The nature of human rights treaties:
Minimum protection agreements to the benefit of third parties

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1 Introduction

This contribution presents a theoretical exposition of the nature of multilateral human rights conventions. This is done in hopes of achieving two goals: Firstly, to contribute towards theoretical clarity on the nature of these treaties; and secondly, on a practical level, to define the nature of the rights and duties of the parties and participants to these conventions.

The decades since World War II have witnessed the adoption of numerous human rights conventions. The present discussion will, however, be conducted mainly with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and to a lesser extent the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms...
of Discrimination Against Women (CEDAW)\(^5\), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)\(^6\) and the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT)\(^7\) in mind. What applies to these conventions in relation to their theoretical nature also applies to similar instruments.

### 2 Central Theses

The central theses are that multilateral human rights conventions are (a) in the nature of *stipulationes alteri* (agreements for the benefit of third parties); and (b) provide *minimum protection* for such third parties, which in the present case are individuals under the jurisdiction of contracting states. The following elements flow from this:

(a) In principle the first two parties in all these treaties are the states which are the contracting parties to the treaties, each one individually pledging to all the other parties to the treaties in question to provide the basic protection as set out in the conventions in question to individuals under their jurisdiction.\(^8\)

(b) The third parties are all the individuals under the jurisdiction of the state parties to these multilateral agreements, to the benefit of whom the treaties are concluded. The individuals are not parties to the initial negotiation and conclusion of the treaties but become benefiting parties immediately the conventions in question enter into force.

(c) The rights negotiated for these individuals accrue at the same moment as the conventions enter into force between the state parties to these treaties. Hence, such treaties have a self-executing character and need not be incorporated into the domestic law of the state parties before individuals in such states acquire rights under such conventions. Individuals therefore acquire rights on the plane of international law at the same moment as states incur duties under international law pursuant to these treaties. Hence, it is submitted that this renders individual beneficiaries to these treaties fully-fledged parties to human rights conventions, and therefore, at least within the context of these conventions, subjects of public international law: Individuals are not parties to the conclusion of these treaties but they are subjects of international law in consequence thereof.\(^9\)

\(^5\) General Assembly Resolution 34/180 of 1979-12-18, the convention entered into force on 1981-09-03.

\(^6\) General Assembly Resolution 2106A(XX) on 1965-12-21 and entered into force on 1969-01-04.

\(^7\) General Assembly Resolution 39/46 of 1984-12-10 and entered into force on 1987-06-26.

\(^8\) ‘Under jurisdiction’ encompasses both individuals (including nationals) present in the national territory of a state for the purposes of human rights conventions as well as under the control of a combating state for the purposes of humanitarian law covenants.

\(^9\) This is consonant with Richard Falk’s view that international human rights law is to a certain extent an embodiment of an emerging law of humanity instead of a continued on next page
under these conventions can therefore neither be diminished by a consecutive treaty among the states which have initially entered into the human rights convention in question, nor by legislation passed by the legislature of any of the contracting states.

(d) The kind of protection emanating from these treaties is always minimum protection. Should better protection be given under the domestic law of a contracting state such greater protection must prevail. The treaty cannot serve as an excuse for lowering the greater protection rendered by domestic law. If the domestic protection falls short of the protection provided for under the treaty, such weaker protection must be improved in order to meet the minimum standard of the treaty. Minimum protection means that the treaty serves as a base line of protection: If the domestic protection is weaker than that of the treaty it must be improved in order to bring it at least to the base line, but if the domestic dispensation is better, such better dispensation must prevail.

In the following discussion the plausibility of these theses is motivated.

3 The Notion of Minimum Protection

Human rights convention law provides minimum protection to the inhabitants of the state parties involved. It defines the base line or minimum level of the protection that must be given by the state parties. Less protection than that provided for in the convention is not permissible. Human rights convention law, however, does not set maximum standards to state parties. Neither can a human rights convention ever serve as an excuse for a state party to detract from the better protection available under the domestic law of the state party involved. To the contrary, it is a rather well established principle of human rights convention law to safeguard whatever additional and enhanced human rights protection is given under the domestic law of a state party. Both the two foremost international human rights conventions may be cited as authority for what is said here.

