

## **Indus Water Treaty and Hungary-Slovakia Dam Project: International Law and Treaty Termination**

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### **Introduction**

The Indus Water Treaty and the Gabčíkovo-Nagymaros (Hungary-Slovakia) Dam Project are both international treaties that have been entered into by countries with the aim of making portable water and irrigation facilities more available between them. The existence of these treaties indicates the countries' commitment to enter into a mutually beneficial agreement with each other. While the international fora around treaties, more specifically treaties involving sensitive issues like water projects stands disjointed, the Vienna Convention on Law of Treaties (VCLT) holds these countries and these treaties accountable. While this is the conventional understanding of the VCLT and its various provisions, the truth of the VCLT and its governance of these treaties is often concealed through technical jargon and international pressure from other interested parties. This paper aims to address these inconsistencies and delve into the specifics of the treaties, their governance and the VCLT.

International law is only possible through the enthusiastic participation of multiple nations that decided to come together and work together. These agreements are codified in the form of treaties and agreements between participating countries. The most standard laws to govern these treaties come from the VCLT. These

laws lay down some structural and fundamental regulatory frameworks basis which the entire premise of treaties and agreements rely. In the absence of these foundational guidelines, it becomes possible for countries to back out from otherwise firm commitments which can lead to significant economic and social loss on a global scale. Typically, the adjudication of these issues falls to the International Court of Justice (ICJ) but sometimes a delegation of representatives from the countries also meet to discuss a settlement. The Indus Water Treaty and the Gabčíkovo-Nagymaros (Hungary-Slovakia) Dam Project are critical examples of the VCLT, its application and adjudication by the ICJ since their contrasting examples provide abundant insight into the functioning of treaties, regulatory frameworks surrounding them and their adjudication mechanisms.

## **Understanding the Indus Water Treaty**

The Indus Water Treaty<sup>1</sup> was proposed by the World Bank when India and Pakistan were at an impasse about the distribution of water of River Indus that originated in Tiber Autonomous Region of China and flows through Kashmir into Pakistan to drain into the Arabian Sea. The Treaty was signed on September 19, 1960 after both the short-term agreements signed between the countries i.e., the Standstill Agreement of 1947 and the Inter-Dominion Accord of 1948 expired. Up until the Indus Water Treaty was formulated and signed, there was no permanent solution addressing the problem and this led to severe issues between the nations considering that India started withholding water from Pakistan.<sup>2</sup> The main objective of the Treaty was to set out a regulating mechanism for continued cooperation and exchange of information regarding the river water.

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<sup>1</sup> India, Pakistan and International Bank for Reconstruction and Development, UNITED NATIONS, <https://treaties.un.org/doc/Publication/UNTs/Volume%20419/volume-419-I-6032-English.pdf>

<sup>2</sup> Indus Water Treaty, BRITANNICA, (Jun. 28, 2024, 02:37 AM) <https://www.britannica.com/event/Indus-Waters-Treaty>

The key provisions included definitive water sharing issues setting up the main dispute resolution system i.e. the Permanent Indus Commission. Both the countries were mandated to set up a Commission and they had to meet annually. The Commission has successfully resolved several disputes that have arisen over the years. A dispute resolution mechanism was also set-up that included three main steps under which questions from both the parties i.e. India and Pakistan can be addressed at the annual meeting of the Permanent Commission or at the inter-governmental level. In case of any unresolved issues or concerns, the World Bank can appoint a Neutral Expert (NE) to evaluate the situation and provide judgement. If there are any appeals that are made against the said decision, they are referred to the Court of Arbitration which is set up by the World Bank.<sup>3</sup>

There have been various instances where both the parties have accused the other of serious violation of the Treaty. A few of the recent issues that were addressed by the Permanent Commission are as follows; In 2016, Pakistan accused India of serious violations of the Treaty as India constructed the Kishanganga Dam in Kashmir despite various objections raised by Pakistan however, such construction was approved by the Commission<sup>4</sup>. The other point of concern was the Tulbul Project which was suspended as Pakistan objected to the construction of the project by India.<sup>5</sup>

