The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol

A Commentary

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Article 42 of the 1951 Convention/ Article VII of the 1967 Protocol

Article 42 (Reservations/Réserves)

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1), 33, 36–46 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

1. Au moment de la signature, de la ratification ou de l'adhésion, tout État pourra formuler des réserves aux articles de la Convention autres que les articles 1, 3, 4, 16 (1), 33, 36 à 46 inclus.

2. Tout État Contractant ayant formulé une réserve conformément au paragraphe 1 de cet article pourra à tout moment la retirer par une communication à cet effet adressée au Secrétaire général des Nations Unies.

Article VII (Reservations and Declarations/Réserves et Déclarations)

1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16 (1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.

2. Reservations made by States Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.

3. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

4. Declarations made under article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by

1. Au moment de son adhésion, tout État pourra formuler des réserves sur l'article IV du présent Protocole, et au sujet de l'application, en vertu de l'article premier du présent Protocole, de toutes dispositions de la Convention autres que celles des articles 1, 3, 4, 16 (1) et 33, à condition que, dans le cas d'un État partie à la Convention, les réserves faites en vertu du présent article ne s'étendent pas aux réfugiés auxquels s'applique la Convention.

2. Les réserves faites par des États parties à la Convention conformément à l'article 42 de ladite Convention s'appliqueront, à moins qu'elles ne soient retirées, à leurs obligations découlant du présent Protocole.

3. Tout État formulant une réserve en vertu du paragraphe 1 du présent article peut la retirer à tout moment par une communication adressée à cet effet au Secrétaire général de l'Organisation des Nations Unies.

4. Les déclarations faites en vertu des paragraphes 1 et 2 de l'article 40 de la Convention, par un État partie à celle-ci, qui adhère au présent Protocole, seront censées s'appliquer sous le régime du présent Protocole, à moins que, au moment de l'adhésion, un avis contraire n'ait

the State Party concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and 3, and of article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

été notifié par la partie intéressée au Secrétaire général de l'Organisation des Nations Unies. Les dispositions des paragraphes 2 et 3 de l'article 40 et du paragraphe 3 de l'article 44 de la Convention seront censées s'appliquer, mutatis mutandis, au présent Protocole.

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A. Function of Articles 42 and VII

1 Article 42 of the 1951 Convention, combined with Art. VII of the 1967 Protocol, covers a wide range of legal questions relating to the rules applicable to reservations to treaties and to interpretative declarations. Moreover, while Art. 42 simply reflects some basic rules contained in Arts. 19 and 23 of the 1969 Vienna Convention on the Law of Treaties (VCLT), Art. VII raises interesting and complex issues of succession of treaties in time. Given their close relationship, they must be examined together.

2 An examination of these provisions is all the more stimulating since both provisions have been the object of a quantatively unusual practice, problematic in various respects.

3 However, it must be noted that, besides the possibility to make reservations by virtue of Art. 42, the 1951 Convention provides for a variety of what the ILC has termed 'alternatives to reservations', *i.e.* procedures to which States have recourse 'in order to achieve results comparable to those effected by reservations':[2]

(1) Several articles provide for exceptions on grounds of national security or public order.[3]
(2) For States parties to the 1951 Convention only,[4] the temporal application of that instrument is limited to the date of 1 January 1951.[5]

[1] *Cf.* Pellet, 'Article 19', in *Les Conventions de Vienne*, pp. 641–788, *passim*; Pellet/Schabas, 'Article 23', in *Les Conventions de Vienne*, pp. 971–1017, *passim*.

[2] ILC, Draft Guide to Practice on Reservations to Treaties (*cf. infra*, fn. 7), draft guideline 1.7.1 (Alternatives to Reservations); ILC, UN Doc. A/55/10 (2000), pp. 253–269 (complete text and commentary of this provision).

[3] *Cf.* Arts. 9, 28, 32, 33 of the 1951 Convention.

[4] The very purpose of the 1967 Protocol is explained as follows in the last recital of the Preamble: '... it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951'. For further details *cf.* Alleweldt, Preamble 1967 Protocol MN 7–8. Art. I, para. 2 of the 1967 Protocol provides that: 'For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and..." and the words "... as a result of such events", in article 1 A (2) were omitted.' For further details *cf.* Schmahl on Art. I, *passim*.

[5] For further details *cf.* Zimmermann/Mahler on Art. 1 A, para. 2 MN 113–122.

(3) By the same token, the contracting States may limit the territorial scope of the 1951 Convention by declaring that it only applies to 'events occurring in Europe [and not elsewhere] before 1 January 1951';[6] according to the ILC 'Guide to Practice'[7] on reservations to treaties, such a declaration does not actually qualify as a reservation.[8]

(4) Under the colonial clause of Art. 40 of the 1951 Convention, a contracting State also 'may... declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible'.[9]

(5) As noted by some delegations during the *travaux préparatoires* of the 1951 Convention, the federal clause of Art. 41 may appear as a disguised possibility for federal States to make reservations otherwise prohibited;[10] and the same holds true for Art. VI of the 1967 Protocol, the wording of which is similar to that of Art. 41 of the 1951 Convention.

[6] Art. 1 B, para. 1 (a) of the 1951 Convention. Here again the 1967 Protocol erases this territorial limitation, without completely deleting it: 'The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declararions made by States already Parties to the Convention in accordance with article 1 B (1) (a) of the Convention, shall, unless extended under article 1 B (2) thereof, apply also under the present Protocol.', Art. I, para. 3 of the 1967 Protocol.

[7] In 1995, the ILC decided that it would 'adopt a guide to practice in respect of reservations. In accordance with the Commission's statute and its usual practice, this guide would take the form of draft articles whose provisions, together with commentaries, would be guidelines for the practice of States and international organizations in respect of reservations', *ILC Yearbook, vol. I, part II* (1995), p. 108 (paras. 487–488); *cf.* also GA Res. 50/45 of 11 December 1995, para. 4.

[8] *Cf.* draft guideline 1.4.7 (Unilateral Statements Providing for a Choice Between the Provisions of a Treaty): 'A unilateral statement made by a State or an international organization, in accordance with a clause in a treaty that expressly requires the parties to choose between two or more provisions of the treaty, is outside the scope of the present Guide to Practice.' *Cf.* also draft guideline 1.7.1 (Alternatives to Reservations): 'In order to achieve results comparable to those effected by reservations, States or international organizations may also have recourse to alternative procedures, such as:–The insertion in the treaty of restrictive clauses purporting to limit its scope or application;...' ILC, UN Doc. A/64/10 (2009), pp. 196, 197.

[9] In draft guidelines 1.1.3 and 1.1.4 of its Guide to Practice (ILC, UN Doc. A/64/10 (2009), p. 192), the ILC deals with 'reservations having territorial scope' or 'formulated when notifying territorial application' (*i.e.* 'opting out' declarations), but Art. 40 of the 1951 Convention provides for 'opting in' declarations. Two unilateral declarations respectively made by Georgia ('According to the para. 1, Art. 40 of the... Convention, before the full restoration of the territorial integrity of Georgia, this Convention is applicable only to the territory where the jurisdiction of Georgia is exercised') and Moldova ('According to paragraph 1, article 40 of the Convention, the Republic of Moldova declares that, until the full restoration of the territorial integrity of the Republic of Moldova, the provisions of this Convention are applicable only in the territory where the jurisdiction of the Republic of Moldova is exercised' do correspond to the definition given in draft guideline 1.1.3. The ECtHR had to deal with similar reservations made by Moldova and concluded that they were invalid reservations, *cf.* ECtHR, *Ilaşcu and others v. Moldova and the Russian Federation*, Decision of 4 July 2001; *cf.* also ECtHR, *Assanidze v. Georgia*, RJD 2004-II, p. 259 (para. 140). For further details on the 'colonial clause' and a table with the list of territories to which the 1951 Convention was applied *cf.* Gil-Bazo on Art. 40 MN 49, *passim*. As to the meaning and scope of Art. VII, para. 4 of the 1967 Protocol, *cf. infra*, MN 31–32.

[10] Thus, 'Mr. ROCHEFORT (France) wondered whether, through the operation of the Federal State clause, it would not be possible for a Federal State to paralyse the application of the provisions of article 36 and thus to make reservations on articles to which no reservations were permissible', Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.30 (1951), p. 23. After the rejection of a safety clause proposed by France, 'Mr. ROCHEFORT (France) made the following statement on behalf of the French Government for inclusion in the summary record: the French Government interpreted article 41 as meaning that the federal clause could not in practice enable reservations to be entered in respect of articles to which reservations were not permitted', Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.35 (1951), p. 28. For further details on the 'federal clause' *cf.* Gil-Bazo on Art. 41/Art. VI, *passim*.