Article 5 of the International Covenant on Civil and Political Rights provides:

"1 Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognised herein or at their limitation to a greater extent than is provided for in the present Covenant.

2 There shall be no restriction upon or derogation from any of the fundamental human rights recognised or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognise such rights or that it recognises them to a lesser extent."

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Article 5 of the Covenant on Economic, Social and Cultural Rights is of almost exactly the same wording.\textsuperscript{10} It may therefore be stated that human rights convention law guarantees the minimum human rights protection as defined in the conventions in question, but whenever the human rights protection of the domestic law of a state party exceeds the protection of the convention in question, convention law prohibits any detraction from the enhanced protection under domestic law and guarantees such domestic protection.

4 Stipulatio Alteri

Not known to Roman Law,\textsuperscript{11} the stipulatio alteri was recognised by some of the foremost writers of Roman Dutch Law, particularly Johannes Voet (1647–1713), and arguably also by Grotius.\textsuperscript{12} The stipulatio is now recognised in numerous civil law jurisdictions, including France, Germany, Italy, Austria, Spain, Portugal, The Netherlands, Belgium and Luxembourg as well as Greece and Scotland.\textsuperscript{13} It is also recognised in South Africa. Being incompatible with the doctrine of privity of contract,\textsuperscript{14} the stipulatio alteri was for a very long time not recognised in English law.\textsuperscript{15} However, a very substantive body of English scholarly opinion favours the recognition of the stipulatio alteri in English law and the English Law Commission has recommended accordingly.\textsuperscript{16} The stipulatio is also widely recognised in other common law jurisdictions such as New Zealand, Australia and the United States.\textsuperscript{17}

\textsuperscript{10} See also art 5 of the Convention Relating to the Status of Refugees of 1951 (entered into force on 1954-04-22) that provides that nothing in this convention shall be deemed to impair any rights and benefits granted by a contracting state to refugees apart from this convention.

\textsuperscript{11} De Wet Die Ontwikkeling van die Ooreenkoms ten Behoewe van 'n Derde (1940) 95; Christie The Law of Contract in South Africa (1991) 312.

\textsuperscript{12} See De Wet & Van Wyk Die Suid-Afrikaanse Kontraktereg en Handelsreg (1992) 104–105; Christie 312. According to De Wet, Hugo de Groot did not really proffer an exposition for the stipulatio alteri but rather gave an account of how someone may act as a disguised agent for another.


\textsuperscript{14} The doctrine of privity of contract (the third party rule) lays down that a contract cannot confer rights upon someone who is not a party to the contract and that such person can therefore not sue under such contract. See English Law Commission 1; Christie 310. The stipulatio alteri is also hardly compatible with the English doctrine of considerations, requiring a quid pro quo liability under a contract.

\textsuperscript{15} That is at least since 1861. Interestingly enough, the stipulatio had been recognized in English law for a period of two hundred years before that date. See English Law Commission 7.

\textsuperscript{16} English Law Commission 39.

\textsuperscript{17} Idem 55–62.
In short the contract for the benefit of a third party (stipulatio alteri) is an agreement in terms of which one party, the promisor, agrees with another, the promisee, to perform something for the benefit of a third party, the beneficiary. There is some discord as to the specific construction to be placed upon such an agreement. One opinion holds that the benefit undertaken by the promisor in its agreement with the promisee also serves as an offer to the third party. Such offer must first be accepted by the beneficiary, thus creating a second agreement, between the promisor and the beneficiary, before an enforceable right against the promisor vests in the beneficiary. This construction obviously implies that the promisor should inform the beneficiary of the benefit in order to enable the beneficiary to decide whether or not to accept the offer. The promisee has the right under its agreement with the promisor to enforce the benefit to the third party against the promisor. Before acceptance by the third party under this construction, the promisee can discharge the promisor from its obligation to the beneficiary. If so, no rights eventually accrue to the third party. Obviously, no discharge can occur after acceptance, since the causa of the beneficiary’s right would in that case not be the initial agreement between the promisor and the promisee but the second agreement, namely that between the beneficiary and the promisor.

