AY Bank Ltd v Bosnia & Herzegovina [2006] APP.L.R. 04/12

JUDGMENT : The Chancellor : Chancery Division. 12th April 2006

Introduction

1. On 5th March 1980 AY Bank Ltd ("the Bank") was incorporated in England under the Companies Acts 1948 to 1976 for the purpose of encouraging trade, finance and engaging in associated banking activities with the Socialist Federal Republic of Yugoslavia ("SFRY"). SFRY comprised six republics namely the republics of Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia. The central bank of SFRY was the National Bank of Yugoslavia ("NBY"). On various dates between 25th June 1991 and 5th April 1992 each republic, except those of Serbia and Montenegro, declared its independence from SFRY. On 27th April 1992 the Republics of Serbia and Montenegro together formed the Federal Republic of Yugoslavia ("FRY"). FRY set up its own central bank, originally also called the National Bank of Yugoslavia, now called the National Bank of Serbia ("NBS").

2. On 30th May 1992, 9th June 1998 and 19th June 1999 various sanctions were imposed on SFRY and its nationals by the United Nations, the United States of America and the European Union. The effect of such sanctions was to freeze assets of the Bank. On 25th June 1999 an administration order in respect of the Bank was made by Lloyd J for all four of the purposes prescribed by s.8(3) Insolvency Act 1986 but to no avail. On 23rd September 2003 Hart J discharged the administration order on condition that the Bank was put into creditors' voluntary liquidation. On 26th September 2003 the members of the Bank resolved that the Bank be wound up voluntarily on the ground that it could not by reason of its liabilities continue its business. Joint Liquidators were duly appointed.

3. At all material times there were a number of accounts with the Bank (a) in the name of 'the National Bank of Yugoslavia' ("the NBY Accounts"), (b) in the name of 'the Yugoslavian Embassy' ("the Embassy Accounts") and (c) a suspense account to which had been credited a number of sums in the name of the National Bank of Yugoslavia ("the Suspense Account"). At the commencement of the winding up of the Bank the aggregate credit balances, duly converted into sterling at the rates then prevailing, amounted to £9,491,018 in the case of the NBY Accounts, £933,525 in the case of the Embassy Accounts and £104,537 in the case of the Suspense Account. On 5th January 2006 the Joint Liquidators issued the originating application now before me seeking the directions of the court as to the identity of the persons to whom to pay dividends in respect of those accounts and in what proportions. The originating application was subsequently amended to seek directions regarding certain dealings on the NBY Accounts referred to as the 1993 and 1994 Set-Offs. To explain the need for these directions, the other applications now before me and the claims and contentions of the various parties it is necessary to consider a number of earlier events in some detail. They arise under the general headings of succession to the property of SFRY, transactions on the NBY Accounts, the claims of the parties and the further applications.

Succession to the property of SFRY

4. As I have already indicated in paragraph 1 above four of the six republics which made up SFRY declared their independence in the period 25th June 1991 to 5th April 1992. Initially the remaining two republics, namely those of Serbia and Montenegro, claimed that they were the successors under International Law to the property of SFRY, in effect, as the survivors of the six constituent republics. In due course that view was modified. It is now common ground that SFRY underwent a process known to Public International Lawyers as a *dismembratio* (or dismemberment, see Oppenheim International Law 9th Ed Vol. 1 pp 219-222) the consequence of which is that the former republics constituting SFRY are jointly the successors to its property.

5. There followed a number of international conferences which culminated in the Agreement on Succession Issues ("the ASI"). The ASI was concluded on 29th June 2001 between the five successor states of SFRY, namely Bosnia and Herzegovina, the republics of Croatia, Macedonia and Slovenia and FRY. The ASI was registered with the United Nations on 2nd June 2004 and came into force on that date. By then the constituent republics of FRY, namely, Serbia and Montenegro had united to form a single state of that name.

6. The ASI recognises that the five parties thereto *"being in sovereign equality [are] the five successor states to the former"* SFRY. It recites the need to resolve questions of state succession arising from the break-up of SFRY, the various negotiations which had taken place and the agreement reached on 10th April 2001 at a meeting held at the Bank for International Settlements concerning the distribution of the assets of the former SFRY. By article 1 SFRY was defined as *"the former Socialist Federal Republic of Yugoslavia"*. Article 3 contains a list of Annexes in which the subject matter of each annex is settled, Annex C being financial assets and liabilities. Articles 4, 5, 7 and 8 are, so far as relevant, in the following terms:

   "Article 4

   (1) A Standing Joint Committee of senior representatives of each successor state, who may be assisted by experts, is hereby established.

   (2) This Committee shall have as its principal tasks the monitoring of the effective implementation of this Agreement and serving as a forum in which issues arising in the course of its implementation may be discussed. The Committee may as necessary make appropriate recommendations to the Governments of the successor states.

   [(3) – (4)]

   Article 5

   (1) Differences which may arise over the interpretation and application of this Agreement shall, in the first place, be resolved in discussion among the States concerned.

   (2) If the differences cannot be resolved in such discussions within one month of the first communication in the discussion the States concerned shall either

(a) refer the matter to an independent person of their choice, with a view to obtaining a speedy and authoritative determination of the matter which shall be respected and which may, as appropriate, indicate specific time limits for actions to be taken; or

(b) refer the matter to the Standing Joint Committee established by Article 4 of this Agreement for resolution.

[(3) – (5)]

Article 7

This Agreement, together with any subsequent agreements called for in implementation of the Annexes to this Agreement, finally settles the mutual rights and obligations of the successor States in respect of succession issues covered by this Agreement. The fact that it does not deal with certain other non-succession matters is without prejudice to the rights and obligations of the States parties to this Agreement in relation to those other matters.

Article 8

Each successor State, on the basis of reciprocity, shall take the necessary measures in accordance with its internal law to ensure that the provisions of this Agreement are recognised and effective in its courts, administrative tribunals and agencies, and that the other successor States and their nationals have access to those courts, tribunals and agencies to secure the implementation of this Agreement."

