

vista dalla Carta delle Nazioni Unite per i relativi emendamenti, salve tuttavia quelle disposizioni che l'Assemblea generale stabilisce, su proposta del Consiglio di Sicurezza, circa la partecipazione di quegli Stati che siano aderenti al presente Statuto ma non siano membri delle Nazioni Unite.

70. La Corte ha la facoltà di proporre gli emendamenti al presente Statuto che essa ritenga necessari, mediante comunicazione scritta al Segretario Generale, perché siano presi in considerazione in conformità alle disposizioni dell'articolo 69.

6.2. Accordo speciale tra Ungheria e Slovacchia per la sottoposizione alla Corte Internazionale di Giustizia delle controversie relative al progetto Gabčíkovo-Nagymaros, firmato a Bruxelles il 7 aprile 1993

In base all'art. 36, par. 1 dello Statuto, la competenza della Corte si estende a « tutte le controversie che le parti le sottopongono ». La giurisdizione della Corte si basa in tal caso su un accordo speciale con cui le parti si impegnano a far risolvere la loro controversia dalla Corte. Un esempio recente di trattato internazionale concluso a tal fine è dato dall'accordo sopra menzionato. L'accordo sottopone alla Corte internazionale di giustizia la soluzione delle controversie insorte tra l'Ungheria e la Slovacchia sull'applicazione del Trattato relativo alla costruzione e al funzionamento del sistema di opere di Gabčíkovo-Nagymaros, firmato a Budapest il 16 settembre 1977. La sentenza della Corte è stata resa il 25 settembre 1997.

L.M.

(*) SPECIAL AGREEMENT FOR SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE OF THE DIFFERENCE BETWEEN THE REPUBLIC OF HUNGARY AND THE SLOVAK REPUBLIC CONCERNING THE GABCÍKOVO-NAGYMAROS PROJECT

The Republic of Hungary and the Slovak Republic,

Considering that differences have arisen between the Czech and Slovak Federal Republic and the Republic of Hungary regarding the implementation and the termination of the Treaty on the Construction and Operation of the Gabčíkovo-Nagymaros Barrage System signed in Budapest on 16 September 1977 and related instruments (hereinafter referred to as « the Treaty »), and on the construction and operation of the « provisional solution »;

Bearing in mind that the Slovak Republic is one of the two successor States of the Czech and Slovak Federal Republic and the sole successor State in respect of rights and obligations relating to the Gabčíkovo-Nagymaros Project;

Recognizing that the Parties concerned have been unable to settle these differences by negotiations;

Having in mind that both the Czechoslovak and Hungarian delegations expressed their commitment to submit the differences connected with the Gabčíkovo-Nagymaros Project in all its aspects to binding international arbitration or to the International Court of Justice;

Desiring that these differences should be settled by the International Court of Justice;

Recalling their commitment to apply, pending the judgment of the International Court of

(*) *International Legal Materials*, 1993, vol. XXXII, p. 1293 ss.

Justice, such a temporary water management régime of the Danube as shall be agreed between the Parties;

Desiring further to define the issues to be submitted to the International Court of Justice, Have agreed as follows:

1. The Parties submit the questions contained in Article 2 to the International Court of Justice pursuant to Article 40, paragraph 1, of the Statute of the Court.

2. 1. The Court is requested to decide on the basis of the Treaty and rules and principles of general international law, as well as such other treaties as the Court may find applicable,

(a) 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;

(b) 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, described in the Report of the Working Group of Independent Experts of the Commission of the European Communities, the Republic of Hungary and the Czech and Slovak Federal Republic dated 23 November 1992 (damming up of the Danube at river kilometre 1851.7 on Czechoslovak territory and resulting consequences on water and navigation course);

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

2. The Court is also requested to determine the legal consequences, including the rights and obligations for the Parties, arising from its Judgment on the questions in paragraph 1 of this Article.

3. 1. All questions of procedure and evidence shall be regulated in accordance with the provisions of the Statute and the Rules of Court.

2. However, the Parties request the Court to order that the written proceedings should consist of:

(a) a Memorial presented by each of the Parties not later than ten months after the date of notification of this Special Agreement to the Registrar of the International Court of Justice;

(b) a Counter-Memorial presented by each of the Parties not later than seven months after the date on which each has received the certified copy of the Memorial of the other Party;

(c) a Reply presented by each of the Parties within such time-limits as the Court may order.