These various means of mitigating the respective rights and obligations of the parties to the 1951 Convention are dealt with in more detail elsewhere in this volume, in the commentaries on the relevant provisions.[11]

4 Notwithstanding those provisions, Art. 42 of the 1951 Convention and Art. VII of the 1967 Protocol:

- exclude reservations to four substantive provisions of the 1951 Convention (Art. 3 (Non-Discrimination), 4 (national treatment regarding freedom of religion), 16, para. 1 (Access to Courts), and 33 (Prohibition of Expulsion or Return *('Refoulement')*), and the 'executory and transitory provisions' of Chapter VI (with the exception of Art. 35 'co-operation of the national authorities with the United Nations');
- explicitly[12] or implicitly[13] exclude reservations to Final Clauses except to Art. IV of the 1967 Protocol on the settlement of disputes;
- include very common provisions concerning the withdrawal of reservations made under both articles; and
- Art. VII of the 1967 Protocol states the rules applicable for combining the reservations and declarations made in respect to the 1951 Convention with its own provisions.

B. Drafting History

I. Article 42 of the 1951 Convention

5 Besides some revealing considerations of principle on the role of reservations in a treaty of the nature of the 1951 Convention, Art. 42 as such did not give rise to long debates during the *travaux préparatoires* of the 1951 Convention, although there were rather extensive exchanges of views on the necessity felt by many States to make reservations to a number of the draft provisions.[14]

6 During its first session, the Ad Hoc Committee on Statelessness and Related Problems—established in accordance with ECOSOC Resolution 248B (IX) of 8 August 1949 in order to draft the text of a revised and consolidated convention relating to the international status of refugees and stateless persons—agreed in principle 'to incorporate a reservation article in the draft convention but there was disagreement as to its scope' and it provided no text to that end in expectation of comments from governments.[15] It was only during its second session in August 1950 that the Ad Hoc Committee on Refugees and Stateless

[11] For further details *cf.* Alleweldt, Preamble 1967 Protocol, *passim*; Zimmermann/Mahler on Art. 1 A, para. 2, *passim*; Schmahl on Art. 1 B, *passim*; Davy on Art. 9, *passim*; Vedsted-Hansen on Art. 28, *passim*; Davy on Art. 32, *passim*; Kälin/Caroni/Heim on Art. 33, para. 1, *passim*; Gil-Bazo on Art. 40, *passim*; Gil-Bazo on Art. 41, Art. VI, *passim*; Schmahl on Art. I, *passim*.

[12] Art. 42, para. 1 of the 1951 Convention excludes reservations to Arts. 36–46 inclusive; said articles relate to information on national legislation (Art. 36), relation to previous conventions (Art. 37), and final clauses (Chapter VII—Arts. 38–46) including Art. 38 on settlement of disputes.

[13] According to Art. VII, para. 1 of the 1967 Protocol, 'At the time of accession, any State may make reservations in respect of Article IV of the present Protocol...'; *a contrario*, this implies that no reservation is admissible in respect of all other provisions not explicitly mentioned in that article, *cf.* Art. 19 (a) VCLT and *infra*, MN 19.

[14] *Cf.* in particular the reluctance of several States to accept the right to public education (draft Art. 17 which has become Art. 22 of the 1951 Convention), Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.10 (1951), pp. 11 *et seq.* *Cf.* also the discussions on the right to public relief (draft Art. 18, current Art. 23 of the 1951 Convention) and to social security (draft Art. 19, current Art. 24), *ibid.*, pp. 18 *et seq.*

[15] Ad Hoc Committee on Statelessness and Related Problems, UN Docs. E/1618 and E/AC.32/5 (1950), p. 62.

Persons, while reiterating 'the hope that there will be few reservations',[16] was able to agree on a draft Art. 36 on 'Reservations'. Paragraph 1[17] of that provision read: 'At the time of signature, ratification or accession, Contracting States may make reservations to articles of the Convention other than Arts. 1, 3, 11 (1), 28 and Chapters VI and VII.'[18]

Besides the replacement of 'Contracting States' by 'any State',[19] the only changes made 7
by the Conference of Plenipotentiaries were the addition of one more provision to which reservations are prohibited and, in the other direction, the exclusion from the list of what is now Art. 35 of the 1951 Convention (then draft Art. 30) on 'co-operation of the national authorities with the United Nations', which was (and is) the first article in Chapter VI on 'Implementation [now: 'Executory'] and Transitory Provisions'.

It is not without interest to note that the text of the 1951 Convention was prepared while, 8
following difficulties with the issue of the reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), the issue was still pending before the ICJ and the ILC, as the Legal Counsel of the United Nations recalled before the Conference of Plenipotentiaries on 26 November 1951.[20] It is precisely to avoid that kind of problem that draft Art. 36 was adopted (as Art. 42 of the 1951 Convention):

> In practice, however, difficulties generally arose out of failure to make provision for reservations in a convention. In the present case, article 36 covered the point. It was generally admitted that the negotiating parties could formulate an article on reservations in any way that they desired. The possibility of entering reservations could be excluded entirely, or could be made applicable to all the provisions of an instrument or to certain articles only. In article 36, the Conference had chosen the last mentioned method by excluding certain articles from reservation. That procedure was perfectly permissible. If article 36 was adopted as drafted, the situation would be perfectly clear.[21]

During the Conference of Plenipotentiaries, Yugoslavia introduced an amendment to 9
draft Art. 36 'prompted by the desire to ensure that the greatest possible assistance was accorded to refugees'[22] and aiming at mentioning also nine other draft articles among the provisions to which no reservation could be made.[23] However, during the debate, the

[16] Ad Hoc Committee on Refugees and Stateless Persons, UN Docs. E/1850 and E/AC.32/8 (1950), p. 14 (para. 33): Interestingly, the Ad Hoc Committee on Refugees and Stateless Persons specified that it was of the opinion 'that Governments might not find it necessary to reserve an article as a whole when it would be sufficient to reserve exceptional cases or special circumstances in connection with the application of that article'.

[17] Para. 2 of what was to become Art. 42, was drafted in a way very similar to its final wording, the main changes being: (1) the replacement of 'The Contracting State' by 'Any State' following the identical change suggested by Kerno (Assistant Secretary-General in charge of the Department of Legal Affairs) to paragraph 2; and (2) the abandonment of the second sentence initially proposed ('The Secretary-General shall bring such communication to the attention of the other Contracting States'), *cf.* statement of Kerno (Assistant Secretary-General in charge of the Department of Legal Affairs), Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.27 (1951), p. 16; *cf.* also Conference of Plenipotentiaries, UN Doc. A/CONF.2/AC.1/R.1/Add.2 (1951), the principle of which is reflected in Art. 46 (d) of the 1951 Convention.

[18] Conference of Plenipotentiaries, UN Doc. A/CONF.2/1 (1951), p. 19.

[19] Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR. 27 (1951), p. 16; *cf.* also Conference of Plenipotentiaries, UN Doc. A/CONF.2/AC.1/R.1/Add.2 (1951).

[20] Statement of Kerno (Assistant Secretary-General in charge of the Department of Legal Affairs), Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.21 (1951), pp. 18–19.

[21] *Ibid.*; however, this was probably an over-optimistic view: *cf. infra*, MN 20–21.

[22] Statement of Makiedo (Yugoslavia), Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.27 (1951), p. 10.

[23] Draft Arts. 10, 12, 15, 16, 17, 18, 19, 20, 24 relating to the right of association, the right to engage in wage-earning employment, various welfare provisions, administrative assistance, and fiscal charges, *cf.* Conference of Plenipotentiaries, UN Doc. A/CONF.2/31 (1951), p. 3.

Yugoslav representative explained that he 'realized... from the trend of the discussions on the Conference that governments would be forced to enter a great many reservations, and he did not wish his amendment to discourage them from acceding to the Convention'; consequently he withdrew it.[24]

10 In the same spirit, the Conference of Plenipotentiaries adopted a French amendment aimed at 'enabling governments to make a reservation to article 30'[25] (which was to become Art. 35—cooperation of the national authorities with the United Nations). On this occasion the French representative stated that:

> Agreement to allow reservations to be made to article 30 would not prevent the Belgian Government from acting as it wished, while it would permit other governments, among them the French Government, which were unable to adopt the same attitude, to act in accordance with their possibilities and wishes.... The co-operation referred to in article 30 did not necessarily form part and parcel of the application of the Convention.... Although certain countries were prepared to apply article 30 without reservations, others might not desire to go so far... The prohibition of reservations to that article might make it quite impossible for certain States to accede to the Convention.... while the French delegation had nothing in principle against cooperating with the High Commissioner's Office, it maintained that the possibility of making reservations to article 30 reflected a practical need, which, incidentally, was shared by many other countries.[26]

11 The position of the French delegation advocating the possibility to make reservations to Art. 35 was in line with the general view it had expressed during the debate on the geographical limitation of the definition of a refugee in Art. 1 B, para. 1 of the 1951 Convention,[27] which gave rise to lengthy discussions on the role of reservations in supporting the universality of the 1951 Convention. On this occasion, the French representative stated that:

> What France wanted was the adoption, signature and ratification, with the minimum of reservations, of the Convention before the Conference. It was pointless to adopt an apparently generous text, if such generosity was vitiated by reservations and a limited number of accessions.
>
> ...
>
> The Convention on the Status of Refugees must not be allowed to join the earlier conventions in the purple shroud for dead letters. The text of the Convention should be realistic, and founded on the positions of the countries in which the refugee problem was a real one.[28]

[24] Statement of Makiedo (Yugoslavia), Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.27 (1951), p. 10.