7. Annex C is headed "Financial Assets and Liabilities". Article 1 states that the financial assets of SFRY comprise all its financial assets including in particular

"(b) accounts and other financial assets in the name of the National Bank of Yugoslavia;"

Article 5, so far as material, is in the following terms:

"(1) Foreign financial assets....whether held by SFRY or the National Bank of Yugoslavia directly or with foreign banks, Yugoslav joint venture banks and agencies of Yugoslav Banks abroad include the following:

[(i)]

(ii) foreign exchange accounts held at foreign commercial banks and valued on 31 March 2001 at $307.61 million;

(iii) foreign exchange accounts held at SFRY joint venture banks abroad and valued on 31 March 2001 at $645.55 million; and

[(iv)]

(2) The available foreign financial assets identified in paragraph (1) of this article shall be distributed according to the following proportions, which shall be applied to items (i), (ii), (iii) and (iv) separately:

Bosnia and Herzegovina	15.50%
Croatia	23.00%
Macedonia	7.50%
Slovenia	16.00%
Federal Republic of Yugoslavia	38.00%"

8. Article 6 constituted a committee for the distribution of the financial assets and liabilities of the former SFRY with a representative of each successor State. Such committee ("the Distribution Committee") was to arrange initial distributions. Its objective was to effect distributions as quickly as possible. It was required, among other functions, to "*verify, settle and effect distributions under Article 4 of this Annex*". Article 9 of and Appendix 1 to Annex C contained a Disclosure Authorisation whereby the successor States agreed that data on financial assets of the National Bank of Yugoslavia and SFRY held by foreign banks, financial institutions and other entities as they stood on 31st May 2001 should be made available to each successor State. Article 9(a) provided that each successor State would *"allow free access to and provide copies of such records and data requested by any successor State as are in its possession and relate to the SFRY's financial assets and liabilities. Accounts of the National Bank of Yugoslavia opened after the date on which UN Sanctions were first imposed [30th May 1992] are not subject to this disclosure requirement."*

9. In a witness statement made on 3rd April 2006 Mr Zdravko Rogic, the Republic of Croatia's representative on the Distribution Committee since its establishment, stated that it was NBS which originally provided the figure of $645.55m for the foreign exchange accounts held at SFRY joint venture banks abroad and valued on 31 March 2001 referred to in Article 5(1)(iii) of Annex C to the ASI. He also stated that NBS informed the Distribution Committee that of such foreign exchange assets the balances on the NBY accounts with the Bank came to $35,533,540.03. According to Mr Rogic the representative of Serbia and Montenegro later informed the Distribution Committee that the foreign exchange balances came to only $56,680,000 and the balance on the accounts of National Bank of Yugoslavia with the Bank was only $3m. Mr Rogic stated that between 2001 and 2004 attempts of the Distribution Committee to resolve these differences came to nothing because FRY would not agree. Accordingly by resolution no: 18 passed on 1st June 2004 the Distribution Committee referred the matter to the Standing Joint Committee established under Article 4 of the ASI for their guidance as to how to proceed. He concludes: *"Given the requirement of unanimity before the Standing Joint Committee can issue any opinion, it must be open to serious doubt whether any opinion will ever be given."*

By resolution no:22 of the Distribution Committee passed on 6th May 2005 it was agreed that "each successor state may submit statement of claim to AY Bank Limited London (in liquidation)". Proofs of debt were duly lodged with the Joint Liquidators to which I shall refer later.

Transactions on the National Bank of Yugoslavia's accounts with the Bank

10. The relevant transactions fall into three categories, namely (1) credits/debits to the NBY accounts after the formation of FRY and NBS on 27th April 1992, (2) debits to the NBY accounts arising from a set-off effected on 25th May 1993 ("the 1993 Set-Off") and (3) further debits to the NBY accounts arising from a further set-off effected on 18th July 1994 ("the 1994 Set-Off"). I will deal with each category in turn.

11. The transactions in the first category are described in the witness statement of Mr Dusan Lalic, the General Manager of the Legal Affairs Department of NBS, made on 15th March 2006. He alleges that the balances on the NBY Accounts as at the commencement of the winding up of the Bank on 26th September 2003 aggregating £9,491,018 represent deposits made by or on behalf of FRY on or after its creation on 27th April 1992, not SFRY which by then had ceased to exist. He avers that three of the accounts were opened after that date in the name of National Bank of Yugoslavia which at the time was the name of NBS. In addition he contends (paragraph 25) that with one immaterial exception *"each of the accounts in respect of which directions are sought was either overdrawn on a number of occasions or had a nil balance in the period between when the 1992/1993 sanctions were lifted against the FRY (i.e. 22nd November 1995) and when the 1998/1999 sanctions were imposed on the FRY. Furthermore my staff have told me (again based on information they have received from the liquidators) that after the dates on which each account was overdrawn, had a nil balance....very substantial credits and debits were made to each account in the period between 1996 and 1999. The funds credited to these accounts during this period can only have been credited for the benefit of FRY/NBS. They could not have been credited for the benefit of the SFRY. The SFRY did not exist by 1996, let alone 1999."*

12. Some such claims had been made in letters to the Joint Liquidators from NBS in March 2005. The Joint Liquidators considered supporting documentation produced by NBS but concluded, as stated in paragraph 9.11 of the witness statement of one of them, *"NBS relied upon deposit slips showing the roll-over of existing deposits in the name of NBY between 1996 and 1999 but I am not able to say that this documentation shows any "new" monies deposited to the NBY accounts after 30th May 1992 as opposed to the roll-over of existing deposits."*

13. Both the 1993 Set-Off and the 1994 Set-Off arose from a document dated 22nd December 1989 executed as a deed by NBY and addressed to the Bank. This document ("the Charge") comprises a request by NBY to the Bank

"to continue and/or grant banking facilities and/or accommodation to [blank]

as you may from time to time determine and in consideration of your so doing...you may hold any monies from time to time standing to my/our credit...together with all interest...thereon as security for and I/we hereby charge as beneficial owner by way of fixed charge such monies with the repayment of any indebtedness or ascertained or contingent liability whatsoever which have been or may be incurred by [blank]

to you."

It was provided that the security should be governed by, construed and take effect in accordance with English law. NBY thereby submitted to the exclusive jurisdiction of the English Courts.

