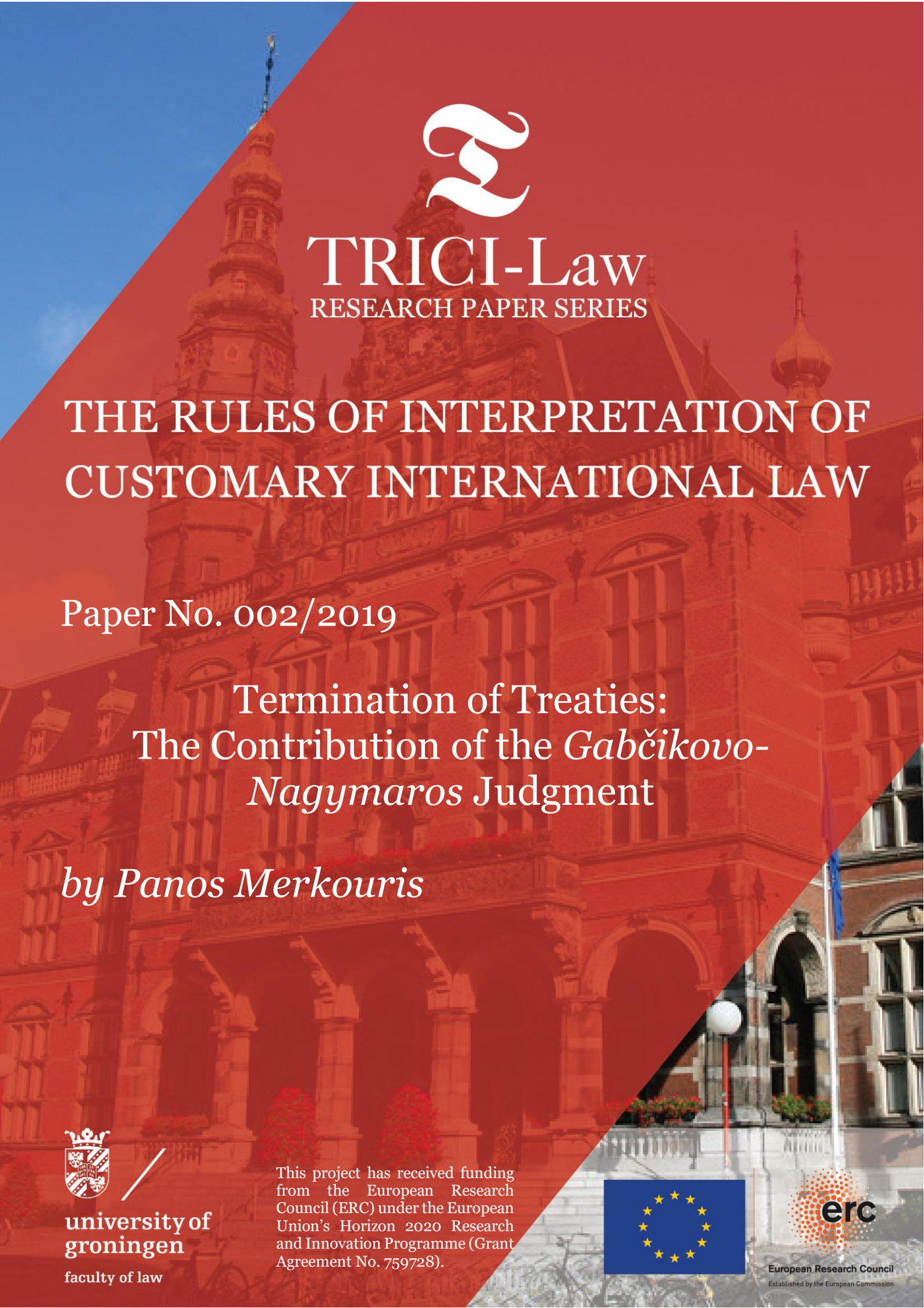

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Termination of Treaties: The Contribution of the *Gabčikovo-Nagymaros* Judgment

by Panos Merkouris

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CHAPTER 10

Termination of Treaties

The Contribution of the Gabčikovo-Nagymaros Judgment

Panos Merkouris[*]

Introduction

This Chapter will discuss the contribution of the *Gabčikovo-Nagymaros* judgment[1] to the development of international law in the context of unilateral termination of treaties. As evidenced by the previous sentence, two are they key axes of analysis: i) development, and ii) treaty termination. With respect to the first axis, development can come in a variety of forms. It should not be equated only to breaking with the past or trailblazing but it can manifest itself in a more incremental or indirect way, for instance not by stating what the content of the rule is, but also what it is not. It is in this wide gamut of manifestations of development that the contribution of *Gabčikovo-Nagymaros* really shine through.

As far as the second axis is concerned, ie termination of treaties, the *Gabčikovo-Nagymaros* judgment is a veritable smörgåsbord. Almost all the major grounds for unilateral termination included in the Vienna Convention on the Law of Treaties[2] were argued by Hungary. Supervening impossibility of performance, material breach and fundamental change of circumstances were all submitted before and considered by the Court. Not only intra-VCLT grounds for termination were considered but even exo-VCLT ones, such as that of common

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1 *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* (Judgment) [1997] ICJ Rep 7 (*Gabčíkovo-Nagymaros*).

2 1969 Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

repudiation of a treaty, which resembles an expansively interpreted form of *inadimplenti non est adimplendum*.[3] It seems that the only ground missing is termination by virtue of the emergence of a new peremptory norm of general international law (*jus cogens*). Hungary's last claim, in theory, could have been based on Article 64 VCLT.[4] However, none of the parties to the dispute claimed that the environmental norms they referred to had attained *jus cogens* status. Consequently, as the Court rightly pointed this issue was more connected to interpretation of treaties rather than termination.[5]

Whether the invocation of such a plethora of grounds of termination was solidly based on the facts of the case, or whether it was more of a litigation strategy,[6] is a matter of conjecture and falls outside the scope of this Chapter. Nonetheless, it offered the Court a unique opportunity to expound, while always respecting judicial economy on both the grounds of termination of treaties and the manner in which they have developed both pre- and post-VCLT.

1 Non-applicability of the VCLT

At this point, it needs to be clarified that although in the present Chapter the VCLT provisions on termination of treaties will often be referred to, this does not mean that the VCLT was applicable to the Treaty concerning the Construction and Operation of the Gabčíkovo-Nagymaros System of Locks (1977 Treaty).[7] On the contrary, since that treaty was concluded in 1977 and entered into force in 1978, by virtue of Article 4 VCLT, which enshrines the principle of non-retroactivity, the VCLT cannot be applied to that treaty, as the VCLT entered into force for the disputing parties after the conclusion of the1977 Treaty.[8] However, as the Court was very quick to point out 'it

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3 *Gabčíkovo-Nagymaros* (n 1) [114].

