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The Danish 'Coil Campaign' in Greenland

Indigenous Genocide Through Forced Birth Control?

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Abstract

This article analyses whether Denmark may have committed genocide against the indigenous population of Greenland by inserting intra-uterine devices into thousands of Greenlandic women and girls as part of a birth control programme in the 1960s and 1970s – the so-called 'coil campaign'. This question is important for understanding of how genocide can be committed against indigenous peoples as part of colonial abuses. The article provides an in-depth analysis of genocide, focusing in particular on the prohibited act of imposing measures to prevent births, specific intent, and state responsibility. It then offers a critique of the so-called 'Holocaust standard', which perceives genocide as a time-intense mass murders committed by undemocratic, violent regimes and which often excludes indigenous experiences of genocide. Lastly, the article analyses Denmark's obligations for truth, justice, and reparation. It concludes that, while more investigation is needed, it is possible that the coil campaign in Greenland may constitute genocide.

Keywords

genocide – measures intended to prevent births – indigenous peoples – Greenland – colonisation – Denmark

1 Introduction

On 6 May 2022, a Danish podcast – 'The Coil Campaign' (*Spiralkampagnen*)[1] – made an extraordinary revelation: in the 1960s and 1970s Danish doctors inserted approximately 4,500 coils or intra-uterine devices (IUDs) into Greenlandic[2] women and girls without their or their parents' consent.[3] This has since been the subject of a BBC documentary,[4] and has been reported widely in both Danish and international media.[5] What emerged is a story of a mass forced birth control programme of an indigenous people by a colonial power. Greenland – a former Danish colony – was annexed by Denmark in 1953. What followed was a time of intense 'modernisation', and in fact increased colonisation, during the 1950s and 1960s to bring living standards in line with those in Denmark. This led not only to improved living standards and increased life expectancy, but to an enormous and unexpected population growth, which was the fastest in the world.[6] The population doubled in size in three decades, increasing from 24,867 in 1953 to roughly 50,106 in 1980.[7] The

1 "Spiralkampagnen," *Danish Broadcasting Corporation*, 6 May 2022, <www.dr.dk/lyd/p1/spiralkampagnen-35106548080000>, visited on 14 August 2024.

2 While most of the population in Greenland identifies as Inuit, they generally refer to themselves collectively as Greenlanders. I will therefore do the same. *See* Peter Bjerregaard and Thomas Steensgaard, "Greenland," in *Health Transitions in Arctic Populations*, ed. T. Kue Yong and Peter Bjerregaard (Toronto: University of Toronto Press, 2008) 23; Elizabeth Rink *et al.*, "An Ecological Approach to Understanding Women's Reproductive Health and Pregnancy Decision Making in Greenland," *Health & Place* 77 (2022): 1.

3 Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, José Francisco Calí Tzay* (A/HRC/54/31/Add.1), para. 26; Jan Misfeldt, "Familieplanlægning i grønlandske lægedistrikter," *Ugeskrift for læger* (1977): 1501.

4 "Greenland's Lost Generation," *BBC World Service*, 8 December 2022, <www.youtube.com/watch?v=CdlhHPOoLF8>, visited on 9 December 2024.

5 *E.g.* Nanna Nørby Hansen, "Gjorde modernisering besværlig: Her er tre grunde til, at Danmark ville begrænse antallet af nyfødte i Grønland," *Danish Broadcasting Corporation*, 8 May 2022, <www.dr.dk/nyheder/indland/tusindvis-af-groenlandske-kvinder-fik-opsat-spiraler-af-danske-myndigheder-her-er>, visited on 14 August 2024; Anne-Françoise Hivert, "Greenland victims demand justice over forced IUD scandal," *Le Monde*, 4 October 2023, <www.lemonde.fr/en/international/article/2023/10/04/greenland-victims-demand-justice-over-forced-iud-scandal_6148938_4.html#>; Miranda Bryant, "'I was only a child': Greenlandic women tell of trauma of forced contraception," *The Guardian,* 24 March 2024, <www.theguardian.com/world/2024/mar/29/i-was-only-a-child-greenlandic-women-tell-of-trauma-of-forced-contraception>. All visited on 14 August 2024.

6 Ole Berg, "IUDs and the Birth Rate in Greenland," *Studies in Family Planning* (1972): 12; Misfeldt, "Familieplanlægning," 1501; "Redegørelse af Ministeren for Grønland," *Folketinget*, 23 April 1970, <www.folketingstidende.dk/samling/19691/redegoerelse/R5/19691_R5.pdf>, visited on 14 August 2024.

7 Peter Bjerregard and Christina Viskum Lytken Larsen, "Health Aspects of Colonization and the Post-Colonial Period in Greenland 1721 to 2014," *Journal of Northern Studies* 10, No. 2

number of newborns peaked in 1966 at 1,781 – an increase of almost 80 per cent in 15 years.[8] This in turn increased the cost for the Danish state to provide housing, schools, and other services.[9] It appears that what is now referred to as the 'coil campaign' was a solution to this 'problem'.

Since its unearthing, the coil campaign has received the attention of the UN Special Rapporteur on the rights of indigenous peoples and in September 2022, Denmark and Greenland agreed on a two-year independent investigation into the decision-making process and implementation of the coil campaign between 1966 to 1991 – when Greenland took over responsibility for the health care system.[10] The investigation is led by the Ilisimatusarfik Center for Arctic Welfare in collaboration with the Center for Public Health in Greenland at the University of Southern Denmark and is expected to finish its work on 1 September 2025.[11] A group of Greenlandic women are also seeking compensation from the Danish government.[12]

According to the Greenlandic Council for Human Rights and Danish Institute for Human Rights constitutes gross and large-scale violations of human rights, including inhuman and degrading treatment.[13] Furthermore, Greenlandic members of the Danish Parliament as well as the former Greenlandic prime minister have made allegations of genocide,[14] and in 2024 the Greenlandic

(2016): 91; "Greenland Population 1950–2024," *Microtrends*, <www.macrotrends.net/global-metrics/countries/GRL/greenland/population>, visited on 14 August 2024.

8 Hansen, "Gjorde modernisering besværlig."

9 "Redegørelse af Ministeren for Grønland"; Misfeldt, "Familieplanlægning," 1501.

10 "Danmark og Grønland Indgår Aftale om Udredning af 'Spiralsagen'," *Indenrigs- og Sundhedsministeriet,* 30 September 2022, <www.ism.dk/nyheder/2022/september/danmark-og-groenland-indgaar-aftale-om-udredning-af-"spiralsagen">, visited on 14 August 2024; Human Rights Council, *Report of the Special Rapporteur*, para. 27–28.

11 "Danmark og Grønland Sætter Uvildig Udredning af Spiralsagen i Gang," *Government of Greenland*, 30 May 2023, <naalakkersuisut.gl/Nyheder/2023/05/3005_udredning?sc_lang=da>, visited on 14 August 2024; *Midtvejsrapport: Uvildig udredning af praksis for antikonception i Grønland og på efterskoler i Danmark med grønlandske elever i årene fra 1960 til og med 1999*, 2024, Sundhedsudvalget, SUU Alm.del Bilag 355, <www.ft.dk/samling/20231/almdel/SUU/bilag/355/2892996/index.htm>, visited on 27 June 2025.

12 Cristy Cooney, "Greenland Women Seek Compensation over Involuntary Birth Control," BBC, 3 October 2023, <www.bbc.co.uk/news/world-europe-66990670>, visited on 14 August 2024.

13 "Spiralkampagne i Grønland udgør grov krænkelse af menneskerettighederne," *Institut for Menneske Rettigheder*, 12 May 2022, <www.menneskeret.dk/nyheder/spiralkampagne-groenland-udgoer-grov-kraenkelse-menneskerettighederne>, visited on 9 December 2024.

14 *E.g.* "Politiker: Spiral-kampagne var folkemord," *Sermitsiaq*, 10 May 2022, <www.sermitsiaq.ag/samfund/politiker-spiral-kampagne-var-folkemord/570242>, visited on 9 December 2024; "Grønlands regeringschef beskylder Danmark for folkedrab: 'Min tålmodighed er sluppet op'," *Danish Broadcasting Corporation*, 12 December 2024, <www.dr.dk/nyheder/politik/groenlands-regeringschef-beskylder-danmark-folkedrab-min-taalmodighed-er-sluppet-op> visited on 17 March 2025.

government launched an investigation to assess whether the coil campaign meets the definition of genocide.[15] Genocide allegations have, however, been rejected by some Danish politicians as being "out of all proportion",[16] as well as some Danish legal experts who have claimed that there is no "basis to assume that the Danish state wanted to remove the Greenlanders as a group from Greenland", and therefore it would not constitute genocide.[17] Nevertheless, one of the prohibited acts in the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) is measures intended to prevent births,[18] and the occurrence of other prohibited acts listed in the Convention, like mass killings, often leads to such allegations. The current debate in Denmark about the coil campaign thus raises a series of questions about genocide, including whether the Genocide Convention and existing jurisprudence is applicable to cases such as the coil campaign, but also questions about whether existing perceptions of genocide, such as understandings about the context in which the crime takes place and who perpetrates it, prevents us from seeing the coil campaign as an example of genocide.

This article therefore analyses important questions that may arise in relation to the issue of whether the implementation of the coil campaign may constitute genocide against the indigenous population of Greenland – questions that will need to be addressed by any court or judicial body adjudicating on this issue. Since genocide is both a crime under international law and a violation of the obligations of the state not only to refrain from introducing policies that may amount to genocide but also to prevent, prohibit and punish genocide, responsibility for genocide will be analysed both through the prism of individual criminal responsibility and state responsibility. While it is primarily Denmark's responsibility to identify individuals who may be responsible for genocide, this article suggests actors who may bear such responsibility. It must be recognised that domestic prosecutions for genocide might be impossible due to the length of time since the implementation of the coil campaign and the likelihood that many of the individuals responsible for its planning and implementation may already have passed away. Nevertheless, it may be

15 "Naalakkersuisut iværksætter en afdækning af de menneskeretlige aspekter ved Antikonceptionssagen," *Government of Greenland*, 16 August 2024, <naalakkersuisut.gl/Nyheder/2024/08/1608_Antikonceptionssagen?sc_lang=da>, visited on 17 March 2025.

16 "Frederik Harhoff var med til at definere, hvad der er et folkedrab. Og det er spiralsagen ikke," *Danish Broadcasting Corporation*, 14 December 2024, <www.dr.dk/nyheder/indland/frederik-harhoff-var-med-til-definere-hvad-der-er-et-folkedrab-og-det-er-spiralsagen>, visited on 17 March 2025.

17 *Ibid.*

18 Convention on the Prevention and Punishment of the Crime of Genocide, General Assembly resolution 260 A (III) of 9 December 1948, Article II(d).

possible for a state party to the Genocide Convention to bring a case against Denmark before the International Court of Justice (ICJ) for breaches of the Genocide Convention. If this occurs, it would be the first time an international court adjudicates on the issue of genocide committed through measures intended to prevent births by method of forced birth control.

This article also challenges the notion of genocide as solely an event of mass violence, particularly mass-murder, in contexts of repression or conflict. Such a narrow understanding of genocide – in some literature referred to as the 'Holocaust standard'[19] – not only unhelpfully limits the crime of genocide to extreme cases of conflict-related violence such as the Holocaust, Rwanda, and Srebrenica, but it also excludes experiences of indigenous peoples with colonial regimes. It is also contrary to a plain reading of the Genocide Convention. Arguably three of the five prohibited acts in the Convention – deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group – are of a different type of violence and cause slower destruction than killing members of the group, or causing serious bodily harm to members of the group. Nevertheless, this does not mean that these acts cannot on their own, if committed with the specific intent to destroy a protected group in whole or in part as such, constitute genocide; indeed, the Genocide Convention clearly provides otherwise. Additionally, this article challenges notions of exceptionalism existing among former colonial powers, including Denmark and other Scandinavian states, and which implicitly champion the narrow Holocaust standard. This exceptionalism perceives these countries as peaceful states who tend to respect most human rights (even though such respect tends to extend only to those recognised as part of mainstream society) and morally different to the 'rogue' states who they can label as perpetrators of genocide without difficulty. It also leads to an unwillingness or inability to accept that the treatment of indigenous peoples could enter the realm of what could constitute genocide.[20] Several scholars discussing the potential application of the crime of genocide to colonial contexts appear to assume that a coloniser with 'benevolent' motives cannot have committed genocide since they will have lacked genocidal intent.[21] While this article disagrees with such assumptions,

19 *E.g.* Martin Shaw, *What is Genocide?* (Cambridge: Polity Press, 2015) 53.

20 *E.g.* Pernille Ipsen, and Gunlög Fur, "Introduction," *Itinerario* 33, No. 2 (2009): 10; Andrew Woolford and Jeff Benvenuto, "Canada and Colonial Genocide," *Journal of Genocide Research* 17, No. 4 (2015): 375.

21 *E.g.* Gunther Lewy, "Can There Be Genocide Without the Intent to Commit Genocide?," *Journal of Genocide Research* 9, No. 4 (2007): 6961–674; Adam Muller, "Troubling History,

they raise important issues as to the characterisation of the requirement of specific intent in the definition of genocide, including whether the population control of a specific indigenous population for financial motives (if this is indeed what the motives were for the coil campaign) can constitute intent to destroy in whole or in part a protected group.