14. The documents produced by the Joint Liquidators include a letter from the Bank to 'National Bank of Yugoslavia' dated 5th April 1993 asking for confirmation that certain fixed deposits of NBY with the Bank comprising DEM 17.8m and US$16m might be considered as pledged to the Bank as security for loans to certain named borrowers in the aggregate sum of US$28.7m. That letter was countersigned as confirmed on behalf of *'National Bank of Yugoslavia'*. On 30th April 1993 the Bank wrote to the Sanctions Emergency Unit of the Bank of England stating that in view of its refusal to consent to the reinstatement of a loan of US$3m to one of the debtors referred to in the letter of 5th April 2003 the Bank had demanded repayment. It went on to ask that in the event of the borrower defaulting it might debit the account of NBY in settlement of the loan. On 7th May 1993 an official in the Sanctions Emergency Unit gave permission "to debit NBY's accounts in your books with settlement of loans etc as and when required". By a letter dated 24th May 1993 the managing director of the Bank notified "Mr G.Djedovic/Mr Dj.Nicovic" of the "National Bank of Yugoslavia" that the accounts of the latter had been debited with the aggregate sum of US$ 2.9m. Plainly there is an issue whether the consent purportedly given on behalf of the National Bank of Yugoslavia by countersignature of the letter of 5th April 1993 was given with the authority of NBY. It is or appears to be common ground that NBY had ceased to exist at that date and NBS, then called National Bank of Yugoslavia, was a different legal person.

15. Similar transactions took place in 1994. They were preceded by a letter dated 6th October 1993 from Clifford Chance (then advising the Bank but now acting for Serbia and Montenegro) to the Bank suggesting that the best way to protect National Bank of Yugoslavia's deposits with the Bank against third party claims in the event of the restructuring of the debts of SFRY would be *"to convert the loans into what you refer to as fiduciary loans from NBY using the NBY deposits to fund the loans and thus removing both the loans and the corresponding amount of the deposits from your balance sheet."*

This letter was sent under cover of a letter dated 21st October 1993 from the Bank to NBS, then called the National Bank of Yugoslavia, proposing that the outstanding debts due to NBY *"is conducted from the NBY deposits with the AY Bank in accordance with our agreement of 05.04.03"*. The letter went on to explain: *"In the case of AY Bank and in accordance with the Third Party Agreement of 1989 and also your letter of 05.04.03, we would inform the Bank of*

England that we are unable to collect payments from parties liable and that we would charge your accounts, so that all the deposits and placements would pass into an off-balance position. NBY would have given us a written order that it agrees that we should continue monitoring the approved loans according to the Agreement of 05.04.03 as fiduciary loans. Using this procedure NBY funds would be completely secure regarding seizure."

16. A letter from the governor of NBS, purporting to be "the Governor of the National Bank of Yugoslavia", to the managing director of the Bank dated 20th May 1994 suggests that NBS agreed to that proposal. On 28th June 1994 the Bank wrote to the governor of NBS suggesting offsets of £20m for which the Bank had more than sufficient funds from NBY. On 30th June 1994 the Bank wrote again proposing placements to various named persons amounting to US$22.4m, £2.16m and DEM 9.75m to be off-set against deposits of NBY with the Bank aggregating DEM 19.11m and US$ 19.94m. They calculated that after that off-set NBY would have approximately US$4.5m and £0.43m still available. NBS agreed to these proposals by a letter dated 6th July 1994. On 14th July 1994 the Bank submitted revised proposals which NBS approved. The transactions were then effected. They gave rise to placements amounting to US$ 22.6m, £2.16m and DEM 9.8m which were off-set against the credits on the NBY Accounts with the Bank. Once again there would appear to be an issue whether the Bank was authorised to set-off the placements against the NBY deposits given that it only had the authority of NBS to do so.

17. NBS also relied on these transactions in support of its contention that the set-offs satisfied pro tanto the liability of the Bank to NBY at the time so that the balance at the date of the commencement of the winding up had to represent new money contributed by NBS. The Joint Liquidators state that they have seen no evidence to support this analysis and have been advised that the set-offs are valid.

The claims of the parties

18. Following the resolution of the Distribution Committee to which I referred in paragraph 9 above the parties duly submitted proofs of debt to the Joint Liquidators. By his order dated 30th March 2006 Etherton J directed the respondents to serve a notice on the Joint Liquidators stating (1) whether such respondent claimed an interest in the balance of £9,491,018 standing to the credit of the NBY accounts with the Bank at the commencement of the winding up, (2) whether such respondent challenged the effectiveness of the 1993 Set-Off and the 1994 Set-Off and (3) in each case setting out the basis on which they do so and what they allege the consequences to be for the manner in which the Joint Liquidators should deal with their proofs. In the light of both the proofs of debt and such notices as were served it is possible to state the relative position of the parties.

19. I start with FRY now Serbia and Montenegro. NBS submitted a proof of debt dated 15th November 2005. It claimed (1) the sum of £9,491,018.21 as funds placed with the Bank by the National Bank of FRY as at 1st June 2004 according to the statement of the Bank sent to NBS in May 2005 and/or (2) 38% of all available funds on accounts of National Bank of former Yugoslavia. In a covering letter dated 23rd November 2005 and their notices dated 30th March 2006 they explained the bases for doing so. Claim (1) is advanced by NBS on the footing that the whole of the balance of £9,491,018.21 represents monies it deposited after NBY ceased to exist which, in consequence, as it submits, are not subject to the ASI at all. Claim (2) is advanced on the alternative basis that the sum of £9,491,018.21 is subject to the provisions of the ASI and pursuant to Annex C Article 5(2) FRY is entitled to 38% of any available foreign exchange asset. Both NBS and FRY declare that they are neutral on the question whether the 1993 Set-Off and the 1994 Set-Off are valid.

20. Bosnia and Herzegovina submitted proofs through its central bank dated 25th April and 7th December 2005. In each case the proof was in the sum of US$ 5,507,698.70 and described as 15.50% of US$ 35,533,540.43. The latter sum is alleged to be the balance on the accounts of NBY with the Bank at March 31st 2001. The percentage is that prescribed by Annex C Article 5(2) of the ASI. The alleged balance on the account at 31st March 1991 is the amount given by NBS to the Distribution Committee to which Mr Rogic referred in his witness statement, see paragraph 9 above. Though joined as a party to the application Bosnia and Herzegovina have taken no part in these proceedings and so have not served any notice pursuant to the order of Etherton J made on 28th March 2006. Nevertheless it would appear from the suggestion that the debt due by the Bank is US$35.5m that Bosnia and Herzegovina seeks to challenge the validity of all movements on the NBY accounts, including the 1993 Set-Off and the 1994 Set-Off.