## **Indus Water Treaty, Unilateral Termination and VCLT**

The Indus Water Treaty was the sole instrument that kept India and Pakistan in a bilateral relationship as both the countries have had a tumultuous past. Despite all the issues and concerns that arose, the hostility and wars

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<sup>3</sup> Indus Water Treaty, DRISHTI IAS, (Jun. 27, 2024) <https://www.drishtias.com/daily-updates/daily-news-analysis/indus-water-treaty-2>

<sup>4</sup> Award in the Arbitration regarding the Indus Waters Kishanganga between Pakistan and India, UNITED NATIONS, [https://legal.un.org/riaa/cases/vol\\_XXXI/1-358.pdf](https://legal.un.org/riaa/cases/vol_XXXI/1-358.pdf)

<sup>5</sup> Indus Waters Treaty, BYJUS, <https://byjus.com/free-ias-prep/indus-water-treaty/>

between the countries, this Treaty remain untouched for decades however, after 2016's Uri attacks, tension between the countries reached a new high. India hinted towards a unilateral withdrawal from the Treaty and Pakistan responded with a string argument stating that such withdrawal is a violation of international law and will amount to an act of aggression<sup>6</sup>. The question arises, does this argument have any merit considering the current relationship between the countries or unilateral withdrawal will be granted to India?

Unilateral termination of a Treaty under customary international law is not possible. VCLT articles along with the other guidelines encourage nations to follow through their commitments with adverse consequences in the case of non-fulfilment. This is also derived from the internationally accepted principle of *pacta sunt servanda* which means that treaties are binding on all parties and therefore, must be fulfilled unless unavoidable circumstances that make such fulfilment completely impossible arise. Considering this internationally accepted fundamental principle regarding treaties, the Indus Water Treaty cannot be terminated by either party. Further, neither of the parties are signatories to the VCLT and therefore, these articles will not apply however, in various judgements, the Indian legislature has recognised VCLT as customary international law and applied it to treaty-based disputes. This was observed in *Ireland v Directorate General of Civil Aviation*<sup>7</sup> where the Court applied Article 26<sup>8</sup>, 27<sup>9</sup> and 31<sup>10</sup> to establish which essentially establish that every international convention/ treaty made must be kept and fulfilled in good faith. The judgement set a benchmark in the Indian legislature by appreciating and acknowledging the application of customary international law.

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<sup>6</sup> Sufyan, M., Is Unilateral Revocation of the Indus Water Treaty Permissible Under International Law?, JURIST NEWS (Nov. 22, 2018, 08:50 AM) <https://www.jurist.org/commentary/2018/11/sufyan-zia-revocation-indus/>

<sup>7</sup> *Ireland v Directorate General of Civil Aviation*, WP(C) 871/2015

<sup>8</sup> Vienna Convention on the Law of Treaties, Article 26, 1969

<sup>9</sup> Vienna Convention on the Law of Treaties, Article 27, 1969

<sup>10</sup> Vienna Convention on the Law of Treaties, Article 31, 1969

Assuming a situation where Articles from the Vienna Convention<sup>11</sup> apply, Part V of the Articles deal with cases of treaty termination, denunciation, etc. and clearly state that unilateral withdrawal without the consent of the other party is a violation. Further, termination on some extraordinary grounds are also stated however, none of these grounds will be applicable here and therefore, the Indus Water Treaty cannot be terminated unilaterally.

## **Gabčíkovo-Nagymaros (Hungary-Slovakia) Dam Project and VCLT**

### **Facts and Issues**

On July 2, 1993, the Governments of the Republic of Hungary (hereinafter referred to as ‘Hungary’) and the Slovak Federal Republic (hereinafter referred to as Slovak) jointly submitted a special agreement<sup>12</sup> signed at Brussels on April 7, 1993 to the Registry of the Court which provided them with the right to address issues arising out of the implementation and termination of the Budapest Treaty<sup>13</sup> of September 16, 1977. The Treaty was formulated for the construction and operation of Gabčíkovo-Nagymaros Barrage system and the construction and operation of the “provisional solution”<sup>14</sup> (also referred to as Variant C).

