The United Nations Genocide Convention and Political Groups: Should the United States Propose an Amendment?

Lawrence J. LeBlanc†

Introduction

The United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide in December 1948.¹ Article II of the Convention defines genocide as the commission of certain acts with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group.² The drafters of the Convention seriously considered the possibility of making it applicable to actions against political groups as well; in fact, a reference to such groups was included in Article II throughout most of the drafting stage. However, the word “political” was deleted from the article near the close of debate on the Convention as a whole, and as a result its protection does not extend to political groups.

The drafters’ decision not to extend coverage to political groups has been of little concern in most countries of the world. The Convention has been ratified by about 100 nations, and the deletion of the word “political” from Article II does not appear to have been an issue in their ratification decisions.³ In contrast, the matter has been of great concern

† Associate Professor of Political Science, Marquette University; M.A., Louisiana State University, 1967; Ph.D., University of Iowa, 1973. The author wishes to thank Vernon Van Dyke, Robert Beck, and Michael Switalski for helpful comments and criticism on an earlier draft of this article.

2. Article II of the Convention, 78 U.N.T.S. at 280, states:
   In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, 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.
3. For a table of the parties to the Convention and of their reservations to and understandings of the document, as well as of objections to those reservations and understandings, see MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY GENERAL (Status as of 31 December 1986) at 95-102, U.N. Doc. ST/LEG/SER.E.5, U.N. Sales No. E.87.V.6 (1987).

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in the United States ever since President Harry S Truman requested the Senate's advice and consent to ratification of the Convention in June 1949. Critics of the Convention have denounced the deletion of the word "political" from Article II, insisting that it creates a loophole in the definition of genocide that could be abused by totalitarian states, especially the Soviet Union. In brief, the critics argue that the Soviet Union could, for example, persecute a national group in a way that would probably be considered genocidal under the terms of the Convention, but evade being charged with the crime of genocide on the ground that its actions were undertaken to suppress a political group. To overcome this problem, the critics have advocated amending Article II to cover political groups. Although this issue did not prevent the Senate from finally giving its advice and consent to ratification, Senate critics of the Convention did succeed in passing a sense of the Senate resolution that calls for the United States to take steps, after becoming a party to the Convention, to persuade the United Nations to adopt a “political group” amendment.

The purpose of this article is to examine the arguments advanced on this issue, and to offer two responses: First, an amendment adding political groups is unnecessary to achieve the objectives of the Convention’s critics. Second, an amendment is undesirable because it could undermine efforts to interpret and apply the Convention. The political group proposal seems to rest on a misunderstanding of the reasons why the drafters of the Convention decided not to include political groups among those protected in the first place. It also reflects a curious and probably erroneous interpretation of the intentions of the drafters and of the meaning of the Convention as adopted. All things considered, it would be better to pursue aggressive enforcement of the Convention as written, and, if necessary, to work toward the development and acceptance of a separate instrument on what could be called “politicide.”

The article is divided into three main parts. Part I examines the basic considerations that entered into the selection of the groups identified as objects of protection in Article II of the Convention. Part II presents the arguments made during the drafting stage regarding the treatment of political groups, and appraises the rationale of the drafters in deciding

4. See 132 CONG. REC. S1378-79 (daily ed. Feb. 19, 1986). The resolution of ratification was adopted by a vote of 83 in favor, 11 against, and 6 not voting. According to this resolution, the Senate gave its advice and consent to ratification subject to two “reservations,” five “understandings,” and a “declaration” stating that “the President will not deposit the instrument of ratification until after the implementing legislation referred to in Article V [of the Convention] has been enacted.” Id. Because this implementing legislation has not been passed, the United States is still not a party to the Convention.

5. Id. at S1377-78.
not to include political groups. Part III criticizes the arguments that have been made in the United States in favor of amending Article II.

I. The Groups Protected: National, Ethnic, Racial, and Religious

The issue of genocide against political groups is of profound importance precisely because it involves the heart of the Convention—its definition of genocide. In effect, the critics argue that the Convention's definition is fundamentally flawed. This argument contains a misunderstanding of the drafters' motives in deciding not to include political groups among the objects of protection. In part, the problem the drafters faced in this regard can be traced to the early efforts to define genocide, which were marked by vagueness and inconsistency.

A. Early Efforts to Define Genocide

The Polish scholar and attorney Raphael Lemkin coined the word "genocide" in 1944. He derived the term from a combination of the Greek word "genos," which means "race" or "tribe," and the Latin root "cide," which means "killing." In his actual definition of the term, however, Lemkin liberally used the words "nations" and "national groups" rather than "races" or "tribes," and he stated that genocide meant not only the "immediate destruction" of such groups but also efforts to destroy them over time by attacking such things as their political and social institutions, culture, national feelings, religion, and language.

The first U.N. resolution on the subject, Resolution 96(I), passed in 1946, also contained vague and even contradictory statements. It stated that genocide is "a denial of the right of existence of entire human groups," and referred to past instances of genocide when groups had been destroyed "entirely or in part." Moreover, it failed, as Lemkin had, to delineate clearly the kinds of groups that had been or could become victims of genocide. In this connection, the resolution referred only to "racial, religious, political and other groups."

B. The Groups Protected

Whatever its shortcomings, Resolution 96(I) established the basic guidelines within which the Convention was to be drafted. Its provisions were frequently invoked in the two committees that did the most impor-
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tant work on the Convention: the Ad Hoc Committee of the Economic and Social Council ("Ad Hoc Committee"),\(^9\) and the Sixth (Legal) Committee of the General Assembly ("Sixth Committee").\(^10\) In both committees, different views were expressed on precisely what kinds of groups should be identified for protection in Article II. The only category not expressly mentioned in Resolution 96(I) was national groups, but there seems never to have been any doubt during the drafting stage that such groups should be included in Article II, as the matter was never really discussed. Ironically, both committees agreed that "national" groups—not included in Resolution 96(I)—should be included in Article II.

