

**IN THE NAME OF  
HUMANITY**

(collection of documents)

**Helsinki Committee  
for Human Rights  
in Serbia**

**Belgrade, November 1996.**

## THE DAYTON ACCORDS, HUMAN RIGHTS, REFUGEES AND DISPLACED PERSONS

*by Prof. Stevan Lilić, LL.D*

*(Communication presented at the meeting Legal Aspects of Refugee Return,  
Berlin, June 1996 - revised version)*

### I

The Dayton Accords is an exhaustive and complex political and legal document which comprises, inter alia, numerous provisions on military and civilian aspects of the peace settlement, measures to secure the stability of the region and the manner in which the inter-entity boundaries are to be determined, conditions for elections and the new Constitution of Bosnia-Herzegovina.<sup>1</sup> According to the Concluding Statement by the Participants in the Bosnia Proximity Peace Talks, the Peace Agreement for Bosnia-Herzegovina reached in the US Wright-Patterson Air Force Base in Dayton, Ohio, on 21 November 1995 (and signed in Paris on 14 December), the delegations of the Republic of Bosnia-Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia agreed on the terms for the implementation of what was termed the General Framework Agreement for Peace in Bosnia-Herzegovina and eleven, that is twelve agreements more, constituting an integral part of the Accords as separate annexes.<sup>2</sup>

The nature of this peace agreement gives rise to numerous controversies and debates, which are perhaps best defined by an American professor of our descent: "a terrible peace after a terrible war".<sup>3</sup> Two reasons are principally responsible for this: first, the Dayton Peace Accords were signed by the selfsame persons who held the power in Bosnia-Herzegovina, Croatia and Serbia, that is Yugoslavia, before the armed conflict, during the conflict and after the conclusion of peace; secondly, in view of the status of the so-called entities, the Dayton Accords *de facto* leave open the question of the prospects of Bosnia-Herzegovina as a single state.

Nevertheless, it needs to be pointed out that, although the Dayton Accords specifically address Bosnia, by the very nature of things, they also address Serbia (Yugoslavia) and Croatia for the simple reason that the latter two are also parties to this peace treaty. In other words, in addition to Bosnia-Herzegovina, "the principles of the Dayton Agreement must be incorporated in the system both in Serbia and Croatia (...) the results of the war will be there

even when refugees return, but they will be attenuated. The refugee return will see to yet another thing: it will deny the chance of setting up ethnically pure states.”<sup>4</sup>

## II

In the General Framework Agreement for Peace in Bosnia<sup>5</sup> the Parties agreed to conduct their mutual relations in accordance with the principles set forth in the United Nations Charter as well as the Helsinki Final Act and other documents of the Organisation for Security and Cooperation in Europe (Art. 1). To this end, the Parties, among other things, endorse and accept the arrangements envisaged by Annexes 6 and 7 for the establishment of a Commission on Human Rights and a Commission on Refugees and Displaced Persons (Art. 7) and explicitly recognise that the respect for human rights and protection of refugees and displaced persons are of vital importance for a lasting peace and fully agree to honour the provisions of Annex 6 relative to human rights and Annex 7 relative to refugees and displaced persons (Art. 8).<sup>6</sup>

Of numerous questions relating to the implementation of the Dayton Accords, on this occasion we shall address its most important provisions relative to the enjoyment and protection of human rights, notably in the light of the exercise and protection of the rights of refugees and displaced persons and difficulties related to this exercise.

*The Agreement on Human Rights (Annex 6)*<sup>7</sup>, signed by the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska (the Parties) has 16 articles divided in three chapters: 1. Respect for Human Rights (Art. 1); 2. The Commission on Human Rights (Art. 2-12) and 3. General Provisions (Art. 13-16) as well as a special appendix.

Annex 6 secures to all persons it addresses the highest level of internationally recognized human rights and fundamental freedoms, including the right to life, the right to liberty and security of person, the right to property, the right to liberty of movement and residence etc. To ensure their enjoyment, a Commission on Human Rights will be established, consisting of the Office of Ombudsman and the Human Rights Chamber. The Office of Ombudsman and the Human Rights Chamber shall consider, among other things, violations of human rights and discrimination on any grounds, such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, birth status, property status or other status arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Annex.