Recent legal scholarship on genocide interrogates how international law deals with cultural destruction,[22] issues relating to specific intent,[23] but also analyses the position of reproductive crimes in international criminal law, including measures to prevent births.[24] There have been several important advances made in legal scholarship and practice, which this article considers. However, the alleged perpetration of genocide against indigenous peoples is largely absent from this literature. Much of the existing non-legal scholarship on indigenous genocide tends to centre around critiques of the definition of genocide in international law as too narrow to adequately account for the experiences of indigenous peoples, since this definition excludes destruction of culture, or 'cultural genocide'.[25] Some also discuss how the structures of settler colonialism mean that genocides against indigenous peoples often occur over lengthy periods of time, which does not easily fit within current conceptions of this crime.[26] These scholars, however, often focus on methods of destruction such as loss of land, culture, language and traditions through

Troubling Law: The Question of Indigenous Genocide in Canada," in *Understanding Atrocities: Remembering, Representing, and Teaching Genocide,* ed. Scott W. Murray (University of Calgary Press: 2017) 83–106; Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 8, No. 4 (2006): 387–409.

22 *E.g.* Predrag Dojčinović, "The Chameleon of Mens Rea and the Shifting Guises of Culture-Specific Genocidal Intent in International Criminal Proceedings," *Journal of Human Rights* 15, No. 4 (2016): 454–476; Elisa Novic, "Physical-Biological or Socio-Cultural 'Destruction' in Genocide? Unravelling the Legal Underpinnings of Conflicting Interpretations," *Journal of Genocide Research* 7, No. 1 (2015): 63–82.

23 *E.g.* Catherine Renshaw, "The Numbers Game: Substantiality and the Definition of Genocide," *Journal of Genocide Research* 25. No. 2 (2023): 195–215.

24 *E.g.* Rosemary Grey, "A Legal Analysis of Genocide by "Imposing Measures Intended to Prevent Births": Myanmar and Beyond," *Journal of Genocide Research* (2023): 1–22; Rosemary Grey, "Reproductive Crimes in International Criminal Law," in *Gender and International Criminal Law*, ed. Indira Rosenthal, Valerie Oosterveld, and Susana SáCouto (Oxford: Oxford University Press: 2022) 231–264.

25 *E.g.* Lindsey Kingston, "The Destruction of Identity: Cultural Genocide and Indigenous Peoples," Journal of Human Rights 14, No. 1 (2015): 63–83; Muller, "Troubling History"; Laurelyn Whitt Alan W. Clarke, *North American Genocides: Indigenous Nations, Settler Colonialism, and International Law* (Cambridge: Cambridge University Press, 2019); Andrew Woolford, *This Benevolent Experiment: Indigenous Boarding Schools, Genocide, and Redress in Canada and the United States* (Lincoln: University of Nebraska Press, 2015).

26 *E.g.* Pauline Wakeham, "The Slow Violence of Settler Colonialism: Genocide, Attrition, and the Long Emergency of Invasion," *Journal of Genocide Research* 24, No.3 (2022): 337–356.

assimilationist policies of colonising powers, but exclude indigenous women's experiences, such as with forced sterilisations. Some literature does specifically discuss the sterilisation of indigenous women as genocide, for example in Canada, the United States, and Peru, but without detailed legal analysis of the law on genocide or how it would apply to the cases discussed, particularly in relation to specific intent.[27] The claims of genocide therefore remain underdeveloped. This article builds on this existing and cross-disciplinary scholarship on genocide and reproductive violence against indigenous women to provide an in-depth legal analysis of the law on genocide through forced birth control and how in the context of the coil campaign this may constitute an indigenous genocide. It shows that, while the existing Holocaust standard and exceptionalism do produce barriers, forced birth control imposed on indigenous women can qualify as genocide under the existing definition in the Genocide Convention.

The question of whether the coil campaign may constitute genocide is important for how broad or exceptional we understand the concept of genocide to be. This impacts on whether we consider various types of human conduct as genocide. A narrow conception of genocide maintains a rigid hierarchy of horror which privileges certain harms at the expense of others, whereas the less privileged harms fall outside the conception of genocide and consequently become more morally permissible or justifiable within society. It is also important for our understanding of how genocide can be committed against indigenous peoples as part of colonial oppression, even in the absence of the mass killings or other violent crimes that often characterise instances of genocide. As such the analysis and findings in this article may be relevant for other contexts where forced sterilisations or measures of enforced birth control were used against indigenous peoples or other marginalised peoples or groups subjected to forms of control or domination. It also contributes to an understanding of how genocide can be committed through measures intended to prevent births more generally – something that has not yet been adjudicated by international criminal tribunals and only by a few domestic courts.[28] This article is therefore relevant for both indigenous rights and

27 Erin Clarke, "Indigenous Women and the Risk of Reproductive Healthcare: Forced Sterilisation, Genocide and Contemporary Population Control," *Journal of Human Rights and Social Work* 6 (2021): 144–147; Ñusta P. Carranza Ko, "Making the Case for Genocide, the Forced Sterilization of Indigenous Peoples of Peru," *Genocide Studies and Prevention* 14, No. 2 (2020): 90–103; D. Marie Ralstin-Lewis, "The Continuing Struggle against Genocide: Indigenous Women's Reproductive Rights," *Wicazo Sa Review* 20, No 1, (2005): 71–95.

28 *E.g. Sentencia C-01076-2011-00015*, Tribunal Primero de Sentencia Penal Narcoactividad y Delitos Contra el Ambiente, 26 September 2018.

international criminal law research and practice. Additionally, as other Scandinavian countries, *e.g.* Sweden and Norway, are beginning to address colonial abuses against the Sami, this article is also relevant for the broader context of Scandinavian colonialism and treatment of indigenous peoples, and for how to redress human rights violations against the indigenous peoples in the region.

This article begins by analysing the law on genocide through the Genocide Convention and jurisprudence from international courts and tribunals and whether the coil campaign may constitute genocide according to international law, as well as state responsibility for genocide. It then discusses issues that arise from the so-called 'Holocaust standard', which result in narrow understandings of genocide not necessarily in line with international law and risks excluding experiences of indigenous peoples. The section also discusses genocide by attrition as a way of understanding genocide in a broader way that is more inclusive of indigenous peoples' experiences. Lastly, the article analyses Denmark's international obligations to investigate the coil campaign and provide reparation to its victims.

2 The Coil Campaign – a Genocide?

Genocide is an international crime defined as the commission of certain prohibited acts "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such".[29] The prohibited acts are: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; and (e) Forcibly transferring children of the group to another group.[30]

This definition from the Genocide Convention has since 1948 remained the accepted legal definition of genocide both internationally and domestically[31] and is repeated in the statutes of various international criminal tribunals.[32] The Genocide Convention criminalises the commission of genocide, and also other forms of perpetration, namely conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and

29 Genocide Convention, Article II.

30 *Ibid.*

31 *E.g.* Genocide Act 1969, <www.legislation.gov.uk/ukpga/1969/12/2001-09-01/data.html>, visited on 14 August 2024.

32 *See e.g.* statutes of the ICTY, ICTR, ECCC, and the Rome Statute of the ICC.

complicity in genocide.[33] Denmark ratified the Genocide Convention in 1951 and passed domestic legislation making it possible to prosecute individuals for the crime of genocide in 1955.[34]

This section analyses the elements of genocide and whether the coil campaign may constitute genocide by imposing measures intended to prevent births. It shows that while a full investigation into the facts is necessary, including of the planning and implementation of the coil campaign and the intent of individuals responsible, if the elements of specific intent are fulfilled a court adjudicating on the issue may find that genocide has been committed and that Denmark's state responsibility for this may be engaged.

2.1 *The Actus Reus*

2.1.1 Protected Groups

The *actus reus* elements of genocide require that any of the prohibited acts be committed towards one of the protected groups. Determination of group membership will be therefore vital, and the Greenlanders would need to be considered as a national, racial, ethnical, or religious group to be protected under the Genocide Convention. The enumeration of these groups is considered by some as the most controversial aspect of the Genocide Convention.[35] The drafters of the Convention limited the protected groups category to groups perceived to be stable and permanent, *i.e.* groups whose membership was not voluntary; political and economic groups were therefore excluded.[36] Nevertheless, the protected groups enumerated in the Convention are not inherently distinct; they overlap, help define each other, and groups may be protected on multiple bases.[37] Therefore, they operate "much as a four corner posts that delimit an area within which a myriad of groups" are protected.[38]

33 Genocide Convention, Article III.

34 Law Nr. 132 of 29 of April 1955 Law concerning punishment of Genocide, <www.preventgenocide.org/dk/folkedrab1955.htm>, visited on 9 December 2024.

35 William A. Schabas, "Groups Protected by the Genocide Convention: Conflicting Interpretations form the International Criminal Tribunal for Rwanda" *ILSA Journal of International & Comparative Law* 6, No. 2 (2000): 375.

36 Melanie O'Brien, "Defining Genocide," *Journal of International Peacekeeping* 22 (2018): 159; UN General Assembly Sixth Committee, *Hundred and Twenty-Eight Meeting* (A/C.6/SR.128).

37 William A. Schabas, "Groups Protected by the Genocide Convention: Conflicting Interpretations form the International Criminal Tribunal for Rwanda," *ILSA Journal of International & Comparative* Law 6, No. 2 (2000): 385; David L. Nersessian, "The Razor's Edge: Defining and Protecting Human Groups under the Genocide Convention," *Cornell International Law Journal* 36, No. 2 (2003): 303. *Also*, *Prosecutor* v. *Radislav Krstić,* Trial Judgment (IT-98-33-T) 2 August 2001, para. 555.

38 Schabas, "Groups Protected," 385.

Because the Genocide Convention does not provide definitions for the protected groups, courts and tribunals have had to decide how membership should be determined. The approach to this has changed over time, from a purely objective approach to a mixed objective and subjective approach.

The International Criminal Tribunal for Rwanda (ICTR) in *Akayesu* – the first time an international court adjudicated the crime of genocide – defined each of the protected groups according to certain objective criteria, including an ethnical group as "a group whose members share a common language or culture"[39] and a racial group as one "based on the hereditary physical traits often identified with a geographical region".[40] Providing objective, fixed, definitions of these categories is not unproblematic since it reduces complex and ever-changing terms to static identify markers,[41] and the Chamber's attempt to define the protected groups has been criticised.[42] The definition of race is particularly problematic as the Chamber focused on physical characteristics, which seems to suggest the identification of people based on their physical appearance rather than considering social and historical contexts.[43] However, it has since long been recognised that "there is no gene for race";[44] indeed, race is now considered as a social construct, rather than a biological fact.[45] Thus, continuing to base the determination of group membership on purely objective criteria set by outsiders risks making the application of the Genocide Convention static and "not correspond[ing] to the perception of the persons concerned by such categorisation".[46] Additionally, the meaning of racial groups was much broader at the time of drafting the Convention, when it was largely synonymous with national, ethnic, and religious groups,[47] showing that these groups were interlinked and not separated into silos. The narrower interpretation in *Akayesu* thus has the 'perverse result' in that it offered less protection than 50 years earlier.[48]

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39 *Prosecutor* v. *Jean-Paul Akayesu*, Trial Judgment (ICTR-96-4-T) 2 September 1998, para. 513.

40 *Ibid,* para. 514.

41 Steve Spencer, *Race and Ethnicity: Culture, Identity and Representation* (London: Routledge, 2014) 57.

42 *E.g.* Schabas "Groups Protected"; Carola Lingaas, "Defining the Protected Groups of Genocide," *ICD Brief*, 18 December 2015.

43 Lingaas, "Defining the Protected Groups," 8.

44 *Ibid*, 8.

45 Tara Van Ho, "Angels, Virgins, Demons, Whores: Moving Towards an Antiracist Praxis by Confronting Modern Investment Law Scholarship," *Journal of World Investment & Trade* 23, No. 3 (2022): 348; E. Tendayi Achiume and Devon W. Carbado, "Critical Race Theory Meets Third World Approaches to International Law," *UCLA Law Review* 67 (2021): 1467.

46 *Prosecutor* v. *Goran Jelisić*, Appeal Judgment (IT-95-10-A) 5 July 2001, para. 70.

47 Schabas, "Groups Protected," 381; Lingaas, "Defining the Protected Groups," 8.

48 Schabas, "Groups Protected," 382.

Since *Akayesu*, there has been a progressive move towards a more subjective approach that avoids the type of scientifically verifiable criteria under the purely objective approach[49] and has allowed the definitions to become more flexible.[50] The ICTR and the International Criminal Tribunal for the former Yugoslavia (ICTY) have held that because there are no internationally accepted definitions of the protected groups, they must be assessed in the light of a particular political, social, historical, and cultural context.[51] At the same time, a victim's membership of a protected group is determined by the point of view of, and stigmatisation by, the perpetrator of the victim.[52] The current approach by international tribunals is that the definition of a protected group must be assessed on a "case-by-case basis by reference to the *objective* particulars of a given social or historical context, and by the *subjective* perceptions of the perpetrators".[53] The group cannot however, be defined in negative terms, *i.e.* as not belonging to the perpetrator's group.[54] The same approach has been taken by both the ICJ and the Commission of Inquiry on Syria.[55]

The mixed objective and subjective approach, assessed on a case-by-case basis, has been said to ensure that "the perpetrator's conception of the victim group bears some logical relation to one or more of the four categories set forth in the Genocide Convention".[56] It also allows for a creative interpretation of group membership,[57] and permits the understanding of protected groups as categories that may change over time, thus challenging the perception of the

49 Lingaas, "Defining the Protected Groups," 9.

50 Veronika Bílková, "A House with Four Rooms Only? The Protected Groups under the Definition of Genocide," in *The Crime of Genocide: Then and Now*, ed. Pavel Šturma and Milan Lipovský (Leiden: Brill, 2022) 102.

