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STATE SUCCESSION TO ASSETS AND DEBTS: AN UPDATE 2001/2

EXECUTIVE SUMMARY

1. This Opinion updates the one provided in 1992 and outlines the major relevant events since that time. These have primarily concerned the dissolution of Yugoslavia and of the USSR and their aftermath. This Opinion focuses on the Yugoslav situation in particular since several critical issues were addressed by the Yugoslav Arbitration Commission and a final resolution of outstanding questions was reached in the important Vienna Agreement On Succession Issues Adopted at the Conference on Succession Issues of June 2001.

2. Issues such as the applicable law and critical date as well as the nature and relevant law concerning immovable and movable property; financial assets; and debts are addressed and the evolution in state practice briefly described. Reference is also made to archives and pensions in this context.

3. The conclusions reached concern the predominant territorialist approach and the rise in the application of equitable principles in succession situations. In addition, the growing importance of the role and activities of the international institutions, particularly financial institutions, is noted.

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STATE SUCCESSION TO ASSETS AND DEBTS: AN UPDATE 2001/2

SUCCESSION D'ETATS AUX BIENS ET AUX DETTES: MISE A JOUR ET COMPLEMENTS DE 2001/2

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1. On 20 January 1992, I provided an Opinion to the "Commission Parlementaire d'Etude des Questions Afferentes à l'Accession du Québec à la Souvertaineté" on the division of state property and debts in the event that the Province of Quebec were to become independent ("the 1992 Opinion"). I have now been asked by Professor Claude Corbo, Coordinator of the Bureau de coordination des études in correspondence commencing 5 July 2001, to update (mise à jour) this Opinion.

2. The structure of this Opinion is, according to instructions received from the Bureau de coordination des études, to be in three parts. The first part will reprise the conclusions of the original Opinion; the second part will analyse recent practice in the field and the third part will provide a revised or updated set of conclusion. In the course of reviewing practise since 1992 in the second part, elements of the original Opinion will be noted.

I. The Conclusions of the 1992 Opinion

3. The 1992 Opinion reached the following overall conclusions:

"67. It can be seen that the approach of international law to questions of state succession in a situation where part of an existing state secedes to form a new state, is not free from uncertainty, but that the dominant approach is a geographical or territorially based one.

68. In general, state property (movable or immovable) closely linked to the territory concerned will pass to the successor state, while debts similarly characterised would also pass to the successor state. Doubts exist with regard to some kinds of movable property outside the territory and with regard to general state debts, where there appears to be a move towards apportionment, although not such as to form a binding norm of international law. The possible bases for such an apportionment are various and have appeared in differing forms and combinations in relevant international agreements. Precisely which factors might

be used and in what order of priority are questions that can only be determined in the context of negotiations in specific cases."

2. Post-1992 Practice

4. The major elements of state practice since the 1992 Opinion with regard to assets and debts have concerned the dissolution of Yugoslavia and of the USSR and their aftermath. Insofar as the former is concerned and inevitably this Opinion will focus on this situation, critical issues were addressed by the Yugoslav Arbitration Commission in Opinions 11 to 15 (see 96 International Law Reports, p. 713 et seq.). A final resolution of outstanding questions was reached in the important Agreement On Succession Issues Adopted at the Conference on Succession Issues held at the Hofburg Palace Heldenplatz, Vienna on 29 June 2001 (see http://untreaty.un.org/English/notpubl/29-1.pdf - hereafter "the Yugoslav Agreement 2001"). Insofar as the former USSR is concerned, some issues have been resolved, while others remain to be settled (see further paragraph 21).