21. The Republic of Macedonia submitted a proof to the Joint Liquidators on 18th May 2005 in the sum of US$2,625,000 being 7.50% of US$ 35,000,000. The letter from the Advisor to the Governor of the National Bank of the Republic of Macedonia merely stated that *"According to the information that we have about these funds, the amount that shall be subject to division among the successor states of the former SFRY is US$ 35 million."*

The percentage is, of course, that prescribed by Annex C Article 5(2) to the ASI. In a letter to the solicitors for the Joint Liquidators from the Advisor to the Governor of the National Bank of the Republic of Macedonia dated 27th March 2006 they were advised that the Republic of Macedonia did not intend to serve any evidence or be represented at any hearing. It was explained that the Republic of Macedonia consented to the directions sought by the Joint Liquidators. It specifically confirmed its agreement with the views of the Joint Liquidators that the monies in the NBY accounts are all subject to the provisions of the ASI "as the NBY accounts and the balances therein all pre-date the ASI". The Advisor added: *"For the avoidance of any doubt, the position of the Republic of Macedonia stated above does not exclude its valid and proportional claim over the funds of the former NBY with AY Bank Limited that were set-off in 1993 and 1994 for the benefit of the Serbian entities and we will pursue with our activities regarding this issue through the Standing Joint Committee of the Successor States."*

22. The Republic of Slovenia submitted a proof of debt dated 20th May 2005 for 16% of US$ 35,452,276. The percentage is that for which Annex C Article 5(2) of ASI provides, the form of proof specifies the sum to which it is to be applied as that standing to the credit of Account 22530999. In its notice served pursuant to the order of Etherton J on 30th March 2006 the Republic of Slovenia advanced three alternative claims. First it disputed the validity of the 1993 Set-Off and the 1994 Set-Off on the grounds that NBY had ceased to exist and NBS had no authority to dispose of any assets of NBY. It contended that NBS did not introduce any new money and insofar as it introduced any money at all into the NBY accounts it represented succession assets subject to the provisions of the ASI. In those events it claimed an interest in the sum of £9,491,018 as prescribed by the ASI on the footing that Serbia and Montenegro had already received the amounts of the set-offs. Second it claimed that if the set-offs were to be treated as valid the amounts thereof must be brought into account pursuant to the ASI and debited to any entitlement of Serbia and Montenegro. Third, it submitted that if these issues or any of them were found to be non-justiciable then all deposits should be retained and disposed of as directed by the Standing Joint Committee.

23. The Republic of Croatia submitted proofs of debt on 18th May and 10th November 2005 in the sum of US$8,172,714.21 being 23% of US$ 35,533,540.03. The covering letter sent to the Joint Liquidators dated 18th May 2005 explained that the figure of US$35,533,540.03 was that presented to the successor States during the Vienna negotiations on 16th May 2001 as being the balance due by the Bank to SFRY on 31st March 2001. The percentage is that authorised by Article 5(2) Annex C to the ASI. In its notice served pursuant to paragraph 7 of the order of Etherton J made on 28th March 2006 the Republic of Croatia disputed the validity of both the 1993 Set-Off and the 1994 Set-Off on the ground that whoever appeared to authorise the relevant transactions, namely NBS, had no right to do so on behalf of either SFRY, NBY or the successor States collectively. The Republic of Croatia contends that when those transactions are reversed the relevant balance on the accounts of NBY is increased to the figure of which it claims 23%. The Republic of Croatia then submits that the amount of the set-offs are moneys misapplied by Serbia and Montenegro so that either those sums must be brought into account in determining the amount of the balance on the NBY accounts or Serbia and Montenegro as the recipients of those moneys must be treated as having received them on account of their entitlement to receive 38% of the available foreign exchange assets.

24. In addition to considering the claims of the parties to the application of the Joint Liquidators it is also necessary to have regard to the other claims in the liquidation and the assets available for distribution to unsecured creditors. On the assumption that the liability in respect of the NBY accounts is £9.5m then the current estimate of the claims of all unsecured creditors is £36m. The Joint Liquidators have already made an interim distribution to unsecured creditors of £4.7m. The assets available for future distribution to them is estimated to be £29.336m but only £10m is now held by the Joint Liquidators.

The Applications

25. The application of the Joint Liquidators originally sought directions on the footing that both the 1993 Set-Off and the 1994 Set-Off were valid. They asked the court to permit them (1) to admit proofs from the five successor States on the basis that the total debt was £9,491,018.20 and each of them was entitled to prove for that percentage of the total debt as Article 5(2) of Annex C to the ASI prescribed; (2) to reject the proofs in excess of those amounts and (3) to treat proofs in respect of the Embassy and Suspense accounts in the same manner.

26. On 15th March 2006 Mr Dusan Lalic made a witness statement on behalf of Serbia and Montenegro. He made the claims to which I have referred in paragraph 11 above. In response to those claims on 26th March 2006 the Republic of Slovenia issued an application against Serbia and Montenegro seeking an order for standard disclosure. The application was supported by a witness statement of the solicitor acting for the Republic of Slovenia pointing out that Mr Lalic had produced no underlying banking documents to support his contentions. He suggested that disclosure was required in relation to (1) the amounts of US$645.55m and US$ 35,533,540 and the further figures of US$56,677,189 and US$3m to which I have referred in paragraph 9 above; (2) the 'new money' referred to in paragraphs 10 and 11 above; (3) the accounts of NBY and NBS.

27. On 23rd March 2006 the solicitors for Serbia and Montenegro wrote to those acting for the other parties to the Joint Liquidators' application suggesting, for the first time, that the matters raised by the Joint Liquidators are not justiciable before the English Court. On 27th March 2006 solicitors for the Republic of Croatia sought disclosure from the Joint Liquidators. On 28th March 2006 such solicitors also sought disclosure from Serbia and Montenegro and NBS.

28. By his order made on 28th March 2006 Etherton J directed Serbia and Montenegro to issue an application seeking the directions of the court in relation to the issues which it contended were not justiciable. By the same order he authorised the joinder of NBS and allowed the Joint Liquidators to amend their application so as to seek directions regarding the set-offs.

29. The application directed by Etherton J was duly issued by Serbia and Montenegro on 29th March 2006. It claims that 14 specified issues arise from the Joint Liquidators' application and are non-justiciable. The fourteen issues are grouped into four classes. The first class relates to the seven NBY accounts, the second to the Suspense Account, the third to the Embassy Accounts and the fourth to the validity of the 1993 Set-Off or the 1994 Set-Off. In each case the essence of the contention is that the issue is not justiciable because it necessarily involves the interpretation and/or enforcement of the ASI. It is sufficient, at this stage, to refer to the first three issues relating to the NBY Accounts. It is suggested that this court should not adjudicate on whether the credit balance on the NBY accounts of £9.5m is subject to the ASI and if so whether it should be divided in the proportions set out in Article

5(2) of Annex C or in the same relative proportions on the assumption that Serbia and Montenegro is to be treated being excluded or fully paid.

