



Gabkovo-Nagymaros Project (Hungary/Slovakia)

ARGUED: 21 November 2022

DECIDED: 22 November 2022

1 The Majority Opinion was signed and agreed to by Justice Pando of China, Justice Gillson of Djibouti,
2 Justice Preston of Ethiopia, Justice Nigro of Italy, Justice Kilkelly of Ukraine, Justice Lee of Peru, Justice Pineda
3 Gomez of Australia, Justice Hardesty of Jamaica, and Justice Krouss of the Netherlands.

4 Statement of the History of Proceedings

5 On 2 July, 1993, the Slovak Republic (hereinafter referred to as Slovakia) and the Republic of Hungary
6 (hereinafter referred to as Hungary) submitted a Special Agreement to the Registrar of this Court. The purpose of
7 this Special Agreement was to notify the Court of Slovakia and Hungary's differences regarding the implementation
8 and termination of the Budapest Treaty of 1977. This Court heard oral arguments on this matter from Slovakia
9 and Hungary on 21 November, 2022. Slovakia contends that Hungary has failed to fulfill its obligations under the
10 Budapest Treaty and has therefore violated the treaty. Slovakia also asserts that the environmental concerns cited
11 by Hungary do not meet the required criteria for termination of the treaty. Thus, Slovakia asks the Court to allow
12 for the continued construction of the Gabkovo-Nagymaros Project and to enforce the Budapest Treaty of 1977.
13 Hungary contends that the potential environmental impact of completing this project justifies their termination of
14 the Budapest Treaty. Hungary has also asserted that Slovakia wrongfully continued with Variant C after Hungary
15 had given notice that they were terminating the Budapest Treaty. Further, Hungary argues that Slovakia did not
16 succeed in Czechoslovakia's rights and obligations under the Budapest Treaty. Therefore, Hungary contends that
17 Slovakia has no right to attempt to enforce the Treaty. Hungary asks the Court to find them justified in terminating
18 the Budapest Treaty for those reasons.

19 Statement of the Relevant Facts

20 On 16 September 1977, Czechoslovakia and Hungary entered into the Budapest Treaty. This treaty called
21 for the construction and operation of a hydroelectric system of locks on the Danube River. The original plan was for
22 the project to be completed in 1991. However, by 1989, the Czechoslovakian portion of the system (Gabkovo) was
23 almost completed while Hungary's portion of the system (Nagymaros) had made little progress; thus the agreement
24 was amended for the project to be completed by 1994. In 1992, Hungary terminated the agreement via *note*
25 *verbale*. In 1993, the Czechoslovak Republic dissolved and the territory was split into two separate nation states:
26 the Czech Republic and Slovak Republic (hereafter referred to as "Slovakia"). Slovakia now controlled the land on
27 the Danube River, and they continued construction of the dam. Slovakia offered Hungary seven alternatives to the
28 dam construction, but Hungary was unwilling to find an amenable solution among the seven alternatives. Since one
29 of the alternatives, Variant C, would allow Slovakia to continue building without Hungary's approval, they voted to
30 go forward with the implementation of Variant C. In 1992, the People's Republic of Hungary gave Czechoslovakia
31 (succeeded by Slovakia) notice that they wished to terminate the treaty on the grounds of environmental necessity.

32 Statement of Jurisdiction

33 The Court bases its jurisdiction on Article 40, Section 1 of the Statute of the Court, and Articles 1 and 2 of
34 the Special Agreement Between the Republic of Hungary and the Slovak Republic for Submission to the International
35 Court of Justice of the Differences between them Concerning the Gabkovo-Nagymaros Project (hereafter referred to
36 as the "Special Agreement.") According to the Special Agreement, "the Treaty and rules and principles of general
37 international law" shall be within the Court's jurisdiction and purview, and shall be used to make a ruling on this
38 case.

