



## **Fundamental Flaws in Labeling Genocide**

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## Abstract

The purpose of this research is to evaluate the United Nations' process of investigating potential cases of genocide and determining if a crime has been committed. The main documents analyzed are the initial works produced by Raphael Lemkin and the laws created at the United Nations Convention on Genocide in 1948. I apply the definitions and processes in these documents to the genocides in Rwanda and Darfur. The comparison will show that the two situations were very similar, yet Rwanda was labeled a genocide and Darfur was not. Then, I show that the economy of a country going through genocide can have a political influence on the United Nations' investigative process. The findings are that the inconsistency within the United Nations' process is due to vague definitions in the original laws created in 1948, which allow varying interpretations. These varying interpretations open the door for economic trade factors to have some political influence in the international community's determination of a genocide. This study will be helpful to understanding the international community's flaws in defining and investigating genocide. It can spark discussions on how to improve the United Nations' investigative process.

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## Introduction

The international community faces a variety of issues every day. There are organizations established to handle global warming, natural disasters, war, and extreme acts of violence. Genocide is one of these events that needs to be dealt with every so often. A genocide is a slow process that may take time to be recognized. However, horrific acts are often uncovered when the word “genocide” is finally uttered to define a situation. Usually, the violence needs to be tamed before it gets so chaotic that a population and its culture are lost from one geographic portion of the world permanently. If it weren’t for a lawyer named Raphael Lemkin, then the idea of genocide would not have progressed so rapidly through the 20<sup>th</sup> century. His work helped establish institutions and processes in order to deal with crimes of genocide.

A definition of genocide was formulated at the Genocide Convention in 1948, which was held by the United Nations. Raphael Lemkin, the leading researcher of genocide at the time, defined genocide as follows: “any act committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group” (Lemkin, 2008). This definition was important because now genocide had a set of terms to describe it that could be applicable to various international situations in future. This definition would eventually lead to punishment of perpetrators of genocide, as well as reparations, so that victims of this atrocity could be given justice. However, there was finally a definition that social scientists and politicians could use going forward to gauge their actions and to determine how to act both domestically and internationally when it came to acts of violence from one group against another.

Ever since the formation of the term “genocide,” there have been several occurrences between populations that have needed to be evaluated by the United Nations. Some examples are the acts of violence that took place in Rwanda, Bosnia, and Cambodia. I have determined that there is usually a general trend of three steps that occur in these situations. First, there are acts of violence from one group against another. These violent acts can occur across borders or within a country between two different cultures. The violent actions usually lead to mass casualties in a population. Second, there is usually a meeting that occurs in the United Nations to determine if the acts that have been committed constitute a genocide. In this instance, all factors are taken into account. This includes the victims, the perpetrators, the number of casualties, and if there has been an intent to eliminate the culture of the people. Then, a decision is made among the members of the United Nations to label the acts as “genocide” or not. This is usually done in the form of a vote among the Security Council. Third, there is the indictment of the perpetrator’s leaders for an international crime and military intervention by United Nations forces to stop any violence.

I plan to focus on only one aspect of this process in this paper: the middle tier. That is how the United Nations comes to declare an instance of genocide or not. The United Nations Convention on Genocide in 1948 laid out a set of laws that were to be followed and procedures in the event that a crime of genocide had been committed (United Nations Convention on Genocide, 1948). There have to be a multitude of factors that come into play when the meetings are held and decisions are being made. These factors were formulated by Raphael Lemkin from his research in the early 20<sup>th</sup> century. He asserts that the destruction or intent to destroy a population physically, economically, culturally, socially, politically, biologically,

religiously, and so on are all factors that should be taken into account in a genocide (Lemkin, 2008). I want to evaluate the United Nations Convention on Genocide and the process that the international community has for labeling a genocide. It is only through this process that we can truly understand what the criteria is for determining the crime of genocide.

In this paper, I will be analyzing two international situations that were taken to the United Nations for a series of resolutions to be voted on. The first is the situation in Rwanda in the early to mid 1990's where the Hutu population, after years of being lower on the class system, carried out vicious attacks of violence on the Tutsi population (Smith, 2010). Although the actions taken by the United Nations have been questioned for a long time, they did come to an agreement that the terror attacks committed by the Hutus were genocide. This declaration led to the attempted intervention by the United Nations and the attempt to find justice through international criminal tribunals. The second situation is the terror attacks that occurred in Darfur in the early 2000's. The region of Darfur suffered systematic mass killings by the Sudanese government and the Janjaweed militia. However, it never was declared a genocide by the United Nations despite the horrific events that have taken place because of a lack in "intent" to destroy the population (Smith, 2010). I want to juxtapose these two situations and see if there are any similarities in the two situations and why the actions taken by the United Nations could be so different for both situations. I find it hard to believe that two situations of mass killings and oppression of a population could yield such different results.

After I have looked at the procedure in both instances, I will evaluate to see if there were any economic factors that could have influenced the decision to label each instance a genocide or not. I have found that a country's economy can always have lasting political

ramifications on the outside world. For example, if a nation's economy is more interconnected with the economy of a nation with a heavy international influence, will that lead to more resistance in labeling a set of events as a genocide? Certain factors, such as what goods are produced, what other countries it engages in trade with, the country's GDP (gross domestic product) are all factors that can establish the international economic role a country has. It is through this lens that I will also evaluate the United Nations procedures in both situations.

In this paper, I will show that there is a fundamental flaw with the United Nations Convention on Genocide in 1948. This flaw is that the definition of the term "genocide" is too subjective, based on other terms that can also be loosely defined. I will then also show that economic relations could be argued to have at least a small influence on the decision to label a series of events a genocide or not. The economic relations of a country should have no bearing on the United Nations finding of genocide. However, I will show that the fundamental flaw in the Convention on Genocide allows for these types of influences. By the end of this paper, I hope that there are more questions raised about the United Nations' process in investigating genocide, about what factors are important to labeling a genocide, and about the subtle factors that can take advantage of these flawed procedures.



# Chapter One: Raphael Lemkin

## Early Years

Raphael Lemkin was a lawyer who dedicated his career to the fight against genocide. He came to the United States from Europe in the hopes of conducting research into various social issues. He began his work in the United States at Duke University before he moved on to research the Nazi Genocide and how the idea of genocide should be addressed by international organizations. Raphael Lemkin brought the issue to the United Nations Convention on Genocide in 1948 and his research was directly applied in the convention to define genocide and how it should be identified. The work of Raphael Lemkin prompted the international community to address the issue of genocide, which had never been looked at. Without his research, it may have taken several more decades for this idea to be brought to the international forum.

Raphael Lemkin grew up in a rural town in Poland in the early 1900's (Balakian, 2013). Even in his early years he had a curiosity for genocide studies, which would lead to the career path that he chose (Balakian, 2013). Another important factor in Lemkin's young life that would influence his research on genocide was the fact that he was a Jewish boy living in Eastern Europe in the early 1900's (Cooper, 2015). World War I and World War II played significant roles in the life of Lemkin and it was the mass killings that his people as a whole suffered that he wanted to resolve.

His family first became victim to violence in 1915 when the German army invaded Poland and Russia during World War I (Cooper, 2015). His family's farm was attacked and burned down as part of the German war tactics (Cooper, 2015). His family would work vehemently to restore their farm in the next few years. However, the German Army would

complete the same act of terror on their rebuilt home in 1918. Once again they burned down his family's farm (Cooper, 2015). It was not just his family that was attacked though. There were populations all around him that he would learn were victims to the violence. According to Cooper, "In Lvov, in a pogrom in November 1918 which lasted for 3 days, 72 Jews were murdered and 443 were injured. On 5 April 1919, the local Polish military commander in Pinsk ordered the shooting of 34 Jews, maliciously accusing the participants at a meeting to distribute food for Passover of being a secret Communist cell" (Cooper, 2015). It was not Poland that was targeted, but the Jewish population as a whole. Lemkin was aware of the targeted violence against Jews. These targeted attacks would motivate Lemkin to focus his academic research and curiosity on human rights violations and how they should be punished. This curiosity as we will see led to some of the greatest research on international human rights to date.

### **Young Adulthood/College**

Raphael Lemkin developed this curiosity while he was in college at the University of Lvov (Cooper, 2015). He had become interested in the case of an Armenian who had killed a Turkish military leader that orchestrated mass killings of Armenians in the early 1900's (Balakian, 2013). Cooper explains that Lemkin believed that the military leader should have been put on trial for the mass killings that he had ordered. Lemkin said, "Sovereignty of states... implies construction of roads, in brief, all types of activity directed towards the welfare of people. Sovereignty... cannot be conceived as the right to kill millions of innocent people" (Cooper, 2015). Lemkin's statement here shows his distaste for the experiences he had as a kid and explains that the state does not have the right to take a person's life. Lemkin could not believe that all of the

innocent lives that had been taken away by targeted mass killings would be overlooked.

Another factor that pushed Lemkin to go into the legal field are the debates that he would have with his less-progressive professors at the university (Cooper, 2015). He believed that there needed to be laws in place to prohibit awful events such as these. By 1926, Lemkin had obtained his doctorate of law degree from the University of Lvov and the University of Heidelberg (Cooper, 2015). He would use this degree to begin his legal career, which would eventually bring him to the United States.

