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DAYTON ACCORDS—LESSONS FROM HISTORY: THE
INTER-WAR MINORITIES SCHEMES AND
THE "YUGOSLAV NATIONS"

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**PROSPECTS FOR NATIONAL MINORITIES
UNDER THE DAYTON ACCORDS—Lessons
From History: The Inter-War Minorities
Schemes and the “Yugoslav Nations”[†]**

*Julie Mertus**

Nothing . . . is more likely to disturb the peace of the world than the treatment which might in certain circumstances be meted out to minorities.¹

I. INTRODUCTION

After World War I, the victorious allies used international law to rearrange the European landscape, parceling out the losses of Germany, the Ottoman Empire, Bulgaria and the successor states of the Habsburg Empire, Austria and Hungary. As one author described, “[t]he principle of ‘one nation, one state’ was not realized to the full extent permitted by the ethnographic configuration of Europe, but it was approximated more closely than ever before.”² Protections for minority groups within the newly created nation-states—religious, cultural, language and national minorities—were designed as a counter-balance to national self-determination since millions of people were left out of “their” nation-state. To some degree, it was advantageous to protect the rights of nations that had

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1. President Woodrow Wilson, Speech at the Plenary Session of the Paris Peace Conference (May 31, 1919), reprinted in *5 A HISTORY OF THE PEACE CONFERENCE OF PARIS 130* (H.W.V. Temperley ed., Oxford University Press 1969) (1924).

2. INIS L. CLAUDE, JR., *NATIONAL MINORITIES: AN INTERNATIONAL PROBLEM* 12 (Greenwood Press 1969) (1955).

been trampled by empires. Barbara Jelavich explains:

The victors had two roads to peace. First, they could base the terms of the treaties on the idealistic principles enunciated during the war by the Socialist parties, the Bolshevik government and Woodrow Wilson in his Fourteen Points. The aim would be a just peace based on self-determination and conciliation between the victor and the vanquished. . . . The second alternative . . . would be to apply the secret treaties and impose a punitive peace on the defeated governments. After all, no state in either camp had shown much interest in self-determination in the formulation of its own wartime objectives, unless . . . the principle would advance its own claims.³

Under the interwar agreements then, "the victor states took the spoils—but with the stipulations often clothed in the idealistic language of national self-determination and justice."⁴

The negotiators for peace in the Balkans⁵ made a similar compromise: the territorial victors were rewarded and, at the same time, the peace process trumpeted self-determination and justice. In the Dayton peace system, human rights provisions constitute a corollary and corrective to a new twist on the principle of self-determination. The Dayton Accords⁶ simulta-

neously advance alternative visions of self-determination. Through formal affirmation of the legal integrity of the internationally-recognized state of Bosnia,⁷ Dayton claims to respect the Bosnians' earlier act of self-determination. Yet Dayton also takes steps to eviscerate the earlier moment of self-determination. Dayton divides the state of Bosnia and Herzegovina roughly in two, giving Serbs what they wanted all along, a semi-autonomous state,⁸ and paying the way for what Croats wanted all along: the securing of their borders and political and military inroads into Herzegovina.⁹

In crafting its guarantees, the drafters of Dayton faced far different circumstances than interwar diplomats, circumstances marked by increased global interdependence, accelerated regionalization and marked development in international legal systems and mechanisms. Europe had already been divided into nation-states; economic insecurity and power struggles within these nation-states had created new instabilities and tapped nascent nationalisms; war raged in Bosnia and

³ *The Dayton/Paris Peace Agreement on Bosnia*, 90 AM. J. INT'L L. 301 (1996). Agreements subsequent to the Dayton Accords can be found on the web page for the Office of the High Representative in Bosnia and Herzegovina at the following internet address: <http://www.ohr.int:8/index.html>.

⁴ The parties to the Dayton Accords were: the Republic of Bosnia and Herzegovina (represented by its President, Alija Izetbegovic), the Republic of Croatia (represented by its President, Franjo Tudjman) and the Federal Republic of Yugoslavia (represented by the President of Serbia, Slobodan Milosevic). See Dayton Accords, *supra*, signatures, 35 I.L.M. 91. By a special agreement of August 29, 1995, Milosevic was granted power to negotiate for Republika Srpska. Milosevic's delegation included three officials of Republika Srpska: Krjizanik, Nikola Koljivic and Aleska Buba. Although these leaders, all members of the Republika Srpska Parliament, refused to participate in the finalizing of the agreement at Dayton, they initiated the texts in Pale on November 24, 1995, and they participated in the signature ceremony later in Paris. See Szasz, *supra*, at 304 n.13.

