

Glossa luridica

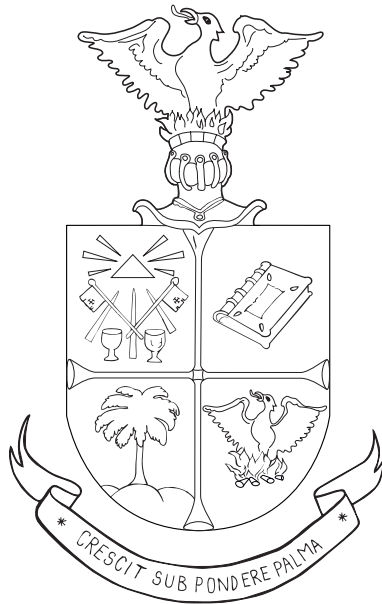
IV. évfolyam, 3-4. szám

KÖZÉRDEK

Glossa Iuridica

IV. évfolyam, 3-4. szám

KÖZÉRDEK



Budapest, 2018

Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar

LESSONS AND ISSUES OF THE YUGOSLAV STATE SUCCESSION AGREEMENT

MARKO AČIĆ

Lecturer (University of Business Studies, Banja Luka)

1. Introduction

1.1. *State succession in international legal history*

Historically observed extinctions and formations of states as subjects of international law have been quite common occurrences. Regardless of the period in the historic development of states and interstate law, these phenomena have left no small consequences for emerging countries and for those which – as a result of dissolution or partition – disappeared or, in case of secession, permanently lost their sovereignty with regard to a greater or lesser part of the territory over which they exercised *summa potestas* as well as *suprema potestas*.

In that case, as Professor Djordjevic emphasizes, “when the area of a legal order becomes fully or partially area of control of the second order, certain rights and obligations of one state are conferred by general international law to another state. If we adopt the opposite viewpoint, there could be some harmful consequences for a third country”.¹

In addition to the question of the exercise of highest state authority in the territory subject to change in its sovereign control, the consequences should also be examined with respect to the questions of the status of its citizens, the acquired rights pertaining to a certain territory or the ownership of movable and immovable property to be shared and allocated in the process of the transfer of sovereignty from one entity to another. In the history of *ius publicum Europeanum*, the first legal theorists who dealt with these juridical issues – for example Hugo Grotius in the 17th century – made an attempt to solve the international legal conundrums of state entities succeeding one another by resorting to an analogy of the rules applicable to hereditary rights by means of equivalence of the state with a physical person whose rights and

1 DJORDJEVIC, Stevan: *On the Continuity of States with Special Consideration on the International Legal Continuity of the Kingdom of Yugoslavia*. Scientific Paper, Belgrade, 1967, 29.

obligations after death are conferred onto his heirs.² Later, Kelsen broadened the legal problem, interpreted it more precisely and defined it – in addition to changing the responsibility for international legal issues in a territory – as “the partial transfer of the rights and obligations from the predecessor country to the successor states”.³

By codification and progressive development of public international law, many of these issues came to be addressed in the field of state succession. Due to the diversity of issues that is bound to arise in a succession process, this field of international law has also evolved in interrelated and particular dimensions as ramifications of state succession: state property, international treaties, membership in international organizations, state debts, state archives, citizenship of inhabitants living on the territory subject to succession as well as issues relating to property rights.

The need to distinguish the status of successors from the status of predecessor state claiming legal continuity was perceived as a recurrent question in the history of political and legal transformations within the territory of the former Yugoslavia. It has been observed that “The denial of the continuity of modern Serbian statehood was posed too often. The creation of the Kingdom of Serbs, Croats and Slovenians on 1 December 1918 and his relationship with the pre-war Kingdom of Serbia, the arrival of the Communists to power and their aspiration that by *damnatio memoriae* “cover” everything that had nothing to do with them”.⁴ As other cases later also appeared to illustrate that it became an unwritten practice in the treatment of rights, primarily those of Serbia for the status of the predecessor state.

1.2. Theoretical considerations on the concept of succession

Before we turn to a more precise definition of state succession and the evolution of its legal concept, it is necessary to emphasize the differences between international legal continuity and succession itself, because it is about seemingly same or similar, but ultimately different legal concepts.

