

*This is a transcript of The Conversation Weekly podcast 'Israel-Gaza: what the term genocide means under international law,' published on November 30, 2023.*

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**Mend Mariwany:** On October 7th, the Palestinian armed group Hamas launched a surprise attack from Gaza killing 1,200 Israelis and taking more than 200 people hostage. Israel's government responded with an aerial and then ground assault on Gaza, killing 15,000 Palestinians and displacing millions. Accusations of genocide are flying from both sides, but what does international law actually say? And who gets to decide what is genocide and what isn't? I'm Mend Mariwany, and this is The Conversation Weekly, the world explained by experts.

Today we've got with us Amy Lieberman, politics and society editor at The Conversation in the US. Hi Amy, it's great to have you on the show.

**Amy Lieberman:** Hey Mend, it's great to be here with you.

**Mend Mariwany:** Amy, you've recently worked on a story exploring the question of whether Israel and Hamas have been committing genocide since October 7. Why did you decide to work on this story?

**Amy Lieberman:** So we were trying to approach the conflict from a variety of angles and provide insight in the best way that we could. One of those ways that we try to do that is breaking down complex terms that you read a lot about in the media and people might glaze over and not fully think about what actually is being discussed. So genocide was a word that we've seen used a lot. It's also a term that came up repeatedly in the first few months of Russia's invasion of Ukraine in 2022, and we did a story at that time. So with this conflict unfolding between Israel and Hamas, the same questions came to me. Basically, is there actually evidence that genocide is happening on either side of this conflict, or is one side trying to attempt to wage genocide on an entire group of people? And I thought it was really important just to break down what genocide actually means, according to international legal definitions, and to go beyond people's talking points and accusations of genocide.

**Mend Mariwany:** And you turned to an academic, Alexander Hinton, and he's a genocide expert who's worked in Cambodia specifically. Can you tell us about him?

**Amy Lieberman:** Yes, so Alexander and I worked before on the question of genocide happening in the Ukraine war. He's a distinguished professor of anthropology at Rutgers University Newark

in the U.S. and he specialized in comparative genocide studies and atrocity crimes prevention. He's dedicated much of his career to Cambodia and in 1994 after finishing his graduate studies he spent some time living there with his family.

**Alexander Hinton:** I always think back to this one time, I was living with a family in Cambodia, one time the lights went out and sometimes you'd be sitting in the dark, someone would take a drag of a cigarette, the cigarette would light up, you could see the illumination of someone's face, smoke, so it was kind of a, not surreal, but it was a very, sort of strange atmosphere. The father started talking about how he had been arrested by the Khmer Rouge in Cambodia and was sent for reeducation. And then he talked about his family members who had been killed. And he asked a question many Cambodians asked, why did Khmer kill Khmer? So, Khmer are Cambodians—why did Cambodians kill Cambodians? So their question became my question, in a sense.

**Mend Mariwany:** Between 1967 and 1975, Cambodia experienced a tumultuous period marked by a bitter civil war.

**Alexander Hinton:** You had this brutal civil war that took place in which hundreds of thousands of people were killed. There was massive dislocation and destruction.

**Mend Mariwany:** The situation escalated when the Khmer Rouge, a militant leftist political party, launched an insurgency in 1968.

**Alexander Hinton:** They took up arms against the government, and eventually, Cambodia was carpet bombed by the U.S., civil war is going on.

**Mend Mariwany:** Then in 1975, the Khmer Rouge seized power through a series of swift military victories.

**Alexander Hinton:** By the time the Khmer Rouge took power, it was a very volatile situation. The conflict ended, in a sense, but the Khmer Rouge believed that there were hidden enemies growing from within. That was the phrase they say often used.

**Mend Mariwany:** What exactly happened in the Cambodian genocide? What distinguishes it from other genocides?

**Alexander Hinton:** Through the policies they implemented, many people died of starvation, overwork, and they think maybe a million people were executed. So this was out of a population of about 8 million people. So they eventually undertook massive purges and all sorts of people, both former cadre, but many innocent people linked to them, arrested, purged in the countryside,

so you parse who belongs to us, who belongs to them. Urbanites were associated with capitalism, and they were targeted from the start for elimination.