⁵ In particular, see BOSS. & HERZ. CONST. art. 1: "The Republic of Bosnia and Herzegovina . . . shall continue its legal existence under international law as a state, with its internal structure modified as provided herein," divided into two "Entities"—the Federation of Bosnia and Herzegovina and the Republika Srpska—and with its present internationally recognized borders. *Id.* art. 1(1), (3).

⁶ If put to a vote, there is little question that at this time Bosnian Serbs would vote for either an autonomous state or a semi-autonomous state aligned closely with Serbia. The Dayton accord advances both of these agendas.

⁹ Bosnian Croats, unlike Bosnian Serbs, do not have sole control over their own semi-autonomous state as they must share it with Bosnian Muslims. However, recent history has shown that this arrangement has indeed fulfilled the greater Croatian goal of making inroads into Bosnia-Herzegovina.

³ 2 BARBARA JELAVICH, *THE HISTORY OF THE BALKANS* 122 (1983).

⁴ *Id.*

⁵ The process of negotiations was extended and cumulative, in the sense that each new proposal built in some way on a previous proposal. This Article discusses only the agreement known as the "Dayton Accord." See *infra* note 6. An analysis of the proposals leading up to this agreement, with a particular emphasis on human rights provisions, appears in Paul C. Szasz, *Protecting Human and Minority Rights in Bosnia: A Documentary Survey of International Proposals*, 25 CAL. W. INT'L L.J. 237 (1995). An analysis of the constitutional proposals leading up to the Constitution adopted by Dayton can be found in Paul C. Szasz, *The Quest for a Bosnian Constitution: Legal Aspects of Constitutional Proposals Relating to Bosnia*, 19 FORDHAM INT'L L.J. 363 (1995).

⁶ The General Framework Agreement for Peace in Bosnia and Herzegovina, Dec. 14, 1995, BOSS. & HERZ.-CROAT.-YUGO., 35 I.L.M. 89 [hereinafter Dayton Accords], is also reproduced in U.N. Doc. A/50/750-S/1995/999 in the form initiated in Dayton on November 21, 1995. The version that appears in *International Legal Materials* on November 21, 1995. The agreement as it was signed on December 14, 1995, in Paris. The latter version corrects minor errors that are present in the United Nations (UN) printing. All references herein to "Dayton" or the "Dayton Accords" are to the latter. The Constitution of the Federation of Bosnia and Herzegovina, contained in the Dayton Accords, *supra*, Annex 4, 35 I.L.M. 114, is referenced herein as BOSS. & HERZ. CONST. Although I have chosen to use the shorthand of "Dayton," I realize that a more proper name for the agreement would be the "Dayton/Paris Agreement." Cf. Paul C. Szasz, *The Protector of Human Rights Through*

Herzegovina and Croatia. Post-war thinking had shifted away from the group-based minority rights of the interwar period to an individual-based human rights model.¹⁰ In contrast to the drafters of the interwar plans, the authors of the Dayton Accords had a host of post-World War II regional and international agreements at their disposal, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms¹¹ (European Convention) and the International Covenant on Civil and Political Rights.¹²

Nevertheless, this Article argues, the grand scheme to protect national minorities¹³ embodied in the Dayton Accords

bears marked similarities with the minority rights guarantees created after the first World War. The Minorities Treaties,¹⁴ concluded under the auspices of the League of Nations and other interwar minority rights measures,¹⁵ failed to protect the rights of ethnic, religious and linguistic minorities and to create a long-lasting peace. Dayton appears to be headed in the same direction. While tracking closely the international peace techniques of days gone by, Dayton jettisons the language and constructs through which the people of the land once called Yugoslavia had become accustomed to defining themselves—that is, as nations (*narod*)¹⁶ or national minorities (*narodnosti*). At the same time, on top of all of its heavy human rights machinery, Dayton creates a nation-based government designed to cement national divides. What vision of soci-

10. Although support for group-based minority rights can still be seen today in several systems and mechanisms; for example, in the European system, the Organization for Security and Cooperation in Europe (OSCE) catalogue of rights. See, e.g., PATRICK THORNBERRY, *INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES* (1991); Gudmundur Alfredsson, *Minority Rights and a New World Order*, in *BROADENING THE FRONTIERS OF HUMAN RIGHTS: ESSAYS IN HONOUR OF ASHWIN EIDE* 55-78 (Donna Gornien ed., 1993); Gudmundur Alfredsson & Danile Turk, *Their Advantages, Disadvantages and Interrelationships*, in *30 MONITORING HUMAN RIGHTS IN EUROPE* 169, 169-196 (Arie Elsed et al. eds., 1993); Giorgio Sacerdoti, *New Developments in Group Consciousness and the International Protection of the Rights of Minorities*, 13 *188*, Y.B. ON HUM. RTS. 116 (1983); Felix Ermacora, *The Protection of Minorities Before the United Nations*, 182 *RECUEIL DES COURS* 247 (1983).

11. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222.

12. International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 360 (entered into force Mar. 23, 1976).

13. The term "national minorities" is used in the manner invoked by the people of the former Yugoslavia: nations are groups brought together by such factors as common language, culture, traditions and mythologies. "National minorities" are those people who do not belong to the majority nation in their country. Note that the term "nation" as used herein does not mean "state"—rather, nation is more akin to the American use of the term "ethnic group." At times, I also use the term "ethno-national minorities" to underscore the similarities with the Americanized term "ethnic" and to highlight the difference between nations and states.

14. In 1987, the UN issued a compilation of definition proposals submitted to it over a forty year period. See *Compilation of Proposals Concerning the Definition of the term "Minority"*, U.N. ESCOR, Comm. on Hum. Rts., 43rd Sess., U.N. Doc. E/CN.4/1987/WG.5/WP.1 (1986). The literature on nations and nationalisms is boundless. For definitions of "nations", see generally *Definition and Classification of Minorities*, U.N. ESCOR, Comm. on Prevention of Discrimination and Protection of Minorities, 2nd Sess., U.N. Doc. E/CN.4/Sub.2/85 (1985); PETER ALTER, *NATIONALISM: THE ORIGIN AND SPREAD OF NATIONALISM* (1983); JOHN BREUILLY, *NATIONALISM AND THE STATE* (1982); ERNEST GELLNER, *NATIONS AND NATIONALISM* (1983); MONTSERAT GUBERNAT, *NATIONALISMS: THE NATION-STATE AND NATIONALISM IN THE TWENTIETH CENTURY* (1996); ERIC HORSBAM, *NATIONS AND NATIONALISM*

SINCE 1780 (1990); DAVID MILLER, *ON NATIONALITY* (1995); ANTHONY D. SMITH, *NATIONS AND NATIONALISM IN A GLOBAL ERA* (1995); John A. Hall, *Nationalisms, Classified and Explained*, in *NOTIONS OF NATIONALISM* 8, 8-33 (Sukumar Pervall ed., 1995); Lea Brilmayer, *The Moral Significance of Nationalism*, 71 *NORTH DAKOTA L. REV.* 7, 9-12 (1995); Thomas M. Franck, *Clan and Superclan: Loyalty, Identity and Community in Law and Practice*, 90 *AM. J. INT'L L.* 359, 360-68 (1996). For works on ethnicity, see PAUL R. BRASS, *ETHNICITY AND NATIONALISM* (1991); ETHNICITY (John Hutchinson & Anthony D. Smith eds., 1996); ETHNICITY: THEORY AND EXPERIENCE (Nathan Glazer & Daniel P. Moynihan eds., 1975).

14. As explained further below, a number of treaties were concluded by which the protection of national minorities was internationalized. "Minorities Treaties" were included in the Peace Treaties of St. Germain, Triano, Neuilly and Lausanne and the Albanian and Lithuanian Declarations. The Minorities Treaties empowered the League of Nations to receive petitions, conduct fact-finding investigations and issue directives to those nations in violation of the treaties. Only one of three cases brought before the Permanent Court of International Justice (PCIJ) was decided, although the court gave five advisory opinions on minority questions between 1923 and 1931. For an explanation of the operation of the treaties, see P. DE AZARATE, *THE LEAGUE OF NATIONS AND NATIONAL MINORITIES* 92-136 (Eileen E. Brooke trans., 1945); see also generally Francesco Caporali, *Study on the Rights of Persons Belonging to Ethnic, Religious, and Linguistic Minorities*, U.N. Doc. E/CN.4/Sub.2/884/Rev.1, U.N. Sales No. E.78.XIV.1 (1979). For PCIJ opinions, see, e.g., Advisory Opinion, *Minority Schools in Albania*, 1935 P.C.I.J. (ser. A/B) No. 62 (Apr. 6); Advisory Opinion, *Treatment of Polish Nationals*, 1932 P.C.I.J. (ser. A/B) No. 44 (Feb. 4); Advisory Opinion No. 17, *Interpretation of the Convention Between Greece and Bulgaria Respecting Reciprocal Emigration*, 1930 P.C.I.J. (ser. B) No. 17 (July 31).

15. In particular, the Convention Between Germany and Poland Relating to Upper Silesia, May 15, 1922, Pol.-Ger. 9 L.N.T.S. 466 hereinafter Convention Relating to Upper Silesia (known as the "Geneva Convention" at the time), contained minority rights protections and even permitted individuals to bring cases against their own state. See GEORGES KAECKENBECK, *THE INTERNATIONAL EXPERIMENT OF UPPER SILESIA* 47-56 (1942).

16. The Slavic word "narod" means both "nation" and "people."