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Reservations in the Geneva Conventions of 1949 and their Validity

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by [Robert Kolb](#) | Dec 1, 2025



Twenty-three States have appended some declarations when ratifying or acceding to the 1949 [Geneva Conventions](#) (GCs). Not all these declarations embody reservations. According to the law of treaties, the term “reservation” [designates](#) “a unilateral statement, however phrased or named, made by a State when ratifying, acceding or succeeding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.”

There is a specificity of the GCs regarding the law of reservations. Their validity under the object and purpose test stipulated in Article 19 of the [Vienna Convention on the Law of Treaties](#) (VCLT) is influenced by a peculiar clause contained in all these conventions. The clauses contained in Articles 6/6/6/7 of GCs I-IV allow the parties to the Conventions to conclude special agreements to implement the conventional duties or to fill gaps in protection, but they require the parties not to conclude special agreements diminishing (i.e. derogating from) the rights of the protected persons. The relevant sentence [reads](#): “No special agreement shall adversely affect the situation of the wounded and sick, of members of the medical personnel or of chaplains, as defined by the present Convention, nor restrict the rights which it confers upon them.”

If bilateral or multilateral legal acts shall not diminish the rights of protected persons, the most logical interpretation would be that unilateral acts (even more so) cannot lead to such a result. That would mean that reservations to the GCs' rights protections are contrary to Articles 6/6/6/7 applied by analogy, or simply to the object and purpose of these Conventions. Once more, the precise scope of application of these non-derogation provisions needs to be properly ascertained.

Not all the provisions of the GCs stipulate rights of the protected persons. The rule of non-derogation shall indeed extend only to "Geneva Law" provisions stipulating rights of the protected persons. Because the two [Additional Protocols of 1977](#) are part of the GCs, the clause of Article 6/6/6/7 applies to them, but only to the extent they regulate "Geneva Law" issues turning on rights of protected persons. The rules of the "Hague Law" contained in the Protocols, notably Articles 48 *et seq.* of [Additional Protocol I](#) (AP I), are thus not covered. These provisions do not stipulate rights of protected persons in the sense of the GCs, because the protected persons of the latter are so outside the context of hostilities. The protected persons are such because they are, to varying degrees, under the control of the adverse party.

A perusal of the reservations appended to the GC shows to what extent this legal construction can be squared with practice. This post will not review in detail all the declarations but considers them as they relate to the rights of protected persons. For the purpose of this discussion, the various declarations of States are classified into the following legal categories: (1) policy and other declarations, not being reservations; (2) reservations not (directly) affecting the rights of protected persons; and (3) reservations (possibly) affecting the rights of protected persons.

Policy and Other Declarations, Not Being Reservations

A series of declarations do not impinge upon the rights and obligations contained in the GCs and thus do not exclude or modify the legal effect of some of its provisions. These are thus not reservations.

Bangladesh issued the following [declaration](#):

The Permanent Mission of Bangladesh to the United Nations in Geneva has brought to the knowledge of the Swiss Government, by note dated 20 December 1988, the decision of the Government of the People's Republic of Bangladesh to use henceforth the red crescent instead of the red cross as the emblem and distinctive sign.

Iran, in turn, [declared](#):

In view of the prevailing developments in line with increasing the number of emblems, it is emphasized that in the case of approval and increase of new distinctive emblems, the Government of the Islamic Republic of Iran will according to Article 38 of the 1949 Geneva Convention on improving the situation of those wounded in the armed forces

during military expedition in which, mention has been made of the three emblems of Red Cross, Red Crescent and Red Lion and Sun, maintain its right of using the Red Lion and Sun emblem once again.

In the same vein, Israel has made the following [declaration](#): “Subject to the reservation that, while respecting the inviolability of the distinctive signs and emblems of the Convention, Israel will use the Red Shield of David as the emblem and distinctive sign of the medical services of her armed forces.” If that addition of the emblem is seen as a modification of the Convention, it would be a reservation, but it can also be seen as not altering the Conventions and just operating *praeter legem*. It is then a mere declaration.

