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## **A CASE STUDY OF MULTI-INSTITUTIONAL POST-WAR CONFLICT PREVENTION: THE DAYTON PEACE AGREEMENT AND ITS IMPLEMENTATION\***

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# A CASE STUDY OF MULTI-INSTITUTIONAL POST-WAR CONFLICT PREVENTION: THE DAYTON PEACE AGREEMENT AND ITS IMPLEMENTATION\*

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## 1. Introduction and Terminological Clarification

The *General Framework Agreement for Peace in Bosnia and Herzegovina*, negotiated in Dayton (Ohio) on 1--21 November 1995 and signed in Paris on 14 December 1995,<sup>1</sup> opened the way to a huge international deployment - which someone has referred to as 'a vast imperial expedition'<sup>2</sup> in Bosnia and Herzegovina. Numerous peace-keepers, electoral monitors, human rights experts, engineers and far more professional figures flooded into the war-torn country. Although post-conflict peace-building in Bosnia and Herzegovina is not unlike that in other countries in similar conditions (Cambodia, El Salvador, Haiti, ...), the level of international involvement and the number of international organizations present in the field is unprecedented in post-II World War Europe.

The case is interesting in many perspectives. In the first place, it is significant in itself, as the Agreement which - although harshly criticised - put an end to four years of war in ex-Yugoslavia. It depicts a constitutional shape and a delineation of borders for Bosnia and Herzegovina which has been widely criticized both because it represents a legitimation of the politics of ethnic cleansing and because the very pillar of its architecture, the mainly-Muslim-Croat *Federation of Bosnia and Herzegovina*, is not such a pillar, as among other things, the difficulties of the Muslim-Croat town of Mostar demonstrate.

The DPA is also interesting for what we can learn from it about Transatlantic burden-sharing in crisis management in Europe. As a matter of fact, the Agreement and the peace (or, better, absence of war) which followed was the result of an unprecedented American leadership in the

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<sup>1</sup> The Dayton Peace Agreement (DPA) initialed on 21 November 1995 is reproduced in UN doc. A/50/790-S/1995/999; the version of the document signed in Paris on 14 December 1995 appears in *International Legal Materials*, XXXV, 89, 1996. The second version differs from the first only for the correction of some minor errors.

There is a growing literature on the DPA and its implementation. See, among others: AssemblŽe de l'Europe occidentale, *Le processus de paix dans les Balkans - La mise en Őuvre des Accords de Dayton*, Rapport prŽsentŽ au nom de la Commission politique par M. Roseta, WEU document 1526, 14 Mai 1996; Domenico Caccamo, 'Pax Americana e paralisi europea. A proposito degli accordi di Dayton', *Rivista di Studi Politici Internazionali*, LXIII, 2, 1996, pp. 163--173; Marie-Janine Calic, 'Bosnia-Hercegovina After Dayton. Opportunities and Risks for Peace', *Aussenpolitik*, XLVII, 2, 1996, pp.127--135; US Library of Congress, *Bosnia: Civil Implementation of the Peace Agreement*, CRS Report for Congress, 96--177 F, 1996; US Library of Congress, *Bosnia After IFOR*, by Sloan, S.R., CSR Report for Congress, 96--344F, 1996; Paul Garde, 'Après Dayton, le dŽluge?', *Politique internationale*, LXXII, 1996, pp. 145--166; Dick A. Leurdijk, 'Before and After Dayton: The UN and NATO in the Former Yugoslavia', *Third World Quarterly*, XVIII, 3, 1997, pp. 457--470; Reneo Lukic, Allen Lynch, 'La paix amŽricaine pour les Balkans', *ftudes internationales*, XXVII, 3, 1996, pp. 553--570; Jeames Schear, 'Bosnia's Post-Dayton Traumas', *Foreign Policy*, CIV, 1996, pp. 87--101; Thierry Tardy, 'Les Accords de paix en Bosnie-Herzegovine. De la Forpronu ^ l'Ifor', *Relations Internationales et Stratĕgiques*, XXI, 1996, pp. 60--75; International Commission on the Balkans, *Unfinished Peace*, Aspen Institute & Carnegie Endowment for International Peace, Washington/Plymouth, Brookings/Plymbridge Distributors, 1996; Jane Sharp, 'Dayton Report Card', *International Security*, XXII, 3, 1997/8, pp. 101--137.

<sup>2</sup> See Schear, 'Bosnia's Post-Dayton Traumas', p. 91.

management of the Yugoslav crisis. Post-Cold War great expectations about a European independent or leading role in crisis management seemed to be killed in Sarajevo.

Moreover, the Document envisages a particular type of *multi-national* and *multi-institutional* conflict management in Europe. The model which seems to prevail in present Europe, and which is reproduced in the text of the DPA, is that of a multilateral/multi-institutional conflict management without one institutional leader for *all* the aspect of the operation. Furthermore, the early 1990s idea of the OSCE as 'umbrella-organization' for the maintenance of peace in Europe has been abandoned and finds no place in the DPA. The maintenance of peace showed to be more dependent on the *actual will* to use force than post-1989 enthusiasts thought, and this limited significantly the possibility for the OSCE (already CSCE) to play the role of sort of 'regional UN' providing legitimation to the operation of other institutions.<sup>3</sup> At present there seems to be a trend towards a growing specialization and a burden-sharing in conflict prevention/conflict management operations which takes account of the different capacities of various organizations. This, however, does not overcome the problem of the type of coordination among various intergovernmental organizations (IGOs) involved in a conflict management operation. Alleged *mutually reinforcing* institutions may eventually turn *overlapping* if not *inter-blocking*. It is interesting to analyse what the DPA foresaw in this respect and how such provisions were implemented.

Furthermore, while defining a certain type of inter-institutional burden-sharing, the DPA and its implementation on the field illustrated the adaptment of various institutions to the new security environment and at the same time gave impetus to such an adaptation. This was particularly the case of NATO, whose involvement in the former Yugoslavia, both before and post-Dayton, gave reality to many aspects of its transformation: its relations with the UN (from 'subcontracting' to an institution with a growingly independent role in peace-enforcement) and with its Partners Countries (see the composition of IFOR/SFOR), its internal adaptation to perform non-Article 5 operations, France's participation in NATO's peace-support operations, etc.<sup>4</sup>

Last, but not less important, is the interest reposed by the DPA as a form of 'post-war conflict prevention' (PWCP). If the definition of 'conflict prevention' (CP) is problematic, even more so is that of PWCP. In order to make some order I will briefly touch on some basic definitions which will turn useful in the continuation of the paper.

At one extreme of the denotation continuum, 'conflict' is any situation in which two or more parts have contending interests. This broad concept, however, does not provide an efficient 'theoretical knife' which enables the researcher to cut significant slices of 'reality': conflict as a situation of contending interests is present everywhere. At the other extreme of the denotation continuum, 'conflict' is a violent experience between the above contending parties.

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<sup>3</sup> The OSCE, for instance, cannot legitimize peace-enforcing type of operations but only traditional peace-keeping. However, in the early '90s, it seemed that the CSCE could play the role of an actual regional agency with a particular role in peace-keeping operations. In June 1992, for instance, NATO endorsed the principle of making available its assets to CSCE peace-keeping operations. Cf. Lurdijk, 'Before and After Dayton', p. 459.

On the OSCE role in the maintenance of peace and security in Europe, see: Michael Lucas (ed.), *The CSCE and the Evolution of a Pan-European Order of Security and Cooperation in the 1990s*, Baden-Baden, Nomos Verlagsgesellschaft, 1993; Michael Bothe, Natalino Ronzitti, Allan Rosas (eds), *The OSCE in the Maintenance of Peace and Security*, The Hague, Kluwer Law International, 1997. For a general overview of the role of various IGOs in conflict management, see: Abram Chayes, Antonia Chayes (eds), *Preventing Conflict in the Post-Communist World: Mobilizing International and Regional Organizations*, Washington DC, Brookings Institution, 1996; Trevor Findlay, 'Multi-Lateral Conflict Prevention, Management and Resolution,' *SIPRI Yearbook*, Oxford, Oxford University Press, 1994.

<sup>4</sup> Cf. Gregory Schulte, 'Former Yugoslavia and the New NATO', *Survival*, XXXIX, 1, 1997, pp. 19--42.

It is already clear that 'CP' has a completely different meaning according to what is meant by 'conflict'. This applies also to CP in international politics, whose significance depends on the very definition of 'international conflict'.<sup>5</sup>

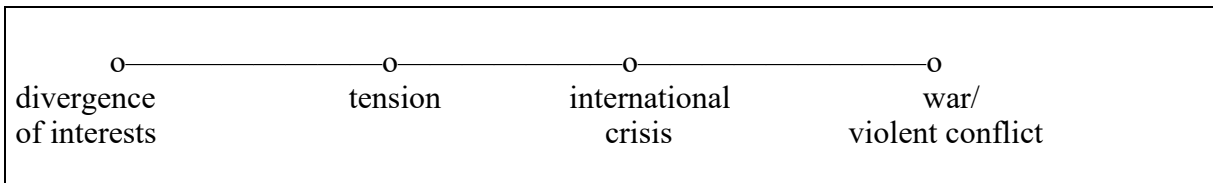


Fig. 1. *The denotation continuum of the concept 'international conflict'*

Here we aim at providing a definition of 'international conflict' which goes beyond the traditional understanding of it as a violent experience *between states*, rather we define *'international conflict'* a situation in which conflicting interests between two or more organized actors led, or have a significant possibility to lead, to an open war. Many definitions of 'war' have been proposed, without going into details we refer here to *war as an armed and violent fight between two or more organized groups*.<sup>6</sup> The term will be used interchangeably with those of armed conflict and violent conflict.

In this way it is possible to conceive an international conflict as a broad experience which can take place at different levels of expressed violence between the parties. The definition includes both inter-state conflicts and 'ethnic', 'communal', 'domestic' conflicts as the only requirement is that the conflicting parties are organized groups. The tools in the hands of the international community to deal with sub/trans-State conflicts, differ according to the different cases (see the repeats to art. 2.4 of the UN Charter for threat to peace, violation of peace and act of aggression - cf. Chapter VII of the UN Charter).

According to the above definition, we can conceive CP a complex and rich set of activities which all aim at avoiding the development of conflict, its vertical and orizontal escalation, and its reappearance. Synthetically, the activities which can be performed in relation to an international conflict are the following:

1. *conflict avoidance and prevention*: activity aimed at preventing disputes from arising and/or becoming violent
2. *conflict management*:
  - 2a. *conflict de-escalation* = activity aimed at diminishing the intensity of an armed conflict

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<sup>5</sup> The literature on international conflict is rather vast, suffice here to recall: P.G. Benett (ed.), *Analysing conflict and its resolution*, London, Oxford University Press, 1987; John W. Burton, *Conflict Resolution and Prevention*, New York, St. Martin's Press, 1990; Christopher R. Mitchell, *The Structure of International Conflicts*, London, MacMillan Press, 1986; Raimo Vayrynen (ed.), *New Directions in Conflict Theory: Conflict Resolution and Conflict Transformation*, Newbury Park, CA, Sage, 1991. On CP, see: Michael Lund, 'Understanding preventive diplomacy', *Foreign affairs*, LXXIV, 4, 1995, pp. 160--163; Michael Lund, *Preventing Violent Conflicts: A Strategy for Preventive Diplomacy*, Washington, US Institute for Peace Press, 1996 Werner Bauwens, Luc Reyhler (eds.), *The Art of Conflict Prevention*, London/New York, Brassey's (Brassey's Atlantic commentaries, 7), 1994; Stedman, 1995; Bruce W. Jentleson, *Preventive Diplomacy and Ethnic Conflict: Possible, Difficult, Necessary*, Policy Paper N° 27, Institute of Global Conflict and Cooperation, University of California, 1996; Creative Associates International, *Preventing and Mitigating Violent Conflicts: A Guide for Practitioners*, document prepared for the Greater Horn of Africa Initiative, The US Department of State and the USAID, 1996.