[25] Statement of Rochefort (France), *ibid.*, p. 11; 'The French amendment was adopted by 10 votes to none, with 14 abstentions. Article 36, as a whole and as amended, was adopted by 23 votes to none with 1 abstention', *ibid.*, p. 16.

[26] Statement of Rochefort (France), *ibid.*, pp. 13–15; without any reason, the Belgian delegate had 'remarked that the French amendment, if adopted, would in effect leave States free not to co-operate with the United Nations High Commissioner for Refugees', Statement of Herment (Belgium), *ibid.*, p. 11. Interestingly, at the end of the day, no reservation was actually made to Art. 35 of the 1951 Convention as adopted by the Conference of Plenipotentiaries. *Cf.* also *infra*, MN 18, the *volte-face* of France on this issue during the discussion of Art. II of the 1967 Protocol.

[27] *Cf. supra*, MN 3, No. 3 of the enumeration.

[28] Statement of Rochefort (France), Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.20 (1951), pp. 10–11. Note also the odd distinction made by the French representative between reservations restricting the scope of the 1951 Convention and reservations widening it, *cf.* statement of Rochefort (France), Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.22 (1951), p. 20. For his part, van Heuven Goedhart (United Nations High Commissioner for Refugees) declared that he 'believed that the compromise proposal made at the preceding meeting by the Swiss representative might provide a way out of the difficulty, and that existing

This is a rather clear explanation of the positive function of reservations to treaties—which must be balanced with the necessity not to tolerate reservations 'incompatible with the object and purpose of the treaty'.[29]

Eventually, Art. 42 was adopted in second reading without any discussion by 24 votes to none and without any abstentions.[30] 12

It is to be noted that the compromissory clause providing for the ICJ's jurisdiction[31] is part of the provisions to which reservations are prohibited and it seems that there was no debate on this point, either in the Ad Hoc Committee or during the Conference of Plenipotentiaries. This is no mystery: neither the Soviet Union nor its 'satellites'[32] took part in the negotiations of the 1951 Convention. This is a sign of the times—and of the change in the majority of States, now defiant towards any intervention of the ICJ; Art. VII, para. 1 of the 1967 Protocol takes the opposite position. 13

II. Article VII of the 1967 Protocol[33]

The origin of the 1967 Protocol can certainly be found in the Colloquium on the Legal Aspects of Refugee Problems, organized by the Carnegie Endowment for International Peace, with the support of the Swiss government, held at Bellagio (Italy) from 21 to 28 April 1965.[34] The possibility to make reservations proved consensual: 'It was the understanding of the Colloquium that the text in Annex II would allow reservations, within the limits of Article 42 of the Convention, to be made at the time of signature, ratification or accession to the Protocol.' However: 14

> Some members of the Colloquium expressed the view that the requirement of Article 38 of the Convention, relating to the compulsory jurisdiction of the International Court of Justice, would deter some States from acceding to the Protocol, and it was therefore suggested that the Protocol might contain a provision to the effect that States adhering to it would not be precluded from making a reservation, in relation to the Protocol, to Article 38 of the Convention. Others did not believe that this was a major obstacle to adherence. They were concerned also that to make Article 38 optional would result in two groups of States, one bound by Article 38 of the Convention and the other not. Such a result would, in their view, not only be undesirable but might prevent some States which have accepted the Convention, which includes Article 38, from adhering to the Protocol. The Colloquium felt that it was not in a position to evaluate the extent to which such a provision would in fact prove an obstacle to the adherence of States to the Protocol.[35]

differences might be reconciled if States which were unable to accept article 1 without the reinstatement of the words "in Europe" were permitted to enter a reservation in respect of that article.... Of course, the solution was not ideal, and he would prefer all governments to accept the text of article 1 as it stood. But it was desirable that those States which could only accept the definition if it contained the words "in Europe" should nevertheless be enabled to sign the Convention', Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.21 (1951), p. 16. On the Swiss proposal, *cf.* statement of Schurch (Switzerland), Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.20 (1951), p. 14.

[29] *Cf.* Art. 19 (b) VCLT and draft guidelines 3.1.5 (Incompatibility of a Reservation to the Object and Purpose of a Treaty) and 3.1.6 (Determination of the Object and Purpose of the Treaty) of the ILC Guide to Practice, ILC, UN Doc. A/62/10 (2007), pp. 66–82 (for the commentaries of these provisions).

[30] Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.35 (1951), p. 28.

[31] Adopted by 23 votes to none, with 1 abstention, *ibid.*, p. 26.

[32] Yugoslavia could certainly not be described as a satellite of the USSR.

[33] On the history of the drafting of the 1967 Protocol *cf.* Weis, *BYIL* 42 (1967), pp. 39–48.

[34] UNHCR ExCom, UN Doc. A/AC.96/INF.40 (1965), p. 3 (para. 5 (b)). *Cf.* also Deak, *AJIL* 59 (1965), pp. 918–920, *passim*; Weis, *BYIL* 42 (1967), pp. 39–70, *passim*.

[35] UNHCR ExCom, UN Doc. A/AC.96/INF.40 (1965), p. 4 (para. 6 (a)).

15 Consequently, and in keeping with the more flexible approach, the Colloquium adopted a 'Draft Article relating to reservations' which read: 'As among States Parties to this Protocol, reservations may be made to any of the provisions of the Convention, as herein extended, other than those contained in Articles 1, 3, 4, 16(1), 33, 36, 37, 39–46 thereof.'[36]

16 In spite of the reluctance of some (Western) States, this position was maintained in the subsequent phases of the adoption of the 1967 Protocol. As explained in the report of the UNHCR to the GA, in the UNHCR ExCom:

> Some representatives stated that they agreed that the Protocol should contain a provision permitting reservations in respect of the application under the Protocol of article 38 of the Convention concerning the jurisdiction of the International Court of Justice in the case of disputes. Other representatives felt that while there were various disadvantages in such a provision, it could nevertheless be accepted in the interest of the widest possible adherence.[37]

17 The text introduced by the UNHCR to the UNHCR ExCom was based on the draft 1967 Protocol prepared by the Colloquium, and established by the High Commissioner 'in the light of comments by Governments and in consultation with the Secretariat of the United Nations'.[38] The UNHCR ExCom adopted Art. VII in the wording proposed by the High Commissioner and formally 'expressed the desire that article VII of the draft Protocol should not permit reservations to Article II concerning co-operation of the national authorities with the United Nations'.[39]

18 Paradoxically, this position was taken on the initiative of the representative of France, who 'considered that article VII of the draft Protocol which reproduced article 35 [*sic*: Art. 42 referring to Art. 35] of the Convention, should not permit reservations to article II concerning co-operation of the national authorities with the United Nations'.[40]

C. Analysis of Article 42 of the 1951 Convention

19 As noted above,[41] Art. 42 of the 1951 Convention is a very common form of reservations clause and it is certainly true that, as the Legal Counsel of the United Nations explained,[42] enumerating provisions to which a reservation is prohibited largely defuses the difficulties stemming from reservations when the treaty is mute on their admissibility. From the anachronistic standpoint of Art. 19 VCLT, Art. 42, para. 1 of the 1951 Convention corresponds to the hypothesis envisaged by Art. 19 VLCT according to which: 'A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless: (a) the reservation is prohibited by the treaty'.[43]

[36] UNHCR ExCom, UN Doc. A/AC.96/INF.40 (1965), p. 4 (para. 6 (a)). Annex III. The compromissory clause in the 1951 Convention is Art. 38.

[37] UNHCR, UN Doc. A/6311/Rev.1/Add.1 (1967), p. 18 (para. 33).

[38] *Ibid.*, p. 18 (para. 30).

[39] *Ibid.*, p. 18 (para. 37). ECOSOC and then the GA took note of the text of the draft 1967 Protocol—including Art. VII—annexed to the High Commissioner's Report without change, *cf.* ECOSOC Res. 1186 (XLI) of 18 November 1966, and GA Res. 2198 (XXI) of 16 December 1966.

[40] UNHCR, UN Doc. A/6311/Rev.1/Add.1 (1967), p. 18 (para. 32). During the 1951 Conference of Plenipotentiaries, France had taken the exactly opposed view, *cf. supra*, MN 10.

[41] *Cf. supra*, MN 1.

[42] *Cf. supra*, MN 8.

