Cat on a Hot Tin Roof: The World Court, State Succession, and the *Gabčíkovo-Nagymaros* Case

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Abstract: The law relating to state succession played a small but important role in the World Court's recent decision in *Gabčíkovo-Nagymaros*. Hungary's argument that the 1977 Treaty had not survived the transition from Czechoslovakia to Slovakia notwithstanding, the Court found that the 1977 Treaty had continued to be in force. Hungary presented several arguments relating to succession: the absence of consent; and that only certain rights and obligations (but not the Treaty itself) had survived. The present article analyzes these arguments in context and concludes that the Court came up with the right decision, but through a process of reasoning that is less than fully convincing.

1. INTRODUCTION

In 1977, Hungary and Czechoslovakia embarked on a project to build a dam in the Danube. A decade later, it turned out that the project could have serious environmental repercussions; Hungary used this argument in various guises to unilaterally terminate the 1977 Treaty.[1] Therefore, when the case was brought to the International Court of Justice, it was widely anticipated that it would become a classic of environmental law.[2] Instead, it turned out that most of the Court's argument, in its decision of September 1997, was based on general doctrines, most notably the law of treaties.[3]

A small but crucial role in the Court's decision was played by the law relating to state succession in respect of treaties. The issue of succession

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1. 1977 Treaty Between the Hungarian People's Republic and the Czechoslovak Socialist Republic Concerning the Construction and Operation of the Gabčíkovo-Nagymaros System of Locks, signed in Budapest, 16 September 1977 (1977 Treaty), reproduced *in* 32 ILM 1247 (1993).
2. Cf., e.g., G. Verhoosel, Gabčíkovo-Nagymaros: The Evidentiary Regime on Environmental Degradation and the World Court, 6 European Environmental Law Review 247 (1997). But see M. Fitzmaurice, Environmental Protection and the International Court of Justice, in A.V. Lowe & M. Fitzmaurice (Eds.), Fifty Years of the International Court of Justice: Essays in Honour of Sir Robert Jennings 293, especially at 311 and 313 (1996).
3. Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment of 25 September 1997. The full text of the Judgment is available on the Internet: http://www.icj-cij.org/idocket/ihs/ihsjudgement/ihsjudcontent.html. For an overview, *see* M. Fitzmaurice's contribution to the present *Journal*.

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overshadowed the case in at least two ways. Firstly, the Court must have been painfully aware that almost anything it would decide on state succession could come back to haunt it in another (and more dramatic) case in its docket: the case between Bosnia-Herzegovina and Yugoslavia.[4]

Secondly, the Special Agreement to take their dispute to Court was signed by Hungary and Slovakia on 7 April 1993, a mere 14 weeks after Slovakia had succeeded the Czech and Slovak Federal Republic (CSFR).[5] No matter what role Slovakia may have played when it was still a part of the CSFR (and at one point the Court felt compelled to stress Slovakia's involvement prior to 1993),[6] it was clear that Slovakia as an independent state could not have committed too many wrongdoings. Finding against Slovakia, then, could result in unfairness, holding Slovakia responsible for the activities of what was legally a different entity.

The best way for the Court to secure a balanced judgment, then, was to simply deny that the 1977 Treaty had been terminated. That way, Slovakia would remain largely an innocent bystander, and there would be little risk of pre-empting the pending *Bosnia* case.[7] This line of reasoning is strengthened by another consideration: without the Treaty, there would not have been a whole lot left for the Court to decide or to help solve the dispute. Had the Treaty been terminated, all that would have been left for the Court was to assign blame and responsibility. Arguably, such would have done little to improve the bonds between the two neighbouring states, and it would have probably failed to satisfy the Court's self-image. As it is, the Court's chosen solution to send the parties back to the negotiating table carries with it the promise of improvement. Still, the decision is based on the Treaty still being in force[8] which, in turn, hinges, at least partly, on the state succession argument.