<sup>6</sup> Cf. G. Bouthoul, *Les guerres: ŹlŹments de polŹmologie*, Paris, 1951; for a review of the definitions of war, see, among others: Angelo Panebianco, 'Guerra. Politica', *Enciclopedia delle Scienze Sociali*, Istituto della Enciclopedia Italiana Giovanni Treccani, vol. IV, 1994, pp. 465--476.

2b. *conflict containment* = activity aimed at preventing violent conflicts from spreading to other areas

2c. *conflict settlement (i) and resolution (ii)* = activity aimed at settling the dispute (i) with the aim to find a long-term solution, thereby resolving the conflict completely (ii).

3. *post-war conflict prevention* = activity aimed at preventing a re-emergence of a concluded war, included the (re-)establishment of democratic institutions.<sup>7</sup>

In a sense, therefore, activities of CP are present at all stages of conflict: before, during and after it turns/has turned violent. During the management of a violent conflict, however, the activities of CP are only a relatively small part of the business, while they become the preeminent part of operations both before and after a conflict turns/has turned violent. *PWCP, is to be conceived as the whole set of activities which are put into existence in order to avoid the resurgence of an armed conflict.* In this sense, *conflict resolution* brings back to CP.<sup>8</sup> *PWCP* activities range from immediate-post war emergency operations such as the establishment of free transit between the territory of the fighting parties (in case of contiguous territories), the demilitarization of the parties etc., to the advice for the (re)construction of democratic institutions and social tissue, economic development<sup>9</sup>, etc. As a matter of fact, the situation immediately after a war is usually one of *unstable peace* ('negative peace' or 'low intensity conflict') slowly moving towards *stable peace* ('cold peace' or 'conflict latency', with limited cooperation but mutual respect) in order to become - if it ever does - a *durable peace* (lasting, positive peace, with high levels of cooperation)<sup>10</sup>. The type of CP tends to be different at different stages of post-war involvement and peace-building. Even more complicated: different stages - requesting different types of international involvement - can be present at the same time in different geographic areas of post-war territory and concerning different issue-

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<sup>7</sup> 'Conflict avoidance/prevention' and 'conflict de-escalation' broadly correspond to what Boutros Boutros-Ghali referred to as *preventive diplomacy*, an activity which includes all those actions aiming at preventing disputes from (i) arising, (ii) turning violent or (iii) spreading beyond their current borders. The remaining 'conflict management' activities (conflict containment, settlement and resolution) correspond to Boutros-Ghali's *Peace-keeping, peace-making and peace-enforcement*, the first being defined as the deployment of interposition forces with the assent of the fighting parties, and the latter two consisting in attempts at bringing hostile parties into compliance with UN Resolutions either via peaceful means (ex Chapter VI of the UN Charter, in the first place), or through forceful means (ex Chapter VII of the UN Charter, in the second case). Finally, *peace-building* was used by then-UN Secretary General to refer actions aiming at (re-)establishing democratic institutions, and in this the concept comes close to that of *PWCP* (point 3). Cf. Boutros Boutros-Ghali, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping*, New York, United Nations, 1992; Boutros-Ghali, 'An Agenda for Peace: One Year Later', *Orbis*, Summer, XXXVII, 1993, pp. 323-332; Boutros-Ghali, *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, New York, United Nations, 3 January 1995.

<sup>8</sup> On the last point see: Muthiah Alagappa, 'Regional Institutions, the UN and International Security: a Framework for Analysis', *Third World Quarterly*, XVIII, 3, 1997, pp. 421--441.

<sup>9</sup> In this perspective, it is quite interesting to note that the Kantian idea that democracies are less warprone than non-democratic regimes has passed in international law and politics quite uncontested. A similar consideration holds true as far as economically-developped countries are concerned. In reality the thesis that liberaldemocratic regimes are less warprone has not *full* empirical evidence: liberaldemocratic regimes make war as much as authoritarian regimes (cf. M. Small, J.D. Singer, 'The War-proneness of Democratic Regimes, 1916--1965', *Jerusalem Journal of Internal Relations*, I, 1976, pp. 50--69; Z. Maoz, N. Abdolali, 'Regime Types and International Conflict, 1916--1976', *Journal of Conflict Resolution*, XXXIII, 1989, pp. 3--35.), but not among themselves (Reinhard Rummel, 'Liberalism and International Violence', *Journal of Conflict Resolution*, XXVII, 1983, pp. 27--71; Maoz, Abdolali, 'Regime Types and International Conflict').

<sup>10</sup> On the various phases of a conflict in a post-war situation, see Lund, *Preventing Violent Conflicts*, pp. 3/7.

areas. In the case of Bosnia and Herzegovina, for instance, there is a generalised situation of unstable peace, however, the level of instability varies sensible from e.g. Tuzla to Mostar; in the same way the degree of cooperation between the parties on military matters is not even comparable with that on the civilian aspects of the peace plan.

The DPA is an interesting case of complex PWCP, where elements of peace-keeping, peace-enforcement, and post-conflict peace-building (à la Boutros Ghali) coexist with the aim of enforcing peace and avoid the resurgence of armed conflicts. A multitude of international institutions were called to share the burdens of such an international effort. The way in which this division of tasks was envisaged in the Document and in which it eventually took place on the ground is the object of the remaining part of this paper.

Chapter 2 provides a synthetic view of the main events of Summer 1995 which opened the way to the negotiations for the DPA.

Chapter 3 deals with the military and civilian aspects of the Peace Agreement, both as it was envisaged in the Treaty and as it was realized during the first phases of its implementation (until April 1998).

An evaluation of the PWCP capacity of the Dayton process, and of the lessons which can be possible drawn from it about the evolving European Security Architecture conclude the paper.

## 2. The Way to Dayton

The DPA was negotiated at the end of a ferocious war which fragmented the Socialist Federal Republic of Yugoslavia (SFRY) - one of the most developed countries of 'former Eastern Europe' - and destroyed large parts of Bosnia-Herzegovina; a war which transformed a multiethnic reality into a puzzle of 'ethnically cleansed' areas, and a relatively rich country into a land of devastation.<sup>11</sup> The attempts of the so-called international community to put the conflict(s) to an end were mostly ineffective for more than four years. The US decided that Yugoslavia was a 'European problem'<sup>12</sup> and left it in European hands until 1994, when it took the lead of the so-called Contact Group.<sup>13</sup> Major European powers soon overcome their disagreement on how to manage the conflict and agreed on risking the least. The original disagreement on the issue of the recognition of Slovenia and Croatia in 1991 - which saw Germany defecting from a truly EU collective action<sup>14</sup> - and the initial disagreement between France and Britain on the deployment of a WEU interposition force in 1991, left place to a

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<sup>11</sup> On the Yugoslav wars, see, among others: Susan Woodward, *Balkan Tragedy: Chaos and Dissolution after the Cold War*, Washington DC, Brookings Institution, 1995; Stefano Bianchini, Paul Shoup (eds), *The Yugoslav war, Europe and the Balkan: how to achieve security?*, Ravenna, Longo Editore, 1995; Marco Carnovale (ed), *La guerra in Bosnia: una tragedia annunciata*, Milano, IAI-Franco Angeli, 1994; David Owen, *Balkan Odyssey*, London, Victor Gollancz, 1995; Sonia Lucarelli, 'The Yugoslav Imbroglia', in Knud Erik Jørgensen (ed), *European Approaches to Crisis Management*, The Hague, Kluwer Law International, 1997; Laura Silber, Allan Little, *The Death of Yugoslavia*, London, Penguin/BBC, 1995; James Gow, *Triumph of the Lack of Will. International Diplomacy and the Yugoslav War*, London, Hurst & Co., 1997.

<sup>12</sup> See articles on *Financial Times*, 29--30/6/1991.

<sup>13</sup> Cf. Daniel Vernet, 'Le Groupe de contact: le retour des grandes puissances en Europe?', *Relations internationales et stratégiques*, 19, 1995, pp. 132--138; Owen, *Balkan Odyssey*, Ch.7.

<sup>14</sup> On Germany's *Alleingang* see: Beverly Crawford, *German Foreign Policy After the Cold War: The Decision to Recognize Croatia*, CGES Working Paper 2.21, University of California, Berkeley, 1993; Sonia Lucarelli, 'Germany's Recognition of Slovenia and Croatia: an Institutional Perspective', *The International Spectator*, XXXII, 2, 1997, pp. 65--91.

weak German involvement and a substantial agreement between France and Britain which now shared the same fears for their troops on the ground.

Only in Summer 1995 did the international community adopt a forceful strategy, a strategy which needed to be even more forceful as the international community had to re-gain the credibility which it had lost in four years of called bluffs and weak management. On 28 August a Serb mortar killed 37 people in Sarajevo and the Western Allies agreed on a NATO forceful response to this further violation of UN resolutions.

Among the many explanations which can be offered of the shift towards forceful diplomacy in Summer 1995, it is worth mentioning the effect of TV images of the tragic fall of Srebrenica and Zepa under Serb siege and bombing (July 1995), and of UN soldiers made hostages by Serbian troops, had on the average Western TV 'zapper' and his/her governors. Domestic concerns played a role also as far as the US's resolve to use force was concerned.<sup>15</sup> The US Congress had been calling for a 'lift and strike' strategy from a long time, and in late July the Senate passed a bill, promoted by Bob Dole, in favour of a US unilateral lift of the arms embargo on the Bosnian Government. Clinton vetoed it within ten days, but the possibility rose the European criticism and seriously threatened future Transatlantic relations and worsened the situation on the battle-field. The US President needed to resolve the Bosnian case before the Congress could finally pass the bill after the Summer break.

The deployment of the 'Rapid Reaction Force' (authorised by UNSC Res. 998, 16/6/1995) and its use for the rapid withdrawal of Blue Helmets from areas at risk for NATO air operations, then, made French and British governments more confident on the safety of their troops on the ground. Furthermore, in France recently-elected President Jacques Chirac had since the beginning of his mandate expressed the will to adopt a more forceful conduct in Bosnia and after the fall of Srebrenica vehemently declared that France was ready to reconquer the town by force and to stop such 'Nazi-like crimes'<sup>16</sup>.

Moreover, the situation on the ground had completely changed in such a way that it become easier to intervene forcefully with a *de facto* two-path strategy: On the one side, enforcing peace through NATO air power ( now easier to use due to the revision of the blocking UN/NATO 'dual-key' system), on the other supporting the Croat Army in order to counterbalance the Serbs. The Croat *Operation Flash* (1 May 1995) - against Western Slavonia - and *Operation Storm* (4--9 August 1995) - against Serb rebels of Krajina - were strong demonstrations that the latter effort succeeded. Contemporarily, responding to the further violation of the Sarajevo 'save area' by Bosnian Serbs, NATO launched *Operation Deliberate Force*, under the authority of UNSC resolution 836 and in agreement with the UN Commander. The operation - which rose particularly strong reservations on the side of Russia<sup>17</sup> - was the largest military operation in the history of the organization, it was massive and systematic and saw the participation of both air and ground power. After a three-week graduated campaign of air-strikes against Bosnian Serb military targets, Bosnia leadership agreed on a cease-fire and on the removal of heavy artillery around Sarajevo. This eventual real backing of diplomacy with an effective use of military force re-launched the peace process and in September the contending parties agreed to

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<sup>15</sup> On the United States policy in Yugoslavia, see: Michael Brenner, *The United States Policy in Yugoslavia*, Ridgway Papers, n. 6, Pittsburg, University of Pittsburg, 1996; William Johnsen, *US Participation in IFOR: A Marathon, Not a Sprint*, Carlisle Barracks, PA, US Army War College, Strategic Studies Institute report of June 20, 1996; John Sray, 'US Policy and the Bosnian Civil War: A Time for Reevaluation', *European Security*, IV, 2, 1995, pp. 318--327; Warren Zimmermann, *Origins of a Catastrophe: Yugoslavia and its Destroyers - America's Last Ambassador Tells What Happened and Why*, New York, Times Books, 1996.