There is however an alternative, and it is submitted, a sounder construction, which, as will be argued, is also more suitable within the context of human rights conventions. According to this construction, the beneficiary acquires a right immediately on conclusion of the agreement between the promisor and the promisee. The beneficiary need not do anything in order to acquire the rights created for it by the promisor and the promisee, and is therefore not required to accept the benefit as a prerequisite for acquiring rights. The rights automatically vest in the beneficiary, who may then decide whether or not to utilise and enforce them.

Apart from scholarly opinion favouring this alternative construction, this view also finds expression in article 328 of the German Civil Code.

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18 This explains why the stipulatio alteri is sometimes construed as the so-called two contracts theory.
19 This is the construction favoured in South African positive law. See eg Christie 318-323; De Wet 97; Van der Merwe et al Contract General Principles (1993) 186. This also reflects the construction of the Dutch Civil Code (book 6 art 253).
20 This alternative construction is preferred by the illustrious South African jurist de Wet, partially basing his view on that of Johannes Voet. See De Wet 94.
21 Apart from De Wet, see too Kahn “Extension clauses in insurance contracts” 1952 SAlJ 53.
22 328 (Vertrag zugunsten Dritter). (1) Durch Vertrag kann eine Leistung an einen Dritten mit der Wirkung bedungen werden, dass der dritte unmittelbar das Recht erwirbt, die Leistung zu fordern. (2) In Ermangelung einer besonderen Bestimmung ist aus den Umstanden, insbesondere aus dem Zwecke des Vertrags, zu entnehmen, ob der Dritte das Recht erwerben, ob das Recht des Dritten sofort oder nur unter gewissen Voraussetzungen entstehen und ob den Vertragschliessenden die Befugnis vorbehalten sein soll, das Recht des Dritten ohne dessen Zustimmung aufzuheben oder zu ändern.
5 *Stipulatio Alteri* as a Source of Public International Law

Doubts may be expressed as to the appositeness for public international law of principles of a private law character such as the *stipulatio alteri* which ordinarily regulates private law relationships within a contractual setting. On what basis, it may be asked, can this private law notion serve as a source of public international law? In the next paragraphs arguments are advanced in support of the application of principles informed by the *stipulatio alteri* within the context of human rights treaties.

The *stipulatio alteri* may be regarded as a *general principle of law recognised by civilised nations* within the meaning of article 38(1)(c) of the Statute of the International Court of Justice (ICJ).\(^{23}\) The ambit and content of general principles of law, also recognised in the Statute of the Permanent Court of International Justice,\(^{24}\) have been the subject of more doctrinal controversies than any of the other sources.\(^{25}\) Issues raised are: (a) Which states pass the *civilised* test; (b) in how many states must a particular principle be applied in order for it to be regarded as *general*; and (c) are general principles referring exclusively to notions of public international law or do they also include legal notions applicable in private, commercial or other fields of law normally featuring within domestic legal systems. These controversies seem to be more apparent than real. The *civilised nations*-requirement is of no practical importance anymore. It is a vestige of pre-World War II nomenclature.\(^{26}\) Currently all member states of the United Nations\(^{27}\) are regarded as civilised.\(^{28}\) It has also been said that *civilised nations* should presently simply be taken to mean *independent states*.\(^{29}\) Neither is it required that a particular principle be operative in all or even the majority of states in order to meet the requirement of generality.\(^{30}\) The ICJ and its predecessor have also never embarked upon thorough comparative studies to establish the incidence of a particular principle before utilising such principle as a source.\(^{31}\) This should in any case not be a problem with the *stipulatio alteri*, which, as indicated, enjoys wide recognition in more than one legal family.\(^{32}\) The gravity of scholarly opinion holds that general principles denote principles of domestic law in

