

EVAP Ep. 9A: Alexander Hinton

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SPEAKERS

Alexander Hinton, Jaclyn Streitfeld-Hall

J Jaclyn Streitfeld-Hall 00:12

Welcome to Expert Voices on Atrocity Prevention by the Global Centre for the Responsibility to Protect. I'm Jaclyn Streitfeld-Hall, Research Director at the Global Centre. This podcast features one-on-one conversations with practitioners from the fields of human rights, conflict prevention and atrocity prevention. These conversations will give us a glimpse of the personal and professional side of how practitioners approach human rights protection and atrocity prevention, allowing us to explore challenges, identify best practices, and share lessons learned on how we can protect populations more effectively. Today's episode is the first in a two part series on the Russian invasion of Ukraine and international law. For this first episode, I will speak with Professor Alexander Hinton, who is a distinguished professor of anthropology, the Director of Study for the Centre of Genocide, and the UNESCO chair in genocide prevention at Rutgers University. Thank you for joining us today, Professor Hinton.

A Alexander Hinton 01:11

Yeah, and thanks again for inviting me to do this.

J Jaclyn Streitfeld-Hall 01:13

Just to give our listeners a little bit of background, before we dive into the conversation. Could you define what the crime of genocide is under international law?

A Alexander Hinton 01:25

Yeah, that's an important question, and a great question. And maybe, to sort of get there, there's a bit of a path we have to take. You know, I think it's important to distinguish between different ways that people understand the term. There is what we might call a humanistic or

folk conception of genocide, and that's the idea that genocide refers to the destruction of a group of people, and often people will think of the Holocaust, Auschwitz and so that informs a lot of common sense understandings of genocides when the term is used, many people think of that. The term itself has, of course, a longer history, and the person who coined it, his name was Raphael Lemkin. He was a Polish Jewish jurist, who eventually came to the United States, and he coined the term in 1944. He defined it as the destruction of a nation or an ethnic group. He had an interesting way of thinking about it, and that, you know, in some sense, bears back upon the situation, and with the Russian invasion of Ukraine, maybe we can look back to that later. But he referred to it as a coordinated plan of different actions aimed at the destruction of the essential foundations of the life of national groups. And so again, it wasn't in contrast to the folk humanistic common sense understanding of genocide. He was talking about physical killing, but also even the destruction of a group's political system, its religious system, its moral system, its economic system, and its cultural system, as well. And he saw this as a two pronged - it sort of took place, in terms of two phases. One was the destruction of the national pattern of whatever group was being targeted. And then his book, *Axis Rule in Occupied Europe*, about the Nazi atrocities, he actually went through and showed how the Nazis were doing this in different countries. So the first was the destruction of the national pattern of a group, and then the imposition of whatever the aggressor, their national pattern. So he coined this in 1944. Then, you know, it sort of made its way a little bit to Nuremberg, and then Lemkin, as well as other people, advocated at the UN for the criminalization of genocide. So we have what we might say the humanistic folk conception of genocide, and then we have Lemkin's vision of genocide, which is still expansive, and we might think of it as more of a social scientific understanding of genocide and one that many scholars - it informs their work. But legally, to go back to your question, so this is the third sense. You know, eventually through a lot of political brokering, debate, argument, you know, almost miraculously, we had passage of the UN Genocide Convention in 1948. It began actually with a more extensive definition, no doubt, because Lemkin was probably involved in the writing of it that included, for example, political groups, and cultural genocide. But through debate at the UN, and there was lots of politics involved, the definition eventually was restricted to four protected groups. So, in terms legally, there's a mental element involved, and there's also a physical element. So, the mental element that came out was, you know, in the convention, genocide referred to acts committed with the - and this is the key part - the intent to destroy, and the intent to destroy is important, because you have to then legally, and again, in contrast to other ways of looking at genocide, but within the legal sense, now you have to prove intent, the question then becomes: what is intent? How do you prove it? That's a larger question. That's the intent to destroy. And again, in contrast to that folk conception where it's the complete annihilation of a group, in the Genocide Convention it's actually the intend to destroy in whole or in part, and then there are four protected groups: national groups, ethnic groups, racial groups, and religious groups. So for example, distinctions made other way, the other group identities are taken out including, importantly, political identifications. So that's the mental element, that intent to destroy the four protected groups. And then the physical element, and it's, you know, if you, when I, read through this, you'll see it's almost as odd, the things that are put together, and part of that is that this was the endpoint of debate and deliberation. But you know, so the first part of it, the first physical element involves killing, you know, going back to the folk conception, the physical killing of members of a group, and then related to that, it also includes causing serious bodily or mental harm to members of a group, and then the third component - there are three of five - is putting a group in situations that are calculated to bring about its physical destruction in whole or in part, and you can actually think of, you know, blockading, speaking to the present moment, blockading a city, if you have the intent, you've got to prove the mental element, to destroy a population. The fourth, is imposing different measures to prevent births within a group, and this has been used, for example, in Rwanda, and other cases, to charge people