2 KELSEN, Hans V.: *Dictionrie da la terminologie du droit international*. The Hague, Académie de droit international de La Haye, 1960, Vol 42, 314.

3 KRECA, Milenko D.: *International Public Law*. Sixth Edition. Belgrade, Faculty of Law, University of Belgrade, 2012, 242.

4 BÜHLER, Konrad G.: *State Succession and Membership in International Organizations: Legal Theories versus Political Pragmatism*. The Hague/London/Boston, Martinus Nijhoff Publishers, 2001, 351. http://www.odbrana.mod.gov.rs/odbrana-stari/vojni_casopisi/arhiva/VD_4-2015/67-2015-4-25-Tisma.pdf, consulted on 10.07.2017

In case of international legal continuity, the point is laid down by Professor Kreća in his conclusion on “the attitude towards the *subjectivity* of the predecessor state, that is, the question of whether the former subject due to territorial changes has disappeared or continues to exist as an identical subject of international law.”⁵ On the other hand, the questions of the concept of *succession* and its clear definition by legal theorists as distinguished from the previous consider the defining features of state succession primarily as matters relating to the status, rights and obligations that are *transferred* from the predecessor country to another, the successor state.

In relation to the very concept of succession and its evolutionary path, we can say that a number of theories have been elaborated which essentially came from the aforementioned principles of inheritance, i.e., the questions of *de cuius* represented by Grotius first and later by other legal theorists to its present definition which focuses on the change of sovereignty and those legal issues that are related to its consequences⁶.

In relation to this development of the concept of succession and the treatment of this notion as a counterpoint to the theory of universal succession⁷ they have emerged in the history of various theories that, through the positivist aspect and other similar perceptions, considered that the essence of succession should be linked only to the change of sovereignty. Such an understanding, regardless of whether we are talking about the recognition of the continuity or discontinuity of the rights and obligations of the predecessor state, is accepted even today.

Although historically, there were attempts to impose the discontinuity theory advocated by the USSR after the disappearance of the Tsarist Russia, the treaties that the United Kingdom concluded with several of its former colonies – for example, Ghana, Cyprus, Malta and Sierra Leone – were similar to the arrangement laid out when Belgium seceded from the Netherlands. It

5 KREĆA op. cit. 242.

6 Grotius’s theory of universal succession has identified several of its modifications, three of which are the most important: the first one deals with state observation as through its subjectivities and its two subcomponents that go through the process of skimming, and above all the polar and social component, the theory that explains it by The principle of arrogation and the disappearance of the international legal existence of the state, but still through its other constituent elements (eg the population), as well as the theory that views the territory that is the subject of succession from the aspect of the contribution of the development or investment, which is the predecessor did in this part of the territory. See more in KREĆA op.cit. 245-246.

7 Theories about state succession, see more: http://shodhganga.inflibnet.ac.in/jspui/bitstream/10603/129013/14/07_chapter%202.pdf. consulted on 10.07.2017.

was deemed agreeable and fair in case of these newly created state entities to start “international life with a clean slate and the same approach was adopted with regard to the secession of Cuba from Spain”.⁸ The practice of African states after decolonization⁹ period has shown other characteristics of this process.

This practice, above all, in the process of decolonization and the emergence of novel sovereign entities in the territory of Africa¹⁰ and Asia has led to attempts of various international organizations, primarily in the UN (through the engagement of international experts in the International Law Commission) to elaborate a draft for the possible codification of the customary rules of international law regarding state succession and for its further progressive development. The codification initiative led to the adoption of the 1978 Convention on the Succession of States in Relation to International Treaties which eventually (after the required number of ratification) came into force in 1996. Another separate component of the cluster of treaties governing the various aspects of state succession, the Convention on the Succession of States in Relation to State Property, Archive and Debts in 1983 was adopted, but it has not yet entered into force. The reason for such a delay should be sought in the fact that it is one of the most contested in issue area in the entire area of state succession in international law.