51 *Prosecutor* v. *Rutaganda*, Trial Judgment (ICTR-96-3-T) 6 December 1999, para. 56; *Prosecutor* v. *Bagilishema*, Trial Judgment (ICTR-95-1A-T) 7 June 2001, para. 65; *Krstić*, Trial Judgment, para. 557.

52 *Rutaganda*, Trial Judgment, para. 57; *Prosecutor* v. *Goran Jelisić*, Trial Judgment (IT-95-10-T) 14 December 1999, para. 70; *Bagilishema*, Trial Judgment, para. 65; *Krstić*, Trial Judgment, para. 557.

53 *Prosecutor v. Laurent Semanza*, Judgment and Sentence (ICTR-97-20-T) 15 May 2003, para. 317. *Also, Bagilishema*, Trial Judgment, para. 65; *Case 002/02*, Trial Judgment, (002/19-09-2007/ECCC/TC) 16 November 2018, para. 793.

54 *Prosecutor* v. *Radovan Karadžić*, Trial Judgment (IT-95-5/18-T) 24 March 2016, para. 541. Also, *Prosecutor* v. *Ratko Mladić*, Trial Judgment (IT-09-92-T) 22 November 2017, para. 3436.

55 Human Rights Council, ""They came to destroy": ISIS Crimes Against the Yazidis," (A/HRC/32/CRP.2) para. 105; *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina* v. *Serbia and Montenegro*), 26 February 2007, Judgment, ICJ, para. 191–201.

56 Nersessian, "The Razor's Edge," 312.

57 Bílková, "A House with Four Rooms Only?," 112.

protected categories as stable and permanent. Nevertheless, this approach only considers the view of the outsider – either through the 'objective' observer, *e.g.* experts, or judges, or the perpetrator. Individuals' own perception as part of a group does not appear relevant for the purposes of determining the existence of a protected group or group membership, although it could perhaps help establish objective criteria. This may be explained by the fact that since the perpetrator targets the victims for destruction because of their identity as members of a particular group, it is the subjective stigmatisation of the group that matters.[58] As Lingaas argues, "a subjective perpetrator-based approach is coherent with any pre-genocidal process", since the perpetrator's prejudice towards a group other than their own, *i.e.* the phenomenon of 'othering', is essential for the commission of genocide.[59]

Applying the mixed objective and subjective approach, the question arises whether the Greenlanders and other indigenous groups are protected under the Genocide Convention. Schabas argues that it is "unnecessary to attempt to establish within which of the four enumerated categories [groups] should be placed", since we can readily understand groups to be protected without it being important to determine within which precise category listed in the Convention a particular group would fall.[60] Nevertheless, it seems logical that indigenous people, including the Greenlanders, should fall under one or several of the protected groups. Indeed, the UN Declaration of the Rights of Indigenous Peoples (UNDRIP) confirms the right of indigenous peoples to be free from racial or ethnic discrimination, to belong an indigenous nation, and to religious traditions,[61] thus seemingly recognising that indigenous peoples may constitute distinct national, ethnical, racial, and/or religious groups. Furthermore, the Greenlanders share a common language and culture,[62] and have also throughout history been viewed by the Danish state as different to the majority white, Danish population.[63] It should therefore not be difficult to conclude that the Greenlanders constitute at

58 *E.g.* Nersessian, "The Razor's Edge," 311.

59 Lingaas, "Defining the Protected Groups," 10.

60 Schabas, "Groups Protected," 385–386.

61 UN Declaration of the Rights of Indigenous Peoples, Resolution adopted by the General Assembly on 13 September 2007, Articles 8(2), 9, 12.

62 *E.g.* Bjerregard and Steensgard, "Greenland," 23; Arnaq Grove and Sanne Larsen, "A Brief History of Greenlandic Healthcare Development and the Teaching of Interpreting," in *Multilingual Healthcare*: *A Global View on Communicative Challenges*, ed. Christiane Hohenstein and Magdalène Lévy-Tödter (Springer, 2020) 158.

63 *E.g.* Anne N. Bang, and Charlotte H. Kroløkke, "For Sled Dogs and Women: Hormonal Contraception and Animacy Hierarchies in Danis/Greenlandic Depo-Provera Debates," *European Journal of Women's Studies* 30, No. 3 (2023): 363–379; Rud, S, "Governing sexual citizens: decolonial and venereal disease in Greenland," *Scandinavian Journal of History* 47, No.4 (2022): 567–586.

least an ethnical group, and probably also a racial group, and as such a protected group under the Genocide Convention.

2.1.2 Measures Intended to Prevent Births

Since one of the prohibited acts in the Genocide Convention is measures intended to prevent births, it will be necessary to determine whether birth control such as IUDs, as used in the coil campaign, could constitute such measures. Early drafts of the Genocide Convention included specific acts through which genocide could be committed by measures to prevent births: sterilisation, forced abortion, segregation of the sexes, and obstacles to marriage.[64] Nevertheless, this was later changed in favour of the more open-ended formulation found in the Convention, which means that imposing "measures of any kind" intended to prevent births within a protected group may be an act of genocide.[65] This has allowed the law to change and develop in tune with societal understandings of what measures could be included, although the measures originally included in the Convention are now part of what are considered measures intended to prevent births.

Measures intended to prevent births may be physical, *i.e.* those that effect the reproductive capacity of a group by physical means.[66] International and national courts, and other bodies, have found that these measures can include sexual mutilation, sterilisation, forced birth control, separation of the sexes, prohibition of marriages, and forced abortion.[67] They also include rape where membership of a group is determined by the identity of the father and a woman from that group "is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother's group"[68] Similarly, the Commission of Inquiry on Syria found that forcible conversions by the Islamic State (IS) of the Yazidi men could be a measure intended to prevent births, since under Yazidi religious

64 *E.g.* Committee on the Progressive Development of International Law and Its Codification, *Draft Convention for the Prevention and Punishment of Genocide*, (A/AC.10/42/Rev.1).

65 Ad Hoc Committee on Genocide, *Commentary on Articles Adopted by the Committee*, (E/AC.25/W.1).

66 *Akayesu*, Trial Judgment, para. 507; *Rutaganda*, Trial Judgment, para. 53; Human Rights Council, *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar* (A/HRC/39/CRP.2), para. 1408; *Sentencia C-01076-2011-00015,* 184. Translation by the author.

67 *Akayesu*, Trial Judgment, para. 507; *Rutaganda*, Trial Judgment, para. 53. Also, Human Rights Council, ""They came to destroy"," para. 142; *Sentencia C-01076-2011-00015*, 184, translation by the author; Uyghur Tribunal, Judgment, 9 December 2021, para. 177(d).

68 *Akayesu*, Trial Judgment, para. 507; Human Rights Council, ""They came to destroy"," para. 142.

tradition, both parents must be Yazidi for the child to belong to the group.[69] Measures intended to prevent births thus include those originally suggested in the Genocide Convention but have also gone further, indicating a growing understanding in how this act of genocide may be committed.

As seen above, forced birth control is recognised as a measure intended to prevent births, and the coil campaign may be one of two genocides currently known – the other being that against the Uyghurs in China – where such methods have been used. The Uyghur Tribunal (UT) – a 'people's tribunal' created to investigate alleged genocide and crimes against humanity against Uyghur, Kazakh, and other Turkic Muslim populations by the Chinese government[70] – found that the government imposed measures intended to prevent births on the Uyghur population in Xinjiang province, through forced birth control *inter alia* in the form of forced insertion of IUDs.[71] The coil campaign may similarly be considered to fall under measures intended to prevent births. However, a key factor may be to what extent the imposition of the IUDs in the coil campaign can be considered to have been forced. The UT judgment speaks of 'forced insertion' of IUDs, including in detained Uyghur women,[72] but without further detail on how this force was applied. Nevertheless, the judgment found that the Chinese government had put in place a system of monitoring Uyghur women's reproduction and enforced birth control measures, including checks to see that IUDs were not removed and a system for reporting 'illegal childbirth behaviours,' such as removing IUDs.[73] While the women in Greenland may not have experienced the same kind of monitoring and enforcement of birth control policy, although details of how the coil campaign was enforced remain to be seen, it should be enough for the campaign to constitute forced birth control that IUDs were inserted without consent.

Free and informed consent is required before a medical intervention,[74] and part of the right to sexual and reproductive health,[75] and thus required for

69 Human Rights Council, ""They came to destroy"," para. 143–144.

70 Uyghur Tribunal, Judgment, xxi.

71 *Ibid*, para. 177(d), 190.

72 *Ibid*, paras. 33(j), 297, 415(b).

73 *Ibid*, paras. 489, 485–486, 855.

74 Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, (ETS No. 164) Article 5; Council of Europe, *Explanatory Report to the Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine*, (ETS No. 134) para. 34.

75 Committee on Economic, Social and Cultural Rights, *General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)* (E/C.12/GC/22) para 5–6.

procedures such as insertion of IUDs. Consent is free and informed when based on objective information as to the nature and the potential consequences of the planned intervention or of its alternatives, and in the absence of any pressure from anyone.[76] Minors are typically not considered to have capacity to give consent,[77] and thus the consent of parents or guardians become necessary. However, some of the women who had the IUD inserted as minors were not consulted and their parents were not asked for consent.[78] Furthermore, in 1970 Denmark changed the law to allow doctors in Greenland to 'guide' girls from the age of 15 about birth control without parental consent.[79] Some women also had IUDs inserted without their knowledge, for example in connection with post-delivery care, or in connection with abortions.[80] Clearly, this shows lack of consent to the procedure in some cases, and should be considered as an instance of imposing forced birth control.

Moreover, in contexts of colonisation the relationship between the colonial power and the colonised may impact the capacity for free consent. Colonial hierarchies of power existed in Greenland at the time of the coil campaign; the Greenlandic healthcare system was regulated by Danish law and overseen by Danes,[81] and decisions were made on behalf of the Greenlanders driven by Danish interests and managed from Copenhagen.[82] Colonial, racist views seemingly influenced the decision to use IUDs as a method of population control, rather than the birth control pill which had become available in Denmark in 1966.[83] According to Danish doctors, the birth-control pill was not suitable for Greenlandic women because they were unable to manage the regular, daily administration of the pill.[84] They thus viewed Greenlandic women

76 Council of Europe, *Explanatory Report*, para. 35.

77 *E.g. Burrell* v. *Harmer* [1967] Crim LR 169.

78 "Spiralkampagnen," *Danish Broadcasting Corporation*, 8 May 2023, <www.dr.dk/nysgerrig/webfeature/spiralkampagne>, visited on 14 August 2024.

79 Anders Dall, "Naja Lyberth fik oplagt spiral uden samtykke: 'Alt skal frem i lyset' i kulegravning," *Danish Broadcasting Corporation*, 30 May 2023, <www.dr.dk/nyheder/indland/naja-lyberth-fik-oplagt-spiral-uden-samtykke-alt-skal-frem-i-lyset-i-kulegravning>, visited on 14 August 2024

80 "Spiralkampagnen," *Danish Broadcasting Corporation*, 8 May 2023, <www.dr.dk/nysgerrig/webfeature/spiralkampagne>, visited on 14 August 2024.

81 Bang and Kroløkke, "For Sled Dogs," 367.

82 Anna Derksen, "The 'Greenladization' of Care: Disability in Postcolonial Greenland, 1950s-1980s," *European Journal for the History of Medicine and Health* 79, No. 2 (2022): 414; Lars Jensen, *Postcolonial Denmark: Nation Narration in a Crisis Ridden Europe* (London: Routledge, 2018) 109, 113.

83 "P-pillens Historie – Prævention før Pillen," Aarhus University, <www.danmarkshistorien.dk/vis/materiale/p-pillens-historie-praevention-foer-pillen/>, visited on 14 August 20424.

84 Berg, "IUDs," 12; Misfeldt, "Familieplanlægning," 1502.

as incapable of managing their own reproduction – the same arguments made to justify the forced sterilisation of indigenous women in the US and Canada.[85] Colonial hierarchies consequently impacted the relationship between doctors and the women and girls subjected to the coil campaign. Some victims felt that they could not say no to the IUDs, due to their young age and Greenlandic culture of respecting authority figures, in this case Danish doctors;[86] "our parents were the authority in the family, but above them lay the Danes who were seen as all-powerful".[87] In such contexts, the ability of Greenlandic women and girls to give free consent must be seriously questioned and there should be a strong assumption that the coil campaign was thus a form of forced birth control and therefore a measure intended to prevent births.