4 Or to be more precise to its customary law equivalent, since the VCLT did not apply to the 1977 treaty.

5 *Gabčíkovo-Nagymaros* (n 1) [111-12].

6 The parties 'going fishing' as Pellet has suggested; in more detail on the issues relating to litigation strategy in *Gabčikovo-Nagymaros* see the Chapter of Stephan Wittich in the present edited volume.

7 1977 Treaty between the Hungarian People's Republic and the Czechoslovak Socialist Republic Concerning the Construction and Operation of the Gabčíkovo-Nagymaros System of Locks (adopted 16 September 1977, entered into force 30 June 1978) 1109 UNTS 235.

8 Article 4 VCLT provides that: '…the Convention applies only to treaties which

needs only to be mindful of the fact that it has several times had occasion to hold that some of the rules laid down in that Convention might be considered as a codification of existing customary law. The Court takes the view that in many respects this applies to the provisions of the Vienna Convention concerning the termination and the suspension of the operation of treaties, set forth in Articles 60 to 62 [VCLT]'.[9] Consequently, references to the VCLT provisions are made only by virtue of them being a reflection of the content of customary international law, which is the only truly applicable law on termination of treaties in this case.

2 Lack of a Termination Provision

The fact that the execution of the obligations incorporated in a treaty text has become anomalous, does not *eo ipso* mean that grounds for termination of a treaty can be considered. The logical and normatively precursor is that of determining whether unilateral denunciation or withdrawal from a treaty is even permissible. The 1977 Treaty did not have a provision regarding termination. To make matters even more complex, the Court was unable to infer either from the text or from the surrounding circumstances any indication that the parties had the intention to allow even for the option of denunciation or withdrawal from the 1977 Treaty, especially considering the nature of the Treaty, which was intended to establish 'a long-standing and durable regime of joint investment and joint operation'.[10]

The reference to the nature of the treaty is quite critical as according to Article 56 VCLT, which according to the ICJ codifies customary international law,[11] if a treaty does not contain a provision regarding

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are concluded by States after the entry into force of the present Convention with regard to such States'.

9 *Gabčíkovo-Nagymaros* (n 1) [46] and similarly [99]; in support the Court referred to its previous juriprudence in: *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion) [1971] ICJ Rep 16, [94] (*Namibia Advisory Opinion*); *Fisheries Jurisdiction (United Kingdom v Iceland)* (Jurisdiction) [1973] ICJ Rep 3, [36]; *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt* (Advisory Opinion) [1980] ICJ Rep 73, [49].

10 *Gabčíkovo-Nagymaros* (n 1) [100].

11 Although whether that is correct for the entirety of the Article is up for debate; see Th Christakis, 'Article 56' in O Corten and P Klein (eds), *The Vienna*

its termination and does not provide for denunciation or withdrawal 'is not subject to denunciation or withdrawal unless: (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or (b) a right of denunciation or withdrawal may be implied by the nature of the treaty'. The near unanimous adoption of Article 56 during the Vienna Conference on the Law of Treaties,[12] may give the wrong impression as to how truly unchallenged the content of Article 56 was, and its reflection of customary international law. The Article reflected two competing interests. On the one hand, the autonomy of the will of the States, and on the other hand the need for stability of international relations.[13]

Whereas subparagraph (a) of Article 56(1) VCLT did not cause any ripples during both the ILC and the Vienna Conference debates,[14] subparagraph (b), which aimed at introducing an 'objective' element, ie that of the nature of the treaty was a completely different story. Article 56(1)(b), which is based on the assumption that certain categories of treaties are intrinsically temporary,[15] had a fiercely debated drafting history.[16] This was probably because there were three non-harmonizable trends with respect to the content of Article 56(1)(b). A group of ILC members were of the view that the dominant rule was that of prohibition of unilateral denunciation, with the intention of the parties being the only permitted exception. Another group was of the view that a tacit denunciation right, along with certain exceptions had already become customary international law. Finally, a third group maintained that, although a tacit right of denunciation did not exist, it could be inferred from a certain type of treaties.[17]

Waldock in his 'Second Report' proposed Draft Article 17, which identified types of treaties that by their nature either allowed for or were not open to denunciation or withdrawal in the case of lack of a

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Conventions on the Law of Treaties: A Commentary (OUP 2011) 1251-76; Th Giegerich, 'Article 56' in O Dörr and K Schmalenbach (eds), *Vienna Convention on the Law of Treaties: A Commentary* (2nd edn, Springer 2018) 1039-60.

12 95 votes in favour, 0 against, with 6 abstentions.

13 Christakis (n 11) [17]; Giegerich (n 11) [1-13] and [24-35].

14 Christakis (n 11) [12] referring to comments made by Mr. Tsuruoka, Verdross, and Briggs in ILC, 'Summary Record of the 689th Meeting' (29 May 1963) UN Doc A/CN.4/SR.689 [16], [24] and [35] respectively; see also Giegerich (n 11) [1-13].

15 Christakis (n 11) [49].

16 Giegerich (n 11) [30].

17 Christakis (n 11) [10 et seq].

relevant provision. In the former category belonged commercial or trading treaties, treaties of alliance of military co-operation, treaties for technical co-operation; treaties of arbitration, conciliation or judicial settlement and *modus vivendi* agreements; in the latter category belonged boundary treaties, or effecting a cession of territory, or a grant of rights in or over territory, treaties establishing an international régime for a particular area, territory, river, waterway or airspace; treaties of peace, of disarmament, or for the maintenance of peace, treaties effecting a final settlement of an international dispute and human rights treaties.[18]

Given what was stated above about the three key approaches to Article 56(1)(b), it should come as no surprise that Draft Article 17 was criticized by several ILC members for being both too timid and too progressive.[19] The ILC eventually decided to omit any reference to the 'character of the treaty',[20] as its members considered this to be only one of a multitude of elements in the set that allowed for determination of the intention of the parties with regard to denunciation or withdrawal. This was reversed by the participating States in the Vienna Conference on the Law of Treaties, which not only reinserted the reference, but switched at the same time the term 'character' with 'nature'. Indicative of the debate surrounding Article 56(1)(b) is the fact that during the Vienna Conference on the Law of Treaties amendment proposals to article 56 were submitted by five States (Cuba, United Kingdom, Colombia, Spain and Venezuela). The amendment by the United Kingdom re-introduced the second exception, and was adopted by the narrowest of margins.[21] This turned the 'nature of the treaty' into a self-standing ground for rebutting the presumption of Article 56(1) VCLT, one that was of equal value with that of the intention of the parties, and not merely an element through which the latter could be identified.[22]

Of note is also the fact that the term 'nature' appears only once throughout the entire VCLT, whereas 'character' five times, and 'object and purpose' eight times.[23] Interestingly enough, in Article 60 VCLT,

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18 ILC, 'Second Report on the Law of treaties, by Sir Humphrey Waldock, Special Rapporteur' (20 March – 5 June 1963) UN Doc A/CN.4/156 and Add 1-3, Article 17 (Waldock 'Second Report').