The inclusion of other groups, however, was more controversial. Some representatives questioned whether both racial and ethnic groups should be identified in Article II, arguing that those terms meant essentially the same thing.\(^11\) The same criticism was directed at the terms "ethnic" and "national." Ultimately, the word "ethnic" was retained upon the insistence of the Swedish delegation, which wanted to maintain a distinction between these last two concepts.\(^12\) Perhaps the most serious disagreement occurred over religious groups. The Soviet representative argued that genocide against a religious group appeared always to be closely linked to genocide against a national group, thus implying that religious groups should be considered subgroups of national groups.\(^13\) Other representatives, however, especially in the Sixth Committee, took strong exception to this view and argued that there could be—and had been—cases of genocide against religious groups within a single nation.\(^14\) In the end, the Soviet position on religious groups was dismissed by virtually everyone present.\(^15\)

It is noteworthy that the drafters, having agreed upon the groups that were to be identified in Article II, decided merely to enumerate them and


10. The Sixth Legal Committee was comprised of 58 countries. The members are listed in Table I, infra page 277; see 3 U.N. GAOR C.6 at xiv-xx, U.N. Doc. A/633 (1948). The Ad Hoc Committee initially prepared the draft of the Convention; it was subsequently revised by the Sixth Committee before it was adopted by the General Assembly.


12. Id. at 98.


15. Id. at 117 (vote of 40 to 5, one abstaining, against including "religious" in parentheses after "national").
not to define them in any detail.\textsuperscript{16} Defining the groups more precisely was presumably left to the implementing legislation which parties to the Convention are to adopt in accordance with Article V.\textsuperscript{17} Thus party-states are left significant discretion. A U.N. study of this matter shows that states that have ratified the Convention have defined the protected groups in different ways, and it is reasonable to expect that others that have not yet ratified will follow suit.\textsuperscript{18} Thus, the definitions adopted by Canada,\textsuperscript{19} for example, are not exactly the same as those proposed in implementing legislation submitted to Congress by the Nixon and Carter Administrations when they attempted to secure the Senate's advice and consent to ratification.\textsuperscript{20} Because different states have varying definitions of protected groups, problems could arise in interpreting and applying the Convention. While it is arguable that any difficulties arising from definitional differences could be resolved by the International Court of Justice ("ICJ") in accordance with Article IX of the Convention, no dispute involving the Convention has yet reached the ICJ.\textsuperscript{21}

Despite potential definitional problems, it is probably just as well that no effort was made to define the groups more precisely in the Convention itself. It is unlikely that acceptable definitions could have been agreed upon. The word "national," for example, seems to have acquired a meaning synonymous with citizenship in a state or country, regardless of its original meaning. The word "ethnic," in common usage, tends to re-

\textsuperscript{16} In principle, drafting international agreements always entails a choice between mere enumeration and detailed definitions. For a discussion of the relative advantages and disadvantages of each approach, see A. Robertson, Human Rights in Europe 17-18 (1963).

\textsuperscript{17} Article V of the Convention, 78 U.N.T.S. at 280, states:

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 of any of the other acts enumerated in Article III.

\textsuperscript{18} See Commission on Human Rights, U.N. Economic & Social Council, Study of the Question of the Prevention and Punishment of the Crime of Genocide 45, 140-53, U.N. Doc E/CN.4/Sub.2/416 (1978) [hereinafter Commission on Human Rights]. This study also shows that even if Article V of the Convention, see supra note 17, is interpreted as requiring the parties to adopt implementing legislation (which the Special Rapporteur of the study insists is the correct interpretation), some of them have not yet done so.


\textsuperscript{20} The same legislation was submitted by both administrations. See S. Exec. Rep. No. 23, 94th Cong., 2d Sess. 33-38 (1976).

\textsuperscript{21} Article IX of the Convention, 78 U.N.T.S. at 282, states:

Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for 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.

Article IX contemplates an important role for the ICJ. The article may only be invoked, however, in the event of a "dispute" concerning the interpretation of the Convention. In addition, many ratifying states have included reservations to Article IX. The U.S. resolution of ratification contains such a reservation. 132 Cong. Rec. S1377 (daily ed. Feb. 19, 1986).
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...fer to a group of people distinguished by certain cultural and linguistic characteristics. The word "racial" tends to be associated with physical characteristics of a people such as color of skin. But surely one should expect that different definitions could be put forth, that the words could have different meanings (or perhaps no meaning) in different cultural contexts, and that it could be difficult to translate these words from one language to another. By way of example, one hears frequently of the Soviet Union's treatment of national minorities and of Soviet nationality policies. The word "national" in such cases refers to Ukrainians, Georgians, and so forth, not to the citizens of the Soviet Union as a whole.

The lack of specific content does not mean, of course, that the words used to identify the groups in Article II of the Convention are meaningless, but rather that the drafters saw the need for some flexibility in defining them. They therefore left more concrete definition to future determination, through such means as the implementing legislation adopted by the various parties. Although the drafters did not define in detail the protected groups, it is clear that they intended to extend protection to stable groups only—to groups having an enduring identity. This decision makes sense, given the historical context in which the drafters were operating. The Convention was obviously drafted in response to atrocities committed against the Jews and other groups by the Nazis during World War II. As adopted, Article II would surely apply to such a situation, whether Jews would be considered a religious, ethnic, or even racial or national group. Similarly, the Convention would cover the Armenian genocide—whether one sees Armenians as an ethnic, national, or religious group.

II. Why Political Groups Are Not Protected

Although the drafters of the Convention reached agreement relatively easily on most of the groups eventually identified in Article II, discord arose with respect to political groups. The issue consumed a vast amount of the time of both the Ad Hoc Committee and the Sixth Committee.22 While the arguments advanced in each body were essentially the same, the Ad Hoc Committee voted four to three for inclusion of political groups in their draft convention,23 while the Sixth Committee voted against inclusion.24

23. Report of the Ad Hoc Committee, supra note 9, at 5.
24. See N. ROBINSON, supra note 8, at 59.
A. The Arguments Against Protecting Political Groups

Four different arguments were advanced in these debates against including political groups in Article II. Of these, two appear to have been of little importance as far as the ultimate decision was concerned: One was the position of the Soviet representative, which rested on allegedly scientific grounds. He argued that the word "genocide" referred to the destruction of races or nations, and that therefore to include political groups in Article II would have the effect of expanding the meaning of the term beyond "the fundamental notion of genocide recognized by science." But like the Soviet argument on religious groups discussed above, this position was disregarded by the great majority of representatives of other states. This point deserves emphasis because, as explained in Section III below, the U.S. delegation to the United Nations has often been vilified for having capitulated to the Soviet delegation on the question of including political groups.

A second argument, which several representatives made, was that the protection of political groups ought to be considered in the broader context of human rights rather than the narrower one of genocide, and that the Human Rights Commission therefore seemed like the more appropriate body in which to discuss the issue. But this argument seems to have been introduced more as an afterthought—as a convenient way of avoiding an issue full of conceptual and political difficulties.

