The Apportionment of Public Debt and Assets during State Secession

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I. INTRODUCTION

This Essay focuses on how public debt and assets should be apportioned during state secession to achieve a quick, fair, and equitable result for both the seceding state and the parent state. This Essay analyzes the different approaches to the division of debt and assets and concludes that among the various approaches, the per capita basis approach is the most efficient and equitable. Specifically examined is how debt and asset apportionment should be applied if Quebec secedes from Canada. The feasibility of the different approaches of debt apportionment is studied using Canada’s public debt as a model, while the various assets present in Canada are utilized to analyze the apportionment of assets.
This Essay utilizes the Quebec/Canada situation as a springboard for the development of theories concerning the principles of international law that govern the apportionment of public debt and assets under state secession. Presently, there is no customary law concerning the apportionment of debt during state secession, and the acknowledged manner of asset apportionment during state secession is not an established, uniform practice under international law. Although international practice has developed some general principles which are codified in the 1983 Vienna Convention on Succession of States in Respect of State Property, Archives and Debits, the 1983 Vienna Convention was never ratified, and thus its rules are not binding.


2 See Sharon A. Williams, International Legal Effects of Secession by Quebec 43-44 (Background Studies of the York University Constitutional Reform Project Study No. 3, 1992); Desjardins & Gendron, supra note 1, at 26.

3 See Williams, supra note 2, at 44; Robert A. Young, The Secession of Quebec and the Future of Canada 110 (1995) [hereinafter Young, Secession of Quebec].

The word “secession” has replaced the word “succession” when referring to a formal withdrawal from a federation. See generally Young, supra; Marchildon & Maxwell, supra note 1; Allen Buchanan, Secession (1991); Desjardins & Gendron, supra note 1. Cf. United Nations Conference on Succession of States in Respect of State Property, Archives and Debts: Vienna, Mar. 1 - Apr. 8, 1993: 1 Official Records: Summary Records of the Plenary Meeting and of the Committee of the Whole, U.N. Doc. A/Conf.117/16 (1995); Okon Udokang, Succession of New States to International Treaties (1972); Daniel P. O’Connell, State Succession in Municipal Law and International Law (1967). “State secession” is defined as the “withdrawal from an existing state.” Buchanan, supra, at 22. The dictionary definition of the word “secession” is “the act or process of one person taking the place of another in the enjoyment of or liability for his rights or duties or both.” Webster’s Ninth New Collegiate Dictionary, supra, at 1178. The word “secession” describes taking control of territory by preventing the existing state from continuing to exert its state power in that territory, while the word “succession” describes when one state ceases to exist in a given territory and its place is taken by another state. See Buchanan, supra, at 10-11; Udokang, supra, at 106. The similarity between the use of the words “secession” and “succession” while discussing states explains the past, interchangeable use of the words. The current use of “secession” rather than “success-
Because international law is deficient in governing the apportionment of public debt and assets during state secession, this Essay examines the apportionment of public debt and assets in three previous sessions: Belgium's secession from the Netherlands in 1830, Norway's secession from Sweden in 1905, and Slovakia's secession from the Czech and Slovak Federal Republic in 1993. These three secessions most closely resemble Quebec's attempt to secede from Canada, though they do not provide directly comparable precedent. An examination of the apportionment approach for debt and assets utilized in these successful, peaceful secessions aids in the determination of which apportionment approach should be employed if Quebec secedes from Canada, and for peaceful secessions in general.

A. The Need for Standardization in the Apportionment of Public Debt and Assets During State Secessions

Since the apportionment of public debt and assets is considered one of the toughest and longest negotiation subjects during state secessions, 

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4 See generally Desjardins & Gendron, supra note 1, at 26 (noting that international law theories and proposals in this area are diverse and often contradictory).

5 See JONATHAN E. HELMREICH, BELGIUM AND EUROPE: A STUDY IN SMALL POWER DIPLOMACY 16 (1976).


8 See generally Desjardins & Gendron, supra note 1, at 26 (describing Quebec's attempted secession as being a unique and unprecedented situation).

9 See generally Robert A. Young, How Do Peaceful Secessions Happen?, 27 CAN. J. OF POL. SCI. 773, 774 (1994) (providing reasons that the study of peaceful secessions may be valuable in present cases) [hereinafter Young, How Do Peaceful Secessions Happen?].

10 See Paul Boothe et al., Dismantling Confederation: The Divisive Question of the National Debt, in CLOSING THE BOOKS: DIVIDING FEDERAL ASSETS AND DEBT IF CANADA BREAKS UP, supra note 1, at 27, 28; Desjardins & Gendron, supra note 1, at 17; Yvan Stringer, Sharing Modest Thoughts on How to Share an Immodest Debt, in CLOSING THE BOOKS: DIVIDING FEDERAL ASSETS AND DEBT IF CANADA BREAKS
it would be beneficial for a set of rules or guidelines for the apportionment of public debt and assets to be developed to achieve an easy and efficient settlement for all peaceful secessions. Currently in state secessions, both the seceding state and the parent state present different methods for apportioning public debt and assets. This approach produces a prolonged and costly debate concerning how to divide the debt and assets because each party proposes the method of apportionment most beneficial to its particular interests.

Extended bargaining over the apportionment of the public debt and assets could prove costly because cool-headed calculations may not be easily made during heated secession negotiations. A heated debate between the seceding state and the parent state over the apportionment of the public debt and assets could affect both states' international credibility rating. Additional activities hurt by a prolonged debate include future trade between the two states and the states' participation in financial markets. A quick agreement between the seceding state and the parent state on the apportionment of debt and assets is imperative to a smooth, peaceful, and inexpensive transition to independence. Furthermore, the

Up, supra note 1, at 56, 56; MARCEL CÔTÉ & DAVID JOHNSTON, IF QUÉBEC GOES . . . THE REAL COST OF SEPARATION 98-99 (1995); YOUNG, THE BREAKUP OF CZECHOSLOVAKIA, supra note 7, at 46-48. Cf. YOUNG, SECESSION OF QUEBEC, supra note 3, at 202, 219 (stating that this will be a difficult issue if Quebec secedes from Canada).

11 Cf. BOOKMAN, supra note 7, at 118 (arguing that numerous economic decisions need to be made and new legal institutions need to be created to support these decisions); Summary of Discussion, in 2 ECONOMIC DIMENSIONS OF CONSTITUTIONAL CHANGE 510, 511 (Robin W. Broadway et al. eds., 1991).

12 See John F. Chant, Dividing the Debt: Avoiding the Burden, in CLOSING THE BOOKS: DIVIDING FEDERAL ASSETS AND DEBT IF CANADA BREAKS UP, supra note 1, 84, 89; CÔTÉ & JOHNSTON, supra note 10, at 100.

13 See Chant, supra note 12, at 89; BOOKMAN, supra note 7, at 119-20. Desjardins & Gendron, supra note 1, at 17.

14 See generally Chant, supra note 12, at 87-90.


16 See Chant, supra note 12, at 87-88.

17 See id.; CÔTÉ & JOHNSTON, supra note 10, at 188; FREEMAN & GRADY, supra note 6, at 147.

international capital markets require a quick agreement on the apportionment of debt. Otherwise, the seceding state’s economic system would be strained by an increase of seceding transaction costs resulting from the seceding state’s uncertain economic situation. Specifically, the interest rates would rise quickly to prevent capital flight, investments would decline, and the stock market would falter.

To avoid costs caused by both states arguing over an acceptable method for the apportionment of public debt and assets, an outside party should develop an equitable standard for public debt and asset apportionment. Currently, there are four different approaches to apportion public debt and assets: the per capita approach, the gross domestic product approach, the historical benefits approach, and the historical tax shares approach. Each approach is based on a different rationale, and preference for one approach over another depends on the values or objectives of the individual parties. The four approaches are based on different ideologies and can lead to a wide variety of apportionment results. Thus, creating a new approach for public debt and asset apportionment is unnecessary. Determining the most acceptable apportionment approach is favored over creating a new approach.

Most past secessions are inadequate for developing a set of rules or guidelines for the peaceful apportionment of debt and assets because they usually resulted from conquests, armed conflicts, conveyances, or decolonizations. Examples include Bangladesh’s secession from Pakistan in 1971, Croatia’s secession from Yugoslavia in 1992, and Eritrea’s

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19 Cf. Young, Secession of Quebec, supra note 3, at 100; Pierre Fortin, The Threat of Quebec Sovereignty: Meaning, Likelihood and Economic Consequences, in 2 Economic Dimensions of Constitutional Change, supra note 11, at 335, 343.

20 Cf. Young, Secession of Quebec, supra note 3, at 100; Fortin, supra note 19, at 338.

21 See Young, Secession of Quebec, supra note 3, at 216; Boothe et al., supra note 10, at 28; McCallum, supra note 15, at viii; James E. Pesando, Comment, in 2 Economic Dimensions of Constitutional Change, supra note 11, at 489, 489; Boothe & Harris, supra note 18, at 454.

22 See Stringer, supra note 10, at 56.

23 See Desjardins & Gendron, supra note 1, at 6; Young, How Do Peaceful Secessions Happen?, supra note 9, at 776 (stating that “contested secessions are far more numerous than peaceful ones”).

