

## **Convention on the Prevention and Punishment of the Crime of Genocide**

**Canada** signed the treaty on 28 November 1949 and ratified it on 3 September 1952.

**Adoption:** The Convention was adopted by the United Nations General Assembly on 9 December 1948.

**Entry into force:** 12 January 1951.

**Number of signatories and ratifications/accessions:** There are 146 parties to the Convention.

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### **Summary information**

The [Convention on the Prevention and Punishment of the Crime of Genocide](#) was adopted by the General Assembly of the United Nations in 1948. It entered into force in 1951 after 20 States had ratified or acceded to it. Unlike most of the other main human rights treaties, the Genocide Convention does not establish a monitoring mechanism.

The Convention confirms that genocide is a crime under international law, identifies five acts which constitute genocide and lists five acts as punishable: genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity in genocide.

### **History**

According to the UN [Audiovisual Library of International Law - Convention on the Prevention and Punishment of the Crime of Genocide](#), "The term 'genocide' was first used by Raphael Lemkin in his book *Axis Rule in Occupied Europe*, published in late 1944." While the International Military Tribunal trying Nazi prisoners was limited to

crimes perpetrated after the outbreak of war, there were strong efforts within the United Nations General Assembly to also condemn what some called “peacetime genocide.”

“At the first session of the General Assembly, in late 1946, Cuba, Panama and India presented a draft resolution that had two objectives: a declaration that genocide was a crime that could be committed in peacetime as well as in time of war, and recognition that genocide was subject to universal jurisdiction -- that is, it could be prosecuted by any State, even in the absence of a territorial or personal link to the person accused of committing the crime of genocide. [General Assembly resolution 96 \(I\)](#), adopted on 11 December 1946, affirmed ‘that genocide is a crime under international law which the civilized world condemns’. It was silent as to whether the crime could be committed in peacetime, and although it described genocide as a crime ‘of international concern’, it provided no clarification on the subject of jurisdiction. Resolution 96 (I) mandated the preparation of a draft convention on the crime of genocide.”

Draft text for the convention was prepared initially by the United Nations Secretariat and then reworked by an Ad Hoc Committee set up under the authority of the Economic and Social Council. The “Ad Hoc Committee draft was the basis of negotiations in the Sixth Committee [Legal] of the General Assembly, in late 1948, which agreed upon the final text of the Convention, submitting it for formal adoption to the plenary General Assembly.” The Sixth Committee made several important decisions, such as excluding “cultural genocide” from the scope of the Convention, and also including “forcible transfer of children from one group to another.” It also excluded from the scope of the treaty what later became known as “ethnic cleansing,” worded then as “measures intended to oblige members of a group to abandon their homes in order to escape the threat of subsequent ill-treatment.”

Additionally, the UN’s Audiovisual Library reports, the drafters quite explicitly rejected universal jurisdiction for the crime. Article VI recognises only territorial jurisdiction, as well as the jurisdiction of an international criminal tribunal. There was, of course, no international criminal tribunal at the time. But when it agreed to the Convention, the General Assembly also adopted a resolution directing that work begin on a draft statute for such a court. This was the beginning of sporadic work that would eventually lead, half a century later, to the adoption of the Rome Statute of the International Criminal Court.”

The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the General Assembly of the United Nations by its resolution 260 A (III) on 9 December 1948. The Convention entered into force 12 January 1951 after 20 States had ratified or acceded to it.

## **Key Provisions**

The Convention identifies five acts, any of which constitute genocide if “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group”. They

are:

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group; and
- Forcibly transferring children of the group to another group.

The Convention confirms that genocide is a crime under international law which the parties to the Convention agree to prevent and to punish. The Convention lists five acts as punishable:

- Genocide;
- Conspiracy to commit genocide;
- Direct and public incitement to commit genocide;
- Attempt to commit genocide; and
- Complicity in genocide.

The Convention makes it clear that any person, whether “constitutionally responsible rulers, public officials or private individuals” committing genocide shall be punished. State parties to the Convention must undertake to enact the necessary legislation, in accordance with their respective constitutions, “to give effect to the provisions of the ... Convention” and to “provide effective penalties for persons guilty of genocide” and the other four related acts listed above. Persons charged with genocide are to be tried by “a competent tribunal of the State in the territory of which the act was committed” or by an international tribunal whose jurisdiction has been accepted by that State.

