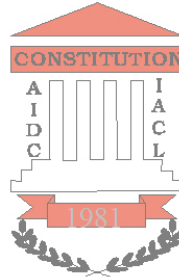
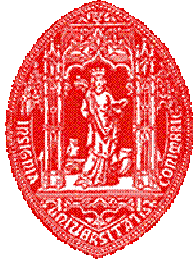




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**“THE STATUS
OF INTERNATIONAL TREATIES
ON HUMAN RIGHTS”**

Coimbra (Portugal), 7-8 October 2005

REPORT

**“HUMAN RIGHTS TREATIES AND THE VIENNA CONVENTION
ON THE LAW OF TREATIES – CONFLICTS OR HARMONY”**

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1. Introduction

This report discusses the relationship between the Vienna Convention on the Law of Treaties¹ and human rights treaties. Rather than being an in-depth scholarly study in the matter, the paper identifies alternative approaches in the issue and discusses their relative strengths and weaknesses. The paper is structured on the basis of five different approaches to the relationship in question. A brief concluding discussion follows their presentation.

2. A Textual (Positivist) Approach to the Vienna Convention as a Treaty Regulating the Law of Treaties

An extreme positivist position in relation to the Vienna Convention would be to take it literally as a treaty that regulates treaty relationships between states in accordance with its own provisions – nothing less and nothing more. The application of such an approach would, somewhat surprisingly, result in a situation where the role of the VCLT is quite marginal and at the same time destructive in respect of the functioning of human rights treaties. This is, firstly, because the total number of states parties to the VCLT (101) is smaller than the number of states parties to any one of the six major UN human rights treaties, the latter ranging from 139 (CAT) to 192 (CRC).² The VCLT would be applicable only in treaty relationships between states that also are parties to this convention. Hence, under a textual reading, the VCLT would not at all apply in respect of a fairly large number of states that are parties to human rights treaties. And in respect of states that are parties to the VCLT, the VCLT would not govern their treaty relationships with states that are not parties to the VCLT.

Secondly, article 4 of the VCLT contains a non-retroactivity clause according to which the convention applies only to treaties which are concluded by states after the entry into force of the VCLT with regard to such states. Consequently, the VCLT would not apply in respect of many treaty relationships under human rights treaties between states that as such *are* parties to the VCLT but ratified it later than their human rights treaties.

To illustrate the consequences of these observations, let's as an example take a look at the 11 states that in the English alphabet start with the letter "A".³ Due to the different ratification records of these states, there are currently 274 bilateral treaty relationships between these states under the six major human rights treaties. As four of the 11 states in question are not

¹ *Adopted, 23 May 1969, entered into force 27 January 1980, 1155 United Nations Treaty Series 331. Parties (17 August 2005): 101.*

² *The six treaties referred to are the International Covenant on Economic, Social and Cultural Rights (CESCR; 16 December 1966, entered into force 3 January 1976, 993 UNTS 3), the International Covenant on Civil and Political Rights, (CCPR; 16 December 1966, entered into force 23 March 1976, 999 UNTS 171), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD; adopted 21 December 1965, entered into force: 4 January 1969, 660 UNTS 195), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW; 18 December 1979, entered into force 3 September 1981, 1249 UNTS 13), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 10 December 1984, entered into force 26 June 1987, 1465 UNTS 85), and the Convention on the Rights of the Child (CRC; 20 November 1989, entered into force 2 September 1990. 1577 UNTS 3). The recent addition to the family, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW; General Assembly resolution 45/158 of 18 December 1990, entered into force 1 July 2003) or Optional Protocols to various treaties are not taken into account here.*

³ *Afghanistan, Algeria, Albania, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria and Azerbaijan.*

parties to the VCLT, and as many of the remaining seven states ratified the VCLT later than most of their human rights treaties, the VCLT is applicable in respect of less than 10 per cent of the total number of bilateral treaty relationships between the 11 states, to be exact in 22 relationships.⁴ Even in respect of the CRC which internationally entered into force in 1990, i.e. almost ten years later than the VCLT, the Vienna Convention is applicable only in respect of six bilateral treaty relationships although all of the 11 states in question are parties to the CRC and the total number of bilateral relationships is therefore 55.⁵

These consequences of the textual positivist approach demonstrate that it would be destructive not only for the coherence of human rights law but for public international law in general mechanically to apply the VCLT, in accordance with its own terms, in some but not all treaty relationships between states. This outcome demonstrates that a sensible relationship between human rights treaties and the VCLT only can be found by understanding the VCLT as something more – or less – than a set of rules to be applied mechanically within the formal scope of application of the VCLT.

