Understanding Hate Speech Within the Context of International Criminal Law

Final Report

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International Nuremberg Principles Academy

Prepared by:

Dr Rachel Horan, CPsychol, CSci, AFBPsS, Director – The Averment Group Ltd (consultant) and Jolana Makraiová, Senior Officer for Interdisciplinary Research, International Nuremberg Principles Academy (Nuremberg Academy)

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Acronyms

AF	Analytical Framework
CAH	Crimes Against Humanity
DT	Definitional Table
ICC	International Criminal Court
ICL	International Criminal Law
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
JCE	Joint Criminal Enterprise
JNA	Yugoslav People's Army
RTLM	Radio Télévision Libre des Mille Collines
SOB	Strategic Oversight Board
ToR	Terms of Reference
VJ	Yugoslav Army (Vojska Jugoslavije)
VRS	Army of the Serbian Republic of Bosnia and Herzegovina (Vojska Republike Srpske)
WG	Working Group

Definitions

The research introduces several multidisciplinary terms that may not be familiar to all readers. We have provided non-technical and multidisciplinary descriptions of key terms to provide guidance for readers. They are not legal definitions.

Exploratory: used in relation to the research to highlight how it is exploring the topic and not conducting scientific study.

Ideology: an elusive and multifaceted construct referring to a sense of who one is as a person and as a contributor to society.[1]

Individual/group ideology: group ideologies are shared beliefs and values systems. Ideology is also understood at an individual level referring to an individual's own beliefs and values system.[2]

Ideological end goal: an ideology guides a person or a group towards action. An end goal is the sought result of that action, the ideal arrangement of a set of beliefs, systems, values and ideas.[3]

Identity: refers to a sense of who one is as a person and as a contributor to society.[4] Again, a group identity refers to collective identity and a person's sense of belonging to a group.

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[1] John Gerring, "Ideology: A Definitional Analysis", in *Political Research Quarterly*, 1997, vol. 50, no. 4, pp. 957–994.

[2] Leor Zmigrod, "A Psychology of Ideology: Unpacking the Psychological Structure of Ideological Thinking", in *Perspectives on Psychological Science*, 2022, vol. 17, no. 4, pp. 1072–1092; Timothy Hayes, Jacob C. Lee, and Wendy Wood, "Ideological Group Influence: Central Role of Message Meaning", *Social Influence*, 2018, vol. 13, no. 1, pp. 1–17.

[3] Zmigrod, 2022, see above note 2.

[4] Carol H. Hoare, *Erikson on Development in Adulthood: New Insights from the Unpublished Papers*, Oxford University Press, Oxford, 2002.

Intent: refers to a prior conscious decision to perform a behaviour. More generally, it refers to any directedness in one's thoughts or behaviours, whether or not this involves conscious decision-making.[5]

Joint criminal enterprise (JCE): imposes individual criminal responsibility on an accused for their participation in a group's common criminal plan.[6]

Motive: refers to the reason an individual engages in an action.

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- Professor Mohamed Elewa Badar, Professor of Comparative and International Criminal Law & Islamic Law, Northumbria University Law School, Newcastle

- Lisa Biersay, ICL expert, formerly ICTY

- Professor Predrag Dojčinović, Adjunct Professor and Research Affiliate at the Gladstein Family Human Rights Institute, University of Connecticut

- Dr Matthew Gillett, Senior Lecturer, Essex Law School

- Professor Gregory Gordon, Professor of Law, Chinese University of Hong Kong, formerly ICTY

- Dr Jordan Kiper, Assistant Professor of Anthropology at the University of Alabama at Birmingham

- Professor Jutta Lindert, Professor of Public Health, University of Emden/Leer

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[5] American Psychological Association, "Intention", 2022, <https://dictionary.apa.org/intention> accessed 1 April 2023.
[6] See Mohamed Badar, *Mens Rea in International Criminal Law: The Case for a Unified Approach*, Bloomsbury Publishing, New York, 2013, pp. 346–361.

- Dr Samantha Moore-Berg, the Emile Bruneau Postdoctoral Researcher and the director of the Peace and Conflict Neuroscience Lab at the Annenberg School for Communication at the University of Pennsylvania

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The report presents exploratory research on genocide and focuses on the possible consequences of hate-based rhetoric on an unimaginable scale. The stories of those affected directly and indirectly by the consequences of hate speech are foremost in our mind.

About the International Nuremberg Principles Academy

The International Nuremberg Principles Academy (Nuremberg Academy) is a non-profit foundation dedicated to the advancement of international criminal law and human rights. It was established by the Federal Republic of Germany, the Free State of Bavaria and the City of Nuremberg in 2014. The Nuremberg Academy is located in Nuremberg, the place of the first international trial before the International Military Tribunal. For the first time in history, an international tribunal was authorised to hold leading representatives of a state personally accountable for crimes under international law.

The foundation carries forward the legacy of the Nuremberg Trials and the "Nuremberg Principles", which comprise the principles of international law recognised in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal. They were formulated by the International Law Commission of the United Nations General Assembly in 1950.

Conscious of this historic heritage, the Nuremberg Academy supports the fight against impunity for universally recognised international core crimes: genocide, crimes against humanity, war crimes and the crime of aggression. Its main fields of activity include providing a forum for dialogue by convening international conferences and expert meetings, conducting interdisciplinary and applied research, engaging in specialised capacity building for practitioners of international criminal law and human rights education. Dedicated to supporting the worldwide enforcement of international criminal law, the Nuremberg Academy upholds the Nuremberg Principles and the rule of law with a vision of sustainable peace through justice, furthering knowledge and building capacities of those involved in the judicial process in relation to these crimes.

1. Executive Summary

This report presents an exploratory research project that was conducted by the International Nuremberg Principles Academy (Nuremberg Academy) in collaboration with Dr Rachel Horan, between 2022[7] and 2023. A group of multidisciplinary international experts supported the project.

Data was collected in two main stages. An Analytical Framework and a Definitional Table were developed in the first stage which concluded in mid-2022. Their outputs were reviewed by two working groups of experts. The second stage involved the review and analysis of cases that have involved hate speech. The review and analysis were guided by the developed frameworks. Further data comparison was conducted to finalise the outcomes of the research. The third stage in early 2023 involved quality assurance and refinement of analyses and findings.

The project concludes by presenting the Multi-Dimensional Knowledge Framework (MDKF) as applied to the crime of direct and public incitement to genocide. This prototype framework is a helpful frame of reference, formulated from multidisciplinary knowledge and methodologies. It can assist in gaining a deeper understanding of hate speech within the context of international criminal law (ICL). It also concludes by noting relevant observations arising from the research and comparative analysis, including further research suggestions. Moreover, the project contributes to the field of ICL by providing: 1) a detailed analytical framework of factors related to hate speech; and 2) a more comprehensive definitional table, created for the purposes of this project that breaks down legal elements regarding criminal cases involving hate speech in the context of ICL.

The limitations of this research are highlighted. Notably, resources and the exploratory nature of the study enabled only a small case sample and analysis that was limited to appeal and trial judgments. The experience of the experts consulted was impressive and extensive, but their number was limited by project resources. Some disciplines and sub-disciplines were not represented amongst experts. The case analysis was conducted by the authors.[8] Draft findings and reports were shared with the experts to seek additional feedback.

This research is unique in its bridging of law and science. The Multi-Dimensional Knowledge Framework enabled new perspectives and new observations. It has provided a deeper multidisciplinary understanding of hate speech, incitement and of an inciter's criminal conduct, especially regarding *mens rea*, group identification and influence and also the way that hate speech is proliferated. It has also highlighted the necessity to understand the relationship between an individual defendant, their ideology and their identification with a group and its effect on the individual's conduct. Incitement is by nature a group phenomenon and it is unsurprising that group levels of factors permeate our findings.

Moreover, the framework also highlights:

- A wide range of contextual / content level dimensions.
- The complexity of the relationship between a "speaker" and "listener" (and vice-versa).
- The need to further understand how a message reaches the audience.[9]
- Insight regarding mirroring between a speaker, their identity and ideology, their group and the content of incitement.
    - Having looked at individual and collective levels, our framework indicates that words may not necessarily mirror one's intent or ideology.

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[7] Refer to section 2.4 (Research Evolution and Question).
[8] Refer to section 9 – conclusions which includes reflections on future research avenues.
[9] Including how the audience responds, which is beyond the scope of this research.

- Omission: considerations such as the role of groups.
- A wide range of content dimensions of speech including both dis- and misinformation, presentation of the message, presentation of biased solutions and threat construction.
- The need for more psychologically informed perspectives and the extension of necessary contextual and content elements and their integration with individual-level factors to expand the crime and individual liability analysis.

Additional contributions to ICL include the following outputs:

1. The Analytical Framework offers a comprehensive cross-discipline study of factors relevant to hate speech, mapping out 113 related items grouped under five levels.
    a. Interesting novel dimensions including a broad array of individual-level factors, an intra-group level of dimensions and a level of communication and media context that explores the complexity of information spread.
2. The Definitional Table breaks down legal elements concerning hate speech related acts and maps out various crimes/liability considerations and potential discrepancies.
3. Literature review.
4. New observations to guide future multidisciplinary scholarship.

It is important to stress what the framework is not intended to be:
- It is not an assessment tool.
- It is not a comprehensive model of incitement to genocide. Rather it is a starting point that has brought together multidisciplinary knowledge and understanding and a first formulation of its utility via descriptive analysis of cases.

Further research could develop upon this work towards enabling the framework to explore:

- Audience vis-à-vis speaker interaction
- A deep dive into individual-level factors
- Understanding of the audience of incitement and pathway from an audience to message uptake
- How the explored factors may contribute to a progressed framework of understanding of incitement.

What does the Multi-Dimensional Knowledge Framework aspire to be? It is a cross-disciplinary tool that can provide further or complementary knowledge to deepen understanding of this specific subject. It hopes to be flexible, scalable and relevant to a wide audience that includes practitioners, scholars and researchers. We have begun to understand the utility of multidisciplinary knowledge in legal decision-making and started a bigger conversation between multidisciplinary experts about how it could be better used.

Overall, this report presents the foundations of future research and a novel multidisciplinary framework that can be developed.

2. Introduction

This exploratory research project focuses on understanding hate speech within the context of international criminal law (ICL). It is a project that has been undertaken by the International Nuremberg Principles Academy (Nuremberg Academy), together with Dr Rachel Horan, as expert consultant. It has considered the feasibility of exploring hate speech within the context of ICL through a multidisciplinary lens. The initial project idea started in 2020 by exploring whether it is feasible to undertake a multidisciplinary study of hate speech within the context of ICL and what such a study would look like. This study initiated the work on the Multi-Dimensional Knowledge Framework – an output which the authors of this report believe is a useful frame of reference towards advancing understanding of hate speech within the context of ICL. It is a frame of reference that bridges law and science, and addresses lacunas identified not only by the authors but by many experts in the field of ICL (and possibly more widely).

This report presents the work undertaken towards the initial development, a prototype of this Multi-Dimensional Knowledge Framework in the context of ICL.

2.1   Understanding Hate Speech Within the Context of ICL

The project idea started with the need for a deeper understanding of hate speech within the context of international criminal law.

2.2   Complexities Behind Hate Speech

Hate speech is a deep-rooted, complex and multidimensional phenomenon.[10] It is growing in prevalence, changing and developing.[11] It has a patent "role in enabling and amplifying conflict, polarisation and discrimination" and it "is integrally linked to incitement to violence and daily infringements on human rights, often targeting the most vulnerable people and groups."[12] It is however not a legal term *per se*. There is no universally accepted definition of hate speech[13]. Moreover, there is an abundance of inter-disciplinary scholarship about the causes, consequences and necessary responses to hate speech. Hate speech, through this lens, is often considered as something subjective, inconsistent, vague and lacking in coherence.[14] Whether hate speech causes or constitutes

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[10] Council of Europe, "Combating Hate Speech", 2022 <https://rm.coe.int/prems-083822-gbr-2018-recommendation-on-combating-hate-speech-memorand/1680a70b37> accessed 5 March 2023.

[11] See, for example, Asako Okai, "Preventing Atrocity Crimes: Countering and Addressing Hate Speech", United Nations Development Programme, 5 March 2021 <https://www.undp.org/speeches/preventing-atrocity-crimes-countering-and-addressing-hate-speech> accessed 16 October 2023.

[12] UNESCO, "Learn the Facts, Think Critically, Take Action, Stand Together Against Hate Speech", 25 October 2021 <https://www.unesco.org/en/articles/learn-facts-think-critically-take-action-stand-together-against-hate-speech?TSPD_101_R0=080713870fab2000915cb7e917756e46737b29e3d47789c080c39f62423c90f8adb07f585 a8d32870845f44f21143000cda4b84ac8bf0fddcb4ecf4eba17383e7a7caf6c29f58f94859f4bfc0777a3745f977a62 faf491d6a454217d6906b347> accessed 22 December 2022.

[13] Council of Europe, "Combating Hate Speech", 2022 <https://rm.coe.int/prems-083822-gbr-2018-recommendation-on-combating-hate-speech-memorand/1680a70b37>, accessed 5 March 2023.

[14] Article 19 notes that a definition of "hate speech" that means any expression of discriminatory hate towards people captures a very broad range of expression would include lawful expression. This general concept, therefore, is too vague for use in identifying expression that may legitimately be restricted under international human rights law. Article 19 "'Hate Speech' Explained: A Summary", 2020 <https://www.article19.org/resources/hate-speech-explained-a-summary/> accessed 22 December 2022.

harm in itself is also fiercely debated.[15] These issues raise necessary caution about what, and to what extent, hate speech should be curbed. In other words, what are the limits to freedom of expression and when can it be restricted in order to protect other rights and freedoms?

For the purposes of this exploration, and especially relevant for the creation of an analytical framework, hate speech has been understood in broad terms including both offensive yet permissible acts of discriminatory or targeting language and language that is ultimately unlawful as it leads to either the incitement of criminal activity or constitutes the criminal activity in itself.

2.3 Hate Speech, ICL and Incitement

ICL does not criminalise hate speech as such, it only addresses certain forms of hate speech, or certain acts, in certain particular contexts. This, at times, requires a causal link with violence, while at other times it does not.[16] It does however provide some understanding in terms of incitement.

There are some thirty[17] cases from international or internationalised criminal tribunals that outline how hate speech related acts can incite, in some form or another, genocide, crimes against humanity or war crimes. In the case of incitement to the crime of genocide, such incitement constitutes a crime in itself, that is it does not require a causal link with the *actus reus* of genocide, as long as it is both direct and public (the crime of direct and public incitement to genocide). On the other hand, incitement to other international crimes requires some sort of causal link with the crimes themselves to be potentially regarded as criminal.[18]

Jurisprudence and the boundaries between lawful and unlawful speech in ICL have been scrutinised in legal scholarship with interesting critiques and innovative proposed solutions. Some methods rely on comparative methods and others on doctrinal debate. Seminal contributions advocate doctrinal reform[19] and strengthened prohibitions on hate speech in ICL.[20] However, there seems to be little progress made in addressing or resolving the critiques. Can ICL *per se*, resolve some of these critiques alone or is new knowledge and understanding from other disciplines necessary to contribute to advancing the debate and finding a response?

For the purposes of this exploration, and considering varied limitations, the focus of incitement will be on the substantial crime, on the crime of public and direct incitement to genocide. The exploration however will be broader in terms of case selection to allow for comparative analysis. Careful assessment and analysis are planned to explore whether our project could advance the understanding of hate speech within the context of ICL and especially address the two areas below:

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[15] Eric Barendt, "What Is the Harm of Hate Speech?", in *Ethical Theory and Moral Practice,* 2019, vol. 22, pp. 539–553; Jeremy Waldron, *The Harm in Hate Speech*, Harvard University Press, Cambridge, Mass., 2012.

[16] See an analysis of the fragmented criminalisation in Gregory Gordon, "The Forgotten Nuremberg Hate Speech Case: Otto Dietrich and the Future of Persecution Law", in *Ohio State Law Journal*, 2014, vol. 3, pp. 571-607.

[17] Richard Wilson, *Incitement on Trial: Prosecuting International Speech Crimes*, Cambridge University Press, Cambridge, UK, 2017, pp. 1-16.

[18] International Criminal Law Services, "International Criminal Law & Practice Training Materials: Modes of Liability: Commission & Participation", 2018, pp. 6-7 <https://iici.global/0.5.1/wp-content/uploads/2018/03/icls-training-materials-sec-9-modes-of-liability.pdf> accessed 10 January 2023.

[19] Gregory S. Gordon, *Atrocity Speech Law: Foundation, Fragmentation, Fruition*, Oxford University Press, Oxford, UK, 2017.

[20] Wibke Timmermann, *Incitement in International Law*, Routledge, London, 2015. See also Mohamed Badar and Polona Florijnačič, "The Prosecutor v. Vojislav Šešelj: A Symptom of the Fragmented International Criminalisation of Hate and Fear Propaganda", in *International Criminal Law Review*, 2020, vol. 20, pp. 405–491.

→ there is an abundance of inter-disciplinary scholarship about the causes, consequences and necessary responses to hate speech to be studied; and

→ the need for a study of whether direct and public incitement to genocide – or rather the review of cases concerning this crime offers further guidance in terms of criminal liability, and whether this would advance understanding of hate speech within the context of ICL.

