Conclusion to Part II

As noted in the introduction, the purpose of an extensive examination of the Gabčíkovo–Nagymaros Project dispute was to further the understanding of the role of international law and the legal processes of inquiry, mediation and adjudication within the regime of transboundary environmental protection. In particular, the case study demonstrates how specific legal principles and various aspects of the legal process operate to address the multifarious elements of a transboundary environmental dispute in such a manner so as to allocate the respective rights and responsibilities of each party as necessary to produce a formal decision that can form the basis for the settlement of the dispute. This case study also furthered the understanding of the influence of state and sub-state actors and interested third parties on the dispute resolution process and the role of law within that process.

Interestingly, the role of international law throughout the process of resolving the dispute was affected by the fact the dispute has its origins in a number of socio-political and economic circumstances that have evolved substantially in the last twenty years. Since the conclusion of the 1977 Agreement to alter the course of the Danube River, both Slovakia and Hungary have undergone a transformation from totalitarian regimes with command economies to market-based democratic regimes. The former Soviet Union, Warsaw Pact and CMEA, all three of which played a role in the decision to conclude the Agreement, have dissolved, and there are substantial questions as to whether the hydroelectric energy and improved navigation resulting from the construction of the Gabčíkovo–Nagymaros Project are still of significant value to Slovakia and Hungary. Slovakia asserts that not withstanding these dramatic changes there is still a need for the Project, while Hungary asserts the Project is a relic of another time and should be abandoned. But for the socio-political
and economic transformations, this dispute would not have occurred and certainly would not have become the subject of international discourse with the involvement of the EU and ICJ.

Ecological circumstances, as highlighted by a number of sub-state actors, have also played an important part in the resolution of this dispute. The simple evolution of environmental technology coupled with an emerging public environmental ethos raised substantial questions as to the effect of the Project on the regional ecosystem and the ability of Slovakia and Hungary to mitigate any adverse consequences. In the end, because the threats to the environment were so severe, the public objection so vociferous, the bilateral relations between Slovakia and Hungary so important and the desire to participate fully in the international community so pervasive, Slovakia and Hungary agreed to reach a political resolution of this dispute guided by the principles of international law.

In the initial stages of the dispute, international law obligated the parties to seek to resolve their dispute peacefully, to consult with each other in good faith, and to share relevant information. As a result of the perceived noncompliance with these obligations, the parties sought to establish a means of inquiry, and subsequently conciliation, with the assistance of the European Commission. Although unable to bring about a resolution of the dispute, the mechanisms of inquiry and conciliation assisted the parties in articulating the exact nature and parameters of their dispute and in agreeing to submit the dispute to arbitration or adjudication. In particular, the EU strongly influenced the parties to continue to rely upon the principles of international law as they sought to resolve this transboundary environmental dispute and to make use of a formal dispute resolution mechanism. The international legal process of adjudication was also used in part because of the general evolution of the Slovak and Hungarian domestic political systems towards the rule of law, the growing importance of domestic environmental law to resolve domestic resource disputes and the perception of the ICJ as an adequate dispute resolution mechanism.

Once submitted to the ICJ, the question of the capacity of international law to promote a resolution of the dispute became relevant. In the case of the Gabčíkovo–Nagymaros Project dispute, the Court was able to employ principles of international law relating to treaty termination, environmental protection, state responsibility and state liability in a manner that narrowed the dispute from eleven possible outcomes, with each party advocating the most extreme outcomes, to a single outcome – that of preserving the fundamentals of the treaty regime while ensuring
environmental protection. The role of the Court in narrowing the possible outcomes of the dispute cannot be underestimated, as throughout the time the case was before the Court, the parties continued to negotiate intermittently, but were unable to reach any consensus as to which regime was most consistent with their political and economic interests as well as international law.

Notably, the Court was also able to interpret the law in a manner so as to provide each party with certain essential elements necessary for them to reach an agreement, which were not forthcoming from the other party. For instance, the decision of the Court provides Hungary will share in the operation of the Čunovo dam and Slovakia will be entitled to operate the Provisional Solution. Had Slovakia offered to permit Hungary to share in the operation of the Čunovo dam, which controls the amount of water diverted into the power canal, Hungary would likely have been willing to agree to some form of operation of the Provisional Solution. Similarly, had Hungary agreed in principle to the operation of the Provisional Solution, Slovakia would likely have been willing to permit its joint operation.

Although international law and the legal process were effectively able to guide the parties toward a structured and peaceful means of resolving the dispute, and eventually to narrow the options available to the parties, the principles of international law and the legal process were not able to, and should not reasonably be expected to, dictate the exact nature of the operating regime best suited to balancing economic and environmental interests. The exact nature of the joint operating regime to be established by Slovakia and Hungary will be properly dictated by the nonlegal factors that have influenced the dispute throughout its four phases.

Relying on these observations and the observations relating to the secondary case studies examined in Part I, Part III will deduce a number of general conclusions regarding the role of international law and the legal process within the international regime of transboundary environmental protection among CEE states, and more particularly those aspects of the regime relating to transboundary environmental dispute resolution. The purpose of Part III will be to promote an understanding of how international law and the legal process might better operate to promote CEE transboundary environmental dispute resolution and thereby enhance CEE transboundary environmental protection by systematically delineating the context within which international law operates, and by identifying the circumstances and factors that influence the manner in which states use international law.