<sup>16</sup> see *The Guardian*, 15/7/1995.

<sup>17</sup> Cf. Schulte, 'Former Yugoslavia and the New NATO', p. 32.

start a US-led peace process, whose first result was the Dayton Peace Agreement of 21 November 1995.

The war, therefore, ended with no clear winner and loser on the field, but with the general perception that the eventual US leadership had paid off.

### **3. Inter-institutional Burden-sharing in the DPA and its Implementation**

The text of the Document consists of a *General Framework Agreement*, the *Agreement on Initialing the General Framework Agreement for Peace in Bosnia and Herzegovina* (with which the Republic of Bosnia and Herzegovina - RBH, the Republic of Croatia and the Federal Republic of Yugoslavia - FRY - agreed to be bound by the Agreement) and a *Concluding Statement by the Participants in the Bosnia Proximity Peace Talks*. The *General Framework Agreement* has eleven detailed annexes on specific issues, and maps. The annexes contains arrangements for the re-establishment of military security (Annexes 1A and 1B); the boundaries between the two *Entities* of the RBH - the (mainly) Muslim-Croat *Federation of Bosnia and Herzegovina* (FBH) and the Serbian *Republika Srpska* (RS) (Annex 2); the constitutional structure of Bosnia and Herzegovina (Annex 4); the civilian reconstruction and the establishment of the new democratic institutions (Annexes 3 and 10); procedures of peaceful settlement of disputes between the two Entities (Annex 5), minority and human rights (Annex 6), refugees (Annex 7), and war crimes (in more than one Annex); and the establishment of a UN International Police Task Force (IPTF) to assist 'the Parties' (i.e. the RBH, the FBH and the RS) in their effort to 'provide a safe and secure environment' (Annex 11, at art. I.1.).

The document is made even more complex by the definition of roles and responsibilities not only among the Parties, but also among quite a number of international organizations dealing with peace and security in Europe, with all their internal institutional bodies<sup>18</sup>.

As for the implementation of the Peace Plan, the Dayton Proximity Talks were followed by a Peace Implementation Conference in London on 8--9 December 1995, and a Conference in Paris on 14 December (where the so-called DPA was formally signed). After the entry into force of the Agreement, a series of meetings, more or less *ad hoc*, provided the framework to assess the state of implementation of the DPA and the economic involvement of the international community. Among them: the Vienna OSCE conference on CSBMs in the RBH of 26 January 1996, the Rome Conference of 17--18 February 1996, the Ankara Conference of 14--15 March 1996, the Geneva meeting a few days later, on 18 March, the Moscow meeting of 23--24 March; the Brussels meeting of 12--13 April, the Florence Review Conference of 13--14 June 1996, the London Implementation Conference of 4--5 December 1996;<sup>19</sup> etc. All these meetings were occasions in which the implementation of the Peace Plan was assessed, the presence of risky factors was evaluated, the international community called on the uncomplaining Parties and the latter could adopt further provisions to enforce peace (see the Rome Conference). Issues relative to economic reconstruction emerged primarily in the Moscow, Brussels and Florence meetings.

Successes and failures in the implementation of the Peace Plan have been unevenly distributed between the two sides of the Agreement. So far, the military part of the DPA has been far more

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<sup>18</sup> In this section the institutional bodies involved in PWCP in Bosnia and Herzegovina as from the DPA are evidenced in bold.

<sup>19</sup> Cf. *The New York Times*, 19/2/96, 19/3/96, 14/3/96; *The Washington Post*, 17--19/2/96, 16/3/96, 19/3/96; *Le monde*, 17--18/3/96, 19--20/3/96. The text of the concluding documents of these meeting can be found at NATO page on Internet: <http://www.nato.int>



smoothly implemented than the civilian part. However, the implementation of parts of the civilian side has created problems also to the NATO-led implementation force since part of its mandate includes supporting the work of international organizations involved in the implementation of the civilian side. In relation to these tasks, problems related to the institution's fears of 'mission creep' and the difficulties of coordinate the two sides of the Agreement emerged.

This section will, first, delineate the inter-institutional burden-sharing system depicted in Dayton, and, then, illustrate the main problem relative to the implementation of the DPA with particular regard to those related to coordination among the different institutions involved.

### *3.1. On Military Aspects*

#### **International Institutions' involvement in the Military Aspects of the Peace Plan as from the text of the DPA**

The military side of the DPA, contrary to the so-called civilian side, has one clear reference/responsible institution: **NATO**. In the Agreement, the NATO-led military Implementation Force (**IFOR**) should have responsibility for, and the enforcement powers to, ensure compliance with the military aspects of the peace settlement (Annex 1A, Article I); and the final authority for the interpretation of such a part of the peace settlement is the IFOR Commander (Annex 1A, Article XII).

As to underline the precious role played by the US and NATO in the Summer 1995 operations which opened the way to Dayton, the text of the agreement endorsed US requests and gave an hegemonic role to NATO in the military side of the plan. The US agreed on a NATO implementation of a peace settlement only under the conditions of an agreement of the parties involved (Bosnian Serbs, Croats and Muslims<sup>20</sup>), a NATO command, a clear timetable, and a mandate with enforcement powers: all conditions met in the DPA.

The text of the Agreement explicitly called on the UN to 'authorize Member States or regional organizations to establish [...] IFOR' which, however, was 'understood and agreed [...] to be established by] NATO [...] under the authority [...] direction and political control of the NAC, through the NATO chain of command' (Annex 1A, article I.1). Such force should be 'composed of ground, air and maritime units from NATO and non-NATO nations' and should 'ensure compliance with the provisions of this Agreement' (Annex 1A, article I.1): The composition of the IFOR and its tasks, therefore, represented a large-scale implementation of NATO's post-cold war changes in policy.<sup>21</sup> The enlarged composition of the Implementation Force not only

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<sup>20</sup> However, it is here important to recall that the agreement was signed by Serbia's Prezident Milosevic, Croatia's President Franjo Tudjman, and Bosnia-Herzegovina's President Aljia Izetbegovic. That is to say that only one of the three was direct part of the Bosnian conflict, the other functionned explicit (see the the side letter of the delegation of the *Republika Srpska* to Milosevic) of implicit guarantors that their 'proxies' will fulfill the obligations of the DPA.

<sup>21</sup> On international institutions after the Cold War, see: S. Anderson, 1995, 'EU, NATO, and the CSCE Responses to the Yugoslav Crisis: Tesying Europe's New Security Architecture', *European Security*, IV, 2, pp. 328–352; Marco Carnovale (ed), *European Security and International Institutions after the Cold War*, Basingstoke, McMillan, New York, St. Martin's Press, 1995; Uwe Nerlich, 'The Relationship Between a European Common Defence and NATO, the OSCE and the United Nations', in Laurence Martin, John Roper (eds), *Towards a Common Defence Policy*, Paris, The Institute for Security Studies of Western European Union, 1995. On NATO's post-Cold War evolution see, among others: Michael Brenner (ed), *Nato and Collective Security*, London-New York, Macmillan Press, 1998; Nelson Drew, *NATO from Berlin to Bosnia: Trans-Atlantic Security in Transition*, Washington DC, National Defence University, 1995; US Library of Congress, *NATO's Future: Beyond Collective Defence*, by Sloan, S.R., CRS Report for the

overcome the problem of the recruitment of the significant number to troops necessary, but also endorsed the principle of close cooperation with non-NATO members which was the logic behind the creation of the North Atlantic Cooperation Council (NACC, December 1991), and the 'Partnership for Peace' programme (PfP, December 1994). Furthermore, the mixture of peace-keeping, peace-enforcing and post-war peace-building that characterised IFOR's mandate in Bosnia was to a certain extent an application of post-1989-NATO's willingness to develop the capacity to undertake non-Article 5 operations (see NATO's *New Alliance Strategic Concept*, November 1991). The military side of the DPA represented also an interesting development in the relationship between NATO and the UN, which was very much affected by the frustrating experience of cooperation in the field in former Yugoslavia.<sup>22</sup> During the management of the Yugoslav wars, tasks and rules of engagement (RoE) were strictly defined by the UN,<sup>23</sup> and the dual-key system provided both organizations with the power to veto the use of air power - *de facto* making such a use difficult if not impossible.

The 'dual-key' system was the result of a compromise on the use of air-strikes reached in August 1993 between the UN and NATO. According to the agreement, NATO Commander-in-Chief of NATO's Southern Command (CINCSOUTH) and UN Commander were to decide jointly about air-strikes, once received the authorization of their respective organizations. Due to the different interpretation of air-strikes by the two organizations and the long procedure to adopt an air-strike decision, this military tool was of difficult use. On February 1994, in order to demonstrate NATO's resolve to use air-strikes in a more flexible way, the NAC delegated authority to launch air-strikes to its Commander of CINCSOUTH - Adm. Smith. It was only in July 1995, with the decision of UN Secretary General to give authority on air-strikes to UN Force Commander - Gen. Janvier, that NATO gained a wider - and successful - freedom of maneuver. Gradually, NATO's role in the former Yugoslavia had shifted from one of UN 'subcontractor', to that of a more active participant involved in the definition of its own mission and mandates.<sup>24</sup>

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Congress, 95--979 S, 1995; Stanley R. Sloan, 'US perspectives on NATO's future', *International Affairs*, LXXI, 2, pp. 217--231, 1995; Antonia Chayes, Richard Weitz, 'The Military Perspective on Conflict Prevention: NATO', in Chayes, Chayes (eds), *Preventing Conflict in the Post-Communist World*, 1996.

<sup>22</sup> On 7 December 1992, for instance, NATO expressed willingness to carry out, on an *ad hoc* basis, 'peace-keeping operations under the authority of the UN Security Council' (*Final Communiqué*, Ministerial Meeting of the North Atlantic Council, 17 December 1992, in *Atlantic News*, n. 2484, 19/12/1992: Annex). However, such a development was already taking place on the field (see operation *Maritime Monitor*, since 16 July 1992). Closer - although conceptually and operationally confused - collaboration between the two organizations took place since April 1993, with operation *Deny Flight* and June 1993 with the introduction of the formula of 'close air support': NATO was to provide air power for the safety of UNPROFOR soldiers. On UN-NATO relationship in ex-Yugoslavia, see Dick Leurdijk, *The United Nations and NATO in the Former Yugoslavia*, The Hague, Drukkerij Tulp bv, Zwolle for the Netherlands Atlantic Commission and the Netherlands Institute of International Relations 'Clingendael', 1994; *The United Nations and NATO in Former Yugoslavia, 1991--1996. Limits to Diplomacy and Force*, 1996; and 'Before and After Dayton', 1997; Schulte, 'Former Yugoslavia and the New NATO', 1997; Espen Eide, Per Erik Solli, *From Blue to Green. The Transition from UNPROFOR to IFOR in Bosnia and Herzegovina*, Oslo, NUPI Working Paper 539, 1995.

<sup>23</sup> The RoE are guidelines and procedures which Commanders and troops should follow in case of situations requesting an appropriate response. In the case of IFOR's RoE, full details remained classified in order for IFOR to have a stronger deterrent power.

An exception to the UN strictly-defined mandate for NATO was the case of the 'exclusion zone' around safe areas, defined for the first time by NATO with the ultimatum for the withdrawal of heavy weapons in the 20 km around Sarajevo, in February 1994.

<sup>24</sup> Cf. Schulte, 'Former Yugoslavia and the New NATO', p. 20.