An analysis of Article 18, para. 1 (b) of the Convention of 1983 (“immovable State property of the predecessor state situated outside its territory shall pass to the successor States in the equitable proportions”¹¹) reveals the sensitivity of this matter which would be later demonstrated on the example of the conclusion of the Agreement about the succession of the . Its complexity is also confirmed by the rulings of the highest courts in several countries related to cases involving these issues. As one of the relevant examples, we

8 SHAW, Malcolm N.: *International law*. Sixth edition. Cambridge, Cambridge University Press, 2008, 974 -975.

9 The postulates of this discontinuity theory were also represented by Tanzanian President Julius Njerera, who considered that, in particular, with regard to the obligations of the newly created states in Africa, they should not be burdened with any inherited obligations from colonial rule.

10 See more: O’CONNELL, D. P.: Reflections on the State Succession Convention, *ZaoRV*, 1979, 39(4), Kamminga, Menno T.: State Succession in Respect of Human Rights Treaties, *European Journal of International Law*, <http://www.ejil.org/pdfs/7/4/1388.pdf>, consulted on 2.6.2017.

11 Vienna Conventions on Succession of States in respect of State Property, Archives and Debts (1983), http://legal.un.org/ilc/texts/instruments/english/conventions/3_3_1983.pdf consulted on 3.6.2017.

can point out to the judgment delivered by the German Federal Supreme Court in the case of “Espionage Proceusuction”¹².

Professor Shaw emphasizes another important aspect of the succession issue. Namely, the question of “succession of governments, especially revolutionary succession, and consequent models of recognition and accountability” needs to be distinguished from the concept of state succession.¹³ Such issues have not been elaborated in detail in the said conventions and remain subject to regulations of bilateral or multilateral agreements such as, for example, the Saint-Germain Treaty of 1919, with Iran after the fall of the Shah in 1979 or “bilateral agreements as between, for instance, colonial power and the new state, which however, would not bind third states” mainly practiced by France or the UK.

Representing another perspective, professor Braunley points out that “state succession arises when there is a definitive replacement of one state by another in terms of sovereignty over a particular territory in accordance with international law.”¹⁴ In addition to his definition, he emphasizes that other well-known authors have dealt with different theoretical aspects of succession. Among other things, it is important to emphasize that “Hyde and other writers argued that the predecessor’s national legislation remains in force until the new sovereign takes steps to change it. O’Connell from another aspect of observation, but very similarly supports the principle of asserted or acquired rights ... which consists in the fact that the change of sovereignty has no effect on the acquired rights of foreign nationals.”¹⁵

Each case of state succession has its own specificities requiring composite and adaptive arrangements in order to conclude all dimensions of transition and transfer with definitive settlements. We will try to illustrate the difficulties of finding satisfactory and mutually agreeable solutions to outstanding issues of contemporary state succession and their eventual resolution through reference to the example of the former SFRY and the achievement of an agreement. Particular attention will be paid to one of the elements of the comprehensive settlement, its annex on the distribution of diplomatic assets and premises of SFRY among its successor states.

12 Federal Republic of Germany, Federal Supreme Court (BGH) 30 January 1991 *Case No 2 BGs 38/91*, <http://ebooks.cambridge.org/clr/case.jsf?bid=CBO9781316152232&id=CBO9781316152232A007>, consulted on 3.6.2017.

13 SHAW, Malcolm N. op. cit. 957.

14 BROWNLIE, Ian: *Principles of Public International Law*. Fourth edition. Oxford, Clarendon Press, 654.

15 Ibid. 657.

2. The Conclusion of the SFRY Succession Agreement

In the process of determining the number of successor states after the disintegration of SFRY, all newly established states – Slovenia, Croatia, Bosnia and Herzegovina (BiH) and Macedonia – challenged the claim of FRY to the right and status of the successor state of SFRY. Although the FRY met all the conditions to be recognized as the predecessor country because it retained “an essential part of the territory – including the historical core, the majority of the population, the armed forces, the sources, the seat of the Government and the name of an earlier member”¹⁶, which were stated as the conditions (as confirmed by an arbitration decision¹⁷) which granted Turkey the same status after the break-up of the Ottoman Empire. In the end, under international pressure, however, FRY gave up its claim to that status in order to conclude a comprehensive Agreement on the Succession of SFRY.

