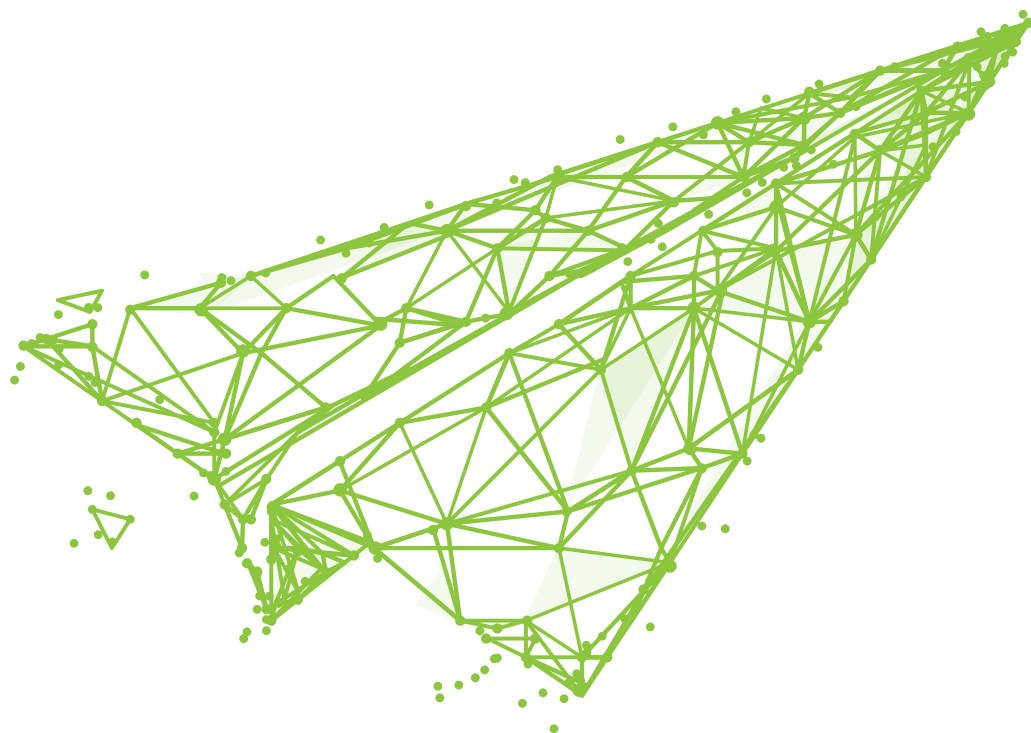




HEINRICH BÖLL STIFTUNG



POLICY BRIEF:
The Dayton Peace Agreement at 25:
How to proceed for agreement for future?

Western Balkan Strategy Group
for an effective EU-enlargement policy

January 2021

CONTENTS





Introduction and Recommendations	1
The outcome of DPA 25 years later: A dysfunctional state and uncertain peace	2
A change of approach – starting in the region	3
Time for (pro)active role of the international community	4



The General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Peace Agreement (DPA), was formally signed in Paris on the 14th of December 1995, putting an end to the armed conflict in Bosnia and Herzegovina (B&H). The current Constitution of Bosnia and Herzegovina is the Annex 4 to the DPA. The Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (as "Parties") agreed to peace and a single sovereign state composed of two parts, the largely Serb-populated Republika Srpska and mainly Croat-Bosniak-populated Federation of Bosnia and Herzegovina (FB&H).

The DPA resolved the armed conflict in B&H, but also established a state with a complex multi-level structure based on power-sharing mechanisms and three constituents, which froze the peace process just as much as it did the armed conflict of the 1990s. The involvement of international actors through the DPA has led to international influence that remains prevalent in B&H politics, in particular through the Office of High Representative (OHR), which has a mandate to implement the civil aspects of the agreement. The European Union (EU) and United States of America (USA) also played key roles in both the negotiation and execution of the DPA, preserving their important role in post-conflict B&H and its development. However, captured by the DPA, B&H has struggled with internal issues, particularly ethnic-based constitutional discrimination and separatist tendencies, as well as external influences and pressure from the region. This has contributed significantly, together with the political failure of domestic actors, to the positioning of the country on the margins of the EU association process. In 2020, numerous international conferences and forums held on the occasion of the 25th anniversary of the DPA have returned the issue of B&H to the international agenda. The stability and progress of the Balkans are questionable without resolving the B&H issue. B&H is not just regional problem, but a European one as well.

