

**CASE CONCERNING GABCIKOVO-NAGYMAROS PROJECT
(Hungary v Slovakia)
JUDGMENT**

[1997] ICJ Reports

REVIEW OF PROCEEDINGS AND STATEMENT OF CLAIMS (paragraphs 1-14)

Proceedings in this case were instituted in the International Court of Justice by Hungary and Slovakia ("the parties") on 2 July 1993 by joint notification of a Special Agreement signed at Brussels on 7 April 1993. After setting out the text of the Agreement, the Court recited the successive stages of the proceedings and referred, *inter alia*, to its visit to the area from 1 to 4 April 1997 on the invitation of the parties. It further set out the submissions of the parties.

HISTORY OF THE DISPUTE (paragraphs 15-25)

The present case arose out of the signature on 16 September 1977 by the Hungarian People's Republic and the Czechoslovak People's Republic, of a treaty "concerning the construction and operation of the Gabčíkovo-Nagymaros System ("1977 Treaty"). The 1977 Treaty entered into force on 30 June 1978. It provided for the construction and operation of a System of Locks by the parties as a "joint investment".

According to the Preamble of the 1977 Treaty, the system was designed to attain "the broad utilization of the natural resources of the Bratislava-Budapest section of the Danube river for the development of water resources, energy, transport, agriculture and other sectors of the national economy of the Contracting Parties". The joint investment was thus essentially aimed at the production of hydroelectricity, the improvement of navigation on the relevant section of the Danube and the protection of the areas along the banks against flooding. At the same time, by the terms of the 1977 Treaty, the parties undertook to ensure that the quality of water in the Danube was not impaired as a result of the Project, and that compliance with the obligations for the protection of nature arising in connection with the construction and operation of the System of Locks would be observed.

The sector of the Danube river with which this case was concerned is a stretch of approximately 200 kilometres, between Bratislava in Slovakia and Budapest in Hungary. Below Bratislava, the river gradient decreases markedly, creating an alluvial plain of gravel and sand sediment. The boundary between the two states is constituted, in the major part of that region, by the main channel of the river. Cunovo and further downstream, Gabčíkovo, are situated in this sector of the river on Slovak territory, Cunovo on the right bank and Gabčíkovo on the left. Yet further downstream, after the confluence of the various branches, the river enters Hungarian territory. Nagymaros lies in a narrow valley at a bend in the Danube just before it turns south, enclosing the large river island of Szentendre before reaching Budapest (see sketch-map No 1).

The 1977 Treaty described the principal works to be constructed in pursuance of the Project. It provided for the building of two series of locks, one at Gabčíkovo (in Czechoslovak territory) and the other at Nagymaros (in Hungarian territory), to constitute "a single and indivisible operational system of works" (see sketch-map No 2). The treaty further provided that the technical specifications concerning the system would be included in the "Joint Contractual Plan" which was to be drawn up in accordance with the Agreement signed by the two governments for this purpose on 6 May 1976. It also provided for the construction, financing and management of the works on a joint basis in which the parties participated in equal measure.

The Joint Contractual Plan set forth on a large number of points, both the objectives of the system and the characteristics of the works. It also contained Article 23, "Preliminary Operating and Maintenance Rules", which specified that "[t]he final operating rules [should] be approved within a year of the setting into operation of the system."

The Court observed that the Project was thus to have taken the form of an integrated joint project with the two parties on an equal footing in respect of the financing, construction and operation of the works. Its single and indivisible nature was to have been realised through the Joint Contractual Plan which complemented the 1977 Treaty. In particular, Hungary would have had control of the sluices at Dunakiliti and the works at Nagymaros, whereas Czechoslovakia would have had control of the works at Gabčíkovo.

The schedule of work had for its part been fixed in an Agreement on mutual assistance signed by the two parties on 16 September 1977, at the same time as the 1977 Treaty itself. The Agreement made some adjustments to the allocation of the works between the parties as laid down by the 1977 Treaty. Work on the Project started in 1978. On Hungary's initiative, the parties first agreed, by two Protocols signed on 10 October 1983 to slow the work down and to postpone putting into operation the power plants, and then, by a Protocol signed on 6 February 1989 to accelerate the Project.

As a result of intense criticism which the Project had generated in Hungary, the Hungarian Government decided on 13 May 1989 to suspend the works at Nagymaros pending the completion of various studies which the competent authorities were to finish before 31 July 1989. On 21 July 1989, the Hungarian Government extended the suspension of the works at Nagymaros until 31 October 1989. In addition, it suspended the works at Dunakiliti until the same date. Lastly, on 27 October 1989, it decided to abandon the works at Nagymaros and maintain the status quo at Dunakiliti.

During this period, negotiations took place between the parties. Czechoslovakia also started investigating alternative solutions. One of them, an alternative solution subsequently known as "Variant C", entailed a unilateral diversion of the Danube by Czechoslovakia on its territory some 10 kilometres upstream of Dunakiliti (see sketch-map No 3). In its final stage, Variant C included the construction at Cunovo of an overflow dam and a levee linking that dam to the south bank of the bypass canal. Provision was made for ancillary works.

