> adapt the Joint Contractual Plan to new scientific and legal developments regarding the environment. Articles 15, 19 and 20 oblige the parties jointly to take, on a continuous basis, appropriate measures necessary for the protection of water quality, of nature and of fishing interests.

Articles 15 and 19 expressly provide that the obligations they contain shall be implemented by the means specified in the Joint Contractual Plan. The failure of the parties to agree on those means cannot, on the basis of the record before the Court, be attributed solely to one party. The Court has not found sufficient evidence to conclude that Czechoslovakia had consistently refused to consult with Hungary about the desirability or necessity of measures for the preservation of the environment. The record rather shows that, while both parties indicated, in principle, a willingness to undertake further studies, in practice Czechoslovakia refused to countenance a suspension of the works at Dunakiliti and, later, on Variant C, while Hungary required suspension as a prior condition of environmental investigation because it claimed continuation of the work would prejudice the outcome of negotiations. In this regard it cannot be left out of consideration that Hungary itself, by suspending the works at Nagymaros and Dunakiliti, contributed to the creation of a situation which was not conducive to the conduct of fruitful negotiations.

108 Hungary's main argument for invoking a material breach of the Treaty was the construction and putting into operation of Variant C. As the Court has found in para 79 above, Czechoslovakia violated the Treaty only when it diverted the waters of the Danube into the bypass canal in October 1992. In constructing the works which would lead to the putting into operation of Variant C, Czechoslovakia did not act unlawfully.

In the Court's view, therefore, the notification of termination by Hungary on 19 May 1992 was premature. No breach of the Treaty by Czechoslovakia had yet taken place and consequently Hungary was not entitled to invoke any such breach of the Treaty as a ground for terminating it when it did.

109 In this regard, it should be noted that, according to Hungary's Declaration of 19 May 1992, the termination of the 1977 Treaty was to take effect as from 25 May 1992, that is only six days later. Both parties agree that Articles 65 to 67 of the Vienna Convention on the Law of Treaties, if not codifying customary law, at least generally reflect customary international law and contain certain procedural principles which are based on an obligation to act in good faith. As the Court stated in its Advisory Opinion on the Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt (in which case the Vienna Convention did not apply):

> Precisely what periods of time may be involved in the observance of the duties to consult and negotiate, and what period of notice of termination should be given, are matters which necessarily vary according to the requirements of the particular case. In principle, therefore, it is for the parties in each case to determine the length of those periods by consultation and negotiation in good faith.' ([1980] *ICJ Rep* at p 96, para 49.)

The termination of the Treaty by Hungary was to take effect six days after its notification. On neither of these dates had Hungary suffered injury resulting from acts of Czechoslovakia. The Court must therefore confirm its conclusion that Hungary's termination of the Treaty was premature.

110 Nor can the Court overlook that Czechoslovakia committed the internationally wrongful act of putting into operation Variant C as a result of

Hungary's own prior wrongful conduct. As was stated by the Permanent Court of International Justice:

> It is, moreover, a principle generally accepted in the jurisprudence of international arbitration, as well as by municipal courts, that one party cannot avail himself of the fact that the other has not fulfilled some obligation or has not had recourse to some means of redress, if the former party has, by some illegal act, prevented the latter from fulfilling the obligation in question, or from having recourse to the tribunal which would have been open, to him. (Factory at Chorzow, Jurisdiction, Judgment No 8, PCIJ Ser A, No 9 p 31 (1927).)

Hungary, by its own conduct, had prejudiced its right to terminate the Treaty; this would still have been the case even if Czechoslovakia, by the time of the purported termination, had violated a provision essential to the accomplishment of the object or purpose of the Treaty.

111 Finally, the Court will address Hungary's claim that it was entitled to terminate the 1977 Treaty because new requirements of international law for the protection of the environment precluded performance of the Treaty.

112 Neither of the parties contended that new peremptory norms of environmental law had emerged since the conclusion of the 1977 Treaty, and the Court will consequently not be required to examine the scope of Article 64 of the Vienna Convention on the Law of Treaties. On the other hand, the Court wishes to point out that newly developed norms of environmental law are relevant for the implementation of the Treaty and that the parties could, by agreement, incorporate them through the application of Articles 15, 19 and 20 of the Treaty. These articles do not contain specific obligations of performance but require the parties, in carrying out their obligations to ensure that the quality of water in the Danube is not impaired and that nature is protected, to take new environmental norms into consideration when agreeing upon the means to be specified in the Joint Contractual Plan.

