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See You in Court, Mahmoud Ahmadinejad

By Adi Schwartz

Next month, a new element will be introduced into the discussions about the international community's attitude toward Iran, which is becoming a nuclear power. A group of Israelis, headed by former UN ambassador Dr. Dore Gold, recently completed the composition of a lawsuit to be referred to the International Criminal Court in The Hague against Iranian President Mahmoud Ahmadinejad, for incitement to genocide.

The lawsuit, whose main points are being published here for the first time, is based on the 1948 UN Convention for the Prevention and Punishment of the Crime of Genocide, one of the most important conventions in international law. The convention was written after the Second World War, in order to prevent the repetition of cases of genocide such as the destruction of the Jews by the Nazis. According to the convention, "direct and public incitement to committing genocide" is a criminal offense, with genocide defined as an activity "committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group." In first place among the list of crimes enumerated by the convention is "Killing members of the group."

Aside from Gold, the group includes Meir Rosenne, former legal adviser to the Foreign Ministry and Israeli ambassador to France and the U.S.; Eytan Bentsur, former director general of the Foreign Ministry; and MK Danny Naveh. The four share the opinion that the words repeatedly uttered by the Iranian president regarding the destruction of Israel and erasing it from the map are a distinct violation of the Genocide Convention, aside from being a violation of the convention of the UN itself, which prohibits a member nation from calling for the destruction of another member nation.

Time to attack

"There are things about which we must not be silent and that we must not ignore," says Gold, today chair of the Jerusalem Center for Public Affairs, which is coordinating the lawsuit as a nongovernmental organization. "The time has come to go on the legal attack. As a citizen and a former diplomat, who was witness to the fact that Israel was under attack for years in the area of humanitarian international law, I believe that we must no longer remain silent, particularly in light of the blatant violation of the Genocide Convention, which is the most important of the UN conventions."

Rosenne, today a private attorney, says that this is not a political act. "It

is easy to imagine what would happen if Israel announced that it desired to destroy another country," says Rosenne. "Sanctions against it would be applied immediately. Were the threat only theoretical, we could live with it. But we are talking here about a country of about 70 million people, which is increasingly arming itself, and in addition is arming organizations that it sponsors, such as Hezbollah, which are acting directly against Israel. In other words, this has practical implications. It is simply astonishing that the president of a country that is a UN member makes such declarations and nobody in the international community reacts, except with polite words."

The lawsuit says that the name of the convention - the Convention for the Prevention and Punishment of the Crime of Genocide - testifies to the fact that its intention is to prevent genocide. For that reason, in order to prevent conflict and bloodshed, the court is requested to discuss the lawsuit. The document points out that according to the convention, incitement is a crime in itself, and there is no need to wait until genocide takes place in order to convict for incitement to genocide.

The lawsuit spells out the history of the relations between Iran and Israel, and particularly their deterioration since the 1979 Islamic Revolution. Strong words against Israel have been uttered over the years, but Ahmadinejad has brought them to a peak in his specific calls for destroying Israel. Gold says that the suit will give about 20 examples of such calls (which the president of Iran managed to utter in the course of only one year since becoming president), including his declaration in 2005 that "Israel should be wiped off the map," or a statement from August 2006 to the effect that the solution to the crisis in the Middle East is "the destruction of the Zionist regime." In 2005 the Iranian president convened a congress in Tehran called The World Without Zionism. There is no question about the public and direct nature of these words, and according to the suit, the State of Israel and its population are considered a national entity.

"I relate to these threats in all seriousness," says Irit Kahan, former head of the department of international law in the State Prosecutors Office, who supports the initiative to prosecute Ahmadinejad. "We have here a specific threat to eliminate a country. The man is also a serial Holocaust denier, who makes no effort to hide that fact. This is a phenomenon that cannot be ignored."

Gold explains that Ahmadinejad differs from previous leaders of Arab or Muslim countries. "In the past, with Nasser for example, the expression focused on criticism, as harsh as it may have been, of the Israeli government or of Zionism," says Gold. "But here there is a call to wipe out the population living in Israel. These are two entirely different things. Aside from that, since the 1990s, and particularly since the terrible failures of the UN in Rwanda and Yugoslavia, the international community has been paying special attention to the issue of genocide. The subject of genocide is blazing in the consciousness of

jurists and diplomats, and therefore the ground is much more fertile for discussing such issues."

The main precedents offered in the lawsuit come from the International Tribunal for Rwanda, which convicted nine people of incitement to genocide. The most prominent of them was the former prime minister of Rwanda, Jean Kambanda, who was sentenced to life imprisonment for the special role he played when speaking in the name of the government at public events and in the media, engaging in direct and public incitement to commit acts of violence against moderate Tutsi and Hutu. The lawsuit points out that Kambanda's status as a head of state did not grant him immunity.