An independent arbitration commission of the Peace Conference on Yugoslavia (convened in 1991), the so-called Badinter Commission¹⁸ exerted decisive influence the interpretation and determination of succession issues regarding the situation of states in the wake of the disintegration of SFRY. The Badinter Arbitration Commission laid out the applicable guidelines for matters of state succession.¹⁹ In its opinions 1, 9 and 11 to 15, the arbitration body pointed out that problems of state succession should be resolved by mutual agreement between successor states with a view to the equitable division of international assets and obligations of the former SFRY. With respect to status in international institutions, it also underlined the membership of the SFRY in intergovernmental organizations could not be continued by any successor state, but that each state would have to apply for membership separately.

We can point out that the two phases of this process can be identified:

16 WILLIAMSON, E. D.: *Panel on State succession and relations with federal states*. American Society of International Law, April 1992, 10.; BLUM, Y. Z.: UN Membership of the “New” Yugoslavia: Continuity or Break?, *American Journal of International Law*, 1992, 86(4), 830-833.

17 See more in: Effects of Governmental Changes. *American Journal of International Law*, 1935, 29(1), <http://www.jstor.org/stable/2213691>

18 Robert Badinter, the head of the French Constitutional Court was appointed as President of the five-member Commission consisting of presidents of Constitutional Courts of Germany (Roman Herzog), Italy (Aldo Corasaniti), Spain (Francisco Tomás y Valiente) and Belgium (Irene Petry).

19 Conference on Yugoslavia Arbitration Commission: Opinions on questions arising from the dissolution of Yugoslavia. *International Legal Materials*, Vol. 31, 1992.

- the first can be defined by the FRY position towards/of legally unfounded secession and the recognition of the independence of the former Yugoslav republics and their activity as independent states from 1992 to 2000²⁰ (for the duration of the application of this attitude),
- the other phase, which started precisely in the year 2000 - which is also related to the legal fact that the former FRY “and ultimately independent Serbia and Montenegro, were successors in relation to the SFRY, as well as all other former republics”.²¹ These facts related to Serbia and Montenegro was confirmed by all interested parties participating in these negotiations by signing the Agreement on Succession Issues on 29 June 2001 in Vienna.²²

3. Structure of the Succession Agreement

After resolving all the doubts about the issue of the number of successors of SFRY, the Agreement on succession issues was concluded. This comprehensive act signed by the Federal Republic of Yugoslavia (FRY), Bosnia and Herzegovina (BiH), the Republic of Croatia, the Republic of Slovenia and the Former Yugoslav Republic of Macedonia (FYROM) conclusively confirmed that five sovereign equal successor states were formed upon the dissolution of the former SFRY. The five state parties reached the accord to solve numerous outstanding issues of inheritance of property and other rights arising in the succession process. Its signature in Vienna was carried out ten years after the start of the first serious events leading to the break-up of SFRY through violent and non-violent (for instance, in case of Macedonia) processes set in motion by the secession of various constitutive components of SFRY which came to a conclusion with the adoption of the succession settlement framework as their slowly negotiated epilogue.

From the formal legal point of view this multilateral treaty could be included in a relatively short intergovernmental accord of this kind, because it contains

20 ČOLOVIĆ, Vladimir: *Agreement on Succession-Protection of Private Property*. In Yearbook of the Faculty of Law, No. 1, Banja Luka, University of Apeiron, 2015, 41.

21 ČOLOVIĆ, Vladimir: *State guarantees and acquired rights in the conditions of succession-general issues (with reference to the Agreement on Succession Issues of the SFRY, Proceedings from the International Scientific Conference on “Regulation of Open Issues between Successor States of the SFRY”*, Belgrade, Institute for International Politics and Economy, 2013, 168.

22 Agreement on succession issues between the five successor states of the former state of Yugoslavia, *International Legal Materials*, 2002, 41(1), 11.

only thirteen articles. In addition to its principal text with core articles, it is important to emphasize that it also comprises seven annexes and three additions. Nevertheless, the material and legal aspects of the provisions in this compact are extremely important, bearing in mind that they included the solution of ten years of uncertainty about state succession.

In the agreement, the parties reached consensus that each of them would take all necessary measures and actions in relation to property, and other state property in order to protect it from any damage or other circumstances that could result in the reduction of its value. All the afore mentioned and other aspects are contained in seven annexes that form integral parts of this Agreement.