By inserting these evolving provisions in the Treaty, the parties recognised the potential necessity to adapt the Project. Consequently, the Treaty is not static, and is open to adapt to emerging norms of international law. By means of Articles 15 and 19, new environmental norms can be incorporated in the Joint Contractual Plan.

The responsibility to do this was a joint responsibility. The obligations contained in Articles 15, 19 and 20 are, by definition, general and have to be transformed into specific obligations of performance through a process of consultation and negotiation. Their implementation thus requires a mutual willingness to discuss, in good faith, actual and potential environmental risks.

It is all the more important to do this because as the Court recalled in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, 'the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn' ([1996] *ICJ Rep* at para 29; see also para 53 above).

The awareness of the vulnerability of the environment and the recognition that environmental risks have to be assessed on a continuous basis have become much stronger in the years since the Treaty's conclusion. These new concerns have enhanced the relevance of Articles 15, 19 and 20.

113 The Court recognises that both parties agree on the need to take environmental concerns seriously and to take the required precautionary

measures, but they fundamentally disagree on the consequences this has for the joint Project. In such a case, third-party involvement may be helpful and instrumental in finding a solution, provided each of the parties is flexible in its position.

114 Finally, Hungary maintained that by their conduct both parties had repudiated the Treaty and that a bilateral treaty repudiated by both parties cannot survive. The Court is of the view, however, that although it has found that both Hungary and Czechoslovakia failed to comply with their obligations under the 1977 Treaty, this reciprocal wrongful conduct did not bring the Treaty to an end nor justify its termination. The Court would set a precedent with disturbing implications for treaty relations and the integrity of the rule *pacta sunt servanda* if it were to conclude that a treaty in force between states, which the parties have implemented in considerable measure and at great cost over a period of years, might be unilaterally set aside on grounds of reciprocal non-compliance. It would be otherwise, of course, if the parties decided to terminate the Treaty by mutual consent. But in this case, while Hungary purported to terminate the Treaty, Czechoslovakia consistently resisted this act and declared it to be without legal effect.

115 In the light of the conclusions it has reached above, the Court, in reply to the question put to it in Article 2, para 1(c), of the Special Agreement (see para 89), finds that the notification of termination by Hungary of 19 May 1992 did not have the legal effect of terminating the 1977 Treaty and related instruments.

4.11 Dispute settlement

One of the main purposes of international law is to provide a framework for the peaceful settlement of disputes and Article 33 of the UN Charter places an obligation on states to settle their disputes by peaceful means. Clearly this provision applies to disputes between parties to a treaty. Article 66 VCT 1969 deals with the specific question of disputes arising out of questions of validity, termination, withdrawal from or suspension of the operation of a treaty. If parties have not been able to settle the dispute themselves within a period of 12 months then two procedures come into operation. In the case of disputes about the application or interpretation of a rule of *jus cogens* the parties to the dispute may submit it to the ICJ for a decision. Disputes arising for other reasons are to be submitted to a conciliation procedure operated by the Secretary General of the UN and detailed in an annex to the VCT 1969.

4.12 State succession

State succession involves the replacement of one state by another in the responsibility for the international relations of territory and has been a particularly controversial and unsettled area of law. In 1978 the Vienna Convention on the Succession of States in Respect of Treaties was signed. The VCS has yet to enter into force, although the basic rules are thought to reflect customary international law. As far as newly independent states are concerned, the VCS operates the 'clean slate' rule. In other words, a newly de-colonised state:

> ... is not bound to maintain in force, or become a party to, any treaty by reason only of the fact that at the date of the succession of states the treaty was in force in respect of the territory to which the succession of states relates.[59]

The only exception to this rule is in respect of treaties establishing boundaries or concerning other territorial matters, eg treaties establishing objective regimes. This reflects general international practice with regard to the sanctity of boundaries and is in line with Article 62(2) of the VCT 1969 which provides that a fundamental change of circumstances cannot be invoked as a ground for terminating a treaty that establishes a boundary.

