'Hard power 'and the European Convention on Human Rights

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7 Jurisdiction of the European Court of Human Rights

7.1 Introduction

In the current redaction of the Convention, the Court's jurisdiction is defined by Article 32. That Article provides, firstly, that '[t]he jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33 [inter-State applications], 34 [individual applications], 46 [referrals by the Committee of Ministers of the Council of Europe of problems of interpretation and execution] and 47 [requests by the Committee of Ministers for advisory opinions]' and secondly, that '[i]n the event of dispute as to whether the Court has jurisdiction, the Court shall decide' (that is, the Court enjoys jurisdiction to define the scope of its own competence; this power is sometimes referred to using a German expression, *Kompetenz-Kompetenz*).

This chapter will examine the possibilities for removing the exercise of 'hard power' from the jurisdiction of the Court itself.

7.2 Territorial limitations to the acceptance of Convention jurisdiction

Under the Convention of 1950, the right of individual petition to the then European Commission of Human Rights and the jurisdiction of the Court were conditional on specific declarations to be made by the Contracting State concerned (Articles 25 and 46, respectively, of the Convention of 1950).

Former Article 25 admitted of limiting the acceptance of the right of individual petition (at that time, to the Commission) to a specific period. Former Article 46 similarly allowed Contracting States to accept the Court's jurisdiction on condition of reciprocity on the part of several or certain other Contracting States or for a specified period.

In 1987, Turkey accepted the right of individual petition for a period of three years, but only in respect of 'allegations concerning acts or omissions of public authorities in Turkey performed within the boundaries of the territory to which the Constitution of the Republic of Turkey is applicable'. Greece protested; other Contracting States expressed reservations as to the validity of this restriction. Turkey later extended the validity of its declaration for further three-year periods, but again, only in respect of 'allegations concerning acts or omissions of public authorities in Turkey performed within the boundaries of the national territory of the Republic of Turkey'.

In 1990 Turkey made a declaration '[recognising] as compulsory ipso facto and without special agreement the jurisdiction of the European Court of Human Rights

in all matters concerning the interpretation and application of the Convention which relate to the exercise of jurisdiction within the meaning of Article 1 of the Convention, performed within the boundaries of the national territory of the Republic of Turkey, and provided further that such matters have previously been examined by the Commission within the power conferred upon it by Turkey'. Again, Greece protested.

Given that Turkey recognised the 'Turkish Republic of Northern Cyprus' as a state in its own right, these declarations, taken at face value, excluded the possibility of invoking the Convention against Turkey in respect of matters occurring in northern Cyprus.

An application was brought against Turkey by three Cypriot nationals, one of them Mrs Loizidou, whom we have encountered before: she complained of her arrest and detention by Turkish forces and of denial of access to immovable property of which she claimed ownership. Turkey opposed its territorial restriction.

In its admissibility decision, the Commission '[found] no legal basis in the Convention for a restriction of a declaration under Article 25 other than the temporal limitations provided for in paragraph 2 of this Article'.[868]

Mrs Loizidou's case was later disjoined from those of the two other applicants. After the Commission adopted its report (former Article 31 of the Convention), the Government of Cyprus referred it to the Court.

The Court noted the absence from both Article 25 and Article 46 of any wording providing for territorial restrictions. It continued:

> If, as contended by the respondent Government, substantive or territorial restrictions were permissible under these provisions, Contracting Parties would be free to subscribe to separate regimes of enforcement of Convention obligations depending on the scope of their acceptances. Such a system, which would enable States to qualify their consent under the optional clauses, would not only seriously weaken the role of the Commission and Court in the discharge of their functions but would also diminish the effectiveness of the Convention as a constitutional instrument of European public order (*ordre public*).[869]

Continuing this line of reasoning, the Court went on to dismiss the argument of the Turkish Government that the lack of validity of the territorial restrictions invalidated the Turkish acceptance of the right of individual petition and the Court's jurisdiction.[870]

This ruling is now of historical interest only. Upon entry into force of Protocol No. 11 to the Convention, on 1 November 1998, acceptance of the right of individual

868 *Chrysostomos, Papachrysostomou and Loizidou v. Turkey*, nos. 15299/89, 15300/89 and 15318/89, Commission decision of 4 March 1991, DR 68, p. 216.

869 *Loizidou* (preliminary objections), 23 March 1995, § 75, Series A no. 310.

