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EUROPEAN COMMISSION
DIRECTORATE-GENERAL - EXTERNAL POLITICAL RELATIONS

Directorate B

FAX

Date: 11 August 1994

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Number of
pages: 1+11

Subject: Draft Paper
For The Co-chairmen

Message: Please find attached a new version of the paper for the cochairmen, revised as we discussed this morning.
Best wishes,

Graeme ROBERTSON

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FOR INFORMATION OF COCHAIRMEN ONLY

State Succession in The Former SFRY - A Proposed Solution For
Assets and Liabilities

Aims

1. The aim of this paper is to set out a proposed solution to the problem of dividing the assets and liabilities of the former SFRY among the successor states. The proposal is based on the following objectives:

-the settlement proposed by the ICFY should be workable and represent a practical way of resolving these questions and so facilitate a resumption of normal economic life

-the settlement should, as far as possible, represent an equitable division of assets and liabilities, respecting the rights of the successor states, former SFRY citizens and creditors.

Background

2. Work on the division of assets and liabilities of the former SFRY has been directed by the Working Group on State Succession Questions of the ICFY, assisted as appropriate by the Working Group on Economic Issues. The purpose of this proposal is to break the impasse which has developed among the successor states in negotiations over the last two years. It forms part of a wider draft treaty dealing with all the legal aspects of state succession.

3. The principal quantitative source for this proposal is the "Chairman's Report on the Valuation of the Assets and Liabilities of the Former SFRY" submitted to the co-Chairmen of the ICFY in February 1993. This report provided estimated valuations on a large number of items contained in an inventory drawn up by the Working Group on State Succession. The inventory did not reflect a shared conception of the assets and liabilities subject to the succession process as there was no minimum basis of agreement among the successor states on such a conception. Instead the inventory consisted of a list of all the items which any of the successor states considered should be included. The valuation is, therefore, a useful background document but does not in itself provide a basis for a settlement.

4. In April of 1994 the delegation of the FRY proposed a draft inventory detailing their conception of the state property of the SFRY. This inventory, for which a global valuation has now been prepared, is based on the contention that all investments made by the SFRY since its creation should be repaid by the recipient Republics and then redistributed amongst them as successor states. This reflects the desire of that delegation to reverse the perceived inequities in the investment policies carried out by the SFRY.

International Law and Precedents

5. The current proposal draws on the principles of international law contained in the Vienna Conventions and, in particular, on two recent precedents of the division of the assets and liabilities of a Federal state among constituent republics - the CSFR and the USSR - and discussions have been held with representatives of the new republics who were involved in the work on these divisions.

6. The break-up of the CSFR into the new Czech Republic and the Republic of Slovakia is an excellent example of what can be achieved through a desire to resolve the problem in at least a minimally cooperative fashion. Broadly, the solution adopted in this case was to divide all real assets according to the Republic in which they were located (the territorial principle) and to provide compensation for any evident inequities which arose from such a division. Other assets and liabilities were divided on a 2-1 basis according to the size of the new Republics' populations.

7. In the case of the USSR the solution adopted was rather different in the crucial respect that one Republic (the Russian Federation) was accepted as the legal continuation of the USSR (a position to which the FRY has long and unsuccessfully aspired). Nevertheless, the main principle of the division was territorial with each Republic taking control of the assets on its territory. Other assets went to the Russian Federation in return for the so-called "zero option" whereby Russia also took responsibility for the former Soviet debt.

The Principles

8. The proposed division is derived from the application of a number of basic principles. Firstly, the proposal relies on the view that decisions on investment and other matters taken by the SFRY should be seen as decisions taken jointly by the Republics under the Federal constitution. These decisions should be regarded as part of the "acquis" and efforts to revisit them and reverse their effects should be resisted.

9. A second principle of the division is that it should offer a practical approach which stands a realistic chance of being implemented voluntarily or enforced by the United Nations Security Council. This requires recognition of the fact that in the circumstances of a violent dissolution, it is difficult to imagine transfers of property in the possession of the successor states taking place. Even if such transfers were considered possible they would clearly be difficult and costly to administer and verify. As a result it is clear that, as in the Czechoslovak and Soviet cases, the principle of division according to location will have to have a prominent role. However, bearing in mind the aim of achieving an equitable division, compensation for inequities which arise from the territorial principle will have to be made from other sources.