when rape is used as a weapon of genocide in conflicts. And then the fifth one, which is in some sense, perhaps a relic of cultural genocide which was taken out, as transferring children from one group to another group, and maybe they had in mind, partly the Armenian Genocide, when a lot of children were taken away and transferred over. So, that's the mental element, along with the acts, the physical component, and then there are actually - I should say that the criminalization of genocide, so it was made a crime and international law, but it was both to prevent and to punish. So it sort of had this dual aspect to it that too often, in terms of prevention it's falling short, there's been much more effort in terms of punishment. But it's not just committing genocide that's punishable. There's also conspiring to commit genocide; incitement, the incitement of genocide; attempts to commit; and complicity. So, you know, there are other clauses as well, different articles within the convention. These are the three big ones. But that's the legal sense. And I just want to, sort of, circle back and note that it overlaps with, but is also different from, that humanistic folk sense, and also diverges in important ways from the social scientific sense that many scholars, including me, often tend - the way we tend to think about genocide, even as we recognize the importance of the legal sense and the Genocide Convention. And so in public discourse, right, the word is used in all of these different ways, and this has a number of entailments, including the misuse of the term, and the political manipulation of the term, and a lack of understanding of when the term applies and doesn't apply.

J

Jaclyn Streitfeld-Hall 10:00

I think you make an excellent point here regarding what misuse of the term and incorrect use of the term, and the fact that there is sort of a nuanced understanding of genocide. There's the legal, there's the folk, and then there's, you know, how people think of it themselves, regardless of legal definition. So I think with that in mind, jumping to the current context, as many people know, prior to the invasion of Ukraine, Vladimir Putin listed out several reasons justifying the invasion, and one of them was to stop genocide in eastern Ukraine. So I'm curious, how do you feel about that reasoning? And was there ever any evidence of genocide in eastern Ukraine?

A

Alexander Hinton 10:46

Yeah, so you know, this is a clear example of the political misuse of the term genocide, and there are different ways in which the term is politically misused, we could talk about that later, perhaps. But in this case, it's being used as a justification for mass violence. So, you know, the term genocide in terms of the Soviet Union, moving into the Russian Federation and the present, the term has long circulated, you know, for example, in the 1950s, after the UN Genocide Convention was passed, a number of Baltic states diaspora communities mobilized to say that the USSR was committing genocide there. So that's, you know, the term has circulated, and this has continued through time with accusations by different groups, both former members of the Soviet Union who now are independent states but also within Russia itself. And, the vision, you know, to understand the claims that Russia is making, it's important to sort of look at the history of when the Soviet Union fell apart and fractured and splintered, and many people, including Putin, were very upset by that. There's almost a yearning to reclaim that imperial, expansive vision of what the Russian Federation is. And this has come out very clearly in different speeches, for example, that Putin has given. But the claim, in some sense, is there's this there's a role of Russia to protect those who are Russian identified - and I

