

Responsible Education: Responsibility under International Law for Indoctrination to Hatred and Violence in Education Systems

States and other political entities often enshrine political narratives in their education systems. However, such practices can cross the threshold of legality and thus warrant imposition of responsibility under international law, when States use their education systems to systematically indoctrinate students by promoting an agenda of violence against their political rivals. This Note looks into such practices internationally. After defining the phenomenon of systematic indoctrination to hatred and violence, this Note will explore its implications for indoctrinated children and youth, to explain why young minds are especially susceptible to inculcation of perspectives and positions by their teachers. Using psychological evidence, this Note aims to articulate the causal effect between systematic indoctrination into hatred and violence in education systems and violations of international law during armed conflicts, during which there are higher probabilities that indoctrinated persons will be triggered to carry out the violent agenda they were taught to follow. The Note will first examine individual criminal liability under international criminal law for those behind such systematic indoctrination. This analysis will focus on modes of liability for systematic attempts to engender widespread violence. Then, this Note will analyze State responsibility under international humanitarian law, suggesting that systematic indoctrination to hatred and violence runs counter to States' fundamental duty to "ensure respect" for the Geneva Conventions. Essentially, by drawing attention to the causal relation between systematic indoctrination of hatred and violence and subsequent violations of international law by those who were indoctrinated, this Note sets out an argument for future imposition of international legal responsibility on State entities for vi-

lations committed by indoctrinated persons.

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INTRODUCTION

In a July 2018 resolution, the United Nations Security Council strongly condemned all violations of applicable international law involving the participation and use of children in armed conflicts, alongside recognition that such involvement impedes conflict resolution and sustainable peacebuilding.¹ The Security Council therefore urged that States must take active measures to mitigate the tolls that armed conflicts inflict on children.² It is imperative to shed light on

1. S.C. Res. 2427 (July 9, 2018).

2. *Id.*

educational practices aimed at encouraging children and youth to become involved in these hostilities, as these educational practices are instrumental to children later engaging in armed conflict.

Traditionally, most self-governing entities control and regulate the education systems operating within their respective jurisdictions, essentially controlling the knowledge and skills acquired by young generations, while conveying social norms and expectations.³ Parties to political conflicts, both States and governing non-State entities, inevitably enshrine narratives with respect to conflicts, often presenting their adversaries negatively.⁴ In some cases, education with respect to political conflicts involves indoctrination into hatred, dehumanization of adversaries, and incitement to violence and even to war, encouraged, for example, by glorification of acts of war and warriors.⁵ For example, consider educational methods employed by Iran aimed at teaching youth to sacrifice themselves in order to reach heaven by attacking Iraqi nationals.⁶ In Palestinian society, some of these messages are conveyed explicitly to children, for example through encouragement of martyrdom by promising both spiritual and financial rewards to those engaged in acts against the Zionist enemy.⁷ Another example of messages encouraging participation in war is the political and religious indoctrination aimed at recruitment of children and youth by rebel forces in south Thailand.⁸ Such in-

3. See FAZAL RIZVI & BOB LINGARD, *GLOBALIZING EDUCATION POLICY* 1–3 (2009).

4. See generally Herbert C. Kelman, *Social-Psychological Dimensions of International Conflicts*, in *PEACEMAKING IN INTERNATIONAL CONFLICT: METHODS AND TECHNIQUES* 61 (I.W. Zartman ed., 2007); Roy F. Baumeister & Stephen Hastings, *Distortions of Collective Memory: How Groups Flatter and Deceive Themselves*, in *COLLECTIVE MEMORY OF POLITICAL EVENTS: SOCIAL, PSYCHOLOGICAL PERSPECTIVE* 277 (James W. Pennebaker et al. eds., 1997); see also Yehudit Auerbach, *National Narratives in a Conflict of Identity*, in *BARRIERS TO PEACE IN THE ISRAELI-PALESTINIAN CONFLICT* 101–04 (Yaacov Bar-Siman-Tov ed., 2010).

5. See OMER BARTOV, *MIRRORS OF DESTRUCTION: WAR, GENOCIDE, AND MODERN IDENTITY* 9–14 (2000).

6. *Id.* See also ADAM LANKFORD, *HUMAN KILLING MACHINES: SYSTEMATIC INDOCTRINATION IN IRAN, NAZI GERMANY, AL QAEDA AND ABU GHRAIB* 104–07 (2009) (describing the methods employed by Iran to encourage participation in war). These methods are different than other patriotic methods employed in educational settings, such as singing the national anthem, and are less likely to be viewed as legitimate educational practices. *Id.*

7. See, e.g., Daphne Burdman, *Education, Indoctrination, and Incitement: Palestinian Children on Their Way to Martyrdom*, 15 *TERRORISM AND POL. VIOLENCE* 96, 99–105 (2003).

8. See *Child Soldier International, Thailand: Protect Children from Recruitment and Use by Armed Groups in the South*, *CHILD SOLDIERS INT’L* (Jan. 9, 2014), [https://www.child-](https://www.child-soldiers.org/)

citement can also involve implicit, but no less effective, violent messages conveyed to children. For example, indoctrination has been suggested to take place in Israeli education. Some argue that a consistent disregard for the rights of the Palestinian people combined with justifications for preserving a Jewish majority in order to secure a Jewish State “prepares Israeli youth to be good soldiers and to carry on practices of occupation in the Palestinian Occupied Territories.”⁹ This argument, essentially, refers to the psychological consequences and biases that may result from implicit derogatory messages against an adversary and that may lead to a willingness to participate in acts of violence and war against the adversary. In extreme cases, some education systems perpetuate war crimes,¹⁰ and even more extreme systems train children to effectively participate in hostilities.¹¹

Besides impeding the resolution of armed conflict, systematic indoctrination into hatred and violence through education has psy-

soldiers.org/News/press-release-thailand-protect-children-from-recruitment-and-use-by-armed-groups-in-the-south [https://perma.cc/BMA3-BU36].

9. Nurit Peled-Elhanan, *Legitimation of Massacres in Israeli School History Books*, 21 DISCOURSE & SOC’Y 377, 377 (2010).

10. For instance, the Palestinian Authority has been accused repeatedly of glorifying war criminals and perpetuating war crimes. See, e.g., *Violence and Terror*, PALESTINIAN MEDIA WATCH, <http://palwatch.org/main.aspx?fi=448> [https://perma.cc/6XSD-KTXB]; Hayah Goldlist-Eichler, *Report on PA Education System Shows Widespread Glorification of Terrorism*, JERUSALEM POST (July 22, 2015), <http://www.jpost.com/Arab-Israeli-Conflict/Report-on-PA-education-system-shows-widespread-glorification-of-terrorism-409753> [https://perma.cc/9WHB-BBL4].

11. See LANKFORD, *supra* note 6, at 92–95 (describing the case of Iran). ISIS also manifested such an education system. U.N. Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, Rule of Terror: Living under ISIS in Syria*, 10–11, U.N. Doc. A/HRC/27/CRP.3 (Nov. 19, 2014), <https://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/Documentation.aspx> [https://perma.cc/S93J-ZABW]. See Adam Withnall, *Inside the ‘School of Jihad’: Isis Militants Release Shocking Videos Showing What ‘Education’ Means for Boys in the Lands It Occupies*, INDEPENDENT (Oct. 23, 2014), <https://www.independent.co.uk/news/world/middle-east/inside-the-school-of-jihad-isis-militants-release-shocking-videos-showing-what-education-means-for-9813525.html> [https://perma.cc/UA39-DE2M]. Consider also the example of Hamas’s summer camps, which reportedly include quasi-military trainings. See, e.g., *Hamas Summer Camps in the Gaza Strip Integrate Social Activities with Political and Islamic Indoctrination and Semi-Military Training*, MEIR AMIT INTELLIGENCE & TERRORISM INFO. CTR. (Aug. 17, 2009), <http://www.terrorism-info.org.il/en/18233/> [https://perma.cc/JC8H-3Q2U]. See also William Booth, *Here’s What a Hamas Training Camp for Teens Looks Like*, WASH. POST (Jan. 29, 2015), https://www.washingtonpost.com/world/heres-what-a-hamas-training-camp-for-teens-looks-like/2015/01/29/ef0b4092-a33f-11e4-9f89-561284a573f8_story.html?noredirect=on&utm_term=.a0ef84c87163 [https://perma.cc/6XDC-SUBJ].

chological impacts that could motivate children to become involved in hostilities and even to commit war crimes, whether at a young age or later as adults. Through a discussion of children's and adolescents' susceptibility to indoctrination, this Note aims to articulate the causal effect between systematic indoctrination into hatred and violence in education systems and violations of international law during armed conflicts. This Note also aims to illustrate how States and non-State organizations abuse education systems under their control for the purpose of advancing their political interests, arguing they should incur responsibility for individual violations of international law committed as a consequence of their educational teachings. Ascribing such responsibility for violations committed during armed conflict by children and persons who have been indoctrinated as children becomes even more relevant alongside the growing recognition that these children should bear minimal criminal responsibility for their actions during armed conflicts.¹² In particular, this Note will analyze the applicability of international criminal law and international humanitarian law to systematic indoctrination into violence. Starting with an explanation of the concept of indoctrination, Part I will present the phenomenon of systematic indoctrination into violence and hatred through education systems. Part II will present psychological explanations for children's and adolescents' susceptibility to education and thus to indoctrination. It will further attempt to articulate psychological implications of such systematic indoctrination of children, completing the theoretical framework for the ensuing legal analysis.

Parts III and IV will present two arguments for imputing responsibility for indoctrination into hatred and violence under international law. First, the Note will discuss individual criminal responsibility. Part III will address modes of criminal liability, analyzing doctrines under international criminal law in order to determine whether psychological evidence may substantiate the conclusion that indoctrination is sufficient to impose criminal liability on those behind the indoctrination itself. Part IV will discuss State responsibility for indoctrination occurring either in formal public education systems or in private educational institutions. It will suggest that practices of indoctrination into hatred and violence may constitute a breach of the duty to ensure respect for international humanitarian law. A comprehensive analysis of State responsibility for indoctrination under inter-

12. *See, e.g.*, S.C. Res. 2427 ¶ 21 (July 9, 2018) (urging States to consider neither prosecuting nor detaining children for their activities with armed forces, but rather to focus on their rehabilitation and reintegration into society).

national law would have addressed international human rights law as well, yet the scope of such analysis warrants separate research that goes beyond the context of armed conflict and is thus beyond the scope of this Note.¹³

I. INDOCTRINATION AND EDUCATION

A. Defining the Concept of Indoctrination

The definition of “indoctrination” is subject to prolonged academic discourse.¹⁴ As this Note does not purport to definitively define indoctrination, the following discussion is aimed merely to define the phenomenon for the purpose of the following legal analysis.

The Oxford English Dictionary defines the verb “indoctrinate” as “to imbue with learning, to teach; to instruct in a subject, principle, etc.; to imbue with a doctrine, idea or opinion; to bring into knowledge of something.”¹⁵ Hence, the most basic definition refers to a form of teaching or instruction of another person. Although the term’s denotation is neutral,¹⁶ the academic discourse raises ques-

13. For an analysis of potential violations of international human rights law (“IHRL”), see *infra* notes 132, 133, and 139 and accompanying text. The text referred to discusses the crime of persecution, of which one required element is a violation of fundamental human rights. This is neither a comprehensive nor a sufficient analysis of potential violations of IHRL in cases of indoctrination to hatred and violence but rather a small glimpse into possible violations that can be analyzed in these cases. An argument under IHRL can also address States’ obligation to protect individuals’ rights in the sense that they are required to exercise due diligence to prevent human rights violations by private persons within their respective jurisdictions. Thus, it can also be argued that States have responsibility under IHRL to prevent systematic indoctrination by non-State actors. See G.A. Res. 2200(XXI)A, International Covenant on Civil and Political Rights art. 2 (Dec. 16, 1966) [hereinafter ICCPR]. See also U.N. Human Rights Comm’n, General Comment no. 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) (analyzing States’ duty to ensure respect for human rights). More particularly, the Inter-American Court of Human Rights applied this obligation and established that States should exercise due diligence to prevent human rights violations in their jurisdiction. *Velásquez Rodríguez v. Honduras, Compensatory Damages*, Inter-Am. Ct. H.R. (ser. C) No. 4 (Aug. 17, 1990).

14. I.A. SNOOK, INDOCTRINATION AND EDUCATION I (1972).

15. *Indoctrination*, OXFORD ENGLISH DICTIONARY (2018), <http://www.oed.com/view/Entry/94678?>. For a more extensive analysis of different dictionary definitions of indoctrination, see Brian S. Crittenden, *Indoctrination as Mis-Education*, in CONCEPTS OF INDOCTRINATION: PHILOSOPHICAL ESSAYS 131, 144 (I.A. Snook ed., 1972).

16. See Crittenden, *supra* note 15, at 144.

tions about the morality of indoctrination due to the term's often negative or pejorative connotation.¹⁷ Generally, indoctrination is referred to as the inculcation of information for purposes other than merely providing knowledge.¹⁸ Scholars are divided about the circumstances in which indoctrination actually takes place.¹⁹

According to I.A. Snook, articulating a broad definition for indoctrination,²⁰ the intention of the indoctrinator is the only necessary and sufficient criterion for identifying indoctrination: "a person indoctrinates a proposition or a set of propositions if he *teaches* with the *intention* that the pupil *believe* it *regardless of the evidence*."²¹ Accordingly, Snook defines indoctrination as a form of teaching, stating that a person indoctrinates only if "he teaches."²² While the narrow concept of teaching refers to formal education, Snook stresses that teaching, for the purpose of defining indoctrination, should be construed as "any intentional attempt to foster learning" through the employment of teaching techniques over a period of time in the context of a special relationship in which the teacher has some degree of authority.²³

17. See SNOOK, *supra* note 14, at 3–4.

18. See J.P. White, *Indoctrination and Intentions*, in CONCEPTS OF INDOCTRINATION: PHILOSOPHICAL ESSAYS 117, 119 (I.A. Snook ed., 1972). See also Tasos Kazepides, *Religious Indoctrination and Freedom*, in FREEDOM AND INDOCTRINATION IN EDUCATION 5, 6–7 (Ben Spiecker & Roger Straughan eds., 1991).

19. The debate revolves around four criteria to define indoctrination. One suggestion is to regard indoctrination as a *method* of teaching employed for the purpose of "brainwashing." See Antony Flew, *Indoctrination and Doctrines*, in CONCEPTS OF INDOCTRINATION: PHILOSOPHICAL ESSAYS 67, 67–68 (I.A. Snook ed., 1972). The second suggested criterion addresses the *content* being taught—i.e., indoctrination can take place only when the content includes doctrines, such as religious beliefs, politics, history, and morals. See Antony Flew, *Indoctrination and Religion*, in CONCEPTS OF INDOCTRINATION: PHILOSOPHICAL ESSAYS, 106–116 (I.A. Snook ed., 1972); see also SNOOK, *supra* note 14, at 28–30. Another criterion addresses the *recipient*, suggesting that a person is indoctrinated when he does not hold his beliefs based on evidence or reason. See *id.* at 38–39. The last criterion raised in the academic discourse addresses the indoctrinator's *intentions* to inculcate unshakeable beliefs. See White, *supra* note 18, at 119; see also SNOOK, *supra* note 14, at 46.