19 Depending on which of the three groups the critic belonged to.

20 That was the term being used and not 'nature'.

21 26 votes in favour, 25 against, with 37 abstentions.

22 Giegerich (n 11) [30].

23 In French the term '*nature*' appears twice, in Article 56 and Article 60(2)(c),

the term character is preferred. This inconsistency in the terminology might be explicated by virtue of the aforementioned last minute re-drafting of Article 56 in the Vienna Conference. It is the author's view, as evidenced by discussions on the law of treaties not only in the ILC but also in the *Institut de droit international*, that the ILC members wanted to move away from the term 'nature' towards more neutral terms like 'character' and 'object and purpose' in order to avoid the natural law connotations and the various presumptions, interpretative and otherwise, that were usually associated with the term 'nature'.[24]

The Court in *Gabčikovo-Nagymaros* may not have referred explicitly to Article 56 VCLT (or its customary law counterpart) but the second and third sentence in paragraph 100, seem to correspond to Article 56(1)(a) and (b) respectively, thus, signaling an implicit acceptance by the Court of the customary nature of Article 56 in its entirety. This, despite all the above-described controversy during the drafting history of the article. Irrespective of whether the Court was correct in its assessment, it is significant for the purposes of the validation of the normative status of Article 56 VCLT under customary international law.

3 Unilateral Termination of a Treaty: the *Gabčikovo-Nagymaros* Approach

The lack of a withdrawal or denunciation provision in the 1977 Treaty inexorably led the Court to examine the possibility of unilateral termination of a treaty. It is at this point that the contribution of the *Gabčikovo-Nagymaros* judgment to the development of the international law on treaties (with an emphasis on termination of treaties) becomes more pronounced. Essentially, the Court's judgment, assisted by Hungary's claims, is a *tour de force* of grounds of termination of treaties. Hungary had raised the following grounds in an attempt to substantiate its actions: i) the impossibility of

although in the latter article in paragraph 5, the term is switched, once again, to '*caractère*'. Respectively the terms '*caractère*' and '*objet et but*' appear three and seven times respectively.

24 On the discussions relating to interpretative presumptions see P Merkouris, '*In dubio mitius*' in C Salonides, Y Parkhomenko and J Klinger (eds), *Between the Lines of the Vienna Convention? Canons and Other Principles of Interpretation in Public International Law* (Wolters Kluwer 2018) 259-305.

performance of the 1977 Treaty; ii) the occurrence of a fundamental change of circumstances; iii) the material breach of the 1977 Treaty by Czechoslovakia; and, iv) the development of new norms of international environmental law.

This reads like a textbook presentation of the relevant VCLT articles on termination of treaties. The only ground that is missing is termination by virtue of the emergence of a new peremptory norm of general international law (*jus cogens*). Hungary's last claim, in theory, could have been based on Article 64 VCLT.[25] However, none of the parties to the dispute claimed that the environmental norms they referred to had attained *jus cogens* status. Consequently, as the Court rightly pointed this issue was more connected to interpretation of treaties rather than termination.[26]

In responding to Hungary's other three claims, ie on supervening impossibility of performance (Article 61 VCLT), fundamental change of circumstances (Article 62 VCLT) and material breach (Article 60 VCLT) the Court offered valuable insights as the normative character of these grounds, as well as to several of the specific elements that need to be satisfied in order for the above grounds to be successfully invoked. We shall return to these points in the following Sections. The Court also underscored the importance not only of the substantive elements of the aforementioned grounds of termination, but also of the procedural elements that need to be satisfied.[27] Finally, the Court also refused to accept another venue that Hungary tried to explore, ie that of common repudiation,[28] and expounded on its view as to the relevance of *inadimplenti non est adimplendum* in the context of the termination of treaties.

It is these insights and they manner in which they have affected subsequent jurisprudence and academic discourse that the following Sections will focus on, in order to demonstrate the far-reaching effects that the *Gabčikovo-Nagymaros* judgment has had in the theory and practice surrounding the termination of treaties.

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25 Or to be more precise to its customary law equivalent, since the VCLT did not apply to the 1977 treaty.

26 *Gabčíkovo-Nagymaros* (n 1) [111-12].

27 ibid [108-09].

28 ibid [114].

4 Supervening Impossibility of Performance

During the proceedings, Hungary apart from the aforementioned grounds for termination had also raised, and in fact raised it as its first argument for termination, the existence of a state of necessity. This is quite interesting as it is demonstrative of the fuzzy borders between law of treaties and state responsibility, which permeated the ILC's discussions on these two topics. The invocation of the state of necessity within the context of treaty termination was easy to dispense with, and the Court promptly did so by holding that even if a state of necessity existed.

> ... it is not a ground for the termination of a treaty. It may only be invoked to exonerate from its responsibility a State which has failed to implement a Treaty. Even if found justified, *it does not terminate a Treaty*; the Treaty may be ineffective as long as the condition of necessity continues to exist; it may in fact be dormant, but - unless the parties by mutual agreement terminate the Treaty - it continues to exist. As soon as the state of necessity ceases to exist, the duty to comply with treaty obligations revives.[29]

Be that as it may, the interplay of a number of concepts may defy a strictly Aristotelian categorization within the parameters either of the law of treaties or of state responsibility, despite the Court's declaration to the contrary in *Gabčíkovo-Nagymaros*.[30] Within the context of treaty termination the two most well-known culprits are the connection between i) supervening impossibility of performance and *force majeure*, and ii) material breach and countermeasures.[31]

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29 ibid [101] (emphasis added).

30 ibid [47]; '[n]or does the Court need to dwell upon the question of the relationship between the law of treaties and the law of State responsibility, to which the Parties devoted lengthy arguments, as those two branches of international law obviously have a scope that is distinct. A determination of whether a convention is or is not in force, and whether it has or has not been properly suspended or denounced, is to be made pursuant to the law of treaties. On the other hand, an evaluation of the extent to which the suspension or denunciation of a convention, seen as incompatible with the law of treaties, involves the responsibility of the State which proceeded to it, is to be made under the law of state responsibility.'

