

The Bosnian Peace Accord

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1. INTRODUCTION

In Dayton, Ohio, on 21 November 1995, after three weeks of proximity talks, the Bosnian parties, joined by the Federal Republic of Yugoslavia and the Republic of Croatia, initialled a General Framework Agreement for Peace in Bosnia and Herzegovina, together with twelve Annexes.¹ Following an implementation conference held in London on 8 and 9 December 1995, the General Framework Agreement and its accompanying Annexes were signed in Paris on 14 December 1995. They came into force upon signature.

This article will present the salient aspects of the Peace Accord and highlight some aspects that might be of particular interest to lawyers.

2. IMPORTANCE OF THE ACCORD

The first thing to note about the Accord is that it was the sixth attempt to arrive at an agreement for peace in Bosnia and Herzegovina. The Carrington-Cutileiro plan, the Vance-Owen plan, the Stoltenberg-Owen plan, the European Union Action plan, the Contact Group plan, all saw light of day and then disappeared in the Bosnian quagmire. The Dayton Accord used the building blocks of its predecessors and offers the real prospect of bringing the war to an end. Any assessment of the Accord should begin with an appreciation of how important it was to bring the war to an end.

1. Dayton Agreement, 2 *International Peacekeeping* 138-167 (1995).

3. THE ROLE OF LAWYERS IN THE EVOLUTION OF THE ACCORD

Seen against this background, the lawyers at Dayton bore great responsibility, having to remain faithful to the precepts of the rule of law, to justice, and to respect for human rights and humanitarian law while at the same time helping to craft an agreement on which the parties could agree and thus end the war. The lawyers deserve praise and admiration for what they did. The early drafts of the General Framework Agreement and of its Annexes show a marked commitment to principled solutions and to meaningful provisions for the defence of human rights, protection of the rights of refugees and displaced persons, and to arbitration as a method for the resolution of disputes.

Having regard to what the traffic would bear, some of these drafts were significantly pruned as the proximity talks went on. The Annex on arbitration, for example, bears no resemblance to what was initially put forward. However, it was noticeable to those present at Dayton that the initial drafts started with very lofty purposes and were technically of high quality.

Towards the very end of the proximity talks, the whole effort almost foundered on the disposition of the Brčko area in Northern Bosnia. The fact that there was an agreement at all is attributable to the fact that the lawyers came up with an article providing for arbitration on the Brčko area. The parties agreed to binding arbitration of the disputed portion of the boundary line in this area by a three-member panel of arbitrators, one each appointed by the parties, and a third appointed by the President of the International Court of Justice. The proceedings of the arbitral tribunal are to be conducted in accordance with the United Nations Commission on International Trade Law (UNCITRAL) rules.²

One can only be wistful in recalling that when, in January of 1994, the only issue precluding an agreement between the parties was the fate of a very small area of territory, one of the three Bosnian parties declined an identical proposal from Stoltenberg/Owen that the disposition of the areas involved should be submitted to binding arbitration under the authority of the Security Council. Herein lies a lesson for lawyers in peace negotiations: resort to arbitration did not work in January 1994 because then the

2. See 1976 UNCITRAL Arbitration Rules, 15 ILM 701 (1976).

idea was not backed by the kind of power that was at work in Dayton.

4. OUTLINE OF THE ACCORD

The Constitution of Bosnia and Herzegovina invokes a faith that democratic governmental institutions and fair procedures best produce peaceful relations within a pluralistic society. The parties committed themselves to Bosnia and Herzegovina as a democratic state, operating under the rule of law and with free and democratic elections. The Constitution draws guidance from the purposes and principles of the Charter of the United Nations, and inspiration from the Universal Declaration of Human Rights,³ the International Covenants on Human Rights,⁴ and the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,⁵ as well as other human rights instruments.

A pillar of the accord is recognition of Bosniacs, Croats, and Serbs as *constituent peoples*. The concept of constituent peoples has a long history in the constitutional doctrines of the former Yugoslavia and has played an important role in the drafting of peace agreements for the area, but the concept is one that is not well-known outside the area.

