

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

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April 23, 2007

Ambassador M. Javad Zarif, Ph.D.
Permanent Representative
c/o Permanent Mission of the Islamic Republic
of Iran to the United Nations
622 Third Avenue
New York, NY 10017

Dear Ambassador Zarif:

I am writing on behalf of the Association of the Bar of the City of New York ("ABCNY") to express our concern with respect to certain statements made by Iran's President Mahmoud Ahmadinejad and other representatives of the Iranian Government that, we believe, violate international law.

These statements fall into two categories: (a) anti-semitic propaganda broadcast by Iran's state-owned media and contained in the public statements of Iranian representatives; and (b) against that background, specific statements by President Ahmadinejad and other Iranian representatives advocating the "death" of Israel and the mass deportation of its Jewish population.

Statements in the first category include programs broadcast on Iran's state-controlled television and speeches made by Iranian officials that portray classic anti-semitic themes; an exhibition of cartoons, endorsed by President Ahmadinejad, depicting anti-semitic stereotypes; and a conference, sponsored by Iranian officials, devoted to the denial and minimizing of the Holocaust.

Against this background of virulent anti-Semitic statements, President Ahmadinejad has called for "Death to Israel" and both President Ahmadinejad and other Iranian representatives have explicitly advocated the deportation of Israel's Jewish population to their countries of origin.

We believe that these kinds of statements by Iranian state agencies and officials should be condemned as violating, not only the acceptable norms of international discourse, but international law as well. Specifically, the statements violate Iran's international law obligations under the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD"), the United Nations International Covenant on Civil and Political Rights ("ICCPR"), and the Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention"). Iran is a state-party to all of these treaties.

With respect to ICERD, Article 4 of that convention provides that state parties must “condemn [and enact enforcing legislation making punishable] 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.” Similarly, Article 20 of ICCPR provides that “[a]ny advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence shall be prohibited by law.” Finally, the Genocide Convention prohibits, in Article 3(c), among other punishable acts, “direct and public incitement to commit genocide”. Under Article 2(c) of that Convention, genocide is defined in part as “[d]eliberately inflicting on [a national, ethnical, racial or religious] group conditions of life calculated to bring about its physical destruction in whole or in part.”

With respect to ICERD and ICCPR, the Iranian Government’s failure to condemn and/or punish the statements described above constitute *per se* violations of the Islamic Republic’s obligations under those documents. With respect to the Genocide Convention, the proposed mass deportation of Israel’s Jews to their respective countries of origin would almost certainly inflict “conditions of life calculated to bring about [the Jews’] physical destruction, in whole or in part.” The public statements advocating such a genocidal act made by President Ahmadinejad and other high officials of Iran should, we believe, be deemed incitement to genocide under the Convention.

We believe that rhetoric of the kind described above is not consistent with Iran’s international law obligations and we respectfully request that the Iranian leadership refrain from making or sponsoring such statements. For your reference, we enclose a memorandum setting forth in detail the factual and legal bases for this letter. We would be pleased to have you meet with the Association’s committees to further discuss the legal issues we are addressing.

Respectfully submitted,



Barry Kamins

The Association of the Bar of the City of New York
Committee on International Human Rights

April, 2007

Memorandum Regarding Violations of International Law Obligations Resulting
from Anti-Semitic Propaganda and Incitement to Genocide by Iranian Officials

Over the past two years, statements made by the President of Iran, Mahmoud Ahmadinejad, and other members of the Iranian Government have become increasingly strident in attacking Jews as an ethnic group and urging that Israeli Jews in particular be expelled from the Middle East. As demonstrated below, this rhetoric not only goes beyond the acceptable norms for international discourse, but also violates international law. Accordingly, we suggest that the President of the Association (1) write to President Ahmadinejad, asking that he put a stop to this rhetoric, and (2) urge the United States government to take appropriate action through the United Nations to condemn and prevent the continuation of these kinds of statements by a member state.