Lastly, a plain reading of the Genocide Convention makes clear that genocide is not a crime that requires a particular result; for the genocidal act of imposing measures intended to prevent births, it does not matter whether the birth rate *actually* dropped, or whether a protected group is *actually* destroyed in whole or in part – what matters is that the measures were *intended* to prevent births and implemented with the *special intent* to destroy the group in whole or in part (discussed below). Unfortunately, the ICJ has taken a different and arguably incorrect approach that is not in line with the wording of the Convention. This may be relevant to the coil campaign if a case would be brought against Denmark before the ICJ by another state party to the Genocide Convention. In the *Bosnia* v. *Serbia* case, the ICJ found that the forced separation of men and women was not committed as a measure intended to prevent births among the Muslims in Bosnia because there was no evidence to show an actual reduction in birth rates.[88] This may have been in response to the applicant's argument that the separation "in all probability entailed a decline in the birth rate of the group".[89] Nevertheless, it seems both the applicant and the Court incorrectly assumed that a measure intended to prevent births required an actual reduction in birth rates in order for it to constitute genocide. The Court should have corrected this in its analysis and focused on what the measure was intended to achieve, rather than its actual result, but instead continued its incorrect approach in the *Croatia* v. *Serbia* case, when it held that rape and other acts of sexual violence could constitute measures intended to prevent

85 *E.g.* Dyck and Lux, "Population Control in the "Global North"?," 502–503; Ralstin-Lewis, "The Continuing Struggle," 76.

86 "Spiralkampagnen," *Danish Broadcasting Corporation*, 8 May 2023, <www.dr.dk/nysgerrig/webfeature/spiralkampagne>, visited on 14 August 2024.

87 "Greenland's Lost Generation," at 2:20-2:30.

88 O'Brien, "Defining Genocide," 163; *Bosnia* v. *Serbia,* para. 355.

89 *Bosnia* v. *Serbia,* para. 355.

birth, "provided that they are of a kind which *prevent* births within the group".[90] However, as O'Brien argues, if this was a requirement, "the provision [in the Genocide Convention] would have been worded along the lines of: 'imposing measures resulting in prevention of births within the group'".[91] As further argued by O'Brien, given the history of excluding rape and sexual violence from international criminal law, it is both telling and concerning that while the Court did not see any reason to impose a requirement of result for the genocidal act of deliberately inflicting conditions of life calculated to bring about the physical destruction of a protected group, *i.e.* that it actually lead to death or other harm, the Court imposed the requirement that measures intended to prevent births actually prevent births.[92] In the same case the Court further held that rape and sexual violence had to be systematic in order to be considered genocide by measures intended to prevent births – also not a requirement of the Genocide Convention.[93] In relation to the coil campaign, it should be less problematic to show that the imposition of forced birth control was both systematic and actually caused a reduction in birth rates given the number of women who had IUDs inserted and the dramatic decline in birth rates after the launch of the campaign, from seven to 2.3 children per woman and in some villages to nearly zero.[94] Nevertheless, the ICJ's approach in these cases is problematic and quite clearly departs from the wording of the Genocide Convention, a Convention it is mandated to adjudicate on, and is also not in line with international criminal jurisprudence on the issue.

The Court will have an opportunity to correct its approach on these issues since imposing measures intended to prevent births is one of the acts of genocide alleged in The Gambia's case against Myanmar and which the Court has required Myanmar to prevent.[95] Allegations of genocide against the Palestinian population in Gaza by imposing measures intended to prevent births have also been made by South Africa in its case against Israel, including through killing women and children; displacement; lack of access to food and water, shelter, clothes, hygiene and sanitation, and lack of access to health services; and lack of access to critical medical supplies, including blood, leading doctors to "perform ordinarily unnecessary hysterectomies on young

90 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Croatia* v. *Serbia*), 3 February 2015, ICJ, Judgment, para. 166, emphasis added.

91 O'Brien, "Defining Genocide," 163.

92 *Ibid*, 163.

93 *Croatia* v. *Serbia*, para. 166.

94 Human Rights Council, *Report of the Special Rapporteur*, para. 27.

95 *The Gambia* v. *Myanmar*, 11 November 2019, ICJ, Application Instituting Proceedings, para. 2; *The Gambia* v. *Myanmar*, 23 January 2020, ICJ, Request for the Indication of Provisional Measures, Order, para. 86.

women in an attempt to save their lives, leaving them unable to have more children".[96] The ICJ should in these cases ensure it follows the wording of the Genocide Convention and to depart from its earlier approach.

2.2 *The Mens Rea*

The *mens rea* (mental element) of genocide requires a 'double intent' on the part of perpetrators. First, and while often not the focus of the *mens rea* in international jurisprudence, the prohibited act against a protected group must be committed with intent.[97] This means that the act of imposing measures intended to prevent births, such as the IUDs during the coil campaign, must be committed with intent.

Intent has not always been defined in a consistent way by international criminal courts and tribunals, and has sometimes been used as synonymous to *mens rea*, rather than as a *form* of *mens rea*.[98] Nevertheless, so-called 'direct intent' has been defined as the desire to cause a particular consequence, and 'indirect intent' as knowledge that the result is a probable or likely consequence of an act or omission.[99] Intent has been similarly defined by the International Criminal Court,[100] as meaning to cause a consequence (direct intent), *i.e.* acting with purposeful will or desire to bring about material elements of the offence,[101] and awareness that it will occur in the ordinary course of events (indirect intent), *i.e.* that it is virtually certain to occur.[102]

While more investigation into the coil campaign is necessary, it seems reasonable to conclude that the individuals involved in planning and/or

96 *South Africa* v. *Israel*, 29 December 2023, ICJ, Application Instituting Proceedings, paras. 95–100.

97 *Prosecutor* v. *Radislav Krstić,* Appeal Judgment (IT-98-33-A) 19 April 2004, para 20; *Karadžić*, Trial Judgment, para 549.

98 Robert Cryer, Darryl Robertson, and Sergey Vasiliev, *An Introduction to International Criminal Law and Procedure* (Cambridge: Cambridge University Press, 2019) 366; Ebba Lekvall and Dennis Martinsson, "The *Mens Rea* Element of Intent in the Context of International Criminal Trials in Sweden," *Scandinavian Studies in Law* 66 (2022) 109.

99 Lekvall and Martinsson, "The *Mens Rea* Element," 110–111. *See Prosecutor* v. *Kayishema and Ruzidana*, Trial Judgment (ICTR-95-1-T) 21 May 1999, para. 139; *Prosecutor* v. *Rasim Delić*, Trial Judgment (T-04-84-T) 15 September 2008, para. 48, 52; *Prosecutor* v. *Pavle Strugar*, Trial Judgment (IT-01-42-T) 31 January 2005, paras. 236, 261, 296; *Prosecutor* v. *Momčilo Perišić*, Trial Judgment (IT-04-81-T) 6 September 2011, para. 104, 112; *Karadžić*, Trial Judgment, para. 448.

100 Rome Statute, Article 30.

101 *E.g. Prosecutor* v. *Thomas Lubanga Dyilo*, Trial Judgment (ICC-01/04-01/06) 14 March 2012, para 1007.

102 *E.g. Prosecutor* v. *Germain Katanga*, Trial Judgment (ICC-01/04-01/07) 7 March 2014, para 776.

implementation of the campaign had the desire to impose measures intended to prevent births, meaning that they had intent to commit this prohibited act. Such individuals could include those at the Ministry for Greenland (*Grønlandsministeriet*) and the Danish Health Authority (*Sundhedsstyrelsen*), who participated in the creation and implementation of the coil campaign,[103] as well as individual doctors.

The second part of the 'double intent', and which receives most attention in the jurisprudence on genocide, requires that the underlying act also be committed with *intent to destroy in whole or in part the protected group as such*. This has been referred to as 'specific intent', 'special intent', 'genocidal intent', and *dolus specialis*.[104] It will be referred to here as 'specific intent', but whatever the term used it is what distinguishes genocide from other international crimes.[105] While the below discussion analyses the specific intent in separate elements, these should be read together since all have to be fulfilled in order for this intent to be found.

2.2.1 Intent to Destroy …

Intent for the purposes of specific intent has been defined as the perpetrator seeking to achieve the destruction,[106] or having the aim, objective, or goal to destroy,[107] in whole or in part of a protected group as such. However, it is not enough that the perpetrator simply knew that the underlying crime would inevitably or likely result in the destruction of the group.[108] According to the Uyghur Tribunal 'destroy' and 'destruction' "have no single and unique meanings,"[109] but some international jurisprudence defined this as the elimination, extinction or disappearance of a group.[110]

When it comes to destruction, international and domestic jurisprudence primarily focuses on what types of destruction are required for the purposes of genocide. Some of the jurisprudence from the Nuremberg Military Tribunal

103 "Spiralkampagnen," *Danish Broadcasting Corporation*, 8 May 2023, <www.dr.dk/nysgerrig/webfeature/spiralkampagne>, visited on 14 August 2024.
104 *Jelisić,* Appeal Judgment, para 45.
105 *E.g. Krstić*, Trial Judgment, para. 569–580; *Mladić*, Trial Judgment, para. 3435; *Semanza*, Judgment and Sentence, para. 311–314; *Karadžić,* Trial Judgment, 549–550.
106 *Jelisić*, Appeal Judgment, para. 46. *Also Akayesu*, Trial Judgment, para 498.
107 *Krstić*, Trial Judgment, para. 571; *Prosecutor* v. *Vidoje Blagojević and Dragan Jokić*, Trial Judgment (IT-02-60-T) 17 January 2005, para. 656; *Jelisić*, Trial Judgment, para. 86.
108 *Blagojević*, Trial Judgment, para. 656.
109 Uyghur Tribunal Judgment, para. 159.
110 *E.g. Krstić,* Trial Judgment, para 595; *Krstić,* Appeal Judgment, para.36–37.

combined physical and cultural destruction in decisions on genocide.[111] The Federal Constitutional Court of Germany has also held that genocide includes the destruction "of a group as a social unit with its special qualities, uniqueness and its feeling of togetherness, not exclusively their physical-biological annihilation".[112] More recently the Stockholm District Court in Sweden found that IS attacks against the Yazidi in Sinjar showed intent to destroy the group in whole or in part, "both physically and from a social and cultural perspective."[113]

Nevertheless, international law limits destruction to physical or biological destruction of the protected group.[114] The inclusion of cultural destruction was explicitly rejected by the drafters of the Genocide Convention,[115] and the International Law Commission's (ILC) commentary to the Draft Code of Crimes against the Peace and Security of Mankind clarifies that for the purposes of genocide, destruction means the "material destruction of a group either by physical or by biological means, not the destruction of the national, linguistic, religious, cultural or other identity of a particular group".[116] International jurisprudence has also made clear that destruction does not include "attacks on cultural or religious property or symbols of the group".[117] Still, such attacks may be evidence of an intent to physically destroy the group.[118] This is also the position of the Danish Ministry of Justice.[119]

While not defined in international jurisprudence, physical and biological destruction has been found to encompass not only killings of members of the group,[120] but also other acts that fall short of causing death.[121] For example, causing serious bodily or mental harm to members of the group, *e.g.* through rape and sexual violence, can form part of the physical or biological destruction

111 O'Brien, "Defining Genocide," 157.

112 *Jorgić*, Bundesverfassungsgericht, 2 BvR 1290/99, 30 Aril 1999, para. 20.

113 *Case B 3210-23*, Stockholm District Court, 11 February 2025, 207, 211.

114 *E.g. Semanza*, Judgment and Sentence, para. 315; *Krstić,* Trial Judgment, para. 580; *Mladić*, Trial Judgment, para. 3436; *Bosnia v Serbia*, para. 344; *Croatia* v. *Serbia*, para. 136; *Case 002/02*, Trial Judgment, para. 800.

115 UN General Assembly Sixth Committee, *Eighty-Third Meeting* (A/C.6/SR.83).

116 "Draft Code of Crimes against the Peace and Security of Mankind with commentaries," *Yearbook of the International Law Commission 1996*, Volume II, Part Two, Article 17, commentary para. 12.

117 *Krstić,* Appeal Judgment, para. 25; *Karadžić*, Trial Judgment, para. 553.

118 *Krstić,* Trial Judgment, para. 580; *Karadžić*, Trial Judgment, para. 553.

119 *Betænkning om visse internationale forbrydelser*, 2024, Justitsministeriet, Betænkning nr. 1583, 173 <www.ft.dk/samling/20231/almdel/URU/bilag/220/2888384/index.htm>, visited on 7 May 2025.

120 *Blagojević*, Trial Judgment, para. 596–598.

121 *Kayishema and Ruzindana*, Trial Judgement, para. 95; *Blagojević*, Trial Judgment, para. 666.

of a group,[122] as can forcible transfer of people, including children, because of the consequences for the group's ability to reconstitute or renew itself and to ensure its long-term survival.[123] Furthermore, the ILC commentary to the Draft Code and the drafting history of the Genocide Convention show that measures intended to prevent births, which as seen above includes forced birth control, would fall under biological destruction.[124] However, the present discussion should not be interpreted to mean that the protections under the Genocide Convention extend to children who were never conceived due to the coil campaign. International human rights law does not recognise rights to the unborn,[125] and by analogy therefore not to the unconceived. Rather, the Genocide Convention should be understood to protect groups from destruction through measures intended to prevent births and the long-term effects of being unable to procreate.