China [declared](#) as follows:

On 31 May 2000, the People’s Republic of China deposited with the Swiss Federal Council a declaration on the applicability of the Geneva Conventions of 12 August 1949 and the Additional Protocols I and II to the Special Administrative Region of Macao. Pursuant to this declaration, the Conventions and Protocols are applicable to the Special Administrative Region of Macao from 20 December 1999.

Kuwait has made the following policy [declaration](#): “This Accession (...) does not imply recognition of Israel or entering with it into relations governed by the Conventions thereto acceded”, attracting the objection of Israel. The same is true for Yemen, with the same reaction by Israel.

In other cases, the declaration hinges upon a provision of the GCs but does not alter its content. Thus, Suriname [declared](#) that: “Surinam reserves the right to impose the death penalty in accordance with the provisions of Article 68, paragraph 2, without regard to whether the offences referred to therein are punishable by death under the law of the occupied territory at the time the occupation begins.” Because Article 68(2) GC IV makes no reference to the law of the occupied territory in this context, there is no modification of the provision by the mentioned phrase. The declaration seems rather explicative or *ex abundante cautela*. It has been made by other States, notably Pakistan, the Republic of Korea and the United States.

A further declaration of Pakistan is (at best) unclear. It relates to Article 44 of GC IV, which asks a detaining power not to automatically treat as an enemy refugees who do not enjoy the protection of any government. The [declaration](#) reads as follows and is titled “reservation”:

Every protected person who is a national de jure of an enemy State, against whom action is taken or sought to be taken under Article 41 by assignment of residence or internment, or in accordance with any law, on the ground of his being an enemy alien, shall be entitled to submit proofs to the Detaining Power, or as the case may be, to any appropriate Court or administrative board which may review his case, that he does not enjoy the protection of any enemy State, and full weight shall be given to this circumstance, if it is established whether with or without further enquiry by the Detaining Power, in deciding appropriate action, by way of an initial order or, as the case may be, by amendment thereof.

The entitlement to submit evidence does not detract from any right of the protected persons and seems to be fully compatible with Article 44. The declaration seems therefore rather a policy statement.

The same is true of the [so-called reservation](#) of Uruguay to GC III and IV: “With express reservations in respect of Articles 87, 100 and 101 of Geneva Convention III, and of Article 68 of Geneva Convention IV, in so far as they involve the imposition and execution of the death penalty.” If the meaning of this declaration is to combat the death penalty, it is a mere policy statement. The GCs do not mandate the pronouncement of death penalties; they just allow States to impose this under certain restrictive conditions.

An interesting case is the following [reservation](#) to Article 118 GC III on immediate repatriation of prisoners of war at the end of hostilities, made by the Republic of Korea: “The Republic of Korea interprets the provisions of Article 118, paragraph 1, as not binding upon a Power detaining prisoners of war to forcibly repatriate its prisoners against their openly and freely expressed will.” Because Article 118 mandatorily speaks of repatriation (and not release into a third State), this statement would normally be a reservation. But is it known that since the Korean War (1950-1953), this provision has been [interpreted](#) as encompassing release without repatriation. In view of this by now accepted subsequent practice, the reservation of Korea has become a simple interpretative declaration.

Reservations Not (Directly) Affecting the Rights of Protected Persons

A series of reservations on Article 10 GCs bear on the conditions a substitute to the protecting power can be mandated by the detaining power. Thus, in the [formulation](#) of Albania: “The People’s Republic of Albania will not recognize a request by a Detaining Power to a humanitarian organization or to a neutral State to take the place of a Protecting Power, as being in order, unless the Power of which the protected persons are nationals has given its consent.”

The same reservation has been made by other States, e.g. China, DPR Korea, Northern Macedonia, the Russian Federation and Viet Nam. Article 10(2) does not require this; the declaration thus adds a condition. It is therefore a reservation. But this reservation does not directly affect rights of the protected persons. It concerns the conditions under which a detaining power can ask another entity to perform its tasks.

