REFERRAL OF IRANIAN PRESIDENT

AHMADINEJAD

ON THE CHARGE OF

INCITEMENT TO COMMIT GENOCIDE

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Front Cover: AP Photo

Back Cover: Ahmadinejad speaks during a conference on Oct. 26, 2005 entitled 'The World Without Zionism.' Ahmadinejad states that Israel should be "wiped off the map," the official IRNA news agency reported. (AP Photo/ISNA)

Executive Summary

President Mahmoud Ahmadinejad of the Islamic Republic of Iran has made the destruction of Israel his avowed policy. Ahamadinejad's declaration in 2005 that "Israel should be wiped off the map" was met by widespread international outcry. Yet, this declaration was not an isolated incident, but the first of many during the past year. Indeed, it is fair to consider the elimination of Israel as Iran's foremost foreign policy objective, to be facilitated by arming Hizbullah and Hamas, advancing Iran's rogue nuclear weapons program, and expanding its arsenal of long-range nuclear-capable missiles that can reach anywhere in Israel and Europe.

The statements emanating from the Iranian President are not only alarming and destabilizing. They also constitute direct and public incitement to commit genocide -- a gross violation of international law. Such incitement is reminiscent of historical incidents of genocide, like that which occurred in Rwanda. The critical difference is that while the Hutus in Rwanda were equipped with the most basic of weapons, such as machetes, Iran, should the international community do nothing to prevent it, will soon acquire nuclear weapons. This would increase the risk of instant genocide, allowing no time or possibility for defensive efforts.

It is essential to distinguish between freedom to oppose a government and incitement to genocide. Various political leaders outspokenly condemn rival governments using epithets like "the evil/Cuban/corrupt/North Korean/ruthless regime." These verbal barrages, however, pose no existential threat to ordinary people in the street. Ahmadinejad's reckless anti-Semitic tirades that "the Jews are very filthy people," "[the Jews have] inflicted the most damage on the human race," "[the Jews are] a bunch of bloodthirsty barbarians," "they should know that they are nearing the last days of their lives," and "as the Imam said, Israel must be wiped off the map" should have aroused trepidation. Thus far, however, Ahmadinejad's threats have been met with acquiescence, indifference, and inaction. Yet, his apocalyptic utterances are not mere rhetoric. Ahmadinejad's declaration that the Holocaust was a "fairy tale," and his enabling of Hamas and Hizbullah, demonstrate that there is simply no way for his ambitions to be realized without perpetrating a new genocide.

In all cases of previous genocides, the response of the international community has been too little and too late. As Kofi Annan plaintively stated on the tenth anniversary of the Rwandan genocide,"We must never forget our collective failure to protect at least eight hundred thousand defenceless men, women and children who perished in Rwanda ten years ago. Such crimes cannot be reversed. Such failures cannot be repaired. The dead cannot be brought back to life. So, what can we do?"

In response to Annan's sober question, the international community must heed the early warning signs of genocide and act to prevent it. Various mechanisms to prevent genocide are

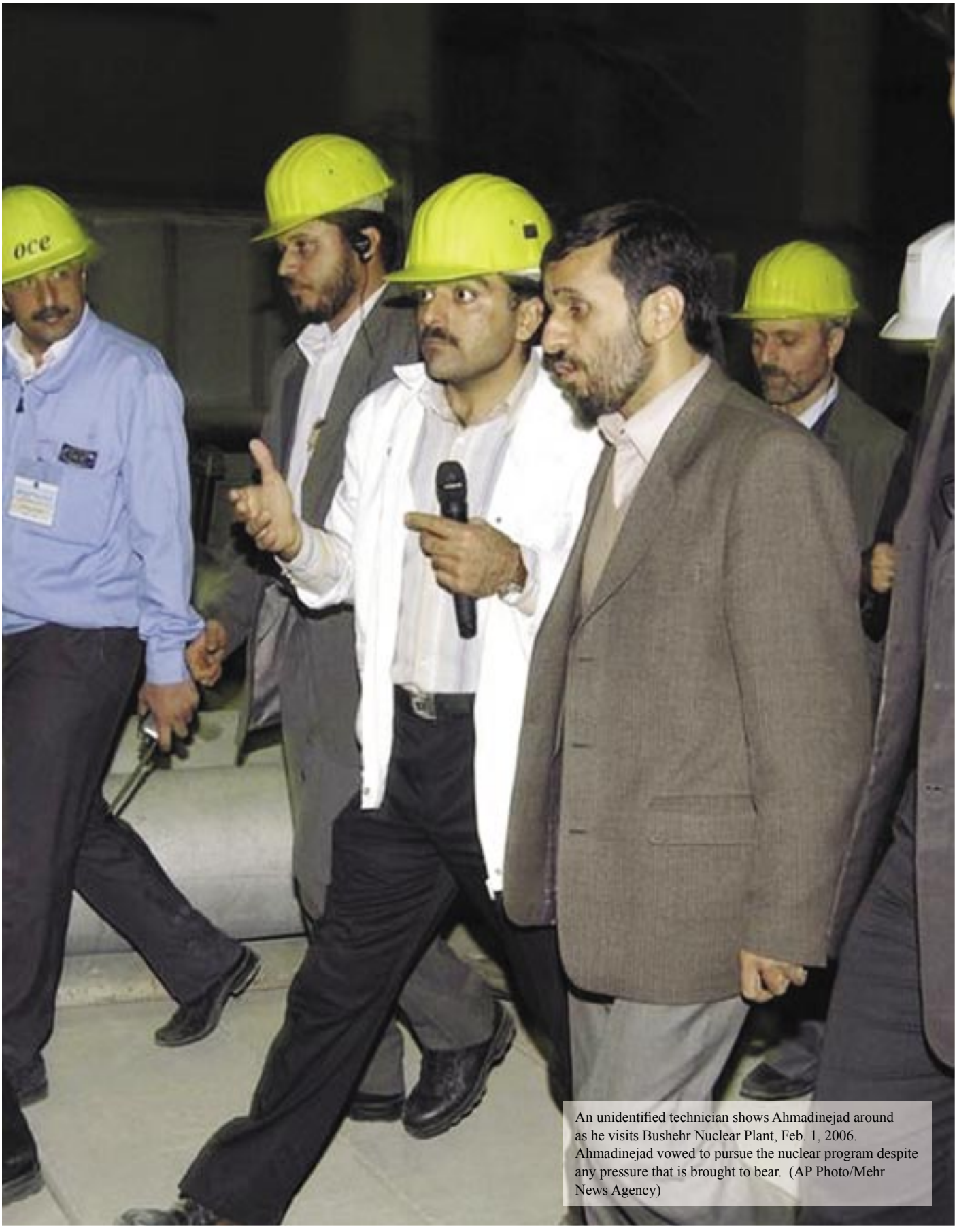
available under international law and the national laws of a number of countries. These can be employed in order to thwart the realization of Ahmadinejad's goal. One of the relevant legal sources is the Convention on the Prevention and Punishment of the Crime of Genocide, which came into force on January 12, 1951. This Convention is one of the most widely accepted treaties in the realm of international law, having been ratified by 138 states, including Iran.

The Genocide Convention defines the crime of genocide, and stipulates that certain acts related to genocide are punishable. One of these prohibited acts is incitement to commit genocide. By including this as a crime the drafters sought to create an autonomous breach of international law, which is an inchoate crime -- a crime in the absence of any substantive offence having been committed or consummated. Thus, in order to succeed in a case of incitement, a prosecutor need not prove that genocide has in fact transpired. It is sufficient to prove that incitement to genocide has occurred.

In analysing the Genocide Convention and relevant case law, it is indisputable that Ahmadinejad is engaged in and responsible for direct and public incitement to commit genocide. The challenge now is averting this imminent disaster. Sadly, the historical record shows that the international community has consistently delayed action until after thousands or even millions were already slain. This shameful record must be, and can be, improved upon, by implementing the existing international and/or national laws.

The broader contribution to be made here is to rally the world to use the legal means available not only to combat genocide, but to prevent it. The crime of incitement is materially nothing compared to the actual slaughter, displacement, and rape of Sudanese, or their predecessors in Cambodia or elsewhere. However, the drafters of the Genocide Convention and the Rome Statute included inchoate crimes like incitement so that a person like Ahmadinejad – who has broadcast his intentions on an unprecedented global scale – can be stopped.

This Monograph seeks to generate public, legal and diplomatic action pertaining to Iran's violations of the requisites for U.N. membership and the central role of the Iranian President in incitement to genocide. If the world wakes up and enforces its law, the future of genocide will read quite differently, and perhaps not at all.



An unidentified technician shows Ahmadinejad around as he visits Bushehr Nuclear Plant, Feb. 1, 2006. Ahmadinejad vowed to pursue the nuclear program despite any pressure that is brought to bear. (AP Photo/Mehr News Agency)

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Introduction

President Mahmoud Ahmadinejad[1] of the Islamic Republic of Iran has made the destruction of Israel his avowed policy. Ahmadinejad's declaration in 2005 that Israel "should be wiped off the map" was met by a widespread international outcry.[2] Yet it did not stop with this single instance, but rather the Iranian President repeated the same theme on multiple occasions during the past year,[3] including in his reference to "the myth of the Holocaust."[4] Moreover, Ahmadinejad, who recently claimed that he has "a connection with God,"[5] has been seconded in his genocidal proclamations by very senior officials in the national security establishment of the government of Iran.[6] It is fair to consider this theme as Iran's principal foreign policy objective.[7]

President Ahmadinejad's "wipe off the map" speech and its subsequent reiterations and embellishments are alarming and destabilizing. They also constitute direct and public incitement to commit genocide, a gross violation of international law. As will be discussed *infra*, these bellicose threats entitle Israel to respond in anticipatory and/or preemptive self-defense pursuant to Articles 2(4) and 51 of the U.N. Charter and/or the parallel customary international law.[8] Such a reaction -- albeit in response to Iran's *casus belli* -- would entail undesirable and unanticipated consequences. In an effort to avoid bloodshed, legal proceedings carried to a prompt and successful conclusion could offer an alternative course of action. A peaceful resolution of this state of affairs is possible if the main bodies, judicial organs, and specialized agencies of the United Nations (U.N.), the G-8, NATO, senior national political leaders, and prosecutors in various jurisdictions,[9] treat Ahmadinejad's genocidal intimidation with the gravity it most certainly deserves.[10]

While beyond the scope of this Monograph, it is abundantly obvious that Israel faces unprecedented mortal danger from Iran. The source of this danger lies in the Islamic regime's long-range nuclear-capable missiles that can strike any location in Israel, its ongoing rogue development of weapons of mass destruction, and its unalterable dedication to the destruction of the Jewish state. Taken together, this congruence of capabilities and intentions portends nothing less than preparations for a genocidal war, a war that would assuredly have grave consequences throughout the Middle East and the world.

Section I of this Monograph comprehensively considers precedents of inaction and delayed action in confronting genocide. Section II reviews pertinent international law sources and Section III scrutinizes the development of the law relating to the crime of incitement to commit genocide. The Convention on the Prevention and Punishment of the Crime of Genocide is discussed in Section IV. Section V focuses on the issues of jurisdiction and immunity. The question of state responsibility is addressed in Section VI, which is followed by the principal author's Conclusion and the Appendices.

Genocide: Precedents of Inaction and Action Delayed

I

Historically, addressing genocide has primarily been a forensic endeavor that only begins in earnest when the tragedy is virtually over. However, international and national law exists to attempt to improve upon this dismal record. After World War II the International Court of Justice (ICJ), known colloquially as the 'World Court,' was created as the judicial organ of the United Nations.

Although its judicial record has been criticized as subject to political influence,[11] the ICJ could be a useful jurisdiction. An additional legal initiative that followed several years later was the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention).[12] As its title clarifies, the Genocide Convention was formulated to prevent genocide, not merely to punish it after the fact.[13] Thereafter, the Rome Statute created the International Criminal Court (ICC) to hear cases involving the most serious crimes of concern to the international community as a whole -- genocide being the worst such crime. According to its Preamble, "the most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation"[14] It should be noted that most nations criminally punish incitement without requiring the element of a causal nexus between the act and physical harm.[15]

Incitement to genocide is specifically outlawed in Article **25(3)(e)** of the Rome Statute.[16] Although neither Israel nor Iran are parties to the Rome Statute, the ICC may nevertheless be able to gain jurisdiction over Ahmadinejad by persuading the Prosecutor to commence an investigation pursuant to Article 12 (under nationality principles or if Israel is a territorial State[17]) if the situation is referred to it by the U.N. Security Council, or under Article 14's additional criteria for jurisdiction.[18] Prosecuto rs of various nationalities and representing various NGOs and groupings of aggrieved persons (such as Holocaust survivors) can choose among the various jurisdictional options. A variety of relevant criminal law venues -- international,[19] regional,[20] and national,[21] and diverse jurisdictions -- are also worthy of consideration.

Should any of the relevant U.N. or national organs take appropriate and timely action against the President of Iran and/or the Islamic Republic of Iran, this will enable the international community to improve upon its record of allowing genocide to be perpetrated against groups such as European Jews, Bosnians, Tutsis,[22] and now the Sudanese in

Iran's elite Revolutionary Guard tests the long-range Shahab-3 missile amongst dozens of other missiles, in a central desert area of Iran, Nov. 2, 2006. (AP Photo/ Ruhollah Vahdati)

Darfur.[23] This shameful record can be bettered by simply fulfilling the Genocide Convention's express mandate of "prevention," specifically by prosecuting Ahmadinejad's direct and public incitement to commit genocide.

In all these historical cases, and certainly in the ongoing conflict in Darfur, the international community has ignored genocide even amidst reliable reports of atrocities. While each and every one of these cases of genocide is deplorable, among these tragedies a few stand out, where opportunities were missed to save large numbers of victims. In these cases, there were early warning signs of genocide, and specifically there was direct and public incitement to commit genocide long before atrocities began -- and still there was no intervention. This was the case in both Nazi Germany and in Rwanda,[24] and the initial stages of a parallel situation are emerging from Tehran. Specifically, the threat posed by Iran's ongoing rogue nuclear technology program[25] developed simultaneously with the country's long-range nuclear-capable missiles, and coupled with Ahmadinejad's confrontational incitement, come together to elevate the threat to an extraordinary intensity.[26]

Moreover, past failures to act to prevent genocide in a timely fashion weigh heavily upon the U.N., as noted by Secretary General Kofi Annan on the tenth anniversary of the Rwandan Genocide, "We must never forget our collective failure to protect at least eight hundred thousand defenseless men, women and children who perished in Rwanda ten years ago. Such crimes cannot be reversed. Such failures cannot be repaired. The dead cannot be brought back to life. So, what can we do?"[27]

In response to Annan's plaintive question, what can be done is for the international community to heed the early warning signs of genocide emanating from Tehran, and to act to prevent genocide as they are obliged to do. This Monograph will not only provide the factual basis for such action, but will also address ancillary legal issues arising from such action.

In Bosnia, the genocide committed by Serbs against Bosnian Muslims and Croats was not marked by blatant, documented incitement. However, it serves as an appalling example of the international community's inaction in the face of genocide. At the end of the Cold War, the Federation of Yugoslavia was made up of six republics: Serbia, Montenegro, Bosnia, Croatia, Macedonia, and Slovenia. In late 1991, when Serbian President Slobodan Milosevic began to assert Serbian dominance in the Federation, Slovenia and then Croatia seceded; the latter suffered a brutal seven-month war waged by the Yugoslav National Army.[28] Although an entity made up of 43 percent Muslims, 35 percent Orthodox Serbs, and 18 percent Roman Catholic Croats, Bosnia faced growing Serb control in the Yugoslav federation, and on April 5, 1992, the Republic of Bosnia seceded from Yugoslavia.[29]

The Bosnian Serbs -- supported by neighboring Serbia and Montenegro -- responded with violence aimed at ethnically partitioning Bosnia and joining the Serb-held areas of all the republics to form a "Greater Serbia."[30] They compiled lists of Muslims and Croats, rounding them up, often beating them, and executing them by the thousands. The Serb forces began pounding Sarajevo (the capital of the Bosnian government which had declared independence from Yugoslavia) with artillery; they openly called this strategy "ethnic cleansing."[31] Western media swarmed in and around Bosnia, and there was an "unprecedented public outcry" accompanied by U.N. sanctions -- nonetheless, the genocide was not actually stopped. Professor Samantha Power, of Harvard's Kennedy School of Government, addresses the inaction of the international community while 200,000 Bosnians were killed, "What the United States and its allies did not do until it was too late…was intervene with armed force to stop genocide." Power then

provides a detailed account of what went on during the genocide in American and European diplomatic circles. She reveals that the US State Department had already decided that non-intervention in Bosnia was "a fact, not a forecast." Thus, even though "no other atrocity campaign in the twentieth century was better monitored and understood by the US government," and even though President George H. W. Bush knew there were once again "concentration camps in Europe," nothing was done.[32] Power's stirring book, *A Problem from Hell*, explains the mechanisms of international and domestic politics (not to mention human nature) that combined to prevent military intervention. She also documents a 1991 call made by Mirko Klarin, a leading Yugoslav journalist, to try Balkan war criminals in an international court. Power cites Klarin, "there is no reason to leave the Yugoslav mini-Nuremberg for when 'this is all over.' It would be much more cost-effective to do it before, or rather, instead of."[33] The relevant lesson here: once genocide is being committed, the international community has been unwilling or unable to stop it.

The international community's response to the 1994 genocide in Rwanda supports the previous statement. However, what the Rwandan genocide also demonstrates is the possibly catastrophic role of incitement, and how such incitement should be heeded and acted upon in order to prevent genocide.

During the first decades following Rwanda's 1962 independence, the Tutsi tribe held political power, despite comprising only 10 to 15 percent of the country's population. Resenting this Tutsi domination, majority Hutu tribesmen initiated attacks against the Tutsis, killing thousands and forcing many others to flee.[34] Throughout the 1970s and 1980s, "the Hutu systematically purged the Tutsis from government and universities."[35] In 1993, after decades of conflict, the Rwandan government and members of the Rwandan Patriotic Front (RPF) -- a rebel group of "exiled Tutsis and moderate Hutus" formed in 1986[36] -- signed the Arusha Accords, a power-sharing agreement that also called for the deployment of U.N. peacekeepers.[37]

In January 1994, Major General Romeo Dallaire, commander of the U.N. mission in Rwanda, sent a cable to the Department of Peacekeeping Operations at the U.N., alerting the Department of Intelligence that the extremist Hutu Interhamwe militia had been undergoing training in official Rwandan army camps, and that an order had been given for the registration of all Tutsis "for their extermination."[38] One month later, "Dallaire reported he was drowning in information about death squad target lists" and again urged extensive U.N. intervention.[39] Yet despite the wealth of physical evidence and firsthand accounts Dallaire presented, the Department of Peacekeeping Operations ordered him to take no action. Indeed, the Department maintained this position even as it received additional cables predicting "catastrophic consequences" in Rwanda should the U.N. fail to act.[40] Thus, in the absence of any international outcry, "from April 7 [1994] onward, the Hutu-controlled army, the gendarmerie, and the militias worked together to wipe out Rwanda's Tutsi."[41]

The cables received by the U.N. in early 1994 were not the first warnings of imminent genocide in Rwanda, but were in fact preceded by a decades-long tradition of inflammatory public hate speech by the Hutu majority against the Tutsi minority. Yet while the country's print media, a news outlet essentially run by the government, was awash with hateful invective from as early as the 1960s, greater incitement was needed to foment genocide in a country where most of the population was illiterate. Radio Mille Collines provided this incitement, beginning in 1993.[42] With broadcast attacks on "the dominating spirit of extremist Tutsis" in October 1990, the issuing of the so-called "Ten Commandments of the Tutsis" in December 1990, and calls for the elimination of the "Tutsi cockroach" in April 1994,[43] Radio Mille

Collines allowed "the genocide planners" to "broadcast murderous instructions directly to the people."[44] This is a prime example of the powerful role public incitement can play in the perpetration of genocide.