Although the coil campaign, as a measure intended to prevent births, would likely be considered a form of biological destruction as required for genocide, it would still be necessary to prove that those responsible had actual *intent* to destroy the Greenlanders through this form of destruction, *i.e.* that the perpetrators sought to achieve the elimination of the Greenlanders as such, at least in part, through the implementation of the coil campaign. One issue that may arise in relation to proving intent to destroy, and which may arise in proceedings relating to the coil campaign, is the question of motive. While more investigation into the coil campaign and possible motives is needed, available information suggests that the motives for the campaign were driven by concerns about the perceived promiscuity of Greenlandic people leading to high number of young, unwed mothers having too many unplanned and unwanted children,[126] as well a desire to protect the state from rapidly increasing costs in supporting the Greenlandic population,[127] which at the time was the

122 *Akayesu*, Trial Judgment, para. 731–732; *Prosecutor* v. *Alfred Musema*, Trial Judgment (ICTR-96-13-T), 27 January 2000, para. 933; *Blagojević*, para. 662; *Croatia* v. *Serbia*, para. 136.

123 *Blagojević*, Trial Judgment, para. 666; *Croatia* v. *Serbia*, para. 136.

124 "Draft Code of Crimes," Article 17, commentary para. 12; UN Economic and Social Council, *Draft Convention on The Crime of Genocide* (E/447).

125 *E.g. Vo* v. *France*, 8 July 2004, ECtHR, App No 53924/00, para 80; *Artavia Murillo et al. ("In vitro fertilization")* v. *Costa Rica*, 28 November 2012, IACtHR, Preliminary Objections, Merits, Reparations and Costs, para. 264.

126 Berg, "IUDs," 12; "Spiralkampagnen," *Danish Broadcasting Corporation*, 8 May 2023, <www.dr.dk/nysgerrig/webfeature/spiralkampagne>, visited on 14 August 2024.

127 Hansen, "Gjorde modernisering besværlig"; "Spiralkampagnen," *Danish Broadcasting Corporation*, 8 May 2023, <www.dr.dk/nysgerrig/webfeature/spiralkampagne>, visited on 14 August 2024.

fastest growing population in the world.[128] The rapid population growth that followed the 'modernisation' programmes required the Danish state to provide more houses, schools, and other investments, which saw aid to Greenland increase almost fivefold in ten years.[129] It was against this backdrop that the coil campaign was rolled out at the request of the Ministry for Greenland and the Danish Health Authority as part of a push for family planning to control population growth and state expenses.[130] Arguments may therefore arise that the motives for the coil campaign were somehow 'benevolent', or at least that because of these motives there was no intent to destroy the Greenlanders; the State acted in the interest of the whole nation to reduce the cost association with population growth but also in the interest of the women in Greenland to be able to plan when to have children and how many to have. However, such arguments are fundamentally problematic and espouse the same colonial and paternalistic mindset as the Danish authorities, who were concerned with the sexual morality and alleged hyper-promiscuity of the Greenlanders.[131] The coil campaign was part of the colonial policies imposed on Greenland by Danish authorities to solve the 'problem' of over-population, but did so without actually helping Greenlandic women with family planning; instead Danish authorities decided for them without proper consultation and consent. Arguments that the coil campaign came from a place of benevolence should therefore be seriously questioned.

Furthermore, international jurisprudence clearly differentiates between specific intent and motive. For example, the ICTY Appeals Chamber in *Jelisić* stated that while the motive of a perpetrator of genocide "may be, for example, to obtain personal economic benefits, or political advantage or some form of power", this "does not preclude the perpetrator from also having the specific intent to commit genocide".[132] Thus, the motive of the perpetrator is not a requirement to prove intent but can be evidence of it. Consequently, the fact that the motives of the individuals involved in the planning and implementation of the coil campaign may have been financial as well as to 'help' indigenous Greenlandic women with family planning does not automatically preclude the requisite specific intent for genocide. What matters is whether through the coil

128 Berg, "IUD s," 12; Misfeldt, "Familieplanlægning," 1501.

129 "Redegørelse af Ministeren for Grønland."

130 Hansen, "Gjorde modernisering besværlig"; "Spiralkampagnen," *Danish Broadcasting Corporation*, 8 May 2023, <www.dr.dk/nysgerrig/webfeature/spiralkampagne>, visited on 14 August 2024.

131 Rud, "Governing sexual citizens," 572.

132 *Jelisić*, Appeal Judgment, para. 49. *Also, Karadžić* Trial Judgment, para. 55; *Prosecutor* v. *Aloys Simba*, Appeal Judgment (ICTR-01-76-A) 27 November 2007, para. 269.

campaign they intended to destroy the Greenlanders as such in whole or in part.

Premeditation is also not required to find intention to destroy, as "it is conceivable that although the intention at the outset of an operation was not the destruction of a group, it may become the goal at some later point during the implementation of the operation."[133] Additionally, while genocide in international law is limited to physical and biological destruction, the perpetrator is not required to choose the most efficient method of accomplishing the destruction of the targeted group for intent to be found.[134] According to the ICTY Appeal Chamber in *Krstić*, "even where the method selected will not implement the perpetrator's intent to the fullest, leaving that destruction incomplete, this ineffectiveness alone does not preclude a finding of genocidal intent".[135] As such, there is no need for Denmark to have chosen a permanent method of birth control such as sterilisation – arguably a more efficient method of seeking the destruction of the Greenlandic community than IUDs – for a finding that there was intent to destroy the Greenlanders by imposing measures intended to prevent births.

Proving specific intent for genocide is complicated since there are rarely documents or statements available which show a stated intent to destroy a protected group in whole or in part. However, "the absence of such statements is not determinative,"[136] and where such evidence is not available, specific intent may be inferred from the facts and circumstances of the case, such as the general context, the scale of the acts committed, systematic targeting of victims on account of their membership of a particular group, or the existence of a plan or policy.[137] However, it should be noted that although the ICTY Appeals Chamber has confirmed that a plan or policy may be evidence of intent, it has rejected the requirement of a plan or policy as an element of genocide,[138] and the Genocide Convention contains no such requirement. The Uyghur Tribunal also held that in relation to measures intended to prevent births, "the actual consequences for future birth rates [...] may be instructive for identifying a perpetrator's destructive intent".[139] Furthermore, intent may

133 *Krstić*, Trial Judgment, para. 572.
134 *Krstić,* Appeal Judgment, para. 32.
135 *Ibid.*
136 *Krstić,* Appeal Judgment, para. 34.
137 *Jelisić*, Appeal Judgment, para. 48; *Mladić,* Trial Judgment, para. 3457; *Krstić,* Appeal Judgment, para. 33–34.
138 *Jelisić*, Appeal Judgment, para. 48; *Krstić,* Appeal Judgment, para. 225.
139 Uyghur Tribunal, Judgment, para. 175(f).

be inferred, however such inference must be the "the only reasonable inference available on the evidence."[140]

The available information suggests that a plan or policy to impose measures intended to prevent births existed in the form of the coil campaign, although the current investigations into the coil campaign should offer important insight into the extent of the plan and policy, including which individuals were involved in decision-making and implementation of the coil campaign. Furthermore, since IUDs were inserted into approximately half of the fertile women in Greenland during the coil campaign,[141] measures intended to prevent births arguably particularly targeted these women due to their membership of the group and were imposed on a massive scale, which caused a dramatic decline in birth rates.[142] This evidence may lead to an inference that individuals at the Ministry for Greenland and the Danish Health Authority, as well as doctors inserting the IUDs, had intent to destroy, but only if such an inference is the only reasonable one on the evidence.

2.2.2 … in Whole or in Part …

Specific intent also requires intent to destroy *in whole or in part* the protected group. Nothing in the currently available information suggests that the coil campaign was implemented to destroy the entire Greenlandic population, but this is of course not necessary. Where the intent is to destroy the group in part, "that part must constitute a substantial part"[143] of the group that is "significant enough to have an impact on the group as a whole".[144] To determine whether a substantial or significant part of the group has been targeted, the numerical size relative to the total population can be considered, but also for example whether a prominent section of the group – such as its leadership – has been targeted.[145] The ICTY Appeal Chamber in *Krstić*, held that if "a specific part of the group is emblematic of the overall group, or is essential to its survival, that

140 *E.g. Prosecutor* v. *Mitar Vasiljević*, Appeal Judgment (IT-98-32-A) 25 February 2004, para. 120; *Krstić,* Appeal Judgment, para. 41.

141 Human Rights Council, *Report of the Special Rapporteur,* para. 26.

142 *Ibid*, para. 27.

143 *Mladić*, Trial Judgment, para. 3437; *Semanza*, Judgment and Sentence, para. 316; *Bagilishema*, Trial Judgment, para. 64; *Krstić*, Appeal Judgment, para. 8; *Bosnia* v. *Serbia*, para. 198.

144 *Mladić*, Trial Judgment, para. 3437; *Krstić*, Appeal Judgment, para. 8; *Bosnia* v. *Serbia*, para. 198; *Case 002/02*, Trial Judgment, para. 802.

145 *Prosecutor* v. *Sikirica*, Judgment on Defence Motions to Acquit (IT-95-8-T) 3 September 2001, para. 65, 76; *Prosecutor* v. *Kayishema and Ruzidana*, Trial Judgment para. 96; *Jelisić*, Trial Judgment, para. 82; *Krstić*, Appeal Judgment, para. 12; *Mladić* Trial Judgment, *para.* 3437; *Prosecutor* v. *Ratko Mladić*, Appeal Judgment (MICT-13-56-A) 8 June 2021, para. 576.

may support a finding that the part qualifies as substantial".[146] This part could consist of the most representative members of the targeted community, such as political, administrative and religious leaders, or academics and intellectuals, and others who are selected for the impact that their disappearance would have upon the survival of the group as such.[147] The ICTY Trial Chamber has also held that genocide can be committed against part of a group in a small geographical area,[148] and that intent to destroy a group in part can be found even when the targeted group is "only a part of the geographically limited part of the larger group because the perpetrators of the genocide regard the intended destruction as sufficient to annihilate the group as a distinct entity in the geographic area at issue".[149]

Catherine Renshaw criticises the focus on the numerical size of the group targeted to determine what is a substantial part of the group for de-centring the reason why the crime of genocide exists, *i.e.* to protect groups, and argues that its focus on scale leads to simplistic comparisons between historical events.[150] A recent example is Myanmar's argument before the ICJ, where Myanmar compared the number of Rohingya killed with the number of Jews killed during the Holocaust and Tutsis killed during the Rwanda genocide, stating that the scale of killings of Rohingya was not reached to be considered genocide with only 10,000 deaths among a population of over one million.[151] Such comparisons are clearly inappropriate and incorrect as a determination of genocide, since the requirements for genocide are that protected groups are targeted for destruction in whole or in part; nothing in the Convention suggests that the determination of genocide is made on the basis of the numbers of victims. In fact, genocide could theoretically be committed against only one victim if done with the requisite specific intent. Nevertheless, when determining whether a substantial enough group has been targeted for the purposes of establishing whether the group has been targeted 'in part', the "numeric size of the targeted part of the group is the necessary and important starting point",[152] since the term 'substantial' indicates a certain size in relation to the overall size of the overall group. Furthermore, the jurisprudence is clear that numbers are not the only factor to consider, and that the main issue is whether the targeted part of the group is significant enough to have an impact

146 *Krstić*, Appeal Judgment, para. 12.
147 *Jelisić*, Trial Judgment, para. 82.
148 *Ibid.*
149 *Krstić*, Trial Judgment, para. 590.
150 Renshaw, "The Numbers Game," 197, 203–204.
151 *The Gambia* v. *Myanmar*, 11 December 2019, Verbatim Record, ICJ, 12, 36–40.
152 *Krstić*, Appeal Judgment, para. 12.

on the group as a whole.[153] Even a relatively small number of a group may therefore be a substantial part for the purposes of genocide, depending on the impact the targeting has on the group.

When it comes to determining whether the targeted group was sufficiently large to be substantial in relation to measures intended to prevent births, as in the case of the coil campaign, the question arises regarding who should be counted to show the relative numerical size – the individuals targeted by the measures, or the future children not born because of the measures imposed to prevent births. Because the genocide cases adjudicated so far have focused on killings of members of the protected group or causing serious bodily or mental harm to members of the group, the jurisprudence appears to assume that the targeted members of the protected group are also the ones that form the part of the group that perpetrators are intending to destroy. For example, in the case of Srebrenica, the 8,000 Bosnian Muslim men and boys targeted and killed, were clearly the part that the perpetrators intended to destroy. In relation to the coil campaign, between 1966 and 1970 Danish doctors inserted around 4,500 IUDs into approximately half the fertile women in Greenland,[154] which represents somewhere between roughly nine and 11 per cent of the population in the period 1966–1976.[155] It is unclear whether this would be enough to constitute a substantial part. However, the Uyghur Tribunal took the approach and that the measures intended to prevent births targeted a substantial part of the whole Uyghur group, namely the 'unborn' part of the population, which was "calculated by consideration of the likely numbers of Uyghurs in years to come measured against the likely number of Uyghurs there would have been had the Uyghurs not been treated in the way they were by measures to prevent births".[156] Following this approach, the number of children not born by the Greenlandic women is likely to be substantial given the dramatic decline in births and birth rates due to the coil campaign. As seen above, the birth rate fell from seven to 2.3 children per woman.[157] In the town of Narssaq, 85 children were born in 1967, prior to the start of the campaign in the town; in 1969 the number was down to 25, and a midwife predicted five to six births in 1970.[158]

153 *Mladić*, Trial Judgment, para. 3437; *Krstić*, Appeal Judgment, para. 8, 12; *Bosnia* v. *Serbia*, para. 198–200.