*The Office of Ombudsman* will be an independent agency made of per-

sons of recognised high moral standing and competent in the field of international human rights. The Office of Ombudsman will be headed by the Ombudsman appointed by the Organization for Security and Cooperation in Europe (OSCE) for a term of five years, who may not be a citizen of Bosnia and Herzegovina or a citizen of any neighbouring state (i.e. Croatia or Yugoslavia).

*The Human Rights Chamber* will consist of fourteen members, of whom four shall be appointed by the Federation of Bosnia and Herzegovina, two by the Republika Srpska, whilst the remaining members, who may not be nationals of Bosnia and Herzegovina or any neighbouring country, and from among whose number the President of the Chamber shall be designated, will be appointed by the Committee of Ministers of the Council of Europe. The Chamber will receive applications about human rights violations. These applications may be referred to the Chamber by the Ombudsman (on behalf of an applicant), Parties to the Agreement, or persons, non-governmental organizations or groups of individuals claiming to be victims of human rights violations by any of the Parties. The Chamber may attempt to arrive at a so-called amicable solution at any stage of the proceedings on the basis of respect for the rights and freedoms referred to in the Agreement. However, failing that and after the proceedings, the Chamber will take a decision establishing whether a Party violated its obligation to respect human rights and if so, decide what steps this Party is to take to put an end to the human rights violations (e.g. order to cease and desist, indemnification for damage and the like).

Furthermore, Annex 6 envisages that the Parties will promote and encourage the activities of non-governmental and international organisations for the protection and promotion of human rights, noting that full and effective access shall be allowed to non-governmental organisations for purposes of investigation and monitoring human rights conditions.

Annex 6 includes, as an integral part of the Agreement, a special appendix listing 16 international human rights conventions and documents (e.g. European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, 1950; International Covenant on Civil and Political Rights, 1966 etc.).

*The Agreement on Refugees and Displaced Persons* (Annex 7)<sup>8</sup> also signed by the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska (Parties) has 18 articles divided in two chapters: 1. Protection of Rights of Refugees and Displaced Persons (Art. 1-6) and 2. Commission for Displaced Persons and Refugees (Art. 7-13).

Annex 7 secures the right of all refugees and displaced persons to freely return to their homes, the right to the restoration of their property of which they were deprived in the course of hostilities since 1991 and right to compensation

of the property that cannot be restored to them. In particular, the Parties undertake to ensure the safe return of refugees and displaced persons, without risk of harassment, intimidation, persecution or discrimination, particularly on account of their ethnic origin, religion or political opinion. Furthermore, the Parties undertake to take necessary measures in their territories to prevent activities which could hinder or impede the safe and voluntary return of refugees and displaced persons and to secure full respect for the human rights and freedoms of persons within their jurisdiction. Particular respect needs to be ensured for the right of individuals or families to freely choose their destination, observing the principle of preservation of the family by, among other things, abstaining from interference in the returnees' choice of destination or pressure on them to remain.

In this regard, Annex 7 envisages that a refugee or a displaced person will not be charged with a crime, that is will be amnestied, except in cases of serious violations of international humanitarian law (as defined in the Statute of the Hague Tribunal for war crimes in the former Yugoslavia).

To ensure the enjoyment of the refugees' and displaced persons' right to return, an independent Commission for Displaced Persons and Refugees will be established, with which all Parties will undertake to cooperate in good faith (*bona fide*). The Commission shall be composed of nine members, of whom four will be designated by the Federation of B-H (two for three-, and two for four-year terms), and two by the Republika Srpska (one for a three-year, and the other for a four-year term). The remaining members will be appointed by the President of the European Court for Human Rights (for a term of five years), of whom one shall be designated as Chairman. The commission will be authorized to receive and decide any claims for real property in B-H, provided the property has not been voluntarily sold or otherwise transferred since 1 April 1992 and the claimant does not enjoy that property now. In addition to return of the property, compensation may also be claimed. The decisions of the Commission are final and any right or obligation established by the Commission shall be recognized as lawful throughout the territory of B-H. Failure of any Party or individual to cooperate with the Commission will not prevent the Commission from making a decision.

Annex 7 envisages also the establishment of a special Refugees and Displaced Persons Fund in the Central Bank of B-H. This fund will be administered by the Commission and will be replenished through the purchase, sale, lease and mortgage of real property to be decided by the Commission. Furthermore, it can be replenished through payments by the Parties, or contributions by States, international and non-governmental organizations.

