'Genocide' Against Political Groups in Latin America in light of the Travaux Préparatoires of the Genocide Convention (1948): The Case of Argentina

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Abstract 1

This chapter examines the genocide findings made by some Argentinian courts as a result of the widespread and severe human rights violations that occurred during the military dictatorship of 1976–1983. Based predominantly on a narrow selection of the *travaux préparatoires* and other documents predating the Genocide Convention (1948), as well as a decision from Spain's *Audiencia Nacional*, Argentinian judges have held that the physical destruction of 'political groups' as such or effectively as a part of a national group falls within the definition of genocide as included in said Convention. This chapter reviews the *travaux préparatoires* of the Genocide Convention (1948) relevant to the protected groups and shows that the drafters did not envisage genocide against political groups directly or indirectly as part of a national group. Accordingly, these Argentinian cases do not withstand close academic scrutiny.

I. Introduction: Argentinian prosecutions for crimes committed during the government of the military juntas (1976–1983)

Between 1976–1983, Argentina experienced a period of State-driven political violence that led to systematic and widespread violations of human rights. Never had the country experienced such large-scale atrocities inflicted by the State against its own people with a level of brutality and sadism that it has left searing and painful memories upon the national Argentinian psyche to this day. This process began on 24 March 1976, when the military overthrew the constitutional government of Isabel Martínez de 2

* The views expressed herein are those of the authors alone and do not necessarily reflect the views of the Attorney-General's Department of Australia, the Attorney-General of Australia, the Australian Government or any other institution.

Perón and, by a document titled the 'National Reorganization Act' ('*Acta de Reorganización Nacional*'), formally established a junta that assumed political power and declared obsolete the legislative and provincial authorities. Additionally, those entrusted to uphold the law were wiped away – the junta purged members of the Supreme Court of Justice, the High Courts of the various provinces, and the National Attorney General's Office, among others.[1] The military government then went on to implement a policy of State repression against certain individuals and groups characterized by them as 'subversive'. This was undertaken clandestinely and included abductions, secret detentions, torture, murders, the stealing of babies, and the forced disappearance of thousands – both Argentinians and foreign nationals.

3 The junta ended in late 1983 amid its delegitimization due to its human rights violations, the army's defeat in the Malvinas Islands War of 1982, and its (mis)handling of the economy which led to an economic crisis felt by all Argentinians. In the years following the resumption of democratically elected government in 1983, various mechanisms have been employed in Argentina's quest to face its violent past. One of them has been the criminal law. After decades of impunity for the atrocities committed between 1976–1983, and as a result of new laws and important case law emanating from the Supreme Court of Justice, Argentina has been able to prosecute those responsible for the crimes committed during the junta's rule. This has led, in recent years, to a steady stream of criminal judgments from Argentinian courts that have entered and upheld convictions for domestic and international crimes.

4 These cases raise a myriad of interesting legal issues such as statute of limitations for essentially domestic crimes,[2] the interaction between Argentinian law and international criminal law, and the historical link between crimes against humanity and armed conflict. Probably because of their length and publication only in Spanish, these judgments have not received the attention they deserve by international criminal law practitioners, aca-

1 Pablo F Parenti and Lisandro Pellegrini, 'Argentina' in Kai Ambos, Ezequiel Malarino and Gisela Elsner (eds), *Justicia de Transición. Informes de América Latina, Alemania, Italia y España* (Konrad–Adenauer–Stiftung eV, 2009) 134.

2 Accused persons were not technically charged with international crimes *per se*, but with ordinary offences under Argentinian law. However, Argentinian courts have found that these domestic offences were simultaneously international crimes (mostly crimes against humanity and genocide) and then relied on their dual characterisation as a means to overcome statute of limitations obstacles.

demics and judges.[3] This chapter focuses on one aspect raised in some of these judgments: the numerous genocide findings (and convictions) entered on the basis that the (attempted) physical destruction of political groups falls within the *mens rea* definition of genocide as contained in the Convention on the Prevention and Punishment of the Crime of Genocide (1948) ('Genocide Convention').[4] On its face, this is a misnomer, given that the Genocide Convention (1948) stipulates only four protected groups, none of which are political groups:

> […] genocide means any of the following acts committed with the intent to destroy, in whole or in part, *a national, ethnical, racial or religious group*, as such.[5]

This chapter will discuss how it is that some Argentinian courts, on various 5
occasions, have creatively (mis)interpreted this definition so as to encompass political groups and entered (and upheld) findings of genocide. This exercise reveals that Argentinian judges have significantly and selectively relied on the *travaux préparatoires* and other documents predating the Genocide Convention (1948) as well as decisions from Spain's *Audiencia Nacional* to arrive at their legal conclusions. And so, this chapter seeks to provide a holistic account of the *travaux préparatoires* related to the Genocide Convention's protected groups. From this discussion and analysis, we can draw lessons that would benefit Latin American jurisdictions also dealing with similar crimes, and indeed Argentina itself.

II. Select Argentinian jurisprudence on genocide committed against political groups under the Genocide Convention (1948)

The *Etchecolatz* case was the first criminal prosecution in Argentina since 6
the Supreme Court of Justice declared as unconstitutional the 'Full Stop

3 But see Kai Ambos, *Treatise on International Criminal Law* (Second edition, Oxford University Press 2021) 174–176 (discussing Argentinian case law on indirect perpetration).

4 Up to June 2019, it has been reported that out of the 120 cases in which genocide was raised, 51 recognized its existence during the military junta years: Malena Silveyra and Daniel Feierstein, 'Genocidio o Crímenes de Lesa Humanidad: El Debate Jurídico Argentino Como Disputa Por El Sentido Asignado al Pasado' (2020) 77 Estudios de Derecho 17, 29.

5 Genocide Convention (1948), Article II (emphasis added).

Law' and the 'Due Obedience Law'.[6] On 19 September 2006, the *Tribunal Oral en lo Criminal Federal de La Plata* found that individuals had been 'held illegally in captivity in units of the General Direction of Investigations' of the Province of Buenos Aires,[7] and that Etchecolatz had served as head of this office from May 1976 until February 1979.[8] He was found guilty of crimes against humanity and was sentenced to life imprisonment.