Of course, successor states may wish to become parties to treaties which had been in force with respect to the territory in question. In such a situation, a successor state may become a party by giving notice of succession. This rule will not apply where the application of the treaty to the successor state would be incompatible with the object and purpose of the treaty.

VCS 1978 was adopted when questions of state succession mainly arose as a result of de-colonisation. Recent events in Central and Eastern Europe have raised new questions and it is not yet possible to identify clearly a body of common state practice. Generally, the problem has been dealt with during negotiations leading to recognition of new states and in the drafting of new constitutions. In the case of German unification, many of the problems were dealt with in the Unification Treaty 1990 between the Federal Republic of Germany and the German Democratic Republic. Under the terms of unification the GDR ceased to exist as a state and its territory was integrated into the FRG. As far as treaties to which the FRG is a party are concerned, the principle of moving treaty frontiers applies in that all treaties remain in force 'unless it appears that application of the treaty to the new territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation' (Article 15 of the VCS 1978). As far as treaties to which the GDR was a party are concerned the position is more difficult. In the case of a union between two states which results in a new successor state the VCS 1978 provides for the continuation of the treaties of both states to the extent that application of the treaties to the successor state is compatible with the object and purpose of the treaties, and does not radically change the conditions for its operation. Such treaties continuing in force shall in general only apply in respect of the part of the territory of the successor state in respect of which the treaty was in force at the date of succession. The situation envisaged here is exemplified by the short-lived union of Egypt and Syria in the United Arab Republic, where the two states continued, in practice, to live a separate existence. The rules applicable to that situation do not seem to apply easily to the German situation. The preferred view seems to be that when states become dissolved, *prima facie*, no treaties pass to the successor state. and this rule applies where formerly sovereign territory is integrated into an existing state. Thus treaties concluded by former sovereign parts of the Indian, American and Australian federal states have been discontinued. Clearly, the option remains for the successor state to choose expressly to be bound by such treaties, but succession is not regarded as automatic.

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59 Article 16 of the VCS 1978.

With regard to those states which were formerly part of the Soviet Union, Russia has been regarded as a continuation of the Soviet Union and the other former Soviet republics have been regarded as successor states, except in the case of the Baltic republics of Latvia, Estonia, and Lithuania, which are regarded as the continuation of states which existed up until Soviet annexation in 1940. The Baltic states do not regard themselves as bound by treaties entered into by the former Soviet Union. The treaty obligations of the other former Soviet republics have been dealt with on a case-by-case basis. The same formula has been used in relation to the division of the former Czechoslovak Republic into the Czech Republic and the Republic of Slovakia and in the case of the break-up of the former Socialist Republic of Yugoslavia. The problem is complicated with regard to Yugoslavia since while the Belgrade regime of Serbia and Montenegro considers itself to be the continuation of former Yugoslavia and refers to itself as the Republic of Yugoslavia, this claim is not recognised by the rest of the international community. The issue of succession to treaties is currently being considered by the ICJ in the *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, in which proceedings have been brought by the government of Bosnia and Herzegovina against Serbia and Montenegro. Both parties regard themselves as parties to the Genocide Convention although Serbia and Montenegro has not deposited an instrument of succession. There have recently been discussions within the Council of Europe on the whole question of treaty succession and it has been suggested that matters could be clarified if there was an obligation on the depositories of treaties to contact successor states to ascertain their position with regard to the treaty obligations of those formerly responsible for the territory.

17 The proceedings instituted before the Court are between two states whose territories are located within the former Socialist Federal Republic of Yugoslavia. That Republic signed the Genocide Convention on 11 December 1948 and deposited its instrument of ratification, without reservation, on 29 August 1950. At the time of the proclamation of the Federal Republic of Yugoslavia, on 27 April 1992, a formal declaration was adopted on its behalf to the effect that:

> The Federal Republic of Yugoslavia, continuing the state, international legal and political personality of the Socialist Federal Republic of Yugoslavia, shall strictly abide by all the commitments that the Socialist Federal Republic of Yugoslavia assumed internationally.