2.4 Research Evolution and Research Question

The Nuremberg Academy and Dr Horan began exploring the traction of research to develop understanding of hate speech within the context of ICL during 2020–2021. This topic has been significantly explored in available legal literature. To search for additionality as well as advancing debate, the exploratory research scoped the relevance and potential contribution of multidisciplinary knowledge to ascertain whether hate speech could be described from a multidisciplinary perspective within ICL.[21] This early pilot research observed 1) significant differences in the application of ICL between cases and 2) important correlations and mutual relations amongst multidisciplinary dimensions, but also many differences and discussion points regarding their relevance to hate speech in ICL. The Nuremberg Academy then engaged with leading experts in both law and multidisciplinary fields. Through advancing discussions and workshops with experts, the relevance of progressing a multidisciplinary approach which combines law and science was ratified. The proposed project plan, research question and methodology were developed.

The research seeks to innovate and explore what hate speech looks like from a developed multidisciplinary angle, to compare this multidisciplinary understanding between varied hate speech related crimes and modes of liability and then apply our learning to the crime of public and direct incitement to genocide. By doing so, we hope to galvanise a wider multidisciplinary understanding of hate speech in ICL and help better situate the role of ICL in the prevention of, and accountability for, core international crimes.

After careful consideration of project evolution, the complexity of the subject matter and varied resource and capacity restrictions, the following research question was agreed as to the purposes of this exploratory research. It hoped to streamline discussion and outputs and apply multidisciplinary analyses to explore the crime of incitement to genocide:

"What does a Multi-Dimensional Knowledge Framework of incitement to genocide look like?"

Target Audience

The intended audience for this report is broad as the research is exploratory. The likely audience includes practitioners, scholars and researchers with the aim of advancing the cross-disciplinary exchange and thinking about the subject matter. The research is not conclusive in terms of action or full exploration, but it is conclusive in reaffirming the importance of a multidisciplinary exploration of hate speech with respect to criminal liability, especially when seeking to set out boundaries between lawful and unlawful conduct.

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[21] Rachel Horan, *The Psychological, Behavioural and Social Dimensions of Threshold in Hate Speech Related Criminal Acts and the Commission of Core International Crimes*, 2020, prepared for the International Nuremberg Principles Academy Project "Prevention and Accountability for Hate Speech" (internal work product).

3. Overview of the Project Methodology

3.1 General Research Approach

An exploratory[22] and multiple-case research design utilising a combination of jurisprudence and secondary research as sources of information was developed to derive in-depth insight. The research was conducted in two workstreams. The Nuremberg Academy led and coordinated the research.

Workstream 1 – Definitions: which delineated the legal parameters of crimes and modes of liability involving hate speech related cases and then specifically of public and direct incitement to genocide to guide the research framework.

Workstream 2 – Framework Analysis: this workstream involved the analysis of cases and the formulation of a multidisciplinary Analytical Framework (section 6).

Initially the two workstreams proceeded independently. This was an intentional step to support the research's multidisciplinary focus. The current research required this methodology to enable an independent and objective multidisciplinary analysis of the legal challenge to provide additionality and insight and limit doctrinal debate. Therefore, the two workstreams proceeded separately, but were united once both frameworks had been developed to aggregate and understand the emerging data.

A team of two undertook the research. One team member is a chartered psychologist, and the other is an international lawyer and legal expert. Some administrative support was made available to the research team and the project was funded over a period of two years.

3.2 Scientific Oversight Board

To assure the validity and legitimacy of the research, a Scientific Oversight Board (SOB) was established. The role of the SOB was to provide oversight of the research and ensure that it was conducted to rigorous ethical and methodological standards. The SOB was convened on a quarterly basis through the course of the research.

3.3 Working Groups

The project's practical focus and ambition of real-world utility and relevance led to the recruitment of a range of additional multidisciplinary experts to provide advice, knowledge and guidance. Two working groups were established to oversee and guide the two workstreams and meetings were convened on a quarterly basis. The research was thus able to join an academic approach with practical field contributions and expert knowledge, achieving innovation in approach and unique knowledge contributions to expand and strengthen its methodology.

3.4 Research Standards and Ethics

The research involved the secondary analysis of public data and, whilst no direct field work was undertaken, the research sought to respect the dignity of individuals and groups through integrity and transparency, maximising the benefit for individuals and society and minimising risk and harm. A

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[22] Robert K. Yin, *Case Study Research: Design and Methods*, 4th edition, Sage, Thousand Oaks, CA, 2009.

reflective approach was taken throughout the research, recognising our authorial perspectives and differing disciplines. We recognise the sensitivity of the subject area.

Lines of responsibility and accountability were clearly defined. These steps sought to enhance the research validity and maintain its scientific integrity.

The Scientific Oversight Board (SOB) provided oversight of the research and ensured that it was conducted to rigorous ethical and methodological standards.

3.5   Incitement to Genocide and Case Selection Reasoning

The research focuses on incitement to genocide as the default because it possibly represents one of the clearest cases of the criminalisation of conduct amounting to hate speech in ICL. The research sought to gather a multidisciplinary understanding of hate speech and incitement across crimes and modes of liability that have involved such acts, and then apply our learning to the crime of (public and direct) incitement to genocide. The case selection was thus wider than cases focusing or charged with (public and direct) incitement to genocide. The reasons for this selection were intentional and hoped to cover the below points:

- Persecution is typically present when (public and direct) incitement to genocide is charged.
- Understand the complexities when charging the hate speech related acts and their attribution[23] in criminal cases.
- Understand the elements of "direct" and "public" in more detail and in contrast with the other modes of liability /crimes.
- Understand and attempt to unravel the implications that JCE brings into the picture considering the cases before the ICTR/ICTY and possible implications, if any, for ICC and its jurisprudence.

The cases, bound by resource constraints, were discussed with working group experts. It was agreed that this explorative approach might allow us to advance a more comparative assessment in terms of different challenges with hate speech related acts and liability attribution.

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[23] Please refer to section 6 for more discussion of individual and group attribution.

4. Limitations of the Project and Mitigating Measures

4.1   Overall Limitations[24]

It is important to emphasise the methodological approach and its ambitions. The aim of the research was exploratory, with a focus on what a Multi-Dimensional Knowledge Framework of incitement to genocide looks like in ICL. The research did not seek to define hate speech or to provide a model of hate speech. It aimed to explore whether answering the research question can advance understanding of hate speech within the context of ICL.

The aim of the research was not to "assess" law and jurisprudence. Its aim was to explore whether there are multidisciplinary dimensions of understanding within the reviewed cases so as to explore their relevance to ICL. The research overlaid multidisciplinary knowledge with legal jurisprudence. Its exploratory design included several limitations which are highlighted here at the outset of the report:

- Research design – the research was limited to a two-year project with a small but sufficient budget for an achievable exploratory study.
- Bias – internal bias is a likely and inevitable element of the research approach. Cases were deliberately selected for analysis to explore contrasting case law regarding hate speech related acts and incitement. Trial and appeal judgments were used as evidence sources. It is a small case sample, that required a careful, structured and thorough review of each case. The research team explored and interpreted case law and multidisciplinary knowledge.

Mitigation steps:

- The Strategic Oversight Board provided expert oversight and support of the research design, delivery and reporting. The international project experts provided expert support and advice to the research team and objective oversight via a wide array of disciplines. Throughout the project, the research team met with the SOB and experts in both workstreams at quarterly expert meetings to share and discuss progress. A project concept note and inception report were formulated and shared. A final meeting was held with project experts from both workstreams to discuss the emerging findings and final reporting format. Project experts assisted in keeping the research focused and exploratory in nature with clear and agreed expectations.

The developed Definitional and Analytical Frameworks were shared with SOB members and project experts at formulation and refinement stages and feedback integrated into both frameworks. This sought to provide a validation and quality assurance check of the structure and content of both exploratory tools.

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[24] Further phase-specific limitations are summarised in subsequent sections (5.2, 6.2 and 7.4).

5. Definitional Table

5.1 Research Conducted – Summary

To understand what a Multi-Dimensional Knowledge Framework of incitement to genocide looks like, it was necessary to delineate what hate speech looks like, and to identify the distinct elements of hate speech and incitement to genocide from a legal perspective. A Definitional Table was formulated, drawing from definitions contained within statutes along with a review of relevant case law. Its aim was to provide a straightforward account of ICL and hate speech to assist multidisciplinary study.

A clear legal description of incitement including all the varied modes of liability, with an eye to genocide, was thus developed to facilitate the multidisciplinary case analysis. The formulated Definitional Table provides a summary of relevant definitions as a doctrinal foundation of the research. The Definitional Table analysed the following crimes to understand incitement (including to genocide), and to be able to draw distinctions from the case analyses:

a) Genocide
b) Direct and public incitement to genocide
c) Crimes against humanity / persecution / other inhuman acts / extermination / forcible transfer / deportation
d) War crimes / inflicting terror on civilian population
e) Propaganda for war / aggression

The Definitional Table presents varied hate speech related acts and situates them in terms of criminal liability. It includes all crimes that have involved hate speech in international criminal trials to delineate between direct and public incitement to genocide and other crimes with hate speech elements. In addition, it assisted the non-lawyer members of the project team to better understand the legal elements of these crimes. It additionally provided a basis for case selection to draw evidence from complex and diverging approaches within ICL in terms of these liabilities.

5.2 Limitations[25]

The definitional exploration was much wider than initially anticipated because it snowballed to enable understanding of the varied and distinct elements within genocide, public incitement to genocide and crimes against humanity and war crimes (especially due to the JCE charging).

The identified limitations of this element of the research are:

- The focus of its results is based on statutes and case law summaries.
- The case summaries are not empirical research exercises with respect to each case or the whole judgment.
- Discrepancies between approaches are observed but not fully explored (see, for example, Nahimana *et al.* and the issue of "causal link" or contemporaneousness).

Mitigation steps: the Definitional Table was shared with the project experts for feedback and corrections.

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[25] Further phase-specific limitations are summarised in sections 6.2 and 7.4. Overall limitations are summarised in section 4.1.

5.3 Results and Added Value

The formulated Definitional Table provides a legal synopsis of hate speech from an ICL perspective. It provides clarity and a simple descriptive overview within the clear parameters of ICL. It draws out incitement as a crime and as a mode of liability, identifying ICL parameters within legal parlance and avoids theoretical debate. It makes the law more accessible to the multidisciplinary audience of the research.

An extract of the Definitional Table is provided in the following table (one).

Table One: Extract of Definitional Table

Elements	ICC	ICTY	ICTR	Other / comments
Commonly accepted elements				
Public	✓	✓	✓	Also included within the Genocide Convention
Direct	✓	✓	✓	Also included within the Genocide Convention
Incitement to genocide	✓[26]	✓	✓	Also included within the Genocide Convention
Specific intent to eliminate one of the protected groups (4 protected groups: national, ethnical, racial or religious group)	✓	✓	✓	Also included within the Genocide Convention
Elements to be further explored through case studies[27]				
Incitement is an inchoate crime that does not require the actual commission of genocide			✓	Also included within the Genocide Convention *Cf*. Nahimana *et al.*, AJ, para. 709[28]
The direct element of the crime / *actus reus* must be assessed in light of cultural and linguistic content			✓	Context, content, individual, group and communication levels of factors are all highlighted by the Multi-Dimensional Knowledge Framework and their complex inter-relationship
"The crime of direct and public incitement to commit genocide is completed as soon as the discourse in question is uttered or published, even though the effects of incitement may extend in time."			✓	
Inciting others to commit genocide	✓		✓	

The Definitional Table also assisted in the formulation of the following questions as <u>potentially relevant</u> for analysis purposes:

1. Is the MDKF helping towards further understanding of the public or direct elements with respect to direct and public incitement to genocide?
2. How crucial and substantial is the link of "inciting others" to commit genocide and what does this "inciting others" look like regarding the public and direct incitement of genocide?

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[26] Rome Statute of the International Criminal Court, 17 July 1998, Article 25(3)I] (['ICC Statute']) <http://www.legal-tools.org/doc/7b9af9/> ("[I]n respect of the crime of genocide, directly and publicly incites others to commit genocide.").

[27] The ICTY and ICC have yet to produce any case law on direct and public incitement to genocide, so it is unclear whether they would include the same elements that the ICTR has in their case law. (Note – there is no pending case law before the Residual Mechanism of the ICTY/R that might develop a case law on direct and public incitement to commit genocide.).

[28] International Criminal Tribunal for Rwanda, *Prosecutor v. Nahimana et al.*, Appeals Chamber, Judgment, 28 November 2007, ICTR-99-52-A, para. 709 ('Media Case Appeals Judgment') (noting that "in some circumstances, the fact that a speech leads to acts of genocide could be an indication that in that particular context the speech was understood to be an incitement to commit genocide and that this was indeed the intent of the author of the speech. The Appeals Chamber, notes, however, that this cannot be the only evidence adduced to conclude that the purpose of the speech (and of its author) was to incite the commission of genocide.").

3.   Does genocide have to occur – is it possible to have the contextual elements required for analysing the *mens rea* without the crime occurring? What would these be?

4.   How does genocide occurring impact the *actus reus* and the contextual elements assessment in terms of direct incitement?

5.   Is the Multi-Dimensional Knowledge Framework illuminating additional elements for consideration when trying to understand hate speech within the context of ICL?

6. Analytical Framework

The Analytical Framework was formulated from the knowledge and understanding of hate speech gathered from the reviewed literature. It provides a framework to undertake exploratory research that is not confined by definitions or models of approach. It is a framework of key dimensions of hate speech that are proposed in the reviewed multidisciplinary research.

6.1 Research Conducted – Summary

An initial literature review was undertaken by the research team. It was then shared with the project experts who supplemented the literature review with additional suggestions of content and scholarly works from a variety of disciplines. All literature sources are available in Appendix One.

A review of available models of hate speech was undertaken. The dimensions identified in our literature review did not sit within any available "model". Notably, group and communication related factors constituted such missing dimensions.

A review and refinement of the resulting framework was conducted, drawing together dimensions of interest from the literature review into a first "analytical framework". All dimensions identified in the literature review were included in the formulation of the Analytical Framework. No weighting or factor analysis was undertaken. This purely exploratory exercise aimed to yield a list of relevant dimensions to be put together into a first framework to guide case analysis and explore whether multidisciplinary dimensions were observed in the cases and their relevance to ICL.

Dimensions were grouped together under five high-level summary categories that fitted the evidence, rather than fitting the evidence into a model. These five summary **levels** are the first levels of the framework. Underneath these five summary grouping levels are 34 grouping **factors** that break the levels down a descriptive step. A further 113 **items** are grouped by the factors and provide detailed description of content.

The resulting Analytical Framework was shared with project experts in advance of the case analyses.

6.2 Limitations[29]

In addition to section 4.1 the following limitations were identified:

Individual-level data: the Analytical Framework includes an individual level with 34 items grouped within 5 factors. Some items were very similar and some items were grouped to avoid double and triple duplicate items. Individual-level evidence was difficult to extract from trial and appeal judgments. The judgments used within the exploratory research were selected for reasons of comparison and reliability. All explored cases were analysed using same evidence sources. The research design could be extended in any future research (with appropriate ethical considerations and permissions) to include a wider range of source material.

Discipline and evidence inclusion: the dimensions of the Analytical Framework were formulated from a literature review of available evidence regarding hate speech and multidisciplinary knowledge. There is no doubt a wealth of additional knowledge in these, and possibly other disciplines could be

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[29] Further phase-specific limitations are summarised in sections 5.2 and 7.4. Overall limitations are summarised in section 4.1.

extrapolated to this area of study. However, the current research is a starting point. Exploration prompts more inquiry about the unknown.

6.3 Results and Added Value

The final version of the Analytical Framework contains five summary levels, drawn from multidisciplinary research (listed in Appendix One) described as follows:

Individual – dimensions relevant to the individual defendant, including their ideology and beliefs, identity, intent, the function and goal of their derogatory language and their capability.

Intra-group – referring to the group with whom the individual defendant identifies – their in-group. This element is influenced by social identity theory, defining a group as "a collection of people who categorise themselves as belonging to the same social category and internalise the category's social identity-defining attributes to define and evaluate themselves — attributes that capture and accentuate intragroup similarities and intergroup differences."[30] It refers to the processes and dimensions within the individual's in-group and not the relationship between this group and other groups. Factors included group conformity, group identity, collective intent / motivation and shared ideology / beliefs. The individual's psychological connection with the in-group is explored in individual-level factors.

Contextual – refers to the context of the hate speech including societal, structural, political and also historical conditions. Societal refers to items including perceived levels of threat, community prosperity and stability, war and division. The historic factor separates out current and historic issues and includes items such as a history of intergroup conflict, perceived historic injustices and long-standing competition between groups for resources. Structural conditions include items of deficient rule of law frameworks, a weaponised society and economic and development prospects.

Content – refers to the content of the hate speech. The factors include dehumanising discourse, revenge and retribution, threat construction and presentation of message. Misinformation ("false information that is spread, regardless of intent to mislead")[31] and also disinformation (deliberate and including malicious content)[32] are separated to reflect the differing dimension of intent between both elements.

Communication / media content – this level contains dimensions about how the message is proliferated and distributed, including dimensions of information spread, reach and modality.

The formulation of the Analytical Framework highlighted the observed distinction between individual and collective response, drawing again from social identity theory where there is distinction between individual and collective responses to perceived social disadvantage. Therefore, attribution refers to whether dimensions can be attributed to the individual defendant, their in-group or both. Again, it is an entirely exploratory exercise.[33]

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[30] Tajfel and Turner, 1979, pp. 56-65, see above note 1; Michael A. Hogg, "Self-Uncertainty and Group Identification: Consequences for Social Identity, Group Behaviour, Intergroup Relations, and Society", in Bertram Gawronski (ed.), *Advances in Experimental Social Psychology,* vol. 64, Elsevier, Amsterdam, 2021, pp. 263–316.