7 During the trial, the legal representatives of the victims requested that Etchecolatz be convicted of genocide,[9] which his Defence opposed.[10] Despite the fact that Argentina had ratified the Genocide Convention (1948) in 1956, and that in 1994 it acquired constitutional status (as per Article 75(22) of the Argentinean Constitution), the Convention had not been incorporated into the Argentinian Penal Code as such when Etchecolatz was charged. The *Ley de Implementacíon de Estatuto de Roma del 17 de Julio de 1998* ('Rome Statute of 17 July 1998 Implementation Law') changed this scenario, since it criminalised genocide under Argentinian law, but it did not purport to apply retroactively.

8 Although the court did not find Etchecolatz guilty of genocide per se, it held *in dicta* that the crimes he committed occurred in the 'context of genocide'. Indeed, it confirmed 'the ethical and legal need to recognize that in Argentina there was a genocide'.[11] To support this, the court noted that UN General Assembly Resolution 96(I) provided for genocide on 'political or any other grounds',[12] which according to the judges constituted a precedent 'that must not be overlooked given its implications for the [court's] conclusions'.[13] It further noted that Article 2 of the first draft of

6 The 'Full Stop Law' ('*Ley de Punto Final*') (Law No. 23.492) and the 'Due Obedience Law' ('*Ley de Obediencia Debida*') (Law No. 23.521) were enacted in 1986 and 1987, respectively, by former President Raúl Alfonsín. While the former suspended further court proceedings and investigations after the famous Trial of the Juntas Case ('*Juicio a las Juntas*') (Case No. 13/84), the 'Due Obedience Law' introduced a rebuttable presumption in law for crimes committed by members of the armed forces: if they were carried out as a result of 'due obedience' to their superiors, the crimes were not punishable.

7 *Decision against Miguel Osvaldo Etchecolatz* (Tribunal Oral en lo Criminal Federal n 1 de La Plata) 1.

8 ibid.

9 ibid 3.

10 ibid 5.

11 ibid 88.

12 ibid 89–90.

13 ibid 89.

the Genocide Convention (1948) included acts with the intent to destroy political groups based on the political opinions of their members.[14] The court then posited that the adoption of the final definition of genocide (which excluded political groups)

> [p]oses, particularly with respect to the events that happened in [Argentina] during the military dictatorship that began in 1976, the interesting question as to whether or not the tens of thousands of victims of that State terrorism constitute a 'national group' as set out by the Convention […] [A]n affirmative response is required […].[15]

The court relied on the findings of the *Military Juntas Trial*,[16] in which 9
the plan to eliminate 'opposition groups' as part of the 'National Reorganization Process' had been proved and found to have been implemented throughout Argentina.[17] Furthermore, it also relied on the interpretation of the Spanish *Audiencia Nacional* in the *Scilingo* case, which had expansively interpreted what a 'national' group was,[18] even though the Spanish Penal Code's definition of genocide – like the Genocide Convention (1948) – did not recognize political groups as a protected group. Nevertheless, it was affirmed that:

> [t]he group subject to persecution and harassment included those citizens who did not fit the preconceived prototype that the sponsors of the repression regarded as part of the new order to be established in the country. It was composed of citizens who opposed the new regime, but also citizens who were indifferent to the regime. The repression was not intended to change the group's attitude towards the new political system, but rather to destroy the group through detentions, deaths, disappearances, kidnapping of children from their families, and the intimidation of group members. These attributed actions constitute the crime of genocide.[19]

14 ibid 89–90.
15 ibid 90.
16 *Sentencia Causa 13/84* (Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal de la Capital Federal).
17 *Decision against Miguel Osvaldo Etchecolatz* (n 7) 90.
18 *Rollo de Apelación 84/98, Sección Tercera, Sumario 19/97* (Audiencia Nacional, Sala de lo Penal (Pleno)).
19 *Decision against Miguel Osvaldo Etchecolatz* (n 7) 91.

10 The *Tribunal Oral en lo Criminal Federal de La Plata* added that to prevent impunity, the term 'national group' should not be interpreted to mean 'a group of individuals belonging to the same nation', but rather it was enough for the specific group to be part of a broader national community. It held that '[t]his social conception of genocide […] would not allow the indicated exclusions [with respect to political groups]'.[20] The court also referred to the reflections of an Argentinian sociologist, Daniel Feierstein, who explained that:

> [T]he characterization of a 'national group' is absolutely valid for analyzing the events in Argentina, since the perpetrators set out to destroy a particular section of the social relations in the State in order to produce a change substantial enough to alter the life of the whole [State].[21]

11 Based on these arguments, the court affirmed that conceiving the accused's acts as crimes against humanity would not exclude the possible existence of a genocide.[22] Indeed, it was pointed out that the court was dealing with 'with something significantly greater which should be termed "genocide"'.[23] As a result, it was concluded that Etchecolatz was 'the perpetrator of crimes against humanity committed in the context of a genocide'.[24]

12 The *Tribunal Oral en lo Criminal Federal de La Plata* would go on to repeat substantially the same reasoning in other cases. On 1 November 2007, for instance, in *Von Wernich*, the accused was sentenced to 'life imprisonment […] for the crimes […] against humanity committed in the context of the genocide that took place in Argentina between 1976 and 1983'.[25] Similarly, on 24 November 2010, it again held that genocide had occurred in Argentina in *Dupuy et al.*,[26] and on 19 July 2013, in the *Madrid et al.* case,

20 ibid 92.
21 ibid 93.
22 ibid.
23 ibid.
24 ibid 98.
25 *Decision against Christian Federico Von Wernich* (Tribunal Oral en lo Criminal Federal No 1 de La Plata). The court repeated the brief overview of the history of 'genocide' as a legal term, noted that UN General Assembly Resolution 96(I) expressly provided for genocide on political or any other grounds, affirmed that this was later rejected due to political reasons, and affirmed again that the tens of thousands of Argentinian victims could form part of a 'national group'.
26 *Decision against Abel David Dupuy et al* (Tribunal Oral en lo Criminal Federal No 1 de La Plata) 8–12. Similar to the positions adopted in *Etchecolatz* and *Von Wernich*, the court repeated the definition of genocide contained in UN General Assembly in

it sentenced the accused for their 'complicity in the genocide perpetrated during the last civil–military dictatorship (1976–1983)'.[27]

One of the problems with this line of case law, aside from their selective reliance on the *travaux préparatoires* of the Genocide Convention (1948) which will be discussed below, is that one of its pillars – the *Scilingo* case from Spain's *Audiencia Nacional* – is no longer good law. In fact, on 1 October 2007, the Spanish Supreme Court specifically repudiated the methodology employed by the *Audiencia Nacional*. It held that: 13