5. The applicable law remains a mix of domestic law and customary international law. The Vienna Convention on Succession of States in Respect of State Property, Archives and Debts 1983 ("the Vienna Convention"), which had in 1992 not been ratified by any state, now has 5 parties (Croatia, Estonia, Georgia, Macedonia and Yugoslavia) but is still not in force, fifteen ratifications or accessions being required. It is, however, fair to say in general terms that many of its provisions are reflective of customary law and that its most controversial aspects (with regard to so-called "newly independent state") refer only to traditional decolonised states and have no application to recent practice nor indeed to any relevant Quebec scenario. As always, legal issues relating to state succession are highly dependent upon particular factual situations and states retain a considerable degree of flexibility in seeking to apply the general principles of international law to their own circumstances.

a) The Relevant Date

6. The Vienna Convention provides that the date of succession (for both property, archives and debts, see Articles 10, 22 and 35) is the date at which the successor state replaces the predecessor state in "responsibility for the international relations of the territory" (Article 11; a formulation repeated in Opinion No. 11 of the Yugoslav Arbitration Commission, 96 International Law Reports, p. 719). This is invariably the date of independence. Neither the Czechoslovak nor the USSR succession situations posed a difficulty in this respect. However, much attention during the Yugoslav succession discussions focused upon the relevant date at which particular legal principles may be deemed to have crystallised. The problem in this situation was that the different successor states all came to independence at a different time and this clearly was a relevant factor with regard, for example, to the valuation of assets and debts. The Yugoslav Arbitration Commission, which was established pursuant to the European Community Declaration of 27 August 1991 (see 92 International Law Reports, p. 162) and consisted five members chaired by Robert Badinter, took the view that the former Socialist Federal Republic of Yugoslavia ("SFRY") had dissolved over a period of time, (see Opinion Nos. 1 and 8, id., pp. 162 and 199).

7. The Commission noted that the date of succession for each of the new states emerging from the SFRY was the date on which it became a state "which was a question of fact to be assessed in the light of all the relevant circumstances" (Opinion No. 11, 96 International Law Reports, p. 719). What is interesting is that the basis for the dates in question for the new states varied. In the cases of Croatia and Slovenia the relevant date was the date on which the declarations of independence took effect, following a three month suspension under the Brioni Declaration, and the two republics finally severed institutional links with the SFRY (8 October 1991). In the case of the Former Yugoslav Republic of Macedonia, the date of succession was the date on which the new Constitution was adopted (17 November 1991), while for Bosnia-Herzegovina the relevant date was the date on which the results of the referendum on independence were announced (6 March 1992). As far as Federal Republic of Yugoslavia (Serbia and Montenegro) ("FRY") was concerned, the Commission took the view that the

date of succession was the date on which the new Constitution was adopted "and the relevant international agencies affirmed that the process of dissolution of the SFRY was complete" (27 April 1992).

8. In fact, the position taken by the FRY was different. It maintained that it was the continuation of the SFRY, so that the date given of 27 April 1992 was not a relevant "date of succession". This complicated negotiations during the following years of the decade (see, for example, Stanic, "Financial Aspects of State Succession: The Case of Yugoslavia", 12 European Journal of International Law, 2001, p. 751) since differences arose both as to the date of any relevant valuations of assets and debts and as to various substantive legal principles, some of which arguably varied depending upon whether there was a continuation of the original state. This Yugoslav position changed with the despatch of a letter from its President to the Security Council on 27 October 2000 requesting admission to the UN as a new member. It was so admitted on 1 November that year (see General Assembly resolution 55/12). On this basis incidentally, Yugoslavia has applied to the International Court for revision of its judgment on preliminary objections of 11 July 1996 (see the Yugoslav Application dated 23 April 2001, http://www.icj cij.org/icjwww/idocket/iybh/iybhapplication/iybh_iapplication_20010423.pdf). No doubt this alteration of position, occasioned by political changes in Belgrade and the overthrow of Slobodan Milosovic, facilitated the achievement of the Yugoslav Agreement of June 2001.

