
CONTRIBUTORY NEGLIGENCE IN FATAL ACCIDENT CLAIMS

A bane of our modern society, and a matter which causes considerable concern and anxiety, is the ever increasing number of fatal accidents, particularly fatal accidents from motor vehicle collisions.¹

Where the death of a person is caused by the wrongful act of another, two types of actions may arise. First the deceased's personal representative may sue the wrong-doer for damages in respect of the wrong committed against the deceased. The action, traditionally called an "estate claim", is based on section 8 of the Civil Law Act 1956. Section 8 has its origins in the (United Kingdom) Law Reform (Miscellaneous Provisions) Act 1934. By virtue of section 8(1) of the Malaysian Act, on the death of a person all causes of action except defamation, seduction, inducing one spouse to leave or remain apart from the other and damages for adultery, survive for the benefit of his estate. Section 8(2) regulates the damages recoverable for the benefit of the estate.

The second type of action that may be brought is a claim by the dependants of the deceased², who may sue the wrongdoer for damages in respect of the pecuniary support which they had lost in consequence of the deceased's death, an action which is traditionally called a "dependency claim" in Malaysia. The dependency claim is regulated by section 7 of the Civil Law Act 1956. Section 7 has its origins in the

¹Malaysia intends to amend its Road Transport Act 1987 to provide for a mandatory jail sentence for persons causing death by reckless driving. See "The Star" 9 November 1998, p. 3.

²Sections 7(2) and 7(11) of the Civil Law Act 1956 explain the meaning of the expression "dependants of the deceased".

(English) Fatal Accidents Act of 1846 (Lord Campbell's Act). The right of the dependants to claim damages under section 7 of the Malaysian Act is a major exception to the common law rule described in *Baker v Bolton*³ as, "In a civil court the death of a human being cannot be complained of as an injury."

Significant and far reaching amendments were made to sections 7 and 8 of the Civil Law Act 1956 by the Civil Law (Amendment) Act 1984.⁴ The effect of the aforesaid Amendment Act on the estate claim was severe. In the early nineteen-eighties substantial damages could be obtained in Malaysia under an estate claim as a result of case law developments in England leading up to the decision of the House of Lords in *Gammell v Wilson*.⁵ This was because of the "new" award in an estate claim for loss of earnings of the deceased during "the lost years" caused by his death. In 1984 the aforesaid Civil Law (Amendment) Act amended section 8(2) of the Civil Law Act 1956 to exclude from the damages recoverable for the benefit of a deceased person's estate a claim for "damages for loss of expectation of life and *any damages for loss of earnings in respect of any period after that person's death.*"⁶ This drastically reduced the importance of the estate claim which, in many cases, was reduced to a claim for funeral expenses and special damages, if indeed such expenses or damages were suffered by the deceased's estate.⁷ The effect of the aforesaid Amendment Act was to make the dependency claim under section 7 the more important of the two. Indeed, today in some fatal accident cases an estate claim is not pursued because of the added burden of the need for a personal representative, and the expense of obtaining a grant of representation from the court.

A person may have several dependants. The Civil Law Act 1956 in sections 7(2) and 7(5) attempts to avoid multiplicity of actions by

³(1808) 1 Camp 493.

⁴Act A 602 which came into force on 1 October 1984.

⁵[1982] AC 27.

⁶My italics.

⁷If there was an interval between injury and death and the deceased was conscious or partly conscious during the interval, a claim may be made for pain and suffering and loss of amenity. See for instance *Golam Hassan v Susila* [1987] 2 MLJ 211 (SC).

providing that a dependency claim must be brought for all dependants in one action in the name of the personal representative of the deceased. By virtue of section 7(6) the personal representative may, if he so wishes, include a claim for damages suffered by the estate, and any sum recovered "shall be deemed to be part of the assets of the estate of the deceased." Without doubt it is beneficial to bring a dependency claim for all dependants and also an estate claim in one action. But such a move is only possible after the deceased's personal representative has extracted his grant of representation. The process of obtaining a grant from the High Court can, sometimes, cause considerable delay and hardship to dependants. Section 7(8) therefore provides that if an estate does not have a personal representative for six months after the death of the deceased or there being a personal representative, no dependency claim is brought within six months of the deceased's death, the dependency action "may be brought by all or any of the persons" entitled to claim under section 7(1).⁸