24 See Harun-or-Rashid, Bangladesh: The First Successful Secessionist Movement in the Third World, in Secessionist Movements in Comparative Perspective 83, (Ralph R. Premdas et al. eds., 1990); Freeman & Grady, supra note 6, at 60; Lawrence S. Eastwood, Jr., Note, Secession: State Practice and International Law After the Dissolution of the Soviet Union and Yugoslavia, 3 Duke J. Comp. & Int’l L. 299, 310-13 (1993); see also Bookman, supra note 7, at 34 (explaining that the
secession from Ethiopia in 1993. In these secessions, military force determined the apportionment of public debt and assets between the seceding state and the parent state. The deluge of secessions in the 1990s requires the creation of a standardized approach for the apportionment of public debt and assets. Hopefully, the same approach developed for the apportionment of public debt and assets during peaceful secessions could be utilized to resolve apportionment issues in violent secessions.

B. Reasons for Applying Debt and Asset Apportionment Concepts to the Quebec/Canada Scenario

An analysis of Quebec's possible secession from Canada is particularly appropriate for determining the best approach for the apportionment of public debt and assets during peaceful secessions because results can be achieved without having to take into account the effect of military conflict. There is a consensus that if Quebec elects to secede, Canada would not use military force to block Quebec's secession.

The desire of many Quebecers to secede from Canada has been building for decades and will not disappear after this single vote against secession in 1996. With a record amount of over 92% of Quebec's eligible voters participating in the last referendum, 50.6% voted against

Bangladesh succession movement involved a violent transition with international intervention).

25 See BOOKMAN, supra note 7, at 33; see generally Eastwood, supra note 24, at 322-28.


27 See BOOKMAN, supra note 7, at 119 (noting that war and violence impact the distribution of debt).

28 See BOOKMAN, supra note 7, at 118; Marchildon & Maxwell, supra note 1, at 620-22; see also BOOKMAN, supra note 7, at 26-34 (including Slovakia, Eritrea, and all the countries emerging from the collapse of the Soviet Union and Yugoslavia).

29 See FREEMAN & GRADY, supra note 6, at 28, 206-07; YOUNG, SUCCESSION OF QUEBEC, supra note 3, at 4-5.

30 See FREEMAN & GRADY, supra note 6, at 206-07; Marchildon & Maxwell, supra note 1, at 621-22; PHILIP RESNICK, TOWARD A CANADA-QUEBEC UNION 57-58 (1991); YOUNG, SECESSION OF QUEBEC, supra note 3, at 4-5; BOOKMAN, supra note 7, at 32.

31 See FREEMAN & GRADY, supra note 6, at 1; Clyde H. Farnsworth, Quebec, by Razor-Thin Margin, Votes "No" on Leaving Canada, N.Y. TIMES, Oct. 31, 1995, at A1; Fortin, supra note 19, at 336.
secession while 49.4% voted for secession. The side voting against secession won by roughly 52,000 votes. This small margin of defeat has encouraged secessionists to believe that Quebec will secede from Canada in the near future. The main goal of Quebec's Premier, Jacques Parizeau, and his political Party, Parti Quebecois, which controls Quebec's National Assembly, is to have Quebec secede from Canada and become an independent country. In addition, there is a "near consensus among knowledgeable American diplomats that Quebec . . . eventually [will secede from Canada]." Consequently, it is likely that the establishment of a standard approach for the apportionment of the public debt and assets, in the event of a state secession by Quebec, will have to be determined sometime in Canada's future to make the transition as smooth as possible.

II. CURRENT INTERNATIONAL LAW ON DEBT AND ASSET APPORTIONMENT

Sources of international law on state secession are found in treaties, doctrines, and precedents. Nonetheless, international law does not have any set rules concerning the apportionment of debt and assets during state secessions, and international case law does not provide firm guidance on the peaceful apportionment of debt and assets during state secessions. Instead, there are contradictory theories on how to apportion the public debt and assets between the seceding state and the parent state.

32 See Farnsworth, supra note 31.
33 See Donald McKenzie, Voting-Fraud Charges Spark Inquiry: No-Side Backers Claim They Were Told to Reject Ballots if the Xs Were Too Dark or Too Light, WINDSOR STAR, November 8, 1995, at A12; Christopher S. Wren, Quebec Party Unlikely to Seek a New Sovereignty Vote Soon, N.Y. TIMES, Nov. 4, 1995, at §1, 9; Farnsworth, supra note 31.
34 See Farnsworth, supra note 31.
35 See FREEMAN & GRADY, supra note 6, at 11; CÔTÉ & JOHNSTON, supra note 10, at 214; Farnsworth, supra note 31.
36 LANSING LAMONT, BREAKUP: THE COMING END OF CANADA AND THE STAKES FOR AMERICA 244 (1994); see also YOUNG, SECESSION OF QUEBEC, supra note 3, at 120.
37 See Desjardins & Gendron, supra note 1, at 2; see also discussion supra part V (discussing precedents established by the state secessions of Belgium, Norway, and Slovakia).
38 See FREEMAN & GRADY, supra note 6, at 109.
39 See id. at 110.
40 See Desjardins & Gendron, supra note 1, at 26.
A. Debt

Although there is no agreement in international law on how to apportion the public debt during state secession, it is generally accepted that the seceding state should pay its fair share of the debt. However, it is also accepted that unless the seceding state voluntarily assumes its fair share of the debt, the creditors of the parent state do not have any claim against the seceding state to force repayment of the debt. There are no preemptory rules or uniform customs in international law that require the seceding state to be responsible for the public debt of the parent state.

The principle of privity of contract holds that contracts are only enforceable between the contracting parties. For example, since Canada is the party that entered into contracts with its creditors, Canada bears full legal responsibility for servicing those debts. "[I]nternational law would not transfer automatically to an independent Quebec any obligation toward Canada's creditors" because Quebec would not be directly liable to the creditors of Canada's public debt. If Quebec chooses to assume a portion of Canada's public debt, then Canada's creditors would have a right to collect from Quebec. The practice of preventing the parent state from forcing its debt obligations onto the seceding state was originally adopted in situations where the seceding state was a former colony of the parent state.

Although there is no uniformly accepted rule of international law which obligates the seceding state to pay a portion of the public debt, there is a tendency within current international law to require the seceding state to assume an equitable share of the public debt. When Singapore seceded from Malaysia in 1965 and Bangladesh seceded from Pakistan in

41 See Freeman & Grady, supra note 6, at 112; Williams, supra note 2, at 47; Finkelstein & Vehg, supra note 1, at 3-4.
42 See Freeman & Grady, supra note 6, at 112; Finkelstein & Vehg, supra note 1, at 64.
43 See Desjardins & Gendron, supra note 1 at 6; Williams, supra note 2, at 45-46; Young, Secession of Quebec, supra note 3, at 110 (1995).
44 See Desjardins & Gendron, supra note 1, at 10.
45 See Williams; supra note 2, at 46-47; Chant, supra note 12, at 88; Young, Secession of Quebec, supra note 3, at 110.
46 See McCallum, supra note 15, at vii.
47 See generally Desjardins & Gendron, supra note 1, at 9 (asserting that while there are no international rules or customs on point, it is the opinion of the authors that Quebec must first voluntarily assume the debt).
48 See id. at 19.
49 See id. at 19-21; McCallum, supra note 15, at vii-viii.
1971, both seceding states agreed to accept a portion of the public debt.\(^5\) This tendency is based on the theory that since the seceding state inherits assets financed by the public debt, it is wrong for the seceding state to be exempt from having to assume an equitable share of the public debt.\(^5\) Economic and political realities usually compel the seceding state to voluntarily assume its share of the public debt.\(^5\) For instance, when Ukraine seceded from the former Soviet Union, Ukraine initially refused to pay any part of the Soviet Union's outstanding debt.\(^5\) However, for four months no other country would loan money to Ukraine until it finally agreed to pay its share of the Soviet debt.\(^4\) As a result, a seceding state may desire to voluntarily assume a portion of the public debt to portray itself as a respectable borrower in international financial markets.\(^5\)

Although international legal convention currently favors the seceding state having to assume an equitable share of the public debt, there is no consensus on how to determine this equitable share.\(^5\) Presently, determining how to calculate an equitable share of the public debt is subject to considerable haggling which can harm both the seceding state and the parent state.\(^5\) Consequently, there is a need to establish an optimal approach for apportioning the public debt during state secession.

**B. Assets**

The seceding state’s right to possess all fixed assets located within its territorial borders is widely acknowledged, though it is not an established uniform criterion.\(^5\) All financial assets related to the seceding state’s territory or to the exercise of the state’s sovereignty are also under the state’s legal authority.\(^5\) There are no rules of international law pertaining to the apportionment of fixed assets which are located outside the seceding state and the parent state’s territory, such as embassies and

\(^{50}\) See Freeman & Grady, supra note 6, at 112.

\(^{51}\) See Desjardins & Gendron, supra note 1, at 20-21.

\(^{52}\) See id. at 10; McCallum, supra note 15, at viii-vii.

\(^{53}\) See Côté & Johnston, supra note 10, at 189; Bookman, supra note 7, at 121.

\(^{54}\) See Côté & Johnston, supra note 10, at 189; Bookman, supra note 7, at 121.

\(^{55}\) See Desjardins & Gendron, supra note 1, at 20.

\(^{56}\) See id. at 24. Cf. Freeman & Grady, supra note 6, at 53.

\(^{57}\) See Freeman & Grady, supra note 6, at 53; Chant, supra note 12, at 89.

\(^{58}\) See Desjardins & Gendron, supra note 1, at 11; Williams, supra note 2, at 44; Young, Succession of Quebec, supra note 3, at 110; Finkelstein & Vegh, supra note 1, at 58-59.

