

## ***Iran: A Case Study for the International Resolve***

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“Ahmadinejad’s Iran” – and I use that term because I want to distinguish it from the people and the publics of Iran, who are the targets of massive domestic repression – is the most comprehensive, compelling, and generic security challenge that the world is currently facing.

My thesis is that Iran has emerged as a clear and present danger to international peace and security, to regional and Middle East stability, to Israel and world Jewry, and increasingly – and alarmingly so – to its own people. Simply put, in Ahmadinejad’s Iran we are witnessing the toxic convergence of four distinct yet interrelated threats: first, the nuclear threat; second, the danger of state-sanctioned incitement to genocide; third, the danger of state sponsorship of international terrorism; and fourth, the danger of persistent and pervasive massive violations of domestic human rights.

Recent developments have only served to expose and magnify this critical mass of threats. Iran has embarked upon a significant expansion in the enrichment of uranium to nuclear weapons-grade capability, including the proposed construction of ten additional uranium enrichment centers. The disclosure of a secret enrichment facility at Qom has only reaffirmed the belief of experts that Iran is already housing a nuclear archipelago.

Moreover, while defying the international community on the nuclear issue, both Supreme Leader Ayatollah Khamenei and President Ahmadinejad – in no less significant though surprisingly ignored threats – have reaffirmed their incendiary calls for Israel’s disappearance, with the Supreme Leader stating “that God willing, its obliteration is certain,” while Ahmadinejad has threatened to “finish [Israel] once and for all.” Indeed, more recently, on Iranian Press TV, Ahmadinejad chillingly elaborated on

these themes, referring to Israel as “most criminal nation in the world ... placed in our region with lies and fictional tales ... [and] with Allah’s help, this regime will be annihilated.”

The massive domestic human rights violations – unmasked since the fraudulent June 12 election – have intensified ever since, with its pattern of arrests, detentions, beatings, torture, kidnapping, disappearances, extrajudicial killings – the whole replete with Stalinist show-trials and coerced confessions. Indeed, Iran has arrested thousands of persons; continues its persecution and prosecution of members of religious minorities – especially the Bahá’í; seeks to intimidate and repress students and women’s rights activists; and has executed more prisoners in absolute terms than any other country, except China, including juvenile offenders.

Let there be no mistake about it: Iran is in standing violation – and mocking defiance of – international legal prohibitions, including UN Security Council Resolutions and the IAEA regime against the development and production of nuclear weapons. These resolutions can be described as trying to accomplish too little too late, and furthermore, they have yet to be fully implemented.

Indeed, Iran is not only a serial violator – it is a serial deceiver. In the last year alone – Obama’s year of engagement – Iran has trumpeted higher-grade enrichment capabilities and facilities, tested enhanced long range missile technology, and begun construction on more lethal centrifuges.

The second important point is that Iran has already committed the crime of incitement to genocide, prohibited under the Genocide Convention. We have been conducting hearings in Canada in our parliamentary foreign affairs subcommittee on international human rights, and have received abundant witness testimony and documentary evidence with respect to state-sanctioned incitement to genocide. The president of the International Association of Genocide Scholars, Professor Gregory Stanton, said that from an historical perspective, Iran has already passed through the first of the six stages of genocide.

As someone who has prosecuted Rwandans and others for incitement to genocide, I can affirm that there are as many if not more incitement precursors to genocide in Ahmadinejad’s Iran than there were in Rwanda or in the Balkans. The evidence of incitement led to the drafting of an international petition on “The Dangers of a Nuclear, Genocide-Inciting,

Rights-Violating Iran: The Responsibility to Prevent,” which has been endorsed by over 60 leading international law scholars, genocide experts, and human rights advocates, as well as victims and survivors.

The petition is divided into two parts. The first part is what I regard as the most comprehensive and authoritative compilation of witness testimony and documentary evidence on the previously mentioned four distinct threats. The second part is organized around a framework of redress and remedy for these threats. In other words, the petition urges implementation of not only a sanctions-based regime as a generic form of remedy, but also advocates specific remedies that address each of the previously mentioned threats.

