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Minority Rights in the 'New' Europe

Edited by

**Peter Cumper and
Steven Wheatley**

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The Dayton Peace Accords: Lessons From the Past and for the Future

Julie Mertus*

INTRODUCTION

After the First World War, the victorious allies used international law to rearrange the European landscape, parcelling out the losses of Germany, the Ottoman Empire, Bulgaria, and the successor states of the Habsburg Empire—Austria and Hungary. The nascent principle of self-determination insisted that these new states created were, as far as possible, ethnically homogeneous. As Claude notes:

The principle 'one nation, one state' was not realised to the full extent permitted by the ethnographic configuration of Europe, but it was approximated more closely than ever before.¹

Protections, designed as a counter-balance for those millions left out of 'their' nation-state and unable to exercise their right to national self-determination, were introduced for religious, cultural, language and ethno-national minorities.² However, whatever the humanitarian motives advanced for the exercise of the right of national self-determination, under these inter-war agreements "the victors [still] took the spoils, but with the stipulations often clothed in the idealistic language of national self-determination and justice".³

More than half a century later, the peace settlement negotiated for the former Yugoslavia at Dayton, Ohio, made a similar compromise: the territorial victors were rewarded and, at the same time, the peace process trumpeted self-determination and justice. Affirmation, in the Dayton accord,⁴ of the integrity of the internationally-recognised state of Bosnia-Herzegovina⁵ accorded respect for the state's earlier act of self-determination. Yet, at the same time, the peace settlement divided Bosnia-Herzegovina roughly in two—giving the Bosnian Serbs what they wanted all along, a semi-autonomous state.

Under the Dayton accord, international human rights provisions were

introduced as the mechanism through which tensions between states, ethno-national groups, and nationalisms could be addressed. Nevertheless, despite changes in international law and policy, the grand scheme to protect ethno-national groups embodied in the Dayton accord bears marked similarities to the minority rights guarantees created after the First World War. The 'minorities treaties'⁶ concluded under the auspices of the League of Nations (and other inter-war minority rights measures⁷) failed both to protect the rights of ethnic, religious and linguistic minorities and to create a long-lasting peace. The Dayton accord appears predestined to make the same mistakes.

Examination of the historical underpinnings of the Dayton agreement has been absent from policy discussion on the protection of members of the various ethno-national minority groups in Bosnia-Herzegovina, Croatia, and other troubled parts of Central and Eastern Europe. Yet Dayton was not concluded in a policy vacuum; it was influenced by earlier international and regional responses to crumbling states, nationalism and the need to protect the rights of members of minority groups. Understanding the potential stumbling blocks to Dayton's effective enforcement requires an inquiry into earlier international frameworks designed to construct peace. Additionally, Dayton's attempt to address the question of 'national minorities' must reconcile itself with previous Yugoslav efforts to manage and construct ethno-national identities. Thus, an assessment of Dayton also necessitates an analysis of the ways in which Dayton attempts to foster notions of identity in a society in which deep-rooted cultural and legal identity tags have already been deployed.

This chapter explores the Dayton accord through two historical inquiries: first, it analyses the ways in which Dayton responds to the question of national identity, as framed by earlier notions of group identity; second, it examines Dayton in light of the minority rights agreements of the inter-war years. Whilst the similarities between Dayton and the treaties of the inter-war period spell potential disaster for minority groups (and the wider international community), the differences could provide their salvation.

ADDRESSING THE PROBLEM OF ETHNO-NATIONAL IDENTITY

Given the Communist regime's attempts to enforce a Yugoslav national identity over all other senses of belonging, it was inevitable perhaps with the collapse of communism that the issue of national identity should become increasingly important. Although ethno-national identity was not the cause of the wars in Croatia and Bosnia-Herzegovina, it provided the

soil in which the elites' struggle for power could take root. In turn, this soil was fertilised by a combination of ingredients: the actions and inaction of international financial institutions (which led Yugoslavia to the brink of disaster); tremendous fear and uncertainty among the general populace; heavy state and party control over the broadcast media; a 'heritage of authoritarianism';⁸ and a lack of a civil society that could challenge government and support a diversity of opinions. Although commentators have recognised the role of nationalism in fanning the flames of war in the Balkans, few have analysed how the Dayton accord responds to (national) 'identities' hardened by years of war. To be viewed as legitimate by the people of the region, the Dayton agreement must, at the very least, address the past ways of naming identities; in order to promote long-term peace, it must somehow take steps to break-down the virulent national divides which have become a reality in Bosnia-Herzegovina. As this section will illustrate, Dayton accomplishes neither of these tasks.

This section will first examine the development of national identity in the former Yugoslavia over three periods: the formal naming of groups in the constitutional developments between 1946 and 1974; the impact of the collapse of Yugoslavia; and the impact of war (1992-1995). Against this backdrop, the response of the drafters at Dayton will be considered.

