

## Report

### The Dayton Peace Agreement, Two Decades Later: What was achieved and what to expect?

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15 December 2015



*“Even from beyond the grave, there are victims singing the song of peace today. May their voices be in our minds and our hearts forever.”*

—US President William J. (Bill) Clinton

## Introduction

At the conclusion of the agreement reached at Dayton, President Clinton declared,

The presidents of Bosnia, Croatia, and Serbia have made a historic and heroic choice. They have heeded the will of their people. Whatever their ethnic group, the overwhelming majority of Bosnia’s citizens and the citizens of Croatia and Serbia want the same thing. They want to stop the slaughter. They want to put an end to the violence and war. They want to give their children and their grandchildren the chance to lead a normal life.<sup>(1)</sup>

Almost exactly twenty years later, the children and the grandchildren of the people of Bosnia, Croatia, and Serbia continue to live within the firm framework of the Dayton Peace Agreement.<sup>(2)</sup> The proud legacy of the accords was on display this year at the University of Dayton, where current and former world leaders gathered to commemorate the historic agreement. Former US President Clinton delivered the keynote address on 19 November, the first day of the two-day “Dayton Peace Accords at 20” conference on the University of Dayton’s River Campus.

Twenty years after the agreement was reached, the Dayton Accords remain the most important documents for Bosnia and Herzegovina, by which all spheres of its political, economic, and social life are regulated. This year commemorates two important and closely connected events of its modern history: the Srebrenica genocide, and the signing of the Dayton Accords. The agreement was signed in the aftermath of the 1995 genocide in Srebrenica, an event which compelled NATO forces to bomb Bosnian Serb military positions, thus increasing the pressure on Yugoslav President Slobodan Milosevic to stop the aggression against Bosnia and Herzegovina. Although the results were not immediate, the Dayton Accords created the conditions for peace after three and half years of the most brutal European conflict since the Second World War.

In November 1995 a US-led team of negotiators and mediators persuaded the leaders of the warring parties to sign the peace agreement in Dayton, Ohio. The chief negotiator for the United States, Richard Holbrooke, explained that the Dayton Agreement was created and signed in order “...to turn the sixty-day cease-fire into a permanent peace, and to gain agreement for a multiethnic state.”<sup>(3)</sup> Paradoxically, during the intervening twenty years, the Dayton Peace Accords have led directly to two radically opposed processes in Bosnia and Herzegovina: along one track, ethnic reconciliation and the construction of the new state, and on the other, the institutional strengthening of strict ethnic division. More than any other document in modern political history, the Dayton Peace Accords demonstrates the hazards of international interventionism.

It is important to note that the initial aim of the accords was to establish temporary international control over the military, construct a new state, and establish peace in the region. The eleven annexes of the accords explicitly require that the new Bosnian state would be highly dependent on international supervision, but only until the first general elections in September 1996. After this date, the power of decision making was to be gradually ceded to local authorities. The armed forces, as well as other government institutions, were to be largely controlled by international organizations. These dimensions of international involvement were written into the Bosnian Constitution and the post-war reconstruction.

Twenty years later, however, Bosnia and Herzegovina still exists as a protectorate—a territory that, in practical terms, is controlled completely by the international community with little likelihood in the foreseeable future to regain its status as a truly sovereign state.

### **The bloody road to Dayton**

In order to understand the Dayton Agreement and its importance for the actual political situation in Bosnia and Herzegovina (including its relationship with Serbia and Croatia), it is necessary to trace the events which preceded the peace conference.

During the disintegration of the former Yugoslavia in the early 1990s, the international community offered to recognize the status of sovereign state to any former Yugoslav republic whose citizens voted for independence in a public referendum. The citizens of Bosnia and Herzegovina went to the polls between in late February 1992; the turnout was 63.4 percent, of which 99.7 percent voted for independence. On 3 March, Alija Izetbegovich, Chairman of the Presidency of Bosnia and Herzegovina, declared independence, and parliament ratified the formal secession. On 6 April, the United States and the European Economic Community recognized Bosnia and Herzegovina as an independent state, and on 22 May the country was admitted into the United Nations under the constitutional name Republic of Bosnia and Herzegovina (BiH).