On 23 July 1991, the Slovak Government decided "to begin, in September 1991, construction to put the Gabčíkovo Project into operation by the provisional solution". Work on Variant C began in November 1991. Discussions continued between the parties but to no avail. On 19 May 1992, the Hungarian Government transmitted to the Czechoslovak Government a Note Verbale terminating the 1977 Treaty with effect from 25 May 1992. On 15 October 1992, Czechoslovakia began work to enable the Danube to be closed and starting on 23 October, proceeded to dam the river.

The Court finally noted that on 1 January 1993 Slovakia became an independent State. By Special Agreement concluded between Hungary and

Slovakia the parties agreed to establish and implement a temporary water management regime for the Danube. They concluded an Agreement in respect of it on 19 April 1995, which was to come to an end 14 days after the Judgment of the Court. The Court observed that not only the 1977 Treaty but also the "related instruments" were covered in the Preamble to the Special Agreement and that the parties, when concentrating their reasoning on the 1977 Treaty, appeared to have extended their arguments to the "related instruments".

SUSPENSION AND ABANDONMENT BY HUNGARY IN 1989 OF WORKS ON THE PROJECT (paragraphs 27-59)

In terms of Article 2(1)(a) of the Special Agreement, the Court was requested to decide:

whether the Republic of Hungary was entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the Treaty attributed responsibility to the Republic of Hungary.

The Court observed that it had no need to dwell upon the question of the applicability or non-applicability in the present case of the 1969 Vienna Convention on the Law of Treaties, as argued by the parties. It needed only to note the fact that it had on several occasions held that some of the rules laid down in that Convention might be considered as a codification of existing customary law. The Court took the view that in many respects this applied 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. Neither had the Court lost sight of the fact that the Vienna Convention was in any event applicable to the Protocol of 6 February 1989. Under this Protocol, Hungary and Czechoslovakia had agreed to accelerate completion of the works relating to the Gabčíkovo-Nagymaros Project.

The Court did not 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. A determination of whether a convention was in force, and whether it had been properly suspended or denounced, was 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, involved the responsibility of the state which proceeded to it, was to be made under the law of state responsibility.

The Court did not accept Hungary's argument to the effect that in 1989, in suspending and subsequently abandoning the works for which it was still responsible at Nagymaros and at Dunakiliti, it did not suspend the application of the 1977 Treaty itself or then reject that Treaty. The conduct of Hungary at that time could only be interpreted as an expression of its unwillingness to comply with at least some of the provisions of the Treaty and the Protocol of 6 February 1989, as specified in the Joint Contractual Plan. The effect of Hungary's conduct was to render impossible the accomplishment of the system of works that the Treaty expressly described as "single and indivisible".

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

The Court observed, first of all, that state of necessity is a ground recognised by customary international law for precluding the wrongfulness of an act not in conformity with an international obligation. It considered moreover that such ground for precluding wrongfulness could only be accepted on an exceptional basis. The following basic conditions set forth in Article 33 of the Draft Article on the International Responsibility of States by the International Law Commission were relevant in the present case: it must have been occasioned by an "essential interest" of the state which was the author of the act conflicting with one of its international obligations; that interest must have been threatened by a "grave and imminent peril"; the act being challenged must have been the "only means" of safeguarding that interest; that act must not have "seriously impair[ed] an essential interest" of the state towards which the obligation existed; and the state which was the author of that act must not have "contributed to the occurrence of the state of necessity". These conditions reflected customary international law.

The Court had no difficulty in acknowledging that the concerns expressed by Hungary for its natural environment in the region affected by the

Gabcikovo-Nagymaros Project related to an "essential interest" of that state. However, with respect to both Nagymaros and Gabcikovo, the perils invoked by Hungary, without prejudging their possible gravity, were not sufficiently established in 1989 nor were they "imminent". Hungary had available to it at that time means of responding to these perceived perils other than the suspension and abandonment of works with which it had been entrusted. Furthermore, negotiations were under way which might have led to a review of the Project and the extension of some of its time-limits, without there being need to abandon it.

The Court further noted that Hungary, when it decided to conclude the 1977 Treaty, was presumably aware of the situation as then known; and that the need to ensure the protection of the environment had not escaped the parties. Neither could the Court fail to note the positions taken by Hungary after the entry into force of the 1977 Treaty. The Court inferred that in the present case, even if it had been established that there was in 1989 a state of necessity linked to the performance of the 1977 Treaty, Hungary would not have been permitted to rely upon that state of necessity in order to justify its failure to comply with its treaty obligations, as it had helped by act or omission to bring it about.

In the light of the conclusions reached above, the Court found that Hungary was not entitled to suspend and subsequently abandon in 1989 the works on the Nagymaros Project and on the part of the Gabcikovo Project for which the 1977 Treaty and related instruments attributed responsibility to it.

CZECHOSLOVAKIA PROCEEDING TO VARIANT C IN NOVEMBER 1991 AND PUTTING THIS VARIANT INTO OPERATION FROM OCTOBER 1992 (paragraphs 60-88)

By the terms of Article 2 (1) of the Special Agreement, the Court was asked in the second place to decide:

whether the Czech and Slovak Federal Republic was entitled to proceed, in November 1991, to the 'provisional solution' and to put into operation from October 1992 this system.