Under the agreement, specifically Article 2<sup>15</sup>, the Court was asked to address several issues as follows;

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<sup>11</sup> Vienna Convention on the Law of Treaties, (May. 23, 1969) entered into force on Jan. 27, 1980,

<https://www.oas.org/legal/english/docs/Vienna%20Convention%20Treaties.htm>

<sup>12</sup> Special Agreement, International Court of Justice (Jul. 2, 1993) <https://www.icj-cij.org/sites/default/files/case-related/92/10835.pdf>

<sup>13</sup> Budapest Treaty, No. 30074 (Sep. 16, 1977) <https://treaties.un.org/doc/Publication/UNTS/Volume%201724/volume-1724-I-30074-English.pdf>

<sup>14</sup> Ibid.

<sup>15</sup> Supra Note 1.

First, whether Hungary was entitled to suspend and abandon the works on Nagymaros project and the portion of Gabčíkovo project that they were responsible for?

Second, whether Czech and Slovak were entitled to proceed to the provisional solution in November, 1991 and put into operation the damming of Danube River on Czechoslovak Territory from October, 1992?

Third, what were the legal effects arising from the notification regarding termination of Treaty by Hungary on May 19, 1992? Additionally, the Court was asked to clarify the rights and obligations of all the parties arising from the Court's judgement based on the other questions.<sup>16</sup>

To assess the situation better and collect evidence, the Agent of Slovakia requested the Court to visit the site of the Gabčíkovo-Nagymaros project on the Danube River. A "Protocol of Agreement"<sup>17</sup> was signed in November 1995 between the two parties to provide a clear understanding and purposes of the visit and the visit took place from April 1 to 4, 1997. Post the visit, the Court delivered its judgement on September 25, 1997.

## Analysis

Before the International Court of Justice (ICJ) started adjudication on the matter, agents of Hungary and Slovakia put forth certain contentions in favour of their stance. Hungary alleged that the Treaty did not exist and construction of a provisional solution by Slovakia was unlawful and therefore, Slovakia owed certain duties to Hungary such as compensation for damages, returning of water of Danube River among others. It

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<sup>16</sup> Gabčíkovo-Nagymaros Project (Hungary/Slovakia), International Court of Justice, <https://www.icj-cij.org/case/92>

<sup>17</sup> Reports of Judgements, Advisory Opinions and Orders, Case Concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), International Court of Justice (Sep. 25, 1997) <https://leap.unep.org/sites/default/files/court-case/Case%2520concerning%2520.pdf>

further also contended that Slovakia's actions amounted to breach of international law. On the contrary, Slovakia contended that Hungary's actions were in breach of international law and therefore, they should be liable to pay damages as the Treaty was effectively in force and the notification by Hungary on May 19, 1992 did not have any legal effects. It further contended that putting into operation Variant C (provisional solution) was lawful.

Before analysing the facts and the evidence, the Court enunciated that while adjudicating this case, customary international law will be considered<sup>18</sup> instead of Articles from Vienna Convention<sup>19</sup> due to their limiting nature.<sup>20</sup> The Court further observed that the liability of a State committing an internationally wrongful act will include the nature of obligation it failed to comply with.<sup>21</sup>

## **Issue 1 (Analysis of the Court):**

Regarding the suspension and abandonment of work on the barrage system, Hungary argued that such a measure was necessary due to the 'state of necessity'. The Court observed that suspension of the 1977 Treaty and subsequent construction by Hungary displays its unwillingness to comply with the agreement. State of necessity here implies that Hungary has opted out of State responsibility due to the existence of a circumstance in the absence of which its conduct would have been considered unlawful; however, Hungary in the Treaty had acknowledged that in any circumstance whatsoever, state of necessity would not hinder Hungary from fulfilling its obligations.<sup>22</sup>

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<sup>18</sup> Para No. 46, Pg No. 38, Judgement of the International Court of Justice on the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), <https://www.icj-cij.org/sites/default/files/case-related/92/092-19970925-JUD-01-00-EN.pdf>

<sup>19</sup> Supra Note 11.

<sup>20</sup> Para No. 43, Pg No. 37, Supra Note 7.