[43] This provision is reproduced in draft guideline 3.1 (a) of the ILC draft Guide to Practice, while draft guideline 3.1.1 lists (and distinguishes between) the cases when a reservation must be held as being expressly prohibited by the treaty. ILC, UN Doc. A/61/10 (2006), pp. 327–333 (text of and commentary on draft guideline 3.1),

As a consequence, reservations to any provision of the 1951 Convention other than those enumerated in Art. 42 might be seen as permissible. However, and still in the purview of the now stabilized contemporary principles applicable to reservations to treaties as exposed in the VCLT and clarified in the ILC draft Guide to Practice, things are rather more complicated than Kerno had envisaged during the 1951 Conference of Plenipotentiaries, when he submitted that 'article 36 gave States, so to speak, a blanket authorization to make any reservations they wished, except in respect of certain specific articles'.[44] As noted in draft guideline 3.1.3 of the ILC draft Guide to Practice ('Permissibility of Reservations not Prohibited by the Treaty'): 'Where the treaty prohibits the formulation of certain reservations, a reservation which is not prohibited by the treaty may be formulated by a State or an international organization only if it is not incompatible with the object and purpose of the treaty.'[45] 20

It could, therefore, not be excluded that reservations formulated on provisions which are not enumerated in Art. 42, para. 1 would be inadmissible because of their incompatibility with the object and purpose of the 1951 Convention and could give rise to objections on this ground. This has not been explicitly the case yet. However, several States objected to the reservation made by Guatemala upon its accession in 1983[46] on the ground that the reservation was 'worded in such general terms that its application could conceivably nullify the provisions of the Convention and the Protocol. Consequently, this reservation cannot be accepted.'[47] 21

The exclusions provided for in Art. 42, para. 1 relate to five substantive provisions of the 1951 Convention concerning respectively the Definition of the Term 'Refugee' (Art. 1), Non-Discrimination (Art. 3), Religion (Art. 4), the general principle of free access to the courts of law (Art. 16, para. 1), and the Prohibition of Expulsion or Return ('*Refoulement*') (Art. 33). There is, unavoidably an element of subjectivity in such a list and one could argue whether freedom of religion is more 'important' than the right to elementary education (Art. 22, para. 1), or free access to courts than freedom of movement (Art. 26). It is, however, remarkable that the enumeration of the rights not open to reservation in Art. 42, para. 1 did not give rise to extensive debates during the negotiation of the 1951 Convention.[48] 22

pp. 333–340 (text of and commentary on draft guideline 3.1.1), in particular pp. 338–339 (para. 9), which precisely exemplifies the case when the treaty contains a particular provision 'prohibiting reservations to specified provisions' (draft guideline 3.1.1 (b))—defined as the 'simplest' situation envisaged by Art. 19 (a) VCLT—by referring to Art. 42 of the 1951 Convention.

[44] Statement of Kerno (Assistant Secretary-General in charge of the Department of Legal Affairs), Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.21 (1951), p. 19.

[45] For the commentary on this provision, *cf.* ILC, UN Doc. A/61/10 (2006), pp. 350–354; *cf.* also ILC, UN Doc. A/CN.4/177/Add.1 (1965), p. 17 (para. 4), or *ILC Yearbook, vol. II* (1965), p. 50 (para. 4).

[46] The first part of the Guatemalan reservation read: 'The Republic of Guatemala accedes to the Convention relating to the Status of Refugees and its Protocol, with the reservation that it will not apply provisions of those instruments in respect of which the Convention allows reservations if those provisions contravene constitutional precepts in Guatemala or norms of public order under domestic law', *cf.* Declarations and Reservations to the 1951 Convention, available at <http://treaties.un.org/Pages/ViewDetailsII.aspx?&src=TREATY&mtdsg_no=V~2&chapter=5&Temp=mtdsg2&lang=en>; Guatemala withdrew its reservations in 2007, *ibid.*

[47] Objection made by Germany, 5 December 1984, *ibid.*; *cf.* also the objections of Belgium, France, Italy, and the Netherlands and the declaration of Luxembourg, *ibid.* According to the ILC, '[a] reservation shall be worded in such a way as to allow its scope to be determined, in order to assess in particular its compatibility with the object and purpose of the treaty', draft guideline 3.1.7 (Vague or General Reservations), ILC, UN Doc. A/62/10 (2007), pp. 82–88 (text of and commentary on this draft guideline); *cf.* also draft guideline 3.1.11 (Reservations relating to Internal Law) and commentary thereon, ILC, UN Doc. A/62/10 (2007), pp. 109–113.

[48] *Cf. supra*, MN 5–13.

23 This, however, is certainly not sufficient to establish that the rights the integrity of which is thus protected are customary law, or part of *jus cogens*.[49] According to Colella:

> Il ne semble pas que la plupart des règles codifiées dans la Convention et non réservables soient considérées, dans la pratique des Etats, comme règles de droit coutumier, d'autant plus que nombre d'Etats sont restés en dehors de son champ d'application (Etats socialistes et arabes). Il est vrai que sur les cinq piliers de la Convention il n'y a que l'article 33, c'est-à-dire le principe de non-refoulement, qui pourrait avoir le caractère de droit international coutumier, comme fondement de la protection des réfugiés.[50]

It is true that this was written in 1989—since then, the 1951 Convention has attracted a quasi-universal participation[51]—and that it might be the case that the 1951 Convention should be considered as a 'norm-creating' instrument, 'which has generated rule[s] which, while only contractual in [their] origin, [have] since passed into the general corpus of international law . . .'.[52] It is dubious whether this is true for all five provisions in question, but if this were the case, it would not change the general picture: there is no general prohibition against formulating reservations to provisions reflecting customary rules of international law;[53] therefore, the express prohibition in Art. 42 remains useful.

24 It is, in any case, clearly untenable to allege that the definition of the term 'refugee' in Art. 1 of the 1951 Convention has attained customary status.[54] In this respect or, more specifically, concerning the prohibition of reservations to that provision, three remarks are in order:

(1) Article 1 was the object of extremely delicate and difficult negotiations and is the result of a compromise[55] which reservations would destroy;
(2) as a result, it is drafted with great care and contain numerous exceptions and qualifications which reflect the objections of States to conferring too expanded a scope *ratione personae*, *loci*, and *temporis* to the 1951 Convention, and thus clearly limiting the need for reservations; and
(3) the article itself includes a clause of choice (Art. 1 B, para. 1) which, while not allowing reservations as such, introduces an element of flexibility, and the declarations made in application of that provision constitute efficient alternatives to reservations.[56]

25 The other articles listed in Art. 42, para. 1 are either provisional (Arts. 36 and 37)[57] or the final clauses (Arts. 38 to 46)—the borderline between the two categories being rather vague. Such a general prohibition of reservations to final clauses is rather exceptional[58]

[49] Ijlstra, in *Refugee Problem*, pp. 955, 958.

[50] Colella, *AFDI* 35 (1989), pp. 446, 450 (footnotes omitted).

[51] On 10 April 2010, it had been ratified or acceded to by 144 States and signed by 19 other States, *cf.* Status of the 1951 Convention, *supra*, fn. 46.

[52] ICJ, *North Sea Continental Shelf*, Judgment, ICJ Reports (1969), p. 41 (para. 71).

[53] *Cf.* draft guideline 3.1.8. of the ILC Guide to Practice, *cf.* ILC, UN Doc. A/62/10 (2007), pp. 88–98 (for the text of and commentary on this guideline); *cf.* also Klein, in *Reservations*, pp. 59, 61.

[54] For further details *cf.* Zimmermann/Mahler on Art. 1 A, para. 2 MN 3, *passim*.

[55] *Cf.* Schmahl on Art. 1, para 1, *passim* and Zimmermann/Mahler on Art. 1, para. 2 MN 51–62.

[56] *Cf. supra*, MN 3, No. 3 of the enumeration. For further details *cf.* Schmahl on Art. 1 B MN 11–15.

[57] Regarding the—highly debatable—exclusion of Art. 35 from the list *cf. supra*, MN 7, 10.

[58] A similar provision, excluding all final clauses from the possibility to make reservations, is to be found in Art. 38 Convention Relating to the Status of Stateless Persons, which provides for the ICJ's jurisdiction in Art. 34. Otherwise, the provisions specifying the articles to which reservations are forbidden do not include among them the final clauses, *cf.* Art. 8 Convention on the Nationality of Married Women, Art. 19 Convention on Fishing and Conservation of the Living Resources of the High Seas, Art. 12 Convention on the Continental Shelf.

and, indeed, superfluous for many of the provisions in question: it would make no sense to formulate a reservation to an article providing for the date of opening to signature (Art. 39, para. 1), the entry into force (here Art. 43), or the denunciation (Art. 44) of a treaty and, although not inconceivable in the abstract,[59] an objection to the, rather infamous (in human rights treaties), 'colonial clause' (Art. 40) would be rather nugatory.

The situation is different with respect to the compromissory clause of Art. 38, that opens 26
the Chapter on Final Clauses.[60] Reservations to the similar provision in the Genocide Convention (Art. IX) were at the origin of the request made to the ICJ for an advisory opinion and the question posed to the ILC by the GA on the admissibility of reservations to the Genocide Convention,[61] which were under examination precisely at the time when the 1951 Convention was being discussed. But the questions were formulated in the abstract; consequently neither the ICJ,[62] nor the ILC[63] tackled the issue, which then remained open until recent years. But it is now clear that a reservation to a clause on the settlement of disputes is not, in itself, incompatible with the object and purpose of human rights treaties.[64] Therefore, if reservations to Art. 38 of the 1951 Convention are, no doubt, impermissible, it is only because—in obvious contrast with the Genocide Convention—Art. 42, para. 1 of the former instrument expressly prohibits them. Indeed no reservation has been formulated with respect to Art. 38—but this is probably one of the main reasons why the former socialist countries and many States from the Third World have distanced themselves from the 1951 Convention for a long time. The abandonment of that prohibition in the 1967 Protocol[65] might have had an effect in the decisions of those States to, finally, accede to the 1951 Convention.

