(g) arbitrary deportation or forcible transfer of population;

(h) arbitrary imprisonment; forced disappearance of persons;

(i) rape, enforced prostitution and other forms of sexual abuse;

(j) other inhumane acts which severely damage physical or mental integrity, health or human dignity, such as mutilation and severe bodily harm.

Article 19 Crimes against United Nations and associated personnel

1 The following crimes constitute crimes against the peace and security of mankind when committed intentionally and in a systematic manner or on a large scale against United Nations and associated personnel involved in a United Nations operation with a view to preventing or impeding that operation from fulfilling its mandate:

(a) murder, kidnapping or other attack upon the person or liberty of any such personnel;

(b) violent attack upon the official premises, the private accommodation or the means of transportation of any such personnel likely to endanger his or her person or liberty.

2 This article shall not apply to a United Nations operation authorised by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organised armed forces and to which the law of international armed conflict applies.

Article 20 War crimes

Any of the following war crimes constitutes a crime against the peace and security of mankind when committed in a systematic manner or on a large scale:

(a) any of the following acts committed in violation of international humanitarian law:

(i) wilful killing;

(ii) torture or inhuman treatment, including biological experiments;

(iii) wilfully causing great suffering or serious injury to body or health;

(iv) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) compelling a prisoner of war or other protected person to serve in the forces of a hostile power;

(vi) wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) unlawful deportation or transfer or unlawful confinement of protected persons;

(viii) taking of hostages;

(b) any of the following acts committed wilfully in violation of international humanitarian law and causing death or serious injury to body or health:

(i) making the civilian population or individual civilians the object of attack;

(ii) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;

(iii) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;

(iv) making a person the object of attack in the knowledge that he is *hors de combat*;

(v) the perfidious use of the distinctive emblem of the red cross, red crescent or red lion and sun or of other recognised protective signs;

(c) any of the following acts committed wilfully in violation of international humanitarian law:

(i) the transfer by the occupying power of parts of its own civilian population into the territory it occupies;

(ii) unjustifiable delay in the repatriation of prisoners of war or civilians;

(d) outrages upon personal dignity in violation of international humanitarian law, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(e) any of the following acts committed in violation of the laws or customs of war:

(i) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;

(ii) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(iii) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings or buildings or of demilitarised zones;

(iv) seizure of, destruction of or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;

(v) plunder of public or private property;

(f) any of the following acts committed in violation of international humanitarian law applicable in armed conflict not of an international character:

(i) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(ii) collective punishments;

(iii) taking of hostages;

(iv) acts of terrorism;

(v) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(vi) pillage;

(vii) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are generally recognised as indispensable;

(g) in the case of armed conflict, using methods or means of warfare not justified by military necessity with the intent to cause widespread, long-term and

severe damage to the natural environment and thereby gravely prejudice the health or survival of the population and such damage occurs.[46]

10.5.2 An international criminal court

At the same time as work has been carried out on the preparation of a draft code of international crimes, the ILC has also been preparing a draft statute for an international criminal court. It is proposed that an international diplomatic conference be held in Rome in 1998 to discuss and adopt a convention on an international criminal court.[47] The hope is that the establishment of such a court would render unnecessary in future the establishment of *ad hoc* tribunals such as the ones dealing with events in Rwanda and in former Yugoslavia.

10.6 State responsibility for the treatment of aliens

As was indicated in 10.1 a state may suffer injury indirectly when the victim of wrongful behaviour is one of its nationals. Not every injury suffered by a foreign national abroad will constitute an international wrong. The injury will only give rise to issues of state responsibility if it can in some way be linked to the foreign state. As was indicated in 10.4 a state will not generally be liable for the acts of private individuals but responsibility will arise if the state can be shown to have connived at or failed to take adequate measures to prevent injuries to foreigners, or if, after the event, the foreign authorities fail to make an adequate attempt to provide justice.

Where the respondent state is involved in the wrongful act itself, either through its organs or officials, it is appropriate to talk of *prima facie* breaches of international law. The state of the injured national has the right to intervene on the diplomatic level to insist that the respondent state remedy the wrong it has committed. The matter is on the international plane from the start, even if it only gives rise to state responsibility if the respondent state fails to provide adequate redress through local remedies.