> The doctrine is practically unanimous in accepting that the drafters of the [Genocide] Convention agreed not to expressly include political groups. [...] [A] national group cannot be divided into two or more national groups differentiated from each other on the basis of extraneous criteria. Interpreting the norm in this way would lead to the irrelevance of the inclusion of one or the other groups, contrary to the text [of the Genocide Convention], giving rise to an analogical extension of the crime to the detriment of the defendant and is, therefore, prohibited.[28]

Oddly, *Dupuy et al.* and *Madrid et al.* (both handed down well after the Spanish Supreme Court's judgment) continued to rely – as *Etchecolatz* and *Von Wernich* had done – on the *Audiencia Nacional*, either ignoring or not being aware of the aforementioned Supreme Court judgment. 14

Over the years, other Argentinian courts have followed, to different degrees, the path first laid out in *Etchecolatz*.[29] Thus on 12 September 2012 15

Resolution 96(I), the *travaux préparatoires* of the Genocide Convention (1948) and the *Scilingo* case of the Spanish *Audiencia Nacional*.

27 *Decision against Domingo Madrid et al* (Tribunal Oral en lo Criminal Federal No 1 de La Plata) 224–225. The court again offered a brief review UN General Assembly Resolution 96(I), Article 2 of the initial draft of the Genocide Convention (1948), the findings of the judgment in the *Military Juntas Trial,* the holdings of the Spanish *Audiencia Nacional* in the *Scilingo* case, and the comments on genocide by Feierstein cited above. Interestingly, the court also relied on the International Criminal Tribunal for the former Yugoslavia (ICTY)'s *Jelisić* and the International Criminal Tribunal for Rwanda (ICTR)'s *Akayesu* cases to sustain its position. The judges stated that, according to *Akayesu*, the notion of 'protected groups' should not be limited to those listed in the Genocide Convention (1948); instead, it protects all groups 'that have the characteristics of stability and permanence'. ibid 195

28 *Scilingo v Spain* [2007] Tribunal Supremo de España Sala de lo Penal No. 798/2007 [10(5)].

29 In addition to the cases referred to in the body of this chapter, *see Decision against Jorge Rafael Videla et al – Partially Dissenting Judgment of Judge Pérez Villalobos* (Tribunal Oral en lo Criminal Federal No 1 de Córdoba) 318–338 (relying on, among

in *Bayón et al.*, the *Tribunal Oral en lo Criminal Federal de Bahía Blanca* also relied on UN General Assembly Resolution 96(I), the *Military Juntas Trial*, the *Scilingo* case (also failing to recognise that this was no longer good law) and on Feierstein's statements. The *Tribunal* further referred to the first draft of the Genocide Convention (1948) to assess the situation of 'political groups'.[30] As a result of this provision and the crimes committed during the Second World War, it affirmed that the international community had recognized 'without hesitation' that the concept of genocide included attacks against 'political groups'.[31] The *Tribunal* nonetheless concluded that a 'national group' had been attacked in the context of a genocide committed by the military dictatorship in Argentina[32] because the group was:

> made up of citizens opposed to the regime, but also of citizens who were indifferent […] The repression was not intended to change the attitude of the group in relation to a new political system, but to destroy the group through arrests, deaths, disappearances, abduction of children […], intimidation of the group's members. These acts constitute the crime of genocide.[33]

16 On 4 December 2017, the same court repeated these arguments in the *Chipont et al.* case.[34]

17 In the *Rezzet* and *Tomassi et al.* cases, handed down on 23 February 2011 and 30 March 2012 respectively, the *Tribunal Oral en lo Criminal Federal de Mar del Plata* referred on various occasions to the 'crimes against humanity in the context of the genocide' that took place in Argentina but did not offer any analysis justifying its view.[35] In the *Porra et al.* case, decided on 24 February 2014, the *Tribunal Oral Federal en lo Criminal No. 1 de Rosario* also examined UN General Assembly Resolution 96(I), where

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other things, UNGA Resolution 96(I) and the *travaux préparatoires* of the Genocide Convention (1948)).

30 *Decision against Bayón et al* (Tribunal Oral en lo Criminal Federal de Bahía Blanca) 542–543 (incorrectly citing 'Article 21' of the first draft of the Genocide Convention (1948); the correct reference should have been Article 2).

31 ibid 543.

32 ibid 541–548.

33 ibid 545.

34 *Decision against González Chipont et al* (Tribunal Oral en lo Criminal Federal de Bahía Blanca) 1952–1957.

35 *Decision against Rezett* (Tribunal Oral en lo Criminal Federal de Mar del Plata) 33; *Decision against Tomassi et al* (Tribunal Oral en lo Criminal Federal de Mar del Plata) 72.

'political groups' had been envisaged, noting that these were excluded from the Genocide Convention (1948) for 'geo-political reasons'.[36] This is why it explicitly rejected the possibility of examining whether 'political groups' had been attacked:

> Since it is a criminal offence, it is legally ruled out [to consider] that the enumeration of Article 2 [of the Genocide Convention (1948)] is not exhaustive (principle of legality: *lex stricta*); therefore, the question is to determine whether any of the groups contemplated [...] admits that the prosecuted facts in the present case are envisaged by the international convention as a criminal offence.[37]

Instead, the court asked whether a part of a 'national group' had been 18
attacked, finding in the affirmative. It described the group concerned as being composed of those individuals that had been identified by the military junta as being 'subversives' or 'terrorists' who, essentially, opposed their worldview and ideology.[38] While the court took great care not to call this a 'political group' (since they had already rejected his possibility), what they described was, for all intents and purposes, exactly that.