(d) The Court may request additional written pleadings by the Parties if it so determines.

3. The above-mentioned parts of the written proceedings and their annexes presented to the Registrar will not be transmitted to the other Party until the Registrar has received the corresponding part of the proceedings from the said Party.

4. 1. The Parties agree that, pending the final Judgment of the Court, they will establish and implement a temporary water management régime for the Danube.

2. They further agree that, in the period before such a régime is established or implemented, if either Party believes its rights are endangered by the conduct of the other, it may request immediate consultation and reference, if necessary, to experts, including the Commission of the European Communities, with a view to protecting those rights; and that protection shall not be sought through a request to the Court under Article 41 of the Statute.

3. This commitment is accepted by both Parties as fundamental to the conclusion and continuing validity of the Special Agreement.

5. 1. The Parties shall accept the Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.

2. Immediately after the transmission of the Judgment the Parties shall enter into negotiations on the modalities for its execution.

3. If they are unable to reach agreement within six months, either Party may request the Court to render an additional Judgment to determine the modalities for executing its Judgment.

6. 1. The present Special Agreement shall be subject to ratification.

2. The instruments of ratification shall be exchanged as soon as possible in Brussels.

3. The present Special Agreement shall enter into force on the date of exchange of instruments of ratification. Thereafter it will be notified jointly to the Registrar of the Court.

In witness whereof the undersigned, being duly authorized thereto, have signed the present Special Agreement and have affixed thereto their seals.

Done in Brussels, this 7th day of April 1993, in triplicate in English.

6.3. Clausola compromissoria del Trattato tra Argentina e Uruguay del 26 febbraio 1975 sullo statuto del fiume Uruguay

Si dà qui di seguito un esempio recente di clausola compromissoria contenuta in un trattato bilaterale, precisamente quella inserita all'art. 60, par. 1, del Trattato tra Argentina e Uruguay del 26 febbraio 1975 sullo statuto del fiume Uruguay, applicativo del Trattato di frontiera concluso tra le stesse parti il 7 aprile 1961. In attuazione di detta clausola, l'Argentina ha convenuto l'Uruguay a giudizio davanti alla Corte Internazionale di Giustizia il 4 maggio 2006, assumendo una violazione del Trattato a opera di quest'ultimo a seguito della costruzione nel suo territorio di impianti industriali che potrebbero inquinare le acque del fiume.

G.C.

(*) 60. Any dispute concerning the interpretation or application of the Treaty and the Statute that cannot be settled by direct negotiations may be submitted by either Party to the International Court of Justice.

(*) *United Nations Treaty Series*, vol. 1295, n. 21425.

6.4. Dichiarazioni di accettazione della giurisdizione obbligatoria della Corte Internazionale di Giustizia

L'art. 36, par. 2, dello Statuto della Corte internazionale di giustizia prevede che gli Stati parte « possano, in qualsiasi momento, dichiarare che essi riconoscono come obbligatoria *ipso facto* e senza accordo speciale, rispetto a ogni Stato che accetti lo stesso obbligo, la giurisdizione della Corte in tutte le controversie giuridiche relative: a) all'interpretazione di un trattato; b) a ogni questione di diritto internazionale; c) all'esistenza di qualsiasi fatto che, se provato, costituirebbe una violazione di un obbligo internazionale; d) alla natura o all'estensione della riparazione dovuta per la violazione di un obbligo internazionale ». Gli Stati che hanno accettato la clausola facoltativa di giurisdizione obbligatoria sono, al 31 dicembre 2005, 68. Nella prassi gli Stati limitano in vario modo le loro dichiarazioni: l'accettazione della giurisdizione obbligatoria della Corte può escludere alcune categorie di controversie, può essere a tempo indeterminato o limitata nel tempo, incondizionata o a condizione di reciprocità, ecc.

Si riproducono qui di seguito le dichiarazioni della Gran Bretagna e dell'Ungheria che, assieme ad altri Stati dell'Europa centro-orientale già a regime comunista, a seguito del mutamento di regime ha abbandonato la anteriore diffidenza nei confronti della giurisdizione della Corte.