\(^{59}\) See Finkelstein & Vegh, supra note 1, at 58; Young, Secession of Quebec, supra note 3, at 110; Desjardins & Gendron, supra note 1, at 13.
consulates, except that these assets should be divided in an equitable manner. Following these principles, if Quebec secedes from Canada, Quebec would take ownership of Canada’s fixed assets situated in Quebec and Canada’s financial assets located or linked to Quebec’s sovereignty without compensating Canada. Canada would possess all fixed assets which remain within its borders and all financial assets which are under its control or not directly linked to Quebec.

III. 1983 VIENNA CONVENTION ON SUCCESSION OF STATE IN RESPECT OF STATE PROPERTY, ARCHIVES AND DEBTS

The Vienna Convention on Succession of States in Respect of State Property, Archives and Debts was created to codify the many general principles developed for the apportionment of public debt and assets during state secession. Although the Vienna Convention is not an authoritative source on the law of state secession, it represents the current trend in international law for the apportionment of public debt and assets during state secession.

A. Debt

The Vienna Convention imposes an obligation on the seceding state to assume an equitable portion of the parent state’s debt in the absence of any agreement between the two states concerning the apportionment of debt. The Vienna Convention does not provide guidance on how to determine this equitable proportion. The Vienna Convention also fails to address whether a creditor attempting to recover money owed to it for

60 See Desjardins & Gendron, supra note 1, at 12, 20-21; Freeman & Grady, supra note 6, at 111.
61 See McCallum, supra note 15, at vii; Freeman & Grady, supra note 6, at 1, 110-11; Finkelstein & Veh, supra note 1, at 3, 59.
62 See Williams, supra note 2, at 43-44; Young, Secession of Quebec, supra note 3, at 110; Desjardins & Gendron, supra note 1, at 12-14.
63 See Desjardins & Gendron, supra note 1, at 3.
64 See id. at 3; Williams, supra note 2, at 43-44; Young, Secession of Quebec, supra note 3, at 110.
65 See Desjardins & Gendron, supra note 1, at 3.
67 See Desjardins & Gendron, supra note 1, at 24.
debts contracted by the parent state would have a legal claim against the seceding state for money owed.\textsuperscript{68} The Vienna Convention obligates the seceding state to assume debts related to assets transferred to the seceding state and requires that the debt be divided in equitable proportion to the assets transferred.\textsuperscript{69}

B. Assets

The Vienna Convention states that all fixed assets located in the seceding state belong to the seceding state, all financial assets pertaining to or located in the territory of the seceding state belong to the seceding state, and all other financial assets pass to the seceding state in an equitable proportion.\textsuperscript{70} The Vienna Convention requires that state archives which are normally located in, or are directly related to, the territory of the seceding state belong to the seceding state.\textsuperscript{71} Furthermore, either state may have the right to receive copies of the other state's archives which are related to one's own archives, cultural heritage, or territory.\textsuperscript{72}

IV. APPROACHES TO THE APPORTIONMENT OF DEBT AND ASSETS

A. Debt

Depending upon which of the four approaches is used to decide the apportionment of debt, the amount of debt to be assumed by the seceding state can vary widely.\textsuperscript{73} For instance, if Quebec secedes from Canada, Quebec's share of the debt could range from one-sixth to one-third of Canada's public debt.\textsuperscript{74} Canada is among the world's most indebted countries with a debt of roughly $547.9 billion,\textsuperscript{75} making the difference

\textsuperscript{68} See id. at 6-7.
\textsuperscript{69} See id. at 17, 21.
\textsuperscript{70} Vienna Convention on Succession of States, supra note 66, art. 15; see also Desjardins & Gendron, supra note 1, at 5, 13.
\textsuperscript{71} Vienna Convention on Succession of States, supra note 66, art. 15.
\textsuperscript{72} Id.
\textsuperscript{73} See Chant, supra note 12, at 86 ("Quebec's share ranges from $68 billion (21 percent of the debt) under a modified Bélanger-Campeau approach to the $110 billion (30 percent) under the assumption that the debt should be divided according to historical benefits from Confederation.").
\textsuperscript{74} See McCallum, supra note 15, at viii; see also YOUNG, SECESSION OF QUEBEC, supra note 3, at 216 (estimating the range as between 18.50% and 32.03%).
\textsuperscript{75} See FREEMAN & GRADY, supra note 6, at 117; CÔTÉ & JOHNSTON, supra note 10, at 15, 90-91.
between the possible amounts of debt to be assumed by Quebec reaches $90 billion.\textsuperscript{76} Recognizing that there is no absolute rule in international law favoring one of the four apportionment approaches,\textsuperscript{77} this Essay examines all four: the per capita approach, the gross domestic product approach, the historical benefits approach, and the historical tax shares approach. The method, advantages, and disadvantages of each approach are illustrated through the employment of each approach in determining Quebec's share of Canada's public debt if Quebec secedes from Canada.

1. Per Capita Approach

Under the per capita approach, the public debt is divided on a per capita basis, meaning that the percentage of the debt to be paid by the seceding state is in direct proportion to the seceding state's population.\textsuperscript{78} Since Quebec's population is 25% of Canada's population, Quebec would be obligated to pay 25% of Canada's debt.\textsuperscript{79} The reasoning behind the per capita approach is that each person should assume an equal share of the public debt.\textsuperscript{80} Canada's public debt was accumulated by all Canadians, and the funds were spent by the Canadian government to benefit the entire country.\textsuperscript{81} Therefore, if Quebec decides to secede from Canada, then Quebec should take its fair share of Canada's debt in equal proportion.\textsuperscript{82}

The rationale supporting the per capita approach and the simplicity of the calculations required are the major benefits of this approach.\textsuperscript{83} Canada's public debt is divided by the total population of Canada, then multiplied by Quebec's population to determine Quebec's share of the

\textsuperscript{76} ($547.9 \text{ billion} \times \frac{1}{3})-($547.9 \text{ billion} \times \frac{1}{6}) = $91.3 \text{ billion}.

\textsuperscript{77} See CÔTÉ & JOHNSTON, supra note 10, at 100.

\textsuperscript{78} See YOUNG, SECESSION OF QUEBEC, supra note 3, at 216; FREEMAN & GRADY, supra 6, at 118.

\textsuperscript{79} See YOUNG, SECESSION OF QUEBEC, supra note 3, at 216; Boothe et al., supra note 10, at 51; FREEMAN & GRADY, supra note 6, at 46, 117 (calculating 24.9% as the exact figure); CÔTÉ & JOHNSTON, supra note 10, at 9; McCallum, supra note 15, at viii (calculating 25.4% as the exact figure); Daniel Drolet, The Quebec Referendum; The Facts Behind the Question; Contention, Controversy Awaits the Beginning of the Debate, OTTAWA CITIZEN, Dec. 10, 1994, at B3.

\textsuperscript{80} Boothe & Harris, supra note 18, at 454.

\textsuperscript{81} See YOUNG, SECESSION OF QUEBEC, supra note 3, at 216.

\textsuperscript{82} See id.

\textsuperscript{83} See Stringer, supra note 10, at 68; Ip & Robinson, supra note 15, at 77-78; YOUNG, SECESSION OF QUEBEC, supra note 3, at 216; FREEMAN & GRADY, supra note 6, at 118.
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public debt. For example, Canada's debt of $547.9 billion is divided by its population of 29.2 million people, multiplied by Quebec's population of 7.2 million, resulting in Quebec's share of the debt at $135.1 billion. This calculation is based on the simple concept of equity. The per capita approach is straightforward and easily understood, and thus the average citizen is likely to accept this basis for apportioning the public debt.

The only debatable issue is deciding when to take the measurement of Quebec's and Canada's population. Once Quebec announces that it will secede from Canada but before Quebec officially secedes, a large volume of migration activity between Quebec and the rest of Canada will occur. It is predicted that more people will leave than enter Quebec, hence there will be an inverse relationship between Quebec's share of the public debt and the amount of time that elapses before the population measurement is taken.

If the apportionment of debt is based on the population of Quebec and Canada at the time secession is decided, subsequent large population migrations from Quebec would drastically alter Quebec's debt to person ratio, thus preventing the attainment of the most equitable apportionment of debt at the time secession occurs. In this case, when Quebec officially secedes from Canada and receives its share of the public debt, Quebec would assume a larger percentage of the debt than its current population would dictate. Because Quebec would decide whether to secede by a vote of all Quebec citizens, it would seem appropriate to use the date of the vote for measuring the population because this is the day that the Quebec citizens choose to leave Canada and assume responsibility for their portion of the debt. Also, it is not pragmatic to base the apportionment of debt on the population of Quebec and Canada at the time secession officially occurs because the delay prevents a quick resolution

54 See Freeman & Grady, supra note 6, at 118.
55 ($547.9 billion [Canada's debt] / 29.2 million people [Canada's total population]) x (7.2 million people [Quebec's total population]) = $135.1 billion [Quebec's total share of the debt]. See id. at 46, 53, 117.
56 See id. at 118; Boothe & Harris, supra note 18, at 454-55.
57 See Stringer, supra note 10, at 68; Ip & Robinson, supra note 15, at 77-78.
58 See Boothe et al., supra note 10, at 55; Young, Secession of Quebec, supra note 3, at 216.
59 See Young, Secession of Quebec, supra note 3, at 216 (stating that people will emigrate from Quebec if they still wish to be citizens of Canada and vice-versa).
60 See id.
61 Boothe et al., supra note 10, at 55.
62 See id. at 33.
of the apportionment of debt. An approach which provides a quick and equitable apportionment of public debt is necessary for providing a smooth secession.

