

Going forward, the jurisprudence should explicitly identify the following as normatively actionable types of incitement: (1) direct calls for destruction; (2) predictions of destruction; (3) verminization, pathologization, and demonization; (4) accusation in a mirror; (5) euphemisms and metaphors; (6) justification during contemporaneous violence; (7) condoning and congratulating past violence; (8) asking questions about violence; (9) conditional calls for incitement; and (10) victim-sympathizer conflation.

1. Direct Calls for Destruction

Direct calls for destruction are relatively rare but they should be classified as a separate incitement technique. Examples would include the June 4, 1994 broadcast of RTLM announcer Kantano Habimana, wherein he implored his audience to exterminate the “Inkotanyi,” or Tutsis, discernible by height and physical appearance.¹ He chillingly concluded: “Just look at his small nose and then break it.”² Another notable instance was Iranian President Mahmoud Ahmadinejad’s call for Israel’s destruction when he told a gathering in October 2005 that Israel “must be wiped off the map.”³

2. Predictions of Destruction

Prophesying destruction constitutes a less direct form of incitement. In the *Media Case* Trial Chamber judgment, for instance, certain RTLM broadcasts that foretold elimination of the *Inyenzi* (i.e., Tutsis) were among those emissions held to meet the legal definition of incitement, including the following:

I think we are fast approaching what I would call dawn . . . dawn, because—for the young people who may not know—dawn is when the day breaks. Thus when day breaks, when that day comes, we will be heading for a brighter future, for the day when we will be able to say “There isn’t a single *Inyenzi* left in the country.” The term *Inyenzi* will then be forever forgotten, and disappear for good⁴

Former Iranian President Mahmoud Ahmadinejad was also responsible for this sort of incitement. In 2008, for example, as Israel celebrated its sixtieth anniversary, Ahmadinejad said to a gathering that the Jewish state was “dying” and that its statehood anniversary celebrations were an attempt to prevent its “annihilation.”⁵

¹ *Nahimana, Barayagwiza & Ngeze*, Case No. ICTR 99-52-T, ¶ 396.

² *Id.*

³ See Nazila Fathi, *Iran’s New President Says Israel Must Be “Wiped Off the Map,” N.Y. Times*, Oct. 27, 2005, at A8. See generally Gregory S. Gordon, *From Incitement to Indictment? Prosecuting Iran’s President for Advocating Israel’s Destruction and Piecing Together Incitement Law’s Emerging Analytical Framework*, 98 J. CRIM. L. & CRIMINOLOGY 853 (2008) (explaining how Ahmadinejad’s statement might have been prosecuted as direct and public incitement to commit genocide). Certain commentators have disputed that this constitutes direct and public incitement to commit genocide. See, e.g., Benesch, *supra* note 2, at 490–91 (“Ahmadinejad’s speech was reprehensible and perhaps even dangerous, but did not constitute incitement to genocide, in my view.”).

⁴ *Nahimana, Barayagwiza & Ngeze*, Case No. ICTR 99-52-T, ¶ 405 (internal quotation marks omitted).

⁵ Ali Akbar Dareini, *Iranian Leader Marks Israeli Anniversary with Menace*, *Herald Scot.*, May 15, 2008, <http://www.>

3. Verminization, Pathologization, and Demonization

Respectively, verminization, pathologization, and demonization are methods by which speakers try to dehumanize their would-be victims and thereby advocate their liquidation. Verminization caricatures victims as vile, pestilent creatures, such as lice, whose extermination would be considered normal and desirable.⁶ During the Rwandan Genocide, for instance, extremist Hutu propagandists called the Tutsi “*Inyenzi*,” the Kinyarwanda word for “cockroach.”⁷ RTLM journalist Georges Ruggiu’s guilty plea was accompanied by a confession that the word *Inyenzi*, as employed in the socio-political context of 1994 Rwanda, signified designating the Tutsis as “persons to be killed.”⁸

In the same vein, pathologization, or depiction of an object as a disease, is a comparable means of urging out-group destruction.⁹ According to a prominent alliance of medical doctors and legal scholars, pathologization “expropriates pseudo-medical terminology to justify massacre [and it] dehumanizes the victims as sources of filth and disease, [propagating] the reversed social ethics of the perpetrators.”¹⁰ As alluded to in Chapter 1, in Nazi Germany, for instance, Jews were the targets of pathologization:

[F]rom the inception of the regime, there is a continuous stream of metaphors equating Jews with disease. Respiriologist Kurt Klare, co-founder of the Nazi Physicians’ League . . . communicated . . . about the “decomposing influence of Jewry” within the German organism, as if Jewry were a sickness. This theme of Jewish “racial decomposition” and the consequent “cleansing of our *völkisch* body,” was graphically reiterated by Dr. [Gerhard] Wagner and his medical aides on the occasion of the Nazi party rally in fall 1935—the fatal rally that introduced the anti-Jewish race laws.¹¹

Demonization employs similarly sinister figurative speech but is more phantasmagorical or anthropocentric in nature. In particular, its slanders center on devils, malefactors, and other nefarious personages.¹² Mahmoud Ahmadinejad, for instance, once asked an audience if Israeli Jews are human

theherald.co.uk/news/foreign/ display.var.2272254.0.0.php#comments.

6 See Benesch, *supra* note 2, at 503.

7 *Nahimana, Barayagwiza & Ngeze*, Case No. ICTR 99-52-T, ¶ 179.

8 *Prosecutor v. Ruggiu*, Case No. ICTR 97-32-I, Judgment and Sentence, ¶ 44(iii) (June 1, 2000).

9 Rony Blum et al., “*Ethnic Cleansing*” *Bleaches the Atrocities of Genocide*, 18 *Eur. J. Pub. Health* 204, 204 (2007), available at <http://eurpub.oxfordjournals.org/cgi/reprint/18/2/204>.

10 *Id.*

11 Michael H. Kater, *Doctors under Hitler* 178 (1989).

12 See David Luban, *A Theory of Crimes against Humanity*, 29 *Yale J. Int’l L.* 85, 120–21 (2004).

beings, and responded to his own query in the negative: “They are like cattle, nay, more misguided! A bunch of bloodthirsty barbarians. Next to them, all the criminals of the world seem righteous.”¹³ During the same time period, he similarly described the Israeli people to partisans at a political gathering as “filthy bacteria,” a “wild beast,” and a “scarecrow.”¹⁴

4. Accusation in a Mirror

“Accusation in a mirror” is a genocidal speech technique that entails accusing the victim of a plan to commit the identical offenses that the actual perpetrator seeks to commit or has already committed.¹⁵ In an infamous mimeographed document found in the wake of the Rwandan Genocide and titled “*Note Relative à la Propagande d’Expansion et de Recrutement*” an anonymous Rwandan propagandist praised this technique.¹⁶ Drawing on the ideas of notable previous propagandists, including Goebbels and Lenin, he observed that “the party which is using terror will accuse the enemy of using terror” which will “persuade listeners and ‘honest people’ that they are being attacked and are justified in taking whatever measures are necessary ‘for legitimate [self-]defense.’”¹⁷ Kenneth Marcus provides an excellent illustration of how this represents a perversion of the Golden Rule:

For example, if one plans to kill one’s adversaries by drowning them in a particular river, then one should accuse one’s adversaries of plotting precisely the same crime. As a result, one will accuse one’s enemies of doing the same thing despite their plans. It is similar to a false anticipatory *tu quoque*: before one’s enemies accuse one truthfully, one accuses them falsely of the same misdeed.¹⁸

Léon Mugesera availed himself of this mendacious agitprop in his infamous 1992 speech, in which he accused the “*Inyenzi*” at several reprises of plotting to perpetrate genocide against the Hutu:

13 Iranian President Ahmadinejad Addresses Rally & Warns the U.S. & England, 1229 Special Dispatch Series (Middle E. Media Research Inst.), Aug. 3, 2006, <http://www.memri.org/report/en/0/0/0/0/0/0/1769.htm>.

14 Michal Lando et al., *Ahmadinejad: Israel Filthy Bacteria*, Jerusalem Post, Feb. 20, 2008, <http://www.jpost.com/servlet/Satellite?cid=1203343707673&pagename=JPost%2FJPArticle%2FShowFull>.

15 See Kenneth L. Marcus, *Accusation in a Mirror*, 43 Loy. U. Chi. L.J. 357, 358 (2012) (AiM [Accusation in a Mirror] is a rhetorical practice in which one falsely accuses one’s enemies of conducting, plotting, or desiring to commit precisely the same transgressions that one plans to commit against them.”).

16 Alison des Forges, “Leave None to Tell the Story”: Genocide in Rwanda 75-76 (1999).

17 *Id.* at 76.

18 Marcus, *supra* note 48, at 359.

These people called *Inyenzis* are now on their way to attack us . . . I am telling you, and I am not lying, it is . . . they only want to exterminate us. They only want to exterminate us: they have no other aim. Are we really waiting till they come to exterminate us?¹⁹

Regarding this insidious technique, Catherine MacKinnon notes: “This infamous ‘accusation in a mirror’—the propaganda technique in which one side falsely attributes attacks to the other in order to justify retaliation in kind, casting aggression as self-defense—was especially causally potent.”²⁰ Kenneth Marcus elaborates on this observation and puts it into better historical context:

AiM’s [accusation in a mirror] directness can be seen in both its widespread usage by genocidaires and its effectiveness. First, AiM has historically been an almost invariable harbinger of genocide. [It] has been commonly used in atrocities committed by Nazis, Serbs, and Hutus, among others. . . . Second, AiM is extraordinarily effective as a means of facilitating genocide and other forms of persecution. This is largely because of the manner in which it legitimizes the crimes it describes, but also because AiM serves at least five other functions, both in genocidal and non-genocidal contexts: to shock, to silence, to threaten, to insulate, and, finally, to motivate or incite. The extraordinary efficacy of this method, combined with the great frequency of its usage, suggests that it should raise the same flags as the more commonly discussed methods of demonization and dehumanization. In contrast to these techniques, however, AiM is more direct in the sense that it communicates a specific message to its listeners (i.e., do unto others as they would do unto you).²¹

5. Euphemisms and Metaphors

Conflict entrepreneurs seldom employ explicit terminology to tempt their murderous minions to do their dirty work. Rather, they tend to speak in coded language and this can be classified as a separate incitement technique.²² During the Rwandan Genocide, for instance, “go to work,” seemingly the most common massacre directive, connoted “kill Tutsis.”²³ William Schabas has perspicaciously commented: “[t]he history of genocide shows that those who incite the crime speak in euphemisms.”²⁴

19 Mugesera v. Canada, [2005] 2 S.C.R. 100, 2005 SCC 40 app. III, ¶ 18.

20 Catherine MacKinnon, *International Decision: Prosecutor v. Nahimana, Barayagwiza & Ngeze*, 98 Am. J. Int’l L. 325, 330 (2004).

21 Marcus, *supra* note 48, at 361-362.

22 Benesch, *supra* note 2, at 506.

23 See, e.g., *Prosecutor v. Ruggiu*, Case No. ICTR 97-32-I, Judgment and Sentence, ¶ 44(iv) (June 1, 2000).

24 William A. Schabas, *International Decision: Mugesera v. Minister of Citizenship and Immigration*, 93 Am. J. Int’l L. 529, 530 (1999).

6. Justification during Contemporary Violence

Describing atrocities already occurring in an effort to persuade listeners that the crimes are morally justified can also be categorized as a separate incitement technique. W. Michael Reisman explains that “in many of the most hideous international crimes, many of the individuals who are directly responsible operate within a cultural universe that inverts our morality and elevates their actions to the highest form of group, tribe, or national defense.”²⁵

By way of example, RTLM announcer Georges Ruggiu would ascribe positive virtues to violence (e.g., by stating that the population is having a “good time” killing).²⁶ Several decades earlier, Nazi leaders went to great pains to stress to potentially complicit Germans the “humaneness” of their massacres, torture, death marches, slavery, and other atrocities.²⁷

7. Condoning or Congratulating Past Violence

Publicly admiring murderers for previous genocidal violence is yet another technique that has been used to great effect. So, for example, RTLM announcers, such as Georges Ruggiu, congratulated the “valiant combatants” who engaged in a “battle” against Tutsi civilians.²⁸ Rwandan Transportation Minister Eliézer Niyitegeka similarly gave thanks to the militias for their “good work.”²⁹

8. Asking Questions

The *Bikindi* decision confirmed that posing questions can qualify as an incitement technique.³⁰ It will be recalled that on Simon Bikindi’s return trip from Kayove, he broadcast the following question to militia over a truck loudspeaker: “[H]ave you killed the Tutsis here?” And he went on to ask the militia if they had killed the “snakes.”³¹ These questions were among the factual findings contributing toward Bikindi’s criminal responsibility for direct and public incitement to commit genocide.³²

25 W. Michael Reisman, *Accountability for International Crime and Serious Violations of Fundamental Human Rights: Legal Responses to Genocide and Other Massive Violations of Human Rights*, 59 *Law & Contemp. Probs.* 75, 77 (1996).

26 Prosecutor v. Ruggiu, Case No. ICTR 97-32-I, Judgment and Sentence, ¶ 44(v) (June 1, 2000).

27 See Raul Hilberg, *The Destruction of the European Jews*, 1010 (3d ed. 2003).

28 Ruggiu, Case No. ICTR 97-32-I, ¶ 44(v).

29 Prosecutor v. Niyitegeka, Case No. ICTR 96-14-T, Judgment and Sentence, ¶ 142 (May 16, 2003).

30 Prosecutor v. Bikindi, Case No. ICTR-01-72-T, Judgment, ¶ 423 (Dec. 2, 2008).

31 *Id.* ¶ 269.

32 *Id.* ¶ 423.

9. Conditional Calls for Destruction

In the Media Case appeals judgment, the judges referred to a January 1994 *Kangura* article written by Hassan Ngeze and titled “The Last Lie.” In it, Ngeze wrote that if “the *Inyenzi*” made a “small mistake,” they would be exterminated, and if they made the mistake of attacking once again, there would be “none of them left in Rwanda, not even a single accomplice. All the Hutu are united.”³³ The Appeals Chamber found that this qualified as a call for incitement to commit genocide, even if the appeal was conditional on the Rwandan Patriotic Front initiating an attack, as the condition was satisfied.³⁴ Thus, incitement may be predicated on conditional calls for eliminationist violence and this should be recognized as a discrete incitement technique.³⁵

10. Conflating Victims and Sympathizers

It has been observed that “inciters intentionally conflate victims-to-be and members of the dominant group who sympathize with them, preparing the audience for the killing of both.”³⁶ Thus, in the Third Reich, non-Jews who protected Jews were the victims of brutal attacks. Or they were sent to concentration camps and murdered simply owing to their sympathy for Jewish people. Likewise, Hutus in genocidal Rwanda who were considered sympathetic to Tutsis were labeled as “traitors,” conflated with Tutsis or “the enemy,” and slaughtered as if they had been Tutsi themselves.³⁷ In the following decade, Iranian President Mahmoud Ahmadinejad, who, as we saw at the beginning of this section, had threatened to “wipe Israel off the map” also made threats against those who would come to Israel’s defense, warning: “Anybody who recognizes Israel will burn in the fire of the Islamic nation’s fury.”³⁸

33 Prosecutor v. Nahimana, Barayagwiza & Ngeze, Case No. ICTR 99-52-A, Judgment, ¶ 771 (Nov. 28, 2007).

34 *Id.* See also Wibke Timmermann & William A. Schabas, *Incitement to Genocide*, in *Elements of Genocide* 164 (Paul Behrens & Ralph Henham eds., 2013) (“According to the Appeals Chamber, the fact that the appeal to exterminate the Tutsi was conditional on the occurrence of an attack by the RPF did not change the directness of the call for the commission of genocide if the condition was realized.”).

35 *Cf.* Model Penal Code § 2.02(6), titled “Requirement of Purpose Satisfied if Purpose Is Conditional,” which declares that if “a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense.” Model Penal Code § 2.02(6) (1985). Query whether this would constitute incitement if the condition were not satisfied. It is beyond the scope of this discussion to contemplate the doctrinal implications of that scenario.

36 Benesch, *supra* note 2, at 506.

37 See, e.g., Thomas Kamilindi, *Journalism in a Time of Hate Media*, in *The Media and the Rwandan Genocide* 136, 138–39 (Allan Thompson ed., 2007) (featuring a Hutu journalist who describes how he became “one of the targets of the Hutu militia” because he was perceived as sympathetic to Tutsis).

38 Ahmadinejad Quotes, Jerusalem Post Online Edition, May 16, 2006, <http://www.jpost.com/servlet/Satellite?cid=1145961353170&pagename=JPost%2FJPostArticle%2FPrinter>.