PART I
A NEW APPROACH
CHAPTER 1
CONCEPTUALIZING THE LAW OF SUCCESSION

The story of state succession and commercial obligations is a story about globalization. As producers and consumers, we depend on each other to supply and demand goods, services and capital. Because of this worldwide interdependence, we are part of a common enterprise to manage the effects of state succession on international commercial arrangements. We share an interest in preventing state succession from disrupting international arrangements that allow us to cooperate with each other. We also share an interest in ensuring that whenever succession occurs, each participant in global commerce survives as a viable entity. The risks and costs of financial contagion and regional instabilities should a state, financial institution or large multinational corporation become insolvent are high. Consequently, in a succession, international decision makers tend to act in concert to protect commercial cooperation and to prevent the economic destruction of any participant. Such global decision making took place in recent successions—the Soviet Union, Yugoslavia, Czechoslovakia, Hong Kong, Macau and East Timor—and is likely to be repeated in future successions.

Succession occurs when a state fundamentally changes its structures of power and authority, and an authoritative international response is needed to manage disruptions to international arrangements that may result from that change. In the last two decades, several fundamental changes in the structures of power and authority of states have disrupted international commercial obligations and required an international response, such as the dissolution of the Socialist Federal Republic of Yugoslavia (the SFRY) in the 1990s and the “regime change” in the Republic of Iraq in 2003.

The question of how succession affects commercial obligations is, however, not new. For centuries, states have dissolved, unified,