<sup>21</sup> Para No. 47, Pg No. 38, Supra Note 7.

<sup>22</sup> Para No. 48, Pg No. 39, Supra Note 7.

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The Court also considered whether there was an actual state of necessity in 1989 that affected Hungary's ability to fulfil its duties towards Slovakia. Existence of state of necessity was evaluated by referring to Article 33<sup>23</sup> laid down by the International Law Commission<sup>24</sup>. The state of necessity in the report by the committee was defined as a situation in which a State is forced to adopt a conduct that is not in conformity with an international obligation due to a "grave" and "imminent" peril to safeguard their "essential interest".<sup>25</sup> The Court, at the time of interpretation, observed that this principle can be applied only on an exceptional basis. Therefore, such a state of necessity can only be applied in circumstances with strict application of rules and several clauses must be satisfied beyond extent; to the State's understanding as well as the Court's.<sup>26</sup>

The Court acknowledged the situation of Hungary and its concerns for the environment as it would have been adversely impacted after the construction of the barrage system however, these concerns were not proven despite multiple scientific studies that took place. These concerns were still uncertain without any possibility of *material damage*. To suffice the definition of "peril" in Article 33, there should be actual damage instead of mere apprehension of damage. Hungary's argument regarding state of necessity did not fulfil the Court's requirement as they were not able to prove an actual "grave" and "imminent" "peril" by completion of their obligation in 1989.<sup>27</sup>

Additionally, the Court considered the political situation in Hungary after the Treaty was formulated and noting the tumultuous journey which led to various uncertainties, Hungary had given its consent to continuous

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<sup>23</sup> Yearbook of the International Law Commission, Volume I, Summary Records of the Meetings of the Thirty-Second Session, United Nations (May 5, 1980- Jul. 25, 1980) , Article 33, [https://legal.un.org/ilc/publications/yearbooks/english/ilc\\_1980\\_v1.pdf](https://legal.un.org/ilc/publications/yearbooks/english/ilc_1980_v1.pdf)

<sup>24</sup> Para No. 50, Pg No. 39, Supra Note 7.

<sup>25</sup> Para No. 1, Supra Note 12.

<sup>26</sup> Para No. 51, Pg No. 40, Supra Note 7.

<sup>27</sup> Para No. 54, Pg No. 41, Supra Note 7.



construction of the barrage system at multiple points in time. The Court, after considering all the facts and principles, observed that even if there was a state of necessity in 1989 which hindered Hungary's ability to fulfil its obligations, it cannot rely on state of necessity to justify their conduct as they have continued construction, either by act or omission, in all the circumstances.<sup>28</sup>

## **Issue 2 (Court Analysis):**

To address whether Czech and Slovak were entitled to start constructing Variant C in November 1991 and begin the damming of Danube River on Czechoslovak Territory from October, 1992, the Court referred to multiple documents as evidence. The first document it took into consideration was a note from Czechoslovakia dated October 30, 1989 stating that if Hungary fails to meet its parts of the agreement, Czechoslovakia will have to unilaterally finish the construction of the barrage system.<sup>29</sup> Despite the allegations of unlawful conduct by Hungary, Czechoslovakia maintained that construction of Variant C did not constitute a wrongful act as their actions were to only fulfil the 1977 Treaty in good faith.<sup>30</sup> Slovakia continued to maintain that even if the Court finds their actions unlawful, such construction was justified as a countermeasure.<sup>31</sup>

While acknowledging the financial losses that Czechoslovakia had to deal with among other issues due to the suspension and abandonment of such construction despite multiple occasions where they called Hungary out for resuming performance, the Court observed that Czechoslovakia put the Gabčíkovo system into operation unilaterally for their benefit.<sup>32</sup> In response to this observation, Slovakia presented the "principle of

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<sup>28</sup> Para No. 57, Pg No. 45, Supra Note 7.

<sup>29</sup> Para No. 61, Pg No. 47, Supra Note 7.

<sup>30</sup> Para No. 67, Pg No. 51, Supra Note 7.

<sup>31</sup> Para No. 69, Pg No. 52, Supra Note 7.