I. The Statements at Issue

The statements at which this memorandum is directed include (a) anti-Semitic propaganda broadcast by Iran's state-owned media and contained in the public statements of Iranian officials; and (b) against that background, specific statements by President Ahmadinejad and other Iranian officials advocating the "death" of Israel and the mass deportation of its Jewish population.

A. State Sponsored Anti-Semitic Propaganda

Since at least 2005, Iran has sponsored a campaign of propaganda, including programs broadcast on Iran's state-owned television channel and public statements by government

officials, that has been, not merely anti-Israeli, but anti-Semitic. Indeed, the rhetoric used has been so extreme as to be reminiscent of that used in Nazi Germany and by the most rabid anti-Semites. For example,

- January 28, 2005: Sahar TV (“Sahar”), a channel owned by the Iranian government,¹ aired “Zahra’s Blue Eyes,” a weekly serial in which “Zionists” are “portrayed as kidnapping little Palestinian children and harvesting their organs,”² as well as “Ash-Shatat” [“The Diaspora”], a supposed historical drama series, which repeated the classic anti-Semitic “blood libel” and “portray[ed] the Jews as controlling the world through a secret global government and as being responsible for all the ills of the world, through political, economic, and sexual conspiracies, war-mongering, and political assassinations.”³
- February 24, 2006: Professor Hasan Bolkhari, a cultural advisor to the Iranian Education Ministry, told a television audience to “[r]ead the history of the Jews in Europe. This ultimately led to Hitler’s hatred and resentment.”⁴
- June 9, 2006: Iranian presidential adviser, Mohammad Ali Ramin, who was later appointed to head an Iranian foundation for Holocaust studies, stated, “Throughout

¹ Middle East Media Research Institute, *France Bans Iran’s Sahar TV for Airing Antisemitic Programs*, Special Dispatch Series - No. 868, Feb. 23, 2005, at 2, <http://www.memri.org/bin/opener.cgi?Page=archives&ID=SP86805> (observing that “Sahar TV . . . belongs to the Islamic Republic of Iran, on the Hotbird satellite”).

² Middle East Media Research Institute, *Antisemitism and Holocaust Denial in the Iranian Media*, Special Dispatch Series - No. 855, Jan. 28, 2005, at 1-2, <http://www.memri.org/bin/opener.cgi?Page=archives&ID=SP85505>.

³ *Id.* at 2. In 2004, Al-Manar TV, which produced Ash-Shatat, was banned from broadcasting in France on account of the content of this series. See U.S. Dep’t of State Bureau of Democracy, Human Rights, and Labor, *Report on Global Anti-Semitism* 3 (Jan. 5, 2005), <http://www.state.gov/g/drl/rls/40258.htm> [hereinafter “*Report on Global Anti-Semitism*”] (“In November 2004, Al-Manar, the Lebanon-based television network controlled by Hizballah featuring blatantly anti-Semitic material, obtained a limited 1-year satellite broadcast license from the French authorities. This was revoked shortly thereafter due to Al-Manar’s continued transmission of anti-Semitic material. Al-Manar is now off the air in France.”).

⁴ Middle East Media Research Institute, *Cultural Advisor to Iranian Education Ministry and Member of Interfaith Organization Lectures on Iranian TV: Tom and Jerry - A Jewish Conspiracy to Improve the Image of Mice, Because Jews Were Termed ‘Dirty Mice’ in Europe*, Special Dispatch Series - No. 1101, Feb. 24, 2006, at 2, <http://memri.org/bin/opener.cgi?Page=archives&ID=SP110106>.

history, this religious group [the Jews] has inflicted the most damage on the human race. . . . Jews are very filthy people.”⁵

In August of 2006, a public exhibition of Holocaust cartoons, sponsored by a newspaper controlled by the municipality of Tehran,⁶ and endorsed by President Ahmadinejad,⁷ took place. These cartoons again depicted classical anti-Semitic themes, such as Jews as vampires, Jews dominating the world, Jews as killers of children, etc.⁸