2. Gross Domestic Product Approach

Under the gross domestic product approach, the seceding state’s percentage of the value of all goods and services produced by the parent state’s economy is used to determine the seceding state’s share of the public debt. Specifically, Quebec’s share of Canada’s Gross Domestic Product is Quebec’s share of Canada’s debt. Quebec contributes 22.6% of Canada’s Gross Domestic Product, therefore, Quebec would be obligated to pay 22.6% of Canada’s debt. The gross domestic product approach is based on the theory that the amount of debt assumed by the seceding state should be directly related to the seceding state’s income. Therefore, the seceding state’s share of the debt is based on the seceding state’s ability to pay the debt. Accounting for the ability to pay ensures that the seceding state will not receive an unmanageable debt burden.

Quebec’s regional prosperity determines Quebec’s ability to pay. Hence, the Gross Domestic Product is calculated by averaging Quebec’s Gross Provincial Product, the figure used in determining regional prosperity, over eight years. The Gross Provincial Product does not include taxes. Quebec produced less federal tax revenues from its goods and services than it received in federal funds through revenue sharing. Thus, it is contested that Quebec should not continue to receive this benefit by only having to assume the percentage of the debt proportional

93 See Young, Secession of Quebec, supra note 3, at 216.
94 See id. at 100. Cf. Bookman, supra note 7, at 118 (arguing a set of guidelines for resolving problems will make secession easier).
95 See Boothe et al., supra note 10, at 33; Freeman & Grady, supra note 6, at 118-19; Young, Secession of Quebec, supra note 3, at 216.
96 See Young, Secession of Quebec, supra note 3, at 216.
97 See Freeman & Grady, supra note 6, at 47, 118-19; but see McCallum, supra note 15, at viii (showing Quebec’s portion of the GDP as 23.2%).
98 See Freeman & Grady, supra note 6, at 118.
99 See Young, Secession of Quebec, supra note 3, at 216.
100 See Boothe et al., supra note 10, at 54.
101 See id. at 33.
102 See id. at 33, 43 (using the years 1981 through 1989; the years between the two recent economic peaks).
103 See id. at 34.
104 See Freeman & Grady, supra note 6, at 119.
to Quebec's revenues, since Quebec received more in federal benefits. While the gross domestic product approach protects a seceding state from being forced to assume an unrealistic debt by basing the apportionment of debt on the seceding state's ability to pay, this approach ignores how much revenue has already been contributed toward paying off the debt.

3. Historical Benefits Approach

The historical benefits approach apportions the public debt by allocating debt shares based on past benefits received. The seceding state's share of the parent state's debt is based on the net benefits received by the seceding state while a part of the parent state. The more the seceding state benefits, the greater its share of the public debt. The reasoning behind this approach is that the seceding state should pay for the benefits it received for being a part of the parent state. The proportion of debt apportioned to the seceding state corresponds to the amount of federal money spent in the seceding state. The net benefit received by the seceding state is determined from all past federal spending to the seceding state and from all past federal withdrawals from the seceding state. The excess of federal expenditures over federal revenues for the seceding state is the net benefit received from the parent state.

Under the historical benefits approach, Canada's public debt is divided according to Quebec's share of net fiscal benefits starting from 1961. The year 1961 was chosen as a starting point for calculating Quebec's net benefits because that was the first year Canada started compiling provincial economic account statistics, and in 1961 Canada's

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105 See id.
106 See Boothe et al., supra note 10, at 54; see Young, Secession of Quebec, supra note 3, at 216.
107 See Boothe et al., supra note 10, at 30; Boothe & Harris, supra note 18, at 455; Young, Secession of Quebec, supra note 3, at 216.
108 See Stringer, supra note 10, at 57; Desjardins & Gendron, supra note 1, at 22 (discussing the relevance of "historical benefits" of assets when dividing debt).
109 See Stringer, supra note 10, at 57.
110 See Boothe et al., supra note 10, at 34; McCallum, supra note 15, at ix.
111 See Freeman & Grady, supra note 6, at 119.
112 See Boothe et al., supra note 10, at 34; Stringer, supra note 10, at 57.
113 See Boothe et al., supra note 10, at 34; Stringer, supra note 10, at 57.
114 See Boothe et al., supra note 10, at 43; Freeman & Grady, supra note 6, at 119.
public debt was only $20.1 billion. These statistics are adjusted to take into account the effect of a number of factors including regulated prices for natural resources to calculate correctly the proportion of debt. Under this approach, Quebec would have to pay approximately 32% of Canada's debt because an excess of 32% of Canada's federal funds were spent in Quebec. Quebec has received more funds from Canada's federal government than it has paid, thus, if Quebec separates, Quebec must pay Canada back for the excess funds. The apportionment of debt will be regarded as a final settling of accounts by requiring Quebec to reimburse Canada's federal government for all those years when Quebec received more money from the federal government than it paid to the government through taxes.

The methodology for calculating the apportionment of debt under the historical benefits approach is flawed. Equating the excess of federal expenditures over federal revenues for the seceding state with the seceding state's net benefit might not prove to be an accurate representation of the benefits received by the seceding state while a part of the parent state. This method leaves out a few costs and benefits necessary for calculating the net benefit of the seceding state. Some items which benefit the entire parent state are only analyzed for their benefit to the seceding state. Another factor not accounted for is the migration of people from the seceding state to the parent state and vice-versa. For instance, many individuals could have received benefits through federal spending in one state, then moved to another state while the original state upon secession would assume the burden of those federal expenditures even though these individuals are no longer a part of its citizenry.

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115 See Freeman & Grady, supra note 6, at 119.
116 See Boothe et al., supra note 10, at 43-44; Freeman & Grady, supra note 6, at 119.
117 See Boothe et al., supra note 10, at 43, 53, tbl.6; Young, Secession of Quebec, supra note 3, at 216 (using the provincial economic accounts from 1961 to 1988); McCallum, supra note 15, at viii. Employing the provincial economic accounts from 1961 to 1992, Quebec's share of Canada's debt is 35.9%. See Freeman & Grady, supra note 6, at 117 tbl.2.
118 See McCallum, supra note 15, at ix.
119 See id. at 57.
120 See Freeman & Grady, supra note 6, at 119.
121 See Stringer, supra note 10, at 57, 61-62.
122 See id.
123 See id. at 57.
124 See Boothe & Harris, supra note 18, at 455 (using defense as an example).
125 See Stringer, supra note 10, at 62.
Migration may frustrate any attempt to divide the debt according to benefits received.\textsuperscript{126}

It is difficult, if not impossible, to accurately calculate the seceding state's net benefit by adjusting the provincial economic account statistics on federal spending and revenues to allow for regulatory policies such as agriculture price stabilization programs, import quotas, auto pacts, and energy policy.\textsuperscript{127} The historical benefits approach favors seceding states which benefitted from regulatory policies and hurts seceding states which have received fiscal benefits.\textsuperscript{128} Seceding states must repay fiscal benefits but not benefits gained through regulatory policies.\textsuperscript{129}

Another problem with the historical benefits approach is determining what period of analysis should be used for calculating the apportionment of the public debt.\textsuperscript{130} For determining Quebec's share of net fiscal benefits, the period of analysis employed was the period of time for which statistics were available.\textsuperscript{131} It is impossible to know precisely Quebec's fair share of Canada's public debt because Canada already had a public debt when statistics started being kept for federal expenditures and revenues in Quebec. For instance, Quebec's share of Canada's debt is 32\% or $128.3 billion using the statistics from 1961 to 1988,\textsuperscript{132} but Quebec's share of Canada's debt is calculated as being 35.9\% or $196.7 billion using statistics from 1961 to 1992.\textsuperscript{133} $68.4 billion is a sizable disparity which fully illustrates the impact of the particular period of analysis employed on the calculation of the apportionment of debt. The error in estimating Quebec's share of the public debt would not be as great as the above example illustrates because Canada's public debt was only $20.1 billion in 1961, the year Canada started keeping statistics.\textsuperscript{134} Nevertheless, the possibility of such an error exists. If there are times when an absence of statistics prevents a proper determination of the net benefit received by the seceding state for being a part of the parent state, then this method of debt apportionment should not be employed.\textsuperscript{135}

\textsuperscript{126} See id.
\textsuperscript{127} See Desjardins & Gendron, supra note 1, at 22; Stringer, supra note 10, at 57.
\textsuperscript{128} See Stringer, supra note 10, at 58.
\textsuperscript{129} See id.
\textsuperscript{130} See Desjardins & Gendron, supra note 1, at 22; Boothe & Harris, supra note 18, at 455.
\textsuperscript{131} See Freeman & Grady, supra note 6, at 119.
\textsuperscript{132} See Boothe et al., supra note 10, at 43, 53, tbl.6 (calculated by adding the total amount of debt and pensions).
\textsuperscript{133} See Freeman & Grady, supra note 6, at 117, tbl.2.
\textsuperscript{134} See id. at 119.
\textsuperscript{135} See Stringer, supra note 10, at 58.
4. Historical Tax Shares Approach

The historical tax shares approach, also referred to as the Bélanger-Campeau approach, determines the seceding state’s share of the public debt in proportion to assets transferred to the seceding state. This approach bases debt apportionment on how much the seceding state benefited from the accumulation of the parent state’s public debt. This benefit is defined as the difference between past provisions of federal government goods, services, and transfers to the seceding state and the seceding state’s past contributions to federal tax revenues.