31 See below in this Section and in the Section on material breach.

As far as supervening impossibility of performance is concerned, it has generally received little attention when compared to either material breach or fundamental change of circumstances.[32] Even the ILC struggled to find real life examples and the discussions revolved mainly around theoretical scenarios.[33] This, however, did not prevent the ICJ years later to consider Article 61 declaratory of customary international law.[34] Undoubtedly, *Gabčikovo-Nagymaros* is the most critical of the modern cases that delved into some of the critical aspects of the doctrine of supervening impossibility of performance, namely the concepts of 'indispensable object' and of 'permanent disappearance or destruction'. Hungary argued that the 'essential object' of the 1977 Treaty, ie 'an economic joint investment which was consistent with environmental protection and which was operated by the two contracting parties jointly' had permanently disappeared and therefore the obligations contained in the 1977 Treaty were no longer possible to perform.[35]

The Court, however, opined that Hungary's interpretation of Article 61(1) VCLT[36] was not supported either by the text of that provision or by the intention of the parties as revealed through the preparatory work.[37] In coming to this conclusion, the Court relied on the fact that Article 61(1) VCLT regulates the *absolute* impossibility of performance, whereas the relative one falls under the scope of Article

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32 For an in-depth discussion, see M Fitzmaurice, 'Exceptional Circumstances and Treaty Commitments' in D Hollis (ed), *The Oxford Guide to Treaties* (OUP 2012) 605-33.

33 Many examples were provided, but as Waldock explicated '[n]o doubt, any of these things may happen, but none of them has so far given rise to a leading case or diplomatic incident concerning the dissolution of treaties'; Waldock 'Second Report' (n 18) Commentary to Article 21, [5].

34 *Gabčíkovo-Nagymaros* (n 1) [99, 102-03].

35 ibid [103].

36 It is interesting to note, at this point, that the ICJ uses the term 'interpretation' in this context. Although it refers to interpretation of Article 61 VCLT, since, as we have already established and the Court explicitly stated in paragraphs 46 and 99 of its judgment, the VCLT is not applicable in the present case, then this reference to interpretation alludes to interpretation of a customary rule as seen through a relevant treaty rule that codifies it. For a more detailed analysis of interpretation of customary international law see P Merkouris, *Article 31(3)(c) and the Principle of Systemic Integration: Normative Shadows in Plato's Cave* (Martinus Nijhoff 2015) 231-300; P Merkouris, 'Interpreting the Customary Rules on Interpretation' (2017) 19 ICLR 126.

37 *Gabčíkovo-Nagymaros* (n 1) [102].

62 VCLT.[38] Article 61 VCLT requires 'the *permanent* disappearance or destruction of an object indispensable for the execution'. Despite the fact that efforts had been made during the Vienna Conference on the Law of Treaties to expand the scope of Article 61 VCLT to cover even cases of 'impossibility to make certain payments because of serious financial difficulties',[39] the delegating States decided not to go down that path, as they felt that a more restrictive interpretation was more appropriate considering the fact that Article 61 VCLT dealt with the exceptional situation of a unilateral termination of a treaty. It is worth noting, however, the fact that the example offered was acknowledged to possibly fall under the rubric of circumstances precluding wrongfulness demonstrates once again how closely intertwined the law of treaties and on state responsibility are.[40]

Because of the above choices made in the Vienna Conference on the Law of Treaties, the Court felt that it did not have to examine whether a legal régime could fall under the notion of 'object' for the purposes of Article 61 VCLT. The examples offered during the ILC discussions on supervening impossibility of performance referred to the extinction of the physical object to which the treaty related, such as the disappearance of an island owing to the subsidence in the seabed, the permanent drying up of a river, the destruction of a railway by an earthquake, or the destruction of a plant, installation, canal, lighthouse and so on.[41] Once again, from the examples provided it is clear that a connection exists between supervening impossibility and *force majeure.* The ILC members were well aware of this fact, and despite their best efforts to draw clear lines between them, those efforts bore little fruit.[42] In the view of the ILC[43] although '[t]he *sedes materiae* of

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38 Comments by Mr de Luna in ILC, 'Summary Record of the 833rd Meeting' (18 January 1966) UN Doc A/CN.4/SR.833 [9-12].

39 *Gabčíkovo-Nagymaros* (n 1) [102 referring to the United Nations Conference on the Law of Treaties, '62nd Meeting of the Committee of the Whole'(9 May 1968) UN Doc A/CONF.39/C.1/SR.62 [2], where the representative of Mexico, while explicating the reason for the Mexican amendment proposal, referred to 'the impossibility to deliver an article by a given date owing to a strike, the closing of a port or a war, or of the possibility that a rich and powerful State, faced with temporary difficulties, might be obliged to suspend its payments'.

40 *Gabčíkovo-Nagymaros* (n 1) [102].

41 ILC, 'Second Report on the Law of Treaties by Mr GG Fitzmaurice, Special Rapporteur' (15 March 1957) UN Doc A/CN.4/107 [97] (Fitzmaurice 'Second Report').

42 United Nations Conference on the Law of Treaties (n 39) [1-46].

43 Even when discussing the 1986 Vienna Convention on the Law of Treaties

force majeure might therefore be said to be the question of responsibility, rather than the law of Treaties ... there were still some points at which the law of treaties and the question of responsibility converged, and article 61 was one of them'.[44]

Interestingly, in Waldock's 'Second Report' Draft Article 21, which later became Article 61 VCLT, had a reference to 'permanent disappearance of a legal … régime' as a ground for invoking supervening impossibility of performance,[45] which disappeared from later versions of the article. However, the Court felt that there was no need to explore further this issue since the lack of 'permanent disappearance or destruction' of the alleged 'object' already barred any possible application of the doctrine of supervening impossibility of performance.[46] The Court came to this conclusion on the basis of the existence of provisions in the 1977 Treaty that allowed the parties to make any necessary readjustments between economic imperatives and ecological imperatives. This conclusion was further strengthened by the fact that any alleged 'impossibility o performance' had emerged as a result of Hungary's own (in)action and therefore, Article 61(2) VCLT would bar Hungary from benefitting from its own breach of its contractual obligation, and thus Hungary could not invoke that ground for termination of the 1977 Treaty.[47]

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between States and International Organizations or between International Organizations (adopted 21 March 1986, not yet in force) UN Doc A/CONF.129/15.