[31] Dictionary.com, "Misinformation" <https://www.dictionary.com/browse/misinformation> accessed 17 October 2023.

[32] European Commission, "Tackling Online Disinformation", 2022 <https://digital-strategy.ec.europa.eu/en/policies/online-disinformation> accessed 4 April 2023.

[33] An example here is societal conditions and the item "a perceived level of threat". This could be attributed to both Šešelj at an individual level and also collectively amongst his in-group, that is to say his political party with

- **Individual attribution:** this refers to Analytical Framework factors and items where there is evidence in the reviewed documents that can be attributed to the individual defendant.
- **Collective attribution:** this refers to Analytical Framework factors and items where there is evidence in the reviewed documents that can be attributed to the group with which the defendant identifies, their in-group.

The added value of the Analytical Framework is the integration of new perspectives and knowledge. Most of all, the addition of two novel categories to the study of hate speech in ICL – intra-group factors and also communication / media factors. Looking at both individual and collective attribution is an additional development.

Overall, the Analytical Framework provides an exploratory tool that is shaped by contemporary, multidisciplinary knowledge to explore hate speech in ICL. Its use at this stage will ascertain the relevance of the Analytical Framework's factors in current legal decision-making. Its utility can be developed in future research.

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whom he identifies. The judgments outline how both Šešelj and his political party perceive threat. This item was observed collectively amongst the defendants of the *Media* case, where there was no account as to whether each defendant perceived a level of threat, but certainly their in-groups perceived such threat. Decisions were made based on what evidence was observed in the reviewed trial and appeal judgments and assumptions avoided. In the above example, it could be easy to assume the defendants of the *Media* case perceived a level of threat individually, but this was not explicit in the reviewed judgments.

7. Case Selection and Case Analysis

7.1 Case Selection

- International Criminal Tribunal for Rwanda: *Nahimana et al.* (*Media* case) (ICTR-99-52)
- The International Criminal Tribunal for the former Yugoslavia (ICTY): *Šešelj* (IT-03-67)
- Judgment of the International Military Tribunal: *Julius Streicher* (excluded[34])

The *Media* case[35] included direct charges of direct and public incitement to genocide, while the *Šešelj*[36] case concerned speech that instigated, *inter alia*, persecution and deportation and was linked closely to a Joint Criminal Enterprise (JCE). Both cases included hate speech related acts being charged also under persecution.

The formulated Analytical Framework guided the case analyses. Case analysis sought to identify the existence of Analytical Framework factors within judgments and also observe whether factors could be individually or collectively attributed. One Analytical Framework was completed for each of the individual defendants. When evidence was identified, the relevant judgment paragraph was recorded in evidence fields and each subfactor was individually and / or collectively attributed. All information has been drawn from the Trial Judgments[37] and Appeal Chamber Judgments[38] of the cases.

Analysis developed on a stepwise basis drawing out multidisciplinary parameters and understanding in four key stages:

(1) Definitional Table analysis
(2) Analytical Framework analysis
(3) Crime analysis[39]
(4) Amalgamated data analysis

7.2 Case Presentation

The following summaries of cases are formulated from a combination of reference sources.[40]

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[34] Refer to section 7.4 for further explanation of exclusion.

[35] International Criminal Tribunal for Rwanda, *Prosecutor v. Nahimana et al.*, Trial Chamber, Judgment and Sentence, 3 December 2003, ICTR-99-52 ('Media Case Trial Judgment'); Media Case Appeals Judgment, see above note 28.

[36] International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Šešelj*, Trial Chamber, Judgement, 31 March 2016, IT-03-67-T ('Šešelj Trial Judgement'); International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Šešelj*, Appeals Chamber, Judgment, 11 April 2018, MICT-16-99-A ('Šešelj Appeals Judgment').

[37] Šešelj Trial Judgment, see above note 36; Media Case Appeals Judgment, see above note 28.

[38] Šešelj Trial Judgment, see above note 36; Media Case Appeals Judgment, see above note 28.

[39] The crime analyses were an internal tool undertaken by the research team to simplify the crimes and criminal liability for the purpose of analysis. An individual summary table was formulated for each defendant.

[40] Media Case Trial Judgment, see above note 35; Media Case Appeals Judgment, see above note 28; Sophia Kagan, "The 'Media Case' before the Rwanda Tribunal: The *Nahimana et al.* Appeal Judgement", in *Hague Justice Journal,* 2008, vol. 3, no. 1, pp. 83–91; International Criminal Tribunal for Rwanda, *Prosecutor v. Nahimana et al.* Summary of Judgment, 28 November 2007, ICTR-99-52; International Justice Resource Centre, "Nahimana", 2022 <https://ijrcenter.org/international-criminal-law/ictr/case-summaries/nahimana/> accessed 1 April 2023; International Criminal Tribunal for the Former Yugoslavia, "Judgment Summary for Vojislav Šešelj", 2009 <http://www.haguejusticeportal.net/Docs/

Ferdinand Nahimana was a founder and ideologist of the *Radio Télévision des Mille Collines* (RTLM). Jean-Bosco Barayagwiza was a board member of the *Comité d'initiative* of the RTLM and founding member of the Coalition for the Defence of Republic (CDR) political party. Both were responsible for the editorial content of the popular radio station which regularly broadcast messages describing Tutsis as the enemy and Hutu opposition members as accomplices, spreading false information, the locations of suspected Tutsi representatives and their family members and other ethnic hatred.

Hassan Ngeze was the owner, founder and editor of the Kangura newsletter, one of Rwanda's largest newspapers. The newspaper spread anti-Tutsi propaganda and Hutu superiority. Ngeze was a founding member of the CDR and was alleged to have participated in distributing firearms, supervising roadblocks and ordering massacres in the Gisenyi préfecture.

Nahimana, Barayagwiza and Ngeze were all charged before the International Criminal Tribunal for Rwanda with the counts of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide and persecution and extermination as crimes against humanity. Additionally, Nahimana and Barayagwiza were charged with murder as a crime against humanity. Barayagwiza was also charged with war crimes.

In December 2003 the ICTR Trial Chamber found all three accused guilty of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide and persecution and extermination as crimes against humanity. The accused were acquitted of complicity in genocide and extermination as a crime against humanity. Barayagwiza was also found to be not guilty of serious breaches of Common Article 3 of the Geneva Conventions and Additional Protocol II.

In 2007 the ICTR Appeals Chamber reversed Nahimana's convictions on all grounds except the findings of guilt entered against Nahimana under Article 6(3) of the Statute but only on the basis of the RTLM broadcasts made after 6 April 1994, for direct and public incitement to commit genocide and for the crime against humanity of persecution.

The ICTR Appeals Chamber reversed Barayagwiza's convictions on all grounds except the findings of guilt entered against Barayagwiza under Article 6(1) of the Statute for 1) instigating the perpetration of acts of genocide in Kigali by militants of the CDR and the Impuzamugambi; 2) ordering or instigating the commission of a crime against humanity (Extermination) by CDR militants and the Impuzamugambi in Kigali (Judge Güney dissenting) and for planning the commission of this crime in Gisenyi préfecture; and 3) instigating the perpetration by CDR militants and the Impuzamugambi in Kigali of a crime against humanity (Persecution).

The ICTR Appeals Chamber reversed Ngeze's convictions on all grounds except the findings of guilt entered against Ngeze under Article 6(1) of the Statute for 1) aiding and abetting the commission of genocide in Gisenyi préfecture; 2) direct and public incitement to commit genocide through the publication of articles in his Kangura newspaper in 1994; and 3) aiding and abetting crimes against humanity (Extermination) in Gisenyi préfecture.

Court%20Documents/ICTY/Seselj_contempt_judgement_summary.pdf> accessed 1 April 2023; Šešelj Trial Judgment, see above note 36; Šešelj Appeals Judgment, see above note 36; International Criminal Tribunal for the former Yugoslavia, "Case Information Sheet: Vojislav Šešelj" <https://www.icty.org/x/cases/seselj/cis/en/cis_seselj_en.pdf> accessed 15 March 2023.

7.2.2   Vojislav Šešelj

Vojislav Šešelj was the founder of the Serbian National Renewal Party, (renamed the Serbian Chetnik Movement), which was banned by the authorities of the Socialist Federal Republic of Yugoslavia (SFRY). He was then appointed president of the Serbian Radical Party (SRS) and an elected member of the Assembly of the Republic of Serbia. Šešelj was alleged to have propagated a policy of uniting "all Serbian lands" in a homogeneous Serbian State, which he referred to as "Greater Serbia".[41]P This State was to include Serbia, Montenegro, Macedonia and considerable parts of Croatia and Bosnia and Herzegovina (BiH).

Šešelj was charged before the International Criminal Tribunal for the Former Yugoslavia with three counts of crimes against humanity and six counts of violations of the laws or customs of war. The indictment alleged that Šešelj planned, ordered, instigated, committed, including through his participation in a Joint Criminal Enterprise (JCE), or otherwise aided and abetted in the planning, preparation or execution of these crimes. The indictment alleged that the purpose of the JCE was the permanent forcible removal of a majority of the Croat, Muslim and other non-Serb civilian populations from parts of Croatia, Bosnia and Herzegovina and the province of Vojvodina in the Republic of Serbia.

The Appeals Chamber reversed Šešelj's acquittals, in part, entering convictions against Šešelj under Counts 1, 10 and 11 of the indictment for instigating deportation, persecution (forcible displacement), and other inhumane acts (forcible transfers) as crimes against humanity, as well as for committing persecution, based on a violation of the right to security, as a crime against humanity.

The Appeals Chamber found, *inter alia*, that the Trial Chamber erred in not holding Šešelj criminally responsible for a speech he gave in Hrtkovci, Vojvodina (Serbia) on 6 May 1992, calling for the expulsion of the non-Serbian population.[42] For the particular speech, the Appeals Chamber found him responsible for instigating deportation, persecution (forcible displacement) and other inhumane acts (forcible transfer) as crimes against humanity.

7.3 Results

The following tables present the first stage of our analysis and formulation towards a Multi-Dimensional Knowledge Framework. Tables 7.3 present the first integration of the Definitional Table and Analytical Framework with a descriptive population of the observed evidence of multi-dimensional factors.

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[41] "In 1989, Šešelj was declared Četnik duke by Momčilo Đujić, a Četnik leader from World War II, with a mandate to make a unitary Serbian state where all Serbs would live, occupying all the Serb lands, the so-called Greater Serbia. Šešelj established a military wing of his party, created a War Staff, promoted the Četnik movement's militaristic traditions, appeared in military attire at front lines and, most importantly, relentlessly spread his fear and hate propaganda aimed mostly at Croats and Bosniaks. Šešelj studied the mass psychology of fascism and in his book, entitled Ideology of Serbian Nationalism, published in 2002, he expressed the belief that propaganda is based on the fact that the majority of people are ready to believe indiscriminately in everything they read, hear or see on television." See Badar and Florijančič, 2020, pp. 425- 427, see above note 20.

[42] Šešelj Appeals Judgment, see above note 36, para. 166.

7.3.1   Integrated Table with Evidence Selection – Actus Reus

Crime	Genocide	Direct and public incitement to commit genocide
	Destruction	Destruction
	Destruction / killing/ serious bodily or mental harm / preventing births	Inciting/inciting others to commit genocide (ICTY v. ICTR)
Šešelj – instigating		
Šešelj – committing persecution in Hrtkovci		
Nahimana – command responsibility		A high frequency of all content and context dimensions explored. Specific trends: - More historical factors evidenced. - Link to genocide happening. - Status–- position of power, views self as a leader and is also contextually powerful (social power, influence or dominance of speaker) = effective command control.
Barayagwiza	- Individually attributable with leadership element in the context of roadblocks. Leadership and status together with power = prompting and influence via content of message, which is lower in complexity.	
Ngeze	Substantial contribution – fact based. - Individual ideology and ideological ends of extermination, shared with group and a match to collective intent as well as motivation (that is to say to realise ideological ends).	A high frequency of all content and context dimensions explored. - More historical factors evidenced. - Link to genocide happening. - Status – position of power, views self as a leader and is also contextually powerful (social power, influence, or dominance of speaker) a possible link to "effective" command control.

Crimes against Humanity – Persecution	Crimes against humanity – Extermination	Crimes against humanity – Deportation / forced displacement
Discrimination	Killings / mass scale	(deportation – requires cross-border transfer)
Act/omission which discriminates in fact and which denies or infringes upon a fundamental right	Act/omission that results in the death of persons on a massive scale	Act/omission causing serious bodily or mental harm
Instigating the crime (also the language used: inciting / prompting), not *per se* committing. - Content of speeches predominantly individually attributable. - Sophisticated combination of factors in speech content. - Speeches have political content. - Presents a combination of context-responsive content including group-based rhetoric, dehumanising content, threat construction, violence calls, disinformation, revenge talk and biased solutions. - More societal factors evidenced rather than historical in contextual evidence.		Instigating–- his speeches and why people were deported. - Predominant factors are politicised content and biased solutions. He is the only case where there is direct evidence that his (individually attributed) speech is perceived as "powerful" by the audience (important for public audience rather than subordinates). - There is an evidenced link between Šešelj, his speeches, the resonance and relevance of their content to his audience and the audience status of insecurity / historical grievance. Link to political profile. - Šešelj's communication reach is more targeted, but widely disseminated.
- Individual attribution across content dimensions. - Šešelj's individually attributable message was seeded / spread. - This speech was evidenced as being "powerful" to its audience which aligns with the societal contextual evidence.		
- Less individually attributed content compared to 2 co-defendants. - Dehumanising content is gross, blatant and linked with other factors–- threat construction, disinformation, group-based rhetoric, threat construction and violence. Misinformation as well as disinformation. - Contemporaneous with current perceived social injustices (societal conditions rather than historical conditions predominate in contextual factors).		
- More individually attributed content compared to 2 co-defendants. - Dehumanising content is gross, blatant and linked with other factors–- threat construction, disinformation, group-based rhetoric, threat construction and violence. - Contemporaneous with current perceived social injustices (societal conditions rather than historical conditions predominate in contextual factors).	Ordering / instigating and planning Gisenyi. - Aggregate of factors including individual capability together with individual and group ideological ends (extermination). - Group focused rhetoric. - Leadership and status together with power and also control in Gisenyi.	
	Ideological ends of "extermination" — both individually and collectively attributable. - Group focused rhetoric. - Power and influence enabled and assisted information spread and reach. - Link to genocide happening.	

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7.3.2 Integrated Table with Evidence Selection – Mens Rea

	Mens Rea	
Crime	**Genocide**	**Direct and public incitement to commit genocide**
	Specific Intent to destroy the group	Specific Intent to destroy the group
	Specific intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such	Context and content relevant / the intent to directly prompt or provoke another to commit genocide (ICTY v. ICTR)
Šešelj – instigating		
Šešelj – committing persecution in Hrtkovci		
Nahimana – command responsibility		Match of individual and group ideology and ideological ends = shared ideology and a shared ideological ends / group intent. - Views self as a leader as well as being viewed contextually as a leader = match. - Information spread and reach both evident –- knowledge of subordinates committing such acts.
Barayagwiza	Ideology and its ends evidenced on both individual and collective levels, together with a shared group ideology. - More contextual evidence, individually attributed as well as collectively, that is to say Barayagwiza has contributed to the current societal conditions himself.	
Ngeze	Substantial contribution – fact based. - Intent shared with subordinates = his group influence and resulting group cohesion.	Match of individual and group ideology and ideology ends = shared ideology and shared ideological ends / group intent. - Views self as a leader as well as being viewed contextually as a leader = match. - Information spread + reach both evident = knowledge of subordinates committing such acts.

Crimes against Humanity – Persecution	Crimes against humanity – Extermination	Crimes against humanity – Deportation / forced displacement
Deliberately carried out with the intention to discriminate on one of the listed grounds	Intent to kill persons on a massive scale or to inflict serious bodily injury that might lead to death	Intent to inflict the harm / or knew that his acts will result in this harm
Intent of the crime–- ideology specific to Šešelj - Šešelj has an evidenced individually attributable ideological end goal of large-scale discrimination (mental harm). - Discriminatory intent via presentation of message. - An individually attributable ideology with criminal purpose but not a shared group ideology that has the same criminal purpose (bodily versus mental harm?). - Two groups of influence – political group and Šešelj's men. - Shared ideology, but not a shared ideological end / group intent. - Šešelj has an individual ideology with ideological ends, an individually perceived status, group influence and control, a recognised position of authority but, importantly, not enough contextual influence / power / dominance in the absence of a hierarchical link to Šešelj's men despite *de facto* influence and power.		Individually attributable evidence that Šešelj had knowledge of the fact that his words might contribute to the commission of grave crimes or large-scale discrimination against targeted out-group / victim group and the denial of human rights of its members. - His words reflect his own ideology and its ends, but no probative evidence to reflect the collective intent of his in-group. - Mismatch of individual / group level intent and individual / group level motivation.
- Šešelj's has an evidenced individually attributable ideological end goal of large-scale discrimination (mental and other harm). - Targeting of minority in speech in village. - Group based rhetoric and presentation of violence, biased solutions and disinformation.		
Individually attributable evidence of intent. - His words reflect his own ideology and its ends, and the shared intent of his in-group. - Group cohesion and group intent and motivation is evidenced, together with his group influence.		
An individual ideology with ideological ends, an individually perceived status, group influence and control.	Ordering / instigating and planning Gisenyi. - An individual ideology with ideological ends of extermination, shared across group. - Direct causation link / violence as a necessary response dimension.	
	Ideological ends of extermination – both individually and collectively attributable. Match with group ideology = shared intent.	