Two other arguments were of much greater consequence and were dealt with at much greater length by the drafters of the Convention. One had to do with a perceived lack of stability or permanence of political groups. This issue was vigorously and repeatedly raised by a number of Third World states. The representatives of Venezuela, Iran, Egypt, and Uruguay on the Sixth Committee were especially outspoken in this regard. They argued that political groups were different in kind from national, ethnic, racial, and religious groups, since persons tend to be born into the latter groups, or at least the membership of these groups does not change over relatively long periods of time. Political groups, on the other hand, were not perceived to possess such stability or permanence.

Finally, some representatives opposed including political groups in Article II out of concern that disputes over their inclusion might jeopardize support for the Convention itself in many states. Some drafters of the Convention felt that their governments might find it necessary to take

27. See Report of the Ad Hoc Committee, supra note 9, at 6.
action against subversive elements. Many representatives on the Sixth Committee, noting that the draft Convention contemplated the creation of an international criminal court, feared that if political groups were included, their governments might be reluctant to ratify the Convention. As the Venezuelan representative stated:

The inclusion of political groups might endanger the future of the convention because many States would be unwilling to ratify it, fearing the possibility of being called before an international tribunal to answer charges made against them, even if those charges were without foundation.

Subversive elements might make use of the convention to weaken the attempts of their own Government to suppress them . . . [While] certain countries where civic spirit was highly developed and the political struggle fought through electoral laws would favor the inclusion of political groups, . . . there were countries where the population was still developing and where political struggle was very violent. Those countries would obviously not favour the inclusion of political groups in the convention.29

B. Arguments in Favor of Protecting Political Groups

The views summarized above were widely held, but the U.S. representative took a strong stand in favor of including political groups in Article II. This had the effect of prolonging the negotiations until he was willing to compromise. His position was based on three considerations. He argued that in practice many states defined political groups in their national legislation and decrees—for example, by banning political parties or by establishing a certain party as the only legal party of the state. Hence, he insisted, it could not be maintained that political groups were impossible to define. He also took issue with those concerned that including political groups would hinder the ability of governments to take action against groups involved in subversive activities. In this connection he argued that groups of various sorts, not only political groups, could engage in subversive activities. Finally, he invoked Resolution 96(I), in which the General Assembly declared that political groups had been victims of genocide, and he maintained that failing to follow through on that earlier statement could weaken the credibility of the United Nations.30 Representatives of several states supported the U.S. position on political groups. An Ecuadoran delegate, for example, observed that

29. Id. at 58.
"public opinion would not understand it if the United Nations no longer condemned in 1948 what it had condemned in 1946."\textsuperscript{31}

C. Resolution of the Issue

The debate among the representatives on the Sixth Committee over the issue of including political groups was lively and prolonged, and resulted in a vote of twenty-nine in favor, thirteen against, and nine abstentions. At the time, one-half of the membership of the United Nations supported the U.S. proposal. But as Table I shows, there was substantial disagreement within the three largest groupings of states (Asia, the Americas, and Europe) on the issues of the alleged lack of stability of political groups and the possibility of those groups engaging in subversive activities. Still, the measure carried.

<table>
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<th>No</th>
<th>No Vote</th>
<th>Total</th>
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Column Total (50.0) (15.5) (22.4) (12.1) (100.0)


32. The data on which this table is based were made available by the Inter-University Consortium for Political and Social Research. The data were originally collected by the International Relations Archive and are available on tape. Neither the original collector of the data nor the Consortium bears any responsibility for analyses or interpretations presented here. Figures may not add to exactly 100, due to rounding.

The areas referred to in the left-hand column consist of the following countries—Africa: Egypt, Ethiopia, Liberia, South Africa (6.9% of the total votes); Asia: Afghanistan, Burma, China, India, Iran, Iraq, Lebanon, Pakistan, Philippines, Saudi Arabia, Thailand, Syria, Yemen (22.4%); Europe: Belgium, Byelorussian SSR, Czechoslovakia, Denmark, France, Greece, Iceland, Luxembourg, Netherlands, Norway, Poland, Sweden, Turkey, Ukrainian SSR, the Soviet Union, United Kingdom, Yugoslavia (29.3%); Americas: Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El
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In view of the long debate that occurred over the issue, the vote in favor of including the reference to political groups in Article II suggests that the arguments made by the U.S. representative were persuasive. The decision continued to be controversial, however, throughout the negotiations on other provisions of the Convention. Indeed, the inclusion of political groups in Article II appears to have been the subject of the most serious disagreement during the drafting process. Near the close of debate on the Convention as a whole, the issue was taken up again by representatives of Iran, Uruguay, and Egypt, who proposed that political groups be deleted from Article II. Speaking in favor of this proposal, the Egyptian delegate noted that as the discussion in the Sixth Committee proceeded, it had become clear that the inclusion of political groups in Article II would be a serious obstacle to ratification of the Convention by a large number of states.

At this point, the U.S. representative took what he considered to be a "conciliatory" position, accepting the deletion of political groups from Article II in exchange for a provision in Article VI that contemplated the creation of an international criminal court. The United States had supported the creation of an international criminal court throughout the negotiations, and the Ad Hoc Committee's proposal included the establishment of such a court. This provision, however, was deleted by the Sixth Committee. A number of states voiced strong opposition to the international criminal court in the Sixth Committee. Some were concerned about the ability of political groups to bring unfounded charges against them before the international body. The Soviet Union expressed doubts about the appropriateness of the international criminal court's jurisdiction.

Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, the United States, Uruguay, Venezuela (37.9%); Oceania: Australia, New Zealand (3.4%).

34. Article VI of the Convention states:
Persons charged with genocide or any of the other acts enumerated in Article III [i.e., conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, or complicity in genocide] 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.
78 U.N.T.S. at 282.
35. Report of the Ad Hoc Committee, supra note 9, at 11-12.
37. See supra text accompanying note 29.
38. The Soviet Union indicated that it "was still of the opinion that genocide was within the province of the competent national tribunals alone, since the right of those who had been victims of genocide to undertake the punishment of the perpetrators of that crime must be safeguarded." 3 U.N. GAOR C.6 (128th mtg.) at 670, U.N. Doc. A/633 (1948).
While the U.S. representative continued to maintain that political groups should be covered by Article II, he had come to recognize that the need to attract the largest possible number of parties to the Convention might be more important than including all the provisions that he believed should be included. Many delegates had expressed serious concern that the inclusion of political groups in Article II might make it impossible to secure ratification of the Convention in their own countries. In the view of the United States, it seemed wise to delete the political groups clause, particularly if the Sixth Committee delegates previously opposed would be willing to reconsider their earlier rejection of the provision regarding an international criminal court. This compromise proved acceptable to a large number of delegates and was considered quite significant, although the court has never been created.