The rationale for the historical tax shares approach is that the seceding state “must assume full responsibility for obligations of the federal government to its own citizens,” and the seceding state’s debt cannot be calculated independently of the asset side of the balance sheet. Hence, this method utilizes a balance-sheet approach by matching federal assets with liabilities. All federal assets are evaluated and each asset is allocated to a portion of the debt incurred. As a result, a link is formed between the assets and debt, requiring the payment of the debt to be the same percentage as the amount of the assets received. The seceding state should assume a dollar of debt for every dollar of assets that the seceding state takes. If the amount of assets apportioned to the seceding state is greater or less than the amount of debt apportioned to the seceding state, the amount of debt actually assumed by the seceding state is raised or lowered to equalize the seceding state’s share of the public debt and assets.

In determining the apportionment of Quebec’s share of Canada’s public debt, the historical tax shares approach considers the past relationship of Quebec’s future tax liabilities for servicing the public debt,

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136 See Pesando, supra note 21, at 489; McCallum, supra note 15, at viii; Desjardins & Gendron, supra note 1, at 21; Boothe et al., supra note 10, at 28; Boothe & Harris, supra note 18, at 454-55; Chant, supra note 12, at 86; Stringer, supra note 10, at 56; YOUNG, SUCCESSION OF QUEBEC supra note 3, at 216.

137 See Stringer, supra note 10, at 62.

138 See Pesando, supra note 21, at 490.

139 See Boothe & Harris, supra note 18, at 455.

140 See Boothe et al., supra note 10, at 31.

141 See Peter Hadekel, Campeau’s Loose Lips Could Sink PQ’s Sovereignty Ship, GAZETTE, Feb. 8, 1995, at D6.

142 See YOUNG, SUCCESSION OF QUEBEC supra note 3, at 216.

143 See BOOKMAN, supra note 7, at 119.

144 See Stringer, supra note 10, at 65.

145 See McCallum, supra note 15, at xvi.
Quebec’s future pension obligations, and Quebec’s acquired assets.146 Quebec’s share of Canada’s debt is based on the concept that Canada’s current debt "is the present value of the excess of future tax revenues over future government [expenditures]."147 Quebec’s share of the public debt should be the share of future federal revenues that would be raised from Quebec.148 Since future revenues cannot be known in the present, past contributions to federal revenues are used in determining Quebec’s share of the debt.149 The ratio of Quebec’s past federal tax contributions to Canada’s total federal taxes is utilized for estimating Quebec’s future taxes.150 By adopting the principle that Quebec’s share of past obligations are based on Quebec’s historical tax share,151 Quebec’s share of future tax liabilities is calculated by averaging its past shares of federal revenues.152 Using the years 1972 to 1988 as the applicable time period, Quebec’s average share of federal revenues is 22.8%.153

The historical tax shares approach to dividing pension liabilities assumes all federal employees working in Quebec would transfer to Quebec’s government and all federal employees working in the rest of Canada would continue to work for Canada.154 Quebec would assume pension responsibilities for all federal employees working in Quebec.155 Quebec’s share of pension liabilities would be proportional to the number of federal employees who work in Quebec, while Canada’s share of pension liabilities would be the remaining portion of federal employees who work in the rest of Canada and all former federal employees.156 Quebec’s share of the pension liabilities is 13.3%.157 This percentage is calculated from the superannuation accounts of the federal government.158 By calculating Quebec’s future tax liabilities, future pension obligations, and acquired assets, Quebec’s share of Canada’s debt is 16.6% under the historical tax shares approach.159

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146 See Chant, supra note 12, at 86; Boothe & Harris, supra note 18, at 455.
147 McCallum, supra note 15, at xvii n.2.
148 See id. at xvii-xviii.
149 See id. at xviii.
150 See Boothe & Harris, supra note 18, at 455.
151 See id.
152 See FREEMAN & GRADY, supra note 6, at 116.
153 See McCallum, supra note 15, at xviii; FREEMAN & GRADY, supra note 6, at 116 (analyzing the 1972-1988 time period for determining the average federal revenue).
154 See McCallum, supra note 15, at xviii; Boothe et al., supra note 10, at 32.
155 See Desjardins & Gendron, supra note 1, at 23.
156 See McCallum, supra note 15, at xviii; FREEMAN & GRADY, supra note 6, at 116.
157 See FREEMAN & GRADY, supra note 6, at 116.
158 See Boothe et al., supra note 10, at 39, tbl.2, 42.
159 See FREEMAN & GRADY, supra note 6, at 116; McCallum, supra note 15, at viii.
The historical tax shares approach is criticized for compensating for a surplus or deficit in the seceding state's share of assets by adjusting the seceding state's share of the parent state's debt. A seceding state with an asset deficiency would receive an immediate benefit through a reduction of its share of the parent state's debt, but a seceding state with a surplus of assets which might not be liquidated for years would still be obligated to assume its full share of the debt immediately. Another argument against calculating debt apportionment of the seceding state based on the seceding state's share of assets is that the parent state's federal government did not incur the public debt simply to purchase assets but grew from successive years of deficit spending. The approach of distinguishing between the debt incurred to finance the acquisition of assets and the debt incurred to finance current expenditures is rejected as unnecessary because the data on which the decision to issue debt formally rests treat all expenditures as current expenditures. Also, basing the division of debt on future tax liabilities is problematic because this approach utilizes past tax liabilities for determining debt apportionment. Since past tax liabilities can be markedly different from future tax liabilities, the calculations can be skewed.

The justification for applying a special calculation for the division of pension liabilities is rejected in favor of apportioning pension liability in exactly the same way as all other liabilities. The historical tax shares approach of apportioning pension liabilities by dividing unfunded liability of superannuation accounts according to the residence of the federal employees is questionable because usually there is no correlation between the employees' place of residence and the beneficiaries of the employees' pensions. This calculation of the seceding state's share of public debt is derived by the formula:

\[ D = aL - (a-b)A - mL, \]

where \( D \) = seceding state's share of the public debt; \( L \) = value of parent state's public debt; \( A \) = value of parent state's public assets; \( a \) = seceding state's share of net federal liabilities; \( b \) = proportion of federal assets acquired by the seceding state; and \( m \) = proportion of federal liabilities held in monetary form by the seceding state. Fortin, supra note 19, at 340-41. See also discussion infra part IV.B (apportioning assets).

See Ip & Robinson, supra note 15, at 81; Boothe & Harris, supra note 18, at 456.


See Freeman & Grady, supra note 6, at 115.

See Ip & Robinson, supra note 15, at 82.

See id. at 77.

See id.

See id. at 82; Stringer, supra note 10, at 67; Pesando, supra note 21, at 491; McCallum, supra note 15, at ix.
services delivered. "[E]xisting pensions have been earned by public servants providing services to all Canadians, including Quebecers, and should be shared on the same basis as any other federal government debt." Under this modified version of the historical tax shares approach, Quebec's share of Canada's debt is 18.5%.

B. Assets

Two of the same approaches that could be employed in the apportionment of debt may also be utilized in the apportionment of assets between the seceding state and the parent state. They are the historical tax shares approach, which apportions assets through historical shares of federal tax revenues, and the per capita approach of dividing assets based on the proportional population size of each state. The international concept of territorial sovereignty which involves state possession of public assets physically located within its territory may also be employed for the apportionment of assets.

The gross domestic product approach and the historical benefits approach are not used for asset apportionment; instead both approaches rely on the per capita approach for asset apportionment. The gross domestic product approach is not appropriate for asset apportionment because it would penalize poorer seceding states by apportioning an insufficient amount of assets to function as an independent state. The historical benefits approach is rejected for asset apportionment because seceding states that had net contributions to the federal government would not receive any assets under this approach.

Determining a fair apportionment of public assets and the liabilities associated with these assets requires the appraisal of all public assets and liabilities. Depending upon which approach is used for valuing public assets, the

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167 See Ip & Robinson, supra note 15, at 82.
168 See Freeman & Grady, supra note 6, at 116.
169 See Boothe et al., supra note 10, at 40, tbl.3; Fortin, supra note 19, at 341 n.1; Young, Succession of Quebec, supra note 3, at 216; Hadekel, supra note 141; Drolet, supra note 79 ("Some sovereignists have mentioned a percentage as low as 18 per cent.").
170 See Pesando, supra note 21, at 490.
171 See Young, Succession of Quebec, supra note 3, at 219.
172 See Bookman, supra note 7, at 121; Desjardins & Gendron, supra note 1, at 11; Williams, supra note 2, at 43-44; Finkelstein & Végh, supra note 1, at 58-59.
173 See Boothe et al., supra note 10, at 43-44.
174 See id. at 43.
175 See id. at 44.
176 See Freeman & Grady, supra note 6, at 114.
assets, the determination of each asset’s value can vary widely. The historical tax shares approach combines the valuation of assets with the apportionment of assets by netting various assets and liabilities against each other. Under the per capita approach, the appraisal of the current value of all public assets and liabilities is completed before the apportionment of assets is commenced. Under the location approach of territorial sovereignty, no valuation of assets occurs because assets are divided based on their physical location.

