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A Legal Case Against Iran

By David B. Rivkin Jr. and Lee A. Casey
Tuesday, June 6, 2006; A15

Speaking last October at a Tehran conference on "The World Without Zionism," Iran's president, Mahmoud Ahmadinejad, referred to Israel as a "disgraceful blot" and called for it to be "wiped off the map." This was not an isolated or idle threat. In the same speech, he defended Iran's determination to press ahead with its nuclear program -- which would give it the practical ability to achieve this result.

Although Ahmadinejad's bellicose statements were condemned by the United States and a number of its European allies, the condemnation was not followed up by a concerted diplomatic and legal effort in the U.N. Security Council. It ought to be, especially given the uncertain prospects of the council's current consideration of Iran's nuclear activities, further complicated by the just-announced offer of direct negotiations between Tehran and Washington.

There is a good legal basis for such action. Ahmadinejad's words clearly violate Article 2.4 of the U.N. Charter. This provision, to which Iran has agreed, requires all U.N. member states to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state." Ahmadinejad's specific formulation -- wiping Israel off the map and prophesying a coming nuclear conflagration in which much of humanity would expire -- also clearly entails a threat of committing genocide, which member nations are obliged, under the Genocide Convention, to prevent.

Both the nature and context of Ahmadinejad's manifesto set it apart from such harsh but legally permissible rhetoric as President Bush's talk of an "axis of evil" or President Ronald Reagan's reference to the Soviet Union as an "evil empire." Such statements do not threaten the existence of a sovereign member of the international community. Likewise, expressing a view that a particular undemocratic regime or an otherwise odious government would not survive the rising anger of its people, or will fall prey to certain forces of history, does not amount to a legally proscribed challenge.

But Ahmadinejad's rant features a direct and unequivocal threat, and it gives Israel a valid *casus belli* -- under both Article 51 (self-defense) of the U.N. Charter and customary international law -- to use preemptive force as a means of ensuring that Iran cannot make good on its stated intentions.

Indeed, the International Court of Justice, in a 1996 opinion analyzing the legality of the threat or use of nuclear weapons, found that use-of-force threats that violated Article 2.4 and were not otherwise justified under Article 51 also posed a threat to international peace and security, thereby further infringing the U.N. Charter. Since Israel has not committed aggression against Iran, Ahmadinejad's statements cannot be justified as self-defense. They have, in fact, created a legally cognizable threat that can, and should, be addressed by the Security Council under its Chapter VII powers, which are concerned with threats to peace.

So far U.S.-led efforts to have the Security Council directly condemn and impose sanctions on Iran under Chapter VII for its nuclear ambitions have not succeeded. That's why seeking the council's intervention on Iran's illegal threats to use force makes excellent diplomatic sense. Such an approach would provide multiple and reinforcing benefits.

First, it would broaden the international dialogue beyond Tehran's breach of nonproliferation obligations, focusing on the real underlying problem: the bellicose nature of the Iranian regime and the use it might make of nuclear weapons. And since Tehran's violations of the U.N. Charter are, by their nature, issues that can be handled only by the Security Council, bringing them to the council would counter Iran's efforts to displace the U.N. framework in favor of direct negotiations with the European Union and the United States. Indeed, a serious debate on Ahmadinejad's illegal threat would give the United States a unique opportunity

to focus the Security Council on the shrill anti-Israeli rhetoric emanating not just from Iran but also from numerous other Islamic countries. This rhetoric fosters regional tensions and nurtures the dangerous "jihadist" sentiments.

Second, demands that Iran withdraw its threat and acknowledge its obligation to peacefully resolve any dispute it may have with Israel would be firmly grounded in international law -- so much so that Security Council members Russia and China would be hard-pressed to oppose the effort. Both of those countries have routinely cloaked their objections to E.U.-U.S. policy toward Iran in the language of international law, arguing, for example, that Iran has a legal right to pursue civilian nuclear activities. No country, of course, is entitled to violate the U.N. Charter.

Not to put too fine a point on it, but this is how the U.N. system was, and is, supposed to work. When a clear threat to peace arises, it is incumbent upon the Security Council to act in defense of the threatened party to head off the unilateral use of force and to advance "collective security." This imperative is particularly compelling when the very legitimacy of the threatened party and its right to independent national existence have been challenged. Such a challenge goes beyond the violation of Article 2.4 and raises the specter of the most heinous international crimes, including genocide.

If Iran genuinely desires the peaceful atom as an energy source, then it should have no problem retracting its threats against Israel and reaffirming its commitment to resolve any differences it may have with Jerusalem through peaceful means. If it refuses, it will provide compelling evidence that Iran's current government cannot be expected to act as a responsible member of the international community. Then the world can take stock of its true intentions and act accordingly.

The writers are Washington lawyers who served in the Justice Department during the administrations of Ronald Reagan and George H.W. Bush.

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