DEVELOPMENT OF NATIONAL IDENTITY IN YUGOSLAVIA

Constitutional Developments

Yugoslavia had three major constitutional revisions between 1945 and its collapse:⁹ the 1946, 1963 and 1974 versions. Through arranging the legal and social terms with which people were to operate, each of these constitutions had an impact on shaping national identity.¹⁰ Everyone enjoyed Yugoslav nationality, united in 'brotherhood and unity', although by the time of the 1946 constitution, the Yugoslavia people were *de facto* divided into two categories—the 'hosts and the historical guests'.¹¹ The hosts, or nations (*narod*), were the Serbs, Croats, Slovenes, Macedonians and Montenegrins. The guests were called national minorities.

Under the 1963 constitution, national minorities were re-designated as 'nationalities' (*narodnosti*), as the term 'minority' was perceived to be demeaning. *Narodnost* was understood to include all those with a national homeland elsewhere: such people included (ethnic) Albanians, Hungarians, Italians, Bulgarians, Turks, Slovaks, Czechs and Russians. Those without a homeland elsewhere, such as the Romany and Vlachs, were seemingly ignored by the constitution. Perhaps the most significant development, in

hindsight, in the 1963 constitution, was the fact that Muslims were elevated in status from a nationality to a nation.¹²

The 1974 Constitution provided a turning point in which national differences became "constitutionally enshrined".¹³ Article 1 of the 1974 Constitution defined Yugoslavia as "a federal state having the form of a state community of voluntarily united nations and their Socialist Republics".¹⁴ Unlike earlier constitutions, sovereignty did not rest with the people but in the 'sovereign rights' that the "nations and nationalities shall exercise in the socialist republics, and in the socialist autonomous provinces – and in the SFRY when in their common interests".¹⁵ Each republic of Yugoslavia, with the exception of Bosnia-Herzegovina, was dominated by one national group (i.e. Serbia was mainly Serb and Croatia was mainly Croat). However, the *fit* between 'homeland' and nation was never complete, with many people living outside their 'national homeland'. Thus, with its emphasis on national divisions tied to republic lines, the 1974 Constitution created a potentially explosive mix of national tensions.

In a development that lent more importance to national identity, power under the 1974 Constitution was decentralised from the federal to the republic level, giving each of Yugoslavia's six republics and two provinces their own central bank and police force and control over the educational and judicial systems. These units, with the exception of Bosnia-Herzegovina, were *de facto* organised around national identity, based on the majority nation of that region (for example, government in Serbia was dominated by Serbs, etc.). Through such arrangements, national status, "which had seemingly been buried by the 1971 intervention [Tito's squelching of nationalist movements in Croatia], returned by the back door".¹⁶ Reward and advancement became conditional on nationality and national status; a 'nationality key' system (of proportional representation) pushed national identity into the forefront, and became a means for many incompetent and/or corrupt party members to achieve positions of importance simply because they were of the right national status, leading to a widespread backlash and the widening of national divides.¹⁷

However, even after the adoption of the 1974 constitution, Yugoslavia continued to operate as a unitary state. The 'consensus' system, which officially "prevented any decisions from being adopted if opposed by any single federal unit (including the autonomous provinces)",¹⁸ weakened the federation "by paralyzing the decision making process and removing real authority of federal decisions",¹⁹ placing government back in the hands of the Communist Party. With everything under the control of the Party, individuals had little incentive to become involved in politics. In these circumstances a civil society could not develop.

The Collapse of Yugoslavia²⁰

During the years after Tito's death, Yugoslavia increasingly divided along grounds of national identity.²¹ In the first democratic elections, nationalism became the mechanism for political differentiation, and few alternative categories existed to distinguish the candidates.²² Political and economic structures swayed under the weight of internal bickering as new leaders struggled for power and international financial institutions pressed Yugoslavia to restructure its economy.²³ This situation fostered intense bureaucratic competition and corruption, often conducted along national lines.²⁴ Nationalism was not the only force pushing Yugoslavia toward collapse, but, manipulated by politicians, it became a crucial ingredient.

The Impact of War: Closing Ranks

The war impacted on national identity in three ways. First, it accomplished the complete demonisation of other nations and national groups. Initially, state-controlled propaganda machines broadcast stories of the 'Other's' inhumanity. Over time, many witnesses and victims of acts of great cruelty began to tell their story – and their neighbours listened. The Diaspora often played an important role in this demonisation process. Far away from the region, living in nationally homogeneous marriages (at least at a rate much higher than their kin back home), the Diaspora had an easier time painting the 'Other' as evil.²⁵

Secondly, war precipitated national segregation. People who had been forced to leave their villages and cities because of their national background crowded into enclaves of 'their own people'.²⁶ Segregation exploited and reinforced 'Otherness'.

Finally, war forced the closing of ranks. In Bosnia, individuals were characterised as being a member of one of three groups: Serb, Croat or Muslim. This left four categories of people without any identity: those of mixed parentage or marriage; those who were of another national identity; those who wanted to identify themselves as something else, either above the nation (such as European), or below (such as a member of a particular neighbourhood or organisation); and those who wanted out of the labelling process. Those who failed to make a choice usually left the country (if they could) or fell silent. A few stubbornly fought back, despite the extreme backlash against anything different and potentially challenging to the Nation.²⁷