20. Most scholars argue either for the content criterion or for an intent-based determination. Scholars arguing for intent as the necessary and sufficient criterion also place some restriction on content, opining that only beliefs can be indoctrinated, as opposed to skills or behavior. See SNOOK, *supra* note 14, at 2.

21. *Id.* at 47 (emphasis added).

22. *Id.*

23. See *id.* at 49. For discussion of the subjective element of "intention," see, e.g., Crittenden, *supra* note 15, at 131–32. Crittenden further echoes this mental condition to

Snook's elegant definition seems the most appropriate for the legal analysis in this Note. First, its simplicity in comparison to other definitions²⁴ makes it easy to apply in different contexts. It also effectively encompasses the phenomenon addressed in this Note—i.e., an intentional fostering of certain beliefs through education systems, including informal systems, in which authoritative figures impart their beliefs to their students. In addition, the irrelevance of the motives and purposes for such intended practice under Snook's definition is crucial to ascribe legal responsibility, as it sets a clear and less-debatable definition of indoctrination.²⁵ Furthermore, this broad definition allows it to address systematic indoctrination, as it is not limited to a pre-determined set of methods or contents. It is focused on the intention of the indoctrinator to impart certain beliefs, an aim that can be furthered by different methods of conduct that do not always fit into narrower definitions.²⁶ Moreover, Snook's definition excludes other concepts that are beyond the scope of this Note. Snook considers the inculcation of skills and behavior as conditioning and not as indoctrination, because conditioning neither addresses the cognitive process nor involves logical reasoning to the same extent as the inculcation of informational knowledge.²⁷ Therefore, for instance, training of youth to participate directly in an armed conflict falls outside this definition of indoctrination, because it involves teaching of skills and behavior rather than propositions.²⁸ It will be

define the act of teaching: the agent—i.e., the teacher—must be aware of the nature of his actions as teaching. In other words, it requires “engaging and influencing the mental efforts of another person so that a relatively enduring change is effected in what or how the latter thinks or acts or in the attitudes he takes.” *Id.*

24. *Cf., e.g.,* David Copp, *Moral Education Versus Indoctrination*, 14 THEORY AND RES. IN EDUC. 149, 154 (2016).

25. For example, other definitions exclude positive motives for indoctrination. Such definitions lead to confusion and leave room for relativist arguments debating what should be regarded as a positive motive. In political contexts, such debate could give rise to questions about whether a rebellion to gain independence could justify indoctrination. It thus could undermine the imposition of legal responsibility across different cultures or opposing political positions, such as responsibility imposed under international law. *See generally* Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 HUM. RTS. Q. 400 (1984).

26. Such definitions would leave out glorification of war or martyrdom, for instance, or other sub-textual beliefs and contents, which are not defined doctrines or specific methods.

27. *See* SNOOK, *supra* note 14, at 104–06.

28. *Id.* Although practices of training youth to participate in hostilities might be aimed to influence, among other things, their mental state so as to enable them to voluntarily risk themselves, these practices are governed by other bodies of international law, such as prohibitions aimed at eradicating participation of children in armed conflict. *See* Elijah

helpful to break down Snook's definition and address each of its elements.

To better articulate the element of authoritative relationship required for indoctrination, Snook compares indoctrination to propaganda.²⁹ At first glimpse, Snook alleges, there is a great deal of similarity between these concepts, as they are both about methods used to influence the audience's state of mind and beliefs through dissemination of non-rational propositions.³⁰ Yet, indoctrination is a particular form of propaganda that necessarily takes place in an educational setting, in which an authoritative figure takes advantage of their privileged role to inculcate certain beliefs.³¹ While a public figure might attempt to incite the masses through propaganda, he usually does not rely on personal attachment by members of his audience to imbue his messages. In contrast, the indoctrinator relies substantially on the personal attachment to and dependence of his students in order to influence their beliefs. It is a student's trust in a teacher that allows the teacher to inculcate an agenda and beliefs by presenting it as the truth. The subjective element of the definition, requiring a specific intention, warrants further clarification.

To confront the inevitable difficulty in proving one's intentions, Snook also includes, under his definition of "intention," outcomes that are foreseen as likely.³² He explains that a teacher also indoctrinates when he teaches his students with the foresight that they would believe what he is teaching regardless of evidence.³³ It should be noted that purpose is irrelevant under this definition; a "good" motive—for example, to instill certain myths to provide a sense of security—can still be regarded as indoctrination.³⁴ In the same vein,

Oluwatoyin Okebukola, *Training Children for Armed Conflict—Where Does the Law Stand?*, 14 INT'L CRIM. L. REV. 588, 598–609 (2014). Insofar as training is not aimed merely to teach children skills but to also inculcate beliefs in certain propositions, such that hostilities against a certain entity are warranted and should be advanced, Snook's definition would apply.

29. SNOOK, *supra* note 14, at 106–07.

30. *Id.*

31. *Id.*

32. *Id.* at 50.

33. *Id.*

34. *Id.* at 61–62. R.F. Atkinson further elaborates on this point, arguing that even where the ultimate aims are knowledge and intelligent practice, it seems inevitable that some educational recourse will have to be based on non-rational teaching methods. These methods are sometimes necessary to impart information and techniques beyond the recipients' current ability to fully comprehend. Moreover, not everyone can have a full

Snook negates another counterargument, based on cultural relativism, made against his definition.³⁵ According to this counterargument, there are societies in which some controversial propositions are not questionable.³⁶ Hence, teachers in such societies cannot be regarded as indoctrinators, even though they are in fact teaching their students to believe these propositions despite existing contradicting evidence, because they believe these propositions to be true and substantiated.³⁷ Thus, it seems they do not meet the subjective, intentional element of Snook's definition.³⁸ However, as Snook argues, these teachers nonetheless intend their pupils to hold certain beliefs regardless of evidence, even though they might be unaware of what opposing evidence could suggest, because they do not teach students to seek, nor do they present, contradictory evidence or critical analysis.³⁹ In other words, when a teacher inculcates beliefs he views as certain, knowing they are disputed in other places, he foresees that his students are likely to believe them despite the fact the evidence is inconclusive.⁴⁰

Snook's rejection of cultural relativist arguments also addresses the last requirement under his definition, embedded in the phrase "regardless of the evidence," which he views as the key to differentiating between an indoctrinator and an educator.⁴¹ Evidence should be understood in the broader sense, as including logic and reasoning to a conclusion.⁴² To Snook, while the educator is primarily concerned with teaching "methods of assessing data, standards of accuracy, and validity of reasoning," the indoctrinator is mostly concerned with the answers and beliefs his pupils walk away with.⁴³ To

grasp of all the information and techniques that are put into use. Nevertheless, such good motives can be regarded as indoctrination, yet it does not mean it is unnecessary or less warranted. R.F. Atkinson, *Indoctrination and Moral Education*, in *CONCEPTS OF INDOCTRINATION: PHILOSOPHICAL ESSAYS* 55, 57 (I.A. Snook ed., 1972).

35. Cultural relativism refers to the proposition that culture is the source of the validity of a moral right or rule. Thus, cultural differences can explain differences of moral standards between societies, implying that cross-cultural moral judgment should accordingly be restrained and cautious. *See generally* Donnelly, *supra* note 25.

36. *See* SNOOK, *supra* note 14, at 52.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.* at 64–65. This point is significant to negate arguments against imposition of responsibility under international law for indoctrination based on cultural relativism.

41. *Id.* at 55–56.

42. *Id.* at 58–59.

43. *Id.* at 55–56.

the latter, evidence, logic, and proof are of secondary importance; they are instrumental to further an indoctrinator's aim.⁴⁴ That is the reason, according to Snook, why we associate indoctrination with ideology: the acceptance of ideology is essentially the desired result of indoctrination, as opposed to the acceptance of a reasoned conclusion drawn from evidence, which is the desired result of normal education.⁴⁵

Lastly, it should be noted that, to Snook, indoctrination is a neutral concept when discussed out of context. To illustrate that point, Snook compares it to the concept of brain-washing.⁴⁶ Brain-washing involves any method that can be employed to change a person's pattern of thinking or feeling, including conditioning, distortions, enforced isolation, drugs, etc. Indoctrination can be employed to further brain-washing, yet the key difference is the explicit and necessarily malicious intention of brain-washing, whereas indoctrination does not require such an intention.⁴⁷ Also, indoctrination does not normally involve brain-washing techniques, especially when employed on children, as it effectively influences them, rendering extreme measures associated with brain-washing redundant.⁴⁸

To conclude this part, indoctrination, for the purposes of this Note, is defined as teaching with the intention of instilling certain beliefs and propositions among pupils, by disregarding evidence, reasoning, and logic in the teaching process.

B. Systematic Indoctrination to Violence and Hatred

It is common for children to be taught to embrace different propositions and beliefs about the world and about what is right or wrong without receiving a full explanation and reasoning. Many of us were introduced to information during our childhood that was not necessarily substantiated by facts or reason. In other words, many of us have been indoctrinated. Nonetheless, by and large, in the natural course of events, ordinary people do not engage in hate crimes against innocent populations. However, when people undergo systematic indoctrination at the hands of an organization with violent intentions, the ethical and social restraints that would have prevented

44. *Id.*

45. *Id.*

46. *Id.* at 108.

47. *Id.*

48. *Id.*

others from carrying out the organization's agenda seem to be absent.⁴⁹

The question, then, is at what point do children become perpetrators?⁵⁰ Naturally, there is no single process or system to which we could attribute the criminal activity of every particular individual.⁵¹ However, in cases where perceptions and concepts were disseminated by a particular system, which is a common ground for multiple perpetrators carrying out crimes based on the same ideas, it could be asserted that such a system has played a role in encouraging these actions.⁵² This Note will argue throughout that those who advance systematic indoctrination into hatred and violence are in fact responsible for violations of applicable international law in armed conflicts committed by indoctrinated persons.

A classic and well-documented example of such indoctrination took place in Germany during World War II, when German children underwent systematic indoctrination as students in the formal education system and as members of the Nazi youth organization, known as the Hitler Youth.⁵³ In both spheres, children were exposed to extensive lessons that were focused on hatred against the Jewish population, portraying the Jewish people as an evil that should be

49. See LANKFORD, *supra* note 6, at 4.

50. *Id.* at 5. According to Waller's comprehensive analysis, the blame for hate crimes lies in a great range of factors, including desire for social dominance, cultural belief systems, moral disengagement, rational self-interest, us-them thinking, and dehumanization of the victims. JAMES WALLER, *BECOMING EVIL: HOW ORDINARY PEOPLE COMMIT GENOCIDE AND MASS KILLINGS* (2007). These factors are significantly advanced by systematic indoctrination to hatred and violence. LANKFORD, *supra* note 6, at 5.

51. See, e.g., REID GRIFFITH FONTAINE, *THE MIND OF THE CRIMINAL: THE ROLE OF DEVELOPMENTAL SOCIAL COGNITION IN CRIMINAL DEFENSE LAW* 46 (2012).

52. See LANKFORD, *supra* note 6, at 7. See, for example, the connection between hate speech and mass atrocities, as demonstrated by the comprehensive historical analysis in GREGORY S. GORDON, *ATROCITY SPEECH LAW: FOUNDATION, FRAGMENTATION, FRUITION* 29–60 (2017). Gordon connects the Armenian genocide and the Ottoman hate speech campaign. He also breaks down the hate-speech elements of Nazi propaganda that have significantly influenced the general public. In addition, he connects the Bosnian Serb hate speech and atrocities that took place in the Balkan area throughout the 1990s and refers to hate speech that preceded the genocide in Rwanda. *Id.*

53. See, e.g., AARON M. MILLER, *THE DUALITY OF THE HITLER YOUTH: IDEOLOGICAL INDOCTRINATION AND PRE-MILITARY EDUCATION* 16–23 (2017). The most promising and loyal members of the Hitler Youth became candidates to join the Schutzstaffel (the "SS"), while others identified with leadership abilities were sent to special academies run by the Hitler Youth to train future military officers. Margaret Eastwood, *Lessons in Hatred: The Indoctrination and Education of Germany's Youth*, 15 INT'L J. HUM. RTS. 1291, 1293 (2011).

eradicated.⁵⁴ They were indoctrinated to hate Jewish people based on racial differences.⁵⁵ The outcomes of the extensive Nazi indoctrination were evidently formidable. First, German children expressed deeply absorbed racial hatred at that time.⁵⁶ Data collected from 1996–2006 among German natives who were subjected to the Nazi indoctrination as children indicate the depth and instinctive nature of their bias against groups that were considered as non-Aryan.⁵⁷ In addition, the extensive voluntary enlistment of Hitler Youth members to the German forces provided evidence of the effectiveness of Nazi indoctrination, turning “youth into an army of ruthless, brainwashed killers.”⁵⁸

Modern examples of systematic indoctrination engendering the commission or participation in the commission of unlawful acts of violence can be found in various States and non-State governing organizations involved in some form of political conflict.⁵⁹ Essentially, these examples illustrate the employment of different strategies, including the utilization of education system as a platform to instill hatred, especially through dehumanization of their political opponents,⁶⁰ through dissemination of the idea that violence is neces-

54. See *id.* at 1293–1300.

55. For instance, a cover of a children’s book titled *Don’t Trust the Fox in the Green Meadow nor the Jew in His Oath* depicted a stereotypical sketch of a Jewish person, with a bulky head, a large hooked nose, and an equally sly looking fox. The book starts with a brief history of the evil origins of Jewry, and the pictures compare the marked differences between Jews and Aryans, suggesting Jewish people are inferior. *Id.* at 1296–98. Such content, in addition to dehumanizing Jewish people by comparing them to animals, indoctrinated children to attribute negative characteristics to members of a certain group based on such membership, and provided reasons why they should be acted against. *Id.*

56. As indicated, for example, by letters children sent to anti-Semitic newspapers expressing their view of Jewish people as enemies that should be defeated. *Id.* at 1299.

57. See, e.g., Nico Voigtländer & Hans-Joachim Voth, *Nazi Indoctrination and Anti-Semitic Beliefs in Germany*, 112 PROC. NAT’L ACAD. SCI. 7931 (2015).