10.6.1 Standard of treatment

One area of considerable controversy is the standard of treatment to be accorded to foreign nationals. A state will only be responsible for treatment of aliens which falls below this standard. There are two conflicting views. Most Western states adhere to the concept of an international minimum standard of treatment. Every state is under a duty to treat aliens within its territory in accordance with this standard. This is so even if municipal law imposes a lower standard of treatment with respect to home nationals. This view was applied in

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46 *ILC Report* 1996 Chapter II.

47 By its Resolution 51/207 of 17 December 1996, the General Assembly took note of the report of the Preparatory Committee on the Establishment of an International Criminal Court (A/51/22), and decided that the Preparatory Committee shall meet from 11 to 21 February, 4 to 15 August and 1 to 12 December 1997, and from 16 March to 3 April 1998, in order to complete the drafting of a widely acceptable consolidated text of a convention, to be submitted to the diplomatic conference of plenipotentiaries to be held in 1998.

the *Neer Claim* (1926)[48] by the US-Mexican Claims Tribunal and in the *Chevreu* case (1931)[49] by an Anglo-French arbitral tribunal. Proponents of the international minimum standard have sought to argue that the concept is inextricably linked to the international law of human rights which is discussed in Chapter 15.

The opposing view is that foreign nationals are only entitled to be treated in the same manner as home nationals. This national standard would imply that the only thing to guard against is discrimination against foreign nationals. Article 9 of the Montevideo Convention on the Rights and Duties of States 1933 reflected this view by providing that 'foreigners may not claim rights other or more extensive than those of the nationals'. The national standard has been most strongly advocated by the developing states in the context of nationalisation of foreign owned property. This topic is discussed in Chapter 16.

It seems clear that it is not possible to discern a general rule of international law relating to treatment of aliens. Much depends upon the particular rights being asserted. What is more certain is that it is for international law to decide which standard operates in a particular case and this is related to the general principle that provisions of municipal law cannot be used as a defence to breaches of international obligations.

10.7 *Locus standi* and the right to bring claims

The general rule is that it is only injured states which are able to bring international claims against other states for a breach of some international obligation. The principle was strictly applied in the second phase of the *South West Africa* case (1966)[50] when the ICJ held that Liberia and Ethiopia had no legal interest in South Africa's treatment of the inhabitants of Namibia. Although both states had been original members of the League of Nations and therefore had certain rights under the Mandate agreement between the League and South Africa, the Court held that enforcement of the Mandate was a matter for the League alone and individual members suffered no injury and therefore had no independent right to bring claims arising out of breaches of its provisions. Article 5(1) of the ILC Draft Articles on State Responsibility, Part II (1985) provides that an injured state is any state a right of which is infringed by the act of another state if such an act constitutes an internationally wrongful act. Article 5(2) lists a number of situations in which injury will have occurred and this includes breaches of treaty obligations, both bilateral and multilateral, together with breaches of customary international law. Thus, for example, breaches of the European Convention on Human Rights by a State Party may be pursued by any other State Party to the Convention and there is no requirement that the victim of the human rights abuse should be a national of the claiming state.

48 (1926) RIAA 60.

49 (1931) RIAA 575.

50 [1966] *ICJ Rep* at p 6.

Article 5(3) of the Draft Articles goes further by providing that if the internationally wrongful act constitutes an international crime (see 9.4) then 'injured state' means all other states. This idea of collective responsibility is one of the most controversial areas of state responsibility and Article 5(3) cannot in any way be said to express an existing rule of international law. The concept of international crimes and *erga omnes* obligations is of particular relevance to claims arising out of human rights abuses, breaches of humanitarian law and environmental damage and will be further discussed in Chapters 14, 15 and 17.