To be discussed *infra* are the many convictions under Article 3 of the Genocide Convention of Hutu extremist leaders for this incitement to genocide (as well as for genocide itself). Yet, as in every other past genocide, the international community delayed acting until it was too late. One might ask, if there was such broad evidence of incitement to commit genocide, why was the incitement not prosecuted beforehand? International human rights expert William Schabas observes that, "contribution to the prevention of genocide might have been made by jamming the waves of Radio Mille Collines, which was responsible for promoting so much ethnic hatred." He concludes, "The Rwandan experience mandates some action to prevent hate speech that constitutes incitement to genocide."[45]

A situation of frightening similarity exists today in Iran. Calls for the destruction of the State of Israel by the most senior figures in the government of the Islamic Republic of Iran, including President Mahmoud Ahmadinejad,[46] are reminiscent of calls for the extermination of the Tutsis by the leadership of the Hutus. The critical difference, however, is that the Hutus were equipped with the simplest of weapons, such as machetes, whereas Iran will, if nothing is done to prevent it, soon complete its decades-long rogue pursuit of the most destructive weapons in existence -- nuclear weapons.[47] This would risk an unprecedented phenomenon: instant genocide. Simply put, there would be no time for the U.N. to debate intervention, for coalitions of the willing to form, or for diplomatic pressure to build. "Prevention" would be rendered useless.

The threats from Iran commenced from a short revolutionary history dating back to the 1979 Islamic Revolution. Before 1979, the Shah had implemented democratic reforms (albeit under an absolute monarchy with a brutal secret police). Yet throughout the 1970s, large portions of the Iranian population began to perceive their government as corrupt and incompetent. Although discontentment came from both the secular left and the religious right, the revolution became "subsumed in the cloak of Shi'ite Islam" and was led by the exiled Ayatollah Ruhollah Khomeini.[48]

The Shah fled the country in January 1979, and upon declaring Iran an Islamic republic in April, Khomeini rolled back reforms, recruited religious militias, and began incitement against Israel and the West.[49] Despite a brief experiment with reform under Mohammed Khatami, Ahmadinejad's 2005 presidential election victory consolidated the fundamentalist hold on all branches of the Iranian government.

From as early as the rule of Khomeini, anti-Israel pronouncements and anti-Semitic invectives have characterized Iranian leaders' speeches and permeated the Iranian media.[50] In fact, the phrases "death to Israel" and "Israel must be eliminated" were coined by Khomeini himself.[51] This was followed by former Ayatollah Ali Khameini who in 2000, called for Israel, the "cancerous tumor of a state," to be "removed from the region."[52] Former Iranian President Ali Akbar Hashemi Rafsanjani has openly weighed the costs and benefits of hitting Israel with nuclear bombs, seemingly more convinced by the benefits.[53] Ahmadinejad, whose virulent anti-Israel remarks have enjoyed widespread international consumption, has also influenced Iranian students to join in the incitement.[54] After successive presidents enunciated their aggressive intentions, Ahmadinejad has explicitly called for Israel to be "wiped off the map."[55] In a metaphorical update in April 2006, Ahmadinejad referred to Israel as a "rotten, dried tree" that would collapse in "one storm." He added, "Whether you like it or not, the Zionist regime is

on the road to being eliminated."[56] Again, as the crisis on the Israeli-Lebanese border unfolded in the summer of 2006, Ahmadinejad declared that the main solution to the crisis was the "elimination of the Zionist regime."[57]

The virulence of Ahmadinejad and his predecessors is striking, especially considering that Iran has never had any territorial dispute or bilateral conflict with Israel. Samantha Power remarks that all the examples of genocide she studied took place "under the cover of war."[58] Although Iran and Israel are not at war, the repeated genocidal pronouncements by Iranian leaders have created an atmosphere where much of the international community is ignorant of that fact.

Iran's quest mostly takes the form of developing nuclear weapons and long-range missiles, as well as supporting terrorist organizations. The Shahab 3 missile can threaten either Tel Aviv or Riyadh from the same launch point. The newer Shahab 3ER, with its 2,000 kilometer range, can reach Ankara in Turkey, Alexandria in Egypt, or Sanaa in Yemen from one single launch point deep within Iran.[59]

Many believe that the technology needed by Iran to begin building nuclear weapons is only months away.[60] US Director of National Intelligence John Negroponte recently offered his more conservative estimate -- that Iran could have nuclear bombs between the years 2010 and 2015.[61] Furthermore Mohammed El-Baradei, the Director General of the International Atomic Energy Agency, has said that the prolonged secrecy of Iran's nuclear program "has created a confidence deficit regarding its nature and its direction."[62]

These nuclear aspirations are compounded by Iran's close diplomatic, ideological, and financial ties with the most threatening terrorist organizations that repeatedly attack Israel and global Jewry, such as Hizbullah, Hamas, and Islamic Jihad. At the infamous 2005 conference in Tehran, "The World Without Zionism," representatives from these organizations were present.[63] The *London Times* reported last year that according to a senior Palestinian intelligence official, Iran promised a reward of $10,000 (£5,600) to Islamic Jihad if the group launched rockets from the West Bank toward Tel Aviv. The *Times* reporter also described money -- in the hands of a captured Islamic Jihad operative -- that had come from Tehran via Damascus.[64] The Iranian government has supported, financed, armed, and trained Hizbullah and other terror cells carrying out attacks against Israel and global Jewry for two decades, a fact acknowledged by its leaders.[65] Notable examples include the Karin A, a cargo ship caught in 2004 smuggling 83 crates of weapons from Kiesh (in Iranian waters) to Gaza,[66] and the Hizbullah suicide bombing of an Argentine Jewish center in 1994 that killed 85 and wounded 300.[67] As if to back up this behavior, the Iran Revolutionary Guards corps has declared, "Intifadah and the wrath of Palestinians will undoubtedly lead to the total destruction of Israel and before long we shall witness a world without the illegitimate regime of Israel."[68]

Iran's specific support for and arming of Hizbullah became incontrovertible in July and August of 2006 when the Islamic republic openly aided Hizbullah's bombardment of northern Israel with weapons from Tehran. Thus, Hizbullah fired on and hit an Israeli warship with an Iranian-made C-802 missile, possibly with on-the-ground assistance from Iranian troops.[69] Then, on August 6, 2006, Ali Akbar Mohtashemi Pur, the former Iranian Ambassador to Syria, announced that Iran had been supplying Hizbullah with long-range missiles to hit all of Israel.[70] This demonstrates that Iran has not abandoned its pursuit of destroying Israel indirectly by employing terrorists.

Iran's support of Hizbullah cannot be easily ignored. Statements made by the Secretary General of Hizbullah, Hassan Nasrallah, are not mere rhetoric. With his organization's recent, sustained at-

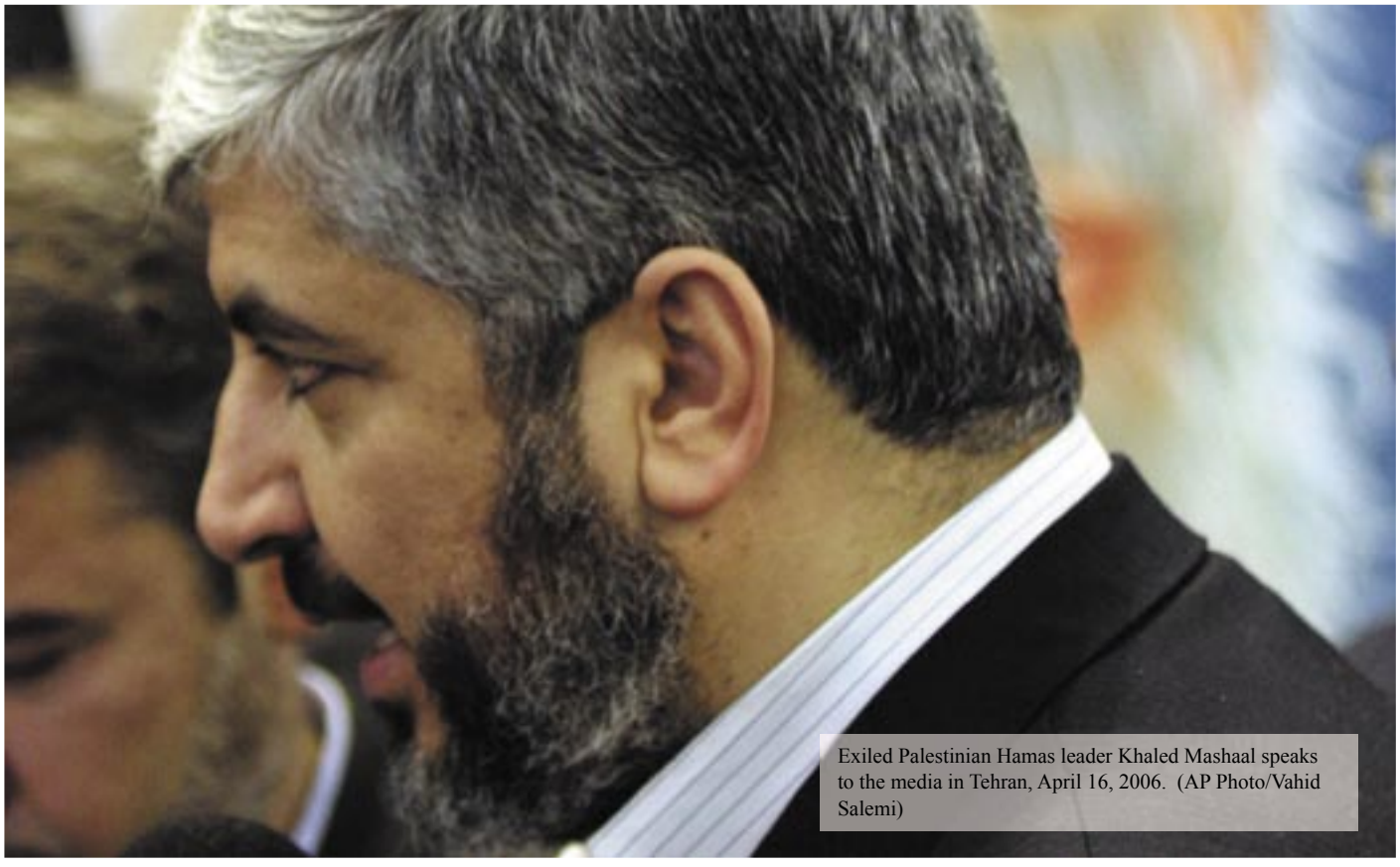
tack on Israel and its civilian population, statements by Nasrallah[71] such as "if they [Jews] all gather in Israel, it will save us the trouble of going after them worldwide,"[72] "it is an open war until the elimination of Israel and until the death of the last Jew on earth,"[73] and "there is no solution to the conflict in this region except with the disappearance of Israel,"[74] should be treated with the utmost seriousness, as should the supply of weaponry and ideological support that he receives from Iran. Clearly Ahmadinejad's words have moved into the stage of action, deadly action. Therefore his statements cannot be viewed as stopping at the stage of inchoate (preliminary[75]) incitement. Indeed, considering the fatal actions of Hizbullah and Hamas, and the groundswell of support for Ahmadinejad's odious comments in the Muslim world, it is already far past that point.

Whether Ahmadinejad wants the Iranian armed forces or his terrorist minions to destroy Israel, he is engaging in incitement. These nuclear aspirations and terrorist ties directed against Israel offer context for Ahmadinejad's incitement, and make it appear that he is liable to use whatever means he has to further his objective. If he does act, Samantha Power's observation on the correlation between genocide and war hints at a grim possibility: an attempt at genocide would likely produce a massive war. As in Rwanda, this is not merely talk -- it is incitement to commit genocide.

Indeed, there is an unerringly common feature between Rwandan and Iranian incitement. This is what anthropologist Lisa Malkki calls "mythico-history."[76] This phenomenon entails an ethnic or national group constructing a historical narrative that bends or fabricates facts of history to foment extremism. In her book *Purity and Exile*, Malkki explains how Hutu refugees in the 1970s constructed vile images of Tutsis through historical myths. The results of this were disasterous.

Mahmoud Ahmadinejad and his government practice an even more widespread, state-run version of mythico-history in their systematic denial of the deadliest and most widely studied genocide in modern history -- the Holocaust.[77] This denial of the previous genocide against the Jews of Europe[78] opens the door to a new genocide against the Jews of Israel. In fact, an Iranian presidential advisor, in the midst of a patently mythological speech about the Jews being responsible for the Black Plague, typhus, and SARS, said, "The resolution of the Holocaust issue will end in the destruction of Israel."[79] While this undermines Ahmadinejad's Holocaust denial, it reasonably shows that if Ahmadinejad is not already intent on acting against Israel, his advisors most certainly are.

Nasrallah, leader of Hezbollah, during the annual rally to mark Al-Quds Day (Jerusalem Day), Oct. 28, 2005. (AP Photo/Hussein Malla)



Exiled Palestinian Hamas leader Khaled Mashaal speaks to the media in Tehran, April 16, 2006. (AP Photo/Vahid Salemi)

The Relevant Legal Sources

II

General agreement appears to have been reached as regard the sources of international law, to which international courts and tribunals refer when cases come before them. The sources are set out in Article 38 of the Statute of the ICJ.[80] While Article 38 is primarily a direction to the ICJ as to how disputes that come before it are to be adressed, it is regarded as an authoritative statement on the sources of international law.[81]

While not expressly creating a ranking of the sources of international law, Article 38 is nevertheless a hierarchy for the application of international law in the settlement of disputes. The Article identifies three major sources of international law and two subsidiary means for determining the rules of international law.[82] The five sources that are identified by Article 38 are: (1) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (2) international custom, as evidence of a general practice accepted as law; (3) the general principles of law, recognized by civilized nations; (4) judicial decisions, and (5) the teachings of the most highly qualified publicists of various nations as subsidiary means for the determination of rules of law. Thus, in any matter coming before the ICJ, first, existing relevant treaty provisions between the parties must be applied. In the absence of any such provisions, custom is to be applied. If there is neither a relevant treaty nor custom then the Court may invoke general principles of law as recognized by civilized nations. Should the Court be unable to identify any such principles, judicial decisions and teachings of publicists (leading experts who have published respected scholarship) may be utilized to identify the relevant rules of international law.[83] These five sources will now be analyzed briefly, with emphasis being placed on two sources: treaty and custom.

A treaty, as characterized by Sir Gerald G. Fitzmaurice, the third Rapporteur on the law of treaties for the U.N. International Law Commission of March 1956, is, "An international agreement embodied in a single formal instrument (whatever its name, title or designation) made between entities both or all of which are subjects of international law possessed of an international personality and treaty-making capacity, and intended to create rights and obligations, or to establish relationships, governed by international law."[84]

The treaty-making process involves a number of stages including negotiation, provisional acceptance, and final acceptance. The treaty is only binding on the parties (states) that have agreed to its terms. Such

An Iranian woman attends a suicide bombers gathering in Tehran, May 25, 2006. Under a banner showing coffins draped with US, Israeli, and British flags, more than 150 Iranian men and women pledge their willingness to become suicide bombers. (AP Photo/Hasan Sarbakhshian)

agreement is evidenced by ratification, the formal acceptance of a treaty on the part of a state. The treaty only takes effect upon ratification, and until such time it does not create binding obligations for the parties thereto.[85] Thus, a state may opt out of a treaty. Indeed, even when a state ratifies a treaty it can stipulate certain reservations; these reservations are changes or amendments to the treaty that are implied or specified conditions of acceptance. Thus, a party may be bound by only parts of a treaty.[86]

A treaty can be entered into either between two parties (bipartite) or between several parties (multipartite). A distinction can be drawn between treaty contracts and law-making treaties. The former refer to agreements entered into between relatively few parties, which create particular law between the signatories. The latter are treaties to which there are numerous signatories. These may be regarded as law-making treaties in light of the wider effect that they have.[87] These law-making treaties, more far-reaching by their nature, create general norms for the future conduct of the parties. In theory, the obligations of law-making treaties are only binding upon those that have ratified the treaty, but oftentimes, the number of parties and the declaratory nature of the provisions have a strong law-making effect, at least as great as the general practice required to support the formation of a customary rule.[88] One such treaty is the Genocide Convention.