30. Accordingly the issues for my determination are (1) whether all or any of the issues raised by the application of the Joint Liquidators are justiciable in this court and to the extent that any of them are justiciable (2) what directions, including disclosure, should be given to enable them to be determined. It is clear that I cannot at this stage give any of the directions the Joint Liquidators specifically sought in their application.

Justiciability

31. Many matters were not disputed. Thus there is no suggestion that these proceedings are non-justiciable because the respondents, as foreign sovereign states, have interests, in the broadest sense, in the assets available for distribution to the unsecured creditors, including themselves, of the Bank. First, these proceedings clearly fall within the scope of s.6(3) State Immunity Act 1978. Second, at least Serbia and Montenegro and the Republics of Croatia and Slovenia have submitted to the jurisdiction of this court for the purposes of s.2 State Immunity Act 1978. Nor are the general principles, as exemplified in the decisions of the House of Lords in ***Buttes Gas v Hammer*** [1982] AC 888 and ***JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry*** [1990] 2 AC 418, in doubt. What is in dispute is the extent to which those principles apply to issues arising in the liquidation of the Bank as identified in the Joint Liquidators' application and the ambit of any exceptions to such principles.

32. Thus the courts in England will not adjudicate upon the transactions of foreign sovereign states. Such impediment arises from a number of considerations, namely the principles of law applicable to such transactions is not the domestic law (including private international law) of England, the courts in England could not compel observance of their orders outside England and any attempt to do so might cause embarrassment to the United Kingdom in the conduct of its foreign affairs. The impediment arises from judicial self-restraint and is a principle of English law, see per Lord Wilberforce in ***Buttes Gas v Hammer*** [1982] AC 888, pages 931-933 and 938.

33. Similarly the courts in England have no power to interpret or enforce treaties between foreign sovereign states which have not been incorporated into the domestic law of England. Such a treaty is governed by public international law which, alone, determines its validity, interpretation and enforcement, see per Lords Templeman and Oliver of Aylmerton in ***JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry*** [1990] 2 AC 418, at pages 476/7, 480 and 499/500. Lord Oliver of Aylmerton recognised that there are exceptions to that principle. He added at page 500: *"It must be borne in mind, furthermore, that the conclusion of an international treaty and its terms are as much matters of fact as any other fact. That a treaty may be referred to where it is necessary to do so as part of the factual background against which a particular issue arises may seem a statement of the obvious. But it is, I think, necessary to stress that the purpose for which such reference can legitimately be made is purely an evidential one. Which states have become parties to a treaty and when and what the terms of the treaty are questions of fact. The legal results which flow from it in international law, whether between the parties inter se or between the parties or any of them and outsiders are not and they are not justiciable by municipal courts."*

34. The latter principle was applied by Colman J in ***Westland's Helicopters Ltd v Arab Organisation for Industrialisation*** [1995] QB 282. In that case Westland's sought to enforce an international arbitration award it had obtained against the defendant by garnishee of bank balances in London due to the latter. An Egyptian organisation claiming to be the defendant intervened seeking to oppose the application. Its claim was rejected. After referring to the passage from the speech of Lord Oliver which I have quoted in paragraph 33 above Colman J said (at page 294): *"It is the logical consequence of this principle that it is not open to the English courts to determine whether a foreign sovereign state has broken a treaty or effectively terminated it: see* ***British Airways Board v. Laker Airways Ltd.*** *[1985] A.C. 58, 85-86, per Lord Diplock. It follows that any attempt by the courts of this country to determine in these proceedings whether there has been a breach of the treaty either by the three Gulf states or by Egypt would be quite contrary to the principle of non-justiciability. It would involve not only a domestic court passing judgment on the validity of the acts of a foreign sovereign state but also doing so in circumstances where the result of that determination would be to affect the rights to the bank deposits of an international organisation which was the product of the treaty in question. Inasmuch as such determination would directly affect the rights of the international organisation to those assets, it would indirectly affect the sovereign states which were members of it. Comity precludes any such determination."*

35. Counsel for Serbia and Montenegro relies on these principles in support of his contention that each of the 14 issues identified in his clients' application is non-justiciable. He submits that the ASI is a treaty made between foreign sovereign states, it has not been incorporated into English domestic law and issues which arise in the liquidation of the Bank necessarily involve the interpretation and enforcement of the ASI. In addition he contends that the deliberations of the Standing Joint Committee and of the Distribution Committee established pursuant to the provisions of the ASI constitute transactions of foreign sovereign states on which the courts in England are not entitled to adjudicate and with which they may not interfere. He does not suggest that the movements on the NBY accounts which have given rise to the allegations that the balance at the date of the liquidation of the Bank belong to Serbia and Montenegro or that both the 1993 Set-Off and the 1994 Set-Off are invalid are not justiciable in the sense that the court in England is unable to investigate what occurred and determine its effect in English law.

36. The specific respects in which he contends that these principles would be infringed arise from the terms of Articles 1(b), 5(1)(iii) and 5(2) of Annex C which I have quoted in paragraph 7 above. He submits that the issues involve identifying "the accounts and other financial assets in the name of NBY" for the purposes of Article 1(b), in particular those embraced in the description of "foreign exchange accounts held at SFRY joint venture banks

abroad" contained in Article 5(1)(iii), in order to apply the percentages provided for in Article 5(2) to "the available foreign financial assets". He points out that the parties are not agreed on these matters because four of the five successor states seek to challenge the validity of the set-offs and thereby to increase the quantum of the debt due by the Bank to US$35m. Nor are they agreed as to the date of the *dismembratio* which will determine the date as of which the operation of the NBY accounts might have been effected without authority and subsequent credits might have represented 'new money'. He submits that all these matters involve the interpretation, application and enforcement of the ASI.

37. In addition he contends that these issues are matters for the Standing Joint Committee and the Distribution Committee constituted by and in accordance with the ASI whose deliberations are not complete and by themselves constitute transactions between foreign sovereign states. He suggests that the court in England has no alternative to preserving the assets available for distribution in respect of the balance due by the Bank to NBY to await the decisions of those committees. Such a course would, he submits, be consistent with the decisions of the Supreme Court of Austria in ***Republic of Croatia v Girocredit Bank AG der Sparkassen*** (1997) 36 ILM 1520 and the French Supreme Court in ***Federal Republic of Yugoslavia v Banque Commerciale pour L'Europe du Nord,*** each of which was decided before the conclusion of the ASI. He recognises that acceptance of his submissions is likely to mean that distributions to other creditors will be delayed for an indeterminate period and expressed his sympathy for their plight.