You have a security apparatus that's built up to monitor, to survey, to find who the different people are, who may be your hidden enemies are growing from within. And so they had people listening, reporting on each other. So again, if you were a new person, the group that was targeted, you had fewer rights, you did harder work, people were disappeared, and they were killed. They also targeted Muslim chams. There was a Muslim population, there still is, and ethnic Vietnamese.

**Mend Mariwany:** In a period of four years, the Cambodian genocide saw between 1.5 and 3 million people killed at the hands of the Khmer Rouge. Three decades on, in 2009, a UN-backed international tribunal, in conjunction with the Cambodian government, prosecuted leaders of the Khmer Rouge regime for genocide, crimes against humanity, and war crimes committed during their rule. Alexander, having dedicated much of his career to Cambodia's conflict, testified as an expert witness.

**Alexander Hinton:** And so at the tribunal, I testified on the charge of genocide, was a big part of it, and spoke about how, in the area where I was doing my research, you know, one piece of it was I talked about how local officials said they got orders to go find the ethnic Vietnamese and the Muslim chams and other counter-revolutionaries, and to target them.

**Mend Mariwany:** Before the Cambodian genocide, there were other genocides that took place. Can you tell me about the history of the term genocide and how it eventually became part of international law as we know it today?

**Alexander Hinton:** The person who coined the term genocide was a Polish-Jewish lawyer. Raphael Lemkin. For him, his understanding of atrocities dated far back in time. He was born in 1900, and he also witnessed pogroms that were taking place. But he also, in 1915, for example, the Armenian genocide took place. So he went to law school, and at law school, he said to his law professor one day, "Why is it that it's a crime to kill another person? One person. You can't do that. You're going to be held accountable. So why is it that a state can kill hundreds of thousands of people, millions of people, and not be held accountable? That seems preposterous."

**Mend Mariwany:** Skip forward to 1933, while Lemkin was witnessing Hitler's rise to power in Germany, he presented a paper at the International Conference on the League of Nations in Geneva, Switzerland. It was there that he first proposed the creation of a multilateral convention to make the extermination of human groups an international crime. Then, a few years later in 1939, Lemkin became a target of the Nazis himself.

**Alexander Hinton:** He actually lost dozens of members of his family during the Holocaust, but he fled to eventually the U.S. He landed first at Duke and he had collected documents along the way, incriminating documents about the Nazis. And he compiled these and wrote a book called *Access Rule*. In this book, in occupied Europe, he proposed this is the time he coined the word genocide. And so he saw genocide as the destruction of a group, but it involved all these different techniques. You would attack their religion, and you would attack their economic livelihood, you would attack their traditions, and you would kill them as well. And killing was absolutely, it was front and center, but it wasn't the only thing. So killing a bunch of people could include destroying their cultural heritage, killing their intellectuals, killing their artists, and his argument in part was that the spirit of every group contributed to humanity as a whole so everyone should be outraged and upset and should want to criminalize the destruction of groups.

**Mend Mariwany:** After the war, Lemkin served as an advisor in the Nuremberg Trials. He fought to have the word genocide introduced into the trial record, but his efforts were unsuccessful. It wasn't until after the United Nations were set up that he was able to petition for a legal definition of genocide.

**Alexander Hinton:** And so he began to advocate there for criminalization of genocide, and he actually had a great deal of success. In 1946, and again this is important to sort of understand the legal definition now, in 1946, there were many people who agreed with him and also from all over the world, different diplomats who helped push this, but they had a first definition and a resolution that talked about genocide as the destruction of a group.

**Mend Mariwany:** Today the UN defines genocide as acts committed with the intent to destroy either wholly or partially a national, ethnic, racial, or religious group. These acts include killing members of the group, causing serious harm, imposing measures to prevent births, and forcibly transferring children. Alexander says a major way the UN's genocide convention deviates from Lemkin's original, is the inclusion of intent of genocide.

