



American Model United Nations

International Court of Justice

November 22 2005

The Gabčíkovo-Nagymoros Project
Hungary/Slovakia

PRESENT: President Billerbeck (Venezuela), Vice President Eldridge (Haiti), Justice Brown (Denmark), Justice Roberts (Cambodia), Justice Melo (Brazil), Justice Banuelos (Paraguay), Justice Bechtel (Iraq), Justice Van de Walker (Indonesia), Justice Makieva (Cuba), Justice Maher (Ireland), Justice Berg (South Africa), Justice Setchfield (Chile), Justice Coronel (Uruguay)

*The Court,
Composed as above,
Delivers the following Judgement*

- a. Because the dispute between the nations of Hungary and Slovakia is based upon a bilateral treaty, the Court finds that it has jurisdiction to adjudicate and provide a revised framework under which the disputing nations may work to resolution.
- b. In the 1997 decision regarding the treaty disputes of Hungary and Slovakia, it was established that although Hungary unilaterally withdrew from the Treaty, the Treaty was still in force. The Court has decided that adherence to the treaty, particularly after 1997, remains *prima facie*. In addition to reinforcing the validity of the treaty, the Court also recommended avenues of negotiation for each nation in order to resume participation in the treaty and to resolve the disputes of environmental and economic concern. With its consideration of the treaty as *prima facie*, the Court will now focus on the manner in which Hungary and Slovakia have or have not complied with the obligations of the 1997 decision.
- c. Because the validity of the treaty was reaffirmed in 1997, the Court also asserted that the unilateral withdrawal of Hungary was inadmissible, and that the primary purpose of negotiations was to address Hungarian concerns in order to ensure resumption of treaty adherence. However, the Court concludes that since 1997 Hungary has not complied with the ruling, citing extreme environmental concerns and economic difficulties attributed to the building of Variant C by Slovakia. While the construction of Variant C was undeniably unilateral, the economic complaints cannot be wholly attributed to its diversion of the Danube River. The Court notes that the Treaty was created with economic disputes in mind, intending to equalize profits and costs between the nations upon completion of the project. The Nagymoros Dam was built only by Slovakia; Hungary did not build its portion of the plan. The Court finds that although Variant C did create some

degree of economic discord for Hungary, the preceding failure to complete its portion of the plan makes the position of Variant C irrelevant; Hungary had already failed to comply with the Treaty.

- d. The environmental concerns of Hungary that occurred before 1997 are not relevant to the decision of the Court, because they have already been considered in previous decisions. Conversely, the Court will reference on the changes in environmental conditions post the 1997 decision in order to create a new framework. Because the Court has already made a decision that references the Vienna Convention of law of Treaties, which said that destruction must make an ecological necessity imminent and grave, the court will regard these changes in order to create a new framework. Also relevant is the principle of *rebus sic standibus*, which means that if there is a change in circumstance, they make breach the treaty when the situation becomes difficult and/or impossible. The Court would like to reference more recent research in regards to environmental research that has led it to the conclusion that the environmental situation of Hungary has indeed changed since the 1997 ruling; At this point, the Court must evaluate the actions that have occurred since 1997 under this change of conditions in order to invalidate or to validate said actions. A lack of valid evidence regarding change in environmental conditions illustrates to the Court that significant change in environmental conditions has not occurred, and demonstrates sufficiently that the Treaty still stands as *prima facie*.
- e. The convention of Navigation* has not changed since the 1997 decision and thus is not included in the change in conditions. Although Variant C and the subsequent abuse of natural resources does encroach upon sovereignty, the Court has already had an opportunity to adjudicate these allegations and emphasizes that the solution to these situations, as articulated in the decision from 1997, rests primarily with negotiation and adherence to the treaty. Once again, the Court reiterates that the party nations have not fulfilled their obligations of negotiation that was defined in the 1997 decision.
- f. Each nation is entitled to the revenues gained from the completion of the plan, however, the Court recognizes that the revenues were gained only from partial completion of the plan, which was largely substantiated by Slovakia, the only country that built a dam producing electricity revenues. Article 18 of the Treaty, subsection 1, the last phrase “shall ensure uninterrupted and safe navigation” and the system of locks reserves navigation parties. Navigation in the system of locks shall be governed by the regulations of the navigations authorities of the contracting parties, as stated by Article 18, paragraph 3. Because of this, the Court also notes that the partial completion necessitates accommodation by each party in mind of the natural tendency to block flow due to the partial completion of the plan. In addition, the permanent status of the river indicates to the Court that each nation should share the fees incurred by shipping, and upon completion of Treaty goals in good faith would allow for sharing of the revenues from the shipping