### III

In the light of the difficulties arising with regard to the respect for human rights and the protection of the rights of refugees and displaced persons at this stage of the Dayton Agreement implementation, it is very important for all the Parties to strictly abide by the provisions of the Agreement which they accepted and signed.

Within this context, the enjoyment of human rights in Serbia (Yugoslavia) is rendered more difficult by the fact that the Federal State which, constitutionally speaking, has been in existence for four years, has not adopted yet many of the basic laws indispensable for the functioning of a legally stable state.<sup>9</sup> The procedure and form in the Yugoslav legal system are, by and large, instruments of manipulation, either when they are insisted upon or circumvented. The most frequent violations of human rights occur due to the slow judicial and administrative procedure. Legal argument has lost any meaning, having ceded its place to a system of connections, lobbies, pressures, interest groups and the like. Categories such as the rule of law and human rights give only rise to scorn and disbelief. A system of values has set in, whereby only those who "have made it" in the legal chaos and lawlessness, enjoy prestige in the society. The State encourages and sustains this state of affairs consciously. Under such circumstances, many citizens and refugees live in a legal vacuum which deprives them even of the minimal protection.<sup>10</sup> The situation did not improve even after the recent adoption of the Yugoslav Citizenship Law, seen as a "law permeated with the police spirit of practically unlimited discretionary powers".<sup>11</sup>

### IV

According to the information accessible to the Helsinki Committee for Human Rights in Serbia (regularly published in its reports for domestic and foreign public) and *Helsinki Povelja Journal*<sup>12</sup>, many elements render significantly more difficult the implementation of the Dayton Accords, more particularly in respect of the enjoyment and protection of universally proclaimed human rights on the one hand, and enjoyment and protection of the rights of refugees and displaced persons on the other.<sup>13</sup>

The refugee return is one of the crucial questions in the Dayton Agreement as it is, objectively speaking, the only chance to vacate a considerable portion of the results of the war and ethnic cleansing. Although the Dayton Accords address only Bosnia and Herzegovina, the refugee return is a principle which all three Parties (that is, parties to the war) shall have to abide by. A special place belongs to the amnesty of all individuals involved in military or armed

formations (with certain exceptions), which is a prerequisite for the return of refugees and displaced persons. Thus, under the Dayton Agreement, all refugees or displaced persons need to be amnestied if they return, even if they are accused of committing a crime, except if they are charged with crimes against humanity and international law as defined in the Statute of the International Tribunal in the Hague, or with a crime unrelated to the war itself (e.g. theft, murder, infliction of bodily injuries and the like<sup>14</sup>. To this end, in mid-1996, Bosnia and Herzegovina, Croatia and Yugoslavia adopted their amnesty laws. However, whereas the Bosnian-Herzegovinian law can be said to be more or less in line with the letter and spirit of the Dayton Agreement, this does not hold true of the amnesty laws adopted in Croatia<sup>15</sup> and Yugoslavia<sup>16</sup>. With respect to amnesty, a problem onto itself is the Republika Srpska, the entity which has not adopted its amnesty act yet, and if one is to judge by media reports, its adoption meets with numerous impediments, including the fact that the Hague Tribunal has filed even the formal indictments against the President, that is the Supreme Commander of this entity's army (R. Karadzic and R. Mladic).<sup>17</sup>

As regards the return and free movement of refugees and displaced persons, according to the information available, Muslims cannot return to the entity of the Republika Srpska<sup>18</sup> because, as things stand now, even the rudimentary conditions for their safe return as defined by the Dayton Agreement, are totally lacking. This is also shown by the fact that not even FRY nationals of Muslim descent or even with a Muslim name only, are allowed to enter and travel through the Republika Srpska.<sup>19</sup> On the other hand, individuals of Serb descent can exercise this right without any problems and with an identity card only.

On the other hand, refugees from the Republika Srpska (including Serbs) have no rights in Serbia. They are unable to regulate their refugee status, obtain travel documents, nor shall they be able to enjoy the right to nationality unless they return to their entity, while military conscripts still live in fear that they might be deported to the Republika Srpska and subjected to criminal prosecution for desertion.