**Alexander Hinton:** One of the reasons that they included this word 'intent' was to create a threshold that would make it more difficult to prove that genocide was taking place.

**Mend Mariwany:** Essentially, some countries petitioned for a narrower definition to prevent being accused of genocide themselves. The USSR feared it could be charged for killing political enemies, while the U.S. had concerns about being accused of committing genocide against Black people.

**Alexander Hinton:** Politicians in the US, southern Democrats at the time, said this will make it harder for us to be accused of committing genocide in the US because of its history with enslavement. So this word 'intent' was included.

**Mend Mariwany:** He says Lemkin's original definition of genocide, on the other hand, was much broader.

**Alexander Hinton:** He had more of a social-scientific humanistic definition, and so many scholars, like myself, use that broader definition as opposed to the politicized legal definition, even as everyone recognizes it's much better to have a legal definition than not to have one. But it also means that when horrific acts take place that don't fall within the purview of that legal definition, people say, ell, it's not genocide.

**Mend Mariwany:** In other words, even when atrocities are committed with the consequence of destroying a group of people, if lawyers can't prove that there was the explicit intention to destroy that particular group, it's hard to prove genocide.

**Alexander Hinton:** So bombing of Hiroshima, that's a horrific act and people say, well, it wasn't genocide. So there's this way in which genocide has this double sense that it's used and named something and it's critical to name it, but it's also highly political and it can also diminish horrific atrocities that are taking place. Sometimes we get sidetracked as, you know, as taking place now with Gaza, at this moment, we're speaking with debates about what a word means, whether this is genocide, isn't genocide. In one sense, it's, you know, important. But another, horrific things are taking place and the world needs to act.

**Mend Mariwany:** Today, the majority of countries around the world have ratified the UN Genocide Convention, but it didn't gain immediate widespread acceptance, as a result of the Cold War that was taking place at the time.

**Alexander Hinton:** Finally, in the 1990s, we began to have criminal prosecutions. At first, tribunals were set up in the former Yugoslavia and Rwanda in the early 1990s, and both of those courts have had genocide verdicts. But we also got the creation of the International Criminal Court with the passage of the Rome Statutes in 1998.

**Mend Mariwany:** The Rome Statute is the treaty that established the International Criminal Court, or ICC. The ICC is a permanent international court with the authority to prosecute individuals for the most serious crimes of international concern. These include genocide, war crimes, crimes against humanity, and the crime of aggression. But Alexander says the ICC has been criticized for singling out some conflicts while ignoring others.

**Alexander Hinton:** People often, for good reason, become frustrated and depressed. Like these horrible things, look at Gaza, look what's happening in Ukraine, look at the Uyghur, look at Myanmar with the Rohingya, look at Darfur, look at Yemen. It goes on and on, this long list of

what are now called atrocity crimes, and those atrocity crimes again include genocide, crimes against humanity, ethnic cleansing, and war crimes. But people say, look what's taking place, nothing's done.

**Mend Mariwany:** Have individual people and countries been successfully prosecuted for genocide?

**Alexander Hinton:** Yeah. So in Cambodia, when I testified, Chea, who was his brother number two under the leader of Khmer Rouge, he and another associate were convicted of genocide for crimes against the ethnic Vietnamese and for, you know, Chea, Muslim chams as well. In Rwanda, we've had convictions for genocide and we've also had those in the former Yugoslavia.

**Mend Mariwany:** In 2007, the UN also set up the Office on Genocide Prevention and the Responsibility to Protect, which works closely with the ICC.

**Alexander Hinton:** Kofi Annan, the former Secretary General at the UN, who recently passed away, you know, he sort of looked back to when he was the head of peacekeeping and his failure in Rwanda to stop what was taking place. They had people on the ground. And so he made it a sort of, you know, not the only thing, but one of his driving passions and driving ambitions was to build up an infrastructure to stop atrocity crimes prevention. And sometimes people quickly critique him for Rwanda, but actually, we now have at the UN, for example a special office that's devoted to the study of genocide prevention. And the reason this is worth noting, again, is just that in the last 20 years especially, these infrastructures to prevent and monitor and to issue warnings when genocide may occur, as is happening now in Gaza, that did not exist before.