With the DPA, the trend towards a more autonomous NATO's role continued. In the first place the decision on the deployment of IFOR was taken at the negotiations table, outside UN Headquarters, and the UN was simply asked to authorize its deployment. In the second place, the Agreement gave NATO and the NAC full authority to elaborate on IFOR and 'establish additional duties and responsibilities [... for it] in implementing [... the military] Annex' (Annex 1A, Article VI.4), therefore to bind the range of implementation of IFOR's mandate. In the third place, the DPA foresaw the end of the UN Protection Force (UNPROFOR)'s existence and its transfer of authority from UNPROFOR to IFOR (confirmed by a Secretary General's letter to the SC dated 20 December 1997). This *de facto* put an end to pre-Dayton regime, characterised by UN established RoE (as compared to the IFOR's 'robust' RoE of the Dayton regime) and the deployment of a mainly peace-keeping force (as compared to the peace-enforcement powers of IFOR). As a matter of fact, under the DPA, IFOR was given the authority to use force against any Party which refuses, obstacles, interferes or denies IFOR's 'right to observe, monitor and inspect' (Annex IA, Article VI.4). Purely peace-keeping capacity, on the contrary, were reserved by the DPA to the UN IPTF, as will be shown later.

IFOR's principal tasks as defined in Annex 1A of the DPA concerned the monitoring of - and ensuring compliance with - the cessation of hostilities, the withdrawal and re-deployment of forces, the exchange of prisoners among the Parties. The Parties' duties in relation to the above issues were very clearly defined in the text, especially as far as deadlines were concerned. Such deadlines, contrary to those of the civilian side, were supported by IFOR's enforcing powers. Particularly detailed are the provisions regarding the separation of forces, which should take place in three phases, under control of the IFOR and with a transfer of authority to the IFOR Commander once forces were withdrawn.

In addition to the above assignments, IFOR was called to establish liaison arrangements with local civilian and military organizations and perform a number of 'supporting tasks' (Article VI.3) among which: to create secure conditions for the conduct of tasks associated with the civilian side of the peace plan, such as elections; to assist the movement of other organizations and support their humanitarian tasks; to observe movement of civilians, refugees and displaced persons; to clear minefields and obstacles. In order to 'help create secure conditions' (Article VI.3.a.), it was decided that IFOR Commander should be the sole authority to govern air traffic on Bosnia and Herzegovina until it judged it necessary.

Furthermore, IFOR was given the responsibility to monitor the intangibility of the Inter-Entity Boundary Line (the border between the RS and the Federation) without a prior notification to IFOR Commander. Such a border was delineated in the DPA with the exception of the status of Brcko for which the Agreement asked a binding arbitration of a three-person panel within six months.<sup>25</sup> It is interesting noticing that the Inter-Entity Line substantially coincided with the cease-fire line, that is to say the DPA eventually accepted the territorial changes introduced by means of war. At the same time, however, in other parts of the document, a clear will to reject the results of war is evident. This is particularly the case of the affirmed right of the refugees and displaced persons to return home and their right to vote in their original electoral conscription - as to reject the results of the policy of ethnic cleansing.<sup>26</sup> These two logics co-existed with many difficulties already during the management of the Yugoslav wars, but

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<sup>25</sup> According to the DPA, 1 arbitrator was to be appointed by the RS, 1 by the FBH, and 1 by the above appointees or, in case of disagreement, by the **President of ICJ**.

<sup>26</sup> In reality, the DPA allows citizens of Bosnia-Herzegovina to register alternatively (i) in their conscription of origin - where they registered for the 1991 census (P1 form), or (ii) where they live at present or intend to live in the future (P2 form). A principle, this, which has been regarded as one among the many contradictions of the DPA. Cf. Patrick Moore, 'Postponing the Inevitable?', *Transition*, 20 September 1996, pp. 63, 1996.

become particularly clear with the creation of the International War Crimes Tribunal for former Yugoslavia (ICTY)<sup>27</sup> at the same time that the international community accepted Karadzic and Milosevic as political referents. Although arduous to avoid, the co-existence of the two logics is due to create difficulties and contradictions, and the DPA and its implementation - as in the case of the IFOR and the alleged war criminals - is a case in point.

The DPA was not clear about NATO's role in the detention and transfer to the ICTY of indicted war criminals. The Agreement asked NATO to perform 'supporting tasks' for the implementation of civilian aspect of the peace plan, but did not explicitly give NATO the mandate to arrest indicted war criminals. Furthermore, NATO itself for a long time tended to give a reductive interpretation of its mandate in supporting tasks, as it wanted to avoid the so-called mission creep and further risks for its soldiers.

With the function of consultative body for IFOR Commander, the DPA created the Joint Military Commission, chaired by the IFOR Commander and composed of a military representative of each Party, the **High Representative - HR** (the highest body of the civilian side of the DPA), and other persons indicated by the Chairman or the Parties. The presence of the HR in the Commission is one of the not-so-numerous mechanisms of coordination between the main authorities of the two parts of the DPA - military and civilian.

Annex 1B of the DPA dealt with regional stabilization and arms control establishing that the RBH and its Entities should start negotiations for both local and regional confidence and security building measures (CSBMs) and reach a first set results by a short deadline (respectively 45 and 39 days since the entry into force of the DPA). The **OSCE** should assist the parties in their negotiations for local and regional CSBM (respectively regulated by article II and IV of Annex 1B) and follow the implementation and verification of the resulting agreements.

### **The Implementation of the Military Side of the Peace Plan**

In November 1995 the DPA gave NAC the 'authority, direction and political control' of IFOR. On the basis of previous planning efforts<sup>28</sup> NATO headquarters, in Brussels, prepared an operational plan for the implementation of the military part of the DPA, and the NAC endorsed it on December 5. The UNSC, acting under chapter VII of the UN Charter, authorised IFOR's establishment on December 15 (Resolution 1013). The relative operation, *Operation Joint Endeavour*, was activated by the NAC the following day. On December 20, with a letter to the Security Council, UN Secretary General, Boutros Ghali, formally confirmed that command authority in Bosnia was transferred from UNPROFOR to NATO, and that all enforcement

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<sup>27</sup> Formally entitled: 'International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991'. The ICTY was established by UNSC resolution 827, on 25 May 1993. For further on the Tribunal, see: George Aldrich, 'Jurisdiction of the International Criminal Tribunal for the Former Yugoslavia', *American Journal of International Law*, XC, 1, 1996, pp. 64--68; Theodor Meron, 'The Case of War Crimes Trials in Yugoslavia', *Foreign Affairs*, LXXII, 3: 122--135; and 'International Criminalization of Internal Atrocities', *American Journal of International Law*, LXXXIX, 3, 1995, pp. 554--574; Virginia Morris, Michael Scharf, *An Insider's Guide to the International Tribunal for the Former Yugoslavia: A Documentary History and Analysis*, Irvington-on-Hudson, NY, Transnational Publishers, 1995. Of useful consultation is the UN Secretary General's report on the UN Tribunal's dispositions as preview by paragraph 2 of UN Resolution 808 (UN doc. S/25704, 3/5/1993). ICTY's web page on Internet: <http://www.un.org/icty/bl.htm>

<sup>28</sup> NATO had been requested to provide contingency planning for the implementation of a peace plan for Bosnia and Herzegovina already at the time of the Vance-Owen peace plan, in 1993. Planning for the implementation of the DPA, therefore, could rely on previous efforts, included that for the never implemented operation *Determined Effort* to withdraw UN forces from Bosnia and/or Croatia.

measure previously adopted by the UNSC, were terminated. However, UN's presence in the Bosnia and Herzegovina was not over as under the DPA the UN had three main civilian tasks:

- \* coordination of humanitarian assistance and a leading role in the issues of refugees and displaced persons (task to be performed mainly by the UNHCR);
- \* help to the party to reconstruct their law enforcement capacity (task to be performed by the IPTF, a part of the UN Mission to Bosnia and Herzegovina (UNMIBH));
- \* de-mining.

*Operation Joint Endeavor* could be regarded as 'an historic moment for the Alliance', as NATO's Acting Secretary-General said. '[Its] first-ever ground force operation, [its] first-ever deployment 'out-of-area', [its] first-ever operation with [its] PfP partners and other non-NATO countries'<sup>29</sup>. The complete deployment of the 60,000 IFOR's troops (among which 10,000 from non-NATO countries) took place between mid-December 1995 and mid-February 1996 - although a theatre-enabling force had been sent to Bosnia and Croatia already by December 1. The deployment was divided into three Sectors, each with a Headquarters (HQ): the North Sector (US HQ), the Southwest Sector (British HQ), and the Southeast Sector (French HQ). Air support aircraft were based in Italy. The overall command of *Operation Joint Endeavor* rested with the Supreme Allied Commander Europe (SAUCER), US Gen. George Joulwan; while the commander for all IFOR's air, ground and maritime forces rested with NATO SOUTH Commander, (again)US Adm. Leighton Smith.

IFOR's mission statement listed the following *primary tasks*<sup>30</sup>:

- \* to ensure self-defense and freedom of movement to IFOR's troops
- \* to supervise the marking of boundaries and zones of separation
- \* to monitor and enforce the withdrawal of forces requested in the DPA
- \* to assume control of Bosnia-Herzegovina's airspace and key ground routes
- \* to establish a Joint Military Commission

and the following *secondary tasks*, to be performed according on available resources:

- \* to help create secure conditions for the working of other organizations involved in the implementation of the civilian aspects of the Peace Plan
- \* to assist the UNHCR and other organizations involved in humanitarian mission
- \* to assist movement of the civilian population, responding appropriately in case of interference with it
- \* to assist the implementation of arms control and regional stability measures.

The specifically-military tasks of the IFOR were mainly undertaken within the deadlines established by the DPA. This enabled the multinational force to devote more time and efforts to the support of the civilian aspects of the Peace Plan, and it was in this context that IFOR encountered the greatest difficulties and faced some of the problems it had tried to avoid. As a matter of fact, among the main concerns of NATO while planning for IFOR's mission, there was the definition of a realistic 'exit-strategy' (embodied by the 1 year length of the operation), and of a clearly-delineated military mandate which would avoid the problems created to UNPROFOR by its hybrid and changing mandate.<sup>31</sup> Similar conditions were set for the subsequent *Stabilization Force* (SFOR) which replaced IFOR in December 1996.

Both NATO-led military operations contributed to the implementation of the civilian reconstruction of Bosnia in two ways: (i) supporting *directly* the activities of the civilian aspects

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<sup>29</sup> Leurdijk, 'Before and After Dayton', pp. 465--6.

<sup>30</sup> See: US Library of Congress, *Bosnia After IFOR*, p.13.

<sup>31</sup> In the case of UNPROFOR new tasks were successively added to the original peace-keeping one, and the eventual mix of military and humanitarian goals of the mission severely undermined its performance.

of the DPA; and (ii) *indirectly*, with a contribution resulting from I/SFOR's performance of its military tasks (the construction of bridges and roads, for instance). The direct and indirect contribution of IFOR included a wide spectrum of activities ranging from the support provided to the September 1996 general elections (from the monitoring of order to the distribution of election material), to the repairing or construction of roads, bridges etc., and the protection of the HR's or other officials' transportation. With the aim of fostering the civilian-military cooperation, NATO deployed some 350 specialists with a background in fields like international law, justice, education, transportation, agriculture, etc. This figures functioned effectively as *trait d'union* between IFOR and the civilian organizations.

I/SFOR's gravest problems with its supporting-civilian tasks were relative to two major issues: the level of assistance it should provide to the ICTY, and its cooperation with the IPTF. In order not to risk its soldier's lives and its own credibility, NATO tried to avoid that I/SFOR could be called to performed tasks it lacked the resources and capabilities, that is tasks which went beyond its specific mandate ('mission creep'). For this reason I/SFOR was reluctant to get deeply involved in the implementation of sensitive civilian issues such as those listed above.