154 Human Rights Council, *Report of the Special Rapporteur,* para. 26; Misfeldt, "Familieplanlægning," 1501.

155 The population was 40,500 in 1966 and 49,700 in 1977. "Population, total – Greenland," *World Bank*, <www.data.worldbank.org/indicator/SP.POP.TOTL?locations=GL>, visited on 14 August 2024.

156 Uyghur Tribunal Judgment, para. 189.

157 Human Rights Council, *Report of the Special Rapporteur*, para. 27.

158 Berg, "IUDs," 14.

This could indicate that the unborn part of the Greenlandic population was substantial.

The impact on the Greenlandic population also needs to be considered. As seen from the graph below (figure 1), the population growth rate fell drastically for several years, from 4.2 per cent in 1965, down to -0.6 per cent in 1977.[159] Statistics from the World Bank show that the fertility rate has remained between two and 2.7 children per woman since 1975.[160] From the number of women that were targeted by the coil campaign and the demographic changes in the subsequent decades, it may therefore be reasonable to conclude that the targeted group was substantial enough to have a significant impact on the group as a whole. If this is the case, it shows intent to destroy a substantial part of the Greenlandic community through the implementation of the coil campaign.

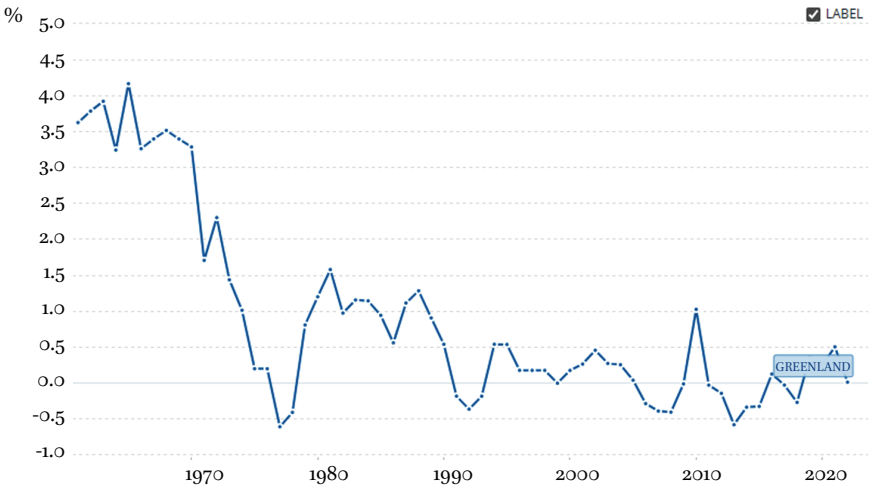

FIGURE 1 Population growth (annual 5) Greenland
SOURCE: WORLD BANK[161]

2.2.3 ... the Group as Such

The last part of the specific intent is that the genocidal act was committed with the intent to destroy the group *as such*. While the jurisprudence shows that a personal motive does not preclude intent to destroy, as discussed above, the words 'as such' have been interpreted to mean that genocidal acts have been

159 "Population growth (annual %) – Greenland," *World Bank*, <www.data.worldbank.org/indicator/SP.POP.GROW?locations=GL>, visited on 14 August 2024.

160 "Fertility rate, total (births per woman) – Greenland," *World Bank*, <www.data.worldbank.org/indicator/SP.DYN.TFRT.IN?locations=GL>, visited on 14 August 2024.

161 "Population growth (annual %) – Greenland," *World Bank*.

committed "on the basis of the victim's membership in a protected group",[162] *i.e.* that they were targeted not as individuals but because they belonged to a group identified by the perpetrators as one that they intended to destroy. Genocide therefore requires a discriminatory motive[163] for the crime to occur. It is therefore important to note that regular birth control programmes, not targeting a particular group, will not constitute genocide as there will be no specific intent to destroy in whole or in part a protected group *as such*.[164]

Some of the available information indicates that there were some Danish women in Greenland who also received IUD s.[165] However, the fact that the coil campaign was directed at women in Greenland, and not mainland Denmark, should indicate that the targeted group were mostly Greenlandic, as opposed to Danish. The Greenlandic women were thus targeted by the coil campaign because they belonged to the Greenlandic community, arguably showing a discriminatory intent on the part of Danish authorities and an intent to destroy the group *as such*.

Consequently, if it is found that the above parts of specific intent are all fulfilled this would mean that there was, on the part of the individuals responsible for the planning and implementation of the coil campaign, intent to destroy, in part, the Greenlandic population as such through the imposition of measures intended to prevent births, and a court adjudicating on the matter could thus find that genocide was indeed committed.

2.3 *State Responsibility for Genocide*

According to the Genocide Convention, states have an obligation to prevent and punish the crime of genocide, whether the perpetrators "are constitutionally responsible rulers, public officials or private individuals".[166] Nevertheless, given the length of time since the planning and implementation of the coil campaign, many of those responsible may already have passed away, making it perhaps impossible to prosecute many individuals personally responsible. It will therefore be important to determine whether Denmark as a state can incur responsibility for genocide.

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162 *Semanza*, Judgment and Sentence, para. 312. *Also Karadžić* Trial Judgment, para. 551; *Mladić* Trial Judgment, para. 3457; *Prosecutor* v. *Goran Jelisić*, Appeal Judgment, IT-95-10-A, 5 July 2001, para. 47–48; *Krstić*, Trial Judgment, para. 561.

163 Cryer, Robertson, and Vasiliev, *An Introduction,* 305.

164 William Schabas, *Genocide in International Law* (Cambridge: Cambridge University Press, 2009): 294.

165 Berg, "IUD s," 12.

166 Genocide Convention, Article I and IV.

In *Bosnia* v. *Serbia* the ICJ held that states have an obligation to not commit genocide.[167] The Court held that since states parties confirm in Article I that genocide is a crime under international law, which they undertake to prevent and punish, they "must logically be undertaking not to commit" genocide.[168] Moreover, the Court held that "it would be paradoxical" if states were under an obligation to prevent the commission of genocide "but were not forbidden to commit such acts through their own organs, or persons over whom they have such firm control that their conduct is attributable to the state .... under international law".[169] Thus, while genocide is defined primarily in international criminal law terms, it is also an internationally wrongful act which can give rise to state responsibility.

The law on state responsibility provides that the conduct of any state organ is considered an act of that state, whatever its position in the organisation of the state.[170] A state organ is not limited to organs of the central government or to officials at a high level, but "extends to organs of government of whatever kind or classification, exercising whatever functions, and at whatever level in the hierarchy, including those at provincial or even local level".[171] While more investigation into the decision-making, planning, and implementation of the coil campaign is needed to find out which state organs were involved, the Ministry for Greenland and the Danish Health Authority – both state organs – appear to have been important players in the campaign and the conduct of these ministries would be considered acts of the state. Public hospitals where IUDs were inserted in Greenland as well as individual doctors at these hospitals may also be considered organs of the state and their conduct therefore attributable to the state. However, even if they do not fulfil the criteria to be considered an organ of the state, their conduct may still be attributable to the state as persons or entities exercising elements of governmental authority.[224] This applies to "a wide variety of bodies which, though not organs, may be empowered to by the law of a State to exercise elements of governmental authority", including public agencies of various kinds.[172] Alternatively their acts could be attributed to the state if it is shown that their conduct is directed or controlled by the state.[173]

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167 *Bosnia* v. *Serbia*, para. 166–167.
168 *Ibid*, para. 166.
169 *Ibid.*
170 International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries* (A/56/10), Article 4.
171 *Ibid*, Article 4, Commentary, para. 6.
172 *Ibid*, Article 5, Commentary para. 2.
173 *Ibid*, Article 5.

An important question arising in the attribution of genocide to states is how to deal with the issue of special intent since states do not possess *mens rea*.[174] Paola Gaeta has argued that "as a wrongful act of states of exceptional seriousness, genocide always requires the existence of a genocidal policy",[175] pointing to the fact that "there has never been an attempt to maintain that a state was responsible for genocide without an allegation that that state was pursuing a genocidal policy against a particular group", such as the Jews by the Nazis or the Tutsis in Rwanda.[176] The International Law Commission appears to also support the idea that state responsibility for genocide may require a genocidal policy, stating in its commentary to the Draft Articles on State Responsibility that the prohibition of genocide "implies that the responsible entity (including a State) will have adopted a systematic policy or practice".[177] The Commission of Inquiry on Darfur concluded that it could not find that the state had committed genocide due to lack of evidence of a genocidal state plan or policy, which showed a lack of genocidal intent on the part of government authorities.[178] The National Inquiry into Missing and Murdered Indigenous Women (NIMMIW) in Canada also took the view that a state's specific intent "can only be proved by the existence of a genocidal policy or manifest pattern of conduct".[179]

Marko Milanović, however, has argued that if genocide is being committed by individuals of a *de jure* organ of the state, the state would be responsible simply by virtue of genocide being committed by its organs.[180] This also seems to be the approach taken by the ICJ, which has stated that the test of responsibility and attribution of conduct means ascertaining whether the acts were committed by organs of the state;[181] a plan or policy is thus not necessary for state responsibility, although a genocidal plan may show intent on the part of direct perpetrators whose conduct may then be attributed to the

174 However, South Africa in its arguments against Israel at the ICJ refers to Israel's 'genocidal intent', rather than state responsibility. This is however argued based on the specific intent of the individual leadership, which then seems attributed to Israel. *See e.g. South Africa* v. *Israel*, 11 January 2024, ICJ, Verbatim Record, CR 2024/, 31–42.

175 Paola Gaeta, "On What Conditions Can a State Be Held Responsible for Genocide?", *The European Journal of International Law* 18, No. 4 (2007): 643.

176 Gaeta, "On What Conditions," 642. Milanović disagrees, *see* Marko Milanović, "State Responsibility for Genocide," *The European Journal of International Law* 17, No.3 (2006): 568–569.

177 *Draft Articles*, Article 15, commentary para. 3.

178 Gaeta, "On What Conditions," 642.

179 National Inquiry into Missing and Murdered Indigenous Women, *A Legal Analysis of Genocide: Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women* (2019), 20.

180 Milanović, "State Responsibility," 568.

181 *Bosnia* v. *Serbia*, para. 379.

state.[182] The Uyghur Tribunal seems to have taken the same approach when determining the state's responsibility for genocide. The Tribunal took into account "all of the policies and conduct concerning birth control measures exercised by the [Chinese government]" and concluded that this showed the intent of the leadership's policies to destroy the Uyghur population and that the state had committed genocide.[183] Thus, the state policy was evidence of the leadership's *mens rea* and responsibility for genocide was then attributed to the state. In oral arguments against Israel at the ICJ, South Africa also referred to Israel's policy in Gaza to argue that it is committing genocide, but also rather confusingly referred to the state's 'genocidal intent' rather than clearly arguing that responsibility is attributed through the law on state responsibility.[184] Nevertheless, this was argued on the basis of the specific intent of individuals, including political and military leadership, whose conduct is attributed to Israel.

Consequently, a Danish state plan or policy is not necessary in order to find that the state is responsible for genocide against the Greenlanders. It would, however, as seen in section 2.2.1, be important as evidence in establishing specific intent for individual responsibility, which could then be attributed to the state if these individuals were found to be part of the state or exercised governmental authority. As stated above, the investigations into the coil campaign should establish whether such a plan or policy existed. This will be important not only as evidence to establish individual criminal responsibility, but also for establishing whether the state is responsible for genocide against the Greenlanders. The fact that the coil campaign seems to have been rolled out at the request of two state bodies, the Ministry for Greenland and the Danish Health Authority, suggests the existence of a plan or policy at the level of state leadership, whose conduct would be attributable to the state. If so, and if the individuals responsible are found to have the requisite specific intent, Denmark as a state may be found responsible for genocide against the Greenlandic population. Still, while Denmark has ratified the Genocide Convention, the jurisdiction of the ICJ to adjudicate on the issue will only be triggered if another state party brings a case against Denmark to the Court.[185] Since Greenland is not an independent state, any such case would need to be brought by a third-party state, as in the cases against Myanmar and Israel.

182 *Ibid*, paras. 370–375; *Croatia* v. *Serbia*, 3 February 2015, ICJ, Judgment, paras. 510–515.
183 Uyghur Tribunal, Judgment, para. 178, 190.
184 *South Africa* v. *Israel*, Verbatim Record, 33.
185 Genocide Convention, Article IX.

3 The 'Holocaust standard' and the Limits of Genocide

It has been shown above that the coil campaign may be an instance of genocide committed against the Greenlandic population. However, as seen in the introduction, so far allegations of genocide have been rare or dismissed in discussions about the coil campaign. In fact, the Genocide Convention and subsequent international jurisprudence are not generally applied to genocides of indigenous peoples. For most people, genocide invokes images of mass killings or extreme violence during conflict, such as during the Holocaust, or the genocides in Rwanda and Srebrenica. Indeed, scholars have pointed to the so-called 'Holocaust standard', as "the maximal standard" that must be reached for something to be recognised as genocide.[186] This has created a narrow conception of genocide that fails to encompass the diverse lived experiences of indigenous peoples and to give true meaning to the term genocide,[187] the word that according to some indigenous people best describes their experience as colonised peoples.[188] It may also be what so far has prevented the coil campaign from being seen through the lens of genocide. This section discusses these points of friction between the current conception of genocide and indigenous experiences, arguing that the Holocaust standard is not in line with the Genocide Convention and should be challenged in favour of a conception of genocide that more accurately reflects what it means to destroy a protected group in whole or in part.

