

INTERNATIONAL LAW LADDER

- ① Was the IRS system genocidal?
- ② What legal instruments exist internationally to bring about justice for Indigenous Peoples in Canada?

CUT OUT OF THE UNGC

LEMKIN → genocide is a COORDINATED PLAN of DIFFERENT ACTIONS aiming at the DESTRUCTION of the ESSENTIAL FOUNDATIONS of the LIFE of NATIONAL GROUPS with the ULTIMATE AIM of ANNIHILATING the GROUP themselves

LEMKIN included "cultural genocide" as an act of genocide, which conveys the attempted destruction of languages, religions, & cultures (VS) the act of "forced assimilation" which suggests the targeting of individuals rather than a group's collective identity

↳ the intentional destruction of the FOUNDATIONS that supports the group & distinguishes it from other groups

★ THE PERPETRATOR MUST HAVE INTENDED THE PHYSICAL & BIOLOGICAL DESTRUCTION OF A GROUP

ICTY / ICTR have characterized the UNGC as a dynamic / changing document that is open to reinterpretation by the courts

ICTY / ICTR have redefined the definition of:

"national" → broadened to beyond a state (Indigenous Peoples are without state-based claims but qualify as "nations" or "national groups")

"racial" → based on hereditary physical traits often identified with a geographical region (traditional territory...)

"ethnic" → self-identification OR identification by the perpetrator

UNGC 2 ... a group based on
 national
 racial
 ethnic
 religious] grounds

"intent to destroy" → the standard of guilt (a high standard of SPECIFIC INTENT) OR (GENOCIDAL INTENT)
★ → the perpetrator must have intended the physical & biological destruction of a group

UNGC 2 "acts committed with intent to destroy, in whole or in part, a group"

"in whole or in part" → intended destruction of only part of a group is also genocide

ACTION ✓ → INTENT

*** "part" should be a significant part of the target group (Srebrenica ~ 8000) → individuals may be guilty of genocide even if one person is killed by that individual so long as there is knowledge they were participating in a larger plan to destroy the group

- (a) genocide
- (b) conspiracy to commit genocide
- (c) direct & public incitement to commit genocide
- (d) attempt to commit genocide
- (e) complicity in genocide

THE SCALE OF THE ATROCITIES / ACTS is an important factor in making the legal case of genocide

UNGC 3 "acts" (a)(b)(c)(d)(e)

→ Art. 3 UNGC "acts" that comprise a policy to destroy a group's existence / identity
groups as collective entities → GROUP = clearly defined identities where the group is targeted as a group rather than as individuals

GROUP → acts committed against →

UNGC 2(e) forcibly transferring children of the group to another group

→ by direct force, fear of violence, duress, detention, psychological oppression [UNHCR defines a child as under the age of 14]

UNGC 2(c) deliberately inflicting conditions of life calculated to destroy a group

→ including the deliberate deprivation of resources needed for the group's physical survival, such as ... food ... medical services via forcible relocation

UNGC 2(b) causing serious bodily or mental harm to members of the group

→ including inflicting trauma on members of the group through widespread torture, rape, sexual violence, forced or coerced use of drugs and mutilation

UNGC 2(a) killing members of the group

→ includes direct killing and actions causing death

ACTION → 3 parties/perpetrators

① the CDN gov't ② the RCMP ③ the Churches

- Catholic
- Anglican
- Presbyterian
- United

2 ELEMENTS → ① intent ② action

The crime of genocide has 2 elements → "intentional" is proven directly from statements or orders

UN Convention on the Prevention and Punishment of Genocide (UNGC) in force 12 January 1951

OR
inferred from a systematic pattern of coordinated acts