Once the United States agreed to support the exclusion of political groups, the Sixth Committee deleted the reference to them from Article II. As Table II shows, however, in this second consideration of the issue, the number of states not voting doubled, to approximately one-third of the U.N. membership at the time. The number of states abstaining also increased. Thus, while only six member states (Burma, Chile, China, Ecuador, Netherlands, and Philippines) felt strongly enough about the issue to vote against excluding political groups, the U.S. proposal was adopted with a majority of member states either abstaining or not voting on the issue. The Soviet Union and its handful of consistent supporters (Byelorussian SSR, Ukrainian SSR, Czechoslovakia, Poland, and Yugoslavia) abstained, apparently to indicate displeasure with the international criminal court compromise forged by the U.S. delegation.

39. *Id.* at 661-62.
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Table II
Vote in the Sixth Committee on Political Groups
(Second Vote: Exclude Political Groups)

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<th>Count (%) of area votes cast</th>
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<th>No</th>
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</table>

Column: 22 12 6 18 58
Total: (37.9) (20.7) (10.3) (31.0) (100.0)

It would be fair to say, then, that political groups fell victim to two major considerations when the Convention was drafted. First, there were practical political considerations. The United States could have its own way on political groups or an international criminal court, but not on both. In the end it took the court. Second, there were theoretical considerations. Political groups were widely perceived to be different in kind from national, ethnic, racial, and religious groups; the latter were perceived as stable groups whereas political groups were perceived as essentially unstable, since membership in political groups is by choice rather than birth, and such membership can change drastically over time.

III. The Proposed United States Amendment On Political Groups

Ironically, while the United States agreed to the deletion of the reference to political groups in Article II in part to remove an obstacle to the Convention’s ratification by other states, the decision to delete caused problems in the U.S. Senate. President Truman transmitted the Convention to the Senate in 1949 with a request for its advice and consent to ratification. A subcommittee of the Committee on Foreign Relations held hearings on the Convention in 1950, and although the subcommittee favored ratification, the full committee failed to report the Convention to

40. The source of the data for Table II is the same as Table I. See supra note 32.
the Senate. President Truman's request met with the combined opposition of conservative senators and influential organizations such as the American Bar Association. As a result, the Convention languished in committee until President Nixon resurrected it in the early 1970s. The Committee on Foreign Relations or subcommittees thereof held hearings on the Convention in 1970, 1971, and 1977, and recommended its ratification in 1970, 1971, 1973, and 1976. The same combination of political forces, however, continued to block ratification. A resolution of ratification was debated on the floor only once during this entire period, in 1974, and at that time a filibuster prevented its adoption. The Committee on Foreign Relations held more hearings during the Reagan Administration, in 1981, 1984, and 1985. These hearings culminated in the February 1986 adoption of a resolution of ratification, known informally as the Lugar-Helms-Hatch Sovereignty Package.

Throughout this entire period, the so-called "political group exemption" plagued the Senate debates over ratification of the Convention. It was not the only controversial issue, but it was one of the most important. Other difficult issues proved easier to resolve. One such issue, important especially to conservative senators, was the general argument that genocide is not a proper subject of the treaty-making power, and more specifically, that the Convention itself contained provisions that would infringe on constitutional rights and liberties.


43. For the resolution of ratification that was recommended in each of those years, see S. EXEC. REP. No. 50, 98th Cong., 2d Sess. 21-22 (1984).

44. 120 CONG. REC. 2202-09 (1974).


47. Senator Sam Ervin, Jr. was especially outspoken on this point. In more recent years, Senators Jesse Helms, Strom Thurmond, and Orrin Hatch have held this position. See 1984 Senate Hearings, supra note 45, at 4-34. The Subcommittee on the Constitution of the Senate Committee on the Judiciary held hearings on the constitutionality of the Convention in 1985.
do with the possible application of the Convention in times of war, an issue of great concern during the early 1970s, when some opponents of ratification became alarmed that American soldiers fighting in Vietnam might be charged with committing genocide. During the early 1980s, the International Court of Justice's handling of the case of Nicaragua v. United States raised a new issue: whether the United States should accept Article IX of the Convention, providing for ICJ resolution of disputes concerning the interpretation or application of the Convention. Ultimately, these and other issues were "resolved" in the Lugar-Helms-Hatch Sovereignty Package, which included U.S. interpretations of certain provisions of the Convention and expressed reservations to the document.

The alleged loophole involving political groups, however, could not be addressed in the Sovereignty Package. This resolution clarified specific words, phrases, or provisions contained in the Convention, whereas the supposed loophole exists because the word "political" was deleted from Article II of the Convention. Another way had to be found to address the issue. One proposal, advanced by Senator Steven Symms, was for the Senate to amend Article II of the Convention by inserting the word "political" after the word "national." This proposal was rejected by a vote of sixty-two against, thirty-one in favor, and seven not voting, mainly because it was thought to be a "killer" amendment requiring renegotiation of the Convention prior to U.S. ratification. The Senate then overwhelmingly adopted a compromise: a sense of the Senate resolution calling for the United States to work toward persuading the United Nations to include political groups in Article II. This resolution was adopted by a vote of ninety-three in favor, one against, and six not voting.


48. An article on this charge was carried by the New York Times on November 26, 1969, at A10, col. 1, and it figured prominently in the Senate deliberations in the early 1970s. The text of the article is reprinted in 1971 Senate Hearings, supra note 42, at 53.

49. 1984 I.C.J. 392 (Judgment of Nov. 26, 1984). In the Nicaragua case, the United States withdrew its consent to the compulsory jurisdiction of the ICJ after the court agreed to rule on Nicaraguan charges of U.S. violation of international law.

50. See supra note 21.


53. Id. at S1361-62.

54. Senator Richard Lugar, then Chairman of the Foreign Relations Committee, thought that an amendment would be "tantamount to rejection" of the Convention. Id. at S1357. Senator Symms was well aware of the implications of his proposal. See id. at S1356-57.