L.M.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

1 July 2004

1. The Government of the United Kingdom of Great Britain and Northern Ireland accept as compulsory *ipso facto* and without special convention, on condition of reciprocity, the jurisdiction of the International Court of Justice, in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to terminate the acceptance, over all disputes arising after 1 January 1974, with regard to situations or facts subsequent to the same date, other than:

- (i) any dispute which the United Kingdom has agreed with the other Party or Parties thereto to settle by some other method of peaceful settlement;
- (ii) any dispute with the government of any other country which is or has been a Member of the Commonwealth;

(iii) any dispute in respect of which any other Party to the dispute has accepted the compulsory jurisdiction of the International Court of Justice only in relation to or for the purpose of the dispute; or where the acceptance of the Court's compulsory jurisdiction on behalf of any other Party to the dispute was deposited or ratified less than twelve months prior to the filing of the application bringing the dispute before the Court.

2. The Government of the United Kingdom also reserve the right at any time, by means of a notification addressed to the Secretary-General of the United Nations, and with effect as from the moment of such notification, either to add to, amend or withdraw any of the foregoing reservations, or any that may hereafter be added.

HUNGARY

The Republic of Hungary hereby recognizes a compulsory *ipso facto* and without special agreement, on condition of reciprocity, the jurisdiction of the International Court of Justice, in accordance with Article 36, paragraph 2, of the Statute of the Court in all disputes which may arise in respect of facts or situations subsequent to this declaration, other than:

(a) disputes in regard to which the parties to the dispute have agreed or shall agree to have recourse to some other method of peaceful settlement;

(b) disputes in regard to matters which by international law fall exclusively within the domestic jurisdiction of the Republic of Hungary;

(c) disputes relating to, or connected with, facts or situations of hostilities, war, armed conflicts, individual or collective actions taken in self-defence or the discharge of any functions pursuant to any resolution or recommendation of the United Nations, and other similar or related acts, measures or situations in which the Republic of Hungary is, has been or may in the future be involved;

(d) disputes in respect of which any other party to the dispute has accepted the compulsory jurisdiction of the Court only in relation to or for the purpose of such dispute; or where the acceptance of the Court's compulsory jurisdiction on behalf of any other party to the dispute was deposited less than twelve months prior to the filing of the application bringing the dispute before the Court.

The Government of the Republic of Hungary reserves the right at any time, by means of a notification addressed to the Secretary-General of the United Nations, and with effect of six months of such notification to amend, add to or withdraw any of the foregoing reservations or any that may hereafter be added.

This declaration shall remain in force until the expiration of six months after notification has been given of its termination.

Budapest, 7 October 1992

6.5. Accordo sull'istituzione di un tribunale arbitrale per la delimitazione delle aree marine tra Francia e Canada, firmato a Parigi e Toronto il 30 marzo 1989

L'accordo per deferire alla decisione di un arbitro o di un tribunale arbitrale la soluzione di una controversia può essere concluso dalle parti dopo l'insorgere della controversia. In genere tale accordo (« compromesso ») indica la persona o le persone chiamate a svolgere la funzione di arbitro, o i meccanismi per la loro designazione, l'oggetto della controversia, il diritto applicabile, la procedura da seguire. Si riproduce qui di seguito l'accordo di arbitrato concluso tra Francia e Canada per la soluzione della controversia insorta tra i due Stati sulla delimitazione delle aree marine attorno alle isole francesi di Saint Pierre e Miquelon, situate al largo della costa meridionale di Terranova (Canada).

L.M.

(*) AGREEMENT ESTABLISHING A COURT OF ARBITRATION FOR THE PURPOSE OF CARRYING OUT THE DELIMITATION OF MARITIME AREAS BETWEEN FRANCE AND CANADA

The Government of the Republic of France and the Government of Canada (hereinafter « the Parties »);

Considering that by an agreement signed in Ottawa on March 27, 1972 the Parties partially delimited the maritime areas appertaining respectively to Canada and France;

Considering that, in view of the differences between them, the Parties have been unable to complete the delimitation;

Considering that the Parties have expressed a common desire to resolve the dispute arising from these differences by submitting it to third-party binding arbitration;

Have agreed as follows:

1. 1. A Court of Arbitration (hereinafter « the Court ») is hereby established, consisting of five members, namely:

- Mr. Prosper Weil, appointed by the French Government;
- Mr. Allan E. Gotlieb, appointed by the Canadian Government;
- Mr. Gaetano Arangio-Ruiz;
- Mr. Eduardo Jiménez de Aréchaga;
- Mr. Oscar Schachter.