The *Tribunal Oral Federal en lo Criminal de Paraná* for its part, in the 19
Harguindeguy et al. and *Céparo* cases handed down on 4 April 2013 and 26 October 2016 respectively, also held that genocide against part of a 'national group' had occurred Argentina.[39] In this regard, the *Tribunal* pointed out that although the exclusion of 'political groups' from the Genocide Convention (1948) had been largely criticized, it had been restated in the Rome Statute of the International Criminal Court (ICC) (1998) and incorporated as such into Argentinian domestic law.[40] Relying on the principle of legality ('*lex stricta*'), both *Harguindeguy et al.* and *Céparo* decided to determine whether 'any of the groups contemplated' in the Genocide Convention (1948) fit the facts and concluded that the term 'national group' adequately covered the situation before them by essentially following the reasoning

36 *Decision against Ariel Porra et al* (Tribunal Oral Federal en lo Criminal No 1 de Rosario).
37 ibid.
38 ibid.
39 *Decision against Harguindeguy et al* (Tribunal Oral en lo Criminal Federal de Paraná) 217–229; *Decision against Céparo* (Tribunal Oral en lo Criminal Federal de Paraná) 107–114.
40 *Decision against Harguindeguy et al.* (n 39) 222; *Decision against Céparo* (n 39) 109.

of the *Porra et al.* case.[41] That is, despite their best efforts, the group they identified and described was the domestic opposition to the military junta – a political group.[42]

20 As can be observed, these cases modified *Etchecolatz*'s reasoning: although they held that genocide had occurred in Argentina, they avoided explicitly identifying that a 'political group' had been attacked and instead focused on genocide against part of a national group. This effectively masked the fact that, ultimately, the targeted group was indeed a political group as they were made up of individuals who shared one underlying characteristic: they were politically opposed to the military junta (or, at least, were perceived as such by the perpetrators).[43]

III. The travaux préparatoires of the Genocide Convention's protected groups

21 As is clear from the above exploration of select case law, some Argentinian courts have made a habit of relying on historical documents in support of their legal interpretation of Article II of the Genocide Convention (1948). This is of course perfectly permissible. Nevertheless, it is contended that these courts have selectively chosen to draw their attention to only those parts of the Genocide Convention's (1948) history that support – and do not contradict – their legal conclusions. To demonstrate this, it is important to have at one's disposal the entire historical picture that ultimately led to the protected groups as they were written in 1948 and later replicated verbatim in the Statues of the ICTY[44] and ICTR[45] and the ICC.[46]

1. UN General Assembly Resolution 96(I)

22 The first concrete proposal concerning genocide within the UN was a draft resolution proposed by Cuba, India and Panama during the second part of the first session of the UN General Assembly in early November 1946. This draft resolution stated that genocide had taken place throughout

41 *Decision against Harguindeguy et al.* (n 39) 219–220.
42 ibid 222–223; *Decision against Céparo* (n 39) 109–110.
43 *Decision against Bayón et al.* (n 30) 545–546.
44 See ICTY Statute, Article 4(2)-(3).
45 ibid, Article 2(2)-(3).
46 See ICC Statute, Article 6.

history when 'national, racial, ethnical or religious groups ha[d] been destroyed'[47] and received widespread support. Later that same month, the Saudi Arabian delegation presented a draft 'Protocol for the Prevention and Punishment of Genocide' which defined genocide as 'the destruction of an ethnic group, people or nation'.[48]

Although amendments were suggested, the original proposal for a narrow list of protected groups was not raised as an issue during discussions.[49] The change took place during the negotiations of a subcommittee to whom the drafting of the resolution had been referred. Unfortunately, there appears to be no record of these discussions. Instead, the record shows that the subcommittee's final draft resolution was unanimously adopted with no substantive amendments and became UN General Assembly Resolution 96(I). This draft affirmed that genocide had taken place in the past against 'racial, religious, political and other groups' and included genocide on 'religious, racial, political or any other grounds'.[50] The accompanying report made no mention of this change and neither was it raised in the discussions following its submission and immediately preceding its adoption.[51] State representatives did not appear to have appreciated or reflected on the fact that the original proposal had been substantively amended from narrow protected groups (as per the Cuban, Panamanian and Indian draft) to wide protected groups, for it elicited no debate or comment. Thus, it is difficult to ascertain exactly why the protected groups were widely defined in UN General Assembly Resolution 96(I). What we do know is that, as originally conceived, they were narrowly – not widely – defined.

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47 UN Doc. A/BUR/50, Annex 15, 2 November 1946, in Hirad Abtahi and Philippa Webb, *The Genocide Convention. The Travaux Preparatoires. Volume 1* (Martinus Nijhoff 2008) 3.

48 UN Doc. A/C.6/86, Annex 15b, 26 November 1946, in ibid 6.

49 See UN Doc. A/C.6/83, Annex 15a, 1946, in ibid 8–12; UN Doc. A/C.6/91, 30 November 1946, in ibid 13–15; UN Doc. A/C.6/94, Annex 15d, 1946, in ibid 17; UN Doc. A/C.6/95, Annex 15c, 1946, in ibid 16. For a summary of the debate see: UN Doc. E/621, 26 January 1948, in ibid 481–488.

50 UN. GA Res. 96(I), 11 December 1946.

51 UN Doc. A/C.6/120, Annex 15e, 1946, in Abtahi and Webb (n 47) 25–27; UN Doc. A/C.6/127, 13 December 1946, in ibid 28–30. For a summary of the process see: UN Doc. A/231, Annex 63, 1946, in ibid 31–33.

2. First Draft Genocide Convention prepared by the UN Secretary-General

24 Subsequently, the first draft of the Genocide Convention prepared by the UN Secretary-General declared in the preamble that genocide is 'the intentional destruction of a group of human beings' and in Article I(I) that the treaty's aim was 'to prevent the destruction of racial, national, linguistic, religious or political groups of human beings'.[52] In the introduction to the commentary to the draft, the issue was confronted head on by asking 'What human groups should be protected by the Convention?' and indicating that this question needed to be decided by the UN, which would be free to limit or restrict the protected groups as it saw fit.[53]

25 The commentary to Article I(I) went into more detail, acknowledging that there exists many diverse and varied human groups, 'but if we consider the problem of genocide from the point of view of practice and past experience, it is evident that it is not meant to protect a professional or a sporting group'.[54] It went on to list the groups that may be considered for protection as per Article I(I), on the basis that they were all included (with the exception of linguistic groups) in UN General Assembly Resolution 96(I). These protected groups were put to Professor Lemkin during consultations:

> [...] Mr. Lemkin[] expressed doubts on the desirability of including political groups. He observed that on the one hand political groups have not the permanency and the specific characteristics of the other groups referred to and, on the other hand, that the Genocide Convention being of considerable interest, should not run the risk of failure by introducing notions on which the world is profoundly divided. He also remarked that

52 UN Doc. A/AC.10/41, 6 June 1947 (French original), in Abtahi and Webb (n 47) 67; UN Doc. E/447, 26 June 1947 (English translation), in ibid 214. It should be noted that the English translations of the French originals differ slightly. For the purposes of this chapter, unless stated otherwise, the authors have included their own translations of the French originals.