One of the first research papers that Lemkin completed after obtaining his legal degree was based on the case of a man named Samuel Schwartzbard (Cooper, 2015). This was a man who killed the leader of the Ukrainian nationalists that was responsible for mass killings (Cooper, 2015). Lemkin was very critical about the fact that there were no laws in place for the Ukrainian nationalists to be tried for their actions. There was no court or governing body that could sanction these individuals. Lemkin was, yet again, following his passion to fight mass group-targeted violence. He was opposed to the lack of processes put into place to deter people from committing mass killings of a racial or ethnic group. This was not the only situation in which Lemkin was disgusted with the lack of procedure and organization to investigate and prosecute international crimes. A young Armenian man assassinated the former Ottoman minister of the Interior that was responsible for several mass killings of Armenians. Lemkin said on the matter:

- The trial of Tehlirian in 1920 in Berlin is very instructive. A man whose mother was killed in a genocide case killed Talaat Pasha. He told the court that he did it because his mother came to him in his sleep and incited him many times: Here is the murderer of your mother. You do something about it. And so he committed a crime. So you see, as a lawyer, I thought that a crime should not be punished by the victims but should be punished by a court, international law. (Balakian, 2013)

International law was what he believed should govern these types of situations and how they should be investigated and prosecuted. Justice should not be left in the hands of individuals, who were prepared to commit their own crimes of retaliation.

Lemkin continued to conduct more research on different countries and their criminal procedures. Some of these papers focused on the penal code in Russia, the criminal code in Italy, and the Supreme Court in Poland (Cooper, 2015). He was passionate about the law, but even more passionate about bringing about a process to make sure that mass killings of ethnic groups could be tried and justice could be brought in a legal manner (Cooper, 2015). In 1933, he wrote an article titled “Acts Constituting a General (Transnational) Danger Considered as Offences against the Law of Nations” (Balakian, 2013). In this article was the first mention of mass killings of targeted populations as a crime. He made sure that he linked the mass killings and the attempt to eradicate a population together. This would be important later on when Lemkin was called upon to give an exact definition of the crime of genocide.

***Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress***

Raphael Lemkin’s most known work is the book that he published in 1944 titled *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. In this book, Lemkin covers a wide variety of issues that needed to be changed in many different nations and through international organizations. The book focuses on German occupation techniques, occupied countries, issues that face the international community, and lastly a small

section on genocide (Lemkin, 2008). The chapter on genocide was the most important part of the book because it introduced a new concept that had not been seen by the international community before. Cooper states, “The core of *Axis Rule in Occupied Europe* was a chapter dealing with genocide, a new concept invented by Lemkin to denote the destruction of a nation or... an ethnic group” (Cooper, 2015). The novel idea would have lasting ramifications for countries around the world who would now begin to study what Lemkin had been passionate about his entire life.

The chapter dedicated to genocide in *Axis Rule in Occupied Europe* gives a very detailed definition of genocide: “By ‘genocide’ we mean the destruction of a nation or an ethnic group” (Lemkin, 2008). However, he goes on to give a two-phase description of what constitutes genocide: “Genocide has two phases: one, destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor” (Lemkin, 2008). In his definition, the actions of the oppressor destroy a population and the destruction of that population is the intent of the oppressor. Lemkin made sure to include in this chapter how different plans of genocide are put into place in different occupied nations. Lemkin directly cited the Germans and how there was a different plan of genocide for each population that they wanted to destroy (Lemkin, 2008). This lends to the idea that the act of genocide can vary between countries and not every situation is the same.

Lemkin discusses the different ways that an oppressor can go about destroying a population. Those ways include politically, socially, culturally, economically, biologically, physically, religiously, and morally. Every aspect of a population’s life is attacked and constantly weakened by the oppressors that are committing genocide. Some of these factors may be seen

as more important and more easy to recognize, such as political, cultural, economic, and physical destruction of a population. However, all play an equal role in the destruction of a population and make up the act of genocide.

Lemkin goes through the different aspects of life that can be controlled by an oppressor. In his book, he explains each situation using examples that he has seen in real life. The most common oppressor that he focuses on is Nazi Germany and its oppression of the Polish people, as well as other populations (Lemkin, 2008). The first factor that Lemkin analyzed was how a population could be destroyed politically. Lemkin discusses how the Germans would politically destroy populations in the countries that they took over. He states, "In the incorporated areas, such as western Poland, Eupen, Malmedy and Moresnet, Luxemburg, and Alsace-Lorraine, local institutions of self-government were destroyed and a German pattern of administration imposed" (Lemkin, 2008). He describes how many street signs and commercial signs were changed to the language of German. This indicated that the institutions that existed beforehand no longer existed, or at the very least were currently under the control of the Nazi regime. Lemkin refers to this process as if colonization was taking place and the native populations knew that they no longer have any political power (Lemkin, 2008).

The second pattern of destruction that contributes to the act of genocide is when an oppressor destroys a victim population's culture. Lemkin is very aware of this and talks about how an oppressor, such as Germany, will try to take away the language of a population, their style of education, and their forms of art (Lemkin, 2008). He references the Germans who forced oppressed countries to adopt the German education system; any individual in these nations that wanted to part take in some form of art, whether it be painting, dancing, or music,

had to obtain a license from the German authorities. These authorities would closely monitor what material these individuals produced (Lemkin, 2008). A large part of a population's culture concerns the traditions that they grow up with, including music, artwork, education, language, and so on. When an oppressor is able to take away these practices, the population begins to lose its identity. Eventually the population looks exactly like the regime that has it under control and the population's culture after a generation or two is permanently destroyed. This is one essential way in which genocide is conducted: not by destroying only the political power of the victim people, but also by taking away any of the customs that they held.

The third most effective way that a regime can oppress and destroy a population is economically. There are certain modes of production that make a population unique that allow them to trade with other countries and also within their country, so that they are able to succeed and make progress. If these trades are taken away from them, then a country becomes reliant on its oppressor to supply it with food and other means of daily life. Lemkin describes the impact that taking these economic means away from people can have on their everyday lives. He says, "The lowering of the standard of living creates difficulties in fulfilling cultural-spiritual requirements. Furthermore, a daily fight literally for bread and for physical survival may handicap thinking in both general and national terms" (Lemkin, 2008). If "the standard of living" is lowered, then these oppressed populations during a genocide will no longer have the time to practice their own customs. This helps contribute to their loss of identity. It will also influence their way of thinking, as they will be so worried trying to survive that they will no longer strategize about resisting or trying to maintain their political power. Lemkin finishes discussing the economic form of genocide by saying, "Participation in economic life is thus

made dependent upon one's being German or being devoted to the cause of Germanism. Consequently, promoting a national ideology other than German is made difficult and dangerous" (Lemkin, 2008). If a population that is under siege by an oppressor wants to be able to engage in the economy and survive, then it needs to abandon its previous nationality and support the oppressor. This is an emotionally draining task to ask any people who have been suppressed and need some form of economic stability in order to survive. No population should be forced to recognize an oppressor as its leader in order to participate in the economy.

There is one more form of oppression that constitutes genocide and it is the most important of all. The physical act of genocide is the most severe crime that a regime commits during a genocide. There have been millions of individuals who have fallen victim to mass killings by genocide perpetrators over the last half-century. The mass killing of a population is the ultimate form of destruction: it is how a perpetrator attempts to destroy a culture and erase its existence from this earth. There are three ways that genocide perpetrators try to physically destroy native populations.

The first tactic that is used by genocide oppressors is the "Racial Discrimination in Feeding," as Lemkin calls it. This is the idea that certain populations that are targeted by the oppressive regime will receive little to no food when the administrations of that regime distribute food to the public (Lemkin, 2008). This is a very disgusting act that the genocide perpetrator commits because there are many "policies" that a dominant population can put into place that can prohibit the targeted victim populations from receiving healthy food that meets living minimums. Lemkin in his book points to the German oppression of the Jewish population in the early to mid-1940's. Lemkin explains that 0% of the Jewish population



received meat when it was distributed to the various populations under German control (Lemkin, 2008). And whenever they do receive food, the nutrient content is also not sufficient for the targeted populations. As you can see in Appendix A, German individuals received 100% of the necessary carbohydrates, 97% of the necessary proteins, and 77% of the necessary fats in 1942 (Lemkin, 2008). However, the French people only received 58% of carbohydrates, 71% of proteins, and 40% of fats. Then the Jewish populations under German control were provided 27% of the necessary carbohydrates, 20% of the necessary proteins, and 0.32% of the necessary fats for daily living (Lemkin, 2008). There is no way a population could survive with that kind of nutrient distribution. It was a subtle way of killing off a population because, without the proper nutrients, individuals begin to starve to death or die of illness because of malnutrition.

The second tactic that genocide oppressors use is to endanger the health of the victim populations. This is one of the results of not properly distributing nutrients to the victim populations. Other forms of endangering health that Lemkin refers to are not providing proper housing or firewood to individuals during the winter time, so that they might fall ill (Lemkin, 2008). Also, overcrowding in homes can lead to the spread of disease, which is another way to endanger health. Lemkin explains how these tactics lead to disease and to higher rates of death within the targeted population (Lemkin, 2008).