Those are the following:

- Annex A relating to movable and immovable property,
- Annex B relating to the diplomatic and consular archives,
- Annex C containing provisions of financial assets and liabilities excluding only those defined in one of the three appendices to this agreement,
- Annex D regulating the issue of archival succession,
- Annex E, regulating the issues of pensions and their implementation,
- Annex F which by its standards included other rights and obligations as well as
- Annex G regulating the extremely sensitive matter of private property and acquired rights.

As a separate body established with the task of “effective implementation of this Agreement, and to serve as a forum for discussing issues that arise during the implementation of the Agreement”²³, the so-called Standing Joint Committee, which was empowered to adopt its own rules of work, has made it possible to overcome all problems in the continuation of its work. This committee, in relation to the prescribed competencies, was also the final authority for resolving all the above mentioned issues and ambiguities in relation to the Agreement, which appeared in the work of lower commissions and working bodies in the process of state succession to SFRY.

On the basis of the possibility given by the rules of international treaty law, the parties agreed that it will not be possible to make reservations to the Agreement and the ratification process should be accomplished within a given period. Articles 11 and 13 of the Agreement emphasized the need for an urgent end to the ratification process in national parliaments in order

23 Article IV of the Agreement on succession Issues.

for the provisions of the Agreement to come into force. As an example of the ratification procedure, we can recall the provisions of the Law on the Confirmation of the Agreement on Succession Issues adopted by the FRY as one of the successor states.²⁴ By similar legal acts, this Agreement has been introduced into the national legal orders of the other signatory states to the Agreement.

In addition, the position of the UN Secretary-General as the depositary of the agreement is no less important. In accordance with Article 102 of the Charter of the United Nations, its obligation is that “every treaty and an international agreement concluded by a member of the United Nations after the entry into force of the Charter”²⁵ shall be as soon as possible registered and published by the Secretariat of the United Nations.

It must be noted that only its proper registration in the UN Secretariat ensured the condition for the possible invocation of the agreement before any UN forum²⁶ in case of violation of the provisions of the deposited ratified Agreement.

3.1. *Annex B of the Succession Agreement*

Without going into the essence of all the aforementioned annexes to the Agreement, the only further subject of the current analysis will be Annex B. Its contents of seven articles – similarly to the content of other annexes – elaborate in more details a specific aspect of the issues defined by the Agreement, where we could see just general explanation. The annexes to this Agreement could not be identified with the amendments or modifications of the treaties defined in Chapter IV of the Vienna Convention on the Law of Treaties of 1969.²⁷ All the attached annexes were adopted together, simultaneously with the principal text of the Agreement as the constituent components of the settlement of state succession issues among SFRY successor states.

Therefore, Annex B (together with the other annexes) has the same legal force as any other element of the composite treaty. It was duly confirmed

24 Published in *Official Gazette of FRY- Part International Agreements*, No. 6. From July 3 2002.

25 <http://www.un.org/en/charter-united-nations/>, consulted on 24.06.2017.

26 Article 102 (2), UN Charter.

27 Vienna Convention on the Law of Treaties, Part IV Amendment and Modification of Treaties, <http://global.oup.com/booksites/content/9780198259466/15550012>, consulted on 24.06.2017.

in the laws on their ratification.²⁸ Annex B of the Agreement itself contains several important principles, of which the most important are the following: type, legal nature, scope and manner of distribution of former SFRY diplomatic and consular representations.

First, we emphasize the precise wording that all diplomatic and consular missions and the existence of the former SFRY need to be classified according to two conditions:

- pursuant to Article 1 of Annex B of the Agreement “as an interim and partial distribution of SFRY diplomatic and consular properties, the successor States have selected the following properties for allocation to each of them: Bosnia and Hercegovina: London embassy, Croatia: Paris embassy, FYR Macedonia: Paris consulate, Slovenia: Washington embassy, Federal Republic of Yugoslavia: Paris residence”²⁹, shall be granted immediately and in whose possession the Contracting Parties shall enter into within a period not exceeding six months from the moment of signing the Succession Agreement,
- the one that will be the subject of division of the successor states in the coming period, and with the additional principle that their distribution is done in the form as they exist, that is in the form of real estate and not in the way of estimating their monetary value and securing payment to the successor state in this way.