44 Comments by Mr Reuter in ILC, 'Summary Record of the 1585th Meeting' (6 May 1980) UN Doc A/CN.4/SR.1585 [8]. See also ILC, 'Fourth Report on the Law of Treaties by Mr GG Fitzmaurice, Special Rapporteur' (17 March 1959) UN Doc A/CN.4/120 [77-78].The link between supervening impossibility of performance and *force majeure* had been already been pleaded before the PCIJ in two cases, the *Serbian* and *Brazilian Loans* cases; *Case Concerning the Payment of Various Serbian Loans Issued in France (France v. Serb-Croat-Slovene State)*, 1929 PCIJ Series A, No, 20, 39-40; *Case Concerning the Payment in Gold of the Brazilian Federal Loans (France v. Brazil)* (1929) PCIJ Series A., No. 21, 120. For recent attempts to compartmentalize supervening impossibility of performance separately from *force majeure* see P Bodeau-Livinec and J Morgan-Foster, 'Article 61' in O Corten and P Klein (eds), *The Vienna Conventions on the Law of Treaties: A Commentary* (OUP 2011) 1382-408.

45 Waldock 'Second Report' (n 18), Article 21; '… 2. It shall be open to any party to call for the termination of a treaty if after its entry into force its performance shall have become impossible owing to – (b) the *complete and permanent disappearance of a legal arrangement or régime* to which the rights and obligations established by the treaty directly relate' (emphasis added).

46 *Gabčíkovo-Nagymaros* (n 1) [103].

47 ibid [103].

5 Fundamental Change of Circumstances

Article 62 VCLT dealing with the notion that a State may terminate or suspend its treaty obligations if circumstances have changed fundamentally since the treaty entered into force, most commonly known as the doctrine of *rebus sic stantibus*, has been the object of focus both in academia and practice.[48] It aims to strike a proper balance between stability of international relations and equity, as it would not be 'in the interest of the international legal and political order to petrify a treaty which has become anachronistic'.[49] Given this, it is a residual rule that allows treaty termination or suspension as an *ultima ratio*.[50] Although, nowadays it is generally accepted as a rule of customary international law[51] it was fiercely debated in the ILC and at the UN Conference on the Law of Treaties.[52]

Article 62 VCLT requires five cumulative[53] conditions to be met in order for it to be activated: i) a supervening change of circumstances, ii) a change of fundamental character, iii) a change not foreseen by the parties, iv) the existence of circumstances constituting an essential basis of the consent of the parties, and v) a radical transformation of the extent of the remaining obligations.

In *Gabčikovo-Nagymaros*, Hungary brought forward several elements, which in its view amounted to a fundamental change of circumstances, such as: i) the fact that 'socialist integration', for which the treaty had been a vehicle, had ceased to exist; ii) that the 'single and indivisible operational system', had been substituted by a unilateral scheme; iii) the frustration of the basis of the joint

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48 See OJ Lissitzyn, 'Treaties and Changed Circumstances (*Rebus Sic Stantibus*)' (1967) 61 AJIL 895; G Haraszti, 'Treaties and the Fundamental Change of Circumstances' (1975/III)146 RdC 1; R Müllerson, 'The ABM Treaty: Changed Circumstances, Extraordinary Events, Supreme Interests and International Law' (2005) 59 ICLQ 509.

49 Comments by Bartoš in ILC, 'Summary record of the 834th Meeting' (19 January 1966) UN Doc A/CN.4/SR.834 [77-80].

50 *Gabčíkovo-Nagymaros* (n 1) [95]; see also G Dahm, J Delbrück and R Wolfrum, *Völkerrecht Band I/3* (2nd edn, De Gruyter 2002) 753.

51 *Gabčíkovo-Nagymaros* (n 1) [104]. See also the analysis on how much of Article 62 VCLT can truly be considered as customary international law in: Th Giegerich, 'Article 62' in O Dörr and K Schmalenbach (eds), *Vienna Convention on the Law of Treaties: A Commentary* (2nd edn, Springer 2018) 1143-80; MN Shaw and C Fournet, 'Article 62' in O Corten and P Klein (eds), *The Vienna Conventions on the Law of Treaties: A Commentary* (OUP 2011) 1411-33.

52 Giegerich (n 51) [8-25].

53 A Aust, *Modern Treaty Law and Practice* (3rd edn. CUP 2013) 262.

investment by virtue of the 'sudden emergence of both states in a market economy'; iv) the change in Czechoslovakia's attitude, which transformed the 'framework treaty' into an 'immutable form'; and, v) finally, 'the transformation of a treaty consistent with "environmental protection" into "a prescription for environmental disaster".[54]

With respect to several of the claims made by Hungary it has to be noted that what is meant by 'circumstances' is objective conditions and not subjective changes in the attitudes or expectations of the parties.[55] For instance, the legal changes to which Hungary alluded may fall under Article 62 VCLT,[56] but there the threshold for invocation of 'fundamental change of circumstances' would be quite high, as other venues would have to first be exhausted before resorting to Article 62[57]. The prevalent political conditions, on the other hand, are somewhat of a tricky category. Although the ILC came to an agreement that 'a change in the policies of the State claiming to terminate the treaty, or in its motives or attitude with respect to the treaty'[58] did not qualify as a fundamental change of circumstances, it left that possibility open when it came to a profound political transformation.[59]

In *Gabčíkovo-Nagymaros* the ICJ allowed for the theoretical possibility of a change in the prevalent political conditions and the economic system in force to constitute a 'fundamental change of circumstances.[60] However, in order for that to happen these conditions and/or system would have to form the essential basis of the consent of the parties to be bound by the 1977 Treaty. This would be determined on how closely linked those circumstances were to the object and purpose of the treaty.[61] On the basis of the given facts, the Court was of the view that such a close link did not exist.

Furthermore, one of the cumulative requirements of Article 62 VCLT is that the change needs to be unforeseen. The Court was very clear that if a treaty includes provisions designed to accommodate

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54 *Gabčíkovo-Nagymaros* (n 1) [95].

55 Fitzmaurice 'Second Report' (n 41) 63 [170].

56 *Gabčíkovo-Nagymaros* (n 1) [111-13]; see also *Fisheries Jurisdiction* (n 9) [32].

57 Such as *lex posterior* under Article 30, harmonization through interpretation through the process in Article 31, or even Article 59, before resorting to the *ultima ratio* that is Article 62; Giegerich (n 51) [43]; see also Dahm et al (n 50) 676 et seq.

58 Waldock 'Second Report' (n 18), Article 22(3).

59 Giegerich (n 51) [41].

60 *Gabčíkovo-Nagymaros* (n 1) [104].