10. Finally, in defining the inventory of items to be taken into account in the final settlement of assets and liabilities, it is proposed to take a limited view of SFRY property, based on the decentralising constitution of 1974. In particular, this will mean the exclusion of most social property such as enterprises from the division, on the grounds that these items come under Republican jurisdiction. The items considered as part of the Federal property for division are:

- Assets of the Federal Government Secretariats and Agencies (including the property of the Federal Agency for Foreign Affairs located abroad)
- Assets of the Yugoslav National Army (JNA)
- Assets of the National Bank of Yugoslavia (including reserves in foreign currency and precious metal), assets of the Yugoslav Bank for International Economic Cooperation (JUEMES) and assets of the Military Department of the National Bank of Yugoslavia
- The "unallocated" external debt of the SFRY and the liabilities of JUEMES and the Military Department of the National Bank of Yugoslavia.

The Proposed Division

11. In light of the principles mentioned above, it is proposed that all physical assets on the territory of the former SFRY be divided according to their location. The remaining items will be divided among the successor states with a view to providing compensation for the inequities which result from this division. The items to be divided are financial assets and liabilities and assets abroad. The degree of equity achieved will be assessed by comparing the resulting division with that which would be given by a distribution on the basis of population.

12. In order to assess the proportions in which these remaining items should be divided, it is first necessary to look at the results of a division of assets located in the former SFRY according to the territorial principle.

Total Property On The Territory Of The SFRY Subject To State Succession And Its Current Distribution

13. The total value of property subject to state succession and located on the territory of the former SFRY is YD 895 317 million (US\$ 84 012 million). This value represents all the movable and immovable assets of the JNA and of Federal government secretariats and agencies.

14. The following table shows the current distribution of assets on the territory of the former SFRY. Assets of the Federal government, its secretariats and agencies are distributed according to location, with movable assets distributed on a proportionate basis. JNA assets represent YD 884 618 million (98.8%) of this total, of which YD 403 940 million are immovable assets and have been distributed according to location, and YD 480 678 million represent movable items. Movable items have been allocated on the basis of intelligence reports covering a limited number of items with the remainder being attributed to the FRY. It should be noted that the relatively small amounts of JNA equipment in the possession of Serb forces in Croatia and Serb and Croat forces in Bosnia-Herzegovina have been allocated as the property of the internationally recognised Governments of these two states.

<u>REPUBLIC</u>	<u>TOTAL (YD million)</u>	<u>PERCENTAGE</u>
Bosnia-Herzegovina	83 822.8	9.4
Croatia	131 993.2	14.7
FRY	552 315.0	61.7
Macedonia	29 617.2	3.3
Slovenia	97 568.8	10.9

15. Using this existing division as a basis, it is now necessary to look at the remaining items in order to assess the degree of compensation required and the implications of this for the final division to be proposed. These are financial assets and liabilities and assets abroad. The following tables look briefly at these items.

Financial Assets

16. Financial assets are estimated at YD 161 409 million (US\$ 15 146 million). These are made up of assets of the NBY worth YD 89 197 million, foreign currency and gold reserves totalling YD 59 234 million, outstanding dues from abroad estimated at YD 4 500 million, the assets of JUEMES worth YD 7 791 million and assets of the Military Department of the NBY valued at YD 687 million. Further details of the financial assets are included in the background note on financial assets and liabilities.

17. The following table represents the distribution of financial assets which would result from using the population criterion. Population figures are taken from the 1991 census.

	<u>Value</u>	<u>Population Share</u>
Division: B-H	30 603	18.96
Croatia	31 781	19.69
FRY	71 391	44.23
Macedonia	14 462	8.96
Slovenia	13 236	8.20

Liabilities

18. The estimated value of liabilities relevant for state succession is YD 44 521 million (US\$ 4 178 million). This figure is made up of the total unallocated external debt YD 37 076 million, liabilities of JUBMES YD 6 921 million and the liabilities of the Military Department of the NBY YD 524 million.