Recommendations:

-  The international community should support B&H in the EU integration process by insisting that attacks on B&H as an integral state cease and requiring the genuine implementation of EU accession commitments.
-  It is important for the international community to recognize the threat of secession and destabilization of B&H and to condemn such acts. The inviolability of international borders in the Western Balkans, as well as meddling in B&H domestic political affairs by Serbia and Croatia, should be clearly addressed.
-  Implementation of the ECHR rulings, i.e. the elimination of discrimination in the electoral process, should be separated from all other politically issues related to constitutional reform, and the international community should insist on the depoliticization of the process by excluding the risk that the constitution will continue to contain discriminatory provisions, while political parties continue to focus on party (ethnic) interests.
-  Discussion about electoral law, with domestic and international experts, accompanied by transparent debate with wider public, should be supported. Electoral law must be discussed within parliamentary procedures and must not exclude voting rights or allow further ethnicization of FB&H.



- The international community should be consistent in promoting reforms and preventing denial, trivialisation, justification or condoning of crimes against humanity and war crimes during the 1990s and World War II.
- All international actors should contribute to the creation of conditions for constitutional changes in B&H to secure a functional state and equality for all its citizens.
- WB6 countries should promote stability in the region by improving interethnic relations, constructively dealing with the legacy of the war(s) and supporting necessary (DPA) reforms on B&H's EU path.
- Serbian and Croatian foreign policy towards B&H should be responsible in terms of their role in the DPA, respecting state sovereignty and territorial integrity, as well as cooperating to achieve democratic solutions.

The outcome of DPA 25 years later: A dysfunctional state and uncertain peace

The Dayton Agreement was aimed at allowing Bosnia and Herzegovina to move from an early post-conflict phase through reconstruction and consolidation, adopting a consociation power-sharing approach. However, leading nationalist political elites have demonstrated a lack of political will, maturity and dedication to state building. All important issues are deadlocked within the central government, with each party advocating for conflicting priorities, based on ethnic policies rather than common interests. This practice of conditioning and blocking state institutions has perpetuated a political crisis over the last 25 years and limited the overall processes of democratisation and Europeanization of the country.

A clear example of this is the persistent official ignorance of the European Court of Human Rights rulings (Sejdić-Finci, Zorić, Pilav, Šlaku, Pudarić) i.e. the elimination of discrimination in the electoral process from Constitution. According to the B&H Constitution, Bosnian citizens living in the Federation entity vote for the Croat and Bosniak members of the presidency, while Bosnians living in the Serb-majority populated entity of Republika Srpska vote for the Serb member of the presidency. The same is true of the nomination for the Presidency: Serbs living in the Federation of B&H cannot be nominated as the Serb Presidency representative, and vice versa for Bosniaks and Croats living in Republika Srpska.

The tendencies that are present indicate that the (de)construction of B&H is continuing. Instead of strengthening a state, retrograde policies limit the basic functioning of the state by institutionalizing divisions based on ethnicity.

'Others' cannot stand for election for the Presidency nor for the House of Peoples of the B&H Parliament. There is also strong pressure from the Croatian Democratic Community (HDZ), a political party, to vote on ethnic lines for the Croat Presidency representative in FB&H. Croatia has been lobbying the EU and NATO to force B&H to reform its Electoral Law and Constitution to ensure "equality among the three constituent people". "Federalization", in the jargon of the HDZ, is a euphemism for the creation of a third entity and further internal division of B&H into ethnic enclaves.



Denial of war crimes and glorifying war crimes and war criminals are omnipresent in B&H.

Manipulation of narratives and revisionism of the past keep B&H in a status of a 'frozen conflict'.

Years of disputes over the Electoral Law, and conditioning by nationalist parties, has kept the country in a dysfunctional system of governance. B&H, and its citizens, remain trapped between an entity and an imaginary ethnic space. The constant external interference of Serbia and Croatia is fuelling tensions in which there can be no winner.

Strong separatist tensions are present in the Dayton State that is now 25 years-old. This repeatedly threatens peace and trust between ethnic groups, including with neighbouring countries (Serbia and Croatia).

It is clear that the DPA did not B&H with a structure that recognizes citizens as such, but instead follows the logic of war, in which ethnicity is the overriding principle. Peacebuilding has also remained trapped in ethnic divisions and the strong war-inciting rhetoric of political elites. Consequently, the ideologies and attitudes of the 1990s remain in control, which do not allow B&H to embark on the process of dealing with the past. Denial of court-established war crimes and the glorification of those who committed them is ubiquitous, and competent institutions still lack the 'political will' to adopt regulations to stop such practices or take other concrete institutional steps to do so. The society of B&H faces open denial, trivialisation, justification and condoning of crimes and facts established by courts, both with respect to the responsibility of the perpetrators and in terms of disputing that the crimes took place at all. This leads to further social divisions and makes it impossible to build a society based on democratic principles.

A change of approach – starting in the region

The understanding and importance of DPA in the WB6 region is limited to the signatory countries of the agreement (B&H, Serbia and Croatia), although issues of interethnic relations and dysfunctional state institutions are not strange to countries in the region or beyond. Even though Serbia and Croatia are bound to respect and affirm B&H's sovereignty and territorial integrity, both countries, together with ethno-political elites in B&H, have actually weakened B&H's state institutions and functionality.