58. See Eastwood, *supra* note 53, at 1292–93.

59. See LANKFORD, *supra* note 6, at 65, 87 (examples of Iran and Al-Qaeda). Another modern example is the Israeli-Palestinian conflict, as both parties have been accused of using their educational systems to indoctrinate political narratives, hatred, and violent approaches towards the conflict. See Eastwood, *supra* note 53, at 1301–04 (providing an overview of relevant scholarship). Moreover, even countries considered by Western nations to be allies (based in part on their involvement in counterterrorism operations alongside the U.S.) systematically indoctrinate young generations to hate the Western world as enemies aiming to dominate the world. *Saudi Arabia’s Troubling Educational Curriculum: Hearing before the Subcomm. on Terrorism, Nonproliferation, and Trade of the Committee on Foreign Affairs*, 115th Cong. 1–5, 18–20 (2017).

sary to realize self-interests⁶¹ and the encouragement of martyrdom.⁶²

One could validly argued that according to the definition provided above, teaching political narratives might amount to systematic indoctrination, as it may include biased presentation of historical events for the purpose of inculcating the narrative that the government wishes would be told, despite possible contradictory evidence.⁶³ While it can be argued, then, that there is not much difference between systematic indoctrination into hatred against political opponents and teaching young generations about political narratives of armed resistance, the latter falls outside the scope of this Note. Even though inculcating young people into political narratives can constitute indoctrination that might be detrimental to the resolution of conflicts,⁶⁴ this Note addresses the specific case of systematic indoctrination into hatred and violence, aimed to engender the commission of violations of international law in the context of armed conflicts, in order to focus the discussion on the causal link between clear-cut cases of indoctrination and subsequent actions committed by those who have been indoctrinated.

60. Dehumanization is a strong method to inculcate hatred, as it detaches human instincts of empathy and sentiments towards other humans. See LANKFORD, *supra* note 6, at 25–27. See the example of Iran. *Id.* at 106.

61. For example, by glorifying war and terrorism as necessary means to realize political goals. See the example of Afghan education in C. E. Sluzki, *Seeding Violence in the Minds of Children*, 72 AM. J. ORTHOPSYCHIATRY 3 (2002). See generally Lia Brynjar, *Doctrines for Jihadi Terrorist Training*, 20 TERRORISM & POL. VIOLENCE 518, 523, 535, 537 (2008) (discussing the role of indoctrination to violence in preparation for participation in war or terrorism).

62. Glorification of martyrdom is reported to be a common practice in Palestinian education, effectively encouraging the commission of terrorist acts, as indicated by the reasoning that terrorists and their families provide for their actions. See, e.g., Burdman, *supra* note 7, at 97–105. See also Itamar Marcus, Nan Jacques Zilberdik & Alona Burger, *Palestinian Authority Education: A Recipe for Hate and Terror*, PALESTINIAN MEDIA WATCH (June 12, 2015), <http://palwatch.org/storage/special%20reports/PMW%20Comprehensive%20Report%20on%20PA%20Education%20July%202015.pdf> [https://perma.cc/EA2H-LRQD].

63. See examples of inculcation of political narratives in educational contexts in Sami Adwan, Daniel Bar-Tal & Bruce E. Wexler, *Portrayal of the Other in Palestinian and Israeli Schoolbooks: A Comparative Study*, POL. PSYCHOL. 201 (2016).

64. *Id.* at 213 (exemplifying how detrimental political indoctrination is in the context of the Israeli-Palestinian conflict).

II. SUSCEPTIBILITY OF CHILDREN AND ADOLESCENTS TO INDOCTRINATION: PSYCHOLOGICAL EXPLANATIONS

According to Snook, indoctrination mainly involves children and youth as victims, unless special psychological methods against adults are employed during a teaching process.⁶⁵ Expressing a common view of the impressionable nature of young minds, Snook argues that merely teaching children—as opposed to employing techniques that are more aggressive, like brain-washing—greatly influences their inner world and, thus, suffices to steer their intentions and motivations in the direction of the proposed ideology. One key question to ask in relation to the indoctrination of children specifically is: why are children and adolescents particularly susceptible to indoctrination and in what ways might it affect them? The purpose of this Part is to provide psychological evidence for the causality between indoctrination and future behavior of its recipients and not to lay out a comprehensive analysis about psychological effects indoctrination might have on children. The first section will present the theory of moral development,⁶⁶ explaining how individuals' abilities to analyze and morally react to different social stimuli developed during childhood can be affected by education. The second section will apply this framework to systematic indoctrination to hatred and violence.

A. Moral Development and Indoctrination

Based on the work of Jean Piaget,⁶⁷ a psychologist who developed an influential theory of cognitive development, American psychologist Lawrence Kohlberg developed an interdisciplinary cognitive-developmental⁶⁸ approach to moral judgment. Mainly, Kohlberg built upon Piaget's idea that morality is not relative to culture

65. SNOOK, *supra* note 14, at 49.

66. See generally LAWRENCE KOHLBERG, *THE PSYCHOLOGY OF MORAL DEVELOPMENT: ESSAYS ON MORAL DEVELOPMENT* (1984).

67. See JEAN PIAGET, *THE MORAL JUDGMENT OF CHILDREN* (1932).

68. Cognitive theories discuss the “representational or coding process intervening between stimulus and response” applicable to a variety of stimuli and may elicit a variety of responses, also depending on “non-cognitive” motivational and situational factors. KOHLBERG, *supra* note 66, at 7–8. For example, self-confidence can be a non-cognitive factor. See Lazar Stankov, Suzanne Morony & Yim Ping Lee, *Confidence: The Best Non-Cognitive Predictor of Academic Achievement?*, 34 *EDUC. PSYCHOL.* 9–28 (2014).

but rather a cognitive process.⁶⁹ Fundamentally, Piaget posits that generally recognized conceptions and sentiments of justice, originating mostly in conceptions of reciprocity and equality, are cognitively developed responses to social stimuli instead of concepts that are internalized by populations in each society.⁷⁰ Although Kohlberg's revolutionary moral development theory was subject to various critiques,⁷¹ his widely accepted propositions⁷² illustrate potential psychological implications of indoctrination and may help to understand the psychological context in which indoctrination takes place. Substantiating his ideas with data collected from diverse cultures, Kohlberg identified a qualitative, progressive sequence of capabilities necessary to exercise moral judgment, developed from childhood through time, during which morality is confronted by social challenges.⁷³

Kohlberg conceptualized the process of moral development, based on his empirical studies, in six abstract stages, defining the qualitative levels according to a rough age trend⁷⁴ and describing factors considered in each stage while making moral judgments, as well as motivations for actions in moral conflicts.⁷⁵ This process starts during young childhood.⁷⁶ In their moral judgment, young children legitimize the command of authority figures, such as parents or teachers, because of their size, power, or impressiveness.⁷⁷ This moral stage is characterized by obedience and actions motivated by or reasoned through avoidance of punishment.⁷⁸ Growing up, moti-

69. KOHLBERG, *supra* note 66, at 10.

70. *Id.* at 41.

71. See criticism about the universal applicability of Kohlberg's findings, expressed in John C. Gibbs et al., *Moral Judgment Development Across Cultures: Revisiting Kohlberg's Universality Claims*, 27 DEV. REV. 443–500 (2007).

72. JOHN C. GIBBS, MORAL DEVELOPMENT & REALITY: BEYOND THE THEORIES OF KOHLBERG AND HOFFMAN 81 (3d ed., 2014).

73. *Id.* at 83.

74. GIBBS, *supra* note 72, at 17.

75. KOHLBERG, *supra* note 66, at 42–55.

76. See description of moral stage number one. *Id.* at 52, tbl. 1.6.

77. GIBBS, *supra* note 72, at 19. Besides moral judgment, other fields of social cognition (understanding of self, others, social relations and situations, friendship, emotions, gender, death, etc.) also provide evidence of young children's vulnerability to the impressive and salient. *Id.* at 20.

78. KOHLBERG, *supra* note 66, at 60. For example, preschoolers, in contrast to older children, evaluate lies that will be punished more negatively than lies that will not. Intentions for lying are irrelevant in moral stage one's simplistic and inflexible moral

vations to act evolve into a desire for reward or benefit more than avoidance of punishment.⁷⁹ Older children and adolescents who attained the next stages present a less egocentric perspective; they are “decentered” in the sense they have less biased attentions and judgments.⁸⁰ Their moral value resides in performing a good or right role, in maintaining the conventional order and the expectations of others in accordance with the way one perceives what society would regard as just and expected. These stages are characterized by conformity with stereotypical conceptions of normality.⁸¹ Therefore, actions are motivated by anticipation of disapproval or dishonor of others, blame for failure of duty, and guilt over concrete harm done to others.⁸² Importantly, Kohlberg emphasizes that the trend of attaining successive stages at certain ages is universal and roughly the same in any culture.⁸³

Simply put, by and large, children and adolescents are motivated to act in ways they think will entitle them to the approval of authority figures, or at least in ways that they think would allow them to avoid punishment. This conclusion has been confirmed by various psychological studies, though they provide different reasons why children and adolescents are motivated by their need for approval and

judgment. GIBBS, *supra* note 72, at 19. In addition, moral judgment at this stage is egocentric in the sense that judgment is biased in favor of one’s own perspectives and needs over those of others. At this stage, children distortedly tend to assimilate others’ perspectives to their own. While this cognitive distortion may decline over time with attainment of higher moral stages, it does not disappear entirely. *Id.* at 23. The inability to differentiate between one’s own needs from the needs of others impedes the process of taking into account the negative externalities of an act that would otherwise satisfy one’s needs. Thus, delayed cognitive development essentially limits the ability to consider others’ needs, especially those contradicting one’s own.

79. See description of moral stage numbers three and four in KOHLBERG, *supra* note 66, at 52 tbl 1.6.

80. GIBBS, *supra* note 72, at 28.

81. See description of moral stages three and four in KOHLBERG, *supra* note 66, at 44 tbl. 1.6.

82. *Id.* at 52.

83. *Id.* at 43.

rewards.⁸⁴ For this reason, Kohlberg has argued that educators should refrain from explicitly sharing their views with pupils, in order for them to be able to explore and develop their own cognitive structure without resorting to adoption of their educator's perspective.⁸⁵ Thus, the indoctrination of children does not require special methods other than merely teaching.⁸⁶

84. Other psychological scholarship underscores different reasons for behavior aimed to obtain approval from authoritative figures. Accordingly, given children's dependency and the limits of their learned individual responsibility, security, love, and nurture inform their perception that the fulfillment of their physical needs by an authoritative adult is conditioned to approval of their actions, and, therefore, they tend to follow authority. DENISE WINN, *THE MANIPULATED MIND: BRAINWASHING, CONDITIONING, AND INDOCTRINATION* 82–94 (2000) (presenting an overview of psychological studies and theories arguing that emotional needs, rather than cognitive ability, is the cause for internalization of the content authority figures inculcate in children).

The approach of the behavioral studies field, as supported by neuroscientific research, suggests that adolescents are inclined to heightened reward-responsiveness, due to widespread neurobiological differences in the structural and functional development of different areas in the brains of adolescents compared to those of adults. Youths weigh costs and benefits differently than adults and apply different subjective values to the outcomes that affect their ultimate choices. A study of peoples' ability to delay gratification reports that adolescents more often opt for an immediate but smaller reward, whereas adults delay rewards unless the immediate value is only slightly discounted. Barry C. Feld, B.J. Casey & Yasmin L. Hurd, *Adolescent Competence and Culpability: Implications of Neuroscience for Juvenile Justice Administration*, in *A PRIMER ON CRIMINAL LAW AND NEUROSCIENCE: A CONTRIBUTION OF THE LAW AND NEUROSCIENCE PROJECT SUPPORTED BY THE MACARTHUR FOUNDATION* 179, 180, 188, 192–93 (Stephen J. Morse & Adina L. Roskies eds., 2013). From a neurobiological perspective, adolescents have a magnitude-based response with a significant enhancement in response to large rewards relative to small rewards that is exaggerated in comparison to adults. *Id.* The ability to make long-term advantageous choices regarding future consequences of decisions does not develop until very late adolescence/early adulthood. *Id.* Immediate reward-choice may underlie the bias of adolescent behavior toward immediate gratification. *Id.*

85. See, e.g., Ben Spiecker, *Indoctrination: The Suppression of Critical Dispositions*, in *FREEDOM AND INDOCTRINATION IN EDUCATION* 16–29, 22–24 (Ben Spiecker & Roger Straughan eds., 1991); see generally Moshe M. Blatt & Lawrence Kohlberg, *The Effects of Classroom Moral Discussion upon Children's Level of Moral Judgment*, 4 *J. MORAL EDUC.* 129–61 (1975). These conclusions have also been articulated in the international legal realm. For example, in a case discussing teachers' freedom of religion in school, the European Court of Human Rights ("ECtHR") has noted that "children tended to identify with their teacher, particularly on account of their daily contact and the hierarchical nature of their relationship." *Dahlab v. Switzerland*, App. No. 42393/98, 2001-V Eur. Ct. H.R. See generally an analysis of the ECtHR approach to indoctrination in Sylvie Langlaude, *Indoctrination, Secularism, Religious Liberty, and the ECHR*, 55 *INT'L & COMP. L.Q.* 929–44 (2006).

86. Lawrence Kohlberg, *The Cognitive-Developmental Approach to Moral Education*,

Indoctrination is also inadvisable, according to Kohlberg, because it can potentially halt moral development, which inhibits youth and young adults from reaching mature moral decision-making (“moral maturity”).⁸⁷ Kohlberg underscores the empirical correlation between higher stages of moral judgment and moral behavior.⁸⁸ He explains that moral maturity gives rise to distinctive ways of defining moral situations one faces and thus enables one to better handle moral conflicts.⁸⁹ For example, by correctly defining rights and duties arising in a moral conflict, as well as the emotions they arouse, moral maturity enables one to better comprehend the situation and how it affects the individual and others.⁹⁰ Thus, it also facilitates the identification of alternative courses of action while assessing how they might affect oneself and others.⁹¹ Therefore, moral maturity significantly contributes to a well-developed cognitive judgment of a situation by providing tools to better handle moral conflicts and potentially informing moral behavior.⁹²

The question is, then, what could hinder moral development? Kohlberg states that moral maturity does not result from internalized social norms in their explicit form.⁹³ Rather, reaching moral maturity is a cognitive process developed through attainment of moral devel-

56 PHI DELTA KAPPAN 670, 673–74 (1975).

87. KOHLBERG, *supra* note 66, at 257.

88. *Id.*

89. *Id.*

90. *Id.* at 71–72.

91. *Id.*

92. *Id.* at 261. Kohlberg explains the implications of his assertion through the massacre at My Lai. He asserts that individual American soldiers murdered non-combatant women and children neither because, according to their moral judgment, these actions were morally right nor because they suffered from some kind of pathological disorder. They participated in a group action taken on the basis of group norms: the army’s decision-making procedures. The soldiers’ decisions were dependent upon a collective assessment of the situation and of what should have been done about it. *Id.* at 263. Although it can be argued that other factors affected their choice not to deviate from the group’s behavior, a strong and mature moral sense would have equipped these soldiers with tools to handle this highly difficult situation and thus would have informed more deontic behavior. It should be emphasized that this example does not exemplify indoctrination in any way but only how social norms inform a group’s behavior, despite the moral charge and judgment each of its members could have had. Consider what differentiates soldiers and officers who chose not to follow instructions they viewed as departing from their own moral charge. See examples and discussion in Keith Petty, *A Duty to Disobey?*, JUST SEC. (Nov. 28, 2016), <https://www.justsecurity.org/34612/duty-disobey/> [<https://perma.cc/T8AP-7UF3>].