9. Article 7 of Annex A of the Yugoslav Agreement (dealing with movable and immovable property) provides that "Where pursuant to this Annex property passes to one of the successor states, its title to and rights in respect of that property shall be treated as having arisen on the date on which it proclaimed independence, and any other successor state's title to and rights in respect of the property shall be treated as extinguished from that date" (see also Article 3 (1)). It would appear that this approach would supersede that of the Arbitration Commission, particularly with regard to the relevant date for Slovenia and Croatia (see above paragraph 7). However, the distribution of diplomatic and consular properties is expressly stated to be on the basis of a valuation made in

the Report of 31 December 1992 on the valuation of SFRY assets and liabilities as at 31 December 1990. Accordingly, one may conclude that issues of title depend upon the date of independence as the date of succession whereas the valuation is dependent upon that made on the basis of the Report.

b) The Definition of Property

10. It is correct that no definition of state or public property exists in international law (see, for example, Stern, "La Succession d'États", 262 Recueil des Cours, 1996, at p. 329 and see also the dispute concerning property belonging to the Order of St. Mauritz and St. Lazarus, 11 Annuaire Francais de Droit International, 1965, p. 323). Article 8 of the Vienna Convention provides that state property for the purposes of the convention "means property, rights and interests which, at the date of the succession of states, were, according to the internal law of the predecessor state owned by that state". In the case of states not having a unified legislation, the relevant internal law would be that law which in the predecessor state applies to the state property in question. Article 8 can be taken as reflective of customary international law (see also, for example, the Chorzow Factory case, PCIJ, Series A, no. 7, p. 30 and the German Settlers in Upper Silesia case, PCIJ, Series B, no. 6, p. 6).

11. The Yugoslav Commission tackled the question of property, particularly in Opinion No. 14 (96 International Law Reports, p. 729). It confirmed that to "determine whether the property, debts and archives belonged to the SFRY, reference should be had to the domestic law of the SFRY in operation at the date of succession – notably to the 1974 Constitution". It drew attention to the developed notion of "social ownership" or "propriété sociale", held for the most part by "associated labour organisations" with their own legal personality, operating in a single republic and coming within its exclusive jurisdiction. As such, their property, debts and archives were not to be divided for purposes of state succession, each successor state was to exercise its sovereign powers in respect of them. However, where such organisations operated "social ownership" either at federal level or in two or more republics, such property, debts and archives were to be divided between the successor states if they exercised public prerogatives on behalf of the SFRY or of individual republics. Where

such organisations did not exercise public prerogatives, then they would be considered private sector enterprises to which state succession did not apply.

12. There were differences between FRY and the other four republics as to the definition of state property. The former took the view that SFRY state property included not only the property, rights and interests of the federal institutions and units, but also "those parts of the so-called 'social property' which have in their totality or in part been created by or financed from the federal budget and other federal funds or from those of two or more federal units, or by juridical persons from two or more federal units". In addition, the Yugoslav government sought to exclude the property, rights and interests brought by the Kingdom of Serbia and the Kingdom of Montenegro into the Yugoslav Kingdom of Serbs, Croats and Slovenes (Draft Agreement on Succession between FRY and the Successor States, 4 May 1994, cited in Degan, "Disagreements over the Definition of State Property in the Process of State Succession to the Former Yugoslavia" in Mrak (ed.), Succession of States, Nijhoff, 1999, at p. 39). Such a wide view, however, was not adopted in the Yugoslav Agreement of 2001 as will be seen and should rather be understood as a negotiating position at the time. However, the Agreement does provide in Article 6 of Annex A that "It shall be for the successor state on whose territory immovable and tangible movable property is situated to determine, for the purposes of this Annex, whether that property was state property of the SFRY in accordance with international law". This does introduce an element of confusion, since we now apparently have a unilateral test of the definition of state property "in accordance with international law" rather than a straightforward reference to the SFRY law of the relevant time.

c) Immovable State Property

13. The Vienna Convention provides that unless the states otherwise agree, immovable state property of the predecessor state shall pass to the successor state in the territory of which it is situated (Articles 17 and 18). This applies both in cases of

separation of part of the territory of a state and dissolution of the predecessor state. It is a clear principle of customary international law (see for example the agreement of 1 December 1948 between India and Pakistan, see O'Connell, State Succession in Municipal Law and International Law, vol. 1, p. 220). It is confirmed in Opinion No. 14 of the Yugoslav Arbitration Commission, which referred to the "well established rule of state succession law that immovable property situated on the territory of a successor state passes exclusively to that state" (96 International Law Reports, p. 731) and in Article 2 (1) of Annex A of the Yugoslav Agreement 2001, which simply states that "Immovable state property of the SFRY which was located within the territory of the SFRY shall pass to the successor state on whose territory that property is situated".