The third tactic used by oppressors are mass killings in the form of organized murder (Lemkin, 2008). Every genocide has seen thousands to millions of people killed because an oppressor wants to eliminate the population. During the Holocaust, thousands of resulted from mass killings targeting an oppressed population, the Jews. These organized murders involved the use of gas chambers or machine guns (Haberer, 2001). According to Haberer, “a major

action was launched on May 8 in the town of Lida that lasted for five days and resulted in the murder of 5,670 Jews. Moreover, subsequent actions removed the last vestiges of Jewish life in some of the smaller towns of the Gebietskommissariat. Surviving selective executions that targeted the 'least productive', 3,500 Jews were transferred to the now drastically reduced ghetto of Lida" (Haberer, 2001). The aspect of genocide that is the most impactful and the most intimidating is the physical destruction of a people. To take human life away, in order to extinguish the population, is disgusting and irreversible. The victims of genocide will never get back the lives of their friends, family, and neighbors.

Lemkin knew that this needed to be changed and he called for that change in his book *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* and in person by visiting individual countries to discuss the issue of genocide with political leaders. Lemkin's goal was to create an international law that listed genocide as a crime. The goal was specifically written in his book that was published in 1944. Lemkin writes, "An international multilateral treaty should provide for the introduction, not only in the constitution but also in the criminal code of each country, of provisions protecting minority groups from oppression because of their nationhood, religion, or race" (Lemkin, 2008). He continued to argue that each criminal code should have a liability portion, so that there should always be an individual or group that could be punished for the acts of genocide (Lemkin, 2008). Liability is a legal term that basically places the blame for a set of circumstances on a specific entity. That entity can then be punished.

## **Bringing the Issue to the Table**

To accomplish the goal of labeling genocide as a crime and prosecuting the perpetrators of the crime, Lemkin argued for the formation of an international criminal code that is accepted laterally by many nations. Lemkin believed that the United Nations was the organization that would be able to bring this criminal code to the international forum (Cooper, 2015). According to Stanley Goldman, “In the fall of 1946, Raphael Lemkin, unemployed and without a portfolio, began to haunt the corridors of the United Nations building” (Goldman, 2012). It was through perseverance that he would bring genocide to the discussion table and force people to listen to the issues that he so eloquently elaborated in his book. A criminal code was developed by the United Nations defining international crimes that could be deemed punishable (Cooper, 2015). This would stem out of the Nuremburg Tribunals, which were held after World War II to try the Axis Powers for their actions during the war (Cooper, 2015). It was soon afterward that Genocide was officially recognized as an international crime. Cooper explains, “Having passed the resolution which affirmed the principles of the Nuremburg Tribunal, the General Assembly on the same day, 11 December 1946, went on to adopt resolution 96(1) which declared that genocide was a crime under international law” (Cooper, 2015). The Resolution was a huge step forward in the field of international law because now any perpetrators of genocide could be tried -- something that was never possible beforehand.

The UN Convention on Genocide took place in 1948 and this is where the definition of genocide was put into law and where the punishment and repercussions for perpetrators of genocide would be explained (Goldman, 2012). This was a big step for the United Nations in asserting its power as an international organization that could try political leaders for their

actions against targeted populations. However, Lemkin's work was not done there. According to Goldman, "Lemkin spent the next three years traveling from country to country lobbying for ratification of the UN Genocide Convention. The law first took effect in 1951, when the twentieth nation signed on to the treaty" (Goldman, 2012). It took a long time, but eventually genocide was made an international crime and Lemkin had succeeded in his accomplishments.

Raphael Lemkin is seen as one of the most important lawyers of his time because of the impact that he had on international law. He was able to find a social problem that affected millions of individuals in the world and bring it to an international discussion where laws were created and solutions were made. Without Raphael Lemkin, the international community's knowledge of genocide and the rapid ability of the international community to address this problem would not have occurred. Genocide is now a major problem that international organizations are on the watch for and is no longer overlooked during times of war and times of peace.

## Chapter Two: United Nations Convention on Genocide (1948)

### The Substance

The United Nations Convention on genocide addressed the exact issue that Raphael Lemkin had researched for decades. With the influence of Lemkin, the United Nations was able to list genocide officially as an international crime that was punishable. The best possible way to understand the international community's definition of genocide is to examine the document that was created at the United Nations Convention on Genocide in 1948.

Article I of the United Nations Convention on Genocide states that any act of genocide, "whether in times of war or peace", is deemed a crime under international law that will be punished (United Nations, 1948). This is significant because previously it could have been argued that genocide could not take place during war because there are naturally going to be casualties during wartime. However, this first article makes sure that any attempt to commit genocide at any time can be punishable by international law. Lemkin definitely had an impact on this part of the Convention because he believed that genocide could occur during war and peace. In his book Lemkin said, "Moreover, we should not overlook the fact that genocide is a problem not only of war but also of peace. It is an especially important problem for Europe, where differentiation in nationhood is so marked that despite the principal of political and territorial self-determination, certain national groups may be obliged to live as minorities within the boundaries of other states" (Lemkin, 2008). Populations can fall under the definition of a genocide even in times of peace and not during wartime alone. Lemkin and the United Nations firmly explained to countries in the Convention that an act of genocide at any time is punishable.

The next and probably most important articles are Articles II and III. Article II of the Convention defines genocide for the first time in international law. An act can be defined as genocide if any of the following occur with the intent of trying to destroy the group: “killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group, and lastly forcibly transferring children of the group to another group” (United Nations, 1948). If any of this criteria are met and it is determined it is with the intent of destroying the group, then it is classified as genocide. The definition is important because it does not merely list the killing of members of the group, but also the attempt to stop procreation within the group and the attempt to force living conditions that are not habitable (United Nations, 1948). Doing this widens the range of actions that can be deemed genocide. Article III describes which acts can be punishable by the United Nations. These include genocide, conspiracy to commit genocide, provoking publically the act of genocide, the attempt to commit genocide, and aiding others in genocide (United Nations, 1948). It is important that intent to commit genocide and encouraging genocide are included. However, there are no specifications of how intent to commit genocide and encouraging genocide can be identified. The lack of specificity is an important flaw with these articles. The inclusion of intent to commit genocide and encouraging genocide might deter future perpetrators from discussing the destruction of a local population because they do not want to suffer the consequences. Articles II and III of the Convention represent the first time in international law that genocide had been defined and been made punishable.

Articles IV through VI all allude to the punishment of genocide. Article IV is important because it indicates that governments can also be held accountable for genocide (United Nations, 1948). Not only individuals or private militias can be brought to court for human rights violations of genocide, but a national government can be indicted for the crime of genocide as well. I imagine that this was no doubt due to the fact that the German government had just committed genocide against the Jewish population and so the United Nations wanted to ensure that governments were aware that they were not an exception to the laws being made. As we have seen in history, the majority of genocides before and after the convention were committed by state militaries against local minority populations.

Article V explains that all of the signees of the Convention agree that they will hold accountable perpetrators, guilty, and will make sure that a punishment is found (United Nations, 1948). In the future, this would be important because every member of the United Nations would have a chance to discuss a genocide in question and raise issues that are relevant to it. The article holds every country accountable to uphold the standards of the convention, which indicates to the members of the United Nations that this is a serious issue that should not be overlooked. Lastly, Article VI is important because it does not allow the perpetrator of genocide to be tried in neutral territory or in its home country if the genocide occurred abroad. Article VI states, "Persons charged with genocide or any other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed" (United Nations, 1948). The fact that a perpetrator of genocide would be tried in the territory in which the acts of genocide occurred might lead to biased results. However, it does eliminate any neutral territory court from reigning a decision upon the

situation. It keeps the jurisdiction and prosecution of the crime to where it occurred, which is probably the most just to the victims of the crime of genocide. All would be very important in future genocide cases.

The only remaining Articles that I am going to address are Articles VIII, IX, and XIV. Article VIII discusses the fact that a crime of genocide can be brought to the forum of the United Nations by any member that has signed the Convention on Genocide (United Nations, 1948). There is no committee that is set aside to look into acts of genocide, but rather an individual country can bring a crime of genocide to the attention of the entire United Nations and a discussion regarding it would then ensue. Article IX is very important, because when there are questions about how a genocide punishment has been handled or if there is an appeal, the inquiry can go to the International Court of Justice, which would review the request (United Nations, 1948). This allows a country to question the decisions that are made in the process of investigating and punishing genocide and creates a sort of check and balance. It gives the International Court of Justice more power than it previously held. Lastly, Article XIV indicates that the convention would remain in effect for ten years and then for another five years, unless signees opted out before the ten-year limit expired (United Nations, 1948). The law was put into place for ten years and is still looked back upon as the basis for understanding genocide.