As the provisions of the DPA were not cristal-clear with regard to NATO's role in arresting indicted war criminals, I/SFOR gave a minimalist interpretation of the text's requirements. On May 1996, after repeated calls on IFOR to have a more active role in this field, NATO and the ICTY signed a Memorandum of Understanding (MOU) according to which NATO was to provide safety for ICTY's teams, and was to arrest war criminals only if met in the performance of IFOR's functions. In simple words, IFOR was still avoiding 'man hunting'. NATO's position in this regard did not change (despite the many criticism in this respect) until July 1997, when a sort of 'hunting campaign' started in the RS. Even then, however, SFOR's attitude did not change substantially; on the contrary, French soldiers were accused of having encoutered warlords and have not arrested them.<sup>32</sup> By April 1998 there were only four seizures of indicted war criminals by I/SFOR.

As for the IFOR-IPTF relations, if IFOR's task to ensure a secure environment for the functioning of other organizations was given a large interpretation, an active role in constructing efficient police forces could be even considered a direct task of IFOR. As a matter of fact, the late deployment of the IPTF, its lack of enforcement powers, and - most of all - the lack of compliance of the Parties with the implementation of this part of the DPA, created problems which threatened the security of the environment. An example for all: in February and March 1996, when the formerly-Serb controlled districts of Sarajevo were to be transferred to the Bosnian Government, the IPTF was unable to avoid the cahotic transfer of authority which eventually resulted in the exodus of some 60,000 Serbs. On that occasion, asked to support the IPTF's efforts, NATO agreed to supply an 'enhanced presence' but refused to exercise police-type operations. The result was perhaps more safety for the IPTF but no effect on the continuation of violence.<sup>33</sup> In a certain sense, this was a case of practical problems of implementation which brought problems of inter-institutional coordination - between IFOR and the (UN) IPTF.

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<sup>32</sup> The chief prosecutor at the Hague Tribunal, Louise Harbour, told *Le monde* of 13 December 1997 that France was deliberately hampering the court's work by not arresting indicted war criminals living free in the Bosnian zone under French control, and by not allowing French officers and soldiers to testify in person before the court (a denial which was later cancelled by the french government). Furthermore, in late April 1998, French Major Herve Gourmillon was recalled from Bosnia because he had a proved clandestine meeting with Karadzic (RFE/RL Newslite, 23/04/1998).

<sup>33</sup> Cf. US Library of Congress, *Bosnia: Civil Implementation*, p. 19.

Well before IFOR's mission expired (in December 1996), a vivid debate started on what should be done with IFOR and Bosnia.<sup>34</sup> The US - especially the Congress - was very concerned of the costs of an IFOR2 and the risks of a 'mission creep'. The Europeans were clearly reluctant to maintain their presence in Bosnia - perhaps in a reduced, all-European IFOR2 - if the US withdrew completely.<sup>35</sup> It was adamantly clear that a complete withdrawal of NATO troops in December 1996 was by no means possible without risking the worsening of conflict and an eventual new war. Furthermore, even in the best case, the withdrawal of IFOR would have seriously endangered also the continuation of the civilian implementation. The eventual solution was the so called *Stabilization Force* (SFOR), which has the same authority to perform enforcement actions, RoE and unity of command as IFOR, but half the size.

IFOR mission officially expired on 20 December 1996. The US participated with 8500 soldiers (plus some 4000/5000 military personnel deployed in the region as reinforcement in case of emergency) and the intention to withdraw after 18 months<sup>36</sup>. This opened once again the debate about what should be done if the SFOR mission ends at the established deadline (in June 1998) - which would have meant starting to a gradual pull-out of soldiers already by the beginning of 1998. Again the Europeans denied they would remain if the US left: 'We went in together - affirmed German Defence Minister Vlker Ruehe - and we will come out together'<sup>37</sup>. However, the Clinton administration started soon to prepare a policy for a possible extension of US military presence in Bosnia, but had to overcome the opposition of the Congress. NATO realized that its presence in Bosnia should continue well beyond the expiration of the SFOR mission, especially after the results of the September 1997 elections which showed the will of refugees to return home. This, affirmed Robert Frowick (head of the OSCE Mission), is a 'wonderful challenge' which can be won 'by maintaining the presence of the international community in Bosnia for an indetermined period'<sup>38</sup>. Eventually, on 18 December 1997, Clinton unveiled the US's official decision: SFOR (and the US) would continue its presence in Bosnia after June 1998. The decision was endorsed by the NAC on February 18: SFOR will remain in Bosnia, keeping the same size until after the September 1998 elections (34.000 men) and then reducing to about 20./25.000 troops. SFOR's new mandate will not have a formal cut-off date, but the participating countries will review regularly the role of the peacekeepers.

As for negotiations on CSBMs, progresses were made in a relative short time. In January 1996 an agreement on CSBMs in Bosnia-Herzegovina (so-called *Article II Agreement on Confidence and Security Building Measures in Bosnia and Herzegovina*) was signed in Vienna under the auspices of the OSCE. In June 1996, an analogous agreement on arms control (so-called *Article IV Agreement on Sub-regional Arms Control*) - also signed by the Republic of Croatia and the FRY - was reached in Florence. Since then, the OSCE is assisting the parties in a number of ways: it chairs the joint consultative commissions set for, respectively, Article II and Article IV agreements; provides expert assistance on arms reduction; accompanies the Parties on

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<sup>34</sup> Cf. *International Herald Tribune*, 11/3/1996; US Library of Congress, *Bosnia After IFOR*; Leurdijk, *The United Nations and NATO in Former Yugoslavia, 1991--1996*, pp. 139--149; The Washington Quarterly, 'Policy Forum: Bosnia-After The Troops Leave', *The Washington Quarterly*, XIX, 3, pp. 61--86, 1996.

<sup>35</sup> Cf. *International Herald Tribune*, 11/9/1996.

<sup>36</sup> Cf. *International Herald Tribune*, 12, 26/6/1997.

<sup>37</sup> *International Herald Tribune*, 3/10/1997.

<sup>38</sup> *La Repubblica*, 16/9/1997, my translation.

inspections and visits; and facilitates verification of information provided by the Parties; and works on the implementation of the letter and the spirit of the Agreement.<sup>39</sup>

Although Bosnian Serbs initially boycotted negotiations on arms control as a protest against Bosnian Government that had captured and hand in to the ICTY some Bosnian Serb military leaders, agreements were eventually signed and then successfully implemented. There has been a remarkable 100% compliance with arms reduction, including destruction of some 6,580 armaments.

The greatest debate as far as arms control was concerned, in reality took place between the US and the European.<sup>40</sup> The latter considered against the very principle of arms control and regional stabilization the introduction of new arms and expertise in Bosnia. On the contrary, the Clinton Administration supported the idea of a train-and-equip programme of the Bosnian Federation armed forces also as a means of regional stabilization. In US perspective, the programme was necessary as a sort of compensation for the unfairness of the DPA to the Bosniacs, and as a way to avoid that Bosnian-Muslims would again torn to Iran for help. The programme started and provided arms and training provided to the Federation provided it reduced its old military equipment according to established quota. Soon also the RS (in the person of its president, Biljana Pavlsic) asked to take part in the programme, but the US refused claiming that the leadership of the RS had not shown itself sufficiently committed to the DPA to qualify for the programme (RFE/RL Newline, 13/11/1997).<sup>41</sup>

### 3.2. *On Civilian Aspects*

#### **Multi-institutional involvement in the Civilian Aspects of the Peace Plan as from the text of the DPA**

The civilian aspects of the peace settlement entailed a wide range of activities including the continuation of humanitarian aid until necessary, the reconstruction of infrastructures and economy, the establishment of political and constitutional institutions for the RBH also through free and democratic elections, the promotion of respect of human rights and the right of refugees to return home. For all these aspects, contrary to the military side of the Agreement, no clear leading authority was appointed. Various organizations, with a longer or shorter temporary role in the life of the new Bosnian state, were to work under the coordination of the HR.<sup>42</sup>

The HR was issues to monitor and facilitate the implementation of the civilian aspects of the peace settlement, also by coordinating the activity of the organizations involved (organizations active in the field, and/or donors). to him/her is reserved 'the final authority in the theatre regarding the interpretation of [...the] Agreement on the civilian implementation of the peace settlement' (Annex 10, Article V).

It is quite interesting to note the clear division between the two parts of the DPA (military and civilian) envisaged in the Treaty. The HR - states the DPA - 'shall have no authority over the

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<sup>39</sup> For updated information on the activities of the OSCE for the implementation of the DPA, see web page: <http://www.oscebih.org/>. On the OSCE in the post-Dayton ex-Yugoslavia, see: Arie Bloed, 'The OSCE and the Bosnian Peace Agreement', *Helsinki Monitor*, VII, 1, 1996, pp. 73--85; Mario Sica, 'The Role of the OSCE in the Former Yugoslavia after the Dayton Peace Agreement', in Bothe, Ronzitti, Rosas, A. (eds), *The OSCE in the Maintenance of Peace*, 1997.

<sup>40</sup> Cf. *International Herald Tribune*, 30/3/1996; *Financial Times*, 1/4/1996; Sharp, 'Dayton Report Card', pp. 116--118.

<sup>41</sup> RS's proposal was immediately supported by Bosnian-Muslims who saw in the common participation to the 'train & equip programme' a first step towards the creation of a common Bosnian army.

<sup>42</sup> For updated information on the activities of the HR's Office (OHR), see OHR's web page on Internet: <http://www.ohr.int/>



IFOR and shall not in any way interfere in the conduct of military operations' (Annex 10, Article II.8). Forms of coordination between the HR and the IFOR Commander were foreseen to take place under the form of 'close contact, [...] exchange of information and [...] liaison on a regular basis' (Annex 10, Article II.5/6), in the Joint Military Commission (and relative local sub-commissions) - as we have seen above - and in the Joint Civilian Commission (and relative local sub-commissions), the latter chaired by the HR and composed by him/herself, senior political representatives of the Parties, and the **IFOR Commander** (or his representative) and other civilian organizations invited by the HR.

Equally interesting is the request, explicitly made in the Agreement, that the HR should report periodically about progress in the implementation to the **US** and the **Russian Federation** next to the UN, the EU, and no-better specified 'others' (Annex 10, Article 2.f.). Thereby the constant attention in the DPA to the role of international organizations in post-war peace-building in Bosnia is suddenly abandoned in favour of more traditional attention to the basic role of the main player of the Dayton game - the US - and its former, still-strategically important, enemy. The reference to the US and the Russian Federation appears particularly striking as it comes next to that of the EU and UN, in a list where the OSCE is not even quoted!

The number of organizations to whom the DPA attached a role in the reconstruction of Bosnia and Herzegovina is so high that it is reasonable to ask the reasons for this mix. It seems plausible to affirm that a multi-institutional reconstruction responded to two main needs. On the one hand, there was the necessity to share the burden of what was rather clearly going to be difficult and complex enterprise. On the other hand, participation in Bosnia's post-war reconstruction was for many organizations a chance to affirm their presence in post-Cold War European Security Architecture; in a sense, both the management of the Yugoslav conflict and the reconstruction of the country offered to possibly-anachronistic (because created in a different international framework) institutions a way to legitimize their very existence.

In order to illustrate how various international organizations were involved by the DPA, it might be worth introducing to a central part of the civilian section of the peace settlement: the constitution of Bosnia and Herzegovina (Annex 4). Basically (although not so explicitly) the constitution endorsed the principle of an ethnic division of the country. 'Bosniacs, Croats and Serbs' were defined 'the constituent peoples and citizens of Bosnia and Herzegovina' (Annex 4, Preamble), and the (largely Muslim-Croat) FBH and the (Bosnian Serb) RS were to be 'the two Entities' of the RBH (Article I), each with its Parliament, armed forces and a wide range of powers. Central institutions included a two-chambers Parliamentary Assembly, a three-members Presidency chaired by rotation, a Council of Ministers, a Constitutional Court, and a Central Bank, all constructed so to respect ethnic three-partition of the country. A Joint Interim Commission, composed of representatives of the Parties, should provide a forum of discussion on practical questions relative to the implementation of the constitution.