This intention thus expressed by Yugoslavia to remain bound by the international treaties to which the former Yugoslavia was party was confirmed in an Official Note of 27 April 1992 from the Permanent Mission of Yugoslavia to the United Nations, addressed to the Secretary General. The Court observes, furthermore, that it has not been contested that Yugoslavia was party to the Genocide Convention. Thus, Yugoslavia was bound by the provisions of the Convention on the date of the filing of the Application in the present case, namely, on 20 March 1993.

18 For its part, on 29 December 1992, Bosnia-Herzegovina transmitted to the Secretary General of the United Nations, as depositary of the Genocide Convention, a Notice of Succession in the following terms:

> The Government of the Republic of Bosnia and Herzegovina, having considered the Convention on the Prevention and Punishment of the

> Crime of Genocide, of 9 December 1948, to which the former Socialist Federal Republic of Yugoslavia was a party, wishes to succeed to the same and undertakes faithfully to perform and carry out all the stipulations therein contained with effect from 6 March 1992, the date on which the Republic of Bosnia and Herzegovina became independent.

On 18 March 1993, the Secretary General communicated the following Depositary Notification to the parties to the Genocide Convention:

> On 29 December 1992, the notification of succession by the Government of Bosnia and Herzegovina to the above-mentioned Convention was deposited with the Secretary General, with effect from 6 March 1992, the date on which Bosnia and Herzegovina assumed responsibility for its international relations.

19 Yugoslavia has contested the validity and legal effect of the Notice of 29 December 1992, contending that, by its acts relating to its accession to independence, the Republic of Bosnia-Herzegovina had flagrantly violated the duties stemming from the 'principle of equal rights and self-determination of peoples'. According to Yugoslavia, Bosnia-Herzegovina was not, for this reason, qualified to become a party to the convention. Yugoslavia subsequently reiterated this objection in the third preliminary objection which it raised in this case.

The Court notes that Bosnia-Herzegovina became a Member of the United Nations following the decisions adopted on 22 May 1992 by the Security Council and the General Assembly, bodies competent under the Charter. Article XI of the Genocide Convention opens it to 'any member of the United Nations'; from the time of its admission to the Organisation, Bosnia-Herzegovina could thus become a party to the Convention. Hence the circumstances of its accession to independence are of little consequence.

20 It is clear from the foregoing that Bosnia-Herzegovina could become a party to the Convention through the mechanism of state succession. Moreover, the Secretary General of the United Nations considered that this had been the case, and the Court took note of this in its Order of 8 April 1993 ([1993] *ICJ Rep* at p 16, para 25).

21 The Parties to the dispute differed as to the legal consequences to be drawn from the occurrence of a state succession in the present case. In this context, Bosnia-Herzegovina has, among other things, contended that the Genocide Convention falls within the category of instruments for the protection of human rights, and that consequently, the rule of 'automatic succession' necessarily applies. Bosnia-Herzegovina concluded therefrom that it became a party to the Convention with effect from its accession to independence. Yugoslavia disputed any 'automatic succession' of Bosnia-Herzegovina to the Genocide Convention on this or any other basis.

22 As regards the nature of the Genocide Convention, the Court would recall what it stated in its Advisory Opinion of 28 May 1951 relating to the Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide.

> In such a convention the Contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d'être* of the Convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to states, or of the

> maintenance of a perfect contractual balance between rights and duties. ([1951] *ICJ Rep* at p 23.)

The Court subsequently noted in that Opinion that:

> The object and purpose of the Genocide Convention imply that it was the intention of the General Assembly and of the states which adopted it that as many states as possible should participate. The complete exclusion from the Convention of one or more states would not only restrict the scope of its application, but would detract from the authority of the moral and humanitarian principles which are its basis. (*Ibid*, p 24.)

23 Without prejudice as to whether or not the principle of 'automatic succession' applies in the case of certain types of international treaties or conventions, the Court does not consider it necessary, in order to decide on its jurisdiction in this case, to make a determination on the legal issues concerning state succession in respect to treaties which have been raised by the Parties. Whether Bosnia-Herzegovina automatically became party to the Genocide Convention on the date of its accession to independence on 6 March 1992, or whether it became a party as a result, retroactive or not, of its Notice of Succession of 29 December 1992, at all events it was a party to it on the date of the filing of its Application on 20 March 1993. These matters might, at the most, possess a certain relevance with respect to the determination of the scope *ratione temporis* of the jurisdiction of the Court, a point which the Court will consider later (paragraph 34 below).