3. A Dogmatic Approach to the Vienna Convention as a Complete Codification of the Customary Norms on the Law of Treaties

The non-retroactivity clause in article 4 of the VCLT was central in the discussion above. However, that provision is more complex than was implied in its mechanical application above. The clause reads as follows:

“Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.”

The clause itself speaks against a mechanical positivist application of the VCLT, by referring to rules that would be applicable independently of the VCLT. The formulation reflects a more general understanding of the VCLT as a *codification*, *approximation* or *illustration* of valid norms of customary international law in the field of the law of treaties. But if there is a close connection between the provisions of the VCLT and norms of customary law, what exactly is the nature of that connection? Are we speaking of a codification, approximation or illustration?

One possible answer is to take the view that the International Law Commission managed to codify, in a comprehensive and exhaustive way the customary norms on the law of treaties into the provisions of the VCLT which therefore are for their substance applicable in respect of all treaties between states, irrespective of whether a particular state is a party to VCLT, or in which order it happened to ratify its international treaties.⁶ Hence, the rules of the VCLT

⁴ The number of bilateral relationships in respect of which the VCLT is applicable under each of the six treaties is as follows: CESCR 1, CCPR 3, CERD 0, CEDAW 6, CAT 6 and CRC 6.

⁵ Afghanistan, Angola, Antigua and Barbuda, and Azerbaijan are not parties to the VCLT. Albania, Andorra and Armenia ratified the VCLT later than the CRC. Consequently, the VCLT would be applicable in respect of the CRC in the relationships between Algeria, Argentina, Australia and Austria.

⁶ For a pragmatic, rather than dogmatic approach leading to the same outcome, see, e.g. Anthony Aust, *Modern Treaty Law and Practice*, Cambridge University Press 2000, p. 10: “To what extent does the Convention express rules of customary international law? A detailed consideration of this question is beyond the scope of this book, but it is, with certain exceptions, not of great concern to the foreign ministry lawyer in his day-to-day work. When questions of treaty law arise during negotiations, whether for a new treaty or about one concluded

would be applicable in respect of any multilateral treaty, irrespective of the special characteristics of the treaty. The provisions of the VCLT which were formulated on the basis of a rich variety of practices, would form a straightjacket in relation to treaty law. Such a dogmatic approach to the VCLT as a complete codification of customary law might lead to the denial of any need to adjust the applicable norms of the law of treaties to the nature of each treaty. For instance, as articles 31-33 of the VCLT are silent of the relevance of any institutionalized practices of interpretation developed by an international monitoring body established through the treaty, such practices could be said to have no relevance for the interpretation of the treaty. And as articles 19-21 are silent on the legal effect of impermissible reservations, there might be a temptation to apply the provisions of article 21 which textually could be understood as referring only to permissible reservations,⁷ in respect of any reservation.

These expansive inferences rest upon the assumption that the VCLT would be a true codification of very firm rules of customary international law and that even textual lacunae could be filled by applying the provisions of the VCLT beyond their prescribed scope of application. Such an approach, which is here classified as dogmatic, represents a distorted view of international law and does not hold critical analysis. For instance, on the basis of the preparatory works of the VCLT it is quite clear that the adopted provisions on reservations and objections to reservations were never intended to govern the consequences of impermissible reservations,⁸ and that the rules of customary law in respect of reservations to multilateral treaties were unclear at the time the VCLT was drafted. What came to be reflected in the VCLT is the majority view of the International Court of Justice in its Advisory Opinion in the *Reservations to the Genocide Convention* case. That majority view, in turn, departed with reference to the “special characteristics” of the Genocide Convention from what was referred to as the “traditional concept”, namely the requirement of consent by all parties for the permissibility of any reservation to a multilateral treaty.⁹

4. Human Rights Treaties as One Special Regime: Fragmentation of International Law

There are obvious reasons for why human rights lawyers are uncomfortable with a dogmatic application of the VCLT and call for a modified application of the VCLT rules in respect of human rights treaties, with due account of their special characteristics. Although the VCLT is written as a general treaty applicable in any treaty relationships between states under multilateral treaties, it contains many hidden assumptions that are not justified in respect of human rights treaties. Among the most relevant of such hidden assumptions are the following:

(a) The VCLT is written as if only states and state interests mattered: it deals with reciprocal treaty relationships between states where every right by one state has as its correlate a duty of another state. There are no third parties involved – except perhaps third states¹⁰ – and

before the entry into force of the Convention, the rules set forth in the Convention are invariably relied upon even when the states are not parties to it.”