Similar themes were articulated at or around the same time in public statements by Iranian officials. In January of 2006, “it was announced that the Iranian government intended to hold an international conference on the Holocaust.”⁹ That conference, “titled the ‘International Conference on Review of the Holocaust Global Vision,’ was held on December 11-12, 2006 in Tehran,”¹⁰ and was organized by a governmental organization known as the “‘Iranian Institute for Political and International Studies,’ headed by Rasul Mosavi.”¹¹ At the conference,

[i]t was announced . . . that a “new world foundation for Holocaust studies” would be established [with] Iranian presidential adviser Mohammad Ali Ramin . . . [as] its secretary-general. He was quoted as stating: “Throughout history, this religious group [the Jews] has inflicted the most damage on the human race.” A few

⁵ Middle East Media Research Institute, *Iran Holocaust Denial Conference Announces Plan to Establish World Foundation for Holocaust Studies – To Be Eventually Based in Berlin and Headed by Iranian Presidential Advisor Mohammad Ali Ramin Who Has Said: ‘The Resolution of the Holocaust Issue Will End in the Destruction of Israel’*, Special Dispatch Series - No. 1397, Dec. 15, 2006, at 1-2, <http://memri.org/bin/opener.cgi?Page=archives&ID=SP139706>.

⁶ Nazila Fathi, *Iran Daily to Sponsor Holocaust Cartoons*, International Herald Tribune, Feb. 7, 2006, at 1, http://www.iht.com/bin/print_ipub.php?file=/articles/2006/02/07/news/iran.php (“The daily Hamshahri, which is Iran’s largest newspaper and is run by the capital’s municipality, said the competition would be cosponsored by the House of Caricatures, an exhibition hall for cartoons in Tehran.”).

⁷ Christopher Dickey, *Muhammad Cartoons: Europe Lashes Back*, Newsweek International, Feb. 20, 2006, at 1, <http://www.msnbc.msn.com/id/11300953/site/newsweek/> (“In Iran, President Mahmoud Ahmadinejad exulted in cartoon-inspired hysteria, allowing protesters to try to storm the Danish Embassy, and endorsing a Tehran newspaper’s competition for Holocaust caricatures.”).

⁸ See Manfred Gerstenfeld, *Ahmadinejad, Iran, and Holocaust Manipulation: Methods, Aims, and Reactions*, Jerusalem Center for Public Affairs Papers No. 551, Feb. 1, 2007, at 3-8, <http://www.jcpa.org/JCPA/Templates/ShowPage.asp?DBID=1&LNGID=1&TMID=111&FID=254&PID=0&IID=1495> [hereinafter “Gerstenfeld”].

⁹ *Id.* at 2.

¹⁰ *Id.* at 1.

¹¹ *Id.*

weeks [later], he . . . said Hitler was the son of a Jewish prostitute and his policies aimed at establishing a Jewish state.¹²

B. Statements Calling for “Death to Israel” and the Mass Deportation of Israeli Jews

Against this background of virulent anti-Semitism, President Ahmadinejad took up the slogan “Death to Israel”¹³ and called for the deportation of Israel’s Jewish population to their countries of origin. Specifically, on April 14, 2006, rhetorically addressing the Western European countries, he stated:

Of course, if you still consider yourself indebted to [the Jews, whom he called “the usurpers of the land of Palestine”], then find a proper place for them in your own territories; otherwise, call upon them to return to their countries of origin to live like their forefathers.¹⁴

In an interview with the German magazine *Der Spiegel*, President Ahmadinejad repeated the same theme:

Look here, my views are quite clear. We are saying that if the Holocaust occurred, then Europe must draw the consequences and that it is not Palestine that should pay the price for it. If it did not occur [which he made clear is his own view], then the Jews have to go back to where they came from.¹⁵

Similarly, Iranian Parliament Speaker Gholam-Ali Haddad ‘Adel (“Haddad ‘Adel”) stated in an address broadcast on the Iranian News Channel, this time rhetorically addressing Israel’s Jews:

¹² *Id.* at 8 (emphasis added).