24 Yugoslavia has also contended, in its sixth preliminary objection, that, if the Notice given by Bosnia-Herzegovina on 29 December 1992 had to be interpreted as constituting an instrument of accession within the meaning of Article XI of the Genocide Convention, it could only have become effective, pursuant to Article XIII of the Convention, on the 90th day following its deposit, that is, 29 March 1993.

Since the Court has concluded that Bosnia-Herzegovina could become a party to the Genocide Convention as a result of a succession, the question of the application of Articles XI and XIII of the Convention does not arise. However, the Court would recall that, as it noted in its Order of 8 April 1993, even if Bosnia-Herzegovina were to be treated as having acceded to the Genocide Convention, which would mean that the Application could be said to be premature by nine days when filed on 20 March 1993, during the time elapsed since then, Bosnia-Herzegovina could, on its own initiative, have remedied the procedural defect by filing a new Application. It therefore matters little that the Application had been filed some days too early. As will be indicated in the following paragraphs, the Court is not bound to attach the same degree of importance to considerations of form as they might possess in domestic law.[60]

117 The Court must first turn to the question whether Slovakia became a party to the 1977 Treaty as successor to Czechoslovakia. As an alternative argument, Hungary contended that, even if the Treaty survived the notification of termination, in any event it ceased to be in force as a treaty on 31 December 1992, as a result of the 'disappearance of one of the parties'. On that date

60 *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v Yugolslavia) (Preliminary Objections)* Judgment of 11 July 1996.

Czechoslovakia ceased to exist as a legal entity, and on 1 January 1993 the Czech Republic and the Slovak Republic came into existence.

118 According to Hungary, 'there is no rule of international law which provides for automatic succession to bilateral treaties on the disappearance of a party' and such a treaty will not survive unless another state succeeds to it by express agreement between that state and the remaining party. While the second paragraph of the Preamble to the Special Agreement recites that 'the Slovak Republic is one of the two successor States of the Czech and Slovak Federal Republic and the sole successor State in respect of rights and obligations relating to the Gabcikovo-Nagymaros Project', Hungary sought to distinguish between, on the one hand, rights and obligations such as 'continuing property rights' under the 1977 Treaty, and, on the other hand, the Treaty itself. It argued that, during the negotiations leading to signature of the Special Agreement, Slovakia had proposed a text in which it would have been expressly recognised 'as the successor to the Government of the CSFR' with regard to the 1977 Treaty, but that Hungary had rejected that formulation. It contended that it had never agreed to accept Slovakia as successor to the 1977 Treaty. Hungary referred to diplomatic exchanges in which the two parties had each submitted to the other lists of those bilateral treaties which they respectively wished should continue in force between them, for negotiation on a case-by-case basis; and Hungary emphasised that no agreement was ever reached with regard to the 1977 Treaty.

119 Hungary claimed that there was no rule of succession which could operate in the present case to override the absence of consent.

Referring to Article 34 of the Vienna Convention of 23 August 1978 on Succession of States in respect of Treaties, in which 'a rule of automatic succession to all treaties is provided for', based on the principle of continuity, Hungary argued not only that it never signed or ratified the Convention, but that the 'concept of automatic succession' contained in that Article was not and is not, and has never been accepted as, a statement of general international law.

Hungary further submitted that the 1977 Treaty did not create 'obligations and rights ... relating to the regime of a boundary' within the meaning of Article 11 of that Convention, and noted that the existing course of the boundary was unaffected by the Treaty. It also denied that the Treaty was a 'localised' treaty, or that it created rights 'considered as attaching to [the] territory' within the meaning of Article 12 of the 1978 Convention, which would, as such, be unaffected by a succession of States. The 1977 Treaty was, Hungary insisted, simply a joint investment. Hungary's conclusion was that there is no basis on which the Treaty could have survived the disappearance of Czechoslovakia so as to be binding as between itself and Slovakia.

120 According to Slovakia, the 1977 Treaty, which was not lawfully terminated by Hungary's notification in May 1992, remains in force between itself, as successor State, and Hungary.