38. These submissions are disputed by counsel for the Republic of Croatia. He contended that on examination the issues can be seen to relate to rights under private law to prove in the liquidation of the Bank. Such rights are situate in England and are unaffected by principles of International Law, see ***Re Russian Bank for Foreign Trade*** [1933] 1 Ch. 745, 767. Similarly, he contended, the right to the debt continues notwithstanding the winding up of the Bank, ***Re Rafidain Bank*** [1992] BCC 376. He submitted that the issues arise under two heads, namely the size of the debt to be admitted to proof and the proportions in which it is to be divided between the States successor to NBY. He suggested that the 'new money' point goes to both, the set-off issues to the first and the accountability of Serbia and Montenegro for the amounts of the set-offs to the second. None of them, he submitted, involved the interpretation or enforcement as between successor States, as opposed to recognition and implementation as between successor States and the Bank, of the ASI or intervention in the transactions of the Standing Joint Committee or Distribution Committee. He pointed out that Serbia and Montenegro do not challenge the right of the Joint Liquidators to seek directions or to administer the funds under their control. He likened their submissions to a dog in the manger: either distribute it all to us or do not distribute any of it to anyone.

39. Counsel for Croatia subjected both set-offs to a penetrating analysis in the light of the documentary evidence now available. He contended that in each case the issue depended on whether the person apparently consenting to the relevant debits on behalf of NBY had the authority of NBY to do so. Similarly, in the case of the contention of Serbia and Montenegro that the balance of £9.5m due at the commencement of the winding up of the Bank was due to them because it represented new money put into the accounts of NBY after it had ceased to exist, the resolution of the issue does not depend on the interpretation or enforcement of the ASI. Further, as he submitted, the issue whether Serbia and Montenegro are to be treated as having been paid their share is independent of any issue arising under the ASI. He submitted that the question of authority was one of English law, including private international law; the issue of new money depended on an application of the rule in ***Clayton's Case*** and associated principles of English law; and the liability of Serbia and Montenegro to bring the amounts of the set-offs into account a question of equitable accounting under English law as exemplified in ***Cherry v Boultbee*** (1839) 4 My & Cr. 442 and ***Selangor United Rubber Estates Ltd v Cradock*** [1969] 1 WLR 1773.

40. If for any reason these submissions were not acceptable then he contended that the principles on which counsel for Serbia and Montenegro relied admit of exceptions one or more of which are applicable in this case. The exceptions on which he relied were (1) compliance by the United Kingdom with obligations imposed by a resolution of the Security Council Resolution, (2) the consent of all parties concerned and (3) the enforcement of private rights for which the interpretation of an international treaty is incidental but necessary.

41. That the principle of ***Buttes Gas v Hammer*** [1982] AC 888 admits of exceptions was recognised by Lord Oliver of Aylmerton in the passage from his speech in ***JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry*** [1990] 2 AC 418, to which I have referred in paragraph 33 above. Lord Steyn in ***Kuwait Airways Corpn v Iraqi Airways Co*** (Nos 4 and 5) [2002] 2 AC 883, 1101 considered that the principle was not "a categorical rule". In ***R v Prime Minister of the United Kingdom, ex parte Campaign for Nuclear Disarmament*** [2002] EWHC 2777 the Administrative Court was concerned with a claim to a declaration that in the light of the terms of one resolution of the Security Council of the United Nations it would be in breach of international law to take military action against Iraq otherwise than as expressly sanctioned by another. In paragraph 35 Simon Brown LJ referred to *"...the court's [lack of] jurisdiction to rule on matters of international law unless in some way they are properly related to the court's determination of some domestic law right or interest."*

In that connection he observed in paragraph 36: *"Should the court declare the meaning of an international instrument operating purely on the plane of international law? In my judgment the answer is plainly no. All of the cases relied upon by the applicants in which the court has pronounced upon some issue of international law are cases where it has been necessary to do so in order to determine rights and obligations under domestic law.....As Mr Sales points out, there is in the present case no point of reference in domestic law to which the international law issue can be*

said to go; there is nothing here susceptible of challenge in the way of the determination of rights, interests or duties under domestic law to draw the court into the field of international law."

As he pointed out at paragraph 37 all that was sought in that case was a ruling on the interpretation of an international instrument "no more and no less". In the same case Richards J recognised at paragraph 61(iii) that *"....situations arise where the national courts have to adjudicate upon the interpretation of international treaties e.g. in determining private rights and obligations under domestic law..."*

He also envisaged that there may be other exceptional cases where the court can properly rule on the interpretation of an international instrument.

42. In ***Republic of Ecuador v Occidental Exploration and Production Co*** [2006] 2 WLR 70 the claimant, the Republic of Ecuador and the defendant Occidental Exploration submitted to an UNCITRAL arbitration a dispute regarding the refund of value added tax arising under a bilateral investment treaty between the Republic of Ecuador and the United States of America. The arbitrators found for Occidental on all issues but one. The Republic of Ecuador sought to have the award set aside pursuant to s.67 Arbitration Act 1996. Occidental claimed, inter alia, that the court had no jurisdiction to entertain the matter as the claim required the court to interpret the provisions of the bilateral investment treaty between the United States and the Republic of Ecuador which was non-justiciable under English law. Aikens J rejected this contention. He considered (paragraph 77) that the court is "entitled to do so if it must in order to determine the domestic law right of Ecuador to challenge the jurisdictional ruling of the arbitral tribunal". The Court of Appeal took the same view. Mance LJ giving the judgment of the Court noted at paragraph 31 that *"English Courts are not therefore wholly precluded from interpreting or having regard to the provisions of unincorporated treaties. Context is always important."*

43. Mance LJ proceeded to consider aspects of the exceptions. At paragraph 31 he indicated that the question was whether in that case "*there is a sufficient foothold of the nature contemplated by*" Simon Brown LJ in ***R v Prime Minister of the United Kingdom, ex parte Campaign for Nuclear Disarmament*** [2002] EWHC 2777. In that connection the court had regard to the special character of the bilateral investment treaty and the agreement to arbitrate. In paragraph 47 he concluded: *"..we consider that the fact that the states party to the treaty deliberately chose to provide for a mechanism for dispute resolution which invokes consensual arbitration, with its domestic legal connotations, is a factor which should make the English court hesitate long about subjecting such arbitration proceedings to special principles of judicial restraint developed in relation to international transactions or treaties lacking any foundation or incorporation in domestic law."*