#### *Constitutional bodies*

The proportion of parliamentarians elected by/delegated in the FBH and the RS were defined in the proportion of 2/3 -- 1/3. Analogous the case of the Presidency, where the members should be 'one Bosniac and one Croat [...] from the territory of the Federation, and one Serb [...] from the territory of the RS'(Annex 4, Article V). In any case, no-members of (or candidate to) the Parliament or of other public offices could be a 'person serving a sentence [...] or under indictment by the Tribunal' (Annex 4, Article IX.1).

The Council of Ministers - whose Chair should be nominated by the Presidency - shall be composed of 'no more than two thirds of Ministers [...] from the territory of the Federation'. Furthermore, of the nine members of the Constitutional Court, four should be selected by parliamentarians of the Federation and two by those of the RS. The rest should be selected by

the **President of the European Court of Human Rights (ECHR)**, after consultation with the Presidency, until the Parliamentary Assembly decides on another method of selection (Annex 4, Article VI.1.d).

The DPA established that the first Governing Board of the Central Bank shall be composed by a member appointed by the **International Monetary Fund (IMF)**, three appointed by the Presidency, two by the Federation and one by the RS. The Governor should not be a citizen of Bosnia and Herzegovina.<sup>43</sup> After five years, successive Governing Boards should be appointed by the Presidency.

### *Elections*

In order to put the above institutions into existence, the international community had to face the necessity of urgent fair and democratic elections. Annex 3 of the DPA regulates the issue. Once established approximate deadlines, the Peace Plan gave to the OSCE the responsibility to certify the feasibility of democratic elections and their correctness once they take place. To this end the DPA asked the OSCE to establish a Provisional Elections Commission (PEC) which should adopt electoral rules and regulations, supervise the electoral process, 'ensure action is taken to remedy any violation of the provisions' for elections, accredit observers. The PEC should be composed by the **Head of the OSCE Mission** (who should also be the Chairman), the **HR** (or his/her designee), representatives of the Parties, and other persons the Head of the OSCE Mission (in consultation with the Parties) may decide. The main responsibility within the PEC, therefore, was given to the Head of the OSCE Mission, who, in case of disputes within the Commission, should have the final decision.

### *Human rights*

The DPA assigned a major role to the OSCE also in the field of human rights (Annex 6). With the mandate to vigilate on the respect of fundamental rights and freedoms spelled out in Article I and embodied in the Human Rights Agreements to be applied in the RBH (listed at the end of Annex 4), the DPA established a Commission on Human Rights. Alleged violation of human rights and discrimination on the ground of sex, race etc., (which can be submitted by any person) should be addressed to the Office of the Ombudsman, except in cases of expressed preference for the jurisdiction of the Human Rights Chamber, the two bodies composing the Commission. An Executive Officer, jointly appointed by the two parts of the Commission, should provide all necessary administrative arrangements. The Ombudsman (who should come neither from the RBH nor from neighboring states) should be appointed, for five years, by the **Chairman-in-Office (CiO) of the OSCE**. After the first five years (unless the Parties otherwise agree), when a 'transfer of authority' takes place,<sup>44</sup> he/she should be nominated by the Presidency of the RBH. The Ombudsman may investigate, issue findings and conclusions to which the violating Party shall respond, refer allegations to the Chamber, issue reports and, eventually, in case the violating Party does not comply with the Ombudsman conclusions, publish a report to be forwarded to the **HR** and initiate a proceeding before the Chamber. The latter shall be composed of 14 members, of which four appointed by the FBH, two by the RS and eight by the **Committee of Ministers of the Council of Europe (CoE)** - among which a President. With the transfer of authority all members should be appointed by the Presidency of Bosnia and Herzegovina. The Chamber should develop procedures for adjudication and

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<sup>43</sup> It is curious to note, however, that one of the issues on which it was most difficult for the parties to reach an agreement was citizenship: It took more than two years before an accord on citizenship was attained!

<sup>44</sup> The DPA refers to the moment when a local institution takes over the right to nominate/elect domestic institutional figures (nominated for the first term by an international body) as 'transfer of authority'.

application. During the proceedings, it could also attempt at facilitating a friendly resolution, and should publish a report of successful cases, to be forwarded to the **HR**, the **OSCE**, and the **Secretary General of the CoE**. The decisions of the Chamber shall be published and addressed to the same bodies as the reports.

Further organizations called to 'monitor closely the human rights situation' were the **UN Commission on Human Rights (UNCHR)**, the **UN High Commissioner for Human Rights (UNHCHR)**, 'and other intergovernmental or regional human rights missions or organizations' (Article XIII). The issue of human rights, therefore, is covered by a range of organizations, and their coordination seems a difficult task.

#### *Refugees and displaced persons*

As far as assistance and relief to the return of refugees and displaced persons is concerned, the leading role was given to the **UN High Commissioner for Refugees (UNHCR)**, entrusted by the UN Secretary General with the task to coordinate all agencies working in this field (e.g. the International Committee of the Red Cross - ICRC, the UN Development Programme - UNDP, etc.). Furthermore, in order to deal with claims of usurped properties, the DPA established a 'Commission for Displaced Persons and Refugees' (Annex 7, Chapter two), composed of four members appointed by the Federation, two by the RS, and three - among whom the Chairman of the Commission - by the **President of the European Court of Human Rights (ECHR)**. After five years (unless the Parties agree otherwise) the appointment of all members and the financing of the Commission should pass under the responsibility of the Government of the RBH.

#### *National monuments and public cooperation*

A further Commission was set to preserve national monuments (Annex 8). For the first five years its members should be appointed by the Federation (two), the RS (one) and the **Director-General of the UN Educational, Scientific and Cultural Organization - UNESCO** (two, one of whom should function as Chairman). After such a period the members should be appointed by the Presidency, unless otherwise decided by the Parties. Here again the representation of different ethnic groups should be satisfied (Article III).

The Commission on Public Corporations, shall be composed of members appointed by the Federation (two), the RS (one) and the **President of the European Bank for Reconstruction and Development - EBRD** (two, one of whom should be the Chairman). It was clearly in the interest both of the Parties and of an important donor such as the EU, that the latter had a representation in this Commission. The creation of corporations such as that on energy, transportation, communications etc. was undoubtedly considered an important step towards the reconstruction of the country, and in that direction were to work a significant number of financial and non-financial international organizations.

#### *Civilian police*

As the Parties were requested by Treaty to provide a safe and secure environment, the DPA asked the UNSC to establish the **UN IPTF**, whose tasks should be to assist the Parties by monitoring, assisting, facilitating, and providing training on law enforcement activities. The IPTF, headed by a Commissioner appointed by the Secretary General, should receive guidance by the HR, and should report periodically to the latter and the Secretary General, while at the same time providing information to the IFOR Commander and possibly other institutions (Annex 11, Article 4). Furthermore, in order to promote coordination, the DPA preview that the IPTF may attend the meetings of the Joint Military Commission and the Joint Civilian Commission (and their relative sub-commissions), and regularly notify to the HR and inform

the IFOR Commander of failures to cooperate with the IPTF. As a matter of fact, as we have already seen, in case of failure to cooperate the IPTF has no enforcement powers, and may simply request the HR to call the attention of the Parties and consult relevant states and international organizations on further responses.

In case the IPTF learns of violations of human rights or fundamental freedoms, it should provide such information to the Human Rights Commission and to the International Tribunal for the Former Yugoslavia. As we have seen, the treaty envisages (more or less explicitly) forms of cooperations between the IPTF and the IFOR, which encounters a series of difficulties of interpretation and implementation.

Next to these institutions, then, it is worth recalling **IFOR's** direct and indirect contribution to civilian tasks, as has been shown in the section on the implementation of military aspects of the DPA.

It is clear from the above overview that the number of organizations called to be involved in post-war reconstruction and peace-building in Bosnia-Herzegovina is striking. The DPA mobilize not only all main international organizations, but also, specifically, some of their internal institutions (such as the OSCE's Cio, the ECHR's President, the CoE's Committee of Ministers, etc.). Furthermore, there is not a precise 'division of tasks' as more than one organization is called to contribute to the same task. This is the case, for instance, of the aspects of the Treaty dealing with human rights, for which bodies of the OSCE, the CoE and the UN are called to work, together with 'other intergovernmental or regional human rights missions or organizations' (Article XIII). Inter-institutional coordination in the implementation of the civilian part of the DPA, therefore, was inevitably to be a difficult task.

### **The Implementation of the Civilian Side of the Peace Plan**

On December 8--9, in London, the international community was mobilised in support of the recently-concluded DPA. Carl Bildt, already EU mediator in ex-Yugoslavia, was nominated HR. Bildt was then replaced on 20 June 1997 by former foreign minister of Spain, Carlos Wetsendorp. Next to the HR, was established a Peace Implementation Council (PIC) composed of all states and organizations present at the London Implementation Meeting. The Steering Board of the PIC was to provide political guidance to the HR.<sup>45</sup> Shortly afterwards (on December 20--21), international donors met in Brussels and pledged \$600 million for immediate humanitarian needs. The OSCE formally accepted its mandates as from the DPA, at its Budapest ministerial meeting, on December 7--8.

Since the Dayton Agreement, the implementation of the civilian components of the Plan encountered many difficulties and uneven results. Although an evaluation of successes and failures in this field are more difficult to make than those in the military sphere, it is undoubtful that the execution of the civilian section of the Peace Agreement has moved on slowly. Many deadlines passed without full compliance was reached (e.g. on the release of prisoners, on the removal of foreign forces, etc.), and resistance to the application of the Dayton provisions emerged frequently (i.e. on resettlement of displaced persons and refugees, on the creation of an actual central police force, on free movement between the Entities, etc.). Difficulties in the implementation of the civilian aspects of the Peace Plan emerged since the very beginning. Bildt was criticised already in mid-December 1996 for not being more 'energetic' and 'consistent'

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<sup>45</sup> The Steering Board of the PIC was composed by Canada, France, Germany, Italy, Japan, the Russian Federation, Britain, the US, the EU and the Organization of the Islamic Conference.

in performing his role<sup>46</sup>. Furthermore, already in early 1997, the uncompliance of the Parties suggested to organize a meeting in Rome, on February 17--18 (such meetings were to become a routine of the implementation process). To the weak performance of the international community and the uncompliant behaviour of the parties as elements which explain the limited implementation of the DPA in the civilian sphere it is to be added a further explanatory variable: the difficulties relative to coordination among the multitude of organizations involved. Particularly telling in this regard is the case of organizations dealing with human rights-related tasks. In this case, calls for coordination rose since the beginning and coordinating bodies such as the 'Human Rights Coordination Centre' or the 'International Roundtable for Human Rights in Bosnia-Herzegovina' were created to respond to this need.<sup>47</sup>

It is, however, undeniable that the main role as far as weak performance is concerned has been played by the uncooperative - when not obstructivist - behaviour of the parties involved and - although to a far lesser extent - by the lack of enforcement powers of the organizations involved in the implementation of the civilian side of the DPA. In order to overcome the latter problem, on the one side IFOR was given IFOR 'supporting tasks', and the 'international community' used repeatedly a 'stick and carrot' strategy trying to make economic support contingent on the respect of the Peace Agreement. However, the already-told problems relative to IFOR's enforcement powers in the civilian sphere, together with the persistence of the parties' uncooperative attitude, led the international community to provide the HR with more significant powers than those granted him/her by the DPA. At the Bonn international conference on Bosnia of 9--10 December 1997, it was decided to expand the powers of the international community's chief representative: from then on, the HR could impose agreement on the three Bosnian parties and punish individuals who boycott the implementation of the DPA. It was not clear to what extent he could use enforcement powers, nor what could be the extreme consequences in case of continued uncompliance of the parties and as of April 1998 there has been not occasion to verify these doubts. However, from December 1997 to April 1998, Carlos Westendorp made frequent use of his new powers and used them mainly to accelerate the creation of common Bosnian institutions. As a matter of fact, friction between the parties - taking place both between the Entities, and within the mainly-Muslim/Croat Federation - obstructed not only the solution of the Brcko question (left open by the DPA and due to be resolved by arbitration but in reality still pending<sup>48</sup>) but also the *formation of common democratic institutions* such as the Assembly, and the decision on a Bosnian citizenship and license plates (important in order to facilitate internal freedom of movement). The Assembly of the Union met in full session only in January 1997 and the law on common citizenship was eventually imposed by the HR and entered in to force on 1 January 1998 (it was the first time the HR used his reinforced powers). Analogously, after long disagreement on the design of the new Bosnian flag, Westendorp set a deadline for decision and eventually imposed it (4 February 1998). A further important decision imposed by the HR due to lack of spontaneous agreement between the parties was relative to the new Bosnian currency design (21 January 1998). On the contrary, following a further Westendorp's ultimatum, the parties could agree on a joint design for automobile license plates (23 January 1998). It seems, therefore, that what has been critically called an 'international protectorate' has produced some interesting results which should not be underestimated regarding them as weak solutions due to fall down as soon as the international community leaves.