Czechoslovakia, and later Slovakia, had maintained that proceeding to Variant C and putting it into operation did not constitute internationally

wrongful acts. In proceedings before the Court, Slovakia contended that Hungary's decision to suspend and subsequently abandon the construction of works at Dunakiliti had made it impossible for Czechoslovakia to carry out the works as initially contemplated by the 1977 Treaty and that the latter was therefore entitled to proceed with a solution which was as close to the original Project as possible. Slovakia invoked what it described as a "principle of approximate application" to justify the construction and operation of Variant C. It explained that this was the only possibility remaining to it "of fulfilling not only the purposes of the 1977 Treaty, but the continuing obligation to implement it in good faith".

The Court observed that it was not necessary to determine whether there was a principle of international law or a general principle of law of "approximate application" because, even if such a principle existed, it could by definition only be employed within the limits of the treaty in question. In the view of the Court, Variant C did not meet that cardinal condition with regard to the 1977 Treaty.

As the Court had already observed, the basic characteristic of the 1977 Treaty was, according to Article 1, to provide for the construction of the Gabčíkovo-Nagymaros System of Locks as a joint investment constituting a single and indivisible operational system of works. This element was equally reflected in Articles 8 and 10 of the Treaty providing for joint ownership of the most important works of the Gabčíkovo-Nagymaros project and for the operation of this joint property as a coordinated single unit. By definition, all this could not be carried out by unilateral action. In spite of having a certain external physical similarity with the original Project, Variant C thus differed sharply from it in its legal characteristics. The Court accordingly concluded that Czechoslovakia, in putting Variant C into operation, was not applying the 1977 Treaty but, on the contrary, violated certain of its express provisions. In so doing, Czechoslovakia had committed an internationally wrongful act.

The Court took note that between November 1991 and October 1992, Czechoslovakia confined itself to the execution, on its own territory, of the works which were necessary for the implementation of Variant C, but which could have been abandoned if an agreement had been reached between the parties. This did not therefore predetermine the final decision to be taken. For as long as the Danube had not been unilaterally dammed, Variant C had not in fact been applied. Such a situation was not unusual in

international law or for that matter in domestic law. A wrongful act or offence is frequently preceded by preparatory actions which are not to be confused with the act or offence itself. One had to distinguish between the actual commission of a wrongful act (whether instantaneous or continuous) and the conduct prior to that act which was of a preparatory character and which did not qualify as a wrongful act.

Slovakia also maintained that Czechoslovakia was acting under a duty to mitigate damages when it carried out Variant C. Slovakia claimed that it was a general principle of international law that a party injured by the non-performance of another contract party must seek to mitigate the damage he has sustained. But the Court observed that, while this principle might provide a basis for the calculation of damages, it could not, on the other hand, justify an otherwise wrongful act. The Court further considered that the diversion of the Danube carried out by Czechoslovakia was not a lawful countermeasure because it was not proportionate.

In the light of these conclusions the Court found that Czechoslovakia was entitled to proceed, in November 1991, to Variant C in so far as it then confined itself to undertaking works which did not predetermine the final decision to be taken by it. On the other hand, Czechoslovakia was not entitled to put that Variant into operation from October 1992.

NOTIFICATION BY HUNGARY ON 19 MAY 1992 OF THE TERMINATION OF THE 1977 TREATY AND RELATED INSTRUMENTS (paragraphs 89-115)

By the terms of Article 2(1) of the Special Agreement, the Court was asked to determine:

what are the legal effects of the notification, on 19 May 1992, of the termination of the Treaty by the Republic of Hungary.

During the proceedings Hungary presented five arguments in support of the lawfulness, and thus the effectiveness, of its notification of termination. These were the existence of a state of necessity, the impossibility of performance of the Treaty, the occurrence of a fundamental change of circumstances, the material breach of the Treaty by Czechoslovakia and finally, the development of new norms of international environmental law. Slovakia contested each of these grounds.

(i) State of Necessity

The Court observed that even if a state of necessity was found to exist, it was 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.

(ii) Impossibility of Performance

The Court found that it was not necessary to determine whether the term "object" in Article 61 of the 1969 Vienna Convention on the Law of Treaties (which speaks of "permanent disappearance or destruction of an object indispensable for the execution of the treaty" as a ground for terminating or withdrawing from it) can also be understood to embrace a legal regime as in any event, even if that were the case, it would have to conclude that in this instance that regime had not definitively ceased to exist. The 1977 Treaty, in particular Articles 15, 19 and 20, actually made available to the parties the necessary means to proceed at any time, by negotiation, to the required readjustments between economic imperatives and ecological imperatives.

(iii) Fundamental Change of Circumstances

In the Court's view, the prevalent political conditions were not so closely linked to the object and purpose of the 1977 Treaty that they constituted an essential basis of the consent of the parties. In changing, they radically altered the extent of the obligations still to be performed. The same held good for the economic system in force at the time of the conclusion of the 1977 Treaty. Nor did the Court consider that new developments in the state of environmental knowledge and of environmental law could be said to have been completely unforeseen. Furthermore, the formulation of Articles 15, 19 and 20 was designed to accommodate change. The changed circumstances advanced by Hungary were 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.