Finally at paragraph 57 he observed: *"We accept that the English principle of non-justiciability cannot, if it applies, be ousted by consent. We are however concerned with issues regarding its proper scope and interpretation in a novel context."*

44. Before reaching any conclusion on these matters I should refer to the position of the other parties. Bosnia and Herzegovina and the Republic of Macedonia have taken no part in the proceedings but each submitted proofs of debt which necessarily involved disputing the new money claims of Serbia and Montenegro and challenging the validity of both set-offs. The Republic of Slovenia took part in these proceedings. Its position was that if the matters in dispute were not justiciable then the liquidators should be directed to retain the assets available for distribution until such time as the Standing Joint Committee or the Distribution Committee determined to whom they should be distributed. If they are justiciable then proper opportunity should be given to enable the parties to present their cases. The Joint Liquidators are concerned to be directed what to do but, in effect, supported the submissions of the Republic of Croatia to the effect that the relevant issues are justiciable.

45. I propose to start by considering two of the suggested exceptions to the general principle. It was not disputed that the principle of non-justiciability does not apply where the United Kingdom is required to respect international obligations imposed by a resolution of the Security Council under Chapter VII of the UN Charter, see ***Kuwait Airways Corpn v Iraqi Airways Co*** (Nos 4 and 5) [2002] 2 AC 883 at pp.1080 and 1109 paras 23 and 141. The resolution on which the Republic of Croatia relies is UN Security Council Resolution 1022 of 22nd November 1995.

46. By paragraph 1 of that Resolution the Security Council suspended sanctions imposed by certain specified earlier resolutions. In paragraph 6 it decided that: *"the suspension or termination of obligations pursuant to this resolution is without prejudice to claims of successor States to the former Socialist Federal Republic of Yugoslavia with respect to funds and assets; stresses the need for the successor States to reach agreement on the distribution of funds and assets and the allocation of liabilities of the former Socialist Federal Republic of Yugoslavia; encourages all States to make provision under their national law for addressing competing claims of States, as well as claims of private parties affecting funds and assets; and further encourages States to take appropriate measures to facilitate the expeditious collection of any funds and assets by the appropriate parties and the resolution of claims related thereto."*

47. Counsel for Serbia and Montenegro submitted that such a resolution could not give rise to an exception to the general principle as it did not impose any relevant obligation on the United Kingdom. Counsel for the Republic of Croatia accepted that no obligation was imposed but submitted that the application of the principles of non-justiciability in the circumstances of this case would be inconsistent with the encouragement to the United Kingdom amongst other states to make provision for competing claims.

48. In my judgment Resolution 1022 cannot of itself provide an exception to the principle of non-justiciability. It imposes no obligation and was, to some extent, superseded by the entry into force of the ASI nine years later. But

whilst it may not constitute an exception I see no reason why it cannot form part of the "context" to which Mance LJ referred in ***Republic of Ecuador v Occidental Exploration and Production Co*** [2006] 2 WLR 70 at paragraph 31. As such it is a clear invitation to the domestic courts of all states to make provision under their domestic law for resolving competing claims between states and by or against states and third parties arising from the *dismembratio* of SFRY.

49. Counsel for the Republic of Croatia also suggested that consent of the relevant states to the adjudication of the English courts would preclude the application of the principle of non-justiciability. This was disputed by counsel for Serbia and Montenegro on the grounds that the principle is one of law and excludes the jurisdiction of the court; parties may not, he submitted, confer jurisdiction by consent. In paragraph 57 of the judgment of the Court in ***Republic of Ecuador v Occidental Exploration and Production Co*** [2006] 2 WLR 70 Mance LJ stated in terms that the principle if it applies cannot be excluded by consent. Counsel for the Republic of Croatia submitted that this statement is obiter and wrong.

50. It is not necessary in this case to reach any decision on this last submission for the plain fact is that the parties do not all consent to this court adjudicating on the issues which arise in this liquidation. It is plain from its application and submissions that Serbia and Montenegro oppose this court adjudicating on the matters at issue at least in those respects it has identified in its application. The alleged consent on which counsel for the Republic of Croatia relied arises from paragraph 14 of the witness statement of Mr Rogic. He suggested that Resolution no.22 passed by the Distribution Committee and the subsequent actions of all successor States in submitting proofs of debt to the Joint Liquidators necessarily constituted their consent to the resolution by the court in which the Bank is being wound up of all issues arising in respect of such proofs. This is not necessarily so. Other successor States, such as the Republics of Slovenia and Macedonia consider that the submission of proofs was a step necessary for the protection of their respective rights to participate in any distributions made by the Joint Liquidators in respect of the NBY accounts. Accordingly I reject the contention that the submission of proofs of debt in response to the resolution of the Distribution Committee is of itself sufficient to exclude the principle of non-justiciability. But that is not to say that such a resolution and consequent conduct cannot be an important part of the context to which Mance LJ referred. The ASI cannot have been intended to have effect only on the plane of International Law. Article 5 of Annex C is an essential element in a successor State's proof of title in domestic law to the percentage of a foreign exchange account in the name of NBY held at a SFRY joint venture bank abroad. If the relevant committee constituted under the ASI invites or directs successor States to submit proofs and they do so why should the domestic court be hampered in its ability to deal with disputes arising out of them?

51. I turn then to the third suggested exception, namely that the principle of non-justiciability has no application where the dispute involves the enforcement of private law rights. Counsel for Serbia and Montenegro submitted that there was no or no sufficient dispute as to private rights. He contended that the dispute was solely between sovereign states as to their respective rights under the ASI, that the ASI provided its own dispute resolution mechanism and that the rights of others are not affected. To deal with this submission it is necessary to consider in some detail what the nature of the underlying dispute is.