D. Analysis of Article VII of the 1967 Protocol—Its Relationship with Article 42

The possibility to make reservations to the provision concerning the settlement of disputes 27
accepted in Art. VII of the 1967 Protocol is one of the most striking differences between this provision and Art. 42 of the 1951 Convention. As clearly exposed by Weis:

> Article 38 of the Convention, on the other hand, dealing with the settlement of disputes, and providing for the compulsory jurisdiction of the International Court of Justice in the case of disputes between parties relating to its interpretation or application which cannot be settled by any other means, is excluded from reservations under the Convention but may be subject to reservations under

[59] *Cf.* the Soviet declaration relating to Art. XII Genocide Convention: 'The Union of Soviet Socialist Republics declares that it is not in agreement with article XII of the Convention and considers that all the provisions of the Convention should extend to Non-Self-Governing Territories, including Trust Territories', Declarations and Reservations to the 1951 Convention, *supra*, fn. 46.

[60] Rosenne argues that the compromissory clauses could not conceptually be part of the final clauses of a treaty and should not therefore appear in that chapter, Rosenne, *AJIL* 98 (2004), pp. 546–549, *passim*; *cf.* also for further details Oellers-Frahm on Art. 38/Art. IV, *passim*.

[61] GA Res. 478 (V) of 16 November 1950.

[62] ICJ, *Reservations to the Genocide Convention*, Advisory Opinion, ICJ Reports (1951), p. 15.

[63] ILC, UN Doc. A/CN.4/48 (1951), pp. 7–23.

[64] *Cf.* ICJ, *Legality of Use of Force* (Yugoslavia *v.* Spain), Order, ICJ Reports (1999), p. 772 (paras. 32–33); ICJ, *Legality of Use of Force* (Yugoslavia *v.* United States of America), Order, ICJ Reports (1999), p. 924 (paras. 24–25); ICJ, *Armed Activities on the Territory of the Congo (New Application: 2002)*, Judgment, ICJ Reports (2006), pp. 32–33 (paras. 67–68).

[65] *Cf. supra*, MN 12–17.

the Protocol by virtue of Article VII. This was introduced in the light of comments of governments in the interest of universality of the treaty, threatened by the known disinclination of certain States to accept the compulsory jurisdiction of the World Court.[66]

28 Up to April 2010, eleven States had made a reservation to Art. IV of the 1967 Protocol.[67] Therefore, given this difference of approach in respect to reservations to the compromissory clause, the question of the jurisdiction of the ICJ might arise when one party to the dispute is a party to both the 1951 Convention and the 1967 Protocol and has made a reservation to Art. IV of the latter.[68] In such a case, a distinction must be made depending on the refugees concerned: if they are covered by the 1967 Protocol only (post-1951 refugees or, for States having excluded the application of the 1951 Convention to refugees for events having occurred elsewhere than in Europe, in accordance with Art. 1 B, para. 1 (a) of the 1951 Convention),[69] clearly the ICJ will not have jurisdiction; if, on the contrary, the dispute arises in relation to pre-1951 (and, in some cases, only 'European') events, then the ICJ will have jurisdiction.[70]

29 It must be noted that, as time passes, this debate becomes moot: disputes concerning 'pre-1951' refugees are most unlikely to arise. For this same reason, it seems superfluous to take a final position on the question of the applicable provision if a State has made a reservation to a given provision of the 1951 Convention on the basis of Art. VII, para. 1 of the 1967 Protocol but no reservation to that same provision under Art. 42 of the 1951 Convention.[71] The opposite (and more likely) situation is envisaged in Art. VII, para. 2, which clearly means that reservations to the 1951 Convention apply as of right to the 1967 Protocol.[72]

30 It can be noted in passing that, contrary to the assumptions made by some writers,[73] the fact that the 1967 Protocol does not prohibit reservations to Art. 35 of the 1951 Convention in contrast to Art. 42 of the 1951 Convention itself[74] is immaterial with respect to the application of the 1967 Protocol or its combination with the 1951 Convention. According to Art. I, para. 1 of the 1967 Protocol: 'The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined'; Art. 35 of the 1951 Convention is not involved and reservations thereof can raise no problem in respect of the application of the 1967 Protocol.

[66] Weis, *BYIL* 42 (1967), pp. 39, 61; *cf.* also Colella (who simply translates the former passage into French, but without quotation marks), *AFDI* 35 (1989), pp. 446, 451–452.

[67] Six from Africa (Angola, Botswana, Congo, Ghana, Rwanda, and Tanzania); 4 from Latin America and the Caribbean (El Salvador, Jamaica, Saint-Vincent and the Grenadines, and Venezuela), and China.

[68] This is the case for all of the reserving States mentioned in *supra*, fn. 67, with the exception of Tanzania and Venezuela, which are not parties to the 1951 Convention. No question would really arise in case of disputes between a party to the 1951 Convention and the 1967 Protocol and another party only bound by the 1967 Protocol and having made a reservation to Art. IV: in such a case, the ICJ would clearly lack jurisdiction.

[69] *Cf. supra*, MN 3, point (3) in the list.

[70] Along the same lines, but with some hesitations, Weis, *BYIL* 42 (1967), pp. 39, 62; *cf.* also Colella, *AFDI* 35 (1989), pp. 446, 452; *cf.* also Oellers-Frahm on Art. 38/Art. IV MN 40.

[71] According to the present writer, the same reasoning as in *supra*, MN 28 applies: If the 1951 Convention is applicable ('pre-1951' refugees), then the reservation does not apply; it, of course, applies if the dispute concerns post-1951 refugees.

[72] However, several States reiterated their reservations to the 1951 Convention when becoming party to the 1967 Protocol. *Cf. e.g.* the declarations made by Honduras, Latvia, Malta, the Netherlands, or Turkey, Declarations and Reservations to the 1951 Convention, *supra*, fn. 46.

[73] *Cf. e.g.* Weis, *BYIL* 42 (1967), pp. 39, 61 or Colella, *AFDI* 35 (1989), pp. 446, 451.

[74] *Cf. supra*, MN 10.

moreover, here again, the issue is moot since, in spite of the insistence of France during the 1951 Conference,[75] no State has made a reservation to Art. 35 and such a possibility is now in fact excluded.

In the same way as Art. VII, para. 2 of the 1967 Protocol maintains the applicability of the reservations made by the States parties to the 1951 Convention in accordance with Art. 42 thereof, Art. VII, para. 4 extends the application of both the declarations made under Art. 40, paras.1 and 2 of the 1951 Convention and the provisions themselves of Art. 40, paras. 2 and 3 and Art. 44, para.3 to the implementation of the 1967 Protocol. All these provisions relate to the territorial scope of the 1951 Convention and are included in Art. VII rather artificially. Only the Netherlands (in respect to Suriname) and the United Kingdom (in respect to the Bahamas Islands and Jersey) made such declarations on the basis of Art. VII, para. 4.[76] A greater number of dependent territories are affected by the declarations made under Art. 40 of the 1951 Convention,[77] although many of them have subsequently acceded to independence.[78] 31

Very traditionally,[79] Art. 42, para. 2 of the 1951 Convention and Art. VII, para. 3 of the 1967 Protocol specify that reservations can be withdrawn by a simple communication to the depository—the Secretary-General of the United Nations. And, in the same spirit—but with opposite results—Art. VII, para. 4 opens the possibility to States parties to withdraw the declarations made under Art. 40 of the 1951 Convention, and can be seen as overlapping with Art. 44, para. 3 (to which it refers), which also envisages the possibility for any State having made an Art. 42 declaration to put an end to it. 32

E. Overview of the Practice

Article 42 of the 1951 Convention and, to a lesser extent, Art. VII of the 1967 Protocol, have led to an abundant practice—which is summarized in the table appended to the present commentary. On 1 April 2010, 67 States parties had made reservations to the 1951 Convention[80] (but 14 States had partially or completely withdrawn their reservations) and 34 were listed as having made reservations to the 1967 Protocol.[81] 33

Such statistics just give a general idea and are scientifically questionable, if only because the division between reservations proper, on the one hand, and interpretative declarations, on the other, is sometimes tenuous.[82] Thus, several States have formulated 'declarations' interpreting Art. 1 of the 1951 Convention (to which reservations are prohibited) which are 34

[75] *Cf. ibid.*

[76] *Cf.* Declarations and Reservations to the 1951 Convention, *supra*, fn. 46.

[77] *Ibid.*

[78] Several of the declarations made under Art. 40 either reproduce the reservations made by the mother country or include specific reservations (*cf. ibid.*); this is in line with an accepted practice, *cf.* draft guideline 1.1.4 (Reservations Formulated when Notifying Territorial Application) of the ILC Guide to Practice; ILC, UN Doc. A/53/10 (1998), pp. 209–210 (for the complete text of and commentary on this provision).

[79] *Cf.* Art. 22, para. 1 VCLT, the text of which is reproduced in guideline 2.5.1 of the ILC Guide to Practice; ILC, UN Doc. A/58/10 (2003), pp. 190–201 (for the complete text of and commentary on this provision).

[80] Except when otherwise specified, all the data concerning the practice are based on the UNTC, Declarations and Reservations to the 1951 Convention, *supra*, fn. 46.