(iv) Material Breach of the 1977 Treaty

Hungary's main argument for invoking a material breach of the 1977

Treaty was the construction and putting into operation of Variant C. The Court pointed out that it had already found that Czechoslovakia violated the 1977 Treaty only when it diverted the waters of the Danube into the bypass canal in October 1992. In constructing the works which would lead to the putting into operation of Variant C, Czechoslovakia did not act unlawfully. Thus, the Court held that the notification of termination by Hungary on 19 May 1992 was premature. Czechoslovakia had not yet breached the 1977 Treaty and as a result, Hungary was not entitled to invoke any such breach of the Treaty as a ground for terminating it when it did.

(v) Development of New Norms of International Environmental Law

The Court noted that neither party contended that new peremptory norms of environmental law had emerged since the conclusion of the 1977 Treaty. Thus, the Court was not required to examine the scope of Article 64 of the 1969 Vienna Convention on the Law of Treaties (which treats the voidance and termination of a treaty because of the emergence of a new peremptory norm of general international law or *jus cogens*). On the other hand, the Court pointed out that newly developed norms of environmental law were relevant for the implementation of the Treaty and that the parties could, by agreement, incorporate them through the application of Articles 15, 19 and 20 of the 1977 Treaty. These articles did not contain specific obligations of performance but required the parties in carrying out their obligations to ensure that the quality of water in the Danube was not impaired, to ensure that nature was protected, and to take new environmental norms into consideration when agreeing upon the means to be specified in the Joint Contractual Plan. By inserting these evolving provisions in the 1977 Treaty, the parties recognised the potential necessity to adapt the Project. Consequently, the Treaty was not static and was open to adapt to emerging norms of international law. By means of Articles 15 and 19, new environmental norms can be incorporated in the Joint Contractual Plan.

The awareness of the vulnerability of the environment and the recognition that environmental risks had to be assessed on a continuous basis had become much stronger in the years since the 1977 Treaty's conclusion. These new concerns enhanced the relevance of Articles 15, 19 and 20. The Court recognised that the parties had agreed on the need to take environmental concerns seriously and to take the required precautionary measures, but that they had fundamentally disagreed on the consequences

this had for the joint Project. In such a case, third-party involvement could have been helpful and instrumental in finding a solution, if each party was flexible in its position.

Finally, the Court was of the view that although it had 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.

In the light of these conclusions the Court found that the notification of termination by Hungary of 19 May 1992 did not have the legal effect of terminating the 1977 Treaty and related instruments.

DISSOLUTION OF CZECHOSLOVAKIA (paragraphs 117-124)

The Court then turned to the question whether Slovakia became a party to the 1977 Treaty as successor to Czechoslovakia. Hungary had contended that, even if the Treaty survived the notification of termination, it ceased to be in force as a treaty on 31 December 1992 as a result of the "disappearance of one of the parties". On that date Czechoslovakia ceased to exist as a legal entity, and on 1 January 1993, the Czech Republic and the Slovak Republic came into existence.

The Court did not find it necessary for the purposes of the present case to enter into a discussion of whether or not Article 34 of the 1978 Vienna Convention on Succession of States in respect of treaties (in which a rule of automatic succession to all treaties is provided for) reflected the state of customary international law. More relevant to its present analysis was the particular nature and character of the 1977 Treaty. An examination of this Treaty confirmed that, aside from its undoubted nature as a joint investment, its major elements were the proposed construction and joint operation of a large, integrated and indivisible complex of structures and installations on specific parts of the respective territories of Hungary and Czechoslovakia along the Danube. The Treaty also established the navigational regime for an important sector of an international waterway, in particular the relocation of the main international shipping lane to the bypass canal. In so doing, it inescapably created a situation in which the interests of other users of the Danube were affected. Furthermore, the interests of third states were expressly acknowledged in Article 18, whereby the parties undertook to ensure "uninterrupted and safe navigation

on the international fairway" in accordance with their obligations under the Convention of 18 August 1948 concerning the Regime of Navigation on the Danube.

The Court then referred to Article 12 of the 1978 Vienna Convention on Succession of States in respect of Treaties, which reflects the principle that treaties of a territorial character have been regarded both in traditional doctrine and in modern opinion as unaffected by a succession of states. The Court considered that Article 12 reflected a rule of customary international law and noted that neither of the parties disputed this. It concluded that the content of the 1977 Treaty indicated that it must be regarded as establishing a territorial regime within the meaning of Article 12 of 1978 Vienna Convention. It created rights and obligations "attaching to" the parts of the Danube to which it related. Thus, the Treaty itself could not be affected by a succession of states. The Court therefore concluded that the 1977 Treaty became binding upon Slovakia on 1 January 1993.

LEGAL CONSEQUENCES OF THE JUDGMENT (paragraphs 125-154)

The Court observed that the part of its Judgment which answered the questions in Article 2(1) of the Special Agreement had a declaratory character. It dealt with the "past" conduct of the parties and determined the lawfulness or unlawfulness of that conduct between 1989 and 1992 as well as its effects on the existence of the 1977 Treaty.