The third Iranian threat – state sponsorship of international terrorism – is not always appreciated worldwide, but it is well understood here in Israel. This terrorist threat includes the arming, financing, training, and instigation of terrorist groups like Hamas and Hizbollah. On this point, what is not always appreciated is that these groups are more than just terrorist militias. They have a genocidal objective, an anti-Semitic ideology – not because I say so but because their own covenants and charters affirm this – and use terrorism to implement this agenda. Accordingly, in supporting, aiding, and abetting these groups, Iran is also supporting, aiding, and abetting genocidal incitement.

Iran has appointed as its minister of defense – overseeing its nuclear program and weapons development – Ahmad Vahidi, the object of an INTERPOL arrest warrant for his role in the planning and perpetration of the greatest terrorist attack in Argentina since the end of the Second World War – the bombing of the AMIA Jewish Community Center. So in response to President Obama’s outstretched hand during 2009 – his Year of Engagement – Iran reciprocated with a clenched fist, as exemplified by the country’s appointment of Ahmad Vahidi.

Finally, Iran continues its systematic and widespread assaults on its citizens, which international law experts increasingly characterize as crimes against humanity.

These four distinguishable yet interrelated threats constitute what I would call a critical mass of threats, and demonstrate that Iran has emerged as a clear and present danger to world security. Nonetheless, each of these threats has been met with what might be called a culture of impunity, where

each of the threats is sanitized rather than sanctioned, indulged in rather than held to account.

The current situation of impunity thus invites the question: how can we address the current situation in 2010? What should we do? Indeed, what must be done?

In the spirit of full disclosure, I have to acknowledge at the outset that I was a supporter of Obama's Year of Engagement. I believe in the exhaustion of remedies principle, and I was a supporter of mobilizing the international community through engagement for the purpose of ultimately being able to bring together a critical mass of sanctions in response to a critical mass of threats, if Iran would be unresponsive to the process of engagement. But I have to say that the engagement process thus far has not joined issue with the critical mass of threats, and has also failed to implement effective remedial responses against those threats. Much of the engagement has been of open-ended character, without specific timelines and benchmarks, and without a framework for resolution.

It has been more than a year since President Obama, then candidate Obama, spoke of implementing a "carrot and stick" engagement approach with respect to Iran. Again, while I supported the use of carrots and sticks, we have seen the carrots but have yet to see the sticks. It was February 2009 when Secretary of State Hillary Clinton first spoke of "crippling sanctions" against Iran; yet we are now approaching 2010 and none of these crippling sanctions have been implemented. So the first point that needs to be emphasized is that engagement itself has to be serious, sustained, effective, and resolute.

The second important point is that engagement thus far has focused only on the nuclear threat. Now while focus on the nuclear threat is necessary and understandable, it should not, however, be the exclusive focus. I want to suggest that from a strategic point of view, by choosing to focus solely on the nuclear threat, one runs the risk of ignoring, marginalizing, and sanitizing the other three threats. Similarly, from a strategic point of view, minimizing the other three Iranian threats undercuts the case with respect to combating the nuclear threat. In fact, a nuclear Iran is a critical danger because of the connections between this threat and Iran's genocidal incitement threat, its sponsorship of terrorism, and its massive domestic human rights violations. It is the combination of all these dynamics that

produces a critical mass of threats; by focusing only on the nuclear aspect there is a risk of diluting the remedies to be pursued.

There is a third important point: by emphasizing only the nuclear threat, one runs the risk of emboldening the military theocratic regime while giving the appearance of abandoning the Iranian Green Movement. This point is emphasized by Iranian human rights scholars and activists, several of whom are also the signatories to the international petition. In fact, while this is clearly not the intended effect of focusing exclusively on the nuclear threat alone, it allows the regime to translate the reality of the ongoing engagement into domestic leverage against the protesters themselves. Simply put, if the international community continues to engage with the current regime notwithstanding the intensified massive domestic human rights violations – turning a blind eye to them – and if it continues to focus exclusively on the nuclear aspect, then it is minimizing the gravity of the human rights violations and marginalizing the impact of domestic repression.