61 ibid.

change of the kind that actually occurred, then this creates a presumption that the parties had foreseen those changes and thus recourse to Article 62 VCLT is barred.[62]

For all the above reasons, the Court rejected Hungary's arguments summarily:

> The changed circumstances advanced by Hungary are, in the Court's view, not of such a nature, either individually or collectively, that their effect would radically transform the extent of the obligations still to be performed in order to accomplish the Project. A fundamental change of circumstances must have been unforeseen; the existence of the circumstances at the time of the Treaty's conclusion must have constituted an essential basis of the consent of the parties to be bound by the Treaty. The negative and conditional wording of Article 62 of the Vienna Convention on the Law of Treaties is a clear indication moreover that the stability of treaty relations requires that the plea of fundamental change of circumstances be applied only in exceptional cases.[63]

Finally, despite the, as already mentioned, troubled drafting history of Article 62 VCLT, both in the *Fisheries Jurisdiction* and the *Gabčikovo-Nagymaros* cases the ICJ recognized the customary nature of the substantive elements of Article 62 VCLT,[64] although in both its application was eventually rejected. The one case before an international tribunal in which the plea of fundamental change of circumstances was upheld was *Racke v Hauptzollamt Mainz* in the European Court of Justice (ECJ),[65] regarding the suspension by the Council of Ministers of the European Communities (EC) of a Cooperation Agreement with Yugoslavia, following the outbreak of hostilities in that region.[66] This is an interesting point regarding the scope of Article 62 VCLT, as based on the context of the VCLT, and

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62 ibid.

63 ibid.

64 *Gabčíkovo-Nagymaros* (n 1) [104]; *Fisheries Jurisdiction* (n 9) [36]. The Iran-US Claims Tribunal, on the other hand, viewed it as a general principle of law in *Questech Inc v The Ministry of National Defence of the Islamic Republic of Iran* (1985) 9 Iran-USCTR 122.

65 Case C-162/96 *Racke v Hauptzollamt Mainz* [1998] ECR I-3655 [52-53].

66 R Rank, 'Modern War and the Validity of Treaties: A Comparative Study' (1953) 38 CLQ 321; see also AN Pronto, 'The Effect of War on Law—What Happens to Their Treaties When States Go to War?' (2013) 2 CJICL 227.

specifically Article 73 VCLT, the outbreak of hostilities would fall outside the scope of Article 62 VCLT.[67] Nonetheless since the ECJ applied customary international law in *Racke v Hauptzollamt Mainz*,[68] this indicates that as far as that Court is concerned this type of circumstances, ie outbreak of hostilities, would still fall within the scope of the customary law equivalent of Article 62.[69]

A final development in the scope and content of the rule on fundamental change of circumstances comes not from the ICJ in *Gabčikovo-Nagymaros*, but from the PCA, and specifically the Declaration of Guillaume in *Rhine Chlorides*.[70] Although the VCLT was not applicable to the treaty in question, Guillaume was of the view that Article 62 reflected customary international and its substantive elements were satisfied by the facts of the case.[71] The critical point is the distinction he draws between the consequences of the activation of the ground of 'fundamental change of circumstances' in different legal systems. In domestic law, such an activation 'can lead either to the termination of the contract'[72] or 'to revision by the adjudicator'.[73] The latter solution has been 'considered, but never adopted, in the law of international contracts falling under the "*lex mercatoria*"'.[74]

> On the other hand, it has never been applied in public international law. In relations between States, the '*rebus sic stantibus*' clause implies that where there is a fundamental change of circumstances, *the parties have a duty to negotiate, and then, if negotiations do not bear fruit, they may be allowed to withdraw* from the convention or suspend its implementation …

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67 AD McNair and AD Watts, *The Legal Effects of War* (4th edn, CUP 1966); *contra* Pronto (n 66) 234-35.

68 Since the EC, then, and the EU now, cannot be a party to the VCLT, by virtue of it being an international organization.

69 *Racke v Hauptzollamt Mainz* (n 65) [53-57].

70 *Case Concerning the Audit of Accounts between the Netherlands and France in Application of the Protocol of 25 September 1991 Additional to the Convention for the Protection of the Rhine from Pollution by Chlorides of 3 December 1976 (Netherlands v France)* (2004) 25 RIAA 267 (*Rhine Chlorides*).

71 ibid, 342-43.

72 ibid, 343; referring to the concept of 'frustration' in English law, where the contract is immediately dissolved, without the court having the power to modify the contract.

73 ibid; referring to '*imprévision'* in French administrative law; the theory of '*Wegfall der Geschäftsgrundlage*'in German law; and the jurisprudence of the Swiss Federal Court.

74 ibid and the sources cited therein.

Revision by the judge or arbitrator is permitted only where the Parties have granted such a power. That is not the case here.[75]

6 Material Breach

Material breach as encapsulated in Article 60 VCLT, is one of the most complex provisions of the VCLT.[76] This evaluation is supported both by the drafting history of the article[77] and also by the multitude of critical issues that it raised and continues to raise with respect to its substance and its ties to other principles and areas of international law.[78] In particular, the relationship between material breach and countermeasures is one that has long tortured courts[79] and academics alike.[80] To attempt to provide a meaningful overview of the intricate tapestry of permutations of the content of material breach would be an exercise in futility so in this Section the analysis will focus on some key aspects where the ICJ in *Gabčíkovo-Nagymaros* developed our understanding of this ground for termination of treaties.

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75 ibid, 343-44. (emphasis added. Translation taken from the unofficial translation available at the PCA website. The page references are from the official French text).

76 F Capotorti, 'L'extinction et la suspension des traités' (1971) 134 RdC 417, 550.

77 Th Giegerich, 'Article 60' in O Dörr and K Schmalenbach (eds), *Vienna Convention on the Law of Treaties: A Commentary* (2nd edn, Springer 2018) [11-45]; Sh Rosenne, *Developments in the Law of Treaties 1945–1986* (CUP 1989) 8 et seq.

78 Giegerich (n 77) 1211-31; Br Simma and CJ Tams, 'Article 60' in O Corten and P Klein (eds), *The Vienna Conventions on the Law of Treaties: A Commentary* (OUP 2011) 1351-1378.

79 Although courts sometimes seem inclined to paint a much rosier picture than actually is the case; see Gabcikovo [47]; cf *Case Concerning the Air Service Agreement of 27 March (USA v France)* (1978) 18 RIAA 417 [17-18, 81-83]; *Case Concerning the Difference between New Zealand and France Concerning the Interpretation or Application of Two Agreements, Concluded on 9 July 1986 between the Two States and which Related to the Problems Arising from the Rainbow Warrior Affair (New Zealand v France)* (1990) 20 RIAA 215 [73-75] (*Rainbow Warrior*).

80 K Wellens, 'The Court's Judgment in the *Case Concerning Gabčikovo-Nagymaros Project (Hungary/Slovakia)*: Some Preliminary Reflections' in K Wellens (ed.), *International Law: Theory and Practice: Essays in Honour of Eric Suy* (Martinus Nijhoff 1998) 781; R Lefeber, 'The Gabčíkovo-Nagymaros Project and the Law of State Responsibility' (1998) 11 LJIL 611; Giegerich (n 77) [74-80]; Simma and Tams (n 78) [69-73].