say that those who are regarded as ethnic Russian or Russian speakers - and other nearby adjoining areas, and so that actually implicates the Baltic states, which have large numbers of Russian speakers and ethnic Russians, but it also implicates Ukraine. So, you know, the backdrop to this, and you know, so the word genocide has circulated a long time, even before 2014, when we had the Maidan Revolution in Ukraine. And from the perspective of Russia, the way they frame it, as they say, it was a coup, an illegitimate coup, and they try and tag, dehumanize and demean the Ukrainian government by saying that it was led by neo-Nazis. There were some Neo Nazis, some far right extremists, who were actually active, a small number in Ukraine during that revolution, and there was a party but they actually no longer have any or very minimal power. But what they've done is they've taken that small grain of truth, and they've used it to, they've amplified it, to characterize the Ukrainian government, as, you know, a neo-Nazi regime, which of course suggests what do Nazis do? Well they commit genocide. And so dating back to 2014, when we had the revolution already in 2015, Putin said something that along the lines of "what's happening in Donbas smells of genocide". And so this term has been used and circulated, it was actually used when Russia invaded Georgia in 2008, but it all links into this sort of expansive notion that Russia needs to protect its people wherever they are, even across national borders. So what we heard, expressed very dramatically by Putin, when he gave his speech announcing, what he termed, a quote unquote "special operation" - and of course, they've banned in Russia now the ability of people to use words like invasion, they've criminalized it. So quote unquote, it was obviously and clearly an invasion. One of the reasons, one of the main justifications, was that... So to back up, so in 2014, Russia came in and took Crimea, and they also supported - many people say they sent troops into the, into the Donbas region, which is now split up into two territories, which now they recognize as being states, and there was an ongoing conflict there that took place over many years. We don't know how many people died between 2014, and at the present there are monitors there, from the OSCE, the Office of the High Commissioner for Human Rights. And, you know, it's really tragic. There's been lots of violence, lots of suffering on both sides, as usual civilians are the ones caught up in protracted military conflicts, maybe 13 to 14,000 people have been killed, including civilians, enormous number of people, numbers range up to one and a half million people, have been displaced. There have been all sorts of atrocities, again, on both sides, that have taken place torture, different human rights violations, restrictions of rights, and the COVID crisis also amplified this. So what Russia did, so this has gone on, and again, there are monitors there, and that's very important to keep in mind because - and, you know, including Human Rights Watch, Amnesty, and many people have reported on the awful violence that has taken place. But Russia, circling back, makes the claim that the Ukrainian government is targeting ethnic Russians and Russian speakers, both by indiscriminately shelling them, right, shelling residential areas, and, you know, isn't that ironic right now, given what they're doing throughout Ukraine, they claim to have found mass graves, and they have some pictures they've shown, they claim that Russian ethnicity is being erased through, for example, restrictions on the use of language and cultural practices. But what's happened is, you know, where's the evidence? You know, there is no evidence. So what they do, again, as they've done in the past, is they take little pieces of truth, and they amplify it into a big lie. And so, sure, you know, people have absolutely been killed, but again, we have monitors, they've been observing, and nobody has found anything remotely resembling genocide taking place. It's an absurd claim and the only reason that claim is made, is as a justification for violence for an invasion, and one that already has resulted in exactly the same thing that they were talking about, so they claim to be acting in the name of averting a humanitarian crisis and atrocity crimes. Now they've gone in, and they've created a humanitarian crisis, and they've committed atrocity crimes. So again, it's a complete distortion and misuse of the term. But, again, it's a potent word to use and invoke because of all of the historical resonances that it has.

J

Jaclyn Streitfeld-Hall 18:45

I'm glad you said it in that way because, I think, one thing that has come up for people who maybe don't know international law that well is even if this justification had been correct - and amidst as you noted, you know, evidence of other crimes, not genocide, but certainly other violations of international law - under international law and the UN Charter, can genocide be used as a basis for invading another country?