It is so important to look at the wording and individual articles of the Convention on the Prevention and Punishment of Genocide in 1948 because they detail in list form a social problem that had existed for centuries, and how it was going to be prevented and punished. Everything, from the definition of genocide to who could bring issues of genocide to the forum



of the United Nations, played a part in forming a new part of international law. Lemkin had a big impact with his work in the 1930's and early 1940's, which was reflected in the document produced at the Convention on Genocide in 1948. The Convention attempted to cover every aspect of genocide and its punishment. I believe that it succeeded in doing so. However, that did not deter future genocides from occurring. It only made the genocidal actions more recognizable and gave the international community a process for how to try these crimes and what punishment to incur on the perpetrators.

### **Flaws in the United Nations Convention on Genocide**

The United Nations Convention on the Prevention and Punishment of Genocide in 1948 was groundbreaking. It addressed for the first time a social problem that had been around for years and offered ways in which that crime would be punished. However, that is not to say that there weren't any flaws in the Convention on Genocide, or details that could have been made more clear or better defined to help fight against future acts of genocide and obtain justice. In specific, its main flaws involve some subjectivity in the wording of the document, which would lead to debate in the international community in the future.

As I look at the document that was created during the Convention on the Prevention and Punishment of Genocide in 1948 from a legal perspective, I can't help but see some issues that might cause problems in the future when trying to identify and punish a genocide. The large issue for me is the vagueness with which the "the intent to destroy the group" is also necessary for an act of genocide to be confirmed (United Nations, 1948). This term is far too subjective to be in the definition of genocide. How can someone know what the exact

intentions of a group are? Sometimes, there are obvious ways, such as correspondence between group leaders that indicates their intentions, or public statements about their intentions. However, if they keep their intentions to themselves, then it is hard to accuse a group as having the intent to destroy a group in whole or part.

There are two instances where I see this becoming even more complicated. The first is when the genocidal acts fail, when they are merely attempted, or when only a plan has been devised but not carried out. In these instances, a group can argue that it had intentions of waging war, but not to eradicate the entire population. Without casualties and the attempts to destroy cultural traditions, how can the conclusion be made that the perpetrators actions were with the intent to destroy the group? The second instance is during a time of warfare. A government or group can simply claim that its actions were not with the intention to destroy the entire group, but merely just to win the war and defend themselves. The fact that “intent” is a necessary part of confirming an act of genocide makes it very subjective and leaves it to the discretion of the investigators to decide whether there was intent or not. It is not objective enough to firmly establish an act of genocide, unless the perpetrators have stated their intentions.

David Lisson also discusses another fundamental problem with the document that was created at the Convention on Genocide. Lisson believed that a major flaw with the Convention is that it did not protect all social groups. He claims, “Article 2 limits the crime to acts committed with the intent to destroy ‘national, ethnical, racial or religious’ groups. Other entities, such as those defined by the political parties, economic class, or sexual preference, are unprotected” (Lisson, 2008). I originally had not thought about this when reading the

document. However, this is a pretty important limitation. For example, if the lower class were the targeted population of genocide attacks, and there were no patterns of religious, ethnical, or racial killing, would it be brought up as an issue of genocide? I would like to think that the international community would have the power to broaden the limits of the Convention to include such groups. Lisson states, "If genocide is the destruction of only certain groups, then the threshold question in any potential prosecution is whether the targeted group falls within any of the protected categories" (Lisson, 2008). The issue of what groups are covered by the convention is a large problem that has stemmed from listing the particular types of people that are to be protected.

Another problem that Lisson addresses is the failure to explain what a "national group" is (Lisson, 2008). Apparently a national group can be defined as "a collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties" (Lisson, 2008). This is a problem because it is unclear what groups of people fall under this category. Do individuals need citizenship in that nation? Are there racial, ethnic, or economic factors about a person that qualifies them to be a part of a national group? Questions like these are what arose years after the Convention on Genocide.

The United Nations Convention on the Prevention and Punishment of the Crime of Genocide in 1948 is a historical document that changed international law forever. However, there were terms that are very subjective and can leave instances of genocide up to whoever is determining how to apply it to a situation. These problems will arise in the future when potential cases of genocide need to prove that a specific group has been targeted by a

perpetrator of genocide or that there was intent in destroying that group. Subjective terms like these will prove to be problems in the cases of Darfur and Rwanda.

### **Post-Convention on Genocide**

While the international community was alerted to the social phenomena of genocide and its lasting repercussions on populations in the world, the awareness did not stop future genocides from occurring afterward. The Inter-Parliamentary Alliance for Human Rights and Global Peace has composed a list of potential genocides that have occurred since the Convention of Genocide came into being in 1948. A few of these genocides occurred in Tibet between 1959 and 1966, in Guatemala between 1968 and 1996, in Bosnia from 1992 to 1995, in Rwanda in 1994, and in Darfur from 2003 until the present (Demuyne et al, 2016). Some of these were labeled genocide by the United Nations and officially recognized by the international community. By recognizing those genocides, the international community was able to attempt to gain justice for the victim populations. However, there were also instances in which the international community was unable to come to a consensus on whether the crime of genocide had occurred. I will discuss two situations later in this paper in which the United Nations was able to agree that a genocide took place and one where they could not come to an agreement.

As we can see, the United Nations Convention on Genocide in 1948 was not the ultimate solution to the problem of genocide. It was a monumental moment in international law history that addressed a pressing issue; however, it did not deter future perpetrators from committing this crime. There were many benefits to the Convention on Genocide, but mass

killings and the attempts to destroy certain populations still continue to occur. There is always going to be the threat of a genocide and that's why we need to analyze every instance of genocide, so that we can determine if the processes that are put into place are effective enough to eventually eliminate any injustice going unpunished. That is what I plan to do in the next portion of this paper. I will look at the potential cases of genocide in Rwanda and Darfur and determine if a genocide should have been determined, what the differences were between the two situations, and how they were handled by the international community.

## Chapter Three: Rwandan Genocide

### Background

Rwanda is a small country in East Africa that can often be overlooked. However, it will always be infamous for the tragedy that took place there in the mid-1990's. This was when hundreds of thousands of Rwandans were mass murdered. It is one of the worst genocides in international history, and there are many burial sites that are still around today to embody the violence that took place just twenty years ago. The genocide that took place in Rwanda followed Lemkin's explanation of how one population can attempt to destroy another economically, politically, culturally, and physically.

The two populations that were involved in the genocide were the Hutus (Perpetrators) and the Tutsis (Victims). However, the conflict stems from imperialism when the Belgians and French invaded the country in the early 1900's, they forced its occupants to carry around identity cards, which stated name, tribe, and age (Smith, 2010). It was during this time of Belgian and French colonial rule that the Tutsis were recognized as the class with more status to outside nations (Smith, 2010). This is typical in a genocide, as there are usually two groups: one that already has power over another and abuses that power, and the group with less power that rebels against the higher class.

After many years, the Belgians and the French decided to grant Rwanda its freedom even though there had been internal strife between the Tutsis and Hutus years prior (Smith, 2010). The French and the Belgians left the region, but continued to contribute some arms and weaponry to the Rwandan military (Smith, 2010). The supply of weaponry would be intercepted by groups composed of Hutus that used the weapons to kill Tutsis in waves, who they had

despised for decades. The struggles between the Hutus and Tutsis gained enough recognition that the situation kept being brought to the attention of the United Nations for a determination of whether there should be some sort of intervention (Smith, 2010). The United Nations eventually invaded Rwanda, but was unable to quell the chaos that had been created within the country. Later, the United Nations forces, as well as additional military forces that were sent to aid from individual countries, were removed (Smith, 2010). After a month, the United Nations was able to reverse its decision and increased the number of troops within Rwanda and also ceased any arms trade to the region (Smith, 2010). It was at this time that the international community was able to stop the atrocities and mass killings that were occurring in Rwanda. However, this was not before many innocent lives were lost. This could have been prevented if the genocide had been quickly recognized by the international community and the appropriate actions taken.

### **Was it a Genocide?**

Earlier in this paper, I described four of the main tactics that genocidal oppressors used in attempts to destroy a particular group: economical, cultural, political, and physical destruction. These four elements were all present during the Rwandan genocide and should have been easily recognizable. However, it took many nations a significant amount of time to admit that they believed the crimes that were taking place constituted the crime of genocide.

The physical aspect of genocide most definitely occurred during the 1990's as there were systematic, organized killings of Tutsis by Hutus. According to David J. Simon, "Although the figure itself is a matter of unfortunate (but probably inevitable) debate, at least half a

million people were killed in the genocide of 1994, and perhaps as many as 1.1 million” (Jones, 2012). Simon goes on to explain that around half of the Tutsi population had been killed by Hutus during the genocide (Jones, 2012). This is the physical destruction of a population by a genocide perpetrator.

The cultural aspect of genocide was also demonstrated during the genocide in 1994. Smith explains, “In the wake of genocide, Tutsi survivors often returned from hiding to their homesteads, which were surrounded by the abodes and fields of Hutus” (Jones, 2012). The homes and villages of the Tutsis had been taken over by the Hutus and that in certain ways was an attempt to destroy the culture of the Tutsis. The Hutus did not want the land to be recognizable to its former inhabitants and by residing in that land and transforming it to be their own, there was no way in which the Tutsi traditions and culture could survive and be remembered. Some of this land was important for ritual traditions and was no longer accessible. The Hutu actions directly inhibited cultural traditions to take place.