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<sup>46</sup> Cf. *New York Times*, 17/12/1996.

<sup>47</sup> Cf. Manfred Nowak, 'Beyond 'Bookkeeping': Bringing Human Rights to Bosnia', *The World Today*, LII, 4, 1996, pp. 102--105.

<sup>48</sup> Brcko had to be assigned to one of the two Entities by means of international arbitration by December 1996. The decision was then postponed other two times (February 1997, March 1998) and is now still pending.

Further difficulties relative to the very creation of functioning institutions were found also in the case of the formation of the RS's government (due to the internal fight between Karadzic and Plavsic) and of local municipal councils. The international community supported overtly Plavsic's candidate(s) and eventually rewarded the formation of a moderate government led by Milorad Dodik by rising significantly the economic aid devoted to the RS.

As for the *elections*, Presidential and municipal elections took place at different times due to the doubtful readiness of the country to elections. On September 1996 there were Bosnia-wide elections for the Presidency of the RBH, the House of Representatives of the RBH, the Presidency of RS, the National Assembly of RS, the House of Representatives of the Federation and the Cantonal Assemblies in the Federation of the RBH. One year later, on 13--14 September 1997, after various postponements, municipal elections took place as well. In both occasions, as in the case of city elections in Mostar (30 June 1996), despite the efforts of the international community, many of the conditions set by Ambassador Robert Frowick - head of the OSCE Mission - for free and fair elections did not exist: freedom of movement was far from being a reality, as it was an equal access to the media.<sup>49</sup> Furthermore, all the three ethnic groups (but systematically only the Serbs) used registration to elections to consolidate the ethnic partition of the country. As a matter of fact, as the DPA leaves the electorate free to chose the place where to register to vote (see footnote 26), each 'ethnic community' (or better, their nationalist parties: SDA, HDZ and SDS) encouraged its members to sign up in areas which were previously inhabited by another ethnic community (as in the case of the Muslims SDA which encouraged Muslim refugees in Srebrenica to sign for vote in ex-Serb-inhabited areas of Sarajevo), in areas which were 'lost' by means of war (as in the case of the Croat HDZ, which pushed Croats to sign up in areas contiguous to the Republic of Croatia), or in areas which were 'conquered' by means of ethnic cleansing (as in the case of the Serbian SDS, which systematically and massively 'encouraged' Serb population living in areas previously inhabited by another ethnic community to sign up there, even by threatening to cut the populations humanitarian-aid rations).<sup>50</sup> A further grave problem in relation to the elections concerned the candidature of indicted war criminals - explicitly denied by the DPA. Furthermore, as Radovan Karadzic was discovered to have registered to vote for 1997 elections, on 30 June the PEC disallowed indicted war criminals to vote.

Eventually, although violations and irregularities took place in any case, the September 1997 municipal elections resulted in the most correct electoral exercise in Bosnia-Herzegovina since the entry into force of the DPA<sup>51</sup>. Furthermore, the result was surprising not so much in terms of the candidates elected (although it is interesting to note the successful result of multiethnic lists somewhere - such as in Tuzla), but in terms of registration of the voters: 89% of voters registered for the place where they lived in 1991<sup>52</sup> - despite the above reported campaign of the SDA, HDZ and SDS. Although this result reinforces hopes for the implementation of the part of the DPA which recognises the refugees' right to return home, it also raises doubts about the resistance of the present distribution of territories among the three ethnic groups. Again the double-logic of the DPA created serious problems. Problematic was the transformation of the September vote into the actual formation of Municipal Councils since the 89% refugees who

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<sup>49</sup> The September 1996 elections were (partially) held despite the unpreparedness of the country due also to the US pressure for them to be held before IFOR's expiration date. This has been regarded by someone as an example of the negative consequences of setting a short-term deadline of the NATO-led mission. Cf. Sharp, 'Dayton Report Card'.

<sup>50</sup> See *Oslobodjenje*, 27/8/96; Moore, 'Postponing the Inevitable?'.

<sup>51</sup> Cf. *Le Monde*, 16/9/1997.

<sup>52</sup> Cf. *La Repubblica*, 16/9/1997; *Il Sole-24 Ore*, 16/9/1997.

voted in the original hometown mostly elected candidates affiliated to ethnic/national parties of a different ethnic group than the one now living (in majority) in the area. Several towns had councils elected by refugees evicted by other ethnic groups.<sup>53</sup> This implied that after four months from the elections, only 45 out of 136 municipalities had respected the results of the vote. For this reason, in some cases the OSCE had to set up local government councils by means of arbitration. It was the case of the Serb-held Srebrenica, for example, where Muslim-majority Council (elected with the vote of the Muslim refugees) could not take office due to the opposition of the Serbian authorities. The solution was eventually found only on 6 April 1998, when a temporary council of four Muslims, four Serbs and an OSCE chairman was formed. The OSCE Mission - which was extended for one year - supervised both the elections and IFOR/SFOR provided security for officials and voters in the ballots, for the movement of voters on main routes, etc. Also in view of the municipal elections, on 26 May 1997 UN IPTF and SFOR began joint patrols with a view to implementing the IPTF checkpoint policy. For the organization of the September 1997 electoral turn the OSCE spent 50 million US dollars and sent 2750 supervisors. SFOR enlarged its presence and deployed soldiers on the main routes in order to guarantee the refugees' return to vote. In general, although masses of people moved throughout the country to vote in the place they originally inhabited, the number of incidents was very limited.

The *IPTF* was deployed in a small size (1721 unarmed policemen, whose deployment was authorised by UNSC Res. 1035) and with sensible delay due to difficulties in recruiting personnel and funding. Its size was then enlarged in April 1997 of some 186 additional UN police officers and 11 civilian monitors,<sup>54</sup> but it continued to be too weak a force to fulfill its tasks. As we have briefly mentioned, the IPTF encountered its main difficulties in breaking the opposition of the Serbs to the creation of common Bosnia police forces. Furthermore, most Bosnian police were paramilitaries who had fought in the Bosnian war and now continued to be answerable to former warlords although wearing a different uniform. IPTF could not avoid that local police authorities of both Entities established illegal checkpoints, thereby restricting freedom of movement, also to refugees and displaced persons. It could not even prevent that local police condoned or inflicted about 70% of all human rights abuses committed in Bosnia-Herzegovina in 1996.<sup>55</sup>

For the implementation of the part of the DPA dealing with *Refugees and Displaced* persons, on 21 December 1995, the OSCE CiO appointed the Swiss Gret Haller to be Ombudsman of the Human Rights Commission. In order to coordinate efforts in this field, then, the OHR established a 'Human Rights Task Force'.

In charge of providing humanitarian assistance to the refugees is the UNHCR. If the latter proved to be efficient in coordinating humanitarian assistance coming from many states and organizations, and if the OSCE was always attentive in denouncing violations of the right of refugees to return home, these organizations could not overcome the obstruction of the all three ethnic groups to refugees replacement. Repatriation requires the successful implementation of other parts of the agreement which create a safer environment; as this has not been the case, it is hard to believe there will be a real massive return home of refugees and displaced.<sup>56</sup> The

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<sup>53</sup> *The Economist*, 20/9/1997, p. 33.

<sup>54</sup> *International Herald Tribune*, 2/4/1997.

<sup>55</sup> Sharp, 'Dayton Report Card', p. 118.

<sup>56</sup> UNHCR assumed that about 500,000 internally displaced persons and 370,000 refugees would repatriate in 1996, but only some 250,000 returned home - and almost exclusively to areas in which they

gravest problems relative to refugees return concern the persistent difficulties of internal movement, the obstructionist behaviour of the majority ethnic group now leaving in the refugee-home territory, and the lack of proper guarantee for security of individuals (IFOR insisted that it would provide only 'area security' and not 'individual security'. Furthermore, the Bosnian territory is still highly mined, which renders it non-safe in itself.<sup>57</sup>

If not in more threatening ways, the majority group frequently discourages refugees return by adopting apparently legal policies concerning housing and property rights. As of April 1997 the problems of refugees was still a widely unresolved one. None of the parties was actually fully complying with the DPA as far as refugees are concerned. The HR removed a Croat major who was particularly obstructing the return of refugees home, and the international community put a huge pressure on Croatia to facilitate the return of refugees and to create conditions for which the great number of Serbs now leaving the territory Eastern Slavonia (reintegrated into Croatia on 15 January 1998) would not feel obliged to leave.

Even the establishment of a 'Zone of Separation Return Programme' to allow Bosnian-Muslims to return to their home in the now RS's territories near the Inter-entity boundary line, and the subsequent creation of an International Housing Commission to verify the prewar properties of the refugee did not lead to a huge return of refugees to their prewar home. Furthermore, the slowness of the programme seemed to deny part of the refugees' right to freely return set in the DPA.

As for the *economic support* to the reconstruction of the country, after the DPA the World Bank and the EU - in its capacity of 'civilian power' - were called to lead reconstruction efforts. Immediately following the DPA, the World Bank and the European Commission called for a donors' meeting to mobilize resources for post-war reconstruction and economic normalization in Bosnia and Herzegovina. A Joint World Bank-IMF-EBRD-EU Commission-USAID mission to Bosnia, in October 1995 had identified priority reconstruction financing needs of \$5.1 billion.

The first donors meeting took place in Brussels on 20 -- 21 December 1995, and was attended by representatives of 50 countries and 27 organizations. In early January 1997, the World Bank opened a field office in Sarajevo to coordinate the reconstruction effort, and called for a \$150 million Trust Fund for Bosnia and Herzegovina (TFBH). A second donor conference was organised by the World Bank and the EU on 12--13 April 1996. In the occasion the international community pledged \$1.23 more.

In 1996 the World Bank approved 16 projects for Bosnia, with Bank funds drawn from the TFBH or IDA, and extensive support from international donors. After one year, the first results of peace and reconstruction and a return to normal life began to emerge. Basic services like water, electricity, and heating were restored in most communities, the reconstruction of main roads was started, the reparation of houses, hospitals and schools was under way. On 10 January 1997, in Brussels, representatives of the World Bank, the European Commission, and more than 50 countries and 30 international organizations agreed on 1997 priorities for reconstruction. A target of \$1.4 billion was identified as being needed for 1997, with \$2.5 billion needed for the '1997 -- 98 Consolidation Period.' What the donors tried to affirm was the principle of 'conditionality': further reconstruction and economic assistance would depend

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were the majority group - while further 80,000 people were displaced due to transfer of authority between the two Entities. Cf. Sharp, 'Dayton Report Card', p. 125.