⁷ Textually, article 21 refers to reservations established “in accordance with articles 19, 20 and 23”, i.e., to reservations that under article 19 are permissible and are not, for instance, contrary to the object and purpose of the treaty.

⁸ *Yearbook of the International Law Commission 1966, Volume II (A/CN.4/SER.A/1966/Add.1 p. 209).*

⁹ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, International Court of Justice, Advisory Opinion of 28 May 1951. ICJ Reports 1951 p. 15. For the “traditional concept” based on the integrity of the treaty, see p. 22, and for the “special characteristics” of the Genocide Convention calling for a more flexible approach, see p. 23.*

¹⁰ See, VCLT article 36.

therefore states can legitimately for instance modify a multilateral treaty in their bilateral relationship through an agreement that represents a practice that is contrary to the wording of the treaty.¹¹

(b) The VCLT is written as if states would have the sole responsibility to monitor each others' compliance with the treaty. There are no courts or other monitoring bodies involved in the interpretation, monitoring or enforcement of a treaty. The VCLT regulates how states may react to each others' performance under a treaty but is silent on the role of any other actors.

Basing themselves on the fact that human rights treaties, although technically treaties between states, provide rights for third parties as beneficiaries, as well as on the existence of courts or expert bodies established under human rights treaties to monitor compliance, human rights lawyers call for a modified application of the VCLT rules in respect of human rights treaties. For instance, it may be proposed that monitoring bodies should have a say in assessing the permissibility and consequences of reservations. Or that the institutionalized practices of interpretation developed by a monitoring body established through a treaty should affect the rules of interpretation under that treaty. Or that states should not be allowed to modify the treaty, with consequences to individuals as affected third parties, without following the amendment procedure prescribed by the treaty.

One conclusion drawn from this uneasiness with the dogmatic application of the VCLT is to emphasize the *sui generis* nature of human rights treaties, describing them as a semi-autonomous or self-contained regime that operates according to rules that reflect its own characteristics and that as *lex specialis* deviate from (valid) rules of public international law as embodied in the VCLT. Similar conclusions may be drawn in relation to treaties on other branches of international law – such as environmental law or trade law, and what results is an erosion of the unity of public international law, also called as fragmentation of international law.¹²

Under the fragmentation approach, the call for stronger normativity under human rights treaties would, paradoxically, contribute to the weakening of international law in general.

5. Human Rights Treaties as Global Constitution: Constitutionalization of International Law

By and large the same arguments may, however, also lead to the opposite conclusion, namely a call for a more coherent and rigid structure of public international law. This approach would put forward the argument that human rights law is something more than just one branch of international law, namely a constitutional dimension of international law, representing objectively binding rules that are binding upon states irrespective of their continuing will to be bound. The European Court of Human Rights often refers to the constitutional nature of the ECHR,¹³ and on the universal level one could speak of human rights treaties as an

¹¹ See, VCLT article 41.

¹² The International Law Commission is currently working on the theme under the title “Fragmentation of international law: difficulties arising from the diversification and expansion of international law”, see International Law Commission, Report on the work of its fifty-sixth session (2004, A/59/10), Chapter X.

¹³ See, for instance, *Bankovic and Others against Belgium and Others*, European Court of Human Rights, Grand Chamber inadmissibility decision of 12 December 2001: “The Court’s obligation, in this respect, is to have regard to the special character of the Convention as a constitutional instrument of European public order for the protection of individual human beings and its role, as set out in Article 19 of the Convention, is to ensure the observance of the engagements undertaken by the Contracting Parties” (§ 80).

embryonic form of a global constitution. The VCLT may remain applicable according to its own terms in respect of those multilateral treaties that merely govern reciprocal relationships between states, with no third parties affected. But its provisions are insufficient and inadequate¹⁴ for capturing the operation of human rights treaties that are more than just treaties between states, namely elements of an emerging global constitutional order.

This approach may build its articulation partly with reference to the category of *jus cogens*, also the recognized in the VCLT itself.¹⁵ However, ultimately the argument rests on the special nature of human rights law itself, calling for supremacy of human rights law in respect of “merely” contractual treaties between states. Consequently, a state may find itself in a situation where its reservation is declared impermissible¹⁶ and treated as severable¹⁷ from the state’s acceptance to be bound by the treaty, while the acceptance itself is understood to be irreversible.¹⁸ Consent by an individual state would no longer be an absolute limit to state obligations under human rights treaties but would be pushed aside by an objectively binding “constitution”.