Anticipating the results of the independence referendum, in January 1992 the president of Federative Yugoslavia (composed of the former Yugoslav republics Serbia and Montenegro), Slobodan Milosevic issued a secret order to transfer all army officers born in Bosnia and Herzegovina to the Socialist Republic of Serbia and enlist them in a new Bosnian Serb army.<sup>(4)</sup>

That this aggression was carefully prepared in advance proves that the president of Croatia, Franjo Tudjman, and the president of Yugoslavia, Slobodan Milosevic, had agreed to occupy and divide Bosnia and Herzegovina. (The leaders' motives can be seen

in the agreements signed by Tudjman and Milosevic in Karadjordjevo and Graz.) The two leaders also planned coordinated military actions, simultaneously turning their forces against the army of Bosnia and Herzegovina, resulting in the occupation of more than 70 percent of its territory in the first two months of conflict. During this conflict, several forces—the Army of Montenegro, paramilitary Bosnian Serbs supported by the Serbian government, and the Yugoslav People’s Army—mobilized a huge campaign against the Republic of Bosnia and Herzegovina in order to complete the “ethnic cleansing” of the Bosniak Muslim and Croat population.(5)

At the beginning of the war the Yugoslav People’s Army fought on the side of the Bosnian Serbs, but after 5 May 1992 it withdrew its troops from Bosnia under pressure from the international community. After that date, the Yugoslav People’s Army relinquished command of its estimated 100,000 troops, in effect creating a Bosnian Serb army.(6)

### **Moral relativism of the international community as an excuse for inaction(7)**

In the period from April 1992 to late 1994, the US, the UN, and the EU treated the aggression against Bosnia and Herzegovina as an internal European problem, despite the fact that the country was now a UN member. Two statements memorably express this position: in 1991 the foreign minister of Luxembourg, Jacques Poos, triumphantly proclaimed that “the hour of Europe has dawned,” while US Secretary of State James Baker transmitted the official opinion of the United States when he said that “we [the US] don’t have a dog in this fight.”(8)

As Daniele Conversi argues, during this period Western countries defined the conflict as a civil war—“a war without victims and aggressors”—in which all parties were addressed as “warring factions.”(9) But, as discussed above, this so-called “civil war” was in fact an act of foreign aggression against the sovereign state of Bosnia and Herzegovina. Furthermore, the conflict should not be considered a civil war, as civil wars do not aim to erase the country in which they are fought. Examples of civil wars throughout history clearly demonstrate that the goal of civil war, in principle, is not to eliminate the state entirely, but only to replace the ruling elite or to change the social and political system. In the case of the aggression against Bosnia and Herzegovina the goal was to erase Bosnia and Herzegovina as a state in order to divide its territory between Serbia and Croatia, as clearly proved by the Milosevic-Tudjman agreements reached at Karadjordjevo and Graz.

Western diplomats and policy makers took for granted—or at least allowed themselves to believe in order to justify their inaction—the arguments of analysts who claimed that the wars in Croatia and Bosnia were driven by so-called ancient hatreds, rather than modern

politics. To make the things worse, Western leaders held that all sides were equally responsible for the war. This argument, however, concealed an extremely important truth: in Bosnia and Herzegovina, Serb forces committed 90 percent of all the atrocities—including ethnic cleansing, systematic rape of women, and mass executions.<sup>(10)</sup>

The competing interests of various European countries prevented the EU from acting as a single negotiating entity with clear goals and interests. The Russian-Serbian connection, as well as the pro-Serb sympathies of the British and the French during the administrations of John Major and Francois Mitterrand, prevented effective measures against Serbian aggression, such as enforcing an arms embargo or employing air strikes.<sup>(11)</sup> During this time, European diplomats failed to secure agreement to four peace proposals: the Carrington-Cutileiro plan of 1992 that called for a confederation of Swiss-style cantons; the Vance-Owen plan of the spring of 1993; the so-called “Invincible” plan of September 1993; and the Contact Group plan of May 1994 that envisioned a partition along ethnic lines. While the Bosnian Serbs refused to accept the Vance-Owen and the Contact Group plans, Bosnian President Izetbegovic was not satisfied with the other proposals because they offered only a small part of Bosnian territory to the muslim community.

