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Potentials and planning for postwar Ukraine: Implementing Dayton as a cautionary tale

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Executive summary

As the war in Ukraine is making the region and the global order increasingly destabilised, it is nonetheless necessary to look ahead to a post-war era. Most attention is usually focused on the creation of agreements to end the fighting, far less is given to the implementation of such agreements and the lessons to be learnt from them. This paper focuses on one such example, the 1995 Dayton Agreement that ended the war in Bosnia-Herzegovina, and its initial implementation in 1996.

In many ways, the patterns established in that framework came to be used in subsequent international interventions, from Kosovo to Iraq – not to any great outcome. This paper explains why that is. It establishes the parameters and problems inherent both in the Dayton Agreement and its implementation – and offers insights into how and why they must be avoided in Ukraine.

The paper makes the following recommendations for implementing an agreement in post-war Ukraine:

- Ukrainians must be part of creating an agreement, and there must be absolute clarity on the nature and purpose of the document – a ceasefire or peace.
- Any international military presence to police an agreement and provide security for both sides must be established with a strong and long-term mandate.
- Any agreement must involve major funds for reconstruction, alongside a strong and structured oversight mechanism. The two could be combined by using the lengthy EU accession process of legal and structural adaptation incumbent upon all such states as a means of reconstruction and transformation, with a significant EU presence established for this purpose in Ukraine.
- Ukrainians must be full partners in creating and implementing reconstruction policies funded by international donors.
- It is imperative to understand the various issues related to internal issues and factions that could undermine an agreement as it is being negotiated.

Introduction

The connecting thread between the conflicts in BiH and Ukraine is the battle over the right to self-determination, independence and the application of international law: the core elements of the global order.

The war in Ukraine will eventually end. The death and destruction will stop, and there will be some form of agreement between Ukraine and Russia, and possibly between Russia and various other states or organisations such as NATO and the EU. The parameters of these putative agreements are yet to be formulated. However, some work is clearly in hand, as evidenced by the recently published recommendations on post-war international security guarantees for Ukraine.¹ As the thinking evolves, it may be well to examine some key ingredients for success and failure in recent cases. This paper focuses on one such precedent, largely of the latter category: the Dayton Accords that ended the fighting in Bosnia-Herzegovina (BiH) and their initial implementation.

The Bosnian conflict of 1992-95 was undoubtedly of another nature – not a war of aggression by one state against another but rather a form of civil war, in that the three sides were all originally of BiH. However, it rapidly became more complex, with at least one of the sides, the Serbs, potentially seeking to eliminate another, the Bosniacs, through ethnic cleansing. This is not dissimilar to the Russian attempt to deny the existence and legitimacy of Ukraine and its repeated drives of ethnic cleansing through death and displacement in every territory it has taken. Furthermore, in BiH, the different warring factions came to be backed by other states, and within a short space of time, the conflict also became the focus of massive international involvement. Once again, the Russian backing to breakaway elements in the Ukrainian Donbas since 2014 is very reminiscent, as is the subsequent western backing to Ukraine, which increased ever more since 24 February this year. This is not by chance, as another point of comparison between the conflicts – and possibly the most salient for the purposes of this paper – is that they both concern the world order after the end of the cold war.

The conflict in BiH was one of the Yugoslav wars of succession that emerged after the collapse of the unitary state, which was both a purely Yugoslav event but also one of the outcomes of the end of the cold war as the ideology that underpinned Yugoslavia disappeared. Ukraine declared independence in 1991, after the collapse of the USSR, but at least since the Orange Revolution of 1994 it has been battling various attempts by Russia and its local acolytes to dispute its right to be an independent, European-facing state. And while thirty years separate the fighting, the connecting thread between the conflicts in BiH and Ukraine is the battle over the right to self-determination, independence and the application of international law: the core elements of the global order. This issue is important not only in itself, but because a key flaw in both the Dayton Accords and their implementation was the lack of attention to the global order aspect of the resulting status of Bosnia-Herzegovina. This allowed instability to become the norm – and ultimately for Russia to repeatedly attempt to undermine both the state and the broader Western Balkan region.