The second primary source of international law is international custom. Custom in international law is a practice that is followed by those concerned out of legal obligation or a sense that non-compliance would produce legal consequences such as economic sanctions. Thus, a rule of customary international law is characterized by two elements: a material element and a psychological element. The former refers to the behavior of states, and is concerned with such things as the duration of particular practices, and the uniformity and consistency of such practices.[89] The latter is concerned with the state's conception that the practice is required by, or consistent with, prevailing international law. This is commonly referred to as *opinio juris et necessitates*.[90] Both elements are required for the formation of customary international law. Just as with treaties, a state can contract out of customary international law in the process of its formation. If a state opposes a proposed rule of customary international law, and it expresses its opposition from the time of the rule's inception, then, provided that the objection is clear and persistent, the state will not be bound by such rule. However, should the state fail to object, it will be bound by the rule of customary law even if it is opposed to it, as silence is interpreted as acquiescence.[91]

General principles of law constitute the third major source of law. Two opinions are dominant as to the meaning of the general principles of law. One holds that this source embraces general principles that are common to national (domestic) legal systems, and which can be applied to international legal questions. The second view asserts that general principles of law in fact refer to natural law -- broad universal principles of law that are applicable to all mankind. The prevalent view is that principles of law are those general principles of national jurisprudence applicable in the sphere of international law.[92]

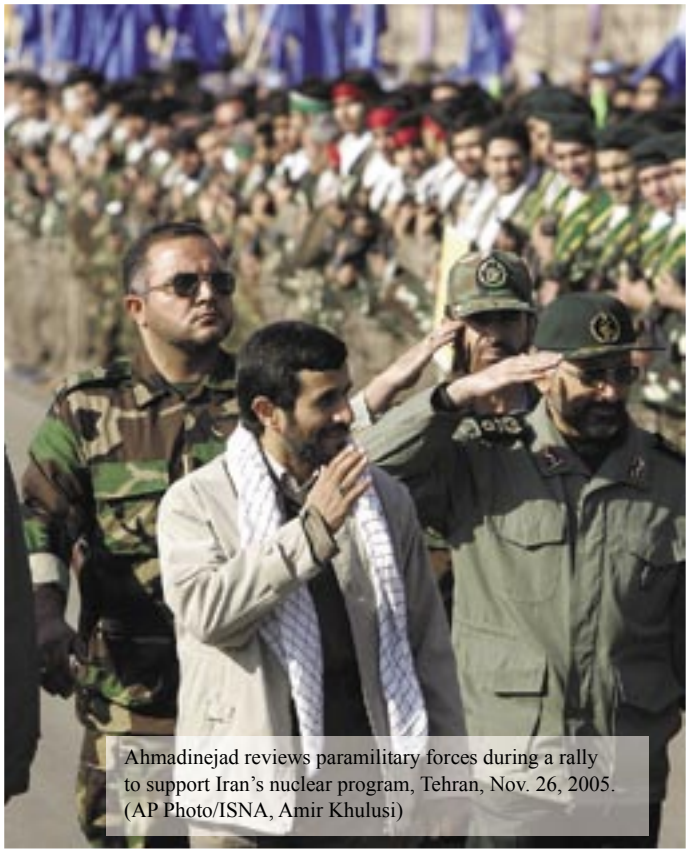
In the absence of an applicable treaty, international custom, or general principles of law, the ICJ is directed to refer to judicial decisions or writings of publicists in an attempt to discover the relevant international law. With respect to judicial decisions, while there is no principle of *stare decises* in international law, and therefore no obligation on courts to do so, international courts and tribunals often do refer to and rely upon previous decisions when seeking solutions to matters that have come before them. This practice encourages judicial consistency.[93] Moreover, international courts and tribunals are not limited in terms of which judicial decisions may be considered. Thus, they often make

reference to national court decisions in order to aid them in the process of decision-making. The weight that will be attached to the decision of the court will depend on its standing.[94]

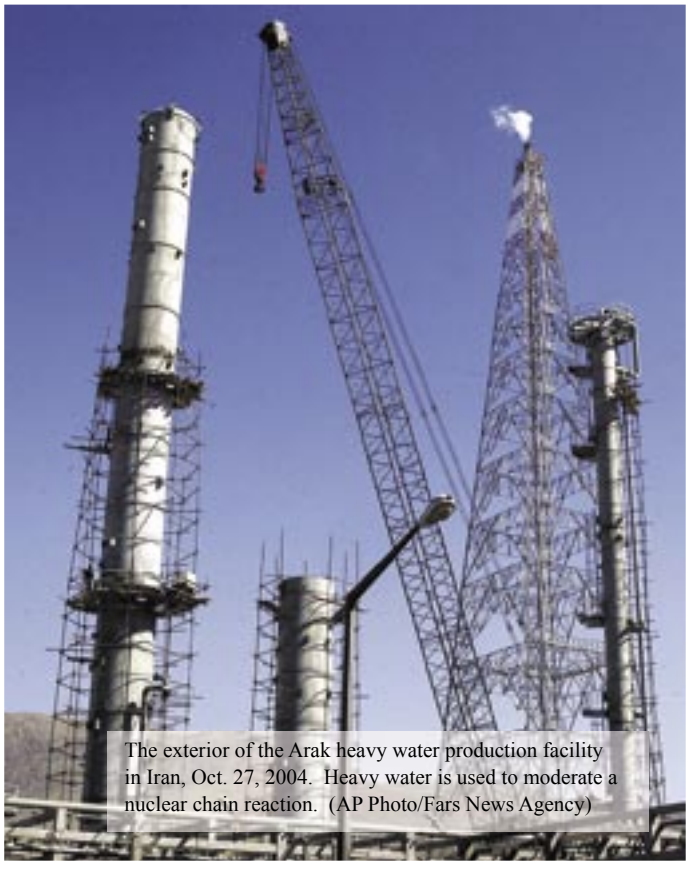
The final source of international law (referred to in Article 38) is the writings of publicists. These writings may be referred to as a subsidiary means of resolving a dispute. While once very influential in the formation of international law, the role played by the writings of publicists has decreased in recent years.[95]

It is important to note that the list of sources of international law that is contained in Article 38 is not exhaustive. Indeed, there are many other international law sources and legal concepts that are employed by international courts and tribunals. One such concept that requires mention, albeit brief, is that of *jus cogens*. *Jus cogens* are peremptory norms that have the character of supreme law. They cannot be modified by either treaty or ordinary customary law.[96] In fact, it is a norm from which no derogation is allowed and which can only be modified by a subsequent norm of general international law that has the same character.[97] These norms create what is referred to as *erga omnes*, a state's standing to enforce rights that belong to the international community. Some claim that *erga omnes* creates an obligation on states to enforce *jus cogens* violations.[98]

With regard to the matter in question -- whether statements made by Mahmoud Ahmadinejad constitute incitement to commit genocide -- three sources of law may be invoked. These are custom, treaty, and *jus cogens*; they will be discussed *infra*.



Ahmadinejad reviews paramilitary forces during a rally to support Iran's nuclear program, Tehran, Nov. 26, 2005. (AP Photo/ISNA, Amir Khulusi)



The exterior of the Arak heavy water production facility in Iran, Oct. 27, 2004. Heavy water is used to moderate a nuclear chain reaction. (AP Photo/Fars News Agency)

The Development of the Law Relating to the Crime of Incitement to Commit Genocide

III

Raphael Lemkin coined the term genocide in 1943 in his celebrated work *Axis Rule in Occupied Europe.* The term is derived from the roots *genos* -- Greek for 'family, tribe or race'; and *occidere* or *cideo* -- Latin for 'to massacre.'[99]

Although genocide was not a specific crime listed by the Nuremberg Tribunal, inclusion of the crime may have been implied under the general rubric of crimes against humanity.[100] Moreover, the crime of genocide does appear to have been part of the customary international law as it did receive scrutiny in the Tribunal.[101] Indeed, some have even argued that the crime is *jus cogens*.[102] This was later noted by the U.N. Commission of Experts reporting on the situation in Rwanda, who stated that the prohibition on genocide has achieved the status of *jus cogens,* and accordingly binds all members of the international community.[103]

The fact that genocide was a crime under customary international law, and possibly even a form of *jus cogens,* was not satisfactory for Lemkin, who in the aftermath of the Holocaust campaigned for the creation of a treaty defining and prohibiting genocide. On December 9, 1948, the General Assembly of the U.N. adopted the Genocide Convention. The Convention, originally signed by 25 states, came into force on January 12, 1951. By January 1985, there had been 96 ratifications, adherences or successions deposited with the U.N. Secretary General.[104] Today 138 states are parties to it,[105] making it one of the most widely accepted treaties in the realm of international law. It is vital to note that one of these ratifications was that of Iran that ratified the treaty without attaching any reservations thereto. Thus, under the international law of treaties, Iran is bound by the Convention.

The Convention defines the crime of genocide, and affirms the criminality of genocide in times of both peace and war. It also stipulates that the following acts are punishable: genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempts to commit genocide, and complicity in genocide.[106] Persons who committed any of these listed acts would be subject to punishment,

A member of the Iranian navy stands next to a missile, in front of a picture of Iran's revolutionary founder Ayatollah Ruhollah Khomeini, during a parade ceremony, Sept. 22, 2005. (AP Photo/Vahid Salemi)

whether they were constitutionally responsible rulers, public officials, or private individuals. For the purposes of this Monograph, emphasis will be placed on the crime of direct and public incitement to commit genocide committed by a head of state. By including incitement as a crime under the Genocide Convention, the drafters sought to create an autonomous breach that is an inchoate crime. Thus, in order to succeed in a case of incitement, the prosecution need not prove that genocide has already occurred. It is sufficient to establish that the direct and public incitement was intentional, and that it was carried out with the intent to destroy, in whole or in part, one of the named groups.

While the Genocide Convention is the primary instrument in international law that defines and prohibits the crime of genocide and that of direct and public incitement to commit genocide, there are other international legal instruments that do so as well. These include the Statute of the International Criminal Court, and the Statutes of the *ad hoc* Tribunals for the former Yugoslavia and Rwanda. These will be returned to *infra* in Section IV.

Accompanied by Iran's army commanders, Ahmadinejad reviews army missiles during a parade ceremony in front of the mausoleum of the late revolutionary founder Ayatollah Khomeini, April 18, 2006. (AP Photo/Vahid Salemi)

A missile is displayed by Iranian armed forces during a parade ceremony on Sept. 22, 2005, to mark the 25th anniversary of the outset of the Iran-Iraq war (1980-1988). In the background hangs a large picture of Iran's late revolutionary founder, Ayatollah Ruhollah Khomeini. (AP Photo/Vahid Salemi)

The Convention on the Prevention and Punishment of the Crime of Genocide

IV

Article 1 of the Genocide Convention states that the contracting parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law that they undertake to prevent and punish.[107] Again, it is important to reiterate that the purpose of the treaty is not only the punishment of the crime of genocide, but also its prevention. Indeed the very name of the Convention speaks of the "prevention" of genocide. Clearly its authors focused on preventing and punishing preliminary conduct that is likely to lead to the actual commission of genocide.

In accordance with this worthy goal, an NGO known as Scholars for Peace in the Middle East, recognizing the critical need for genocide to be prevented, is promoting a petition via the Internet that states, *inter alia*, "Genocide is the foremost cause of preventable death and suffering in the last hundred years. Governmental incitement and the use of hate language is a recognized predictor of genocide, and incitement to commit genocide is a crime in violation of the Genocide Convention. Indifference to incitement and inaction by the outside world are recognized predictors and risk factors for genocide. Denial of previous genocides is another risk factor contributing to future genocides."[108]

Article 2 of the Genocide Convention defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such, "(A) Killing members of the group; (B) Causing serious bodily or mental harm to members of the group; (C) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part."[109]

With reference to the matter at hand, the Israeli people would constitute both a national and an ethnic group. In fact, as Israel is by definition a Jewish state,[110] Israelis could also be considered a religious group.[111] Further, calls for Israel to be wiped off the map evidence an intention to kill many members of the group, or cause them serious bodily harm. Any equivocation about the number of potential victims

An admirer holds a photo of Ahmadinejad, as supporters listen to his speech in western Iran, March 8, 2006. Ahmadinejad stated that the world has to give in to Iran's "right" for uranium enrichment. (AP Photo/ISNA)

and whether this would really constitute genocide can be put aside by considering Israel's size: 20,000 square kilometers -- slightly smaller than New Jersey, making it a target that can be destroyed with only a few weapons of mass destruction. Thus, the definition of genocide is satisfied, and Ahmadinejad's actions fall within the ambit of the Genocide Convention.

Indeed, it is interesting to note that the definition of genocide, specified in Article 2(b), also includes the causing of serious mental harm to members of the relevant group. It is reasonable to suppose that Ahmadinejad and his predecessors have already caused such harm to many Israelis. Recently, discussion has arisen in Israel regarding rebuilding and revamping bomb shelters that were last used when Saddam Hussein launched SCUD missiles at Israel during the (first) Gulf War.[112] Post-traumatic stress disorder (PTSD) and other serious mental harm was rampant in Israel at that time, and again during the 2000-2005 Intifada, in which incidences of PTSD skyrocketed among Israeli youth who had witnessed or survived bombings.[113]

If Ahmadinejad's threats are serious, and he acts with the resources that he, Rafsanjani, and others have indicated, then those resources (nuclear bombs and terrorist attacks) have already been proven to cause serious mental harm to Israelis. Thus, strictly in terms of the Genocide Convention, Ahmadinejad has in fact already perpetrated and is in the process of further perpetrating aspects of genocide. This concept of mental harm, while ostensibly a bit tenuous, in fact has constitutional backing in national law.[114] Although relevant, due to space constraints, this concept of mental harm will not be further addressed in this Monograph. Focus will be placed solely on the concept of incitement to genocide.

As explained *supra*, the Ahmadinejad case necessitates analyzing Article 3 of the Genocide Convention that stipulates the acts that shall be punishable. These include genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and complicity in genocide.[115] It is Article 3, and more particularly Article 3(c), that criminally sanctions direct and public incitement to commit genocide, which is to be addressed *infra*. Before one can hold an individual guilty of having committed direct and public incitement to commit genocide, one must first interpret the meaning of the terms in the statute and then ascertain whether the individual's phraseology actually constitutes punishable incitement.

There are generally three main approaches to treaty interpretation in international law. These are the objective approach, which encourages interpretation in accordance with the ordinary use of the words of the treaty; the subjective approach, which interprets the treaty in accordance with the intention of the parties thereto; and the teleological approach, which advocates interpretation of the treaty in accordance with the treaty's aims and objectives.[116] These approaches, although characterized as distinct, are not mutually exclusive. In fact the Vienna Convention adopts an integrated approach to the interpretation of treaties, and stipulates, "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."[117] In the matter under consideration it is unnecessary to resort to general principles of interpretation, for not only are the words unambiguous, but also there is judicial precedent with respect to the meaning of the words and the phrases.

Prior to July 1, 2002, when the Statute of Rome put the ICC into force, there was no permanent international tribunal. It was therefore necessary to form special tribunals when countries wished to proceed with international criminal trials. The first two such tribunals, created in the aftermath of World War II, were the Nuremberg Tribunal, which was

established to hear cases of war crimes emanating from Germany, and the Tokyo Tribunal, which was established to hear cases of war crimes emanating from the Far East. Neither of these tribunals dealt specifically with the crime of genocide, let alone that of incitement to commit genocide.[118]

The next international tribunal was created in 1993. This was the International Criminal Tribunal for the Former Yugoslavia (ICTY). It was intended to bring to justice those responsible for serious violations of international humanitarian law.[119] To date, there have been no indictments by the Prosecutor of the ICTY for direct and public incitement to commit genocide.[120]

The fourth and final tribunal created thus far is the International Criminal Tribunal for Rwanda (ICTR). Established on November 8, 1994, the ICTR was set up for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in Rwanda between January 1, 1994 and December 31, 1994.[121] The record of the ICTR provides substantial precedent for prosecuting incitement to genocide. Nine men were convicted of incitement to genocide, and some of their convictions were later appealed. Most notably, the then Prime Minister of Rwanda, Jean Kambanda, was sentenced to life imprisonment for the following, "…that in his particular role of making public engagements in the name of the government, he addressed public meetings, and the media, at various places in Rwanda directly and publicly inciting the population to commit acts of violence against Tutsi and moderate Hutu. He acknowledges uttering the incendiary phrase which was subsequently repeatedly broadcast, 'you [Tutsis] refuse to give your blood to your country and the dogs drink it for nothing.'"[122]

The conviction of a former head of state for direct and public incitement to commit genocide constitutes precedent for the Ahmadinejad indictment. Kambanda was no longer Prime Minister when he was tried -- although by then the Tutsi genocide had already been committed.

A famous case of Rwanda incitement convictions was called the Media Trial, in which three influential Hutus were convicted of genocide and incitement to genocide, as well as conspiracy and crimes against humanity. Ferdinand Nahimana, a former professor, became the founding director of Radio Télévision des Mille Collines (RTLM), known in Rwanda after April 6, 1994 as "Radio Machete." He described his incendiary broadcasts as part of a "war of media, words, newspapers and radio stations," complementary to the war of bullets. Indeed, the station broadcasted lists of Tutsis who were members of the RPF in the context of exhorting Hutus to "be vigilant."[123] Many of these Tutsis were slaughtered months later. Nahimana continued to broadcast even during the genocide, professing happiness in an RTLM interview at his awakening of the Hutu.[124] Hassan Ngeze, a colleague of Nahimana's, was editor-in-chief of the Kangura newspaper, a printed incarnation of the same incitement found in RTLM. The cover of Kangura No. 26 answered the question, "What Weapons Shall We Use to Conquer the Inyenzi Once and for All?" with a picture of a machete.[125] Jean Bosco Baryagwiza, a Rwandan Ministry of Foreign Affairs official and head of the Coalition for the Defense of the Republic (CDR) participated in demonstrations in which CDR demonstrators chanted "let's exterminate them," clearly referring to Tutsis. He was also a chief implementer of the actual roadblocks and other mechanisms used to kill Tutsis (hence his conviction of genocide as well).[126] This case demonstrates the intricate relationship between the incitement to, and actual commission of, genocide. These inciters directly caused murder, sometimes participating in it themselves, and self-consciously continued to incite during the genocide.

There were several other convictions. Georges Ruggiu, a Belgian journalist for RLTM, frequently

urged Hutus to "go to work," a phrase the prosecution held was understood to mean, "go kill the Tutsis and Hutu political opponents of the interim government."[127] Others convicted of direct and public incitement to commit genocide include Eliezer Niyitegeka,[128] Rwandan Minister of Information, and Jean Paul Akayesu,[129] a local mayor during the genocide.

Yet another conviction was handed down by the Canadian Immigration and Refugee Board[130] in the case of Leon Mugesera. Mugesera was a Rwandan Hutu extremist who, in a public speech in November 1992, called upon supporters to massacre Tutsis. Mugesera had fled Rwanda in 1993 and obtained refugee and permanent residence status in Canada. While Mugesera could not be tried by the ICTR on the basis that his speech had occurred before January 1, 1994, he could be stripped of his right to remain in Canada if convicted of having committed crimes against humanity[131] or war crimes. This Canadian tribunal found Mugesera guilty of direct and public incitement to commit genocide.[132] This finding was confirmed upon appeal.[133]

These judicial decisions offer insight when interpreting the phrase 'direct and public incitement to commit genocide.' In doing so, one must analyze the words employed on a case-by-case basis. In *Akayesu*, the ICTR looked to comparative law to interpret the term "incitement." Under Common Law the ICTR found that the term involves "encouraging or persuading another to commit an offence."[134] In another example, the tribunal noted that the French penal code defines provocation as follows, "Anyone who, whether through speeches, shouting or threats uttered in public places or at public gatherings or through the sale or dissemination, offer for sale or display of written material, printed matter, drawings, sketches, paintings, emblems, images or any other written or spoken medium or image in public places or at public gatherings, or through the public display of placards or posters, or through any other means of audiovisual communication shall have directly provoked the perpetrator to commit a crime or misdemeanor, shall be punished as an accomplice to such a crime or misdemeanor."[135]

The ICTR further held that the incitement must be intentional. It stated, "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(s) 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."[136]

Despite the requirement that the incitement must provoke or encourage the commission of an offence, the offence need not actually be fully carried out for the crime of incitement to be perfected. This was recognized and emphasized by the ICTR in the case of *Akayesu*. Indeed, this is the distinction that is drawn between incitement to commit genocide and complicity in genocide.[137]

This is akin to national law. For example, in the United States, in the case of *Brandenburg v. Ohio*, the court held that states cannot prohibit speech advocating the use of force unless it is directed at producing imminent lawless action, and is likely to incite or produce such action. While the prohibition in the US depends largely on the effect that one's words could have, punishment for one's words does not hinge on whether violence actually occurs.[138]

Given this understanding of the word "incitement" it would appear that Ahmadinejad has clearly engaged in acts of incitement. Ahmadinejad knowingly and intentionally calls for the destruction of Israel. He has attended rallies where placards calling for "death to Israel" are prominently displayed. He further organized a conference entitled "The World Without Zionism." As the Scholars for Peace

petition reinforces, "Even Ahmadinejad's attempted 'clarification' that he merely advocates the 'transfer' of Jews in Israel to Germany and Austria constitutes advocacy of forced deportation, another crime against humanity and is contradicted by his own action and long-term Iranian policy."[139]

While there is little evidence as to the scope of the words "direct and public" in the *travaux preparatoires*, these words appear to be the technique by which the drafters of the Genocide Convention sought to limit the scope of any offence of inchoate incitement.