However, what Richard Holbrooke called “the brutal stupidity of the Bosnian Serbs,” started to change the attitude of Western leaders. The international community could no longer ignore crimes such as the shelling of the Sarajevo marketplace on 5 February 1994 or the massacre of more than 8,000 muslim men and boys in the UN “safe haven” of Srebrenica in July 1995—both events broadcast globally by CNN and covered by brave reporters such as Roy Gutman and David Rohde.<sup>(12)</sup> International opinion began to shift away from “the delusion of impartial peacekeeping” and toward proclaiming the Serbs as aggressors and the muslims as victims.<sup>(13)</sup>

The Serb army retreated in disarray almost without any resistance at all; Milosevic did not come to their rescue. Furthermore, the Croatian and the Bosnian muslim armies began their offensive during the summer, and started to win back important portions of western and central Bosnia. The Bosnian muslims, despite the UN arms embargo, succeeded in acquiring light weaponry, although the Croats did not allow heavy weapons to pass in order to retain their military edge over the Muslim forces.<sup>(14)</sup>

Finally, the economic and financial sanctions imposed on Yugoslavia began to take a toll on the Belgrade regime. At this point, the United States started to outline the basics of a new negotiation effort. This new effort would be headed for the first time by the United States and would involve not only intensive diplomacy but also the threat of NATO force

to push the parties into an agreement to finally end the war. President Clinton chose Richard Holbrooke to lead what would be a new era in Balkan diplomacy.

### On the stage in Dayton

Though basic elements of what would become the Dayton Agreement were proposed in international talks as early as 1992, the successful negotiations were only initiated following several developments: the collapse of previous peace efforts and arrangements; the August 1995 Croatian military offensive, Operation Storm; and the BiH military offensive against the Republika Srpska, conducted in parallel with NATO's Operation Deliberate Force. During September and October 1995, world powers, especially the United States and Russia, applied intense pressure on the main actors of the conflict to attend negotiations in Dayton, Ohio.

The main individuals present in Dayton included US lead negotiator and Assistant Secretary for European Affairs Richard Holbrooke, Serbian President Slobodan Milosevic, Croatian President Franjo Tudjman, and Bosnia and Herzegovina President Alija Izetbegovic. During the lengthy negotiations Holbrooke faced three major negotiating challenges. First, he had to end a bloody war. Second, he had to ensure the safe withdrawal of the UN peacekeeping forces that were effectively being held hostage by Bosnian Serb forces. Third, he had to work out an acceptable division of Bosnian territory that would not lead to partition and would discourage further conflict. The first step that Holbrooke took in trying to simplify the party structure was to "unify the West by subordinating key European players to US control of the process."<sup>(15)</sup>

Hence, Holbrooke's first goal was to obtain agreement on a set of principles that dealt primarily with basic institutional arrangements: recognizing Bosnia's existing borders; accepting the creation of two entities within Bosnia—one for the Bosnian Muslims and Croats, and one for the Bosnian Serbs—allowing each entity to establish relationships with neighboring countries; and asserting a commitment to basic human rights. (This last point proved to be one of the most contentious for all three Balkan leaders.)