A pertinent question is whether the damages payable to an *estate* under section 8 or to the *dependants* under section 7 may be reduced on account of the deceased's contributory negligence, namely where the deceased's death was caused partly by the fault of the deceased. The law on contributory negligence in Malaysia is governed by section 12 of the Civil Law Act 1956. The section is borrowed from the (United Kingdom) Law Reform (Contributory Negligence) Act 1945. Section 12(1) provides that where any person suffers damage as a result partly of his own fault, his claim shall not be defeated by reason of that fault⁹ but his damages shall be reduced to such an extent as the court thinks just and equitable having regard to his share in the responsibility for the damage. Section 12(4), which is of vital importance to a dependency claim under section 7, provides as follows:

⁸The application of section 7(8) was discussed in the Privy Council case, *Austin v Hari* [1983] 2 All ER 341.

⁹At common law it was a complete defence if the defendant proved that the plaintiff was guilty of contributory negligence. The effect of the 1945 Act is put by Denning L.J. (as he then was) in *Davies v Swan Motor Co Ltd* [1949] 2 KB 291, 322 as follows:

"The legal effect of the Act of 1945 is simple enough. If the plaintiff's negligence was one of the causes of his damage he is no longer defeated altogether. He gets reduced damages."

“Where any person dies as the result of his own fault and partly of the fault of any other person or persons and accordingly if an action were brought for the benefit of the estate under section 8, the damages recoverable would be reduced under subsection (1), any damages recoverable in any action brought for the benefit of the dependants of that person under section 7 or for the benefit of the husband of that person under proviso (iii) of subsection (3) of section 7 or of the spouse or parents under subsection (3B) of section 7 shall be reduced to a proportionate extent.”

It is abundantly clear from sections 12(1) and 12(4) that the damages for the *estate* would be reduced if the deceased had contributed to the negligence that caused his death. Again, no difficulty arises in the rare case where a *claimant for dependency* under section 7 was partly to blame for the deceased's death. In *Mulholland v McCrea & Another*^{9a} the plaintiff's wife was a passenger in a car driver by him when the said car collided with a vehicle driven by the defendant. The plaintiff brought a dependency claim against the defendant. At the trial the plaintiff was found to be liable in contributory negligence. The Court of Appeal of Northern Ireland held that the damages payable to the plaintiff should be reduced having regard to his share in the responsibility for the death of his wife. But in many cases the contributory negligence which is raised is that of the deceased. The legal position in a claim under section 7, where *the deceased* was partly to blame for his death, remained a controversial point in Malaysia and gave rise to a number of conflicting High Court decisions. The conflicting cases were considered by the recent Court of Appeal decision in *Rubaidah bte Dirin (suing as a Widow of Basia bin Bahari, deceased on behalf of herself and the dependants of the deceased) v Ahmed bin Ariffin*.¹⁰

The decision of Wan Yahya J (as he was then) in *Veronica Joseph (f), an infant & Anor (by Cyril Augustine Joseph, their Next Friend) v Tu Kon Lin & Anor*¹¹ may be mentioned as the main starting point

^{9a}[1961] NI 135.

¹⁰[1997] 1 MLJ 677.

¹¹[1987] 1 CLJ 81.

of this saga. In that case a married woman's death was caused by the negligent riding of a motor-cycle by the defendant. The deceased's dependants brought a section 7 claim against the defendant. It is not clear from the facts of the judgment whether the deceased's estate had a personal representative. What is clear is that the personal representative was not a party in the action and that the action was brought in the name of the dependants. The learned trial judge (Wan Yahya J) found that the deceased was liable in contributory negligence to the extent of 20% and considered whether the damages for the dependants should be reduced in proportion to the contributory negligence of the deceased. His Lordship referred to section 12(4) of the Civil Law Act 1956 and said,¹²

"I agree with [Counsel for the claimants] that benefit to the dependants can be reduced to a proportionate extent but this only applies where the action was brought "for the benefit of the estate under section 8 of the Act" and not as in the present case under section 7. This section will not relieve the Defendant from joining the administrator of the estate as a party if he wishes to establish contributory negligence on the part of the deceased. Counsel then cites various authorities to show that our Courts have allowed proportionate deductions. However, in some of the cases cited by the Defendant's Counsel, it can be seen that the deceased was represented by his personal representatives. In the other remaining cases, it is impossible to ascertain from the reports whether the legal representatives were or were not made a party to the suits."