2. HUNGARY'S OVERALL POSITION

The state succession argument was only introduced by Hungary as an alternative. Hungary's main argument was that the Treaty had been legally and

4. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina *v.* Yugoslavia (Servia and Montenegro).
5. *See* Gabčíkovo-Nagymaros Project, *supra* note 3, para. 2.
6. *Id.*, para. 124.
7. *See* note 4, *supra*.
8. Note that four of the five points made by the Court in its *dispositivum* in answering the question asked in Art. 2, para. 2, of the 1993 Special Agreement Between the Republic of Hungary and the Slovak Republic for Submission to the International Court of Justice of the Differences Between Them Concerning the Gabčíkovo-Nagymaros Project, reproduced *in* 32 ILM 1293 (1993), presuppose that the 1977 Treaty continues to be in force; the fifth determines precisely that. *See* Gabčíkovo-Nagymaros Project, *supra* note 3, para.155.

correctly terminated. Fortunately, from the Court's point of view, Hungary's arguments relating to the Treaty's termination were not overly persuasive. Given the reluctance with which international law has generally welcomed notions such as *rebus sic stantibus*, material breach of treaty, or state of necessity, the Court could dismiss these arguments without too much effort.[9]

By contrast, Hungary's position on state succession could possibly have endangered the Court's chosen strategy. Hungary had never signed, much less ratified, the 1978 Vienna Convention on Succession of States in Respect of Treaties[10] (1978 Vienna Convention); consequently, it could easily brush off arguments based solely on the 1978 Convention. While that does not prejudice the position under customary international law, the customary law on state succession is notoriously vague (if there was much of it to begin with); at times it is difficult to tell the rule from the exception.

Why then did Hungary not rely more heavily on the disappearance-of-partner argument? The most likely answer is that Hungary sensed that this would have been tantamount to arguing in favour of a general, immediate, and extreme clean slate rule. To claim termination upon succession, without even a period of grace, would have to be founded on an extreme version of the clean slate doctrine, yet an endorsement of such an immediate and absolute clean slate would imply the creation of serious uncertainties, possibly the complete breakdown of international order. Therefore, any reasonable construction of the clean slate rule must include a certain period of transition, in order to allow the successor state time to get its affairs in order and to conduct or at least initiate negotiations with possible treaty partners.[11]

Hence, it is understandable that Hungary itself did not have too much faith in the disappearance-of-treaty-partner argument. It would have been too extreme an argument to be successful, all the more so given the fact that it was invoked not by the successor state, but by its partner.

In the normal course of events, when legal problems arise due to a succession of states, they usually arise because the successor state is unwilling to succeed to existing international commitments. The successor state will deny that it has become bound by virtue of the very succession of states that

9. It is telling, perhaps, that Judge Fleischhauer's attempt to find that Slovakia materially breached the 1977 Treaty comes at the expense of virtually ignoring the concept of material breach as laid down in Art. 60 of the 1969 Vienna Convention on the Law of Treaties, 8 ILM 679 (1969): to hold that a material breach invites a proportionate response is to do away with the distinction between material and ordinary breach altogether.

10. 1978 Vienna Convention on Succession of States in Respect of Treaties, reproduced *in* 11 ILM 1488 (1978).

11. Beemelmans refers to this as the "wait and see" approach. *See* H. Beemelmans, *State Succession in International Law: Remarks on Recent Theory and State Praxis*, 15 Boston University International Law Journal 71, especially at 96 (1997). It is worth noting, however, that such an approach will have a more useful application with treaties which only require incidental action (*e.g.*, extradition treaties) than with treaties which require continuous action.

has occurred. Instead, it may claim that the clean slate rule applies, or at the very least deny the existence or applicability of the alleged *ipso iure* continuity rule.

In the *Gabčíkovo* case the reverse happened. Here, Hungary, the treaty-partner, denied that Slovakia, the successor, had succeeded to the 1977 Treaty. Hungary, instead, maintained that the Treaty had ceased to be in force "as a treaty"[12] on 31 December 1992, the date on which Czechoslovakia ceased to exist as a legal entity.