Serbia, with strong support from Russia, has been a key regional factor in destabilizing the Western Balkans for the last 25 years. By strengthening ties with B&H's Republika Srpska entity, without respect for B&H or the common interests of all its citizens, Serbia has demonstrated territorial aspirations in B&H. This ambition is confirmed in official statements and many government documents, including the Strategy of National Security of Republic of Serbia.

There is a need for bigger involvement of the SEE countries (governmental institutions and NGO's) in the regional debate and initiatives to overcome the current situation.

Preservation of Republika Srpska is one of Serbia's foreign policy priorities. Serbia's interventionist approach also infiltrates economic policy: the government's revival strategy "Serbia 2025" envisions an additional 100 million euros in investment in Republika Srpska. Serbia has systematically strengthened soft-power mechanisms and informal channels to destabilize neighbouring countries.



Croatia's interference in internal B&H politics has been continuous and has included supporting and promoting separatist tendencies in B&H (such as proclaiming 'Croatian territories' in B&H, rehabilitating Herceg-Bosna, and historical revisionism). Croatia has also misused EU channels and EU membership to conduct its nationalist policy in B&H. A change of president has not brought a turn in policy; on the contrary, policy towards B&H is almost identical. This is particularly dangerous rhetoric for the whole region, and is undermining constitutional reform and the development of the state of B&H.

The issues of interethnic relations and the dysfunction of state institutions affect many countries in the region and Europe (including Slovenia and North Macedonia). However, in the WB6 regional context this is a topic of low relevance. Moreover, there is little or no debate about the question and legacy of the B&H war in these countries – despite their indirect involvement in the conflict and that they are also multi-ethnic countries.

The aforementioned necessity of peace and stability in the region is closely linked to learning about the past, which, including the DPA, is an important factor in all of the countries of the former Yugoslavia, regardless of the experience of conflict in individual states. As an illustration of the lack of understanding of the assurance principle and guarantees of non-recurrence, the question of commemoration of Srebrenica genocide is only seen as problem between the Bosniaks and Serbs, and not as a

WB countries should stand for the principles of democracy, rule of law, respect of human rights and overcoming the current limbo situation in B&H. There should be more commitment and solidarity in the region and Europe to fight ethno-political manipulations–corruption and authoritarianism.

question of human rights, national-chauvinistic agendas, or the ethnic divisions that exist in the region and in Europe. Solidarity and dealing with the past are relevant to building the democratic capacities of the societies in B&H as well in the Western Balkan region, and are an integral part of necessary reforms to both the B&H Constitution and the DPA, as well as the responsibilities established by this peace agreement.

Time for (pro)active role of the international community

The DPA mandated a wide range of international organizations to monitor, oversee and implement components of the agreement. International actors played an extensive role in shaping the post-war agenda in B&H, including enacting sanctions on local political actors. There have been some successful outcomes from the DPA, such as the establishment of the Central Bank, introduction of a common currency, common license plates, and state symbols – all of which were imposed by the international community. This was achieved in the immediate post-Dayton period, after which “local ownership” was proclaimed as the main principle and international engagement withdrew, largely hoping that B&H's institutions would fill the gap and work with commitment for the good of citizens. This neglected the critical lack of institutional capacity and sustainability in the state, and it has become evident that this approach has not brought the envisaged results. The international community should play a more constructive role in order to find or encourage a solution that moves the state beyond the status quo imposed by the DPA. In the past 25 years, many issues should have been resolved, including constitutional reform. As B&H aspires to join the European Union, it should be highlighted that certain trends such as the disregard for the rule of law, political influence



The Dayton Peace Agreement at 25: How to proceed for agreement for future?

over the judiciary, the denial of war crimes and the glorification of war criminals, must stop. The international community should also insist that attacks on B&H as an integral state cease. The EU path offers momentum for B&H, but it must be supported in order to counter the internal and external factors destabilizing the country.

Authors:

Lejla Gačanica

Legal, independent researcher Sarajevo
Bosnia and Herzegovina

Izabela Kisić

Executive Director, Helsinki Committee for
Human rights Belgrade
Serbia

Petar Todorov

Institute of National History - Skopje
North Macedonia

Dr. Fisnik Korenica

Jurist, Group for Legal and Political Studies
Pristina
Kosovo

Daliborka Uljarević

Executive Director, Centre for Civic Education
Podgorica
Montenegro

The “Strategy Group for a political, societal and economic European integration of the Western Balkans Six” is a group of legal, historical and political researches from all WB6 countries organized by Heinrich Böll Stiftung’s Belgrade, Sarajevo and Berlin offices. Its aim is to credibly advocate for a more effective European integration of the Balkans in European as well as Balkan capitals.