At a subsequent part of his judgment his Lordship said,¹³

"The claimants in our present case, are the children; the contributory negligence was that of their mother. They have not been at fault themselves and therefore have no share of the responsibility for the damages. Their claim is for damages suffered as dependants and they cannot be classified as persons who have suffered damages "as a result partly of their own fault" within the meaning of Section 12(1) of the Civil Law Act 1956."

¹²*Ibid* at p. 86.

¹³*Ibid* at p. 88.

Wan Yahya J laid great emphasis on the fact that the deceased (through her personal representative) was not a party in the action before the court. His Lordship was of the view that the court would openly flout the principle of *audi alteram partem* if it were to find the deceased's estate liable for any degree of negligence without first giving her personal representative the opportunity to be heard. In his Lordship's view the proper course for a defendant who wants to raise contributory negligence in a dependency claim is to make the deceased's personal representative a party to the proceedings before the court.

Two cases were cited in *Veronica's* case but, with respect, both decisions were not dependency claims and had no direct bearing on the matter before the court. The first, *Mallett & Anor v Dunn*¹⁴ involved the common law claim by a husband for a tort done to his wife *per quod consortium amisit*. In this case the first plaintiff was knocked down by a motor car driven by the defendant. An action was commenced by the first plaintiff and her husband (as second plaintiff) against the defendant. The defendant pleaded and proved contributory negligence by the first plaintiff. Before Hilbery J the question was whether the husband's claim *per quod consortium amisit* was subject to reduction under the Law Reform (Contributory Negligence) Act 1945 by reason of his wife's contributory negligence. The court held that a husband who exercises his common law right and sues for damages suffered by him by reason of injuries negligently inflicted on his wife, sues in his own right.^{14b} His claim for damages is neither defeated nor reduced by his wife's contributory negligence. The second case cited in *Veronica's* case, namely *Maxfield v Llewellyn & Others*,¹⁵ involved a question of contribution between alleged joint tortfeasors. In this case a motorcycle was involved in a collision with a cattle truck and a post office van. The motorcyclist and his pillion

¹⁴[1949] 2 KB 180.

^{14b}In this context see *Bas Mini Muhibbah Sdn Bhd v Abdullah bin Salim* [1983] 2 MLJ 405.

¹⁵[1961] 1 WLR 1119.

rider died. The widow of the pillion rider brought a dependency and an estate claim against the driver and owner of the post office van and the driver and owner of the cattle truck. The personal representative of the deceased motorcyclist, a probable joint-tortfeasor, was not joined as a party. Stable J found the driver of the cattle truck solely liable and dismissed the claim against the driver of the post office van. On appeal the Court of Appeal apportioned the blame for the accident as two thirds to the driver of the cattle truck and one-third to the driver of the post office van.

In *Maxfield's* case it was submitted before the Court of Appeal that the contributory negligence of the driver of the post office van should not be taken into account for the purposes of contribution under section 6(2) of the Law Reform (Married Women and Joint Tortfeasors) Act 1935 if the deceased motorcyclist's personal representative was not added as a party. The Court of Appeal rejected the argument. In the course of his judgment, Ormerod L.J. said,¹⁶

"That cannot be the proper construction of this section. It appears to me that the court must have regard to a person's responsibility for the damage having regard to the parties who are before the court, whose share of the damage can be taken into account and who have had the opportunity of putting arguments for and against their share of blame and generally of being heard in the action. In those circumstances, for my part, I would reject (Counsel's) interesting submission and say that it is the duty of the court on finding more than one defendant liable to make an assessment of the contribution which each defendant should make according to his share of blameworthiness."

Maxfield's case involved a question of contribution between defendants who were alleged to be joint tortfeasors. Apportionment of liability for the purpose of contribution could not be made against the deceased motorcyclist's estate because his estate was not made a party to the suit. It was not a case where contributory negligence was raised against a claimant for damages. Where contributory negligence is alleged against a party claiming damages it is raised as a defence for the

¹⁶*Ibid* at p. 1121.

purpose of reduction of damages. Where contributory negligence is alleged against the deceased in a dependency claim it is raised for the purpose of reducing the claimants' entitlement to damages and not for the purpose of obtaining contribution from the claimant or from the deceased's estate.