10.8 Nationality of claims

Where a state has suffered directly from an internationally wrongful act such as the breach of a treaty obligation owed to it there will be little difficulty in establishing its right to bring an international claim. However, states may also suffer indirectly. Internationally wrongful acts can occur in respect of the treatment of individuals or corporations. In such situations, the claiming state needs to establish its right to make a claim on behalf of the individual or corporation that has suffered injury. It should be noted that what is being discussed here is the right to bring claims; whether or not a state will actually bring a claim depends on many other considerations, discussion of which is outside the ambit of this book.

10.8.1 Individuals

States may often raise diplomatic protests about the treatment of individuals by foreign states and such protests are not confined to activities involving their own nationals. However, for a state to make specific representation involving claims to reparation and compensation arising from injuries to an individual or group of individuals, or damage to their property, it must be able to show that these individuals are in fact its nationals. The basic rule is that the victim must be a national of the plaintiff state at the time the damage was caused and remain so until the claim is decided. This rule was applied by the PCIJ in the *Panevezys-Saldutiskis* case (1939), the Court stating that:

> In taking up the case of one of its nationals, by resorting to diplomatic action or international judicial proceedings on his behalf, a state is in reality asserting its own right, the right to ensure in the person of its nationals respect for the rules of international law. This rule is necessarily limited to intervention on behalf of its own nationals, because, in the absence of a special agreement, it is the bond of nationality between the state and the individual which alone confers upon the state the right of diplomatic protection.[51]

As indicated by the Court, the general rule can be waived with the consent of the respondent state.

Problems may arise when the individual concerned has dual nationality. Article 4 of the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws (1930) provides that a state may not exercise protection in respect of one of its nationals against a state whose nationality such person also

51 PCIJ Reports Ser A/B, No 76 (1939).

possesses. However, state practice has not always accorded with this provision and its utility was doubted when the Iran-US Claims Tribunal (1984) had to consider a number of individuals who had dual Iranian-US nationality. Article 4 is probably good law when an individual has equal connections with both states of which he or she is a national. However, tribunals will look to see whether the individual has closer or more effective links with one state when deciding questions of the right to exercise diplomatic protection. A state will be able to bring a claim on behalf of its national even if he or she is a national of the respondent state provided that the claimant state can establish the closer, more effective links with the individual concerned. This concept of an effective link was approved by the ICJ in the *Nottebohm* case (1955).[52] In that case the government of Liechtenstein instituted proceedings on the basis that Guatemala had acted unlawfully towards the person and property of Friedrich Nottebohm, a citizen of Liechtenstein. Guatemala disputed Liechtenstein's right to bring the case. Mr Nottebohm had been born in Germany in 1881. In 1905 he had gone to Guatemala and taken up residence there. He continued to travel to Germany and other countries on business and retained his German nationality. He made a few visits to Liechtenstein where his brother lived. While visiting his brother in 1939 he applied for and obtained Liechtenstein nationality. He subsequently had obtained a Guatemalan visa for his Liechtenstein passport and returned to Guatemala. The essential question for the Court was whether the nationality conferred on Nottebohm in 1939 could be relied upon as against Guatemala in justification of the commencement of proceedings. The Court acknowledged that the granting of nationality was a matter of municipal law but found that the right to exercise diplomatic protection of nationals was a matter of international law which the ICJ was entitled to determine. The Court stated that:

> According to the practice of states, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred ... is in fact more closely connected with the population of the state conferring nationality than with that of any other state. Conferred by a state, it only entitles that state to exercise protection *vis-à-vis* another state, if it constitutes a translation into juridical terms of the individual's connection with the state which has made him its national.

The Court found that Nottebohm had little real connection with Liechtenstein, whereas he had been settled in Guatemala for 34 years and had an intention to remain there. His connection with Guatemala was therefore far stronger than any connection with Liechtenstein and consequently Liechtenstein was not entitled to extend its protection over him *vis-à-vis* Guatemala.

In the same year as the *Nottebohm* case the Italian-US Conciliation Commission considered the *Merge Claim*. The claimant had both US and Italian nationality and the tribunal found that:

> The principle, based on the sovereign equality of states, which excludes diplomatic protection in the case of dual nationality, must yield before the

52 [1955] *ICJ Rep* at p 4.