14. Insofar as immovable state property situated outside the territory of the predecessor state is concerned and where the predecessor state is dissolved, then Article 18 (1) b of the Vienna Convention provides that such property shall pass to the successor states "in equitable proportions". Where, however, the predecessor state continues in existence, the convention is silent and no doubt there is here a presumption that such property continues to be that of the predecessor state, subject to agreement to the contrary.

15. The Yugoslav Agreement 2001 deals specifically with diplomatic and consular premises, by their very nature SFRY immovable property situated abroad. The Vienna Convention does not deal separately with such property. The Agreement provides for a careful and measured distribution of some sophistication. It provides for a special allocation of named SFRY diplomatic properties to specific successor states, so that the London embassy goes to Bosnia and Herzegovina; the Paris embassy to Croatia; the Washington embassy to Slovenia; the Paris consulate-general to Macedonia and the Paris residence to Yugoslavia (Article 1 of Annex B). It is expressly recognised that this allocation gives a greater share to Bosnia and Macedonia than they would have received under the IMF key (on which see below paragraph 20) or any other more favourable criterion (Article 2 (2)). All other

diplomatic and consular properties are to be distributed in kind so that the total of such properties (including the special Article 1 allocation) reflects as closely as possible the following proportions by value for each state: Bosnia and Herzegovina 15 %; Croatia 23.5 %; Macedonia 8 %; Slovenia 14 %; Federal Republic of Yugoslavia 39.5 %.

16. To the Annex is appended a list of SFRY diplomatic and consular properties according to geographical region describing inter alia their legal status and value (on the basis of the Report of 31 December 1992 on the valuation of SFRY assets and liabilities as at 31 December 1990) in order to assist the process of allocation. Of particular interest is the provision that each successor state "shall within each geographical region be entitled to its proportionate share" (Article 4 (1)).

d) Movable State Property

17. Where the predecessor state continues in existence or whether there is a dissolution, the Vienna Convention provide that movable state property of the predecessor state "connected with the activity of the predecessor state in respect of the territory to which the succession of states relates shall pass to the successor state", while other movable state property is to pass in an equitable proportion (Articles 17 and 18). It appears to be a general principle that only such property as is destined specifically for local use is acquired by the successor state (O'Connell, *op.cit.* p. 204), but it may not always be easy to define the movable property in question with such precision, especially in view of the phraseology of articles 17 and 18. The reference therein to movable property "connected with the activity" of the predecessor state appears somewhat broader or more flexible than the traditional exposition of the rule. Movable property connected with the territory would therefore include local treasury balances and reserves and funds specifically allocated to the territory in question, as well as all funds applied to the liquidation of local debts, including savings bank deposits and pension and superannuation funds payable to persons in the territory. The successor state

would also obtain all the liquidated rights of the predecessor state in the territory, such as rents relating to public lands, repayment of mortgages, industrial loans and contract debts.

18. Article 3 (1) of Annex A to the Yugoslav Agreement 2001 provides simply that "Tangible movable state property of the SFRY which was located within the territory of the SFRY shall pass to the successor state on whose territory that property was situated on the date on which it proclaimed independence". In many ways this obviates the problems referred to in paragraph 29 of the 1992 Opinion, which drew attention to the problems associated with the notion of an equitable distribution in the circumstances. The Annex, however, interestingly pays particular attention to two special kinds of movable state property. First, by Article 3 (2), Article 3 (1) is not to apply to tangible state property "of great importance to the cultural heritage of one of the successor states and which originated from the territory of that state" but is to go to that successor state. Examples given of such property include works of art, books, objects of historical interest and scientific collections. Such property is to be identified by the successor state concerned as soon as possible, but not later than two years after the entry into force of the Agreement.