A

Alexander Hinton 19:12

Right. So, you know, like all legal documents, there are sub clauses and bits and pieces that can suggest that. So if the UN Genocide Convention says that states have an obligation to prevent genocide, it can selectively be used to justify an action. So again, you know, law, there, of course, is the larger corpus and body of law that amplifies and expands and specifies what is meant by a term, but if you just take a word that appears in the convention, you can use it as a legitimation. But again, it's a misuse of the term. A sort of side, not really side it's a fairly major thing that's taken place, is that the Ukrainian government has actually filed a suit at the International Court of Justice, saying that Russia misused the UN Genocide Convention and falsely claimed that genocide was taking place, and they've actually begun, they've fast-tracked the case. But so, this is being litigated, exactly this point, right now and Russia has not really said much in its defense. Again, sort of going back to the earlier point, where's the evidence? They circulated a document that really wasn't distributed to the broader public at the Security Council, they have filed some complaints about atrocities committed by the Ukrainian government and Donbass before, they, you know, so if you try and find out where exactly the evidence is, well, you can go to RT, and there's a documentary that sort of, you know, promotes the line of Russia. But there ultimately is no evidence. So there's no doubt that in the suit, the court is going to find that there was no basis for the Russian claim of genocide, and that it was a false claim that was used to legitimate the invasion, and now atrocity crimes are being committed there.

J

Jaclyn Streitfeld-Hall 21:17

So, as you've made clear, and as I think most of us feel, looking at the evidence or lack thereof, the term genocide has been kind of blatantly misused in this situation. And, as you noted that it has been a term that's been used throughout history in the USSR and Russia. But this is a common occurrence beyond Eastern Europe and other parts of the world, right?

A

Alexander Hinton 21:44

Yeah, no, that's an important point, and, you know, it needs to be underscored. You know, this isn't just a selective, it's a absolutely vital, important criticism, critique, and point to underscore about Russia's invasion, and I actually wrote a piece about this in The Conversation, and it took up some of these themes about the misuses of the term. But I want to say even, you know, so there's the critique now being made of Russia, but this critique can be made through, since, sort of going back in history, since the term was coined, and then taken up at the UN, I mention the different debates were going on. So why were political groups removed? And why was, why

did cultural genocide, for example, drop out? Well, in terms of political groups, the Soviet Union had committed mass atrocities against political groups, and they certainly didn't want that to be in the convention. Then there were actually some countries in South America as well that didn't want it there. And if you turn to cultural genocide, and you look at the history of colonialism and imperialism, certainly those things being talked about as cultural genocide are very much bound up with colonialism, and imperialism. So again, colonial powers didn't want that included. You know, there were complex debates, and sort of, you know, with nuances, but that's sort of the gist of it. And this, you know, took place in general. So why, if we go back to the mental element, with intent, and now people legally talk about having special intent. So what is special intent, it creates this extremely high threshold to get a conviction for genocide. So how do you prove intent you know, so can you find a smoking gun, as its sometimes called? You know, it's really hard to find that, you know, can you find an exact document where an order is given to exterminate another group? That's very difficult to find. And we can think back cases like Darfur, where they said, well, we can't say genocides taking place because we can't sort of find the smoking gun, so to speak. So, it has to be, intent has to be inferred. But why it's important in terms of the political misuse, is the US, for example, push for a high threshold of intent, because they were worried, that they would especially Dixiecrats, Southern Democrats in the US, that they would be charged with genocide for the mass violence committed against the country's Black population, you know, sort of most dramatically lynching and police abuses. But also well, as a little aside, we just had the 70th anniversary of a petition that was brought forth by Communist-oriented Black activists - not all of them were Communists, but many of them were, including Paul Robeson - they petitioned the UN to say the US has committed genocide, this is in 1951, and it went through and actually used the different, all of the different articles to make this claim, but they also, going back to the physical elements and the third clause about deliberately inflicting conditions on a group that will bring about its destruction, they talked about what we're now talking about, structural racism, and talked about the much higher death rate of Blacks in the US. And so, going back in time, just a little bit during the deliberations for the convention, the US was very aware of that and they did everything they could to ensure that there was a convention that would make it very difficult to charge the US with genocide. So, the political misuses are directly bound up with the creation of the very document that we have, the very convention that we have, which is a political one. And certainly, it's much better to have this one than to not have it, but it's also important to see the different sorts of erasures that are involved, and the very limited number of groups that are protected. It's great to protect them, but it'd be nice if there was a much more expansive number of groups that were listed. So that's an example of what we might call masking, right, obfuscating, and even denying abuses in the past. But, you know, so that was back then and it continues into the present. We can just turn, for example, to the Uyghur in China and see, despite overwhelming evidence, the Chinese government repeatedly denying that genocide is taking place and denying the atrocities. And also the term is used to obfuscate, sometimes it's used to legitimate an action and to pivot back to the US. There's the very famous, notorious, sort of memory of when US officials were asked about the violence taking place in Rwanda, now, you know, its 1994, there is a genocide, and you know, there's a famous interview with a US official who's saying, well, we're not sure we can call it that, it's a very specific term - so again, you can also legitimate inaction, which is another misuse of the term. But the one circling back to what Russia is doing, is one, where you use the term to legitimate and justify mass violence and perhaps it's the most paradoxical of all the different misuses.