The Court then had, on the basis of the foregoing findings, to determine what the "future" conduct of the parties should be. This part of the Judgment was prescriptive rather than declaratory because it determined what the rights and obligations of the parties were. Thus, the parties would have to seek agreement on the modalities of the execution of the Judgment as they agreed to do in Article 5 of the Special Agreement.

In this regard, it was of cardinal importance that the Court found that the 1977 Treaty was still in force and consequently governed the relationship between the parties. That relationship was also determined by the rules of other relevant conventions to which the two states were party, by the rules of general international law and, in this particular case, by the rules of state responsibility. However, it was governed above all by the applicable rules of the 1977 Treaty as a *lex specialis*. The Court observed that it could not disregard the fact that the Treaty has not been fully implemented by either

party for years, and indeed that their acts of commission and omission had contributed to creating the present factual situation. Nor could it overlook that factual situation or the practical possibilities and impossibilities to which it gives rise, when deciding on the legal requirements for the future conduct of the parties. What was essential was that the factual situation as it had developed since 1989 should be placed within the context of the preserved and developing treaty relationship, in order to achieve its object and purpose in so far as that was feasible. Only then could the irregular state of affairs which existed as the result of the failure of both parties to comply with their treaty obligations be remedied.

The Court pointed out that the 1977 Treaty was not only a joint investment project for the production of energy, but that it was designed to serve other objectives as well: the improvement of the navigability of the Danube, flood control and regulation of ice-discharge, and the protection of the natural environment. In order to achieve these objectives the parties accepted obligations of conduct, obligations of performance, and obligations of result. The Court therefore held that the Parties were under a legal obligation, during the negotiations to be held by virtue of Article 5 of the Special Agreement, to consider within the context of the 1977 Treaty, in what way the multiple objectives of the Treaty could best be served.

It was clear that the Project's impact upon, and its implications for, the environment were of necessity a key issue. In order to evaluate the environmental risks, current standards had to be taken into consideration. This was not only allowed by the wording of Articles 15 and 19, but was prescribed to the extent that these articles imposed a continuing, and thus necessarily evolving, obligation on the parties to maintain the quality of the water of the Danube and to protect nature. The Court was mindful that, in the field of environmental protection, vigilance and prevention were required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage. New norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms had to be taken into consideration, and such new standards given proper weight, not only when states contemplated new activities but also when continuing with activities begun in the past. For the purposes of the present case, this meant that the parties together needed to look afresh at the effects on the environment of the operation of the Gabčíkovo power plant. In particular, they must find a satisfactory solution

for the volume of water to be released into the old bed of the Danube and into the side-arms on both sides of the river.

In the present case, the rule *pacta sunt servanda*, as reflected in Article 26 of the 1969 Vienna Convention on the Law of Treaties, required that the parties find an agreed solution within the cooperative context of the Treaty. Article 26 combines two elements, which are of equal importance. It provides that "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith". This latter element, in the Court's view, implied that in this case, it was the purpose of the Treaty, and the intentions of the parties in concluding it, that it should prevail over its literal application. The principle of good faith obliges the Parties to apply it in a reasonable way and in such a manner that its purpose can be realised.

The 1977 Treaty not only contained a joint investment programme, it also established a regime. According to the Treaty, the main structures of the System of Locks were the joint property of the parties; their operation would take the form of a coordinated single unit; and the benefits of the project should be equally shared. As the Court found that the Treaty was still in force and that under its terms the joint regime was a basic element. It considered that, unless the parties agreed otherwise, such a regime should be restored.

The Court held that the works at Cunovo should become a jointly operated unit within the meaning of Article 10(1), in view of their pivotal role in the operation of what remained of the Project and for the water-management regime. The dam at Cunovo had taken over the role which was originally destined for the works at Dunakiliti, and therefore should have a similar status. The Court also concluded that Variant C, which it considered operated in a manner incompatible with the Treaty, should be made to conform to it. It observed that re-establishment of the joint regime would also reflect in an optimal way the concept of common utilisation of shared water resources for the achievement of the several objectives mentioned in the Treaty.

Having indicated what in its view should be the effects of its finding that the 1977 Treaty is still in force, the Court turned to the legal consequences of the internationally wrongful acts committed by the parties, as it had also been asked by both parties to determine the consequences of the Judgment on the issue of payment of damages.

The Court was not asked, at this stage, to determine the quantum of damages due, but to indicate on what basis they should be paid. Both parties claimed to have suffered considerable financial losses and both claimed pecuniary compensation for them.

The Court concluded that both parties committed internationally wrongful acts and it noted that those acts gave rise to the damage sustained by them. Consequently, Hungary and Slovakia were both under an obligation to pay compensation and were both entitled to obtain compensation. However, the Court observed that given the fact that there had been intersecting wrongs by both parties, the issue of compensation could satisfactorily be resolved in the framework of an overall settlement if each of the parties was to renounce or cancel all financial claims and counterclaims. At the same time, the Court pointed out that the settlement of accounts for the construction of the works was different from the issue of compensation and had to be resolved in accordance with the 1977 Treaty and related instruments. If Hungary was to share in the operation and benefits of the Cunovo complex, it had to pay a proportionate share of the building and running costs.

The operative parts of the judgment appear below.