870 *Loizidou* (preliminary objections), § 91.

petition to the New Court which had replaced the former Commission and Court became *de iure* mandatory – as indeed it had been, *de facto*, many a day before then.[871]

7.3 Reservation (Article 57 of the Convention)

Article 57 of the Convention (like its predecessor, Article 64 of the Convention of 1950) allows Contracting States to make reservations at the time of signature or ratification. This possibility is not unlimited: reservations must relate to a 'particular provision' of the Convention 'to the extent that any law then in force in [the territory of the Contracting State concerned] is not in conformity with the Convention'. Moreover, reservations of a general character are not permitted.

Obviously, making a reservation is no longer an option for Contracting States once they have submitted their instruments of ratification.[872]

The validity of reservations is within the jurisdiction of the Court to consider. Thus, at the time of its ratification of the Convention on 12 September 1997, Moldova made several declarations and reservations, including the following:

> The Republic of Moldova declares that it will be unable to guarantee compliance with the provisions of the Convention in respect of omissions and acts committed by the organs of the self-proclaimed Trans-Dniester republic within the territory actually controlled by such organs, until the conflict in the region is finally definitively resolved.

The Court did not accept this. It disposed of the Moldovan declaration in the following terms:

> It is true that in their observations the Moldovan Government maintained that the declaration should be interpreted as a negative declaration under former Article 25 of the Convention and, after 1 November 1998, under Article 34 of the Convention. However, the Court observes that when the present application was lodged, on 5 April 1999, former Article 25 of the Convention was no longer in force. Furthermore, the Court's jurisdiction to entertain an application under Article 34 of the Convention is not subject to acceptance of it by a High Contracting Party, unlike the competence of the Commission under former Article 25, which was subject to such acceptance.
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> Secondly, the Court notes that the declaration does not refer to a specific law in force in Moldova. The words used by the Moldovan Government – "omis-

871 Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby (ETS 155), Explanatory Report, para. 85.

872 See also Article 19 of the Vienna Convention on the Law of Treaties.

> sions and acts committed ... within the territory actually controlled by such organs, until the conflict in the region is finally definitively resolved" – indicate rather that the declaration in question is of general scope, unlimited as to the provisions of the Convention but limited in space and time, whose effect would be that persons on that "territory" would be wholly deprived of the protection of the Convention for an indefinite period.[873]

Similarly, Azerbaijan's reservation to the effect that it could not apply the Convention 'in the territories occupied by the Republic of Armenia until these territories [were] liberated from that occupation' failed to find favour in the eyes of the Court, which dismissed it in terms identical to those used in the Moldovan case.[874]

France, when depositing its instrument of ratification in 1974, made a reservation to the effect, firstly, that French constitutional and statutory provisions relating to the proclamation of a state of siege or emergency should be understood as complying with the purpose of Article 15 of the Convention, and secondly, that the expression 'strictly required by the exigencies of the situation' '[should] not restrict the power of the President of the Republic [under the French Constitution] to take the measures required by the circumstances'.[875] The state of emergency declared on 14 November 2015, after the terrorist attacks in Paris of the previous day, is stated in the French notice of derogation to be based on these provisions.[876] However, as is also stated in the notice of derogation, '[t]he extension of the state of emergency for three months, with effect from 26 November 2015, was authorised by Law No. 2015-1501 of 20 November 2015 [, which] law also amends certain of the measures provided for by the Law of 3 April 1955 in order to adapt its content to the current context' – and may therefore affect the validity of the reservation.[877]

No less an author than Michael O'Boyle, former Deputy Registrar of the Court and one who has done more to shape Convention law than any person living, suggests that a reservation intended to 'tie the hands of an international court from examining the compatibility of derogatory measures with one of the central provisions of the Convention – in other words to exclude all international control of presidential emergency measures' – may be invalid simply because it is incompatible with the system itself of the Convention.[878]

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873 *Ilaşcu and Others v. Moldova and Russia* (dec.) [GC], no. 48787/99, 4 July 2001.

874 *Sargsyan v. Azerbaijan* (dec.), §§ 59-76.

875 Information taken from the web site of the Council of Europe's Treaty Office, http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?p_auth=hZbjvpFr (retrieved on 12 April 2016).