Another aspect of genocide that took place in 1994 was the political genocide of the Tutsi population within Rwanda. Tutsis were held in higher status before the armed conflicts in the 1960’s occurred between Hutus and Tutsis. However, the Hutu Regime was able to gain control in government in the 1970’s (Smith, 2010) and the ensuing violent actions by Hutus against Tutsis were aimed at making sure that the Tutsis would not regain their power in the country. Smith writes, “Tutsi were marginalised and discriminated against, but there were no more mass killings of Tutsi until the early 1990’s” (Smith, 2010). This goes to show that the group was discriminated against politically and were never going to be given a chance of



equality. Based on Lemkin's definition of political genocide, I believe that the actions taken by the Hutus constitute political genocide.

The last aspect is the economic genocide and limitations that were placed on the Tutsi population. The economy in Rwanda during the mid to late 1900's began to grow with the emergence of the trade of coffee (Kamola, 2007). However, it would be the Hutus that were in power in government that repeatedly attempted to withhold the economic profits of the coffee trade from the Tutsi population. Isaac A. Kamola says, "As the international price of coffee increased, the Rwandan Hutu elite sought to consolidate control over this increasingly valuable commodity. Starting in 1962, the same year Rwanda signed the ICA (International Coffee Agreement), President Kayibanda transformed Trafipro into a state-run marketing board which, by 1966, maintained 27 national shops and 70 coffee purchasing points throughout the country" (Kamola, 2007). As Kamola claims, the government nationalized the production of coffee so that the government would receive the profits and the minority Tutsi population would not. By nationalizing coffee production, the Hutus could determine who worked within the business and could halt Tutsis from making a living off of it. Kamola explains that such actions led to massive inequality within Rwanda (Kamola, 2007). This would have been an economic attempt to destroy a population under Lemkin's definition. The Hutus used their power to stop Tutsis from making a profit in the economy, which exacerbated class inequality.

So the four main tactics of genocide are evident in the events that took place in Rwanda. The Hutu population, at least, attempted to destroy the Tutsi population through economic, political, cultural, and physical means. Raphael Lemkin would have advocated to the United Nations and the international community to investigate and bring punishment to the Hutu

leaders for their actions against the Tutsi population. Looking back now, it is clear that the crime of genocide did occur within Rwanda and that necessary actions and punishments must have been taken. However, during the time of the violence and directly after it, the international community had many deliberations about whether or not the events that took place represented the crime of genocide.



\*A memorial site within Rwanda that displays the bones of the victims in the 1990's (Wild Whispers Africa, 2016).

### **International Response to Rwanda**

Lemkin would have been pleased with the end result of how the United Nations handled the situation in Rwanda, but he would not have been pleased with the means by which they got there. While eventually the United Nations, as a whole, recognized the events that took place in Rwanda as the crime of genocide, it took many different meetings and deliberations to arrive at that proclamation. It resulted in a large amount of criticism in the United Nations' ability to handle genocide situations and arguments that the violence could have ended much sooner if it

had been able to come to a conclusion on whether the acts constituted a genocide much earlier.

Spain led the charge in trying to determine if the violent actions in Rwanda were in fact genocide. They called for a United Nations investigation into the events that took place, so that the Security Council could make a decision on it (Smith, 2010). The other members of the UN Security Council, however, were not very enthusiastic about labeling the events as a genocide. Smith writes, “The US refusal to use the term genocide at all until late May and the contortions that US State Department officials went through to avoid doing so are infamous” (Smith, 2010). However, the United States was not the only nation that did not want to categorize the situation in Rwanda as a genocide. The United Kingdom and China were also very hesitant to do so and even refused to vote in a Security Council resolution (Smith, 2010). This is a travesty considering the large number of innocent people who were being killed daily. The United Nations was analyzing this as if it were any other war time conflict that needed to be deliberated on. However, the result was around one million Rwandans that would never regain their lives and a country that would be in shambles halfway through the 1990’s.

Eventually the term “genocide” was applied to the situation that unfolded in Rwanda. The European Union was the first major organization to acknowledge that a genocide had occurred, that intervention needed to be put into place, and that justice should be sought. The European Union declared, “The European Union, recalling its declaration of 18 April 1994 on Rwanda, again appeals urgently to all parties to the conflict to bring an end to the genocide now taking place in the country” (Smith, 2010). The use of the word “genocide” was important because it was the first time an international body had recognized the events as a genocide.

This would eventually pressure the nations on the UN Security Council to label it a genocide as well.

The United Nations did handle the procedure properly once they had formally declared as a whole that the events in Rwanda represented, in fact, a case of genocide. Thomas Olesen describes how the United Nations created an International Criminal Tribunal for Rwanda in 1994, which was aimed at prosecuting anyone who was thought to be responsible for the mass killings and genocide of Tutsis in the 1990's (Olesen, 2012). Olesen says, "The creation of the tribunal by the Security Council, and its location within the UN framework, is an official 'endorsement' by the community of states of the injustices of the Rwanda Genocide" (Olesen, 2012). Olesen is correct that the creation of the tribunal shows that the international community believes that genocide occurred. The necessary procedures from the United Nations Convention for Genocide in 1948 took place.

A flaw of the Convention was made clear during these criminal tribunal proceedings. That is the ability to determine whether a group is being discriminated against or targeted, and whether there was an intent to destroy that group specifically. David Lisson explains that the criminal tribunal could not distinguish the Hutus from the Tutsis because of the amount of shared practices that they had (Lisson, 2008). The criminal tribunals continued forward and various individuals were tried for the crime of genocide. However, it is important to note the initial struggle with the subjective term of "national, racial, or ethnic" groups. The tribunals were an integral part of categorizing the events as a genocide and trying to find the individuals responsible for the crime.

Eventually, the United Nations and the international community, for the most part, came together to identify and try to resolve the problem of genocide in Rwanda. While it may have taken longer than what could have been accomplished, the issue was still addressed in accordance with the United Nations Convention on Genocide. All of the factors were taken into account and an answer was found. Justice was sought, which is not always the result in potential cases of genocide.

## Chapter Four: Genocide in Darfur

### Background

The most recent potential case of genocide has occurred in the region of Darfur, which is within the country of Sudan. Sudan is a country in Northeast Africa that is very close to the Middle East. Darfur is a region in western Sudan that falls under the control of the Sudanese government. Beginning in 2003, there were reports that organized killings were happening in Darfur. It turns out that these reports were true, which led to violent attacks between the individuals that live within the region of Darfur and the Sudanese government. There has been a debate amongst the international community as to whether or not the violence that has taken place from 2003 until the present in Darfur should be categorized as a civil war or if the crime of genocide occurred. Although the United States has formally stated that it believes the actions are those of a genocide, there has not been much support of their claim by the rest of the international community. The events in Darfur should constitute a genocide because the events meet the definition of genocide put forth by Lemkin and the definition proclaimed in the United Nations Convention on Genocide in 1948. However, the international community has failed to label it as a genocide and failed to seek punishment for the hundreds of thousands of deaths that occurred to date.

The country of Sudan gained its independence in 1956 from Britain and Egypt and from that point on has found itself constantly in conflict within the state. Smith explains that in 1983 there was a rebellion in which attacks were waged on the Sudanese government (Smith, 2010). The rebellious attacks are what caused retaliation by the Sudanese government in the early 2000's. There were two groups known as the Sudanese Liberation Movement/Army (SLM/A)

and the Justice and Equality Movement (JEM) who attacked the Sudanese government (Smith, 2010). The justification for the attacks was the lack of fertile land, water, and resources (Smith, 2010). This is very similar to the events that took place in Rwanda, where the conflict was between the majority ruling group and a minority group. The results of the conflict, unfortunately, would also be very similar to Rwanda.

The people living in the region of Darfur were at a disadvantage. The Sudanese government had far more resources than they did, and had the means to carry out large-scale attacks on them. According to Smith, the villages of Darfur were bombed by aircraft and there were ground attacks by the Sudanese government's army (Smith, 2010). This would lead to a significant number of innocent casualties within the region of Darfur. Smith explains, "Civilians were deliberately targeted, with mass killings and rapes common" (Smith, 2010). The innocent individuals of Darfur were falling victim to the crime of genocide and it was only just beginning. It turns out that, by May 2004, about 80,000 people within Darfur had been killed and more than 100,000 people had been forced out of their homes and made to leave the region (Smith, 2010). These are two of the fundamental forms of genocide.

### **Genocide according to the International Definition**

The actions taken by the Sudanese government exhibit the four main tactics of genocide. The Sudanese government had definitively attempted to physically destroy the group of people residing in Darfur. The 80,000 individuals that had been killed within one calendar year are evidence that there was a mission by the government to exterminate these people by mass killings. Smith estimates that around 300,000 people had died in total over the course of

the genocide, whether it be from violence, starvation, or poor living conditions that caused disease (Smith, 2010). The acts of forcibly removing the population from its home and killing them or forcing them into living situations that are not habitable would fall under the definition of genocide put forth by Lemkin and the United Nations. The Sudanese government's goal was to physically destroy this targeted population.