Veronica's case was subjected to a detailed scrutiny by James Foong J in the High Court in *Lim Chai Oon & Anor v Normah bte Ismail & Anor*.¹⁷ In this case the first plaintiff's husband ("the deceased") died in a motor accident in 1988. She brought a dependency claim in the Sessions Court under section 7 of the Civil Law Act 1956. The learned Sessions Court judge found that the deceased was equally to be blamed for the accident, and that he was liable in contributory negligence to the extent of 50%. However, as the learned Sessions Court judge considered herself bound by the High Court case of *Veronica Joseph*, she ignored the deceased's contributory negligence and awarded damages for dependency on 100% liability. On appeal to the High Court James Foong J declined to follow *Veronica Joseph's* case. The learned judge held that the deceased's contributory negligence should be taken into account and proportionately reduced the dependant's dependency loss. The learned judge said,¹⁸

"Section 12(4) of the Act clearly states that in an action brought by a dependant under s 7 of the Act, damages recoverable by the dependant shall be reduced proportionately to the extent of the deceased's fault in the accident. There is no ambiguity in the wording of this particular section of the Act which expressly provides for application to claims made both under ss 7 and 8 of the Act. To impose any other requirements which are not stated in this particular section of the Act would be tantamount to the courts writing into a statute, provisions which do not exist therein. This is particularly so with the requirement of having the deceased's estate made a party and/or be heard before apportionment of awards in situations mentioned above can be made, as indicated in *Veronica's* case [1987] 1 CLJ 81. This function is certainly not within the parameters of the judiciary, whose duty is to interpret the law as stated by the legis-

¹⁷[1994] 3 MLJ 107.

¹⁸*Ibid* at pp. 108-109.

lature. Failure to adhere to this function would result in the collapse of the principle on the separation of powers between the executive, legislature and the judiciary which is practised in our country.”

The learned judge also said that in “virtually all cases of this nature the beneficiaries of the estate consist of the same set of people as the dependency claimants”. The proposed practice in *Veronica's* case, which may lead to multiplicity of suits, should not be encouraged.¹⁹

Veronica's case and *Lim Chai Oon's* case was considered at length in *Balachandran a/l Samy v Chew Man Chan @ Chew Ah Yeow & Anor*.²⁰ In *Balachandran's* case, a minor died in a motor accident and his parents sued for bereavement and funeral expenses. No grant of representation was obtained in respect of the deceased minor's estate and the parents sued in their personal capacities as dependants under section 7(8). In the Sessions Court the learned Sessions judge found that both the deceased and the defendant who caused his death were equally to blame. However, the learned Sessions judge, relying on *Veronica's* case ordered the defendant to pay full damages. The learned Sessions judge refused to take into account the deceased's contributory negligence because the estate of the deceased was not made a party to the proceedings. The parents appealed to the High Court.

In the High Court, Vincent Ng Kim Khoay J accepted the *ratio decidendi* in *Veronica's* case and rejected the decision in *Lim Chai Oon*. His Lordship agreed that section 12(4) of the Civil Law Act was “clear and unambiguous but only to the extent of substantive law”.²¹ The learned judge took the view that compliance with the rules of civil procedure, which are also statutory in nature, was also necessary where contributory negligence is alleged against a person who is not joined as a party in the suit before the court. His Lordship stressed that the dichotomy between substantive law and procedural law should be strictly maintained, as substantive law bestows rights to a person whereas

¹⁹*Ibid* at p. 110.

²⁰[1996] 1 CLJ 169.

²¹*Ibid* at p. 171.

procedural law determines the mode in which he should move the Court to enforce such rights. The learned judge said,²²

It is essential to read the CLA in its entirety; and s. 12(4) ought to be read in the light particularly, of ss. 7, 8, 10 and 12(3) of CLA in order to determine the true intention of the legislature. Upon careful reading of such provisions I do not think that the legislature had intended by implication in s. 12(4) CLA to override the established procedural law in respect of reduction of damages on account of contributory negligence. It stands to reason that the estate of the deceased should be a party before the Court to enable the Court to adjudicate on the question of contributory negligence, whereby this issue itself could be pointedly tried and the personal representatives of the estate (who may or may not be the dependents of the deceased) given the opportunity to be heard, before the Court proceeds to reduce the damages awarded to the plaintiff.