876 Specifically, Law No. 55-385 of 3 April 1955 on the state of emergency. Information taken from the web site of the Council of Europe's Treaty Office (see previous footnote). (Retrieved on 5 May 2016)

877 *Fischer v. Austria*, no. 16922/90, § 41, Series A no. 312; *Stallinger and Kuso* v. Austria, nos. 14696/89 and 14697/89, § 48, Reports 1997-II; *Pauger v. Austria*, no. 16717/90, §§ 53-54, Reports 1997-III.

878 O'Boyle (2016) at p. 335. cf. Article 19 (c) of the Vienna Convention on the Law of Treaties.

7.4 Conflicting international obligations

Governments may occasionally cite conflicting obligations under international law that in their submission prevent them from complying with their obligations under the Convention.

Article 53 of the Vienna Convention on the Law of Treaties provides that a treaty is void if it conflicts with a peremptory rule of international law (*ius cogens*). One such international legal obligation that would in theory override the Convention is the prohibition of genocide, now generally considered to be *ius cogens*,[879] and the concomitant obligation to punish or extradite (preferably to an international tribunal) those who have committed that crime.[880] Another is the prohibition of torture.[881]

Article 28 of the Vienna Convention on the Law of Treaties provides that treaties shall not bind a party 'in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party'.

Conversely, Contracting States are considered to retain Convention liability in respect of treaty commitments subsequent to the entry into force of the Convention.[882] It does not follow, however, that the later treaty commitment is thereby extinguished: thus, the effect of Article 3 of the Convention is that in extradition cases where the person to be extradited faces the possibility of an irreducible term of life imprisonment – which would constitute a violation of that provision[883] – the Contracting State is under an obligation to accommodate its duty under a later bilateral extradi-

879 International Court of Justice: *Democratic Republic of the Congo v. Rwanda* (judgment of 3 February 2006, I.C.J. Reports 2006, p. 6), *Bosnia and Herzegovina v. Serbia and Montenegro* (judgment of 26 February 2007, I.C.J. Reports 2007, p. 43) and *Germany v. Italy* (judgment of 3 February 2012, I.C.J. Reports 2012, p. 99); International Tribunal for Rwanda: *Prosecutor v. Kayishema and Ruzindana* (ICTR-95-1-T, judgment of 21 May 1999) (note however the judgment of the Appeals Chamber in the same case, which avoids the expression *ius cogens* but describes the crime of genocide as "extremely grave": judgment of 1 June 2001, § 367). See *Vasiliauskas v. Lithuania* (GC), no. 35343/05, § 113, ECHR 2015.

880 Convention on the Prevention and Punishment of the Crime of Genocide (9 December 1948), Articles IV-VII. See *Jorgić v. Germany*, no. 74613/01, § 68, ECHR 2007-III, and *Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.), no. 65542/12, § 157, ECHR 2013.

881 *Al-Adsani v. the United Kingdom* (GC), no. 35763/97, § 61, ECHR 2001-XI; compare *H. and J. v. the Netherlands* (dec.), nos. 978/09 and 992/09, §§ 71-74, ECHR 2014 (which does not use the expression "*ius cogens*" but refers to Articles 146 and 147 of Geneva Convention (IV) on Civilians and Articles 4-8 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). See also International Court of Justice, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, 20 July 2012, I.C.J. Reports 2012, p. 457 at § 99.

882 *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* (GC), no. 45036/98, § 154, ECHR 2005-VI; *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 47, ECHR 2001-VIII.

883 *Vinter and Others v. the United Kingdom* (GC), nos. 66069/09, 130/10 and 3896/10, §§ 119-22, ECHR 2013; *Murray v. the Netherlands* (GC), no. 10511/10, §§ 101-12, ECHR 2016.

tion treaty to extradite with its prior Convention obligation by ensuring that the risk of such a violation is obviated.[884]

The United Kingdom successfully invoked a prior treaty obligation before the Commission in the *Hess* case.[885] As we have seen,[886] Rudolf Hess was the last remaining Nazi prisoner in Spandau Prison. Mrs Hess alleged violations of Articles 3 and 8 of the Convention in that his continued imprisonment in a building capable of housing 600 inmates amounted to solitary confinement and in addition interfered with her own right to respect of her family life.

The United Kingdom was however bound by an agreement under which decisions regarding the administration of Spandau Prison had to be taken unanimously by the four Allied Powers – France, the United Kingdom, the USA, and the Soviet Union. The Soviet Union opposed its veto against attempts by the other three Powers to release Hess.