<sup>57</sup> The UN reported that by mid-1997 only 1% of the estimated mines had been cleared.



on significant greater cooperation of the Parties in the implementation of the DPA.<sup>58</sup> A similar 'carrot & stick' strategy was used also by the OSCE after the September 1997 elections in order to gain the Parties' compliance with the electoral results.<sup>59</sup> However, economic aid could have been used even more, and better, as a leverage to gain the Parties' compliance with the DPA. In a country whose GNP declined to 10% of its prewar side, there was ground to use economic aid as an actual arm of blackmail.

For the time being, the implementation of the military part of the Plan has been far more successful than that of the civilian aspects. This uneven success/failure can be explained in many ways, among which the following:

\* *issues at stake*: The reconstruction of civil society in a war-torn country is necessarily more difficult to reach than the separation of military forces (one of the main tasks of IFOR)

\* *enforcement powers*: The civilian side of the DPA was not provided with an institution with the mandate and the capability to enforce the implementation of the Peace Plan;

\* *clear deadlines*: The military side of the DPA not only designated one powerful leader-institution, but stated clearly deadlines for compliance with the Agreement. On the contrary, the civilian side of the Peace Plan did not empower one institution with an overall control, and was not as specific as the military side in indicating deadlines and eventual retaliatory measures.

\* *preliminary planning*. Planning for IFOR was based on the experience of UNPROFOR - that is tried to avoid the ambiguity of UNPROFOR's mandates, and on the various implementation plans for Bosnia prepared by NATO since 1993. This was not the case for the civilian side, where planning was far less advanced when the agreement was signed.

\* *coordination*: it is clearly easier to coordinate the efforts of different components of the same organization (especially if highly centralised as the NATO), than those of different organizations involved in the same operation. The efforts of organizations such as the IMF, the OSCE, the HR, the ICJ, the UN and its specialised agencies, the ECHR, the EBRD, etc. plus all the hundreds of NGOs present in the RBH, are without any doubt difficult to coordinate.

## Conclusions

As mentioned in the introduction, the DPA and its implementation are telling in many perspectives:

### *The DPA as conflict settlement or conflict resolution?*

Surely the results reached so far by the implementation of the DPA have not 'solved' the conflict(s) in Bosnia. The many difficulties met by the implementation of the civilian part of the Peace Plan are mostly due to the unwillingness of the parties (with an unevenly-distributed share of responsibility) to cooperate with each other in the direction of the establishment of functioning common institutions. This is not due only to the inevitable difficulties of re-appacification after a violent civil conflict, but also to the different interpretation that the involved parties gave to the DPA. If, broadly speaking, for the Bosniac/Muslims the DPA represented a way to start a long-term effort to re-integrate Bosnia, for the Serbs and part of the Croats the Agreement was the first step towards the fragmentation of the country and the reconjunction of the Bosnian territory under their control to - respectively - the FRY and

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<sup>58</sup> Cf. the results of the Sintra meeting of May 1995, *Le Monde* 1--2/6/1997.

<sup>59</sup> *La Repubblica*, 16/9/1997.

Croatia.<sup>60</sup> As we have seen, the two logics of integration and partition are present also in the text of the Agreement, where the idea of a united an multiethnic RBH (where refugees should return to their homes) coexists with the idea of an ethnolnational division of the country (see ethnic representation in all federal institutions).

The many difficulties in the road to an actual peace brought by this state of things make it difficult to talk about the DPA as a *conflict resolution* exercise, rather it might be regarded as a *conflict settlement* plan which aims at an operation of PWCP. As a matter of fact, the situation in the ex-Yugoslav territory is still one of *unstable peace*, possibly moving towards *stable peace*, but surely it is not one of *durable peace*. The Dayton peace process is a complex operation of PWCP which encompasses elements of peace-enforcement (envisaged in the military side of the Peace Plan and performed by IFOR), peace-keeping (as performed by the unarmed police forces of the IPTF) and peace-building (mainly consisting in the actual reconstruction of the country and its social life, performed by various institutions under the co-ordination of the HR). Its successes so far are indiscussed only in its peace-enforcement aspects and its ability to keep an unstable peace. For the rest, its results are uneven and still difficult to evaluate.

What can be added here, is that the return of violence in the Kosovo region in 1998 has demonstrated how the eventual results of the DPA are deeply interconnected with peace and stability in the entire territory of the ex-SFRY and, even more, of the Balkans. The Contact Group in charge of politically supervising the implementation of the DPA is now debating also the Kosovo crisis and has taken coercive measures against the government of the FRY. It is clear that any international decision regarding Kosovo or other 'hot spots' of the ex-Yugoslav territory (such as Macedonia) have to be weightened against their possible implications on the overall situation in the Balkans and especially in Bosnia-Herzegovina.

#### *Lessons to be learned on multi-institutional conflict management operation*

What seems to emerge more clearly from the Dayton experience is the tendency towards complex conflict management operations, which see the participation of various international institutions, working under the legitimation of the UNSC, but not necessarily under its direct control - as in the case of NATO and IFOR/SFOR. This type of conflict management/PWCP has undoubtful advantages (costs-sharing; specialization of each institution; separation between issues which Yugoslavia showed should be kept separated, etc.) but poses a series of problems which need to be addressed.

- In the first place there is the issue of *coordination* between the two main sectors of implementation of a peace plan - military and civilian. In the case of the implementation of the DPA, the common Commissions foreseen in the Treaty (Joint Military Commission; Joint Civilian Commission) and the liaison arrangements that NATO set up with the organizations working on civilian issues, worked rather well. However more could be done in order to improve reciprocal inter-institutional knowledge and circulation of expertise. This - suggests Schulte with specific reference to NATO - could be done by increasing the reciprocal involvement in peace-keeping and conflict management seminars and exercises organised by

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<sup>60</sup> As of April 1998, the quasi-state of *Herceg-Bosna* continued to exist and keep special relations with the Republic of Croatia, in contravention of the Dayton Agreement. Furthermore, on 22 February 1998 Croat President Tudjman overtly questioned the territorial integrity of Bosnia (RFE/RL Newslines, 23 and 24/02/1998). On the Serbian side, the fight internal to the RS between the hard-nationalists of Pale (close to Radovan Karadzic) and the more moderated of Banja-Luka (led by President Plavsic) made the republic less compactly close to Milosevic's Serbia. However, the fact that on December 13 1997, the Serbian member of the joint Bosnian Presidency signed an agreement on dual citizenship with the FRY (although he could not) was an interesting sign of the 'special relationship' between the FRY and Bosnian-Serbs.

one organization.<sup>61</sup> Particularly important in order to increase the military-civilian coordination would be the other organizations' participation to NATO's preparatory activities in this field. Moreover, the implementation of the DPA showed the difficulties of promoting and monitoring civil law and order, and those of coordinating the activity of the organization in charge of this civilian task with that dealing specifically with military issues. Indeed, in cases in which the civilian monitoring organization is not equipped for peace enforcement, it would turn to the one which is. Furthermore, if the civilian implementation fails to guarantee civilian law and order, military presence continues to be indispensable even after the military part of the peace plan has been completely implemented. It is not clear, however, what type of relationship and coordination between the organization(s) in charge of the civilian aspects and that(those) in charge of the military aspects would better achieve this specific aim. Various proposals can be put forward: (a) the organization in charge of civilian law monitoring and reconstruction should be provided with the necessary tools to perform its tasks (i.e. have enforcement powers); (b) the specifically military organization should be 'answerable' to the civilian on in case enforcement actions should be taken; (c) the military organization develops capacities to perform some of the tasks of the civilian one (crowd control, policy advisory capacities, using its experience in military matters).<sup>62</sup>

A further aspect of coordination regards that among organizations involved in the civilian reconstruction. The role of the Chief-coordinator should perhaps be strengthened as compared to that of the HR in the case of Bosnia and Herzegovina.

- in the second place, there is the issue of the relationship between the UN and the other organizations involved. As Leurdijk effectively states, '[b]efore Dayton, NATO responded to invitations of the Security Council; after Dayton, the Council merely legitimised IFOR and SFOR under the terms set out in the Dayton Peace Agreement'<sup>63</sup>. For this reason it is difficult to talk about *subcontracting* in the case of the UN and NATO. As a matter of fact, as compared to the precedent experience in the management of the Yugoslav wars, with IFOR NATO gained a level of autonomy in the definition of its mission's mandate and RoE that goes beyond that of a subcontractor. In itself this might even contribute to the efficacy of the operation (and in the Dayton case, it did), but it surely poses problems of *accountability* before the UNSC.<sup>64</sup> In the case of post-Dayton Bosnia, the UN and NATO have attempted at developing principles and criteria of cooperation, and a system of reports which should keep high the circulation of information. However, NATO's reports to the UN on IFOR's operations were by no means examples of accountability.<sup>65</sup>

In general, the following further lessons on multilateral conflict management can be drawn from weaknesses and successes of DPA's implementation:

- Merely-military and civilian tasks should be kept separated from - although coordinated with - humanitarian and peace-keeping tasks. The mix of the two, avoided in the DPA, was one of the main reasons for the UN difficulties in the management of the Yugoslav wars;
- the interaction between different components of the conflict management operation should be well assessed beforehand, in order to avoid inter-blocking situations (another lesson of the

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<sup>61</sup> Schulte 'Former Yugoslavia and the New NATO', p. 37.

<sup>62</sup> Schulte, 'Former Yugoslavia and the New NATO', p. 38.

<sup>63</sup> Leurdijk, 'Before and After Dayton', p. 468.

<sup>64</sup> On the principle of accountability before the UNSC, see: Jarat Chopra, Thomas Weiss, 'The United Nations and the Former Second World: Coping with Conflict', in Abram Chayes, Antonia Chayes (eds), *Preventing Conflict in the Post-Communist World*, 1996, pp. 523--532; Leurdijk, 'Before and After Dayton'; pp. 469--470.

<sup>65</sup> Cf. Leurdijk, 'Before and After Dayton', p. 469.

weaknesses of conflict management during the Yugoslav wars, and the relative-strengths of PWCP as foreseen by the DPA);

- the organizations involved, or one among them (as in the case of the DPA) should have enforcement powers and the capability to use it;
- in case of a PWCP operation, the Peace Plan should state clearly deadlines for the application of the various parts of the agreement and type of punishment in case of lack of compliance. Furthermore, the organizations involved should have a clear 'exit strategy': a condition under which requested organizations find it easier to take on the task, and local parties feel more pressured to cooperate with them;<sup>66</sup>
- expertise in civilian planning should be developed within organizations typically dealing with this issues, on the model of what military organizations do for military planning.

#### *Lessons to be learned on the European security architecture*

As for the particular European security architecture which seems to emerge from the Dayton experience, and the future relationship between the US and the Europeans in this regard, one element is clear: the US and NATO (continue to) play a significant role in the European security framework. The DPA was an American (although late) success, at least as the first cease-fire which lasted after four years of failed diplomatic efforts. In the implementation of the Agreement NATO has played a highly significant role, a role which has enabled the other organizations to perform a task which they could not otherwise perform. The WEU, alleged future European Pillar of NATO, did by no means have a similar relevance. Other European organizations such as the OSCE and the EU were very active in the reconstruction of the country, and were pushed towards a further specialization of specific tasks. The EU emerged more and more as a 'civilian power', rich and generous. The OSCE proved to be the organization better equipped for the preparation and supervision of elections, and an important partner of the UN and the CoE in the supervision of human rights provisions.

The clearly-searched involvement in the Dayton peace process of many international - mostly European - organizations testifies of the interest in developing those organizations for specific tasks of conflict management. The internal institutional changes undertaken by many organizations in the post-Cold War period (cf. NATO's *New Strategic Concept*, WEU's *Petersberg Declaration*, CSCE's transformation in OSCE, etc.) found in the implementation of the DPA a first test and an incentive to go further (as in the case of NATO).

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<sup>66</sup> Some analysts, on the contrary, have regarded 'IFOR's putative one-year span [as a] definite handicap' (Schear, 'Bosnia's Post-Dayton Traumas', p. 92).