According to the International Law Commission, public incitement requires "communicating the call for criminal action to a number of individuals in a public place or to members of the general public at large."[140] The Commission elucidated by stating that this public appeal for criminal action increases the likelihood that at least one individual will respond and encourages the kind of 'mob violence' in which a number of individuals engage in criminal conduct.[141]

Clearly, by speaking at rallies and conferences in Iran and abroad, and having his speeches broadcast nationally and internationally, and reported upon widely in the media, Ahmadinejad is communicating his call for action to millions of individuals as well as to the world public at large, attracting many followers.[142] It is therefore clear that this element of the crime is present.

The final element of the crime is that the incitement be "direct." The problem inherent in this element is that history demonstrates that those who attempt to incite genocide often do so using euphemisms. However, for euphemistic speech to be consequence-free would surely be contrary to the intention of the drafters of the Genocide Convention. According to the International Law Commission, "the element of direct incitement requires specifically urging another individual to take immediate criminal action rather than merely making a vague or indirect suggestion."[143] In *Akayesu*, the ICTR said that incitement must "assume a direct form and specifically provoke another to engage in a criminal act."[144]

Significantly, what constitutes direct incitement depends largely on the context in which the incitement occurs. The Trial Chamber of the Rwanda Tribunal, recognizing this, stated in *Akayesu*, "the direct element of the incitement should be viewed in light of its cultural and linguistic content…a particular speech may be perceived as 'direct' in one country, and not so in another, depending on the audience."[145] For example, during the Rwandan genocide the Hutu president of the interim government called upon Rwandans "to get to work." For Rwandans, this meant using machetes and axes, and would not, according to the Special Rapporteur on the situation of human rights in Rwanda, be misunderstood.[146]

The problem of implied references also faced the Canadian court in *Mugesera*, as Mugesera's speech was in fact a series of double entendres and implied references that were clear to his audience, but sufficiently veiled so as to furnish him with a line of legal defense. This problem was also recognized by the ICTR, which accepted that implicit incitement could nonetheless be direct within the meaning of the Convention, and stated that "acts of incitement can be viewed as direct or not, by focusing mainly on the issue of whether the persons for whom the message was intended immediately grasped the implication thereof."[147]

In a country such as Iran, where the people have been exposed to anti-Israel and anti-Semitic rhetoric since the late 1970s, even veiled invectives are clearly understood. Yet notably, the calls made by Ahmadinejad are neither veiled nor euphemistic, but rather quite explicit. Surely the signs that "Israel should be wiped off the map" painted on the side of Shahab 3 missiles[148] when acquisition of nuclear

technology is only months, or at most, a few years away, and where groups like Hizbullah and Hamas are clamoring to destroy Israel if only given the weapons to do so. This constitutes incitement which is not mere rhetoric, and is no longer simply inchoate.[149]

Thus, given a semantic and contextual analysis of the crime "direct and public incitement to commit genocide," it would appear clear that Ahmadinejad, who speaks at rallies gathered with the theme of wiping Israel off the map, to an audience carrying placards calling for death to Israel, is indisputably engaged in and responsible for direct and public incitement to commit genocide.

Sadly, the historical record shows that the international community has never before prosecuted incitement until after thousands or millions were killed. According to Samantha Power, this shameful record must be, and can be, improved upon.[150] For example, Mugesera, whose specific crime was only incitement, was not prosecuted until after the genocide that his incitement caused. This was too late. While Ahmadinejad has not yet committed genocide, the Rome Statute and Genocide Convention demonstrate that he should nevertheless be tried. He is clearly responsible for incitement that has begun to be carried out and appears more and more liable to fully implement his agenda. He supports terrorism against Israel and denies the Nazi genocide against the Jews. But the recent Iranian nuclear developments and Ahmadinejad's apocalyptic pronunciations[151] suggest that he has no intention of leaving his plan uncompleted. Moreover, if he delays, his followers may vote him out of office for failure to deliver on his promises to destroy Israel. It is for these reasons that action is required now, before Ahmadinejad takes further concrete steps to satisfy his voters, admirers, and terrorist minions. Such action is clearly sanctioned in law, international and national.

Ahmadinejad's intentions are made all the more alarming by the fact that for eighteen years Iran has been deceiving the International Atomic Energy Agency regarding its progress toward becoming a nuclear power (including obtaining black-market technological knowledge to produce nuclear weapons). Moreover, Iran has already developed long-range missile delivery systems capable of carrying nuclear warheads.[152] The time to act has come, and that action can be via legal recourse.[153]

Workers unload a pressurizer, part of the Boushehr nuclear power plant facility, at the Boushehr port, Aug. 22, 2004. Iran, with Russia's help, plans to build more nuclear power plants, despite US concerns that byproducts from the plants could be used to manufacture atomic bombs. (AP Photo/Iran's Atomic Energy Organization)

Iranians greet Ahmadinejad during his visit to the city of Shahriar, Oct. 11, 2006. In the crowd someone is holding a poster featuring (from left to right) Ahmadinejad, Khomeini, and Ali Khomeini. (AP Photo/Hasan Sarbakhshian)

Jurisdiction and Issues of Immunity V

The principle of complementarity is embodied in the ICC, although it is only specifically referred to in the preamble to the Rome Statute. The principle allows for the ICC to punish international crimes, such as genocide, when a state either fails to do so or is unwilling to do so. Article 17 of the Rome Statute implements this principle and stipulates that the Court will not proceed in a matter when a state is investigating or prosecuting the case unless the state is unwilling or unable to proceed.

Given this principle, before the ICC asserts its jurisdiction over the issue under discussion, it must be apparent that other states are either unwilling or unable to proceed, and that there are no other avenues open to the parties to the dispute. In this matter, analyzing the Rome Statute and the Genocide Convention, as well as the general principles of state jurisdiction, it appears to make alternative recourse available to the parties. Whether this recourse is satisfactory will now be analyzed.

The Genocide Convention (to which Iran is a State-Party) stipulates in Article 8 that "any contracting party may call upon the competent organs of the U.N. to take such action under the Charter of the U.N. as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article 3."[154] Neither the Security Council nor the General Assembly has addressed Ahmadinejad's threats.[155] The Iranian nuclear issue has been placed before the U.N. General Assembly as well as before the U.N. Security Council, which has produced a resolution on July 31, 2006 demanding that Iran cease its nuclear enrichment by August 31, 2006 or face possible sanctions.[156] Since then there has been a stalemate as Iran has repeatedly refused to comply and, in response, the US has insisted that other countries join in applying sanctions against Iran.[157] Waiting for the Security Council to act risks having the genocidal statements of Ahmadinejad develop into genocidal action. Therefore, pursuing a range of legal avenues is critical at this time.

The Genocide Convention further provides in Article 9 that "disputes between the contracting parties [states] relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article 3, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."[158] Should not states whose citizens include Holocaust survivors, such as Canada or Germany, be considered "parties to the dispute?" What if one of the many states within range of Iran's Shahab 3

Ahmadinejad speaks in front of a picture of Iran's late leader Khomeini, during the 17th anniversary of his death, Tehran, June 3, 2006. (AP Photo/Hasan Sarbakhshian)

missiles were to take the proposal to the ICJ? And what if the party proposing this indictment is not a state actor but, for example, an organization of Holocaust survivors or an Israeli NGO specializing in genocide prevention?

Alternative fora for the prosecution of Ahmadinejad would be either in the national Israeli courts or those of some 'neutral' state. This might appear complex as jurisdiction is most commonly based upon the principle of territoriality. That is, a state will be able to exercise jurisdiction over events or crimes that occur or are committed within its territory.[159] However, there are exceptions to this rule. Therefore, there are instances where a state can exercise extraterritorial jurisdiction. These instances have crystallized into four principles: the nationality principle, the protective or security principle, the universality principle and the passive personality principle.

The nationality principle enables a state to exercise jurisdiction over any of its nationals wherever they may be, and in respect of offense committed abroad.[160] Since Ahmadinejad is a national of Iran, and since Iran is unlikely to implement any form of criminal prosecution against him, this principle upon which jurisdiction could be exercised is not realistic in the present matter.

The second principle on which a state could exercise jurisdiction is the protective or security principle. This principle enables a state to exercise jurisdiction on the basis of offense, which although occurring overseas and committed by non-nationals, are regarded as injurious to the state's security.[161] While this is clearly open to abuse, the justification lies in a state's need for protection from prejudicial activities of a non-national that occur in a state where such activities are condoned. This would appear to be the case with Ahmadinejad. He is a non-national of Israel, and his criminal activity is based primarily in Iran. In Iran his activity is being politically, if not legally, condoned. Yet his pronunciations, which are injurious to the security of the largely Jewish population of the State of Israel, are being reiterated with mounting ferocity. It would seem that on this basis Israel would be able to exercise jurisdiction over Ahmadinejad. Indeed, this principle was invoked in Israel's exercise of jurisdiction over Adolf Eichmann.[162]

The third principle that can be invoked by a state wishing to exercise jurisdiction is the universality principle. This principle asserts that there are particularly heinous acts that are contrary to international law and over which all states have jurisdiction.[163] Typically, this entails jurisdiction to enforce crimes against humanity, which are of universal concern. Crimes of this kind include piracy, slavery, acts of terrorism, hijacking of aircraft, war crimes and genocide.[164] Given this basis for jurisdiction, all states could indict and try Ahmadinejad. This is particularly so since genocide is considered *jus cogens*. This jurisdiction would surely extend to the crime of incitement to commit genocide. Thus, national courts would have jurisdiction to hear and decide Ahmadinejad's case.

The final possible foundation of state jurisdiction is based on the passive personality principle. According to this principle, the link between the state that is exercising jurisdiction and the offence is the nationality of the victim.[165] While historically this is not a widely accepted principle, it could be applicable to the matter at hand. The likely 'victims' in this case are clearly the Israeli populace and Jews wherever they reside. Therefore, should Israel prosecute, there would be a link between the state exercising jurisdiction and the offence on the basis of the nationality of the victim. Thus, Israel could exercise jurisdiction over Ahmadinejad on this basis.

These various principles are often listed as independent. Yet, in practice, each of them actually constitutes evidence of the reasonableness and appropriateness

of an exercise of jurisdiction. On this basis, jurists have formulated a general principle of jurisdiction that relies on some genuine or effective link between the crime and the state forum. Whether such a general link indeed exists, it is apparent that at least on three bases Israel could exercise jurisdiction over Ahmadinejad. Other states could exercise jurisdiction over him on the basis of the universality principle.

The problem that arises is that Ahmadinejad is a head of state and therefore enjoys what is termed 'head of state immunity.' Head of state immunity is recognized by customary international law. It prohibits the prosecution of foreign leaders for criminal acts.[166] The rationale for this immunity is that "a head of state needs to be free to promote his own state's interests during the entire period when he is in office without being subjected to the prospect of detention, arrest or embarrassment in the foreign legal system of the receiving state."[167] Indeed, such immunity is essential for the effective functioning of a head of state.

Nonetheless, there are limitations to head of state immunity. This was recognized in the Pinochet case, where the English court held that a former head of state will enjoy immunity only for those acts done by him as head of state which were part of his official functions -- thus, for Pinochet, immunity did not extend to acts of torture.[168]

The decision in *Pinochet* was not followed in the case of *Congo v. Belgium*, where the facts were distinguished on the basis that in *Congo v. Belgium* the court was dealing with an incumbent Minister of Foreign Affairs rather than a former president.[169] While this does not appear to bode well for the present matter, the court in *Congo* was careful to stipulate "the immunities enjoyed under international law by an incumbent or former Minister for Foreign Affairs do not represent a bar to criminal prosecution in certain circumstances."[170]

The matter of Ahmadinejad seems to be one such circumstance, where criminal prosecution could be forthcoming even while he holds his current office. As the Genocide Convention explicitly states in Article 4, "persons committing genocide or any of the other acts enumerated in Article 3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals."[171] This provision, most likely inserted so as to empower the international community to prosecute all who commit genocide or any of the acts enumerated in Article 3, clearly removes any immunity that Ahmadinejad may claim as a head of state. Moreover, this appears concordant with the fact that genocide is *jus cogens*, a peremptory norm from which no derogation is permitted. While Israel and other national states may be entitled to exercise jurisdiction over Ahmadinejad, it is unclear whether they would be willing or able to do so. It is unclear which, if any, states would be willing to accept the political fallout of such a move. But Germany, particularly under the leadership of Chancellor Angela Merkel, might exercise the profound historical courage that would be necessary to undertake such a challenge.[172] Germany has ratified both the Genocide Convention and the Rome Statute. To reiterate, the first permanent international criminal court emanated from the adoption of the Rome Statute, which came into force on July 1, 2002.

The court was established so as to have jurisdiction over the most serious crimes of concern to the international community as a whole. There are four crimes that are set out as the most serious crimes of concern to the international community. These are the crimes of genocide, crimes against humanity, war crimes and the crime of aggression.[173] The Rome Statute provides specifically for the inchoate crime of direct and public incitement to commit genocide. This is quite significant. While the Working Group on General Principles at the Rome Conference rejected suggestions that the crime of incitement should be included in the definition of the offence of genocide,

it incorporated it within a general provision with the proviso that direct and public incitement referred only to genocide and did not include war crimes, crimes against humanity or aggression.[174]

Again, the issue of immunity arises. And again, the issue can be resolved, this time by reference to Article 4 of the Genocide Convention, which stipulates that persons committing genocide or any of the acts enumerated in Article 3 of the Convention shall be punished whether they are constitutionally responsible rulers, public officials or private individuals.[175] Thus, Ahmadinejad's immunity will not serve to protect him before the ICC.

The Statute of Rome makes this fact even clearer. Article 27 of the Statute specifically states that the official capacity of the accused is irrelevant. The article stipulates the following on the Statute, "[It] shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government or parliament, an elected representative or a government official, shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for the reduction of sentence."[176] Therefore, Ahmadinejad's position should not give him immunity from the ICC.

This Monograph will now resolve one way the case could get to the ICC. The Office of the Prosecutor is one of the four organs of the ICC. The Chief Prosecutor, Luis Moreno Ocampo, heads it. The mandate of the office is to conduct investigations and to prosecute crimes that fall within the jurisdiction of the Court. The Chief Prosecutor may conduct an investigation upon referrals of situations to him by a State Party, the U.N. Security Council, a non-governmental organization and other such reliable sources.[177] The Prosecutor will only start an investigation if the referral is of a situation in which there is a reasonable basis to believe that crimes have been or are being committed. If the Chief Prosecutor decides that there is such a reasonable basis, then he will request the Pre-Trial Chamber to authorize an investigation. The Investigation Division of the Office of the Prosecutor, if acceded to, will conduct the investigation. Should the Prosecutor decide to prosecute, then the Prosecution Division of his office will undertake the prosecution.

The ICC's jurisdiction on this matter is hampered by the fact that Iran is not a party to the Rome Statute. If Iran were a party to the Statute, then most avenues for this case reaching the ICC would be open: the Prosecutor could initiate the investigation *proprio motu* or it could be referred by one of the many State Parties threatened by Iran. However, under Article 12 of the Statute, the state in which the crime occurred, or the state of which the perpetrator is a national, must be party to the Statute.[178] The crime at hand was committed in Iran by a national (rather, national leader) of Iran and Iran is not a party to the Rome Statute. This is a problem. However, if the case is referred by the U.N. Security Council under Chapter VIII of the Charter of the U.N.,[179] then the above conditions do not apply.[180] This is the case in the ICC's current investigation of the genocide in Darfur. Sudan is not a Party State, but the case was referred by the Security Council in U.N. Security Council Resolution 1593 (2005).[181] One of the issues Mr. Moreno Ocampo deals with in his report on this matter is assessing the gravity of the crimes, specifically (though not exclusively), with reference to the "systematic character of impact of the crimes."[182] The systematic impact of Ahmadinejad's crimes, though they differ from the actual murders in Darfur,[183] is great. His call for the elimination of a member state of the U.N. has already had profound effects on the entire world system, eliciting mass condemnation and political reactions. It is no small matter, and as the Security Council deals with the Darfur issue, it ought to address this one as well. Thus, an additional option is for the U.N. Security

Council to refer the case of Mahmoud Ahmadinejad to the ICC.

If the Security Council option proves unviable, jurisdiction might be addressed another way. This would require a broader interpretation of the term "territory" in Article 12 (a) of the Rome Statute, which establishes that "The State on the territory of which the conduct in question occurred…" must be a Party to the Statute. When Ahmadinejad stood at the "World Without Zionism" conference in Tehran, he stood on Iranian territory. Yet, the live broadcasts of his speech came from media outlets all over the world, in scores of countries that are indeed parties to the Rome Statute.

Should Ahmadinejad be prosecuted, and should he be found guilty, the matter will not be closed. There is also what is referred to as state responsibility, which might be incurred by Iran. This will be briefly dealt with *infra* in Section VI.