Along with the determination of the material worth of some assets, the diversity of public assets also complicates the establishment of a fair and equitable standard for the valuation and distribution of assets. There are two major types of public assets: financial assets and fixed assets. There are also some assets which require special treatment such as federally owned companies, and in Quebec’s case the St. Lawrence Seaway. The apportionment and valuation of each type of asset is analyzed separately.

1. Financial Assets

Financial assets are movables which include gold and foreign currency; receivables, especially from taxes owed; loans, held by federal lending agencies; and liquid holdings, such as cash, transportation equipment, works of art, artifacts, books, and furniture. The valuation of financial assets is easily determined through the resale value of these marketable assets. As a result, under the per capita approach, apportioning most financial assets before or after liquidation is not problematic. However, loans present a problem for the per capita approach because they are affixed to specific corporations or residents.

The location approach apportions assets based on their physical location, thus, loans could be apportioned by the location of the cor-

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177 See Ip & Robinson, supra note 15, at 70.
178 See id. at 69.
179 See id.
180 See BOOKMAN, supra note 7, at 121.
181 See YOUNG, SUCCESSION OF QUEBEC, supra note 3, at 219.
182 See id.
183 See id. at 220-21.
184 See Ip & Robinson, supra note 15, at 76; YOUNG, SUCCESSION OF QUEBEC, supra note 3, at 219.
185 See Ip & Robinson, supra note 15, at 73, 76.
186 See id. at 78.
187 See YOUNG, SUCCESSION OF QUEBEC, supra note 3, at 219.
188 See FREEMAN & GRADY, supra note 6, at 110.
poration or the person receiving the loan.\textsuperscript{189} Under the location approach, if assets are physically located outside both the seceding state and the parent state, these assets are apportioned to the state which subsidizes these assets.\textsuperscript{190} Originally, for the apportionment of assets, the historical tax shares approach allowed the seceding state to acquire all of the financial assets which the seceding state found attractive, but due to the subjectiveness implicit in this method of apportionment, a modified version was established.\textsuperscript{191} Under the modified historical tax shares approach, financial assets are apportioned according to the seceding state's average historical tax contribution.\textsuperscript{192}

2. Fixed Assets

Fixed assets are immovables which include federally owned buildings, airports, shipping ports and the surrounding land, small-craft harbors, bridges, highways, railways, national parks, and specialized equipment.\textsuperscript{193} Estimating fixed assets is problematic, and there is no consensus on how to value these assets.\textsuperscript{194} Fixed assets could be evaluated on the basis of current market values, replacement costs, or historical costs.\textsuperscript{195} An acceptable method for determining the value of fixed assets is necessary.

For valuation purposes, it is desirable to evaluate fixed assets in groups distinguished by their expected economic return.\textsuperscript{196} Income-producing assets should be appraised in the same manner as marketable financial assets,\textsuperscript{197} which entails establishing the current market value or the resale value of the assets.\textsuperscript{198} These assets include airports, housing, commercial buildings, some bridges, agricultural property, and museums and other federally owned buildings.\textsuperscript{199} The market value of assets, such as highways and some bridges, that have quantifiable expenses but

\textsuperscript{189} See id. at 111.
\textsuperscript{190} See BOOKMAN, supra note 7, at 123 (explaining that money and power dictate which parties take control of assets located outside the territory of the parent and the seceding state).
\textsuperscript{191} See Boothe et al., supra note 10, at 41; Boothe & Harris, supra note 18, at 457.
\textsuperscript{192} See Boothe et al., supra note 10, at 41-42; Boothe & Harris, supra note 18, at 457, 457 n.2.
\textsuperscript{193} See Desjardins & Gendron, supra note 1, at 12; FREEMAN & GRADY, supra note 6, at 110; YOUNG, SUCCESSION OF QUEBEC, supra note 3, at 219.
\textsuperscript{194} See generally Boothe et al., supra note 10, at 32.
\textsuperscript{195} See id.
\textsuperscript{196} See Ip & Robinson, supra note 15, at 74.
\textsuperscript{197} See id. at 76.
\textsuperscript{198} See id. at 73, 76; FREEMAN & GRADY, supra note 6, at 114.
\textsuperscript{199} See Ip & Robinson, supra note 15, at 76.
unquantifiable economic benefits cannot be properly estimated. Since these assets generate an economic benefit but carry financial obligations, they should be given a market value of zero. Likewise, assets which do not provide an economic benefit but require little or no maintenance, for example, some historical sites, monuments, bridges, recreational canals, and marine facilities, should be valued at zero.

After valuing the fixed assets, the location approach apportions these assets to the state in which these assets are situated. It is difficult, if not impossible, for fixed assets located in one state to be controlled by the other state. It is unlikely that the apportionment of fixed assets based on the assets’ location would equal the share calculated under the per capita approach. Thus, some balance must be achieved to establish an equitable apportionment of all assets combined. For instance, if there is a verifiable disparity between the fixed assets apportioned to the two states, the amount of that disparity may be corrected by altering the apportionment of financial assets until the disparity in fixed assets apportioned is counterbalanced by the apportionment of financial assets.

The historical tax shares approach also apportions fixed assets on the basis of the assets’ location. This approach estimates the value of fixed assets and determines each state’s share of assets according to the property tax payments made by the federal government, or to federal grants received in lieu of taxes. Fixed assets are valued on the basis of replacement costs, but this approach makes rough modifications to the acquired data derived for different purposes. This approach ne-

\[ \text{Reference numbers: } 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210 \]
APPORTIONING PUBLIC DEBT AND ASSETS

3. Federally Owned Companies

Federally owned companies could be treated like fixed assets or financial assets because they hold both movable and immovable assets.\(^\text{212}\) Whether the company should be treated as a fixed asset or a financial asset for the purpose of asset apportionment will depend on the particular company.\(^\text{213}\) The location approach is employed for the apportionment of federal companies treated as fixed assets.\(^\text{214}\) All companies whose assets are located completely within one state belong to that state.\(^\text{215}\) Under the Quebec/Canada scenario, examples of these types of companies are the Montreal and Quebec Port Corporations.\(^\text{216}\)

Some companies owning assets in both the seceding state and the parent state are treated as fixed assets, and apportioned according to the location approach,\(^\text{217}\) while other companies are viewed as financial assets and apportioned by the per capita or historical tax shares approach. In Canada most public companies including the Canadian Broadcasting Corporation, the National Capital Commission, Petro-Canada, and Bell Canada, due to the immovability of many of their assets, are treated as fixed assets, and their assets are split between Quebec and the rest of Canada based on the assets' location.\(^\text{218}\) All of the companies' assets situated in Quebec would pass to Quebec, while assets situated in the rest of Canada would belong to Canada.\(^\text{219}\) Other companies such as Air

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\(^{211}\) See Boothe et al., \textit{supra} note 10, at 32 n.6.

\(^{212}\) See Desjardins & Gendron, \textit{supra} note 1, at 15.

\(^{213}\) See id. (noting the importance of the relation a particular company has with the remainder of Canada in apportioning its assets). \textit{Cf.} Young, \textit{Succession of Quebec}, \textit{supra} note 3, at 220 (distinguishing characteristics of crown corporations).

\(^{214}\) See Desjardins & Gendron, \textit{supra} note 1, at 15.

\(^{215}\) See id.

\(^{216}\) See id.; Freeman & Grady, \textit{supra} note 6, at 111.

\(^{217}\) See Desjardins & Gendron, \textit{supra} note 1, at 15; Young, \textit{Succession of Quebec}, \textit{supra} note 3, at 220; Freeman & Grady, \textit{supra} note 6, at 111.

\(^{218}\) See Desjardins & Gendron, \textit{supra} note 1, at 15; Freeman & Grady, \textit{supra} note 6, at 111.

\(^{219}\) See Young, \textit{Succession of Quebec}, \textit{supra} note 3, at 219-20; Desjardins &
Canada, Canadian National Railway, Canadian Pacific Railway, and Canada Post Corporation which have common infrastructural services, and hence cannot be fragmented, are apportioned as financial assets. The apportionment of each of these company’s assets is determined by the distribution of the ownership shares of each company to achieve equality among assets without harming the production of the company. These shares in the capital of each company can be distributed on a per capita basis or in proportion to the value of the assets situated in each state. Originally, the historical tax shares approach allowed the seceding state to choose whichever companies the seceding state found attractive, but due to the subjectiveness implicit in this method of apportionment a modified version was established. Under the modified historical tax shares approach, federally owned companies are apportioned according to the seceding state’s average historical tax contribution.

4. St. Lawrence Seaway

In the Quebec/Canada secession scenario, due to the St. Lawrence Seaway’s ownership and management situation, the Seaway’s apportionment would not be conducted by one of the typical apportionment approaches. Currently under international law, Quebec has jurisdiction over the river bed and banks located in Quebec, while Canada controls the water and “maintains a fleet of icebreakers to ensure year-round shipping” for the Seaway. Under the St. Lawrence Seaway Agreement of 1951, management of the St. Lawrence Seaway is done by a binational commission composed of Canadians and Americans.

Gendron, supra note 1, at 15; Freeman & Grady, supra note 6, at 111.

220 See Young, Succession of Quebec, supra note 3, at 219-20; Desjardins & Gendron, supra note 1, at 15 (suggesting fragmentation as a possible approach for dividing common assets).