It was also stipulated that all such property (which is listed in the Appenndix of the Annex B) and its distribution, regardless of the provisions of the Agreement, will be subject to the provisions of special agreements to be concluded between all five successor States.

One particular issue that made it difficult to reach the Agreement and later its implementation was how to meet all the requirements set by the parties and put them in proportion to the total percentage of real estate that the former SFRY had in the category of diplomatic and consular missions.

Article 3 of Annex B determined that besides those real estates referred to in Article 1 of this Annex, all remaining assets will be allocated according to the following criterion: 39,5% belongs to FRY, 23,5% goes to Croatia, BiH receives 15%, Slovenia 14% and Macedonia (FYROM) gets 8% of the total diplomatic and consular assets (premises) owned by the extinct SFRY.

28 See for instance: Law on Confirming Succession Issues, Official Gazette of FRY - International treaties No.6 / 2002.

29 Annex B, Article 1, Agreement of Succession.

It is important to note that the agreed percentages (related to individual parties and in relation to the division of foreign real estate SFRY heritage) were different than what was foreseen for example offered by the International Monetary Fund in general Appendix to the Agreement. This Appendix determined the division of property of the former SFRY kept in the Bank for International Settlements where the ratio was applied to the Member States, according to which the percentage attributed to the Contracting Parties was set out as follows: FRY 36.52%, Croatia 28.49%, Slovenia 16.39%, BiH 13.10% and FYR Macedonia 5.40%.³⁰

The distribution thus encompassed a total of one hundred and twenty-three properties, with their total value of 64.5 million US dollars. In order to avoid possible misunderstandings related to the descriptive elements of real estate, an addition was made to Annex B of the Agreement³¹ which made it much easier and more precise to achieve the level of asset allocation.

The procedure for the specific distribution of the SFRY real estates abroad (was based on the spirit of the UN Charter and the principles of international law. The principle of *bona fides* as the classic principle of contracts and obligations – defined originally in Roman law and preserved in the European legal tradition (such as Article 1135 of the French Code Civil³², that is in 688 articles of the German Civil Code³³ as well as Article 13 of the Serbian Civil Code³⁴) – proved crucial for a mutually satisfactory settlement. Its application was necessary in the approach of the contracting state parties to the sensitive matters of state succession.

The essence of this principle in relation to Annex B implied that a consensual and credible procedure for the allocation of the aforementioned properties of a former state in foreign countries had to be accepted by all participating states. In accordance with the adopted procedure, all contracting parties

30 Appendix on Agreement of Succession, Article 1.

31 With this addition, all 123 properties owned by the former FRY in the category of diplomatic and consular missions were listed under the following criteria: the country in which it is located, its exact address, the total land area, the total superficial real estate, the estimated value of the facility with the estimated value of the land Which is also a special commentary in relation to the real estate itself, which is relevant to succession issues such as, for example, That the embassy building in Australia was leased for 99 years and that it runs from 11.09.1965.

32 Code Civil, art. 1135: Les conventions obligent non seulement a ce qui y est exprime, mais encore a toutes les suites que l'equite, l'usage ou la loi donnent a l'obligation d'apres sa nature, Adopted in 1804.

33 BGB, art. 688, Adopted in 1896.

34 Serbian Code Civil, art.13, Adopted in 1844.

tabled their interests and claims to determine which piece of real estate can be possibly identified as of interest for each state party. In case, they choose the same real estate, contesting state claims would be reconciled in an agreement within a certain period up prior to the final distribution. As an initial element related to the value of each real estate item, the last estimate contained in the Report on evaluation of assets and debts of the former SFRY, which was drawn up on 21 December 1992 refers to the state of this property as of 31 December 1990.

This Annex also resolves the status of the associated movable property with these properties, i.e. it was decided that it would share the legal status of the real estate and land itself on the basis of the agreements reached and as a result of the implementation of the Agreement and its annexes.