Hungary's argument that the Treaty had ceased to exist due to a disappearance of one of the parties consisted of three interrelated considerations. First, Hungary denied the existence of a rule of international law providing for automatic succession to bilateral treaties. Second, in the absence of an automatic succession rule, express agreement between the new state and the remaining state would be required. Yet, no such agreement had ever been concluded. Third, Hungary distinguished between the termination of the 1977 Treaty itself and "continuing property rights", which had not been terminated.[13]

Slovakia, on the other hand, claimed that the automatic succession rule reflected customary international law, as does the provision that certain territorial regimes take on an objective character and will not be affected by a succession of states as such. The Court would finally agree with Slovakia on the latter point.

3. AUTOMATIC SUCCESSION

Although Article 34 of the 1978 Vienna Convention lays down a rule of automatic succession in cases of separation of states without distinguishing between bilateral and multilateral treaties,[14] it seems reasonably clear that if there is a rule of automatic succession to begin with, state practice limits its

12. *See* Gabčíkovo-Nagymaros Project, *supra* note 3, para. 117.
13. This third argument is not spelled out in great detail in Hungary's Memorial; I derived it from the Court's rendition, para. 118.
14. Art. 34 of the 1978 Vienna Convention on Succession of States in Respect of Treaties, *supra* note 10, reads in relevant part: "1. [w]hen a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist: (a) any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed; (b) any treaty in force at the date of the succession of States in respect only of that part of the territory of the predecessor State which has become a successor State continues in force in respect of that successor State alone. 2. Paragraph 1 does not apply if: (a) the States concerned otherwise agree".

application to what are nowadays often referred to as normative multilateral treaties.[15]

When drafting what is now Article 34, the International Law Commission (ILC) already indicated that the automatic succession rule is not lightly to be deemed customary international law. Without putting it in so many words, the Commission's Commentary stressed the open-ended nature of succession. The practice referred to went in various directions, sometimes indicating automatic succession, sometimes also indicating other avenues.[16] As Sir Francis Vallat, the ILC's special rapporteur, pointed out in his response to governmental comments on an earlier draft: "the precedents are few and the arguments based on principles of international law, including those relating to treaties, are far from conclusive."[17] And Sir Francis proceeded by observing that the continuity rule, as envisaged in the draft, was based on the "desirability of maintaining the continuity and stability of treaty relationships wherever possible",[18] rather than on a clearly established rule of customary law.

The Court, in the *Gabčíkovo* case, decided to steer clear from the controversy, and simply reiterated that it did not need to express itself on the legal nature of the alleged automatic succession rule.[19] And wisely so, of course, for the controversy really is unsolvable. As proponents of automatic succession point out,[20] to insist on a clean slate would result in intolerable gaps in the protection offered by international law: the situation where the population of a territory is under international legal protection on Monday, but no longer on Tuesday or Wednesday because of a change in statehood, is difficult to accept.

Yet, to argue that successor states are bound by at least some of the more important treaties concluded by their predecessor is difficult to reconcile with international law's positivist inclination, and ends up begging the question: if a successor state can be bound against its will, then wouldn't the same apply, with the same treaty, to any other state? It appears, indeed, difficult to accept that some states can be bound against their will, while with respect to others this avenue is closed simply because they have existed for a

15. *Cf., e.g.*, sceptical, S. Rosenne, *Automatic Treaty Succession, in* J. Klabbers & R. Lefeber (Eds.), Essays on the Law of Treaties: A Collection of Essays in Honour of Bert Vierdag 97 (1998). A more optimistic appraisal is M.T. Kamminga, *State Succession in Respect of Human Rights Treaties*, 7 EJIL 469 (1996).
16. *Cf.* 1974 YILC, Vol. II (Part One), at 260.
17. *Id.*, at 70.
18. *Id.*, at 71.
19. *See* Gabčíkovo-Nagymaros Project, *supra* note 3, para. 123.
20. *See, e.g.*, Judge Weeramantry's Separate Opinion to the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina *v.* Yugoslavia (Serbia and Montenegro)), Preliminary Objections, Judgment of 11 July 1996, 1996 ICJ Rep. (not yet published). The full text can be found at:http://www.law.cornell.edu/icj/icj4/judgment.htm.

longer time as independent states. Surely, if states must be treated differently in this respect, then the basis of differentiation had better be more coherent.