6. Reconciling the Vienna Convention and Human Rights Treaties

The author of this paper is attracted by the “constitutional” approach just described, at least as a critical tool for addressing the shortcomings of a state-centred conception of evolving international law. As this approach will result in “more law”, rather than the erosion of international legal order that is the consequence of the fragmentation approach, the

¹⁴ “Inappropriate” and “inadequate” were the words used by the Human Rights Committee in its General Comment No. 24 on reservations: “17. As indicated above, it is the Vienna Convention on the Law of Treaties that provides the definition of reservations and also the application of the object and purpose test in the absence of other specific provisions. But the Committee believes that its provisions on the role of State objections in relation to reservations are inappropriate to address the problem of reservations to human rights treaties. Such treaties, and the Covenant specifically, are not a web of inter-State exchanges of mutual obligations. They concern the endowment of individuals with rights. The principle of inter-State reciprocity has no place, save perhaps in the limited context of reservations to declarations on the Committee’s competence under article 41. And because the operation of the classic rules on reservations is so inadequate for the Covenant, States have often not seen any legal interest in or need to object to reservations...”

¹⁵ VCLT article 53.

¹⁶ Human Rights Committee, General Comment No. 24: “18. It necessarily falls to the Committee to determine whether a specific reservation is compatible with the object and purpose of the Covenant. This is in part because, as indicated above, it is an inappropriate task for States parties in relation to human rights treaties, and in part because it is a task that the Committee cannot avoid in the performance of its functions. In order to know the scope of its duty to examine a State’s compliance under article 40 or a communication under the first Optional Protocol, the Committee has necessarily to take a view on the compatibility of a reservation with the object and purpose of the Covenant and with general international law. Because of the special character of a human rights treaty, the compatibility of a reservation with the object and purpose of the Covenant must be established objectively, by reference to legal principles, and the Committee is particularly well placed to perform this task...”

¹⁷ Human Rights Committee, General Comment No. 24, paragraph 18 in fine: “The normal consequence of an unacceptable reservation is not that the Covenant will not be in effect at all for a reserving party. Rather, such a reservation will generally be severable, in the sense that the Covenant will be operative for the reserving party without benefit of the reservation.”

¹⁸ Human Rights Committee, General Comment No. 26: “5. The Committee is therefore firmly of the view that international law does not permit a State which has ratified or acceded or succeeded to the Covenant to denounce it or withdraw from it.” Although the general comment includes references to the VCLT, it includes no mention of article 54 (b), providing for the right of a state to withdraw from a multilateral treaty with the consent of the other parties to the treaty.

constitutional approach is much more appealing from a substantive human rights perspective than the preceding one.

Nevertheless, the author is at the same time mindful of the fact that the constitutional approach may be too radical for many scholars of public international law, not to mention international or domestic judges or governments. Therefore its proponents run a risk of being marginalised in a broader discourse about the place of human rights in world order. In order to avoid this risk, human rights lawyers need to strive for an approach that reconciles the rules of the VCLT with the special characteristics of human rights treaties. Parallel to the elaboration of such a reconciliation approach, they may also resort to the critical nature of the constitutional approach as a justification for the need for a modified, instead of textual or dogmatic, application of the VCLT rules.

In short, the reconciliation approach is based on the acceptance of the VCLT as a *reflection* of norms of customary law, through positive treaty provisions the wording of which was formulated with one ideal type of treaties in mind. The drafters of the VCLT focused on inter-state relationships under a multilateral treaty that establishes no organ for its monitoring or enforcement and that merely regulates reciprocal relationships between states as rights-holders and obligation-bearers, with no affected third parties. Human rights lawyers can accept the full applicability of the provisions of the VCLT in respect of treaties that represent this ideal type of a multilateral treaty.

However, when a treaty does not conform to all the described features of the ideal type, the rules of the VCLT do not represent a complete codification of rules of customary law but, rather, approximations of the applicable rules, subject to modified application whenever the specific characteristics of the treaty so require.

There are elements in the VCLT itself that appear to recognize that not all treaties conform to the ideal type of a multilateral treaty that was the starting-point in formulating the provisions. The clearest examples are constituting treaties of international organizations. Article 5 provides a rule, according to which the VCLT “applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization”. And article 20 on acceptance of and objections to reservations includes paragraph 3 according to which a reservation to a treaty that is a constituent instrument of an international organization “requires the acceptance of the competent organ of that organization”.