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23 Art 38(1)(c) reads: “The Court, whose function it is to decide in accordance with international law such disputes as are submitted to it, shall apply: (c) the general principles of law recognized by civilized nations.”
24 Art 38(1)(3) of the PCII.
25 Degan “General principles of law” 1992 Finish Yearbook of International Law 1 4-41.
27 “Peace loving states” in the phraseology of art 4 of the UN Charter.
30 Ibid; Bassiouni 788; Malanczuk 50.
31 Ibid.
32 Legal family is used in the its trite comparative law meaning as for example by David and Brierly Major Legal Systems in the World Today (1985) 17–31.
so far as they are capable of application to relations among states.33 According to Harris, the *travaux préparatoires* of article 38 also suggests that the general principles encompass principles of domestic legal systems.34 The broadest possible definition of general principles, that is including principles of domestic law corresponds with the crucial purpose to be served by general principles, namely to act as a reserve store of legal principles when no rules of treaty or customary law are applicable.35 General principles are in this scenario best able to prevent the court from declaring a *non liquet.*36 It is evident, moreover, that principles of domestic law specifically include notions of private law.37 This is borne out by the practice of international tribunals, including the ICJ, the PCIJ and international arbitral tribunals, which have been applying private law principles relating to undue enrichment, reparations for breach of an undertaking, limited liability of a corporation, good faith, impossibility of performance, estoppel, trust, mandate and tutelage.38 All these principles are important in the present context, since they share with the *stipulatio alteri* that they regulate questions of liability within the broader scope of the law of obligations within a private law setting.

It is important to state that there is no need to transplant private law notions with precisely the same content from the plane of domestic law into public international law. Instead, a rather pragmatic approach directed towards the effective resolution of legal problems is preferred to one aimed at cherishing dogmatic purity. This point is graphically illustrated by the much quoted and generally supported *dictum* of McNair J in the *International Status of South West Africa Case* on how the ICJ should proceed when drawing upon notions of private law as general principles, envisaged in article 38(1)(c):

“The way in which international law borrows from this source is not by way of importing private law institutions lock, stock, barrel, ready-made and fully equipped with a set of rules. In my opinion, the true view of the duty of international tribunals in this matter is to regard any features or terminology which are reminiscent of the rules and institutions of private law as an indication of policy and principles rather than as directly importing these rules and institutions.”

It is precisely for this reason that what is argued for here is not a fully-fledged reception of the *stipulatio alteri* with exactly the same detailed content as in private law, but rather to pragmatically utilise the underlying

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35 Dugard 36. This reserve store should also serve the principle that no court may refrain from giving judgment on the ground that the law is silent or obscure. See Greig *International Law* (1975) 51.
36 The *travaux préparatoires* also indicate that general principles were included as a source in order to prevent legal lacunae. See Bassiouni 778.
37 Degan 2 86.
38 See the examples referred to by Dugard 38; Harris 48–49; Bassiouni 795–797. These principles were used in spite of the fact that on many occasions they were not expressly referred to as general principles.
principles thereof so that the objective of human rights treaties can be fully achieved.

In the present case we are dealing with international human rights conventions. The principles of convention law are to a very large extent already regulated by the same principles governing private law of contract. It is therefore appropriate to consider the applicability of the stipulatio alteri, which is also a notion of the law of contract in the present context. Moreover, the fact that human rights conventions are primarily aimed at the protection of the rights of (private) individuals and not the rights of states also underscores the importance of notions of private law of contract, which concerns itself primarily with inter-individual relations. This also corresponds with Bassiouni’s view that general principles are bound to be increasingly relied upon in relation to human rights since conventional and customary sources are not adequately developed in this field.

It should also be pointed out that the notion of contracts to the benefit of third parties has already been absorbed into Public International Law. Article 36(1) of the Vienna Convention of the Law of Treaties for example states:

“A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.”

In the case of the application of the stipulatio alteri in the context of human rights conventions we are not dealing with a situation where general principles have to be invoked in order to prevent the court from declaring a non liquet. To the contrary, in this scenario the convention law – the treaties in question – is the main source regulating the subject matter of the various treaties. The extent of the role of the stipulatio alteri should therefore be limited since it should serve as nothing more than an interpretation guide to, or a conceptual framework for, the human rights treaties in question. The extent of the application of general principles in fact ought to be limited in order not to hamper the operation of the principal sources, namely the treaties in question. Utilising the principles of the stipulatio alteri is precisely capable of achieving this end, namely not to frustrate, but rather to give full effect to the principal intention of human rights conventions, which is to work towards the greatest possible benefit of the individuals within the boundaries of the state parties and to diminish state sovereignty to achieve that end.

