

Countering the Iranian threat

*Remarks prepared for a panel on Iran
sponsored by Canadian Mogen*

By David Matas *

Winnipeg, 3 June 2011

Iran is a triple threat. It is hell bent on acquiring nuclear weapons. It violates human rights massively. And it incites to genocide against the Jewish people.

How is the international community to respond to this multi-dimensional threat? There are five basic responses - military, ideological, normative, economic and legal.

About the military and the ideological, there is little I can say. I have no military expertise. The ideological debate takes place within the Islamic community.

The response of the global community has been economic and normative. These responses are disconnected and incomplete.

The economic response invokes the UN Security Council, focuses on sanctions and relates only to the nuclear threat. The normative response invokes the UN General Assembly and Human Rights Council, focuses on reporting and condemnation and relates only to human rights abuses.

The normative response has been inconsistent, criminalizing a political opposition to the regime and then reacting inadequately to human rights violations perpetrated against it. The legal response is non-existent internationally; domestically it exists only in the United States. All the existing responses could be strengthened by being more comprehensive and interconnected.

A. Economic

Iran has signed the Nuclear Non-proliferation Treaty but does not respect its terms. It does not allow unannounced inspection of facilities. It is hiding its nuclear development activity from the nuclear inspection agency established under the Treaty, called the International Atomic Energy Agency. Some of that development has come to light anyways because of leaks and detective work by the Agency.

Iran does not deny that it is developing nuclear facilities but claims that the development is for nuclear energy only. Iran is a major producer of oil and gas. In light of its large oil and gas supplies, the suggestion that it needs nuclear development for energy is not credible.

Nuclear proliferation is a worry anywhere. It is particularly troubling in Iran because the regime of the mullahs incites to genocide against the Jewish people. The regime has threatened the Jewish people with genocide through nuclear destruction. There is every reason to believe that a regime consumed with hatred of the Jews would use nuclear weaponry, once acquired, to inflict yet another genocide on the Jewish people.

How do we stop this from happening? The response of the international community to date has been sanctions. The Security Council has passed four different sanctions resolutions between 2006 and 2010.

The Security Council in July 2006 noted that the International Atomic Energy Agency was unable to conclude that there were no undeclared nuclear materials or activities in Iran. The resolution demanded that Iran suspend all enrichment related and reprocessing activities and a report from the Agency by the end of August whether that had happened.

The Security Council passed a sanctions resolution in December 2006 after having received reports from the Agency in August and November that Iran had not established full and sustained suspension of all enrichment related and reprocessing activities. The new resolution decided that all States must prevent the transfer to Iran of all items which could contribute to Iran's enrichment related, reprocessing or heavy water related activities, or to the development of nuclear weapon delivery systems.

The resolution referred to specific dual use items. The resolution further decided that all states should freeze the funds of named entities and persons.

The Security Council in March 2007 expanded the sanctions regime by imposing an arms export ban. The resolution decided that all States must prohibit the procurement by their nationals of arms from Iran.

A resolution in March 2008 expanded the sanctions to include a travel ban on an annexed list of individuals as being engaged in, directly associated with or providing support for Iran's proliferation sensitive nuclear activities or for the development of nuclear weapon delivery systems. The resolution decided that all states should prevent the entry into or transit through their territories of the designated individuals.

The Security Council in June 2010 endorsed a new round of sanctions with additional bite. The resolution decided that Iran could not acquire an interest in any commercial activity in any other state involving uranium mining, production or use of nuclear materials and technology. The resolution imposed a general embargo on supply of heavy arms to Iran - battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems (including spare parts). The resolution prohibited as well the provision of technical training, financial resources or services, or advice related to the supply of those arms.

The resolution called upon all States to prevent the provision of financial services or the transfer through their territory of any assets if they had information that provided reasonable grounds to believe that such assets or resources could contribute to Iran's proliferation sensitive nuclear activities or the development of nuclear weapon delivery systems. States must freeze any assets that are related to Iranian nuclear activities.

The questions then become: Are sanctions enough? Will they work? Do they even serve any purpose? My answer to these questions is that sanctions are helpful, they can work. They certainly serve a purpose ... but they are not enough.

The sanctions could be broadened. International law allows sanctions to encompass all goods and services, except for food and medical supplies. The sanctions so far are a long way from that.