55. Id. at S1379-80. The only negative vote was cast by Senator Barry Goldwater, who neither participated in the debate nor gave any reasons for his vote.
The resolution is non-binding, and was adopted amidst substantial skepticism about its potential effectiveness. Some senators voted in favor of the resolution even though they disagreed with its content and rationale. Senator Christopher Dodd, for example, remarked on the floor of the Senate several days after the adoption of the resolution that he had voted in favor of it as "a ransom to be paid for getting a final vote on the Genocide Convention." In fact, he had serious reservations about the content and implications of the resolution, suggesting that "anyone who talks about political genocide has missed the whole point of the Genocide Convention and its 37 years [sic] history." Nonetheless, even if the near unanimous vote does not reflect the true sentiment of all senators, the non-binding resolution is important inasmuch as it reflects the strong feelings of many senators on the issue. After all, the more drastic proposal introduced by Senator Symms to amend the Convention was supported by thirty-one Senators. Of those who opposed the Symms proposal, some felt that an amendment was not an appropriate way to approach the issue, even though they did not disapprove of the idea in principle. Moreover, President Reagan endorsed the strategy enunciated in the sense of the Senate resolution even before its adoption, which suggests that the issue is considered important by the Executive Branch as well. In short, even if the United Nations does not accede to the United States' wishes by amending the Convention to cover political groups, there is substantial support in the United States for keeping the issue alive. Thus, it is important to examine the arguments made by critics of the Convention.

A. The Lack of Leadership by the U.S. Delegation

The first point critics have focused on is the fact that the U.S. delegation to the United Nations initially vigorously supported the inclusion of political groups in Article II and then changed its position to allow their deletion from the article. To opponents of ratification, this change of stance reflected not leadership in drafting the Convention but "a very pathetic case of followership." This was one of the major arguments of the ABA, which officially opposed ratification of the Convention from 1949 until 1976. ABA representatives asserted that the U.S. delegation "retreated at every major point . . . like Napoleon's retreat from Mos-

56. See id. at S1379 (statement of Senator Wallop).
58. Id.
60. 1971 Senate Hearings, supra note 42, at 54.
cow—a complete rout.” Thus, while the United States had entered into the negotiations with the intention of making the Convention “meaningful and effective,” “[w]e lost the war when we acceded to the adamant Communist position, which is all a matter of record, that the word ‘political’ must go out, and we fought and we fought, and we were outvoted on the question of political groups.”

Although the ABA representatives claimed to speak with considerable knowledge of the negotiations, their arguments distorted and exaggerated what actually occurred. For the most part, they portrayed the negotiations as a battle in which the U.S. delegation was unable to withstand the onslaught of a determined Communist attack. But, as we have seen, this was not the case: while the Soviet delegation opposed the inclusion of political groups in Article II, other delegations advanced much more widely accepted criticisms, especially those that concerned the alleged lack of stability of political groups. Moreover, there is good reason to think that the Soviet delegation felt outmaneuvered by the U.S. delegation on the eventual compromise. As noted earlier, the Soviet Union and its supporters abstained on the vote that resulted in the deletion of political groups from Article II. It is reasonable to assume that this was meant to show displeasure with the compromise the U.S. delegation had been able to work out with others—that the reference to political groups would be deleted in exchange for a provision in Article VI regarding the creation of an international criminal court. While the Soviet delegation vigorously opposed the inclusion of political groups in Article II, it was an even more vigorous champion of sovereignty and nonintervention in the internal affairs of states. For this reason, apparently, the Soviet Union was not willing to support the creation of an international criminal court, and opposed, though unsuccessfully, the reinsertion of a provision concerning the court in Article VI.

Critics of the Convention in the United States have either misunderstood the bargaining strategies of the U.S. delegation or deliberately distorted what occurred to suit their own purposes. Indeed, one of the ironies that has characterized the debate over U.S. ratification of the

61. Id.
62. Id.
63. Id.
64. See Rosenthal, Legal and Political Considerations of the United States’ Ratification of the Genocide Convention, 3 ANTIOCH L.J. 117, 122-24, 142 (1985). Rosenthal suggests that anti-Sovietism was one of the three main “doctrinal rationales” embraced by opponents of ratification, the two others being anti-globalism and neo-positivism. Id. at 118-19, 133-42.
65. See supra text accompanying note 40.
67. See supra text accompanying notes 34-40.
Convention is that the international criminal court provision of Article VI has been exceedingly controversial, stimulating disagreement reminiscent of the Brickerism of the 1950s. This disagreement over the criminal court culminated in the insertion of an “understanding” in the Lugar-Helms-Hatch Sovereignty Package that states in part that “the United States declares that it reserves the right to effect its participation in any such tribunal only by a treaty entered into specifically for that purpose with the advice and consent of the Senate.” It must be emphasized that in 1948 the Soviet bloc in the United Nations consisted of only five out of a total of fifty-nine states (the Byelorussian SSR, the Ukrainian SSR, Poland, Czechoslovakia, and the Soviet Union itself), and only six if Yugoslavia is included. This alone renders absurd the preoccupation of so many of the Convention’s critics with the Soviet delegation’s position on the issue of political groups. In fact, the United States was very ably represented during the negotiations. Table III presents some evidence in support of this point.

<table>
<thead>
<tr>
<th>Country</th>
<th>% Agreement</th>
<th>(Votes)</th>
<th>Country</th>
<th>% Agreement</th>
<th>(Votes)</th>
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<tbody>
<tr>
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<tr>
<td>United Kingdom</td>
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<td>Venezuela</td>
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<td>Uruguay</td>
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<td>India</td>
<td>73.3</td>
<td>(11)</td>
<td>Iran</td>
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68. Senator John W. Bricker (R. Oh.) was very active during the early 1950s in opposition to U.S. ratification of human rights instruments, including the Genocide Convention. His concern that presidents would urge ratification of such instruments led him to propose a constitutional amendment limiting the use of the treaty-making power in this area. The concerns raised by Bricker and his proposed amendment helped push the Eisenhower administration to retreat from the activism of the Truman administration in the field of human rights. See generally V. VAN DYKE, HUMAN RIGHTS, THE UNITED STATES AND WORLD COMMUNITY 129-41 (1970).


70. The source of the data for Table III is the same as Table I. See supra note 32. The number of votes in which each country coincided with either the Soviet Union or the United States is shown in parentheses. Percentages may add to over 100% in some cases, because the Soviet Union and the United States each abstained or did not vote on two of the seventeen roll call votes. Thus, a country could have a 100% coincidence with U.S. votes while agreeing with 13.3% of Soviet votes.
The data in Table III show the coincidence of agreement of all the members of the United Nations at the time the Convention was drafted with the U.S. and Soviet positions. Only roll call votes taken in the Sixth Committee were used in making the calculations; few votes were taken in the plenary session of the General Assembly when the Convention was adopted, and those taken upheld decisions reached earlier in committee. Moreover, only the coincidence of agreement on yes/no votes was taken

<table>
<thead>
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<th>Country</th>
<th>% Agreement (Votes)</th>
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into account. This method reduces the distortions that might otherwise occur if abstentions were included. A yes or no vote suggests stronger feelings on an issue than does an abstention. In addition, states might abstain for widely differing reasons; their coincidence in so voting would therefore tell us very little.