[81] But this number includes the States parties which have simply reaffirmed, implicitly or explicitly, their reservations to the 1951 Convention and the withdrawn reservations of Guatemala and of Korea.

[82] As for the distinction, *cf.* draft guidelines 1.3, 1.3.1, and 1.3.2 of the ILC Guide to Practice. ILC, UN Doc. A/54/10 (1999), pp. 252–266 (for the complete text of and commentary on this provision).

quite similar to reservations.[83] Similarly, when Angola interprets Art. 17, para. 1 as not meaning 'that refugees must enjoy the same privileges as may be accorded to nationals of countries with which the People's Republic of Angola has signed special co-operation agreements', such an 'interpretation' is hardly compatible with the plain terms of that provision.[84]

35 The Protocol (No 29) on Asylum for Nationals of Member States of the European Union (Protocol 29 TEC)[85] might be perceived as another example of a disguised reservation. It provides that the members of the EU are, in principle, considered as safe countries of origin by the other members for the purposes of granting asylum. Therefore, except in four specific situations, asylum requests from nationals of a State member of the EU are in principle inadmissible in other countries of the EU. Protocol 29 TEC was fiercely criticized and its compatibility with the 1951 Convention and the 1967 Protocol is highly debatable since it is tantamount to introducing a forbidden reservation to Art. 1. Thus the UNHCR observed:

> Such an automatic bar to refugee status determination, introduced by a provision in another legally binding treaty [the EU Protocol on asylum], could result in a partial but essential modification of Article 1 of the 1951 Convention, as revised by the 1967 Protocol. The proposed modification would, in effect, introduce a posteriori a geographical limitation to the application of the refugee definition [which] is incompatible with the 1967 Protocol and the fact that any such previously existing limitation has been removed by the Member States of the Union.... In short, the modification of the Treaties as proposed would affect the very essence of international refugee law since the provision to be adopted in a subsequent international convention between fifteen Contracting States alone would restrict the definition of its beneficiaries. Any such partial derogation from the refugee definition... would be incompatible with the object and purpose of these instruments as a whole. The essential purpose of these two international conventions is to provide for a universally applicable legal regime that ensures protection to an internationally defined group of persons who are in a particularly vulnerable situation. The universal and unconditional application of the international refugee instruments has repeatedly been emphasised by the international community.[86]

[83] *Cf. e.g.* the declaration of Ecuador: 'With respect to article 1, relating to the definition of the term "refugee", the Government of Ecuador declares that its accession to the Convention relating to the Status of Refugees does not imply its acceptance of the Conventions which have not been expressly signed and ratified by Ecuador', which is hardly compatible with Art. 1 A, para. 1 of the 1951 Convention expressly referring to several other treaties (*cf.* also a comparable declaration by Turkey); or that of Mexico: 'It will always be the task of the Government of Mexico to determine and grant, in accordance with its legal provisions in force, refugee status, without prejudice to the definition of a refugee provided for under article 1 of the Convention and article 1 of its Protocol'. As stated in draft guideline 1.3.3 (Formulation of a Unilateral Statement when a Reservation is Prohibited) of the ILC Guide to Practice: 'When a treaty prohibits reservations to all or certain of its provisions, a unilateral statement formulated in respect thereof by a State or an international organization shall be presumed not to constitute a reservation except when it purports to exclude or modify the legal effect of certain provisions of the treaty or of the treaty as a whole with respect to certain specific aspects in their application to its author', *cf.* ILC, UN Doc. A/54/10 (1999), pp. 266–268 (for the complete text of and commentary on this provision); *cf.* also Zimmermann/Mahler on Art. 1 A, para. 2 MN 62–72.

[84] Art. 17, para. 1 of the 1951 Conventions reads: 'The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.' *Cf.* also the Belgian, Latvian, Luxembourg, Malagasy, Dutch, Portuguese, Moldovan, and Spanish general interpretations of the most favouted nation clause in the 1951 Convention.

[85] Protocol (No 29) on Asylum for Nationals of Member States of the European Union (1997) as adapted following the entrance into force of the Treaty of Lisbon (*cf.* Protocol No 1 amending the Protocols annexed to the Treaty on European Union, to the Treaty establishing the European Community, and/or to the Treaty establishing the European Atomic Energy Community).

[86] UNHCR, Position on the Treatment of Asylum Applications, paras. 4 and 5, available at <http://www.unhcr.org/41b6ccc94.pdf>. *Cf.* also Landgren, UNHCR Working Paper No. 10 (1999), p. 16.

Similarly, the European Council on Refugees and Exiles noted that: 36

> Some states also channel applications into an accelerated procedure because the asylum seeker is from a particular country of origin which is considered to be generally safe. The notion of 'safe country of origin' does not relate to an individual assessment of the asylum applicant's status and as such it is wholly unacceptable to maintain the concept as part of a procedure which is based upon the recognition of individual rights. To resort, as some states do, to applying a notion of 'safe country of origin' which effectively excludes certain nationals from having their asylum claim properly examined, amounts to a geographical reservation to Article 1A(2) of the 1951 Geneva Convention. Such a reservation is explicitly prohibited by Article 42 of the 1951 Geneva Convention.[87]

Notwithstanding these uncertainties, Art. 42 of the 1951 Convention and Art. VII of the 1967 Protocol leave ample room for true reservations. The present commentary is not the proper place to provide a detailed analysis of the content and scope of the reservations made by the 144 States parties.[88] However, some general remarks can be made: 37

(1) The provisions which have called for the greatest number of reservations[89] are those providing for social rights and freedom of movement: 31 States have made reservations to Art. 17 (Wage-Earning Employment);[90] 23 States to Art. 24 (Labour Legislation and Social Security);[91] and 17 States to Art. 26 (Freedom of Movement),[92] most of them relating to the place of residence.[93]
(2) Articles 8 (Exemption from Exceptional Measures) and 9 (Provisional Measures) have also been subject to many reservations (respectively 15 and 10 reserving States).[94]
(3) As noted above,[95] many States have also 'interpreted' the numerous most favoured nation clauses in the 1951 Convention as being inapplicable to the rights recognized with regard to citizens of States with which the author of the reservation has concluded special agreements.[96]

[87] ECRE, Guidelines, para. 57.

[88] To both instruments—even though the two lists do not exactly coincide. For more in depth analyses, *cf.* Colella, *AFDI* 35 (1989), pp. 446, 460–469 and Blay/Tsamenyi, *IJRL* 2 (1990), pp. 527, 450–557.

[89] The statistics in this paragraph concern *all* reservations made by the States parties, whether they are still into force or have been withdrawn (*cf. infra*, MN 41). The statistics above illustrate the number of reserving States and not the number and nature of reservations, since States made reservations either to one article as a whole or to one and/or several paragraphs of an article. For more details *cf.* the table appended to this commentary.

[90] For further details *cf.* Edwards on Art. 17 MN 11–12.

[91] For further details *cf.* Lester on Art. 24 MN 8–9.

[92] For further details *cf.* Marx on Art. 26 MN 17–37.

[93] The provisions of the 1951 Convention referring to social rights of refugees appear in Chapters III (Gainful Employment) (Arts. 17–19 inclusive) and IV (Welfare) (Arts. 20–24 inclusive). Several articles pertaining to these chapters have been the object of reservations: 3 reserving States to Art. 18 (self-employment), 4 reserving States to Art. 19 (liberal professions), 2 reserving States to Art. 20 (Rationing), 3 reserving States to Art. 21 (Housing), 12 reserving States to Art. 22 (Public Education), 10 reserving States to Art. 23 (Public Relief). Arts. 22 and 23 are thus among those which have called for the greatest number of reservations. They are also the provisions which have mostly prompted the UNHCR to endeavour to convince States to withdraw them (*cf. infra*, MN 43). For further details *cf.* the respective commentaries in this volume.

[94] Various other provisions were, to a greater or lesser extent, subject to reservations or interpretative declarations: Art. 6 (1 reserving State), Art. 7 (11 reserving States), Art. 11 (2 reserving States), Art. 12 (6 reserving States), Art. 13 (5 reserving States), Art. 14 (4 reserving States), Art. 15 (7 reserving States), Art. 16 (3 reserving States), Art. 28 (7 reserving States), Art. 29 (4 reserving States), Art. 32 (9 reserving States), Art. 34 (11 reserving States). For further details *cf.* the respective commentaries in this volume.

[95] *Supra*, fn. 83.

[96] *Cf.* the reservations formulated by Belgium, Brazil, Cape Verde, Denmark, Finland, Guatemala, Iran, Latvia, Luxembourg, Moldova, the Netherlands, Norway, Portugal, Spain, Sweden, Uganda, and Venezuela.