Slovakia acknowledged that there was no agreement on succession to the Treaty between itself and Hungary. It relied instead, in the first place, on the 'general rule of continuity which applies in the case of dissolution'; it argued, secondly, that the Treaty is one 'attaching to the territory' within the meaning of Article 12 of the 1978 Vienna Convention, and that it contains provisions relating to a boundary.

121 In support of its first argument Slovakia cited Article 34 of the 1978 Vienna Convention, which it claimed is a statement of customary international law,

and which imposes the principle of automatic succession as the rule applicable in the case of dissolution of a state where the predecessor state has ceased to exist. Slovakia maintained that state practice in cases of dissolution tends to support continuity as the rule to be followed with regard to bilateral treaties. Slovakia having succeeded to part of the territory of the former Czechoslovakia, this would be the rule applicable in the present case.

122 Slovakia's second argument rests on 'the principle of *ipso jure* continuity of treaties of a territorial or localised character'. This rule, Slovakia said, is embodied in Article 12 of the 1978 Convention, which in part provides as follows:

Article 12 Other territorial regimes

2 A succession of states does not as such affect:

(a) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of a group of states or of all states and considered as attaching to that territory;

(b) rights established by a treaty for the benefit of a group of states or of all states and relating to the use of any territory, or to restrictions upon its use, and considered as attaching to that territory.

According to Slovakia, '[this] article [too] can be considered to be one of those provisions of the Vienna Convention that represent the codification of customary international law'. The 1977 Treaty is said to fall within its scope because of its 'specific characteristics ... which place it in the category of treaties of a localised or territorial character'. Slovakia also described the Treaty as one 'which contains boundary provisions and lays down a specific territorial regime' which operates in the interest of all Danube riparian States, and as 'a dispositive treaty, creating rights in rem, independently of the legal personality of its original signatories'. Here, Slovakia relied on the recognition by the International Law Commission of the existence of a 'special rule' whereby treaties 'intended to establish an objective regime' must be considered as binding on a successor state (Official Records of the United Nations Conference on the Succession of States in respect of Treaties, Vol III, Doc A/CONF.80/16/Add.2 at p 34). Thus, in Slovakia's view, the 1977 Treaty was not one which could have been terminated through the disappearance of one of the original parties.

123 The Court does not find it necessary for the purposes of the present case to enter into a discussion of whether or not Article 34 of the 1978 Convention reflects the state of customary international law. More relevant to its present analysis is the particular nature and character of the 1977 Treaty. An examination of this Treaty confirms that, aside from its undoubted nature as a joint investment, its major elements were the proposed construction and joint operation of a large, integrated and indivisible complex of structures and installations on specific parts of the respective territories of Hungary and Czechoslovakia along the Danube. The Treaty also established the navigational regime for an important sector of an international waterway, in particular, the relocation of the main international shipping lane to the bypass canal. In so doing, it inescapably created a situation in which the interests of other users of the Danube were affected. Furthermore, the interests of third states were expressly acknowledged in Article 18, whereby the parties undertook to ensure 'uninterrupted and safe navigation on the international fairway' in accordance with their obligations under the Convention of 18 August 1948 concerning the Regime of Navigation on the Danube.

In its Commentary on the Draft Articles on Succession of States in respect of Treaties, adopted at its 26th session, the International Law Commission identified 'treaties of a territorial character' as having been regarded both in traditional doctrine and in modern opinion as unaffected by a succession of states (Official Records of the United Nations Conference on the Succession of States in respect of Treaties, Vol III, Doc A/CONF.80/16/Add.2 at p 27, para 2). The draft text of Article 12, which reflects this principle, was subsequently adopted unchanged in the 1978 Vienna Convention. The Court considers that Article 12 reflects a rule of customary international law; it notes that neither of the parties disputed this. Moreover, the Commission indicated that 'treaties concerning water rights or navigation on rivers are commonly regarded as candidates for inclusion in the category of territorial treaties' (*ibid*, p 33, para 26). The Court observes that Article 12, in providing only, without reference to the Treaty itself, that rights and obligations of a territorial character established by a treaty are unaffected by a succession of States, appears to lend support to the position of Hungary rather than of Slovakia. However the Court concludes that this formulation was devised rather to take account of the fact that, in many cases, treaties which had established boundaries or territorial regimes were no longer in force (*ibid*, pp 26–37). Those that remained in force would nonetheless bind a successor State.