The next aspect of genocide that needs to be analyzed is whether or not the Sudan tried to destroy the individuals in Darfur politically. The political aspect of destruction is hard to discern because it's not as clear-cut as it had been in Nazi Germany, where they changed all of the street language in conquered countries to German and began teaching German history in schools. I have only been able to come across one aspect of political genocide in the case of Darfur. This is the fact that the Sudanese government and military is entirely made up of Arabic natives that monopolized the resources in the area (Hagins, 2011). According to Josh Hagins, "As climate change and desertification reduce arable land and water sources, Arab and non-Arab groups are locked in a resource struggle. The Arab-dominated Sudanese government, unable or unwilling to do much else, has sided with the Arab herding groups and used government forces to train and partner with Janjaweed militias to attack the Black African farming groups" (Hagins, 2011). The Sudanese government is using its political power and military to try and destroy a distinct population, so that it may reallocate these resources. That the government is composed mostly of Arabic members, who support this cause, is inexcusable. There is not enough of a balanced representation of the population, which is leading to the attempted destruction of a minority population by the government. The suppression of



resources by the government to certain populations is political genocide, especially because the suppressed population does not have any representation to advocate on their behalf.

The third aspect of genocide, economic genocide, in Darfur can be closely associated with political genocide. The government of Sudan teamed up with the Janjaweed militia to push out the rebel forces who represented the sedentary economic group (Smith, 2010). The economic genocide is taking the resources that the members of Darfur possessed and giving them to the nomadic Arabs. The Arabs that are nomadic and live off of their livestock need these resources, but so do the sedentary groups of Darfur (Hagins, 2011). The government is supporting taking resources away from one group and giving them to another through the form of displacement, mass murders, and terror. This is the attempt to take away a groups way of life, including how they survive and trade with other populations in the economy. Dev Nathan explains, "If the armed insurgents from the agriculturalists initially sought to deny herders access to land, the armed nomads now stole livestock from the agriculturalists, and also destroyed grain storage bins and irrigation systems. Not only the government, the Janjaweed too accumulated wealth in the form of money" (Nathan, 2008). The Janjaweed and the Sudanese government were intentionally stealing the members of Darfur's economic resources and intentionally destroying economic tools so that they would suffer. It is a clear attempt at economic genocide.

I believe that the Sudanese government has met through its actions in Darfur the last criteria of genocide: cultural genocide. First, attempting to take away an economic means of production that is unique to a certain population is in itself cultural genocide. However, the more important issue here is the displacement of people who no longer have a place that they

can call their home. Karen Smith gives statistics on the amount of people in Darfur who were displaced because their villages were taken over by the Sudanese government or were completely destroyed. According to Smith, at the end of 2008 there were about 2.7 million displaced refugees internationally in neighboring countries (Smith, 2010). These people now have to live in a separate country that does not live the same way of life that they do. Also, the homes, shops, and land that was unique to a culture have now been taken over by the Sudanese government or they have been destroyed. The displacement of the people in Darfur is an attempt to destroy their culture and to either force them to assimilate to the majority and government of Sudan or to live somewhere else.

I would argue that the main forms of genocide have occurred in Darfur and therefore should be recognized as a genocide by the international community. Everything from a government and its military attacking a minority population, that has little to no representation in government, to the mass killings of people and the burning of their villages would meet the definition of a genocide. I would think that it would be hard to argue against the word “genocide” in a matter such as this when the number of casualties is high and economic means for survival are being stripped. However, the international community has yet to collectively acknowledge the events in Darfur as a genocide.



\*The displacement of the people of Darfur has led to housing requirements such as this. (USA Today – Farran, 2014)

### **International Response to Darfur**

The international community took a long time to eventually label the events that took place in Rwanda as a genocide, which can be punishable by international law. Although the delay has been criticized, it was eventually the correct decision to make. However, the same conclusion cannot be applied to the international community's reaction to Darfur. The international community has leaned towards labeling Darfur a genocide. However, it has not officially done so and that has had lasting ramifications for the people of Darfur.

The investigation of the genocide that was ongoing in Darfur did not begin until 2004 when several individuals and organizations demanded that the situation be looked into by a United Nations investigative team. Two individuals in particular are Mukesh Kapila and Kofi Annan, who pleaded with the United Nations to investigate the events that were transpiring in Darfur (Smith, 2010). This is where the situation first gained international attention. The United Nations assigned several investigators to go look into the events that had taken place and they

came back indifferent about whether a genocide had taken place or not (Smith, 2010). The result of these investigations coupled with other countries' hesitancy to label the events in Darfur as a genocide that inhibited the United Nations from taking a more in-depth look.

However, in July 2004, the United Nations decided to issue a declaration to the Sudanese government in an attempt to quell any violence that might be taking place. The United Nations proclaimed that the Sudanese government was to disarm the Janjaweed militia, stop any non-military entity or individual from receiving weapons, and to report every month to the United Nations on the progress being made within Darfur (Smith, 2010). The Sudanese government did not adhere to these demands by the international community and when the issue of placing sanctions on Sudan came up, it was vetoed by China and several African nations (Smith, 2010). China did not want there to be any sanctions or punishment for Sudan on the basis that the Sudanese government refused to adhere to the demands for progress. This may have been because the term genocide was not yet factually linked with Sudan yet.

There was one nation that did acknowledge a genocide. The United States has long been one of the nations that has pushed for further investigation into genocide. The United States hired its own organization to investigate the events and it found that there were human rights violations that needed to be prosecuted in Sudan (Smith, 2010). However, the United States did not stop there. Colin Powell, in 2004, issued a statement that the events in Darfur were, in fact, a genocide and that the Sudanese government and the Janjaweed militias should be held accountable and should be punished for the events that took place (Smith, 2010). This was a momentous statement because a nation who has political influence across the world was

claiming that this was a genocide and that the the government of Sudan should be investigated. However, the term “genocide” would still not reach the international community.

The United Nations would commission one last investigation into Darfur to decide if the events that took place fit the definition of genocide. The results that were released were very intriguing with respect to the Genocide Convention of 1948. The investigation found that there were human rights that had been violated by the Sudanese government and that they should be prosecuted and punished (Smith, 2010). The human rights crime that was violated was moving the population in Darfur to refugee camps and killing anyone that refused. However, the act of genocide was not found because there was no proof that there was an “intent” to destroy the individuals living in Darfur. The investigators claimed that the Sudanese government was not trying to kill everyone in Darfur, but rather they were moving them out of their territory into refugee camps (Smith, 2010). However, those actions did not constitute genocide because the government was not attempting to kill the entire population. This decision is very embarrassing and does not reflect the intention of the Genocide Convention in 1948.

The displacement of these people paired with the statistics that tens of thousands of rebels and citizens in Darfur were killed does, in fact, constitute genocide. The physical aspect of genocide is the tens of thousands of members who have been killed in conflict. However, the displaced peoples living in refugee also constitute genocide. Removing these people from their land and homes is an attempt to politically, economically, and culturally destroy a population. By removing them from their villages, these people lost their agricultural production, which allows them to trade economically and establish a way of life. The removal from their home

takes away much of their culture that has been established within the village. Lastly, the displacement forces the people to worry about survival so much that they no longer have any time to fight for their rights politically. They also may be displaced to another country, where they have little, if any, rights. I believe that the United Nations focused too much on the physical aspect of genocide. The United Nations looked too much at the number of people killed over time and compared it to the total population. The United Nations investigation team should have looked at the cultural, political, and economic suppression that was ongoing as well. Lemkin's definition of genocide did not only look at the physical aspect, but at a multitude of other factors.

The steps taken by the United Nations were incorrect and confirm one of the fundamental flaws with the United Nations Convention on Genocide in 1948. The term "intent" is too subjective to be included in the definition. All of the statistics of displaced people and casualties of the population in Darfur would confirm that genocide took place. However, once you add a subjective term, such as "intent," to the equation the facts can get muddled. This is precisely what took place in the investigation of Darfur. There is no way to factually prove that the intent of the Sudanese government was to destroy this population without a piece of correspondence being found that specifically states this intent or unless members of the government confess to it. That is why the "intent" of an organization or government is so difficult to prove. It is this fundamental flaw that prohibited foreign intervention in Darfur, prohibited justice from being attained, and has resulted in the ongoing violations of human rights in Darfur.

## **Chapter Five: The Explanation**

The United Nations was able to come to the conclusion that Rwanda was a genocide, but not until after a lengthy international deliberation. It also came to the conclusion that Darfur was not a genocide. There was not much difference between the two situations. In both situations, there was one group that was destroyed physically and there was an attempt to destroy that group culturally, politically, and economically as well. The only difference is that the United Nations found there to be intent in Rwanda and a lack of intent in Darfur. What explains this difference? In order to answer this question, I now want to analyze the nations that were voting within the Security Council and the economy of both Rwanda and Darfur. Perhaps, any differences between the two can shed some light on why this subjective term of “intent” was found to be different in both situations.

### **Voting Patterns within the United Nations**

One important aspect of the actions taken by the international community is the pattern of voting and the types of votes that were held within the Security Council in relation to both of these events. There are certain countries that will vote in favor of labeling the acts as a genocide. They may vote in favor of investigating the events taking place or not. They may vote in favor of punishing a country for human rights violations, heeding to probation terms, or complying with demands made by the United Nations or not. A country on the Security Council may also abstain from voting altogether for whatever reason that they may find. Here, I will look at any voting pattern that I can find related to the issues of genocide in Rwanda and Darfur.