53 UN Doc. A/AC.10/41, 6 June 1947 (French original), in Abtahi and Webb (n 47) 79. Interestingly, the English translation says something different: 'The General Assembly's resolution speaks of "racial, religious, political and other groups" and we adopted this formula': UN Doc. E/447, 26 June 1947 (English translation), in ibid 224. The authors consider the original French text to be authoritative.

54 UN Doc. A/AC.10/41, 6 June 1947 (French original), in Abtahi and Webb (n 47) 83; UN Doc. E/447, 26 June 1947 (English translation), in ibid 229.

> in practice the human groups most vulnerable to genocide, as history has shown, are racial, national and religious groups.[55]

Professor de Vabres opposed this view, noting that genocide was odious no matter which groups fell victim and that excluding political genocide might appear to legitimise genocide committed against them but acknowledged that this question was a matter for the General Assembly.[56] 26

3. The Economic and Social Council and the Ad Hoc Committee on Genocide

The drafting of the convention was eventually entrusted to the Economic and Social Council,[57] which established an ad hoc committee to discuss and draft a new convention.[58] At this point, all consideration of 'linguistic groups', as per the UN Secretary-General's draft, ceased completely. Instead, attention turned to political groups. Venezuela indicated that the inclusion of political groups could discourage nations from joining the convention as it 'might be interpreted as hampering the action of Governments with regard to subversive activities directed against them.'[59] China also expressed doubt about their inclusion for they 'had neither the stability nor the homogeneity of an ethnical group' and noted that individuals can change their political beliefs.[60] It was only Lebanon that appeared to express support for the protection of any threatened group 'whether of a racial, religious or cultural character, [or] any social class or political organization.'[61] 27

During the discussions, the Soviet Union would submit a document titled 'Basic Principles of a Convention on Genocide' which stipulated that 28

55 UN Doc. A/AC.10/41, 6 June 1947 (French original), in Abtahi and Webb (n 47) 83; UN Doc. E/447, 26 June 1947 (English translation), in ibid 230.

56 UN Doc. A/AC.10/41, 6 June 1947 (French original), in Abtahi and Webb (n 47) 83–84; UN Doc. E/447, 26 June 1947 (English translation), in ibid 230.

57 The Economic and Social Council was explicitly asked to answer four 'political questions'. The first was: 'What human groups should be protected? Should all human groups, whether racial, national, linguistic, religious or political, be protected or only some of them?' UN Doc. E/622, 3 February 1948, in Abtahi and Webb (n 47) 575.

58 UN Doc. E/734, 3 March 1948, in ibid 619.

59 UN Doc. E/AC.25/SR.1, 1 April 1948, in ibid 686.

60 UN Doc. E/AC.25/SR.3, 13 April 1948, in ibid 702.

61 UN Doc. E/AC.25/SR.2, 6 April 1948, in ibid 692.

the definition 'should be based on the concept that [genocide] essentially connotes the physical destruction of groups of the population on racial and national (religious) grounds'.[62] This document generated debate, with the Chairman (United States) proposing that: '[g]enocide is the extermination or attempted extermination of racial, national and religious groups of human beings'. This was supported by France and Lebanon.[63] In light of this, the Chair opened debate as to whether political groups should also be included in the definition. France insisted that they should for it opined that freedom of opinion should be protected, whereas the Soviet Union opposed on the basis that 'the notion of opinion was not precise enough to enable courts […] to arrive at a decision.'[64] Venezuela supported France, but openly acknowledged that it would be difficult to include political groups in the text.[65]

29 At the very next meeting, the Chairman (United States) formally proposed the inclusion of political groups in the definition, which was supported by Lebanon and France.[66] This time, the Polish representative spoke against, noting that racial, national and religious groups 'had a fully established historical background, while political groups had no such stable form' and that if the protected groups went beyond these three then 'there would be no reason for not having an endless list protecting every conceivable kind of group.'[67] The representative of China agreed with Poland, for '[i]f such groups were included, there was, in fact, no good reason why social, economic and other groups should not be included.'[68] Unlike the previous meeting, Venezuela also opposed the inclusion of political groups and drew attention to the difficulties that would ensue for the signing of the convention was this to occur.[69]

30 Somewhat surprisingly, China subsequently submitted a draft definition that included 'national, racial, religious, or political group[s]'.[70] In response, the Soviet Union proposed to remove 'political groups' in an amended

62 UN Doc. E/AC.25/7, 7 April 1948, in ibid 696; UN Doc. E/AC.25/SR.3, 13 April 1948, in ibid 700.
63 UN Doc. E/AC.25/SR.3, 13 April 1948, in Abtahi and Webb (n 47) 707.
64 ibid 708.
65 ibid.
66 UN Doc. E/AC.25/SR.4, 15 April 1948, in ibid 716–717.
67 ibid 717–718.
68 UN Doc. E/AC.25/SR.4/Corr.2, 20 May 1948, in ibid 724.
69 UN Doc. E/AC.25/SR.4, 15 April 1948, in ibid 719.
70 UN Doc. E/AC.25/9, 16 April 1948, in ibid 833.

version of the Chinese draft.[71] Whilst France supported the Chinese draft as it stood,[72] the Soviet representative emphasised that their approach 'was more concrete and nearer to reality, since genocide [i]s committed only on national, racial or religious grounds.'[73] In the end, the Soviet proposal was defeated by four votes to three and the Chinese text was adopted by six votes to none, however political groups was put in parentheses and remained open to discussion.[74]

In the following meeting, the Chairman (United States) again formally 31
proposed the inclusion of political groups. Venezuela opposed on the basis that it would be too controversial; the Soviet Union repeated that genocide meant only the persecution of 'racial, national or religious groups'; Lebanon opined that a 'political group was not permanent; it was based on a body of theoretical concepts'; and Poland objected for the reasons it had stated earlier. Nonetheless, by a vote of four to three, 'political groups' were included in the draft definition in the convention.[75] When it came to the second reading, the Soviet Union and Poland both voted against the inclusion of political groups.[76]

In explaining their vote against the adoption of the draft convention 32
as a whole, the Soviet Union insisted that the inclusion of political groups had 'nothing in common with [genocide's] scientific definition, [and would] practically lead to the loss of perspective and to the absence of the suppression of the destruction of human groups of national, racial and religious grounds'.[77] For its part, Poland abstained, partly on the basis that 'the inclusion of political groups amongst those covered by genocide might, in practice, lead to interference in the domestic affairs of States.'[78] The final report of the ad hoc committee pointed out that the inclusion of 'national, racial and religious groups' had been unanimous, contrasting it to political groups, noting that those who had voted against had opined 'that political