<sup>32</sup> Para No. 73, Pg No. 53, Supra Note 7.

approximate application” which promotes the unilateral conduct of a party in case the other party fails to perform their part provided such unilateral action should not amount to self-benefit and it should be closest to the primary object.<sup>33</sup>

Looking at the evidence collected from the on-site investigation, the Court observed that despite having significant similarities to the original project, Variant C was very distinct from the intended output. Further, it was being operated by Czechoslovakia in a way that was beneficial to them as it appropriated 80 to 90 percent water of the Danube River to them instead of Hungary. Hungary’s stern refusal in performance of its duties despite the mutual agreement was based on *the basic right of equitable and reasonable sharing of the resources* and therefore, Slovakia’s conduct was considered unlawful.<sup>34</sup>

The Court had to check whether such unlawful act be exempted by the principle of countermeasure as described in *Nicaragua v United States of America*<sup>35</sup>. The twofold elements to satisfy the exemption of countermeasure are; first, it must be in response to the wrong of another State and second, the injured State must call the State with wrongful conduct to discontinue it. Another important element to consider is proportionality. Although the Court answered the two questions in the positive, it held that Slovakia’s conduct was not proportionate to Hungary’s conduct and is irreversible, therefore, not exempted.<sup>36</sup>

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<sup>33</sup> Para No. 75, Ibid.

<sup>34</sup> Para No. 78, Pg No. 54, Supra Note 7.

<sup>35</sup> *Nicaragua v United States of America*, 1986 I.C.J. 14

<sup>36</sup> Para No. 87, Pg No. 56, Supra Note 7.

## **Issue 3 (Analysis of the Court):**

To assess the legal effects of termination of the treaty, the Court had to answer whether such termination was valid or not. To prove the validity of the termination in good faith, Hungary put forth five contentions; existence of state of necessity, impossibility of performance of Treaty, fundamental change in circumstances, material breach by Czechoslovakia and development of new environmental norms internationally<sup>37</sup>. It also referred to laws laid down in the Vienna Convention regarding treaty termination such as Article 60<sup>38</sup>, Article 61<sup>39</sup> and Article 62<sup>40</sup>. Their termination was based on Slovakia's conduct of breaching international law and Article 15<sup>41</sup> and Article 19<sup>42</sup> of the Treaty.

The Court has previously observed that laws from the Vienna Convention would be inapplicable to the situation at hand and to better adjudicate it, customary international laws will be utilised<sup>43</sup>. This was followed because both States ratified the Convention post Treaty-formation therefore, only laws that declare customary law will be applicable.<sup>44</sup> To further assess the validity of such termination, the Court observed that Czechoslovakia was entitled to construct Variant C and therefore, did not breach international law. It only breached international law during October 1992 when it diverted the water of River Danube towards itself for its benefit; however, Hungary terminated the Treaty on May 19, 1992. Such termination of the Treaty and related legal instruments, in the view of the Court, was premature and therefore, not valid.

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<sup>37</sup> Para No. 92, Pg No. 58, Supra Note 7.

<sup>38</sup> Vienna Convention on the Law of Treaties, Article 60, 1969.

<sup>39</sup> Vienna Convention on the Law of Treaties, Article 61, 1969.

<sup>40</sup> Vienna Convention on the Law of Treaties, Article 62, 1969.

<sup>41</sup> Supra Note 2, Article 15, 1977.

<sup>42</sup> Ibid, Article 19, 1977.

<sup>43</sup> Para No. 46, Pg No. 38, Supra Note 7.

<sup>44</sup> Para No. 99, Pg No. 62, Supra Note 7.

## Critiques of the Judgement

The Court referred to extensive amounts of literature to finalise their observation regarding the Hungary-Slovakia situation. I agree with the substantial analysis of the Court for the most part. The Court's assessment of the invalidity of the termination of the Treaty by Hungary, in my opinion, is incorrect. Considering the reasons due to which Hungary was forced to terminate the Treaty, it should not amount to international breach and therefore, it should not be liable to pay any damages to Slovakia.