(4) Several States parties have subordinated the application of the 1951 Convention to their own internal law;[97] while the admissibility of such reservations is questionable, only the reservation of this type formulated by Guatemala was subject to objections by other States parties.[98]

(5) Moreover, and this is specific to the reservations to the 1951 Convention, many of them consist in declaring that the provisions to which they relate are only of a recommendatory nature.[99]

38 The general 'profile' of the reservations made regarding Art. VII of the 1967 Protocol is similar to those made to the 1951 Convention. Besides the reservations excluding application of Art. IV[100] or simply repeating—without it being necessary[101]—those made by the same State to the 1951 Convention, they concern primarily Arts. 17, 24, 26, and the most favoured nation clause. In any case, since Art. VII, para. 2 of the 1967 Protocol has the effect of automatically importing the reservations formulated under the 1951 Convention into the application field of the 1967 Protocol, it is immaterial whether the States reaffirmed or reformulated these reservations on ratification of the 1967 Protocol only. Although they materially relate to articles of the 1951 Convention, they apply equally to the 1967 Protocol. Therefore, the statistics generated under the 1951 Convention apply equally here.[102]

39 Overall, these reservations have resulted in a very limited number of objections: none has been formulated to any reservation specific to the 1967 Protocol; and only eight States parties objected to reservations to the 1951 Convention; moreover, among these objections, six concerned the reservation made by Guatemala upon accession[103] and led to its withdrawal.[104] No reservation to 'maximum effect'[105] has ever been formulated by an objecting State.

[97] *Cf.* the reservations formulated by Angola, Bahamas, Ecuador, Egypt, Italy, and Madagascar. *Cf.* also the general reservation of the Holy See: 'The Holy See, in conformity with the terms of article 42, paragraph 1, of the Convention, makes the reservation that the application of the Convention must be compatible in practice with the special nature of the Vatican City State and without prejudice to the norms governing access to and sojourn therein.'

[98] *Cf. supra*, MN 21.

[99] Angola (Art. 17, para. 2), Austria (Art. 17, paras. 1 and 2), Burundi (Art. 17, paras. 1 and 2), Estonia (Arts. 23, 24), Ethiopia (Arts. 8, 9, 17, para. 2, Art. 22, para. 1), Iran (Arts. 17, 23, 24, 26), Italy (Arts. 17, 18), Latvia (Arts. 17, paras. 1 and 2, 24), Monaco (Arts. 7, para. 2, 15, 22, para. 1, 23, 24), Mozambique (Arts. 13, 22), Moldova (Art. 17, para. 2), Sierra Leone (Art. 17), Spain (Art. 8), Uganda (Arts. 8, 9), Zimbabwe (Arts. 22, para. 1, 23, 24).

[100] *Cf. supra*, MN 28.

[101] *Cf.* Art. VII, para. 2; *cf.* also *supra*, fn. 72.

[102] *Cf. supra*, MN 37.

[103] *Cf. supra*, MN 21.

[104] *Cf. ibid.* The two other objections were made by Ethiopia and Greece. Ethiopia wished 'to place on record its objection to the declaration [made by Somalia upon accession] and that it does not recognize it as valid on the ground that there are no Somali territories under alien domination'. Greece objected to a declaration made by Turkey under Art 1 A, para 2 which reads: 'The Turkish Government considers moreover, that the term "events occurring before 1 January 1951" refers to the beginning of the events. Consequently, since the pressure exerted upon the Turkish minority in Bulgaria, which began before 1 January 1951, is still continuing, the provision of this Convention must also apply to the Bulgarian refugees of Turkish extraction compelled to leave that country as a result of this pressure and who, being unable to enter Turkey, might seek refuge on the territory of another contracting party after 1 January 1951.' Greece later withdrew the objection.

[105] *Cf.* Art. 20, para. 4 (b) and Art. 21, para. 3 VCLT.

Consequently, the reservations made with respect to the 1951 Convention (whether under Art. 42, para. 1 of the 1951 Convention itself or under Art. VII, para. 1 of the 1967 Protocol) produce the effects envisaged by Art. 21 VCLT.[106] And, in practice, when the UNHCR assesses how a State is conducting itself in terms of meeting its obligations, it takes due account of its reservations (and, at the same time inconspicuously encourages the State concerned to interpret such reservations restrictively or to withdraw them altogether).[107] 40

In this respect, it is encouraging to note that, while the call made by the Ad Hoc Committee on Statelessness and Related Problems—which took pains to formulate the 1951 Convention in order to limit the number of reservations as much as possible[108]—was not followed by States parties, there is a continuous trend towards the withdrawal of reservations to the 1951 Convention.[109] Thus, 14 States have totally[110] or partially[111] withdrawn some or all of their reservations. 41

The fact that both the 1951 Convention and the 1967 Protocol include express provisions concerning the withdrawal of reservations might have played a role in this regard. But the renewed calls made to that end by the organs composed of States parties and the patient efforts of the UNHCR are certainly the main reasons for this partial but undeniable success. 42

It is apparent that the UNHCR has played an important role in convincing States to withdraw their reservations. To take just a few examples from some of its recent reports: 43

Egypt:

> As a result of UNHCR's efforts, the Ministry of Education announced that all refugee children with approved registration cards would have access to state schools. *This was seen as a first step towards the lifting of Egypt's reservation* under article 22.1 of the 1951 Convention, whereby the contracting State shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.[112]

Malawi:

> In 2004 *UNHCR continued to lobby the Government to withdraw its reservations* to the 1951 Refugee Convention... though with limited success. However, several improvements were noted.... However, the reservations attached to the 1951 Refugee Convention remain an obstacle to long-term local integration.[113]

Namibia:

> UNHCR continued to encourage the Government of Namibia to lift its reservation to article 26 of the 1951 Refugee Convention.[114]

[106] *Cf.* Müller, in *Les Conventions de Vienne*, pp. 883–934, *passim*; *cf.* also Chapter 4 of the ILC Guide to Practice.

[107] For a recent example, *cf.* UNHCR, Zambia: Analysis of the Gaps in Protection of Refugees, available at <http://www.unhcr.org/46f26f974.pdf>.

[108] *Cf. supra*, MN 6 and specifically, fn. 16.

[109] The provisional character of the reservations is sometimes underlined by the reserving State, *cf.* the reservation of Monaco.

[110] Australia, Greece, Guatemala, Italy, Liechtenstein, Malta, and Switzerland.

[111] Brazil, Denmark, Fiji, and Norway withdrew the reservations they had formulated to some articles, while others remained in place. *Cf.* also the partial withdrawal of their reservations by Ireland or Sweden.

[112] UNHCR, Global Report 2000, p. 252 (Egypt), available at <http://www.unhcr.org/3e23eb517.pdf> (emphasis added).

[113] UNHCR, Global Report 2004, p. 284 (Southern Africa: Regional Overview), available at <http://www.unhcr.org/42ad4dad0.pdf> (emphasis added).

[114] *Ibid.*, p. 285.

44 These efforts are in keeping with the declaration adopted in 2001 by the Ministerial Meeting of States Parties which:

> 4. Encourage all States that have not yet done so to accede to the 1951Convention and/or its 1967 Protocol, as far as possible without reservation;
> 5. Also encourage States Parties maintaining the geographical limitation or other reservations to consider withdrawing them.[115]

This is also in line with the recommendation made by the ILC in draft guideline 2.5.3 of its Guide to Practice.[116]

F. Evaluation

45 It is not easy for a commentator to make a general assessment of the theory and practice of reservations under the 1951 Convention and the 1967 Protocol. However, if one refers to the dialectics which inspired the ICJ in its celebrated 1951 Advisory Opinion, *i.e.* the quest for a fair balance between the search for universality and the wish to preserve the integrity of the convention,[117] it can be seen that the text and the practice of reservations to the 1951 Convention and the 1967 Protocol achieve that goal rather well. The respective Arts. 42 and VII of those instruments certainly encouraged States to amply ratify these texts, while the reservations made by States parties in accordance with these provisions helped them to accept obligations to the extent only that they could effectively implement them while respecting the global object and purpose of those treaties. From this point of view, the drafters of the 1951 Convention were right.[118] The significant number of ratifications read in conjunction with the considerable number of reservations underlines that universality was a realistic goal and reservations a suitable means to achieve it. On the other hand, the express ban of some reservations managed to ensure the integrity of the 1951 Convention, in its essential elements. Not only was it meant to protect some core rights but it also offered reliable criteria to assess the admissibility of the reservations to the 1951 Convention. Therefore the methods by which States seek to circumvent the express prohibitions in Arts. 42 and VII are limited.[119] Moreover, the slow but constant trend of withdrawal of the reservations made is a proper way to rebuild the integrity of the Convention, insofar as it is seen as being endangered by the existing reservations. The practice of reservations under the 1951 Convention should remind analysts that reservations are not always a bad thing. However, this encouraging picture would not be complete or accurate if it did

[115] UNHCR, HCR/MMSP/2001/09 (2002); *cf.* also UNHCR ExCom, UN Doc. A/57/12/Add.1 (2002). The conclusions of the UNHCR ExCom constantly insist upon the withdrawal of reservations: *cf. inter alia* conclusions No. 108 (2008), No. 103 (2005), No. 102 (2005), No. 99 (2004), No. 42 (1987), all published online by UNHCR, *cf.* UNHCR, Thematic Compilation.

[116] Draft guideline 2.5.3 (Periodic Review of the Usefulness of Reservations): 'States or international organizations which have made one or more reservations to a treaty should undertake a periodic review of such reservations and consider withdrawing those which no longer serve their purpose. In such a review, States and international organizations should devote special attention to the aim of preserving the integrity of multilateral treaties and, where relevant, give consideration to the usefulness of retaining the reservations, in particular in relation to developments in their internal law since the reservations were formulated.' ILC, UN Doc. A/58/10 (2003), pp. 207–209 (text of and commentary on this guideline).