While Bosnia and Herzegovina is formally composed of two entities, the Federation of Bosnia and Herzegovina and the Republika Srpska, the Constitution strains to fit within them recognition of, and arrangements for, three constituent peoples. Thus, under Article V, the Presidency of Bosnia and Herzegovina consists of three members: one Bosniac, one Croat, and one Serb. The House of Peoples, one of two parliamentary chambers, will comprise five Croats, five Bosniacs, and five Serbs. A proposed decision of the parliamentary assembly may be declared to be destructive of a vital interest of the Bosniac, Croat, or Serb people by a majority of, as appropriate, the Bosniac, Croat, or Serb delegates in the House of Peoples. Such a proposed decision shall require the approval in

3. See UN Doc. A/RES/217a (III) (1948).

4. See 1966 International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3 (1976); and 1966 International Covenant on Civil and Political Rights, 999 UNTS 171 (1976).

5. See UN Doc. A/RES/47/135 (1992).

the House of Peoples of a majority of the Bosniac, the Croat, and the Serb delegates present and voting.

The Constitution provides for a citizenship of Bosnia and Herzegovina and a citizenship of each entity, as well as for the possibility of citizenship of another state, provided that there is a bilateral agreement between Bosnia and Herzegovina and that state governing the matter.

Under the Constitution, Bosnia and Herzegovina, and both entities, shall ensure the highest level of internationally recognized human rights and fundamental freedoms. All refugees and displaced persons have the right freely to return to their homes. The rights and freedoms in the European Convention for the Protection of Human Rights and Fundamental Freedoms⁶ and its protocols apply directly in Bosnia and Herzegovina. These have priority over all other law.

The enjoyment of the rights and freedoms provided for in the Constitution, as well as in fifteen international human rights instruments annexed to it, are to be secured to all persons in Bosnia and Herzegovina without discrimination. All competent authorities in Bosnia and Herzegovina are to co-operate with, and provide unrestricted access to, any international human rights monitoring mechanisms established for Bosnia and Herzegovina; the supervisory bodies established by any of the international agreements listed in Annex I to the Constitution; the International Criminal Tribunal for the former Yugoslavia; and any other organization authorized by the UN Security Council with a mandate concerning human rights or humanitarian law. Arrangements to deal with the concurrent jurisdiction of these mechanisms have not yet been worked out and may need to be developed in practice as they go about their functions.

Provision is made for the establishment of a Human Rights Commission, and it is specified that, in addition to the European Convention and its protocols, fifteen additional human rights agreements are to be applied by the Commission.

The Human Rights Commission will have two parts: the Office of the Ombudsman and the Human Rights Chamber. The Ombudsman is to be appointed by the Chairman in Office of the Organization for Security and Co-operation in Europe (OSCE). The Human Rights Chamber is to be composed of fourteen members, four members appointed by the Feder-

6. For the text of the Convention, *see* 213 UNTS 211 (1955).

ation, two members appointed by Republika Srpska, and the remaining eight members, who are not to be citizens of Bosnia and Herzegovina or any neighbouring state, are to be appointed by the Committee of Ministers of the Council of Europe. The Committee of Ministers is to designate one of these eight as President of the Chamber. The Chamber will receive by referral from the Ombudsman on behalf of an applicant, or directly from any party or person, non-governmental organization, or group of individuals claiming to be the victim of a violation by any party or acting on behalf of alleged victims who are deceased or missing, for resolution or decision, applications concerning alleged or apparent violations of human rights.

The Constitutional Court of Bosnia and Herzegovina is to have nine members, four from the Federation, two from Republika Srpska, and the remaining three to be selected by the President of the European Court of Human Rights after consultation with the Presidency.

The parties agreed to promote and encourage the activities of non-governmental and international organizations for the protection and promotion of human rights. The parties also joined in inviting the United Nations Commission on Human Rights, the OSCE, the United Nations High Commissioner for Human Rights, and other inter-governmental or regional human rights missions or organizations to monitor closely the human rights situation in Bosnia and Herzegovina, including through the establishment of local offices and the assignment of observers, rapporteurs, or other relevant persons on a permanent or mission-by-mission basis and to provide them with full and effective facilitation, assistance, and access.

The parties agreed that establishment of progressive measures for regional stability and arms control is essential to creating stable peace in the region. To this end, they agreed on the importance of devising new forms of co-operation in the field of security aimed at building transparency and confidence and achieving balanced and stable defence force levels at the lowest numbers consistent with the parties' respective security and the need to avoid an arms race in the region.

The parties requested the OSCE to certify whether elections can be effective under current social conditions in both entities and, if necessary, to provide assistance to the parties in creating these conditions. The parties requested the OSCE to adopt and put in place an elections programme for Bosnia and Herzegovina as set forth in the Agreement.

There is to be a Central Bank, the first Governing Board of which is to consist of a Governor appointed by the International Monetary Fund, plus three members appointed by the Presidency, one Bosniac, one Croat, and one Serb. Provision is also made for the establishment of an independent Commission to Preserve National Monuments. Provision is further made for the establishment of a Commission on Public Corporations.

5. MILITARY ENFORCEMENT

The annexed Agreement on Military Aspects of the Peace Settlement invites the UN Security Council to adopt a resolution authorizing member states or regional organizations and arrangements to establish a multinational military Implementation Force (IFOR) under Chapter VII of the Charter. The parties understood and agreed that IFOR might be composed of ground, air, and maritime units from NATO and non-NATO nations deployed to Bosnia and Herzegovina to help ensure compliance. The parties also understood and agreed that NATO might establish such a force to operate under the authority and subject to the direction and political control of the North Atlantic Council (NAC) through the NATO chain of command.

The Agreement on Military Aspects of the Peace Settlement makes it crystal clear that IFOR will be involved in an *enforcement* operation. The parties authorized IFOR to take such actions as are required, including the use of necessary force, to ensure compliance as well as its own protection.

The parties understood and agreed that further directives from the NAC may establish additional duties and responsibilities for IFOR in implementing this Annex. The parties understood and agreed, furthermore, that the IFOR Commander shall have the authority, without interference or permission of any party, to do all that the Commander judges necessary and proper, including the use of military force, to protect IFOR and to carry out its responsibilities, and they undertook to comply in all respects with IFOR requirements. In the event of the refusal, interference, or denial by any party of IFOR's right to observe, monitor, and inspect, the violating party shall be subject to military action by IFOR, including the use of necessary force to ensure compliance. Any use of air traffic, air early warning, air defence, or fire control radars not authorized by the IFOR

Commander shall constitute a breach of the Military Annex, and the violating party shall be subject to military action by IFOR, including the use of necessary force to ensure compliance.

The IFOR Commander shall have the right to decide on military matters, in a timely fashion, when there are overriding considerations relating to the safety of IFOR or the parties' compliance with the provisions of this Annex. In accordance with Article I, the IFOR Commander is the final authority in theatre regarding interpretation on the military aspects of the peace settlement.

6. THE HIGH REPRESENTATIVE

In view of the complexities facing them, the parties requested the designation of a High Representative, to be appointed consistent with relevant UN Security Council resolutions, to facilitate the parties' own efforts and to mobilize and, as appropriate, co-ordinate the activities of the organizations and agencies involved in the civilian aspects of the peace settlement by carrying out, as entrusted by a UN Security Council resolution, the following tasks:

1. to monitor implementation of the peace settlement;
2. to maintain close contact with the parties;
3. to promote their full compliance with civilian aspects of the peace settlement;
4. to co-ordinate the activities of the civilian organizations and agencies in Bosnia and Herzegovina;
5. to facilitate the resolution of difficulties arising in connection with civilian implementation;
6. to participate in meetings of donor organizations;
7. to report periodically on progress in implementation of the Peace Agreement concerning the tasks set forth in this Agreement to the UN, European Union (EU), US, Russian Federation, and other interested governments, parties, and organizations; and
8. to provide guidance to, and receive reports from, the Commissioner of the International Police Task Force established in Annex 11 to the General Framework Agreement.

The High Representative is the final authority in theatre regarding interpretation on the civilian implementation of the peace agreement.

7. THE ROLE OF THE UNITED NATIONS

The Agreement notes that as a consequence of the introduction of IFOR into the Republic of Bosnia and Herzegovina, the conditions for the withdrawal of the United Nations Protection Force (UNPROFOR) established by UN Security Council Resolution 743 (1992) have been met. They requested that the UN, in consultation with NATO, take all necessary steps to withdraw UNPROFOR from Bosnia and Herzegovina, except those parts incorporated into IFOR.

As was seen above, the parties joined in inviting the UN Commission on Human Rights, the OSCE, the UN High Commissioner for Human Rights, and other intergovernmental or regional human rights missions or organizations to monitor closely the human rights situation in Bosnia and Herzegovina, including through the establishment of local offices and the assignment of observers, rapporteurs, or other relevant persons on a permanent or mission-by-mission basis and to provide them with full and effective facilitation, assistance, and access.

The parties called upon the UN High Commissioner for Refugees to develop in close consultation with asylum countries and the parties a repatriation plan that will allow for an early, peaceful, orderly, and phased return of refugees and displaced persons, which may include priorities for certain areas and certain categories of returnees. The parties agreed to implement such a plan and to conform their international agreements and internal laws to it. They accordingly called upon states that have accepted refugees to promote the early return of refugees consistent with international law.

As was seen above, the High Representative is to co-ordinate the activities of the civilian organizations and agencies in Bosnia and Herzegovina to ensure the efficient implementation of the civilian aspects of the peace settlement. The High Representative is to respect their autonomy within their spheres of operation while giving general guidance as necessary to them about the impact of their activities on the implementation of the peace settlement. The civilian organizations and agencies were

requested to assist the High Representative in the execution of his or her responsibilities by providing all information relevant to their operations in Bosnia and Herzegovina.

The High Representative is to report periodically on the progress in the implementation of the Peace Agreement concerning the tasks set forth in this Agreement to the UN, EU, US, Russian Federation, and other interested governments, parties, and organizations.

To assist them in meeting their obligations, the parties requested that the UN establish by a decision of the Security Council, as a United Nations Civilian Police (UNCIVPOL) operation, a UN International Police Task Force (IPTF) to carry out, throughout Bosnia and Herzegovina, a programme of assistance the High Representative is to provide guidance to. He is also to receive reports from the Commissioner of the IPTF established in Annex 11 to the General Framework Agreement.

The IPTF will be headed by a Commissioner, to be appointed by the UN Secretary-General in consultation with the Security Council. It is to consist of persons of high moral standing who have experience in law enforcement. The IPTF Commissioner may request and accept personnel, resources, and assistance from states and international and non-governmental organizations. The IPTF Commissioner is to report periodically on matters within his or her responsibility to the High Representative, the UN Secretary-General, and shall provide information to the IFOR Commander and, as he or she deems appropriate, other institutions and agencies.

In his address to the London Conference on Implementation, the UN Secretary-General sought to clarify the relationship between the UN, IFOR, and the High Representative with the following statement:

[L]et me mention some general principles that will guide us in the United Nations in our future endeavours. Our mandate stems from the provisions of the Charter and the resolutions of the Security Council. Within this framework we shall do our utmost to assist the parties to the peace agreements to live up to their commitments. But it must be understood that the primary responsibility lies with the parties themselves. The United Nations can, of course, only assist to the extent that we are provided with the resources to do so.⁷

7. UN Press Release (on file with author).

8. CONCLUDING OBSERVATIONS

The Dayton Peace Accord has to be seen in the light of one commanding imperative: the need to stop the war. In that goal they succeeded, at least for the time being. The fighting has stopped and the chance for peace returned to the people of Bosnia and Herzegovina. The military implementation aspects have gone well and reflect the determination of the major powers to brook no nonsense from the parties. The fact that the contributing nations are outfitting and financing their own forces assumes key significance in this regard.

The key to the long-term success of the accords, however, depends on the survival of the Bosniac-Croat federation and the implantation of a culture of democracy, the rule of law, and respect for human rights. This is a long-range endeavour. While the military can impose peace during a 12-month period, it takes much more to get people who have fought one another to move to attitudes of forgiveness, tolerance, and respect - and to accept judicial and quasi-judicial settlement of disputes. Initial difficulties in getting the organization and funding of the civilian aspects of implementation off the ground can and are being overcome. What is crucial, however, is that these activities should be sustained over the long haul. This will challenge the commitment and the staying-power of the EU, the Council of Europe, the OSCE, and similar institutions.

The implementation of the Dayton Accord and the implantation of a firmly-rooted culture of human rights is also a challenge to the community of lawyers and human rights practitioners. The challenge is to help people laden with the legacy of history and empire, the competition of cultures, philosophies, faiths and beliefs, and the pursuit of scarce economic resources to learn to accept one another as brothers and sisters, and to live together with tolerance and respect for one another's inalienable human rights.

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