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Strongly worded adverse reactions from a number of States, including but not limited to the United States, followed the adoption by the Human Rights Committee of its General Comment No. 24. Of particular concern was the position of the Committee that, if it concludes that a reservation to the ICCPR is invalid, the State nevertheless remains bound, because the reservation is "severable" from the principal commitment. This "severability" approach was questioned by the International Law Commission, which took the following position in its *Guide to Practice on Reservations to Treaties* adopted in 2011:

4.5.3 Status of the author of an invalid reservation in relation to the treaty

1. The status of the author of an invalid reservation in relation to a treaty depends on the intention expressed by the reserving State or international organization on whether it intends to be bound by the treaty without the benefit of the reservation or whether it considers that it is not bound by the treaty.
2. Unless the author of the invalid reservation has expressed a contrary intention or such an intention is otherwise established, it is considered a contracting State or a contracting organization without the benefit of the reservation.
3. Notwithstanding paragraphs 1 and 2, the author of the invalid reservation may express at any time its intention not to be bound by the treaty without the benefit of the reservation.
4. If a treaty monitoring body expresses the view that a reservation is invalid and the reserving State or international organization intends not to be bound by the treaty without the benefit of the reservation, it should express its intention to that effect within a period of twelve months from the date at which the treaty monitoring body made its assessment.

PROBLEM - ARE THE TWO VIEWS COMPATIBLE? (1/1 point)

Does the position of the International Law Commission expressed in 2011 contradict that of the Human Rights Committee, as expressed in General Comment No. 24 of 1994?

- ☐ The two positions are fully *compatible*;
- ☒ The two positions are partially contradictory 
- ☐ The two positions are completely *incompatible*

EXPLANATION

The two positions are partly contradictory. While the International Law Commission does accept a presumption of severability in the second paragraph of para. 4.5.3 of the *Guide to Practice on Reservations to Treaties*, it does clearly insist that, if a particular reservation is found to be invalid, the reserving State (or international organization) should be given the possibility not to join the treaty; indeed, it should be left twelve months to do so when it is a treaty monitoring body that has expressed the view that the reservation is invalid, and only if the reserving State has not expressed its intention to withdraw from the treaty within that period shall it be considered to be bound (according to paragraph 4). The following describes the position that was taken by a number of Governments, on the occasion of a dialogue held with the International Law Commission on that issue, in the course of the preparation of the *Guide to Practice on Reservations to Treaties*: "... it was observed by some delegations that the presumption of severability proposed by the Commission was incompatible with the principle of consent on which the law of treaties was based, and concerns were also expressed that such a presumption might bring uncertainty to treaty relations. It was further stated that the presumption of severability was not supported by State practice and existing case-law outside specific contexts such as the Council of Europe, and that it also failed to take into account the nature of the treaty. Thus, a preference was expressed by some delegations for the opposite presumption, according to which a State or an international organization having formulated an invalid reservation should be regarded as not being bound by the treaty at all, unless that State or organization had manifested its intention to be bound by the treaty without the benefit of the reservation" (*Report of the International Law Commission on the work of its sixty-second session (2010). Topical summary of the discussion held in the Sixth Committee of the General Assembly during its sixty-fifth session, prepared by the Secretariat, UN doc. A/CN.4/638, 19 January 2011, para. 20*).

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