Hence, there appear to be only two possible ways out of the conundrum. One was utilized by Judge Shahabuddeen, in his Separate Opinion to the 1996 *Bosnia* case. Judge Shahabuddeen attempted a reconciliation of the two positions, noting that

> the effectuation of the object and purpose of such treaties [i.e., human rights treaties], inclusive of the desideratum of avoiding operational gaps, will support a construction being placed upon them to the effect that they constitute the expression of a unilateral undertaking by existing parties to treat successor States as parties with effect from the date of emergence into independence [...]. The consensual bond is completed when the successor State avails itself of the undertaking by deciding to regard itself as a party to the treaty.[21]

While Judge Shahabuddeen's construction is ingenious, it appears to make rather too much of the notion of object and purpose[22] and, moreover, it fails to answer the problem of succession in case a successor state is not inclined to "complete the consensual bond". In such a case, clearly, no succession can be deemed to have taken place, with the result that the population may still be deprived, due to a succession of states, of international legal protection.

With all this in mind, it is no surprise that the Court in the *Gabčíkovo* case chose the other way out: it simply decided not to decide the issue, in much the same way as it had decided not to decide the issue in the 1996 *Bosnia* case, where Bosnia-Herzegovina had invoked the automatic succession doctrine in order to bolster its rejection of one of Yugoslavia's preliminary objections. In that case, the Court could ignore the issue since it was clear that it would be able to base its jurisdiction on the 1948 Genocide Convention at any rate, regardless of automatic succession.[23] In *Gabčíkovo*, the Court would eventually side-step the pitfalls of the legal status of the general automatic succession provision because it could find Slovakia to have succeeded to the Treaty on a different basis.

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21. *Id.*, at 3.
22. *See, generally,* J. Klabbers, *Some Problems Regarding the Object and Purpose of Treaties*, 8 Finnish Yearbook of International Law (1997) (forthcoming).
23. "[w]ithout prejudice as to whether or not the principle of 'automatic succession' applies in the case of certain type of international treaties or conventions, the Court does not consider it necessary, in order to decide on its jurisdiction in this case, to make a determination on the legal issues concerning State succession in respect to treaties which have been raised by the Parties." *See* Application of the Convention on the Prevention and Punishment of the Crime of Genocide, *supra* note 20, para. 23.

4. ABSENCE OF CONSENT

Hungary's second argument for claiming that Slovakia had not succeeded to the Treaty was intimately related to the first: in the absence of a binding rule of automatic succession, succession to bilateral treaties would positively require the consent of the state concerned.

That is, in itself, a far from eccentric argument. At the very least, international law does not resist the proposition that states are free to settle matters between themselves (barring *ius cogens* considerations). In the absence of an automatic succession rule, then, it follows that the obvious way to go about things is to enter into negotiations with a view to reaching agreement on which bilateral agreements will remain in force, and which had better be abrogated. The support Hungary can muster for this argument is quite impressive,[24] not just when it comes to scholarly work but also, and arguably more importantly, in terms of Slovakia's own position. Thus, Hungary produced a Note Verbale from Slovakia's Ministry of Foreign Affairs dated 15 November 1993, in which Slovakia announced that it was

> ready to hold negotiations on the questions of the Slovak Republic's state succession to bilateral international conventions and agreements which were concluded between the Czech and Slovak Republic and the Republic of Hungary.[25]