In all, seventeen roll call votes were taken in the Sixth Committee. In other votes, where no roll call was taken, an examination of the debate records suggests that the U.S. delegation managed as well as, if not better than, the data based on the roll call votes presented in Table III suggest. Nonetheless, the data presented in the table enable us to reach conclusions that are less impressionistic than conclusions based solely on the summary records. In addition, yes/no votes allow generalization about the extent of “support” for the U.S. and Soviet positions respectively, and the sources of that support. As Table III shows, the U.S. positions enjoyed substantial support across a broad spectrum of states. In fact, twenty-nine of fifty-seven member states supported the U.S. position more than fifty percent of the time. An additional group of nine states had relatively high support scores, ranging from 46.7 percent (Venezuela) to 33.3 percent (Saudi Arabia).

In marked contrast, as Table III demonstrates, the Soviet Union enjoyed very little support among most states. In fact, only five states agreed with the Soviet Union on more than half of the issues. The table indicates a sharp and rapid decline in support for the Soviet positions after the very high scores of the Soviet bloc are taken into account. Although a high support score for either the United States or the Soviet Union often translated into a low support score for the other, there were states that apparently exercised considerable independence in their voting behavior. For example, France’s support scores for the U.S. and Soviet positions are identical at 46.7 percent.

B. The Perception of a Loophole

The second major argument of opponents to ratification has concerned a perceived loophole in the Convention’s definition of genocide. This argument, like the criticism of U.S. leadership in the negotiations, reflects a preoccupation with the Soviet Union. The critics argue that the deletion of political groups from Article II made the Convention inapplicable precisely where it should be applicable—that is, to the treatment that totalitarian governments mete out to political opponents. Thus, the critics contend, the Soviet Union could commit genocide against any of the groups in Article II while claiming that the acts were not genocidal because they were undertaken to suppress enemies of the state, not to de-
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stroy a specific group or groups. It was the deletion of the word "political" from Article II, according to the critics, that made this evasion of charges of genocide possible.\textsuperscript{71} This argument was made by ABA representatives and others during Senate hearings in 1950 and in the 1970s, and it continued to be expressed by some critics even after the ABA changed its position in 1976, declaring itself in favor of the Convention.\textsuperscript{72}

The text of the recently adopted sense of the Senate resolution on political groups suggests that this argument had a tremendous impact on the Senate. The resolution's preambular clauses state that the Senate finds "that politically motivated genocide is being carried out in Afghanistan" and "that instances of political genocide have occurred in Tibet and Cambodia."\textsuperscript{73} President Reagan, too, views an amendment as a way of dealing with "politically motivated" genocide by totalitarian states.\textsuperscript{74} Such an amendment, however, may be politically infeasible. According to Article XVI of the Convention, U.N. action is required to amend the Convention.\textsuperscript{75} Amending a multilateral convention, especially one such as the Genocide Convention that has already been ratified by about one hundred states, would probably be impossible. One U.N. study during the 1970s showed that most states felt that their main objective should be to enforce the Convention as it is rather than to amend it to expand its coverage.\textsuperscript{76}

The difficulty of amending a widely ratified multilateral convention is not the only consideration that should be weighed in assessing the U.S.

\textsuperscript{71}. See 1971 Senate Hearings, supra note 42, at 54-55.
\textsuperscript{72}. See, e.g., testimony of Maud-Ellen Zimmerman, Chairman of Voters Interest League, in 1977 Senate Hearings, supra note 42, at 86-89. The Liberty Lobby was especially outspoken. See 1981 Senate Hearings, supra note 45, at 78-111.
\textsuperscript{73}. 132 CONG. REC. S1380 (daily ed. Feb. 19, 1986).
\textsuperscript{74}. Id. at S1379.
\textsuperscript{75}. Article XVI of the Genocide Convention, 78 U.N.T.S. at 286, states:
A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General, . . . The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.
\textsuperscript{76}. See COMMISSION ON HUMAN RIGHTS, supra note 18, at 114-17. At the time the resolution of ratification was passed, some senators were nonetheless optimistic about the possibility of amending the Convention in the United Nations, and they therefore pressed for the adoption of the sense of the Senate resolution that calls for such an amendment. Senator Richard Lugar, for example, did not think that pressing for an amendment after ratification would "be an empty gesture." He noted that in August 1985, the matter had been discussed in the Subcommission on the Prevention of Discrimination and the Protection of Minorities of the U.N. Commission on Human Rights. 132 CONG. REC. S1254 (daily ed. Feb 18, 1986). Although the Soviet delegate had succeeded in having action on the matter deferred, Senator Lugar thought it might be possible to resurrect the issue with the help of other Western states. Id.
strategy concerning political groups. It may even be argued that such considerations should be secondary: that if an amendment of Article II is worth pursuing, it should be pursued regardless of the possible political difficulties. But is such an amendment necessary to achieve the objectives of the Convention's critics? That is, is an amendment necessary to prevent the evasion of charges of genocide? And even if amendment is not necessary to meet the concerns of the critics, are there other reasons that would make it desirable?

C. *Is An Amendment Necessary To Stop Politically Motivated Genocide?*

The often expressed concern that the Convention does not cover politically motivated genocide reflects a curious and probably erroneous interpretation of Article II, and more broadly, of the Convention as a whole. The critics are preoccupied with motives. They fear, for example, the destruction of a given group (other than a political party) on the grounds of the group's political beliefs. According to Article II, however, genocide is the commission of certain acts "with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." Neither Article II nor any other article of the Convention refers to the motives that must lie behind the commission of such acts. It is true that when the Convention was drafted, some consideration was given to specifying motives. Article II of the draft convention prepared by the Ad Hoc Committee contained specific references to motives—the destruction of national, racial, religious, and political groups on grounds of their national or racial origins, religious beliefs, or political opinions. However, these very precise references to motives were unacceptable to most representatives in the Sixth Committee, and they were deleted from the article. The representative of the United Kingdom offered the most trenchant criticisms, suggesting that the references to motives should be deleted because they were "useless" and "dangerous": useless because Article II already included the notion of intent as a component of the crime of genocide, and dangerous because the terms of the draft had the effect of narrowing the grounds for charges of genocide.77 According to the U.K. representative, requiring proof of motive might allow states to claim that vicious acts aimed at, say, religious groups had been committed on grounds other than the religious beliefs of the group. In such a situation, no charge of genocide could be made.78 Other representatives in the