**Mend Mariwany:** After the Hamas massacre on October 7 and the Israeli ground attacks on Gaza, both sides have accused each other of genocide. I asked Alexander what his view was on whether genocide is taking place in Israel and Gaza.

**Alexander Hinton:** Yeah, you know, that's a good question and as a scholar, one I'm not going to directly answer because my goal and what I've been trying to do is to say it depends on how you define the word. It depends on, you know, if you decide you want to prioritize the legal definition. Well, then you have to have certain sorts of evidence. That evidence takes years to gather. Usually, it's people immediately jump to the legal definition. But as I've stressed, the legal definition is a political and politicized definition. You know, it's great to have it, but it also has limitations, and it's also used politically. And so ultimately, each of us needs to bring our knowledge to bear our critical thinking and make a determination, you know, of what this is.

**Mend Mariwany:** Let's say we're going to assess intent based on the legal definition of genocide. Omer Bartov, who's an Israeli-American historian and a professor of Holocaust and

Genocide Studies at Brown University in the U.S., I listened to an interview that he did, and in that interview, he says that a number of Israeli politicians and officials have actually made statements about Palestinians which appear to have genocidal intent. He also says Hamas could be described as having a genocidal ideology against Israel. How important is language in being able to prove intent of genocide?

**Alexander Hinton:** Yeah, absolutely. Intent is, you know, at the center of things and people primarily focus on intent, but then if we're sticking within the legal paradigm, is to see the connection between those statements that are being made and actions on the ground. So one thing would be what different members of the military are saying to each other in their radio communications or that are reported by other people in their unit. But yeah, I think that's a good point to underscore, is that in part because of the far right composition of the Israeli government.

**Mend Mariwany:** In December 2022, Israel held national elections and the outcome was the formation of a new government led by Benjamin Netanyahu. The notable aspect of this government was its composition, which included parties and members of the extreme far-right of the political spectrum.

**Alexander Hinton:** We have a number of members now of the far-right who are in it. They have primarily been the ones making those statements. Yeah, there's a huge amount of evidence at the top that's circulating, but the sort of connection to say, well, this informed people's actions and was a state policy That's harder to prove. So genocide may be taking place. But whether or not it is taking place, it certainly is in danger of taking place. And in terms of this threat level, early warning system, everyone should be aware of this and should be looking out for it.

**Mend Mariwany:** But Alexander also cautions against focusing too much attention on proving the crime of genocide rather than on other types of crimes.

**Alexander Hinton:** It's important to note that atrocity crimes, genocide, crimes against humanity, war crimes and ethnic cleansing are all horrific. Crimes against humanity in some sense is a word that maybe should be the thing that everyone prioritizes. So for example, when Russia bombed a maternity hospital in Ukraine, that's clearly a war crime. In the same way, Hamas stated war against Israel, came in and committed all sorts of abuses of civilians. So there's a pretty broad consensus. They committed war crimes. Genocide refers to widespread or systematic attacks on a civilian population. So if Hamas goes into a music festival and indiscriminately kills people, yeah, that's a crime against humanity.

Flipping over to the atrocities committed by Israel, bombing, right, one out of every 200 people, Palestinians have been killed. Israel says, you know, we try to protect civilians and take them at their word. You don't know when you're flying bombs from the air, you're dropping them. You

don't know who's down below. And if you're talking about bombing hospitals, refugee camps, ambulances, part of the weakness of Israel's defense about war crimes is that, well, Hamas was able to invade Israel and bypass all of its defenses and there was poor intelligence. It was an intelligence failure. So how can it be that they now have perfect intelligence on the ground? It's not possible. The US didn't have this and it's war on terror. It's never the case. So when you're bombing from above onto the ground, it's quite likely as the US committed war crimes, Israel almost certainly has also committed war crimes.