40 This is borne out by many of the provisions of the Vienna Convention of the Law of Treaties of 1969.
41 Bassiouni 769.
42 Accession clauses in multilateral agreements entitling states which are not parties to the initial treaty to accede to such agreements (eg art 4 of the Charter of the UN) may be construed as agreements to the benefit of a third party. See Seidl-Hohenveldern Völkerrecht (1997) 75.
Employing the principles of the *stipulatio alteri* as a guide to interpretation is apposite given that general principles are included as a source of international law for this purpose. General principles have indeed been defined primarily as principles of interpretation, or as Bin Cheng stated, cardinal principles of the legal system in the light of which international law is to be interpreted and applied. In this context general principles can be relied upon to determine the rights and duties of states within the framework of convention or customary law.

6 The Application of the of *Stipulatio Alteri*-Related Principles in (Multilateral) Human Rights Conventions

Human rights treaties are always concluded within a triangular setting, with at least two state parties involved, as the first two parties, promisor and promisee, and the individuals who are the third party beneficiaries falling under the jurisdiction of the states. The focal point, however, of all human rights treaties is not the state parties entering into such agreements, but the individual inhabitants falling under the jurisdiction of the various state parties. They are the beneficiaries in the interests of whom the agreements are concluded, and it is in their favour that states compromise their own sovereignty and make mutual undertakings under these conventions. Correspondingly, human rights treaties such as the two covenants abound with clauses in which state parties bind themselves to recognise the right of everyone and undertake to ensure the right of everyone to do whatever is then further stated in the various clauses. The fact that these treaties are agreements to the benefit of third parties is, however, most conclusively demonstrated in article 2(1) of both Covenants that read:

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant ...”.

This dispels any doubt as to the evident *stipulatio alteri*-nature of the treaties. What a state party expressly does in terms of a human rights treaty is to undertake to all the other state parties to the treaty to treat those falling under its jurisdiction in the manner as defined in the treaty in question.

Each state party makes two sets of undertakings: Firstly, it undertakes to all the other state parties to the treaty to act in a particular manner in relation to those under its jurisdiction. This is done reciprocally, with all other state parties simultaneously making exactly the same undertaking under the treaty, save for the possibility of reservations. Each state party is therefore both a promisor and promisee at once. These mutual undertakings are the subject matter of the agreement between the various states.

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43 Idem 776.
44 Quoted by Bassiouni 770.
Secondly, each party also undertakes to everyone under its own jurisdiction to act as defined in the treaty in question. This rather obvious conclusion derives from the central intention of human rights treaties, namely to put an international instrument such as a treaty to the use and to the benefit of the best interests of those falling under the jurisdiction of the various state parties. This second set of undertakings, flowing from the treaty, is the primary subject matter of the *stipulatio alteri*.

The fact that many states are parties to these multilateral treaties does not detract from the basic triangular construction which is present in this context. Even though there might be, and are in fact, many states involved there remain, as in the case of the *stipulatio alteri*, only three capacities, namely that of the promisor, the promisee and the third parties/beneficiaries. All the states are promisors to all the other states in relation to the way in which they undertake to treat those falling under their jurisdiction and, simultaneously, promisees in that all the other state parties make precisely the same undertaking as to the way they will treat those under their jurisdiction. The third parties/beneficiaries are the individuals under the jurisdiction of the promisors in whose interests the promises under the treaty are made.

The crucial question to answer pertains to the correct construction to be placed on this *stipulatio alteri*. More particular an answer must be given on whether the individual third party beneficiaries must first accept the benefit before they acquire rights. Alternatively whether they acquire the rights immediately on conclusion of these treaties. The implications of the answer to these questions might be far-reaching and therefore need to be considered carefully. The answer to the question might imply among other things that human rights treaties take on a self-executing character, implying that they need not be incorporated into the domestic law of the state parties in question in order for the individuals under the jurisdiction of such parties to acquire rights under such treaties.

6.1 No Acceptance by Third Party – Beneficiaries or Acts of Transformation by State Parties Required

It is submitted that beneficiaries become parties to human rights conventions with rights vesting in them at the same time as the state parties become legally bound under these treaties under Public International Law.