39 The Opinion of the Court is as Follows

41 This Court rejects the argument that Slovakia is the incorrect state to bring a challenge under the Budapest
42 Treaty due to its status as a successor to the original signatory of the treaty, Czechoslovakia. Under Article 8 of
43 the Vienna Convention on the Succession of States, the treaty obligations of predecessor states only cease to apply
44 to succeeding states if the predecessor state and the succeeding state enter into an agreement explicitly stating
45 such. In this case, Slovakia is the succeeding state, and Czechoslovakia is the predecessor state. 1 January, 1993
46 Czechoslovakia was succeeded by the Czech Republic and Slovakia. In this “velvet divorce,” Czechoslovakia did not
47 enter into an agreement with either of its succeeding states to nullify any preexisting treaty obligations. In fact, in
48 a *Note Verbale* between both states from March 3, 1993 the Czech Republic grants territorial integrity of this issue
49 and the subsequent treaty to Slovakia in its entirety. Therefore, under Article 8 of the Vienna Convention on the
50 Succession of States, Slovakia is a valid party to the Budapest Treaty and has the authority to bring a dispute with
51 the Republic of Hungary about the alleged failure of Hungary to construct its section of the dam.

52 *Material Breach*

53 Hungary claims that the provisional solution “Variant C” constructed by Slovakia constitutes a material
54 breach of Articles 1, 15, 19, and 20 of the Budapest Treaty. The Court believes that Slovakia has presented ample
55 evidence and research backing up the claim that Variant C and other Slovakian activities have made a negligible
56 impact on water quality, nature, and fishing interest and that Slovakia has taken appropriate measures to ensure
57 such interests are not impaired. Therefore, there has not been a material breach on Article 15, 19, and 20 of the
58 Budapest Treaty.

59 Regarding the alleged breaches of Article 1 of the Budapest Treaty of Slovakia, the Court believes that
60 the Variant C program was built in conjunction with and as a provisional measure to the Gabkovo-Nagymaros
61 system; therefore, Variant C is part of the Gabkovo-Nagymaros system, and the unilateral construction of the Variant
62 C program, breaches Article 1 of the Budapest Treaty, which states that “The Contracting Parties shall construct
63 the Gabkovo-Nagymaros system of locks (hereinafter referred to as the “System of Locks”) as a joint investment.”
64 According to Article 60, Section 3, b of the Vienna Convention on the Law of Treaties (hereinafter referred to as
65 the “VCLT”), “A material breach of a treaty, for the purposes of this article, consists in the violation of a provision
66 essential to the accomplishment of the object or purpose of the treaty.” The Court believes that Article 1 outlines
67 the collaborative nature of the project, which the Court believes is a provision essential to the accomplishment of the
68 object or purpose of the treaty, which is the construction of the Gabkovo-Nagymaros system. Therefore, Slovakia’s
69 breach of Article 1 of the Budapest Treaty constitutes a material breach.

70 According to Article 45 of the VCLT, “A State may no longer invoke a ground for invalidating, terminating,
71 withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after
72 becoming aware of the facts:

- 73 1. It shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case
74 may be; or
- 75 2. It must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its
76 maintenance in force or in operation, as the case may be.”

77 If Hungary, aware of this breach, has expressly agreed or, by conduct, could be considered to have acquiesced
78 to the validity of the Budapest Treaty, Hungary may no longer invoke material breach as grounds for termination
79 or suspension. The Court could not find and has not been presented with evidence of such agreement or conduct;
80 therefore, we believe that Hungary has not lost its right to invoke Article 60 of the VCLT as grounds for suspension.

81 *Fundamental Change of Circumstances*

82 Hungary claims that “change in economic viability, progressing environmental knowledge and laws, breaches
83 of Slovakian territory, environmental damage done by Variant C” constitute a fundamental change in circumstances
84 not foreseen by the parties. As stipulated by Article 62 of the Vienna Convention on Treaties, “A fundamental
85 change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty,
86 and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the
87 treaty unless:

- 88 (a) the existence of those circumstances constituted an essential basis of the consent of the parties to be
89 bound by the treaty; and

90 (b) the effect of the change is to radically transform the extent of obligations still to be performed under the
91 treaty.”

92 In the deliberation of this case the Court found that both economic viability and environmental knowledge
93 and laws are not an acceptable change of circumstance to the force majeure aspect implied by 62 (b), where the object
94 being removed from the treaty would be a necessary aspect to the legitimate nature of the treaty. Environmental
95 damage done by Variant C is not applicable as again, it was not an unforeseen change. Letters between Hungary
96 and Slovakia dated 17 of September, 1990 prove that Hungary was aware of the proposed existence of Variant C
97 and therefore any possible damage that could come from the building of Variant C, regardless of its applicability or
98 legitimacy under the treaty. Finally, regarding the proposed breach of Hungarian territory the court finds that due
99 to a lack of inarguable evidence as well as unanimous specification of what constitutes territorial sovereignty in the
100 shared natural border and resource we find that we do not at this time have the jurisdiction to provide any legitimate
101 ruling at this time.