The President of the Court shall be Mr. Eduardo Jiménez de Aréchaga.

(*) *International Legal Materials*, 1990, vol. XXIX, p. 1 ss.

2. If a member of the Court appointed by one of the Parties is unable to act, that Party shall name a replacement within a period of one month from the date on which the Court declares the existence of the vacancy.

3. a) If another member of the Court is unable to act, the Parties shall agree on a replacement within a period of two months from the date on which the Court declares the existence of the vacancy.

b) In the absence of an agreement within the period mentioned in paragraph a) the Parties shall have recourse to the good offices of the President of the Court or, if the office of the President is vacant, the Secretary General of the United Nations.

2. 1. Ruling in accordance with the principles and rules of international law applicable in the matter, the Court is requested to carry out the delimitation as between the Parties of the maritime areas appertaining to France and of those appertaining to Canada. This delimitation shall be effected from point 1 and from point 9 of the delimitation referred to in Article 8 of the Agreement of March 27, 1972 and described in the Annex thereto. The Court shall establish a single delimitation which shall govern all rights and jurisdiction which the Parties may exercise under international law in these maritime areas.

2. The Court shall describe the course of this delimitation in a technically precise manner. To this end, the geometric nature of all the elements of the delimitation shall be indicated and the position of all the points mentioned shall be given by reference to their geographical coordinates in the *North America Datum 1927* (NAD 27) geodesic system.

The Court shall also indicate for illustrative purposes only the course of the delimitation on an appropriate chart.

3. After consultation with the Parties, the Court shall designate a technical expert to assist it in carrying out the duties specified in paragraph 2 above.

3. 1. The Court may perform its functions only when all members are present.

2. All members of the Court shall be deemed to be present notwithstanding the existence of a vacancy in the following cases:

a) where the only matter for consideration is the declaration of a vacancy for the purposes of Article 1, or

b) where either Party has neglected to fill a vacancy as provided by paragraph 2 of Article 1.

3. Subject to paragraph 4 of this Article, the decisions of the Court shall be made by a majority of its members.

4. In the case of an even division of the votes in the circumstances referred to in paragraph 2 of this Article, the vote of the President shall be decisive.

5. Subject to the provisions of this agreement, the Court shall decide on its procedures and on all questions respecting the conduct of the arbitration.

4. 1. Each Party shall designate an Agent for the purposes of the arbitration within thirty days of the signature of this agreement and shall communicate the name and address of its Agent to the other Party and to the Court.

2. Each Agent so designated shall be entitled to name a Deputy to act for him where necessary. The name and the address of the Deputy so named shall be communicated to the other Party and to the Court.

5. 1. The Court shall sit in New-York City.

2. After it has been constituted and after consultation with the Agents, the Court shall appoint a Registrar.

3. The Court may hire staff and procure whatever services and equipment it deems necessary.

6. 1. The proceedings shall include a written phase and an oral phase.

2. The written pleadings shall consist of:

a) a memorial to be submitted by each Party to the Court and to the other Party not later than June 1, 1990;

b) a counter-memorial to be submitted by each Party to the Court and to the other Party not later than eight months after the submission of memorials;

c) any further pleading that the Court deems necessary.

The Court shall be empowered to extend the time periods so established at the request of either Party.

3. The Registrar shall provide the Parties with an address for the filing of their written pleadings and of any other documents.

4. The oral phase shall follow the written phase and shall be held in New-York City, at the place and on the dates determined by the Court after consultation with the two Agents.

5. Each Party shall be represented in the oral phase of the proceedings by its Agent or, where appropriate, its Deputy Agent, and by such counsel, advisers and experts as it may designate.

7. 1. The written and oral pleadings before the Court shall be in French or in English. Decisions of the Court shall be in both these languages. Verbatim records of the hearings shall be produced daily in the language used in each statement.