¹³ Manfred Gerstenfeld, *Ahmadinejad Calls for Israel’s Elimination and Declares War on the West: A Case Study of Incitement to Genocide*, Jerusalem Center for Public Affairs Papers No. 536, Nov. 1, 2005, at 2, http://www.jcpa.org/JCPA/Templates/ShowPage.asp?DBID=1&LNGID=1&TMID=111&FID=254&PID=0&IID=892&TTL=Ahmadinejad_Calls_for_Israel's_Elimination_and_Declares_War_on_the_West:_A_Case_Study_of_Incitement_to_Genocide.

¹⁴ President Ahmadinejad (name of Internet blog or web journal), *Speech at Al-Qods [Jerusalem] International Conference, Tehran*, Apr. 14, 2006, at 9, <http://presidentahmadinejad.blogspot.com/2006/04/speech-at-al-qods-jerusalem.html> (emphasis added).

¹⁵ Spiegel Online, *Spiegel Interview with Iran’s President Ahmadinejad*, May 30, 2006, at 3, <http://www.spiegel.de/international/spiegel/0,1518,418660,00.html> (emphasis added). Ahmadinejad’s denial of the Holocaust is also apparent in this article. See *id.* at 4 (Ahmadinejad: “If there really had been a Holocaust, Israel ought to be located in Europe, not in Palestine.”) (emphasis added)).

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

Our slogan and the slogan of the Islamic world is:
Everyone should return to his own home. The Palestinian refugees should return to the land of their forefathers, and you, who came to Palestine from other countries, should return to your homes too.¹⁶

Thus, Iranian propaganda over the past two years has not only vilified Jews as an ethnic group, but—as set forth above—has urged “death to Israel”¹⁷ and that Israeli Jews be deported to their countries of origin. As demonstrated below, these kinds of statements should be condemned as violating not only the acceptable norms of international discourse, but international law as well.

II. Violations of International Law Obligations

A. ICERD and ICCPR

The International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”) was entered into force on January 4, 1965,¹⁸ and the United Nations International Covenant on Civil and Political Rights (“ICCPR”) was entered into force on March 23, 1976.¹⁹ Iran is a state party to both conventions,²⁰ which condemn hate speech of the kind engaged in by Iranian officials over the past two years.

Article 4 of ICERD provides:

¹⁶ Middle East Media Research Institute, *Iranian Parliament Speaker Gholam-Ali Haddad 'Adel: No Place in Israel Will Be Safe; The Blood of Khomeini in Nasrallah's Veins*, Clip No. 1199, July 18, 2006, at 1, <http://www.memritv.org/Transcript.asp?P1=1199> (emphasis added).

¹⁷ See note 13 *supra* and accompanying text.

¹⁸ See International Convention on the Elimination of All Forms of Racial Discrimination, Jan. 4, 1969, 660 U.N.T.S. 195, http://www.unhcr.ch/html/menu3/b/d_icerd.htm. Iran is a party to the ICERD, although the United States is not.

¹⁹ See International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, http://www.unhcr.ch/html/menu3/b/a_ccpr.htm.

²⁰ See United Nations, Office of the High Commissioner for Human Rights, *Ratifications and Reservations*, <http://www.ohchr.org/english/countries/ratification/2.htm> (ICERD) & <http://www.ohchr.org/english/countries/ratification/4.htm> (ICCPR).

State 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 the 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.