Finally, I cannot agree that because the beneficiaries of the estate may consist of the same set of people as the dependency claimants, the estate of the deceased need not be made a party to the suit.²³

The controversy as to whether a deceased person's contributory negligence can be taken into account to apportion liability where the deceased person's personal representative is not made a party and as a consequence, to reduce the damages payable to the deceased's dependants, came up for consideration by the Court of Appeal for the first time in *Rubaidah bin Bahari, (suing as a widow of Basia bin Bahari, deceased, on behalf of herself and the dependants of the deceased) v Ahmad bin Ariffin*.²⁴ In this case the widow of a deceased motorcyclist brought a section 7 claim for her own benefit and also for the benefit of her four children. The indorsement on the summons showed that the dependants were suing in their own names and that

²²*Ibid* at p. 172.

²³Referring to James Foong J's view in *Lim Chai Oon & Anor v Normah bte Ismail & Anor*, *supra* n. 17.

²⁴[1997] 1 MLJ 677.

the deceased's personal representative was not a party in the suit. From the evidence it could be inferred that the deceased was partly to be blamed for the accident that caused his death. In the Sessions Court the learned Sessions judge found the defendant 100% liable for the accident and awarded a total sum of RM86,000 as general and special damages. The defendant appealed to the High Court. The learned Sessions judge gave an undated written judgment in which he said that in the absence of clear evidence as to how the accident occurred he should have apportioned liability as 50:50 and that his mistake in finding the defendant 100% liable should be corrected by the appellate court if it thought otherwise. In the High Court, the learned High Court judge found the deceased 70% liable in contributory negligence and assessed damages for dependency on the basis of a monthly dependency of RM310 per month x 12 months x 8½ years. In addition RM10,000 for bereavement and RM1,500 as funeral expenses were also awarded. The learned High Court judge reduced the damages in proportion to the deceased's contributory negligence. He did not comment on *Veronica's* case or *Lim Chai Onn's* case. However, as he had reduced the damages it may be inferred that he preferred *Lim Chai Onn's* case. Before the Court of Appeal the widow argued that regardless of the deceased's contributory negligence there should be no reduction in the damages payable to the dependants. The appeal was dismissed.

The unanimous Court of Appeal decision was delivered by Mahadev Shankar JCA. His Lordship undertook a detailed analysis of the relevant statutory provisions and case law and took the view that *Veronica's* case was demonstrably incorrect and should not be followed. Shankar JCA felt that the lawyers²⁵ "who persuaded the trial judge to arrive at that finding and those who perpetuated it must share in the collective responsibility for the adverse repercussions which have followed."²⁶ His Lordship held that *Lim Chai Oon's* case was correctly decided. After an in-depth analysis of sections 7, 8 and 12 of the Civil Law Act Shankar JCA said,²⁷

²⁵*Ibid* at p. 689.

²⁶Each party was ordered by the Court of Appeal to bear his/her own costs throughout the litigation because "until *Veronica* was properly overruled, neither party had any choice but to act as they did" ([1997] 1 MLJ 677, 689).

²⁷*Ibid* at p. 687.

The trial judge in *Veronica*, and the judge in *Balachandran a/l Samy* both erred in failing to appreciate the true significance of the word 'if' in s 12(4). Since by s 8(1) of the Act all causes of action vested in a person or subsisting against him survive for the benefit of the estate, or against it as the case may be, in an action brought against him by the deceased's executor or administrator, a defendant tortfeasor can claim, as a matter of right, to have his damages reduced to the extent of the deceased's contributory negligence. The court must do so in that action. The object of s 12(4) was to import this right into claims brought for the benefit of dependants under s 7 - by the executor, in the first place, or the dependants themselves in their own names six months later. The s 8 action referred to in s 12(4) is hypothetical. The reduction for proven contributory negligence in a s 7 action is automatic. The suggestion in *Veronica* that a defendant tortfeasor must look to the deceased's estate for contribution for the failure of the deceased to take care of himself is totally misconceived. Contribution is something tortfeasors claim from each other. The contributory negligence of the deceased for his own death is a defence which is set up against the dependant plaintiffs."