The same can probably be said for Albania’s [reservation](#) to Article 12 GC III and Article 45 GC IV: “The People’s Republic of Albania considers that in case of prisoners of war being transferred to another Power by the Detaining Power, the responsibility for the application of the Convention to such prisoners of war will continue to rest with the Power which captured them.” This provision stipulates the responsibility of the Power taking the prisoners under its custody (§ 2) but does not free the transferring Power of its own responsibility for the respect of the rights of protected persons (§ 3). The precise scope of the reservation is not clear. If it purports to exclude the responsibility of the newly detaining Power, it modifies the provision under § 2; if it merely emphasizes the

responsibility of the original detaining Power under § 3, it rather expands this responsibility and modifies § 3. This reservation, which has been made by a series of States (e.g. Northern Macedonia, Viet Nam) has been objected to by some States as not being valid (e.g. Australia, Barbados, the United Kingdom, and the United States).

A peculiar [reservation](#) of the United States also does not impact the rights of the protected persons. It reads as follows:

The United States in ratifying the Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field does so with the reservation that irrespective of any provision or provisions in said convention to the contrary, nothing contained therein shall make unlawful, or obligate the United States of America to make unlawful, any use or right of use within the United States of America and its territories and possessions of the Red Cross emblem, sign, insignia, or words as was lawful by reason of domestic law and a use begun prior to January 5, 1905, provided such use by pre-1905 users does not extend to the placing of the Red Cross emblem, sign, or insignia upon aircraft, vessels, vehicles, buildings or other structures, or upon the ground.

Reservations (Possibly) Affecting the Rights of Protected Persons

Such a [reservation](#) is the one on Article 85 GC III, e.g. by Albania:

The People's Republic of Albania considers that persons convicted under the law of the Detaining Power, in accordance with the principles of the Nuremberg trial, of war crimes and crimes against humanity, must be treated in the same manner as persons convicted in the country in question. Albania does not, therefore, consider herself bound by Article 85 so far as the category of persons mentioned in the present reservation is concerned.

Article 85 has the following content: "Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention." The declaration of Albania deprives some of the prisoners of their protections under GC III. This type of reservation has been repeated by other States, mainly formerly Socialist States: Angola; DPR Korea; the Russian Federation; Viet Nam; with slightly different formulations. Significantly, this reservation has been objected to as being invalid by a series of Western States, namely Australia, Barbados, the United Kingdom, and the United States.

Guinea-Bissau issued the following [reservation](#) to GCs I, II and III (arts. 13/13/4):

The Council of State of the Republic of Guinea-Bissau does not recognize the 'conditions' provided for in subparagraph (2) of this article [for GC III: Article 4A(2)] concerning members of other militias and members of other volunteer corps, including those of organized resistance movements, because these conditions are not suited to the people's wars waged today.

This reservation does not contest the possibility of such persons to be protected persons and prisoners of war, but rather the restrictiveness of the applicable criteria to that effect, criteria which were altered in Article 44 AP I three years after the issuing of this declaration. The precise extent of the “reservation” is unclear. If the non-recognition of the conditions means that protected persons are deprived of their status, the reservation impinges on rights of protected persons; if, conversely, the point is just to say that persons not fulfilling the conditions should also be treated as protected persons, the declaration expands the rights under the convention and does not conflict with them. Viet Nam has made the same type of declaration. We shall notice that Germany, the United Kingdom and the United States objected to the validity of this reservation. According to the principle that the interpretation of a legal act shall be in case of doubt compatible with and not causing conflicts with the law, the better way to interpret this declaration is to admit that the rights of the protected persons are not curtailed.

Overall, we are left on the rights of protected persons with only the reservation to Article 85 of GC III. This derogates from their rights in a way that is incompatible with the interpretation given to Articles 6/6/6/7 outlined above. The validity of this reservation can thus be impugned; and that has been done by some States, which have objected to this reservation because they considered it invalid. If one follows the line of argument relating to the effect of Article 6/6/6/7 GCs presented above, there is much to commend the objection by the Western States. We may expressly notice that in the whole reservations practice to the GCs, apparently a single type of reservation is contrary to the so defined object and purpose of the Conventions. It can thus be called a marginal phenomenon.

Conclusion

It is hoped that this cataloging and categorizing of statements, understandings and reservations by States to the Geneva Conventions provides not only awareness of the various positions taken respecting various substantive obligations but also a helpful methodology for organizing them and better understanding their legal and practical significance.

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