93. KOHLBERG, *supra* note 66, at 199.

opment stages, which depends, among other things, on effective social interactions during childhood. Moral development occurs when moral conflicts challenge the individual's moral structure, triggering a reflective reorganization arising from sensed contradictions in one's current structure.⁹⁴ When we are exposed to the moral reasoning of, say, an important authority figure that contradicts the content or structure of our own reasoning, we are encouraged to reflect on this contradiction and reorganize our moral structure in order to resolve it.⁹⁵ Development of moral structure can also occur when we face a decision arousing internal contradictions in our moral reasoning structure.⁹⁶ When children are taught to believe in a proposition regardless of the evidence, they are in effect prevented from taking into account others' viewpoints with respect to this proposition or from reflecting on the internal moral contradictions the proposition might arouse, since children are taught to believe the proposition despite having potentially contradictory evidence.⁹⁷ In other words, the cognitive ability to make moral judgments when induced with different stimuli is not developed with age in a biological sense.⁹⁸ Morality is instead constructed by processing the social perspectives of others through role-playing interactions in various contexts involving exchanges of perspectives with others.⁹⁹ Our internal sense of morality is constructed by confronting different social situations that expose us to the needs and perspectives of others, and it informs our ability to act and reason, thus shaping our actions in future moral conflicts.¹⁰⁰

It is therefore not surprising that in addition to engendering certain behaviors among children, indoctrination essentially undermines children's ability to take into account contradictory perspectives, which is key to moral development, according to Kohlberg.¹⁰¹ Hence, as will be explained further in the next section of this Note, by halting the process of moral development, indoctrination prevents

94. *Id.*

95. *Id.* at 202–03.

96. *Id.* Studies conducted by Kohlberg indicate that through exposure to reasoning of the next stage, there is movement towards this next stage.

97. See Kohlberg, *supra* note 86. Kohlberg established the increasing importance of contemplative (or hypothetical-deductive) reflection in moral judgment development. Such reflection plays a key role in moral development. GIBBS, *supra* note 72, at 58.

98. See e.g., SNOOK, *supra* note 14, at 70.

99. KOHLBERG, *supra* note 66, at 199.

100. GIBBS, *supra* note 72, at 32–35.

101. KOHLBERG, *supra* note 66, at 199, 269.

children from growing psychologically and morally, choosing not to act upon the hateful or violent agenda they were taught, and resisting social trends encouraging such actions.

B. Psychological Consequences of Systematic Indoctrination to Hatred and Violence

Applying this theoretical framework, it is possible to map, to some extent, the consequences of systematic indoctrination into hatred and violence, suggesting how it may induce the commission of acts tantamount to violations of international law by members of the population who had been indoctrinated.¹⁰² Subjected to extensive and systematic indoctrination, children are prevented from reflecting on an indefinite number of propositions. The cognitive development of their moral structure is thereby delayed, and their moral development is compromised.¹⁰³ The more extensive the compromise, the more it renders individuals comfortable with dogmatic and unequivocal opinions. These cognitive deficits are expressed in inflexible patterns of thinking as well as an inability to accept the complexities of reality.¹⁰⁴

When systematic indoctrination aims to enshrine ideas of hatred and violence, it instills cognitive and emotional distortions that can motivate individuals to act upon these beliefs. Indoctrination to hatred of a group based on the group's national, ethnic, or religious characteristics inculcates bias and cognitive distortion against that group. Nazi Germany during World War II, for example, indoctrinated its citizens with such a deep bias against Jewish people that decades of moral and social progress have not yet rooted out these cognitive distortions.¹⁰⁵ When indoctrination into hatred is also rationalized by blaming the targeted group for wrongs and social ills, it

102. See Burdman, *supra* note 7, at 109–13 (providing a comprehensive list of psychological factors influencing terrorist behavior in children).

103. The more extensive the indoctrination, the more it compromises children's moral development, halting their cognitive ability from developing, for example, critical thought. This conclusion has also been supported by neuroscientific studies. See Feld, Casey & Hurd, *supra* note 84, at 202–03.

104. Stuck in early moral stages without being able to cognitively develop and attain the next moral stages, these children grow up while maintaining inflexible thinking patterns and egocentric biases. See GIBBS, *supra* note 72, at 19–23. See an example of similar effects of systematic indoctrination on young generations in the Palestinian context in Burdman, *supra* note 7, at 109.

105. See Voigtländer & Voth, *supra* note 57.

can potentially motivate actions against that group.¹⁰⁶ Psychologically, such actions can be explained by the theory of moral disengagement, which refers to a process of detachment of moral charge from certain behavior, enabling a person to engage in such behavior by relieving the ethical conflict naturally involved with it.¹⁰⁷

Exposure to systematic indoctrination into hatred and violence over time creates a social-cognitive structure among its recipients that makes them more inclined to be morally disengaged from reprehensible conduct,¹⁰⁸ due to the adoption of several cognitive distortions.¹⁰⁹ One distortion is perpetrators' reconstruction of the potential victim as an aggressor, for example by attributing blame and justifying their actions by depicting the victim as deserving of punishment. Perpetrators can also dehumanize the victims by, for example, comparing them to animals, thereby justifying inhumane treatment of the targeted group.¹¹⁰ Another distortion is reconstruction of the moral nature of the reprehensible conduct by attaching a moral justification, such as a larger socially valuable purpose.¹¹¹ For example, Saudi Arabia's educational curriculum refers to Western countries and to the Zionist movement as forces that seek to dominate the world and, therefore, need to be overcome.¹¹² By attributing blame or malicious intent to a targeted group, indoctrinated individuals may feel that harming the targeted group serves societal, utilitarian goals.¹¹³ Accordingly, children indoctrinated to hate people based on their nationality or ethnicity develop biases and learn to attribute malicious intentions to members of that group, irrespective of actual ac-

106. Nazi ideology blamed the Jewish people for, among other things, the economic difficulties Germany faced and for having malicious intentions towards the "Aryan" Germans. See Eastwood, *supra* note 53, at 1296–98 (providing examples from German children's books and instructions to teachers); see also LANKFORD, *supra* note 6, at 25 (discussing dehumanization and stressing the element of blame of the targeted group).

107. See, e.g., FONTAINE, *supra* note 51, at 38–39. See generally Albert Bandura, *Selective Moral Disengagement in the Exercise of Moral Agency*, 31 J. MORAL EDUC. 101 (2002).

108. Moral disengagement has been conceptually tied to numerous types of violent and antisocial forms of behavior such as terrorism, executions, and delinquency. It has also been demonstrated in multiple studies to play a critical role in the development of antisocial behavior. See FONTAINE, *supra* note 51, at 60.

109. *Id.* at 59.

110. *Id.* at 60.

111. *Id.* at 58–59.

112. See *Saudi Arabia's Troubling Educational Curriculum*, *supra* note 59, 1–5, 18–20.

113. FONTAINE, *supra* note 51, at 58–59.

tions or intentions expressed by members of the targeted group. Believing, as they were taught to, that people of the other group are blameworthy, indoctrinated individuals might be inclined to engage in reprehensible actions against that group for the purpose of eliminating a threat to their futures.¹¹⁴

Indeed, behavioral studies indicate that exposure to violence increases the likelihood of aggressive behavior,¹¹⁵ due to the prolonged observation of negative social treatment of others, especially as a means to realize personal needs.¹¹⁶ In the case of systematic indoctrination to violence, children may develop a cognitive bias towards aggressive responses to social stimuli. Children who have been taught extensively and repeatedly that they live under threat and that aggression or violence can alleviate that threat more readily exhibit hostility, experience anxiety, and resort to aggressive behavior.¹¹⁷ In sum, systematic indoctrination to hatred and violence not

114. GIBBS, *supra* note 72, at 141–44. Consider, for example, the horrifying story of Erna Petri, a mother of two and a wife of a senior German officer in the summer of 1943 in Germany. One day, she

was driving home from grocery shopping and noticed six frightened children, dressed only in shreds of clothing, crouching along the side of a country road. She had heard that a number of Jewish children escaped from a boxcar as they were being transported by train to Nazi death camps. She suddenly realized that she had come across a group of them. She told the frightened children, aged six to twelve, to come with her. She brought them into her home, and reassured and fed them. Then she led them into the woods by her house and shot each one of them in the back of the head. Years later, when this German mother of two was asked how she could have committed such a heinous act, she replied: “I am unable to grasp at this time how in those days that I was in such a state as to conduct myself so brutally and reprehensibly—shooting Jewish children. However earlier I had been so conditioned to fascism and the racial laws, which established a view towards the Jewish people. As was told to me, I had to destroy the Jews. It was from this mindset that I came to commit such a brutal act.”

GORDON, *supra* note 52, at 29–30 (citing WENDY LOWER, *HITLER’S FURIES: GERMAN WOMEN IN THE NAZI KILLING FIELDS* 132–33, 156 (2013)).

115. According to Huesmann’s model, a behavioral script represents personal behavioral schemes of how one would behave in a situation matched by the responder. Aggressive individuals are expected to have had more opportunities to observe others behaving aggressively and to have developed a greater number of aggressive behavioral scripts that may be triggered by a wider array of interpersonal exchanges. WINN, *supra* note 84, at 54.

116. See FONTAINE, *supra* note 51, at 42–43. Various studies have indicated that aggressive individuals selectively respond to hostile cues of social stimuli and are also inclined to hostile interpretations and thus to aggressive response. In other words, they exhibit biases that reinforce a pattern of aggressive experiences.

117. Cultures that fail to support and cultivate moral maturity may place even their survival in jeopardy due to a propensity to aggressiveness among their members. Gibbs

only instills the cause and motivation to act violently towards an identified group but also instills the aggressiveness and detached morality required to be able to commit violent actions against any of that group's members.¹¹⁸

III. INDIVIDUAL RESPONSIBILITY UNDER INTERNATIONAL CRIMINAL LAW

States and educational institutions enjoy the unique power to influence future generations' social perception, morality, and behavior. Considering the peril embedded in systematic indoctrination to hatred and violence, it is imperative to impose legal responsibility for its consequences on those who abuse this extensive power. In light of historical links between hate speech and mass atrocities,¹¹⁹ it is worth examining whether and how international criminal law ("ICL") can address these phenomena. This section will analyze potential individual responsibility under ICL of State officials, as well as that of non-State organizations' officials, in positions to manage or regulate education systems used for such indoctrination.

Indoctrination is not criminalized under ICL *per se*;¹²⁰ however, there are two potential ways to ascribe criminal responsibility to such conduct. The first is to analyze whether existing offenses under ICL can be applied in cases of indoctrination to hatred and violence. The second is to analyze indoctrination as a cause of crimes commit-

provides as an example the practice of blood revenge. Evidence has shown that children and early adolescents raised in an Arab village culture that prescribes practices of blood vengeance experience high levels of distress on scales measuring symptomatic behaviors such as hostility, anxiety, phobias, paranoid ideation, depression, and somatic complaints. GIBBS, *supra* note 72, at 45–46.

118. Systematic indoctrination also contributes to socialization of norms by including them in formal education across society. In addition, populations under stress (e.g., due to involvement in armed conflicts) tend towards increased group affiliation, which affords comfort, support, and self-validation. Thus, indoctrinated norms and values, uniting society against a targeted group, can be deeply enshrined as social norms. Burdman, *supra* note 7, at 111. The impact of socialized norms on behavior of a member of society is well-articulated under Child's definition of socialization: "the process by which an individual, born with behavior potentialities of an enormously wide range, is led to develop actual behavior confined within narrower range of what is customary for him according to the standards of his group." KOHLBERG, *supra* note 66, at 37 (citing I.L. Child, *Socialization*, in HANDBOOK OF SOCIAL PSYCHOLOGY (Gardner Lindzey ed., 1954)).

119. See GORDON, *supra* note 52.

120. WIBKE K. TIMMERMANN, INCITEMENT IN INTERNATIONAL LAW 200–01 (2014).

ted subsequently and to impose liability on indoctrinators for such crimes based on modes of liability under ICL.¹²¹ This Note will focus on the second form of responsibility, as it aims to explore whether crimes committed by indoctrinated persons can be attributed to their indoctrinators. Nevertheless, it is worth examining first how established offenses under ICL can be applied to systematic indoctrination to hatred and violence. Incitement to hatred is an inchoate offense for which liability accrues even when no subsequent crimes occur.¹²² In light of resemblance to incitement to hatred, indoctrination could be analyzed as such.¹²³ ICL criminalizes acts of incitement only when associated with genocide, drawing a necessary balance between the fundamental freedom of speech and probability of causing mass atrocity.¹²⁴ While incitement to hatred and indoctrination share similarities, as both intend to foster hatred towards a defined other,¹²⁵ they are conceptually distinct, as explained above in the comparison of indoctrination and propaganda.¹²⁶ Considering the differences between incitement (or propaganda) and indoctrination as discussed in Part I, mostly relating to the element of a teaching relationship in indoctrination, it can be argued that limitations imposed on criminalization of incitement under ICL should not be imposed on acts of systematic indoctrination into hatred and violence. The severity of indoctrination might warrant a different balance with freedom of speech. While incitement is concerned mostly with the mere content of the inciter's statements, indoctrination relies mainly on abuse

121. For a general overview of all modes of liability under ICL, see ELIES VAN SLIEDREGT, *INDIVIDUAL CRIMINAL RESPONSIBILITY IN INTERNATIONAL LAW* 89–147 (2012).

122. *Id.*

123. TIMMERMANN, *supra* note 120, at 200–01.

124. See *Prosecutor v. Kordić & Čerkez*, Case No. IT-95-14/2-T, Judgment, ¶ 209 n.272 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 26, 2001). For an analysis of the jurisprudence of international criminal tribunals with respect to incitement, see GORDON, *supra* note 52, at 224–30. Although some national systems have acknowledged that freedom of speech does not protect hate speech or incitement to violence, international law does not criminalize incitement to hatred or violence that is not associated with genocide. See Shannon Fyfe, *Tracking Hate Speech Acts as Incitement to Genocide in International Criminal Law*, 30 *LEIDEN J. INT'L L.* 525–30 (2017). In addition to the limited applicability of incitement as an offense (i.e., only in relation to genocide), international criminal tribunals have also required proof of causation between the disseminated information and the commission of subsequent crimes, thus further limiting the prosecution of incitement cases. Such a requirement for proof of causation may indicate a conclusion that the act of incitement by itself should not be criminalized. *Id.* at 536–37.

125. TIMMERMANN, *supra* note 120, at 200–01.

126. See Part II, *supra*.

of children's susceptibility to authoritative figures. Therefore, the need to protect young minds, as well as the practice of teaching, from such abuse could warrant a stricter limitation on freedom of speech.¹²⁷ Thus, it seems that limiting responsibility for systematic indoctrination to the confines of incitement under ICL would be inadequate.