Jaclyn Streitfeld-Hall 27:54

That's really fascinating. I can remember in, I think it was 2005, I was teaching Intro to

International Relations, and we used that clip of the State Department official sort of struggling to describe what was happening in Rwanda, without using the word genocide and kind of hand-wringing, and the students were all shocked and horrified: "What is this? How can our government be like this?" And then, you know, at the same time, the same exact debates were happening with regard to Darfur.

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Alexander Hinton 28:26

Yeah, absolutely, and, you know, there's a long history of this. And that's why, you know, going back to the beginning, I thought it was important to lay out the different ways that the term is used, because sometimes these different understandings inflect differently in these debates. So for example, students will often be invoking - and again, depends on the class - but they'll be invoking the folk conception, does it look like the Holocaust? Does it look like Auschwitz? Other people will be using a legalistic sense, and then maybe people like me will often be invoking a more social scientific sense. And maybe I'll just add one little caveat about the social scientific sense, and why even as, you know, I recognize and I can, you know, I testified at the Khmer Rouge Tribunal in Cambodia on the charge of genocide, I was operating within the legalistic framework, so, you know, I recognize its value. But, you know, the social scientific sense that is inspired to some, in many ways by Lemkin, and I just want to add a little small note, though, that we shouldn't overly valorize Lemkin because, for example, when the We Charge Genocide petition was brought forth in 1951, he immediately critiqued it, in part because he was trying to get the UN Convention ratified in the US, and also he was bound up in a mold with the Baltic states, you know, sort of promoting their claims that the Soviet Union was committing genocide. But having said that, the definition that Lemkin has, is more capacious and it also can turn us - well, the UN Genocide Convention is structured in a way that it recognizes and sort of focuses on state-directed violence that's very direct with a sort of prototype being the Holocaust, but of course, there's a long history of settler-colonial genocide, for example, that doesn't neatly fit within that. And so the social scientific conception is more capacious, and of course, many lawyers don't like that, because they want to stick to the UN Genocide Convention, even though I would argue that the Convention itself is somewhat capacious. But again, it's always really important to distinguish between these different ways of knowing and understanding the term so that we don't have - and also the ways of misusing the term, so that we have clarity, and especially at times like the present one where Russia's justifying its invasion of Ukraine, using the language of genocide and the accusation of genocide, it's absolutely critical to be clear.

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Jaclyn Streitfeld-Hall 31:09

Thank you for listening to this episode of Expert Voices on Atrocity Prevention, please tune into our next part of the series, where I will sit down with Rebecca Barber, a research fellow with the Asia Pacific Centre for the Responsibility to Protect and a PhD scholar with the TC Beirne School of Law at the University of Queensland. We'll be discussing the international response to the current situation in Ukraine and what options are still available to the international community. If you'd like more information about the Global Centre's work on R2P, mass atrocity prevention or populations at risk of mass atrocities, visit our website at globalr2p.org and connect with us on Twitter and Facebook at GCR2P.