First and foremost, the ICJ explicitly adopted the view that Article 60 VCLT 'in many respects' is declaratory of customary international law.[81] One should pay close attention to the exact wording, 'in many respects', as this is revealing of the fact that although the ICJ was of the view that the core substance of material breach was customary international law, this by no means covered the entirety of Article 60 VCLT.[82]

In other grounds for termination of treaties, such as the supervening impossibility of performance and the fundamental change of circumstances, there is explicit reference to the fact that a State cannot invoke the ground for termination if the situation emerged as a result of a State's own wrongful conduct.[83] However, Article 60 VCLT does not provide for such a caveat explicitly, although in the ILC there had been members, who had called for such an inclusion.[84] It is at this precise point that the contribution of the *Gabčikovo-Nagymaros* judgment to the development of the customary rule on material breach shines through. The ICJ clarified the uncertainty surrounding the scope of the customary rule on material breach. In no uncertain terms it concluded that it was 'a principle generally accepted …that one Party cannot avail himself of the fact that the other has not fulfilled some obligation … if the former Party has, by some illegal act, prevented the latter from fulfilling the obligation in question'.[85] Consequently, that principle informed the content of material breach as well, and an exception similar to that in Articles 61 and 62 VCLT should be read into Article 60 VCLT as well.[86] If not, then this would be tantamount to allowing States to exercise an *abus de droit*.[87]

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81 *Gabčíkovo-Nagymaros* (n 1) [99]; a view that it had already expressed even in the *Namibia Advisory Opinion* (n 9) [94-95].

82 In more detail on whether Article 60 VCLT reflects customary international law in its entirety or not see Simma and Tams (n 78) [10].

83 Article 61(2)(b) and 62(2) VCLT.

84 Comments by de Luna in ILC, 'Summary Record of the 691st Meeting' (31 May 1963) UN Doc A/CN.4/SR.691 [78] and ILC, 'Summary Record of the 831st Meeting' (14 January 1966) UN Doc A/CN.4/SR.831 [67]; comments by Waldock in ILC, 'Summary Record of the 693rd Meeting' (5 July 1963) UN Doc A/CN.4/SR.693 [37] and ILC, 'Summary Record of the 832nd Meeting' (17 January 1966) UN Doc A/CN.4/SR.832 [6].

85 *Gabčíkovo-Nagymaros* (n 1) [110] citing *Case Concerning the Factory at Chorzów (Germany v Poland)* (Jurisdiction) PCIJ Rep Series A No 9, 31.

86 *Gabčíkovo-Nagymaros* (n 1) [110]; similarly Simma and Tams (n 78) [60].

87 Giegerich (n 77) [42].

Another extremely crucial point in the reasoning of the Court had to do with the procedural requirements relating not only to material breach but to all grounds of termination and invalidity as set out in Articles 65-68 VCLT. Although during the VCLT *travaux préparatoires* the members of the ILC[88] seemed to approach that Section of the VCLT as a progressive development of international law,[89] the ICJ in *Gabčikovo-Nagymaros* pushed the envelope of the normativity of the requirements of Articles 65-67 VCLT a bit further; how much further is a matter of interpretation. The Court was careful in its wording, as it did not unequivocally come out and say that the content of Articles 65-67 VCLT is customary international law. What it did was refer to the parties' views on the matter: '[b]oth 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*'.[90] Based on the reasoning of the Court and its conclusion on the matter it seems that it 'endorsed' this view of the parties.[91] Although the entirety of these articles may not have been and may still not be customary international law, parts of them have achieved that status or at the very least are logical outcomes of existing customary rules or principles.

To say that this pronouncement of the Court put an end to the debate surrounding the customary nature of the requirements contained in Articles 65-67 VCLT would be a gross over-simplification.[92] Demonstrative of the continuing debate as to the exact normative status of the procedural requirements of Articles 65

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88 On why the ILC debates are to be considered as preparatory work of a 'second order' as to what concerns the VCLT see: Merkouris 'Article 31(3)(c)' (n 39) 11; comments by Tunkin and Rosenne in ILC, 'Summary Record of the 873rd Meeting' (20 June 1966) UN Doc A/ CN.4/SR.873 [27-28].

89 M Prost, 'Article 65' in O Corten and P Klein (eds), *The Vienna Conventions on the Law of Treaties: A Commentary* (OUP 2011) [5-13].

90 *Gabčíkovo-Nagymaros* (n 1) [109] (emphasis added).

91 ibid [109-10]; see also Prost (n 89) [9].

92 On the customary or not nature of Articles 65-67 and the possible extent of it see: H Krieger, 'Article 65' in O Dörr and K Schmalenbach (eds), *Vienna Convention on the Law of Treaties: A Commentary* (2nd edn, Springer 2018) [8]; Prost (n 89) [9-13]; MM Gomaa, *Suspension or Termination of Treaties on Grounds of Breach* (Martinus Nijhoff 1996)160; M Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Martinus Nijhoff 2009) Article 65 [27] and Article 67 [9]; C Binder, *Die Grenzen der Vertragstreue im Völkerrecht* (Springer 2013) 219 et seq.

and 67 of the VCLT is the *Racke v Hauptzollamt Mainz* judgment of the ECJ, which came less than a year after the *Gabčikovo-Nagymaros* judgment. There the ECJ came to a diametrically opposite conclusion than that of the ICJ: 'Even if such declarations do not satisfy the formal requirements laid down by Article 65 of the Vienna Convention, it should be noted that *the specific procedural requirements there laid down do not form part of customary international law*'.[93]

Matters are equally murky when one contemplates also the consequences of irregularities in the procedures envisaged in Articles 65-67 VCLT. Those articles do not offer a solution themselves, although the ICJ seems to have intimated[94] that the notification of Article 65(1) cannot be done preemptively, ie before the breach has actually taken place.[95] If such a temporally incongruous notification took place it would be invalid and thus the treaty would not be terminated.[96] On this point, the ECJ seems to have gone along with what the ICJ had hinted at: 'if the disputed regulation [ie the act of suspension] had to be declared invalid, the trade concessions granted by the Cooperation Agreement would remain applicable in Community Law until the Community brought that Agreement to an end in accordance with the relevant rules of international law'.[97]

Finally, although Article 60 VCLT 'codifies and carefully circumscribes the *exceptio inadimpleti contractus*' (*exceptio*),[98] *Gabčikovo-Nagymaros* focused mainly on the former and not the latter. The reason is that Hungary only invoked material breach and that in connection to the termination of the 1977 Treaty. Perhaps one could try to pass off this ground for termination that Hungary tried to argue, ie common repudiation,[99] as a variant of the *exceptio.* Irrespective of the ongoing debate regarding the relevance of the

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93 *Racke v Hauptzollamt Mainz* (n 65) [59] (emphasis added); see also M Fitzmaurice and O Elias, *Contemporary Issues in the Law of Treaties* (Eleven International Publishing 2005) 195 et seq.