There were several meetings held by the UN Security Council in regard to the violence that was taking place within Rwanda. The first of these meetings resulted in UN Resolution 918 which, without a vote, condemned the violence in Rwanda and authorized United Nations military forces into the area to help provide aid and keep those sites that did provide aid safe (United Nations, 1994). Of course this was put into action with ease because the United Nations had agreed to the resolution without a vote necessary. The following meeting resulted in Resolution 925, which expanded the duties of the United Nations forces that were already on the ground in Rwanda and sent slightly more troops (United Nations, 1994). This vote was unanimously decided 15-0 in favor of expanding the responsibilities and the size of the troops on the ground. The third meeting held in regard to these events resulted in United Nations Resolution 935, which recalled all of the troops that had been deployed to Rwanda and had an investigative team assigned to Rwanda to investigate whether human rights violations had occurred (United Nations, 1994). The vote passed again unanimously 15-0 with all of the Security Council members agreeing that an investigation was necessary to determine what had occurred in Rwanda. The last important meeting that was held on Rwanda concerned United Nations Resolution 955. This resolution concerned the establishment of an international criminal tribunal to try individuals who may have been guilty of human rights crimes and crimes concerning genocide that had been found in the previous investigation (United Nations, 1994). The voting pattern was slightly different for this resolution, however it still passed. Thirteen members of the Security Council agreed that an international tribunal should be established to put individuals on trial for genocide crimes. However, Rwanda voted against the establishment



of such a tribunal and China abstained from the voting. Despite the abstention and vote against the resolution, it still passed and an international tribunal was formed.

An International Criminal Tribunal was formed to investigate and prosecute individuals who may have committed genocide. However, China and Brazil both felt that the United Nations may not be the best organization to organize these trials (Van Den Herik, 2005). Although, Brazil eventually voted in favor of the criminal tribunals, China abstained from the vote because they did not believe that it was the right way to conduct the investigation. Both countries did not believe that it was legal for an international organization to punish individuals for crimes that had been committed within a country (Cryer, 2005). These countries believed that it was up to the country itself to hold the individuals responsible for their criminal actions and to find them guilty or not guilty. In their eyes, the jurisdiction should not have been placed in the hands of the United Nations. Despite these hesitations, China did not participate in the United Nations vote and an international criminal tribunal was established to prosecute suspects of genocide.

The Resolutions that were created by the United Nations were aimed both at intervention to assist and solve the problem in Rwanda, and to declare that a genocide had occurred and that justice needed to be found. The voting by the members of the Security Council seemed to follow the organization as a whole, as every resolution was passed either unanimously or with a very high majority of the members voting in favor of the resolution. The United Nations in this instance did what it could, eventually, to quell the human rights issues going on in Rwanda at the time and then to try to find justice against the perpetrators of

genocide. The United Nations upheld the standards of the United Nations Convention on Genocide.

However, the same cannot be said for a similar situation a decade later in the Sudan. The first United Nations meeting held in regard to Sudan and Darfur resulted in United Nations Resolution 1556. This resolution simply stated that the United Nations was ordering that the Sudan should disarm the Janjaweed militia of their weaponry and prosecute any individual who had committed a crime (United Nations, 2004). This resolution was passed unanimously by organization with only two abstentions, China and Pakistan. The next meeting was in regard to individuals who were inhibiting the peace process in Darfur that was being attempted. Resolution 1591 stated, "Condemning the continued violations of the N'djamena Ceasefire Agreement of 9 April 2004 and the Abuja Protocols of 9 November 2004 by all sides in Darfur and the deterioration of the security situation and negative impact this has had on humanitarian assistance efforts" (United Nations, 2005). The United Nations voted to determine if anyone should be punished for interfering with the peacekeeping process that they had earlier voted on. Twelve Security Council members voted in favor of punishing anyone interfering with the peacekeeping process, while there were three abstentions. These nations were China, Russia, and Algeria. The last United Nations meeting concerned Resolution 1593. This resolution was created to determine whether the human rights violations that the United Nations had found could be given to the International Criminal Court to prosecute (United Nations, 2005). The Resolution states, "Acting under Chapter VII of the Charter of the United Nations, (1) Decides to refer the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court. (2) Decides that the Government of Sudan and all other parties to

the conflict in Darfur, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor” (United Nations, 2005). As we see in the Resolution, it also demanded that Sudan comply with whatever instructions the International Criminal Court provided them with. The resolution passed, but not without some question marks. With eleven countries voting in favor, there were no rejections, but there were four abstentions from the voting. These countries were Algeria, Brazil, China, and the United States. With these abstentions, the United Nations was still able to refer the human rights violations to the International Criminal Court for investigation.

The resolutions that were passed within the United Nations helped the situation in Darfur progress. However, they never once dealt with the issue of intervention or found justice for any crimes related to genocide. Instead, they merely made threats that punishment would occur if peace was not found. When it came to justice, it gave that responsibility to the International Criminal Court. Even the Resolutions that were passed were met with abstentions from countries who did not agree with them or wanted a different variation of them. The United Nations, as well as individual countries, did very little to help the people of Darfur who were falling victim to human rights violations, and what I believe to be genocide. When evaluating the actions of the United Nations in regards to the standards established in 1948, the international community did not uphold its pledge to condemn the crime of genocide and every resolution that was passed in relation to Darfur was merely a formality that never provided assistance on the ground or punishment to those that should be found guilty of the crime of genocide. This may have been from pressure from the individual nations that make up the Security Council or it could have been from precedence and the results of earlier United

Nations Resolutions during past genocides. Either way, a population in Darfur was neglected and no real help was provided to them due to the subjectivity of the term “genocide” and due to the inadequacies of the United Nations, which did not do enough in this situation, in terms of aid and justice.

### **Why Wasn't Enough Done in Sudan?**

The United Nations did not pass the proper resolutions to deal with the human rights violations in Darfur and even the resolutions that were passed were always unanimously agreed upon. There needs to be some explanation as to why this is. The United Nations, after a long time of debate, eventually passed the proper resolutions in Rwanda that provided aid and eventually justice. This was not the result in Darfur. I believe that it was the natural resources within Sudan and their economic exports that caused nations to hesitate when it came to labeling the tragic deaths as a genocide. This failure to recognize the events as a genocide would inhibit other nations from providing assistance on the ground, and finding justice. Many countries would not want to ruin diplomatic and economic relations with the Sudanese government because of their natural resources, such as oil that they could import from Sudan.

Oil is the chief export and national resource for the country of Sudan. There are many countries within the same region as Sudan that look to import oil from there. According to the University of California-Berkeley, in 2005 the Sudan produced the third largest amount of oil in Africa (Pinaud, 2006). In 2005, the Sudan produced around 400,000 barrels of oil per day (Pinaud, 2006). This is a very large amount of oil that was very highly demanded from many countries throughout Africa and Asia. There are two major oil ports in Port Bashair and Port

Sudan that produce the majority of the oil in the country (Pinaud, 2006). Pinaud states, “The Sudanese Energy Ministry estimates total oil reserves at 5 billion barrels. Due to conflict, oil exploration has been mostly limited to the central and south-central regions of the country. Vast potential reserves are held in northwest Sudan, the Blue Nile Basin, and the Red Sea area in eastern Sudan” (Pinaud, 2006). The amount of oil, a coveted natural resource, would make any country want to trade and form a strong economic relationship with the country.

There have been several national bonds that have been formed with the Sudanese government when it comes to economic trade. The two biggest countries that have engaged in trade with Sudan for oil for quite a long time now are China and India. China just so happens to be one of the permanent members of the Security Council for the United Nations and can veto a resolution at any time that they please. India, on the other hand, has been increasing its influence in the region and has formed many allies in the process. Japan is also a nation that imports a significant amount of oil from Sudan. According to the U.S. Energy Information Administration, China imports 86% of the oil that is produced in Sudan per day, while Japan imports 8% of their oil and India imports 5% of their oil (U.S Energy Information Administration, 2014). These three countries would be foolish to do anything that may harm their economic ties with Sudan, who could then decide not to engage in trade with these nations.

However, the trade of oil is not the only economic bond that exists between Sudan and these countries. The Oil Consortiums within Sudan hire companies to collect the oil for them. According to the U.S. Energy Information Administration, the Greater Nile Petroleum Operating Company Consortium contracts 40% of the collection of oil to the Chinese National Petroleum Corporation (CNPC) and 25% to the Oil and Natural Gas Corporation (ONGC) which is owned by

India (U.S. Energy Information Administration, 2014). These companies that are contracted to work and collect the oil are from two of the countries that receive the largest exports of oil from the Sudan also. This is even more reason for countries, such as China and India, who engage in economic trade with Sudan not to cross them politically. The economic importance of Sudan is because of the amount of oil that they produce and export to other countries in their region.