> principle of effective nationality wherever such nationality is that of the claiming state.

This *dictum* was subsequently approved and found to be an expression of customary international law by the Iran-US Claims Tribunal.

10.8.2 Corporations and their shareholders

Prima facie, a corporation has the nationality of the state where it was incorporated. The problem arises in the fact that companies may be incorporated in states with which they have very little connection. The right of states to bring claims on behalf of shareholders was discussed in the *Barcelona Traction* case (1970).[53] The Barcelona Traction, Light and Power Company was a holding company incorporated in Canada in 1911 to develop and establish an electricity company in Spain. It created three subsidiary companies in Canada, most of whose shares it owned; and a number of operating and concessionary companies in Spain. The case arose following action taken by Spain which resulted in the company being declared bankrupt. Belgium sought to bring a claim based upon the allegation that most of Barcelona Traction's shares were owned by Belgian nationals and companies, mainly by a company called Sidro, the principal shareholder in which was another company called Sofina in which Belgian interests were again predominant. Spain argued that the injury had been done to the company rather than its shareholders and therefore Belgium lacked *locus standi* to bring the claim. The Court found that although shareholders had suffered it was only as a result of wrongs done to the company. The Court adopted the municipal law concept of the corporate veil and the distinction to be drawn between the personality of the company and its individual shareholders. As far as diplomatic protection was concerned, the Court stated that:

> The traditional rule attributes the right of diplomatic protection of a corporate entity to the state under the laws of which it is incorporated and in whose territory it has its registered office. These two criteria have been confirmed by long practice and by numerous international instruments.

It went on to acknowledge that there were situations where some further degree of connection was necessary but that no absolute test of 'genuine connection' existed in international law. It further suggested that there may be situations where:

> If in a given case it is not possible to apply the general rule that the right of diplomatic protection of a company belongs to its national state, considerations of equity might call for the possibility of protection of the shareholders in question by their own national state.

However, such a situation did not arise in the *Barcelona Traction* case and therefore the Court rejected the Belgian claim. Such situations may arise where the company itself no longer exists or more commonly where it is the national state of the company that actively injures the company.

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53 [1970] *ICJ Rep* at p 3.

10.9 Exhaustion of local remedies

An important rule applicable to indirect injuries to states is that a claim will not be admissible on the international plane unless the individual or corporation has exhausted the remedies provided by the local state. The rule is justified by political and practical considerations. It allows the local state to redress any wrong that has been committed before the matter reaches the level of international dispute settlement. In the *Norwegian Loans* case (1957)[54] Judge Lauterpacht commented that:

> The requirement of exhaustion of local remedies is not a purely technical or rigid rule. It is a rule which international tribunals have applied with a considerable degree of elasticity.

In particular, international tribunals are only concerned with effective local remedies. The rule was considered in the *Ambatelios Arbitration* (1956)[55] which arose following a contractual dispute between a Greek national and the UK. Mr Ambatelios failed to call a vital witness and also failed to take advantage of the opportunity of taking the case to the Court of Appeal. The Commission of Arbitration found that it was up to the defendant state to prove the existence in its municipal law of effective remedies which have not been used. The Commission stated that:

> Local remedies include not only reference to the courts and tribunals, but also the use of the procedural facilities which municipal law makes available to litigants before such courts and tribunals. It is the whole system of legal protection, as provided by municipal law, which must have been put to the test before a state, as the protector of its nationals, can prosecute the claim on the international plane.

An individual or corporation does not need to exhaust all appeal mechanisms if such appeals are clearly going to prove futile. In the *Finnish Shipowners Arbitration* (1934)[56] the UK objected to the Finnish claim on the basis that the Finnish nationals had failed to appeal against a decision of the UK's Admiralty Transport Arbitration Board. The international arbitrator accepted the Finnish argument that in the particular case the Court of Appeal would have been unable to overturn the finding of fact made by the Arbitration Board and that an appeal would therefore have made no difference. Finland was therefore within its rights to pursue the claim on the international plane.