102 *Environmental Necessity*

103 Regarding the applicability of environmental necessity as a legitimate reason for the unilateral dissolution
104 of the special agreement, we turn to the Draft articles on Responsibility of States for Internationally Wrongful Acts,
105 article 25 which stipulates that:

106 “1. Necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act not in
107 conformity with an international obligation of that State unless the act:

108 (a) is the only way for the State to safeguard an essential interest against a grave and imminent peril; and

109 (b) does not seriously impair an essential interest of the State or States towards which the obligation exists,
110 or of the international community as a whole.”

111 In the context of this case specifically, keeping in mind that this court in no way sets precedence, we consider
112 article 25 (a) which states that there must be grave and imminent peril to an essential interest of the state, imminent
113 peril refers to a situation which could be or involve a risk to the object of interest where imminent refers to any period
114 of time where peril or risk becomes certain. If we take the environmental well-being of the state and the Danube to
115 be the essential interest we find that we must grant necessity on the basis of the risk that would be applied to the
116 biodiversity that is essential to the well-being of the Danube river which is at the heart of this issue. Imminence,
117 so far as ecological impact is concerned, we grant in this case as the Hungarian delegation cited several species of
118 fish whose well being would immediately be at risk due to the interruption of migratory flows with other certain
119 perilous impacts which would follow with the implementation of the dam system. The court now turns to Article
120 25 (b) which must also be applied to the issue at hand. This article refers to the essential interests which must be
121 considered on both sides of this dispute. Regarding environmental concern Hungary proved enough imminent risk
122 under the convention on biological diversity regarding the risk facing the well-being of the Danube river that while
123 Slovakia raised the point that the ecological effects anticipated would fall within projected and acceptable levels of
124 imminent peril, as previously defined, still applies.

125 *Obligation under Environmental Law*

126 Under the general principles of international Environmental Law all states have the obligation to take all
127 actions necessary to ensure actions they undertake in their territory do not pollute the environment of another state.
128 This principle is well established in customary international law and is supported by the 1972 Stockholm Declaration
129 on the Human Environment and the United Nations Charter. At the current moment, this Court finds that both
130 Contracting parties are in line with the general principles of International Environmental law. Slovakia has presented
131 sufficient evidence that the state of current construction has not caused environmental damage that would constitute
132 a violation of Environmental law.

133 However, the Court would like to stress that any future construction of the dam system, if it is to be
134 constructed, must occur in compliance with these general principles. Both Hungary and Slovakia are obligated to
135 not undertake actions that may cause pollution or contamination in the jurisdiction of other countries. Therefore, it
136 is incumbent upon Hungary and Slovakia to provide scientific evidence that any future construction of Nagymaros
137 or Variant-C would not violate general principles of International Environmental Law.

138 *Therefore, the Court Orders the Following*

139 First, the Court orders the immediate suspension of the Budapest Treaty. The Budapest Treaty shall be
140 reinstated if and when there is a resolution of Slovakia’s material breach of Article 1 of the Budapest Treaty. The

141 resolution implies the construction of Variant C being agreed upon and accepted by both parties or Variant C
142 being dismantled in an orderly manner with consideration to the environmental laws.

143 Second, both parties take all appropriate measures to ensure compliance with environmental laws and the
144 territorial integrity of other States.

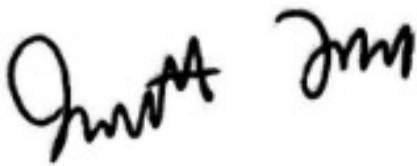
Signed By



Justice Connor Kilkelly



Justice Hao-Yu Lee



Justice Jarrett Krouss



Justice Jess Gillson



Justice Juan Pineda Gomez



Justice Julian Pando



Justice Matthew Nigro



Justice Michaelyn Preston

Owen Hardesty

Justice Owen Hardesty