In contrast, the jurisprudence of international criminal tribunals, establishing a legal construction to criminalize incitement to hatred and violence, even when it is not related to genocide, may suggest a more adequate framework to apply ICL to systematic indoctrination. Accordingly, widespread incitement to hatred and violence on discriminatory grounds was recognized as an act of persecution, which is a crime against humanity.¹²⁸ Essentially, the crime of persecution under customary international law consists of the commission of one of the acts recognized as crimes against humanity, with the addition of a special intention to persecute a targeted group based on discriminatory grounds.¹²⁹ The *actus reus* need not be fully defined in advance, as it may also materialize with the commission of other inhumane acts that have the gravity of the other recognized crimes against humanity.¹³⁰ Notwithstanding the unresolved split between the *ad hoc* international criminal tribunals' approach to considering hate speech as an act of persecution,¹³¹ there is room to

127. In terms of causality, indoctrination possesses greater potential for achieving the goal of instilling hatred and choice of violence. Hence, international tribunals' reluctance to convict based on incitement charges with no proof of causation of subsequent crimes, discussed in Fyfe, *supra* note 124, is arguably unjustified in cases of systematic indoctrination.

128. The International Military Tribunal ("IMT") was the first court to convict a defendant based on the crime of persecution due to anti-Semitic incitement to violence during World War II. See *United States v. Goering, Judgment, Streicher* (Int'l Mil. Trib. Sept. 30, 1946), *reprinted in* 6 F.R.D. 69, 161–63 (1946). See an overview of the indictment and adjudication in GORDON, *supra* note 52, at 107–09.

129. See Int'l Tribunal for the Prosecution of Persons Responsible for Serious Violations of Int'l Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, Updated Statute of the International Criminal Tribunal for the Former Yugoslavia (Sept. 2009), http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf [<https://perma.cc/2YPD-97SZ>] (reflecting customary international criminal law); see also *Prosecutor v. Kupreškić, Case No. IT-95-16-T, Trial Judgment*, ¶ 568 (Int'l Crim. Trib. for the Former Yugoslavia Jan. 14, 2000), <http://www.icty.org/x/cases/kupreskic/tjug/en/kup-tj000114e.pdf> [<https://perma.cc/GGN3-PW9D>].

130. *Id.*

131. See an analysis of pertinent jurisprudence of the *ad hoc* tribunals in GORDON, *supra* note 52, at 232–42.

modify the argument made with respect to hate speech¹³² and to articulate the circumstances under which systematic indoctrination will meet the required elements of the crime of persecution under ICL.¹³³

Moreover, extreme cases of systematic indoctrination may arguably amount to persecution of the indoctrinated children themselves.¹³⁴ Articulating a shared view among international criminal

132. The ICTY has held that persecution does not involve merely physical harm but also mental harm endured by the targeted group. *See, e.g.*, *Prosecutor v. Kordić & Čerkez*, Case No. IT-95-14/2-T, Judgment, ¶ 209, 523 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 26, 2001). Following the jurisprudence of the ICTY, as well as that of the IMT, the International Criminal Tribunal for Rwanda ("ICTR") held that hate speech can qualify as the *actus reus* for the crime of persecution even without the speaker directly calling for violence. *See Prosecutor v. Ruggiu*, Case No. ICTR-97-32-I, Judgment and Sentence, ¶¶ 13–17 (Int'l Crim. Trib. for Rwanda June 1, 2000). The judgment explains that the speech itself is an attack depriving its victims of fundamental rights, such as liberty and basic humanity, enjoyed by members of the wider society. *Id.* ¶ 22. Accordingly, "hate speech is a discriminatory form of aggression" on the dignity of the targeted group. *Prosecutor v. Nahimana*, Case No. ICTR-99-52-T, Judgment and Sentence, ¶ 1072 (Int'l Crim. Trib. for Rwanda Dec. 3, 2003). It creates a diminishing status among the members of the group as well as among those who perceive and treat them as less human. *Id.* For an overview of the judgment in *Prosecutor v. Nahimana* and its background, see GORDON, *supra* note 52, at 221–24. Despite the fact that the ICTY rejected the prosecution's position that Kordić's hate speech met the gravity requirement in order to be construed as persecution, it acknowledged the IMT's finding that the defendant's propaganda clearly advocated anti-Semitic violence and murder and thus would constitute persecution. *Prosecutor v. Kordić & Čerkez*, Case No. IT-95-14/2-T, Judgment, ¶ 209 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 26, 2001). Therefore, it seems that the ICTY could have potentially considered systematic indoctrination to hatred and violence as crossing the required threshold of gravity in order to regard it as persecution.

133. Without delving into an analysis of the elements of the crime of persecution and applying them to systematic indoctrination to hatred and violence, the argument made by the IMT and ICTR considering hate speech as a conduct of persecution can be applicable to systematic indoctrination. Essentially, this argument considers the grave deprivation of fundamental rights laid down under customary or treaty international law associated with hate speech and concludes that it meets the requirements of the crime of persecution. Similarly, the same argument can be made with respect to systematic indoctrination to hatred and violence, as it may involve severe infringement on the rights of liberty, dignity, autonomy, and even of life of the targeted group. *See generally* INT'L CRIM. CT., ELEMENTS OF CRIMES (2011), <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf> [<https://perma.cc/XT76-5ZM9>] (listing the elements of persecution as applicable under the International Criminal Court's framework).

134. Under their definition of crimes against humanity, neither the ICTR's Statute nor the ICC's Rome Statute requires a nexus between the committed crime and an armed conflict (in contrast to the ICTY's Statute) and thus may be applied to acts of governments committed against their own populations. *See* Darryl Robinson, *Defining "Crimes Against Humanity" at the Rome Conference*, 93 AM. J. INT'L L. 43, 46 (1999); *see generally* Rome Statute of the International Criminal Court, July 11, 1998, 2187 U.N.T.S. 90 (entered into

tribunals,¹³⁵ the International Criminal Tribunal for the Former Yugoslavia (“ICTY”) held in the *Kordić* case that the crime of persecution encompasses mental harm and severe infringements upon individual freedoms.¹³⁶ The tribunal further held that persecution should be evaluated in context, bearing in mind the consequences of individual acts—even those that may not be considered *prima facie* as “inhumane”—as required under relevant provisions of ICL.¹³⁷ Hence, when indoctrination is employed with respect to an identifiable group¹³⁸ of children or youth, infringement of their fundamental rights (such as their right to education and, in more severe cases of indoctrination, their right to mental health¹³⁹ and to life¹⁴⁰) can meet the elements of the crime of persecution.

Liability for indoctrination can also be imposed as a form of participation in crimes committed subsequently by indoctrinated persons.¹⁴¹ Traditionally, international criminal tribunals have distin-

force July 1, 2002) [hereinafter Rome Statute].

135. This is implied in the jurisprudence of the IMT and ICTR, considering hate speech to sometimes qualify as the *actus reus* of the crime of persecution. See *supra* notes 128, 131.

136. Prosecutor v. Kordić & Čerkez, Case No. IT-95-14/2-T, Judgment, ¶¶ 198, 523 (Int’l Crim. Trib. for the Former Yugoslavia Feb. 26, 2001).

137. *Id.* ¶ 199.

138. Based on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law. See Rome Statute, *supra* note 134, art. 7(1)(h).

139. Convention on the Rights of the Child arts. 19, 28, 29, Nov. 20, 1989, 1577 U.N.T.S. 3 (providing that State parties to the Convention shall ensure children’s right to education that will be directed, *inter alia*, to the development of mental abilities). As was discussed in previous sections, systematic indoctrination evidently runs counter to this obligation. For a discussion on the application of the crime of persecution to economic, social, and cultural rights, see EVELYNE SCHMID, *TAKING ECONOMIC, SOCIAL AND CULTURAL RIGHTS SERIOUSLY IN INTERNATIONAL CRIMINAL LAW* 124–39 (2015).

140. Some situations escalate to the point where children choose to participate in hostilities—either as children or, later on, as adults—or where they face severe mental issues that might lead them to suicidal behavior. See, e.g., Burdman, *supra* note 7, at 114 (describing injuries sustained by Palestinian children who were exposed to systematic indoctrination). In these cases, there is room to make arguments about systematic infringements of the fundamental right to life, provided for in article 6 of the ICCPR, *supra* note 13. Children’s right to life is also provided for in article 2 of the Convention on the Rights of the Child, *supra* note 139. In cases where it is hard to prove a grave assault on their right to life, an argument can be made for persecution based on wide infringement of children’s right to not be involved in hostilities, applicable to State parties to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, May 25, 2000, 2173 U.N.T.S. 236.

141. ICL aimed to address, *inter alia*, systematic criminality, such as systematic

guished between principal and accessorial perpetrators when ascribing individual responsibility for the crime in question.¹⁴²

A. Liability Modes of Principal Perpetration

The question is whether those who designed, controlled, managed, and operated the education system that served as a platform for systematic indoctrination to hatred and violence, including political figures who design such educational policy (such as the Minister of Education), could be liable as principal perpetrators for crimes committed by indoctrinated persons under modes of intellectual or remote perpetration.¹⁴³ The only potentially relevant doctrine,¹⁴⁴ developed

indoctrination, that could lead to mass atrocities. The term “systematic criminality,” generally accepted today, has two aspects. First, there is the organizational factor, referring to the context within which international crimes are committed. It is used to emphasize that international crimes are committed because of a certain (criminal) climate in the State system as well as the collective nature of such crimes. International crimes often presuppose an intellectual perpetrator or mastermind. Linking these two levels, the intellectual perpetrator at leadership level and the plurality of physical perpetrators at execution level is a difficult task, since traditional forms of criminal liability are not always attuned to this type of criminality. See VAN SLIEDREGT, *supra* note 121, at 20–22.

142. While it is not explicitly stated, this classification manifests differing degrees of responsibility, a sort of hierarchy of blameworthiness. For instance, the ad hoc international criminal tribunals have regarded Joint Criminal Enterprise (“JCE”) as a mode of liability of greater criminal responsibility than aiding and abetting. In the same vein, the ICC has distinguished between principal modes of liability under article 25(3)(a) and accessorial modes of liabilities under articles 25(3)(b)–(d) of the Rome Statute, *supra* note 134.

143. *Id.* at 181. What distinguishes leadership modes (JCE and indirect perpetration) from other modes of liability is the fact that no proof of a direct link to subsequent crimes and/or physical perpetrators is required to attribute criminal liability. In that sense, these modes are theories of imputation rather than forms of participation in crime.

144. The other allegedly relevant mode of liability is indirect perpetration. See Prosecutor v. Lubanga, ICC-01/04-01/06, Judgment Pursuant to Article 74 of the Statute, ¶ 332 (Mar. 14, 2012). In essence, in order to be held criminally liable for indirect perpetration, the accused must have *used* the physical perpetrator of the crime as a mere instrument. The attribution of criminal liability is based on the accused’s control over the conduct and the willingness of the physical perpetrator to commit it. See generally Prosecutor v. Katanga, ICC-01/04-01/07 OA 8, ¶ 488 (Sept. 25, 2009); see also NEHA JAIN, PERPETRATORS AND ACCESSORIES IN INTERNATIONAL CRIMINAL LAW: INDIVIDUAL MODES OF RESPONSIBILITY FOR COLLECTIVE CRIMES 24, 77 (2014). According to the jurisprudence of the ICC, in order to apply this doctrine in cases of systematic criminality, it needs to be shown that the accused controlled the physical perpetrators through an organized and hierarchical apparatus of power that ensured automatic compliance with orders. See Thomas Weigend, *Indirect Perpetration*, in THE LAW AND PRACTICE OF THE INTERNATIONAL CRIMINAL COURT 538, 545–50 (Carsten Stahn ed., 2015). Although it could be argued that

by the ICTY to encompass all perpetrators of collective crimes, is the concept of Joint Criminal Enterprise (“JCE”).¹⁴⁵ Essentially, under the doctrine of JCE, a person who contributed to the commission of a crime in pursuance of a common criminal plan or purpose could be held responsible as principal perpetrator for that crime even if he did not directly commit it.¹⁴⁶

The objective elements of JCE require the existence of a common plan, design, or purpose that amounts to or involves the commission of a crime provided for under the tribunal’s jurisdiction, involvement of a plurality of persons in the common plan, and participation of the accused in the common design.¹⁴⁷ The common plan or agreement does not need to be explicit, and its existence may be inferred from all circumstances.¹⁴⁸ Additionally, there is a required subjective element that can be met in one of three ways. Accordingly, there are three separate categories of JCE. Under category I, the accused must intend for the crime to be committed as part of the JCE.¹⁴⁹ For category II, addressing systematic criminality, the accused must know of the system of ill-treatment and intend to further

indoctrination relies on an authoritative relationship between the indoctrinator and his students, it does not amount to an “organized and hierarchical apparatus of power.” *Id.* More importantly, crimes committed by these students are not executed in the context of automatic compliance with orders. Even in extreme cases of systematic indoctrination, students exercise their own discretion and some form of autonomy when committing crimes. At best, a special case of indoctrination to follow the orders of a powerful teacher might lead to automatic compliance with instructions and could warrant the application of indirect perpetration to systematic indoctrination to hatred and violence.

145. In its prominent judgment in the prosecution of Duško Tadić, the ICTY interpreted its statute to assert that ICL provides for the controversial, yet widely applied, JCE doctrine. *Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgment, ¶¶ 195, 227–28 (Int’l Crim. Trib. for the Former Yugoslavia July 15, 1999). See a general overview of the background and analysis of the JCE doctrine as articulated by the ICTY in JAIN, *supra* note 144, at 29–65.

146. The ICTY held that “although only some members of the group may physically perpetrate the criminal act . . . the participation and contribution of the other members of the group is often vital in facilitating the commission of the offence in question. It follows that the moral gravity of such participation is often no less—or indeed no different—from that of those actually carrying out the acts in question.” *Id.* ¶ 191.

147. See, e.g., JAIN, *supra* note 144, at 15.

148. *Id.* at 47–48.

149. *Id.* at 32. The first category of JCE refers to all perpetrators acting pursuant to a common design who possess the same criminal intent. The accused is not merely a part of a large undefined group whose members he may never have met, but with whom he is presumed to share a common intention. Under this category, the accused has a relatively close connection to the crime and actively contributed to its perpetration. *Id.* at 32–35.

it.¹⁵⁰ This category envisaged concentration camp cases where acts of members of administrative units are apparently non-criminal in nature yet amount to crimes because the individuals act pursuant to a concerted criminal plan.¹⁵¹ Category III imposes liability for crimes committed outside of the common plan on all JCE members.¹⁵² An accused who is a JCE member will be liable for crimes other than those intended if they were foreseeable consequences of the common plan and the accused willingly took that risk.¹⁵³

As discussed in previous chapters, systematic indoctrination does not take place in a single classroom but is rather the manifestation of a collective attempt to inculcate an ideology of hatred and to encourage violence against a defined group. In order to engender commission of crimes by a plurality of its recipients, indoctrination has to be extensive and systematic.