Moreover, in the matter of the nuclear threat, Iran continues to deny that it is engaged in the illegal development and production of nuclear weapons, and we know that there are countries and people who accept this Iranian claim at face value. On the other hand, when it comes to the other three threats – the genocidal incitement threat, the state sponsorship of terrorism, and the massive domestic repression – there is clear, comprehensive, compelling, and abundant witness testimony and documentary evidence to substantiate these threats. Therefore, by engaging with Iran on the basis of this critical mass of threats, one strengthens the case for sanctions much more than if one deals only with the nuclear threat.

This brings me to the issue of sanctions themselves, which is a crucial point in discussing the Iranian threat. I want to emphasize here the need for targeted, calibrated, and comprehensive sanctions to deal with all four threats posed by Iran, including the particular nuclear threat. Moreover, I also want to stress that we need what I would call threat-specific remedies, namely, remedies that are targeted to the very nature of the threats themselves. It is in fact extremely important to devise an effective sanctions regime, and I would like to now offer a summary of the sets of sanctions that must be integrated into a serious sanctions approach to be acted upon in 2010.

First, when we speak about devising comprehensive, calibrated, and targeted sanctions in response to Iran's pursuit of nuclear weapons, a good place to begin is simply with the implementation of the five UN Security Council resolutions that have been adopted since 2006. These resolutions prohibit, *inter alia*, the supply, sale, or transfer to Iran of items, goods, and technology that could contribute to Iran's enrichment-related reprocessing or to the development of its nuclear weapons delivery system. While these sanctions were originally themselves defined as "too little, too late," they have nonetheless yet to be implemented.

I refer to these measures as "too little, too late" because they only began in 2006, although the first disclosure that Iran was engaged in a covert nuclear weapons development process took place in 2002. Moreover, when the international community recently discovered covert facilities in Qom, the disclosure was not a result of Iran's own acknowledgment of its operations. This once again provided a retrospective validation of the fact that Iran is not only engaged in standing violation of UN Security Council resolutions, but is also a compulsive deceiver that engages in serial deception. Indeed, as I mentioned, we recently heard the announcement that Iran will build ten new nuclear uranium enrichment plants, so as to confirm the country is developing what the Wisconsin Project on Nuclear Arms Control called a "nuclear arms archipelago," of which Qom would be one of the components. In this sense, obtaining the implementation of related UN Security Council resolutions would be a first necessary step with regard to creating a sanctions regime.

The second important component of a sanctions regime would be to target gasoline and other refined petroleum imports. Iran imports approximately 40 percent of its domestic gasoline consumption. This dependence on imports makes Iran particularly vulnerable to this sanction, targeting what has been defined as the country's economic Achilles heel. In addition, these measures should be implemented not only directly against those who export gasoline and other refined petroleum products to Iran, but also against those who facilitate such exports, *i.e.*, the shipping, insurance, and similarly involved companies. It is in fact important to have an integrative approach to strategic sanctioning, because by failing to target all actors involved, one prevents the sanctions from having a real impact.

As a third necessary sanctioning measure, we need to curb energy investment in Iran. More generally, governments should prohibit companies from investing in Iran's energy infrastructure, or they should provide incentives for not doing so. Again, all related industries, including shipping, insurance, and even construction companies should be included. At the same time, we must end export financing for Iran. It is not that well known that billions of dollars are spent annually on export financing for Iran, and this needs to be stopped. Therefore, the problem is not only the failed implementation of UN sanctions with respect to Iran's nuclear program, but also that in the absence of a comprehensive approach to a sanctions regime, there are so many loopholes and escape routes that need to be closed before sanctions can be effective.

A fourth necessary element in devising a comprehensive sanctions regime is the need to focus on the Iranian banking industry. While this effort has begun in terms of certain Iranian banks, the Iranian Central Bank has thus far escaped sanctions and restrictions. Therefore it is important to focus on the Iranian Central Bank as well, as this would diminish the efficacy of Iran's financing of its military infrastructure, uranium processing, and the like.

As a fifth measure, we need to ensure that international financial institutions are vigilant. In other words, we need to guarantee that international financial institutions do not support, however inadvertently, money laundering operations, or indeed any illicit activity involving Iran. As the Financial Action Task Force warned earlier this year, banks should be using due diligence when dealing with Iran – which they do not always do – and governments need to ensure that such standards are met.