221 See Young, Succession of Quebec, supra note 3, at 220.

222 See Young, Succession of Quebec, supra note 3, at 220; Desjardins & Gendron, supra note 1, at 15.

223 See Boothe et al., supra note 10, at 41; Boothe & Harris, supra note 18, at 456, 457.

224 See Boothe et al., supra note 10, at 41 n.14; Boothe & Harris, supra note 18, at 457.

225 See Young, Succession of Quebec, supra note 3, at 110-11 (suggesting the necessity to operate the seaway on a full cost recovery basis).


227 See id.
The St. Lawrence Seaway Agreement is categorized as a dispositive or localized treaty which under customary international law is one of the few kinds of treaties that would require Quebec’s compliance after its secession from Canada.\textsuperscript{228} Quebec would be required to assume all treaty rights and obligations regarding the maintenance and navigation of the Seaway under the Seaway Agreement.\textsuperscript{229} Quebec must grant navigational rights to the United States and the rest of Canada, and participate in the regulation of the Seaway and tolls.\textsuperscript{230}

V. PAST SECESSIONS

A. Belgium's Secession from the Netherlands

Belgium's independence from the Netherlands was announced in 1831 at the London Conference, an international conference held for the express purpose of ensuring that war did not result from Belgium's secession from the Netherlands.\textsuperscript{231} The London Conference was comprised of representatives from the five major European powers: Great Britain, France, Austria, Prussia, Russia, the Netherlands, and Belgium.\textsuperscript{232} This Conference was the first to propose a fairly specific method for the settlement of debts arising out of secession.\textsuperscript{233} First, Belgium and the Netherlands would pay their own debts which they brought into the unification of Belgium and the Netherlands in 1814.\textsuperscript{234} Since Bel-
gium merged its debts with the Netherlands' debts when Belgium and the Netherlands united, it was considered most equitable after Belgium's secession to redivide these debts in the same proportion in which the debts were originally joined. Second, Belgium would assume responsibility for a fair proportion of the debt commonly contracted during the union of Belgium and the Netherlands. Calculations for determining this fair apportionment of debt were based on debt figures from Dutch financial charts.

At the onset, debt was apportioned in proportion to the average share of taxes paid by each country from 1827-1829. Using this historical tax shares approach of debt apportionment, Belgium was apportioned 16/31 of the existing debt. This apportionment method was rejected because it created an unequal division of debt for the purpose of enticing the Netherlands to sign the peace treaty granting Belgium independence. During negotiations, Belgium offered to reduce debt payments in return for territorial concessions or vice-versa. For example, Belgium was willing to release any claim over a portion of Limburg in return for a decrease in debt obligations or to increase its debt obligations in return for acquiring the Grand Duchy of Luxembourg. The apportionment of debt was not settled until 1839. During the nine years after Belgium seceded from the Netherlands, but before an agreement on debt apportionment was made, Belgium did not and was not obligated to contribute any amount to the payment of the Netherlands' debt. In the end, the Belgians received a large reduction in the amount of debt they had to pay because they were forced to surrender the Grand Duchy of

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235 See Draft Articles on Succession of States, supra note 232, at 89.
236 See id.; HELMREICH, supra note 5, at 26.
237 See Draft Articles on Succession of States, supra note 232, at 89; HELMREICH, supra note 5, at 54.
238 See Draft Articles on Succession of States, supra note 232, at 89 (quoting article X of the Twelfth Protocol of the London Conference).
239 See id. (quoting article XI of the Twelfth Protocol of the London Conference as holding Belgium liable for 16/31 of the debt); HELMREICH, supra note 5, at 17; LÉON VAN DER ESSEN, A SHORT HISTORY OF BELGIUM 156 (1920).
240 See Draft Articles on Succession of States, supra note 232, at 89 (noting that France in particular objected to this apportionment); HELMREICH, supra note 5, at 18.
241 See HELMREICH, supra note 5, at 54.
242 See id. at 53-54; Draft Articles on Succession of States, supra note 232, at 89.
243 See Draft Articles on Succession of States, supra note 232, at 89; HELMREICH, supra note 5, at 51-52.
244 See Draft Articles on Succession of States, supra note 231, at 90; HELMREICH, supra note 5, at 58.
Luxembourg and some of their northern territories which bordered the Netherlands, specifically Flemish Zeeland and parts of Limburg.\textsuperscript{245} Along with determining the debt Belgium owed to the Netherlands, the London Conference also decided matters involving the apportionment of assets.\textsuperscript{246} For instance, it was agreed that all public or private utilities, such as canals or roads, located in Belgium, but built at the Netherlands’ expense, would belong to Belgium.\textsuperscript{247} Additionally, Belgium was granted free use of the Scheldt River and other internal waterways which went through the Netherlands.\textsuperscript{248} Many of these decisions made by the London Conference were retained as an acceptable means of apportionment by the 1983 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts Issues.

B. Norway’s Secession from Sweden

In June of 1905, Norway’s government voted to leave the union of Sweden and Norway and declared independence.\textsuperscript{249} Two months later the people of Norway overwhelmingly approved by vote the declaration of Norway’s independence from Sweden.\textsuperscript{250} By fall of that year, Norway had officially seceded from Sweden.\textsuperscript{251} Norway’s secession from Sweden was unique in that military forces were not utilized by either side during any point of the secession. Sweden was shocked by Norway’s declaration of independence,\textsuperscript{252} and was sure that it could achieve a military victory

\textsuperscript{245} See VAN DER ESSEN, supra note 239, at 156-58 (discussing the apportionment of debt and surrender of territories); HELMREICH, supra note 5, at 28-29, 58.
\textsuperscript{246} See Draft Articles on Succession of States, supra note 232, at 28.
\textsuperscript{247} See id.
\textsuperscript{248} See HELMREICH, supra note 5, at 29, 58.
\textsuperscript{249} See RAYMOND E. LINDGREN, NORWAY-SWEDEN: UNION, DISUNION, AND SCANDINAVIAN INTEGRATION 131 (1959); T. K. DERRY, A HISTORY OF MODERN NORWAY 1814-1972, 163 (1973); KAREN LARSEN, A HISTORY OF NORWAY 490 (1948); G. GATHORNE HARDY, NORWAY 119 (1925); Young, How Do Peaceful Secessions Happen?, supra note 9, at 780.
\textsuperscript{250} See LINDGREN, supra note 249, at 166-67; DERRY, supra note 249, at 166; LARSEN, supra note 249, at 491; HARDY, supra note 248, at 120; FREEMAN & GRADY, supra note 6, at 62; Young, How Do Peaceful Secessions Happen?, supra note 9, at 783.
\textsuperscript{251} See Draft Articles on Succession of States, supra note 232, at 90-91; LINDGREN, supra note 249, at 198; DERRY, supra note 249, at 171; FREEMAN & GRADY, supra note 6, at 60.
\textsuperscript{252} See LINDGREN, supra note 249, at 132; Young, How Do Peaceful Secessions Happen?, supra note 9, at 781.
over Norway to force Norway to stay in the Union. Nevertheless, Sweden did not want to resort creating a dictatorship over Norway. In fact, Sweden expressed to Norway its intention of not sending any forces into Norway unless Norway attacked Sweden first. Since Norway also believed that a physical conflict between Norway and Sweden would be detrimental to both countries, Norway’s secession was settled diplomatically.

The Karlstad Conference was held to negotiate the final settlement of Norway’s secession from Sweden. Both Sweden and Norway agreed to pay off their own debts and to apportion the common debt held between the two states. Financial and fixed assets located outside Norway and Sweden were appraised or sold and then apportioned on an equal basis. Financial assets, such as archives which only concerned Norwegian affairs, were apportioned to Norway without prior appraisal. All other assets were apportioned based on their location. Norway and Sweden granted each other equal rights for utilizing transit facilities such as railroads and equal access to lakes and rivers for transportation purposes. Sweden and Norway also stipulated that any future disputes between Sweden and Norway would be arbitrated before the Hague Court.

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233 See LINDGREN, supra note 249, at 133.
234 See id. at 132-36; Young, How Do Peaceful Secessions Happen?, supra note 9, at 781.
235 See generally LINDGREN, supra note 249, at 115; DERRY, supra note 249, at 164.
236 See LINDGREN, supra note 249, at 128; DERRY, supra note 249, at 165.
237 See Young, How Do Peaceful Secessions Happen?, supra note 9, at 781.
238 See LINDGREN, supra note 249, at 172; DERRY, supra note 249, at 166-69; LARSEN, supra note 249, at 492; Young, How Do Peaceful Secessions Happen?, supra note 9, at 784.
239 See Draft Articles on Succession of States, supra note 232, at 90-91.
240 See id. at 29 (stating that these assets were apportioned on a equal basis).
241 See generally id. (stating that the predecessor state should receive property the successor state would otherwise abandon).
242 See FREEMAN & GRADY, supra note 6, at 61.
243 See LINDGREN, supra note 249, at 146; DERRY, supra note 249, at 169; Young, How Do Peaceful Secessions Happen?, supra note 9, at 786.
244 See LINDGREN, supra note 249, at 146; DERRY, supra note 249, at 169.
245 See DERRY, supra note 249, at 169.
C. Slovakia's Secession from the Czech and Slovak Federal Republic

The Czech and Slovak separation of 1993 was the most recent, peaceful secession. This Slovakian secession was authorized by a federal act of the Czech and Slovak Federal Government after Slovakia threatened to secede. At the onset of negotiations concerning Slovakia's secession, Czechs emphasized that military force would not be used to prevent the secession. Negotiations between the Czech and the Slovak party leaders dissolved the Czech and Slovak Federal Government within four months. The per capita approach was used for the apportionment of the public debt. The per capita approach was also employed for the apportionment of financial assets, while fixed assets were distributed by the location approach. Some federally owned companies were apportioned by their location, while others like the broadcasting service were transformed into joint-stock companies with shared ownership. All assets located outside of either Slovakia or the Czech Republic were apportioned on a per capita basis.