19. Tangible movable property of the SFRY which formed part of its military property is to be the subject of special arrangements to be agreed among the successor states concerned (Article 4 (1)), while such special arrangements to be made shall in the case of movable and immovable property of the former Yugoslav National Army used for civilian purposes acknowledge the relevance of Articles 2 (1) (providing that immovable property passes to the territorial successor state) and 3 (1) (providing for the same outcome with regard to tangible movable state property). The Annex finally provides that where any successor state considers that the application of Articles 1 to 3 results in a "significantly unequal distribution" of SFRY state property (other than military property), then the matter may be raised with the Joint Committee established under Article 5 of t his Annex.

e) Financial Assets

20. The Vienna Convention does not deal separately with financial assets. However, the matter was specifically addressed in Annex C of the Yugoslav Agreement. Article 1 lists the financial assets of the SFRY (such as cash, gold and other precious metals, deposit accounts, and securities), and including, for example, accounts and financial assets in the name of the SFRY federal government departments and agencies or in the name of the National Bank of Yugoslavia, sums due to the National Bank from banks in other countries, and financial quotas and drawing rights of the SFRY, National Bank or other federal organs or institutions. The Annex notes that a major portion of the assets and liabilities of the SFRY have already in practice been distributed on the basis of agreements made. Examples include the SFRY's share in the IMF, World Bank, EBRD and Bank for International Settlements. Article 4 provides for a distribution of assets on the basis of the proportions laid down in Article 5 (2), namely – Bosnia and Herzegovina 15.5%; Croatia 23%; Macedonia 7.5%; Slovenia 16% and FRY 38%. This formula is to be compared with the allocation agreed, with the consent of the successor states, by the IMF and World Bank (known as the IMF key) - Bosnia and Herzegovina 13.20%; Croatia 28.49%; Macedonia 5.40%; Slovenia 16.39% and FRY 36.52 % (see IMF Press Release No. 92/92, 15 December 1992; Williams, "State Succession and the International Financial Institutions", 43 International and Comparative Law Quarterly, 1994, at p. 802, fn. 168 and Shihata, "Matters of State Succession in the World Bank's Practice" in Mrak, *op.cit*. at p. 87). The same IMF key was used in the distribution with regard to the BIS assets in an arrangement dated 10 April 2001 (see Appendix to the Yugoslav Agreement). Annex F further provides that all rights and interest which belonged to the SFRY and not otherwise covered in the Agreement (such as patents, trade marks, copyrights and royalties) are to be shared among the successor states taking into account the proportion for division of SFRY financial assets.

21. In the case of the dissolution of Czechoslovakia, the two successor states quickly agreed up a 2:1 division of assets and liabilities (Czech Republic/Slovakia), reflecting essentially the population balance (see eg.

Czaplinski, *op.cit*., p. 71 and Shihata, *op.cit*., p. 87). In the case of the former USSR, accepted as a situation of separation from a continuing state, a range of agreements signed in 1991 and 1992 (listed in Stern, *op.cit*., pp. 379-81) established the territorial principle as governing the distribution of property, so that property situated in a particular successor state was appropriated by that state. A special agreement in 1997 was reached with regard to the division of the Black Sea fleet based in the Crimea in Ukraine, following a number of unsuccessful efforts (id. p. 386). Insofar as other state property (essentially property abroad) was concerned, agreements in 1991 and 1992 provided for a division of assets and debts in a proportionate fashion, ranging from Russia – 61.34% to Ukraine –16.37% and to Estonia – 0.62% (id., p. 402). This proportion was reached using four criteria: the participation of the republics concerned in the imports and exports respectively of the former USSR, the proportion of GNP, and the proportion of populations (Czaplinski, *op.cit*., p. 71). However, in 1993, Russia claimed all of the assets and liabilities of the former USSR (id., p. 405).