Divided on the basis of population these debts would be distributed as follows:

	<u>Value</u>	<u>Population Share</u>
Division: B-H	8 441	18.96
Croatia	8 766	19.69
FRY	19 692	44.23
Macedonia	3 989	8.96
Slovenia	3 651	8.20

NB Implementation of an agreement on liabilities will require acceptance of this agreement by the creditors. Creditors are likely to accept settlement based on agreement or enforced by the UNSC

Assets Abroad

19. Property abroad (embassies etc.) has an estimated value of YD 2 845 million (US\$ 267 million). Distribution on the basis of population would be as follows:

	<u>Value</u>	<u>Population Share</u>
Division: B-H	539m	18.96
Croatia	560m	19.69
FRY	1258m	44.23
Macedonia	255m	8.96
Slovenia	228m	8.20

Total Assets (Less Liabilities)

Estimated Value: YD 1 015 050 million (US\$ 95 247 million).

20. This figure represents the total value of military assets, assets of the Federal government, its secretariats and agencies and financial assets, minus the financial liabilities considered relevant for succession. (The total is considerably higher than that in the Chairman's report on the Draft Inventory of February 1993. This is due, firstly to an increased assessment of the value of military bases and infrastructure which results from evaluating this property on the same basis as other fixed assets on the territory of the former Yugoslavia, and, secondly, from a reduction in the financial liabilities considered relevant for succession. This change has been made in response to the preliminary findings of the consultants assisting with the valuation.)

21. The following table shows the division of assets amongst the successor states which would result from division on the basis of population.

	<u>Value</u>	<u>Population Share</u>
Division: B-H	194 453	18.96
Croatia	199 863	19.69
FRY	448 957	44.23
Macedonia	90 948	8.96
Slovenia	83 234	8.20

Distribution

22. Given the total value of assets on the territory of the former SFRY and their current distribution, the net amount of property abroad and financial assets and liabilities receivable by each party in order to achieve a "fair" distribution (according to population) would be as follows:

Bosnia-Herzegovina: YD 110 630 million

Croatia: YD 67 870 million

FRY: YD -106 358 million

Macedonia: YD 61 331 million

Slovenia: YD - 14 335 million

23. Given that the total value of the liabilities amounts to only YD 44 521 million it will clearly not be possible to achieve full compensation using only financial assets and liabilities, since the negative balances due to the FRY and Slovenia far outweigh the total liabilities.

24. It is clear, therefore, that some balance will be required to be struck between the principle of proposing an equitable solution and the need for that solution to be practical and achievable. To seek to achieve full compensation would require the inclusion of further items into the division either by requiring the physical transfer of movable assets on the territory of the former Yugoslavia, or by demanding further financial transfers between the Republics. However to insist upon this approach would be to risk making an impractical proposal which would have no realistic chance of implementation either voluntarily or through enforcement by the UNSC. Further it would mean placing too heavy a reliance on the exactness of the data on which the proposed division is based. Given the difficulties inherent in a data collection exercise on this scale, compounded by the lack of cooperation by the FRY in the collection of data and the methodological problems involved in placing a financial value on military items in particular, this would be unwise. The figures are the best estimates which are available, but they are, after all, only estimates. Furthermore, given that the imbalance is primarily the result of the FRY possessing the vast majority of movable military items, this question will eventually be addressed in the context of new security arrangements for the Balkans when a comprehensive peace settlement is finally made.

25. Rather, it would be more appropriate to take a more pragmatic attitude and accept the fact that fairness has become a much attenuated concept in the Yugoslav conflict. The proposed solution for assets and liabilities would therefore aim to find each successor state's "pain threshold" and identify a least-bad distribution which could be acceptable to all the parties.

26. The following tables propose a solution on this basis. It is assumed that the major burden of compensation should fall on the financial assets and liabilities, as these are the largest items. Property abroad is divided basically according to population, for reasons of its symbolic importance, relative immateriality and in view of the need to allow the successor states the means maintain international relations.

The Proposed DistributionFinancial Assets

27. Estimated Value: YD 161 409 million (US\$ 15 146 million)

	<u>%</u>	<u>Value</u>	<u>Population Share</u>
Division: B-H	45	72 634	18.96
Croatia	25	40 352	19.69
FRY	5	8 070	44.23
Macedonia	20	32 282	8.96
Slovenia	5	8 070	8.20

Liabilities

28. Estimated value: YD 44 521 million (US\$ 4 178 million)

	<u>%</u>	<u>Value</u>	<u>Population Share</u>
Division: B-H	0	0	18.96
Croatia	8	3 562	19.69
FRY	70	31 165	44.23
Macedonia	2	890	8.96
Slovenia	20	8 904	8.20

Property Abroad

29. Estimated value: YD 2 845 million (US\$ 267 million)

	<u>%</u>	<u>Value</u>	<u>Population Share</u>
Division: B-H	20	569	18.96
Croatia	20	569	19.69
FRY	40	1 138	44.23
Macedonia	10	285	8.96
Slovenia	10	285	8.20

Total Assets and Liabilities

30. The proposed division gives the following overall position. Net divergence indicates the degree to which this proposal would differ from full compensation.