The first question, then, in assessing indoctrinators' liability under JCE for crimes committed by indoctrinated persons is whether the system of indoctrination could be regarded as a common criminal plan. International criminal tribunals have consistently held that a plan must have a purposeful and criminal aspect and does not need to be explicitly agreed upon by its members.¹⁵⁴ Since indoctrination in

150. *Id.* at 57.

151. *Id.* at 35–37. The second category of JCE is based on the Dachau Concentration Camp case decided by the IMT. Trial of Martin Gottfried Weiss (The Dachau Concentration Camp Trial), Gen. Military Gov't Court of the U.S. Zone, Dachau, Germany, U.N. War Crimes Comm'n, vol. XI, 5 (1945). There, no evidence indicated that the accused had an agreement to mistreat the detainees, nor were they necessarily acquainted or even in Dachau at the same time. The conviction was based on the fact that they actively and knowingly participated in a general system of cruelty in the camp. In the case of *Krnjelac*, the Appeals Chamber of the ICTY held that as long as the accused is involved in the system of ill-treatment, it is less important to prove that he had an agreement with other JCE members. Prosecutor v. *Krnjelac*, Case No. IT-97-25-A, Appeal Judgment, ¶¶ 96–97 (Int'l Crim. Trib. for the Former Yugoslavia Sept. 17, 2003). See also JAIN, *supra* note 144, at 48.

152. JAIN, *supra* note 144, at 37–40. This category addresses cases involving a common purpose to pursue one course of conduct and one of the perpetrators commits an act that, although outside of the common design, was a natural and foreseeable consequence of execution of the common plan.

153. Prosecutor v. Tadić, Case No. IT-94-1-A, Judgment, ¶¶ 220, 228 (Int'l Crim. Trib. for the Former Yugoslavia July 15, 1999). The Extraordinary Chambers in the Courts of Cambodia ("ECCC") is the only international criminal tribunal to explicitly reject Category III of JCE on the basis that it was not firmly founded in customary international law. *Decision on the Appeals Against the Co-Investigative Judge Order on Joint Criminal Enterprise*, No: 002/19-09-2007-ECCC-OCIJ, Pre-Trial Chamber ¶ 83 (May 20, 2010). See also JAIN, *supra* note 144, at 69.

154. JAIN, *supra* note 144, at 47–48, 53.

itself is not a crime under ICL, systematic indoctrination must have another criminal purpose involving crimes established under ICL. There are specific cases where a criminal purpose, such as to persecute a defined group or to induce commission of extensive war crimes, can be inferred from the circumstances.¹⁵⁵ In such cases, indoctrination is the vehicle to realize the common criminal plan and can assist in identifying the mechanisms that connect the perpetrators who physically commit the crimes and the masterminds behind the plan. Systematic indoctrination could qualify as a criminal plan even if the indoctrination takes place in an education system without an organized explicit policy, as long as an implicit policy can be identified.¹⁵⁶ Moreover, JCE members could be held liable for crimes that were not initially a part of the plan but where leading JCE members had information about additional crimes committed due to expansion of the criminal enterprise and did not prevent their reoccurrence.¹⁵⁷ This point is significant, as indoctrinators can be held liable for crimes committed outside their initial common plan to inculcate their political agenda through systematic indoctrination employed via the education system. For example, JCE leaders who had an agenda of advancing persecution of members of their political adversary by systematic indoctrination may be liable for other crimes committed against that group, if they had failed to act to halt these crimes.

The second issue concerns causality between the crime committed by the indoctrinated person and the indoctrinator. In other

155. When indoctrination includes not only reasons to hate a certain group but also reasons to indiscriminately attack its members, and, in even more extreme cases, includes practical information on how to successfully do so, the indoctrination is likely to meet the criteria of a criminal purpose under JCE doctrine. Consider, for example, Nazi indoctrination. One can infer a common purpose to persecute in cases of systematic indoctrination of racist ideas widely taught across Germany, calling to commit violent acts against non-Aryan persons. In the same vein, when children are taught to attack individuals due to their nationality or religion, regardless of whether they are armed combatants or civilians, a common plan to commit war crimes can be inferred from the circumstances. Consider the example of Hamas. THE MEIR AMIT INTELLIGENCE & TERRORISM INFO. CTR., INCULCATING HATRED AND VIOLENCE FOR ISRAEL IN THE PALESTINIAN EDUCATIONAL SYSTEM: THE RUDOLF WALTHER SCHOOL IN DEIR AL-BALAH, AS A CASE STUDY (Apr. 5, 2016), <http://www.terrorism-info.org.il/en/20985/> [<https://perma.cc/VD8R-A2ZV>]. See also THE MEIR AMIT INTELLIGENCE & TERRORISM INFO. CTR., EDUCATING FOR HATRED AND VIOLENCE AGAINST ISRAELI IN A PERFORMANCE HELD IN A KINDERGARTEN SPONSORED BY THE PALESTINIAN ISLAMIC JIHAD (Dec. 31, 2017), <http://www.terrorism-info.org.il/en/educating-for-hatred-and-violence-against-israel-in-a-performance-held-in-a-kindergarten-sponsored-by-the-palestinian-islamic-jihad-pij/> [<https://perma.cc/L8YE-RENC>].

156. See VAN SLIEDREGT, *supra* note 121, at 162.

157. See, e.g., JAIN, *supra* note 144, at 53.

words, the question is whether the link between the act of indoctrination and the physical crime is sufficient to show that the indoctrinators induced the commission of the crime. Attributing principal responsibility to leaders of an education system for systematic indoctrination is fraught, as the indoctrinated perpetrators in most cases do not act under the hierarchical authority of the educational leaders but rather independently.¹⁵⁸ The physical perpetrators' independence when committing the crime (i.e., deciding what actions they will carry out, against whom, and under what circumstances) undermines the argument that the indoctrinators had control over the crime. Such control usually can be inferred from some form of hierarchy between the physical perpetrator and other participants of the criminal plan that would suggest that the physical perpetrator was required to comply with orders or instructions, or from actual knowledge of the physical perpetrator's criminal actions and intentions. Lack of control over the crime weakens the causality between the physical commission of the crime and the acts that were taken by the indoctrinators.¹⁵⁹

Although it can be argued based on the psychological evidence described above that indoctrinated persons' independent thought was limited due to indoctrination, it is not sufficient under the current legal framework to assert that indoctrinated persons could be acting under some form of an organizational structure in which their compliance with orders was enforced.¹⁶⁰ Nonetheless, the doctrine of JCE, extending concepts of conspiracy,¹⁶¹ was aimed at enabling international criminal tribunals to find such causality even in cases where there is no hierarchy or direct control.¹⁶² JCE addresses the question of causality first by requiring participation and contribution to the common criminal plan under the objective element¹⁶³—

158. See Thomas Weigend, *Indirect Perpetration*, in *THE LAW AND PRACTICE OF THE INTERNATIONAL CRIMINAL COURT* 538, 545–50 (Carsten Stahn ed., 2015).

159. See a discussion about causation in the context of complicity and the relevance of actual control in *MARINA AKSENOVA, COMPLICITY IN INTERNATIONAL CRIMINAL LAW* 118–19 (2016).

160. This was the basic reasoning used by international criminal tribunals when they established liability doctrines of indirect and co-perpetration to hold heads of organizations responsible for crimes committed during their operation. See *VAN SLIEDREGT*, *supra* note 121, at 166–67.

161. For an example of how conspiracy was used as a method by the IMT of Nuremberg in dealing with collective criminality, see *AKSENOVA*, *supra* note 159, at 56–58.

162. *Id.* at 84–86, 89.

163. Questions of participation and membership in JCE revolve around the issue of factual contribution made by an accused to the commission of the crime and whether it was

i.e., the nature of the contribution that the accused had to perform in order to be regarded as a participant in the common criminal plan.¹⁶⁴ Essentially, in the case of indoctrination, the doubt about the applicability of JCE revolves around the fact that none of the persons involved in indoctrination commits an act that is directly criminal in nature, such as providing munition or military trainings, as they are merely involved in education. Yet, they are the masterminds and executors of an education policy clearly advancing a plausible common criminal plan engendering just as much harm as the direct commission of crimes.

According to the jurisprudence of the ICTY,¹⁶⁵ the accused's contribution to the common purpose need not be criminal in nature, and neither necessary to nor a substantial part of a criminal plan, but rather "at least significant" to the crimes of which he is accused.¹⁶⁶ Considering how significantly systematic indoctrination can influence behavior, it can be argued that a teacher of indoctrinated perpetrators can be liable for their crimes insofar as the teacher acts in furtherance of the common plan to indoctrinate students.

With respect to high-ranking officials, the causal link is less obvious but is still arguably supported by ICTY jurisprudence. In *Krajišnik*, the ICTY confirmed that the following actions can be regarded as contribution to an JCE: initiating and promoting governmental policies to advance a common plan, establishing and supporting governmental bodies in order to implement a common plan, disseminating information aimed to engender fear and hatred of a political adversary for the purpose of gaining support for a common plan, encouraging and authorizing political and governmental bodies to carry out acts in furtherance of a common plan, and failing to investigate crimes committed against a group toward which a common plan was targeted.¹⁶⁷

Considering that the ICTY was ready to recognize dissemination of information aimed to engender fear and hatred for the purpose of gaining support for a common plan, it can be argued that the tribunal would have been ready to recognize dissemination of such infor-

substantial enough. See ROGER O'KEEFE, *INTERNATIONAL CRIMINAL LAW* 195 (2015).

164. See JAIN, *supra* note 144, at 55.

165. As summarized in *Prosecutor v. Krajišnik*, Case No. IT-00-39, Appeal Judgment, ¶¶ 215–16, 218 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 17, 2009). See also JAIN, *supra* note 144, at 55–56.

166. *Krajišnik*, Case No. IT-00-39, Appeal Judgment, ¶¶ 215–16.

167. *Id.* ¶ 216.

mation for the purpose of inducing the execution of the common plan by members of the general public. Accordingly, it seems safe to say that contribution through promotion and implementation of policy in the pursuance of a common criminal plan is sufficient to regard the accused as a JCE member.¹⁶⁸ Moreover, it follows from the ICTY's interpretation of the participation requirement that encouraging or authorizing the commission of acts by others, aimed to further the common plan, can be regarded as a contribution. In the case of indoctrination, it may encompass the authorization and encouragement of educational institutions to indoctrinate children into hatred and violence. Furthermore, it is important to note the ICTY's consideration of the failure of governmental actors to investigate hate crimes committed in the timeframe following the dissemination of fear and encouragement to hatred as contributing to the common plan, which buttresses the argument for liability at higher levels of the indoctrinating system. In other words, passive reaction or omission on the part of those who should be responsible to halt subsequent criminal activity (e.g., hate crimes) through criminal enforcement may constitute a contribution to the common criminal plan. Therefore, failure to halt criminal activity that may have been engendered by systematic indoctrination to hatred and violence, through criminal enforcement, can be considered to be a contribution to the JCE of the systematic indoctrination.

Secondly, the JCE doctrine examines whether the accused, confirmed as a JCE member, was responsible for specific crimes committed in the pursuance of the criminal plan. JCE category II may provide a proper legal scheme to address an institutionalized and systematic criminality, as it is aimed to bridge the gap between those participating in direct criminal action and those knowingly furthering the system's criminal purposes.¹⁶⁹ Although the ICTY has not explicitly defined the term "system," ostensibly leaving room for a more flexible definition, the jurisprudential application of JCE category II to concentration camp cases may indicate that it refers to a closed hierarchical organizational structure set up for a specific purpose.¹⁷⁰ There are very limited cases in which an educational system,

168. Under JCE, the moral and legal justifications and authority to hold decision-makers and policy-makers—i.e., the leadership level—responsible for crimes committed by perpetrators at the execution level are expressed in the ICTY's judgment in *Brdanin*. Prosecutor v. Brdanin, Case No. IT-99-36-A, Appeal Judgment, ¶¶ 408–18 (Int'l Crim. Trib. for the Former Yugoslavia Apr. 3, 2007). See also VAN SLIEDREGT, *supra* note 121, at 161–62.

169. See JAIN, *supra* note 144, at 36–37, 59–61.

170. *Id.* at 58–59.

as the vehicle of extensive and systematic indoctrination, will meet such description. The vast majority of education systems, even if abused for political indoctrination purposes, are not established for the purpose of indoctrination or for another purpose that could constitute ill-treatment. Perhaps the only education systems that can fit under category II are those established by non-State organizations for the purpose of expanding the implementation of their hostile political agendas.¹⁷¹ In addition, it is questionable whether systematic indoctrination can amount to a system of ill-treatment.¹⁷² Nonetheless, in light of widespread psychological injuries and potential physical injuries that systematic indoctrination to hatred and violence may inflict both upon the targeted group as well as the indoctrinated populations, systematic indoctrination could reach the point of ill-treatment. Yet, it is not clear whether a criminal tribunal would subscribe to the conclusion that such a system would cross the criminal threshold envisaged by JCE category II.

Although JCE categories I and III were not tailored for institutionalized criminality, these categories may be better suited for the case of systematic indoctrination. While category I requires that the accused intended for crimes to be committed as part of the common plan,¹⁷³ category III only requires that the accused had foreseen the possibility that certain crimes would be committed by other JCE members.¹⁷⁴ Different cases of indoctrination would be more compatible with each category. For example, a JCE member who actively advanced systematic indoctrination to hatred and the commission of acts of violence against a targeted group may well have intended to convince indoctrinated persons to commit crimes, and thus category I would be applicable. In another case, a JCE member who

171. For an example of ISIS's education reform in Iraq for indoctrination purposes, see Hosam Al-Jablawi, *A Closer Look at the Educational System of ISIS*, ATL. COUNCIL (Apr. 26, 2016), <http://www.atlanticcouncil.org/blogs/syriasource/a-closer-look-at-isis-s-educational-system> [<https://perma.cc/Z9EM-6XBF>]. See also Kyle Almond, *How ISIS Changed Iraqi Schools*, CNN (July 2017), <http://www.cnn.com/interactive/2017/07/world/iraq-schools-cnnphotos/> [<https://perma.cc/RZ2P-UFZF>].

172. Thus far, JCE category II has been applied only in cases of detention or concentration camps. See Luke Marsh & Michael Ramsden, *Joint Criminal Enterprise: Cambodia's Reply to Tadić*, 11 INT'L CRIM. L. REV. 137, 140-41 (2011).

173. Prosecutor v. Tadić, Case No. IT-94-1-A, Judgment, ¶ 196 (Int'l Crim. Trib. for the Former Yugoslavia July 15, 1999). See also Antonio Cassese, *The Proper Limits of Individual Responsibility under the Doctrine of Joint Criminal Enterprise*, 5 J. INT'L CRIM. JUST. 111 (2007).