So this is a real drawback of the genocide name game. It doesn't matter if genocide is taking place or it isn't, horrific atrocity crimes are taking place. And ultimately, how do we know the numbers of dead? It's an active situation. We don't know for sure.

**Mend Mariwany:** In November, families of those massacred by Hamas lodged a complaint at the ICC for genocide. Meanwhile, South Africa has referred Israel to the International Criminal Court for War Crimes investigation. And the French lawyer Gilles Devers also announced that he and 400 lawyers have filed at the International Criminal Court on behalf of the people of Palestine. How likely is it that anyone, whether it's specific countries or individual lawyers, are actually able to prosecute either side of the conflict?

**Alexander Hinton:** Not that likely is the very succinct quick answer. But on the other hand, through time, what we find is that people who seem untouchable, due to historical events, change in political leadership, suddenly, potentially become people who might be sent to be tried at a court like the International Criminal Court or ICC. So the ICC, as I mentioned before, is highly political. Israel hasn't signed on. The U.S. hasn't signed on. So yeah, the leadership of Israel, I think, is very unlikely that anything would happen. Hamas is super difficult to get anyone.

**Mend Mariwany:** Alexander cites the example of Myanmar. Between 2016 and 2018, more than 10,000 Rohingya were killed by the military junta, and over 700,000 were forced to flee the country. Then in 2019, the Gambia brought a case to the International Court of Justice.

### *Newsclip*

**Alexander Hinton:** Law is so slow, there also have been referrals and movements to get things going, but the wheels are still spinning, so there is some movement.

**Mend Mariwany:** In 2023, a number of European countries and Canada rallied behind the Gambia's legal action against the military junta. So the case is ongoing and it's likely to take some time before any verdict is issued.



**Alexander Hinton:** You know, it's important to gather the evidence to determine the facts but by the time we often get to some sort of verdict, years and years have passed. So why is that? Well, I guarantee you part of it is politics. And the other point I would make is that you're much more likely to get a conviction and indictment on war crimes than you are on genocide because of the intent threshold. So, in a weird sort of way, having a legal definition of genocide makes it less likely that someone might be prosecuted, if everyone's just focused on charging them with genocide. So it's great if people are trying to mobilize and use the international legal system and those lawyers are very persnickety, they want their evidence. So usually if they come to a determination, it's a pretty solid one. But I would say war crimes, that seems like an open-and-shut case.

**Mend Mariwany:** But he says even if it takes time before a verdict, trials can act as a sort of deterrent in the meantime.

**Alexander Hinton:** So, people know if they do these things they could be held accountable, the leaders know that. Their power is not insured, so genocidaires, people who commit atrocity crimes, the leaders are responding to local pressures, local goals, local ambitions, but now they're all aware that there's this possibility that down the road and the end, they can be in a court of law, they can be found guilty and they can be locked up.

**Mend Mariwany:** In addition, the Genocide Convention and Rome Statute can serve as guiding principles for countries to act individually and take independent actions to address instances of genocide and related crimes.

**Alexander Hinton:** Nationally, some countries now implement what's sometimes called universal jurisdiction, saying that if, say, someone from Rwanda committed genocide and ends up in Belgium, for example, they may be able to be held accountable. Same thing for people involved in the civil war and political violence in Syria. That wasn't there before 2000. But even more to the point, there are many other things that are being done and can be done that aren't just legal. They're naming and shaming. I mentioned before sanctions, there's a whole array of things. We have a lot of tools that we didn't have before, even as the task at hand is still far too complicated for them to solve the conflict. But hopefully in Gaza, those tools will be used, pressure will be brought to bear. And in the end, the conflict will end. And hopefully sooner than it would have if we didn't have some of these tools that are now being implemented.

**Mend Mariwany:** That's it for this episode of The Conversation Weekly. Thank you to Amy Lieberman, who worked with Alexander on the original story for The Conversation. We'll put a link to the story in the show notes. This episode was written and produced by me, Mend Mariwany, with assistance from our producer, Katie Flood. Gemma Ware is the executive producer. Sound design is by Eloise Stevens and our theme music is by Neeta Sarl. Stephen Khan

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