fees, which in fact would be cancelled out for each nation upon completion. In good faith, each nation must observe in good faith the flow of the river in order to preserve the previous rulings of the Court and also to preserve the value of the River and the value of the flow. In this sense, the Court wishes to reiterate that each nation is absolutely and without exception bound to the treaty in its current state. However, the Court also notes that changes to the treaty can only be revised via negotiation and/or amendment and thus must emphasize that negotiation between the two nations is absolutely critical to come to these conclusions. The modern environmental treaty-making is based almost exclusively on the principle of system-building, which considers a treaty as a process and not as a one-off event. Thus, the Court concludes that the continued economic discord results directly from a lack of negotiation between the two nations, particularly Hungary.

- g. Given the fact that judgment from the 1997 case was not followed by both Hungary and Slovakia, the Court is then obligated to direct the actions of the party nations in this manner. Initially the Court notes that reparations are in order, as well as a series of negotiations between the nations that determines the willingness of each nation to continue participation in the treaty, thus making the treaty invalid or valid in the eyes of each nation. The Treaty is an instrument of adjudication that must be protected for future arbitration of disputes. The Court shall recognize the termination of the treaty if the two nations choose to abolish it, but until it is presented with this decision at the end of negotiations, the Court affirms that the treaty is still in force and that the nations must negotiate to revise the treaty in order to make it workable. Before negotiations begin, the Court recalls that reparations were not created in the 1997 decision, and upon repeated request for consideration, the Court now concludes that reparations should be issued to appease the issues in question. Initially, reparations will be issued to address treaty violations that have created economic inequality and questions of sovereignty. After this, reparations must address the environmental concerns that are projected by Hungary.
- h. The Court also found in 1997 that Hungary violated the treaty by unilaterally suspending and subsequently abandoning the project, and at this time, the Court has determined that Hungary must pay compensation, in terms of Article 36, paragraph 2 of the Resolution 65/83 of the UN General Assembly, concerning about the “responsibility of states for internationally wrongful acts”, which states that “the compensation shall cover any financially assessable damage including loss of profits insofar as it is established”. The same solution must be applied to Slovakia, in the case concerning the violation of the treaty by subsequently unilaterally diverting the Danube River after the notice given by Hungary and 1992.
- i. In addition to these reparations, the Court gives the party nations a determined timeline of two years to participate in extensive negotiations to resolve the disputes of the treaty. These negotiations should determine the status of the Treaty

and make any necessary amendments to ameliorate the concerns of each nation. The Court also recommends that the party nations commit themselves to substantial joint research by a UN-recognized body. This research should be conducted in regard to the potential economic, environmental and territorial consequences of Variant C, the current condition of the Nagymoros Dam, and those of the Treaty upon completion. The negotiations regarding the Treaty should use this evidence to guide decision-making by each party and to determine the most ideal situation. Though the Court encourages any necessary discourse and revision, if the party nations choose to reaffirm the Treaty, it must upheld and adhered to as determined by the 1997 decision.

- j. The Court would like to raise awareness towards the multinational implications of this continued dispute between the two nations, specifically the multiple consequences stemming from the inability to reach a resolution. Because the International Court of Justice acts as an important precedent and international law affects all nations, the Court would like to emphasize the importance of resolution between the nations of Hungary and Slovakia.

- k. For these reasons,

The Court,

By nine (9) votes to two (2),

Finds that the nations Hungary and Slovakia have not complied with the 1997 decision and are now subject to the reparations and negotiations recommended by the Court. Additionally, the Court requires that the aforementioned nations present the Court with a decision regarding the status of the treaty in two years time, at the conclusion of said negotiations.

Justices Coronel and Roberts append a joint dissenting opinion.

Justice Makieve appends a separate opinion.

Justice Billerbeck

Justice Berg

Justice Van de Walker

Justice Setchfield

Justice Maher

Justice Brown

Justice Elderidge

Justice Melo

Justice MaKieve

