re Barcelona Traction, Light and Power Co. Ltd.*, I.C.J. Reports 1970, p. 3, at paras. 33-34.

²⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Case no. 91, International Court of Justice (26 February 2007), at paras. 427.

²⁵ *Ibid.* at para. 430.

²⁶ *Ibid.* at para. 431.

The obligation to prevent genocide in the *Genocide Convention* dovetails with more recent international efforts to confirm the responsibility that all States have in the family of nations. The R2P movement, for instance, moves States away from the absolute paradigm of state sovereignty and towards a more nuanced one that recognizes their obligations to their own populations and, more generally, to those at risk of mass-atrocity crimes elsewhere.²⁷

United Nations Secretary-General Ban Ki-moon describes R2P as being “the obligation accepted by all States to act collectively, through the Security Council, when a population is threatened with genocide, ethnic cleansing or crimes against humanity.”²⁸ Indeed, by its reference to the 2005 World Summit Outcome Document, the Security Council has confirmed not only the responsibility of States to take action to prevent genocide, but also its own responsibility to prevent the incitement that is a condition and indicator of genocide:

Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. *This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means.* We accept that responsibility and will act in accordance with it. *The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.*²⁹

The responsibility to protect is particularly compelling and accentuated where the danger of indifference and inaction is greatest – as in the case of genocide – and where the probability of the danger materializing is most pronounced. As the leading expert on the subject, Gareth Evans, has explained, a true “R2P situation” is one “where genocide, or ethnic cleansing, or other crimes against humanity, or war crimes were either actually occurring or could foreseeably occur at

²⁷ See Gareth Evans, “A Strong and Principled Basis for Response,” *Globe and Mail*, 29 November 2008. Available at: <http://www.crisisgroup.org/home/index.cfm?id=5795&l=1>.

²⁸ Secretary-General Ban Ki-moon, SG/SM/11495, AFR/1674, 4 April 2008. Available at: <http://www.un.org/News/Press/docs/2008/sgsm11495.doc.htm>.

²⁹ Referenced in S/RES 1674 (2006). Emphasis added.

some time in the future – immediate, medium term or long term – unless appropriate preventive measures are taken.”³⁰

The responsibility to prevent genocide is therefore underpinned not only by the text of the *Genocide Convention* – itself elevated to a *jus cogens* norm of international law – but also by the emerging R2P doctrine as endorsed by the Security Council. Yet the problem in preventing genocide has never been the argument that this obligation does not exist; it has been the practical difficulty in convincing State actors to respond to their acknowledged legal and moral imperative. For that reason, the corpus of international law is infused with jurisprudence detailing situations of genocidal incitement in the context of genocidal murder—but is silent on the application of these anti-incitement principles as mechanisms of prevention.

Incitement to Genocide in International Law

The legal basis for prohibiting and prosecuting incitement to genocide in international law is well-established. True to its ideal of both preventing and punishing genocide, the *Genocide Convention* was the first international treaty to prohibit “[d]irect and public incitement to commit genocide.”³¹

Notably, the unqualified wording of the Convention makes it clear that direct and public incitement to genocide is punishable whether or not it can be shown to have caused the commission of genocide. This wording was specifically deliberated upon by the drafters of the Convention and accords with the preventative purpose elaborated in Article 1 thereof. The international community does not need to wait for actual genocide to transpire before taking

³⁰ Gareth Evans, “Preventing Mass Atrocities: Making the Responsibility to Protect a Reality,” keynote address to the United Nations University/International Crisis Group Conference on *Prevention of Mass Atrocities: From Mandate to Realisation*, held in New York, 10 October 2007. Available at: <http://www.crisisgroup.org/home/index.cfm?id=5116&l=1>.

³¹ Article 3 of the *Genocide Convention*, *supra* note 1.

action to respond to its warning signs, including incitement.³² The crime of “incitement” therefore contrasts specifically with “instigation” in international law, the latter being punishable only when it leads to the actual commission of the offense intended by the instigator.³³

Direct and public incitement to genocide has formed the basis of criminal indictments at the ICTR, pursuant to Article 2(3)(c) and 6(1) of the ICTR Statute, and the tribunal’s treatment of these cases is largely responsible for building the edifice of modern international legal jurisprudence on the subject.³⁴ This jurisprudence emphasizes the gravity with which this offence is to be treated, even if there is no evidence that the incitement led to any loss of life. The mere prospect of genocide, as intended by the inciter, suffices to confirm the dire nature of the crime:

[G]enocide clearly falls within the category of crimes so serious that direct and public incitement to commit such a crime must be punished as such, even where such incitement failed to produce the result expected by the perpetrator.³⁵

The foundational trial decision in the *Akayasu* case³⁶ – the origin of the above quote – considered the charge of incitement to genocide alleged against Jean-Paul Akayasu, a commune bourgmestre (equivalent to a mayor) and former teacher in Rwanda. On April 19, 1994, Akayasu led a gathering of over 100 people assembled around the dead body of a young Hutu. He urged the population to unite in order to eliminate the Tutsi, which he referred to using a derogative term and calling them the sole enemy. Akayasu even read out a list of names of individuals,

³² See *supra* note 26.

³³ See *Nahimana, Barayagwiza and Ngeze v. Prosecutor*, Case No. ICTR-99-52-A (Appeals Chamber), 28 November 2007, at para. 678. See also Wibke K. Timmerman, “Incitement in International Criminal Law” in *International Review of the Red Cross*, vol. 88, no. 864, December 2006, at pp. 832-840.

³⁴ Note, however, that the concept of punishing those who engage in direct and public incitement to genocide predates the ICTR significantly. See, e.g., the case of Julius Streicher, Nuremberg Proceedings, Vol. 22, at 502.

³⁵ *Prosecutor v. Akayasu*, Case no. ICTR-96-4-T, Judgment (Trial Chamber), 2 September 1998, at para. 562.

³⁶ The *Akayasu* trial judgment was affirmed on appeal, 1 June 2001. The Trial Chamber decision remains a cornerstone precedent in international incitement law: see, e.g., *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100 [*Mugesera*], at paras. 84, 86 and 88; *Prosecutor v. Bikindi*, Case no. ICTR-01-72-T, Judgment (Trial Chambers), 2 December 2008 [*Bikindi*], at para. 387.

whom he identified as being accomplices of the Rwandan Patriotic Front (which defended the Tutsi).

In analyzing the crime of incitement to genocide, the trial chamber specifically noted the role that such speech plays in the genocide-fostering process:

At the time the Convention on Genocide was adopted, the delegates agreed to expressly spell out direct and public incitement to commit genocide as a specific crime, in particular, *because of its critical role in the planning of a genocide*, with the delegate from the USSR stating in this regard that, “It was impossible that hundreds of thousands of people should commit so many crimes unless they had been incited to do so and unless the crimes had been premeditated and carefully organized.” [...] ³⁷

The ICTR found Akayesu guilty of inciting to genocide and, in so doing, elaborated three important dimensions to the crime of incitement to genocide: the *mens rea* element, the “public” element, and the “directness” element. Hateful speech not satisfying these elements, though potentially heinous and inflammatory, is not considered illegal under international law.

The *mens rea* element of the crime immediately distinguishes it from protected speech. Indeed, the mental component of incitement to genocide alone suffices to ensure that legitimate expression will not be caught by the prohibition. The Trial Chamber explained that

The *mens rea* required for the crime of direct and public incitement to commit genocide lies in the intent to directly prompt or provoke another to commit genocide. It implies a desire on the part of the perpetrator to create by his actions a particular state of mind necessary to commit such a crime in the minds of the person(s) he is so engaging. That is to say that *the person who is inciting to commit genocide must have himself the specific intent to commit genocide*, namely, to destroy, in whole or in part, a national, ethnical, racial or religious group, as such. ³⁸

The “public” element of the speech is deduced in large part from the forum in which the comments are aired. The Trial Chamber thus referred to a line of authority that interpreted “public” to refer to any comments spoken in a public place, as well as the International Law

³⁷ *Supra* note 35 at para. 151. Emphasis added.

³⁸ *Ibid.*, at para. 560. Emphasis added.

Commission characterization of “public incitement” as occurring where there is “a call for criminal action to a number of individuals in a public place or to members of the general public at large by such means as the mass media, for example, radio or television.”³⁹

Finally, the “directness” element is satisfied where the incitement “specifically provoke[s] another,” as contrasted with “mere vague or indirect suggestion.”⁴⁰ The Trial Chamber took care to emphasize that the incitement must be viewed “in the light of its cultural and linguistic content,” and that it would determine this question by “focusing mainly on the issue of whether the persons for whom the message was intended immediately grasped the implication thereof.”⁴¹

Later case law also stressed the need to understand the impugned comments in context in order to determine whether they constitute “incitement” or not. The ICTR has explained that context alone can define the line between hateful rhetoric and illegal incitement:

A statement of ethnic generalization provoking resentment against members of that ethnicity would have a heightened impact in the context of a genocidal environment. It would be more likely to lead to violence. At the same time the environment would be an indicator that incitement to violence was the intent of the statement.⁴²

Accordingly, just as incitement contributes to the genocidal process, the existence of this larger process will inform the legal analysis of the incitement.

In the *Ruggiu* case,⁴³ context was analyzed for a slightly different purpose—not to understand its intended impact, but simply to understand its intended meaning. This inquiry was necessary because of the accused’s use of euphemism. In rendering its decision after Georges

³⁹ *Ibid.*, at para. 556.

⁴⁰ *Ibid.*, at para. 557.

⁴¹ *Ibid.*, at paras. 557-558.

⁴² *Prosecutor v. Nahimana, Barayagwiza and Ngeze*, Case no. ICTR-99-62-T, Judgment and Sentence, 3 December 2003 (the “*Media Case*”), at para. 1022. The Appeals Chamber affirmed the importance of context in evaluating incitement in its judgment in the same case on 28 November 2007, at paras. 697, 701 and 703.

⁴³ *Prosecutor v. Ruggiu*, Case no. ICTR-97-21-I, Judgment and Sentence, 1 June 2000.

Ruggiu pled guilty to incitement to genocide, the Trial Chamber explained not only how Ruggiu's phrases were spoken, but more importantly, how they were understood. Notably, the tribunal alluded to how the meaning of phrases could change over time:

The accused acknowledges that the widespread use of the term “*Inyenzi*” conferred the de facto meaning of “persons to be killed”. Within the context of the civil war in 1994, the term “*Inyenzi*” became synonymous with the term “*Tutsi*”. The accused acknowledges that the word “*Inyenzi*”, as used in a socio-political context, came to designate the Tutsis as “persons to be killed”.

[...]

The accused admits that as part of the move to appeal for, or encourage, “civil defence”, he made a public broadcast to the population on several occasions to “go to work”. The phrase “go to work” is a literal translation of the Rwandan expression that Phocas Habimana, Manager of the RTLM, expressly instructed the accused to use during his broadcasts. With time, this expression came to clearly signify “go fight against members of the RPF and their accomplices.” With the passage of time, the expression came to mean, “go kill the Tutsis and Hutu political opponents of the interim government.”⁴⁴

The principle that euphemism cannot exculpate a *genocidaire* was again affirmed through the tribunal's reasoning in the *Media Case*, as it became known.⁴⁵ In this decision, the ICTR elaborated the analysis to pursue in determining whether hateful speech regarding race, ethnicity, and nationality, falls under the banner of legitimate expression or criminal advocacy. Professor Gregory Gordon has distilled from the tribunal's decision four specific elements useful in analyzing allegedly inciteful content: purpose, text, context, and the relation of the speaker to the subject.⁴⁶

⁴⁴ *Ibid.*, at paras. 44(iii)-(iv).

⁴⁵ *Supra* note 42.

⁴⁶ See Gregory Gordon, “From Incitement to Indictment?: Prosecuting Iran's President for Advocating Israel's Destruction and Piecing Together Incitement Law's Emerging Analytical Framework,” (2008) 98:3 *Journal of Criminal Law & Criminology* 853, at 874-878.

With regard to purpose, the determining factor is whether the intent “in publicly transmitting the material was of a *bona fide* nature (e.g. historical research, the dissemination of news and information, the public accountability of government authorities).”⁴⁷ For instance, the tribunal reviewed case law to the effect that when an interviewer takes care to distance himself from the remarks of his interview subject, it operates as an indicator that the purpose in question was to disseminate news rather than to propagate racist views.⁴⁸

With regard to text, the ICTR referred back to the *Faurisson* case,⁴⁹ a decision involving a Holocaust denier in which the United Nations Human Rights Committee considered the meaning of the term “incitement” at Article 20(2) of the *International Covenant on Civil and Political Rights*.⁵⁰ The ICTR noted how the Committee focused on the use of the term “magic gas chamber” in determining that Faurisson was motivated by anti-Semitism and not the pursuit of historical truth.⁵¹

Examination of context – the importance of which has already been discussed – involves analysis of how such language is used in the immediate as well as the historical context, operating to shed light on the words uttered. On this point, the tribunal referred to jurisprudence from the European Court of Human Rights emphasizing how a general statement about massacres needs to be understood in the context of the massacres taking place at that time. The ICTR quoted the European Court’s statement that, understood as such, the speaker’s words were “likely to exacerbate an already explosive situation...”⁵²

⁴⁷ *Supra* note 42, at para. 1001.