174. Prosecutor v. Tadić, Case No. IT-94-1-A, Judgment, ¶ 204. See also, JAIN, *supra* note 144, at 61-62.

worked to intentionally advance systematic indoctrination into hatred cannot easily be held liable for crimes committed subsequently by indoctrinated persons, as it would be difficult to prove that he intended anything more than to advance a political agenda. In such a case, category III might facilitate imposition of liability, as it can be argued that the commission of a hate crime is a foreseeable outcome from systematic indoctrination into hatred.

However, JCE imposes liability on all JCE members for crimes committed by other members and non-members. Applying the ICTY's jurisprudence, liability for a crime committed by an indoctrinated person, a non-JCE member, can be imposed on a JCE member. In *Brđanin*, the ICTY concluded that such liability can be imposed if it finds that a JCE member used or manipulated the physical perpetrator, a non-JCE member, in pursuance of the common plan—in other words, a degree of control over the physical perpetrator is required.¹⁷⁵ Hence, when a teacher, as a JCE member, explicitly or implicitly instigates or encourages a non-JCE member (e.g., his students) to commit a crime, it may be possible to hold every JCE member responsible for this crime.¹⁷⁶ However, despite the above-described interference with the cognitive and mental structure of indoctrinated persons, the decision to commit the crime and how to do it remains with the physical perpetrator. In order to prove that an indoctrinator had used a student as a tool to commit a crime for the purpose of arguing he is liable under JCE category I,¹⁷⁷ it must be proven that the indoctrination was so extensive and intense that the autonomy of students was severely compromised. A limited set of cases of systematic indoctrination would meet this requirement in order to hold a JCE member liable for crimes committed by a non-JCE member.¹⁷⁸ Consider, for example, the difference between systemat-

175. Prosecutor v. Brđanin, Case No. IT-99-36-A, Appeal Judgment, ¶ 410 (Int'l Crim. Trib. for the Former Yugoslavia Apr. 3, 2007). Essentially, the Appeals Chamber held that there is no additional requirement of an agreement between the principal perpetrator and the accused. *Id.* ¶¶ 415–19. See also VAN SLIEDREGT, *supra* note 121, at 161–62; JAIN, *supra* note 144, at 52–53.

176. Prosecutor v. Krajišnik, Case No. IT-00-39, Appeal Judgment, ¶ 226 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 17, 2009). See also JAIN, *supra* note 144, at 52–53.

177. VAN SLIEDREGT, *supra* note 121, at 161–62.

178. In other words, JCE, as applied in the jurisprudence of the ad hoc international criminal tribunals, requires that the JCE member would indirectly commit the crime through a non-JCE member. Although it does not explicitly require that the former controls the latter, it requires that the JCE member commits the crime *through* a non-JCE member. *Brđanin*, Case No. IT-99-36-A, Appeal Judgment, ¶ 410. See also VAN SLIEDREGT, *supra* note 121, at 162. The ICC, in the case of *Katanga*, described the essential difference

ic indoctrination taking place in places where there is usually public access to information and pluralism of opinions and places where the education system is closed to other schools of thought and general information, actively supports hatred and violence, and even provides information on how to do so. In the first scenario, the physical perpetrator has more independence and choice as to whether and how to commit crimes, while in the second scenario, the perpetrator grew up with limited ability to question the agenda he was taught to carry out. Therefore, it would make sense to argue that in the second scenario, the teacher/indoctrinator had sufficient control of the physical perpetrator's mindset that led him to carry out a violent and a hateful agenda through criminal activity.

Another approach is to regard the physical perpetrator as a JCE member, by "reconfiguring the attribution of liability through a maze of multiple and overlapping JCEs."¹⁷⁹ Accordingly, the physical perpetrator (i.e., the indoctrinated person) can be regarded as a member of another JCE, the purpose of which overlaps the original common plan of the original JCE members behind the indoctrinating system. Accordingly, there can be two separate JCEs: one between those who design and apply the indoctrinating educational plan to indoctrinate hatred and violence against the population of the adversarial party to the conflict, and a second between the physical perpetrators of the crimes, commonly planning to carry out the actual crimes based on what they have been taught. If a non-physical perpetrator, such as a teacher who is part of the subsidiary JCE by playing a role of actual indoctrination, also has another role in the primary JCE, then crimes committed by his students, the subsidiary JCE, can be attributed to all members of the primary JCE, insofar as the actions of the students furthering the plan were envisaged by the primary JCE.

between committing a crime *through another* and *influencing* him to do so: "[T]he perpetrators of a crime are those who *control* its commission and who are aware of the factual circumstances allowing them to exert such control. Thus the indirect perpetrator has the power to decide *whether* and *how* the crime will be committed. . . . An accessory, however, exerts no such control. By way of example, whereas participation as an instigator under article 25(3)(b) may entail a position of authority, it requires a contribution consisting solely of prompting or encouraging a decision to act—the power to decide on the execution of the crime remains the preserve of another person." Prosecutor v. Katanga, ICC-01/04-01/07 OA 8, ¶ 1396 (Sept. 25, 2009).

179. See Katrina Gustafson, *The Requirement of an 'Express Agreement' for Joint Criminal Enterprise Liability*, 5 J. INT'L CRIM. JUST. 200, 200–01 (2007). According to Van Sliedregt, the Appeals Chamber's decision in *Brdanin* makes it possible as well. VAN SLIEDREGT, *supra* note 121, at 163.

B. Liability Modes of Accessorial Perpetration

It could be also fairly argued that indoctrinators have, at least, induced or instigated the commission of crimes. Instigating, soliciting, and inducing are accessorial modes of perpetration under ICL,¹⁸⁰ imposing liability on the masterminds of the offence.¹⁸¹ This crime has been defined by international criminal tribunals as prompting, urging, encouraging, inciting, influencing, or provoking another to commit a crime.¹⁸² According to the ad hoc jurisprudence of international criminal tribunals, instigating may involve using group ideology, or even patriotism, to induce one to commit a crime.¹⁸³ The instigator mainly provides a reason, even implicitly, to commit conduct that may amount to a crime.¹⁸⁴ An instigator does not control the perpetration of the offense but rather instills an idea into someone's mind, and it is the latter person who decides whether and how exactly to carry out the conduct.¹⁸⁵

Considering how influential indoctrination can be, it is clear

180. See SARAH FINNIN, ELEMENTS OF ACCESSORIAL MODES OF LIABILITY: ARTICLE 25(3)(B) AND (C) OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT 60–62 (2012). Commentators have suggested that since there are no clear demarcations between these terms, it would be useful to regard them both under the umbrella of inducement, referring to a situation in which a person was influenced by another to commit a crime. *Id.* at 61. More specifically, Ambos is of the view that the influence should be of either a psychological (persuasion) or physical (coercion) nature. Kai Ambos, *Article 25: Individual Criminal Responsibility*, in COMMENTARY ON THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: OBSERVERS' NOTES, ARTICLE BY ARTICLE 743, 756 (Otto Triffterer ed., 2008).

181. See VAN SLIEDREGT, *supra* note 121, at 107.

182. The ICC has referred to the mode of instigation in order to hold an individual criminally liable for influencing the physical perpetrators in several cases. See an overview of these cases in Hector Olasolo & Enrique Carnero Rojo, *Forms of Accessorial Liability under Article 25(3)(b) and (c)*, in THE LAW AND PRACTICE OF THE INTERNATIONAL CRIMINAL COURT 557, 569–70 (Carsten Stahn ed., 2015). In the *Ruto & Sang* case, for example, the Trial Chamber held that the legal characterization of the facts and circumstances described in the indictment may be subject to a change in the eventual judgment to accord with liability for soliciting or inducing, because the accused allegedly established a scheme of payment to motivate and reward the perpetrators upon the successful killing of the civilian population and the destruction of their property. The accused thereby encouraged the perpetrators to commit the crimes with discriminatory rhetoric and promises of immunity in Kenya. *Prosecutor v. Ruto & Sang*, ICC-01/09-01/11-1122, Decision on Application for Notice of Possibility of Variation of Legal Characterization, ¶ 44 (Dec. 12, 2013).

183. See Olasolo & Rojo, *supra* note 182, at 571–72.

184. See FINNIN, *supra* note 180, at 65.

185. See, e.g., VAN SLIEDREGT, *supra* note 121, at 107.

how systematic indoctrination to hatred and violence bears the potential to influence and induce its recipients to commit crimes established under ICL. It is not even necessary that the content of indoctrination would explicitly encourage the commission of crimes, as encouragement for such actions is often implicit in the context of indoctrination to hatred. Problems of causation between the act of indoctrination and the physical commission of the crime do not arise under these accessory modes. While imposing accessory liability requires proof that the principal perpetrator caused the commission of the crime,¹⁸⁶ the act of instigation is not a necessary condition.¹⁸⁷ Moreover, the instigating influence can be passed through intermediaries, and it has been suggested that instigation may also occur in a chain (i.e., that the first instigator attempts to influence the physical perpetrator by influencing others).¹⁸⁸ In the case of systematic indoctrination, such a legal scheme enables the imposition of liability on educational policy-makers and decision-makers who do not directly indoctrinate the pupils.

Instigation, however, does not fully capture the criminality of systematic indoctrination to hatred and violence. It does not, for example, capture the systematic nature of abusing an education system for the purpose of affecting as large a portion of the population as possible. It also does not reflect the severity of hindering the mental and cognitive development of children for the purpose of advancing political interests. In a more general sense, the concept of instigation leaves out a fundamental aspect of indoctrination—the abuse of an authoritative and significant relationship in a child’s life.¹⁸⁹ Therefore, applying the doctrine of JCE probably better manifests the contribution of the indoctrinators to the crime committed by their pupils, and also better explains the criminality of a systematic indoctrination. However, its application is fraught with complexities and, more importantly, it is not clear whether it applies under currently active in-

186. Prosecutor v. Blaškić, Case No. IT-95-14-T, Trial Judgment, ¶ 280 (Int’l Crim. Trib. for the Former Yugoslavia Mar. 3, 2000). See also FINNIN, *supra* note 180, at 128.

187. See Olasolo & Rojo, *supra* note 182, at 571–72. Also, domestic criminal courts do not require that the accessory act be a necessary condition for the occurrence of the accessory object. See, e.g., FINNIN, *supra* note 180, at 129, 138.

188. Prosecutor v. Orić, Case No. IT-03-68-T, Trial Judgment, ¶ 273 (Int’l Crim. Trib. for the Former Yugoslavia June 30, 2006). See also FINNIN, *supra* note 180, at 65–66.

189. In order to hold an individual criminally liable as an instigator, there is no need for a relationship of authority between the accused and the physical perpetrators. Nonetheless, the position of authority may be relevant to determine whether the accused did in fact influence the principal perpetrator to commit a crime. See FINNIN, *supra* note 180, at 70–71.

ternational criminal tribunals, such as the ICC.¹⁹⁰ Nonetheless, if the act of indoctrination is charged as a form of accessorial perpetration, these distinctive features of indoctrination in comparison to instigation could be given special attention when considering the severity of the sentence.

IV. STATE RESPONSIBILITY UNDER INTERNATIONAL HUMANITARIAN LAW

Addressing another form of responsibility under international law for systematic indoctrination to hatred and violence, this Part addresses State responsibility under international humanitarian law (“IHL”), suggesting that such indoctrination violates States’ Geneva Convention obligation to “ensure respect” for the provisions thereof.¹⁹¹ In particular, this Part will examine States’ obligations first to refrain from encouraging violations of the Geneva Conventions, and then whether and to what extent they are obliged to positively pre-

190. Article 25(3) of the Rome Statute provides a scheme of liability modes, including a different form of JCE. It is a residual mode of liability encompassed by Article 25(3)(d), referred to when a case does not fall under other modes of accessorial modes of liability provided for under Article 25(3), such as ordering, instigating, etc. See JAIN, *supra* note 144, at 81–82. Nevertheless, the relationship between Article 25(3)(d) and JCE remains unclear, as is the latter doctrine’s applicability in the ICC’s framework. *Id.* 84–85. Since instigation would better capture the criminality of systematic indoctrination than Article 25(3)(d) under the ICC’s framework, there is no need to further explore how Article 25(3)(d) could be applied to systematic indoctrination.

Given that JCE is not frequently used under the ICC’s framework, one may raise doubts about the purpose of analyzing the applicability of JCE to systematic indoctrination, as the ICC was planned to be the main international criminal adjudicating forum. Even though the mandate of the ad hoc international criminal tribunals has ended, other international and hybrid criminal forums are still operating and could be established throughout the world, applying, inter alia, customary international criminal law, under which one can apply the JCE doctrine. Consider, for example, the ECCC, which was established after the Rome Statute has been signed. *About ECCC*, EXTRAORDINARY CHAMBER IN THE COURTS OF CAMBODIA, <https://www.eccc.gov.kh/en/about-eccc> [<https://perma.cc/ZW58-PLNS>].

191. Common Article 1 of the Geneva Conventions: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 75 U.N.T.S. 31, Common Article 1 (1949); Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 75 U.N.T.S. 85, Common Article 1 (1949); Convention (III) relative to the Treatment of Prisoners of War (IV), 75 U.N.T.S. 135, Common Article 1 (1949); Convention (IV) relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, Common Article 1 (1949) [hereinafter GC].

vent these violations. Considering the scope of this duty under IHL, I conclude that abuse of the education system to indoctrinate children to hatred and violence runs counter to this fundamental obligation and therefore gives rise to State responsibility.¹⁹² It also suggests that this duty requires States to actively prevent such indoctrination through private educational enterprises.

A. The Duty to Ensure Respect under IHL

All parties to an armed conflict¹⁹³ have a general customary obligation¹⁹⁴ to respect and to ensure respect for the provisions of the Geneva Conventions (“GC”) “in all circumstances.”¹⁹⁵ This obligation is generally perceived as applicable to the entire body of IHL binding upon a particular State,¹⁹⁶ in both peacetime and during armed conflict.¹⁹⁷ Essentially, respecting the provisions of IHL dur-

192. Int’l Law Comm’n, Rep. on the Work of Its Fifty-Third Session, Draft Articles on Responsibility of States for Internationally Wrongful Acts, arts. 1–2, U.N. Doc. A/56/10 (2001) [hereinafter ILC Draft Articles on State Responsibility].

193. Common Article 1 refers to High Contracting Parties, so it apparently does not apply to non-State parties to an armed conflict. However, it has been interpreted to apply also to non-State parties. See JEAN PICTET, *THE GENEVA CONVENTIONS OF 12 AUGUST 1949: COMMENTARY, FIRST GENEVA CONVENTION FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIELD* 26 (1952). In addition, Common Article 3, imposing minimal obligations on all parties of an armed conflict during a non-international armed conflict, is read to include a duty to ensure respect for the obligations it provides for and thus also applies to non-State parties to a non-international armed conflict. See e.g., *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, Judgment, 1986 I.C.J. Rep. 14, ¶¶ 218–20 (June 27). See also Robin Geiss, *Common Article 1 of the Geneva Conventions*, in *INDUCING COMPLIANCE WITH INTERNATIONAL HUMANITARIAN LAW: LESSONS FROM THE AFRICAN GREAT LAKES REGION* 417, 428 (Heike Krieger ed., 2015).