It should be emphasised that the requirement of the exhaustion of local remedies only applies to indirect wrongs and is not relevant where the claimant state has suffered direct injury. Thus the rule did not apply in the *Aerial Incident of 27 July 1955* case (1956)[57] which arose following the shooting down of an Israeli aircraft over Bulgaria. There may be some confusion where a claim arises following injury to nationals which is in breach of treaty provisions. A breach of a treaty obligation would normally be considered to amount to a direct wrong, but where the treaty is invoked on behalf of nationals the local remedies rule

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54 [1957] *ICJ Rep* at p 9.

55 (1956) 12 RIAA 83.

56 (1934) RIAA 1479.

57 [1956] *ICJ Rep* at p 127.

will generally still apply. The point was considered by the ICJ in the *Elettronica Sicula SpA (ELSI)* case (1989).[58] The US brought a claim against Italy following the nationalisation of ELSI, an Italian corporation wholly owned by two US corporations. Italy claimed that local remedies had not been exhausted while the US argued that the rule did not apply since it was claiming compensation for the two US companies on the basis of the Treaty of Friendship, Commerce and Navigation 1948 between the US and Italy. It therefore sought to argue that the breach of treaty amounted to a direct international wrong. The ICJ found, however, that the principal issue in the case was the injury suffered by the US corporations and it was not possible to separate this from the direct wrong of the breach of treaty. It stated that the parties to treaties could expressly agree that the local remedies rule would or would not apply, but, in the absence of any relevant agreement, where a claim was partly based on injury suffered by nationals, the rule would be presumed to apply. Having dealt with the general issues involved the Court then found that in the particular case local remedies had been exhausted.

10.10 Defences and justifications

In certain circumstances, a breach of an international obligation imputable to a state may not give rise to international responsibility. Chapter V of the ILC's Draft Articles, Part I indicates a number of circumstances which will 'preclude wrongfulness' and thus provide a defence to international claims. State responsibility will not arise in the following situations:

(i) where the defendant state was coerced into committing the wrongful act by another state;

(ii) where the defendant state had acted with the consent of the harmed state;

(iii) where the defendant state was merely taking permissible counter-measures. Actions involving the use of armed force are excluded from this category of defence.

(iv) where the defendant state's officials acted under *force majeure* or extreme distress and were not wilfully seeking the harm caused. The standard of proof in such cases is high.

The Draft Articles also allow two justifications for wrongful action: necessity and self defence. Necessity will only justify wrongful action if the act was the only means of safeguarding an essential state interest against a grave and imminent peril, and that the act did not seriously impair an essential interest of the state to whom the obligation was owed. For example, in 1967, the Liberian tanker the Torrey Canyon went aground off the UK coast, outside territorial waters, spilling large quantities of oil. After several salvage attempts, the UK finally bombed the ship to burn and disperse the oil. The ILC took the view that this action was justified by necessity. Self-defence justifies an otherwise wrongful act if the measures adopted in self-defence are taken in conformity with the UN Charter. The topic of self-defence will be further discussed in Chapter 13. Neither justification will be available in the case of a violation of a peremptory norm of international law (*jus cogens*).

58 [1989] *ICJ Rep* at p 15.

49 The Court will now consider the question of whether there was, in 1989, a state of necessity which would have permitted Hungary, without incurring international responsibility, to suspend and abandon works that it was committed to perform in accordance with the 1977 Treaty and related instruments.

50 In the present case, the parties are in agreement in considering that the existence of a state of necessity must be evaluated in the light of the criteria laid down by the International Law Commission in Article 33 of the Draft Articles on the International Responsibility of States, that it adopted on first reading. That provision is worded as follows:

Article 33 State of necessity

1 A state of necessity may not be invoked by a state as a ground for precluding the wrongfulness of an act of that state not in conformity with an international obligation of the state unless:

(a) the act was the only means of safeguarding an essential interest of the state against a grave and imminent peril; and

(b) the act did not seriously impair an essential interest of the state towards which the obligation existed.