Estimated Value: YD 1 015 050 million (US\$ 95 247 million).

	<u>Value</u>	<u>Net Divergence</u>
Division: B-H	73 203	-37 427
Croatia	37 359	-30 511
FRY	-21 957	+84 401
Macedonia	31 677	-29 654
Slovenia	-549	+13 786

090/2 ✓

CYZ 072 P1/8

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OUTGOING CODE CABLE

TO : STOLTENBERG, ICFY, GENEVA
FROM : GOULDING, UNATIONS, NEW YORK
DATE : 9 February 1994
NUMBER : 414
SUBJECT : ICFY Working Group on Succession issues:
letter from Slovenia

Please find enclosed the text of a letter by the Prime Minister of Slovenia and attached memorandum addressed to the Secretary-General which were received by this office on 7 February.

In view of the request contained in paragraph 5 of the letter and the forthcoming meeting of the ICFY Working Group on Succession issues, I should appreciate your suggestions regarding the tone and content of the Secretary-General's reply.

In addition, next week the Secretary-General is expected to meet Dr. Radoje Kontic, Prime Minister of the Federal Republic of Yugoslavia. In case you deem it appropriate for the Secretary-General to raise issues related to the Slovenian letter, I should appreciate it if your comments/suggestions could be forwarded to my office by Friday, 11 February.

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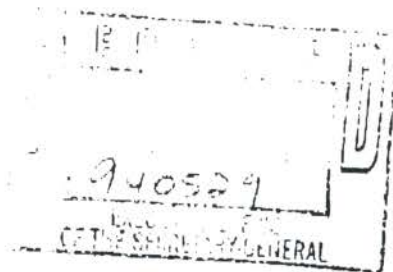
MacDonald
cc Mr [illegible]
CYZ 072 P2/8
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PERMANENT MISSION OF SLOVENIA TO THE UNITED NATIONS

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No.: N-022/94



The Permanent Mission of Slovenia to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to transmit, attached hereto, a letter from H.E. Dr. Janez Drnovšek, Prime Minister of the Republic of Slovenia, and a Memorandum regarding the course of negotiations on the succession of States within the framework of the International Conference on the Former Yugoslavia.

The Permanent Mission of Slovenia to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration. *Dr.*

New York, 4 February 1994



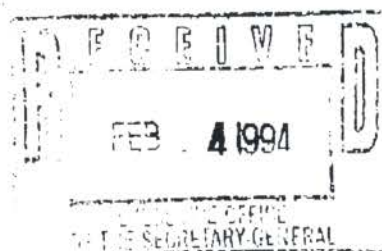
H.E. Dr. Boutros Boutros-Ghali
Secretary-General of the
United Nations

CYZ 012 P3/8

Prime Minister of the Republic of Slovenia

RL/013
LV

Ljubljana, 26 January 1994



Excellency,

Allow me to inform you about the course of negotiations concerning the resolution of the succession of the States issues within the framework of the International Conference on the Former Yugoslavia (ICFY).

Despite the efforts made by the Co-chairmen of the International Conference on the Former Yugoslavia and by some of the successor States to reach an overall equitable and just solution, the negotiations have come to a standstill.

The negotiations have been blocked owing to the non-cooperative attitude of the FRY (Serbia and Montenegro), which has been claiming for itself the right to be the sole successor State of the former SFRY.

On account of such a position, the Republic of Slovenia does not foresee the resolution to the succession of States issues in the near future. Pending the settlement of these issues, we are faced with the fact that one of the successor States, i.e. the FRY (Serbia and Montenegro), is the only State which holds in its possession, without the legal title, practically all the State property of the dissolved State of the SFRY, which should be subject to a just and equitable agreement reached by all the successor States.

H.E.