The Court, however, refused to do anything with Hungary's argument: it did not endorse it; it did not reject it; it did not even discuss it. The Court merely noted that Hungary argued that there must be an "express agreement" between the two states concerned,[26] and that "Slovakia acknowledged that there was no agreement on succession to the Treaty between itself and Hungary".[27]

Silence, here, must have appeared golden to the Court, thanks once more to the shadow of the *Bosnia* case. Any decision based purely on consent would have had reverberations, one way or the other, with respect to the automatic succession rule. Accepting Hungary's argument would have implied rejection of the automatic succession rule; expressly rejecting Hun-

24. *See* Memorial of the Republic of Hungary, especially at 326.
25. *Id.*, at 326. Note that with other states as well, Slovakia entered into negotiations concerning bilateral agreements. *See, e.g.*, G. Hafner & E. Kornfeind, *The Recent Austrian Practice of State Succession: Does the Clean Slate Rule Still Exist?*, 1 Austrian Review of International and European Law 1, especially at 23-24 (1996). *But see* A. Bos, *Statenopvolging in het bijzonder met betrekking tot verdragen, in* A. Bos, O.M. Ribbelink & L.H.W. van Sandick, Statenopvolging, Preadvies NVIR 47 (1995), remarking that between the Netherlands and Slovakia, an exchange of letters concluded in 1994 merely confirmed the automatic succession as envisaged in Art. 34 of the 1978 Vienna Convention.
26. Gabčíkovo-Nagymaros Project, *supra* note 3, para. 118.
27. *Id.*, para. 120.

gary's argument might have been construed as endorsing the automatic succession rule. Moreover, a rejection would have to be based on some argument or other, yet an argument for rejection might have proved difficult to find. In addition, the curious fact that it was not Slovakia, but Hungary, who pointed to a lack of consent, may have influenced the reasoning: to allow both parties (and not just the successor) to invoke the clean slate could potentially create havoc, and would appear to place both parties in the position of newly independent states but without the justification which helped create this special category to begin with.

5. A Territorial Régime of Sorts

It could have been argued, perhaps, that Hungary was estopped from claiming the termination of the 1977 Treaty as a result of state succession by virtue of the reference, in the preamble of the Special Agreement by which the dispute was taken to Court, to Slovakia being "the sole successor State in respect of rights and obligations relating to the Gabčíkovo-Nagymaros Project".[28] In doing so, Hungary seemed to have *prima facie* accepted Slovakia as its new treaty partner.[29]

This, however, Hungary denied, as it of course had to. For, had Slovakia been accepted as the successor to the CSFR, then Hungary's theory of the vanishing treaty-partner had been undermined, as well as its general claim that the 1977 Treaty no longer was in force at any rate. Thus, Hungary came up with a distinction between the Treaty, which in its view had terminated, and rights and obligations which would continue to exist. The Court failed to address the argument directly, but it would use elements of the argument in a different guise, and would use these, in an ironic twist, against Hungary.

The Court would eventually decide that the Treaty had not been terminated due to the succession of one of the parties. Instead, the Treaty had established a territorial régime within the meaning of Article 12 of the 1978 Vienna Convention, creating, as the Court put it, "rights and obligations 'attaching to' the parts of the Danube to which it relates".[30] And the Court continued, in the same sentence, by connecting the Treaty itself and the territorial régime it created: the Treaty established a territorial régime, "thus the Treaty itself cannot be affected by a succession of States."[31] And from

28. Special Agreement, *supra* note 8.
29. A similar argument was of some importance in Legal Status of Eastern Greenland (Norway *v.* Denmark), Judgment, PCIJ Ser. A/B, No. 53 (1933).
30. *See* Gabčíkovo-Nagymaros Project, *supra* note 3, para. 123.
31. *Id.*

that, it followed that the Treaty became binding upon Slovakia on 1 January 1993.[32]

The problem with this reasoning is twofold.[33] The first problem lies in the connection between the treaty and the territorial régime created by it. Second, the Court's attempt to enlist support in Article 12 of the 1978 Vienna Convention seems somewhat strained.