Ahmadinejad speaks in front of a picture of Ayatollah Khomeini, during the 17th anniversary of his death, Tehran, June 3, 2006. (AP Photo/Hasan Sarbakhshian)

Iranian female militias hold their guns during a rally to support Iran's nuclear program in Tehran, Nov. 26, 2005. Ahmadinejad called for a trial of the Bush administration as war criminals. (AP Photo/IRNA)

State Responsibility

VI

State responsibility refers to the liability of one state to another for the non-observance of international legal obligations. A state could bear responsibility for such things as breaches of a treaty obligation, violation of territorial integrity or injury to diplomatic representatives.[184]

In 2001, Draft Articles on the Responsibility of States for Internationally Wrongful Acts were adopted, and General Assembly Resolution 56/83 recommended the text of these articles to governments. The articles seek to codify the law regarding state responsibility for internationally wrongful acts. The articles only deal with state responsibility and only with instances where such responsibility arises from the results of prohibited conduct.[185]

Draft Article 1 establishes the basic premise of the law. It stipulates that "every internationally wrongful act of a state entails the international responsibility of that state."[186] Draft Article 2 supplements Draft Article 1. It provides that, "There is an internationally wrongful act of a state when conduct consisting of an action or omission, (A) Is attributable to the State under international law; and (B) Constitutes a breach of an international obligation."[187]

It is important to note that for the purposes of state responsibility, the characterization of an act of a state as wrongful is governed by international law. Additionally it is unaffected by the fact that the same act is lawful under national law (Draft Article 3).[188]

Given the existence of the concept of state responsibility, it appears appropriate to also consider the responsibility, if any, borne by Iran for the actions of its President. To determine whether Iran bears any liability, one must clearly determine whether the actions of Ahmadinejad are attributable to Iran under international law, and whether his actions constitute a breach of an international obligation.

Imputable -- in the context of state responsibility -- means attributable. Draft Article 4 stipulates that "the conduct of any State organ shall be considered an act of that State under International law."[189] Since Ahmadinejad cannot be described as an organ of state, the answer as to whether his acts are attributable to Iran must lie in Draft Article 5, which deals with conduct of entities other than organs of state. Draft Article 5 states that conduct "shall be considered an act of state under international law, provided the person or entity is acting in that capacity in the particular instance."[190] Clearly, when Ahmadinejad speaks, he does so as President of Iran. He therefore acts in his capacity as President of Iran when he -- for example -- calls for the elimination of Israel. As a result, his acts can be imputed to the state.

Iranian soldiers carry coffins of soldiers killed during the Iran-Iraq war of 1980-88, Tehran, July 24, 2002. In the background is an upside-down American flag reading "Down with USA." (AP Photo/Hasan Sarbakhshian)

The second issue that must be dealt with before Iran can be said to bear responsibility is whether Ahmadinejad's actions constitute a breach of an international obligation. Clearly, this is the case. Whether it is under customary international law, the Genocide Convention, or *jus cogens*, there is an international obligation not to incite the commission of genocide. Thus, Ahmadinejad is clearly breaching an international obligation.

Given that Ahmadinejad is indeed breaching an international obligation, and that his actions are attributable to Iran, that state does bear state responsibility for his acts. It is therefore liable to make reparations.

A state that has committed an internationally wrongful act is under an obligation to make full reparations for the injury caused. The object of reparations is to restore the status quo -- the conditions that prevailed previously -- or if this is not possible, to compensate for the injury itself. Reparations can be achieved through diplomatic negotiation, and it may take the form of an apology, an assurance that the offending breach will not recur, restitution in kind, and if this is not possible, monetary compensation.[191] Certainly such reparations should, in this case, include the dismantlement of Iran's nuclear weapons program.

Finally, any argument for state sovereignty (and thus, non-intervention) can be quickly dismissed. It is generally employed in debates over armed intervention, but would not be relevant for this legal action. As Ahmadinejad and his country are under the jurisdiction of the ICC, as discussed *supra*, "intervention" in the legal sense is permissible.

Regardless of the form the reparations will take, what is clear is that Iran will bear responsibility to Israel and the Jewish people for the acts of Ahmadinejad.

Iranian students burn a US flag during a demonstration to support Iran's nuclear program in front of the Natanz Uranium Enrichment Facility, Nov. 18, 2005. (AP Photo/ Valid Salemi)

Iran's Shahab-3 missile is displayed during a parade ceremony in front of a picture of Komeini. This weapon is capable of carrying a nuclear warhead and reaching Europe, Israel, and US forces in the Middle East. (AP Photo/Vahid Salemi)

Conclusion

Iran is currently risking sanctions by the U.N. Security Council to protect its rogue nuclear weapons development program from international supervision. Simultaneously, Iran has developed ever longer-range nuclear-capable missiles able to target all locations in Israel. Nor does Iran merely pose an inchoate threat. Indeed, Iran has furnished Hizbullah and Hamas, both terrorist organizations dedicated to the destruction of Israel, with between one and two billion dollars[192] of weapons and military training. During the recent Hizbullah aggression,[193] large numbers of these missiles and other Iranian weapons were employed, causing thousands of casualties among Israel's civilian population.[194] Reminiscent of the deadly use of radio broadcasts during the Rwandan genocide, the Iranian government's radio and television channels feature inciting anti-Semitic broadcasts. Many of these broadcasts are also available across the region and the world via the Internet.[195]

Considering the Rwanda precedents in particular, it is fair to say that there has been a veritable high point of international prosecutions for genocide during the past 15 years. On the basis of international law, Iranian President Mahmoud Ahmadinejad is in breach of a prohibition contained in the Genocide Convention, which Iran has ratified. To restate, such a breach can be prosecuted in a variety of fora, including national courts operating under universal jurisdiction as well as national courts where the genocide occurred.[196] Other options exist as well.

In 1991, Mirko Klarin warned that the violators of international law roaming free in Bosnia had to be tried before they did their worst; since then, genocides have taken place in Bosnia, Rwanda, Kosovo, and Sudan. The international community took a great step forward in prosecuting incitement to genocide in Rwanda, but it stepped in too late for the 800,000 dead. Should a court indict Ahmadinejad, this effort might be unprecedented only in that it would finally not be too late. It might actually accomplish the *prevention* of genocide under the Genocide Convention. Should Ahmadinejad be found guilty, not only he, but arguably also the Islamic Republic of Iran, would bear responsibility to the Jewish people and the Jewish state.

The world's opprobrium could then be focused on removing Iran from the U.N.[197] Such a move would be a justified response to Iran's blatant violation of the Charter's provision that "Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter…."[198] Clearly Iran is not a "peace-loving" state; to the contrary, it is a "threa[t] to the peace" and as such should be prevented from acting on its ominous threats. Furthermore, in such circumstances, it could be fitting for the U.N. Security Council to expel Iran for "persistently violat[ing] the Principles contained in the present Charter" as stated in Article 6 thereof. Failing prompt action, the threats of Ahmadinejad and other Iranian senior leadership risk becoming another precedent of inaction, and a further lamentable tragedy.

Genocide was the foremost cause of preventable death and suffering during the last century.[199] The new century *can* be much less perilous. This Monograph seeks to generate international attentiveness pertaining to Iran's violations of the requisites for U.N. membership and the central role of the Iranian President in incitement to genocide. As demonstrated *supra*, Ahmadinejad has repeatedly violated international treaties and customary international law pertaining to genocide. He has also, time after time, violated national laws pertaining to Holocaust denial and related hate crimes. As a consequence, there exist a multiplicity of potential prosecutors and legal venues that are available to commence legal action. Bluntly put, Ahmadinejad's incitement necessitates an indictment.

Iran's elite Revolutionary Guard tests missiles on Nov. 2, 2006. Dozens of missiles were fired during the first few hours of military maneuvers, including the long-range Shahab-3. (AP Photo/Mehr News Agency, Sajjad Safari)

Appendix I:
Incitement of President Mahmoud Ahmadinejad And Other Iranian Leaders

•Statements by Mahmoud Ahmadinejad, President of Iran

"As the Imam said, Israel must be wiped off the map."
October 26, 2005
Al-Jazeera
(http://english.aljazeera.net/NR/exeres/15E6BF77-6F91-46EE-A4B5-A3CE0E9957EA.htm)

"Iran's president, Mahmoud Ahmadinejad, declared Sunday that Israel had 'pushed the button of its own destruction.' "

"Arrogant powers have set up a base for themselves to threaten and plunder nations in the region," said Ahmadinejad. "But today, the occupier regime [Israel] -- whose philosophy is based on threats, massacre and invasion -- has reached its finishing line."
July 23, 2006
Jerusalem Post
(http://www.jpost.com/servlet/Satellite?cid=1153291976348&pagename=JPost%2FJPArticle%2FShowFull)

"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."
July 13, 2006
Iranian News Channel (IRINN)
Middle East Media and Research Institute (MEMRI)

"They have no boundaries, limits, or taboos when it comes to killing human beings. Who are they? Where did they come from? Are they human beings? 'They are like cattle, nay, more misguided.' A bunch of bloodthirsty barbarians. Next to them, all the criminals of the world seem righteous."
August 3, 2006
IRINN
MEMRI

"They should know that they are nearing the last days of their lives."
August 2, 2006
IRINN
MEMRI

"Very soon, this stain of disgrace [i.e. Israel] will be purged from the center of the Islamic world – and this is attainable."
"I hope that the Palestinians will maintain their wariness and intelligence, much as they have pursued their battles in the past 10 years. This will be a short period, and if we pass through it successfully, the process of the elimination of the Zionist regime will be smooth and simple."

"Oh dear people, look at this global arena. By whom are we confronted? We have to understand the depth of the disgrace of the enemy, until our holy hatred expands continuously and strikes like a wave."
October 28, 2005
Iranian Students News Agency (ISNA)
MEMRI

"As I have said before, as far as several aggressive European governments are concerned, and as far as the Great Satan [the U.S.] is concerned, it is permissible to harm the honor of the divine prophets, but it is a crime to ask questions about the myth of the Holocaust, and about how the false regime occupying Palestine came into being."
February 14, 2006
Jaam-e Jam 2 TV
MEMRI

"We say that this fake regime [Israel] cannot logically continue to live."
April 25, 2006
Al-Jazeera
(http://english.aljazeera.net/NR/exeres/06244378-DDED-4CF6-A9C9-AFA0038B2774.htm)

"He also warned the 'great powers' against supporting the 'crimes of the Zionist regime...' [since] the continuation of these crimes and of the support [for them] will fan the flames of Muslim rage, which will annihilate them all."

July 14, 2006
Islamic Republic News Agency (IRNA)
MEMRI

"Art reaches perfection when it portrays the best life and best death. After all, art tells you how to live. That is the essence of art. Is there art that is more beautiful, more divine, and more eternal than the art of martyrdom? A nation with martyrdom knows no captivity. Those who wish to undermine this principle undermine the foundations of our independence and national security. They undermine the foundation of our eternity."

"We want art that is on the offensive. Art on the offensive exalts and defends the noble principles, and attacks principles that are corrupt, vulgar, ungodly, and inhuman."

July 29, 2005
Iranian Channel 1 (television)
MEMRI

"There is no doubt that the new wave of attacks in Palestine will erase this stain from the face of Islam."

November 29, 2005
Haaretz
(http://www.haaretz.com/hasen/objects/pages/PrintArticleEnjhtml?itemNo=638926)

•Statements by Mohammad Ali Ramin, Iranian Presidential Advisor

"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."

June 15, 2006
Rooz (online daily)
MEMRI

•Statements by Ayatollah Khamenei, Supreme Leader of Iran

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

August 14, 2006
FrontPageMagazine (http://www.frontpagemag.com/Articles/Printable.asp?ID=23841)
Quoted from: Daily Telegraph, January 1, 2000

"The Islamic world, and the Muslim youth in all the Islamic countries know that there is no way to confront the barbaric Zionist wolves and the aggression of the 'Great Satan' [i.e. America] except through martyrdom."

August 4, 2006
Fars (Iranian news agency)
MEMRI

•Statements by Gholam-Ali Haddad 'Adel, Iranian Parliament Speaker

"Therefore, following World War II, they established an artificial, false, and fictitious state called Israel in this region."

"Today, your flourishing cities in the north of Israel… of occupied Palestine are within the range of fire of the fighters and lion cubs of Hizbullah. Today, Haifa and Tiberias are within Hizbullah's range of fire. No place in Israel will be safe."

"Today, nobody in the Islamic countries is rolling out the red carpet for you. Today, the land of Palestine is painted red with your contemptible blood."

"Today is the day you will flee occupied Palestine. You must return to your homes."

July 26, 2006
IRINN
MEMRI

•Statement by Yahya Raheem Safavi, Iranian Revolutionary Guards Commander

"In light of the Zionists' crimes and oppression, I ask God to hasten the years when this regime will no longer exist... The Zionists are hastening their own death through their foul deeds, since Hizbullah and the Lebanese people are undefeated. There is a need to topple the phony Zionist regime, this cancerous growth [called] Israel, which was founded in order to plunder the Muslims' resources and wealth."
August 2, 2006
Fars (Iranian news agency)
MEMRI

•Statements by Hassan Nasrallah, Secretary General of Hizbullah

"I have a special message to the Arabs of Haifa, to our martyrs and to your wounded," he said in a televised address. "I call on you to leave this city. I hope you do this. . . Please leave so we don't shed your blood, which is our blood."
August 12, 2006
Times Online, UK
(http://www.timesonline.co.uk/article/0,,251-2308998,00.html)

"If Jews all gather in Israel, it will save us the trouble of going after them worldwide."
May 23, 2004
New York Times
p. 15, sec. 2, col. 1

Appendix II:
Relevant Articles from the United Nations Charter

Article 1(1): To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

...

Article 2: The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

...

Article 2(4): All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

...

Article 4(1): Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

...

Article 6: A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

...

Article 51: Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

Appendix III:

Relevant Articles from the Rome Statute of the International Criminal Court[200]

•Preamble

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

PART 1. ESTABLISHMENT OF THE COURT

•Article 1

The Court

An International Criminal Court ["the Court"] is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

•Article 2

Relationship of the Court with the United Nations

The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.

•••

•Article 4

Legal Status and Powers of the Court

1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

•Article 5

Crimes within the Jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

(a) The crime of genocide;

(b) Crimes against humanity;

(c) War crimes;

(d) The crime of aggression.

•••

•Article 6

Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

•••

•Article 12

Preconditions to the exercise of jurisdiction

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.

2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

(a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;

(b) The State of which the person accused of the crime is a national.

3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of

jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

•••

•Article 13

Exercise of Jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if: (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or

(c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

•Article 14

Referral of a Situation by a State Party

1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.

2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation.

•Article 15

Prosecutor

1. The Prosecutor may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court.

2. The Prosecutor shall analyze the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.

3. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence.

4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case.

•••

•Article 25

Individual Criminal Responsibility

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.

2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

•••

(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime;

(e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

Appendix IV:

Relevant Articles from the Convention to Prevent and punish the Crime of Genocide[201]

•The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,

Recognizing that at all periods of history genocide has inflicted great losses on humanity, and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided:

•Article 1

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.

•Article 2

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

•Article 3

The following acts shall be punishable:

(a) Genocide;

(b) Conspiracy to commit genocide;

(c) Direct and public incitement to commit genocide;

(d) Attempt to commit genocide;

(e) Complicity in genocide.

•Article 4

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

•Article 5

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

•Article 6

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

•Article 7

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

•Article 8

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

•Article 9

Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Appendix V:
Relevant Articles from the United Nations International Covenant on Civil and Political Rights

•Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide….

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

•••

•Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Appendix VI:
Relevant Article from the International Convention on the Elimination of All Forms of Racism

•Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, *inter alia*:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

…

Notes

1 Ahmadinejad has been identified by at least six of the US hostages as a ringleader of the 1979 takeover of the US Embassy in Tehran. He has been accused of the murder of Kurdish leader Abdul Ghassemlou in Vienna by officials in Austria who claim that they have evidence and want an arrest warrant sworn for Ahmadinejad. As Mayor of Tehran, Ahmadinejad was one of the principal forces in the campaign to recruit and train suicide bombers, specifically targeting the US, Britain, and Israel. Joseph Farah, The Terrorist with Diplomatic Immunity, available at: http://jewishindy.com/modules.php?name=News&file=article&sid=6046 (last viewed Oct. 23, 2006).

2 Nazila Fathi, *Iran's President Says Israel Must Be 'Wiped Off the Map'*, NYTIMES.com, Oct. 26, 2005. *See* UN Watch, written statement by UN Watch, *Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination*, Mar. 2, 2006, available at: http://www.unwatch.org/site/apps/nl/content2.asp?c=bdKKISNqEmG&b=1355321&ct=2051475 (last visited Oct. 12, 2006).

3 Claims that Iran has no intention of attacking Israel do not square with the weight of the evidence gathered in the Appendices *infra*. (The Iranian Foreign Ministry insists that it has "no intention to attack Israel." BBC News, *Iran 'not planning Israel attack,'* Aug. 27, 2006, available at: http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/middle_east/4387852.stm (last visited Aug. 30, 2006)). The overall record of the Iranian leadership would entitle Israel to view Iran's occasional claims of non-belligerence with great suspicion. (Iran poses a threat to other countries as well, including the United States. *See*, *e.g.* U.S. House of Representatives Permanent Select Committee on Intelligence, *Recognizing Iran as a Strategic Threat: An Intelligence Challenge for the United States*, Aug. 23, 2006, available at: http://intelligence.house.gov/Media/PDFS/IranReport082206v2.pdf (last visited Aug. 31, 2006)).

4 Interview of Iranian President Mahmoud Ahmadinejad, (Feb. 14, 2006), Jaam-e Jam 2 TV, translated by Middle East Media Research Institute (MEMRI), available at: http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/middle_east/4387852.stm (last visited Aug. 30, 2006)).

5 MEMRI, Special Dispatch Series No. 1328, *Iran President Ahmadinejad: "I Have a Connection With God, Since God Said that the Infidels Will Have No Way to Harm the Believers…*," Oct. 19, 2006, available at: http://memri.org/bin/opener.dgi?Page=archives&ID=SP132806 (last visited Apr. 17, 2006). Ahmadinejad used the same speech to claim that President Bush is inspired by Satan. *Id*.

6 Appendix I, *infra*. Since being elected, Ahmadinejad and his colleagues have called for the elimination of Israel some fifty times. Richard A. Hellman, President of the Middle East Research Center, et al., Organizational Sign-On Letter to US President George W. Bush calling for the referral of Ahmadinejad by the U.N. Security Council to the International Criminal Court, Oct. 5, 2006 (on file with the principal author).

7 *See* Appendix I, *infra*, for relevant examples of Ahmadinejad's remarks and those of other Iranian leaders.

8 David B. Rivkin, Jr. & Lee A. Casey, *A Legal Case Against Iran*, THE WASHINGTON POST, June 6, 2006, at A15.

9 *See* notes 21 and 196 *infra*.

10 In the opinion of Professor van der Wilt, "…decent criminal law abhors the penalization of sheer intention. However, the magnitude of the crime and the seriousness of its consequences may mitigate some rightful apprehensions." Harmen G. van der Wilt, Genocide, *Complicity in Genocide and International v. Domestic Jurisdiction*, 4(2) J. OF INT'L CRIM. JUSTICE 239, Apr. 1 2006, available at: (Lex. Nex.).

11 *See*, *e.g* Barry A. Feinstein & Justus Reid Weiner, *Israel's Security Barrier: An International Comparative Analysis and Legal Evaluation*, 37(2) George Washington Int'l L.J. 309, 451-59 (2005).