Mr. Boutros Boutros - Ghali
Secretary-General of the
United Nations
NEW YORK

CYZ 072 P4/8

Prime Minister of the Republic of Slovenia

In the light of the present situation, we respectfully request Your Excellency to strive for the continuation of negotiations within the framework of the Working Group on the Succession of States Issues of the ICFY. The agenda for the next meeting of this Working Group ought to be drawn up in such a manner as not to give an opportunity to the delegation of the PRY (Serbia and Montenegro) to repeatedly reopen the discussion on the definition of State property, which this delegation manipulates on the procedural and substantive grounds, thus impeding progress during the negotiations.

We respectfully request Your Excellency to endorse the ICFY in giving full opportunity to the cooperative States to reach an agreement or a series of agreements that would, as a whole, cover all the succession of States issues of the dissolved State of the SFRY.

The Republic of Slovenia is willing to accept peaceful means of the settlement of the succession of State's disputes, including an arbitration in case the successor States achieve such an agreement. However, we give the priority to the role of the Arbitration Commission as a body of the ICFY that has played a decisive role in searching the way to a just solution of the States succession issues.

Enclosed please find the Memorandum of the Republic of Slovenia concerning the succession of the States issues at the International Conference on the former Yugoslavia.

We thank you in advance for your understanding and cooperation.

Please accept, Excellency, the assurances of my highest consideration.



CYZ 072 P5/8

MEMORANDUM

The Government of the Republic of Slovenia notes with serious concern that the negotiations between the successor States to the former SFRY within the Working Group on the Succession of States Issues of the International Conference on the Former Yugoslavia (ICFY) have been blocked and are hardly expected to be resumed with any success in the near future. The last meeting of this Working Group took place in Geneva between 27 - 29 September 1993, now under the guidance of its Chairman, Ambassador Alf Jönsson from Denmark. The Working Group failed to make any progress despite the fact that, on request of the Co-chairmen of the ICFY the Arbitration Commission, on 16 July and 13 August 1993, issued the Opinions No. 11-15 in order to clarify some concrete matters and thus to facilitate and speed up the negotiating process between the successor States to the former SFRY as equal partners in order to reach an overall equitable solution or partial solutions on equal terms with the same effect.

The main reason that the successor States to the former SFRY cannot reach any agreement on the succession of States issues lies in the position of the FRY (Serbia and Montenegro), which has been claiming for itself the position of the predecessor State and thus the sole and the exclusive legal successor to the former SFRY, while other successor States - Slovenia, Bosnia and Herzegovina, Croatia and Macedonia - have seceded from SFR Yugoslavia and are thus only obliged to share the liabilities of the predecessor State. This ill-fated stand-point of the FRY (Serbia and Montenegro), which has inter alia led to the acts and war of aggression against Slovenia, Bosnia and Herzegovina and Croatia, is contrary to the actual matter of facts, namely that the SFRY dissolved and ceased to exist. While the Arbitration Commission of the ICFY in its Opinion No. 1 of 29 November 1991 established that the former SFRY was in the process of dissolution, it concluded in its Opinion No. 8 of 4 July 1992 that this process was completed and that the former SFRY no longer existed. Accordingly, in its Opinion No. 9 the Arbitration Commission laid down the basic principles on the succession of States to the former SFRY, which are, among others, that new States have been created on the territory of the former SFRY and they are all successors to the predecessor State; the successor States

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CYZ 072 F6/8

must settle all aspects of succession by mutual agreement; in the resulting negotiations, the successor States must try to achieve an equitable solution on the basis of international law relating to the succession of States; full account must be taken of the principle of equality of rights and duties between the States in respect of international law. In its Opinion No. 10 the Arbitration Commission reiterated that the FRY (Serbia and Montenegro) was a new State which could not be considered the sole successor to the SFRY. The spirit of these Opinions was embodied in the Statement of Principles and Work Programme of the ICFY, as the joint body of the UN and the EU.