## V

The return of refugees and displaced persons turns into a highly acute question in the light of forthcoming preparations for elections in Bosnia and Herzegovina, called under the Dayton Agreement for 14 September 1996 and confirmed at the Florence Conference.<sup>20</sup> Thus, according to the report of the Helsinki Committee for Human Rights in Serbia: "The registration of refugees from Bosnia and Herzegovina (in Yugoslavia) for electoral rosters clearly indicates the intentions of this regime regarding the future of refugees from the

Federation of Bosnia and Herzegovina and the Republika Srpska. According to reports from various places around Serbia and in Belgrade, and “on-the-spot” findings of Helsinki Committee monitors, it can be concluded that the whole procedure was conducted under very precise instructions. Its objective is to have the least possible number of refugees register for the roster of the Federation of Bosnia and Herzegovina”. The Report then goes on to say that the refugees return envisaged by the peace agreement has not even started yet and that the Serbian and Croatian side are prominent in obstructing it because ‘ethnic engineering’ can be prevented only if the letter and the spirit of Dayton are strictly respected.<sup>21</sup> This state of affairs was particularly evident in the so-called Drvar case.<sup>22</sup>

Nevertheless, talk about return can be heard more and more often of late, and even the Office of the United Nations High Commissioner for Refugees (UNHCR) has taken part, within the refugee return programme, in the settlement of Serbs from Krajina (Croatia), who have opted accordingly, in some parts of the Republika Srpska. They were not returned to places they had fled from and were settled instead in places where there were conditions for it. UNHCR intentions are undoubtedly humane but it remains an open question whether the refugee question can be solved in this manner because, in our view, ‘ethnic settlement’ is at odds with the principle of voluntariness set forth in the Dayton Agreement and goes in favour of the realisation of ethnically pure states.

The above leads to a conclusion that the implementation of the Dayton Agreement presumes the obligation of all those involved in the refugee return programme to make their maximum spiritual and material commitment to solving this humanitarian, moral and political question. Otherwise, not only the “High Contracting” Parties, but the whole international community, will have failed the test in the implementation of the Dayton Accords.

---

<sup>1</sup> Cf. Proximity Peace Talks - The Dayton Agreement, *Naša Borba*, Belgrade, 1996.

<sup>2</sup> The Dayton Accords, Concluding Statements by the Participants in the Bosnia Proximity Talks, p. 63.

<sup>3</sup> Bogdan Denitch, *A Terrible Peace to End a Terrible War in Bosnia and the Balkans*, TOD Newsletter, Institute for Transition to Democracy, No. 18, July 1996, New York/Belgrade/Zagreb, pp. 1-10.

<sup>4</sup> Biljana Kovacevic-Vuco, *Živimo u fiktivnom svetu (Living in a Virtual World)*, interview, *Odgovor*, refugee newspaper for politics and culture of the civil society, 2 July 1996.

<sup>5</sup> The Dayton Accords, pp. 1-2.

<sup>6</sup> See: Stevan Lilić, *Potpisi koji obavezuju (Binding Signatures) Helsinška Povelja*, May 1996, pp. 9-10.

<sup>7</sup> The Dayton Accords, pp. 34-39.

<sup>8</sup> The Dayton Accords, pp. 40-43.



<sup>9</sup> Cf. Helsinki Committee for Human Rights in Serbia, *Izveštaj o stanju ljudskih prava u Srbiji u 1995. godini (Report on the State of Human Rights in Serbia in 1995)*, Belgrade, December 1995.

<sup>10</sup> Helsinki Committee for Human Rights in Serbia was approached by 32,000 persons desirous of returning to their homes (...) "the number of those who would like to go back to Croatia ranges from 30 to 70 per cent", says Helsinki Committee member Ninko Miric, "and depends on the political climate, reports about killings and harassment of Serbs in the areas they have come from, and their living conditions in Serbia". (*Neither to Go, nor Not to Go: One Year after Krajina's fall, for Krajinians There Is No Place under the Sun; Croatia Does Not Want Them, Serbia Does Not Need Them Any More*, *Vreme*, Belgrade, 3 August 1996).

<sup>11</sup> "The Yugoslav Citizenship Bill presented by the Federal Government reeks with police spirit" - this was concluded yesterday in a public discussion organised by the Social Democratic Union. "A law prescribing that the citizens' loyalty shall be assessed by the police, is a characteristic of police states, and fully reflects the nature of the regime in our country", says Dr Stevan Lilic, professor of administrative law at the Faculty of Law in Belgrade. (...) "The adoption of a citizenship law of this sort affects in particular refugees and expellees as they are requested to submit a proof of their sources of livelihood whilst most of them live in collective centres or in clandestinity". (*Absence of Loyalty - Loss of Nationality*, *Dnevni Telegraf*, Belgrade 13 July 1996).