12 Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 UNTS 277 (Genocide Convention); available at: http://www.unhchr.ch/html/menu3/b/p_genoci.htm (last visited May 23, 2006).

13 According to Professor Gregory Stanton, "Any state that is a Contracting Party to the Genocide Convention could make a diplomatic protest to Iran over the statements of President Ahmadinejad, citing them as violations of the Genocide Convention. When Iran rejects the protest, (or even if it ignores it), a dispute will arise between that state and Iran. Then Article 9 of the Genocide Convention will come into effect. It states, 'Disputes between contracting parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a state for genocide or any of the other acts enumerated in Article 3, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute. Incitement is one of the acts enumerated in Article 3." Email message from Gregory H. Stanton, President of Genocide Watch to the principal author, Sept. 20, 2006 (on file with the principal author). Professor Stanton continued, "Ahmadinejad is the President of Iran and his statements may reasonably be interpreted as the policy of the state of Iran. This should be a state versus state case [presumably brought by a state that is friendly to Israel. The ICJ would have jurisdiction as long as the state bringing the dispute to it has not entered into a reservation on Article 9 jurisdiction of the ICJ over that state." *Id*.

14 The Rome Statute of the International Criminal Court, Preamble. *See* Appendix III.

15 Joshua Wallenstein, note, *Punishing Words: An Analysis of the Necessity of the Element of Causation in Prosecutions for Incitement to Genocide*, 54 Stanford Law Rev. 351 (2001). In April 1994, the German Constitutional Court declared that denials of the Holocaust were not protected by free speech. *Id*. In 1995, the Parliament passed a law declaring it a crime, punishable by five years in prison. *Id*.

16 Rome Statute of the International Criminal Court, Art. 25(3)(e) available at: http://www.un.org/law/icc/statute/romefra.htm (last visited Aug. 13, 2006).

17 Kevin Jon Heller, *Would the ICC Have Jurisdiction over Ahmadinejad's Statements?*, Blog Opinio Juris, Aug. 27, 2006, available at: http://www.opiniojuris.org/ posts/1156564555/shtml (last visited Aug. 29, 2006).

18 Avi Bell, *Suing Ahmadinejad*, Blog Opinio Juris, Aug. 25, 2006, available at: http://www.opiniojuris.org/posts/1156542761/shtml (last visited Aug. 27, 2006).

19 *See e.g*. Art. 6 and 20 of the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976; Art. 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by General Assembly Resolution 2106 A (XX) of 21 December 1965, entry into force: 4 January 1969, in accordance with Art. 19. *Cf*. Art. 7 of the Universal Declaration of Human Rights, G.A. Res. 217 A(III), Dec. 10, 1947.

20 *See e.g*. art. 10 and 14, European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Europe. T.S. No. 5; *cf* Art. 60 and 61 of The African Charter on Human and Peoples' Rights, opened for signature June 21, 1981, OAU Doc. CAB/LEG/67/3/Rev.5 (1981), reprinted in 21 I.L.M. 59 (1982).

21 A U.S. Federal court might assume jurisdiction pursuant to the Alien Tort Act. In addition, since Ahmadinejad has called for their destruction or expulsion, presumably any Israeli citizen would have standing to sue. Various European nations are also

possible venues, foremost among them those states with universal jurisdiction over genocide and related human rights crimes. These include Israel, Germany, Canada, Spain, Austria, and Switzerland. Some of the European countries have previously accepted jurisdiction in actions against Israeli officials for their roles in prosecuting the war against terror. Eugene Kontorovich, Mail to BLOG OPINIO JURIS, Aug. 25, 2006, available at: http://www.opiniojuris.org/ posts/ 1156542761/shtml (last visited Aug. 29, 2006).

22 SAMANTHA POWER, "A PROBLEM FROM HELL": AMERICA AND THE AGE OF GENOCIDE (2003). In her book, Power studies the genocides against Armenians, Jews, Cambodians, Iraqi Kurds, Bosnian Muslims, Tutsis, and Kosovar Albanians. The definition of genocide can be applied to all these, as well as other situations, although in some cases the term "ethnic cleansing" was also used. Genocide scholar William Schabas prefers to define genocide in terms of the aims of the killers. William A. Schabas, *The Genocide Convention at Fifty* (United States Institute of Peace, Spec. Report No. 41, Jan. 7, 1999), available at: http://www.usip.org/pubs/specialreports/sr990107.html (last visited June 25, 2006). Without delving into this valuable and difficult debate over what, in the past, has constituted genocide, and with solemn respect to all victims of genocide everywhere, this document will focus on Iran, drawing precedent most valuably from Rwanda. Bosnia is used as an example of the many genocides in which incitement was *not* a main, visible feature. These cases have their own lesson: once genocide is launched the international community has displayed egregious inertia and allowed unspeakable atrocities to happen.

23 The U.N. and ICC have been slow to characterize the violence in the Western Darfur region of Sudan as genocide, as Samantha Power's argument might predict. *International Criminal Court Prosecutor Briefs Security Council on Darfur, Says Will Not Draw Conclusions on Genocide Until Investigation Complete,* Security Council 5459th Meeting (PM), June 14, 2006, available at: http://www.un.org/News/Press/docs/2006/sc8748.doc.htm (last visited May 12, 2006). While it seems apparent that genocide is being committed in Darfur, as endorsed by many world leaders and rights groups, the debate over labels and terminology is irrelevant to this Monograph.

24 "The Rwandan experience mandates some action to prevent hate speech that constitutes incitement to genocide." William Schabas, *The Genocide Convention at Fifty*, Special Report, U.S. Institute of Peace, Jan. 7, 1999.

25 New traces of plutonium and enriched uranium, potential material for atomic warheads, have been found in a nuclear waste facility in Iran. AP, *Iran questioned on fuel traces found at waste plant*, USA TODAY, Nov. 14, 2006. However a nation's possession of nuclear weapons is not *per se* a threat; rather the threat can emerge from a lack of maturity coupled with possession of WMD. *See* Natasha Bajema & Mary Beth Nitkin, *The Future Of Integration Regimes: Organizations and Practices: Assessing Nuclear Maturity: Determining Which States Should Have Access to What Nuclear Technology*, 28 FLETCHER F. WORLD AFF. 157 (2004).

26 Since the dangers of inaction could be catastrophic, calls have been made by the International Association of Genocide Scholars to apply the Precautionary Principle to the conduct of Ahmadinejad. This principle states that when there is uncertainty concerning the risk from a situation with potentially catastrophic effects upon human health and safety, the risks of inaction far outweigh the risk of action. This principle shifts the burden of proof from those warning of a risk of a catastrophic event to those denying the risk. Rony Blum, Greg Stanton, Elihu D. Richter & Israel Charney, *Ahmadinejad- Incitement Deserves Indictment*, JERUSALEM POST, Feb. 7, 2006. Thus, having made a *prima facie* case for action herein, the burden of proof will shift to those in the international community who wish not to act and deny any risk involved in non-action. With this burden of

proof, shifts also the burden of responsibility. Should the international community not act on this occasion, as it has failed to do on so many others, it will bear a very heavy responsibility. *Id*.

27 Secretary General Observes International Day of Reflection on 1994 Rwanda Genocide, Launches Action Plan to Prevent Genocide Involving U.N. System in Speech to Commission on Human Rights, Apr. 7, 2004, available at: http://www2.unog.ch/news2/documents/newsen/sg04003e.htm (last visited July 1, 2006).

28 Samantha Power, "A Problem from Hell": America and the Age of Genocide 247-250 (2003).

29 Central Intelligence Agency, The World Factbook: Bosnia and Herzegovina, available at: http://www.cia.gov/cia/publications/factbook/geos/bk.html (last visited June 10, 2006).

30 Central Intelligence Agency, The World Factbook:, Bosnia and Herzegovina, available at: http://www.cia.gov/cia/publications/factbook/geos/bk.html (last visited June 10, 2006).

31 It seems that the Serbs coined this phrase, "ethnic cleansing," probably modeling it after the Nazis' term *Sauderung*, or "cleansing." Samantha Power, "A Problem from Hell": America and the Age of Genocide 249 (2003). It is an unfortunate term in that it takes the perspective of the perpetrators rather than the victims. William Schabas prefers to define genocide in terms of the aims of the killers. William A. Schabas, *The Genocide Convention at Fifty* (United States Institute of Peace, Spec. Report No. 41, Jan. 7, 1999), available at: http://www.usip.org/pubs/specialreports/sr990107.html (last visited June 25, 2006).

32 Samantha Power, "A Problem from Hell": America and the Age of Genocide 264, 269 (2003).

33 Samantha Power, "A Problem from Hell": America and the Age of Genocide 481 (2003). Renowned in Yugoslavia, Klarin later became a senior correspondent for the Institute for War and Peace Reporting (www.iwpr.net.), reporting extensively on the International Criminal Tribunal for the former Yugoslavia.

34 Samantha Power, "A Problem from Hell": America and the Age of Genocide. New York: Perennial, 2003, at 336.

35 Dore Gold, Tower of babble: how the united nations has fueled global chaos 137 (2004); *see* also, William Shawcross, Deliver us from Evil: Peacekeeping, Warlords, and a World of Endless Conflict 124-129 (2000).

36 Dore Gold, Tower of babble: how the united nations has fueled global chaos 137 (2004).

37 Samantha Power, "A Problem from Hell": America and the Age of Genocide 264, 336(2003).

38 Dore Gold, Tower of babble: how the united nations has fueled global chaos 138-139 (2004).

39 Samantha Power, "A Problem from Hell": America and the Age of Genocide 345 (2003).

40 *See* Report of the Independent Inquiry Into the Actions of the United Nations During the 1994 Genocide in Rwanda, Dec. 15, 1999, available at: http://www.un.org/News/ossg/rwanda_report.htm (last visited Sept. 15, 2006).

41 Samantha Power, "A Problem from Hell": America and the Age of Genocide 333 (2003).

42 Samantha Power, "A Problem from Hell": America and the Age of Genocide 371 (2003).

43 Dore Gold, Tower of babble: how the united nations has fueled global chaos 137-142 (2004).

44 Samantha Power, "A Problem from Hell": America and the Age of Genocide 371 (2003).

45 William A. Schabas, *The Genocide Convention at Fifty* (United States Institute of Peace, Spec. Report No. 41, Jan. 7, 1999), available at: http://www.usip.org/pubs/specialreports/sr990107.html (last visited June 25, 2006).

46 *See* Appendix I, *infra*.

47 As reported in the *Jerusalem Post*, Iran is only a few months from acquiring the technological know-how that will allow it to build a nuclear bomb. Associated Press, *Olmert: Iran Just months from nuclear weapons know-how*, Jerusalem Post, May 21, 2006.

48 *Iran* (2006), Encyclopedia Britannica, available at: http://search.eb.com/eb/article-32189 (last visited June 19, 2006).

49 *Iran* (2006), Encyclopedia Britannica, available at: http://search.eb.com/eb/article-32189 (last visited June 19, 2006). To clarify the succession of leaders: Khomeini died in 1989, having led the country for ten years. He was succeeded by Iran's president Sayid Ali Khameini. Khameini was soon replaced by Ali Akbar Hashemi Rafsanjani, who was re-elected president in 1993. In 1997, Rafsanjani was replaced as president by a relatively moderate Muslim cleric – Mohammed Khatami, who was re-elected in 2001. The presidential elections of 2005 were won by the hard-line conservative mayor of Tehran, Mahmoud Ahmadinejad. *See Iran* (2005), The Columbia Encyclopedia, available at: http://www.bartleby.com/65/ir/Iran.html (last visited June 19, 2006).

50 *See* Appendix I.

51 Meir Javedanfar, *The point of no return*, Haaretz.com, November 1, 2005. It is not unreasonable to think someone else might have said these things before 1979. *See* Appendix I, *infra*.

52 CNN.com, *Iran leader urges destruction of 'cancerous' Israel*, Dec. 15, 2000, available at: http://archives.cnn.com/2000/WORLD/meast/12/15/mideast.iran.reut/ (last visited Mar. 2, 2006).

53 "If one day, he said, the world of Islam comes to possess the weapons currently in Israel's possession [meaning nuclear weapons] -- on that day this method of global arrogance would come to a dead end. This, he said, is because the use of a nuclear bomb in Israel will leave nothing on the ground, whereas it will only damage the world of Islam." *Former Iranian President Rafsanjani on Using a Nuclear Bomb Against Israel*, Middle East Media Research Institute: Special Dispatch Series – No. 325, Jan. 3, 2002, available at: http://memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP32502 (last visited Mar. 2, 2006).

54 The infamous October 2005 conference was held at a gathering of 4,000 students organized by the Association of Islamic Students Societies. Nazila Fathi, *Iran's President Says Israel Must Be 'Wiped Off the Map*' NYTIMES.com, Oct. 26, 2005, available at: http://www.nytimes.com/2005/10/26/international/middleeast/26cnd-iran.html?ex=1287979200&en=ac28fc488a56d88f&ei=5088&partner=rssnyt&emc=rss (last visited Sept. 8, 2006). *See* Ethan Bronner, *Just How Far Did They Go, Those Words Against Israel?* NY Times, Weekly Review, June 11, 2006, available at: http://www.nytimes.com/2006/06/11/weekinreview/11bronner.html?ex=1307678400&en=efa2bd266224e880&ei=5088&partner=rssnyt&emc=rss (last visited Sept. 30, 2006). There has been some dispute over the translation of Ahmadinejad's words at the anti-Zionism conference in October 2005. What little confusion there is seems to be semantic in nature. Some translators think Ahmadinejad actually called for Israel to be wiped away from "the pages of time or history," rather than "the map," and that his phrase "the occupying regime of Jerusalem" implies that he only wants regime change, not destruction. Bronner is unconvinced that the threats are innocuous, and indeed, they are anything but. *See id*.

55 Nazila Fathi, *Iran's President Says Israel Must Be 'Wiped Off the Map*', NYTIMES.com, Oct. 26, 2005, available at: http://www.nytimes.com/2005/10/26/international/middleeast/26cnd-iran.html?ex=1287979200&en=ac28fc488a56d88f&ei=5088&partner=rssnyt&emc=rss, (last visited Sept. 8, 2006).

See Appendix I, *infra*, for relevant examples of Ahmadinejad's threats.

56 Nazila Fathi, *Iranian Leader Renews Attack On Israel at Palestinian Rally*, NY Times, Apr. 15, 2006, available at: http://www.spme.net/cgi-bin/

facultyforum.cgi?ID=2140, (last visited Aug. 16, 2006).

57 Ahmadinejad thought the immediate solution was a cease-fire, but missed no opportunity to incite genocide. Sean Yoong, *Ahmadinejad: Destroy Israel, End Crisis*, Associated Press Online, Aug. 3, 2006 (Lex. Nex.).

58 Samantha Power, "A Problem from Hell": America and the Age of Genocide 505 (2003).

59 Uzi Rubin, *The Global Range of Iran's Ballistic Missile Program*, Jerusalem Center for Public Affairs: Jerusalem Issue Brief Vol. 5 No. 26, June 20, 2006, available at: http://www.jcpa.org/brief/brief005-26.htm (last visited July 12, 2006).

60 As reported in the *Jerusalem Post*, Iran is only a few months from acquiring the technological know-how that will allow it to build a nuclear bomb. Associated Press, Jerusalem Post," May 21, 2006.

61 Deutsche Presse-Agentur, *Iran could have nuclear weapons in 10 years: US intelligence chief*, June 2, 2006.

62 Mohammed el-Baradei, *Putting Teeth in the Nuclear Non-Proliferation and Disarmament Regime*, available at: http://www.iaea.org/NewsCenter/Statements/2006/ebsp2006n004.html, (last visited June 12, 2005).

63 Middle East Media Research Institute, Special Dispatch Series - No. 1013, available at: http://memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP101305 (last visited June 12, 2006).

64 Uzi Mahnaimi, *Tehran 'bounty' for attack on Israel*, Times Online, Oct. 30, 2005, available at: http://www.timesonline.co.uk/printFriendly/0,,1-524-1849215-524,00.html (last visited May 24, 2006).

65 On May 4, 2006, Hizbullah founder and former Secretary General Sheikh Subhi Al-Tufeili told Al-Arabiya TV: "Hizbullah definitely fosters its relations with the Syrians, but its real leadership is 'the rule of the jurisprudent' - in other words, Khamenei." Middle East Media Research Institute, Special Dispatch Series - No. 1205, available at: http://memri.org/bin/articles.cgi?Page=countries&Area=iran&ID=SP120506 (last visited July 24, 2006).

66 *Remarks by the Spokesman for the Chief of the IDF General Staff, Commander in Chief of the Israeli Navy, and Commander in Chief of the Israeli Air Force, Discussing the Seizure of Karin A, The Palestinian Weapons Ship*, Federal News Agency, Oct. 19, 2004.

67 The suicide bomber was Hizbullah member Ibrahim Hussein Berro. In addition, "Argentina has international warrants against 13 Iranians suspected of involvement in the attack, including the former Iranian ambassador to Buenos Aires, Hadi Soleimanpur, and former cultural attaché, Moshen Rabbani." *Hezbollah member bombed Jewish center in 1994: Argentine prosecutor*, Agence France Presse – English, Nov. 10, 2005.

68 *Iran Guards Corps says intifadah to wipe Israel off the map*, BBC Monitoring Middle East – Political, from Mehr News Agency, Nov. 1, 2005.

69 The attack killed four Israeli soldiers. Ramit Plushnick-Masti, *Israeli intelligence: Iranian troops helped Hezbollah attack Israeli warship*, Associated Press, July 15, 2006. This example represents Iran's larger role in the fighting in Lebanon.

70 Toby Harnden, *Iran Admits it Gave Hezbollah Missiles to Strike all of Israel*, The Daily Telegraph (London), Aug. 6, 2006 (Lex. Nex.). According to a Reuters report members of Iran's Revolutionary Guard have been found among the Hizbullah fighters killed by Israel in southern Lebanon. Dan Williams, Reuters, *Propaganda Alert! Iranians said among Hizbollah combat dead*, Aug. 10, 2006, available at: http://today.reuters.co.uk/news/articlenews.aspx?type=topNews&storyID=2006-08-09T215844Z_01_L09100220_RTRUKOC_0_UK-MIDEAST-LEBANON-IRANIANS.xml (last visited Aug. 23, 2006).

71 During the 2006 Lebanon war Nasrallah publicly advised Israeli citizens of Arab origin, some of whom had already been killed by missiles fired from Lebanon, to leave their homes in Haifa. He said, "I call upon you to leave this city [Haifa]. I hope you will do this…Please leave so we don't shed your blood which is our blood." Joseph Panossian, Associated Press, *Nasrallah urges Arabs to Leave Haifa*, Aug. 9, 2006, available at: http://www.aljazeerah.info/News%20archives/2006%20News%20Archives/August/9%20n/Hizbullah%20Leader,%20Shaikh%20Hassan%20Nasrullah,%20Urges%20Israeli%20Arabs%20to%20Leave%20Port%20City%20of%20Haifa.htm (last visited Aug. 23, 2006). Nasrallah's effort to target Israeli Jewish civilians is a further indication of Hizbullah's genocidal intentions.

