

# A Note on the Dayton Peace Accord

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The Dayton Peace Accord brought an end to the war in Bosnia and Herzegovina and any agreement that ends a war tends to deflate criticism. Peace is always preferable to war. Nation building, however, is a process that extends beyond peace, and all agreements, Dayton included, must allow room for revision that serves greater unity and prosperity.

Taking the broad view, from the vantage point of over two and a half decades since its signing – by the then-presidents of Serbia, Croatia and Bosnia, Milošević, Tudjman, and Izetbegović – it becomes clear that Serbia, which at the time of signing essentially controlled about 65% of BiH territory, largely dictated both the form and the contents of the Accord. The outcome of the resulting provisions, of which this article will treat only two, was well understood by Milošević and quite certainly by the Clinton administration as well. Presiding over the agreement, the US government was motivated by the reality of a President seeking his second term and for whom the coup of ending the war in the Balkans was as fine a foreign policy achievement as could be gained.

The first provision to address relates to the return of refugees and displaced persons. It is treated by Annex VII of the Accord and lays out a remedy to reverse the effects of ethnic cleansing. Simply put, it calls for conditions to be created so that survivors are allowed a safe return to their homes. Before the war, close to 50% of citizens populating the territory granted by the Accord to the Entity of Republika Srpska (RS), were non-Serbs. Successful implementation of Annex VII would effectively yield a return to pre-war figures, or there about, and yet

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today, only about 10% of RS citizens are non-Serbs. With no penalties for non-compliers imbedded in the text of the agreement, the mandate to return displaced persons was left with their former persecutors. Return of refugees and displaced persons without clear political will to do so (across all levels of government) is not only complex but near impossible. It is not a matter of simply returning property but of rebuilding schools and roads, providing jobs and protection by law enforcement, as well as inclusion in local government bodies.

While the Dayton Peace Accord foresees the conditions that need to be created for return to succeed, it fails to spell out target numbers, time-frames and, importantly, any repercussions for failing to meet these. The process of return is still ongoing, some twenty-five years since the end of the war, with the RS government continuously proclaiming that all are welcome to their property and home. In reality, property is most often sold where reclaimed by returnees, as the place of return is unwelcoming at best with openly hostile the norm. With each passing year, ethnic cleansing is cemented with passage of time, as survivors age and their children grow up elsewhere. What remains in stone is a country divided into two Entities along not only lines of territory (49% to RS and 51% to Federation) but of ethnicity. As such, it goes against both the letter and spirit of the Accord, but triggers no remedy as none has been provided.

The other provision concerns the bicameral structure of the national legislature, consisting of the Lower House (House of Representatives) and Upper House (House of the Peoples). In the former, individual MPs from all of BiH vote individually, in the latter – the vote is by ethnic groups. It is the House of the Peoples, as defined in Dayton that steers the fate of the land.

Originally intended to prevent any formerly warring side to outvote another on matters deemed to be of “vital national interest”, for a resolution to pass it must secure votes from each voting bloc of the House of Peoples (a minimum of 1/3 from each group). As this essentially gives veto power to each constituent group, defining what matters of “vital national interest” are would seem paramount, but there was no time for such detail in the winter of 1995. Without this definition, any measure before the House is voted on as a matter of “vital national interest”, gumming up progress of any resolution, any investment, and any act that serves to strengthen the central state. Importantly, these constituent blocs are not only ethnically but largely

politically homogenous, as MPs are not voted in on a national level but through the Entities. In the case of the RS, the lack of return of refugees and displaced persons plays an important role, as the voting tide consistently sways towards the extreme right, ensuring that the nationalists and the populists are those in power and in firm possession of the veto.

Over two and a half decades since the signing of the Agreement, no consensus has been reached in defining what the matters of “vital national interest” are. This is unsurprising as any definition of these special interests would serve to curtail Entity power and would require the will of those holding this power to give it up. The ethnic vote is today a tool of trade, where bargains (we-will-vote-for-this-if-that) and resulting institutional corruption is rife, with the central state rendered impotent to lead in any reform. The infection permeates all pores of our society, coming from top down, it thrives everywhere from education to the judiciary. Again, as such, it goes against both the letter and spirit of the Accord, but triggers no remedy as none has been provided. What remains in stone is the House of Peoples’ veto power, serving to protect and advance the nationalist agenda of the ruling parties.

The House of Peoples, much like the three-member Presidency, highlights the fact that Dayton Peace Accord recognizes only three ethnic groups as homogenous blocks: Bosniaks (formerly referred to as Bosnian Muslims – not in professed belief but in ethnic origin), Croats, and Serbs. The nation’s highest posts are divided among these three groups, making any other citizen of undeclared or minority ethnic origin (Jewish, Roma or other) not only de facto excluded from high office but de jure as well. The rights of BiH citizens can only be viewed through the prism of their ethnicity and the votes that underpin the complex machinations of the state can only be competed for through the Entities. What follows is that, at the most fundamental level, competing for office does not necessarily require competing in ability or competence at all, but rather in ethnicity: being very Serb for the Serb position or very Bosniak for the Bosniak position, very Croat for the Croat one. To be this, one must be a caricature of hard-liner positions that served as pillars for the very creation of the system.

In retrospect, the International Criminal Tribunal for Former Yugoslavia, and its rulings, represents the greatest contribution of the international community towards lasting peace and future

prosperity in BiH and the wider region. The inclusion of international members of judiciary and foreign prosecutors in the work of the BiH Constitutional Court has had an immense impact on the preservation of this state's legal framework and its continued existence. However, preserving the frame is not enough to mitigate the effects of the three-pronged system it holds: one that has served to inflate the government to an unwieldable and impenetrable size, where citizens are denied both efficiency and transparency and where economic prosperity and state security play second fiddle to political opportunism. Worrying numbers of BiH citizens (well over half in polling) profess that they see their future outside of the country.

Perhaps we can allow that at the signing of the Accord, the world leaders overseeing its creation did not have a full picture of the atrocities and the devastation this country has suffered: the horrifying number of mass graves on RS territory, the Srebrenica genocide. Dayton was never meant to cement the future of this country but pave the way for it. However, with what we know today, expecting Bosnians to come together and reform a constitutional framework that cannot be reformed considering the stakeholders involved, and the decision-making process required, is disingenuous at best. Ultimately, the same political forces that brought about the original Dayton constitution must be involved in its transformation. This means the international community must again provide the impetus, if we must provide the muscle.



Signing of the Dayton Peace Accord, 14 December 1995, Paris