2 In any case, a state of necessity may not be invoked by a state as a ground for precluding wrongfulness:

(a) if the international obligation with which the act of the state is not in conformity arises out of a peremptory norm of general international law; or

(b) if the international obligation with which the act of the state is not in conformity is laid down by a treaty which, explicitly or implicitly, excludes the possibility of invoking the state of necessity with respect to that obligation; or

(c) if the state in question has contributed to the occurrence of the state of necessity. (*Yearbook of the International Law Commission*, 1980, Vol II, Part 2 at p 34.)

In its Commentary, the Commission defined the 'state of necessity' as being:

> The situation of a state whose sole means of safeguarding an essential interest threatened by a grave and imminent peril is to adopt conduct not in conformity with what is required of it by an international obligation to another state (*ibid*, para 1.)

It concluded that 'the notion of state of necessity is ... deeply rooted in general legal thinking' (*Ibid*, p 49, para 31).

51 The Court considers, first of all, that the state of necessity is a ground recognised by customary international law for precluding the wrongfulness of an act not in conformity with an international obligation. It observes moreover that such ground for precluding wrongfulness can only be accepted on an exceptional basis. The International Law Commission was of the same opinion when it explained that it had opted for a negative form of words in Article 33 of its Draft:

> In order to show, by this formal means also, that the case of invocation of a state of necessity as a justification must be considered as really constituting an exception and one even more rarely admissible than is the case with the other circumstances precluding wrongfulness ... (*ibid*, p 51, para 40).

Thus, according to the Commission, the state of necessity can only be invoked under certain strictly defined conditions which must be cumulatively satisfied; the state concerned may not be the sole judge of whether those conditions have been met.

52 In the present case, the following basic conditions set forth in Draft Article 33 are relevant: it must have been occasioned by an 'essential interest' of the state which is the author of the act conflicting with one of its international obligations; that interest must have been threatened by a 'grave and imminent peril'; the act being challenged must have been the 'only means' of safeguarding that interest; that act must not have 'seriously impaired an essential interest' of the state towards which the obligation existed; and the state which is the author of that act must not have 'contributed to the occurrence of the state of necessity'. Those conditions reflect customary international law.

The Court will now endeavour to ascertain whether those conditions had been met at the time of the suspension and abandonment, by Hungary, of the works that it was to carry out in accordance with the 1977 Treaty.

53 The Court has no difficulty in acknowledging that the concerns expressed by Hungary for its natural environment in the region affected by the Gabcikovo-Nagymaros Project related to an 'essential interest' of that state, within the meaning given to that expression in Article 33 of the Draft of the International Law Commission.

The Commission, in its Commentary, indicated that one should not, in that context, reduce an 'essential interest' to a matter only of the 'existence' of the state, and that the whole question was, ultimately, to be judged in the light of the particular case (see *Yearbook of the International Law Commission*, 1980, Vol II, Part 2, p 49, para 32); at the same time, it included among the situations that could occasion a state of necessity, 'a grave danger to ... the ecological preservation of all or some of the territory of a state' (*ibid*, p 35, para 3); and specified, with reference to state practice, that: 'It is primarily in the last two decades that safeguarding the ecological balance has come to be considered an 'essential interest' of all States.' (*ibid*, p 39, para 14.)

The Court recalls that it has recently had occasion to stress, in the following terms, the great significance that it attaches to respect for the environment, not only for states but also for the whole of mankind:

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. The existence of the general obligation of states to ensure that activities within their jurisdiction and control respect the environment of other states or of areas beyond national control is now part of the corpus of international law relating to the environment.' (Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, *ICJ Reports* 1996, pp 241–42, para 29.)

54 The verification of the existence, in 1989, of the 'peril' invoked by Hungary, of its 'grave and imminent' nature, as well as of the absence of any 'means' to respond to it, other than the measures taken by Hungary to suspend and abandon the works, are all complex processes.

As the Court has already indicated (see para 33 *et seq* above), Hungary on several occasions expressed, in 1989, its 'uncertainties' as to the ecological impact of putting in place the Gabcikovo-Nagymaros barrage system, which is why it asked insistently for new scientific studies to be carried out.