In order to overcome all misunderstandings liable for all possible problems and issues raised during the allocation related to Annex B, the work on the Standing Joint Committee was redefined. Nevertheless, the work of this board regarding the issues defined in Agreement of Succession and its Annex B was related to “verification and, if necessary, amendments to the regulations referred to in Article 4, as well as the assessment of the legal status of each property, its physical condition and any financial liabilities that go long with it, as well as the valuation of assets if it is necessary”.³⁵

The last principle that we consider essential for Annex B is the question of the responsibility of all the contracting parties in relation to the actual possession of all real estate individually. In that sense, they were obliged to take all the necessary measures of a conscientious owner to prevent the occurrence of damage to property or its destruction, as already stated in the Agreement. Otherwise, it was clearly stated that, in the event of any of the above-mentioned acts, the complete compensation of damages would be solely their obligation.

As a challenge facing the state parties after several meetings of the Standing Committee, the important issue of previously not registered and known properties³⁶ of the former SFRY emerged, which could not be considered under the provisions of Annex B of the Agreement³⁷. (For example, we could mention meeting Standing Joint Committee in Skopje in April 2016 where was last time noticed newly discovered property³⁸.) In any case, it is evident

35 Article 5, Annex B to the Succession Agreement of SFRY.

36 After meeting Standing Joint Committee in Skopje in April 2016.

37 BUTUROVIĆ, Adnan: From a bad start to a maximum for BiH. *Prizma*, November/December 2016, 10-12.

38 <http://avaz.ba/vijesti/229121/hadzikapetanovic-na-sastanku-zajednickog-odbora-za->

from this aspect that it will be necessary to begin negotiations related to the conclusion of a new Appendix of Annex B which could make its full implementation increasingly difficult.

3.2. *The case of of BiH in the implementation of Annex B to the Succession Agreement*

Like the other contracting parties, BiH was obliged to ratify the Agreements which were approved by the BiH Presidency session on 28 November 2001. Since the entire process related to the ratification of this Agreement (parallel in all Contracting States) ended only in 2004, the BiH Council of Ministers has since taken concrete steps by forming working groups and following this process through the implementation of several documents such as the Framework Program for the continuation of activities in implementation of the Succession Agreement of the former SFRY as well as through the Negotiating Platform in which the interests of BiH were laid out.

After the entry into force of the Agreement, concrete work began by the working groups established under the Ministry of Foreign Affairs in order to come into possession of BiH property share in line with 15.2% allocation arrangement with an estimated value of 9 855 000 US dollars. The division procedure for BiH in relation to the positions of other member states did not proceed with the expected pace and in accordance with its own interests. As a country most severely affected by war and afflicted by internal political divisions under the specific type of constitutional arrangements created by the Dayton Agreement of 1995 in conclusion of the war with supervisory mandate assigned to specific international organizations³⁹, BiH could not effectively undertake a successful campaign of diplomatic initiatives and negotiations in order to become the owner of its share of former SFRY diplomatic real estate.

In the period from the beginning of the division of real estate in relation to Article 1 of Annex B of the Agreement and the initial number of one hundred and twenty-three properties in the category of diplomatic and consular missions, until today there have been 51 uncollected properties, primarily due to a variety of legal problems and demands that related to the remaining part of the division.

raspodjelu-imovine-sfrj , (consulted on 06.07.2017).

39 Aćić, Marko K.: *The role of international organizations in the emergence and functioning of Bosnia and Herzegovina established by the Dayton Peace Agreement*. Doctoral dissertation, 470-474.

In addition to the above, “this process is accompanied by problems related to the registration of objects in the ownership⁴⁰. BiH, having entered into possession, in a few cases, determined the problem of property-legal status of the building.”⁴¹

The process of dividing the remaining assets from the standpoint of BiH gets new dimensions. If it were accepted that assets that can not be distributed, it could be sold to generate financial sources to divide among the state parties. It may offer a reasonable solution for the distribution of inherited value, but this is essentially contrary to Article 2 (1) of Annex B of the Agreement which prescribes: “SFRY diplomatic and consular properties shall be distributed in kind (i.e. as properties) rather than by way of monetary payments”.⁴²

This proposal was concluded by the contracting parties in April 2016 after meeting in Brdo near Kranj in Slovenia and the contradiction might be resolved by the application of the *lex specialis derogat legi generali* principle.