It should be noted that the Genocide Convention has also been criticised for excluding 'cultural genocide',[189] meaning that the experiences of many indigenous peoples of assimilation and other policies aimed at destruction of their language, culture, and religious and traditional practices[190] are not considered genocide. However, a discussion of such criticism is outside the purview of this article since the coil campaign already falls within the prohibited acts of the Convention.

186 Shaw, *What is Genocide?* 53. *Also* Woolford, *This Benevolent Experiment*, 11.

187 National Inquiry into Missing and Murdered Indigenous Women, *A Legal Analysis of Genocide*, 9.

188 Larissa Behrendt, "Genocide: The Distance Between Law and Life," *Aboriginal History* 25 (2001): 132.

189 *E.g.* Julie Cassidy, "Unhelpful and Inappropriate? The Question of Genocide and the Stolen Generations," *Australian Indigenous Law Review* 13, No. 1 (2009): 114–139; Kingston, "The Destruction of Identity"; Muller, "Troubling History"; Woolford, *This Benevolent Experiment*.

190 Kingston, "The Destruction of Identity," 65.

3.1 *Genocide as Mass Murder*

The Holocaust standard equates genocide with "mass murder as epitomized by the industrialized killing machines of the concentration camps".[191] Indeed, some scholars writing about indigenous experiences of colonisation hold onto the idea that "the concept of genocide is best reserved for instances of *group-based mass murder*".[192] This may lead to genocide not being applied to indigenous experiences of group destruction due to the many instances in which violence against indigenous peoples by colonial powers was not primarily committed through mass murder even though killings occurred. However, this understanding of genocide is not grounded in the law.

First of all, the Genocide Convention does not require killings to be conducted *en masse*, and, as argued by Renshaw, the danger of focusing on scale "is that preconceptions about the requisite level of destruction cloud and distort our capacity to recognise that what occurred was the intention to destroy a group".[193] It also "invites crude and unhelpful comparisons between mass atrocities".[194] This was seen in the example above where Myanmar used the Holocaust and Rwanda to argue that the number of Rohingya killed did not meet the threshold for genocide.

Secondly, the Genocide Convention does not require the *killing* of a population; this is only *one* of five prohibited acts. Indigenous women have faced forced and coerced sterilisation, an example of colonial violence towards indigenous women that fall under the acts of the Genocide Convention as measures intended to prevent births. For example, the governments in the US and Canada implemented forcible or coercive sterilisation policies in the 1960s and 1970s targeting indigenous women, due to desires to control the population growth because of the high birthrates among indigenous women and the cost of providing services to the population, as did Peru during the armed conflict between 1996 and 2000.[195] Between 1973 and 1976, four hospitals in the United States sterilised 3,406 indigenous women, which, given the small number of Native Americans in the population, was comparable to sterilising 452,000

191 Wakeham, "The Slow Violence," 351. *Also,* Shaw, *What is Genocide?*, 8.

192 Joseph P. Gone, "Colonial Genocide and Historical Trauma in Native North America: Complicating Contemporary Attributions," in *Colonial Genocide in Indigenous North America*, ed. Andrew Woolford, Jeff Benvenuto, and Alexander Laban Hinton (Durham: Duke University Press, 2014) 275.

193 Renshaw, "The Numbers Game," 214.

194 *Ibid*, 213.

195 Erica Dyck and Maureen Lux, "Population Control in the "Global North"?: Canada's Response to Indigenous Reproductive Rights and Neo-Eugenics," *The Canadian Historical Review* 97, No.4 (2016): 499–500, 507–510; Carranza Ko, "Making the Case for Genocide," 90; Ralstin-Lewis, "The Continuing Struggle," 77.

white women.[196] Studies have revealed that between 25 and 50 per cent of Native American women in the US were sterilised between 1970 and 1976,[197] and between 1970 and 1980 the birthrate for Native American women fell by 1.99 – a rate seven times greater than that of white women.[198] This violence reflects the structural inequality embedded in historical power relationships between the colonial white society and the colonised indigenous one.[199] However, while scholars in fields other than law refer to the forced sterilisations in Peru, Canada, and the US as genocide,[200] the issue does not tend to be discussed as such in international legal circles. Nevertheless, as the coil campaign falls under an act prohibited by Genocide Convention, it should not be ignored due to a narrow conception of genocide influenced by the Holocaust standard.

3.2 *Genocide and Exceptionalism*

In addition to the above, the Holocaust standard sees genocide as motivated by a racist hatred that dehumanises the target group to the point that their survival can no longer be permitted.[201] The extraordinary event that was the Holocaust therefore makes it easy for democratic, colonial states to make claims of exceptionalism – that their nature is fundamentally different to the racist and violent Nazi regime and that they would therefore never commit such a heinous crime – and to deny genocides committed against indigenous peoples.

For example, when the Genocide Convention was debated in the Australian Parliament, members of parliament confidently stated that "[n]o one in his right senses" believed that Australia would "ever be asked to answer" for anything listed in the Convention in relation to its treatment of its indigenous people.[202] "The horrible crime of genocide" was unthinkable in Australia because "we are a moral people",[203] thus setting Australia and its policies

196 Ralstin-Lewis, "The Continuing Struggle," 76–81.

197 Jane Lawrence, "The Indian Health Service and the Sterilization of Native American Women," *American Indian Quarterly* 24, No. 3 (2000):. 410.

198 Ralstin-Lewis, "The Continuing Struggle," 71, 77.

199 Ñusta Carranza Ko, "Forcibly Sterilized: Peru's Indigenous Women and the Battle for Rights," in *Human Rights as Battlefields: Changing Practices and Contestations*, ed. Gabriel Blouin-Genest, Marie-Christine Doran and Sylvie Paquerot (Cham: Springer International Publishing, 2019), 151.

200 *E.g.* Clarke, "Indigenous Women"; Carranza Ko, "Making the Case for Genocide"; Ralstin-Lewis, "The Continuing Struggle."

201 Woolford, *This Benevolent Experiment*, 37.

202 Quoted in Rosemary Norman-Hill, "Australia's Native Residential Schools," in *Residential Schools and Indigenous Peoples: From Genocide via Education to the Possibilities for Processes of Truth, Restitution, Reconciliation, and Reclamation*, ed. Stephen Minton (London: Routledge, 2020) 81.

203 *Ibid.*

apart from those of Nazi Germany. In Canada, the mythology of the 'peaceful frontier' and the Holocaust standard has meant resistance to seeing colonial policies as genocidal.[204] Similarly, ideas about exceptionalism exists among Scandinavian countries, who – because they were not major colonial powers – have been able to position themselves as (relatively) untainted by the stain of colonial exploitation, and thus as a modern conscience in the international community.[205] In fact, Denmark has yet to publicly acknowledge its status as a colonial power in Greenland,[206] and scholars have pointed to a self-perceived exceptionalism in Denmark when it comes to the country's colonial past,[207] and refusal to see itself as a colonial power.[208] This obviously ignores the colonial exploitation which did occur and arguably continues in certain forms, and it informs a rather generous self-perception as rational, egalitarian, and peaceful states who defend human rights and support minorities.[209] Such self-perceptions, combined with the Holocaust standard makes it difficult for these peaceful, liberal democracies to see their behaviour towards indigenous peoples as genocidal.

The perception of genocide as motivated by racist hatred underpinning the Holocaust standard, together with perceptions of exceptionalism, also causes some to dismiss the description of colonial experience of indigenous peoples as genocide because of benevolent intentions or motives, including missionary activities or access to land.[210] Guenter Lewy, for example, argues that "unlike the Nazis, whose intentions were anything but benevolent, the missionaries [in North America] were sincerely concerned for the welfare of their native converts".[211] Adam Muller has argued that many of the policies concerning

204 Woolford and Benvenuto, "Canada and Colonial Genocide," 375.

205 Ipsen and Fur, "Introduction," 10. *Also* Ebba Lekvall, "Repairing 'historical' wrongs: the Church of Sweden's approach to redressing colonial abuses against the Sami", in *The Netherlands Yearbook of International Law 2022*, ed. Otto Spijker, Julie Fraser, and Emmanuel Giakoumakis (Springer, 2025).

206 Jensen, *Postcolonial Denmark*, 82.

207 *E.g.* Lars Jensen, "Postcolonial Denmark: Beyond the Rot of Colonialism?," *Postcolonial Studies* 18, No. 4 (2015): 440–452; Richard C. Powell, "Institutions, Resources, and the Governance of Postcolonial Greenland," in *Governing the North American Arctic: Sovereignty, Security, and Institutions*, ed. Dawn Alexandrea Berry, Nigel Bowles, and Halbert Jones (London: Palgrave Macmillan, 2016) 200–216; Jensen, *Postcolonial Denmark*; Christina Petterson, "Colonialism, Racism and Exceptionalism," in *Whiteness and Postcolonialism in the Nordic Region*, ed. Kristín Loftsdóttir and Lars Jensen (London: Routledge, 2012) 29–42.

208 Jensen, L, 'Postcolonial Denmark: Beyond the Rot of Colonialism?,'445.

209 Ipsen and Fur, "Introduction," 10.

210 *E.g.* Lewy, "Can There Be Genocide"; Muller, "Troubling History; Wolfe, "Settler Colonialism."

211 Lewy, "Can There Be Genocide," 668–669.

indigenous peoples in Canada were created not to destroy them but, at least outwardly, for reasons of 'benevolence'. Such 'benevolent' motives, "although they are certainly paternalistic", "do not seem to qualify as genocidal".[212] Patrick Wolfe has argued that since "the primary motive for elimination [of indigenous peoples in North America] is … access to territory", rather than racial or religious, no genocide can be committed.[213] Some have, however, pushed back against this narrative, arguing that most states commit genocides under the guise of national mythos and that the modern/colonial world order often has camouflaged indigenous genocides as attempts to civilise indigenous peoples and help them achieve higher standards of living.[214]

The idea of the 'benevolent' civilising mission is also part of Danish exceptionalism and has worked as the default explanation of Danish colonialism.[215] The view of Danish colonialism as benign, and as providing a guiding hand for Greenland on the path towards modernity, continues to play an important role in Danish conceptions of the relationship between Denmark and Greenland.[216] In fact, scholars have as recently as in the last decade referred to the Greenlanders as "a people subject to a benign colonisation",[217] because their language has survived, they were "not transported south for treatment of tuberculosis" like indigenous peoples in Canada, and there was no "notorious boarding school system"[218] for indigenous children like in Canada or the US. However, as seen in section 2.2.1, arguments about 'benevolent' motives both misunderstand the nature of special intent and motive – the latter which is irrelevant in international criminal law. They also ignore Greenlandic experiences of oppression and assimilation at the hands of Danish colonial power.[219] Indeed, as Andrew Woolford argues, whatever the motive, ideas about assimilation and civilisation of indigenous peoples – even if construed misguided acts of welfare – still represent an attempt to destroy indigenous peoples as groups as such.[220] As long as the acts committed fall under the

212 Muller, "Troubling History," 97.
213 Wolfe, "Settler Colonialism," 388.
214 Alonso Gurmendi Dunkelberg, "How to Hide a Genocide: Modern/Colonial International Law and the Construction of Impunity," *Journal of Genocide Research* (2025): 2–3, 16.
215 Jensen, "Postcolonial Denmark: Beyond the Rot," 445.
216 Astrid Nonbo Andersen, "The Greenland Reconciliation Commission: Moving Away from a Legal Framework," in *The Yearbook of Polar Law Volume 11*, Gudmundur Alfredsson, Timo Koivurova and Akiho Shibata (Brill, 2020): 216.
217 Bjerregard and Larsen, "Health Aspects," 101.
218 *Ibid*, 86.
219 Rink *et al.*, "An Ecological Approach," 2.
220 Woolford, *This Benevolent Experiment*, 36–38.

list of prohibited acts in the Genocide Convention they could be genocide – 'benevolent' motive or not – as long as there is specific intent.

3.3 *Genocide by Attrition*

Lastly, the Holocaust standard creates a perception of genocide as a 'time-intense' event,[221] such as the genocide in Rwanda, which took place over 100 days, or Srebrenica, which occurred during less than a month. However, indigenous genocides committed by colonial powers often do not conform to this notion of genocide as a determinative, quantifiable event,[222] due to being part of colonialist structures.[223]

Some scholars therefore advocate for conceptualising genocide as a process in a way that would encompass many indigenous genocides. Sheri Rosenberg, for example, speaks of 'genocide by attrition', *i.e.* a slow process of destruction of a protected group through policies and practices that do not cause the immediate death, but rather lead to the slow and steady destruction of the group.[224] In fact, many victims of historical genocides died from slower, 'indirect', and less immediately deadly methods than murder.[225] For example, around 13.7 per cent of Jewish Holocaust victims died as result of disease and starvation while living in ghettos prior to their deportation to forced-labour and extermination camps,[226] which could be considered conditions of life calculated to bring about the group's physical destruction – an act of genocide.