The Four Power Agreement dated from 1945, thus predating the Convention by five years; moreover, as the Commission found, the United Kingdom was not free to withdraw from it unilaterally. It therefore took precedence over the Convention.

A case in which a respondent sought to invoke conflicting international obligations *postdating* the Convention was *Al-Saadoon and Mufdhi v. the United Kingdom*. The applicants were Iraqi Baathists who were suspected of having orchestrated violent resistance against the multinational force. They were held, first by American, then by United Kingdom forces as 'security internees', until the Royal Military Police found indications linking them to the wilful killing of two British servicemen who had been captured by Iraqi forces during the hostilities and had been held as prisoners of war.

Pursuant to United Nations Security Council Resolution 1483, the Coalition Provisional Authority set up 'an Iraqi Special Tribunal (the 'Tribunal' [later to be known as the 'Iraqi High Tribunal' or 'IHT']) to try Iraqi nationals or residents of Iraq accused of genocide, crimes against humanity, war crimes or violations of certain Iraqi laws'. As between Iraq and the United Kingdom, a Memorandum of Understanding on criminal suspects was in force that granted the United Kingdom contingent of the Multinational Force discretion to keep persons wanted for prosecution before the Iraqi High Tribunal in its physical custody.

The validity of this Memorandum of Understanding was dependent on the mandate of the Multinational Force to remain in Iraq; it therefore came to an end on 31 ecember 2008, the date until which the United Nations Security Council Resolution had extended that mandate.

After the cases against the applicants concerning the deaths of the two British servicemen had been referred to the Iraqi courts, the Iraqi High Tribunal made repeat-

884 Lawson (1999), pp. 297-98 (referring to *Soering*, in which the question arose with respect to the conditions of detention on death row in the Commonwealth of Virginia, the extradition treaty applicable dating from 1899); more recently, *Harkins and Edwards v. United Kingdom*, nos. 9146/07 and 32650/07, § 138, 17 January 2012; *Trabelsi*, §§ 136-39.

885 *Hess v. the United Kingdom*, no. 6231/73, Commission decision of 28 May 1975.

886 6.4.1.2 above.

ed requests for the applicants to be handed over to it. The applicants, for their part, brought proceedings in the English courts seeking to prevent such handover absent assurances that the death penalty, if imposed, would not be carried out. The English courts, however, did not prevent the applicants' handover to the Iraqi authorities, holding (in accordance with their practice at the time – this was before the Court's judgment in *Al-Jedda*) that the United Kingdom's jurisdiction under Article 1 of the Convention was not in issue.

The United Kingdom Government, in the meantime, made representations to the Iraqi Government stating their opposition to the death penalty and asking for assurances that it would not be imposed on the applicants. The President of the IHT, President Aref, invited letters from the victims' families and from the British embassy in Baghdad opposing the imposition of the death penalty in this case, as 'that would be a factor which would be taken into account by the court', and also suggested that it would be helpful if the United Kingdom Government waived its right to civil compensation. Letters of such purport were provided by the British embassy and by the surviving family of one of the two British soldiers; the United Kingdom Government also waived civil compensation.

On 30 December 2008, after the failure of the proceedings brought by the applicants in England, the Court gave an indication under Rule 39 of the Rules of Court,[887] informing the respondent Government that the applicants should not be removed or transferred from the custody of the United Kingdom until further notice. The United Kingdom, however, faced with the expiry of the mandate of the Multinational Force and the Memorandum of Understanding on Criminal Suspects, transferred the applicants into Iraqi custody on the very next day.

The Court held as follows:

> 126. The Government contended that they were under an obligation under international law to surrender the applicants to the Iraqi authorities. In this connection, the Court notes that the Convention must be interpreted in the light of the rules set out in the Vienna Convention on the Law of Treaties of 1969, of which Article 31 § 3 (c) indicates that account is to be taken of "any relevant rules of international law applicable in the relations between the parties". More generally, the Court reiterates that the principles underlying the Convention cannot be interpreted and applied in a vacuum. The Convention should be interpreted as far as possible in harmony with other principles of international law of which it forms part (see *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 55, ECHR 2001-XI, and *Banković and Others v. Belgium and Others* (dec.) [GC],

887 Rule 39 of the Rules of Court provides for the Court to indicate interim measures to the parties. The Court's practice is only to issue an interim measure against a Member State where, having reviewed all the relevant information, it considers that the applicant faces a real risk of serious, irreversible harm if the measure is not applied. See the Practice Direction "Requests for interim measures", available on the Court's Internet web site.