7.4   Limitations[43]

Some limitations to this element of the research are identified:

- Differing parameters: the defendants of the *Media* case were initially convicted at trial and their convictions varied upon appeal. Šešelj was initially acquitted at trial, but then convicted on appeal. There are resultant differences in the presentation of evidence between the two appeal decisions. The two cases have very different contexts both in terms of geography but also in dimensions including the structural, societal and political.
- Case bias: the cases selected are international criminal law cases. Individuals who are subject to prosecution for atrocity crimes are more likely higher-ranking individuals or those with considerable status. A person of higher status is more likely to be capable of inciting others. The nature of cases reaching international tribunals will impact the likelihood of a number of dimensions of the Analytical Framework. Moreover, the nature of these cases concerns Joint Criminal Enterprise (JCE) charges, which is a complex mode of liability through which defendants can be found guilty of crimes by various levels of association.
- Process bias: If an item within a dimension of the Analytical Framework was evidenced, it was recorded as a yes / no and the evidence recorded. Recording was based on the non-legal expert reading of the cases. Confirmation bias is an inevitable risk of the research but mitigation steps were transparency and systematic recording of decision-making.
- Evidence: the main publicly available documents are appeal and trial chamber judgments. There is variation in the public documents, evidence sources, expert witness testimony and other court documents for each individual. There was also variation in what was used in legal decision-making. For example, the exclusion of multidisciplinary expert witness testimony in the case of Šešelj. Further bias is created by rules of evidence and the likely submission of the most persuasive evidence as opposed to the most comprehensive in the courtroom. Importantly, it is also highlighted that the analysed judgments included crimes other than those involving hate speech.

Mitigation steps:

- As analysis progressed it became apparent that the evidence sources and material were comparable between the *Šešelj* and *Nahimana et al.* cases but that there was significantly less comparable available evidence in the case and judgment transcripts of *Streicher*. As a result, the case review of *Streicher* was excluded to minimise the risks of false results. This reduced the case sample size further, but it was felt to be a necessary mitigation step.
- The research explores what a Multi-Dimensional Knowledge Framework of hate speech looks like in ICL, more specifically of incitement to genocide. To do this, it was imperative to avoid becoming a judge or jury of process. To provide fair comparisons between cases within available resources, analysis relied on court action and evidence. To this end, appeal judgments were the primary data source and material evidence was extracted from trial judgments. It is readily acknowledged that there is substantial evidence beyond appeal and trial judgments, but its analysis would be a task beyond the resources available to the current research. This exploratory research analysed only the content that has been accepted by international tribunals to make reasoned observations about the relevance of multidisciplinary knowledge. To put it simply, the research had to start somewhere with a replicable design.

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[43] Further phase-specific limitations are summarised in sections 5.2 and 6.2. Overall limitations are summarised in section 4.1.

- The main analytical task was conducted by one member of the research team and their findings reviewed by the second member of the research team. Our findings are available for scrutiny. They are presented as descriptive, qualitative and observational findings rather than a model of hate speech. The design of the research is a starting point, with a methodology that can be both replicated and expanded upon. It was the aim of the current research to explore its relevance and appropriateness.
- Whilst some of the findings may not seem intuitively correct, they reflect the evidence sources which are the publicly available contents of judgments that have informed legal decision-making and enable the research to understand this evidence from a multidisciplinary perspective. Some of the research findings are likely surprising, but this is an interesting finding in itself, reflecting the framing of legal evidence sources in a multidisciplinary perspective.[44] To mitigate the inevitable subjectivity within this approach as far as possible, the second member of the research team reviewed the conclusions and recorded evidence. Findings were also shared with working group experts for discussion.

8. Formulation of the Multi-Dimensional Knowledge Framework

The following section describes the various analytical and formulation stages undertaken towards the development of a Multi-Dimensional Knowledge Framework.

The following tables (8.1 – Amalgamated Tables) present the Analytical Framework dimensions that were observed during our case analyses layered against the Definitional Table crimes in a first amalgamated table for each case. Observed summary levels and factors from the Analytical Framework are presented.

It is emphasised that the presented material is our own interpretation of the cases and entirely descriptive. In this next step, levels and factors of the Analytical Framework were used in the analysis, before drilling into the detail of items within.

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[44] In considering the content of hate-based rhetoric and hate speech, included evidence was based on convictions. In the case of Šešelj, content level factors of the Analytical Framework were populated from his key speech delivered in the village of Hrtkovci on 6 May 1992 together with material evidence that was accepted in the judgments regarding the content of his other speeches. Material evidence available within judgments was used for other individual and contextual dimension evidence sources. The large amount of additional evidence available in this case is again highlighted, for example the content of the report by Dr Anthony Oberschall, Emeritus Professor of Sociology, in the case of Šešelj. As this did not lead to conviction it was not used for the purpose of the current research. The current exploratory research is a first exercise with clear parameters but could form the basis of further work that progresses the methodology to explore additional evidence sources. This is discussed further in the conclusion section of this report.

8.1 Amalgamated Tables

8.1.1   Vojislav Šešelj

	ACTUS REUS			
Crime	**Crimes against Humanity – Persecution**		**Crimes against humanity – Deportation / forced displacement**	
	Discrimination		Deportation – requires cross-border transfer	
	Act/omission which discriminates in fact, and which denies or infringes upon a fundamental right		Act/omission causing serious bodily or mental harm	
Šešelj – instigating	Instigating the crime (also the language used: inciting / prompting), not *per se* committing		Instigating — his speeches and why people were deported	
	Individual	Ideology and beliefs	Individual	Ideology and beliefs
		Identity		Identity
		Capability		Capability
		Intent / motive		Intent / motive
	Intra-group level	Group identity	Intra-group level	Group identity
		Shared ideology and beliefs		Shared ideology and beliefs
		Collective intent / motivation		Collective intent / motivation
	Content	ALL factors * Disinformation * Politicalised content * Presentation of biased solutions * Presentation of message	Content	ALL factors * Disinformation * Politicalised content * Presentation of biased solutions * Presentation of message
	Communication and media context	Information spread	Communication and media context	Information spread
		Reach		Reach
	Contextual	ALL factors *Societal / structural / political conditions	Contextual	ALL factors *Societal / structural / political conditions
Šešelj – committing persecution in Hrtkovci	Individual	Ideology and beliefs		
		Identity		
		Capability		
		Intent / motive		
	Intra-group level	Group identity		
		Shared ideology and beliefs		
		Collective intent / motivation		
	Content	ALL factors * Disinformation * Politicalised content * Presentation of biased solutions * presentation of message		
	Communication and media context	Information spread		
		Reach		
	Contextual	ALL factors *Societal / structural / political conditions		

MENS REA			
Crimes against Humanity – Persecution		**Crimes against humanity – – Deportation / forced displacement**	
Deliberately carried out with the intention to discriminate on one of the listed grounds		Intent to inflict the harm / or knew that his acts will result in this harm	
Instigating the crime (also the language used: inciting / prompting), not *per se* committing		Instigating –- his speeches and why people were deported	
Individual	Ideology and beliefs	Individual	Ideology and beliefs
	Identity		Identity
	Capability		Capability
	Intent / motive		Intent / motive
	Function / goal of derogatory language		Function / goal of derogatory language
Communication and media context	Information spread	Communication and media context	Information spread
	Reach		Reach
Content	All * Presentation of message * Disinformation * Group-based rhetoric	Content	All * Presentation of message * Disinformation * Group-based rhetoric
Intra-group level	Group identity	Intra-group level	Group identity
	Shared ideology and beliefs		Shared ideology and beliefs
	Collective intent / motivation		Collective intent / motivation
Contextual	ALL factors *Societal / structural / political conditions	Contextual	ALL factors *Societal / structural / political conditions
Individual	Ideology and beliefs		
	Identity		
	Intent / motive		
	Capability		
	Function / goal of derogatory language		
Intra-group level	Group identity		
	Shared ideology and beliefs		
	Collective intent / motivation		
Communication and media context	Information spread		
	Reach		
Content	All * Presentation of message * Disinformation * Group-based rhetoric		
Contextual	ALL factors *Societal / structural / political conditions		

8.1.2 Ferdinand Nahimana

Crime	Direct and public incitement to commit genocide		Crimes against Humanity – Persecution	
	Destruction		Discrimination	
	Inciting/inciting others to commit genocide (ICTY v. ICTR)		Act/omission which discriminates in fact and which denies or infringes upon a fundamental right	
Nahimana – command responsibility	Individual	Ideology and beliefs	Individual	Ideology and beliefs
		Capability		Capability
		Identity		Identity
	Content	ALL factors		Intent / motive
	Intra-group level	Group identity	Content	ALL factors
		Shared ideology and beliefs	Intra-group level	Group identity
		Collective intent / motivation		Shared ideology and beliefs
	Communication and media context	Information spread		Collective intent / motivation
		Reach		Information spread
		Modality	Communication and media context	Reach
	Contextual	ALL factors		Modality
		*Status, personal influence and power	Contextual	ALL factors
				*Status, personal influence and power

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MENS REA				
Direct and public incitement to commit genocide		**Crimes against Humanity** **- Persecution**		
Specific Intent to destroy the group				
Context and content relevant / the intent to directly prompt or provoke another to commit genocide (ICTY v. ICTR)		Deliberately carried out with the intention to discriminate on one of the listed grounds		
Individual	Ideology and beliefs	Individual	Ideology and beliefs	
	Identity		Identity	
	Capability		Capability	
	Intent / motive		Intent / motive	
	Function / goal of derogatory language		Function / goal of derogatory language	
Content	ALL factors * Presentation of message * Violence as a necessary response * Group based rhetoric * Dehumanising discourse * Revenge and retribution * Threat construction * Misinformation * Disinformation	Content	ALL factors * Presentation of message * Violence as a necessary response * Group based rhetoric * Dehumanising discourse * Revenge and retribution * Threat construction * Misinformation *Disinformation	
Intra-group level	Group identity	Intra-group level	Group identity	
	Shared ideology and beliefs		Shared ideology and beliefs	
	Collective intent / motivation		Collective intent / motivation	
Communication and media context	Information spread	Communication and media context	Information spread	
	Reach		Reach	
Contextual	ALL factors	Contextual	ALL factors	
	*Status, personal influence and power			

8.1.3   Jean Bosco Barayagwiza

	ACTUS REUS						
Crime	**Genocide**		**Crimes against Humanity – Persecution**		**Crimes against humanity – Extermination**		
	Destruction		Discrimination		Killings / mass scale		
	Destruction / killing/ serious bodily or mental harm / preventing births		Act/omission which discriminates in fact and which denies or infringes upon a fundamental right		Act/omission that results in the death of a persons on a massive scale		
Barayagwiza	Individual	Ideology and beliefs	Individual	Ideology and beliefs	Individual	Ideology and beliefs	
		Capability		Capability		Capability	
		Identity		Identity		Identity	
	Content	ALL factors	Content	ALL factors	Content	ALL factors	
	Intra-group level	Group identity	Intra-group level	Group identity	Intra-group level	Group identity	
		Shared ideology and beliefs		Shared ideology and beliefs		Shared ideology and beliefs	
		Collective intent / motivation		Collective intent / motivation		Collective intent / motivation	
	Communication and media context	Information spread	Communication and media context	Information spread	Communication and media context	Information spread	
		Reach		Reach		Reach	
		Modality		Modality		Modality	
	Contextual	ALL factors *Status, personal influence and power	Contextual	ALL factors *Societal / structural / political conditions	Contextual	Status, personal influence and power	

MENS REA					
Genocide		**Crimes against Humanity – Persecution**		**Crimes against humanity – Extermination**	
Specific Intent to destroy the group					
Specific intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such		Deliberately carried out with the intention to discriminate on one of the listed grounds		Intent to kill persons on a massive scale or to inflict serious bodily injury that might lead to death	
Individual	Ideology and beliefs	Individual	Ideology and beliefs	Individual	Ideology and beliefs
	Identity		Identity		Identity
	Capability		Capability		Capability
	Intent / motive		Intent / motive		Intent / motive
	Function / goal of derogatory language		Function / goal of derogatory language		Function / goal of derogatory language
Content	ALL factors * Presentation of message * Violence as a necessary response * Group based rhetoric * Dehumanising discourse * Revenge and retribution * Threat construction * Misinformation * Disinformation	Content	ALL factors * Presentation of message * Violence as a necessary response * Group based rhetoric * Dehumanising discourse * Revenge and retribution * Threat construction * Misinformation * Disinformation	Content	ALL factors * Presentation of message * Violence as a necessary response * Group based rhetoric * Dehumanising discourse * Revenge and retribution * Threat construction * Misinformation * Disinformation
Intra-group level	Group identity	Intra-group level	Group identity	Intra-group level	Group identity
	Shared ideology and beliefs		Shared ideology and beliefs		Shared ideology and beliefs
	Collective intent / motivation		Collective intent / motivation		Collective intent / motivation
Communication and media context	Information spread	Communication and media context	Information spread	Communication and media context	Information spread
	Reach		Reach		Reach
Contextual	ALL factors *Status, personal influence and power	Contextual	ALL factors *Societal / structural / political conditions *Status, personal influence and power	Contextual	ALL factors *Societal / structural / political conditions *Status, personal influence and power

8.1.4 Hassan Ngeze

Crime							
	ACTUS REUS						
	Genocide		**Direct and public incitement to commit genocide**		**Crimes against humanity – Extermination**		
	Destruction		Destruction		Killings / mass scale		
	Destruction / killing/ serious bodily or mental harm / preventing births		Inciting/inciting others to commit genocide (ICTY v. ICTR)		Act/omission that results in the death of persons on a massive scale		
Ngeze	Individual	Ideology and beliefs	Individual	Ideology and beliefs	Individual	Ideology and beliefs	
		Capability		Capability		Capability	
		Identity		Identity		Identity	
	Intra-group level	Group identity	Intra-group level	Group identity	Intra-group level	Group identity	
		Shared ideology and beliefs		Shared ideology and beliefs		Shared ideology and beliefs	
		Collective intent / motivation		Collective intent / motivation		Collective intent / motivation	
	Communication and media context	Information spread	Communication and media context	Information spread	Communication and media context	Information spread	
		Reach		Reach		Reach	
		Modality		Modality		Modality	
	Content	ALL factors	Content	ALL factors	Content	ALL factors	
	Contextual	ALL factors *Status, personal influence and power	Contextual	ALL factors *Status, personal influence and power	Contextual	ALL factors *Status, personal influence and power	

MENS REA					
Genocide		**Direct and public incitement to commit genocide**		**Crimes against humanity – Extermination**	
Specific Intent to destroy the group		Specific Intent to destroy the group			
Specific intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such		Context and content relevant / the intent to directly prompt or provoke another to commit genocide (ICTY v. ICTR)		Intent to kill persons on massive scale or to inflict serious bodily injury that might lead to death	
Individual	Ideology and beliefs	Individual	Ideology and beliefs	Individual	Ideology and beliefs
	Identity		Identity		Identity
	Capability		Capability		Capability
	Intent / motive		Intent / motive		Intent / motive
	Function / goal of derogatory language		Function / goal of derogatory language		Function / goal of derogatory language
Content	ALL factors * Presentation of message * Violence as a necessary response * Group-based rhetoric * Dehumanising discourse * Revenge and retribution * Threat construction * Misinformation * Disinformation	Content	ALL factors * Presentation of message * Violence as a necessary response * Group-based rhetoric * Dehumanising discourse * Revenge and retribution * Threat construction * Misinformation * Disinformation	Content	ALL factors * Presentation of message * Violence as a necessary response * Group based rhetoric * Dehumanising discourse * Revenge and retribution * Threat construction * Misinformation * Disinformation
Intra-group level	Group identity	Intra-group level	Group identity	Intra-group level	Group identity
	Shared ideology and beliefs		Shared ideology and beliefs		Shared ideology and beliefs
	Collective intent / motivation		Collective intent / motivation		Collective intent / motivation
Communication and media context	Information spread	Communication and media context	Information spread	Communication and media context	Information spread
	Reach		Reach		Reach
Contextual	ALL factors *Status, personal influence and power	Contextual	ALL factors *Status, personal influence and power	Contextual	ALL factors *Societal / structural / political conditions *Status, personal influence and power

8.2 Summary Table – Individual / Collective Grouping and Findings

The following table summarises the next, deeper stage of analysis and presents the formulated Multi-Dimensional Knowledge Framework with individual and collective attributions for observed factors across all cases.

8.2.1 *Actus Reus*[45]

Level	Factor	Item description	Genocide	
			Barayagwiza	Ngeze
Individual level	Ideology and beliefs	In-/out-group thinking		I
		Out-group derogation		I
		A perception that certain groups pose a threat		I
		Dehumanising ideology (speaker believes that out-group / victim group is inferior, subhuman and a threat to the in-group)		
		Ideological "ends" (speaker has knowledge of the fact that their words might contribute to the commission of grave crimes or large-scale discrimination against the targeted out-group / victim group and the denial of human rights of its members)	I	I
	Speaker identity	Views themself as a leader / having authority	I	I
		Ideologically obsessed and charismatic actors		
	Intent / motive	A need for revenge and retribution towards a grievance		
		Intent to destroy an out-group / victim group		
	Capability	Access to funds / resources / training	I	I
		The speaker wields a monopoly on the means of communication, has regular access to means of communication or has the capacity to censor and suppress information	I	I
		Propaganda and political leadership (by the instrument of propaganda, a politician able to hold and form the will of the people)	I	I
intra-group level	Group identity	A sense of belonging to a group of like-minded people with a common identity and common cause	I	I
		Group influence and control	I	I
	Shared ideology and beliefs	Shared by in-group	I/C	I/C
	Collective intent / motivation	Intent to destroy an out-group / victim group	I/C	I/C
Contextual level	Status, personal influence and power	Speaker holds a recognised position of authority in, for example, a government, religious or political organisation	I/C	I/C
		Social power, influence or dominance of speaker		I/C
	Societal conditions	An audience with grievances and/or fears that the speaker can cultivate		
		A perceived level of threat	C	C
		A less than prosperous and stable community	C	C
		Sectarian divisions / segregation	I/C	C
		War		
		Speaker is perceived as credible / charismatic by his or her audience		I
		The emotional state of the audience is influenced and/or more prone to manipulation by circumstances of insecurity and uncertainty		

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[45] "I" refers to individual attribution and "C" refers to collective attribution. A full and complete reference list is available in Appendix One, which includes all sources used in the formulation of the Multi-Dimensional Knowledge Framework.

Direct and public incitement to commit genocide		Crimes against Humanity – Persecution				Crimes against Humanity – Extermination		Crimes against Humanity – Deportation / forced displacement
Nahimana – command responsibility	Ngeze	Šešelj – instigating	Šešelj – committing persecution in Hrtkovci	Nahimana – command responsibility	Ngeze	Barayagwiza	Ngeze	Šešelj – instigating
I	I	I	I	I	I		I	I
I	I	I	I	I	I		I	I
	I	I	I		I		I	I
		I	I					I
I	I	I	I	I	I	I	I	I
I	I	I	I		I	I	I	I
		I	I					I
		I	I			I		I
		I	I	I	I	I	I	I
I	I				I	I	I	
I	I	I	I	I	I	I	I	I
I	I	I	I	I	I	I	I	I
I	I	I	I	I	I	I	I	I
I	I	I	I	I	I	I	I	I
I/C	I/C	I/C	I/C	I/C	I/C	I/C	I/C	I/C
I/C	I/C			I/C	I/C	I/C	I/C	
I/C	I/C	I/C	I/C	I/C	I/C	I/C	I/C	I/C
I/C	I/C			I/C	I/C		I/C	I/C
		C	C					C
C	C	I/C	I/C	C	C	C	C	I/C
C	C	C	C	C	C	C	C	C
C	C	C	C	C	C	I/C	C	C
		C	C					C
	I	I	I		I		I	I
		C	C					C

Level	Factor	Item description	Genocide	
			Barayagwiza	**Ngeze**
		The unquestioning loyalty of security services to the leadership	I/C	
		Erosion of anti-discriminatory norms towards descriptive norms that allow out-group / victim group derogation		
	Historical conditions	A history of intergroup conflict between the in-group and out-group / victim group, and the number of instances of intergroup violence has increased overall in the previous twelve months	C	C
		Preceding rate of dehumanising hate speech in public discourse	C	C
		Previous episodes of violence following inflammatory speech	C	C
		Perceived historic injustices at the individual and societal levels	I/C	
	Structural Conditions	Perceived current injustices at the individual and societal levels	C	
		Deficient regulatory or rule-of-law frameworks, and/or deficient application or lack of enforcement of existing regulations	C	C
		A "weaponised society" in which civilians have ready access to military-grade weaponry	I/C	C
		A society under occupation, apartheid, military invasions, economic sanctions or similar repressions	C	C
	Political conditions	A major national political election in the next twelve months or a major national political election in the last twelve months		
		Significant polarisation of political parties along religious, ethnic or racial lines	C	C
Content of hate speech	**Group focused rhetoric**	A focus on individuals or groups instead of on issues	I/C	I/C
		A low level of complexity in cognitive representation of out-group	C	
	Dehumanising discourse	Targets of dangerous speech are described in a variety of ways that deny or diminish their humanity, reducing the moral significance of their future deaths, or the duties owed to them by potential perpetrators; includes animalistic / mechanistic dehumanisation	C	I/C
	Guilt attribution	Individuals, or an entire group, are said to be guilty of heinous past crimes against the in-group	I/C	I/C
	Misinformation	False information that is spread, regardless of intent to mislead	I/C	I/C
	Disinformation	Assertions that the members of the out-group / victim group are besmirching the audience group, or damaging its purity or integrity	I/C	
		Individuals or groups are accused of disloyalty, treachery, alliance with other countries (in particular with the enemy) or the previous regime, thereby implying threat and appealing to the listeners' emotions	I/C	I/C
		Out-group / victim group are blamed for the misfortune of the country in terms of historical or present difficulties	I/C	C
		Identifying the out-group / victim group as foreign or alien, as if to expel them from the audience's group, for example affiliation with a region, nationality, religion or language group different from that of the majority of listeners	I/C	I/C
	Threat Construction	Assertions that the in-group faces serious and often mortal threats from the out-group / victim group	I/C	I/C
		"Accusation in a mirror" (speaker accuses the out-group / victim group of plotting the same harm to the audience that the speaker hopes to incite, thus providing the audience with the collective analogue of self-defence)	I/C	C
		Implicit/Explicit: whether the rhetoric is direct and explicit, or it is veiled and reliant on external information to accomplish its objective	I/C	I/C
	Revenge and retribution	Calls for revenge against the out-group / victim group		I
		Speech is a call to violence	I/C	I/C

Direct and public incitement to commit genocide		Crimes against Humanity – Persecution				Crimes against Humanity – Extermination		Crimes against Humanity – Deportation / forced displacement
Nahimana – command responsibility	Ngeze	Šešelj – instigating	Šešelj – committing persecution in Hrtkovci	Nahimana – command responsibility	Ngeze	Barayagwiza	Ngeze	Šešelj – instigating
						I/C		
		C	C					C
C	C	C	C	C	C	C	C	C
I/C	C			I/C	C	C	C	
C	C			C	C	C	C	
C		I	I	C		I/C		I
C		C	C	C		C		C
C	C	C	C	C	C	C	C	C
C	C	C	C	C	C	I/C	C	C
C	C	C	C	C	C	C	C	C
		C	C					C
C	C			C	C	C	C	
C	I/C	I	I	C	I/C	I/C	I/C	I
C				C		C		
C	I/C	I	I	C	I/C	C	I/C	I
C	I/C	I	I	C	I/C	I/C	I/C	I
C	I/C			C	I/C	I/C	I/C	
C				C		I/C		
C/I	I/C	I	I	C/I	I/C	I/C	I/C	I
C	C			C	C	I/C	C	
C	I/C	I	I	C	I/C	I/C	I/C	I
C	I/C	I	I	C	I/C	I/C	I/C	I
C	C			C	C	I/C	C	
C	I/C			C	I/C	I/C	I/C	
	I				I		I	
C	I/C	I	I	C	I/C	I/C	I/C	I

| Level | Factor | Item description | Genocide | |
			Barayagwiza	Ngeze
		Speech calls for an assault on human dignity	I/C	C
	Violence as a necessary response	Violence is presented as just punishment (and perhaps vengeance) for the wrongdoing of the out-group	C	I/C
		Violence is presented as inevitable, as necessitated by forces beyond the control of human agency, or as the only choice open to perpetrators	I/C	C
	Presentation of message	Morality shifting – justifying acts as fulfilling a positive moral duty to protect the in-group and obey authority	I/C	C
		Speaker resorts to intense language, replete with vivid images, graphic metaphors and exaggerations	C	C
		The message contains explicit or implicit calls for violent acts against members of an out-group	I/C	I/C
		The message includes personal insults and attacks on the integrity of an individual, and the communication is defaming and derogatory	I	
		The arguments are unbalanced and are not objectively verifiable with facts from other sources or standards of a rational argumentative debate	I	
		Frequency / scope – level of intensity	I/C	I/C
		The speech is perceived as "powerful" by the audience		
	Politicalised content	The speaker attains direct political gain and an increase in power by harming the target		
	Presentation of biased solutions	Speaker offers solutions that are simplistic and do not take into account the complexity and multifaceted nature of societal problems; the promised solutions are not real solutions to the existing situation	I	
		The offered solutions are destructive rather than constructive in nature, as they are based on the exclusion of certain individuals or groups from political power or the society in general	I	I/C
		The communicated ideas and suggested solutions for problems are not inclusive of all in society, but instead benefit a specific group while excluding others		I/C
Communication and media context	**Modality**	An influential means of dissemination, such as a radio station that is the sole or primary source of news for the relevant audience	I/C	I/C
	Information spread	Seeding – tailored messages targeted to communities through social networks (communities, networks, social media)	I/C	I
		Proliferation of message using the technology of the age, for example, social media, radio, newspapers	I/C	I/C
		Emotional / motivational appeal and connection of audience to content of message		I
	Reach	The speaker's message reaches a community or audience who rely predominantly on that one source of news or information	I/C	I
		Regulation of media		
		The speaker's message is widely disseminated through mass communication for a such as printed media, radio, television or social media	I/C	I/C

Direct and public incitement to commit genocide		Crimes against Humanity – Persecution				Crimes against Humanity – Extermination		Crimes against Humanity – Deportation / forced displacement
Nahimana – command responsibility	Ngeze	Šešelj – instigating	Šešelj – committing persecution in Hrtkovci	Nahimana – command responsibility	Ngeze	Barayagwiza	Ngeze	Šešelj – instigating
C	C	I	I	C	C	I/C	C	I
C	I/C			C	I/C	C	I/C	
C	C			C	C	I/C	C	
C	C			C	C	I/C	C	
C	C	I	I	C	C	C	C	I
C	I/C	I	I	C	I/C	I/C	I/C	I
						I		
						I		
I/C	I/C	I/C	I/C	I/C	I/C	I/C	I/C	I/C
		I	I					I
		I	I					I
		I	I			I		I
	I/C	I	I		I/C	I	I/C	I
	I/C	I	I		I/C		I/C	I
I/C	I/C			I/C	I/C	I/C	I/C	
I/C	I	I	I	I/C	I	I/C	I	I
I/C	I/C			I/C	I/C	I/C	I/C	
	I	I	I		I		I	I
I/C	I			I/C	I	I/C	I	
I				I				
I/C	I/C	I	I	I/C	I/C	I/C	I/C	I

8.2.2 *Mens Rea*[46]

Level	Factor	Item description	Genocide Barayagwiza	Ngeze
Individual level	**Ideology and beliefs**	In-/out-group thinking		
		Out-group derogation		
		A perception that certain groups pose a threat		
		Dehumanising ideology (speaker believes that out-group / victim group is inferior, subhuman and a threat to the in-group)		
		Ideological "ends" (speaker has knowledge of the fact that their words might contribute to the commission of grave crimes or large-scale discrimination against the targeted out-group / victim group and the denial of human rights of its members)	I	
	Speaker identity	Views themself as a leader / having authority	I	
		Ideologically obsessed and charismatic actors		
	Function / goal of derogatory language	In-group cohesion	I	
		Mobilisation of new political support / voters		
		Motivational goal to destroy / eliminate the hate target, whether physically, socially or symbolically		
		An assumed responsibility for upholding and embodying group ideology	I	
	Intent / motive	A need for revenge and retribution towards a grievance – to be explored		
		Intent to destroy an out-group / victim group	I	
	Capability	Access to funds / resources / training	I	
		The speaker wields a monopoly on the means of communication, has regular access to means of communication or has the capacity to censor and suppress information	I	
		Propaganda and political leadership (by the instrument of propaganda, a politician able to hold and form the will of the people)	I	
intra-group level	**Group identity**	A sense of belonging to a group of like-minded people with a common identity and common cause	I	
		Group influence and control	I	
	Shared ideology and beliefs	Shared by in-group	I	
	Collective intent / motivation	Intent to destroy an out-group / victim group	I/C	
Contextual level	**Status, personal influence and power**	Speaker holds a recognised position of authority in, for example, a government, religious or political organisation	I/C	
		Social power, influence or dominance of speaker	I/C	
	Societal conditions	An audience with grievances and/or fears that the speaker can cultivate		
		A perceived level of threat		
		A less than prosperous and stable community	C	
		Sectarian divisions / segregation	C	
		War	I/C	
		Speaker is perceived as credible / charismatic by his or her audience		
		The emotional state of the audience is influenced and/or more prone to manipulation by circumstances of insecurity and uncertainty		
		The unquestioning loyalty of security services to the leadership		
		Erosion of anti-discriminatory norms towards descriptive norms that allow out-group / victim group derogation	I/C	
	Historical conditions	A history of intergroup conflict between the in-group and out-group / victim group, and the number of instances of intergroup violence has increased overall in the previous twelve months		

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[46] "I" refers to individual attribution and "C" refers to collective attribution. A full and complete reference list is available in Appendix One, which includes all sources used in the formulation of the Multi-Dimensional Knowledge Framework.

Direct and public incitement to commit genocide		Crimes against Humanity – Persecution				Crimes against Humanity – Extermination		Crimes against Humanity – Deportation / forced displacement
Nahimana – command responsibility	Ngeze	Šešelj – instigating	Šešelj – committing persecution in Hrtkovci	Nahimana – command responsibility	Ngeze	Barayagwiza	Ngeze	Šešelj – instigating
I	I	I	I	I	I		I	I
I	I	I	I	I	I		I	I
I	I	I	I	I	I		I	I
		I	I					I
I	w	I	I	I	I	I	I	I
I	I	I	I	I	I	I	I	I
		I	I					I
		C	C			I		C
		I	I					I
I		I	I	I				I
	I	I	I		I	I	I	I
			I					I
I		I	I	I		I		I
	I				I	I	I	
I	I	I	I	I	I	I	I	I
I	I	I	I	I	I	I	I	I
I	I	I	I	I	I	I	I	I
I	I	I	I	I	I	I	I	I
I/C	I	I/C	I/C	I/C	I	I	I	I/C
I/C	I/C			I/C	I/C	I/C	I/C	
I/C	I/C	I/C	I/C	I/C	I/C	I/C	I/C	I/C
I/C	I/C			I/C	I/C	I/C	I/C	
	I/C	C	C		I/C		I/C	C
C		I/C	I/C	C				I/C
C	C	C	C	C	C	C	C	C
C	C	C	C	C	C	C	C	C
	C	C	C		C	I/C	C	C
		I	I					I
	I	C	C		I		I	C
		C	C			I/C		C
C		C	C	C				C

			Genocide	
			Barayagwiza	**Ngeze**
		Preceding rate of dehumanising hate speech in public discourse	C	
		Previous episodes of violence following inflammatory speech	C	
		Perceived historic injustices at the individual and societal levels	C	
	Structural Conditions	Perceived current injustices at the individual and societal levels	I/C	
		Deficient regulatory or rule-of-law frameworks, and/or deficient application or lack of enforcement of existing regulations	C	
		A "weaponised society" in which civilians have ready access to military-grade weaponry	C	
		A society under occupation, apartheid, military invasions, economic sanctions or similar repressions	I/C	
	Political conditions	A major national political election in the next twelve months or a major national political election in the last twelve months	C	
		Significant polarisation of political parties along religious, ethnic or racial lines		
	Group focused rhetoric	A focus on individuals or groups instead of on issues	C	
		A low level of complexity in cognitive representation of out-group	I/C	
	Dehumanising discourse	Targets of dangerous speech are described in a variety of ways that deny or diminish their humanity, reducing the moral significance of their future deaths, or the duties owed to them by potential perpetrators; includes animalistic / mechanistic dehumanisation	C	
	Guilt attribution	Individuals, or an entire group, are said to be guilty of heinous past crimes against the in-group	C	
	Misinformation	False information that is spread, regardless of intent to mislead	I/C	
Content of hate speech	**Disinformation**	Assertions that the members of the out-group / victim group are besmirching the audience group, or damaging its purity or integrity	I/C	
		Individuals or groups are accused of disloyalty, treachery, alliance with other countries (in particular with the enemy) or the previous regime, thereby implying threat and appealing to the listeners' emotions	I/C	
		Out-group / victim group are blamed for the misfortune of the country in terms of historical or present difficulties	I/C	
		Identifying the out-group / victim group as foreign or alien, as if to expel them from the audience's group, for example affiliation with a region, nationality, religion or language group different from that of the majority of listeners	I/C	
	Threat Construction	Assertions that the in-group faces serious and often mortal threats from the out-group / victim group	I/C	
		"Accusation in a mirror" (speaker accuses the out-group / victim group of plotting the same harm to the audience that the speaker hopes to incite, thus providing the audience with the collective analogue of self-defence)	I/C	
		Implicit/Explicit: whether the rhetoric is direct and explicit, or it is veiled and reliant on external information to accomplish its objective	I/C	
	Revenge and retribution	Calls for revenge against the out-group / victim group	I/C	
		Speech is a call to violence		
		Speech calls for an assault on human dignity	I/C	
	Violence as a necessary response	Violence is presented as just punishment (and perhaps vengeance) for the wrongdoing of the out-group	I/C	
		Violence is presented as inevitable, as necessitated by forces beyond the control of human agency, or as the only choice open to perpetrators	C	
	Presentation of message	Morality shifting – justifying acts as fulfilling a positive moral duty to protect the in-group and obey authority	I/C	
		Speaker resorts to intense language, replete with vivid images, graphic metaphors and exaggerations	I/C	

Direct and public incitement to commit genocide		Crimes against Humanity – Persecution				Crimes against Humanity – Extermination		Crimes against Humanity – Deportation / forced displacement
Nahimana – command responsibility	Ngeze	Šešelj – instigating	Šešelj – committing persecution in Hrtkovci	Nahimana – command responsibility	Ngeze	Barayagwiza	Ngeze	Šešelj – instigating
C/I	C			C/I	C	C	C	
C	C			C	C	C	C	
C	C	I	I	C	C	C	C	I
C		C	C	C		I/C		C
C		C	C	C		C		C
C	C	C	C	C	C	C	C	C
C	C	C	C	C	C	I/C	C	C
	C	C	C		C	C	C	C
C				C				
C	C	I	I	C	C	C	C	I
C	I/C			C	I/C	I/C	I/C	
C		I	I	C		C		I
C	I/C	I	I	C	I/C	C	I/C	I
C	I/C			C	I/C	I/C	I/C	
C	I/C			C	I/C	I/C	I/C	
C		I	I	C/I		I/C		I
C	I/C			C		I/C	I/C	
C	C	I	I	C	C	I/C	C	I
C	I/C	I	I	C	I/C	I/C	I/C	I
C	I/C			C	I/C	I/C	I/C	
C	C			C	C	I/C	C	
	I/C				I/C	I/C	I/C	
C	I	I	I	C	I		I	I
C	I/C	I	I	C	I/C	I/C	I/C	I
C	C			C	C	I/C	C	
C	I/C			C	I/C	C	I/C	
C	C			C	C	I/C	C	
C	C	I	I	C	C	I/C	C	I

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| | | | Genocide | |
			Barayagwiza	Ngeze
		The message contains explicit or implicit calls for violent acts against members of an out-group	C	
		The message includes personal insults and attacks on the integrity of an individual, and the communication is defaming and derogatory	I/C	
		The arguments are unbalanced and are not objectively verifiable with facts from other sources or standards of a rational argumentative debate	I	
		Frequency / scope – level of intensity	I	
		The speech is perceived as "powerful" by the audience	I/C	
	Politicalised content	The speaker attains direct political gain and an increase in power by harming the target		
	Presentation of biased solutions	Speaker offers solutions that are simplistic and do not take into account the complexity and multifaceted nature of societal problems; the promised solutions are not real solutions to the existing situation		
		The offered solutions are destructive rather than constructive in nature, as they are based on the exclusion of certain individuals or groups from political power or the society in general	I	
		The communicated ideas and suggested solutions for problems are not inclusive of all in society, but instead benefit a specific group while excluding others	I	
Communication and media context	**Modality**	An influential means of dissemination, such as a radio station that is the sole or primary source of news for the relevant audience		
	Information spread	Seeding – tailored messages targeted to communities through social networks (communities, networks, social media)	I/C	
		Proliferation of message using the technology of the age, for example social media, radio, newspapers	I/C	
		Emotional / motivational appeal and connection of audience to content of message	I/C	
	Reach	The speaker's message reaches a community or audience who rely predominantly on that one source of news or information		
		Regulation of media	I/C	
		The speaker's message is widely disseminated through mass communication for a such as printed media, radio, television or social media	I/C	

Direct and public incitement to commit genocide		Crimes against Humanity – Persecution				Crimes against Humanity – Extermination		Crimes against Humanity – Deportation / forced displacement
Nahimana – command responsibility	Ngeze	Šešelj – instigating	Šešelj – committing persecution in Hrtkovci	Nahimana – command responsibility	Ngeze	Barayagwiza	Ngeze	Šešelj – instigating
C	C	I	I	C	C	C	C	I
	I/C				I/C	I/C	I/C	
						I		
I/C		I/C	I/C	I/C		I		I/C
	I/C	I	I		I/C	I/C	I/C	I
		I	I					I
		I	I					I
		I	I			I		I
	I/C	I	I		I/C	I	I/C	I
	I/C				I/C		I/C	
I/C	I/C	I	I	I/C	I/C	I/C	I/C	I
I/C	I			I/C	I	I/C	I	
	I/C	I	I		I/C	I/C	I/C	I
I/C	I			I/C	I		I	
I	I			I	I	I/C	I	
I/C	I/C	I	I	I/C	I/C	I/C	I/C	I

8.3 Results from Tables 8.1– 8.2

The following section discusses our reading of the amalgamated tables above and the observations that were made during this stage of analysis. It builds on the comparative analysis of the cases and their important differentiations.

8.3.1   Ideology and Identification

The analysis has highlighted the importance of understanding and unpacking ideology, identity and intent and the prominence and inter-relationship of ideology with other levels and factors. Ideology, which for the purpose of the research was considered to refer to a set of beliefs, systems and ideas, differs from an intention to cause harm. An intention to cause harm is different from an ideological end goal. Harm to an out-group may be part of an ideology, but an end goal may not ultimately be harm; for example, it could be argued that Šešelj's end goal is a greater Serbia, and the involved harm is a necessary component rather than a goal. The factors of the Analytical Framework have begun to enable a more nuanced understanding of these elements, their differences and their interactions.

It was difficult to evidence the individual identity of the four defendants. The one identity factor that was observed across all individuals was that they viewed themselves as a leader. Whether they identified with a group or ideology, and over-identified with said group, were two important questions that could not be answered from the evidence reviewed. It is likely there are many more items within the construct of identity that need exploration to better understand it.

Intention was also a challenging dimension to explore. The Analytical Framework dimension of intent and motive contain two elements and the analysis observed an individual-level intention across all defendants to destroy / attack an out-group or victim group.

The factor of ideology had several items that were common to all defendants. In- / out-group thinking, out-group derogation and a perception that certain groups pose a threat. Other elements of ideology were difficult to explore from the available information, especially a dehumanising ideology.[47] Ideological "ends", that is to say their ideal arrangement of a set of beliefs, systems, values and ideas,[48] was observed across the four defendants at an individual level. There were however differences in what the "end goals" looked like (here we are using multidisciplinary factor parameters and are not making judgments regarding criminal intent). Šešelj's ideological ends are observed as expulsion which speaks to large scale discrimination as an end goal whereas the *Media* case defendant's likely ideological "end goals" were death.

There were many pieces of indicative evidence in support of other items of the ideology factor, but the research sought to maintain its integrity of analysis to minimise bias. Clearly there is a lot of support for future research to seek out additional evidence that may enable further population of the Analytical Framework and a better understanding of individual-level factors, especially ideology, identity and intent which are prominent within the limited evidence available across the explored cases.

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[47] Particularly interesting in comparative analyses is the observation that in the speech that Šešelj made in Hrtkovci for which he was convicted there was no specific dehumanising content. However, the material evidence of his other speeches highlights extensive dehumanising content. The *Media* case speech content is extensively dehumanising. Šešelj's messaging appears more sophisticated and targeted in a communication context and perhaps less overt in blatancy with the *Media* case more direct and indeed crude. It is not possible to understand whether these defendants' own ideology is dehumanising.

[48] Zmigrod 2022, see above note 2.

Again, the factors and items of group intention and identity were more difficult to draw conclusions about from the available evidence.

8.3.2   Status

Status was a particularly important dimension of individual-level and contextual-level factors, and their inter-relationship and aggregation. It is a complex term regarding hate speech. Importantly, whilst all four defendants were evidenced to view themselves as leaders at an individual level, this did not automatically mean that the same defendant was evidenced to have comprehensive contextual leadership (including status, personal influence, power and dominance) and there was an important link to be made to their in-group.

In the case of Šešelj, the evidence spoke of a view of himself as a leader (individual status) but at a contextual level it is questioned by the research whether Šešelj is viewed as a leader by all involved groups (that is to say all "Šešelj's Men", his political party and his public audience). Discrepancies are evident in the judgments – the Trial Chamber observing no hierarchical link between the accused and the volunteers once they were integrated into the structures of the Yugoslav People's Army (JNA), Yugoslav Army (Vojska Jugoslavije, VJ) and Army of the Serbian Republic of Bosnia and Herzegovina (Vojska Republike Srpske, VRS) which would suggest that he may not be viewed as a leader by all of Šešelj's Men. However, the Trial Chamber notes Šešelj had influence over the members of his party, that he was an ideological leader, even seen by some "as if he were a god[49]", and that his speeches had a significant impact on the audience[50] which would support him being viewed as a leader by his political party and his public audience. The formulation stages suggest a nuanced understanding of status and its interrelationships is important.

Importantly, at a contextual level, Šešelj holds a position of power, but was not observed to have comprehensive social power / dominance in our analysis. This combination of factors was then linked to less group influence and control for Šešelj. It seems that Šešelj has an individual ideology with an ideological end, unclear "in-groups", an individually perceived status, some group influence and control, a recognised position of authority but importantly, not enough contextual influence / power / dominance over all groups. This was a similar finding for Barayagwiza. Despite all defendants holding a recognised contextual position of authority, Nahimana and Ngeze were the only two defendants who appear to have social dominance or power (both individually and collectively attributable) over all of their identified in-group.

An important limitation to the research is again highlighted here – individuals who are subject to prosecution for atrocity crimes are more likely higher-ranking individuals or those with considerable status and capability, which may have created bias within the analysis sample. Status is evidently critical within the analysed cases, and it is important to emphasise the boundaries of our analysis and case sample.

8.3.3   Communication and Media Context

Communication and media context, specifically information spread and reach, emerged as particularly relevant factors during the case analyses. Despite the very different contexts of the cases, there were nuanced differences amongst the items of this factor. The dimension itself importantly identifies the proliferation of the message via the technology of the age (for example social media, radio, newspapers) together with seeding of tailored messages targeted to communities and the emotional connection of

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[49] Šešelj Trial Judgment, see above note 36, para. 341.
[50] International Criminal Tribunal for the former Yugoslavia, "Case Information Sheet: Vojislav Šešelj" <https://www.icty.org/x/cases/seselj/cis/en/cis_seselj_en.pdf> accessed 15 March 2023.

the audience. In the case of Šešelj, seeding and the emotional connection of the audience are evidenced, but not proliferation of message using the technology of the age. His message does however appear to achieve wide dissemination via seeding, and consequently reach, via rallies. In the *Media* case, the emotional connection of the audience is limited in evidence but seeding and proliferation of message is again observed.

All defendants in the *Media* case were observed to have an individual and collectively attributable role in information spread. *Nahimana* and *Ngeze* saw the most individually attributable factors under information spread compared to the others, which reflected the inclusion of their own authored content amongst the evidence. In the case of Šešelj, it was his own message that was spread and there were fewer collectively attributable dimensions.

The information spread factor was observed to be important to understand the relationship between an individual's ideology and their spoken content. How it is seeded, whether there is sophistication and also its modality could provide insight as to whether an individual's ideology is mirrored in their spoken content.

8.4 Differences

As the formulation of the Multi-Dimensional Knowledge Framework developed, a number of patterns and differences between cases were observed during analyses. It is a descriptive and exploratory analysis. Observations are summarised in the following table.

	Šešelj	Nahimana	Barayagwiza	Ngeze
Dehumanising, individually attributable ideology	Yes – individually attributable	Not observed	Not observed	Not observed
Ideological "ends"	Yes – individually attributable (expulsion)	Yes – individually attributable (death / extermination)	Yes – individually attributable (death / extermination)	Yes – individually attributable (death / extermination)
Individual – views self as a leader	Yes – individually attributable	Yes – individually attributable	Yes – individually attributable	Yes – individually attributable
Position of authority	Yes – individually and collectively attributable	Yes – individually and collectively attributable	Yes – individually and collectively attributable	Yes – individually and collectively attributable
Contextual status – power and influence	Not observed	Yes – individually and collectively attributable	Not observed	Yes – individually and collectively attributable
Group identity / collective intent	Individual ideology with criminal purpose but not a shared group ideology that is evidenced to have criminal purpose – "defence"	Intent to destroy out-group / victim group, individually and collectively attributable	Intent to destroy out-group / victim group, individually and collectively attributable	Intent to destroy out-group / victim group, individually and collectively attributable
Societal context	More evidence, and mostly collectively attributed	Less evidence	Less evidence	Less evidence
Historical context	Less evidence	More evidence, and mostly collectively attributed	More evidence, and mostly collectively attributed	More evidence, and mostly collectively attributed
Content – dehumanising discourse	Yes – individually attributable	Collectively attributable	Collectively attributable	Both individually and collectively attributable
Disinformation	Less evidence	More evidence, and mostly collectively attributed	More evidence, and mostly collectively attributed	More evidence, and mostly collectively attributed
Threat construction	Yes – individually attributable	Collectively attributable	Both individually and collectively attributable	Both individually and collectively attributable
Revenge and retribution	Yes – individually attributable	Collectively attributable	Both individually and collectively attributable	Collectively attributable

Violence in response	Less evidence	More evidence, and mostly collectively attributed	More evidence, and mostly collectively attributed	More evidence, and mostly collectively attributed
Information Spread	Yes – individually attributable	Both individually and collectively attributable	Both individually and collectively attributable	Both individually and collectively attributable
Reach	Less evidence, but both individually and collectively attributable	Both individually and collectively attributable	Both individually and collectively attributable	Both individually and collectively attributable

There are three particularly prominent factors that emerged from the analysis to be highlighted – ideology, status and information spread. These are further considered in the following section.

8.5 Added Value – Multidisciplinary Dimensions

The added value of the comparative analyses is new insight and the observations gathered from the multidisciplinary framed enquiry of case law. These are summarised within the following themes.

8.5.1   Groups

Groups were an important frame of reference in understanding the interrelationships and connections between Analytical Framework factors and levels.

The Analytical Framework included a distinct factor level of intra-group. This referred to the group with whom the individual defendant identified – their in-group. The factor level included items about the in-group including group conformity, group identity, collective intent / motivation and shared ideology / beliefs.

The intra-group summary level factors helped to understand the group that the defendants did (or indeed did not) identify with, that is to say their in-group and some of its functions and process. Its focus on the defendant's in-group, including its dynamics, composition, ideology and intent, enabled insight and analyses of the individual's relationship with their in-group.

At an individual level, each defendant has their own beliefs, ideology and motivations and in the case of each defendant in the reviewed cases, each appear to have identified with an in-group. The comparative analyses enabled a number of observations to be made about the relationship between the defendant's ideology and that of their in-group. The defendant's "in-groups" also appear to share an identity and ideology, and the comparative analyses facilitated the exploration of whether the defendant's ideology matches that of the group with whom they identified. Also important was the "in-groups'" shared ideological ends and how this matched to the individual defendant's ideology. An example here is Šešelj where there were two associated groups – his political party and "Šešeljevci" (Šešelj's Men). Guided by the Analytical Framework, our comparative analyses observed that whilst "Šešelj's Men" likely indicate some elements of a shared group identity, this disparate group of individuals no doubt had a wide range of different motivations and intentions, making it unlikely that there was a cohesive shared ideology and shared "end goal". A different picture is gained when looking at Šešelj's political party, a group with whom Šešelj seems to identify (that is to say his in-group). Here the Analytical Framework enabled observation of a group with cohesiveness and a likely shared identity and ideology which is evidenced as the "defence" of a Greater Serbia. The shared group ideology is suggested to match Šešelj's but whether the group's ideological "end goal" matches that of Šešelj is unclear.

Critically, this level of the Analytical Framework is intra-group, meaning the dynamics within the in-group. It does not refer to the relationship of an in-group to other groups (inter-group considerations).

8.5.2   Contextual Factors

Observations were made within the contextual factors of the Analytical Framework. This also enabled the exploration of the feedback loops regarding contextual factors around incitement. Contextual factors were split across historic, structural, political, societal together with status, influence and power (see Appendix Two). This differentiation led to the observation of how dynamic these factors are, as opposed to a more static perspective.

There are interesting observations about individual and collective attributions for contextual dimensions between the cases. More collectively attributable contextual factors were evidenced for *Šešelj*, stemming from his political party, whereas in the *Media* case, each defendant had more individually attributable evidence of contributions to the societal conditions, particularly in their media leadership roles.

Our comparative analyses saw interesting differences in misinformation and disinformation which could indicate a greater sophistication in Šešelj's speeches, together with politicised content. In Šešelj's case it was observed that his speech was "powerful" to its audience which aligns with the societal contextual evidence yet does not quite align with status and power. Šešelj's contextual status and power was observed to be group and contextually specific. Such nuanced differences were not as evident in the *Media* case.

The contextual dimension of status, personal influence and power was of importance too, which is discussed in more detail in the following section.

8.5.3   Reflecting

The comparative analyses of the four individual cases using multidisciplinary knowledge has led to the observation that individual factors may not always be reflected at a contextual, group, content or communication level. Whilst challenging, some exploration of individual ideology has been possible through the reviewed judgments. Looking at the relationship between an individual's ideology and that of the group with whom they identify, and their ideological "end goals", it is observed that there may not always be a match.

An example is that all four defendants were observed in the analysis to have an individually attributable dehumanising ideology, but this was not evidenced in the content of all the hate rhetoric as not all speeches contained dehumanising discourse. Individually attributable dehumanising discourse was evidenced in the content of Šešelj and Ngeze's rhetoric. In the cases of Nahimana and Barayagwiza, dehumanising content was collectively attributable (that is to say it was spoken by others).

8.5.4   Group and Individual Attribution

Individual-level factors were an important element of the analysis. Individual factors were critical to understanding an individual defendant's dimensions including their ideology, beliefs, identity and intent. Making the distinction of an "individual" factorial level rather than "speaker" or "contextual" dimensions enabled the concept of mirroring to emerge. Not all defendants were evidenced to have themselves "spoken" all of the hate rhetoric words. This is particularly evident in the *Media* case where some messages were proliferated and communicated rather than spoken directly.

The distinction enabled the analysis to better explore the multidisciplinary dimensions from an individual psychological perspective as well as a behavioural and content perspective.

8.5.5   Contemporary Relevance

The Analytical Framework guided comparative analysis highlights the contemporaneous relevance of many new dimensions. It is new thinking and a contemporary framing of hate speech in ICL. For example, in the communication and media factor level, the "reach" factor that the "speaker's message is widely disseminated through mass communication" is importantly expanded by the information spread category which includes the "proliferation of message using the technology of the age, for example social media, radio, newspapers". As technology advances exponentially, so does the ability to proliferate messages. We observe that the expansiveness of how messages reach an audience is not historically comparable and this distinction of the Analytical Framework is important. Radio in the context of Rwanda in 1994 was likely the most expansive technology of the age. There is a contemporary relevance of how a message is proliferated, and in both cases it is relevant to the times.