Pauline Wakeham also highlights how the persistent structures of settler colonialism engender a range of different genocidal processes that may overlap, be superseded, or be reinvented at different times.[227] When these processes accumulate within a colonial structure that perpetuates grave socio-economic disparities, territorial dispossession, and the violation of indigenous rights, the effects typically compound over time into a prolonged, multi-generational assault on indigenous peoples.[228] For example, the NIMMIW in Canada has concluded that genocide was committed insidiously and over centuries against different indigenous communities, implemented gradually and intermittently,

221 Wakeham, "The Slow Violence," 351; Shaw, M, *What is Genocide?*, 8.
222 National Inquiry into Missing and Murdered Indigenous Women, *A Legal Analysis of Genocide*, 10.
223 Wakeham, "The Slow Violence," 338.
224 Sheri P. Rosenberg, "Genocide Is a Process, Not an Event" *Genocide Studies and Prevention* 7, No. 1 (2012): 19.
225 Rosenberg, "Genocide Is a Process," 18.
226 *Ibid.*
227 Wakeham, "The Slow Violence," 349.
228 *Ibid.*

and using varied tactics.[229] Of course, the special intent of genocide may be difficult to prove in cases of indigenous genocides in colonial contexts which are "slower, more insidious, structural, systemic, and often span multiple administrations and political leadership".[230]

The coil campaign took place over *at least* four years, between 1966 and 1970, which is longer than other recognised genocides, *e.g.* Rwanda and Srebrenica. However, the temporal mandate of the independent investigation covers the period 1966–1991, indicating that the coil campaign may be a genocide that lasted for a much longer period, over several administrations and iterations of government. The coil campaign may also have, through its method of destruction – measures to prevent birth – created the kind of slow process of group destruction of a genocide by attrition. This should nevertheless not preclude recognition that the coil campaign may be genocide; there is no requirement in the Genocide Convention or existing jurisprudence that genocide be committed within a certain time frame.

4 Denmark's Obligations for Truth and Reparation

Victims of human rights violations and international crimes, including genocide, have a right to truth, justice, and reparation.[231] More information and knowledge is necessary to find out the truth about what was done and why – including clarification of facts around decision-making and responsibility – in order to discover the extent of Denmark's human rights violations in the context of the coil campaign. It should be noted that the insertion of approximately 4,500 IUDs into women and children without their consent may constitute several human rights violations other than genocide, including torture, cruel, inhuman, or degrading treatment, the denial of reproductive health, and racial discrimination. However, any truth-finding exercise must provide a full assessment of human rights violations and crimes, and to exclude genocide from such an exercise would mean that the extent of Denmark's

229 National Inquiry into Missing and Murdered Indigenous Women, *A Legal Analysis of Genocide*, 9.

230 *Ibid*, 20.

231 *E.g.* General Assembly, *Basic Principles and Guidelines on Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (A/RES/60/147); General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Resolution 40/34); Commission on Human Rights, *Report of the independent expert to update the Set of Principles to combat impunity, Diane Orentlicher* (E/CN.4/2005/102).

responsibility is incomplete. The joint independent investigation into the coil campaign should therefore be an important truth-finding exercise into *all* the possible violations and crimes committed through the coil campaign.

Nevertheless, the terms of reference for the joint investigation do not mention investigating Denmark's responsibility for violations of its human rights obligations, including whether what happened may constitute genocide. These would be natural components of terms of reference for this kind of inquiry, and despite the failure to include them explicitly, hopefully they will feature in both the fact-finding and the conclusions and recommendations. If not, however, the findings from the independent investigation should be used to further analyse Denmark's responsibilities. Moreover, the UN Special Rapporteur has criticised the scope of the investigation as restrictive, having been informed that cases of involuntary IUDs had occurred as recently as 2019. He has further stressed "the importance of consulting with [Greenlandic] women throughout all phases of the inquiry".[232] Danish and Greenlandic authorities should heed these recommendations and augment and ensure adequate consultation with the Greenlandic women. Additionally, currently the most of the publicly available information appears to stem from the 'The Coil Campaign' podcast; documents from the Danish ministries in charge of planning and implementing the coil campaign are located in the Danish National Archives (*Rigsarkivet*) in Copenhagen and are not accessible without permission.[233] Danish authorities should make documents relating to the coil campaign in the National Archives publicly available and accessible as a step in finding out the truth.

If genocide has been committed against the Greenlandic population, Denmark has a legal obligation under the Genocide Convention to punish those responsible;[234] although as mentioned above, given the length of time passed, many of those involved may have died. Denmark also has the obligation to provide adequate, effective, and prompt reparation in proportion to the gravity of the violation and the harm suffered,[235] for any human rights violations committed through the coil campaign. This should include – as appropriate – measures of restitution, compensation, rehabilitation,

232 Human Rights Council, *Report of the Special Rapporteur*, para. 27–28.

233 "Spiralkampagnen, Episode 2:5 – Med Pandelampe og Spekulum," *Danish Broadcasting Corporation*, <www.dr.dk/lyd/p1/spiralkampagnen/spiralkampagnen-1/spiralkampagnen-2-5-med-pandelampe-og-spekulum-16122293172>, visited on 14 August 2024.

234 Genocide Convention, Article I and IV.

235 International Law Commission, *Draft Articles*, Article 31; General Assembly, *Basic Principles and Guidelines*, Principle 15.

satisfaction, and guarantees of non-repetition.[236] A group of women victims of the coil campaign have asked the government for 300,000 Danish kroner (approximately £34,400) each.[237] The Danish government should provide both individual reparation to the women victimised by the coil campaign as well as collective reparation to the Greenlandic community as a whole for the collective harm suffered.[238] Any measures of reparation need to be developed and provided in consultation with the victims and affected communities. However, the state should provide more than compensation in order to fulfil its international human rights law obligations. Rehabilitation, including medical and psychological care, will be important for many of the women victims of the coil campaign. Women in Greenland have been offered psychological support free of charge through the Greenlandic authorities, in line with international standards on rehabilitation,[239] and since June 2022, 87 women have sought help.[240] However, victims residing in Denmark need to pay at least part of the treatment themselves as the Danish state only covers 40 per cent of the cost through the health system.[241] All victims should receive any rehabilitation free of charge whether they reside in Greenland or Denmark. Denmark should also provide measures of satisfaction – for example public disclosure of the truth, public apology, memorialisation – and guarantees of non-repetition, as requested by and in consultation with the Greenlandic community.

5 Conclusion

This article has analysed whether genocide may have been committed against the Greenlandic population through the coil campaign. It has shown that, while more information and investigation is needed particularly in relation to specific intent and the individuals responsible, it is possible that genocide may have been committed by individuals at the Ministry for Greenland and the Danish Health Authority as well as doctors who planned and implemented

236 General Assembly, *Basic Principles and Guidelines*, Principles 15–23.

237 Cooney, "Greenland Women Seek Compensation."

238 *E.g. Plan de Sánchez Massacre* v. *Guatemala*, 19 November 2004, IACtHR, Reparations, Series C No. 116, paras. 109–111.

239 *E.g. Massacre of Santo Domingo* v. *Colombia*, 30 November 2012, IACtHR, Preliminary Objections, Merits and Reparations, Series No. 259, para. 309; *Bholi Pharaka* v. *Nepal*, 15 July 2019, CCPR, Views, Communication No. 2773/2016, para. 9(b).

240 Helle Nørrelund Sørensen, "Henriette Berthelsen: Staten Bør Betale Regningen for Tterapi til Spiralkvinder i Danmark," *Greenlandic Broadcasting Corporation*, <www.knr.gl/da/nyheder/staten-boer-betale-regningen-terapi-til-spiralkvinder-i-danmark>, visited on 14 August 2024.

241 *Ibid.*

the coil campaign in Greenland. The international responsibility of the Danish state may also be engaged.

Denmark's colonial policies, especially those during the period after annexation, affected Greenlandic society and led to the creation and implementation of a mass programme of forced birth control on a racial basis and without the consent of those affected. As discussed, the Greenlanders are a protected group under the Genocide Convention and a measure intended to prevent births within that group – one of the genocidal acts necessary – was implemented. Also, international jurisprudence shows that motive is generally irrelevant for intent. Therefore, even if the motives for the coil campaign were to lessen the state's financial burden through controlling the population growth and assisting women with family planning, this may not necessarily preclude a finding of genocide. In fact, in the case of the coil campaign such motives may actually indicate intent to destroy, since the implementation of the coil campaign shows that the authorities were seeking to prevent births on a massive scale – which would cause physical or biological destruction of the Greenlanders. Furthermore, given Danish views on the inability of Greenlandic women to manage their own reproduction, it is highly unlikely that similar measures would have been implemented against white, Danish women on such a massive scale. Indeed, the fact that the policy appears to have targeted Greenlandic women shows that they were targeted because of their membership of a protected group and consequently that there was intent to destroy the group *as such*. It may also be possible to conclude that there was intent to destroy the group in part, either by considering the number of women targeted by the coil campaign or the number of children not born due to the coil campaign. Either way, the targeted group may be considered substantial and certainly had significant impact on the group as a whole, given the sharp decline in birth rates should be considered significant. The case of the coil campaign also shows that indigenous genocide can be committed by acts that are already prohibited by under the Genocide Convention.

The article has also shown how the Holocaust standard creates hurdles for a broader, and more appropriate, understanding of genocide. Indeed, existing assumptions about genocide as mainly an event of mass-murder and ideas about exceptionalism of former colonial states and 'benevolent' motives have limited the conception of genocide in a way that is both contrary to the Genocide Convention and excludes experiences of indigenous peoples. It thus prevents genocide being given its true meaning – a crime of "denial of the right of existence of entire human groups".[242] In order to fully implement the protections of the Genocide Convention, it is necessary to abandon the

242 UN General Assembly, *Resolution 96(1) The Crime of Genocide*, 11 December 1946.

Holocaust standard as well as the exceptionalism that views genocide as a crime committed by 'other' nations, *i.e.* non-democratic or non-Western states. It is important to recognise that genocide can be committed through acts other than mass-killings and other forms of physical violence by liberal, democratic states, and that such states have committed genocide against indigenous peoples.

The joint investigation and Greenland's own investigation into the coil campaign are important for the clarification of facts, including for a finding of genocide, and establishing responsibility for reparation for all human rights violations committed through its implementation. Any reparation must be developed and provided in consultation with the victims. If the joint independent investigation does not in the end address questions of Denmark's responsibility for human rights violations, Denmark should launch a truth commission or other independent inquiry with the view of investigating its international legal responsibility for such violations with a view to provide adequate, effective and prompt reparation to all victims.

It should also be noted that the investigations into the coil campaign are taking place in a wider context of re-examination of Denmark's colonial past in Greenland. The Greenlanders have expressed the need for redress of past injuries and intergenerational trauma and for truth and reconciliation for colonial harms more generally.[243] In 2014, a Greenlandic reconciliation commission was created, on the initiative of the then Greenlandic Prime Minister Aleqa Hammond, and it released its report in 2017.[244] While the idea of the commission was to achieve reconciliation both within Greenland and between Greenland and Denmark, Denmark's prime minister at the time, Helle Thorning-Schmidt, said "we have no need for reconciliation".[245] Denmark was therefore not part of the project. Nevertheless, things are moving forward. In June 2022 the governments of Greenland and Denmark agreed to launch a five-year inquiry into the historical relationship between Greenland and Denmark since World War II, and an agreement on the terms for reference for the inquiry was signed in June 2023.[246] This inquiry could also help bring insight into the

243 Human Rights Council, *Report of the Special Rapporteur*, para. 32.

244 "Vi Forstår Fortiden; Vi Tager Ansvar For Nutiden; Vi Arbejder Sammen For En Bedre Fremtid," Grønlands Forsoningskommission, 17 December, 6–9, <www.ft.dk/samling/20171/almdel/GRU/bilag/16/1832977.pdf>, visited on 14 August 2024.

245 Cited in *ibid*, 16.

246 "Danmark og Grønland Beslutter Historisk Udredning af De To Landes Forhold," Statsministeriet, 9 June 2022, <www.stm.dk/presse/pressemeddelelser/danmark-og-groenland-beslutter-historisk-udredning-af-de-to-landes-forhold/>; "Terms of Reference: Historical Inquiry into the Relationship Between Greenland and Denmark,"

wider context in which the coil campaign took place and therefore make important contributions to finding the truth. Members of the inquiry were appointed in February 2024,[247] but at the time of writing it is unclear whether the work of the inquiry has started. Nevertheless, the inquiries into the coil campaign and the historical relationship between Denmark and Greenland are important initiatives to address Denmark's colonial past.

Government of Greenland and Ministry of Higher Education and Science Denmark, 22 June 2023, <www.ufm.dk/aktuelt/pressemeddelelser/2023/kommissorium-for-udredning-mellem-gronland-og-danmark/terms-of-reference-historical-inquiry-into-the-relationship-between-greenland-and-denmark.pdf>. Both visited on 14 August 2024.

247 "Research leadership appointed for the historical study of the relationship between Greenland and Denmark," 20 February 2024, <www.uk.uni.gl/news/2024/february/research-leadership-appointed-for-the-historical-study-of-the-relationship-between-greenland-and-denmark/>, visited on 11 May 2025.