This outcome must be avoided in Ukraine when the time arrives for agreements to be signed. To better understand both the danger of it happening and potential ways to avoid it, a closer examination of the Dayton Accords can serve as an interesting precedent – and a cautionary tale.

Intent: Agreement and imple- mentation

The war in BiH lasted some three and a half years, ending in December 1995 with the signing of the US-brokered and internationally backed Dayton Agreement. This recreated it from a unitary to a federal state composed of two entities: the Republika Srpska for the Serb community, and the Bosniac-Croat Federation for those two communities. While each entity was to be self-governing to a large extent, common state structures of the executive, legislative, and judiciary were established for central management of certain areas, from foreign and defence policy to budgetary issues. The parameters of the agreement and these structures had evolved over the years of war through the mediation attempts of a number of individuals and groups. The US achievement, led by Richard Holbrooke, was in finally brokering the agreement and forcing the sides to implement it – to an extent. While the new and restructured BiH was eventually crafted and was officially at peace, in reality, it was on the verge of collapse – a condition in which it has remained for much of the past 26 years. This is partly due to the flaws in the agreement, and partly to the flawed implementation of the agreement, notably in the first year immediately after the war.

These issues can be summarised and understood through the following five points. Their relevance to the Ukraine outcome is noted after each.

1. Clarity of purpose

Despite its title of *The General Framework for Peace in Bosnia and Herzegovina*, Dayton is essentially a ceasefire agreement. Throughout the years of fighting there were over twenty-five ceasefire agreements signed between the warring factions in BiH, all of which were violated. Dayton is, therefore, an excellent ceasefire agreement in that it has held for 26 years, but it is not a peace agreement with a proper political settlement between the sides. In its fully signed version, the military annexes of the agreement (1A, 1B) take up 39 pages, while all the other ten annexes – covering everything from elections and a constitution to human rights and the international police force, and including signatures – take up 74 pages between them.² Being a ceasefire agreement is not in itself the problem, but rather that Dayton was promoted as a peace agreement while in reality empowering precisely the sides that caused and fought the war, namely the political leaderships of the ethnically based – Serb, Croat and Bosniac/Muslim – parties. As such, rather than enforcing a political solution, it endorsed the physical divisions between ethnicities and solidified the supremacy of the ethnically based parties, which is a core reason BiH remains in its tentative postwar condition rather than evolving into a coherent state.

Relevance to Ukraine

Ukraine is a unitary state, and the Russian war of aggression is actually helping to form it evermore into a coherent nation with increasing narratives of heroism and nation-building. However, it has been at war since 2014, and as in BiH a number of ceasefires were signed – within the process known as the Minsk Agreements – all of which were violated.³ Whether these will in any way offer the framework for a subsequent agreement remains to be seen, but it

is imperative that the Ukrainians be part of creating the agreement, and that there is absolute clarity on the nature of the document – a ceasefire or peace. That will decide the attitude of the population to its durability and prospects.

2. International military presence

Every attempt at a settlement in Bosnia-Herzegovina from 1992 onwards envisaged some form of separation and division of the state into largely ethnic-majority units. Dayton simply transmuted the notions into hard legalese, underpinned by a large international military presence known as the Implementation Force (IFOR), empowered to subdue the warring parties in case they sought to resort to conflict. While this force was a big selling point of the agreement, it was both painfully ironic and also proved to be part of the future problem.

The irony was clear from the start: IFOR was composed of 60,000 well-armed troops – including 20,000 from the US – under NATO command. Yet it was there to implement a peace agreement after the sides had stopped fighting. At its height in 1995, the UN force in BiH during the war was just over 24,000, with no US participation, and until the creation of the UN Rapid Reaction Force (RRF) it was relatively lightly armed.⁴ Yet it was this force that operated within, and ultimately became part of the war, not least in the sense of being charged with defending Safe Areas with few men and arms. While it was possible to position IFOR's massive military presence as a reward for the ending of the war, it was also very possible to interpret it as a sign that the international community was serious about the use of force for attaining peace or ending conflicts only once there was no danger. In effect, it is this interpretation that has been apparent in the ensuing decades, far beyond the Balkans.