72 Elena Lappin, *The Enemy Within*, NY Times, May 23, 2004, at 15, sec. 2.

73 Michael Rubin, *Nasrallah Urges Arabs to Evacuate Haifa*, National Review Online, Aug. 9, 2006, available at: http://corner.nationalreview.com/post/q=ZmE5MzU3NGI5ZTZjMGMwZWNhMDk3MTJiZDQ0NDViZWM= (last visited Aug. 29, 2006).

74 philly@com, *Don't Blame Israel*, Philadelphia Daily News, Aug. 2, 2006, available at: http://www.philly.com/mld/dailynews/news/opinion/15177667.htm (last visited Sept. 4, 2006).

75 The word 'inchoate,' not much used in ordinary discourse, means 'just begun,' 'undeveloped.' The common law has given birth to three general offenses that are usually termed 'inchoate' or 'preliminary' crimes -- attempt, conspiracy, and incitement. A principal feature of these crimes is that they are committed even though the substantive offence is not successfully consummated. An attempt fails, a conspiracy comes to nothing, words of incitement are ignored -- in all these instances, there may be liability for the inchoate crime. Andrew Ashworth, Principles of Criminal Law 395 (1991).

76 Liisa H. Malkki, Purity and Exile: violence, memory, and national cosmology among Hutu refugees in Tanzania (1995).

77 *Ahmadinejad Labels Holocaust a' Myth'*, Kuwait Times, Dec. 15, 2005. Europeans, Ahmadinejad said, are "held hostage" by the "Zionists" and the "Holocaust fairy tale." SPIEGEL ONLINE International, *Ahmadinejad Leading Iran into Isolation: Remove Israel or We Will*, Feb. 13, 2006, available at: http://www.spiegel.de/international/1,1518,400603,00.html (last visited July 7, 2006). Ahmadinejad's own myth consists of accusing others of being the true myth-makers. However, the Holocaust is incontrovertible fact. Interestingly, all six political parties in the German parliament signed a joint resolution condemning Ahmadinejad's Holocaust denial. www.britain.tv, *Holocaust*, available at: http://www.britain.tv/wikipedia.php?title=Holocaust (last visited Aug. 23, 2006).

78 Holocaust denial is illegal in a number of European countries: Austria, Belgium the Czech Republic, France, Germany, Lithuania, The Netherlands, Poland, Romania, Slovakia, Spain and Switzerland. In addition, it is also illegal in Israel. Answerscom. *Holocaust Denial*, available at: http://www.answers.com/topic/holocaust-denial (last visited Sept. 26, 2006). Many of these countries also have broader laws against inciting racial hatred and hate speech, as do some countries that do not have specific laws against Holocaust denial, such as the United Kingdom and Canada. *Id*.

79 *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: Iran, June 15, 2006.

80 Statute of the International Court of Justice, June 26, 1945, art. 38, 33 U.N.T.S. 993, available at http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicstatute.htm#CHAPTER_II.

81 Rebecca M.M. Wallace, International Law, Fifth Ed., 8 (2005).

82 Gerhard Von Glahn, Law Among Nations: An Introduction to Public International Law, Fifth Ed., 15 (1981).

83 Rebecca M.M. Wallace, International Law, Fifth Ed., 8 (2005).

84 Gerhard Von Glahn, Law Among Nations: An Introduction to Public International Law, Fifth Ed., 489 (1981).

85 Gerhard Von Glahn, Law Among Nations: An Introduction to Public International Law, Fifth Ed., 493-495 (1981).

86 Gerhard Von Glahn, Law Among Nations: An Introduction to Public International Law, Fifth Ed., 497 (1981).

87 Rebecca M.M. Wallace, International Law, Fifth Ed., 20 (2005).

88 Ian Brownlie, Principles of Public International Law, Fourth Ed., 12 (1995).

89 Rebecca M.M. Wallace, International Law, Fifth Ed., 9-16 (2005).

90 Ian Brownlie, Principles of Public International Law, Fourth Ed., 7 (1995).

91 Rebecca M.M. Wallace, International Law, Fifth Ed., 12-13 (2005).

92 Gerhard Von Glahn, Law Among Nations: An Introduction to Public International Law, Fifth Ed., 22-23 (1981).

93 Rebecca M.M. Wallace, International Law, Fifth Ed., 26 (2005).

94 Rebecca M.M. Wallace, International Law, Fifth Ed., 28 (2005).

95 Rebecca M.M. Wallace, International Law, Fifth Ed., 29 (2005).

96 Louise Henkin, International Law: Politics and Values 38-39, (1995).

97 Ellen S. Podgor, Understanding International Criminal Law, 10 (2004).

98 Ellen S. Podgor, Understanding International Criminal Law, 9 (2004).

99 *See* Gerhard Von Glahn, Law Among Nations: An Introduction to Public International Law, Fifth Ed., 303 (1981). It has been argued that Ahmadinejad threatens Israel with politicide and not genocide. Politicide is a form of mass, targeted killings in which a group of people is destroyed because of its political or ideological beliefs. It does not specifically target ethnic, racial or cultural groups, rather, it seeks to eliminate a group of persons identified by their political or ideological beliefs. *Politicide*, Wikipedia, available at: http://en.wikipedia.org/wiki/Politicide (last visited Aug. 17, 2006). This genocide/politicide distinction, however, ignores the obvious: it is impossible to wipe a country off the map without simultaneously wiping out its citizens, which constitutes genocide in its simplest form.

100 Edward M. Wise, Ellen S. Podgor & Roger Clark, International Criminal Law: Cases and Materials, 2nd Ed. 811 (2004).

101 Ellen S. Podgor, Understanding International Criminal Law, 126 (2004).

102 Louise Henkin, International Law: Politics and Values 38-39, (1995).

103 M. Cherif Bassiouni. *International Crimes: Jus Cogens and Obligatio Erga Omnes*, 59 Law & Contemp. Probs. 63 (1996), availabe at: http://www.law.duke.edu/journals/lcp/articles/lcp59dFall1996p63.htm (last visited Oct. 31, 2006).

104 Gerhard Von Glahn, Law Among Nations: An Introduction to Public International Law, Fifth Ed., 303-304 (1981).

105 Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 UNTS 277; available at: http://www.unhchr.ch/html/menu3/b/p_genoci.htm

106 Art. 3, Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 UNTS 277; available at: http://www.unhchr.ch/html/menu3/b/p_genoci.htm

107 Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 UNTS 277; available at: http://www.unhchr.ch/html/menu3/b/p_genoci.htm

108 Scholars for Peace in the Middle East, Petition to Endorse the Statements of the International Association of Genocide Scholars et al., June 2, 2006, available at: http://www.spme.net/spme_petitions.html (last visited Oct. 31, 2006). *See supra* comments on mythico-history and Ahmadinejad's Holocaust denial.

109 Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 UNTS 277; available at: http://www.unhchr.ch/html/menu3/b/p_genoci.htm

110 The Declaration of the Establishment of the State of Israel, available at: http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Declaration+of+Establishment+of+State+of+Israel.htm (last visited Oct. 31, 2006).

111 This categorization would unfortunately leave out the many religious minorities living in Israel, but this is inevitable here, if Israel is indeed being targeted specifically because it is a Jewish state.

112 Amnon Rubinstein, *Thinking the Unthinkable*, The Jerusalem Post, June 20, 2006, at 15. Rubinstein is a highly respected lawyer, academic, and former member of the Israeli Knesset. He is currently president of the Interdisciplinary Center in Herzliya.

113 Dr. Ruth Pat Horenzcyk, at the Israel Center for the Treatment of Psycho-Trauma, found that after the 2000 intifada began, 70 percent of the Israeli population experienced increased subjective fear and senses of hopelessness and horror. Fifteen percent experienced partial or full PTSD. Joshua Bains, *The Pain Doesn't Show and Doesn't Go Away*, The Jerusalem Post, Apr. 7, 2006, at 18.

114 Constitutional democracies enshrine the principle of freedom of expression. However, there are limitations to this freedom. Therefore, for example, one is usually prohibited from advocating hatred on grounds such as race, gender, or religion, where such speech would constitute incitement to cause harm. In Canada, the notion of such harm has been interpreted widely, such that in the case of *R v Keegstra*, the court interpreted the notion to include psychological harm. *See* also *Mugesera v. Canada* (Minister of Citizenship and Immigration), [1990] 3 SCR 697. In China, the government controls access to all communications through the use of firewalls. In a highly publicized French case, Yahoo Inc. was found liable for allowing French citizens access to sites selling Nazi memorabilia. Germany, which has some of the strongest prohibitions of Internet hate speech, will subject persons to criminal prosecution for making a hate speech site accessible to Germans. Decisions by the German courts have prompted Internet service providers (ISPs) to block access to sites containing hate speech or symbols of hate speech. In Canada, ISPs are protected from criminal prosecution for allowing access to hate speech. However, under the Canadian Human Rights Act, individual web sites that communicate discriminatory material pertaining to race, religion or national or ethnic origin are subject to injunctions against the use of their sites. John C. Knechtle, *When to Regulate Hate Speech*, 110 Penn St. L. Rev. 539. (2006). There are also widespread theoretical arguments supporting limits to freedom of speech, partially due to the psychological harm hate speech causes. *See* Clay Calvert, *Hate speech and its harms: a communication theory perspective*, 47 The Journal of Communication 4-19 (1997).

115 Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 UNTS 277; available at: http://www.unhchr.ch/html/menu3/b/p_genoci.htm (last visited Aug. 3, 2006).

116 Rebecca M.M. Wallace, International Law, Fifth

Ed., 263 (2005).

117 Rebecca M.M. Wallace, International Law, Fifth Ed., 263 (2005).

118 Ellen S. Podgor. Understanding International Criminal Law, 144-147 (2004).

119 Ellen S. Podgor. Understanding International Criminal Law, 144-147 (2004).

120 William A. Schabas, *Hate Speech in Rwanda: the Road to Genocide*, 46 McGill L.J. 141 (2000).

121 Ellen S. Podgor, Understanding International Criminal Law, 149 (2004).

122 ICTR, Trial Chamber, *The Prosecutor v. Jean Kambanda*, ICTR-97-23-S, Judgment of 4 Sept. 1998, Par. 39, available at: http://69.94.11.53/default.htm.

123 ICTR, Trial Chamber I, *The Prosecutor v. Ferdinand Nahimana*, *Jean-Bosco Barayagwiza, Hassan Ngeze* , ICTR-99-52-T, Judgment of 3 Dec. 2003, Par. 96, available at: http://69.94.11.53/default.htm.

124 ICTR, Trial Chamber I, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, ICTR-99-52-T, Judgment of 3 Dec. 2003, Par. 82, available at: http://69.94.11.53/default.htm.

125 ICTR, Trial Chamber I, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, ICTR-99-52-T, Judgment of 3 Dec. 2003, Par. 71, available at: http://69.94.11.53/default.htm (last visited Oct. 31, 2006).

126 ICTR, Trial Chamber I, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, ICTR-99-52-T, Judgment of 3 Dec. 2003, Par. 40, 83, available at: http://69.94.11.53/default.htm (last visited Oct. 31, 2006).

127 ICTR, Trial Chamber I, *The Prosecutor v. Georges Ruggiu*, ICTR-97-32-I, Judgment of 1 June 2000, Par. 44, available at: http://69.94.11.53/default.htm (last visited Oct. 31, 2006).

128 ICTR, Trial Chamber I, *The Prosecutor v. Eliezer Niyitekenga*, ICTR-96-14-T, Judgment of 16 May 2003, available at: http://69.94.11.53/default.htm (last visited Oct. 31, 2006).

129 ICTR, Trial Chamber I, *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Judgment of 2 Sept. 1998, Par. 552 available at: http://69.94.11.53/default.htm (last visited Oct. 31, 2006).

130 The Canadian Immigration and Refugee Board is an independent administrative tribunal. While its authority is only national, the legal precedent used and produced therein is valuable to establishing a body of evidence on conviction for incitement to genocide.

131 Genocide is a form of a crime against humanity.

132 William A. Schabas, *Hate Speech in Rwanda: the Road to Genocide*, 46 McGill L.J. 141 (2000).

133 *Mugesera v. Canada* (Minister of Citizenship and Immigration), [2005] SCJ No. 40 (SCC) (Lex. Nex.). The Supreme Court of Canada has restored a deportation order issued to Mugesera for helping spark the genocide that killed some 800,000 people. cbc.ca, *Alleged Rawandan war criminal must leave Canada: top court*, June 28, 2005, available at: http://www.cbc.ca/canada/story/2005/06/28/mugesera.html (last visited Oct. 31, 2006).

134 ICTR, Trial Chamber I, The Prosecutor v. Jean-Paul Akayesu, ICTR-96-4-T, Judgment of 2 Sept. 1998, Par. 552 available at: http://69.94.11.53/default.htm (last visited Oct. 31, 2006).

135 William A. Schabas, *Hate Speech in Rwanda: the Road to Genocide*, 46 McGill L.J. 141 (2000).

136 William A. Schabas, *Hate Speech in Rwanda: the Road to Genocide*, 46 McGill L.J. 141 (2000).

137 William A. Schabas, *Hate Speech in Rwanda: the Road to Genocide*, 46 McGill L.J. 141 (2000).

138 *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

139 Scholars for Peace in the Middle East, Petition to Endorse the Statements of the International Association of Genocide Scholars et al., June

2, 2006, available at: http://www.spme.net/spme_petitions.html (last visited Oct. 31, 2006). These and other actions by Ahmadinejad clearly encourage and attempt to justify and persuade Iranians and others to commit genocide against the people of the State of Israel.

140 William A. Schabas, *Hate Speech in Rwanda: the Road to Genocide*, 46 McGill L.J. 141 (2000).

141 William A. Schabas, *Hate Speech in Rwanda: the Road to Genocide*, 46 McGill L.J. 141 (2000).

142 ABC News International, Donna Abu-Nasr, *Some Arabs Aren't Fans of Iranian Leader*, Feb. 2, 2006, available at: http://abcnews.go.com/International/wireStory?id=1572543 (last visited Oct. 31, 2006).

143 William A. Schabas, *Hate Speech in Rwanda: the Road to Genocide*, 46 McGill L.J. 141 (2000).

144 The ICTR clarified that the incitement must be more than "mere vague or indirect suggestion." William A. Schabas, *Hate Speech in Rwanda: the Road to Genocide*, 46 McGill L.J. 141 (2000). This seems puzzling, as the crime of incitement is an inchoate crime, and requiring the incitement to specifically provoke another to engage in a criminal act demands more than is normally required of an inchoate crime.

145 William A. Schabas, *Hate Speech in Rwanda: the Road to Genocide*, 46 McGill L.J. 141 (2000).

146 William A. Schabas, *Hate Speech in Rwanda: the Road to Genocide*, 46 McGill L.J. 141 (2000).

147 William A. Schabas, *Hate Speech in Rwanda: the Road to Genocide*, 46 McGill L.J. 141 (2000).

148 The Shahab 3 is capable of reaching any city in Israel, and of carrying a nuclear payload. Daniel Pipes, *Iran's Final Solution Plan*, New York Sun, Nov. 1, 2005, available at: www.danielpipes.org/article/3100 (last visited May 24, 2005).

149 *See* Rony Blum, Gregory Stanton, Elihu D. Richter & Israel Charney, *Recommendations to the UN*, Braun Hebrew University-Hadassah School of Public Health and Community Medicine, Center for Injury Prevention, Jan. 5, 2006.

150 Samantha Power, "A Problem from Hell": America and the Age of Genocide, (2003).

151 Charles Krauthammer, *In Iran, Arming for Armageddon*, washingtonpost.com, Dec. 16, 2005, at A35, available at: http://www.washingtonpost.com/wp-dyn/content/article/2005/12/15/AR2005121501428.html (last visited Oct. 31, 2006).

152 Scholars for Peace in the Middle East, Petition to Endorse the Statements of the International Association of Genocide Scholars et al., June 2, 2006, available at: http://www.spme.net/spme_petitions.html (last visited Oct. 31, 2006). *See* also the comments of IAEA Director Mohammed el-Baradei, *supra* note 52.

153 Various non-governmental organizations, reflecting a broad spectrum of international civil society, have expressed deep alarm over Ahmadinejad's genocidal statements. These include the Taimalelagi Fagamalama Tuatagaloa-Matalavea, Anglican Observer at the United Nations, Anglican Consultative Council, London, United Kingdom; Douglas Mattern, President, Association of World Citizens, San Francisco, United States; Maurice Aboudaram, Geneva Representative, B'nai Brith International, Washington, DC, United States; Madge Fahy, National International Secretary, Catholic Women's League Australia, Canberra, Australia; Zudije Sej Shehu, Executive Director, Civil Rights Program Kosovo, Pristina, Kosovo; Klaus Netter, Geneva Representative, Coordinating Board of Jewish Organizations, London, United Kingdom; Jose Mathew, Executive Director, Don Bosco Ahaylam, New Delhi, India; Ivan Vesely, Chairman, Dzeno Association, Prague, Czech Republic; Catherine Legna, Project Department Director, France Libertés, Paris, France; Elaine Wolfson, Founding President, Global Alliance for Women's Health, New York, United States; Dr. Yael Danieli, Director, Group Project for Holocaust Survivors and their Children, New York, United

States; Sergio D'Elia, Secretary General, Hands Off Cain, Rome, Italy; Marco Perduca, Secretary General, International Antiprohibitionist League, Rome, Italy; Daryl Balia, General Secretary, International Association for Religious Freedom, Oxford, United Kingdom; Sara Winkowski, President, International Council of Jewish Women, Montevideo, Uruguay; Tom Johannesen, Secretary General, International Federation of Social Workers, Bern, Switzerland; Gianfranco Rossi, Representative to the U.N. in Geneva, International Religious Liberty Association, Silver Spring, Maryland, United States; Maria Grazia Caputo, General Director, International Volunteerism Organization for Women's Education and Development, Rome, Italy; Yevgeniy Zhovtis, Director, Kazakhstan International Bureau for Human Rights and Rule of Law, Almaty, Kazakhstan; Gianfranco Dell'Alba, Secretary General, No Peace Without Justice, Rome, Italy; Paul Lansu, International Secretariat, Pax Christi International, Brussels, Belgium; Marlène Haas, Secretary General, London, United Kingdom; David Dickson, National Director, Thai Catholic Commission on Migration, Bangkok, Thailand; Matteo Mecacci, U.N. Representative, Transnational Radical Party, Rome, Italy; Hillel Neuer, Executive Director, U.N. Watch, Geneva, Switzerland; Gretta Fenandes, Executive Team Chairperson, VIVAT International, New York, United States; Rama Enav, Representative to the U.N. in Geneva, Women's International Zionist Organization, Tel Aviv, Israel; Eric Sottas, Director, World Organization Against Torture, Geneva, Switzerland; and, Christine Durbak, Chair and CEO, World Information Transfer, Inc., New York, United States. *U.N. Watch, Racism, Racial Discrimination, Xenophobia, and All Forms of Discrimination*, Economic and Social Council, E/CN.4/2006/NGO/95 March 2, 2006, available at: http://www.unwatch.org/site/apps/nl/content2.asp?c=bdKKISNqEmG&b=1355321&ct=2051475 (last visited Aug. 31, 2006).