(1) Having regard to Article 2(1) of the Special Agreement:

- (a) Hungary was not entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the 1977 Treaty and related instruments attributed responsibility to it (per Schwebel P, Weeramantry V-P, Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Fleischhauer, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek JJ, Skubiszewski J *ad hoc*; Herczegh J dissenting);
- (b) Czechoslovakia was entitled to proceed, in November 1991, to the "provisional solution" as described in the terms of the Special Agreement (per Weeramantry V-P, Oda, Guillaume, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans JJ, Skubiszewski J *ad hoc*; Schwebel P, Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Rezek JJ dissenting);
- (c) Czechoslovakia was not entitled to put into operation, from October

1992, the "provisional solution" (per Schwebel P, Weeramantry V-P, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Kooijmans, Rezek JJ; Oda, Koroma, Vereshchetin, Parra-Aranguren JJ, Skubiszewski J *ad hoc* dissenting); and

- (d) the notification of the termination of the 1977 Treaty and related instruments by Hungary on 19 May 1992 did not have the legal effect of terminating them (per Weeramantry V-P, Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans JJ, Skubiszewski J *ad hoc*; Schwebel P, Herczegh, Fleischhauer, Rezek JJ dissenting).

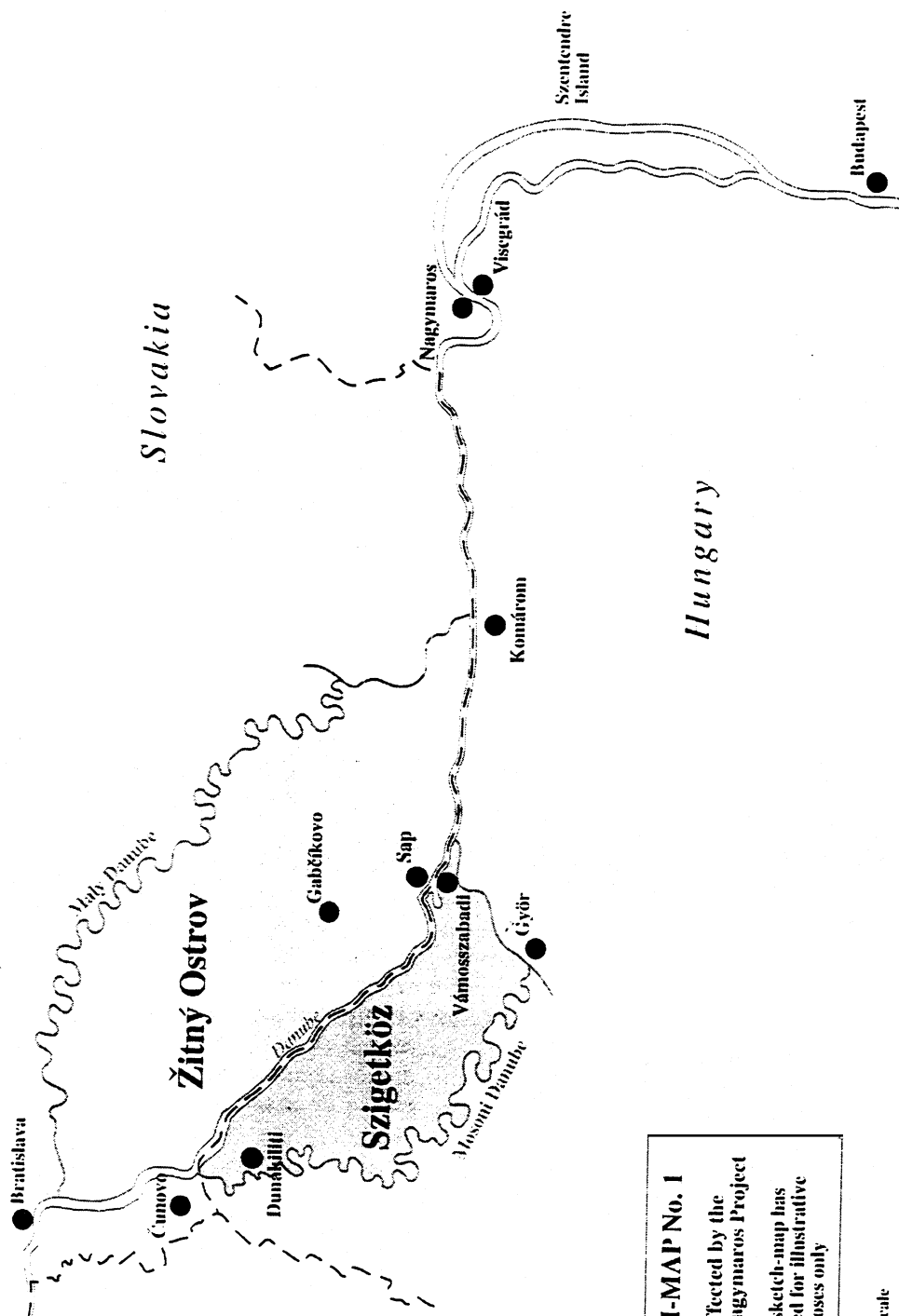
(2) Having regard to Articles 2(2) and 5 of the Special Agreement:

- (a) Slovakia, as successor to Czechoslovakia, became a party to the 1977 Treaty as from 1 January 1993 (per Schwebel P, Weeramantry V-P, Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans JJ, Skubiszewski J *ad hoc*; Herczegh, Fleischhauer, Rezek JJ dissenting);
- (b) Hungary and Slovakia must negotiate in good faith in the light of the prevailing situation, and must take all necessary measures to ensure the achievement of the objectives of the 1977 Treaty in accordance with such modalities as they may agree upon (per Schwebel P, Weeramantry V-P, Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek JJ, Skubiszewski J *ad hoc*; Herczegh, Fleischhauer JJ dissenting);
- (c) unless the parties otherwise agree, a joint operational regime must be established in accordance with the 1977 Treaty (per Schwebel P, Weeramantry V-P, Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek JJ, Skubiszewski J *ad hoc*; Herczegh, Fleischhauer JJ dissenting);
- (d) unless the parties otherwise agree, Hungary shall compensate Slovakia for the damage sustained by Czechoslovakia and by Slovakia on account of the suspension and abandonment by Hungary of works for which it was responsible; and Slovakia shall

compensate Hungary for the damage it has sustained on account of the putting into operation of the "provisional solution" by Czechoslovakia and its maintenance in service by Slovakia (per Schwebel P, Weeramantry V-P, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Parra-Aranguren, Kooijmans, Rezek JJ, Skubiszewski J *ad hoc*; Oda, Koroma, Vereshchetin JJ dissenting); and

- (e) the settlement of accounts for the construction and operation of the works must be effected in accordance with the relevant provisions of the 1977 Treaty and related instruments, taking due account of such measures as will have been taken by the parties in the performance of points (b) and (c) referred to above (per Schwebel J, Weeramantry V-P, Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek JJ, Skubiszewski J *ad hoc*; Herczegh, Fleischhauer JJ dissenting).

Schwebel P and Rezek J appended declarations to the judgment of the Court. Weeramantry V-P, Bedjaoui and Koroma JJ appended separate opinions to the judgment of the Court. Oda, Ranjeva, Herczegh, Fleischhauer, Vereshchetin and Parra-Aranguren JJ and Skubiszewski J *ad hoc* appended dissenting opinions to the judgment of the Court.