8.5.6   Historical v. Current Contextual Factors

Another important division between context levels is made between historical and current factors. There are again differences between the cases with the *Media* case evidencing more historical context and the *Šešelj* case evidencing more current societal context. In other words, the content of hate speech in the *Media* case included more about the past and history than the *Šešelj* case. In the *Šešelj* case, there was more content reference to current societal and structural conditions compared to the *Media* case.

8.6 A Multi-Dimensional Framework of Direct and Public Incitement to Commit Genocide

The following table presents the application of our comparative analysis towards the crime of public and direct incitement of genocide in a Multi-Dimensional Knowledge Framework (MDKF). Individual and collective attributions are observed and the MDKF separates *actus reus* and *mens rea* to enable consideration of observed differences (and for the reference of any onwards research which may observe different distinctions).

The observations from the two reviewed cases charged with the crime of public and direct incitement of genocide (*Nahimana* and *Ngeze*) have been aggregated to formulate this Multi-Dimensional Framework of Direct and Public Incitement to Commit Genocide. Its formulation is the goal of the research, and its utility is discussed in the following section.

The Multi-Dimensional Knowledge Framework has been formulated from a vast amount of reviewed multidisciplinary research evidence. A full and complete reference list (available in Appendix One) includes all sources used in the formulation of the Multi-Dimensional Knowledge Framework. Caution has been taken not to exclude any literature influences for individual items and consequently, a summary list of all literature sources has been produced, reflecting the overlap and inter-relationships of the multidisciplinary evidence base.

8.6.1 *Actus Reus*[51]

Level	Factor	Item description	Attribution
Individual	**Ideology and beliefs**	In-/out-group thinking	I
		Out-group derogation	I
		A perception that certain groups pose a threat	I
		Ideological "ends" (speaker has knowledge of the fact that their words might contribute to the commission of grave crimes or large-scale discrimination against the targeted out-group / victim group and the denial of human rights of its members)	I
	Speaker identity	Views themself as a leader / having authority	I
	Capability	Access to funds / resources / training	I
		The speaker wields a monopoly on the means of communication, has regular access to means of communication or has the capacity to censor and suppress information	I
		Propaganda and political leadership (by the instrument of propaganda, a politician able to hold and form the will of the people)	I
intra-group level	**Group identity**	A sense of belonging to a group of like-minded people with a common identity and common cause	I
		Group influence and control	I
	Shared ideology and beliefs	Shared by in-group	I/C
	Collective intent / motivation	Intent to destroy an out-group / victim group	I/C
Contextual level	**Status, personal influence and power**	Speaker holds a recognised position of authority in, for example, a government, religious or political organisation	I/C
		Social power, influence, or dominance of speaker	I/C
		A perceived level of threat	C
		A less than prosperous and stable community	C
		Sectarian divisions / segregation	C
		Speaker is perceived as credible / charismatic by his or her audience	I
	Historical conditions	A history of intergroup conflict between the in-group and out-group [/ victim group], and the number of instances of intergroup violence has increased overall in the previous twelve months	C
		Preceding rate of dehumanising hate speech in public discourse	C/I
		Previous episodes of violence following inflammatory speech	C
		Perceived historic injustices at the individual and societal levels	C
	Structural Conditions	Perceived current injustices at the individual and societal levels	C

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[51] "I" refers to individual attribution and "C" refers to collective attribution. A full and complete reference list is available in Appendix One which includes all sources used in the formulation of the Multi-Dimensional Knowledge Framework.

Level	Factor	Item description	Attribution
		Deficient regulatory or rule-of-law frameworks, and/or deficient application or lack of enforcement of existing regulations	C
		A "weaponised society" in which civilians have ready access to military-grade weaponry	C
		A society under occupation, apartheid, military invasions, economic sanctions or similar repressions	C
	Political conditions	Significant polarisation of political parties along religious, ethnic or racial lines	C
Content of hate speech	**Group focused rhetoric**	A focus on individuals or groups instead of on issues	C/I
		A low level of complexity in cognitive representation of out-group	C
	Dehumanising discourse	Targets of speech are described in a variety of ways that deny or diminish their humanity, reducing the moral significance of their future deaths, or the duties owed to them by potential perpetrators; includes animalistic / mechanistic dehumanisation	C
	Guilt attribution	Individuals, or an entire group, are said to be guilty of heinous past crimes against the in-group	C
	Misinformation	False information that is spread, regardless of intent to mislead	C
	Disinformation	Assertions that the members of the out-group / victim group are besmirching the audience group, or damaging its purity or integrity	C
		Individuals or groups are accused of disloyalty, treachery, alliance with other countries (in particular with the enemy) or the previous regime, thereby implying threat and appealing to the listeners' emotions	C/I
		Out-group / victim group are blamed for the misfortune of the country in terms of historical or present difficulties	C
		Identifying the out-group / victim group as foreign or alien, as if to expel them from the audience's group, for example affiliation with a region, nationality, religion or language group different from that of the majority of listeners	C
	Threat Construction	Assertions that the in-group faces serious and often mortal threats from the out-group / victim group	C
		"Accusation in a mirror" (speaker accuses the out-group / victim group of plotting the same harm to the audience that the speaker hopes to incite, thus providing the audience with the collective analogue of self-defence)	C
		Implicit/Explicit: whether the rhetoric is direct and explicit, or it is veiled and reliant on external information to accomplish its objective	C
	Revenge and retribution	Calls for revenge against the out-group / victim group	I
		Speech is a call to violence	C

Level	Factor	Item description	Attribution
		Speech calls for an assault on human dignity	C
	Violence as a necessary response	Violence is presented as just punishment (and perhaps vengeance) for the wrongdoing of the out-group	C
		Violence is presented as inevitable, as necessitated by forces beyond the control of human agency, or as the only choice open to perpetrators	C
		Morality shifting – justifying acts as fulfilling a positive moral duty to protect the in-group and obey authority	C
	Presentation of message	Speaker resorts to intense language, replete with vivid images, graphic metaphors and exaggerations	C
		The message contains explicit or implicit calls for violent acts against members of an out-group	C
		Frequency / scope – level of intensity	C/I
	Presentation of biased solutions	The offered solutions are destructive rather than constructive in nature, as they are based on the exclusion of certain individuals or groups from political power or the society in general	I/C
		The communicated ideas and suggested solutions for problems are not inclusive of all in society, but instead benefit a specific group while excluding others	I/C
Communication and media context	Modality	An influential means of dissemination, such as a radio station that is the sole or primary source of news for the relevant audience	I/C
	Information spread	Seeding – tailored messages targeted to communities through social networks (communities, networks, social media)	I/C
		Proliferation of message using the technology of the age, for example social media, radio, newspapers	I/C
		Emotional / motivational appeal and connection of audience to content of message	I
	Reach	The speaker's message reaches a community or audience who rely predominantly on that one source of news or information	C/I
		Regulation of media	I
		The speaker's message is widely disseminated through mass communication such as printed media, radio, television or social media	C/I

As discussed, the factors of particular interest regarding *actus reus* are contextual status, together with individual factors, content and the communication and media context factor. The intra-group factor interacts with all levels.

8.6.2 *Mens Rea*[52]

Level	Factor	Item description	Attribution
Individual	**Ideology and beliefs**	In-/out-group thinking	I
		Out-group derogation	I
		A perception that certain groups pose a threat	I
		Ideological "ends" (speaker has knowledge of the fact that their words might contribute to the commission of grave crimes or large-scale discrimination against the targeted out-group / victim group and the denial of human rights of its members)	I
	Speaker identity	Views themselves as a leader / having authority	I
	Function / goal of derogatory language	Motivational goal to destroy / eliminate the hate target, whether physically, socially or symbolically	I
		An assumed responsibility for upholding and embodying group ideology	I
	Intent / motive	Intent to destroy an out-group / victim group	I
	Capability	Access to funds / resources / training	I
		The speaker wields a monopoly on the means of communication, has regular access to means of communication or has the capacity to censor and suppress information	I
		Propaganda and political leadership (by the instrument of propaganda, a politician able to hold and form the will of the people)	I
intra-group level	**Group identity**	A sense of belonging to a group of like-minded people with a common identity and common cause	I
		Group influence and control	I
	Shared ideology and beliefs	Shared by in-group	I/C
	Collective intent / motivation	Intent to destroy an out-group / victim group	I/C
Contextual level	**Status, personal influence and power**	Speaker holds a recognised position of authority in, for example, a government, religious or political organisation	I/C
		Social power, influence or dominance of speaker	I/C
	Societal conditions	An audience with grievances and/or fears that the speaker can cultivate	I/C
		A perceived level of threat	C
		A less than prosperous and stable community	C
		Sectarian divisions / segregation	C
		War	C
		The emotional state of the audience is influenced and/or more prone to manipulation by circumstances of insecurity and uncertainty	I

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[52] "I" refers to individual attribution and "C" refers to collective attribution. A full and complete reference list is available in Appendix One which includes all sources used in the formulation of the Multi-Dimensional Knowledge Framework.

Level	Factor	Item description	Attribution
	Historical conditions	A history of intergroup conflict between the in-group and out-group / victim group, and the number of instances of intergroup violence has increased overall in the previous twelve months.	C
		Preceding rate of dehumanising hate speech in public discourse	C/I
		Previous episodes of violence following inflammatory speech	C
		Perceived historical injustices at the individual and societal levels	C
	Structural Conditions	Perceived current injustices at the individual and societal levels	C
		Deficient regulatory or rule-of-law frameworks, and/or deficient application or lack of enforcement of existing regulations	C
		A "weaponised society" in which civilians have ready access to military-grade weaponry	C
		A society under occupation, apartheid, military invasions, economic sanctions or similar repressions	C
	Political conditions	A major national political election in the next twelve months or a major national political election in the last twelve months	C
		Significant polarisation of political parties along religious, ethnic or racial lines	C
Content of hate speech	**Group focused rhetoric**	A focus on individuals or groups instead of on issues	C
		A low level of complexity in cognitive representation of out-group	C
	Dehumanising discourse	Targets of dangerous speech are described in a variety of ways that deny or diminish their humanity, reducing the moral significance of their future deaths, or the duties owed to them by potential perpetrators; includes animalistic / mechanistic dehumanisation	C
	Guilt attribution	Individuals, or an entire group, are said to be guilty of heinous past crimes against the in-group	C
	Misinformation	False information that is spread, regardless of intent to mislead	C
	Disinformation	Assertions that the members of the out-group / victim group are besmirching the audience group, or damaging its purity or integrity	C
		Individuals or groups are accused of disloyalty, treachery, alliance with other countries (in particular with the enemy) or the previous regime, thereby implying threat and appealing to the listeners' emotions	C
		Out-group / victim group are blamed for the misfortune of the country in terms of historical or present difficulties	C
		Identifying the out-group / victim group as foreign or alien, as if to expel them	C

Level	Factor	Item description	Attribution
		from the audience's group, for example affiliation with a region, nationality, religion or language group different from that of the majority of listeners	
	Threat Construction	Assertions that the in-group faces serious and often mortal threats from the out-group / victim group	C
		"Accusation in a mirror" (speaker accuses the out-group / victim group of plotting the same harm to the audience that the speaker hopes to incite, thus providing the audience with the collective analogue of self-defence)	C
		Implicit/Explicit: whether the rhetoric is direct and explicit, or it is veiled and reliant on external information to accomplish its objective	C
	Revenge and retribution	Calls for revenge against the out-group / victim group	I/C
		Speech is a call to violence	C
		Speech calls for an assault on human dignity	C
	Violence as a necessary response	Violence is presented as just punishment (and perhaps vengeance) for the wrongdoing of the out-group	C
		Violence is presented as inevitable, as necessitated by forces beyond the control of human agency, or as the only choice open to perpetrators	C
	Presentation of message	Morality shifting – justifying acts as fulfilling a positive moral duty to protect the in-group and obey authority	C
		Speaker resorts to intense language, replete with vivid images, graphic metaphors and exaggerations	C
		The message contains explicit or implicit calls for violent acts against members of an out-group	C
		The message includes personal insults and attacks on the integrity of an individual, and the communication is defaming and derogatory	I/C
		Frequency / scope – level of intensity	C/I
		The speech is perceived as "powerful" by the audience	I/C
	Presentation of biased solutions	The communicated ideas and suggested solutions for problems are not inclusive of all in society, but instead benefit a specific group while excluding others	I/C
	Information spread	Seeding – tailored messages targeted to communities through social networks (communities, networks, social media)	I/C
		Proliferation of message using the technology of the age, for example social media, radio, newspapers	I/C
		Emotional / motivational appeal and connection of audience to content of message	I/C
	Reach	The speaker's message reaches a community or audience who rely	C/I

Level	Factor	Item description	Attribution
		predominantly on that one source of news or information	
		Regulation of media	I
		The speaker's message is widely disseminated through mass communication such as printed media, radio, television or social media	C/I

As discussed, the factors of particular interest regarding *mens rea* are individual-level dimensions including intent and also the function / goal of derogatory language, status, message content and the communication and media context factor. Again, the intra-group factor interacts with all levels.

8.7 Added Value of the Research

The output of the research, the prototype Multi-Dimensional Knowledge Framework, is a new frame of reference guided by contemporary thinking. It is not a model of hate speech or incitement to genocide. The Multi-Dimensional Knowledge Framework enables new perspectives and new observations to be made that are guided by multidisciplinary sources. It has yielded descriptive observations and new insight towards current understanding of hate speech that is criminal and the incitement of core international crimes in ICL. Tables 8.6.1 and 8.6.2 present a first Multi-Dimensional Knowledge Framework towards the crime of public and direct incitement to genocide.

1.   **Does the MDKF give us new insight and discussion towards the challenges we have observed regarding incitement to genocide?**

In this section we present our observations and discussions drawn from the formulation of the Multi-Dimensional Knowledge Framework when overlaying the Analytical Framework with the amalgamated results collected from the case selection.

Let us restate the guiding questions we have posed as potentially relevant:

2.   **Is the MDKF helping towards further understanding of the public or direct elements with respect to direct and public incitement to genocide?**

The simple answer is yes.

In our analysis and ensuing Multi-Dimensional Knowledge Framework, that incitement to genocide must be proven to be "direct", means that both the individual defendant and their audience understand the speech to be a call to action.

The Multi-Dimensional Knowledge Framework analysis shows the complexity of the relationship between a "speaker" and "listener" and the complex interaction and aggregation of context, content, individual, group and communication levels of factors.

Numerous interesting and novel observations have been made.

- In the case of the two defendants convicted of direct and public incitement to genocide (*Media* case – *Nahimana* and *Ngeze*) the Multi-Dimensional Knowledge Framework gave the opportunity to observe that both viewed themselves as leaders at an individual level, both have positions of authority, and both appear to have status including universal influence, power and dominance over their in-group.

- Regarding content and the linguistic nuances of hate rhetoric, again the Multi-Dimensional Knowledge Framework brings in many new dimensions in its exploration. The distinction between misinformation and disinformation[53] involves intent.[54] In the *Media* case one could observe both misinformation and disinformation. Linguistic content must be explored for its contextual relevance and connection to the audience, and the analyses highlight the importance of exploring differences in content dimensions. The hate-based rhetoric that was

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[53] Misinformation (false information that is spread, regardless of intent to mislead) was separated from disinformation (deliberate and includes malicious content).

[54] Dictionary.com, "Misinformation", <https://www.dictionary.com/browse/misinformation> accessed 17 October 2023; European Commission, "Tackling Online Disinformation", 2022 <https://digital-strategy.ec.europa.eu/en/policies/online-disinformation> accessed 4 April 2023.

proliferated by Nahimana and Ngeze in their direct and public incitement of genocide had extensive dehumanising content.

- The analyses support the view that the direct element of the crime (*actus reus*) must be assessed by considering cultural and linguistic content and context. However, the Multi-Dimensional Knowledge Framework analyses observe there to be a much wider range of relevant contextual and content elements when knowledge available in other critical disciplines is brought together. Our analysis especially highlights the additional importance of group and individual levels of understanding in the concept of "direct" to explore how the individual defendant and their audience understand the speech to be a call to action and the pathway between. The relationship of these factors and levels is highly complex.

- We also highlight the likely relevance of the factor of communication and media context, specifically information spread and reach which involves targeting and understanding their audience. To understand linguistic nuances and whether a mode of speech is perceived as direct in a culture, the Multi-Dimensional Knowledge Framework enabled exploration of how it is spread to connect the individual defendant to their audience. Its methodology of delivery is suggested as a key in establishing whether both the individual defendant and their audience understand the speech to be a call to action.

Establishing whether incitement is "public" is again a highly complex issue that the Multi-Dimensional Knowledge Framework provides additional insight towards, through the following observations.

Our analyses suggest that contextual understanding also needs to be extended to include communication and media context, specifically information spread and reach.

Nuanced differences are important insights.

- The dimension itself identifies the proliferation of the message via the technology of the age together with seeding of tailored messages targeted to communities through social networks and the emotional connection of the audience. To understand whether a speech is public, the Multi-Dimensional Knowledge Framework suggests that it is important to understand how the message has reached the audience, again bridging the gap between an accused and their audience. As well as considering whether the medium and place is "public", we suggest that the way it is communicated merits consideration as to how it is used and what planning / targeting is involved to make it public, linking information spread and reach with intent.