Similarly, Article 20 of ICCPR provides:

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

As the International Criminal Tribunal for Rwanda (“ICTR”) has noted, all states parties to ICERD and ICCPR are obligated to enforce the above-quoted provisions:

The Chamber notes that freedom of expression and freedom from discrimination are not incompatible principles of law. Hate speech is not protected speech under international law. In fact, governments have an obligation under the International Covenant on Civil and Political Rights to prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Similarly, the Convention on the Elimination of all Forms of Racial Discrimination requires the prohibition of propaganda activities that promote and incite racial discrimination.²¹

²¹ *Prosecutor v. Nahimana*, Int’l Crim. Trib. for Rwanda, Case No. ICTR-99-52-T, Judgement and Sentence, para. 1074 (Dec. 3, 2003), at <http://69.94.11.53/ENGLISH/cases/Ngeze/judgement/mediatoc.pdf> (emphasis added); see also International Court of Justice, *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia & Herzegovina v. Serbia & Montenegro)*, Judgment of Feb. 26, 2007, para. 148, http://www.icj-cij.org/cijwww/cdoocket/cbhy/cbhyjudgments/cbhy_cjudgment_20070226/bhy_judgment.pdf (“The fact that there is not such a court or tribunal [to enforce international law obligations] does not mean that the obligations do not exist. They retain their validity and legal force. States are required to fulfill their obligations under international law, including international humanitarian law, and they remain responsible for acts contrary to international law which are attributable to them.”).

The ICTR has further observed that:

Hate speech is a discriminatory form of aggression that destroys the dignity of those in the group under attack. It creates a lesser status not only in the eyes of the group members themselves but also in the eyes of others who perceive and treat them as less than human. The denigration of a person on the basis of his or her ethnic identity or other group membership in and of itself, as well as in its other consequences, can be an irreversible harm.²²

Thus, at the very least, the anti-Semitic campaign that Iranian officials have been engaged in for the past two years violates international law obligations as embodied in the ICERD and ICCPR, and as interpreted by the ICTR.

B. The Genocide Convention

We also believe that Iran's rhetoric should be deemed to violate the 1948 Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention"), which was enacted on January 12, 1951.²³ Both Iran and the United States are signatories to the Genocide Convention.²⁴ The Genocide Convention prohibits, in Article 3(c), among other punishable acts, "direct and public incitement to commit genocide." Genocide is defined in Article 2 as including various acts "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." One such act, described in Article 2(c), is:

Deliberately inflicting on [a national, ethnical, racial, or religious] group conditions of life calculated to bring about its physical destruction in whole or in part.

²² *Prosecutor v. Nahimana*, Int'l Crim. Trib. for Rwanda, Case No. ICTR-99-52-T, Summary of Judgement, para. 114 (Dec. 3, 2003), at <http://69.94.11.53/ENGLISH/cases/Barayagwiza/judgement/Summary%20of%20judgment-Media.pdf> (emphasis added).

²³ Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277, http://www.unhcr.ch/html/menu3/b/p_genoci.htm [hereinafter "Genocide Convention"].

²⁴ United Nations, Office of the High Commissioner for Human Rights, *Convention on the Prevention and Punishment of the Crime of Genocide: Status of Ratifications, Reservations and Declarations*, <http://www.unhcr.ch/html/menu3/b/treaty1gen.htm>.

While mass deportation is not specifically referenced as a genocidal act, there is clearly scholarly support for interpreting the Convention to include it. As one commentator has pointed out,

[w]hile the [Genocide] Convention . . . does not by its terms prohibit population transfers and the implantation of settlers in occupied territory, this practice may well constitute genocide not only under the terms of the convention but also as a matter of customary international law.

It is not difficult to prove that population transfers have frequently led to enormous loss of life, in direct violation of [A]rticle 2(a) or 2(c) [of the Convention]. . . . [T]he expulsion and enforced flight of some fifteen million ethnic Germans [at the end of World War II] caused the deaths of over two million of them, and there is ample evidence that numerous leaders of the Soviet Union, Poland, and Czechoslovakia intended that loss of life.