A sixth measure is the need to sanction companies that enable Iranian domestic repression to be effective. For example, we have learned that surveillance equipment used in domestic repression was sold to Iran by corporations like Siemens and Nokia. In this regard, one needs to alter the relevant corporations' economic calculus with respect to these sales by deterring such transactions.

A seventh measure that should be implemented is the targeting of the Islamic Iranian Revolutionary Guards. Sometimes this group is defined simply as a militia; however, they have emerged as the primary political as well as military force in Iran today. Additionally, the Revolutionary

Guards constitute a preeminent economic force that controls 80 percent of Iranian foreign commerce, as well as the Iranian construction industry, the banking industry, and the country's communications center. Any sanctions that do not specifically target the Iranian Revolutionary Guards omit an important component with respect to understanding the critical mass of threats and the critical mass of strategic remedial responses. One of the measures that should be implemented in this regard includes listing the Iranian Revolutionary Guards as a terrorist group in order to ban any form of relationship with them, including any involvement in their financing and economic activities.

The eighth core element of a sanctions regime would pay greater attention to the danger of technology and arms transfer to Iran. Existing embargos are not enforced and monitored very well, and there needs to be increased international coordination.

A ninth element in devising calibrated, targeted, and comprehensive sanctions would be to deny landing permission to the Iranian transportation industry. If states agree to refuse Iranian boats permission to dock and Iranian planes permission to land, the effect of these measures would be significant.

Tenth, countries need to enact national legislation that incorporates by reference each of these sanctioning remedies, so that these countries demonstrate that they are serious in terms of implementing a critical mass of remedial responses to the already discussed critical mass of threats. I have introduced in the Canadian Parliament an Iran Accountability Act that seeks to address the fourfold character of threats and seeks also to incorporate these remedial responses.

And finally, and this is rather shocking, I would like to emphasize that Iran has actually been using a UN agency, a United Nations office in Tehran, the Asia Clearing Union, to skirt existing US sanctions. In other words, Iran is using the Asia Clearing Union agency to pay for goods and services, and reaped over \$13 billion overseas in 2008 and over \$5.6 billion so far in 2009. The fact that a UN agency is involved in assisting Iran with money laundering is simply unconscionable. Here too the international community must hold Iran and the relevant UN agency accountable for their conduct.

Thus far I have discussed what I would call a comprehensive, calibrated, and targeted generic set of sanctions. However, this sanctions regime should



be coupled with a series of threat-specific sanctions. First, as mentioned, Iran has already committed the crime of incitement to genocide prohibited under the Genocide Convention and international law. In other words, Iran is in standing violation of the international law prohibition that deals with preventing and combating incitement to genocide. The appropriate response by the international community is not simply the matter of a policy option. There is, in fact, an international legal obligation of the first order – a *jus cogens* obligation – and a panoply of internationally mandated remedies to hold state-sanctioned incitement accountable under law. However, as we meet, not one state party to the Genocide Convention has exercised any of the remedies mandated by the Genocide Convention and international law, including the modest measure of simply referring the Iranian state-sanctioned incitement to genocide to the UN Security Council for deliberation and account.

Moreover, any state party to the Genocide Convention may immediately initiate an inter-state complaint against Iran, which is also a party to the Convention, and thereby act to hold Ahmadinejad's Iran accountable. At the same time, the UN Security Council could be asked to refer the situation of state-sanctioned incitement to genocide to the International Criminal Court. The UN Security Council did refer the criminality of Omar al-Bashir, the president of Sudan, to the International Criminal Court. The International Criminal Court did indict President al-Bashir, even though there were those who said that heads of state are immune from prosecution. However, there is no such immunity under international law; and both the International Criminal Court Treaty and the Genocide Convention clarify that heads of state that engage in state-sanctioned incitement to genocide are criminally liable. And so the question: Why have we been immunizing Iranian leaders from any criminal liability? Why have no initiatives of this kind been taken?