The economic connection between China and Sudan has been acknowledged many times before. Large and Patey (2014) explain that about 84% of the demand from Asia to Africa falls squarely on Sudan to provide (Large & Patey, 2014). Large and Patey (2014) also state, “The rise of China as Sudan’s top economic partner was part of the reorientation of its trade away from Western markets and toward Asia.” The researchers also wrote, “China’s oil investment was the most important for Sudan from September 1995, when CNPC bought block 6, a concession in South Kordofan” (Large & Patey, 2014). They acknowledge that the Sudan is important to China and that China is important to the Sudan.

After evaluating the economic importance of Sudan to its region and the strong connection that it has with China, it makes sense that China did not take part in any of the resolution votes that took place in the mid-2000’s. If they had voted in favor of punishing the Sudanese government or referring the prosecution to the International Criminal Court, then that lack of loyalty could have damaged its economic ties with Sudan. However, by abstaining it did not make any definitive commitments and let the United Nations make inadequate resolutions in regards to the human rights violations. It also makes sense that individual countries did not want to intervene in Sudan because they knew of the economic importance of

Sudan. Perhaps, they were hopeful that in the future they could form strong economic bonds with Sudan and that would never happen if they voted to condemn the government of human rights violations.

I could compare this to Rwanda's economy and relations with the other nations through trade. According to the University of Pennsylvania, 80% of the economic exports of Rwanda are coffee, which is followed by tea and wolframite (University of Pennsylvania, 2016). The coffee sector was also badly damaged during the genocide in the early 1990's so the exports were not as high as they normally were. The University of Pennsylvania also claims that the main employer in Rwanda is the government and that there is no private corporation that employs more people than the government (University of Pennsylvania, 2016). The economic relations around the time of the genocide were not very strong with any one country in particular. According to the United States Census Bureau, in 1993 Rwanda traded 5.4 million dollars' worth of goods with the United States. In 1992, -2.2 million dollars' worth of good were traded with the United States. Fortunately, in 1994 Rwanda progressed and traded 33.3 million dollars' worth of goods with the United States (U.S. Census Bureau, 2016). These are not particularly large amounts of goods that were being traded with one of the largest influences in the Western Hemisphere. Therefore, there would not have been an incentive for a country, such as the United States, to worry about any political decisions that could impact economic relations. The last factor is the GDP of Rwanda in the early 1990's, which was roughly around 1 billion dollars (Trading Economics, 2016). This is a fairly low number, which indicates that there were not many goods being produced within the country, either for its own use or for export.

My argument is that the decision for intervention into Rwanda was much easier because its economy was not as significant to the outside world and it did not have any strong economic ties to large, politically influential nations. Due to this, nations were able to look at the situation more objectively and eventually made the decision to provide support to intervene in Rwanda and then made the decision to prosecute those individuals who were suspected of the crime of genocide. This is not the same for Sudan because of its influence in the region due to oil. Large countries, such as China and India, would not want to cut economic ties with Sudan by pushing for genocide intervention and punishment. I do not think that that these economic relations were a direct cause of the failure of the international community to handle the situation in Darfur. However, I do believe that the economic relation is a factor that should be taken into consideration along with the loose subjectivity of the United Nations Convention on Genocide definition of 'genocide' and the process to declare a series of events as genocidal. Any country could manipulate that term's subjectivity and argue that a series of events do not meet the criteria for genocide. These are the fundamental flaws with the definition of genocide used by the United Nations and certain loopholes that it can fall victim to. I believe that the failure to label Darfur as a genocide was due to the flaws in the definition of a genocide, as well as influential factors such as economic relations between a perpetrator and a permanent member of the UN Security Council. It is the subjectivity of the definition that can allow the political ties between two nations to hinder an objective analysis of a situation.

The ties between a perpetrator and a permanent member of the UN Security Council are important because a permanent member of the UN Security Council can veto any resolution that has been passed. Therefore, a country, such as the U.S. or China, could veto a resolution if



it wanted to help an economic ally. The permanent member does not need to provide much justification for its action either. Permanent members of the UN Security Council have the ability to stop any resolution and it is this power that gives them so much influence and why economic relations could play a role in labeling events as a genocide.

There are other theories, of course, as to why there was no intervention in Sudan. Eric A. Heinze alludes to two of those reasons in his research. First, Heinze acknowledges that Darfur may have not been labeled a genocide because of the results in Rwanda and how the intervention and punishment were not as effective as they hoped that it would be (Heinze, 2007). The second reason that Heinze gives is that maybe countries did not want to intervene politically in Darfur and they could avoid this by not acknowledging that a genocide was occurring (Heinze, 2007). There are so many factors that can play into a country's decision to acknowledge a genocide or to influence others in the international community to investigate it, recognize it as so, and then to punish it. The flaw in the system here is the loose definition of genocide from the onset and from there loopholes can be found or judgments can vary depending on the use of the definition and which aspect of it is being applied. That is the true flaw and why something such as economic relevance to the outside world or economic relations with influential nations can have any sort of impact on whether a series of violent attacks are labeled as a genocide or not.

## Conclusion

Raphael Lemkin dedicated his life to the research against oppressed populations who fall victim to systematic killings. It began when he was a youth and suffered firsthand the atrocities that many other individuals in Eastern Europe would experience for the next few decades. He swore his life to make sure that there would be laws and processes put in place to try to stop any acts of genocide and then punish those responsible when the time came. While he did accomplish this in 1948 during the United Nations Convention on Genocide, I believe that it is now time to make adaptations to those laws so that they are more definite and there can be more consistency with the process.

The definition of the word “genocide” seems to be too vague and predicates itself on the word “intent,” which is a very subjective term when evaluating a case of genocide. It is almost impossible for a third party to know what the intent of an organization is without that organization confessing to what their intent was or producing some documentation, in which they state what exactly their intentions are. Perhaps, a list of what actions can identify an ‘intent’ to destroy a population can help third-party investigators make better decisions. However, this is the fundamental flaw that needs to be addressed before all else. Once the definition is made more concrete so that investigators, the United Nations, and individual countries know what to look for when it comes to genocide. Then there can be more consistency.

The second flaw -- that a decision of genocide can be influenced by some sort of political or economic factors -- would never be an issue if that first flaw of a more definite, concrete definition of the term “genocide” were fixed. I am not sure if the economic relevance of

Rwanda and Sudan played any part in the types of resolutions the UN formed, the voting patterns of those resolutions, or why certain countries with large political influences abstained from voting. However, they are factors to consider because of the severity of both situations and how they both fit Lemkin's definition of what a genocide is, yet had different outcomes within the United Nations. It is hard to ignore the economic relations between the Sudan and its region of the world, especially China, during the 2000's and the lack of economic ties that Rwanda had in the early 1990's. It would be a lot easier politically to claim a genocide was occurring in a nation that would not have any repercussions on economic relations. These are all factors to think about and it is why that concrete definition of 'genocide' needs to be formed, so situations like this do not come about.

I believe that there is a lot more research that can be done in this area of international politics. The most important part is probably some applied research in finding out what the best ways to define 'genocide', "intent", and "national groups" are in the laws that were created in 1948. This can be done through surveys of political leaders and analysts who have been studying genocide for a long time. Then, the findings can be published and hopefully recognized or suggested by an international organization with some sort of influence that it can bring it to the attention of lawmakers. There are also many other instances in which genocide may have occurred and there was a failure to label the situation as such. They should be researched and compared to events that we have labeled as genocide to find certain common factors that can influence the United Nations to label a series of events as a genocide or not. This would help policymakers understand better what needs to be addressed in the international law against genocide.

These issues need to be dealt with by the international legal community, so that they can address some of the issues behind the definition of the term 'genocide' and 'national groups' and then make those definitions more specific. This needs to be their focus so when the next genocide occurs, they will be able to acknowledge it sooner and provide the necessary relief that is needed. What happened in both Rwanda and Darfur is tragic: many important lives were lost that this world will never be able to get back. There needs to be a consistent process to label correctly all instances of genocide and then a consistent process to find justice for those crimes of genocide. Until then the international crime of genocide will continue to have flaws in its judicial process and it will still be one of the most important social problems facing the international community.

## Appendix A: Nazi Regime Nutrient Breakdown

\*German Racial Discrimination in Feeding in 1944

Population	Carbohydrates (%)	Proteins (%)	Fats (%)
Germans	100	97	77
Czechs	90	92	65
Dutch	84	95	65
Belgians	79	73	29
Poles (Incorporated Poland)	76	85	49
Poles (General Government)	77	62	18
Norwegians	69	65	32
French	58	71	40
Greeks	38	38	1.14
Jews	27	20	0.32

\*Statistics taken from Raphael Lemkin's book *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, and Proposals for Redress*

## **Appendix B: Convention on Genocide Articles**

\*United Nations Convention on the Prevention and Punishment of Genocide in 1948  
(United Nations, 1948)

- Article I: The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

-Article II: In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (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; (e) forcibly transferring children of the group to another group

-Article III: The following acts shall be punishable: (a) genocide; (b) conspiracy to commit genocide; (c) direct and public incitement to commit genocide; (d) attempt to commit genocide; (e) complicity in genocide

-Article IV: Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals.

-Article V: The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

-Article VI: Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

-Article VIII: Any contracting party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

-Article IX: Disputes between Contracting Parties relating to the interpretation, application, or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

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