Moreover, the traumatic experience of losing their homes and every link to the land where they were born and where their parents and grandparents were buried certainly also caused serious bodily and mental harm to the surviving members of the group, in violation of article 2(b). It is hardly tenable that those who order or carry out such expulsions do not intend their foreseeable consequences.²⁵

Similarly, the ICTR has found that

for purposes of interpreting Article 2(2)(c) of the Statute [identical to Article 2(c) of the Genocide Convention], the Chamber is of the opinion that the means of deliberate[ly] inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or part, include, *inter alia*, subjecting a group of people to a subsistence diet, systematic expulsion from homes, and the reduction of essential medical services below minimum requirement.²⁶

²⁵ Alfred de Zayas, *Ethnic Cleansing 1945 and Today: Observations on Its Illegality and Implications* 4 (undated lecture transcript at Pittsburgh) (emphasis added), <http://www.alfreddezayas.com/Chapbooks/ethnicpittsb.doc>, reprinted in Steven Bela Vardy et al., *Ethnic Cleansing in 20th-Century Europe* 787-804 (East European Monographs Aug. 2003) [hereinafter "de Zayas"].

²⁶ *Prosecutor v. Akayesu*, Int'l Crim. Trib. for Rwanda, Case No. ICTR-96-4-T, para. 506 (Sept. 2, 1998), <http://69.94.11.53/ENGLISH/cases/Akayesu/judgement/akay001.htm> [hereinafter "Akayesu"] (emphasis added).

While the recent decision of the International Court of Justice in *Bosnia & Herzegovina v. Serbia & Montenegro* (“*Bosnia Decision*”) found that “ethnic cleansing” does not necessarily constitute genocide as a matter of law,²⁷ it obviously may do so in certain circumstances. In this case, the proposed mass deportation of Israel’s Jews to their respective countries of origin—such as Poland and the Ukraine—would, in fact, almost certainly inflict “conditions of life calculated to bring about [the group’s] physical destruction, in whole or in part.”²⁸ Indeed, the rhetoric used by Iranian officials strongly suggests that the process by which the “death” of Israel and the mass deportation of its Jews is to be achieved is not expected to be a bloodless one.

Paragraph 193 of the *Bosnia Decision* also emphasized the *mens rea* requirement of the Convention, noting that “the essence of the [required] intent is to destroy the protected group, in whole or in part, as such.” In applying this test, the Court adopted an extremely demanding standard of proof—so demanding, in fact, that only one incident, the mass murder of Bosnian Moslems at Srebrenica, was found to constitute genocide. However, in the present case, the nature of the rhetoric at issue makes it clear that the whole purpose of what is being proposed—the “death” of Israel and the deportation of its Jewish population—is to destroy Israeli Jews as a

²⁷ See International Court of Justice, *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia & Herzegovina v. Serbia & Montenegro)*, Judgment of Feb. 26, 2007, para. 190, http://www.icj-cij.org/cijwww/cdoocket/cbhy/cbhyjudgments/cbhy_cjudgment_20070226/bhy_judgment.pdf (emphasis added) (“[D]eportation or displacement of the members of a group, even if effected by force, is not necessarily equivalent to destruction of that group, nor is such destruction an automatic consequence of the displacement. . . . As the ICTY [International Criminal Tribunal for the Former Yugoslavia] has observed, while ‘there are obvious similarities between a genocidal policy and the policy commonly known as ‘ethnic cleansing’” (*Krstić*, IT-98-33-T, Trial Chamber Judgment, 2 August 2001, para. 562), yet ‘[a] clear distinction must be drawn between physical destruction and mere dissolution of a group. The expulsion of a group or part of a group does not in itself suffice for genocide.’ (*Stakić*, IT-97-24-T, Trial Chamber Judgment, 31 July 2003, para. 519.)”).

