

# PROPAGANDA AND GENOCIDE: SETTING STANDARDS FOR RESPONSIBILITY

—Radhika Kapoor\*

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## INTRODUCTION

Use of the media is a powerful tool in mass atrocities for the following reasons: it allows the wielder to shape contemporary discourse; it helps desensitise and marginalise those who are not being targeted; and it can successfully contribute to the generation, entrenchment and wholesale acceptance of dangerous demographic stereotypes, which often serve as the premise for ensuing violence.

Since the general populace does not consider traditional media to be fraught with any particular agenda, it inevitably relies on it to develop ‘unbiased’ awareness about a country’s affairs. The Rwandan genocide is a prime example of how influential persons in control of sources of information such as radio broadcasts and newsletters, can distort and filter the material that the public can access. The Appeals Chamber of the International Criminal Tribunal for Rwanda – an international court tasked with prosecuting various violations of international humanitarian law during the genocide – in *Prosecutor v.*

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\* The author is an alumnus of Harvard Law School and the National Law School of India University. She specializes in the field of transitional justice, particularly international criminal law. She has obtained practical experience at the International Criminal Tribunal for the former Yugoslavia, the International Criminal Court, and the Harvard International Human Rights Clinic. She is a 2019-2020 Harvard Public Service Venture Fund Kaufman Fellow and plans to work at the Public International Law and Policy Group, Washington DC, advising on transitional justice and international peace negotiation processes.

*Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze* handed down a landmark judgment on this use of the media. In this paper, I will examine this judgment, along with two significant cases of incendiary media use during the Third Reich in Germany.

I have two main objectives. First, I will illustrate the power that propaganda wields over people's minds; in order to argue that the media can indeed mould political and social landscapes. Secondly and more specifically, I will analyze and offer a critique of international standards for responsibility in relation to media use by contrasting the approach of two prominent international criminal tribunals.

## THE POWER OF PROPAGANDA

Incendiary media use, by "*those who control and have access to media*,"<sup>1</sup> involves the proliferation of stereotypes via propagandist material. Such propaganda – i.e. the use of the media to further political causes in a manner that either provokes the commission of crimes against humanity, or dehumanises the victims in the eyes of the population – is the focus of this paper. In today's world, propaganda is all-pervasive: any person who accesses any information source – be it the internet or tangible newspapers – is subjected to it. The nexus between propaganda and international crime is especially evident in the modern context, with incendiary murals in Xinjiang<sup>2</sup> and flagrantly Islamophobic propaganda in Myanmar<sup>3</sup> fuelling Beijing and Naypyidaw's crackdowns on their Muslim Uighur and Rohingya populations respectively.

Anything that has such a dramatic, disastrous effect on human minds must be an extremely powerful tool. This portion of the paper is dedicated to proving that this is true of propaganda. Propaganda is powerful because it is, at its very essence, the art of persuasion.<sup>4</sup> It is a tool used to convince others of the truth of one's own side of the story, often by employing misstated or distorted

<sup>1</sup> Johnnie Manzarria and Jonathon Bruck, "Media's Use of Propaganda to Persuade People's Attitude, Beliefs and Behaviors", *War & Peace: Media and War* (2013).

<sup>2</sup> "The Colourful Propaganda of Xinjiang", BBC News (January 12, 2015). See further Emily Feng, "Crackdown in Xinjiang: Where Have All the People Gone?", *Financial Times* (August 5, 2018), available at <<https://www.ft.com/content/ac0ffb2e-8b36-11e8-b18d-0181731a0340>>; Orville Schell, "Crackdown in China: Worse and Worse", *The New York Review of Books* (April 21, 2016).

<sup>3</sup> Paul Mozur, "A Genocide Incited on Facebook, with Posts from Myanmar's Military", *The New York Times* (October 15, 2018). See further Shibani Mahtani, "The World Decries Myanmar's Rohingya Abuses. Myanmar's Reply: Denial, Defiance and Propaganda", *The Washington Post* (October 9, 2018).