71 UN Doc. E/AC.25/SR.12, 23 April 1948, in ibid 861.
72 ibid 863.
73 ibid 865.
74 ibid 867–868.
75 UN Doc. E/AC.25/SR.13, 29 April 1948, in ibid 872–873.
76 UN Doc. E/AC.25/SR.24, 12 May 1948, in ibid 1016–1017.
77 UN Doc. E/AC.25/SR.26, 12 May 1948, in ibid 1041. See also UN Doc. E/794, 24 May 1948, in ibid 1153.
78 UN Doc. E/AC.25/SR.26, 12 May 1948, in Abtahi and Webb (n 47) 1042. See also UN Doc. E/794, 24 May 1948, in ibid 1126.

groups lack the stability of the other groups mentioned. They have not the same homogeneity and are less well defined.'[79]

33 When the draft convention was put to the Economic and Social Council, Venezuela felt that the protected groups should 'be based on permanent and easily recognizable criteria' and that political groups 'lacked permanence';[80] Poland opposed their inclusion 'because of their mutability and lack of distinguishing characteristics' which 'distort the meaning of genocide and the aims of the Convention, which had been designed for the protection of national, racial and religious groups only;'[81] Brazil felt that genocide should be strictly defined and that 'political groups lacked cohesion and stability';[82] and the Soviet Union opposed their inclusion as it 'was not in conformity with the scientific definition of genocide' and would distort the crime of genocide and the efficacy of the convention.[83] On the other hand, Canada supported the inclusion of political groups;[84] France opined that 'it was clear that in the future [genocide] would be committed mainly on political grounds';[85] and the United States 'believed that the right to live could not be challenged, even on grounds of political belief.'[86] The draft convention was eventually transmitted to the Sixth Committee of the UN General Assembly without amendments.

4. The UN General Assembly and the Final Genocide Convention

34 At the Sixth Committee, battle lines were drawn around the issue of the protected groups. Whilst the delegates agreed that national, political and religious groups ought to be protected, political groups proved highly divisive.

79 UN Doc. E/794, 24 May 1948, in Abtahi and Webb (n 47) 1123. The final text of the protected groups (Article 2) in the draft convention can be found at: UN Doc. E/794, Annex, 24 May 1948, in ibid 1155.
80 UN Doc. E/SR.218, 26 August 1948, in Abtahi and Webb (n 47) 1222.
81 ibid 1230.
82 ibid 1238.
83 UN Doc. E/SR.219, 26 August 1948, in ibid 1241.
84 UN Doc. E/SR.218, 26 August 1948, in ibid 1225.
85 UN Doc. E/SR.219, 26 August 1948, in ibid 1244.
86 ibid 1246.

Brazil again repeated its opposition to political groups for lack of 'homo- 35
geneity and stability' and advocated for a strict definition;[87] Egypt drew attention to 'the frequent and inevitable changes of political opinion' and that it 'did not have stable characteristics';[88] (the then) Yugoslavia was concerned that the inclusion of political groups 'implied passing from genocide to the field of human rights';[89] the Soviet Union stuck to the argument that political groups 'were entirely out of place in a scientific definition of genocide' and weakened the treaty;[90] Poland also continued its opposition and reiterated that '[g]enocide was basically a crime committed against a group of people who had certain stable and characteristic features in common';[91] Venezuela insisted that political groups 'had neither the stability nor the cohesion characteristic of ethnic or racial groups';[92] Iran felt that the protected groups should only include groups that 'possess[ed] permanent characteristics such as race, nationality or religion' which excluded political groups, 'membership of which was optional';[93] Sweden did not originally favour their inclusion as it would 'raise the question of also protecting professional and economic groups' and thus favoured a convention that 'was not too wide in scope and would thereby secure the largest number of signatories' (but would later change their minds);[94] Peru feared that '[t]he inclusion of political groups would alarm those countries which covered political crime in their own national legislation';[95] Norway opposed 'on the ground that such groups were never so clear-cut or stable as national, racial or religious groups';[96] the Dominican Republic advocated for the removal of political groups as '[t]he convention would be weakened if its scope were made too wide';[97] Uruguay was against as it felt that 'introduc[ing] political

87 UN Doc. A/C.6/SR.63, 30 September 1948, in Hirad Abtahi and Philippa Webb, *The Genocide Convention. The Travaux Preparatoires. Volume 2* (Martinus Nijhoff 2008) 1291.
88 UN Doc. A/C.6/SR.63, 30 September 1948, in ibid 1293–1294; UN Doc. A/C.6/SR.69, 7 October 1948, in ibid 1358.
89 UN Doc. A/C.6/SR.63, 30 September 1948, in Abtahi and Webb (n 87) 1296.
90 UN Doc. A/C.6/SR.64, 1 October 1948, in ibid 1302.
91 ibid 1308–1309.
92 UN Doc. A/C.6/SR.65, 2 October 1948, in ibid 1312.
93 UN Doc. A/C.6/SR.66, 4 October 1948, in ibid 1324; UN Doc. A/C.6/SR.74, 14 October 1948, ibid 1391–1392.
94 UN Doc. A/C.6/SR.69, 7 October 1948, in Abtahi and Webb (n 87) 1357.
95 ibid 1359.
96 ibid 1360.
97 UN Doc. A/C.6/SR.74, 14 October 1948, ibid 1393.

concepts into the convention on genocide would be dangerous, and might even result in preventing the conclusion of the convention';[98] and Belgium thought that '[t]he extension of genocide to political groups, […] would be an arbitrary measure scarcely likely to lead to success.'[99]

36 On the other side, the United Kingdom supported the inclusion of political groups noting that '[t]here was as much persecution on political grounds as there was on racial grounds' and that 'in certain States the ruling political parties would insist that they possessed an existence as stable as some religious or racial groups';[100] Cuba also spoke in favour 'for it could be said that political groups were in danger just as other groups, perhaps even in greater danger';[101] Bolivia voiced support 'since [political groups'] members were united by a common ideal';[102] the Netherlands argued that the Nazis had destroyed a great number of people for their political opinions and that '[t]hat type of crime should not be omitted from the convention';[103] Ecuador urged the retention of political groups despite its less stable character as that 'was not a sufficient reason for refusing to grant it any protection [as it] did not change the nature of the crime';[104] the United States also spoke in support and noted that such groups were perfectly able to be defined;[105] Haiti insisted that 'the concept of genocide [must] cover crimes committed against political groups';[106] Greece opined that '[t]here were no theoretical or practical reasons for excluding political groups';[107] Guatemala recalled that the Nazis had persecuted Germans solely on political grounds;[108] Sweden, having originally opposed, recanted in light of the historical persecution of political groups that had been presented during the debate;[109] and El Salvador maintained that 'there were no decisive reasons against including [them].'[110]