State parties may also call upon the United Nations “to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide” or any of the other four related acts listed above. Disputes between State parties related to the interpretation or application of the Convention may be submitted to the International Court of Justice by any of the parties to the dispute.

It should be noted that the crime of genocide may be committed during time of peace or time of war.

## **Canada’s Commitments and Responsibilities**

As required by the Convention, Canada enacted legislation to give effect to the provisions of the Convention. A [section was added to Canada’s Criminal Code](#) making it an offence to advocate or promote genocide. But the term “genocide” was only applicable to two acts committed with intent to destroy in whole or in part any identifiable group:

- killing members of the group; and
- deliberately inflicting on the group conditions of life calculated to bring

about its physical destruction.

The other three acts defined under the Convention as constituting genocide were not included in Canada's legislation.

However, more recently, Canada enacted legislation to implement its obligations under the *Rome Statute* establishing the International Criminal Court. The *Crimes Against Humanity and War Crimes Act*, became law in June 2000 and confirmed genocide as a punishable crime, along with crimes against humanity and war crimes. All three terms were defined as being in accordance with customary international law.

## International Monitoring and Implementation

According to the UN [Audiovisual Library of International Law - Convention on the Prevention and Punishment of the Crime of Genocide](#), "Unlike most of the other main human rights treaties, the Genocide Convention does not establish a monitoring mechanism. There have been periodic calls to set up a treaty body, possibly by an additional protocol to the Convention or perhaps simply by a resolution of the General Assembly."

However, there have been several major initiatives in support of the Convention.

[International Criminal Tribunals](#) were established for the former Yugoslavia (1993) and for Rwanda (1994). Both tribunals have tried individuals accused of the crime of genocide as well as crimes against humanity and other violations.

The Rome Statute establishing the [International Criminal Court](#) (ICC) was adopted in 1998 and entered into force in 2002. The ICC has authority to consider the crime of genocide, as well as crimes against humanity, war crimes and the crime of aggression. In 2008, the [ICC Prosecutor presented the case against Sudanese President Hassan Ahmad Al Bashir for genocide](#) as well as crimes against humanity and war crimes committed in Darfur, Sudan. Warrants for the arrest of Al Bashir and others have been issued. Al Bashir remains at large in spite of the arrest warrants.

In 2004, the Secretary-General of the United Nations established the high-level position of [Special Advisor on the Prevention of Genocide](#). The Special Advisor has the following responsibilities:

- Collecting existing information, in particular from within the United Nations system, on massive and serious violations of human rights and international humanitarian law of ethnic and racial origin that, if not prevented or halted, might lead to genocide;
- Acting as a mechanism of early warning to the Secretary-General, and through him to the Security Council, by bringing to their attention situations that could potentially result in genocide;
- Making recommendations to the Security Council, through the Secretary-General, on actions to prevent or halt genocide; and

- Liaising with the United Nations system on activities for the prevention of genocide and working to enhance the United Nations' capacity to analyze and manage information regarding genocide or related crimes.

With respect to Canada, there is an on-going debate as to whether Canada's treatment of its aboriginal peoples constitutes a genocide. According to [Huffington Post](#), in 2013, former National Chief Phil Fontaine, elder Fred Kelly, businessman Dr. Michael Dan and human rights activist Bernie Farber sent a letter to James Anaya, then UN Special Rapporteur on the Rights of Indigenous Peoples, arguing that several specific crimes against aboriginal people in Canada qualify as genocide" under the Convention.

The term "cultural genocide" is now being used by some to describe the crimes inflicted within the notorious Indian Residential Schools, including the [Truth and Reconciliation Commission of Canada](#).

## References

[United Nations Human Rights - Convention on the Prevention and Punishment of the Crime of Genocide](#)

[Audiovisual Library of International Law - Convention on the Prevention and Punishment of the Crime of Genocide](#)

[General Assembly resolution 96 \(I\) on The Crime of Genocide, adopted on 11 December 1946](#)

[Criminal Code of Canada, Section 318](#)

[Government of Canada, Justice Laws Website, Crimes Against Humanity and War Crimes Act](#)

[International Committee of the Red Cross, International criminal justice: The institutions -- Factsheet](#)

[International Criminal Court \(ICC\)](#)

[ICC - Cases](#)

[Office of the Special Advisor on the Prevention of Genocide](#)

[Huffington Post - UN Urged To Declare Canada's Treatment Of Aboriginals 'Genocide'](#)

[Truth and Reconciliation Commission of Canada, Executive Summary](#)