<sup>4</sup> Mohamed Elewa Badar, "The Road to Genocide: The Propaganda Machine of the Self-Declared Islamic State (IS)", *International Criminal Law Review* 16 (2016), at 362 ("Badar"); Anthony R. Pratkanis and Elliot Aronson, *Age of Propaganda: The Everyday Use and Abuse of Persuasion* (1992), at xiii ("Pratkanis").

information.<sup>5</sup> Using the media in this way amounts to a psychological play on those who access it, especially when it is consumed constantly over a period of time. The aim of Nazi propaganda, for example, was precisely this: to bring “ordinary Germans” around to the destructive ideology of anti-Semitism<sup>6</sup> by employing incendiary written journalism, film,<sup>7</sup> and radio propaganda.<sup>8</sup> The accusation against Propaganda Ministry official Hans Fritzsche at Nuremberg demonstrates this well: “*falsifying news to arouse in the German people those passions which led them to the commission of atrocities.*”<sup>9</sup>

This is possible also through biased educational tools; extremist ideology can be highly effective when administered at a young age.<sup>10</sup> The use of biased pedagogy, such as school books that contain racist messages, falls within incendiary use of the media. All these strategies of deception work well precisely because they present subjectivity in the garb of objectivity. Nazi Germany viewed the use of the media for political purposes as ‘public enlightenment’, creating a special ministry for the same.<sup>11</sup> Mass circulation of propaganda to a trusting public who has a perception of disinterest about it allows dangerous ideas to pervade into everyday life and beliefs. Most significantly, clever use of the media is so powerful that it can lead not only to the promotion of a singular ideology, but also to the suppression of all others.

## TRACING RESPONSIBILITY

As argued above, propaganda can be a powerful catalyst for hate-fueled crimes like genocide because at its very essence, it is the art of persuasion, used to convince others of the truth of one’s own narrative.<sup>12</sup> Nazi propaganda, for example, was aimed at bringing ordinary Germans around to the destructive ideology of anti-Semitism.<sup>13</sup>

<sup>5</sup> Badar, at 362; Chad W. Fitzgerald and Aaron F. Brantly, “Subverting Reality: The Role of Propaganda in 21st Century Intelligence”, *International Journal of Intelligence and Counter-Intelligence* 30(2) (2017), at 228; Pratkanis, *ibid.*, at xiii; N. Trueman, *Propaganda in Nazi Germany* (2015).

<sup>6</sup> Randall L. Bytwerk, *Julius Streicher: Nazi Editor of the Notorious Anti-Semitic Newspaper Der Stürmer*, (2001), at 1-2.

<sup>7</sup> Gary Jason, “Film and Propaganda: The Lessons of the Nazi Film Industry”, *Reason Papers* 35 (1) (July 2013), at 204.

<sup>8</sup> Maja Adena et al., “Radio and the Rise of the Nazis in Prewar Germany”, *Quarterly Journal of Economics*, 130(4) (November 2015).

<sup>9</sup> Judgment of 1 October 1946, *The Trial of German Major War Criminals. Proceedings of the International Military Tribunal sitting at Nuremberg, Germany, Hans Fritzsche (“Fritzsche IMT Decision”)*, at 526.

<sup>10</sup> Marie Corelli, “Poisoning Young Minds in Nazi Germany: Children and Propaganda in the Third Reich”, 66 (4) *Social Education*, 228(3) (2002).

<sup>11</sup> Roger Manvell and Heinrich Fraenkel, *Doctor Goebbels: His Life and Death*, 121 (2010).

<sup>12</sup> Pratkanis, *supra* note 4, at xiii; Trueman, *supra* note 5.

<sup>13</sup> Bytwerk, *supra* note 6, at 1-2.

In a sense, powerful persons behind provocative media use, who wish to see violence inflicted upon the target population, may be labeled the *moral* authors<sup>14</sup> of the crime. They engineer hatred<sup>15</sup> in such a manner that it becomes entrenched in people's minds and dehumanizes others. Like remote operatives,<sup>16</sup> their role is to pull strings from a safe distance and watch genocide unfold. The case of Julius Streicher, discussed in detail in the following section, clearly illustrates this. He gave no *direct orders* regarding the extermination of Jews and did not physically participate in the Holocaust. He had, however, dedicated his life to the generation of virulent anti-Semitic material, from books and articles to magazines and speeches, for which reason he could be considered one of the prime instigators of the genocide of Jews.

Consequently, it is essential to identify the standards for determining the responsibility of those who misuse the media to incite or provoke genocide. To view how international law treats 'participants through incitement', I suggest contrasting the approach of the International Military Tribunal at Nuremberg, Germany (IMT) with that of the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) in relation to several prominent instances where the media was used "*in relation to massive violations of international humanitarian law.*"<sup>17</sup> In the interest of lucidity of analysis, I first present a historical account, followed by an investigation of the process of judicial translation of these accounts into the language of responsibility.

## A. A Historical Account: The Events

### (a) *Germany*

Julius Streicher, a member of the National Socialist German Workers' Party during the Third Reich, founded and edited a newsletter called *Der Stürmer*, where he published anti-Semitic slurs, cartoons and articles.<sup>18</sup> He made far-fetched, malicious claims about Jews in the cartoons and articles he published in this newsletter, employing in particular a strategy of scapegoating them for local economic problems and criminal occurrences. In an article published in a 1939 edition of *Der Stürmer*, the author decries the idea of a 'decent Jew',

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<sup>14</sup> Cherif M. Bassiouni, *Crimes Against Humanity in International Criminal Law* (1999), at 248.

<sup>15</sup> Cristina Posa, "Engineering Hatred: The Roots of Contemporary Serbian Nationalism", 11 *Balkanistica* 69 (1998), at 76.

<sup>16</sup> Avitus A. Agbor, *Instigation to Crimes Against Humanity: The Flawed Jurisprudence of the Trial and Appeal Chambers of the International Criminal Tribunal for Rwanda (ICTR)* (2013), at 5.

<sup>17</sup> Fred Grünfeld and Anke Huijboom, *The Failure to Prevent Genocide in Rwanda: The Role of Bystanders* (2007), at 21.

<sup>18</sup> Allan Thompson, *The Media and the Rwanda Genocide* (2002), at 332-338.

stating his intention to make the public of the Third Reich understand why it was a “*shameless lie*”.<sup>19</sup>

Streicher also gave many speeches to the public wherein he communicated the message of the Nazi party. On April 27, 1933, he said before the City Council Hall: “*The German people knows that its misery was caused by a foreign people, the Jews, above all from those who were the lackeys of the Jewish race.*”<sup>20</sup> In addition, he emphasised the need to teach German children about ‘racial theory’<sup>21</sup> and promoted the use of children’s books for this purpose, including *Der Giftpilz*. Translatable to ‘The Poisonous Mushroom’, *Der Giftpilz* is a story in which a mother explains to her son the difference between edible mushrooms and lethal ones, with the latter representing Jews.<sup>22</sup> The book stressed that Jews, just like poisonous mushrooms, were difficult to identify by sight, but were capable of causing massive destruction, and that Germany was obligated to inform the world of this “*terrible toadstool.*”<sup>23</sup>

Several factors point to the entrenchment of Streicher’s messaging. *Der Stürmer* was one of the most widely read papers of the time, helping Streicher’s ideas gain immense traction.<sup>24</sup> Hitler himself considered that Streicher’s efforts helped influence common Germans.<sup>25</sup> Another party member wrote: “*...Stürmer, more than any other daily or weekly newspaper, has made clear to the people in simple ways the danger of Jewry. Without Julius Streicher and his Stürmer, the importance of a solution to the Jewish question would not be seen to be as critical as it actually is.*”<sup>26</sup>

Also during the Third Reich, Hans Fritzsche served as the Ministerial Director at the Ministry of Public Enlightenment and Propaganda.<sup>27</sup> As the head of the radio division, he broadcast various materials that revealed “*definite anti-Semitism.*”<sup>28</sup>

<sup>19</sup> Hanns Oberlindober, *Ein Vaterland, das allen gehört! Briefe an Zeitgenossen aus zwölf Kampffahren*, *Der Stürmer* 152-167 (1940).

<sup>20</sup> Julius Streicher, *Kampf dem Weltfeind*, *Der Stürmer* 143-148 (1938).

<sup>21</sup> Fritz Fink, *Die Judenfrage im Unterricht*, *Der Stürmer* 3 (1937).

<sup>22</sup> Mary Mills, Propaganda and Children during the Hitler Years, The Nizkor Project.

<sup>23</sup> *Ibid.*

<sup>24</sup> Bytwerk, *supra* note 6, at 1.

<sup>25</sup> Holocaust Research Project, *Der Stürmer*, Holocaust Education and Archive Research Team (2009).

<sup>26</sup> Thompson, *supra* note 18, at 334.

<sup>27</sup> Fritzsche IMT Decision, *supra* note 9, at 525.

<sup>28</sup> Fritzsche IMT Decision, *supra* note 9, at 525.

### **(b) Rwanda**

The Rwandan genocide was rooted in ethnic tension, a factor exploited by extremists who controlled the media.<sup>29</sup> These persons included Ferdinand Nahimana and Jean Bosco Barayagwiza, who founded the extremist radio station Radio Télévision Libre des Mille Collines, and Hassan Ngeze, owner and chief-editor of the newspaper *Kangura*.<sup>30</sup>

Specifically, they sought to demonize Tutsis by fostering fear and anger. They warned, for example, that the Tutsi political party and Tutsi civilians were working towards their victory and the destruction of the Hutus.<sup>31</sup> More generally, they circulated racist messages painting the Tutsis as a violent people who opposed democracy, flooding the public with strong anti-Tutsi rhetoric interspersed with popular music via radio.<sup>32</sup> Since for many illiterate Rwandans, the radio was the only news source, this was especially effective.<sup>33</sup> The messages grew in fervor; when the erstwhile President was assassinated, the radio called for a “*final war to exterminate the [Tutsi] cockroaches*.”<sup>34</sup> When the genocide began, messages encouraging the killings were broadcast, and lists of targeted Tutsis were read out.<sup>35</sup>

### **(c) Commonalities?**

Common to all the above is a rich depiction – often bolstered by exaggerated or plainly misused examples – of the idea of exterminating the enemy race or ethnicity as ‘the only option for survival’ of another social group. This enemy entity is often reviled, the differences, if any, between it and the other group overstated and regarded as immutable. This form of fear-mongering is a common, highly effective way to mobilize the people of a country to act on extremist lines. The next line of inquiry is how the two international courts concerned – the IMT and the ICTR – conceptualized these facts.

<sup>29</sup> Matthew Lower and Thomas Hauschildt, “The Media as a Tool of War: Propaganda in the Rwandan Genocide”, 2(1) Human Rights and Conflict Resolution (2014).

<sup>30</sup> Sophia Kagan, “The ‘Media case’ before the Rwanda Tribunal: The Nahimana et al. Appeal Judgement”, Hague Justice Portal (April 28, 2008).

<sup>31</sup> “Role of Propaganda in the Rwandan Genocide”, Coming to Terms with the Past (December 22, 2015).

<sup>32</sup> Thompson, *supra* note 18, at 44.

<sup>33</sup> Thompson, *supra* note 18, at 42.

<sup>34</sup> Russell Smith, “The Impact of Hate Media in Rwanda”, BBC News (December 3, 2003), available at <<http://news.bbc.co.uk/2/hi/africa/3257748.stm>>.

<sup>35</sup> Thompson, *supra* note 18, at 99; Sara E. Brown, “Gender and the Genocide in Rwanda: Women as Rescuers and Perpetrators” (2017).

## B. A Judicial Account: The Decisions of the International Military Tribunal and the International Criminal Tribunal for Rwanda

The IMT found no direct link between Streicher's acts and specific instances where Jews were killed.<sup>36</sup> However, noting his moniker as 'Jew-Baiter Number One', it found that "*week after week, month after month, he infected the German mind with the virus of anti-Semitism.*"<sup>37</sup> His circulation of vitriolic messages was considered a "*poison*" which infiltrated the citizenry's minds and made them subscribe to the general atmosphere of anti-Semitism. The strength and potency of Streicher's extremism manifests in this statement from *Der Stürmer*: "*A punitive expedition must come against the Jews in Russia. A punitive expedition which will provide the same fate for them that every murderer and criminal must expect. Death sentence and execution. The Jews in Russia must be killed. They must be exterminated root and branch.*"<sup>38</sup> The IMT found that his efforts, in line with this sentiment, constituted incitement to murder and extermination of Jews.<sup>39</sup>

In Fritzsche's case, the IMT found evidence on both sides of the coin: on the one hand, his position as the head of the Home Press Division did not give him enough power or responsibility to craft propaganda policies. As the IMT noted, he was but a cog in the wheel: "*He was...subordinate to Dietrich, the Reich Press Chief, who was in turn a subordinate of Goebbels. It was Dietrich who received the directives to the press of Goebbels and other Reich ministers, and prepared them as instructions, which he then handed to Fritzsche for the press.*"<sup>40</sup> Even when he became the head of the Radio Division, the commands he issued in his own name to propaganda offices were all under Goebbels' keen supervision.<sup>41</sup> On this basis, the IMT stressed that he was only an emissary between the higher-ups and the press. On the other hand, however, he was certainly anti-Jew, and definitely played his part in spreading the message: he came out in praise of Goebbels' ferocious propagandist policies,<sup>42</sup> was responsible for anti-Semitic broadcasts on the radio,<sup>43</sup> and had accused the Jews of having begun the war.<sup>44</sup>

With evidence on either side, the IMT concluded that although he had "*made strong statements of a propagandistic nature*", he had not urged the

<sup>36</sup> Judgment of 1 October 1946, The Trial of German Major War Criminals. Proceedings of the International Military Tribunal sitting at Nuremberg, Germany, Julius Streicher ("Streicher IMT Decision").

<sup>37</sup> Streicher IMT Decision, *ibid.*, at 501.

<sup>38</sup> *Ibid.*

<sup>39</sup> Streicher IMT Decision, *supra* note 36, at 502.

<sup>40</sup> Fritzsche IMT Decision, *supra* note 9, at 525.

<sup>41</sup> *Ibid.*

<sup>42</sup> Hans Fritzsche, "Dr. Goebbels und sein Ministerium", *Hans Heinz Mantau-Sadlia* 330-342 (1934).

<sup>43</sup> Thompson, *supra* note 18, at 16.

<sup>44</sup> Thompson, *supra* note 18, at 16.

persecution of Jews and had even attempted to terminate the publication of *Der Stürmer*.<sup>45</sup> Perhaps most significantly, it stated that Fritzsche was not sufficiently senior to have played a role in actually crafting the propaganda campaigns that called for extermination of Jews.<sup>46</sup> For these reasons, he was acquitted.

The above-mentioned decisions indicate the following: responsibility for incitement can arise even where there are no direct orders to anybody calling for genocide. Further, one's position and assigned functions are determinative of responsibility. Generally, only the 'masterminds' of a propagandist strategy should be held responsible unlike 'cogs in the wheel' like Fritzsche. However, this small-fry defence should find limited application if the propaganda, in addition to merely carrying racist tones, urges persecution.<sup>47</sup>

Now, unlike the IMT, the ICTR insisted on evidence indicating that the messages propagated contained a "*call to commit... genocide*."<sup>48</sup> Accordingly, articles containing direct appeals to the majority to slaughter Tutsis were considered constitutive of incitement<sup>49</sup> while broadcasts with "*the obvious intention*" of mobilizing anger against Tutsis<sup>50</sup> and hinting at calls to kill children were not.<sup>51</sup> How do these two approaches – that of the IMT and the ICTR – square with one another, and what metrics may be used to determine favourable modes of reasoning?

## CONTRASTS AND CONCLUDING REMARKS

I submit that there is a need to recast the ICTR's approach – which insisted on separating propagandist messages into those that contained appeals to genocide and those that did not. This stands in stark contrast to the approach followed by the IMT, which viewed Streicher's teachings that labelled Jews as germs or parasites<sup>52</sup> in light of his *other* virulent messaging in order to reconstruct the 'poison' that he was weaving. More specifically, the ICTR's reasoning is particularly problematic in light of its refusal to consider the broadcasts and articles circulated over a period of time as "*one continuing incitement*."<sup>53</sup> This creates an illusory separation between various elements of the propaganda generated during the conflict – those that called for murder and those that did not, rather than recognizing that together, the defendants had managed

<sup>45</sup> Fritzsche IMT Decision, *supra* note 9, at 526.

<sup>46</sup> Fritzsche IMT Decision, *supra* note 9, at 526.

<sup>47</sup> Fritzsche IMT Decision, *supra* note 9, at 526.

<sup>48</sup> *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, ICTR-99-52-A, Appeals Judgment (November 28, 2007) ("ICTR Media Appeal"), at 235.

<sup>49</sup> ICTR Media Appeal, *ibid.*, at 249.

<sup>50</sup> ICTR Media Appeal, *ibid.*, at 236.

<sup>51</sup> ICTR Media Appeal, *ibid.*, at 237.

<sup>52</sup> Streicher IMT Decision, *supra* note 36, at 501.

<sup>53</sup> ICTR Media Appeal, *supra* note 48, at 230.



to construct a rhetoric divisive enough to prompt ordinary persons to take machetes and kill their neighbours.

To demonstrate the effect that the defendants' use of the media had on the Rwandan public, I rely upon the following observations: killers would sing anti-Tutsi songs they had picked up from the radio,<sup>54</sup> broadcasts of regular Hutus espousing anti-Tutsi attitudes were frequently aired, "*killers often carried a machete in one hand and a transistor radio in the other*"<sup>55</sup> and finally, most of the 200,000 persons who took part in the killings were ordinary Hutus.<sup>56</sup> In viewing propagandist pieces in isolation, the ICTR's holding disregarded these pertinent circumstances.

In fact, propaganda that incites common people to 'active persecution'<sup>57</sup> should attract responsibility even where there are no express appeals to murder. Note that the principle of complementarity in the Rome Statute's conception of international criminal law<sup>58</sup> not only confers upon states the first responsibility to prosecute international crimes, but also the *right* to do so. Accordingly, if states adopt effective legislation to address incendiary media use in relation to genocide, there may not be a need to pursue prosecution at international fora.

In this regard, the most apposite standard in international and domestic law would depart from extant ICTR jurisprudence, and instead be one which aligns with the IMT's approach – in particular, one which views the defendant's acts in a holistic light, eschewing forced isolation of constituent elements. Such an approach would successfully encompass instances where systematic attacks upon a population are made possible primarily through the *demonization* of one demographic, which in turn leads to desensitization, acceptance or tolerance of their victimization by another demographic.

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<sup>54</sup> Thompson, *supra* note 18, at 50.

<sup>55</sup> Samantha Power, "Bystanders to Genocide", *The Atlantic* (2001).

<sup>56</sup> Omar McDoom, "Rwanda's Ordinary Killers: Interpreting Popular Participation in the Rwandan Genocide", Crisis States Programme Working Papers Series No. 1, 1-3 (December 2005).

<sup>57</sup> Streicher IMT Decision, *supra* note 36, at 501.

<sup>58</sup> The Principle of Complementarity in Practice, ICC Office of the Prosecutor (2003), at 3.