52. The relationship between the Bank and NBY was that of banker and customer. The balances standing to the credit of the NBY accounts were debts due by the Bank to NBY payable in accordance with the terms of the various accounts. They were and are situate in England. Whether or not they were regulated by English law the right to prove in the liquidation of the Bank arises under the domestic law of England and is situate in England. It is common ground that the *dismembratio* of SFRY caused it and NBY to cease to exist, the property rights of the latter vesting in the successor States. There is no dispute that there was a *dismembratio* but there may not be complete agreement as to when in the period 1991 to 1992 it occurred. It is by no means clear that it is necessary to fix the precise date, but if it is then that is a matter which this court is entitled to resolve, c.f. ***Somalia v Woodhouse Drake SA*** [1993] QB 54 and ***Sierra Leone Telecommunications Co Ltd v Barclays Bank plc*** [1998] 2 AER 821. Just as the court in England is entitled and bound, if it is relevant to do so, to determine when the death of a customer of a bank resident abroad occurred so it is entitled and bound to determine when the *dismembratio* was effective so as to terminate the authority of those who had formerly been entitled to operate the accounts. It is necessary to do so in order to ascertain the initial amount of the debt due by the Bank to NBY and whether subsequent transactions on the NBY Accounts were effected with the authority of the customer.

53. Thus the amount of the debt due by the Bank to NBY was fixed at the time of its effective dissolution. If the effective dissolution was 30th June 1991 the balance was £15.7m, if it was 30th May 1992 the balance was £11.7m. The resolution of this issue has nothing to do with the ASI. Nor is it an issue of concern only to the successor states because the amount of the debt due by the Bank to NBY affects the amount of the dividend payable to other creditors. The subsequent transactions on the NBY Accounts include those on which Serbia and Montenegro rely and the 1993 Set-Off and the 1994 Set-Off. The question is whether those transactions were effected with the authority of the account-holder. That is a question of English law, including private international law. If they were then they were valid with the consequences which English law prescribes. If they were not then the debt due by the Bank in respect of the NBY accounts is greater than £9.5m, the balance as at the commencement of the liquidation of the Bank. All these issues go to the amount of the debt due by the Bank in respect of the NBY accounts. As such they plainly relate to private law rights affecting all creditors and are properly to be determined by this court. The ASI is irrelevant to any such determination.

54. At the time of the *dismembratio* the successor states became beneficially entitled to the benefit of the NBY balances. I have little doubt that if questions had arisen before the conclusion of the ASI the course the court in England would have taken would have been similar to that taken by the Austrian Supreme Court and the French Supreme Court in the cases to which I have referred in paragraph 37 above. But they did not. The conclusion of the ASI resolved the issue of the proportions in which the successor states are entitled to share in the debt due by the Bank to the former NBY. I do not accept that the resolution of the remaining issues involves the interpretation and enforcement of the ASI as between the successor states rather than its recognition and implementation as envisaged by the ASI itself and as encouraged by UN Security Council Resolution 1022.

55. Plainly the NBY accounts come within Articles 1(b) and 5(1)(iii) of Annex C to the ASI. Whether or not they were correctly valued as at 31st March 2001 cannot be relevant to an issue as between the Bank and any of the successor States. Article 5(2) declares the proportions in which the successor States are interested in the NBY balances whatever they may prove to be. There is no question in the proceedings with which I am concerned of seeking to vary the percentages of entitlement of successor States in assets to which it applies. Further if domestic courts are not entitled to recognise and implement the provisions of that paragraph then effect cannot be given to the evident purpose of the ASI, the resolution of the Distribution Committee and the UN Resolution 1022.

56. There remains the effect of the fact, if it be one, that the debits to the NBY accounts in consequence of the 1993 Set-Off and the 1994 Set-Off allegedly accrued to the benefit of Serbia and Montenegro. If those debits were unauthorised to that extent the debt due by the Bank to the former NBY is increased. It may be that the other successor States may have some claim against those responsible for the misapplication but that is not an issue in the liquidation of the Bank. Equally it may be that the principles of equitable accounting on which the Republic of Croatia relies can be applied so as to treat Serbia and Montenegro as having already received in the liquidation of the Bank that percentage of the debt due by the Bank to the former NBY the ASI prescribes to be due to Serbia and Montenegro. But if they do it will be by force of the rules of English law when applied to the operations on the accounts of NBY with the Bank, not by way of interpretation, enforcement or variation of the ASI or by intruding on the responsibilities of the two committees established thereunder.

57. The issues which affect the amount of the debt due by the Bank to the former NBY are issues of private law because they affect the rights of the Bank and other unsecured creditors. The other issues do not involve the interpretation or enforcement of the ASI or interference with the dispute resolution procedure set up by the ASI but the application of rules of English law, including where appropriate principles of private international law. It matters not whether it is described as an exception to the general principle of non-justiciability or, as I prefer, an example of an area to which such principle does not extend. Either way I conclude that the nature of the issues arising in the liquidation, the evident intention behind both the ASI and the UN Resolution all go to show that all such issues are justiciable in this court. No separate arguments were addressed to me concerning the Embassy and Suspense Accounts.

Conclusions

58. For all these reasons I will dismiss the application of Serbia and Montenegro. It is not suggested that I can, at this stage, give directions to the Joint Liquidators as sought in paragraph 13.2 of the second witness statement of Mr Willmont, one of the Joint Liquidators. What I can and should do is to give directions as to the future conduct of proceedings in the liquidation to enable the issues to be determined as economically, in terms of both time and money, as possible.

59. It will be necessary to define the issues by proper pleadings. Disclosure will be required from all parties in respect of the issues so defined. I consider that in view of its 'new money' claim Serbia and Montenegro should be in the position of claimants. They should serve particulars of claim setting out their case in its various alternative forms. The other successor states should then serve particulars of defence, jointly if they can agree, indicating the basis in which they dispute the claim and challenge the 1993 Set-Off and the 1994 Set-Off. Either the Joint Liquidators or a representative creditor will have to advance such contentions as are in the interests of unsecured creditors who are not successor States. Serbia and Montenegro are likely to wish to serve particulars of reply and defence to counterclaim too. I will hear further argument, if necessary, on the detail of these directions. In any event I invite counsel to agree a form of order to give effect to them with such additions and variations as may be agreed between them. In these circumstances it is not necessary to consider further the application for standard disclosure issued by the Republic of Slovenia.

60. In summary, I will:
(1) dismiss the application of Serbia and Montenegro,
(2) make no order on the application of the Republic of Slovenia,
(3) give directions for the future conduct of this matter as indicated in paragraph 59 above.

Miss Sonia Tolaney (instructed by Lovells) for the Applicant (by its Joint Liquidators)
Mr Richard Hacker QC (instructed by Latham & Watkins) for the 2nd Respondents
Dr Claudia Annacker (Austrian Rechtsanwalt) and Mr Adam Goodison (instructed by Clyde & Co.) for the 4th Respondents
Mr Malcolm Shaw QC and Mr David Alexander (instructed by Clifford Chance) for the 5th, 6th and 7th Respondents