Beyond the irony, the core problem with IFOR was timing: it was scheduled to be deployed for one year only – as per article 13 of UN Security Council Resolution 1301 that created it.⁵ Moreover, that was the clear intent of many of the troop-contributing nations, notably the US, that “insisted a one-year deadline would be sufficient time to establish a self-sustaining balance of military forces inside Bosnia.”⁶ This was not entirely by chance, as the US had elections in November 1996, and the Clinton Administration was eager to prove the success of Dayton for its domestic political purposes.

While as a ceasefire agreement the timing was probably correct, from the broader perspective of creating a new and functioning BiH, it proved to be the equivalent of a pressure cooker. Everything had to be achieved before IFOR withdrew, regardless of whether or not the conditions were in place for this to happen. This deadline and its resulting pressure played into the hands of the ethnic leaders seeking to establish division, as it undermined any possibility of trust building within the civilian populations on all sides. These were people emerging from over three years of war and several more years of being incited to both hatred and fear of their fellow citizens of another ethnicity. While they accepted IFOR was there to provide security, the knowledge of it withdrawing after a year – and the latent possibility of a return to conflict – inhibited many from attempting to trust the other or, indeed, from being open to creating a more collective state at the crucial first post-war phase.

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Relevance to Ukraine

In Ukraine, it is highly likely there will be an international military presence to police an agreement as well as to provide security for both sides. Whether under the auspices of the UN or the OSCE or whether as a special purpose independent creation, it will probably be substantial. It is therefore important to establish it with a strong and long-term mandate rather than a limited one in order to ensure a departure deadline does not give succour to those seeking to undermine the agreement from the start.

3. International civilian presence

It could be that the effect of the military, even in one year, would have been extraordinary if it had been matched by a strong international civilian counterpart. Unfortunately, the “civilian structure within the Office of the High Representative (OHR) was given no powers whatsoever,” as Carl Bildt, the first High Representative (HR) noted.⁷ The OHR was another organ created by the Dayton Agreement, but as opposed to IFOR it had a very small budget and largely relied on states seconding staff to get it going rather than being able to choose, recruit, and create a coherent leadership organisation with clear powers of enforcement as a counterpart to the NATO-led military force. That the seconded staff pulled together remarkably well and handled the myriad issues of 1996 is a tribute to them. Still, the awareness of the imbalance between the international military and civilian capabilities was obvious to all, especially the local leadership and population – allowing the perception of non-war rather than incipient peace to become instilled and remain pervasive.

Relevance to Ukraine

Ukraine is a sovereign state, and is showing remarkable resilience in functioning through war, to the extent of becoming an EU candidate state in June 2022. However, any agreement must involve major funds for reconstruction, alongside a strong and structured oversight mechanism. It may therefore be well to combine the two by using the lengthy EU accession process of legal and structural adaptation incumbent upon all such states⁸ as a means of reconstruction and transformation, with a significant EU presence established for this purpose in Ukraine. Moreover, such a presence could assist in gaining the confidence of the population.

4. International implementing agencies

The HR reported to the Peace Implementation Council (PIC) – a body comprised of 55 states, which was as unwieldy as possible even if there was a more limited Steering Board within it. While necessary, this body and others were part of a wide array of implementation agencies and international oversight. The HR was delegated to lead the civilian effort and the political negotiations, the OSCE was tasked with dealing with elections, the UN was responsible for creating an International Police Task Force (IPTF), the World Bank with leading reconstruction, and so on. An alphabet of international organisations and entities, often with identical member states within them making decisions, but with differing and often competing agendas, and all competing for money.

As opposed to NATO and its defined political leadership of the North Atlantic Council (NAC), the civilian effort was nominally overseen by the OHR but in reality by an array of boards and committees within each international organisation. Moreover, and once again in comparison to the military – that was either already in situ (the various national military contingents that had made up the UN force simply changed their berets from the UN blue back to their national colours to become IFOR) or else, in the case of the US, drove down from Hungary in early January 1996 – there was some delay as each civilian agency had to enter and create a presence in BiH from scratch, often with poor resources. As a result, the local population, and often even their leaders, were left baffled as to which organisation did what, and how it could help them, not least as in many cases the organisations brought their own international staff rather than employ locals other than in a support capacity. Given the high level of education in BiH both before and during the war, this was a missed opportunity, and a travesty. In effect, this was nation creation from above rather than nation-building collectively, and from below.