98 ibid 1401.
99 ibid 1402.
100 UN Doc. A/C.6/SR.69, 7 October 1948, in ibid 1360.
101 UN Doc. A/C.6/SR.73, 13 October 1948, in ibid 1378; UN Doc. A/C.6/SR.74, 14 October 1948, ibid 1403.
102 UN Doc. A/C.6/SR.74, 14 October 1948, in Abtahi and Webb (n 87) 1391.
103 ibid 1392.
104 ibid 1393.
105 ibid 1395–1396.
106 ibid 1397.
107 ibid 1402.
108 ibid 1403–1404.
109 UN Doc. A/C.6/SR.75, 14 October 1948, in ibid 1410.
110 ibid 1411.

When a vote on the issue ensued, the result was 29 to 13 with 9 abstentions 37
to retain political groups in the definition (Article II).[111] As we shall see, this vote would prove to be short-lived. The inclusion of political groups was not the only group that elicited debate in the Sixth Committee. During the discussions, the United States also proposed an amendment so as to add 'economic' groups.[112] However, this proposal was not well received with Brazil,[113] Egypt,[114] the Netherlands,[115] the Soviet Union,[116] Sweden[117] and Venezuela[118] all lining up to oppose. The amendment ultimately received only scant support from Bolivia.[119] In light of the less than enthusiastic support, and after it was clear that it would not succeed, the amendment was withdrawn.[120]

In addition, at a relatively late stage of the negotiations, the appearance 38
of 'ethnical' groups emerged. Despite its inclusion in the very first draft resolution of what became UN General Assembly Resolution 96(I)[121] and an early Saudi Arabian draft protocol,[122] it disappeared from the list of protected groups entirely until it was resurrected by Sweden which formally proposed its inclusion during the Sixth Committee's debates. Sweden argued that 'national groups' needed clarification so that it would not be dependent on the existence of a State. In order to avoid, in the absence of a State, such groups falling under 'political groups' (and in light of the opposition to the inclusion political groups), Sweden recommended the inclusion of 'ethnical groups'.[123] Egypt saw no justification for its inclusion but was not opposed;[124] the Soviet Union did not object for it 'was not a

111 ibid.
112 UN Doc. A/C.6/214, 4 October 1948, in ibid 1968.
113 UN Doc. A/C.6/SR.69, 7 October 1948, in ibid 1355.
114 ibid 1358; UN Doc. A/C.6/SR.72, 12 October 1948, in ibid 1372.
115 UN Doc. A/C.6/SR.74, 14 October 1948, in ibid 1393.
116 ibid 1397.
117 UN Doc. A/C.6/SR.75, 15 October 1948, in ibid 1410.
118 UN Doc. A/C.6/SR.84, 26 October 1948, in ibid 1520.
119 UN Doc. A/C.6/SR.74, 14 October 1948, in ibid 1391. This lacklustre support was curious, given that Bolivia had been the first country to suggest the inclusion of "economic genocide": UN Doc. A/C.6/SR.42, 6 October 1947, in ibid 1402.
120 UN Doc. A/C.6/SR.75, 15 October 1948, in Abtahi and Webb (n 87) 1411.
121 UN Doc. A/BUR/50, Annex 15, 2 November 1946, in Abtahi and Webb (n 47) 3.
122 UN Doc. A/C.6/86, Annex 15b, 26 November 1946, in ibid 6.
123 UN Doc. A/C.6/SR.73, 13 October 1948, in Abtahi and Webb (n 87) 1389; UN Doc. A/C.6.230 & Corr.1, 13 October 1948, in ibid 1984.
124 UN Doc. A/C.6/SR.74, 14 October 1948, in Abtahi and Webb (n 87) 1392; UN Doc. A/C.6/SR.75, 15 October 1948, in ibid 1412.

fresh category [but] was a sub-group of a national group';[125] Uruguay proposed that 'ethnical' should be substituted for the word 'racial';[126] Belgium thought that the two words had exactly the same meaning and that national groups was sufficiently clear;[127] and Haiti was in favour for it reasoned that in certain instances a group may not be considered as a racial group but could fall under 'ethnical'.[128] When it was called for a vote, it passed with 18 for, 17 against and 11 abstentions.[129]

39 Notwithstanding the earlier successful vote to include political groups in the definition, as debate on other articles progressed, it became increasingly clear that a significant number of States would not sign on to a treaty that included them; its supporters had overplayed their cards at the expense of the entire treaty. For this reason, the question was re-opened at the insistence of Iran, Egypt and Uruguay which submitted an amendment to exclude political groups – a mere 11 days before the Genocide Convention (1948) was ultimately adopted.[130] This time, the United States – perhaps the staunchest supporter for the inclusion of political groups – relented. '[I]n a conciliatory spirit and in order to avoid the possibility that the application of the convention to political groups might prevent certain countries from acceding to it',[131] the United States expressed its support for the removal of political groups from Article II. Brazil, Egypt, Iran, Belgium and Australia spoke for whilst Cuba and China spoke against.[132] In the end, the proposed amendment was successful with 22 votes for, 6 against and 12 abstentions.[133] This vote spelled the end for political groups within the Genocide Convention (1948).

125 UN Doc. A/C.6/SR.74, 14 October 1948, in Abtahi and Webb (n 87) 1400.
126 UN Doc. A/C.6/SR.75, 15 October 1948, in ibid 1412.
127 ibid 1413.
128 ibid 1413.
129 ibid 1413.
130 UN Doc. A/C.6/SR.128, 29 November 1948, in ibid 1865–1867.
131 ibid 1867.
132 ibid 1865–1870.
133 ibid 1870; UN Doc. A/760, 3 December 1948, in ibid 2029, para 21.