²⁸ Indeed, many of the Polish Jews who survived the Holocaust and returned to Poland after the end of World War II, were murdered in pogroms (one in Krakow in 1945, and another in Kielce in 1946). Jan T. Gross, *Fear: Anti-Semitism in Poland After Auschwitz* (Random House 2006). While those persecutions ended in 1967, when most of the remaining Jewish population left Poland, it is not unreasonable to expect that a mass immigration of several million Israeli Jews to Poland today would result in bloodshed. Similarly, evidence of continuing anti-Semitism in the Ukraine makes it unlikely that Israeli Jews deported to that country would fare much better. Indeed, just last year, it was reported that “one in three Ukrainians do not want Jews to be citizens of their country, according to a survey conducted by the Kiev International Institute of Sociology.” Union of Councils for Jews in the Former Soviet Union, *Chronicle of Antisemitism in Ukraine & Russia: 2005-2006*, Feb. 2, 2007, at 6, <http://www.fsmonitor.com/stories/020207Report.shtml>.

national group. Thus, a strong argument can be made that, even under the *Bosnia* Decision, the present case does satisfy the *mens rea* requirement of the Convention.²⁹

Similarly, the statements at issue on the part of Iranian officials should be deemed to constitute “direct and public incitement to commit genocide.”³⁰ With respect to the requirement of “public” incitement, there is no question in this case that the statements—made by Iranian public officials and broadcast by mass media—were public.

With respect to the element of directness, the ICTR was

of the opinion that the direct element of incitement should be viewed in the light of its cultural and linguistic content. Indeed, a particular speech may be perceived as “direct” in one country, and not so in another, depending on the audience. The Chamber further recalls that incitement may be direct, and nonetheless implicit. Thus, at the time the Convention on Genocide was being drafted, the Polish delegate observed that it was sufficient to play skillfully on mob psychology by casting suspicion on certain groups, by insinuating that they were responsible for economic or other difficulties in order to create an atmosphere favourable to the perpetration of the crime.³¹

Here, the context and tone of the statements made leave no doubt that the destruction of Israel and the deportation of that country’s Jewish population are in fact being directly advocated. Also, the fact that the statements were made by public officials in Iran—a country which, along with its client terrorist groups such as Hizbollah, possesses considerable military resources—adds to the directness of the threat being posed. Surely, where a genocidal act is being advocated by the leadership of a country with the resources necessary to seek the

²⁹ In addition, as a matter of policy, it is difficult to see why imposing the high bar suggested by the *Bosnia* Decision for establishing genocide serves the purposes of the Convention or the international community. Thus, another reason for condemning the rhetoric of Iranian officials at issue here under the Genocide Convention is to make it clear that at least the extreme acts they are advocating should be deemed to violate the Convention.

³⁰ Genocide Convention, *supra* note 23, art. 3(c).

³¹ *Akayesu*, *supra* note 26, at para. 557 (emphasis added).

accomplishment of that act, it is reasonable to consider such incitement to be “direct” within the meaning of the Genocide Convention.

It is true that, in contrast to, say, the Rwandan holocaust, in this case, no actual act of genocide has yet occurred. However, we do not believe that, as a matter of law or policy, an act of actual genocide must have already occurred for incitement to genocide to be found. The Convention is, after all, expressly directed at the “Prevention” as well as the “Punishment” of genocide. Furthermore, it would seem that the purposes of the Convention and the interests of the international community would be well served by preventing mass murder before it occurs. This proposed reading of the Convention, again, has scholarly support. As one commentator has noted:

By including [direct and public incitement to commit genocide] 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.³²

In sum, for all these reasons, we believe that the statements on the part of Iranian officials and state-owned media described above should be condemned under the Genocide Convention as well as the ICERD and ICCPR.

³² Justus Reid Weiner, *Referral of Iranian President Ahmadinejad on the Charge of Incitement to Commit Genocide* 11 (Jerusalem Center for Public Affairs Report Dec. 2006), <http://www.jcpa.org/text/ahmadinejad-incitement.pdf>; see also *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 A.C.W.S.J. 10330, para. 84 (Can. June 28, 2005) (“A charge of incitement to genocide . . . does not require proof that genocide has in fact happened.”).