94 As it referred back to Hungary's arguments.

95 *Gabčíkovo-Nagymaros* (n 1) [108].

96 'the question [submitted to it] is whether Hungary's notification of 19 May 1992 brought the 1977 Treaty to an end, or whether it did not meet the requirements of international law, *with the consequence that it did not terminate the treaty*'; *Gabčíkovo-Nagymaros* (n 1) [98] (emphasis added).

97 *Racke v Hauptzollamt Mainz* (n 65) [42] in combination with [59-60]. For the side claiming that the matter is still unclear see Prost (n 89) [48-54].

98 Giegerich (n 77) [72]; see also Simma and Tams (n 78) [3].

99 *Gabčíkovo-Nagymaros* (n 1) [114].

exceptio[100] and whether it has been subsumed by Article 60 VCLT or whether it continues to remain alive and well as a general principle or rule of customary international,[101] in the *Gabčikovo-Nagymaros* the Court did not consider it relevant. According to the *exceptio*, in the case of obligations of a synallagmatic nature a party may justifiably refuse to respect its obligations when the other party refuses to honour them.[102] The *exceptio* thus understood introduces to the concept of *pacta sunt servanda* an idea of 'negative reciprocity'.[103] It may bear similarities to suspension,[104] but the ICJ seems to have

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100 J Crawford and S Olleson, 'The Exception of Non Performance: Links between the Law of Treaties and the State Responsibility' (2000) 21 Aust YBIL 55; DW Greig, 'Reciprocity, Proportionality and the Law of Treaties' (1994) 34 VirgJIL 295; MFitzmaurice 'Angst of the *Exceptio Inadimplenti Non Est Adimplendum* in International Law' in F Paddeu and L Bartels (eds), *Justifications and Defenses in International Law* (CUP 2019, forthcoming); Ph O'Neill and N Salam, 'Is the *Exceptio Non Adimpleti Contractus* Part of the New *Lex Mercatoria*?' in E Gaillard (ed), *Transnational Rules in International Commercial Arbitration* (ICC Publishing 1993) 152.

101 Judge Anzilotti in *Diverision of Water from the Meuse* opined that: '[*inadimplenti non est adimplendum* is so just, so equitable, so universally recognized, that it must be applied in international relations also'; *The Diversion of Water from the Meuse (Netherlands v Belgium)* (Judgment) PCIJ Rep Series A/B No 70, Dissenting Opinion of Judge Anzilotti, 50; cf ibid, Separate Opinion of Judge Altamira, 38-39; ibid, Individual Opinion of Judge Hudson, 76-77; *Appeal Relating to the Jurisdiction of the ICAO Council (India v Pakistan)* (Judgment) [1972] ICJ Rep 46, Separate Opinion of Judge de Castro, 127. The issue of the status of *exceptio* was discussed in much more detail in *Application of the Interim Accord of 13 September 1995*. There the Court evaded taking a position since Greece had failed 'to establish that the conditions which it has itself asserted would be necessary for the application of the *exceptio* have been satisfied in this case'; *Application of the Interim Accord of 13 September 1995 (Former Yugoslav Republic of Macedonia v Greece*) (Judgment) [2011] ICJ Rep 644 [161]. However, Judge Simma, departing from his previous writings, declared in his Separate Opinion the 'pre-Vienna Convention *exception …* dead … no version of the *exceptio* has survived the codification of the law of treaties — may it rest in peace'; ibid, Separate Opinion of Judge Simma [26, 29]; see, however, *contra* ibid, Dissenting Opinion of Judge *ad hoc* Roukounas [66-67].

102 Waldock 'Second Report' (n 18), Commentary to Article 20.

103 Simma and Tams (n 78) [3].

104 The *exceptio* is not equivalent to the suspension of the operation of a treaty, as envisaged in Article 72 VCLT. According to the latter suspension releases both parties from the obligation to perform the treaty in their mutual relations during the period of suspension. The *exceptio*, on the other hand, 'will only benefit the innocent party, entitling it to suspend the performance of its obligations, while the other State whose non-performance has given rise to the *exceptio* remains obliged to perform'; Giegerich (n 77) [72]; in more detail see Crawford and

implicitly rejected the idea of terminating a treaty due to violation of treaty rules other than under the strict confines of a material breach. '[Only a material breach of the treaty itself, by a State Party to that treaty, [. . .] entitles the other party to rely on it as a ground for terminating the treaty. The violation of other treaty rules or of rules of customary international law may justify the taking of certain measures, including countermeasures, by the injured State, but it does not constitute a ground for termination under the law of treaties'.[105]

Even if one were to consider the argument of common repudiation as a form of *lato sensu* version of the *exceptio* the Court was also quick to reject the relevance of common repudiation for the purposes of termination of treaties.

> 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 noncompliance. 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.[106]

In the span of one paragraph the Court rejects the relevance of common repudiation,[107] for purposes of termination of treaties and emphasizes the principle that permeates its entire reasoning on termination, ie the integrity of *pacta sunt servanda* and more generally the stability of international relations.

Olleson (n 100) 62-66.

105 *Gabčíkovo-Nagymaros* (n 1) [106].

106 ibid [114].

107 Irrespective of whether it is an erroneous or true permutation of the *exceptio*.

7 Concluding Remarks

Development in international law is not a mono-dimensional concept. It can mean the identification of new norms but it should not be equated to that aspect alone. Development can also manifest itself in the form of confirming the normative value of existing rules, content-clarification and content-evolution, both in the positive and the negative sense, ie affirming or rejecting a specific content or normative value of the rule. This means that even rejections of theses relating to the existence and content of rules is a form of development. Development in international law, thus considered, is an incremental, non-linear process.

Given that definition and considering the analysis in the previous Sections, it is undeniable that the *Gabčikovo-Nagymaros* judgment has contributed to the development of international law relating to the termination of treaties. This did not happen only because the ICJ, helped by the arguments of Hungary, examined almost all existing grounds for unilateral treaty termination. That helped without a doubt. But the true contribution of the judgment lies in the fact that, due to the non-applicability of the VCLT, the ICJ had to make pronouncements that either solidified the normative status of the rules on treaty termination, clarified the extent to which the VCLT rules codified or had become customary international law and furthered our understanding regarding the content of those rules, both in an inclusive and exclusionary fashion. Viewed under this light, the *Gabčikovo-Nagymaros* judgment has undeniably led to the development of international law on treaty termination and furthered our understanding of it.