78. *Id.* at 117-18.
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Sixth Committee agreed. The U.S. representative, for example, argued that the "fundamental aim" of Article II was to "define the crime in terms of intention, as was normally done in national legislation," and that to "include motives in that definition would lead to ambiguity."\(^7^9\) While a few representatives argued in favor of retaining the references to motives, the Sixth Committee ultimately decided to delete them and to insert the words "as such" in their place.\(^8^0\)

In retrospect, there was more to be said for deleting the references to motives than for retaining them, precisely for the reasons advanced by the U.K. and U.S. representatives. The words "as such" in Article II have the effect of referring back to the groups as entities. Commentators on the Convention have generally agreed that any of the acts stipulated in Article II committed with the intent to destroy, in whole or in part, one of the groups specified would constitute genocide.\(^8^1\) Put another way, no one could "plead that the deed was done for reasons other than those to be found in the constituent characteristics of the group," for the words "as such" "indicate that the essential element of the crime is the intentional attack against the existence of a group of human beings."\(^8^2\)

According to this interpretation of Article II, the reasons that national, ethnic, racial or religious groups become victims of genocidal acts are irrelevant. It does not matter whether they become victims for political, economic, or other reasons; it matters only that they become victims. Thus, notwithstanding the critics' fears, a state would not be able to avoid charges of genocide by claiming that the motives that lay behind its acts against, say, a national group were solely political.\(^8^3\)

This interpretation of Article II does not make proving charges of genocide easy. Instead, it calls attention to a different, and equally vexing problem in interpreting and applying the Convention: proving the intent to destroy a group or groups. Disputes concerning intention, or the lack

\(^{79}\) Id. at 124.
\(^{80}\) Id. at 124-25, 133.
\(^{81}\) See N. Robinson, supra note 8, at 58.
\(^{83}\) It should be noted that the representatives of various ethnic groups in the United States that have closely followed the Convention debates—e.g., Ukrainians, Armenians, and Greeks—have never considered the deletion of political groups from Article II to affect adversely the application of the Convention, as many of its critics have thought it did. To the contrary, they have supported ratification of the Convention as a way of bringing pressure to bear on the Soviet Union for its allegedly genocidal practices. The Ukrainian Congress Committee of America, for example, strongly supported ratification in 1950 and in the 1970s. See 1970 Senate Hearings, supra note 42, at 165-74. Such groups are likely to support initiatives like that of Senator Robert Byrd, who introduced a concurrent resolution in the Senate in June 1986 calling upon the U.S. Secretary of State to examine whether Soviet action in Afghanistan violated the Convention, which the Soviet Union has ratified. See 132 Cong. Rec. S7919-21 (daily ed. June 19, 1986).
thereof, have already figured prominently in some recent allegations of genocide, such as those concerning the war waged by the United States in Vietnam and the treatment of Aché Indians in Paraguay. United States government officials, of course, never admitted a genocidal intent in the conduct of the Vietnam War, and there has been much disagreement on the issue. The Paraguayan government has also claimed a lack of intent in the case of the Aché Indians as a defense to charges of genocide. Both alleged episodes stand in sharp contrast to the two cases that are usually regarded as the modern paradigms of genocide—the Nazi effort to exterminate the Jews and other groups during World War II, and the Turkish effort to exterminate the Armenians during World War I. In both cases the perpetrators' intentions were clear. Despite difficulties in proving intent, the Convention as written protects racial, ethnic, national and religious groups from genocidal acts where the perpetrator claims only a political motive.

D. Is An Amendment Otherwise Desirable?

Even if the deletion of the word “political” from Article II did not create the loophole regarding motives that critics of the Convention allege, an amendment of the article to cover political groups could still be considered desirable in order to outlaw large-scale political persecution. As a result of the drafters' exclusion of political groups it appears that the Convention does not apply to situations in which genocide-like acts, including mass slaughter, are committed, but the national, ethnic, racial, or religious identity of the victims is not at issue. For example, the atrocities committed in Kampuchea after the fall of the Lon Nol government in 1975 may not constitute genocide under the terms of the Convention. Hundreds of thousands died, but it could be argued that the slaughter was not directed at specific groups on the grounds of their national, ethnic, racial, or religious identity. The Kampuchean situation has evoked strong feelings, and despite the apparently political nature of the acts, efforts are now underway by a nongovernmental organization—the Cam-


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Cambodia Documentation Commission—to persuade a party to the Convention to bring charges of genocide to the ICJ against the government of Democratic Kampuchea, which ratified the Convention in 1950 as Cambodia.\(^7\)

Questions have also been raised about whether the atrocities committed in Uganda during the reign of Idi Amin during the 1970s and in the Soviet Union during the Stalinist purges of the 1930s would constitute genocide under the Convention. In brief, widespread slaughter of populations can occur and apparently not be covered by the Convention.\(^8\) As one scholar has observed, the Convention does not “outlaw all forms of barbarism.”\(^9\)

To many persons, scholars and non-scholars alike, the inapplicability of the Convention to situations such as these is deeply disturbing, reflecting a serious weakness in the Convention’s definition of genocide—a weakness that would not exist had political groups been included in Article II. The one characteristic the victims appeared to share in these situations is that they were thought to be enemies of the state, or perhaps of a particular political leader or group of leaders. What is important is not the nature of the groups but that they became victims, and the horror and magnitude of the crimes make the temptation great to extend protection to all such varied groups.

While the liquidation of political groups is certainly deplorable, it is nonetheless unwise and impractical to provide such groups protection under the Convention. Most scholars and politicians who have considered the question agree that violence against political groups may, in some circumstances, be legitimate. Kurt Glaser and Stefan Possony, for example, who feel that political groups should have been included in Article II, recognize that “some groups may very well be hostile and threaten the security of the state, in which case the threatened state should be allowed to protect itself, albeit by nongenocidal means.”\(^50\) Leo Kuper argues that the concept of genocide should not apply to certain

87. *See Kampuchea*, 166 Hum. RTS. INTERNET Rep., nos. 5-6 (1987).
situations "which have some affinity with genocide, such as the large-scale slaughter of hostages taken from the opposing group, or the shooting down or bombing of passenger planes, or the striking at the soft underbelly of England by bombs in underground trains or subways."  