1. **Note Verbale-** As observed by the Court, after the suspension of work by Hungary, there was constant communication between the two States regarding the project. While Czechoslovakia kept threatening Hungary regarding further construction, Hungary asked them to pause it on multiple occasions for fair negotiations<sup>45</sup>. Despite such compromise on Hungary's part, Czechoslovakia went ahead with unilateral construction. On a Note Verbale on February 14, 1992, Hungary made it clear that Variant C was in breach of international law and further construction would force them to terminate the Treaty and despite such notice, construction was continued.<sup>46</sup>
2. **Breach by Czechoslovakia-** Such continuous construction on their part amounted to breach of international law as they should have paused the project to take part in fair negotiations regarding further construction. Hungary also highlighted that such construction would amount to breach of international law in their Note Verbale.

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<sup>45</sup> Para No. 65, Pg No. 50, Supra Note 7.

<sup>46</sup> Para No. 90, Pg No. 57, Supra Note 7.

3. **Changed circumstances (*Rebus sic stantibus*)**<sup>47</sup>- This doctrine allows for unilateral termination of a treaty when unforeseen changes affect the essential basis of the said treaty.<sup>48</sup> When Hungary put forth this as one of its contentions, the Court should have applied this doctrine to the facts of the case considering Hungary's situation.
4. **Treaty termination unilaterally without an express clause**- Treaties can be unilaterally terminated even if they do not have an express termination clause. This is a generally accepted principle and it stems from the nature of the treaty. This was observed in 1965 when Indonesia opted out of the United Nations setting a precedent that even when there is no express clause regarding withdrawal, States can withdraw and therefore, terminate a treaty.<sup>49</sup>

Considering these factors, such grave breach of law by Czechoslovakia despite multiple reconciliation efforts by Hungary forced it to terminate the Treaty. The Court should have taken these factors into consideration along with other circumstances to relieve Hungary of any international duty owed and held Czechoslovakia in breach of international law since the exchange of Note Verbale began.

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<sup>47</sup> Philip Noonan, Revolutions and Treaty Termination, Penn State International Law Review, Vol. 2, No. 2, Art. 4 (1984) Pg No. 16, <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1014&context=psilr>

<sup>48</sup> Termination of Maritime Boundaries Due to a Fundamental Change of Circumstances, UTRECHT JOURNAL OF INTERNATIONAL AND EUROPEAN LAW, <https://utrechtjournal.org/articles/10.5334/ujiel.335>

<sup>49</sup> Frank Berman, Eirik Bjorge, Book VI Treaties and Treaty-Making, 33 Treaties and Other International Instruments V— Interpretation, Reservations, Termination, the Effect of War, Ius Cogens, OPIL, 2023, <https://opil-ouplaw-com.opj.remotlog.com/display/10.1093/law/9780192859594.001.0001/law-9780192859594-chapter-33#law-9780192859594-chapter-33-div2-398>

## **Brief Conclusion of the Case**

The Court held, in accordance with Article 2, Paragraph 1 (a) of the Special Agreement, Hungary was not entitled to suspend or abandon works on the Gabčíkovo-Nagymaros project. According to Paragraph 1 (b) of the Special Agreement, Czechoslovakia was entitled to construct Variant C in 1991 however, the moment they diverted the water of Danube River for their benefit in October 1992, they breached international law. According to Paragraph 1 (c), the termination of Treaty by Hungary was considered invalid. Both the States owed damages to each other and therefore, the Court advised them to negotiate a stance with which they felt comfortable. While addressing the question of rights and liabilities of parties, the Court observed that Slovakia was the successor of the 1977 Treaty made by Czechoslovakia and Hungary and the dissolution of Czechoslovakia into Slovakia and Czech Republic holds no impact towards the Treaty. Additionally, the Court said that the Treaty became binding on Slovakia on January 1, 1993.<sup>50</sup>

Under customary international law, States are provided with options to terminate treaties on various grounds<sup>51</sup> therefore, States do have the right to terminate Treaties. Further, these are also encoded in principles as decided in multiple International Conventions such as the UN Conference<sup>52</sup>, VCLT<sup>53</sup>, etc. Multiple examples of unilateral treaty termination can also be observed apart from treaty termination with consent and renegotiation (optional). Several examples are when Indonesia unilaterally terminated BITs (Bilateral Investment Treaty, an

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<sup>50</sup> Pg No. 69, Supra Note 7.