By continuing to remind the leaders that this was their last chance to end the war with the help of the United States and the international community, Holbrooke and his team were eventually able to convince each leader to concede some parts of land for the sake of ending the war and obtaining peace in the region. They each recognized a solution was in their long-term interests because their people were suffering and their armies stood at a mutually hurting stalemate. Furthermore, the leaders were being threatened with harsh sanctions, and knew that if they lost US support they would be worse off with the Europeans in any future negotiations.<sup>(16)</sup>

Holbrooke was incredibly committed, and pushed forward even when others were exhausted. Roger Fisher describes Holbrooke as “more of a gladiator than a mediator.”<sup>(17)</sup> His gladiator tactics proved effective in dealing with the Balkan leaders. Previous negotiating styles—such as those of the Europeans, the UN, and former US President Carter—had proven ineffective and played into the hands of the Balkan leaders. As Holbrooke witnessed, the Balkan leaders responded only to direct pressure and a forceful approach.

The negotiation at Dayton was led by US Secretary of State Warren Christopher and negotiator Richard Holbrooke along with two co-chairmen: EU Special Representative Carl Bildt and Russian First Deputy Foreign Minister Igor Ivanov. A key participant in the US delegation was General Wesley Clark (later to become NATO’s Supreme Allied Commander Europe in 1997). The UK team was headed by Pauline Neville-Jones, supported by UK military representative Col. Arundell David Leakey (later to become Commander of EUFOR in 2005). Paul Williams, through Public International Law & Policy Group (PILPG), served as legal counsel to the BiH government delegation. As for the somewhat unusual location, the remote site of Dayton, Ohio was chosen for several reasons: (1) to remove the parties from their comfort zones; (2) to reduce their ability to negotiate through the media; and (3) to securely house over 800 staff and attendants. Curbing the participants’ ability to negotiate through the media was a particularly important consideration. Holbrooke wanted to prevent posturing through early leaks to the press.

After the parties reached agreement and initialed the document in Dayton in November 1995, the full and formal agreement was signed in Paris the following month and witnessed by French President Jacques Chirac, US President Bill Clinton, UK Prime Minister John Major, German Chancellor Helmut Kohl, and Russian Prime Minister Viktor Chernomyrdin.

The agreement’s main purpose was to promote peace and stability in Bosnia and Herzegovina, and to endorse regional balance in and around the former Republic of Yugoslavia. The present political divisions of BiH were agreed upon as part the constitution that makes up Annex 4 of the agreement. A key component of this was the delineation of the Inter-Entity Boundary Line, to which many of the tasks listed in the annexes referred. Bosnia and Herzegovina is a complete state, as opposed to a confederation; no entity or entities can be separated from Bosnia and Herzegovina unless through due legal process. The agreement stipulated that, although highly decentralized, BiH would still retain a central government, with a rotating presidency, a central bank, and a constitutional court. In addition, the Dayton Accords also mandated a wide range of international organizations to monitor, oversee, and implement components of the agreement. The NATO-led IFOR (Implementation Force) was

responsible for implementing military aspects of the agreement. IFOR deployed in December 1995, replacing the UN peacekeeping operation. The Office of the High Representative (OHR) was charged with the task of civil implementation. The Organization for Security and Co-operation in Europe was charged with organizing the first free elections in 1996.

As stipulated by the accords the state of Bosnia and Herzegovina was composed of two units: (1) The Federation of Bosnia and Herzegovina, designed as an entity encompassing all three ethnic groups engaged in the war, Bosnian, Croatian, and Serbian; and (2) the Republika Srpska, formally composed of all three groups, but in practice dominated by Serbs. (In the Bosnian, Croatian, and Serbian languages, Republika Srpska means "Serb Republic" which, grammatically, suggests that the area belongs exclusively to Serbs.) The Federation of Bosnia and Herzegovina consists of ten autonomous cantons, each with their own government. It is inhabited primarily by Bosniaks and Bosnian Croats, which is why it is sometimes informally referred to as the Bosniak-Croat Federation.

The Federation was created in 1994 by the so-called "Washington Agreement," a ceasefire agreement which ended the part of the conflict whereby Bosnian Croats fought with Bosniaks. The agreement established a constituent assembly that continued its work until October 1996. The Federation has a capital, government, president, parliament, customs and police departments, two postal systems, and an airline. It had its own army, the Army of the Federation of Bosnia and Herzegovina, which was merged with the Army of the Republika Srpska to form the Armed Forces of Bosnia and Herzegovina.