Relevance to Ukraine

It is inevitable that the many specialised agencies will be part of the reconstruction process in Ukraine. With a strong civilian leadership, as suggested above, it may be possible to better integrate them all into a well-functioning system rather than competing poles. Given the high educational level of the population, it is imperative to ensure the mistakes of BiH are avoided and Ukrainians are full partners in creating and implementing reconstruction policies funded by international donors.

5. Benefitting factions

The first four points coalesced in the fifth and final issue: the elections of September 1996, mandated by Annex 3 of the Dayton Agreement. The first problem was context, on which Article 1, paragraph 1 of the Annex was quite clear: “The Parties shall ensure that conditions exist for the organisation of free and fair elections, in particular a politically neutral environment; shall protect and enforce the right to vote in secret without fear or intimidation; shall ensure freedom of expression and of the press; shall allow and encourage freedom of association (including of political parties); and shall ensure freedom of movement.” The latter point, on freedom of movement, was to a certain extent attained courtesy of IFOR, but none of the others were achieved by mid-year – which was relevant as the Agreement stipulated that elections should be held “six months after entry into force of this Agreement or, if the OSCE determines a delay necessary, no later than nine months after entry into force.” In June, when the OSCE set the date of the elections for September, it acknowledged that conditions to ensure a free and fair election had not yet been put in place. Worse still, the trajectory throughout the summer of 1996 was not positive,⁹ and the conditions remained identical on election day.

The organisation of the elections was also problematic. The OSCE was charged with the task, despite never having undertaken any such before – while the UN had an established elections division, with some experience in post-conflict ballots. The decision not to use this capability was made at Dayton and resulted in the

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OSCE learning the ropes while conducting a very complex set of elections. While technically this was achieved, the political inexperience became clear quite early on, when it allowed the three local seats of the seven-member Provisional Election Committee (PEC) to be taken up by representatives of the three major ethnically based parties. These parties insisted upon election rules that made it more or less impossible for any non-ethnic or trans-entity party to compete.

In addition, voter registration, that was spread across the entities and the refugee population, was so complex and politicised – with each entity and ethnicity trying to claim both many dead (for the purposes of compensation) and many extra living (to inflate the voter register) – that the September turnout reflected over 100%.¹⁰ It was a sad mess. With basic conditions not met, a PEC designed to ensure ethnic division, a confused voter register, and the pressure of IFOR leaving within a year, it is hardly surprising that the elections of 1996 certified the separation and division of Bosnia-Herzegovina into ethnic entities, not at war but with little love lost between them. As a subsequent legal analysis put it: “in conditions of group insecurity and mutual distrust, with no incentive for politicians to appeal beyond their own ethnic constituencies, elections predictably turned into an ethnic census.”¹¹

Relevance to Ukraine

Ukrainian political parties and politicians have laid aside their differences in the most admirable way in view of the war, but there will inevitably be a return to rivalry and politics as usual when hostilities cease – or very possibly even as agreements are being negotiated. It is therefore imperative to well understand the various issues related to internal issues that could undermine an agreement as it is being negotiated. This is no less important during implementation, in order to ensure the agreement is not instrumentalised by one or other of the domestic political factions against the broader interests of the population, the agreement, and its implementation.

Aftermath: When imple- mentation falters

These five points are all inter-connected: the ceasefire maintained by IFOR ensured order was imposed upon post-conflict disorder, but in the absence of a parallel empowered civilian capability or a coherent and binding post-conflict political settlement, and with a multitude of international interests and agencies and the one-year deadline of IFOR leaving, elections became a stand-in for state building and democracy. Furthermore, this was very necessary, for as embedded in the Dayton Agreement, the elections were essentially IFOR's exit strategy: by actually holding them, an image of democracy in BiH was attained, apparently removing the need for a large military force or international military commitment.

But events did not pan out that way.

IFOR did not withdraw at the end of 1996; instead, it mutated into SFOR, the Stabilization Force, this time with an eighteen-month mandate. It was an inevitable decision, given the vast gulf that separated imagery from reality and the fact that democracy, or even stability, were not assured in BiH. Unfortunately, it was taken only in mid-December 1996¹² once the elections were done, the division was a fact, and the rancour between the two sides had begun to set into new modes that have lasted ever since.

Some months later, in 1997, the Steering Board met in Bonn and finally handed the High Representative the power to make binding decisions on any subject he (and it has always been a male) deemed necessary. As a result of these Bonn Powers, over 1,000 such decisions have subsequently been made. While the Powers could be seen as a corrective both to the imbalance between the military and civilian capabilities, and the entrenched fault lines created in 1996, it could be argued the end result was different: by overriding the duly elected Bosnian leaders when they either did or did not make decisions deemed necessary, the HR released these same leaders from any responsibility for unfolding events, usually created by them.

BiH is currently in another series of crises, including disputes over electoral reform,¹³ that is both a result of this process and a case in point, as it was sparked by a Decision published on 23 July 2021 by the then High Representative, Valentin Inzko, banning the denial of genocide.¹⁴ Since the Serbs of Republika Srpska reject the existence and accusations of the 1995 genocide in Srebrenica committed by Bosnian Serb forces, they also rejected the HR's Decision and threatened to not only pull out of the common institutions of BiH but also to create their own military capability. The decades of deterioration did not make this outcome inevitable, but open Russian meddling did¹⁵ – as it has long sought to undermine the coherence of BiH, largely to enhance its own footprint in the region and destabilise the EU. In response, and due to the war in Ukraine, EUFOR – the successor mission of SFOR, run by the EU rather than NATO – had its troop contingent increased from 600 to 1,100 troops. But in every other respect, BiH teeters on as before, threatening to collapse, with a failing economy, rife with corruption, and nearly half the population under the age of 30 seeking to leave.¹⁶ Not the best outcome for 26 years of peace implementation.

Conclusion: Learning the correct lessons

Military and civilian interventions must be at least of equal capability rather than strongly military, and international commitment to a post-conflict situation cannot end with elections.

The international community appeared to learn little from the flaws in the Dayton Agreement and the experiences of 1996. Interventions in Kosovo, Afghanistan, Iraq and Libya all followed, and barring Kosovo – in which the mistakes made in BiH were largely avoided, at least initially – the five points noted above were apparent in all. Ceasefire situations were crowned as peace, immense military force was matched by weak civilian structures made up of the usual alphabet soup of agencies, and above all, elections were used as an exit strategy. Ballots were repeatedly held within a year of the end of hostilities – in war-torn societies, often with no civil society organisations, and with fanatics or gangsters who had terrified the same population just weeks or months before suddenly parading as politicians. And whatever the ensuing election result, democracy was declared and international interest sated.

None of the examples noted above is a functioning state, let alone a democracy. In addition, the geostrategic reality in each of them – including Kosovo, given its enduring tensions with Serbia backed by Russia – has been degraded, and the viability of the global order increasingly questioned. This is not the fault of Dayton or its implementation, so much as the wrong lessons being learnt from the Bosnian precedent. Notably, that military and civilian interventions must be at least of equal capability rather than strongly military, and that international commitment to a post-conflict situation cannot end with elections, regardless of how many troops or agencies or funds are devoted to it on the ground. It is a long process that must be accompanied by political backing over years. This is necessary not only to ensure the best outcome but also due to the other lesson never properly learnt from Dayton: that an agreement ending hostilities, even if it is a peace agreement, has implications beyond the borders of the states concerned. It must always be created, understood and implemented within both the geostrategic context and the global order – if it is to succeed.

Ukraine is fighting a horrendous war of survival, and it is unclear at this point how it will end – though whenever that happens, it is clear that the state must be reconstructed, the people helped to rebuild their lives, and security very clearly established. All these issues were apparent when the war in Bosnia-Herzegovina ended and the Dayton Accords signed. In order to avoid the mistakes made then, and the outcome of instability that has stalked the Balkan state ever since, it is well to learn the lessons now, and well. Ukraine deserves security – which, as noted above, is already being discussed in the form of a working group on international security guarantees – but it also deserves a better future, for the benefit of us all.

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