[117] ICJ, *Reservations to the Genocide Convention*, Advisory Opinion, ICJ Reports (1951), p. 24. *Cf.* also Pellet, in *Liber Amicorum Judge Oda*, pp. 481–514, *passim*.

[118] *Cf. supra*, MN 9–11. [119] *Cf. supra*, MN 34–40.

not acknowledge the eminent role played by the UNHCR, who, in respect of reservations, functioned as an efficient incentive in the withdrawals and, thus, as the guardian of the integrity of the 1951 Convention.

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Annex
Reservations to the 1951 Convention and the 1967 Protocol[120]

Party	Convention	Protocol	Objections
Angola	General reservation 'subject to Constitution and laws'	IV	
	Art. 8, Art. 9, Art. 17, para. 1, and Art. 26		
Australia	Art. 17, Art. 18,* Art. 19,* Art. 26,* Art. 28, para. 1,* and Art. 32*		
Austria	Art. 17, para. 1, para. 2, Art. 22 para. 1, Art. 23, Art. 25, para. 2, and Art. 25, para. 3		
Bahamas	General reservation		
Belgium	General reservation (MFN), Art. 15		
Botswana	Art. 7, Art. 12, para. 1, Art. 17, Art. 26, Art. 31, Art. 32, and Art. 34	IV	
Brazil	General reservation (MFN), Art. 15,* Art. 17, para. 1,* para. 3*		
Burundi (upon ratification Protocol)	Art. 17, para. 1, para. 2, Art. 22, and Art. 26		
Canada	Art. 23 and Art. 24		
Cape Verde (upon ratification Protocol)	General reservation (MFN)		
Chile	Art. 17, para. 2 (a) and (c), and Art. 34	Refers to the Convention	
China	Art. 14, and Art. 16, para. 3	IV	

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[120] The asterisks indicate withdrawn reservations.

Party	Convention	Protocol	Objections
Congo		IV	
Cyprus (succession)	Art. 8, Art. 9, Art. 17, para. 2 (a) and (c), Art. 24, para. 1 (b), para. 2, Art. 25, para. 1, para. 2, and Art. 25, para. 3		
Denmark	Art. 14* and Art. 17, para. 1 (MFN)		
Ecuador	Art. 1 (declaration) and Art. 15		
Egypt	Art. 12, para. 1, Art. 20, Art. 22, para. 1, Art. 23, and Art. 24		
El Salvador		IV	
Estonia	Art. 23, Art. 24, Art. 25, and Art. 28, para. 1		
Ethiopia	Art. 8, Art. 9, Art. 17, para. 2, and Art. 22, para. 1	Refers to the Convention	
Fiji (succession)	Art. 8, Art. 9, Art. 17, para. 2 (a)* and (c),* Art. 24, para. 1 (b),* para. 2,* Art. 25, paras. 1, 2, and 3		
Finland	General reservation (MFN), Art. 7, para. 2,* Art. 8,* Art. 12, para. 1,* Art. 24, para. 1 (b),* and para. 3, Art. 25,* and Art. 28, para. 1*	Refers to the Convention	
France	Art. 17 and Art. 29, para. 2		
Gambia (succession)	Art. 8, Art. 9, Art. 17, para. 2 (a) and (c), Art. 24, para. 1 (b), para. 2, Art. 25, para. 1, para. 2, and para. 3		
Georgia	General reservation of limited territorial application		
Ghana		IV	
Greece	Art. 8,* Art. 11,* Art. 13,* Art. 17,* Art. 24, para. 3,* Art. 26,* Art. 28,* Art. 31,* Art. 32,* and Art. 34*		
Guatemala	General reservations (MFN)* and subject to Constitution*		Luxembourg
Holy See	General reservation		
Honduras	Art. 7, Art. 17, Art. 24, Art. 36, Art. 31, and Art. 34	I (1)	

Party	Convention	Protocol	Objections
Iran	General reservation (MFN), Art. 17, Art. 23, Art. 24, and Art. 26		
Ireland	Art. 17, Art. 25, Art. 29, para. 1 (partially withdrawn), and Art. 32, para. 1, para. 2		
Israel	Art. 8, Art. 12, and Art. 28	Reaffirms Convention reservations	
Italy	Art. 6,* Art. 7,* Art. 8,* Art. 17,* Art. 18,* Art. 19,* Art. 22,* Art. 23,* Art. 25,* and Art. 34*		
Jamaica (succession)	Art. 8, Art. 9, Art. 17, para. 2 (a) and (c), Art. 24, para 1 (b), para. 2, Art. 25, para. 1, para. 2, and para. 3	IV Reformulates Convention reservations	
Latvia	General reservation (MFN), Art. 8, Art. 17, para. 1, para. 2, Art. 24, Art. 26, and Art. 34	Reaffirms Convention reservations	
Liechtenstein	Art. 17,* Art. 24, para 1 (a)* and (b),* and para. 3*		
Luxembourg	General reservation (MFN)	Refers to the Convention	
Madagascar	Art. 7, para. 1, Art. 8, Art. 9, and Art. 17		
Malawi	Art. 7, Art. 13, Art. 15, Art. 17, Art. 19, Art. 22, Art. 24, Art. 26, and Art. 34	Interpretative declaration of Art. IV	
Malta	Art. 7, para. 2,* para. 3,* para 4,* and para. 5,* Art. 8,* Art. 9,* Art. 11,* Art. 14,* Art. 17,* Art. 18,* Art. 23,* Art. 27,* Art. 28,* Art. 32,* and Art. 34*	Reaffirms Convention reservations	
Mexico	General interpretative declarations (extend the scope of the Convention), Art. 17, para. 2 (a), (b), and (c), Art. 26, Art. 31, para. 2, and Art. 32		
Monaco	Art. 7, para. 2, Art. 15, Art. 22, para. 1, Art. 23, and Art. 24		
Mozambique	Art. 13, Art. 15, Art. 17, Art. 19, Art. 22, Art. 26, and Art. 34		

Party	Convention	Protocol	Objections
Namibia	Art. 26		
Netherlands	General reservation (MFN), Art. 26, General reservation qualified as 'interpretative declaration' (excluding one category of persons from the protection of the Convention)	Reaffirms Convention reservations	
New Zealand	Art. 24, para. 2		
Norway	Art. 17, para. 1 (MFN), and Art. 24*		
Papua New Guinea	Art. 17, para. 1, Art. 21, Art. 22, para. 1, Art. 26, Art. 31, Art. 32, and Art. 34		
Peru (upon ratification Protocol)	General declaration		
Poland	Art. 24, para. 2		
Portugal	General reservation (MFN)	Reaffirms Convention reservations	
Republic of Korea	Art. 7*		
Republic of Moldova	General reservation of limited territorial application, General reservation (MFN), Art. 13, Art. 17, para 2, Art. 21, Art. 24, Art. 26, Art. 31, and two interpretative declarations		
Rwanda	Art. 26	IV	
Sierra Leone	Art. 17, and Art. 17, para. 2, Art. 29		
Somalia	General interpretative declaration	Refers to the Convention	
Spain	General reservation (MFN), Art. 8, Art. 12, para. 1, para. 2, and Art. 26		
St. Vincent and the Grenadines		IV	
Sudan	Art. 26		
Swaziland (upon ratification Protocol)	Art. 22 and Art. 34		

Party	Convention	Protocol	Objections
Sweden	General reservation (MFN), Art. 7, para 2,* Art. 8, Art. 12, para. 1, Art. 14,* Art. 17, para. 2, Art. 24, para. 1 (b)* (partially withdrawn), para. 2,* and para. 3, and Art. 25		
Switzerland	Art. 17,* Art. 24, para. 1 (a)* and (b),* and Art. 24, para. 3*		
TimorLeste	Art. 16, para. 2, Art. 20, Art. 21, Art. 22, Art. 23, and Art. 24	Reaffirms Convention reservations	
Turkey	Two interpretative declarations, General reservation (national treatment)	Reaffirms Convention reservations	Greece : Objection to declaration (withdrawn)
Uganda	Art. 7, Art. 8, Art. 9, Art. 13, Art. 15, Art. 16, Art. 17 (MFN), Art. 25, and Art. 32	Refers to the Convention	
United Kingdom of Great Britain and Northern Ireland	Art. 8, Art. 9, Art. 17, para. 2 (a) and (c), Art. 24, para. 1 (b), para. 2, and Art. 25, para. 1, para. 2, and para. 3		
United Republic of Tanzania		IV	
United States (upon Protocol ratification)	Art. 24, para. 1 (b), and Art. 29		
Venezuela (Bolivarian Republic of) (upon Protocol ratification)	General reservation (MFN)		
Zambia	Art. 17, para. 2, and Art. 17, Art. 22, para. 1, Art. 26, and Art. 28		
Zimbabwe (succession)	All UK reservations withdrawn; Art. 17, para. 2, Art. 22, para 1, Art. 23, Art. 24, and Art. 26		