Choosing a positivist mood, human rights lawyers could argue that at least some human rights treaties fall under VCLT articles 5 and 20 (3) as “international organizations”. For instance, the International Covenant on Civil and Political Rights has its own membership¹⁹ and establishes its own organs with defined competences.²⁰ Hence, any reservation would require the acceptance by the Human Rights Committee which under the terms of the treaty appears to be the competent organ in respect of all functions that pertain to substantive interpretation of the human rights provisions in the treaty.

Alternatively, and still in the positivist mood, human rights lawyers could argue that most human rights treaties are treaties “adopted within an international organization” under the terms of VCLT article 5. As a consequence, one would turn to “relevant rules of the

¹⁹ ICCPR article 48.

²⁰ ICCPR article 30 (3) (*meeting of states parties*), article 28 (*Human Rights Committee*).

organization” as basis for a modified application of the provisions of the VCLT in issues such as reservations, interpretation and termination.

Instead of these fairly straightforward answers the reconciliation approach under discussion in this section of the paper would take VCLT articles 5 and 20 (3) as reflecting a more general principle, the recognition to adapt the application of the VCLT to the specific features of a treaty. One would ask why the VCLT includes these two provisions in respect of constituting instruments of an international organization and whether the same justification applies in respect of some other category of treaties. According to literature, the justification for VCLT article 20 (3) lies in the essential need to preserve the integrity of an international organization.²¹ Judging by the preparatory works of the VCLT, the justification for article 20 (3) was primarily addressed through the existence of a common monitoring organ established through the treaty, rather than the notion of “international organization” as such.²² The same arguments can very well be made in respect of human rights treaties that establish their own international monitoring organs and procedures, without a need to declare human rights treaties as falling, *stricto sensu*, under the notion of international organizations.

Another example of the reconciliation approach can be identified in respect of VCLT articles 57 and 58 that relate to the suspension of treaties. For instance in relation to the ICCPR these provisions should be read together with article 4 of the ICCPR, defining derogation as the specific form of suspension that is allowed under the treaty and prescribing both substantive limits and procedural requirements for states that wish to resort to derogation. VCLT article 57 (a) and article 58 (1) (a) explicitly refer to the provisions of the treaty as regulating suspension, and article 58 which allows for suspension by agreement of certain but not all parties to a multilateral treaty, includes in article 58 (1) (b) (ii) a safeguard clause according to which such suspension must not be contrary to the object and purpose of the treaty.

Further, although VCLT article 31 which contains the general rule of treaty interpretation makes no mention of the relevance of institutionalized practices of interpretation developed through treaty monitoring organs in the exercise of their functions, it includes in article 31 (3) (b) a reference to “any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation”. On the basis of the preparatory works, it appears clear that this clause does not merely refer to explicit acceptance by all states parties to a multilateral treaty but covers also the tacit approval of a practice engaging only a part of the parties.²³ Hence, it would be legitimate to treat the outcomes of treaty monitoring procedures, such as final views on individual complaints, concluding observations on state party reports, and general comments as codifications of earlier practice, as various forms of “subsequent practice” in the meaning of VCLT article 31 (3) (b) – at least in the vast majority of instances where no formal objection is made by states parties.

7. Concluding Discussion

In the preceding sections of this paper, the *positivist* approach, the *dogmatic* approach and the *fragmentation* approach to the relationship between the VCLT and human rights treaties were rejected. Instead, the author expressed sympathy for the two remaining approaches, namely

²¹ Aust, *op. cit.* (footnote No. 6) p. 113.

²² See, *Yearbook of the International Law Commission 1966, Volume II (A/CN.4/SER.A/1966/Add.1)*, p. 207 where the argument is made that for the category of treaties in question the integrity of the instrument outweighs other considerations and it must be for the members of the organization, acting through its competent organ, to determine how far any relaxation of the integrity of the instrument is acceptable.

²³ *Yearbook of the International Law Commission 1966, Volume II (A/CN.4/SER.A/1966/Add.1)*, p. 221-222.

the *constitutional* and the *reconciliation* approach. In the author's view the reconciliation approach has a strong basis in international law, including in a systematic reading and the drafting of the VCLT itself. The reconciliation approach is also more likely than the constitutional approach to meet acceptance beyond the circle of human rights scholars and human rights bodies, i.e. also within a broader discourse on public international law.