Indeed, even modest remedies such as travel bans of those engaged in such prohibited incitement, or placing such leaders on a watch list, or the use of shunning and shaming devices, have yet to be invoked with regard to the Iranian leadership. So while there is a comprehensive set of remedies available with respect to combating the threat of incitement to genocide, none of the remedies has yet been used. This also holds true with regard to the ongoing massive domestic human rights violations. Clearly,

these human rights violations can also be sanctioned through the 11-point set of generic set of sanctions that I described earlier, but they can also be targeted by a number of violation-specific measures as I will now set forth.

Such remedies for human rights violations include regularly displaying public condemnation of the dictatorial Iranian regime and its leadership, rather than any acquiescing, indulging, or ignoring of that leadership and its actions. Moreover, it is important to provide moral and diplomatic support for the democratic movement in Iran and severely restrict the number and nature of official visits by Iranian leaders. It is also crucial to address the topic of Iran's massive human rights violations in the course of any bilateral meeting with the country. Other relevant measures include: coordinating the imposition of travel bans and asset freezes on Iranian officials; monitoring and regulating foreign offices, bureaus, and media outlets that the Iranian regime uses as a source of threat, incitement, and intimidation; and decreasing high level interactions with Iranian officials. At the moment, there is no coordinated approach to holding Ahmadinejad's Iran to account on any of the specific threats to which I have been referring.

Finally, I would like to stress the need for strategic international advocacy. For instance: one can go to country X and raise the issue of the nuclear threat. In response, country X may question whether the available evidence is clear enough to confirm that Iran is engaged in the production and development of nuclear arms. Similarly, country X might raise the objection that Iran's nuclear program may in fact be conceived around civilian purposes, and it might affirm that there is no reason why Iran should not have the right to use nuclear energy for civilian purposes. Accordingly, when dealing with Iran only with respect to the nuclear threat, then one may find that the conversation hits a dead end and that it may be impossible to convince country X, unless one refers to all the available evidence and thereby demonstrates that besides from its nuclear activities, Iran is also engaged in all of the other three sets of threats previously described.

At that point, each country may respond differently to these different threats. For example, I found that when I spoke with German leaders the most compelling case I was able to make to them was not necessarily with respect to the nuclear threat but with the danger of state-sanctioned incitement to genocide. Specifically, I was able to quote my own Supreme Court in Canada – and International Criminal Tribunals for Former

Yugoslavia and Rwanda – that the enduring lesson of the Holocaust and the genocides that followed in Srebrenica, Rwanda, and Darfur is that these genocides occurred not simply because of the machinery of death but because of the existence of state-sanctioned incitement to genocide. As the court put it, the Holocaust did not begin in the gas chambers; it began with words.

So in speaking with German counterparts, referencing the incitement issue may result in a more responsive reaction than by simply mentioning the nuclear threat. In fact, the importance of the historical lesson, the nature of the genocidal threat, and the obligation for all state parties to the Genocide Convention to combat it, may resonate more deeply with them.

At the same time, one may find in Sweden, as I did, that they are much concerned about the massive domestic human rights violations, while worried as well about nuclear proliferation. So in Sweden it is important to focus on these two aspects of the Iranian threat. For its part, Austria this past summer commemorated the twentieth anniversary of the murder of Kurdish Iranian dissidents in 1989; accordingly, they are particularly concerned about the terrorist character of the Iranian leadership and those involved in it, such as Ahmad Vahidi.

Therefore, when engaging Iran, one has to adopt an international strategic approach. Unless one implements such an approach, which focuses on the critical mass of interrelated threats [the nuclear, the genocidal, the state sponsorship of terrorism, and the massive human rights violations], then one ends up marginalizing or excluding some of those threats from the necessary strategy for engagement. A similar point can be made with regard to responses and remedies. In this sense, it will be crucial to devise a comprehensive, calibrated, generic set of sanctions that relate to all four of these threats, as well as a set of threat-specific sanctions that deal with each of these threats on an individual basis.

In conclusion, the time has come for firm action by the international community on behalf of international peace and security, the protection of human rights, and the pursuit of international justice. As Martin Luther King Jr. put it, what concerned him were not so much the acts of his adversaries but the silence of his friends. It is time for the international community to come together and mobilize the critical mass of response to deal with the critical mass of threat.