f) Debts and Liabilities

22. International law has discussed the concepts of state debts and public debts. The latter are more extensive in including debts of public bodies, both of a territorial character and those of a non-territorial nature. Article 33 of the Vienna Convention defines state debts as "any financial obligation of a predecessor state arising in conformity with international law with another state, an international organisation or any other subject of international law". One may divide public debts into national debts (debts owned by the state as a whole); local debts (debts contracted by a sub-governmental territorial unit or form of other local authority) and localised debts (debts incurred by the central government for the purpose of local projects or areas).

23. Local debts pass under customary international law to the successor state since they constitute arrangements entered into by sub-governmental territorial authorities now transferred to the jurisdiction of the successor state and a succession does not directly affect them. In effect, they continue to be debts borne by the specific territory concerned. Localised debts, being debts closely attached

to the territory seceding, also pass to the successor state. This conclusion is strengthened where the territory is a fiscally autonomous region (see, for example, O'CONNELL, *op. cit.* p. 416). In any event, as in the case of local debts, the presumption is that the loan concerned is to be used in the territory concerned.

24. The question of succession to the national debt, or the general state debt, is a troublesome one in international law. Practice is not extensive where the separation of part of an existing state is concerned, but the presumption is that the responsibility for the general public debt of the predecessor state remains with that state (see, for example, the Ottoman Public Debt case, 1 UN Reports of International Arbitral Awards, p. 529). This would certainly appear to be the case where part of a state is transferred to another state (see Yearbook of the ILC, 1977 II, Part 1, p. 81). Where the debt is secured by resources within the territory concerned, the most likely, although not invariable, consequence is that the successor state will take over responsibility for that debt. Articles 40 and 41 of the Vienna Convention provide that, in cases respectively of separation of part of a state to form another state and dissolution of the predecessor state, unless otherwise agreed, the state debt of the predecessor state passes to the successor state "in an equitable proportion" taking into account in particular the property, rights and interests which pass to the successor state in relation to that debt.

25. Annex C of the Yugoslav Agreement concerns financial assets and liabilities. The latter are stated to comprise the external debt (including other liabilities) of the SFRY to official creditors, international financial institutions, commercial creditors, creditors generally and sums payable by the National Bank of Yugoslavia to banks in other countries resulting from uncompleted inter-bank clearing arrangements (Article 2 (1) a). External debts described as “allocated debts”, that is those where the final beneficiary of the debt is located on the territory of a specific successor state or group of successor states are not subject to succession and are to be accepted by the successor state on the territory of which the final beneficiary is located (Article 2 (1) b). Other liabilities are deemed to include guarantees by the SFRY or its National Bank of hard currency savings before the date of independence and those savings deposited by the

SFRY with Post Office Savings Bank. The Agreement notes that the major portion of the liabilities as well as the assets of the SFRY have already been distributed on the basis of a number of agreements, including those relating to the IMF, World Bank, the European Investment Bank, parts of the SFRY's external official debt to members of the Paris Club and parts of the SFRY's external commercial debt to banks (the London Club). The other parts of the Paris and London Club arrangements related to the FRY's allocation for which it has agreed to assume responsibility (Article 3 (2)).

g) Archives

26. Article 20 of the Vienna Convention defines archives as "all documents of whatever date and kind, produced or received by the predecessor state in the exercise of its functions which, at the date of succession of states, belonged to the predecessor state according to its internal law and were preserved by it directly or under its control as archives for whatever purposes". In the case of both secession and dissolution, archives which for "normal administration of the territory" to which the succession relates should be in that territory, pass to the successor state, while the part of the archives that "relates directly to the territory to which the succession relates", shall pass to the successor state (Articles 30 and 31).