There is more than one way to end the threat posed by the regime of the mullahs. The most obvious is regime change. Regime change, to be real and effective, has to come from within.

Sanctions delegitimize the regime in the international arena and cut down on its support at home. Sanctions lead to division within the regime, some elements criticizing others for generating the sanctions. This is so almost regardless of the content of the sanctions, whether they have bite or not.

Sanctions work in three ways - against persons, funds and goods. Sanctions render certain persons the well earned status of global pariahs. The sanctions carry a personal message to and about these individuals.

Sanctions work against the transfer of funds which can be used to acquire the necessary equipment for nuclear development. Sanctions of goods prevent the importation of goods which are necessary for nuclear development.

Some states and individuals may not on their own want to impose sanctions. Yet, once sanctions are universal, as they supposedly are when approved by the Security Council, in theory at least they should be universally respected. Every breach of sanctions is a violation of the sanctions regime.

If China or Russia were not part of the sanctions regime, they likely would not hesitate to breach it. However, because the sanctions regime is Security Council approved, Russia and China are part of it. Any violation of the sanctions regime coming from China or Russia should in principle meet with disapproval and an enforcement remedy from those states themselves as part of their cooperation with the sanctions regime.

Russia has elections which are not free and fair. China does not even have elections. The media in Russia can report what it wants, but, if the reporting riles the wrong people, the reporter is assassinated. China has a comprehensive system of media control and censorship.

With every government there is a distance between what they say and what they do. In non-democratic countries without freedom of expression, the distance can be substantial.

China and Russia can easily in the international arena vote for sanctions and then back home ignore them. Anyone who attempts to hold the governments of these countries to account for not doing what they said they would do makes that effort at great personal risk.

Nonetheless, the promise from Russia and China of sanctions has value. Non-democratic governments can afford to ignore criticism at home because they respond to criticism through repression. Criticism abroad is

different. Non-democratic governments who do not have legitimacy at home through free and fair elections value the legitimacy they get in the international arena.

While in theory non-democratic governments can brush off criticism abroad, they are often reluctant to do so. Russia and China can be held to account for failing to respect a sanctions regime which they have endorsed.

B. Normative

The United Nations General Assembly in recent years has passed, each year, a resolution condemning human rights violations in Iran. This past March 2011 the United Nations Human Rights Council decided on the appointment of a special rapporteur for Iran, the first new special mechanism created by the Council since its inception in 2006.

These initiatives, while welcome, do not go far enough. The language, for instance, of the General Assembly resolution could be strengthened by condemning Iranian Holocaust denial or state sponsored terrorism or violations of human rights outside as well as inside Iran.

A complete normative response means supporting the democratic, rights respecting, political opposition both inside and outside of Iran. This has been done far from consistently.

Many states which oppose the nuclearization and human rights violations of the Iranian regime of the mullahs have also criminalized a major political opposition force to the regime - the People's Mujahideen of Iran (the PMOI) or the Mujahideen al Khalq (MEK). The PMOI has been listed as a terrorist entity in the European Union, Canada, the United States and Australia.

A bit of explanation of the name is appropriate. The word "mujahideen" has different connotations in Arabic and Farsi. In Arabic, the word "mujahideen" has come to mean "fighters for God". In Farsi, "mujahideen" are considered "fighters for freedom".

The name, to those familiar with the Arabic connotation of the word "mujahideen", gives the impression that the group is Islamic fundamentalist. However, it is just the opposite, a secular movement. Indeed, that is the main objection the mullahs have to the PMOI, that they are not religious.

In the exaggerated rhetoric of the mullahs, the PMOI are enemies of God. Being an enemy of God is an offence in the Iranian criminal code, punishable with death. The regime has murdered adherents of the PMOI in the thousands because of their secular beliefs.

It is hard to know why the Western listing of the PMOI as a terrorist entity occurred. The listing states have not identified the PMOI with any terrorist acts. Writer Ali Safavi, in a sequence of articles in the Huffington Post, has run through a speculative list of possible acts that the listing states might have, in secret, attributed to the PMOI and shown that they were either not terrorist acts or that they were acts perpetrated by some other entity.

When the matter has gone to court, as it did in the United Kingdom and the European Union, the courts, after looking behind closed doors at the security service files of the listing states, have said publicly that there is nothing there. The European Union, as a result of these court cases, has now ended the listing of the PMOI as a terrorist entity.