The General Framework Agreement, including eleven annexes, calls for Bosnia and Herzegovina, Croatia, and the Federal Republic of Yugoslavia to fully respect the sovereign equality of one another and to settle disputes by peaceful means. In addition, the parties agreed to fully respect human rights and the rights of refugees and displaced persons. Lastly, the parties agreed to cooperate fully with all international bodies, including those authorized by the United Nations Security Council, in implementing the peace settlement and investigating and prosecuting war crimes and other violations of international humanitarian law.

Peace has endured since the signing of the Dayton Accords. Annex 4 of the General Framework Agreement still stands as the constitution for Bosnia and Herzegovina and continues to be the basis for the present political divisions of Bosnia and Herzegovina and its structure of government. The agreement also laid the groundwork for NATO military action in Kosovo in 1999, which led to Kosovo's independence.



## The role of the UN

During the entirety of the Dayton conference the role of UN was very limited. When the agreement was reached, in a manner of fait accompli, Madeleine Albright, US Permanent Representative to the UN, sent the following letter to the Secretary-General.

I would be grateful if you would have the attached text of the general framework agreement for peace in Bosnia and Herzegovina and the annexes thereto (collectively "the peace agreement"), which was initialed by the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia as well as the other parties thereto on 21 November 1995 in Dayton, Ohio, circulated as a document of the General Assembly, under agenda item 28, and of the Security Council....

The annexed Agreements set up the conditions for peace in Bosnia and Herzegovina and are concluded mainly by Bosnia and Herzegovina and the two Entities directly involved in the conflict (which are not parties to the General Framework Agreement), i.e. the Republika Srpska and the Federation of Bosnia and Herzegovina....

In particular, the delegations of the Republic of Bosnia and Herzegovina, the Republic of Croatia, the Federal Republic of Yugoslavia (also on behalf of the Republika Srpska), and the Federation of Bosnia and Herzegovina have committed themselves to refrain from any hostile act against or interference with members of United Nations Protection Force, the international force to be deployed in accordance with the General Framework Agreement, and personnel of humanitarian organizations and agencies. They specifically commit themselves to assist in locating the French pilots missing in Bosnia and Herzegovina and ensure their immediate and safe return. The participants express their deep appreciation to the Government and the people of the United States of America for the hospitality extended to them throughout the talks.

After the agreement was reached, the role of UN became more robust in all important matters, including peacekeeping, reorganization of the state, implementation of democratic institutions, and humanitarian assistance.

## The role of the US

The war in Bosnia and Herzegovina ended with the ceremony for the signature of the peace agreements in Paris in December 1995. Another ceremony, for the initialing of the agreements, had been held in Dayton the previous month November 1995, at the end of the negotiations. What is the legal meaning of these two ceremonies? The answer is provided by the "Agreement on Initialing." This is the only treaty actually signed at Dayton, and it entered immediately into force. Article II of this agreement provides that the consent of the parties to be bound by the peace agreements is expressed by their

initialing, while Article I provides that the agreements enter into force and have operative effect (the so-called *dies a quo*) upon signature in Paris. This is undoubtedly a novel and unusual way of proceeding. It is not only unusual for treaties of great political relevance to be concluded only by mere initialing, it is also striking that agreements made in this way are subject to the suspensive condition of their signature, that is: although they are binding upon their initialing, this binding force only commences to produce the effects upon signature.

The negotiating process at Dayton was conducted essentially at the instigation of, and under strong pressure from the United States delegation. The agreements bear the strong imprint of US leverage. At the end of the negotiations it was agreed that neither the states nor entities of the former Yugoslavia, nor other states howsoever involved in the peace process, should be allowed to re-open the discussions. On the whole, the peace was to be a "Pax Americana." The signature ceremony principally constituted an attempt by the European leaders, especially President Chirac, to appear as contributors to the peace process and to give Europe an officially recognized role.

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