<sup>51</sup> Laurence Helfer, Terminating Treaties, Duke Law, Pg No. 9,  
[https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5338&context=faculty\\_scholarship](https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5338&context=faculty_scholarship)

<sup>52</sup> Invalidity, Termination and Suspension of the Operation of  
Treaties, International Lawyer, Vol. No. 4, No. 1, Art. 21 (1970)

<https://scholar.smu.edu/cgi/viewcontent.cgi?article=4139&context=til>

<sup>53</sup> Supra Note 8.

international treaty) with 25 States<sup>54</sup> and India terminated BITs with 61 States<sup>55</sup>. Ecuador has also unilaterally terminated several international treaties.<sup>56</sup> Therefore, the States do have the rights and the ability to terminate a Treaty, with or without consent however, it comes with certain obligations; failure of compliance with which, the States can be held responsible for breach.<sup>57</sup> The obligations mentioned herein however strictly refer to rights that have arisen in the course of execution of the said Treaty. Any executory obligations on the other hand come to an end with the termination of a Treaty.<sup>58</sup>

## Conclusion

Through an analysis of these distinct cases it is clear that treaties cannot be unilaterally terminated when governed by the VCLT. The foundational regulations of the VCLT in addition to certain core principles of international law disallow the unilateral termination of a treaty by a participant country in the absence of a valid reason for the termination. Since their adjudication falls to the ICJ, the principles used between the parties will remain consistent. The core principle in this case will be the 'Equitable Utilisation' principle<sup>59</sup> which essentially stipulates that upstream countries should be considerate to downstream countries if the same river flows through them. Since this was a principle that was used, understood and laid down in the Hungary-

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<sup>54</sup> Lucas Wong, Indonesia's Termination of Bilateral Investment Treaties, Vol. No. 1 (2022)

<https://ccla.smu.edu.sg/sites/cebcla.smu.edu.sg/files/asean-perspective/2022-03/SMU%20ASEAN%20Perspectives%20-%20Paper%2005%3A2022.pdf>

<sup>55</sup> India Model Bilateral Investment Treaty (2015) <https://investmentpolicy.unctad.org/%20international-investment-agreements/countries/96/india>

<sup>56</sup> Natalie, Sarah, Martin, Suzy, Terminating a Bilateral Investment Treaty, International Institute for Sustainable Development (2020) <https://www.iisd.org/system/files/publications/terminating-treaty-best-practices-en.pdf>

<sup>57</sup> Responsibility of States for Internationally Wrongful Acts (2001), United Nations [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf)

<sup>58</sup> Article 33. Termination of Treaties, The American Journal of International Law, Vol. No. 29, Pg. No. 11-13 (1935) <https://www.jstor.org/stable/2213700?seq=11>

<sup>59</sup> Asma Yaqoob, India Turning Many Tables for Indus Waters Treaty, 52 Economic and Political Weekly 33 (2017).

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Slovakia Dam Project case, its application will transition over to other similar instances of watercourse abuse by countries bound by treaties among each other. This would also mean the Indus Water Treaty is governed by the VCLT in addition to this principle which makes any unilateral action precarious at best.

In addition to the principle of 'Equitable Utilisation', any unilateral action by India against the Indus Water Treaty will rest with the favorability of the decision lying with Pakistan. Since the river originates in and flows downstream into India first, the responsibility of maintaining a healthy riverine ecosystem and a judicious utilization of the resources from the river will fall primarily on India. This implies that any unilateral action taken by India towards the river will likely be tested against this principle and will not favour India as a rule of thumb. This also makes the situation much worse since if India decides to act unilaterally, Pakistan will lose significant privileges of the portable water the river brings with it in its journey to the Arabian sea. The Hungary-Slovakia case serves as a blueprint for the decision, which, in this case, will rest of the various provisions of the VCLT and the decision of an adjudicatory authority like the ICJ using customary international law principles.