A well-known incident from the Rwanda tribunal was that of three journalists who were accused of genocide because of their exhortations on the "Radio Machete" radio station, to the tune of "Let's destroy them" and "Get to work!" meaning "Go and murder!" In the lawsuit it is claimed that while this case requires attention to the context in which the words were said in order to conclude that this was incitement to murder, Ahmadinejad's calls are specific and require no interpretation.

New coalitions

The main obstacle to putting Ahmadinejad on trial is technical, and stems from legal and political circumstances. Legally speaking, the main problem is that Iran is not a signatory to the Rome Convention on the International Criminal Court, which sits in The Hague and is supposed to mediate the lawsuit. Therefore, the ICC has no power to try Iranian citizens.

Jurists say that there are two ways of bypassing this obstacle. One is by turning to the UN Security Council, which is allowed to refer such cases to the Chief Prosecutor in The Hague. In such a case, there is no importance to the question of whether Iran is a signatory to the ICC convention; this was the method used, for example, in the case of the genocide in Darfur (Sudan is not a signatory, either). A second possibility is for a country that is a member of the convention (not Israel, which is not a signatory) or a nongovernmental organization (such as the Jerusalem Center for Public Affairs) to refer the case to the Chief Prosecutor, who is permitted in exceptional cases to begin an investigation. The question of whether the UN Security Council will refer the case to the Chief Prosecutor in The Hague depends on the international interests of countries like Russia and China, which are liable to cast a veto against such a proposal.

"Our explicit goal is to conduct a discussion in an international legal forum on the matter of the Iranian president," says Danny Naveh, who believes that even discussing the issue and bringing it before international public opinion

are very important.

Gold explains that to date, the discussion on Iran has focused on security and economic questions, such as the nuclear project and the oil industry. "Here there is an entirely new angle of blatant violation of an international convention," he says. "This is an opportunity to create new and strong coalitions on the Iranian issue. At present, for the most part those who are speaking against Iran are identified as rightists, conservatives, or Republicans in the case of the United States. Introducing the element of genocide can also lead to the support of liberals, who champion human rights, especially when it comes to such a blatant violation of such an important convention."

If the Chief Prosecutor in The Hague should decide to open an investigation and if the ICC convicts Ahmadinejad, says Kahan, the prosecutor can issue an extradition order against the Iranian president. Clearly Iran will not extradite

its president to The Hague, but it will be possible to restrict his movements outside the borders of the country, because if he visits one of the countries that is a signatory to the convention, it will have to arrest him immediately. Meir Rosen explains that if the discussion comes to the UN General Assembly, it will be possible to impose sanctions against Iran itself, for example by severing commercial and diplomatic ties, and preventing the landing of Iranian planes in other countries.

In the first stage, Gold and his colleagues intend to publish the document as a book in English, and to organize several events, mainly in the United States and Great Britain, in order to enlist support for the move. The four intend to raise the issue at the UN General Assembly, an annual event convening all the heads of state, which will take place in September. At the same time, the four plan to begin proceedings in legal channels. Several important jurists have already joined the initiative.

Irwin Kotler, former Justice Minister of Canada and one of the authors of the basic convention of the court in The Hague, told Haaretz this week that Canada may submit a request to The Hague to investigate Ahmadinejad. Kotler said that genocide is the most serious crime that exists, and that this is not only a matter of punishment after the fact, but before the fact, which is the meaning of the expression "Never again."

He added that prosecution after the fact is too late, and that we must remember that cases of genocide like the Holocaust succeeded due to the demonization of the other. The Holocaust began with words, said Kotler, not with the gas chambers. It is no coincidence that incitement to murder appears in all the legal documents, because the international community recognizes the fact that incitement is a significant part of the process of genocide. In the case of Ahmadinejad, he said, we are talking about a fixed and clear pattern of incitement to genocide.

George Fletcher, a professor of international criminal law at Columbia University and one of the most important theoreticians today in the United States, believes that the initiative is important and necessary, because we have to label the behavior of Ahmadinejad illegal. The worst thing, he said, is that it is being greeted by silence, and is thus becoming acceptable. This is criminal behavior par excellence. Fletcher says that this is a matter of world peace, not necessarily Israeli peace, and calls it "racist" speech: The fact that a politician is talking about the murder of specific people as a group is intolerable and leads to dehumanization. It is a blow to humanity, according to Fletcher.

Attorney Alan Dershowitz has also joined the initiative. In an interview from his home in the United States, he said that this is a test for the international community of the seriousness of its intentions and of its ability to execute international norms and laws. If, God forbid, there should be genocide, and if it is Iran that commits it against the State of Israel, it is clear that the president of Iran will be convicted of incitement, said Dershowitz. He added that this means that Ahmadinejad is violating the law already, because the incitement is taking place now. "Do we really have to wait until the genocide takes place?" he asked.

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