To begin with the latter point, it is noteworthy that the Court never refers to the text of Article 12 directly; instead, it refers solely to the preparatory works. This might appear somewhat curious, but it turns out that Article 12 has no direct bearing on the Gabčíkovo situation. Article 12, read literally, relates essentially to what are not uncommonly referred to as servitudes;[34] it does not refer to a dam in a river, not even in an international river. The Court, seemingly well aware of this problem, attempts to circumvent it by stating that in drafting Article 12, the ILC explicitly contemplated "treaties concerning water rights or navigation on rivers."[35] What the Court did not mention though, was that none of the precedents produced by the ILC were pertinent to the issue at hand, not even by analogy. These dealt either with rights of navigation or with such issues as fishing, irrigation, or supply of water. Accordingly, the Court makes something of a stretch in its attempt to bring the Gabčíkovo project within the scope of Article 12.[36]

Even more intriguing is the next passage of the Judgment; intriguing enough to be quoted in full.

> [t]he Court observes that Article 12, in providing only, without reference to the treaty itself, that rights and obligations of a territorial character established by a treaty are unaffected by a succession of States, appears to lend support to the position of Hungary rather than of Slovakia. However the Court concludes that this

32. *Id.* The full passage runs: "the content of the 1977 Treaty indicates that it must be regarded as establishing a territorial régime within the meaning of Article 12 of the 1978 Vienna Convention. It created rights and obligations 'attaching to' the parts of the Danube to which it relates; *thus* the Treaty itself cannot be affected by a succession of States. The Court *therefore* concludes that the 1977 Treaty became binding upon Slovakia on 1 January 1993." (emphasis added)
33. Or threefold, if you count the Court's finding that Art. 12 represents customary international law. The basis for this finding is merely that neither of the parties disputes it. *See* Gabčíkovo-Nagymaros Project, *supra* note 3, para. 123.
34. Para. 1 of Art. 12 speaks of territory for the benefit of any territory of a foreign state; para. 2 speaks of territory for the benefit of a group of states or of all states. In both cases, the rights and obligations concerned must be considered as 'attaching to the territories in question.'
35. Gabčíkovo-Nagymaros Project, *supra* note 3, para. 123. The Court quotes the ILC's commentary, *supra* note 15, at 203, para. 26.
36. Hungary never anticipated the argument: its memorial is silent on Art. 12. It briefly discusses Art. 11 of the 1978 Convention, *supra* note 10, which deals with boundary treaties and is generally accepted as reflecting customary international law. *See* Case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Memorial of the Republic of Hungary, Vol. I, at 323 (1994).

> formulation was devised rather to take account of the fact that, in many cases, treaties which had established boundaries or territorial régimes were no longer in force. Those that remained in force would nonetheless bind a successor State.[37]

The Court here acknowledges that it is possible to distinguish a treaty from the rights and obligations once created by it, and while this is no cause for great surprise, it does appear to lend support to Hungary's thesis. In order to dispel this, the Court has to distinguish the situation before it from the ones suggested in the ILC Commentary, and does so by claiming that the latter referred to situations where the treaty was no longer in force.

Thus, the Court strongly suggests that the 1977 Treaty was still in force, and as such binds the successor. But why? The Court's only answer, or so it seems, is because the Treaty is a territorial treaty. There is no discussion whatsoever of the disappearance-of-party argument. Instead, the reasoning takes on a strong Baron von Münchhausen character: because territorial treaties in force remain unaffected by state succession, the 1977 Treaty continues to be in force. But that places a high premium on demonstrating that indeed, the 1977 Treaty is a territorial treaty, and the Court hardly makes a plausible argument to this effect.

Its main argument (and this is the other puzzling element of the Court's reasoning) consists of positing of a direct connection between a treaty and its contents. The Court strongly suggests, by using the word 'thus',[38] that since the Treaty created rights and obligations, for that reason the Treaty itself cannot be affected by a state succession. And therefore, so the Court continues, the Treaty is binding upon Slovakia.