Meanwhile, the practice of States, as expressed through the work of the UN and the EU and their respective organs, confirmed the above stated facts. Namely, the Security Council of the UN in its resolution 757 of 20 May 1992 noted that the claim by the FRY (Serbia and Montenegro) to continue automatically the membership of the former SFRY in the UN was not generally accepted. In its resolution 777 of 19 September 1992, the Security Council considered that the State formerly known as the SFRY had ceased to exist and therefore recommended to the General Assembly that it decided that the FRY (Serbia and Montenegro) should apply for membership in the UN and that it should not participate in its work. The General Assembly of the UN agreed with the Security Council's recommendation by adopting its resolution 47/1. By the resolution 823 of 28 April 1993, basically the same recommendation was passed by the Security Council in respect of the non-participation of the FRY (Serbia and Montenegro) in the work of the Economic and Social Council, which was followed by the General Assembly adopting its resolution 47/229. Numerous specialized agencies adopted this practice, while some of them, like the IMF and the ICAO definitely decided that the membership of the former SFRY was terminated and that all its successor States must apply for the membership respectively.

The insistence of the FRY (Serbia and Montenegro) as regards its position of the predecessor State, while it holds in its possession without the legal title, practically all the State property, assets and archives of the former SFRY, including the military property, its stocks and weaponry used by the former People's National Army and its para-military formations against Bosnia and Herzegovina and Croatia, is a breach of its international legal obligation to negotiate in good faith on the succession of States matters and therefore an international delict that invokes the international responsibility of the FRY (Serbia and Montenegro) towards the Republic of Slovenia and other successor States to the former SFRY. This was also confirmed by the Arbitration Commission of the ICFY in its Opinion No. 12 of 16 July 1993.

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CYZ 072 P7/8

Consequently, the Arbitration Commission even noted that the refusal of one or more successor States concerned to cooperate gives title to other successor States to take counter-measures in accordance with international law.

According to the latest events, the FRY (Serbia and Montenegro) also misuses the impasse within the Working Group on the Succession of States Issues of the ICFY it had intentionally caused by its unwillingness to cooperate as an excuse not to grant to the National Archives of the Republic of Slovenia an unimpeded access to the Federal Archives of the former SFRY in Belgrade. This was a breach of the consensus that all successor States had free access to the former Federal Archives in Belgrade, which was reached within the Sub-group on Archives of the Economic Issues Working Group of the ICFY.

In order to prevent the continuation of this illegal situation as regards the State property, assets and archives of the former SFRY, which favours exclusively the wrongdoing successor State, namely FRY (Serbia and Montenegro), the Government of the Republic of Slovenia is of the opinion that the negotiations within the Working Group on the Succession of States Issues of the ICFY are to to be resumed as an urgent matter.

The agenda for the next meeting of this Working Group ought to be drawn up in such a manner as not to give an opportunity to the delegation of the FRY (Serbia and Montenegro) to repeatedly re-open the discussion on the definition of State property, which this delegation manipulates on the procedural and substantive ground with the sole purpose of preventing that any progress be made during the negotiations. Their view that the social property of the former SFRY corresponds to the definition of the State property has no basis in any legal reasoning as it was also established by the Arbitration Commission of the ICFY in its Opinion No. 14 of 13 August 1993.

The Government of the Republic of Slovenia therefore suggests the following Agenda :

1. Draft Agreement on the Distribution of the Property Abroad.
2. Distribution of State Archives (paper of four successor States of 10 March 1993).
3. Inventory (Agreed Items)-item by item approach.
4. Financial Assets.

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CYZ 072 P8/8.

Those successor States that are willing to cooperate must be given full opportunity to reach an agreement or a series of agreements that would, as a whole, cover all the succession of States issues of the former SFRY. The distribution of the property of the former State abroad and of the hard currency reserves could serve as suitable examples for such distribution, as they are under the jurisdiction of the third States. The member States of the UN and the EU as well as the main organs of these organizations should be expected to give full support to the recognition and execution of such agreements.

The Government of the Republic of Slovenia is convinced that the agreement(s) between the successor States to the former SFRY concerning the settlement of the succession of State issues on the terms of equality of all successor States is(are) one of the preconditions for the normalisation of future relations between these States. Therefore, the wilful non-cooperation of the FRY (Serbia and Montenegro) in the negotiations on State succession endangers the international peace and security too and must be taken into account by the Security Council of the UN as one of the reasons for the continuation of sanctions imposed against FRY (Serbia and Montenegro).

Finally, it should be stressed that the Government of Slovenia is willing to accept peaceful means of settlement of the succession of State's disputes, including an arbitration, should the successor States to the former SFRY so agree. However, we give the priority to the role of the Arbitration Commission as an organ of the ICFY, due to its efficiency, which is in the interest of those successor States that are willing to cooperate in order to reach the just solution.

Ljubljana, 26 January 1994