154 Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 UNTS 277; available at: http://www.unhchr.ch/html/menu3/b/p_genoci.htm

155 Of more than 100 U.N. Security Council Resolutions passed since the beginning of 2005, none has mentioned, let alone sought to prevent or suppress, Iran's genocidal threats against Israel. *See* http://www.un.org/Docs/sc/unsc_resolutions06.htm, http://www.un.org/Docs/sc/unsc_resolutions05.htm (last visited June 11, 2006).

156 U.N. Security Council, In Presidential Statement, *Underlines Importance of Iran 's Re-establishing Full, Sustained Suspension of Uranium-enrichment Activities*, Mar. 29, 2006, available at: http://www.un.org/News/Press/docs/2006/sc8679.doc.htm (last visited June 19, 2006). .

157 *Iran, Russia Call for Diplomatic Solution to Nuclear Dispute*, BBC Monitoring International Reports, from Mehr News Agency, May 28, 2006; BBC News, *US Demands UN Sanctions on Iran*, Oct. 26, 2006, available at: http://news.bbc.co.uk/1/hi/world/middle_east/6086084.stm (last visited Oct. 31, 2006).

158 Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 UNTS 277; available at: http://www.unhchr.ch/html/menu3/b/p_genoci.htm

159 Ian Brownlie, Principles of Public International Law, Fourth Ed., 300 (1995).

160 Rebecca M.M. Wallace, International Law, Fifth Ed., 120 (2005).

161 Rebecca M.M. Wallace, International Law, Fifth Ed., 121 (2005).

162 The Eichmann case was, incidentally, the first invocation and application of the Genocide Convention. Irwin Cotler, *Israel should participate in struggle against international crimes*, Canadian Jewish News, Feb. 22, 2001. Cotler, a former Canadian Justice Minister (currently a Member of Parliament), and an international human rights lawyer, has served as legal Counsel for Andrei Sakharov and

Nelson Mandela.

163 Rebecca M.M. Wallace, International Law, Fifth Ed., 121 (2005).

164 Ellen S. Podgor, Understanding International Criminal Law, 20 (2004).

165 Rebecca M.M. Wallace, International Law, Fifth Ed., 128 (2005).

166 Ellen S. Podgor, Understanding International Criminal Law, 20 (2004).

167 Opinion of Lord Hope of Craighead, as stated in the *Pinochet case*. *See* http://home.att.net/~slomansonb/pinochet.html (last visited June 11, 2006).

168 *See Chile: A Major Step Toward Justice*, Amnesty International Press Release, Aug. 26, 2004, available at: http://news.amnesty.org/index/ENGAMR220092004 (last visited June 11, 2006).

169 Steffen Wirth, *Immunity for Core Crimes? The ICJ's Judgment in the Congo v. Belgium Case*, Academy of European Law Online, Oct. 6, 2004, available at: http://www.ejil.org/journal/Vol13/No4/ab2.html (last visited June 20, 2006).

170 Ellen S. Podgor, Understanding International Criminal Law, 85 (2004).

171 Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 UNTS 277; available at: http://www.unhchr.ch/html/menu3/b/p_genoci.htm

172 Holocaust denial is illegal in eleven European countries, including Germany. *Laws Against Holocaust Denial*, Wikipedia, available at: http://en.wikipedia.org/wiki/Holocaust_denial#Laws_against_Holocaust_denial (last visited Aug. 17, 2006). All six political parties in the German parliament signed a joint resolution condemning Ahmadinejad's December 2005 speech that the Holocaust was a "fairy tale" that had been promoted to protect Israel. *Iran and Ahmadinejad*, Wikipedia, available at: http://en.wikipedia.org/wiki/Holocaust_denial#Laws_against_Holocaust_denial (last visited Aug. 17, 2006).

173 Ellen S. Podgor, Understanding International Criminal Law, 153-154 (2004).

174 William A. Schabas, *Hate Speech in Rwanda: the Road to Genocide*, 46 McGill L.J. 141 (2000).

175 Convention on the Prevention and Punishment of the Crime of Genocide, Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948, entry into force 12 January 1951, in accordance with Article XIII. *See* Appendix I.

176 The Rome Statute of the International Criminal Court, Art. 27. *See* Appendix III.

177 The Rome Statute of the International Criminal Court, Art. 15(2). *See* Appendix III.

178 The Rome Statute of the International Criminal Court, Art. 12. *See* Appendix III.

179 The Rome Statute of the International Criminal Court, Art. 13(b). *See* Appendix III.

180 The Court of Justice of the European Communities, Departments of the Institution: FAQ, available at: http://www.curia.europa.eu/en/instit/services/dpi/faq2.htm#icc (last visited Oct. 31, 2006).

181 The International Criminal Court: Third report of the Prosecutor of the International Criminal Court to the U.N. Security Council Pursuant to UNSCR 1593 (2005), June 14, 2006, available at: http://www.icc-cpi.int/library/cases/OTP_ReportUNSC_3-Darfur_English.pdf (last visited Oct. 31, 2006).

182 The International Criminal Court: Third report of the Prosecutor of the International Criminal Court to the U.N. Security Council Pursuant to UNSCR 1593 (2005), June 14, 2006, available at: http://www.icc-cpi.int/library/cases/OTP_ReportUNSC_3-Darfur_English.pdf (last visited Oct. 31, 2006).

183 The genocide began in Darfur some four years ago. Since then it has claimed an estimated 400,000 deaths, including those from terror attacks and from hunger and disease following expulsion from villages, repeated rapes, and other violence. Israel, recently

attacked by Hizbullah (Lebanon war) and Hamas (the second intifada) with Iranian armaments and encouragement, could already be involved in an early stage of genocide akin to that of Darfur four years ago when hundreds were already being killed and hundreds of thousands made refugees, or to that of the European Jews, and all Europeans for that matter, in 1938-1939 during the run-up to the Second World War. Richard A. Hellman, President of the Middle East Research Center, et al., *Additional Analysis and Explanation for the Indictment of Iran's President* to accompany the Organizational Sign-On Letter to President George W. Bush calling for the referral of Ahmadinejad by the U.N. Security Council to the ICC, Oct. 4, 2006 (on file with the principal author).

184 Rebecca M.M. Wallace, International Law, Fifth Ed., 187 (2005).

185 Rebecca M.M. Wallace, International Law, Fifth Ed., 187-188 (2005).

186 Draft Articles on the Responsibility of States for Internationally Wrongful Acts, II(2) Yearbook of the International Law Commission (2001).

187 Draft Articles on the Responsibility of States for Internationally Wrongful Acts, II(2) Yearbook of the International Law Commission (2001).

188 Draft Articles on the Responsibility of States for Internationally Wrongful Acts, II(2) Yearbook of the International Law Commission (2001).

189 Draft Articles on the Responsibility of States for Internationally Wrongful Acts, II(2) Yearbook of the International Law Commission (2001).

190 Draft Articles on the Responsibility of States for Internationally Wrongful Acts, II(2) Yearbook of the International Law Commission (2001).

191 Rebecca M.M. Wallace, International Law, Fifth Ed., 195-196 (2005).

192 IDF Major General (res.) Yaakov Amidror, former Director of Assessment, Military Intelligence, lecture at the Jerusalem Center for Public Affairs, in Jerusalem, Sept. 6, 2006.

193 U.N. Secretary General Kofi Annan placed the blame for the war squarely on Hizbullah. As Annan stated approximately one week after the recent war began, "I have already condemned Hizbollah's attacks on Israel, and acknowledged Israel's right to defend itself under Article 51 of the UN Charter. I do so again today." Annan blamed Hizbullah for "hold[ing] an entire nation hostage." Taking civilian hostages as human shields to protect against enemy fire is categorically prohibited by the Geneva Convention IV as a grave breach. *See* Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

194 U.N. Secretary General Kofi Annan, Press Release: UN Secretary General Says Immediate Cessation of Hostilities needed in Lebanon, Describes Package Aimed at Lasting Solution, in Security Council Briefing, Release Number L/45/2006[SG/SM/10570;SC/8781], July 21,2006, available at: http://www.unescap.org/unis/press/2006/jul/l45.asp (last visited Oct. 31, 2006). There are those who maintain that preemptive measures are categorically prohibited and that a state must wait to be attacked prior to defending itself. *See, e.g.*, Ian Brownlie, International Law And The Use Of Force By States 112 (1963). The better view, however, is that a state need not wait for its attacker to strike first but may, consistent with Article 51, preempt such an assault, on the grounds that states enjoy the natural legal right to take necessary and proportional measures in self-defense. *See* William V. O'Brien, *Reprisals, Deterrence and Self Defense in Counterterror Operations*, 30 Va. J. Int'l L. 421, 478 (1990) (approving of a right of preemptive self-defense); Oscar Schacter, *The Right of States to Use Armed Force*, 82 Mich. L. Rev. 1620, 1634 (1984). Furthermore, the natural right to self-defense can be easily synchronized with the requirements of positive law by recognizing that, where -- as is so often the case -- the Security Council is unable

or unwilling to take measures to that end, states are freed to pursue their own salvation. Michael A. Lysobey, *How Iraq Maintained its Weapons of Mass Destruction Programs: An Analysis of the Disarmament of Iraq and the Legal Enforcement Options of the United Nations Security Council in 1997-1998*, 5 UCLA Int'l L. & Foreign Aff. 127 (2000). State practice is inconclusive: The United States is one of the few states that openly favors the right to preemptive self-defense. W. Hays Parks, *Memorandum of Law: Executive Order 12,333 and Assassination*, Army Law. 4, 7 (1989). However, the growth of international terrorism, along with the proliferation of advanced and lethal weapons systems, has raised the question of whether states should be freed to pursue their own salvation. *See* also John Shaw, *Startling His Neighbors, Australian Leader Favors First Strikes*, NY Times, Dec. 2, 2002, at A11 (quoting Australian Prime Minister Howard as stating that a politician would be "failing the most basic test of office" if he did not order preemptive action). *See* also William Bradford, *In the Minds of Men: A Theory of Compliance with the Laws of War*, 36 Ariz. St. L.J. 1243. U.N. Secretary General Says 'Immediate Cessation of Hostilities' Needed in Lebanon, Describes Package Aimed at Lasting Solution, in Security Council Briefing, Press Release UNESCAP No. L/45/2006, available at: http://www.unescap.org/unis/press/2006/jul/l45.asp (last visited Oct. 31, 2006).

195 *See*, *e.g*. http://memri.org/bin/articles.cgi?Page=countries&Area=iran&ID=SP101805; http://memri.org/bin/articles.cgi?Page=countries&Area=iran&ID=SP110106; http://memri.org/bin/articles.cgi?Page=countries&Area=iran&ID=SP107206; http://memri.org/bin/articles.cgi?Page=countries&Area=iran&ID=SP83304; http://memri.org/bin/articles.cgi?Page=countries&Area=iran&ID=SP73504; http://memri.org/bin/articles.cgi?Page=countries&Area=iran&ID=SP70504; and http://memri.org/bin/articles.cgi?Page=countries&Area=iran&ID=SP9800 (all last visited Sept. 4, 2006).

196 The 1948 Genocide Convention contemplates prosecution in the national courts of the territory where the genocide transpired, and by an international criminal court. The Convention's drafters meant to rule out universal jurisdiction, but subsequent courts have tended to view Article 6 of the Genocide Convention as merely permissive, and not prohibiting universal jurisdiction. Thus, in recent years universal jurisdiction has been taken by various national courts. In addition, jurisdiction has been taken by the courts in the country where the genocide was committed, other national courts, and *ad hoc* international tribunals created by the U.N. Security Council. In parallel the national courts of Rwanda, Bosnia and Herzegovina, Croatia, and Kosovo have undertaken genocide prosecutions based on the Genocide Convention. As for universal jurisdiction, a small number of prosecutions, including in Israel, Spain, Canada, Germany, Switzerland, and Belgium, demonstrate this as an additional option. Supplementing all of these options is the International Criminal Court, which can prosecute genocide committed in any part of the globe after July 1, 2002, to the extent that its jurisdiction is accepted by states. *See* William A. Schabas, *National Courts Finally Begin to Prosecute Genocide, the 'Crime of Crimes*,' J. of Int'l Crim. Justice, Apr. 2003.

197 U.N. Charter, Art. 1(1); *see* attached Appendix II.

198 U.N. Charter, Art. 4; *see* attached Appendix II.

199 Rony Blum, Gregory Stanton, Elihu D. Richter & Israel Charney, *Recommendations to the UN*, Braun Hebrew University-Hadassah School of Public Health and Community Medicine, Center for Injury Prevention, Jan. 5, 2006.

200 For full text *see* Rome Statute of the International Criminal Court, available at: http://www.un.org/law/icc/statute/romefra.htm.

201 Office of the U.N. High Commissioner for Human Rights, full text available at: http://www.unhchr.ch/html/menu3/b/p_genoci.htm

Working Group

Amb. Meir Rosenne
Dr. Meir Rosenne has served as Israel's Ambassador to the United States and to France. He is one of the principal framers of the Camp David Accords between Egypt and Israel, and served as legal advisor to the Israel Foreign Ministry and to various Israel-U.S. and Israel-Syrian negotiations. He served as CEO of State of Israel Bonds, and is a senior partner at Balter, Guth Aloni & Co.

Prof. Elie Wiesel
Elie Wiesel was awarded the Nobel Peace Prize in 1986. He published his first book, *La Nuit*, a memoir of his experiences in German concentration camps during World War II. He has since authored nearly thirty books some of which use these events as their basic material. In his many lectures, Wiesel has concerned himself with the situation of the Jews and other groups who have suffered persecution and death because of their religion, race or national origin.

Wiesel has been a visiting scholar at Yale University, a Distinguished Professor of Judaic Studies at the City College of New York, and since 1976 has been Andrew W. Mellon Professor in the Humanities at Boston University where he teaches "Literature of Memory." He served as Chairman of the United States Holocaust Memorial Council from 1980 – 1986.

Amb. Dore Gold
Dr. Dore Gold, President of the Jerusalem Center for Public Affairs, served as Israel's Ambassador to the United Nations (1997-1999). Previously he served as foreign policy advisor to former Prime Minister Benjamin Netanyahu, at which time he served as an envoy to Jordan, Egypt, the Palestinian Authority, and the Gulf States. He was involved in the negotiations over the 1998 Wye Agreement, the 1997 Hebron Protocol, and in 1996 concluded the negotiations with the U.S., Lebanon, Syria, and France for the creation of the Monitoring Group for Southern Lebanon. In 1991, he served as an advisor to the Israeli delegation to the Madrid Peace Conference. Dr. Gold is the author of *Hatred's Kingdom: How Saudi Arabia Supports the New Global Terrorism* (Regnery, 2003); *Tower of Babble: How the United Nations Has Fueled Global Chaos* (Crown Forum, 2004); and *The Fight for Jerusalem: Radical Islam, the West, and the Future of the Holy City* (Regnery, 2007).

Irit Kohn, Adv.
Irit Kohn joined the Israeli Ministry of Justice in 1989 and from 1995 to 2005 was director of its International Affairs Department. She has been a member of various governmental committees and has published on several legal subjects. In 2004, she was elected to the Vice-Presidency of the International Association of Jewish Lawyers and Jurists. She holds an LLB degree from the Hebrew University of Jerusalem..

Amb. Eytan Bentsur
Amb. Eytan Bentsur is a former Director General of the Israel Foreign Ministry and the author of *Making Peace: The Road to Peace Goes Through Madrid.* He was a representative of the Foreign Ministry in Los Angeles, CA; Washington, DC; Budapest, Hungary; and London, U.K. as well as Advisor and Political Secretary to Foreign Minister Abba Eban.

M.K. Dan Naveh
Dan Naveh has been a member of the Israeli Knesset since 1999. Among other roles he has served with the Israeli Cabinet as the Minister of Health as well as a Minister without Portfolio. M.K. Naveh, an attorney, has held the following positions outside of his government service: Chairman, Israeli side, of the Steering Committee for Negotiations with the Palestinians; Chairman of the Forum for Tracing Anti-Semitism; Chairman of the Staff Working for the Release of Jonathan Pollard; and Advisor to Minister of Defense and Foreign Minister, Moshe Arens.

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Justus Reid Weiner received his Juris Doctor degree from the University California at Berkely (Boalt Hall) School of Law and his BA from Colgate University. He is currently a Scholar-in-Residence at the Jerusalem Center for Public Affairs. His professional publications have appeared in leading law journals and intellectual magazines. He teaches courses on international law and international business at the Hebrew University of Jerusalem, lectures widely abroad, and was a visiting Assistant Professor at Boston University School of Law. Previously Weiner practiced law as an associate in the litigation department of the international law firm White & Case. Weiner also served as a senior attorney at the Israel Ministry of Justice specializing in human rights and other facets of public international law.

About the Jerusalem Center for Public Affairs

www.jcpa.org

The Jerusalem Center for Public Affairs is an independent, non-profit institute for policy research founded in 1976. Since then, the Center has produced hundreds of studies by leading experts on a wide range of international topics. Dr. Dore Gold, Israel's former ambassador to the U.N., has headed the Jerusalem Center since 2000.

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- Jerusalem in International Diplomacy - Dr. Dore Gold analyzes the legal and historic rights of Israel in Jerusalem according to existing agreements and U.N. documents. A companion research study by Justus Reid Weiner looks at *Illegal Construction in Jerusalem: A Variation on an Alarming Global Phenomenon* (2003).
- The Israeli Economy and Privatization - This comprehensive, 10-year project has studied the application and impact of privatization policy in Israel. Sponsored by the Milken Institute, the project includes nine published volumes in Hebrew and English.

About the International Association of Jewish Lawyers and Jurists

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The international Association of Jewish Lawyers led in past years by the late Justice Arthur Goldberg, Justice of the American Supreme Court, by the late Justice Chaim Cohen, Deputy Chief Justice of the Israeli Supreme Court, by the late Joshua Rotenstreich, former Head of the Israel Bar Association, and the (now retired) Judge Hadassa Ben-Ito, has undertaken the task of serving as the advocate of the Jewish People and of the State of Israel. Putting to advantage its members' relative advantages as professional jurists, the International Association deals with legal matters that carry special importance for the Jewish People and the State of Israel (and which are not in internal political controversy), and uses this relative advantage to deal with the overwhelming problems before them.