The same proposal includes the decision to sell those properties designated for sale in New York, Tokyo, Bonn and Bern which could not have been allocated before.⁴³ In relation to these properties, whose sales are expected to generate about \$ 80 million, BiH would have the right to claim “at least 12 million” by a percentage of 15% under Annex B of the Agreement.⁴⁴

One of the special issues related to the implementation of the obligations under Annex B was the resolution of the issue of paying rent for the use of property that was supposed to be owned by another of the contracting countries. Until today no agreement has been reached on this matter, because it is still kept by another state party. (For instance, Serbia paid to BiH 55 5 30 000 US dollars for the use of the facility of the embassy of SFRY in Ankara, which should belong to BiH in accordance with Annex B.⁴⁵) This obligation in relation to the payment of rent from all Contracting Parties to the Agreement was accepted periodically as additional to the obligations from the Agreement

40 Especially in the land registry of the state where the property is located.

41 BUTUROVIĆ op. cit. 10.

42 Article 2 (1) of Annex B of the Agreement.

43 Invitation to tender for the provision of real estate sales services the sale of diplomatic real estate in New York (United States of America), Tokyo (Japan), Bonn (Germany), and Bern (Switzerland), gp.mzz@gov.si, consulted on 07.07.2017.

44 <http://www.paragraf.ba/dnevne-vijesti/21042016/21042016-vijest8.htm>, consulted on 08.07.2017.

45 http://www.glassrpske.com/novosti/vijesti_dana/BiH-dobija-12-miliona-dolara-od-prodaje-ambasada/lat/207401.html, consulted on 08.07.2017.

and shall apply from 1 January 2012⁴⁶ on the basis of the aforementioned bilateral and other agreements decided for each property separately.

Compared to the initial problems that were related to the failure of diplomacy to enter effectively into possession of the property which belonged to BiH, there are noticeable positive developments in the direction of a higher percentage of the implementation of Annex B of the Succession Agreement.

So far Bosnia and Herzegovina has entered, among other properties, in possession of real estates from the category of diplomatic and consular missions belonging to the former SFRY) in exceptionally important countries: Austria, Italy, Canada, Hungary, Norway, USA, Spain, Turkey, Great Britain, Algeria, Egypt, Kenya, etc.⁴⁷ All of the above indicates that the process of implementation of the Agreement itself from the point of view of BiH started to move in significantly new direction of more efficient exercise of rights than it could achieve in the first years after the ratification of the Vienna state succession agreement of 2001.

4. Conclusion

The issue of succession from the theoretical and practical point of view today still draws the attention of the professional public. The reasons for this should be sought in attempting to regulate this area even more in a more detailed manner by adopting new contracts or creating custom as a recognized source of international law, as well as in order to ensure a sufficient number of ratifications so that the Convention on the Succession of States in relation to the state property, archives and debts in 1983 came into force. In addition to the above, the fact that the achievement and implementation of the provisions of the Succession Agreement of the former SFRY is a achievement and implementation is certainly one of the examples that showed that, in the absence of generally accepted conventions in the field of succession, politics can exercise the rule of law, and in that way determine important issues in the succession process, for example, both the number of successors themselves and the way in which their rights and obligations are left. In the example of Annex B of this Agreement, we have indicated that respecting the agreement, the principles of bona fides and the rules of international law relating to

46 <http://www.novosti.rs/vesti/naslovna/politika/aktuelno.289.html:599701-Sarajevo-trazi-600000-dolara-za-zgradu-u-Ankari>, consulted on 08.07.2017.

47 <https://www.faktor.ba/vijest/raspodjela-imovine-bivse-jugoslavije-preuzima-mo-jos-dvije-ambasade-203167>, consulted on 08.07.2017.

international treaties may lead to a greater degree of real implementation of the agreement. In relation to some other annexes that also regulated issues such as, for example, Annex G, which treats the matter of acquired rights, shows that the implementation of Annex B is at a higher level. In this process, in comparison to the initial difficulties of BiH, in relation to the initial difficulties related primarily to the lack of the tradition of independent and competent diplomatic service, it has still managed to get into possession of a significant number of properties that belong to it in the percentage of 15% according to Annex B of the Agreement.