<sup>12</sup> *Helsinška Povelja (Helsinki Charter)*. Issued by Helsinki Committee for Human Rights in Serbia, Belgrade 11000, Zmaj Jovina 7.

<sup>13</sup> Cf. Helsinki Committee for Human Rights in Serbia, *Izveštaj o stanju ljudskih prava u Srbiji u 1995. godini (Report on the State of Human Rights in Serbia in 1995)*, Belgrade, December 1995; Helsinki Committee for Human Rights in Serbia, *Izveštaj o nekim aspektima pravnog i politickog sistema januar-maj 1996 (Report on Some Aspects of the Legal and Political System, January-May 1996)*, Belgrade, June 1996 etc.

<sup>14</sup> The Dayton Accords, Annex 7, Article VI: "any returning refugee or displaced person charged with a crime, other than a serious violation of international humanitarian law as defined in the Statute of the International Tribunal for the Former Yugoslavia since January 1991, or a common crime unrelated to the conflict (...)".

<sup>15</sup> "Franjo Tudjman and Mate Granic went to Washington. Two principal questions were on the table during the talks about this region: financing and amnesty. They were told in no ambiguous terms that the reintegration depended on the implementation of these two things. For, we cannot get rid of the heavy weaponry without psychologically demilitarising the people, and this means an all-embracing amnesty... said American general Jacques Klein, the UN transition administrator for East Slavonia (Jacques Klein before the Deputies of the East Slavonian Assembly, *Politika*, Belgrade, 5 August 1996).

<sup>16</sup> "The Amnesty Law is only a preliminary condition, rather than a guarantee of the safe return... in none of its parts does this law reflect the substance of the Dayton Accords". (Biljana Kovacevic-Vuco, *The Dayton Substance Missing: Things Left Out in the Recently Adopted Amnesty Law*, *Naša Borba*, Belgrade, 21 June 1996).

<sup>17</sup> Cf. M. Klarin, *Medjunarodne poternice za Karadžića i Mladića (International Arrest Warrants for Karadžić and Mladić)*, *Nasa Borba*, Belgrade, 12 July 1996. For the

full text of the indictment, see: *Optuznica (The Indictment)*, *Helsinki Povelja*, July 1996, pp. 16-30.

<sup>18</sup> “The Belgrade Circle, Helsinki Committee for Human Rights in Serbia, Association for B-H, Women in Black, Humanitarian Law Fund and European Movement in Serbia strongly protest and request that an immediate end be put to the racist practices of the Republika Srpska authorities in cooperation with FR Yugoslavia’s authorities, prohibiting the freedom of movement to persons of Muslim descent in the territory of the Republika Srpska. We seize the opportunity to remind that Annex 6 of the Dayton Accords envisages the respect for human rights and obligation of the Parties to secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms. These rights and freedoms include the right to move freely (...) (*Protest, Helsinki Povelja*, Belgrade, May 1996, p. 4).

<sup>19</sup> Cf. Biljana Kovacevic-Vuco, *Povratak izbeglica u Republiku Srpsku (The Return of Refugees to the Republika Srpska)*, *Helsinki Povelja*, May 1996, pp. 14-15.

<sup>20</sup> Cf. *Izbori u Bosni 14. septembra (Elections in Bosnia on September 14)*, *Naša Borba*, Belgrade, 15-16 June 1996.

<sup>21</sup> Cf. *Usmeravanje glasova u RS (Marshalling Votes Towards RS)*, *Naša Borba*, Belgrade, 5 August 1996.

<sup>22</sup> “With Form 1, expelled Drvarans could vote in Serbia, without having to travel; in Belgrade, however, they are offered only Form 2, which orients them towards the polls in the Republika Srpska (Brcko, Srebrenica, Zvornik) and nominees of ‘Serb’ parties”. (*Zašto Drvarčani ne mogu slobodno na izbore u BiH: sa “dvojkom” se ne ide u Drvar - Why Drvarans Can’t Go Freely to the Elections in B-H: With “No. 2” One Does Not Get to Drvar*, *Naša Borba*, Belgrade, 31 July 1996.