VI. Concluding Remarks: (re)examining Argentinian jurisprudence on genocide in light of the travaux préparatoires of the Genocide Convention (1948)

When (re)examining the aforementioned Argentinian cases in light of the *travaux préparatoires*, one can observe that the rich legislative history as it pertains to political groups has been overlooked. Indeed, the inclusion of an open-ended broad list of protected groups which expressly included political groups in UN General Assembly Resolution 96(I) – upon which Argentinian courts have placed great weight – appears to have been something of an oversight, for the issue never elicited any substantive debate and was not even considered important enough to merit attention in the report that accompanied the final draft of that resolution. Furthermore, it is clear that the drafters of the Genocide Convention (1948) never seriously intended at any point after UN General Assembly Resolution 96(I) to include a broad open-ended list of protected groups. That resolution was both the first and last time that such a formula was put forward as a serious option with respect to the protected groups.[134] Only ethnical, national, religious, racial, political, linguistic and economic groups were ever subject to substantive debate during the negotiations. Of these, only national, religious and racial groups received consistent and undivided support throughout the entire process. The suggestion of including economic and linguistic groups were short-lived affairs, whilst ethnical groups appeared fairly late and was only included by the narrowest of margins. Although political groups elicited constant debate, it was ultimately voted out of existence. There is no evidence that any other groups were seriously considered for inclusion. Moreover, the category of national groups was purposefully clarified with the addition of ethnical groups so that no future generation or judge would confuse or extract from it political groups – which, as recounted earlier, is precisely what some Argentinian courts have done. Last, the *travaux préparatoires* demonstrate that it was a desire for the

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134 China did very briefly suggest the following definition (but note the closed protected groups):
In this Convention, Genocide means any of the following deliberate acts directed against a national, racial, religious, (or political) group as such, whether on national, racial, religious, (Political) or any other grounds.
This suggestion never went to a vote as in the space of a few speakers China would remove the open ended 'any other grounds' formula. See UN Doc. E/AC.25/SR/12, 23 April 1948, in Abtahi and Webb (n 47) 863–866.

widespread ratification of the Genocide Convention (1948) that ultimately saw political groups being excluded. Here, a consistent theme emerges from among those States that opposed political groups from the beginning: its lack of permanency and stability when compared to religious, national, ethnical and racial groups.

41 To be clear, the above analysis is restricted to the *travaux préparatoires* of the protected groups found in Article II of the Genocide Convention (1948) because this is what that the above Argentinian judgments relied upon. They did not, for example, rely on a domestic definition of genocide found in a criminal code where the protected groups could have been altered to explicitly encompass political or other groups.[135] And so, one question remains: where do these conclusions leave Argentinian jurisprudence on genocide against political groups? It is submitted that they simply cannot stand up to historical scrutiny; they go (blatantly) against the historical intent of the drafters of the Genocide Convention (1948). There is simply no basis whatsoever for an expansive interpretation of 'national' groups based on the *travaux préparatoires* and in particular, expanding them to include political groups. As the above demonstrates, although the inclusion of political groups was actively discussed and indeed almost made it into the final text, the fact remains that a conscious decision was made to exclude them. That this was done out of political expediency is irrelevant. What is relevant is the reason why it caused problems in the first place: its lack of stability and permanency.

42 Putting these conclusions to one side, this chapter also subtly raises a head-scratching question: why has no-one apparently challenged these genocide findings on appeal on the basis of said *travaux préparatoires* in

135 See Manuel J Ventura, 'Terrorism According to the STL's Interlocutory Decision on the Applicable Law: A Defining Moment or a Moment of Defining?' (2011) 9 Journal of International Criminal Justice 1021, 1032–1033 (discussing how various States have defined genocide's protected groups for the purposes of their domestic criminal law, with some expressly expanding them to include, among others, political groups). In the case of Argentina, its (non-retroactive) domestic definition of genocide – incorporated into Argentinian criminal law in 2006 when it adopted Law No. 26.200 to implement the Rome Statute of the International Criminal Court (1998), which entered into force in early 2007 – includes precisely the same protected groups as found in Article II of the Genocide Convention (1948): national, racial, religious and ethnical groups: see Rome Statute of 17 July 1998 Implementation Law [2007]. That the Argentinian legislature did not incorporate political groups into its domestic definition of genocide, when it well could have, seems to further undermine the Argentinian judgments discussed in this chapter.

Argentina? Indeed, there does not appear to be any appellate judgments in Argentina that have directly engaged with the question of whether the Genocide Convention (1948) really does encompass political groups (whether as part of a national group or otherwise) from this perspective. Neither has the Inter-American Court of Human Rights been seized of this matter. However, the Inter-American Commission on Human Rights did address this issue in *Díaz et al. v. Colombia*, finding that:

> [t]he definition of genocide provided in the [Genocide] Convention does not include the persecution of political groups, although political groups were mentioned in the original resolution of the General Assembly of the United Nations leading to the preparation of the Convention on Genocide. The mass murders of political groups were explicitly excluded from the definition of genocide in the final Convention. Even in its more recent application in fora such as the Yugoslavia War Crimes Tribunal, the definition of genocide has not expanded to include persecution of political groups. The Commission concludes that the facts alleged by the petitioners set forth a situation which shares many characteristics with the occurrence of genocide and might be understood in common parlance to constitute genocide. However, the facts alleged do not tend to establish, as a matter of law, that this case falls within the current definition of genocide provided by international law.[136]

In light of the fact that the Spanish Supreme Court has rejected the *Audiencia Nacional*'s reasoning in *Scilingo*, the *travaux préparatoires* of the Genocide Convention (1948) as detailed above, and the Inter-American Commission's decision in *Díaz et al. v. Colombia*, a legal challenge against a finding that genocide as defined in the Genocide Convention (1948) occurred in Argentina would be on solid ground. Time will tell if any Argentinian Defence counsel will take up this issue. 43

Further Reading

Beth van Schaack, 'The Crime of Political Genocide: Repairing the Genocide Convention's Blind Spot' (1997) 106 The Yale Law Journal 2259.

136 *Díaz et al v Colombia (Admissibility)* [1997] IACmHR Case No. 11.227 [24–25]. Colombia subsequently adopted a domestic legislative definition of genocide which, contrary to the Genocide Convention (1948), expressly includes political groups as a protected group: Article 101, Penal Code of Colombia.

Daniel Feierstein, 'El concepto de genocidio y la "destrucción parcial de los grupos nacionales" Algunas reflexiones sobre las consecuencias del derecho penal en la política internacional y en los procesos de memoria' (2016) 61 Revista Mexicana de Ciencias Políticas y Sociales 247.

Daniel Feierstein, 'Political Violence in Argentina and Its Genocidal Characteristics' (2006) 8 Journal of Genocide Research 149.

David L Nersessian, Genocide and Political Groups (Oxford University Press 2010).

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