2. The Court shall provide translations and interpretation services and shall keep a verbatim record of all the hearings in French and in English.

3. The written pleadings may not be made public until the oral proceedings have commenced. Each Party shall communicate to the public only its own written pleadings.

4. Members of the public shall be admitted to the oral proceedings on invitation by either Party.

5. Each Party may make public the verbatim records of its oral pleadings.

6. Each Party shall inform the other Party prior to introducing into evidence or argument any diplomatic or other confidential correspondence between Canada and France. Unless the Parties agree, neither Party shall invoke in support of its own position or to the detriment of the position of the other Party:

(a) the interim arrangements concerning fishing to be applied pending the award of the Court;

(b) proposals or counter-proposals made with a view to concluding this Agreement or the interim arrangement described in sub-paragraph (a).

7. Unless the Parties agree, neither Party shall introduce into evidence or argument, or publicly disclose in any manner, the nature or content of proposals directed to a settlement of the delimitation issue referred to in Article 2 or responses thereto, in the course of negotiations or discussions between the parties undertaken since January, 1979.

8. 1. The remuneration of the members of the Court and of the Registrar shall be shared equally by the Parties.

2. The general arbitration expenses shall be shared equally by the Parties. The Registrar shall record these expenses in detail and render a final account of them.

3. Each Party shall pay all the expenses incurred by it in the preparation and conduct of its case.

9. 1. The Court's decision shall be fully reasoned. Each member shall be entitled to attach an individual or dissenting opinion.

2. The Court shall inform the Parties of its decision as soon as practicable.

3. Each Party may make public the text of the award or of any individual or dissenting opinion.

10. 1. The decision of the Court shall be final and binding.

2. Each Party may refer to the Court any dispute with the other Party as to the meaning and scope of the decision within three months of its notification.

3. The Court is empowered to correct any material error relating to its decision at the request of either Party, within three months of notification.

11. This agreement shall come into force on the date of its signature.

(Omissis).

Capitolo settimo

L'ADATTAMENTO DELL'ORDINAMENTO STATALE AL DIRITTO INTERNAZIONALE

7.1. Norme costituzionali sull'efficacia interna del diritto internazionale

I rapporti tra ordinamento interno e ordinamento internazionale e l'efficacia delle norme internazionali nell'ordinamento statale sono stati oggetto di numerose e assai diversificate ricostruzioni teoriche. Le soluzioni di diritto positivo a tali questioni, contenute ormai frequentemente nei testi costituzionali, non sono facilmente riportabili in maniera netta ad un assunto determinato, prestandosi a interpretazioni diverse. Tuttavia è riscontrabile una predominante tendenza a garantire l'adeguamento e la conformità delle norme interne alle norme internazionali generali o pattizie, talora con l'attribuzione alle stesse di efficacia automatica, talaltra, specie per le norme pattizie, richiedendosi atti di accettazione e recezione nell'ordinamento interno, con o senza l'attribuzione di un rango superiore alle norme di fonte internazionale.

Il rapporto tra ordinamento internazionale e ordinamento italiano si continua a reputare dualistico o ispirato al principio di separazione tra ordinamenti originari, per cui le norme del primo acquistano efficacia nel secondo in quanto da questo richiamate e fatte proprie con proprie norme, l'art. 10, 1° c., per il diritto internazionale consuetudinario, e le leggi di esecuzione, per i trattati. La nuova formulazione dell'art. 117 Cost., disposta con la legge costituzionale 18 ottobre 2001, n. 3, non altera questo modello. Ne deriva un rafforzamento con garanzia costituzionale per le leggi di esecuzione dei trattati che non potrebbero essere derogate dalla legislazione nazionale e regionale.

La medesima legge costituzionale dispone anche per un limitato potere estero delle regioni a concludere trattati nelle materie di loro competenza, cui è seguita la legge 5 giugno 2003, n. 131, determinando le modalità alquanto restrittive entro le quali tale potere può venire esercitato.

G.C.

COSTITUZIONE DELLA REPUBBLICA ITALIANA

10. L'ordinamento giuridico italiano si conforma alle norme del diritto internazionale generalmente riconosciute.