VI. THE APPORTIONMENT OF PUBLIC DEBT AND ASSETS IF QUEBEC SECEDES FROM CANADA

The per capita approach should be utilized in the apportionment of debt and of most financial assets if Quebec secedes from Canada. Fixed assets and other financial assets, specifically loans, should be apportioned by the location approach. The determination of whether federally owned companies should be apportioned like fixed assets, by the

266 See YOUNG, THE BREAKUP OF CZECHOSLOVAKIA, supra note 7 (describing the peaceful secession that occurred at midnight on December 31, 1992).
268 See YOUNG, THE BREAKUP OF CZECHOSLOVAKIA, supra note 7, at 32 n.28.
269 See id. at 41; YOUNG, SUCCESSION OF QUEBEC, supra note 3, at 156-57; FREEMAN & GRADY, supra note 6, at 65-67.
270 See YOUNG, THE BREAKUP OF CZECHOSLOVAKIA, supra note 7, at 47; YOUNG, SUCCESSION OF QUEBEC, supra note 3, at 216; FREEMAN & GRADY, supra note 6, at 67, 112.
271 See YOUNG, THE BREAKUP OF CZECHOSLOVAKIA, supra note 7, at 47; FREEMAN & GRADY, supra note 6, at 67.
272 See YOUNG, THE BREAKUP OF CZECHOSLOVAKIA, supra note 7, at 28, 42.
273 See FREEMAN & GRADY, supra note 6, at 111-12.
274 See Ip & Robinson, supra note 15, at 77, 82; FREEMAN & GRADY, supra note 6, at 120, 123; Stringer, supra note 10, at 68.
275 See WILLIAMS, supra note 2, at 44-45.
location approach, or like financial assets, by the per capita approach, depends upon the characteristics of the specific company.\textsuperscript{276} Companies should be divided by the location approach, unless this division would substantially harm the production of the company.\textsuperscript{277} In that case, the ownership shares of those companies should be apportioned on a per capita basis.\textsuperscript{278}

International law requires that Quebec continue to grant the rest of Canada free access along the entire St. Lawrence Seaway.\textsuperscript{279} This requirement copies the condition placed on the Netherlands by the other members of the London Convention that Belgium could continue its use of the Scheldt River and other important, internal waterways located within the Netherlands,\textsuperscript{280} and resembles Norway and Sweden’s agreement of equal access to each other’s lakes and rivers for transportation purposes.\textsuperscript{281} All other assets located outside both Quebec and the rest of Canada should be apportioned using the per capita approach.\textsuperscript{282} Precedent for the employment of these debt and asset apportionment approaches was established when Slovakia seceded from the Czech and Slovak Federal Republic. Fixed assets were apportioned by location, while debt, financial assets, and all other assets located outside the Czech and Slovak Federal Republic were apportioned on a per capita basis.\textsuperscript{283}

The per capita approach illustrates the philosophy that if secession occurs, Canada’s finances “are a collective responsibility to be shared equally by all current citizens.”\textsuperscript{284} Therefore, under the per capita approach, the population of Quebec and Canada on the day Quebec voted to secede from Canada should be the figure used in determining Quebec’s share of the public debt and assets. The per capita approach is founded on the basic notion of equity that each person should be obligated for
and apportioned an equal share. This concept provides a strong argument for the implementation of the per capita approach in debt and asset apportionment that would be accepted by the average person. The simplicity of the calculations required for the apportionment of the public debt and assets provides another reason for supporting the use of the per capita approach.

The difficulty in apportioning some assets to any state other than the state where the assets are located provides the only disruption in employing the per capita approach. Utilizing the location approach in these circumstances is justified because the territorial sovereignty principle of apportioning fixed assets by their location and financial assets by their connection with activity in a specific location is a firmly embedded principle of customary international law. Both loans and federally owned companies can qualify as financial assets linked to the territory because the borrower’s residence and the companies’ services are location specific. However, the location approach fails to consider the value of the fixed assets, loans, and companies being divided, assets divided by the location approach may be apportioned unequally. Consequently, the apportionment of all other financial assets should be adjusted to counterbalance any disproportionate apportionment of assets.

The gross domestic product approach, the historical benefits approach, and the historical tax shares approach provide a less equitable apportionment of debt and assets than the per capita approach. In fact, the gross domestic approach and historical benefits approach both defer to the per capita approach for the apportionment of assets. The gross domestic product approach is less effective in apportioning the public debt because its analysis does not consider benefits received by Quebec in federal funds, and the data used in calculating Quebec’s Gross Domestic

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285 See id. at 454-55; FREEMAN & GRADY, supra note 6, at 118.
286 See Stringer, supra note 10, at 68; Ip & Robinson, supra note 15, at 77-78; YOUNG, SUCCESSION OF QUEBEC, supra note 3, at 216 (“The per capita formula has the great advantage of being simple enough to be understood by the public . . . ”); FREEMAN & GRADY, supra note 6, at 118.
287 See FREEMAN & GRADY, supra note 6, at 118; Stringer, supra note 10, at 68.
289 See FINKELSTEIN & VEGH, supra note 1, at 58-59; WILLIAMS, supra note 2, at 43; Desjardins & Gendron, supra note 1, at 12-13.
290 See YOUNG, SUCCESSION OF QUEBEC, supra note 3, at 219; FREEMAN & GRADY, supra note 6, at 111, 232; Desjardins & Gendron, supra note 1, at 13.
292 See id. at 80.
293 See Boothe et al., supra note 10, at 43-44; Boothe & Harris, supra note 18, at 458.
Product do not include taxes. Conceptual problems with the historical benefits approach include leaving out important benefits such as regulatory policies in calculating debt apportionment, and not establishing a standard concerning how many years back the calculations should be carried for determining debt apportionment.

Due to flaws in its methodology, the historical tax shares approach is also not feasible for debt and asset apportionment. First, past tax liabilities do not necessarily provide a reliable guide for determining future tax liabilities, which is the goal of this approach. Second, the method of valuing fixed assets according to federal grants in lieu of property taxes provides unreliable approximations of the assets’ value. Third, Quebec would be able to choose which federally owned companies it wanted, and then adjust its debt obligations to correspond with its selected assets regardless of the rest of Canada’s position. Fourth, dividing pension liabilities for federal employees by their residence is less effective than dividing the pension liabilities in the same manner as all other public debt. In fact, if pension liabilities were treated like all other liabilities under the historical tax shares approach, Quebec’s apportionment of debt would more resemble Quebec’s share of the public debt as calculated under the per capita approach. This fact may serve as an additional reason why the per capita approach should be employed for the apportionment of public debt and assets during state secession.

VII. CONCLUSION

International law does not require the seceding state to assume any portion of the parent state’s public debt. On the other hand, ever since Belgium seceded from the Netherlands, it has been accepted that the public debt should be divided between the seceding state and the parent state in an equitable proportion. A standard approach for public debt

294 See Boothe et al., supra note 10, at 34; FREEMAN & GRADY, supra note 6, at 119.
295 See Boothe & Harris, supra note 18, at 455; Stringer, supra note 10, at 57-59.
296 See Ip & Robinson, supra note 15, at 77.
297 See Boothe & Harris, supra note 18, at 456; Boothe et al., supra note 10, at 32.
298 See Boothe & Harris, supra note 18, at 456.
299 See Pesando, supra note 21, at 491; Ip & Robinson, supra note 15, at 82; Stringer, supra note 10, at 67.
300 See Stringer, supra note 10, at 68.
301 See id.
302 See Desjardins & Gendron, supra note 1, at 6; FREEMAN & GRADY, supra note 6, at 53; WILLIAMS, supra note 2, at 46-47; YOUNG, SUCESSION OF QUEBEC, supra note 3, at 110.
303 See Draft Articles on Succession of States, supra note 232, at 88-89; FREEMAN
apportionment during state secessions should be adopted. The per capita basis should be the standard approach used for equally apportioning the debt between a seceding state and the parent state. The per capita approach uses a very manageable type of calculation based on easily retrievable and objective figures. Verification of this approach's utility is provided by Slovakia's secession from the Czech and Slovak Federal Republic, where the per capita approach was employed to apportion the debt between Slovakia and the Czech Republic.

Territorial sovereignty which is an accepted principle of customary international law allows for the location of public assets to dictate the apportionment of these assets. Thus, the standard utilization of the location approach for the apportionment of fixed assets or financial assets linked to a specific area is substantiated by current, customary international law. All financial assets not tied to a specific area should be equally apportioned between the seceding state and the parent state. The per capita approach should be the standard approach employed for apportioning these financial assets. As with debt apportionment, the per capita approach provides the most equitable and simplest means for apportioning financial assets. The utilization of the per capita approach and the location approach as the standard methods of asset apportionment has been legitimized by Slovakia's secession from the Czech and Slovak Federal Republic, where financial assets and fixed assets were apportioned by the per capita approach and the location approach respectively.
As a result of the implementation of the per capita approach and the location approach as the standard approaches for the equitable apportionment of public debt and assets during state secession, the quick resolution of these difficult apportionment issues would expedite a smoother and more amiable secession.