Taking all these factors into account, the Court finds that the content of the 1977 Treaty indicates that it must be regarded as establishing a territorial regime within the meaning of Article 12 of the 1978 Vienna Convention. It created rights and obligations 'attaching to' the parts of the Danube to which it relates; thus the Treaty itself cannot be affected by a succession of states. The Court therefore concludes that the 1977 Treaty became binding upon Slovakia on 1 January 1993.

124 It might be added that Slovakia also contended that, while still a constituent part of Czechoslovakia, it played a role in the development of the Project, as it did later, in the most critical phase of negotiations with Hungary about the fate of the Project. The evidence shows that the Slovak government passed resolutions prior to the signing of the 1977 Treaty in preparation for its implementation; and again, after signature, expressing its support for the Treaty. It was the Slovak Prime Minister who attended the meeting held in Budapest on 22 April 1991 as the Plenipotentiary of the Federal Government to discuss questions arising out of the Project. It was his successor as Prime Minister who notified his Hungarian counterpart by letter on 30 July 1991 of the decision of the government of the Slovak Republic, as well as of the government of the Czech and Slovak Federal Republic, to proceed with the 'provisional solution' (see para 63 above); and who wrote again on 18 December 1991 to the Hungarian Minister without Portfolio, renewing an earlier suggestion that a joint commission be set up under the auspices of the European Communities to consider possible solutions. The Slovak Prime Minister also wrote to the Hungarian Prime Minister in May 1992 on the subject of the decision taken by the Hungarian government to terminate the Treaty, informing him of resolutions passed by the Slovak government in response.

It is not necessary, in the light of the conclusions reached in para 123 above, for the Court to determine whether there are legal consequences to be drawn from the prominent part thus played by the Slovak Republic. Its role does, however, deserve mention.

In the absence of consistent state practice, state succession in respect of treaties has long been a rather uncertain field of international law. For example, while the 1978 Vienna Convention on Succession of States in Respect of Treaties provided, in accordance with the advice given by the International Law Commission, that a new state is bound by the international agreements binding on the predecessor state,[61] the 1987 Restatement (Third) of the Foreign Relations Law of the United States took the opposite view. Meanwhile scholars involved in the drafting of these instruments readily acknowledge that these standards were very open to criticism.[62] One of the foremost authorities on the subject even observed that 'state succession is a subject altogether unsuited to the process of codification'.[63]

State practice during the 1990s strongly supports the view that obligations arising from a human rights treaty are not affected by the succession of states.[64] This applies to all obligations undertaken by the predecessor state, including any reservations, declarations and derogations made by it. The continuity of these obligations occurs *ipso jure*. The successor state is under no obligation to issue confirmations to anyone.[65] Consent from other states is not required. Individuals residing within a given territory therefore remain entitled to the rights granted to them under a human rights treaty. They cannot be deprived of the protection of these rights by virtue of the fact that another state has assumed responsibility for the territory in which they find themselves. It follows that human rights treaties have a similar 'localised' character as treaties establishing boundaries and other territorial regimes.[66]

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61 Article 34(1) of the Vienna Convention on Succession of States in Respect of Treaties, adopted 22 August 1978, not yet in force.

62 See, eg I Sinclair, 'Some Reflections on the Vienna Convention on Succession of States in Respect of Treaties', in *Essays in Honour of Erik Castren*, 1979, 149, 153.

63 DP O'Connell, 'Reflections on the State Succession Convention' (1979) 39 *ZAoRV* at p 725.

64 For a more cautious conclusion see MN Shaw, 'State Succession Revisited' (1994) 5 *Finnish Yearbook of International Law* 34, 38 ('one is on the verge of widespread international acceptance of the principle that international human rights treaties continue to apply within the territory of a predecessor state irrespective of a succession'). Disagreeing, Bosw, 'State Succession with Regard to Treaties' (1995) 111 *Mededelingen van de Nederlandse voor International Recht* 18.

65 As a matter of fact, while a notification of continuing adherence to a human rights treaty may not be strictly required, in practice such a step may be gratefully accepted by the depository and the other state parties because it resolves any ambiguities that exist.

66 Menno T Kamminga, 'State Succession in Respect of Human Rights Treaties' (1996) 7 *EJIL* 469 at pp 469, 482.