⁴⁸ *Ibid.* The case being referenced by the Trial Chamber is the *Jersild* case, decided by the European Court of Human Rights: *Jersild v. Denmark*, 19 Eur. Ct. H.R. 1, 27 (1995).

⁴⁹ *Faurisson v. France*, CCPR/C/58/D/550/1993 (1996).

⁵⁰ 999 U.N.T.S. 171 (1966).

⁵¹ *Supra* note 42, at para. 1001.

⁵² *Ibid.*, at para. 1004. The case being referenced by the Trial Chamber is the *Zana* case: *Zana v. Turkey*, ECHR, 1997-VII, no. 57.

Prof. Gordon's fourth factor – the relationship of the speaker to the subject – is based on the Trial Chamber's recognition that "special protections" have been developed in jurisprudence to take into account "the power dynamic inherent in the circumstances that make minority groups and political opposition vulnerable to the exercise of power by the majority or by the government."⁵³ While the Appeals Chamber appeared lukewarm to the formulation of a rule based on this principle as such,⁵⁴ it did ultimately agree with the Trial Chamber's overall analysis.⁵⁵

Two final ICTR decisions on incitement to genocide are noteworthy in the context of the present review. The *Kambanda* case⁵⁶ implicated the leader of Rwanda's caretaker government during the genocide (Jean Kambanda) and stands as a testament to the principle that nobody – not even heads of State – is above the law against incitement to genocide. Indeed, Kambanda's conviction marked the first conviction in history of a head of State for this crime. Kambanda pled guilty to directly and publicly inciting genocide (among other crimes); the acts for which he was convicted on this charge included encouraging a radio station on-air to continue inciting violence and calling it an "indispensable weapon in the fight against the enemy," congratulating individuals who already killed victims, and speaking before different audiences encouraging massacre.

One judgment that is presently on appeal – the *Bikindi* decision⁵⁷ – marks a more recent application of incitement principles by the ICTR. Simon Bikindi was a popular singer in Rwanda

⁵³ *Supra* note 42, at para. 1008.

⁵⁴ "The Appeals Chamber has a certain difficulty with these paragraphs. It notes, on the one hand, that the relevant issue is not whether the author of the speech is from the majority ethnic group or supports the government's agenda (and by implication, whether it is necessary to apply a stricter standard), but rather whether the speech in question constitutes direct incitement to commit genocide. On the other hand, it recognises that the political or community affiliation of the author of a speech may be regarded as a contextual element which can assist in its interpretation:" *supra* note 42, at para. 713.

⁵⁵ *Ibid.*, at para. 715.

⁵⁶ *Prosecutor v. Kambanda*, Case no. ICTR 97-23-S, Judgment and Sentence, 4 September 1998.

⁵⁷ *Supra* note 36.

and his charge of direct and public incitement to genocide was based both on his songs, which the prosecution argued in themselves satisfied the elements of the crime, and on two speeches he gave over a vehicle's loudspeaker while travelling. Applying the jurisprudential principles noted above, and on consideration of the evidence, the Trial Chamber determined that Bikindi's songs were not illegal incitement *per se*, but his two speeches were. Interestingly, the Trial Chamber elaborated how it was able to reach this conclusion despite Bikindi's positive personal relationships with Tutsi:

In reaching its conclusion, the Chamber has considered the evidence that Bikindi's second wife was Tutsi, and that he lived and worked with Tutsi on good terms. It has also considered the evidence that Bikindi assisted some Tutsi during the genocide while in Nyundo and supported some Tutsi while in exile in Zaire. However, the Chamber is of the view that Bikindi's direct and public address on the Kivumu-Kayove road leaves no doubt as to his genocidal intent at the time. Bikindi could not have been unaware of the targeting of Tutsi throughout Rwanda, including Gisenyi préfecture, at the time, a targeting that he had encouraged in the past by exhorting people to kill Tutsi in 1993 in Kivumu. Likewise, he could not have been unaware of the impact that his words would have on the audience, the words of a well-known and popular artist, an authoritative figure for the *Interahamwe* and a man perceived as an influential member of the [National Revolutionary Movement for Development].⁵⁸

The *Bikindi* case also raised explicitly a tension that underlies many judgments on incitement to genocide: the appropriate balance between freedom of expression and the criminalization of genocidal incitement. Recognizing the right to freedom of expression, the Trial Chamber explained:

However, this right is not absolute. It is restricted by the very same conventions and international instruments that provide for it. For example, the [*Universal Declaration of Human Rights*] states that everyone should be free from incitement to discrimination. Similarly, the [*International Covenant on Civil and Political Rights*] prohibits war propaganda, as well as the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence, and the [*International Convention on the Elimination of All Forms of Racial Discrimination*]

⁵⁸ *Ibid.*, at para. 425.

aims to outlaw all forms of expression that explicitly lead to discrimination. Each of the regional conventions mentioned above also restrict the freedom of expression: the [*European Convention on Human Rights*] recognises that there are “duties and responsibilities” that accompany the freedom of expression and thus limit its application; the [*American Convention on Human Rights*] allows for legal liability regarding acts that harm the rights or reputations of others, or that threaten the protection of national security, public order, or public health or morals and considers as offences punishable by law any propaganda for war and advocacy of national, racial or religious hatred that constitute incitements to lawless violence; and the [*African Charter on Human and People’s Rights*] restricts the right to that which is “within the law”. The Chamber notes that the restrictions on this right have been interpreted in the jurisprudence of the various adjudicating bodies created from the international and regional instruments above. The Chamber also notes that a large number of countries have banned the advocacy of discriminatory hate in their domestic legislation.⁵⁹

In fact, among those countries banning the advocacy of discriminatory hate in their domestic legislation is Canada. The Canadian laws on hate propaganda have passed scrutiny under the *Charter of Rights and Freedoms* by the Supreme Court of Canada.⁶⁰ And recently, the Supreme Court had the opportunity to examine the offence of incitement to genocide directly.

In the watershed *Mugesera* decision (in which I was implicated in my former capacity as Minister of Justice and Attorney General of Canada),⁶¹ the Supreme Court considered the validity of a deportation order issued against Léon Mugesera. Mugesera was a formerly active member of a hard-line Hutu political party who incited to murder, genocide and hatred in a speech to 1,000 people; after fleeing from Rwanda, Mugesera successfully applied for Canadian permanent residency. The Supreme Court upheld the deportation order that was issued against Mugesera when the government discovered his past incitement, holding that the content of Mugesera’s speech rendered him inadmissible to Canada.

⁵⁹ *Ibid.*, at para. 380.

⁶⁰ See *R. v. Keegstra*, [1990] 3 S.C.R. 697, *R. v. Andrews*, [1990] 3 S.C.R. 870, and *Canada (Human rights commission) v. Taylor*, [1990] 3 S.C.R. 892.

⁶¹ *Supra* note 36.

Basing itself substantially on international jurisprudence, the Court in *Mugesera* lent its support to the principles on incitement to genocide established by the ICTR, including the insight that it is not necessary to establish a causal link between the incitement and genocidal acts that followed (if any).⁶² Indeed, confirmation of this point is crucial not only in the prosecution of past incidents of incitement to genocide, but equally in the prevention of future cases of genocide. The bottom line – echoed now in both Canadian and international legal jurisprudence – is that the world need not wait until genocide has occurred to take action against those who would perpetrate it. To the contrary, international law mandates immediate action.

Holding those who incite to genocide responsible for their crimes under international law, even before the genocides they preach have materialized, has the potential to be an effective juridical tool in combating genocide. This insight finds particular application in the case of contemporary Iran.

Iran: A Case Study in State-Sanctioned Incitement to Genocide

In President Mahmoud Ahmadinejad's Iran,⁶³ one finds the toxic convergence of the advocacy of the most horrific of crimes embedded in the most virulent of hatreds. It is dramatized by the parading in the streets of Teheran of a Shihab-3 missile draped in the words "Israel must be wiped off the map"⁶⁴ while the assembled thousands are exhorted to chants of "Death to Israel."⁶⁵ Moreover, Ahmadinejad's Iran increasingly resorts to incendiary and

⁶² *Ibid.*, at paras. 84-85.

⁶³ From the outset, it should be noted that the comments herein on Iran refer uniquely to the current regime, embodied most notably by Supreme Leader Ayatollah Ali Khamenei and President Mahmoud Ahmadinejad. In particular, the present regime must be distinguished from the peoples of Iran who are themselves increasingly the target of massive human rights repression, as will be discussed in further detail below.

⁶⁴ See "German official was at anti-Israel rally," Benjamin Weinthal, *Jerusalem Post*, 15 October 2008. Available at: <http://www.jpost.com/servlet/Satellite?cid=1222017532585&pagename=JPost%2FJPostArticle%2FShowFull>.

⁶⁵ Video evidence of numerous "Death to Israel" chants is available online through the *Middle East Media Research Institute*, accessible at: <http://www.memritv.org/content/en/search.htm>.

demonizing language, including epidemiological metaphors reminiscent of Nazi and Rwandan incitement. As one involved as Minister of Justice in Canada in the prosecution of Rwandan incitement, I can state that the aggregate of precursors of incitement in the Iranian case are more threatening than were those in the Rwandan one. In the sections that follow, the early stages of a genocidal process can be discerned, as Iran engages in dehumanization, demonization and genocidal incitement against Jews and Israel.

Delegitimization

Iran has started the delegitimization process by impugning the legitimacy of Israel as a nation, and Israelis and Jews as a people, and singling them out for opprobrium and enmity warranting their demise. In segregating out these intended victims from the Iranian population, the Government of Iran has framed this relationship as a zero-sum game, in which inherently competing interests can never be reconciled, a peaceful co-existence cannot be imagined, and the only solution is the elimination of the adversarial enemy:

There is only one solution to the Middle East problem, namely the annihilation and destruction of the Jewish state.⁶⁶

In this artificial dialectic, Israel is wrongly portrayed as being the anti-thesis to “Muslims,” a broad group in no way represented by the contemporary Iranian leadership. The consequence is that the issue becomes falsely framed as a clash of civilizations, where none, in truth, exists:

Who are Israelis? They are responsible for usurping houses, territory, farmlands and businesses. They are combatants at the disposal of Zionist operatives. A Muslim nation cannot remain indifferent vis-a-vis such

⁶⁶ Reported in the *Daily Telegraph*, 1 January 2000. Available at <http://www.frontpagemag.com/Articles/Printable.asp?ID=23841>.

people who are stooges at the service of the arch-foes of the Muslim world.⁶⁷

Death to America and death to Israel are not only words written on paper, but a symbolic approach that reflects the desire of all the Muslim nations.⁶⁸

This delegitimizing paradigm finds further expression in the rhetoric treating Israel as a foreign and alien entity that has no rightful place in the Middle East. Indeed, Israel is often referred to simply as the “Zionist regime”—a convenient euphemism that avoids any implicit recognition of the State and is itself utilized as a means of delegitimation. Accordingly, Foreign Minister Manouchehr Mottaki has stated:

The West has tried to impose a fabricated regime on the Middle East, but even after 60 years, the Zionist regime has neither gained any legitimacy nor played any role in this region.⁶⁹

President Mahmoud Ahmadinejad has frequently – and publicly – referred to the illegitimate “other” – Israel and its people – in a similar manner. For example, on a visit to Rome, he called Israel a “false regime.”⁷⁰ And in front of the United Nations General Assembly, he labelled Israel a “criminal” and “forged” regime of “murderers” that “invade[s]” and “assassinate[s],” the whole created on “other people’s land by displacing, detaining, and killing the true owners of that land.”⁷¹

⁶⁷ Ramin Mostaghim and Borzou Daragahi, “Ayatollah Ali Khamenei says Iran, Israel on ‘collision course,’” *Los Angeles Times*, 20 September 2008. Available at: <http://www.latimes.com/news/nationworld/world/la-fg-iran20-2008sep20,0,554272.story>.

⁶⁸ Hossein Shariatmadari, a close confidant of Supreme Leader Ayatollah Ali Khamenei, in a speech on October 4, 2007. See Joshua Teitelbaum, *What Iranian Leaders Really Say About Doing Away with Israel* (Jerusalem Center for Public Affairs, 2008) [*What Iranian Leaders Really Say*], at p. 15. Available at: <http://www.jcpa.org/text/ahmadinejad2-words.pdf>.

⁶⁹ “Tehran: Israel has neither legitimacy nor any role in the Middle East,” *Ha’aretz*, 18 February 2008. Available at: <http://www.haaretz.com/hasen/objects/pages/PrintArticleEn.jhtml?itemNo=955417>.

⁷⁰ Phil Stewart, “Ahmadinejad calls Israel ‘false regime’ of Zionists,” *Reuters*, 3 June 2008. Available at: <http://www.reuters.com/articlePrint?articleId=USL0369980720080603>.

⁷¹ Text of the speech delivered by President Mahmoud Ahmadinejad at the United Nations General Assembly, 23 September 2008, as translated by the Presidency of the Islamic Republic of Iran News Service [*UNGA Speech*]. Available at: <http://www.haaretz.com/hasen/objects/pages/PrintArticleEn.jhtml?itemNo=1024097>.

This exclusionary rhetoric underpins the animosity that Ahmadinejad's Iran seeks to promulgate: between the false Israel "other," seen as a Zionist Western regime that was artificially placed in the Middle East; and between Muslims, held out as not only the rightful inhabitants of the region, but also as a group usurped by this alien "other." As the words of Supreme Leader Ayatollah Ali Khamenei demonstrate, this basic distinction provides the foundation on which the edifice of hatred is constructed, underpinned by ugly anti-Semitic tropes:

What are you? A forged government and a false nation. They gathered wicked people from all over the world and made something called the Israeli nation. Is that a nation? All the malevolent and evil Jews have gathered there. . . . Those [Jews]⁷² who went to Israel were malevolent, evil, greedy thieves and murderers.

From delegitimization to dehumanization

Against this context of the singling-out and delegitimization of the alien "other" Israel, the next genocidal precursor is the dehumanization of Israelis and Jews through the use of epidemiological metaphors reminiscent of the dehumanization of the Jews during the Holocaust and the dehumanization of Tutsi during the genocide in Rwanda. Indeed, in the genocide-fostering process, biological euphemisms are not just rhetorical tools; they seek to preclude the intended victims from even being considered human to begin with. Thus, just as Jews were labelled as "vermin" by the Nazis and the Tutsi were labelled as "cockroaches" in Rwanda, so too have Israelis and Jews been dehumanized and labelled in Iran as:

⁷² *Radio Iran*, 20 July 1994 (Foreign Broadcast Information Service Daily Reports [FBIS-DR]). Quoted in Meir Litvak, "The Islamic Republic of Iran and the Holocaust: Anti-Semitism and Anti-Zionism," *The Journal of Israeli History*, vol. 25, no. 1, March 2006, pp. 267-284 [Litvak] at p. 271.

- (a) a “filthy germ” and “savage beast;”⁷³
- (b) a “cancerous tumour;”⁷⁴
- (c) a “stain of disgrace” on the “garment of the world of Islam;”⁷⁵
- (d) a “stinking corpse;”⁷⁶
- (e) a “cancerous bacterium;”⁷⁷
- (f) stuck in a “cesspool created by itself and its supporters;”⁷⁸
- (g) “like cattle—nay, more misguided;”⁷⁹
- (h) a “rotten, dried tree;”⁸⁰ and
- (i) an “unclean regime.”⁸¹

From dehumanization to demonization

Related to the dehumanization process is the demonizing process. Under this paradigm, the would-be victims of genocide are portrayed as inspirations of the devil. Dehumanization

⁷³ President Mahmoud Ahmadinejad, in a speech on 20 February 2008. See “UN Chief: Ahmadinejad’s verbal attacks on Israel intolerable”, *Ha’aretz*, 21 February 2008. Available at: <http://www.haaretz.com/hasen/spages/956306.html>. Note that the “filthy germ” quote has also been translated as a “black and filthy microbe”: See Joshua Teitelbaum, “Analysis: Iran’s talk of destroying Israel must not get lost in translation,” *Jerusalem Post*, 22 June 2008 [Teitelbaum]. Available at:

<http://www.jpost.com/servlet/Satellite?cid=1213794295236&pagename=JPost%2FJPostArticle%2FPrinter>.

⁷⁴ Supreme Leader of Iran, Ayatollah Ali Khamenei, quoted in “Iran leader urges destruction of ‘cancerous’ Israel,” *Reuters*, 15 December 2000. Available at: <http://archives.cnn.com/2000/WORLD/meast/12/15/mideast.iran.reut/>.

⁷⁵ President Mahmoud Ahmadinejad, in a speech on 26 October 2005. See Teitelbaum, *supra* note 73.

⁷⁶ President Mahmoud Ahmadinejad, speaking on the occasion of the 60th anniversary of Israel’s founding, 8 May 2008. See “Ahmadinejad calls Zionist regime a ‘stinking corpse,’” *Islamic Republic News Agency (IRNA)*, 8 May 2008. Available at: <http://www2.irna.ir/en/news/view/line-203/0805083448175250.htm>.

⁷⁷ Commander of the Islamic Revolutionary Guard Corps, General Mohammad-Ali Jaafari, in a letter made public 18 February 2008. See Dudi Cohen, “Iran: Cancerous Israel to be destroyed by Hizbullah,” *Ynetnews*, 18 February 2008. Available at: <http://www.ynetnews.com/articles/0,7340,L-3508176,00.html>.

⁷⁸ President Mahmoud Ahmadinejad, speaking to the United Nations General Assembly, 23 September 2008. See Claudia Parsons, “Ahmadinejad rails against Zionists, U.S. bullying,” *Reuters*, 23 September 2008. Available at: http://www.washingtonpost.com/wp-dyn/content/article/2008/09/23/AR2008092303093_pf.html.

⁷⁹ President Mahmoud Ahmadinejad. Reported by the *Iranian News Channel (IRINN)*, 1 August 2006. Available at: http://www.memritv.org/clip_transcript/en/1216.htm.

⁸⁰ President Mahmoud Ahmadinejad, speaking at the opening of a conference, 14 April 2006. See “Iran: Israel Facing ‘Annihilation,’” *Associated Press*, 14 April 2006. Available at: <http://www.cbsnews.com/stories/2006/04/14/world/main1499824.shtml>.

⁸¹ General Yahya Rahim Safavi, founder of the Islamic Revolutionary Guards Corps and advisor to Supreme Leader Ayatolla Ali Khamenei, February 23, 2008. See *What Iranian Leaders Really Say*, *supra* note 68, at p. 14.

coupled with demonization accomplishes the dual purpose of making the would-be victim appear not only to be less than human (if not sub-human), but also to appear more threatening, thereby providing a warrant for genocide.

Indeed, demonization of Israel and Jews is frequent in Ahmadinejad's Iran. In this vein, President Mahmoud Ahmadinejad:

- (a) has stated that "Zionists are the true manifestation of Satan,"⁸² and that the "Zionist regime" is the "flag of Satan,"⁸³
- (b) has remarked that "[n]ext to them, all the criminals of the world seem righteous;"⁸⁴
- (c) has called Israelis "bloodthirsty barbarians,"⁸⁵ stated that they have "no boundaries, limits, or taboos when it comes to killing human beings,"⁸⁶ that Israel is "fighting a war against humanity,"⁸⁷ and that Zionism is the main cause of all corruption and wickedness in the contemporary era;⁸⁸
- (d) has further referred to Israel as a "criminal and terrorist Zionist regime which has 60 years of plundering, aggression and crimes in its file;"⁸⁹ and

⁸² "Zionist regime offspring of Britain, nurtured by US – Ahmadinejad," *Islamic Republic News Agency (IRNA)*, 1 March 2007. Available at: <http://www2.irna.ir/en/news/view/line-20/0703015352005938.htm>.

⁸³ Quoted by the *Islamic Republic News Agency (IRNA)* in "Ahmadinejad: Israel is 'flag of Satan,' may face disintegration," *Reuters*, 18 August 2007. Available at: <http://www.haaretz.com/hasen/spages/894744.html>.

⁸⁴ Statement made during a speech broadcast on the *Iranian News Channel (IRINN)*, 1 August 2006. Available at: http://www.memritv.org/clip_transcript/en/1216.htm.

⁸⁵ Speech broadcast on the *Iranian News Channel (IRINN)*, 1 August 2006. Available at: http://www.memritv.org/clip_transcript/en/1216.htm.

⁸⁶ *Ibid.*

⁸⁷ Patrick Bishop and Sebastian Berger, "'Eliminate' Israel to solve the crisis, says Iranian president," *Daily Telegraph*, 4 August 2006. Available at: <http://www.telegraph.co.uk/news/1525591/Eliminate-Israel-to-solve-the-crisis-says-Iranian-president.html>.

⁸⁸ "Ahmadinejad: Zionist regime to be dismantled soon," *Islamic Republic News Agency (IRNA)*, 20 August 2008. Available at: <http://www1.irna.ir/en/news/view/line-17/0808207991171114.htm>.

⁸⁹ Phil Stewart, "Ahmadinejad calls Israel 'false regime' of Zionists," *Reuters*, 3 June 2008. Available at: <http://www.reuters.com/articlePrint?articleId=USL0369980720080603>.

- (e) builds on this demonic paradigm using different adjectives and metaphors in his speeches, referring, for instance, to Israel as the “epitome of perversion.”⁹⁰

He has elaborated:

*Today, it has been proven that the Zionists are not opposed only to Islam and the Muslims. They are opposed to humanity as a whole. They want to dominate the entire world. They would even sacrifice the Western regimes for their own sake. I have said in Tehran, and I say it again here – I say to the leaders of some Western countries: Stop supporting these corrupt people. Behold, the rage of the Muslim peoples is accumulating. The rage of the Muslim peoples may soon reach the point of explosion. If that day comes, they must know that the waves of this explosion will not be restricted to the boundaries of our region. They will definitely reach the corrupt forces that support this fake regime.*⁹¹

The demonization of Jews in Ahmadinejad’s Iran often fits within the traditional antisemitic canard of a small cabal of Jews running the world:

The dignity, integrity and rights of the American and European people are being played with by *a small but deceitful number of people called Zionists*. Although they are a miniscule minority, they have been *dominating an important portion of the financial and monetary centers as well as the political decision-making centers of some European countries and the US in a deceitful, complex and furtive manner*. It is deeply disastrous to witness that some presidential or premiere nominees in some big countries have to visit these people, take part in their gatherings, swear their allegiance and commitment to their interests in order to attain financial or media support.

This means that the great people of America and various nations of Europe need to obey *the demands and wishes of a small number of acquisitive and invasive people*. These nations are spending their dignity and resources on the crimes and occupations and the threats of the Zionist network against their will.⁹²

⁹⁰ Hossein Jaseb and Fredrik Dahl, “Ahmadinejad says Israel will ‘disappear,’” *Reuters*, 2 June 2008. Available at: <http://www.reuters.com/articlePrint?articleId=USL0261250620080602>.

⁹¹ Speech by President Mahmoud Ahmadinejad, reported on the *Iranian News Channel (IRINN)*, 11 July 2006. Available at: http://www.memritv.org/clip_transcript/en/1187.htm. Emphasis added.

⁹² *UNGA Speech*, *supra* note 71. Emphasis added.

Iranian Presidential Advisor Ali Ramin has even resurrected the historic falsehood of dirty Jews poisoning Christian wells—a pernicious and demonizing myth used to fuel antisemitism in the Middle Ages:

But among the Jews there have always been those who killed God’s prophets and who opposed justice and righteousness. Throughout history, this religious group has inflicted the most damage on the human race, while some groups within it engaged in plotting against other nations and ethnic groups to cause cruelty, malice and wickedness. Historically, there are many accusations against the Jews. For example, it was said that they were the source for such deadly diseases as the plague and typhus. This is because the Jews are very filthy people. For a time people also said that they poisoned water wells belonging to Christians and thus killed them.⁹³

Supreme Leader Ali Khamenei has combined these two images – of Jews conspiring against the world and of Jews waging covert war on a people – in elaborating to his audience what he saw as the “satanic design:”

[T]he occupation of Palestine [by the Jews] is part of a satanic design by the world domineering powers, perpetrated by the British in the past and being carried out today by the United States to weaken the solidarity of the Islamic world and to sow the seeds of disunity among us.⁹⁴

Ultimately, the strategy of demonization seamlessly leads to prophecy—and incitement:

A Zionist organization with 2,000 [members] and with 7,000 or 8,000 activists have brought the world to a state of confusion. Let me tell them that if they themselves do not wrap up Zionism, *the strong arm of the peoples will wipe these germs of corruption off the face of the earth.*⁹⁵

From incitement to hate to incitement to genocide

⁹³ See “Iranian Presidential Advisor Mohammad Ali Ramin: ‘The Resolution of the Holocaust Issue Will End in the Destruction of Israel,’” *Middle East Media Research Institute*, Special Dispatch Series no. 1186, 15 June 2006. Available at: <http://memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP118606>.

⁹⁴ Address by the Ayatollah Khamenei on the Occasion of the International Conference on Palestinian Intifada, 24 April 2001. Available at: <http://www.radioislam.org/tehranconference/eng.htm>. See also Litvak, *supra* note 72, at p. 270.

⁹⁵ Text of a statement made by President Ahmadinejad as broadcast on the *Iranian News Channel* (IRINN), 23 September 2008. Available at: http://www.memritv.org/clip_transcript/en/1868.htm. Emphasis added.

Empowered by the culture of hate it has planted with impunity, Ahmadinejad's Iran feels no need to leave its genocidal intentions as an unspoken conclusion. To the contrary, the calls for Israel's destruction by Iranian officials are explicit and without ambiguity.

Thus, President Mahmoud Ahmadinejad has publicly called for Israel to be "wiped off the map."⁹⁶

The context of this comment is important, lest its clear message be somehow misunderstood. When President Ahmadinejad called for Israel to be "wiped off the map," he was speaking to thousands of students at a conference entitled the "World Without Zionism." Indeed, President Ahmadinejad hosted this conference in Tehran. Despite international condemnation,⁹⁷ when given the opportunity to retract his statement, President Ahmadinejad chose instead to add to their weight, remarking: "My words are the Iranian nation's words."⁹⁸

In his call for annihilation, President Ahmadinejad referenced the former Iranian Supreme Leader Ayatollah Ruhollah Khomeini. On June 2, 2008, speaking at the shrine where the Ayatollah is buried, President Ahmadinejad repeated:

[Ayatollah Khomeini's] ideal is about to be materialized today... The Zionist regime is in a total dead end and, *God willing, this desire will soon be realized and the epitome of perversion will disappear off the face of the world.*⁹⁹

⁹⁶ See Nazila Fathi, "Wipe Israel 'off the map' Iranian says," *International Herald Tribune*, 27 October 2005. Available at: <http://www.iht.com/articles/2005/10/26/news/iran.php>.

⁹⁷ Mary Jordan and Karl Vick, "World Leaders Condemn Iranian's Call to Wipe Israel 'Off the Map,'" *Washington Post*, 27 October 2008. Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/27/AR2005102702221.html>.

⁹⁸ Nazila Fathi, "Iranian President Stands by Call to Wipe Israel Off Map," *New York Times*, 29 October 2005. Available at:

http://www.nytimes.com/2005/10/29/international/middleeast/29iran.html?_r=1&scp=5&sq=wipe%20israel%20off%20the%20map&st=cse&oref=slogin.

⁹⁹ Hossein Jaseb and Fredrik Dahl, "Ahmadinejad says Israel will 'disappear,'" *Reuters*, 2 June 2008. Available at: <http://www.reuters.com/article/idUSL0261250620080602?pageNumber=2&virtualBrandChannel=0&sp=true>. This quote has also been translated as ending "this germ of corruption will be wiped off:" see the translation by the *Middle East Media Research Institute* at: http://www.memritv.org/clip_transcript/en/1784.htm. Emphasis added.

President Ahmadinejad has repeated this call for genocide many other times as well. To cite a few occasions:

Israel's days are numbered... [T]he people of the region would not miss the narrowest opportunity to annihilate this false regime.¹⁰⁰

[T]he Zionist regime is heading toward annihilation.¹⁰¹

We will witness [the] dismantling of the corrupt regime in [the] very near future.¹⁰²

The region and the world are prepared for great changes and for being cleansed of Satanic enemies.¹⁰³

God willing, in the near future we will witness the destruction of the corrupt occupier regime.¹⁰⁴

This [Zionist] regime is on the verge of death, and we advise you to start thinking about your long-term interest and long-term relations with the peoples of the region. At the end of the day, these are all ultimatums.¹⁰⁵

[T]oday, the occupier regime [Israel] – whose philosophy is based on threats, massacre and invasion – has reached its finishing line.¹⁰⁶

[T]his fake regime [Israel] cannot logically continue to live.¹⁰⁷

¹⁰⁰ From a speech delivered in Gorgan, northern Iran, quoted on *Press TV* and *Aftab*, 14 May 2008. See Y. Mansharof and A. Savyon, "Ahmadinejad: Israel Is a 'Dead Fish' and a 'Stinking Corpse'; 'The Zionist Regime Will Be Wiped Off'; 'The European Governments Do Not Want the Zionists Living in Europe,'" *Middle East Media Research Institute*, Inquiry and Analysis Series no. 447, 6 June 2008. Available at: <http://memri.org/bin/articles.cgi?Page=archives&Area=ia&ID=IA44708>.

¹⁰¹ Speech at the opening of a conference, 14 April 2006. See "Iran: Israel Facing 'Annihilation,'" *Associated Press*, 14 April 2006. Available at: <http://www.cbsnews.com/stories/2006/04/14/world/main1499824.shtml>.

¹⁰² Speech at the "World Mosque Week" conference, 20 August 2008. See "Ahmadinejad: Zionist regime to be dismantled soon," *Islamic Republic News Agency (IRNA)*, 20 August 2008. Available at: <http://www1.irna.ir/en/news/view/line-17/0808207991171114.htm>.

¹⁰³ Speech at a military parade, 17 April 2008. See Alan Johnson, "Iran and Oran," *Progress Online*. Available at: <http://www.progressonline.org.uk/columns/column.asp?c=120>. See also Teitelbaum, *supra* note 73.

¹⁰⁴ Speech to foreign guests marking the 18th anniversary of the death of Ayatollah Ruhollah Homeini, 3 June 2007. See "Ahmadinejad says destruction of Israel is close," *Associated Press*, 3 June 2007. Available at: http://chinadaily.com.cn/world/2007-06/03/content_886021.htm.

¹⁰⁵ Speech broadcast on *Jaam-e Jam 1 TV*, 20 October 2006. Available at: http://www.memritv.org/clip_transcript/en/1301.htm.

¹⁰⁶ Statement from 23 July 2006. See "Iran: Israel doomed to 'destruction,'" *Associated Press*, 23 July 2006. Available at: <http://www.jpost.com/servlet/Satellite?cid=1153291976348&pagename=JPost%2FJPArticle%2FPrinter>.

¹⁰⁷ Statement from 24 April 2006. See Angus McDowall, "Iranian President insists 'Israel cannot continue to live,'" *The Independent*, 25 April 2006. Available at: <http://www.independent.co.uk/news/world/middle-east/iranian-president-insists-israel-cannot-continue-to-live-475496.html>.