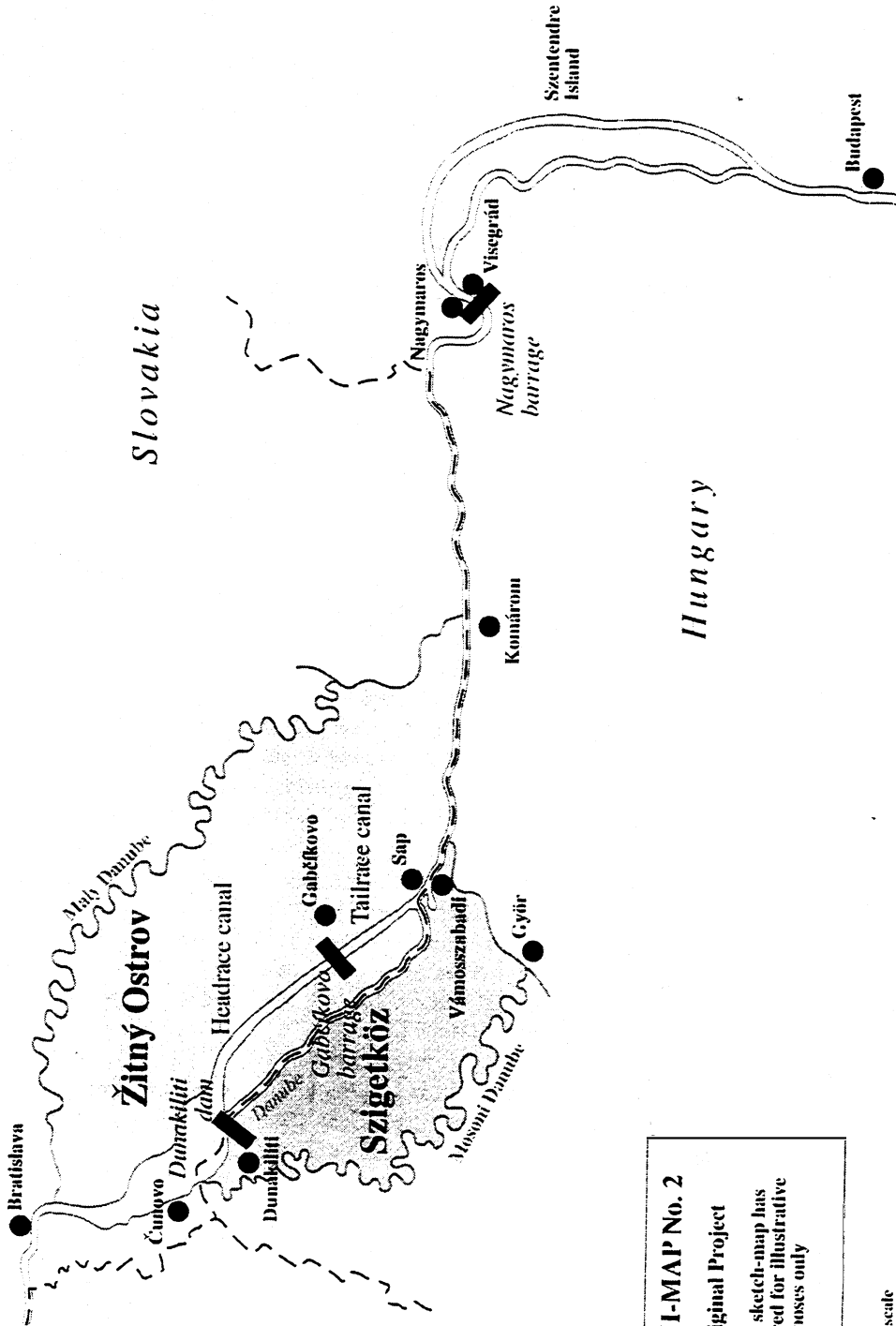


SKETCH-MAP No. 1

Region affected by the
Gabčíkovo-Nagymaros Project

N.B.: This sketch-map has
been prepared for illustrative
purposes only

Sketch-map not to scale

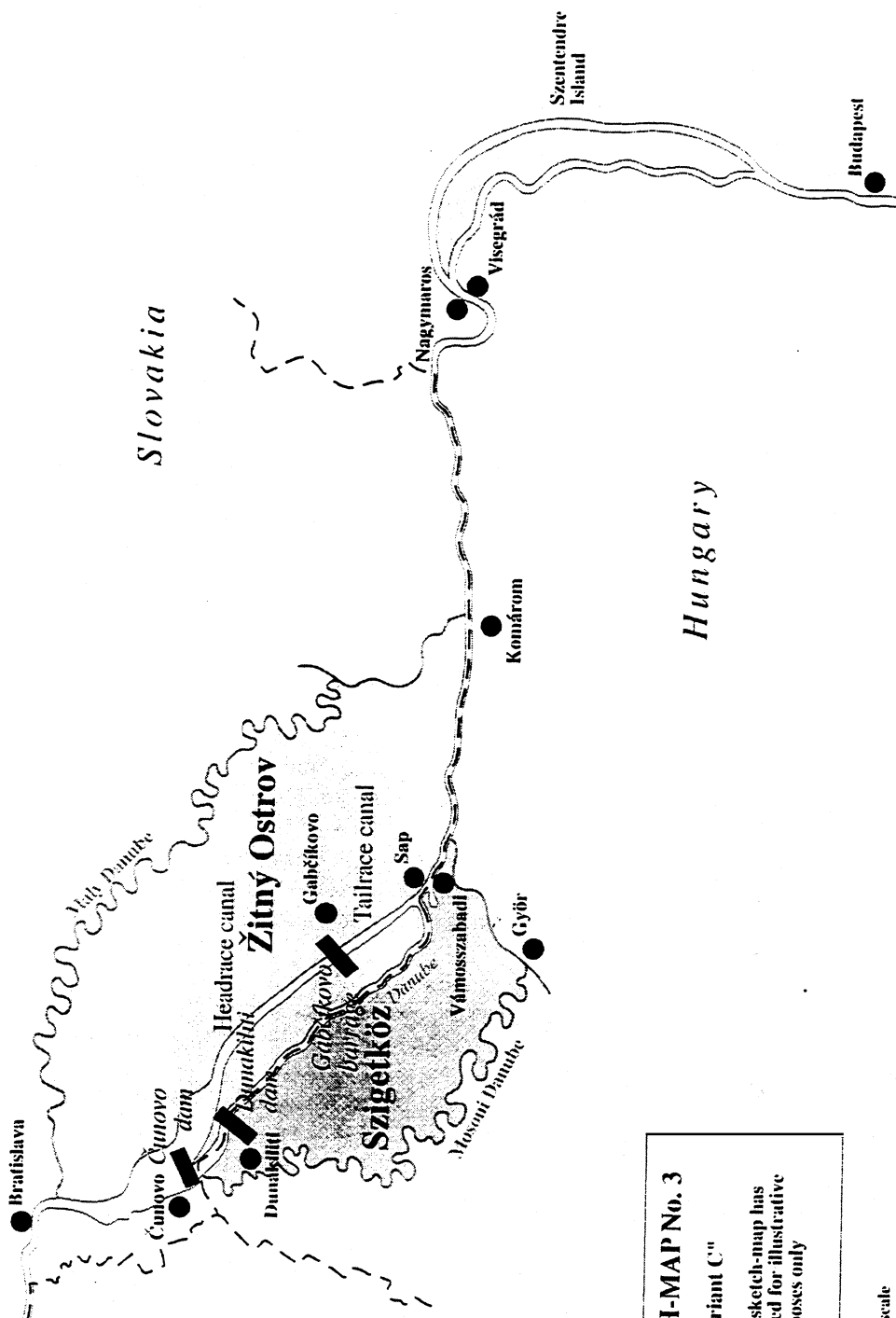


SKETCH-MAP No. 2

The Original Project

N.B.: This sketch-map has been prepared for illustrative purposes only

Sketch-map not to scale



SKETCH-MAP No. 3

"Variant C"

N.B.: This sketch-map has been prepared for illustrative purposes only

Sketch-map not to scale