However, it is the view of the author that the constitutional approach has, in comparison to the reconciliation approach, two merits that justify its further consideration and elaboration. Firstly, this approach represents a critical potential in respect of a state-centred doctrine of international law. Secondly, there may be areas where reconciliation does not suffice, i.e. where human rights treaties under their own terms and read in the light of their object and purpose call for the application of such norms in the field of the law of treaties that cannot be reconciled with the provisions of the VCLT but where one must accept that a choice between the rules derived from human rights treaties and the provisions of the VCLT must be made.

One such area may be the potential severability of impermissible reservations. The reconciliation approach may very well allow such an interpretation of the VCLT, including in the light of its article 20 (3), that recognizes the competence of monitoring organs established under human rights treaties to address and determine, at least for the purpose of their own functions, the permissibility of reservations by states. However, the next step, declaring an impermissible reservation severable, and holding the state bound by the treaty without the benefit of the reservation, might prove more difficult to reconcile with the VCLT regime, also taking into account the majority view in the ICJ Advisory Opinion in the *Reservations to the Genocide Convention* case.²⁴

That said, it needs to be pointed out that the conclusion of severability has not been made merely by human rights scholars and human rights treaty bodies. Instead, it gets support also from the practice of at least certain states that, when objecting to reservations by other states, have concluded that the reserving state is to be considered a party to the treaty in question, without the benefit of the reservation. Before the adoption of General Comment No. 24 by the Human Rights Committee in 1994, objections pronouncing the severability of the reservation had under the ICCPR been made by a number of states in respect of reservations by the Republic of Korea (1991)²⁵ and the United States (1992).²⁶ And much earlier, the United Kingdom applied what is here called severability in its objections to certain reservations entered under the 1949 Geneva Conventions on humanitarian law.²⁷

²⁴ See footnote No. 9, above. In its advisory opinion (p. 29), the ICJ stated by seven votes to five that a state that has entered a reservation which has been objected to by one or more of the parties of the convention can be regarded as a party to the Genocide Convention if the reservation is compatible with the object and purpose of the convention; "otherwise, that State cannot be regarded as being a party to the Convention".

²⁵ *Objection by the Czech and Slovak Federal Republic 7 June 1991*: "... does not recognize these reservations [to articles 14 and 22] as valid. Nevertheless the present declaration will not be deemed to be an obstacle to the entry into force of the Covenant between the Czech and Slovak Federal Republic and the Republic of Korea." See, also, the objection by the Netherlands. *Status of Multilateral Treaties Deposited with the Secretary-General*, <http://untreaty.un.org/English/access.asp>

²⁶ The clearest examples of objections declaring severability are those by France and Italy. France: France 4 October 1993: "this United States reservation [to article 6, paragraph 5] is not valid, inasmuch as it is incompatible with the object and purpose of the Convention. Such objection does not constitute an obstacle to the entry into force of the Covenant between France and the United States." Italy 5 October 1993: "... this reservation is null and void since it is incompatible with the object and the purpose of art. 6 of the Covenant... These objections do not constitute an obstacle to the entry into force of the Covenant between Italy and the United States."

²⁷ See, *Reservations to human rights treaties; Final working paper submitted by Françoise Hampson, Sub-Commission on the Promotion and Protection of Human Rights (2004)*, E/CN.4/Sub.2/2004/42, paras 16-17.

In respect of the practical relevance of the various competing approaches described in this paper it is interesting to note that two (France and the UK) of the three states (France, the UK and the USA)²⁸ that reacted to the Human Rights Committee's General Comment No. 24 by formally expressing their disagreement, had themselves on other occasions expressed the consequence of severability in their objections to reservations by other states. And many other states have, since the adoption of General Comment No. 24, supported the consequence of severability in their objections to reservations by some states. Such objections have been made in respect of reservations to the ICCPR or its Optional Protocols by at least Azerbaijan, Botswana, Guyana, Kuwait, Thailand, Trinidad and Tobago, and Turkey. Objections to these reservations, pronouncing severability as the consequence, were made by at least Denmark, Finland, Greece, the Netherlands, Norway, Poland, Portugal and Sweden.

If severability represents the constitutional approach in addressing the relationship between human rights treaties and the VCLT, then there is considerable state practice supporting the constitutional approach.

²⁸ See, *Annual Report 1995 of the Human Rights Committee, A/50/40 vol. I pp. 126-134 (the United States and the United Kingdom) Annual Report 1996 of the Human Rights Committee, A/51/40 vol. I pp. 104-106 (France).*