For various reasons it would be inappropriate to set acceptance of treaty rights by the beneficiaries as a prerequisite before the rights under the treaty could vest in them. Firstly, it would be impracticable. The third party beneficiaries of human rights treaties are the millions and tens of millions of individuals under the jurisdiction of the state parties. It is obviously impossible to communicate the content of the treaties to everyone effectively. Secondly, it would be completely impracticable to require acceptance by each of the millions of individuals for the treaty rights to vest in them. Thirdly, human rights conventions provide for fully-fledged benefits to third parties, that is, these conventions confer only rights on the beneficiaries without burdening them with any duties. Hence, there is no need for acceptance as a safety mechanism for the protection of the beneficiaries.
The second construction discussed in paragraph 4.3, which does not require acceptance is therefore clearly more plausible than the first and the rights should therefore be regarded as immediately vesting in the third party beneficiaries on entering into force of the treaties between the state parties. This conclusion corresponds with article 36(1) of the Vienna Convention on the Law of Treaties regulating the agreements for the benefit of third parties among states, in terms of which assent of the third party, is presumed unless the treaty provides otherwise.46

6.2 Third Party Beneficiaries are Party to Human Rights Conventions Under International Law

When the acceptance requirement is dispensed with as a prerequisite for rights vesting in the third party beneficiaries and when we conclude, as we have done in 6.1, that the rights under a human rights convention vest in the third party beneficiaries immediately on entering into force of the treaties between the state parties we are making conclusions with rather far-reaching implications.

This conclusion implies firstly that the third party beneficiaries are acquiring rights directly under International Law. They acquire rights under International Law instruments and not under domestic law. Moreover, they are parties, in the capacity of third party beneficiaries to an international convention and for that reason fully-fledged subjects of Public International Law. Consequently, when they seek the enforcement of rights they can do so directly under the international convention in question.

Human rights treaties create continuing obligations for the state parties and corresponding continuing rights for the individual beneficiaries under their jurisdiction. Even though the initial treaty is certainly the origin of the rights which have been bargained for the third parties, the continued existence of the third parties’ rights and the corresponding duties of the states in question do not depend upon that initial agreement but on the ensuing agreement, and thus the actual causa between the states in question and the individuals under the jurisdiction of each of the states. Hence, any ensuing arrangement between the state parties to the initial conventions that might detract from the rights vesting in the third party beneficiaries under a previously concluded human rights convention will be of no consequence since the third party beneficiaries have not waived their rights under the second agreement – i.e., between the third parties and the promisor-state in question. A new agreement among states, the first and the second parties to the initial triangular setting of the agreement to the benefit of a third party, will obviously not be capable of detracting from the rights bargained for under the initial agreement, since

46 Art 36(1) of the treaty provides: "A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to a third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides" (own emphasis).
no state can be said to be the agent of the inhabitants of another state falling outside its jurisdiction, specifically not with a view to detracting from the rights of such inhabitants. If a state does want any existing rights of its own inhabitants under a human rights convention to be detracted from, it must negotiate and obtain the consent of that section of the third party beneficiaries – its own inhabitants – whereafter it can enter into an agreement on that basis. In the absence of such agreement the initial rights emanating from the stipulatio alteri remain in existence.

In terms of a construction of human rights agreements as a stipulatio alteri as developed above, a state can also not take away or diminish rights under a human rights convention even if the state parties to such a convention by legislation have agreed thereto. The reason for that is that under the above construction the second agreement under the stipulatio alteri – that between the state in question and its inhabitants – has been concluded on the international plane between equals, namely the state and its citizens both of whom, as indicated, are for the purposes of these agreements, subjects of Public International Law. The ordinary unequal constitutional relationship between the sovereign state (as government) and its citizenry in terms of which the government is competent to legislate for its citizenry therefore does not obtain in the present case. Instead, the relationship is anchored in Public International Law which is cast in the mould of equality and functions on the basis of consensus and not sovereign authority. The conclusion therefore still remains that the continued existence of the rights and obligations of the state and its inhabitants respectively, do not depend upon the initial treaty between the states; they exist until such time as the parties, in this case the state and the beneficiaries under its jurisdiction, agree otherwise.