Lawyers and lay persons who are sympathetic to claims by widows and children for dependency arising from the death of their breadwinner may lament over the overruling of *Veronica's* case. But, with respect, it is difficult to support *Veronica's* case and the cases that applied it. The claim of the dependants, although created by statute as a separate action, springs from the wrong done to the deceased by the defendant. The dependants cannot be placed in a better position than the position of the deceased himself had he sued the defendant in his own right. After the enactment of section 12(1) of the Civil Law Act 1956 if the deceased had himself sued in respect of his death, to which he was partly to blame, his contributory negligence would result in a reduction of the damages, if any, payable to his estate.

As the claimants for dependency cannot be placed in a better position than that of the deceased himself had he sued, it follows therefore that all defences available against the deceased are also available against the dependants. Thus, if, prior to his death the deceased had by a valid contract released the wrongdoer from liability the re-

lease would be a total bar to a claim under section 7 for dependency by his dependants. A similar position would arise if the deceased's right to sue the wrongdoer was time-barred. Also if the deceased's earnings were from an illegal source the earnings cannot be taken into account for the purpose of computing the lost pecuniary support of the dependants.²⁸ It is irrelevant that the claimants for dependency were unaware that the support was derived from an illegal source. Needless to say, it cannot be argued that a defence of illegality cannot be raised in respect of the deceased's earnings on the ground that the deceased's estate was not a party to the action.

One cannot disagree with the general statement that a court should not make a finding of contributory negligence against a non-party. It is respectfully submitted this general principle was stretched too far in *Veronica's* case and other related cases. After all the claimants for damages are before the court. Although their claim is based on statute, to succeed they will have to establish that the deceased's death was caused by the defendant's wrongful act. Where they allege negligence they bear the burden of proving the elements of that tort.^{28a} They should also bear the burden of disproving a defence of contributory negligence raised by the defendant. Since it is the claimants who are going to benefit from the claim and since it is they who are alleging negligence it is just they who should bear the burden of answering a defence of contributory negligence raised against the deceased. On the other hand the defendant would face difficulty and expense if he is required to join the deceased's personal representative before he can raise the said defence.

The Court of Appeal's decision in *Rubaidah's* case is most welcome as it lays to rest a controversial issue and brings certainty to this area of the law. Finally it may be noted that since *Rubaidah's* case originated in the Sessions Court, there was no appeal from the Court of Appeal to the Federal Court, by virtue of section 96 of the Courts

²⁸ See *Chua Kim Suan (Administratrix of the estate of Teoh Tek Lee, deceased) v Govt of Malaysia* [1994] 1 MLJ 394 (SC).

^{28a} See *Hassaina Rani v Ahmad Nazri* [1997] 3 CLJ 500.

of Judicature Act 1964.²⁹ Prospects of the Federal Court considering *Rubaidah's* case in some other dependency claim in the future is slim. Most fatal accident cases in Malaysia arise from motor vehicle accidents. Since section 65(1) of the Subordinate Courts Act 1948 gives the Sessions Court unlimited monetary jurisdiction in claims arising from motor vehicle accidents most fatal accident claims will originate in the Sessions Court.³⁰

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²⁹As amended by the Courts of Judicature (Amendment) Act 1995 (Act A 909).

³⁰As amended by the Subordinate Courts (Amendment) Act 1994 (Act A887).

INTERNATIONAL SECURITY, THE UNITED NATIONS AND THE POST-COLD WAR ERA

The end of the Cold War in the 1980s signalled a major change in the global security environment which had existed for most of the first half century of the UN era. This variation in the modern pattern of international relations has necessitated a radical review of international defence and security architecture, although it would be erroneous to represent this as having been in any way a clean break from past experience. It is rather the case that long-standing problems in international relations have presented themselves in changed forms and in so doing have demanded new, and possibly more effective, responses.

The UN collective security system as it was established at the end of the Second World War is set out in Chapter VII of the UN Charter, specifically in Articles 30-42. In principle, if a threat to, or breach of, international peace and security appears to have occurred, the UN Security Council determines under Article 39 whether such a threat or breach in fact exists and, if it does, it is to:

make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42 to maintain international peace and security.

Before making a final recommendation, the Security Council may, under Article 40, call upon the States involved to comply with 'provisional measures' for the mitigation of the situation without prejudice to the ultimate resolution of the dispute. Article 41 then provides for the implementation of: