

This study sets out to examine what lessons can be learned from the General Framework Agreement for Peace in Bosnia and Herzegovina (The Dayton Peace Agreement) 1995, with particular relevance to inter-ethnic reconciliation. The author conducted his fieldwork in Sarajevo during May, 2009, complementing these findings with materials and information collected during his previous visits to Bosnia and Herzegovina.

The study identifies a number of important lessons, and presents them in relation to the process of negotiations, designing of provisions, and implementation of the agreement. Regarding the process, the study suggests that those organising the negotiations should strive to coordinate their efforts in order to avoid duplications and internal conflicts. Furthermore, the paper calls for caution regarding power negotiations that are modelled on the exclusion of one or a few main parties to the conflicts. In relation to the key provision – reconciliation – one should not neglect local practices of power-sharing and societal organization that traditionally served as pillars of peaceful inter-group coexistence. Imposition of external models that are not in line with local political and societal traditions may rub inter-ethnic relations and negatively affect long-term reconciliation. Regarding the implementation phase, two key lessons are highlighted. First, for a successful implementation it is essential to have clear goal and to work with realistic deadlines for implementations. Unrealistic deadlines may create wrong incentives for the primary parties implementing the agreement. Secondly, if provisions include external supervision of the implementation of the agreement, one should consider how this would affect domestic ownership of the process. In such an environment, various reconciliatory measures, regardless of how well intended they may be, stand little chance of immediate success.

Reconciling the Past and the Present

– Evaluating
Dayton Peace Accords 1995

Roland Kostić

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Acronyms

ABiH – Army of Bosnia and Herzegovina
 BiH – Bosnia and Herzegovina
 CG – Contact Group
 CNC – Croatian National Council
 CPC – Croat Peoples Community
 DPA – Dayton Peace Agreement
 EC – European Community
 ESI – European Stability Initiative
 EU – European Union
 EUFOR – European Force
 HDZ – Croat Democratic Union
 HND – Croat National Society
 HR – High Representative
 HVO – Croat Defense Council
 IC – International Community
 ICTY – International Criminal Tribunal for former Yugoslavia
 ICFY – International Conference for Former Yugoslavia
 IEBL – Inter-Entity Boundary Line
 IFOR – Implementation Force
 IMF – International Monetary Fond
 MBO – Muslim Bosniak Organization
 MPO – Muslim Peoples Organization
 NATO – North Atlantic Treaty Organization
 NDH – Independent State of Croatia
 NHI – New Croatian Initiative
 OSCE – Organization for Security and Cooperation in Europe
 OHR – Office of the High Representative
 PIC – Peace Implementation Council
 POW – Prisoners of War
 RS – Republika Srpska
 SBiH – Party for Bosnia and Herzegovina
 SDA – Party for Democratic Action
 SDS – Serb Democratic Party

SFOR – Stabilization Force
 SFRJ – Socialist Federative Republic of Yugoslavia
 SPO – Serb Peoples Organization
 SNO – Serb National Organization
 SNSD – Alliance of Independent Social Democrats
 UK – United Kingdom
 UN – United Nations
 UNPROFOR – United Nations Protection Force
 UNHCR – Office of the United Nations High Commissioner for Refugees
 UNDP – United Nations Development Programme
 US – United States
 USA – United States of America
 VRS – Army of Republika Srpska

Executive summary

This purpose of this paper is to examine the process that led to the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina (The Dayton Peace Agreement or DPA). In particular, the paper will focus on how the Dayton Peace Agreement dealt with the issues of governance, constitution, and transitional justice and what were the consequences for the inter-ethnic reconciliation in Bosnia and Herzegovina (BiH). This paper adopts a broad definition of 'reconciliation', seeing it in terms of the existence of mutual trust, positive attitudes as well as the consideration of the other party's needs and interests. Drawing on the experiences from Bosnia, the aim is to highlight those aspects of the peace process that could serve as lessons learnt – lessons that could be applied in the creation of future comprehensive peace agreements. The study combines secondary sources and survey data, as well as interviews with the members of the BiH government, leaders of political parties, OHR, UNHCR, and UNDP representatives conducted in Bosnia and Herzegovina during May 2009.

The key lessons that are drawn from this study are as follows: First, the Dayton peace negotiations suggest that a high degree of coordination among those organizing the talks, is desired. Otherwise, one runs a risk of competing agendas, conflicts and loss of momentum at the negotiating table. Second, one should be aware that highly exclusive negotiations without direct participation of primary parties to the conflict, may have detrimental impact on the legitimacy and ownership of the peace process. Moreover, this report highlights the need to reflect upon any existing agreements and their original purpose and functionality, before their inclusion in a new agreement. Another important conclusion is that when designing provisions on the constitution or power sharing, it is important to consider local practices and tradition before imposing an external solution. As the Bosnian case shows, lack of consideration for such practices and tradition can have detrimental effects for inter-group

reconciliation. Another lesson learned is about the need for clarity when devising the mechanisms that will manage disagreements on the interpretation of the peace agreement. In addition, in the cases with a high level of mistrust between communities, such as Bosnia and Herzegovina, it is crucial to ensure the presence of strong peacekeeping forces to stabilise peace and make initial implementation of an agreement possible. One more lesson learned is to set up realistic deadlines for implementation of the agreement in relation to what is to be achieved. Finally, the Bosnian case calls for caution when it comes to the use of external administrators to oversee the implementation of the agreement. Lack of transparency and a high degree of intrusiveness stifled local ownership, reduced consensus-seeking incentives, and exacerbated political conflict instead of promoting moderation and reconciliatory practices.

1. Introduction

Comprehensive peace agreements became popular following the end of the Cold War.¹ The trend is in line with policy and scholarly arguments that earlier, less comprehensive peace agreements, while able to stop violence, seldom dealt with societal divisions produced by war.² As a consequence, a whole range of state-building and transitional justice measures have been incorporated in peace agreements, in order to facilitate sustainable postaccord peace-building.³ Together, it has been argued, these measures will lead to national reconciliation and lasting stability.⁴

Broadly speaking, the goal of reconciliation is defined in terms of bringing together former opponents on the basis of a minimum of mutual acceptance, in order to establish positive and sustainable peace.⁵ The psychologist Daniel Bar-Tal clarifies the meaning of a minimum acceptable relationship between former adversaries by defining it in terms of the existence of mutual trust and positive attitudes as well as the consideration of the other party's needs and interests.⁶

¹ Vinjamuri, Leslie, and Boesenecker Aron, *Accountability and Peace Agreements Mapping trends from 1980 to 2006*, (Center for Humanitarian Dialogue, 2007), p. 5.

² Tristan Anne Borer, "Truth Telling as a Peace-Building Activity: A Theoretical Overview," in *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies*, ed. Tristan Anne Borer (Notre Dame: University of Notre Dame Press, 2006), p. 5.

³ Roland Kostić, "Nation-Building as an Instrument of Peace? Exploring Local Attitudes Towards International Nation-Building Building and Reconciliation in Bosnia and Herzegovina," *Civil Wars* (2008), p. 205. Vinjamuri, Leslie, and Boesenecker Aron, *Accountability and Peace Agreements Mapping trends from 1980 to 2006*, (Center for Humanitarian Dialogue, 2007), p. 5.

⁴ EU Presidency Statement – Post-Conflict National Reconciliation – The Role of the United Nations, Statement to the Security Council of the United Nations by H.E. Ambassador Richard Ryan, Permanent Representative of Ireland to the UN on behalf of the European Union. (New York), January 26, 2004. Luc Huyse, "The Process of Reconciliation," in *Reconciliation after Violent Conflict – a Handbook*, ed. David; Bloomfield, Teresa Barns; Huyse, Luc (Stockholm: IDEA, 2005). Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies*.

⁵ Maria Ericsson, *Reconciliation and Search for a Shared Moral Landscape – an Exploration Based on Study of Northern Ireland and South Africa* (Frankfurt am Main; New York: P. Lang, 2001). Johan Galtung, "After Violence, Reconstruction, Reconciliation, and Resolution," in *Reconciliation, Justice, and Coexistence*, ed. Mohamed Abu-Nimer (Lanham; Boulder; New York; Oxford: Lexington Books, 2001), p. 1-2, Charles Villa-Vicencio, "The Politics of Reconciliation," in *Telling the Truths: Truth-Telling and Peace-Building in Post-Conflict Societies*, ed. Tristan Anne Borer (Notre Dame: University of Notre Dame Press, 2006).

⁶ Daniel Bar-Tal, "Nature of Reconciliation" (paper presented at the A Conference on Truth, Justice and Reconciliation, Stockholm, 23-24, April 2002).

A number of studies focus on acknowledging past events as a condition for parties to be able to engage in building a common future. In that vein, Huyse discusses the goal of reconciliation in terms of the reparation of past injustices, and the building or rebuilding of non-violent relationships between individuals and between communities.⁷ In his view, restoring a broken moral order also requires that justice is done.⁸ In a similar manner, Priscilla Hayner writes that “reconciliation implies building or rebuilding relationships today that are not haunted by the conflicts and hatreds of yesterday.”⁹ Hayner also suggests a number of indicators to establish the level of reconciliation in society: 1) how the past is integrated and spoken about between former enemies, 2) if contradictory versions of the past have been reconciled, and 3) if relationships are based on the present or past.

According to many policy-makers, only an adoption of a comprehensive and concerted approach to all peace-building challenges can bring about reconciliation. It has been suggested that this type of approach integrates political, peacekeeping, humanitarian, human rights, judicial and developmental aspects of an agreement in order to facilitate national reconciliation.¹⁰ The prevailing logic suggests that a combination of good governance, constitutional and legal equality, and overall inclusiveness may induce inter-group cooperation in the post-war period¹¹, while transitional justice measures such as tribunals would generate accountability for war crimes,

⁷ Luc Huyse, “Justice,” in *Reconciliation after Violent Conflict – a Handbook*, ed. David; Barnes Bloomfield, Teresa; Huyse, Luc (Stockholm: IDEA, 2005), p. 19.

⁸ Possible benefits of retributive justice include avoiding private revenge, prevention against the return to power of perpetrators, fulfilling an obligation to victims, individualizing guilt, strengthening legitimacy and the democratic process. Luc Huyse, Justice, pp. 97 – 98.

⁹ Priscilla B. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocities* (New York: Routledge, 2001), p. 161.

¹⁰ EU Presidency Statement – Post-Conflict National Reconciliation – The Role of the United Nations (New York), January 26, 2004. Statement by the delegation of the Republic of Rwanda to the United Nations, Post-Conflict National Reconciliation: The role of the United Nations, (New York), January 26, 2004.

¹¹ EU Presidency Statement – Post-Conflict National Reconciliation – The Role of the United Nations. Andrew Rigby, *Justice and Reconciliation: After the Violence* (Boulder, Colorado: Lynne Rienner Publishers, 2001), p. 180.

individualize accountability, and facilitate a comprehensive understanding of the past.¹² Together, these measures are supposed to facilitate a process of inter-group and inter-personal reconciliation, which are considered the pillars of sustainable peace-building.

This report explores the process leading to the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina (The Dayton Peace Agreement) as well as parts of its subsequent implementation. In particular, the report will focus on how the peace accords dealt with the issues of governance, constitution, and retributive justice, and what were the consequences for reconciliation in Bosnia and Herzegovina. More specifically, the focus is on whether, and how, the process leading to the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina paves the way for post-war inter-group reconciliation. Drawing on the experiences from BiH, this study aims to highlight those aspects of the implementation that could serve as lessons learnt, and that could be applied in the creation of future peace accords.

¹² Andrew Rigby, *Justice and Reconciliation: After the Violence* (Boulder, Colorado: Lynne Rienner Publishers, 2001), p. 180. Luc Huyse, “Justice,” in *Reconciliation after Violent Conflict – a Handbook*, ed. Bloomfield David; Barnes, Teresa; Huyse, Luc (Stockholm: IDEA, 2005).

2. History of the Conflict

Bosnia and Herzegovina is located in the geographic center of the Balkan Peninsula. Bordered by Croatia to the north, west and south, Serbia to the east, and Montenegro to the south, Bosnia and Herzegovina is almost landlocked, except for the sliver of Adriatic Sea coastline, around the town of Neum.

Politically and socially, what makes the country fairly unique is the absence of a single state-building ethnic majority – *Staatsvolk* – making its imprint on BiH society, identity and culture.¹³ Instead, three constituent peoples, Bosniaks (Bosnian Muslims), Croats and Serbs, share political power. According to the last pre-war census 1991, Bosniaks constituted 43.47%, Serbs 31.21%, Croats 17.38%, Yugoslavs 5.54% and Others 2.38 % of the country's population.

The social and political importance of communal identity in BiH is a legacy of Ottoman rule. In the culturally segmented *millet* system, the non-Muslim religious communities enjoyed a certain degree of autonomy. Therefore, during the process of modernization in the 19th century, Orthodox and Catholic Christians crystallized into the Croat and Serb communities in BiH. While retaining their regional Bosnian and Herzegovinian uniqueness rooted in history, both communities would develop a close affiliation with their compatriots in Croatia and Serbia. In contrast, Bosnian Muslims would still identify with the Ottoman state. Following the Austro-Hungarian occupation of Bosnia and Herzegovina in 1878, a conscious attempt was made to establish a Bosnian nation. However, this political project was only endorsed by the Muslim intellectual elite and a small number of Croats. The Serb community formed a resistance organization that would later grow into the Serb Peoples Organization (SPO). In 1906, a corresponding grassroots Muslim Peoples Organization (MPO) was organized to contend the Aus-

¹³ Kjell Magnusson, "Bosnia and Herzegovina," in *Islam Outside the Arab World*, ed., Svanberg Ingvar and Westerlund David. (Routledge, 1999). p. 301.

tria-Hungary occupation. The MPO entered into alliance with the SPO. Later, also a Croat Peoples Community (CPC) would join the two. This mobilization led to a victorious outcome of the coalition in the first Bosnian elections held 1910.

Given that no community had an absolute demographic dominance, the period before WWII was marked by political struggles for the control over Bosnia and Herzegovina. However, during WWII the Croat fascists, *Ustasha*, who also included many Bosnian Muslims in their ranks, committed a number of atrocities against the Serb population in BiH and Croatia in order to render these territories ethnically pure.¹⁴ The policies of the Ustasas resulted in thousands of Bosnian Serbs enlisting in various resistance movements established in BiH. One of the more prominent movements at the time was the Serb nationalist movement, the *Chetniks* which envisaged the inclusion of large parts of Croatia and BiH into a future Serbian state. Accordingly, BiH was to be cleansed of its Muslim and Croat inhabitants.¹⁵ The implementation of the policy was particularly evident during 1942-43 in eastern Bosnia where Chetniks killed or expelled almost half of the Bosnian Muslim population.¹⁶

The violence instigated by the Ustasas and Chetniks against civilians generated support for the Communist Partisans led by Josip Broz-Tito.¹⁷ Emerging victorious from the Second World War, the Communist leadership sought to settle the inter-communal conflicts by defining BiH as a republic inhabited "by parts of the Ser-

¹⁴ The Ustasha considered the Bosnian Muslims as the purest of all Croats and an intrinsic part of the Croat nation. An array of measures that were employed included forced conversions, deportations to Serbia, opening of concentration camps and mass murder. Tomislav Dulić. *Utopias of Nation-Local Mass Killing in Bosnia and Herzegovina, 1941-42*. (Uppsala University, 2005). pp. 86 – 100.

¹⁵ For a historic account of the Chetniks intentions as well as the results of their policies in eastern Bosnia see *Ibid.*, pp. 177 – 215.

¹⁶ *Ibid.*

¹⁷ Under the motto of 'Brotherhood and Unity' the partisans mobilized large proportions of three ethnic groups in BiH. *Ibid.*

bian and Croatian nations, as well as by the Bosnian Muslims".¹⁸ In other words, three ethnonational groups shared political power equally.¹⁹ Defined as such, BiH was recognized as one of six republics of the new socialist Yugoslav federation in 1946.

Considering its multiethnic structure and absence of a single dominant state-building ethnic majority, BiH under communist rule functioned politically on a strict consociational basis with rotation of representatives of the main three nations in the leading seats of political power, and in the upper tiers of the industry and administration.²⁰ Most decisions were made by consensus of representatives of all three communities in administrative structures. While the motto of 'brotherhood and unity' dominated public space, ethnonational rivalries and conflict expressed themselves far from the eyes of the public within the League of Communists of BiH.²¹

The Communist Party of Yugoslavia disintegrated in December of 1989. This evidently meant profound changes in political life. By the mid-1990s, three national parties, the Croat HDZ (Hrvatska Demokratska Zajednica – Croat Democratic Union), Serb SDS (Srpska Demokratska Stranka – Serb Democratic Party) and Bosniak SDA (Stranka Demokratske Akcije – Party of Democratic Action) had been formed. With the support of religious institutions, all three parties were able to mobilize their respective ethnonational constituencies. With significant grass-root support and joined in a coalition, the three ethnonational parties won the elections in November 1990.

¹⁸ Bosnian Muslims were officially recognized as a nation under the name of Muslims in the 1971 Yugoslav census. See also Noel Malcom, *Bosnia- A Short History*. (New York University Press, 1996), p. 181.

¹⁹ Magnusson, "Bosnia and Herzegovina," p. 301.

²⁰ D.A. Dyker; I. Vejvoda, ed., *Yugoslavia and after – a Study in Fragmentation, Despair and Rebirth* (London and New York: Longman, 1996), p. 18.

²¹ Xavier Bougarel, "Bosnia and Herzegovina – State and Communitarianism," in *Yugoslavia and after – a Study in Fragmentation, Despair and Rebirth*, ed. Vejvoda I. Dyker D.A (London and New York: Longman, 1996), p. 94.

The ensuing dissolution of socialist Yugoslavia in June, 1991, led to major divisions in BiH regarding its future status. The range of options included either a proclamation of independence or remaining in the rump Yugoslavia together with Serbia and Montenegro. The position of the HDZ BiH – representing the Croats – was that they would never agree to remain in a Yugoslavia without Croatia.²² On the other hand, the Serb SDS was willing to recognize the sovereignty of BiH provided that it stayed in a Yugoslavia federation.²³

The dissolution of political consensus that so far had existed in BiH occurred in October 1991. On the one hand, the Bosniak SDA, supported by the Croat HDZ, pushed for the adoption of a 'Memorandum of Sovereignty' by the Parliament of BiH. The memorandum entailed that representatives from BiH would not participate in the work of the federal Yugoslav institutions unless the representatives of all other republics participated, nor would they consider as binding any decisions made by such institutions.²⁴ At the same time, the SDS, representing the Serbs, had passed its own resolution stipulating that the representative of BiH would participate in the work of the federal parliament and presidency. Yet, in the event that Croatia was to be recognized as an independent state, SDS demanded the "realization of the right of self-determination including secession of the constituent nations of Bosnia and Herzegovina (Muslims, Serbs, and Croats)".²⁵

When the Memorandum was adopted, the SDS responded by creating six Serb Autonomous Regions.²⁶ The referendum on self-de-

²² If the rest of BiH would have accepted such a federal arrangement, the Croats intended to secede from BiH in order to leave Yugoslavia. Stenogrami, *Stenogrami O Podjeli Bosne*, ed. Predrag Lovrenović i Lucić, Ivan, 2 vols., vol. 1 (Split-Sarajevo: Kultura& Rasvjeta-Civitas, 2005), pp. 76 – 79.

²³ Filandra Šaćir; Karić, Enes, *Bošnjačka Ideja* (Zagreb: Nakladni zavod Globus, 2002), p. 353; Biljana Plavšić, *Svedočim*, vol. I (Banja Luka: Trioprint, 2005), pp. 84 – 85.

²⁴ Robert M. Hayden, *Blueprints for a House Divided – the Constitutional Logic of the Yugoslav Conflict* (Ann Arbor: The University of Michigan Press, 1999), p. 93.

²⁵ Ibid.

²⁶ Mirjana Kasapović, *Bosnia i Hercegovina: Podijeljeno društvo i nestabilna država* (Zagreb: Politička kultura, 2005), p. 199.

termination of BiH, which was called for by the European Community and held on 29 February and 1 March 1992, was the final reaffirmation of the existing political fragmentation.²⁷ When the votes were cast, the turnout was 63.7 per cent of all eligible voters, of which 98.9 per cent voted for independence.²⁸ However, most Bosnian Serbs boycotted the referendum, a fact used by the Bosnian Serb leaders to justify their demands for separation from BiH.

As BiH was recognized by the EC on 6 April 1992, the Serb Republic of Bosnia and Herzegovina was created and all Serb functionaries, police and army were called upon to break with the newly recognized BiH.²⁹ At the same time, the Serb Territorial Defense and paramilitaries started assuming control of municipalities they considered to be part of their self-proclaimed Republika Srpska. On 8 April, the rump collective presidency of BiH decreed the mobilization of the republican Territorial Defense and called for the unification of countless militias, thus creating a basis for the Army of BiH (ABiH).³⁰ The Croat HDZ responded the same day by setting up its own military force, the Croatian Defense Council (HVO-Hrvatsko Vijeće Obrane), and three months later, created the Croat Community of Herceg-Bosna in the territories under HVO control.³¹ The outbreak of the war started a violent process of territorial takeovers whereby eventually all three sides attempted to capture the largest possible homogenous territory in order to build their own national mini-states.³²

²⁷ The SDS called on all Serbs to boycott the referendum and organized an alternative referendum for secession from BiH.

²⁸ Xavier Bougarel, "Bosnia and Herzegovina: State and Communitarianism," in *Yugoslavia and after – a Study in Fragmentation, Despair and Rebirth*, ed. Vejvoda I. Dyker D.A. (London and New York: Longman, 1996), p. 101.

²⁹ The constitution pronounced all Serb autonomous regions as well as the areas where Serbs became a minority as a result of the genocide in the Second World War as parts of Yugoslav state. Kasapović, *Bosnia i Hercegovina: Podijeljeno Društvo i Nestabilna Država*, p. 119.

³⁰ This will be the basis for the creation of the Army BiH on 5 July 1992.

³¹ For a detailed analysis of the conflict escalation and its dynamics, see Susane L. Woodward, *Balkan Tragedy: Chaos and Dissolution after the Cold War* (Washington, D.C.: The Brookings Institution, 1995). Steven L., Shoup Burg, Paul S., *The War in Bosnia and Herzegovina* (New York and London: M.E. Sharpe, 1999).

³² Kasapović, *Bosnia i Hercegovina: Podijeljeno društvo i nestabilna država*, p. 127.

3. The peace agreement

3.1 Process of getting to the Dayton Peace Agreement

Until early 1994, all peace proposals seeking to put an end to the war in BiH were jointly presented by UN and EC Special Envoys in the framework of the International Conferences for Former Yugoslavia (ICFY).³³ All attempts, however, failed due to the inability of the parties to reach an agreement on territorial and constitutional arrangements.³⁴ Yet another failed attempt in February 1994 by the EU to bring an end to the fighting between Bosniaks and Croats in Central Bosnia, led to a more proactive involvement of the United States.³⁵

The US suggested a formal federation between Bosnian Croats and the Bosniak-led Bosnian government in Sarajevo.³⁶ The strategy was based on a proposal by the Croatian National Council (CNC) in Sarajevo, an organization of Croat politicians and religious leaders functioning at the time as a political alternative to the Croat leadership of Herceg-Bosna.³⁷ In order to get the political leadership of Croatia and Croat Herceg-Bosnia to support the proposal, the US applied both sticks and carrots.³⁸ The pressure paid off, and the constitution of the (Croat-Bosniak) Federation of Bosnia and

³³ Both the UN and EC envoy were appointed within the framework of the International Conference on the Former Yugoslavia. The ICFY was formed in 1991 to provide a permanent forum for the negotiation of a comprehensive political solution to the problems in the former Yugoslavia. Boutros Boutros-Ghali, Annual Report of the Secretary-General on the work of the Organization 1995, <http://www.un.org/docs/SG/SG-Rpt/ch4e-4.htm>

³⁴ The list of rejected proposals includes The Cutileiro's Lisbon Plan (1991), The Vance-Owen plan (1993), The Owen-Stoltenberg proposal (1993), the "EU Action plan" (1993).

³⁵ Burg, *The War in Bosnia and Herzegovina*, p. 293.

³⁶ Ivo Komšić, *Preživljena zemlja-Tko je, kada i gdje dijelio BiH* (Zagreb: Prometej, 2006), p. 347.

³⁷ As told by Ivo Komšić, one of the organisers of the CNC. Komšić was also member of the war-time BiH government. Telephone interview with Ivo Komšić, Sarajevo, September 10, 2009. Also see Komšić *Preživljena zemlja-Tko je, kada i gdje dijelio BiH*, p. 346.

³⁸ On the one hand, there was the threat of international isolation and sanctions against Croatia for its military involvement in BiH. On the other hand, in return for supporting the new federal arrangement and securing Croat HDZ BiH and HVO participation, Croatia was promised US support for its territorial integrity; access to an international loan for reconstruction; membership in Partnership for Peace of NATO; and a seat in the Council of Europe. Burg, *The War in Bosnia and Herzegovina*, p. 292.

Herzegovina was adopted in Washington on March 18, 1994.³⁹ The creation of the Federation BiH stopped the fighting between Bosniaks and Croats and reaffirmed the sovereignty and territorial integrity of Bosnia and Herzegovina. It also envisaged a confederation between the Federation BiH and Croatia. Finally, according to Komšić, the US officials promised Bosniaks and Croats that the federal arrangement with cantons was eventually to be applied to the Serb controlled areas of BiH.⁴⁰ As Hayden (1999) points out in his scholarly analysis of the 1994 constitution, the Federation BiH was essentially an economic community with military forces and foreign policy.⁴¹ Despite these shortcomings, US diplomats considered the Bosnian-Croat Federation as a significant piece in the puzzle towards reaching a final peace agreement for Bosnia and Herzegovina as it stopped the Bosniak-Croat war and facilitated their joint effort against the Serbs.⁴²

Another crucial development on the road to the Dayton Peace Agreement was the formation of the Contact Group in May 1994. The Contact Group included the US, Russia, France, UK, and Germany. Its creation was a reflection of the US government's frustration with the lack of progress in the ICFY negotiation, but also the increased willingness of the great powers to negotiate among themselves. The creation of the Contact Group would also eventually enable NATO to bypass the opposition of UN officials to use military power in order to coerce Bosnian Serbs into negotiations. Moreover, the Contact Group countries also agreed on a division of labor, whereby Russia would bring the Serbian side to negotiations while the US administration was in charge of ensuring Bosniak participation.⁴³ Furthermore, at the meeting in June 1994 the Contact

³⁹ Ibid. 295; Woodward, *Balkan Tragedy: Chaos and Dissolution after the Cold War*. p. 171.

⁴⁰ According to Komšić two options existed, one where a federal BiH state divided on a number of cantons was to be established. Taking into account previous rounds of negotiations in Geneva, a contingency option proposed creation of a confederation of two republics, each consisting of a number of multiethnic cantons. Komšić, *Preživljena zemlja-Tko je, kada i gdje dijelio BiH*. p.361. Interview with Komšić May 14, 2009, Sarajevo.

⁴¹ Hayden, *Blueprints for a House Divided – the Constitutional Logic of the Yugoslav Conflict*. p. 115.

⁴² Burg, *The War in Bosnia and Herzegovina*. p. 298.

⁴³ Ibid. p. 302.

Group puts forward a set of principles for peace, which stipulated a territorial division of BiH giving 51 percent to the Bosniak-Croat federation and 49 percent to the Bosnian Serbs. It also called for the establishment of a two-entities arrangement.⁴⁴

Yet, a significant turnabout took place in the summer of 1995 when the US administration unilaterally decided to run its own peace effort parallel to that of the Contact Group. The reasons were primarily strategic. Firstly, in late 1994 President Clinton committed to deploy 20,000 US troops to evacuate UNPROFOR⁴⁵ if the situation in BiH prevented it from carrying out its mission.⁴⁶ In early 1995, as the situation worsened, the prospect of having to deploy US soldiers in the midst of war became imminent. Secondly, a withdrawal of UNPROFOR would amount to a total humiliation of the US and its NATO partners.⁴⁷ Thirdly, according to Madeleine Albright, the situation in BiH was hurting US foreign policy. It questioned US global leadership, which then led to this being questioned in many other international arenas.⁴⁸ In this context, the Bosnian Serb takeover of the UN-protected Srebrenica and Žepa in July 1995 and subsequent massacres of the Bosniak male population of the enclaves was the straw that broke the camel's back, and convinced the US to put its own plan into action.⁴⁹

According to the US chief negotiator, Richard Holbrooke, the US plan was significantly helped by drastic change in the conflict dynamic in early August 1995 when Croatian troops managed to take control of the Croatian Serb Republic of Krajina in a seven-

⁴⁴ According to Ivo Komšić, the idea was already tested with the Bosnian government's representatives in Washington on 21 March 1994. Ivo Komšić, *Preživljena zemlja-Tko je, kada i gdje dijelio BiH*. p. 361.

⁴⁵ The United Nations Protection Force (UNPROFOR), was the first UN peacekeeping force in Croatia and in Bosnia and Herzegovina during the Yugoslav wars. It existed between the beginning of UN involvement in February 1992, and its restructuring into other forces in March 1995.

⁴⁶ Under Op-plan 40104 the deployment of the US troops was automatic. US Department of State, "The Road to Dayton- U.S. Diplomacy and the Bosnian Peace Process May- December 1995," ed. Bennett Freeman (Washington: 2003). p. 8.

⁴⁷ Ibid. p. 2.

⁴⁸ Ibid. p. 11, 21.

⁴⁹ Ibid. p. 24.

day offensive, and Bosniak and Bosnian Croat forces were able to penetrate further into the territory of Republika Srpska.⁵⁰ By altering the balance of power, and by putting pressure on the Bosnian Serbs, the Croatian offensive facilitated conditions for negotiations on the final settlement of the BiH conflict.⁵¹

The NATO bombings of the Bosnian Serb Army positions also occurred in the spirit of power balancing.⁵² Officially, the bombing campaign, which started on August 28, 1995, was part of a US response to the bombings of Sarajevo.⁵³ The bombing campaign lasted almost three weeks, until 14 September. At the same time, the Army BiH, the Croat Defense Council (HVO), and the Croatian Army – in a coordinated manner – took further advantage of the gaps in the Bosnian Serb defense and increased their control of large parts of the territory in western and central Bosnia.⁵⁴

Simultaneously, Richard Holbrooke began a series of shuttle diplomatic moves between Belgrade, Sarajevo and Zagreb in hope of winning acceptance of the US principles of a future peace agreement.⁵⁵ The US initiative, unlike that of the Contact Group, involved talking exclusively to the main Croat (Tuđman), Serbian (Milošević) and Bosniak (Izetbegović) leaders, while keeping Bosnian Serbs and Bosnian Croats excluded from the talks.⁵⁶ The principles included a comprehensive peace settlement in BiH and the region; a three-way recognition between BiH, Croatia and Serbia and a ceasefire in BiH; acceptance of more viable border solutions; BiH was to remain one state, but composed of two highly

⁵⁰ Bosniak-Croat operation received tacit blessing from the US diplomatic team engaged in the power negotiations. See Richard Holbrooke, *To End a War* (New York: The Modern Library, 1999), p. 73, 103 – 131. Burg, *The War in Bosnia and Herzegovina*, p. 349.

⁵¹ Holbrooke, *To End a War*, p. 73.

⁵² Burg, *The War in Bosnia and Herzegovina*, pp. 352 – 353.

⁵³ The US played a pivotal role in the operation Deliberate Force, while the European allies remained apprehensive of the action. Holbrooke, *To End a War*, (1998) p. 103.

⁵⁴ Ibid.

⁵⁵ Ibid., pp. 103 – 131.

⁵⁶ The Croatian and Serbian presidents were expected to eventually sell the principles to their kin in Bosnia and Herzegovina.

autonomous entities (one majority Serb and other majority Bosniak/Croat)⁵⁷; sanctions relief for Serbia; a Croat-Serb agreement on East Slavonia⁵⁸; and comprehensive economic reconstruction.⁵⁹ The US applied sticks and carrots in order to win the acceptance of its proposal. If all three sides cooperated, Bosniaks would receive economic aid, NATO-enforced peace and military assistance. Serbia would have sanctions lifted and legal territorial rights for Bosnia Serbs, while Croatia would get access to, and integration in, the European institutions. If the Bosniaks were cooperative, but the Serbs proved obstinate, the Bosniaks would be rewarded with NATO air strikes against the Bosnian Serbs, lifting of the arms embargo and American military training. If the Bosniaks were to cause failure, the US would lift the arms embargo but would not provide training or air support.⁶⁰

This acceptance of the principles by all three sides led to a “Joint Agreed Statement of Political Principles”, signed in Geneva on September 8, 1995.⁶¹ As part of the agreement facilitated by the Contact Group, Serbian president Slobodan Milošević agreed to accept the continued legal existence of BiH, its international borders, and continued international recognition.⁶² In return, Alija Izetbegović, the head of the BiH presidency, also representing the Bosniaks in the negotiations, agreed to recognize Republika Srpska, *de facto* partitioning BiH.⁶³ Finally, after a month of NATO bombings and reversed fortunes on the battlefield, the three warring parties signed a ceasefire on October 5, 1995.

⁵⁷ The US documents indicate that the US administration viewed that what they proposed was in practice a bi-national state of Serbs and Bosniaks, whereby the Bosniaks would have received 51 percent of the territory, while the third constituent people Bosnian Croats were not mentioned in this analysis. US State Department, “The Road to Dayton – U.S. Diplomacy and the Bosnian Peace Process May- December 1995” p. 38, 198.

⁵⁸ Croatian territory controlled by Croatian Serbs since 1991.

⁵⁹ US State Department, “The Road to Dayton – U.S. Diplomacy and the Bosnian Peace Process May-December 1995,” pp. 43 – 44.

⁶⁰ Ibid., p. 44.

⁶¹ Ibid., p. 356, Holbrooke, *To End a War*.

⁶² Holbrooke, *To End a War*, pp. 103 – 131.

⁶³ Ibid., Komšić, *Preživljena zemlja-Tko je, kada i gdje dijelio BiH*, p. 370; Interview with Komšić, Sarajevo, May 14, 2009.

Significantly, the October ceasefire created a window of opportunity for Holbrooke's diplomatic team to organize a peace negotiation that could finally put an end to the conflict in Bosnia-Herzegovina. Richard Holbrooke and his team continued with frantic diplomatic activities in order to set the structural pre-conditions for what they envisaged to be an open ended proximity negotiation in the secluded US airbase in Dayton. Before leaving the Balkans, though, the US mediator had laid down the conditions for the three participating sides in the negotiations: 1) firstly, that each President would come to the US with the full powers to sign an agreement, without further need of parliamentary approvals back home;⁶⁴ 2) secondly, the three would stay as long as necessary to reach an agreement, without threatening to walk out; and 3) thirdly, the parties would not talk to the press or other outsiders.⁶⁵

The negotiations finally started at the Dayton airbase on 1 November, with the Bosniak, Croatian and Serbian presidents and foreign ministers present. There was also a low-key involvement of delegations of the Bosnian Serbs and Bosnian Croats, nevertheless, but they had little leverage in the proceedings. Richard Holbrooke and his team of US State Department experts led the negotiations. The US negotiator viewed the Contact Group primarily as a nuisance.⁶⁶ Thus, although Carl Bildt and the Russian Contact Group envoy were formally co-chairing the negotiations, Holbrooke kept the CG diplomats at a distance. Needless to say, the US administration tried to maintain the semblance of their involvement since the Europeans were expected to contribute troops to IFOR, as well as to pay for much of the economic reconstruction of BiH.⁶⁷

⁶⁴ This implied that the Croatian President Tuđman would have an authority to sign agreement on the behalf of Bosnian Croats, while the President of Serbia Milošević would do the same on the behalf of Bosnian Serbs. Implicitly, the Bosnian President Izetbegović would sign agreement on the behalf of the Bosniaks.

⁶⁵ Holbrooke, *To End a War*, p.200.

⁶⁶ US State Department, "The Road to Dayton – U.S. Diplomacy and the Bosnian Peace Process May- December 1995," p. 216.

⁶⁷ Ibid. p. 84.

A tense relationship between civilian and military members of the US negotiation team further complicated the dynamics of the talks. The fact that the brunt of the NATO-led peace implementation force was to come from the US meant that US generals insisted on approving various aspects of the arrangement.⁶⁸ According to Bildt, the US military had an upper hand over Holbrooke and his team and threatened to speak to the Congress if their views were not considered when various military and civilian aspect of the agreement were drafted.⁶⁹ At the time, Bill Clinton and his administration were facing a Republican majority in both Congress and Senate, which on many occasions worked to spoil the US president's foreign policy. The US military skillfully used this domestic power-struggle to exercise pressure over Holbrooke and his team. In practice, this meant that the chief negotiator had to engage in a three-way negotiation, talking to the three main parties, getting the Contact Group members to approve various aspects of the agreement, and finally obtaining support from the US military as well.

At the negotiation table, the priorities of the first week were on reaching an agreement between Tuđman and Milošević on the reintegration of Serb-controlled East Slavonia into Croatia, as this was crucial for securing Tuđman's support for the BiH peace agreement.⁷⁰ Also, another urgent issue was reaching a new Bosniak–Croat agreement on the creation of a functional Federation BiH.⁷¹ The talks on these two issues ran parallel to the main negotiations.⁷²

On the issue of the Federation BiH, the parties agreed on a number of steps to integrate the Federation economically, politically and so-

⁶⁸ With the fresh memories of its Somalian debacle, the US military was insistent on having a say in the shaping of the agreement in order to avoid American casualties or be part of a mission creep.

⁶⁹ Carl Bildt, *Uppdrag Fred* (Stockholm: Norstedts, 1997), p. 201.

⁷⁰ According to the US mediators, Tuđman was primarily interested in settling the Eastern Slavonia issue. US State Department, "The Road to Dayton – U.S. Diplomacy and the Bosnian Peace Process May- December 1995," p. 184.

⁷¹ Ibid. p. 186. Bildt, p. 195.

⁷² The Federation BiH talks were lead by the German diplomat Michael Steiner, while the US ambassador to Croatia Peter Galbraith, together with the UN diplomat Thorvald Stoltenberg, led the talks on Eastern Slavonia.

cially. However, the Bosnian Croat members of the BiH delegation, representing the significantly smaller of the two nations in the Federation BiH, were not happy with the lack of guarantees for Croat participation in the government, and requested that at least one top position (President, Prime Minister, Minister of Foreign Affairs) be given to Bosnian Croats.⁷³ In addition, it was pointed out to the US mediators that they needed to keep in mind the Bosnian political tradition of parity and equal representation of all constituent nations and protection of respective national interests.⁷⁴ Holbrooke, to whom it seemed natural that Bosniaks control all key positions, argued that the Bosnian Croat proposal would lead to a division of BiH and that political parties who win elections should form the government.⁷⁵ A compromise was reached on a joint presidency, which allowed for the Federation BiH agreement to be signed on 10 November.⁷⁶ At the same time, progress was made on the Eastern Slavonia issue. Tuđman and Milošević eventually reached an agreement on the UN-administered re-integration of the region into Croatia within a period of one to two years.⁷⁷ The agreement on Eastern Slavonia was signed on November 12.⁷⁸

Meanwhile, the draft annexes on protection of human rights, national monuments and refugee returns were completed.⁷⁹ However, the division between the US and the Europeans occurred on the issues of police, IFOR and the creation of the position of a High Representative to administer the implementation of the agreement. According to Bildt, the US military objected to the creation of an Office of the High Representative, as they refused to have a European

⁷³ US State Department, "The Road to Dayton – U.S. Diplomacy and the Bosnian Peace Process May-December 1995," p. 212.

⁷⁴ Komšić, *Preživljena zemlja-Tko je, kada i gdje dijelio BiH*, p. 397, 403.

⁷⁵ Ibid. p. 397, State, "The Road to Dayton- U.S. Diplomacy and the Bosnian Peace Process May-December 1995," p. 213.

⁷⁶ Holbrooke, *To End a War*, p. 263 – 264.

⁷⁷ US State Department "The Road to Dayton – U.S. Diplomacy and the Bosnian Peace Process May-December 1995," p. 214.

⁷⁸ Holbrooke, *To End a War*, pp. 263 – 264.

⁷⁹ US State Department, "The Road to Dayton – U.S. Diplomacy and the Bosnian Peace Process May-December 1995," p. 192.

in charge of the US military force.⁸⁰ Secondly, they objected to any connections between the OHR and the UN, i.e. they accepted the idea of a formal UN mandate to the OHR, but refused to have the HR appointed by the UN Security Council.⁸¹ A compromise was reached with the creation of a consulting committee between IFOR and OHR, whereby the OHR would remain in charge of overall implementation while the IFOR dealt with the military aspects of the agreement.⁸² However, on the issue of the police force, the US demanded a robust mission with police that would have the right to make arrests all over BiH. The Europeans objected as a police force of 4000-5000 lacked the capacity for such a task. In addition, they argued that in the context of a dysfunctional judiciary such arrests would not have any significant impact. An agreement was reached whereby the mission of vetting and training of the local police was to be led by the UN.⁸³

At this stage, the US mediators had opened negotiations on the constitutional arrangement, the ICTY, the elections, and the status of Sarajevo. On the status of Sarajevo, the US mediators proposed a variant of the 'District of Columbia model', i.e. an autonomous multiethnic federal city with a three-person mayoral position rotating between the three constitution peoples.⁸⁴ While some progress was made on the issue of Sarajevo, a major change in the talks occurred with the arrival of Richard Perle, a Defense Department official in the Reagan administration, as an advisor on military issues to the Bosnian delegation.⁸⁵ According to Bildt, the Bosniaks had good contacts with the office of Bob Dole, one of the leading Republican figures in the Congress, through which they sub-contracted Perle.⁸⁶ He immediately started redrafting what was already agreed on the

⁸⁰ Bildt, *Uppdrag Fred*, p. 168, 201.

⁸¹ Ibid. p. 199.

⁸² Ibid. p. 202.

⁸³ Ibid. p. 203.

⁸⁴ US State Department, "The Road to Dayton – U.S. Diplomacy and the Bosnian Peace Process May-December 1995," p. 196.

⁸⁵ Ibid. p. 208.

⁸⁶ Ibid. p. 204, Bildt, *Uppdrag Fred*, p. 203, Richard Holbrooke, *To End a War*, p. 176.

status of IFOR and stood behind Bosniak demands for a more robust IFOR mission to include the protection of refugees, supervision of elections and arrest of war criminals.⁸⁷ Nonetheless, despite some minor changes, IFOR remained a force with nearly unlimited authority and few concrete responsibilities.⁸⁸ Yet, as Bildt highlights, the arrival of Perle had a significant impact on the negotiations. In his view, for the US mediators it was one thing to reject Bosniak demands, while it was a totally different thing to reject demands made by an alliance of the Government in Sarajevo and the US congress.⁸⁹

As the talks progressed, the Contact Group became increasingly dissatisfied with its status, while the US refused to include them, as they were perceived as too lenient towards Serbs and generally sabotaging the US effort.⁹⁰ The Europeans accused the US of wanting to get the credit for Bosnia while leaving the bill to them.⁹¹ According to Bildt, who was coordinating the CG effort, the US mediators ignored their constitutional proposal, while themselves producing an uninformed and poorly researched draft.⁹² Amid rumors that the Europeans would leave the talks, the US administration agreed to incorporate them in the work on drafting the constitution. According to Bildt, the European involvement led to major changes in the US proposal. A nine-member presidency was reduced to three members, and, despite Bosniak claims to the position of President, the presidency was to rotate between the representatives of the three peoples.⁹³ Instead of a single chamber, the state was to have a bicameral parliament, with a veto right to protect national interests in the House of Peoples, and a Council of Ministers instead of gov-

⁸⁷ Bildt, *Uppdrag Fred*, p. 204.

⁸⁸ US State Department, "The Road to Dayton – U.S. Diplomacy and the Bosnian Peace Process May-December 1995," p. 221.

⁸⁹ Ibid. p. 205.

⁹⁰ Ibid. p. 216.

⁹¹ Ibid. p. 217.

⁹² Bildt, *Uppdrag Fred*, p. 207.

⁹³ Ibid. p. 207. US State Department, "The Road to Dayton – U.S. Diplomacy and the Bosnian Peace Process May-December 1995," p. 237.

ernment.⁹⁴ According to Bildt, the issue of a veto right to protect national interests of each group and the character of the decision-making process were particularly difficult matters. Decisions by a simple majority vote were not feasible due to the risk that the largest ethnic group, i.e. Bosniaks, would exclude the other two constituent groups and infringe on their vital national interests. Yet, too broad veto rights might be used even on minor issues, thus paralyzing the overall decision-making process. The Bosnian Croats and Serbs insisted on a broad veto right, while the Bosniak representatives were against veto provision as such. Yet, Bildt points out that since the Bosniaks did not constitute an absolute majority in the country, the absence of veto on the protection of vital national interests could also result in a Croat-Serb political alliance which would exclude the Bosniaks from a decision-making process based on simple majority.⁹⁵ As a compromise, the veto right remained, but a Constitutional Court, with a strong international presence, would be the final arbitrator of whether a certain issue involved vital national interests and whether a veto was applicable.

Progress was made on the subject of human-rights protection and the role of ICTY. For the US mediators, the ICTY had a great practical value as it helped isolate the indicted Bosnian Serb leaders Karadžić and Mladić.⁹⁶ On the issue of elections, the Bosniaks insisted on the right of refugees to vote in the place where they were registered according to the population census from 1991. There was also a demand for a robust monitoring of the elections. Despite the European objections, the US mediators insisted that OSCE be in charge of the elections instead of the UN.⁹⁷ In addition, they requested that a US representative should oversee the elections while the Europeans take care of other civilian implementation jobs.⁹⁸

⁹⁴ Bildt, *Uppdrag Fred*, p. 209.

⁹⁵ Ibid. p. 209.

⁹⁶ US State Department, "The Road to Dayton- U.S. Diplomacy and the Bosnian Peace Process May- December 1995," p. 223.

⁹⁷ Ibid. p. 235.

⁹⁸ Ibid.

The agreement on the maps would prove to be the most difficult aspect of the negotiations. From the outset it was clear that Tuđman and Milošević did not inform Bosnian Croats and Bosnian Serbs of the concessions made during the talks.⁹⁹ Croatian president Tuđman traded the traditional Croat territories in Bosanska Posavina, assigned to the Federation BiH by the Contact Group in 1994, in exchange for Eastern Slavonia.¹⁰⁰ Serbian president Milošević, on the other hand, was keen to expand the strategic corridor in Posavina connecting the two parts of Republika Srpska to include the river port of Brčko. Thus, in exchange for Brčko, he made a number of concessions to the Bosniaks, creating a corridor between the enclave of Gorazde and Sarajevo, and agreeing to give up the Serb-controlled parts of Sarajevo, thus essentially making it a sole property of the Federation BiH.¹⁰¹

The situation became complicated when the Bosnian Croat representative Zubak was informed about the Tuđman concessions by other members of the BiH team who had access to the maps¹⁰², and threatened to resign and leave Dayton.¹⁰³ He wrote an open letter to Holbrooke that was published in Croatia and BiH, while another Croat member of the BiH team, Komšić, informed the Posavina lobby groups in Croatia, thus putting additional political pressure on Tuđman.¹⁰⁴ Eventually, the maps were slightly readjusted to give Bosnian Croats a symbolic sliver of Bosanska Posavina.

The map issue became even more complex when Milošević realized that he had conceded too much territory to the Federation BiH. The

⁹⁹ Bildt, *Uppdrag Fred*, p. 212.

¹⁰⁰ US State Department, "The Road to Dayton – U.S. Diplomacy and the Bosnian Peace Process May-December 1995," p. 216. Bildt, *Uppdrag Fred*, p. 212. *Preživljena zemlja-Tko je, kada i gdje dijelio BiH*, p. 415. Interview with Komšić Sarajevo May 14, 2009.

¹⁰¹ US State Department, "The Road to Dayton – U.S. Diplomacy and the Bosnian Peace Process May-December 1995," p. 230.

¹⁰² According to Bildt, neither Tuđman nor Holbrooke informed Bosnian Croats of the new maps. Bildt, *Uppdrag Fred*, p. 212.

¹⁰³ US State Department, "The Road to Dayton – U.S. Diplomacy and the Bosnian Peace Process May-December 1995," p. 231.

¹⁰⁴ Ibid. p. 231. Komšić, *Preživljena zemlja-Tko je, kada i gdje dijelio BiH*, p. 415, 526, 527.

US mediators, although aware of this development, kept this secret from him in order to give the Federation more territory.¹⁰⁵ Nonetheless, when this became obvious, Milošević insisted on 51-49 division that was agreed as a part of the "Joint Agreed Statement of Political Principles" in Geneva in September 1995. The US mediators now pressured the Bosniak representative Silajdžić to give back some of the territory. The problem was that the parts of the Federation BiH territory he agreed to give to Milošević were under Croat control.¹⁰⁶ Tuđman agreed to make a concession after the intervention of President Clinton, but on condition that Bosniaks also make a symbolic sacrifice. As the negotiations entered the final stage, under the pressure of Clinton the BiH delegation agreed to give up one percent of their territory including the strategic railway junction in the city of Doboj but requested access to Brčko and its river port.¹⁰⁷ Milošević refused to make any additional concessions, and the US negotiators were about to close the negotiations while blaming the Bosniaks for their failure.¹⁰⁸ In the last turnabout, in an attempt to save the talks, Milošević endorsed a Croatian idea that the status of Brčko be postponed pending the decision of an international arbitrator.¹⁰⁹ Although hesitant, Izetbegović accepted the solution, and Tuđman, Izetbegović and Milošević initialed the Dayton Peace Agreement on November 21, 1995. As for the Bosnian Serb delegation, they were informed of the final content of the agreement in the last minute, and refused to sign the agreement or to participate in the ceremony. In agreement with Holbrooke, Milošević faxed their signature some

¹⁰⁵ According to Komšić, BiH delegation was under tremendous pressure from the US team to accept the Tuđman- Milošević deal. In return, BiH delegation demanded from Holbrooke 55 per cent of the territory as a compensation for the strategic region of Bosanska Posavina. Komšić, *Preživljena zemlja-Tko je, kada i gdje dijelio BiH*, p. 415. US State Department, "The Road to Dayton – U.S. Diplomacy and the Bosnian Peace Process May-December 1995," p. 240.

¹⁰⁶ Even the head of BiH delegation Izetbegović rejected Silajdžić's concessions behind Croat backs as they risked to spell an end to a fragile Federation BiH Agreement. Bildt, *Uppdrag Fred*, p. 224. US State Department, "The Road to Dayton – U.S. Diplomacy and the Bosnian Peace Process May-December 1995," p. 243.

¹⁰⁷ US State Department, "The Road to Dayton – U.S. Diplomacy and the Bosnian Peace Process May-December 1995," pp. 242 – 247. Komšić, *Preživljena zemlja-Tko je, kada i gdje dijelio BiH*, p. 415.

¹⁰⁸ US State Department, "The Road to Dayton – U.S. Diplomacy and the Bosnian Peace Process May-December 1995," pp. 247 – 248. Holbrooke, pp. 306-309.

¹⁰⁹ Komšić, *Preživljena zemlja-Tko je, kada i gdje dijelio BiH*, p. 417.

ten days later.¹¹⁰ The agreement was formalized in Paris on December 14, 1995.

3.2 The Content of the Agreement

The Dayton Peace Agreement (DPA) consists of 149 pages and is divided into a short General Framework Agreement and twelve large Annexes, which contain the actual essence of the agreement. The DPA offered more than just a traditional peace treaty, as it went far beyond a cease-fire agreement, arms reduction and boundary demarcations to provide a complex framework for the creation of a single Bosnia and Herzegovina internally divided into two entities. Considering the range of issues included, the DPA represents one of the most comprehensive peace agreements negotiated in recent history.

To begin with, the DPA confirmed the ceasefire agreement the parties had signed on October 5, 1995. The military aspects of the DPA also dealt with confidence-building measures, regional stabilization, deployment of a NATO-led military Implementation Force (IFOR), and cooperation with the ICTY.¹¹¹ The military aspects also included the demarcations of the Inter-Entity Boundary Lines (IEBL) and resolution of the status of Brčko through international arbitration.¹¹² The civilian aspects of the agreement dealt with a broad spectrum of issues. On elections, in order to secure the political legitimacy of the new state institutions, it was agreed that the first elections were to be held no later than nine months after the signing of the agreement. They were to be monitored by the OSCE and the Provisional Election Commission.¹¹³ Annex 4 includes the Constitution of BiH and is one of one of the longest annexes of

¹¹⁰ US State Department, "The Road to Dayton – U.S. Diplomacy and the Bosnian Peace Process May–December 1995," p. 251.

¹¹¹ For more see Annex 1-A and 1-B of the Dayton Peace Agreement on Bosnia and Herzegovina.

¹¹² Annex 2

¹¹³ Annex 3, Article I, II.

the DPA. It is followed by a short annex on inter-entity arbitration. Protection of Human Rights and the right to return of refugees and internally displaced persons are dealt with in detail in annexes 6 and 7. The DPA also stipulated the creation of a Commission to Preserve National Monuments and the formation of joint state corporations.¹¹⁴ Annex 11 specifies the role of the UN-run International Police Task Force, which would monitor law enforcement activities, advise, and train law-enforcing personnel.¹¹⁵

However, Annex 10 is probably one of the most important elements of the DPA and deserves additional clarification. It addresses the international supervision of the implementation of the DPA. The authority and jurisdictions of the High Representative (HR) were listed in Annex 10. It was specified that the HR would have the final authority to interpret the civilian parts of DPA while coordinating its actions with the IFOR.¹¹⁶ However, in order to strengthen the authority of the HR, the Council for Implementation of Peace (PIC) was established at an implementation conference held in London, on 8 and 9 December 1995. The PIC is composed of all the states and organizations attending the conference and would subsume the role and authority of the International Conference on Former Yugoslavia.¹¹⁷ The most important body of PIC is the Steering Board.¹¹⁸ The Steering Board provides the High Representative with political guidance and legitimacy. In Sarajevo, the High Representative chairs weekly meetings of the Ambassadors to BiH of the Steering Board member states. In addition, the Steering Board meets at the level of political directors every three months. The OSCE and the UN are invited to attend the Steering Board meeting as well as the major donors in BiH.¹¹⁹ In effect, it is the Steering Board of PIC through

¹¹⁴ See Annex 8 and 9.

¹¹⁵ Annex 11, Article III.

¹¹⁶ Annex 10.

¹¹⁷ PIC, 1995, par. 21.

¹¹⁸ The Steering Board members are Canada, France, Germany, Italy, Japan, Russia, United Kingdom, United States, Presidency of the European Union, European Commission, and Organization of the Islamic Conference, represented by Turkey.

¹¹⁹ For more read David Chandler, *Bosnia: Faking Democracy after Dayton* (London & Sterling-Virginia: Pluto Press, 2000), pp. 55 – 57.

the High Representative which has the effective power and authority over Bosnia and Herzegovina.¹²⁰

3.3 Key provisions

The Constitution of Bosnia and Herzegovina

One of the central provisions of the civilian part of the DPA concerns the constitution and creation of central government institutions.¹²¹ The BiH constitution outlines a comprehensive institutional balance of power among Bosniaks, Croats and Serbs, being defined as the three 'constituent peoples'.¹²² The Constitution provides a basis for the creation of state institutions such as the Presidency, the House of Peoples, the House of Representatives, the Constitutional Court and the Council of Ministers.¹²³ The composition and staffing of all institutions is based on the formula of two entities and three constituent nations.

Accordingly, the Presidency is composed of one Bosniak, one Serb, and one Croat member who rotate in the position of the Chair of the Presidency every eight months during a four-year term in office.¹²⁴ The three members of the Presidency are elected directly, the Bosniak and Croat members by the people of the Federation BiH, while a Serb member is elected from Republika Srpska. The Chair of the Council of Ministers is nominated by the Presidency and approved by the House of Representatives. He or she is then responsible for appointing a Foreign Minister, Minister of Foreign Trade, and other ministers as appropriate. All ministers have to be approved by the House of Representatives.¹²⁵

¹²⁰ Ibid. p. 44.

¹²¹ Annex 4: Constitution of Bosnia and Herzegovina.

¹²² Preamble of Annex 4: Constitution of Bosnia and Herzegovina.

¹²³ The Articles III, IV, and V.

¹²⁴ Annex 4, Article V.

¹²⁵ Annex 4, Article V.

According to the constitution, the Parliamentary Assembly is the lawmaking body of BiH.¹²⁶ It consists of two houses: the House of Peoples and the House of Representatives. The House of Peoples includes 15 delegates, two-thirds of which come from the Federation (5 Croats and 5 Bosniaks) and one-third from the Republika Srpska (5 Serbs). The House of Representatives is composed of 42 Members, two-thirds elected from the Federation and one-third elected from the Republika Srpska.¹²⁷ All decisions are to be made by simple majority, but need to include at least one-third of the votes of members from the territory of each entity. In order to deal with the fear of dominance by one constituent people over the others, the constitutional arrangements empower representatives of all three peoples in the Parliamentary assembly or the Presidency to veto any decision that may be perceived as contrary to the national interests of a particular group.¹²⁸

The Constitutional Court was created with the intention to be a legal arbiter in such and similar disputes between the parties.¹²⁹ The court's jurisdiction also includes dealing with disputes between entity laws and the state constitution. The Constitutional Court has nine members: two judges are nominated by the Assembly of Republika Srpska, while four judges are nominated by the House of the Representative of the Federation BiH. The remaining three judges are non-BiH citizens, and selected by the President of the European Court of Human Rights.¹³⁰ Since the court's rulings are made by simple majority, the international judges play a crucial role in the breaking of deadlocks in the decision-making process.

Since the administrative formula for the resolution of the conflict was to create a single state divided between the Republika Srpska and the Bosniak-Croat Federation, BiH has several administrative

¹²⁶ According to Annex 4, Article IV.

¹²⁷ Annex 4, Article IV 3(d).

¹²⁸ Articles IV: 3 (d) (e) and Article V:2 (d)

¹²⁹ Annex 4, Article VI

¹³⁰ Annex 4, Article VI (a)

structures under the state government level.¹³¹ These include municipalities, and in the case of Federation BiH ten cantons. There is also the Brčko District.¹³² However, the entities are granted a strong standing in relation to the central government. Looking at the division of responsibilities as envisaged at Dayton, the joint institutions are given the responsibility over foreign policy, customs policy, monetary policy, international and inter-entity criminal law enforcement, communication policy, inter-entity transport and air traffic control.¹³³ All governmental functions and jurisdictions not expressly assigned the institutions of Bosnia-Herzegovina were placed at the level of the entities.¹³⁴ Thus, according to the DPA the central state has no army, no police force, and no tax-collecting jurisdiction. Considering the complexity of the constitutional arrangement and the number of checks put in place, one may easily conclude that the DPA resulted in the creation of an extremely decentralized and weak central state.

Cooperation with the ICTY

Unlike many peace agreements in late 1990s that call for the creation of hybrid or national tribunals, the original framework of the DPA – despite its dedication to peace, justice, and reconciliation in the Preamble of Annex 4 – did not stipulate the formation of such a body. Instead, the DPA provisions primarily pertained to Bosniak, Croat, and Serb cooperation with the International Tribunal for the Former Yugoslavia. The International Criminal Tribunal for former Yugoslavia (ICTY) was established by the UN Security

¹³¹ Annex 4, Article I: 3.

¹³² The District of Brčko was established after the conclusion of the arbitration process in 1999. An internationally supervised district was formed of the entire territory of the former Brčko municipality, of which 48% (including Brčko city) was in the Republika Srpska, while 52% was in the Federation BiH. In 2006, the Brčko Supervisor Susan Johnson abolishes all Entity Laws in the District and also abolishes the Entity Border Line. The ruling makes the Laws of the District and the Laws of the State of Bosnia and Herzegovina paramount within the District. OHR decision. August 4, 2006.

¹³³ See Appendix A, Annex 4, Article III:1

¹³⁴ Annex 4, Article III: 3 (a)

Council Resolution 827 on May 25, 1993. Its purpose was to prosecute persons responsible for serious violations of international humanitarian law committed on the territory of former Yugoslavia since 1 January 1991. Both Annex 1A, Article IX (g) and Annex 4, Article II (8) state that the authorities in Bosnia and Herzegovina shall cooperate with and provide unrestricted access to the International Tribunal for the Former Yugoslavia. In other words, as a part of the implementation of the DPA, the BiH authorities were expected to arrest, detain, surrender or provide access to individuals accused of war crimes.

3.4 Current status of the Peace Agreement

Looking at the provisions of the Dayton Peace Accord, it can be noted that most of it has been implemented in the past fourteen years, and, in that respect its implementation may be labeled as a success. Yet if one studies the actual process of DPA implementation, it can be categorized as a failure, since most actions taken occurred due to interventions of international custodians rather than local engagement.

From the outset, the implementation of the DPA annexes was obstructed by the parties to the agreement. The Bosnian Serb representatives insisted that they did not sign the agreement and thus did not have to implement it.¹³⁵ While the exchange of POWs was fairly successful, the delineation of the Inter-Entity Boundary Line (IEBL), particularly in respect to the issue of reintegration of Sarajevo suburbs controlled by Bosnian Serbs and their return to Bosniak authorities was a failure. Between February and March, more than 100,000 Serbs left Sarajevo.¹³⁶

¹³⁵ Kušmuk, Mirjana, "We have not signed anything! Interview with Momcilo Krajisnik", Glas Srpske, <http://cdsp.neu.edu/info/students/marko/glassrp/glassrp1.html>, accessed on October 10, 2003.

¹³⁶ The international community was neither able to provide security guarantees, nor to challenge Serb SDS nationalist propaganda, in order to prevent a mass exodus of the Sarajevo Serb population.

The tripartite presidency was established after much obstruction by the Serb representative Momčilo Krajišnik.¹³⁷ Furthermore, in early 1997, a legislative framework was created by the OHR and IMF for the creation of the Central Bank of Bosnia and Herzegovina. The first post-war elections were held in September 1996. The three ethnonational parties, the Bosniak SDA, the Serb SDS, and the Croat HDZ, controlled 86 percent of the seats in the Parliament.¹³⁸

However, the failure of the parties in BiH to implement the recommendations of PIC led to the introduction of the Bonn Powers in December 1997. At the meeting in Bonn, PIC granted the OHR powers to remove from office those politicians violating the Dayton provisions. In addition, the OHR was given the authority to impose institutional reforms and legislation when the BiH legislative bodies failed to do so.¹³⁹ Since the introduction of Bonn powers, the High Representatives have imposed some 750 decisions.

One of the first decisions was on the design of state symbols, currency, and the tune of the state anthem.¹⁴⁰ The list of other decisions includes removal of government officials for non-cooperation with the ICTY, decisions on return of property, amendments of legislation, appointment of international judges, promulgation of laws related to the judiciary and internal-affairs at the canton, entity and state level, a criminal procedure code, salaries of judges and prosecutors, judicial police, civil service, the Council of Ministers of BiH, citizenship, distribution of public revenues, prohibiting changes of names of public places¹⁴¹, decision on the status of the city of Mostar, and the primary and secondary levels of education in the Federation BiH. The HR also enacted laws relating to eco-

¹³⁷ Ibid. p. 377,382.

¹³⁸ Ibid. P. 373; Kasapović, *Bosnia i Hercegovina: Podijeljeno društvo i nestabilna država*. p. 136.

¹³⁹ Gerald Knaus, "Lessons from Bosnia and Herzegovina – Travails of the European Raj" *Journal of Democracy* 14, no. 3 (2003). p. 64.

¹⁴⁰ Hayden, *Blueprints for a House Divided – the Constitutional Logic of the Yugoslav Conflict*. p. 137.

¹⁴¹ See the cases of Mostar on 26 February 2004, and Sarajevo (annulling the decision of the Assembly of the Public Enterprise in changing the International Airport Sarajevo to the Airport Alija Izetbegović) on 14 October 2005.

nomie reforms, such as regulating banking, entities' banking agencies, communications, taxation, the Central Bank, the creation of the State Court of Bosnia and Herzegovina.¹⁴²

In addition, since 2000 the OHR started using the Bonn Powers, initially introduced to administer the implementation of the DPA and neutralize political spoilers, to reform, often unilaterally, various provisions of DPA. The first *ad hoc* change of parts of the provisions of DPA occurred in 2000, a month before the general elections. Namely, the OSCE changed the Federation BiH elections rules (Article 8, Washington Agreement) in order to simplify voting procedures and facilitate some cross-constituency voting. Thus, instead of each constituency electing its own representatives to the House of Peoples and the Presidency of BiH, now both Bosniaks and Croats were allowed to vote for candidates from both communities. Given that Bosniaks demographically dominate the Federation BiH, this in reality provided them with an opportunity to influence the election of the Croat representatives in the Presidency BiH and affect the vote for the House of Peoples of the Federation BiH. The House of People of the Federation BiH selects the members of the House of People of the State Parliament¹⁴³, but also decides on the appropriateness of the use of the veto by the members of Presidency BiH to protect vital national interests.¹⁴⁴ This in essence meant that the OSCE decision affected representation and protection of the vital interests of Croats at the Federation BiH and the state level.¹⁴⁵

¹⁴² For the list of all decisions see www.ohr.int/decisions.

¹⁴³ The representatives of the House of People of the State Parliament decide if a veto for protection of a vital national interest of the Bosniak, of the Croat or of the Serb people coming from the House of Representatives was invoked correctly. Such a proposed decision requires a majority of the Bosniak, Croat and Serb delegates present and voting. When a majority of the Bosniak, of the Croat, or of the Serb delegates object to the invocation of the paragraph (e), the Chair of the House of People convenes a Joint Commission comprising of one Bosniak, one Croat and one Serb delegate chosen by their caucuses to resolve the issue. If the commission fails to resolve the issue within five days, the matter is referred to the Constitutional Court. Annex 4. art. 4. 3.

¹⁴⁴ If the Croat member of Presidency BiH vetoes a decision by the Presidency, the decision is referred for consideration to the Croat members of the House of Peoples of the Federation BiH. If the veto is confirmed by two thirds of Croat delegates, the challenged Presidency decision will not take place. Annex 4, art. 4.5 (d).

¹⁴⁵ Annex 4, art. 4, 1.

Given that the Federation BiH elections rules were originally part of the Federation BiH agreement, which, in return, is a pillar of the DPA, the Bosnian Croat parties filed a complaint to the Constitutional Court BiH. The Court, however, stated that it could not overturn the OSCE ruling since the changes were made by the OSCE, which although acting in line with its own responsibilities within the DPA (see Annex 3, art. II. 2) was a body outside the constitution of BiH. The Court's ruling caused protests among the Croats, and the 'Croat National Congress' was organized and held a referendum on 'Deconstitutionalisation of Croats in BiH'.¹⁴⁶ On 3 March, 2001, the Croat National Congress, with support of parts of the Catholic Church in BiH, proclaimed a provisional Croat self-government. In order to break the self-proclaimed autonomy, and force the Croats to return to the parliament and accept the new rules, the OHR ordered SFOR to raid the key commercial bank in the Croat region of BiH – Hercegovačka Banka – in order to install an international Provisional Administrator. After six years of auditing under the Provisional Administrator, no illegalities were found and the bank was returned to a local administrator chosen by the Banking Agency of the Federation BiH in 2007. The bank eventually went bankrupt. However, after the loss of its financial backbone, the main Croat party abolished the Croat National Congress and returned to the state institutions.

The changes in the House of Peoples of the Federation BiH opened a way for the eventual imposition of a number of laws, such as the ones on media, and secondary and higher education reforms. Even though Croat representatives in the House of Peoples protested, invoking the right to protect vital national interests, after 2001 the House of Peoples did not act upon their complaints. The unilateral changes of the election law had a profoundly negative impact on Bosniak-Croat coexistence in the Federation BiH.

¹⁴⁶ 70 per cent of the Croats voted in support of the Congress, while the OHR and OSCE proclaimed the results of the referendum to be illegal. BHHRG, "Bosnian Herzegovina 2001: The International Community and the Bosnian Croats," (Oxford: British Helsinki Human Rights Group, 2001), p. 6.

Another change of the DPA was the imposition of the ruling of the Constitutional Court on the amendments of the entities' constitutions in order to bring them in line with the state constitution, since that defines Bosniaks, Croats and Serbs as constituent peoples (along with Others) of Bosnia and Herzegovina.¹⁴⁷ However, the constitution of RS stated that RS is the state of the Serb people and all of its citizens.¹⁴⁸ Similarly, the Federation BiH constitution defined Bosniaks and Croats as the constituent peoples of the Federation BiH.¹⁴⁹ The Bosniak member of the joint BiH Presidency, Izetbegović, requested that the Constitutional Court should evaluate the constitutionality of the entities' constitutions on December 2, 1998. The Court's final ruling from January 2000 challenged the existing constitutional situation.¹⁵⁰ According to the legal logic, by being constitutionally defined as a national state of one people – the Serbs – the constitution of the RS was in disjunction with the Dayton constitution. The same constitutional rationale was applied to Bosniaks and Croats in the Federation BiH. The Constitutional Court ruled that the constitutions of RS and the Federation BiH are not in agreement with the Constitution of BiH regarding the equal status of the constituent peoples. The ruling was imposed by the OHR in April 2002.¹⁵¹

According to a Serb member of the Constitutional Court, the imposition was anti-constitutional, as it entailed a revision of the BiH Constitution (Republika Srpska and Federation BiH being part of it), which according to Article X:1 of DPA could only be done by two thirds of the votes in the BiH House of Representatives.¹⁵² Secondly, she complained that the decision was made by a simple majority vote whereby the international and Bosniak judges disregarded the abovementioned objections of Serb and Croat judges.

¹⁴⁷ Annex 4, Preamble of Constitutions of BiH.

¹⁴⁸ Article 1, Constitution of RS.

¹⁴⁹ Article I.1 Constitution of the Federation BiH.

¹⁵⁰ Snežana Savić, *Konstitutivnost naroda u Bosni i Hercegovini* (Banja Luka: Komesgrafika, 2000), p. 71.

¹⁵¹ OHR 2002a; OHR 2002b).

¹⁵² Savić, *Konstitutivnost naroda u Bosni i Hercegovini*, p. 78.

On the other hand, according to a Bosnian Croat scholar from the Federation BiH, who was part of the BiH team in Dayton but also had an advisory role in the constitutional process, the OHR imposition of the constitutional amendments created an opening for more intensive returns of displaced persons in both entities. For example, by stipulating proportional representation of all groups in public administration based on the census from 1991, in theory, it allowed returnees an access to local power positions based on the pre-war demographic situation.¹⁵³ The decision has never been fully implemented as the High Representative who assumed office in June, 2001, had a different reform agenda.¹⁵⁴ However, even for the new HR, the DPA was not the ceiling but the floor for external interventions.¹⁵⁵ Consequently, the HR was able to push through the promulgation of the State Defense Law by the State Parliament of BiH resulting in the creation of a joint military command and a state army with 10,000 soldiers placed within three national brigades.¹⁵⁶ In a similar manner, there were promulgations of the laws on indirect taxation and border control. Yet, after the elections in 2006 no additional changes were made, since the leading Bosnian Serb parties objected to any further alterations of the DPA and even threatened with a referendum if the changes were to be imposed unilaterally.

¹⁵³ Interview with a member of the BiH negotiating team in Dayton. May 15, Sarajevo. 2009.

¹⁵⁴ Interview with a senior diplomat of the Office of High representative, May 8, 2009. Sarajevo.

¹⁵⁵ Kostić, "Ambivalent Peace: External Nation-building, Threatened Identity and Reconciliation in Bosnia and Herzegovina", p. 91.

¹⁵⁶ Each would celebrate its own day of formation and use its own national symbols together with the symbols of the state.

4. Challenges and options

4.1 The Constitution of BiH

International actors and domestic actors alike consider the complex and cumbersome constitution and administrative organization as the biggest obstacle to a functioning and stable BiH. Thus, in the spirit of this understanding, in recent years there have been various attempts to amend the Dayton constitution through an agreement of BiH political actors.

The first attempt to facilitate domestic political consensus over the changes was made by the US administration in April 2006.¹⁵⁷ The proposal entailed further expansion of the competences of the institutions of BiH. It also envisaged an increase of the members of the House of Representatives from 42 to 87, and of the House of People from 15 to 21 members. The changes also included the creation of a new function, the President of the Parliament. Among other changes, there was a clear definition of what was considered a vital national interest and when the veto was to be used. Significantly, instead of three members of the Presidency BiH, the proposal envisaged the existence of a President and two Vice-Presidents that would be elected by the House of People instead of through a direct vote as it is now. The rotation of the members of the Presidency was left as optional. Finally, instead of the President of the Council of Ministers, the plan envisaged creation of the post of the Prime Minister of BiH.

The proposal polarized political life in BiH. Despite massive US lobbying and pressure, the amendments fell one vote short of approval in the State Parliament. The second largest Bosniak party, the Party for BiH led by Haris Silajdžić and a newly created fraction of the Croat HDZ, voted against it. Silajdžić, who negotiated

¹⁵⁷ Amendments to the Constitution of Bosnia and Herzegovina, The Constitutional Working Group, April 26, 2006. <http://www.daytonproject.org/>, accessed on September 12, 2009.

with Milošević in Dayton, objected to the entity veto right as it favors Serbs over the other two groups, while the Croat fraction opposed the insistence on two entities.¹⁵⁸ They advocated either three entities or a cantonal solution, that would equate Croats with the other two groups in the country.

The second attempt to reform the constitution occurred during spring-summer 2009. The leaders of the largest Croat, Serb and Bosniak parties, HDZ, SNSD, and SDA, attempted to revive the 'April amendments'. During a number of shuttle meetings they also reached a framework agreement on an administrative reform of BiH, which would substitute the two entities with four regions with legislative, executive and judicial powers. Yet, it was not clarified how this was to be done in practice. The initiative collapsed in June due to severe differences of opinions between Serb and Bosniak leader regarding the status of Republika Srpska.

The third attempt of constitutional reforms was initiated on October 8, 2009, by the EU and US diplomats at the NATO airbase of Butmir near Sarajevo. The Butmir initiative in its essence represents another attempt by the international representatives to push through the provisions of the failed April package. An addition is that in an attempt to reduce Bosnian Croat objections to a two-entity solution, and considering the inferior Croat position in the Federation BiH, the international mediators offered the Croat parties a television channel in Croatian (Serbs already have TV RS and Bosniaks control the Federal TV) and protection of cultural autonomy. The proposal also envisages the closing of the OHR upon the successful promulgations of the reforms.

The Butmir negotiations had barely started, however, before most BiH parties had already rejected the EU-US proposal and adopted their 'traditional' positions. All Bosnian Serb parties insist on the strict implementation and protection of the Dayton Accords as

¹⁵⁸ Zornija, Aleno, Razmatra se povratak "travanjskom paketu", *Vijesnik*, August 9, 2009.

they guarantee the existence of RS and the entity veto in the State Parliament.¹⁵⁹ At the same time, the Bosniak SDA and SBiH insist on the transformation of entity voting and entity veto, which according to them favors the Serbs in RS. Also, Bosniak politicians insist that entities and cantons ought to be abolished, and a more centralized state based on geographic regions be created.¹⁶⁰ The Croat parties are divided regarding the reforms of the constitution. The politicians from the largest HDZ complain about the reduction of Croat constitutionality in the Federation BiH which is dominated by Bosniaks, and thus insist that Croats should be made equal to the other two communities by means of their own entity.¹⁶¹ In the smaller HDZ 1990, they share the HDZ view regarding the status of Croats in the Federation. However, according to the vice-president of the party, a way out would be to emulate the Swiss constitutional arrangement with 10-15 cantons instead of entities.¹⁶² Once again, the incompatibilities and inconsistencies that were built into the DPA during the Dayton negotiations are likely to prove an insurmountable obstacle for international mediators.

4.2 ICTY

In the early years of the DPA implementation, there was a great resistance by the Croat HDZ and the Serb SDS to comply with Annex 1-A, Article X, on the obligation to co-operate with the International Crime Tribunal for the Former Yugoslavia in delivering

¹⁵⁹ Kostić, "Ambivalent Peace: External Nation-building, Threatened Identity and Reconciliation in Bosnia and Herzegovina" p. 91. Also interview with SNSD member of the Council of Ministers, May 21, 2009, Sarajevo.

¹⁶⁰ Kostić, "Ambivalent Peace: External Nation-building, Threatened Identity and Reconciliation in Bosnia and Herzegovina" p. 91. Also, interview with an advisor to the Bosniak member of the Presidency, May 21, 2009, Sarajevo. Interview with a highly positioned member of SDA, May 16, 2009, Sarajevo.

¹⁶¹ Kostić, "Ambivalent Peace: External Nation-building, Threatened Identity and Reconciliation in Bosnia and Herzegovina" p. 91. Interview with the Croat member of the House of People, May 21, 2009, Sarajevo.

¹⁶² Interview with the vice-president of HDZ 1990, May 15, 2009, Sarajevo.

indicted war criminals. Until the end of 1999, out of 66 publicly indicted individuals 32 found their way to The Hague. However, in recent years all three parties improved their cooperation with the ICTY, and currently it is only the military leader of the Bosnian Serb Army, Ratko Mladić, that remains to be indicted to the tribunal.

The fact that the ICTY will be closing in 2010 means that there are no major practical challenges regarding this aspect of agreement implementation. In order to keep the transitional justice momentum going, the HR promulgated a law on the Court of BiH in 2000. The court, consisting of international and local judges and prosecutors, was established by the Parliament BiH in July 2002.

Yet, judging by the impact of the ICTY on inter-group reconciliation, the effect of the Court of BiH on reconciliation is uncertain and highly dependent on the political developments in BiH. Empirical studies by Weinstein (2006) and Kostić (2007) show the ICTY did not contribute to more reconciliation in BiH. In Kostić's study most Serbs and very many Croats totally disagree with the notion that the trials at the ICTY are fair. Bosniaks, on the other hand, are more confident than others that the trials are fair¹⁶³. The group differences are strong and significant even regarding the view of the need for tribunals to achieve peace. Although more than a half of all those interviewed agree or somewhat agree that the ICTY is a precondition for just peace and fostering of normal relations, two-thirds of the Serbs totally reject the statement, while more than a half of the Bosniaks totally agree with it. Croat respondents are divided between those who agree and those disagreeing even on this issue. Finally, in spite of the ICTY-led investigations against the Bosniak leader Izetbegović and the Croatian leader Tuđman, implicating their responsibility for war crimes, and a trial against the Serbian leader Milošević, the three leaders still enjoy a fairly

¹⁶³ Kostić, "Ambivalent Peace: External Nation-building, Threatened Identity and Reconciliation in Bosnia and Herzegovina", p. 356.

positive status within their respective communities.¹⁶⁴

The members of the three communities also have different views on the character of the war. More than 75 per cent of Bosniak, Croat and Serb respondents totally agree that their nation had fought a defensive war. This is corroborated by findings about how the population defines which military force was defending them during the war. The group differences are strong and significant, as more than 90 per cent of Croats characterize the Croat Defense Council (HVO) as a defensive force. At the same time, the same proportion of Serbs views the Army of Republika Srpska (VRS) as defenders. Finally, more than 90 per cent of the Bosniaks define the Army BiH (ABiH) as defenders in the last war.¹⁶⁵

On the issue of inter-ethnic reconciliation, domestic political actors remain skeptical.¹⁶⁶ Their skepticism is grounded in the fact that representatives of the three peoples cannot reach a consensus on how to reform Dayton's constitutional and administrative organization to be compatible with the interests of all three constituent peoples. According to the UNHCR Human Rights security officers, the political bickering at the state level, and the nationalist discourses negatively affect coexistence among the members of the three communities at the local level.¹⁶⁷ At the same time, all three communities remain dissatisfied with the work of ICTY or the State Court War Crimes chamber.¹⁶⁸

¹⁶⁴ Ibid., p. 355.

¹⁶⁵ Ibid., p. 354.

¹⁶⁶ Interviews with the representatives of SNSD; HDZ, SDA, NHI-HSS, HDZ 1990, SBIH, SDU, conducted in Sarajevo, May 2009.

¹⁶⁷ Interviews with UNHCR security officers, Sarajevo, May 8, 2009.

¹⁶⁸ Interviews with UNHCR security officers, Sarajevo, May 8, 2009.

5. Lessons learned

This section presents lessons learned which are based on an evaluation of the Dayton Peace Agreement from 1995 forward. The lessons are intended for prospective negotiators as a support to their effort when dealing with future negotiation processes. Yet, considering the uniqueness of each new situation, these lessons learned should primarily be viewed as a set of key reflections that one should consider when engaging in negotiations. The lessons are categorized and presented in relation to the process of negotiations, provisions and implementation of a peace agreement.

5.1 Process

- *Reflect on the roles and relations among the negotiators*

When organizing negotiations, a high degree of coordination is desirable among those participating in the process. Otherwise, there is a risk of competing agendas, duplications and slowdowns in the negotiations. The talks in Dayton serve as a good example of such problems. The US mediators did not want the Contact Group to be directly involved in the talks. Nevertheless, Holbrooke had to keep it informed, as the US needed international legitimacy for its involvement. Furthermore, the US administration was unable to finance the implementation of the eventual agreement alone and needed the European members of Contact Group to be a major financial contributor.

In addition, a strained relationship between civilian and military members of the US negotiation team further complicated the dynamics of the talks. The fact that the brunt of the NATO-led peace implementation force was to come from the US meant that US generals insisted on approving various aspects of the arrangement. According to Bildt, the US military had an upper hand over Holbrooke and his team and continuously threatened to speak to

the Republican dominated Congress if their interests were not taken into consideration.

In practice, the number of negotiators and their power-relations meant that the chief negotiator had to engage in a three-way negotiation, talking to the main parties, negotiating with the US military, and, finally, getting the Contact Group members to approve various aspects of the agreement.

- *Consider the benefits and shortcomings of highly exclusive negotiations*

The US team's negotiation strategy was to run exclusive negotiations dealing primarily with the three regional leaders, Izetbegović representing the Bosniaks and the Government BiH, Milošević representing the Bosnian Serbs and Tuđman, representing the Bosnian Croats. The set up of the shuttle mediation and subsequent talks meant that of the three Bosnian sides, only the Bosniak representatives participated directly in the negotiations. Tuđman and Milošević had the task to get their kin in BiH to accept what they agreed with the Bosniaks and the US negotiators. The positive aspect of this arrangement was that the main negotiators engaged with three primary parties, thus simplifying the negotiations. Counterfactually, one may argue that if Holbrooke had negotiated with Bosnian Serbs and Bosnian Croats, he would have had to involve Tuđman and Milošević anyhow, since they had significant political and economic leverage on their constituency in BiH.

However, the exclusive approach was not without shortcomings. Considering the incentives Croatian and Serbian leaders were offered by the US¹⁶⁹, their interests were not always the interests of their peoples in BiH. According to US diplomats, after agreeing on the peaceful reintegration of East Slavonia with Milošević in the early stages of the negotiations, Tuđman showed little interest in

¹⁶⁹ For details see pp. 14-15.

further discussions. Milošević, on the other hand, was all too eager to have the economic sanctions against Yugoslavia lifted, and made numerous territorial and political concessions on behalf of the Bosnian Serbs. The major problem was that both Bosnian Croats and Bosnian Serbs were scarcely informed about agreements on territorial divisions or the new constitution of the country.

As a result, during the last week of the negotiations, the Bosnian Croat representative Zubak, dissatisfied with his personal exclusion from the negotiation process, threatened not to sign the agreement, objecting to the territorial concessions made by Tuđman. Similarly, when Bosnian Serb representatives found out what Milošević had agreed on their behalf, they refused to sign the agreement. The agreement was signed by Milošević who, ten days later, faxed the signatures of Bosnian Serb representatives to Richard Holbrooke. Despite the overall success of the negotiations, one can argue that the atmosphere of exclusiveness and secrecy in Dayton simplified the process of negotiations at the expense of both legitimacy and commitment of the primary parties who were to be involved in the implementation of the agreement.

- *Keep the balance between the overall goals and specific aspects of peace agreement*

The list of issues that were included in the pre-negotiations agreement in October 1995 indicated that the US mediators aspired to negotiate a comprehensive peace agreement. The list for the talks in Dayton included deployment of a NATO-led military force, elections, constitution, power-sharing, creation of central state institutions, territorial divisions, human rights protections and the role of an international representative in BiH. According to Carl Bildt and US sources, Holbrooke and his team worked hard to reach an agreement, while particularly focusing on negotiating the maps and military provision of the agreement. As a result, the negotiations on the constitution and the structure of the central gov-

ernment, both of key importance if the agreement was to result in a functioning state, were downprioritised by the US team. Bildt reports that this part of the negotiations was taken up by the Europeans. In his words, there was otherwise a risk that one would reach an agreement on the maps and be forced to hastily agree on a constitution and other important provisions. This partly occurred despite the efforts of the Contact Group. According to Bildt, when the Dayton Peace Agreement was announced a number of constitutional details remained unresolved. He corrected some of these constitutional details post-factum in 1997 in his role as the first High Representative in BiH.

- *Reflect over any existing agreements and their purpose before their inclusion in new agreements*

The framework agreement on the Federation BiH was a result of a Bosnian Croat initiative from Sarajevo that was implemented with the help of the US in 1994. According to the initiators, the aim was to end Bosniak-Croat fighting, but also to produce a framework solution that would eventually be implemented in the rest of the country. The initiators insist that at the time of the signing, the US administration promised Bosnian Croat and Bosniak representatives that the cantonal arrangement in the Federation BiH would eventually be expanded to the Serb-controlled areas. Yet, in 1995, the US administration adopted the Contact Group approach that was based on the existence of a Serb republic and the Federation BiH sharing 49-51 per cent of the territory.

Following this logic, Holbrooke and his team spent the first week of the Dayton talks to revive the dysfunctional Federation BiH instead of trying to achieve a more functional and symmetric solution to organization of the mid-level of the BiH administration. This was done although the Federation BiH was failing politically, and the fact that there would be no further military need for it once a peace agreement was reached.

The Federation BiH arrangement would become a continuous source of political conflict and instability of Dayton BiH. On the one hand, Bosniaks would perceive it as unfair that they, demographically the largest constituent nation, were politically constrained by the demographically smallest group, i.e. Bosnian Croats. On the other hand, Bosnian Croats perceive Bosniak demands for more direct political representation and less checks and balances in executive power as an attempt at Bosniak domination. At the same time, both perceive it as unfair that Bosnian Serbs, by having their own entity, were given a preferential status over the two. In hindsight, one of the lessons for other similar cases would be about the need to reflect over existing agreements, their original purpose and functionality before one decides to make them into essential elements of new peace agreements. Otherwise, there is a risk that such agreements will be a source of new political divisions instead of being a means of bringing parties together.

5.2 Provisions

- *Consider existing local practices when working on the provision of the agreement*

Some of the most problematic aspects of any peace agreement often are the design of a constitution, administrative division, and various aspects of power-sharing between the former belligerents. While it may be tempting to create new, externally produced, solutions, mediators should also be open to local knowledge and existing solutions in their search for durable solutions.

In the case of Bosnia and Herzegovina, prior to the war in the 1990s, the constituent peoples, Serbs, Croats and Bosniaks shared power equally despite the demographic differences in size. In practice, the Communist Party introduced an informal 'ethnic key' on all levels of administration ensuring participation, cooperation and

decision-making by consensus among the representatives of the three communities.

During the negotiations in Dayton, Bosnian Croats participating as a part of the BiH delegations, allegedly approached Holbrooke in order to bring this power-sharing tradition to his attention. However, the chief US mediator was apparently not interested in hearing their proposal. Eventually, the US negotiators ended up devising and including in the provisions a more complex power-sharing model that at the state level included a number of checks and balances for the three communities but also for the two administrative entities, while at the mid-level and municipal level of administration it allowed for the dominance of the prevailing ethnic majorities in various regions of BiH. This would eventually have a substantial influence on the process of return of displaced persons and on inter-group cooperation on the local level.

- *Strive to be clear on mechanisms that are to deal with disagreements regarding the implementations of the peace accords*

Another important lesson learned from the Dayton negotiations is that while it is desirable to include mechanisms to deal with competing interpretations of the peace agreement, one should be transparent and clear about their operationalization. In the case of BiH, the mechanism for interpretation of DPA included the presence of the High Representative, whose legitimacy stemmed from the Peace Implementation Council. The HR, although approved by the UN Security Council, is an autonomous and final political instance for the interpretation of various DPA provisions, while there is no legal equivalent to assist and scrutinize the HR and PIC interpretations of the DPA.

This became particularly problematic in situations dealing with the external changes of the DPA. For example, in 2000, the OSCE changed the Federation BiH election rules in order to simplify vot-

ing procedures and encourage some cross-constituency voting. Demographically smaller Bosnian Croats felt that the decision, which endangered their vital interests, was not in line with the constitution and asked the Constitutional Court for its interpretation.

The Court, however, stated that it could not produce a ruling since the changes were made by the OSCE, which, although acting in line with its own DPA responsibilities, was a body outside the constitution of BiH. The ruling caused outrage and led to proclamation of a temporary Croat autonomy, and military disobedience by the Croat units of the Federation BiH. The unilateral changes of the election law created a feeling that the international community was supporting the Bosniaks while trying to reduce the constituent status of the Bosnian Croats and had a profound negative impact on Bosniak-Croat coexistence. Thus, although the inclusion of mechanisms to help the interpretation of accords is desirable, these should preferably have a legal rather than political character. Also, one should try to make them transparent and obvious to all parties involved.

- *Consider including a peacekeeping force that can assist in the implementation of peace*

Inclusion of robust US-led NATO peacekeeping forces in the agreement has been pivotal for the peace process in BiH. Considering the levels of mistrust between the three communities, it is hard to imagine how any progress concerning the territorial demarcations, or return of refugees, or improvement in overall security would have been possible without a forceful military presence. With hindsight, most politicians from the three communities highlight the fact that the NATO military presence, particularly in the early days, has had a crucial confidence-building role.¹⁷⁰ Thus, mediators working on designing a durable agreement should strive

¹⁷⁰ Roland Kostić, "Nation-Building as an Instrument of Peace? Exploring Local Attitudes Towards International Nation-Building Building and Reconciliation in Bosnia and Herzegovina." *Civil Wars*, Vol. 10, No. 4, (December 2008), pp. 386-414.

to secure the commitment of those international organizations that could guarantee security and facilitate peaceful coexistence.

5.3 Implementation

- *Set up realistic timetables and deadlines for implementations*

One of the implementation-related lessons from the DPA is that realistic timetables for the implementation of a peace agreement matter. This is particularly relevant if an agreement is a result of highly exclusive negotiations without direct participation of the actors who are expected to implement it. This lesson is well documented in the implementation of the DPA. Originally, the agreement stipulated that the military implementation was to be completed in one year. Similarly, according to Annex 3 the first free post-war elections were to take place six to nine months from the beginning of DPA implementation. Considering that Bosnian Serb and Bosnian Croat representatives were barely involved in Dayton, it is not surprising that these two sides would put up most resistance to the implementation, especially when knowing that the NATO force was to leave within a year. Subsequently, the timetable for the military withdrawal had to be revised on a number of occasions and has taken much longer than originally envisaged.

In the case of the timetable for elections, while the international desire to involve the local stakeholders is understandable, it was far too ambitious to assume that one would secure freedom of media, movement and expression only nine months after the end of a very brutal inter-communal conflict. In many ways, the first elections were a breach of DPA provisions as the freedom of movement and the right to vote in one's pre-war hometown was not always respected.

- *If provisions include external supervision of the implementation of the agreement, consider how it will affect domestic ownership of the process*

If a peace agreement includes a supervising external body to oversee the implementation, one should reflect over its function, the use of its authority and how it relates to local ownership. As the Dayton Peace Agreement shows, the external eagerness to implement the agreement swiftly, led to an expansion of powers of the OHR in 1997. While the change produced somewhat faster initial implementation, the top-down impositions excluded domestic political representatives. Furthermore, frequently the OHR produced solutions that exacerbated existing inter-group conflicts, thus cementing or even widening inter-group distances instead of promoting reconciliation. Subsequently, the OHR imposed most decisions ranging from state symbols and identity, Central Bank, reform of the legal system, change of the entities' constitutions, passports, state currency and many more. This type of implementation crippled local ownership as political representatives of all three sides refused to make difficult compromises with each other fearing the loss of support from their constituencies. Instead they would retain their own political posture while leaving the OHR with no choice but to make some of these difficult decisions.

6. Challenges today: outlook for tomorrow

21 November, 1995, witnessed the signing of one of the most comprehensive and complex peace agreements after twenty days of hard negotiations. There were many expectations but also many flaws in the agreement. On the positive side, the DPA put an end to war and human suffering, and drastically reduced the immediate risk of a new war. Yet, in the process, it inherited many of the contradictions that led to the war in BiH. Thus, despite the fact that most stipulations of the DPA have been implemented, it has, so far, failed to facilitate deeper inter-ethnic reconciliation in BiH

The main reason lies in an unequal constitutional and administrative treatment of traditionally equal peoples who make up the multiethnic body of BiH. The externally designed and implemented DPA has granted one constituent people, the Bosnian Serbs, an autonomous republic while it pushes the other two constituent peoples into a complex federal arrangement, where Bosniaks as the largest group in the country dominate over the less numerous Croats. At the same time, both communities view the position of Bosnian Serbs as unfair and strive politically to facilitate changes that in turn threaten the interests of Bosnian Serbs. It is these dynamics of constantly recycled political crisis and the need to protect one's own vital national interests that preclude interethnic reconciliation and deeper mutual understanding. In this context, transitional justice measures are viewed primarily through a prism of daily politicking and competing narratives rather than as the efforts to deliver justice and come to terms with the past. In this regard, the key lesson from BiH is that reconciliation is hard to achieve if the reconciliatory measures are implemented within conflict-generating constitutional frameworks. In such contexts, reconciliatory measures, regardless of how well designed and intended they are, will stand little chance of success as long as the war-related incompatibilities remain unsettled.

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