It is not only President Ahmadinejad who calls for the annihilation of Israel. The Supreme Leader of Iran, Ayatollah Ali Khamenei, makes it clear that this is the basic premise upon which the State operates:

It is the mission of the Islamic Republic of Iran to erase Israel from the map of the region.¹⁰⁸

Iran's stance has always been clear on this ugly phenomenon [Israel]. We have repeatedly said that this cancerous tumour of a state should be removed from the region.¹⁰⁹

There is only one solution to the Middle East problem, namely the annihilation and destruction of the Jewish state.¹¹⁰

[W]e are on a collision course with the occupiers of Palestine and the occupiers are the Zionist regime. This is the position of our regime, our revolution and our people.¹¹¹

Nor is this core State principle dependent on the vicissitudes of short-term foreign policy objectives. For example, in the context of the 2006 Lebanon War, President Mahmoud Ahmadinejad advocated an "immediate cease-fire" while also emphasizing that "the main solution is for the elimination of the Zionist regime."¹¹²

Repeated calls for the destruction of Israel, and "prophecies" of its demise, all work to normalize the idea of genocide to the Iranian population. Articulated in the context of

¹⁰⁸ *Ahmadinejad: The Secret History of Iran's Radical Leader*, Kasra Naji (Los Angeles: University of California Press, 2008), at p. 144. This quote has also been translated as stating that "the perpetual subject of Iran is the elimination of Israel from the region." See Teitelbaum, *supra* note 73.

¹⁰⁹ "Iran leader urges destruction of 'cancerous' Israel," *Reuters*, 15 December 2000. Available at: <http://archives.cnn.com/2000/WORLD/meast/12/15/mideast.iran.reut/>. This quote has also been translated as ending "the cancerous tumour called Israel must be uprooted from the region." see Teitelbaum, *supra* note 73.

¹¹⁰ *Supra* note 66.

¹¹¹ "Ayatollah Ali Khamenei says Iran, Israel on 'collision course,'" Ramin Mostaghim and Borzou Daragahi, *Los Angeles Times*, 20 September 2008. Available at: <http://www.latimes.com/news/nationworld/world/la-fg-iran20-2008sep20,0,554272.story>.

¹¹² "Ahmadinejad's Mideast Solution: Destroy Israel," *Associated Press*, 3 August 2006. Available at: http://www.foxnews.com/printer_friendly_story/0,3566,206823,00.html.

demonizing rhetoric implying a clash of civilizations, calls for the annihilation of the Jewish State begins to appear not only moral and justifiable, but natural as well.

Chillingly, all this incitement appears to be sinking into the popular consciousness. President Ahmadinejad's audience responds to his words instantly with chants of "Death to Israel."¹¹³ And the media follows the Government's lead in inciting genocide as well. For instance, on October 22, 2006, *Resalat*, an Iranian newspaper, mirroring an Qods (Jerusalem) Day speech by President Mahmoud Ahmadinejad, wrote in an editorial:

The nation of Muslims must prepare for the great war, so as to completely wipe out the Zionist regime, and remove this cancerous growth. Like the Imam [Ayatollah] Khomeini said: 'Israel must collapse'.¹¹⁴

Conclusion

State-sanctioned incitement to genocide is a singular and unique threat to international peace and security. While over 60 years have passed since the international community sought to address it by prohibiting genocidal incitement, this juridical response – absent tangible action to enforce it – has proven manifestly inadequate. We continue to be haunted by the recent preventable genocides in Rwanda and the former Yugoslavia, while our collective failure to end genocide in Darfur results in more lives lost on a daily basis. Meanwhile, Ahmadinejad's Iran has emerged as the world's first realistic threat – albeit still a nascent one – of a nuclear genocide.

¹¹³ *Supra* note 65.

¹¹⁴ See "Qods (Jerusalem) Day in Iran: 'The Nation of Muslims Must Prepare for the Great War So As to Completely Wipe Out the Zionist Regime and to Remove This Cancerous Growth,'" *Middle East Media Research Institute*, Special Dispatch Series no. 1357, 15 November 2006. Available at: <http://www.memri.org/bin/articles.cgi?Page=countries&Area=iran&ID=SP135706>.

Such incitement should not be allowed to continue with impunity. Indeed, there is a moral and legal imperative to stop it. Among the many remedies available to the international community are the following:

- The incitement to genocide by Ahmadinejad and other Iranian leaders could be referred to the appropriate UN agencies. For instance, such referral may be accomplished pursuant to the Secretary-General's authority under Article 99 of the *Charter of the United Nations* or by any state party to the *Genocide Convention* pursuant to its Article 8.
- The situation of genocidal incitement by Ahmadinejad and other Iranian leaders – including their complicity in crimes against humanity – could be referred by the UN Security Council to the Prosecutor of the International Criminal Court for investigation and prospective prosecution.¹¹⁵
- State parties to the Genocide Convention could initiate an inter-state complaint against Iran before the International Court of Justice for its “direct and public incitement to commit genocide” in violation of the *Genocide Convention*, to which Iran is also a state party.¹¹⁶
- Sanctions from the international community could be targeted not only against Iran's illegal nuclear program, but its illegal genocidal incitement as well. The nuclear program represents merely the means to carry out genocidal intentions; the international community ought be focused on the latter as well.

A group of prominent international jurists, genocide experts and survivors has already united to call attention to Iran's illegal genocidal incitement, and to call for action from state parties to the *Genocide Convention*, the United Nations, and the international community in

¹¹⁵ See the *Rome Statute of the International Criminal Court*, U.N. Doc. A/CONF.183/9*, at art. 13(b).

¹¹⁶ *Supra* note 1, at arts. 3(c) and 9.

general in response.¹¹⁷ If genocide prevention is to have any meaning, the ubiquitous incitement to genocide of Ahmadinejad's Iran must not be allowed to continue with impunity.

The legal apparatus for effectively preventing genocide exists. The jurisprudence, which both affirms the criteria of incitement to genocide and testifies to its harm, has been written. What remains is for preventative action to be taken on the basis of these already-established principles. As we have learned all too well, the cost of ignoring our responsibility to prevent is incalculable.

¹¹⁷ See the *Danger of a Genocidal and Nuclear Iran: The Responsibility to Prevent*, a Petition released by the author and signed by leading jurists, genocide experts and survivors from around the world. It is available for consultation online at http://www.irwincotler.parl.gc.ca/documents/081209_petition.pdf.