> no. 52207/99, § 55-57, ECHR 2001XII). The Court has also long recognised the importance of international cooperation (see *Al-Adsani*, cited above, § 54, and *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 150, ECHR 2005VI).
> 127. The Court must in addition have regard to the special character of the Convention as a treaty for the collective enforcement of human rights and fundamental freedoms. Its approach must be guided by the fact that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied so as to make its safeguards practical and effective (see, *inter alia*, *Soering*, cited above, § 87; *Loizidou v. Turkey (preliminary objections)*, 23 March 1995, § 72, Series A no. 310; and *McCann and Others*, cited above, § 146).
> 128. It has been accepted that a Contracting Party is responsible under Article 1 of the Convention for all acts and omissions of its organs regardless of whether the act or omission in question was a consequence of domestic law or of the necessity to comply with international legal obligations. Article 1 makes no distinction as to the type of rule or measure concerned and does not exclude any part of a Contracting Party's "jurisdiction" from scrutiny under the Convention (see *Bosphorus*, cited above, § 153). The State is considered to retain Convention liability in respect of treaty commitments subsequent to the entry into force of the Convention (*ibid*., § 154 and the cases cited therein). For example, in *Soering* (cited above), the obligation under Article 3 of the Convention not to surrender a fugitive to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture or inhuman or degrading treatment or punishment was held to override the United Kingdom's obligations under the Extradition Treaty it had concluded with the United States in 1972.[888]

In simple terms, therefore, the Convention ought to have taken precedence, not only because of its particular importance as a human rights instrument (which in itself is a consideration), but also – as a matter of general international law – as an earlier binding document preventing its Parties from subsequently entering into contrary legal obligations. Put differently, notwithstanding the obligations arising from the posterior agreement with Iraq, the United Kingdom remained responsible *ratione materiae* under Article 1 of the Convention.[889]

The irony of this case is that the United Kingdom Government might have won it on its facts: there may not have been any violation of the Convention at all. True, the Memorandum of Understanding on criminal suspects between the United Kingdom and Iraq, unlike a similar agreement with Afghanistan, did not explicitly prohibit use of the death penalty. However, the following curious passage appears in a

888 *Al-Saadoon and Mufdhi*, §§ 126-128.
889 Compare *Matthews v. the United Kingdom* (GC), no. 24833/94, § 33, ECHR 1999-I.

Human Rights Annual Report for 2008 of the House of Commons Foreign Affairs Committee:[890]

> ... [T]he Government states that it has received *assurances* [emphasis added] in relation to the two men from:
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> President of the Iraqi High Tribunal, President Aref, that a death sentence would be commuted, as well as written assurances from Deputy Justice Minister Posho that the two detainees will be treated humanely whilst in Iraqi detention. We are satisfied that the Government of Iraq is aware of its earlier assurances and have no reason to believe that they are not being adhered to.[891]

This titbit is not replicated in the Court's judgment, which was adopted on 2 February 2010. The Government's argument, as reflected in the judgment, relies on the limited use of the death penalty made by the IHT, on the various representations made by them to the Iraqi authorities and the president of the IHT and on the request for clemency submitted by the surviving relatives of one of the two victims, all of which reduce the likelihood of the applicants' being sent to the gallows, but it makes no mention of actual 'assurances'. Likewise, it is apparent from the partly dissenting opinion of Judge Sir Nicolas Bratza (who disagrees only with the finding of the majority that the refusal to comply with the Rule 39 indication violated Article 34 of the Convention) that the existence of 'assurances' was not argued by the respondent Party:

> The fact that, had the United Kingdom obtained the necessary assurances from those authorities some four years before, the applicants could have been safely transferred in December 2008, while undoubtedly relevant in the context of the complaint under Article 3 of the Convention, does not in my view affect the question which falls to be examined under Article 34. As to the latter point, while there are strong reasons to believe that the relevant assurances could have been obtained before the referral of the applicants' case to the Iraqi courts, the lack of success of the efforts made after June 2008 would clearly suggest that there was no realistic prospect of obtaining such assurances or achieving a temporary solution at a time when the expiry of the mandate was imminent, a point confirmed by the evidence of Mr Watkins before the Divisional Court and the Court of Appeal (...).