- The information spread factor could also be important in establishing the association of the defendant's ideology, intent and their spoken content. For example, whether it is the defendant's individually authored message that is spread; how it is spread; whose ideology and ideological end goal it is (individual or group or both matching); is a defendant's seeding achieving their sought reach; is there sophistication in their seeding?

- There is no doubt an added complexity regarding the "public" element of hate speech when considering advances in technology, especially social media whose audiences are exponentially larger than the cases explored in the current research. Information spread and reach could be key in understanding the interactional effect of new technology in relationship to individual and group intent, ideology and status within incitement. The current research has identified how hate speech has been proliferated via the technology of the age, but with varying degrees of sophistication which no doubt links back to intent and ideology. Perhaps information spread enables more understanding of *mens rea* with its consideration of intent and targeting in approach. Social media and hate speech work could importantly consider

mens rea of incitement as well as the way in which incitement is proliferated. Also important within this category is the notion of seeding, that takes the concept of message proliferation beyond a mass targeting of message and something that reaches an audience via the most expansive means. Seeding is important in understanding how the message is targeted, which messages reach which audience (responsivity to audience) and that its proliferation in these cases has been through media, but also through defendant's personal attendance at key events. This has enabled their messages to be shared via community networks and mechanisms in a more refined and sophisticated manner, and likely more meaningfully, to the receiving audience than by mass media proliferation alone. Perhaps this better reaches their targeted audience rather than a general "audience" with members actively seeking out the message or attending a rally, for example. This could have a bearing on the likelihood of message take-up and the risks that result from hate speech.

3. How crucial and substantial is the link of "inciting others" to commit genocide and what does this "inciting others" look like regarding the direct and public incitement of genocide?

The research observes no straightforward correlation between what a speaker thinks, their speech and criminal conduct of incitement. There are many dimensions, intermediaries and pathways towards "successful" incitement involving a complex interaction of individual, contextual and group levels of factors.

Importantly, our analysis, as guided by the Multi-Dimensional Knowledge Framework, leads us to observe that you cannot incite, without inciting others. To incite others, we observe individual, group and contextual factors that interact towards a sought outcome and an ideological end goal. Said end goal is not achievable and actionable without inciting others. Accordingly, we observe that inciting others is a necessary, but not a sufficient element of incitement.

Ideology and intent have been observed as critical within this complex interaction at both individual and group levels. Ideology is an individual-level phenomenon and also a group one. Individuals have a belief system, so do groups, these may or may not match. Individuals will have motivations for sharing and upholding their ideology and groups will too, again these may or may not match. It is necessary to understand an individual's ideology and ideological ends and that of their in-group, whether there is an individual as well as a shared group intent, do the ideological ends of an individual and their in-group match, is the individual (and indeed group) intent linked to ideological ends and specifically towards the crime of genocide or to the crime of inciting people to commit genocide, and how much group influence and control does a defendant have? These questions are all relevant to the *mens rea* of incitement to ascertain whether it is wholly individually attributable and to establish the perpetrator's influence. Perhaps the concept of ideological ends is of particular importance to the inchoate crime of direct and public incitement to genocide.

Another reflection can be made. Command responsibility, upon which Nahimana's upheld conviction of direct and public incitement to genocide rested, could be linked to group interactions. If command responsibility changes, does the audience just "switch" to their new "commander" and identify with their ideology? Whether the new command is a group or individual is also important to consider. Obviously in a military context, command responsibility is very different to the hierarchy context of *Nahimana*. Group identity, group engagement and group ideology are all important factors that warrant exploration regarding incitement and the understanding of intent and take-up when command changes.

Inciting others – challenges for *mens rea*

Our multi-disciplinary analyses point to the origin of incitement at an individual factor level. Of course, it could be argued that contextual factors influence an individual and initiate incitement via influence. However, we observe individual factors to be an essential starting point of a sequence of critical interactions of individual, group and contextual factors towards a criminal "act" of incitement. The Multi-Dimensional Knowledge Framework guides our observation that individual factors and *mens rea* are necessary conditions for any contextual influence to be successful. We therefore consider *mens rea* as a starting point of incitement.

The Multi-Dimensional Knowledge Framework leads us to observe that in order to encourage another person to commit genocide, in terms of *mens rea*, specific individually attributable intent is inextricably linked to context and content factors to achieve the incitement of others. For example, mis- and disinformation, capability and presentation of the hate speech link in the Multi-Dimensional Knowledge Framework with individual factors and intent. It could even be argued that mis- and disinformation are distinguishable by intent.

The Multi-Dimensional Knowledge Framework also reflects the importance of groups in considering *mens rea*. If an individual defendant identifies with a group, then it is important to understand the relationship between that individual defendant and the group in terms of the nature of their interaction with that group and its consequent effect on the individual defendant's behaviour (that is to say on the *actus reus* of their crime). We also observe that the purposeful incitement of other members of an in-group, that is to say those with a shared ideology / those who identify with a shared ideology, seems to be another necessary element of incitement as a criminal act. Inciting strategies have emerged from our analysis as key links in a pathway of criminal incitement that begins with *mens rea.*

Inciting others – challenges for *actus reus*

The Multi-Dimensional Knowledge Framework has enabled an expanded exploration about the content of incitement, and we have observed the importance of individual and group factor association. These interactions and nuanced differences demand exploration, for example between whether the spoken word mirrors an individual's ideology or that of their group, or indeed both. In other words, we cannot assume that *mens rea* simply guides *actus reus* in the crime of incitement.

The Multi-Dimensional Knowledge Framework understanding of the content of all speeches brings in levels of group-based rhetoric, dehumanising content, threat construction, calls to violence, disinformation, revenge talk and biased solutions in its analysis. We notice from the comparative case analysis that it is important to understand whether one's own ideology is, for example, dehumanising, and to understand whether content mirrors ideology.

In terms of contextual factors, status is observed to be of particular importance within incitement but there is a distinction between contextual and individual status – *actus reus* being associated with contextual status. The Multi-Dimensional Knowledge Framework guides the unpacking of what "status" means at an individual, group and contextual level. Importantly, in the *Media* case, whilst all four defendants were evidenced to view themselves as leaders at an individual level and indeed group level, without contextual social power and dominance, defendants were evidenced to have less group influence and control. Both Nahimana and Ngeze were the two defendants convicted of direct and public incitement to genocide and both cases evidenced individually and collectively attributable contextual power and influence.

In regard to direct and public incitement of genocide, the contextual communication level, specifically information spread and reach provides insight as to whether a speech is "public" and "direct" and suggests an association between ideology, status and intent at a group level and at an individual level. To achieve an end goal, an individual needs to incite others who identify with a shared ideology. This is especially interesting when considering the crime of direct and public incitement of genocide which is an inchoate offence, so an audience do not need to have undertaken genocide. *Mens rea* and individual factors are especially critical in understanding and guiding analysis.

The Multi-Dimensional Knowledge Framework has enabled the observation of a critical combination of contextual, individual and group factors within incitement that exemplifies why it cannot be assumed that *mens rea* simply guides *actus reus* within the crime of incitement. An individual ideology with harmful ideological ends, an individually perceived status, group influence and control, a recognised position of authority and contextual influence / power / dominance over all of the relevant in-group are observed to be critical elements of incitement. These contextual, individual and group factors interact across *mens rea* and *actus reus.*

3. Does genocide have to occur – is it possible to have the contextual elements required for analysing the *mens rea* without the crime occurring? What would these be?

This question assumes that the Multi-Dimensional Knowledge Framework might be able to help us unravel the contextual elements leading to, but not reaching the threshold of genocide charges. Considering that the case selection was limited in the way that the genocide in those instances occurred, and was charged as such, the dataset did not allow for this exploration.

4. How does genocide occurring impact the *actus reus* and the contextual elements assessment in terms of direct incitement?

This question was specific to cases where genocide has occurred. Case selection involved cases where genocide occurred and was charged as such. This data limitation has not allowed us to assess further the nature of the inchoate crime and it has also not allowed us to draw more concrete conclusions regarding this question. The observation is that, because of genocide occurring, there was a stronger sense that some acts led to incitement of genocide.

5. Is the Multi-Dimensional Knowledge Framework illuminating additional elements for consideration when trying to understand hate speech within the context of ICL?

Please see the added value of the Multi-Dimensional Knowledge Framework, which should be read together with our research limitations. Unexplored areas include:

- Audience vis-à-vis speaker interaction
- A deep dive into individual-level factors
- Understanding of the audience of incitement and pathway from an audience to message take-up.
- How the explored factors may contribute to a progressed framework of understanding of incitement.

9. Conclusion

This innovative and exploratory research has sought to explore what a Multi-Dimensional Knowledge Framework of incitement to genocide looks like. Our conclusions are summarised in Tables 8.6.1 and 8.6.2. The Multi-Dimensional Knowledge Framework has provided a deeper multidisciplinary understanding of hate speech within the context of ICL, incitement and of an inciter's criminal conduct, especially with regard to *mens rea*, group identification and influence and also the way that hate speech is proliferated. It has also highlighted the importance of understanding the relationship between an individual defendant, their ideology and their identification with a group and its effect on the individual's behaviour (that is the *actus reus* of their crime). Incitement is by nature a group phenomenon and it is unsurprising that intra-group levels of factors permeate our findings. It shows the complexities and the need for further multidisciplinary understanding of hate speech in the field to be able to understand the link between acts, omission, liability and attribution.

Moreover, the framework also highlights:

- A wide range of contextual / content level dimensions
- The complexity of the relationship between a "speaker" and "listener" (and vice-versa)
- The need to further understand how a message reaches the audience[55]
- To progress understanding of whether there is always a mirrored relationship between a speaker and the content of incitement
  - Having looked at both the individual and the collective level, our framework indicates that words may not necessarily reflect one's intent or ideology
- The reflection of ideology in spoken content
- The importance of intra-group factors in analysis
- Speech / harm / content: a wide range of content dimensions of speech including both dis- and misinformation, presentation of the message, presentation of biased solutions and threat construction
- The need for a more psychologically informed perspective and the expansion of necessary contextual and content elements and their integration with individual-level factors to expand the analysis of crime and liability attribution.

The research's additional contributions to ICL include the following outputs:

- The Analytical Framework, shaped by contemporary, multidisciplinary knowledge offers a comprehensive cross-discipline study of factors relevant to hate speech, mapping out 113 related items, grouped under five levels and 34 factors
  - Interesting novel dimensions including a broad array of individual-level factors, an intra-group level of dimensions and a level of communication and media context that explores the complexity of information spread
- The Definitional Table breaks down legal elements concerning hate speech related acts and maps out various crimes / liability considerations and potential discrepancies
- Literature review
- New observations to guide future multidisciplinary scholarship

The authors' intention is to present these findings in a simple and readable format. All the outputs are a starting point and further research can build on them and their utility can be developed in future research (see the below Future Steps). Continued multidisciplinary scholarship and knowledge is

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[55] Including how the audience responds, which is beyond the scope of this research.

critical to advance the study of hate speech within the context of ICL and help better situate the role of ICL in the prevention of, and accountability for, international crimes.

What is the Multi-Dimensional Knowledge Framework?

The current Multi-Dimensional Knowledge Framework is a limited prototype of incitement to genocide. It is limited as this exploratory project set out various limitations, including case evidence. The framework however has the potential to be built upon and to become a cross-disciplinary frame of reference that assists areas of law that require further or complementary knowledge to deepen understanding of this specific subject. It hopes to be flexible and scalable and relevant to a wide audience interested in advancing the understanding of hate speech and hate speech within the context of ICL.

We have begun to understand the utility of multidisciplinary knowledge in legal decision-making and have started a bigger conversation between multidisciplinary experts about how it could be better used.

10.   Recommended Future Steps

This multidisciplinary research project has deepened and furthered understanding of hate speech within the context of ICL.

The following suggestions have been formulated by the authors of the report and aim to advance the work on deepening understanding of hate speech within the context of ICL. We suggest that future research could replicate the current methodology with a wider sample of cases to develop the Multi-Dimensional Knowledge Framework. Future research could then apply a further developed version of the Multi-Dimensional Knowledge Framework to other crimes involving hate speech. To limit bias, we highlight the value of our thorough research plan. The importance of collaboration with experts involved in the current research is also paramount.

1.   Research question and methodology

We have highlighted the limitations of our exploratory research and propose a number of future avenues of exploration to address some of the identified bias. To break down the complexities of this project, the research question was tailored to allow for more practical exploration. The research question that has guided the current research was: **"What does a Multi-Dimensional Knowledge Framework of incitement to genocide look like?"**[56]

Recommendation 1: to anchor the research methodology and explore further, with a wider sample of cases or more complete case studies, direct and public incitement to genocide first, depending on the available resources and time limits.

2.   Multidisciplinary evidence

The analytical framework is a considerable starting point of multidisciplinary knowledge development. Many dimensions of the framework were congruent with legal decision-making, supporting their relevance. Items included within the Analytical Framework need verification via statistical methods to validate grouping decisions. More follow-up work can be undertaken.

Recommendation 2: to extend the literature review to include new research and other disciplines with contributions to make, particularly in communication, behavioural science and political science areas. A systemic review or similar structure would also strengthen the review methodology.

3.   Cases

In the end, two cases were analysed for the purposes of the final observations and comparative analysis. The source for the analyses was final trial and/or appeal judgments.

Recommendation 3: future research can replicate the methodology and extend the case sample to include a wider and more representative sample of global cases with different contexts, especially in geography, structures, societies, politics and also a range of crimes / modes of liability to enable comparison between cases. This could be merged with recommendation 4, to combine both recommendations and extend cases and evidence sources.

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[56] Focusing on the crime rather than modes of liability.

4. Evidence sources

The current research has used the appeal and trial judgment of the reviewed cases as evidence sources. This was a collaborative decision made following discussion with our experts. It provides boundaries to the analysis that enabled exploration within resource constraints and a clear basis that can be built upon, or indeed replicated. It also ensured that this exploratory research did not become a judge or jury and make decisions about the relevance of evidence before the court. It enabled the research to explore whether multidisciplinary evidence was used in legal decision-making, whether this corresponds with the dimensions of the formulated analysis matrix and what was common to cases according to the crimes that were charged. However, the methodology also creates limitations, especially in generalisability, as is readily acknowledged.

Recommendation 4: in order to robustly extend the research, it is suggested that the evidence sources are extended beyond trial and judgments to explore, understand and contrast the multidisciplinary evidence used in decision-making, the multidisciplinary evidence available to an international court but not used in legal decision-making and also wider multidisciplinary evidence that was not available to an international court.

Recommendation 5: to ensure that there is sufficient time available to read and digest judgments and discuss their meaning and evidence sources with a varied group of multidisciplinary experts.

5. Definitional table and PDIG

Bearing in mind our research question, the Definitional Table has been reworked in section 5 of the report. It guided our exploration of the crime of Public and Direct Incitement to Genocide.

Recommendation 6: with further careful analysis of the collected data for the Definitional Table, the data could be utilised to guide the exploration of other crimes (or modes of liability) involving hate speech. Further research might be needed here, as set out in the limitations.

6. Target audience

The target audience of the research was broad as the research is exploratory. The likely audience includes practitioners, scholars and researchers with the aim of advancing the cross-disciplinary exchange and thinking about the subject matter.

Recommendation 7: We suggest that future target audiences remain broad, and that the research makes the subject of hate speech in ICL much more accessible and relevant to a wider multidisciplinary audience. In particular, the research could make multidisciplinary understanding more accessible to a wider legal audience.

7. Other research avenues:

Together, these recommendations would provide considerable foundations for a number of further investigations, including:

- The development of a practical tool and resource for practitioners – a framework of understanding of hate speech and its dimensions to support legal practice and procedure.

- Understanding the patterns, relationships and dynamics between factors and whether they may be necessary or sufficient in the complex relationship of hate speech and atrocity crime.

- Foundations to guide research in focused areas of hate speech and ICL, notably in areas where we have made some key conclusions:

  - Information spread and communications – especially social media whose audiences are exponentially larger than the cases explored in the current research. Information spread and reach are likely critical elements in understanding the interactional effect of new technology in relationship to individual and group intent, ideology and status within incitement.

  - Hate speech, ICL/IHRL and Artificial Intelligence, and the likely relevance of multidisciplinary understanding.

  - Whether there is a mirrored relationship between a "speaker" and the content of incitement, considering the additional insights from individual, group and communication factors.

  - The role of groups and the interplay of individual and group factors in ICL. An example is omission / superior responsibility.

  - Exploration of the pathway towards atrocity crime and the likelihood of an inciter's words resulting in incitee(s) positively responding to their call and the steps in-between. The likely critical combination of factors that centre around the individual inciter and their context and the purposeful situation of their words is no doubt something that it is important to understand in the context of the preventative function of ICL.

Appendix One: Literature

Reference	Primary source discipline
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Appendix Two: Analytical Framework Higher Levels and Factors

Level	Factor
Individual level	**History**
	Ideology and beliefs
	Emotions
	Speaker identity
	Function / goal of derogatory language
	Intent / motivation
	Capability
Intra-group level	**Group conformity**
	Group identity
	Shared ideology and beliefs
	Victimhood
	Collective intent / motivation
Contextual level	**Status, personal influence and power**
	Societal conditions
	Historical conditions
	Structural conditions
	Political conditions
Content of hate speech	**Group focused rhetoric**
	Dehumanising discourse
	Guilt attribution
	Misinformation
	Disinformation
	Threat Construction
	Revenge and retribution
	Violence as a necessary response
	Virtue talk
	Future bias
	Presentation of message
	Politicalised content
	Presentation of biased solutions
Communication and media context	**Modality**
	Information spread
	Reach
	Instrumentality