And as Senator Christopher Dodd explained,

Not all political violence is illegal or immoral. There is simply no way to distinguish in legal terms between what may qualify for some as political genocide and what may be regarded as legitimate violence, for instance, a bitter and bloody fight by a subjugated people for its freedom. The use of this elusive concept would do nothing but provide ammunition for endless propaganda battles that we already have enough of. Opponents of the Genocide Convention never ceased to worry about American citizens who served in our military in Vietnam who may be accused of genocide as a result of their service. This was, of course, absurd. We were taking part in an armed political conflict, and were not trying to kill all Vietnamese, or all Buddhists, or any other objectively identifiable group.

We, however, could arguably be accused of having tried to kill all Communists, or at least all Vietcongs. This is the essence of war, ugly as it is. Do the champions of the concept of political genocide really want to expose our ex-servicemen to the charge of political genocide on this account? How about the Afghan freedom-fighters who certainly try to kill all who belong to the occupying Soviet powers and who are allied with them? Do the sponsors of this resolution really want to say they are committing political genocide? My point is, that the Genocide Convention omitted political groups from its definition with good reasons. The reason was not to excuse extreme political violence. The reason was to give a clear and objective definition, to try to raise a well defined international standard that every nation can endorse, even if that endorsement is often hypocritical.

These observations lead to a number of questions: Is it possible to come up with a widely accepted definitional distinction between political genocide and acceptable attacks against political groups? Where does one draw the line between appropriate and forbidden political violence? If the Convention is amended to include political groups among those it aims to protect, how should such groups be defined by member states and how would this provision be applied?

Some have attempted to begin answering these questions. The U.S. representative to the United Nations at the time of the drafting of the Convention suggested that a political party provided a good example of a political group. While this might be true, it is only one example. To confine the meaning of political groups to political parties would be unduly narrow and vague. Groups and movements of various sizes, as well

91. L. KUPER, supra note 86, at 138.
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as individuals, commonly claim to be political in nature and to be persecuted for political reasons. Consider, for example, the groups of war protesters who were tried for various crimes during the Vietnam War—groups who claimed they were being attacked by the government because of their political views. While this claim might be questionable, it points to the difficulty inherent in selecting criteria for determining what constitutes a political group. One possible criterion is the number of victims involved, but it is unclear why this factor should be given much weight. The case of Aché Indians suggests that genocide can be perpetrated against small groups as well as large ones. This group of primitive people, when confronted by those seeking its destruction, behaved in the same way as victims of the much larger Nazi genocidal plan. The Aché demonstrated a loss of self-respect, a loss of the will to live, and even, in some cases, a perverse identification with those trying to destroy them.93

Political groups thus present problems of a sort that national, ethnic, racial, and religious groups do not. Consideration of these problems leads to a recognition of the wisdom of the Convention's drafters in deleting the reference to political groups from Article II. It does not appear possible to develop an acceptable definition of what constitutes a political group for purposes of the Genocide Convention; exceptions to any proposed definition come readily to mind. Yet who would argue that exceptions should be made in the more prominent cases of genocide—the wholesale slaughtering of Jews, Armenians, or the Aché? The Convention was obviously designed to deal with such cases, and only such cases.94

Is there any way out of this dilemma? Jordan Paust has suggested that, "[t]o the extent that violations of relevant human rights are criminally sanctioned, any gap in coverage by the Genocide Convention [of political groups] will prove to be of little import."95 Paust nonetheless believes that "it may be important to emphasize these recognitions in a new international instrument, if only to further sanctify criminal proscription and to provide additional guidance concerning the contours of present prohibitions."96 In this connection he has proposed a draft convention on the prevention and punishment of the "Crime of Politicide." Paust's draft is analogous to the Genocide Convention, though it contains provisions that some might consider to be an improvement. For

93. See Munzel, Manhunt, in GENOCIDE IN PARAGUAY, supra note 85 at 19-45.
94. See Edwards, supra note 89, at 302.
96. Id.
example, it expressly recognizes the principle of universal jurisdiction to try persons accused of politicide and related crimes. While a full analysis of Paust's proposal is beyond the scope of this article, his ideas are worthy of further exploration.

Conclusion

The decision made by the drafters of the Convention to exclude political groups from protection was based on two considerations. First, in determining which types of groups to protect, the drafters employed the criterion of stability: whether the groups were ones that persons tend to be born into or that tend to maintain their identities over relatively long periods of time. National, ethnic, racial, and religious groups qualified under this standard. Political groups did not. Second, some drafters were concerned that the inclusion of political groups in Article II would create an obstacle to its ratification by many states that were apprehensive that they would be charged with genocide of subversive groups they were attempting to suppress.

The possibility that such allegations might be made was perceived to be even more troublesome in light of the fact that the Convention was to contain a provision relating to the creation of an international criminal court. In the end, most drafters of the Convention who favored the inclusion of political groups in Article II were persuaded to accept the deletion of the political groups clause in order to eliminate this obstacle to its ratification.

The deletion had the reverse of its intended effect in the United States. The Senate debated, albeit sporadically, the question of whether or not the Convention should be ratified by the United States for almost forty years. Throughout these decades of Senate debate, the Convention's failure to extend protection to political groups as such was seized upon by numerous critics as a major reason why the United States should not ratify it. Two principal arguments were made. One condemned the ineffective leadership of the United States in the negotiations, and its supposed capitulation to Soviet demands. The other asserted the existence of a loophole in the Convention's definition of genocide because of its failure to mention political groups as possible victims of genocide. The strong sentiments expressed on these issues spurred the Senate to adopt a sense of the Senate resolution along with its resolution of ratification in February 1986, calling upon the President and the Permanent Representative of the United States to the United Nations to propose an amend-

97. Id. at 304-06.
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...ment of the Convention to extend coverage to political groups. As we have seen, however, the first argument misrepresents what actually occurred during the negotiations when the Convention was drafted. The second misinterprets the Convention by introducing questions of motive into Article II which are irrelevant to a finding that genocide has been committed.

Scholars call attention to a different problem that could arise in applying the Convention. The Convention seems not to apply to situations in which genocide-like acts have occurred but the national, ethnic, racial, or religious identity of the victims is not at issue. Yet including political groups in the Convention’s definition of genocide would raise different problems, such as how to define political groups and how to deal with situations in which political violence might not be considered morally repugnant. Thus it is best not to pursue an amendment of the Convention, but rather to attempt to deal with the problem of political violence through other means.