In other words: it was not the treaty that attached to the territory, but rather certain rights and obligations. If so, one may conclude, on the basis of Article 12, that those rights and obligations continue to exist, unaffected by a state succession; indeed, that is what Article 12 is all about. But it does not necessarily follow that the Treaty itself must exist; indeed, that is also what Article 12 is all about. And even less does it necessarily follow that "therefore", the Treaty is binding upon Slovakia as the successor to the Czech and Slovak Federal Republic.

The Court simply waltzes over Hungary's distinction between the existence of certain rights and obligations, and the existence of the Treaty itself. But then again, perhaps the Court felt it had little choice. While the type of distinction made by Hungary has a solid pedigree in legal thinking, applied to the Gabčíkovo situation it appears rather contrived and artificial. It probably did not help that Hungary's Memorial is not very elaborate on the con-

37. *See* Gabčíkovo-Nagymaros Project, *supra* note 3, para. 123. I have omitted the not very specific reference to 11 pages of the ILC's report which the Court invokes in support.
38. *See* the passage quoted *supra* note 32.

tinued existence of "certain property rights".[39] And once more, to accept termination of the Treaty as the result merely of a succession of states would have opened up Pandora's box, and would have been guaranteed to come back to haunt the Court in the pending case between Bosnia and Yugoslavia.

6. CONCLUSION

The Court's handling of state succession issues is, judged in isolation, perhaps not the most convincing possible. In particular, the Court's heavy reliance on the Gabčíkovo project as a territorial régime (despite the language of Article 12 of the 1978 Vienna Convention), in conjunction with equating the 1977 Treaty with its contents, appears too contrived to persuade. That is not to say that the Court's decision was bad, unwise, or unjust. Quite the contrary: faced with a difficult situation, aggravated by having a case in the docket which raises similar issues on a more dramatic scale, the Court had to dance around like a cat on a hot tin roof. It presumably took the wisest course and reached an equitable (if not a very decisive) outcome. None of Hungary's main arguments was very strong; it is no coincidence, e.g., that neither the *rebus sic stantibus* doctrine nor the concept of a material breach of treaty have ever been upheld as the basis of a concrete international judicial decision.[40] As for its alternative argument, Hungary itself did not have too much faith in the vanishing treaty-partner theory, and understandably so.

Hungary's succession argument was bound to fail; it was clear from the outset that international law cannot allow treaties to be terminated merely because of a change of statehood. Intuitively, such would be difficult to accept; intellectually, the reluctance can be rationalized since an immediate clean slate would seriously undermine the sanctity of treaties and therewith international peace and stability. Yet, it is somewhat ironic to think that an outcome which makes perfect sense can only be reached by reasoning that is less than fully convincing.[41]

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39. These only feature in the concluding part, where the legal consequences of the dispute are discussed. The chapter on state succession does not discuss the issue.
40. On *rebus sic stantibus*, *see, e.g.*, A. Vamvoukos, Termination of Treaties in International Law: The Doctrines of Rebus Sic Stantibus and Desuetude (1985). *But see* the recent decision by the Court of Justice of the EC, Case C-162/96, Racke *v.* Hauptzollamt Mainz, Judgment of 16 June 1998 (not yet published). As for material breach, *cf.* J. Klabbers, *Side-stepping Article 60: Material Breach of Treaty and Responses Thereto, in* M. Tupamäki (Ed.), Finnish Branch of International Law Association, 1946-1996: Essays on International Law 20-42 (1998).
41. It has been noted that "the very flexibility of State succession makes it possible to manage sometimes dangerous political conflicts in an innovative way." The *Gabčíkovo* case is an intriguing illustration indeed. *Cf.* M. Koskenniemi, *The Present State of Research, in* P.M. Eisemann & M. Koskenniemi, La succession d'états: la codification à l'épreuve des faits 89, at 93 (1997).