One is left to wonder whether the language used in the Human Rights Report was inaccurate or, alternatively, whether the respondent Government missed a potentially

890 House of Commons Foreign Affairs Committee, Human Rights Annual Report for 2008, sent for printing on 21 July 2009 and published on 9 August 2009.

891 Statement by the United Kingdom Government, quoted by the House of Commons Foreign Affairs Committee, Human Rights Annual Report for 2008 (Seventh Report of Session 2008-09), page 49 (http://www.publications.parliament.uk/pa/cm200809/cmselect/cmfaff/557/557.pdf).

winning argument. The decision in *Boumediene and Others v. Bosnia and Herzegovina* suggests that the Court might well have reached a different decision under Article 3 of the Convention had it been aware of the promise of the President of the Iraqi High Tribunal: 'subsequent developments and, in particular, the assurances obtained by the [Bosnia-Herzegovina] authorities that the applicants would not be subjected to the death penalty, torture, violence or other forms of inhuman or degrading treatment or punishment' sufficed for the Court to find in that case that the respondent had taken 'all possible steps to the present date to protect the basic rights of the applicants' and accordingly to declare the application inadmissible.[892]

The German academic Peters posits the existence, between Germany and the USA, of secret agreements under which the American National Security Agency is granted access to the personal electronic data of individuals within Germany's jurisdiction. She argues that Contracting States cannot validly agree to, or turn a blind eye to, acts within their jurisdiction by non-Contracting States amounting to violations of rights guaranteed under Article 8 of the Convention. Her view is that such agreements, if they exist, are not necessarily unlawful in international law *per se* but must defer to human rights treaties like the Convention, these constituting international law of a higher order. Moreover, although admittedly the fact that they are not recorded in the United Nations Treaty Series does not affect their validity *per se* as between the contracting Parties, '... their secrecy does delegitimise them and makes the argument that they must somehow cede to the human rights treaties more plausible'.[893] Germany being among the first ten States that ratified the Convention, and for which the Convention entered into force on 3 September 1953, it would appear more straightforward at this point in history to argue that any such agreements would have to defer to the Convention on the more basic ground that they postdate the Convention.

Several cases raising precisely the question of 'lawfulness' and 'necessity in a democratic society' of the interception, collection and storage of data by, or on behalf of, a foreign intelligence service have been communicated to the Government of the United Kingdom. The applicants (groups of NGOs and individuals) base their complaints on *inter alia* the absence of an adequate basis in domestic law for the receipt by the United Kingdom security services of foreign intercept material relating to their electronic communications.[894]

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892 *Boumediene and Others v. Bosnia and Herzegovina*, § 67.

893 Anne Peters, *Surveillance without Borders: The Unlawfulness of the NSA Panopticon, Part II*, EJIL:Talk!, 4 November 2013, http://www.ejiltalk.org/surveillance-without-borders-the-unlawfulness-of-the-nsa-panopticon-part-ii/ (retrieved on 31 March 2016).

894 *Big Brother Watch and Others v. the United Kingdom*, no. 58170/13, communicated on 7 January 2014; *The Bureau of Investigative Journalism and Alice Ross v. the United Kingdom*, no. 62322/14, communicated on 5 January 2015; *10 Human Rights Organisations and Others v. the United Kingdom*, no. 24960/15, communicated on 24 November 2015. See also the ensuing Chamber judgment, *Big Brother Watch and Others v. the United Kingdom*, nos. 58170/13, 62322/14 and 24960/15, 13 September 2018 (referred to the Grand Chamber).

7.5 Conclusion

General treaty law can be of only limited assistance to the defence of a respondent Contracting State.

The only territorial restrictions conceivable are constituted by the failure to extend the validity of the Convention or its Protocols to territories for whose international relations the Contracting State is responsible – that is, not applying the 'colonial clause' of Article 57.

Reservations can no longer be made now that the Convention is in force; and under ordinary treaty law may not be such as to frustrate the very purpose of the Convention as a treaty.

The substantive rights were first set out in the Convention text of 1950 and remain unchanged. The various Protocols entered into force on later dates. They take priority *ratione temporis* over any treaty obligations entered into subsequently – and treaty obligations so venerable that they might override the substantive provisions of the Convention will now surely be few.