194. See *Nicar. v. U.S.*, 1986 I.C.J. ¶¶ 115, 216, 255–56; see also International Committee of the Red Cross (ICRC) Study on Customary International Humanitarian Law, Rule 144 (2005), https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule144 [<https://perma.cc/6GCZ-28JY>].

195. See the general explanation about this obligation in ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (Commentaries on the 1949 Geneva Conventions) art. 1(118) (2016), <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=72239588AFA66200C1257F7D00367DBD> [<https://perma.cc/9B8K-RMPE>] [hereinafter ICRC Commentary].

196. See, e.g., ICRC Study, *supra* note 194, Rule 139. See also ICRC Commentary, *supra* note 195, at 126.

197. ICRC Commentary, *supra* note 195, at 127.

ing an armed conflict presupposes that the foundations to guarantee respect for IHL have been laid down in advance, during peacetime.¹⁹⁸ This obligation embodies the presumption that a population's behavior results from advanced direction as well as correction *post factum*. It requires States to prevent and repress breaches of IHL, even by private persons over which they exercise authority.¹⁹⁹ States generally can choose which measures to employ in order to ensure respect for IHL, except with regard to specific provisions of the GC that limit to some extent States' discretion on which measures they can use.²⁰⁰ For example, States are required to suppress breaches of IHL through enforcement of the law upon those who have violated IHL.²⁰¹

The scope of application of Common Article 1 of the GC ("CA1") was subject to debate, mostly with respect as to whether States have the obligation to take all necessary measures to ensure respect for IHL by other States or non-State organizations, even as third parties to the conflict.²⁰² However, it is not controversial that States have undertaken, under CA1, to ensure respect of IHL by their own organs and private individuals within their jurisdiction.²⁰³ Hence, it follows that States' duties under CA1 apply not merely to their armed forces but also to their civilian populations.²⁰⁴

198. *Id.* at 145.

199. *Id.* at 150.

200. The GC contain a number of provisions designed to ensure their implementation by the High Contracting Parties. See a list of these provisions in ICRC Commentary, *supra* note 195, at 146.

201. Convention (IV) Relative to the Protection of Civilian Persons in Time of War art. 146, Aug 12, 1949, 75 U.N.T.S 287. See also EMILY CRAWFORD & ALISON PERT, INTERNATIONAL HUMANITARIAN LAW 236–37 (2015).

202. See ICRC Commentary, *supra* note 195, ¶¶ 153–56. See different positions in the debate and discussion in Geiss, *supra* note 193, at 422–28.

203. Hannah Tonkin, *Common Article 1: A Minimum Yardstick for Regulating Private Military and Security Companies*, 22 LEIDEN J. INT'L L. 779, 783–84, 786–87 (2009).

204. See, e.g., ICRC Commentary, *supra* note 195, ¶¶ 151, 155. One important reason to include the civilian population is that a better knowledge of the GC among the general public could help reduce the horrors that take place whenever civilians participate in an armed conflict, especially an internal one. Due to the public lack of awareness of humanitarian rules applicable in armed conflicts, when uncontrolled and unprepared civilian combatants enter an armed conflict, there is almost an inevitably sharp increase in summary executions, torture, and disregard for the protection granted by the Red Cross emblem. See, e.g., Jean-Jacques Surbeck, *Dissemination of International Humanitarian Law*, 33 AM. U. L. REV. 125, 132 (1983).

B. Negative Obligations to Ensure Respect for IHL and Systematic Indoctrination

The duty to ensure respect entails negative obligations. For example, States must refrain from engaging in certain courses of conduct.²⁰⁵ Fundamentally, they may neither encourage, aid, nor assist the commission of IHL violations.²⁰⁶ Thus, when the formal education system is an organ of the State²⁰⁷ and the education system is used to indoctrinate its students into hatred and violence against adversary parties to an armed conflict, the State actually violates its negative duty articulated above. When children are indoctrinated to hate all members of a group based on innate characteristics, and the children are given reasons and a will to harm members of that group, the indoctrinated children are likely to indiscriminately attack them. Inflicting harm on civilians or unarmed members of armed forces amounts to a violation of IHL.²⁰⁸ When a governmental organ in fact encourages its population to violate IHL provisions, it violates its duty to abstain from any act of such encouragement.²⁰⁹

Furthermore, a State is required to refrain from assisting in

205. See ICRC Commentary, *supra* note 195, ¶ 158.

206. ICRC Study, *supra* note 194, Rule 144. This negative aspect of the duty to ensure respect has been recognized by the ICJ. It held that it would be contradictory if Common Article 1 obliged the High Contracting Parties to “ensure respect” by their own armed forces while allowing them to contribute to violations by other parties to a conflict. *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, Judgment, 1986 I.C.J. Rep. 14, ¶ 220 (June 27). It was also expressly acknowledged by the High Contracting Parties themselves. See 30th International Conference of the Red Cross and Red Crescent, Resolution 3 (Nov. 30, 2007), ¶ 2, <https://www.icrc.org/en/doc/resources/documents/resolution/30-international-conference-resolution-3-2007.htm> [<https://perma.cc/5F2M-CEMY>].

207. ILC Draft Articles on State Responsibility, *supra* note 192, art. 4.

208. ICRC Study, *supra* note 194, Rule 7 (providing that an attack that does not discriminate between civilians and military objectives is a violation of IHL). That is just one example. When hate is involved, parties to an armed conflict are likely to disregard the laws of armed conflict. See GORDON, *supra* note 52, at 30–31.

209. There is no requirement of subjective intention. See, e.g., ICRC Commentary, *supra* note 195, ¶ 159. The term “encouragement” has not been defined in this context. According to the Oxford English Dictionary, encouragement is defined as persuasion to do something or as an attempt to stimulate the development of an activity, state, or belief. *Encouragement*, OXFORD ENGLISH DICTIONARY, <https://en.oxforddictionaries.com/definition/encouragement>. Without any reason to deviate from the ordinary definition of “encouragement,” there is no doubt that indoctrination can be viewed as an act of encouragement, as discussed in the previous chapter under the analysis of accessorial modes of liability.

the violation of IHL. Thus, a State violates its duty to ensure respect under CA1 by allowing private and informal education systems to operate in its jurisdiction, if those private systems systematically indoctrinate children to hatred and violence. In its Advisory Opinion in the 2004 *Wall* case, the International Court of Justice (“ICJ”) held that formal recognition of a State in a situation created by a breach of IHL is a form of aiding and assisting the commission of that breach.²¹⁰ It follows, then, that recognition by the State of educational institutions that advance systematic indoctrination to hatred and violence by enabling their operation in its territory may amount to assisting violations of IHL. Such practices run counter to States’ duty to ensure that the *whole* population over which they exercise authority will respect IHL. This conclusion is even more solid in cases in which systematic indoctrination by private educational institutions has led to violations of IHL and the State has failed to prevent it or enforce the criminal law after the fact.²¹¹ In other words, the duty to ensure respect would be better read to include a duty for States to refrain from providing legal authorization to private educational institutions that systematically indoctrinate into hatred and violence.

C. Positive Obligations to Ensure Respect for IHL and Systematic Indoctrination

States have incurred the positive obligation under CA1 to take active measures to prevent and suppress violations of IHL. Their du-

210. See Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 2004 I.C.J. Rep. 136, ¶¶ 158–59 (July 9). See also ICRC Commentary, *supra* note 195, ¶ 163. Although the ICJ has discussed the recognition of States in situations created by a breach of IHL by other States, the reference here is merely to the ICJ’s acknowledgement that recognition of an unlawful act as legal is regarded as assistance, following Article 40(5) of the ILC Draft Articles on State Responsibility, *supra* note 192.

211. A reference to the context of arms transfers is illustrative. Common Article 1 requires High Contracting Parties to abstain from transferring weapons if there is an expectation, based on facts or knowledge of past patterns, that such weapons will be used to violate the Conventions. This would require an appropriate assessment prior to any arms transfer. See Knut Dörmann & Jose Serralvo, *Common Article 1 to the Geneva Conventions and the Obligation to Prevent International Humanitarian Law Violations*, 895–96 INT’L REV. OF THE RED CROSS 732–35 (2014). See also ICRC, ARMS TRANSFER DECISIONS: APPLYING INTERNATIONAL HUMANITARIAN LAW CRITERIA (Jun. 2007), https://www.icrc.org/eng/assets/files/other/icrc_002_0916.pdf [<https://perma.cc/7TUN-VEZE>]. In other words, even though the State does not directly control the act of indoctrination, by providing private education systems with legal authorization to indoctrinate, the State in fact provides the settings to encourage the commission of violations of IHL during armed conflicts.

ty to prevent violations applies when there is a foreseeable risk that such violations will be committed.²¹² Among other things, States are required to disseminate the principles and provisions of IHL in their respective territories for the purpose of educating their populations and directing their peoples' behavior during armed conflicts.²¹³ The duty to disseminate includes acknowledgement that education sets the foundation to prevent future violations of IHL.²¹⁴ When a State's education system indoctrinates hatred and violence and thereby encourages the commission of such violations, it acts against the heart of the duty to disseminate. More broadly, allowing systematic indoctrination of hatred and violence to take place in a State's jurisdiction runs counter to its obligation to actively prevent violations of IHL. Under this positive obligation, States must employ any reasonable measure to prevent and bring such violations to an end.²¹⁵ States are not responsible for a possible failure of their efforts insofar as they have done everything reasonably in their power to prevent violations.²¹⁶ As an obligation of means, its content depends on the cir-

212. See ICRC Commentary, *supra* note 195, ¶¶ 164, 171–73.

213. Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 47, Aug. 12, 1949, 75 U.N.T.S. 31; Article 48 of Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, art. 48, Aug. 12, 1949, 75 U.N.T.S. 85; Convention (III) Relative to the Treatment of Prisoners of War, art. 144, Aug. 12, 1949, 75 U.N.T.S. 135; Convention (IV) Relative to the Protection of Civilian Persons in Time of War, art. 144, Aug. 12, 1949, 75 U.N.T.S. 287.

214. See Denielle Brassil, *Increasing Compliance with International Law through Dissemination*, 39 U. W. AUSTL. L. REV. 83, 91 (2015). See also CRAWFORD & PERT, *supra* note 201, at 238–39.

215. See ICRC Commentary, *supra* note 195, ¶ 154.

216. *Id.* ¶ 165. The ICRC Commentary suggests an analogy to the due diligence duty to prevent genocide in the Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277. The ICJ has interpreted this duty in Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), 1996 I.C.J. 595, ¶ 430 (July 11). According to the ICJ, the obligation to prevent is one of conduct and not one of result, in the sense that a State cannot be under an obligation to succeed, whatever the circumstances, in preventing the commission of genocide. Instead, the obligation of States parties is to employ all means reasonably available to them to prevent genocide. Applicable standard of due diligence when assessing whether a State has duly discharged the obligation were articulated as follows. The first, which varies greatly between States, is the capacity to effectively influence the action of persons likely to commit or already committing genocide. This capacity itself depends, inter alia, on the geographic distance of the State concerned from the scene of the events, and on the strength of the political links, as well as links of all other kinds, between the State and such persons.

cumstances—in particular, the foreseeability of the violations, the means reasonably available, and the degree of influence the State has over the persons in question.²¹⁷

Although effective prevention of violations is difficult to measure,²¹⁸ it follows that even where an education system is not an organ of a State, the State is still obligated to actively halt systematic indoctrination of hatred and violence, considering the probability that it would engender widespread violations of IHL in case of an armed conflict. The reasons to oblige States to proactively prevent such indoctrination are evident especially in cases where violations of IHL have been actually committed by indoctrinated persons, consolidating evidence of causal effect between indoctrination and commission of violations. In such cases, the State is obligated to prevent reoccurrence of violations by eliminating their cause.

Considering the connection between systematic indoctrination of hatred and violence and the commission of IHL violations during armed conflict, the duty to ensure respect under CA1 should be read as proscribing such practices. Therefore, States, by either directly indoctrinating or indirectly allowing such indoctrination to take place in their jurisdiction violate their obligations under the GC and should be held legally responsible.

CONCLUSION

The practice of political indoctrination is widespread, especially in cases of armed conflict, as governing entities find the indoctrination necessary to maintain their perceived legitimacy. The extent to which indoctrinated children and youth are exposed to hateful and violent contents varies, and so does the depth of the influence of such content on their mental and moral development. Such indoctrination not only instills hatred towards an adversarial group but also may provide reason and sometimes even the skill to act violently against such a group and its members. Moreover, indoctrination in itself impedes moral and psychological development of children, who then lack emotional tools to face morally complicated realities that are introduced to them during armed conflicts. The unfortunate result is extensive participation of children, youths, and other persons who were indoctrinated in armed conflicts, following violent agendas

217. See ICRC Commentary, *supra* note 195, ¶ 150.

218. See discussion about the definition of a positive objective with respect to prevention in Brassil, *supra* note 214, at 92.

that they have internalized.

In unfortunate cases in which indoctrinated children have grown to perpetrate international crimes, indoctrinators should be held criminally liable under ICL. Importantly, policy-making and high-ranking officials can be held liable in this context as well. Moreover, the mere existence of such indoctrinating education systems may indicate that the governing entity has failed to uphold its duty to ensure respect for IHL among its population.

States possess unique power, across social segments, to influence the political perceptions of entire generations of people as well as their psychological abilities to face the complicated reality of armed conflicts. Therefore, States and other governing entities should bear the responsibility for abusing their power for the purpose of preserving their political legitimacy or ensuring the continuance of their ideology. Providing a criminal legal framework for the ascription of responsibility in order to root out behaviors aimed at planting the seeds of hatred and violence is another small step in attempting to eradicate mass atrocities by ending impunity and eradicating children's involvement in armed conflicts.²¹⁹

But even more than triggering a discussion of States' and non-State actors' responsibility for indoctrination of hatred and violence, the purpose of this Note was also to add another dimension to the discussion of advancing compliance with international law. Building upon children's and youth's susceptibility to indoctrination, this Note underscores the origins of human behavior and the development of morality and mental capacity to face moral and emotional conflicts, greatly affected by childhood learning experiences, exposure to hatred, aggression, and threats to survival. Therefore, it seems that education is key to promote compliance with universal morals embedded in peremptory norms of international law.

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219. See Rome Statute, *supra* note 134, Preamble.

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Committed to construction of long-lasting resolution to international conflicts, I believe it is essential to identify the feuling mechanisms that sustain those conflicts. I find that education systems are easily abused for the purpose of sustaining conflicts for generations. Hence, this Note is aimed at advancing the imposition of legal responsibility

for such abuses, in order to disincentivize it and thus weaken a significant mechanism impeding conflict resolution.

I wish to thank Prof. Marko Milanovic for guiding me while developing the main arguments of this Note.

Any position expressed in this Note reflects my own views and should not be attributed to the State of Israel.