27. Annex D of the Yugoslav Agreement 2001 deals with archives. Archives are defined as either SFRY state archives or Republic or other archives, being all documents (including film and other tapes and recordings and computerised records and those documents constituting cultural property) of whatever date or kind or wherever located which were produced or received by the SFRY or by the constituent Republics, or their territorial or administrative units, in the exercise of their functions and which were on 30 June 1991 belonged to them in accordance with internal law and were preserved as archives for whatever purpose.

28. Those parts of the SFRY state archives necessary for the normal administration of the territory of one or more states are in accordance with the stated principle of "functional pertinence" pass to those states, irrespective of the location of the archives (Article 3), while those archives relating directly to the

territory of one or more of the states or produced or received in the territory of one or more of the states or consisting of treaties of which the SFRY was the depositary and which relate only to matters concerning the territory of one or more states are to pass to those states irrespective of the location of the archives (Article 4). Other SFRY archives are to be the subject of an agreement between the successor states relating to their equitable distribution (Article 6). The Agreement further provides that Republic or other archives are to be the property of the corresponding state (Article 8). In essence, therefore, this Agreement confirms the predominantly territorial basis for state succession with regard to archives.

h) Pensions

29. Under international law, service pensions accruing before the change of sovereignty would in general constitute a charge upon the predecessor state. It is only where the pension is payable by a local treasury in the territory in question that it would be regarded as a local administrative debt and thus pass to the successor state. In other words, where the predecessor (central) government was the employer the official in question maintains his rights to enforce the pension against the former and there is no substitution or addition of responsibility without a specific agreement. However, where the official was employed by a totally absorbed local administrative unit and the pension was payable out of the funds of that unit, the debt would be a local one and would therefore pass to the successor state (see O'CONNELL, *op. cit.* pp. 468-9).

30. Article 1 of the Agreement provides that each state is to assume responsibility for and regularly pay legally grounded pensions funded by that state in its former capacity as a constituent Republic of the SFRY, irrespective of the nationality, citizenship, residence or domicile of the beneficiary. In addition, Article 2 provides that each state is to assume responsibility for and regularly pay pensions which are due to its citizens who were civil or military servants of the SFRY, irrespective of where they are resident or domiciled, if those pensions were funded from the federal budget or other resources of the SFRY.

III. Updated Conclusions

31. One may conclude as follows:

1. All succession situations tend to be distinctive and solutions adopted will depend both upon the particular factual background and the political interplay between the predecessor (if any) and successor states.
2. The dominant territorialist approach has been confirmed by recent practice. The allocation of immovable property on this basis has long been established, but the provisions in the Yugoslav Agreement concerning tangible movable state property, allocated external debts, archives and pensions reinforce the importance of the territorial dimension in settling succession issues.
3. The use of equity has been underlined. The large number of references to equitable considerations contained in the Vienna Convention has been confirmed by the approach of the Yugoslav Agreement. The preamble referred specifically to the "equitable distribution" of rights, obligations, assets and liabilities of the former SFRY, while Article 1 of Annex A, for example, relating to property is formulated so as "to achieve an equitable solution". One should also note the approach to non-territorial archives.
4. The use of proportions in order to delimit succession issues is also marked, but what is interesting is the way in which different proportions may be used in regard to the same situation. The Yugoslav Agreement, for example, uses different proportions for the allocation of financial and other interests than used in the IMF and BIS settlements. The situation regarding the former USSR is also instructive in showing both how a particular proportion utilised a number of elements and how such a scheme may encounter serious opposition and be relinquished.
5. One can see also a rather more sophisticated treatment of different kinds of property. The Yugoslav Agreement makes special provision

for diplomatic and consular properties, cultural property and military property, for example.

6. The importance in the succession equation of the international financial institutions (for example, the IMF, World Bank and EBRD) and mechanisms (for example the Paris and London Clubs) is clearly underlined in recent practice. The extent to which many of the core financial assets and liabilities questions had in fact been resolved before the Agreement is instructive.
7. In sum, the question of the allocation of resources and liabilities upon secession or dissolution will remain a significant problem for the international community and one which will continue to require careful consideration in the light of evolving legal principles and complex factual and political contexts.