The most plausible explanation for the listing is that it was done as a sop to the regime of the mullahs in an attempt to further negotiations on the nuclear file. That strategy, if that is what it was, has been ineffective. Iranian nuclear weapons development continues.

Though there are PMOI elsewhere, the leadership of the PMOI is concentrated in Camp Ashraf in Iraq. The Camp has 3,400 residents. The residents are unarmed and have renounced individually the use of force.

When the Multi-national Forces under American leadership controlled Iraq, the residents of the Camp were designated as protected persons under the Geneva Convention for the Protection of Civilians in Time of War. With the withdrawal of the American troops, the protection these troops gave has gone. A United Nations permanent observer post stationed in the Camp left when the Americans left.

The current Iraqi regime is friendly to the Government of Iran. Many of its members lived in Iran during the rule of Saddam Hussein.

Iraqi forces have set around the Camp hundreds of loudspeakers blaring threats of mass killing around the clock, a form of psychological torture. Access of family, friends, media, lawyers and visiting dignitaries is

denied. Materiel for maintenance of the Camp (which is in reality, a village with permanent structures) is blockaded. The residents are denied egress for medical help and medical personnel are denied entry. The Iraqi regime has threatened the residents of the Camp with forcible relocation to an uninhabitable, abandoned desert jail, far from any other habitation.

Iraqi forces have attacked the Camp violently on a couple of occasions, in April 2009 and April 2011. In the first attack, the attacking forces killed eleven innocents and wounded five hundred. Videos show that many were killed and injured by armed Iraqi vehicles running down and running over scrambling, fleeing residents. In the second attack, the attacking forces killed thirty five innocents and wounded three hundred and fifty.

The response of the international community to these attacks has been muted. Neither the United Nations General Assembly resolutions on Iran nor the UN Security Council resolutions on the United Nations Assistance Mission in Iraq (UNAMI) have ever mentioned the Camp.

The Red Cross has said nothing publicly. The Office of the United Nations High Commissioner for Refugees has not recognized the residents of the Camp as refugees. Refugee resettlement countries have not offered the residents of the Camp resettlement.

The international community should not be standing by silently when innocents are threatened and slaughtered, no matter what the political context. The inadequate response to the victimization of the residents of the Camp, a political opposition to the regime of the mullahs, when the whole of the civilized world is trying to come to grips with the threat that the regime of the mullahs poses to humanity, is both perplexing and troubling.

C. Legal

Neither the sanctions regime nor protection of the PMOI would alone be sufficient to counter the threat of the Iranian regime. We should as well pursue legal remedies. There are three possible recourses.

One is bringing Iran in front of the International Court of Justice for violation of the Genocide Convention. That Convention provides that any signatory state can bring any other signatory state before the Court for violating the Convention. Iran is a signatory. It is violating the Convention by allowing its leaders to incite to genocide against the Jewish people.

This sort of initiative does not take a global effort. Any one state can act on its own. Canada is a signatory state. Canada can take Iran to the World Court without the need for any other state to agree with that initiative.

A second option is referral to the International Criminal Court. The Court has jurisdiction over acts committed by nationals of states which have signed on to the Court treaty, acts committed on territories of states which have signed on to the treaty, and situations referred by the Security Council. Iran has not signed the treaty, but it need not be for a situation referred by the Security Council.

The Security Council has already referred to the International Criminal Court the situations in Darfur, Sudan and Libya though neither Sudan nor Libya are signatories to the Court treaty. It should do the same for Iran, for its massive human rights violations and its incitement to genocide.

The third possible legal recourse is local universal criminal and civil jurisdiction. Universal civil jurisdiction means amending state immunity laws. Right now, Iran cannot be sued civilly in Canada for its many crimes because the State Immunity Act gives Iran immunity. The American Foreign Sovereign Immunities Act has an exception for states designated as supporters of terrorism and Iran is designated. Canadian legislation needs a similar exception.

Sanctions are a useful precursor to these legal measures. If Iran does not cease its nuclear weapons development despite the sanctions regime, its behaviour becomes a justification for these legal measures.

We cannot rest content with the sanctions regime alone or any other one remedy in isolation; neither can we abandon the sanctions remedy. We both have to try to enforce the sanctions and use them as a basis for further action.

David Matas is an international human rights lawyer based in Winnipeg, Manitoba, Canada and senior honorary counsel to B'nai Brith Canada.