
To the Parliament of the Republic of Bosnia and Hercegovina

Washington agreement on Bosnia means genocide by word-processor

by Francis A. Boyle

This analysis of the Washington Agreements of March 18 was submitted by Professor Boyle on March 24, for formal consideration before a meeting of the Bosnian Parliament in Sarajevo on March 25. Professor Boyle was formerly the attorney for Bosnia before the World Court, and is professor of international law at the University of Illinois. We have excerpted from his memorandum without use of ellipses, for readability.

2. This Memorandum will be similar to the analysis of the so-called Owen-Stoltenberg Carve-Up Plan, which I did for President Izetbegovic in Geneva on 30 July 1993, and filed with the International Court of Justice on 7 August 1993. However, I want to make it quite clear that I am no longer Bosnia's Lawyer before the World Court. Therefore, the analysis which follows represents only my personal professional opinion as an expert on international law and a friend of Bosnia and Hercegovina and of the Bosnian People.

3. Generally put, it seems that the United States, Russia, Britain, France and the European Union have decided to impose a de facto if not de jure partition upon the Republic of Bosnia and Hercegovina into two portions: a Muslim-Croat de facto state (51%) and a Bosnian-Serb de facto state (49%). It also appears that with the introduction of Russian troops into Sarajevo at the connivance of Russia, Britain, the United States, and the United Nations, that the Great Powers have already effectively imposed a de facto partition on Sarajevo that is being policed by Russian troops. To be sure, such an arrangement represents an advance over the so-called Owen-Stoltenberg Plan, which would have called for the outright carve-up of Bosnia and Hercegovina into three independent states and the formal partition of Sarajevo.

4. I also wish to make it clear that it is my personal and professional opinion that a reconciliation between Bosnian Croats and Bosnian Muslims as well as between the Republic of Bosnia and Hercegovina and the Republic of Croatia is a positive, good, and necessary step to take. However, these two documents of 18 March 1994 seem to be promoting this

reconciliation for the purpose of preparing for the ultimate partition of the Republic of Bosnia and Hercegovina. Moreover, the so-called Confederation Agreement between the Republic of Bosnia and Hercegovina and the Republic of Croatia will probably mean that the so-called Federation of the Republic of Bosnia and Hercegovina will become not much more than a protectorate of the Republic of Croatia.

5. It appears from these documents, then, that the Great Powers of Europe and the United States have decreed the partition of the Republic of Bosnia and Hercegovina. But unlike the Owen-Stoltenberg Plan, this partition will be carried out gradually over a period of years. Eventually, what you will probably see is the Bosnian Serbs joining up with Belgrade to create the Greater Serbia and the Federation of the Republic of Bosnia and Hercegovina being effectively absorbed by the Republic of Croatia, to create the Greater Croatia. To be sure, the figleaf and legal fiction of the so-called Federation of Bosnia and Hercegovina will probably continue for a number of years until it can be quietly eliminated by the Great Powers acting in conjunction with Serbia and Croatia. But here we should let these two documents speak for themselves.

19. Generally put, it is obvious from this Article 1 that the Federation is being set up for the purpose of fulfilling the four requirements for establishing the existence of an independent state under international law: (1) territory (borders); (2) population (citizens); (3) a government; and (4) the capacity to conduct international relations. But such an arrangement for the Federation would imply, and then require, the de facto, if not de jure, partition of the Republic of Bosnia and Hercegovina.

20. The Federation arguably might have all four of these characteristics and therefore might arguably fulfill these characteristics necessary for the creation of a separate and independent state under international law. But this does not mean that the Federation would continue the international legal personality of the Republic of Bosnia and Hercegovina, including its U.N. Membership or current membership in other

international organizations. Indeed, there is a good chance that without strict safeguards, the establishment of the Federation would mean that the Republic could lose its U.N. Membership. I will return to that point later. And even if Bosnia's U.N. Membership is properly guaranteed, there can be no guarantee that those states which currently recognize the Republic of Bosnia and Hercegovina will recognize the Federation of Bosnia and Hercegovina as the successor-in-law or even as an independent state. So you risk losing the high degree of international legal recognition that the Republic of Bosnia and Hercegovina has already obtained if this document were to be implemented.

The Federation Executive

39. The procedure for election of the President and Vice President by consensus between the Bosniac delegates and the Croat delegates is a prescription for deadlock. Once again, the whole system is being set up on the principle of establishing a consensus on how to proceed between the so-called Bosniacs and the Croats. In other words, the drafters have abandoned the principle of majority rule. Consensus is a terrible way to set up a government. It simply does not work. Witness the type of consensus government that was set up in Lebanon on a confessional basis that eventually degenerated into a confessional civil war.

46. Therefore I can only conclude at this point that this "Constitution of the Federation of Bosnia and Hercegovina" is not simply an internal reorganization of the Republic of Bosnia and Hercegovina. Rather, this Constitution is preparing the way for the Federation to become a separate and independent state under international law. This would imply the partition of the current Republic of Bosnia and Hercegovina and the creation of the Federation of Bosnia and Hercegovina on the territories now occupied by the Bosnian army and the HVO and the Croatian army. So far this document does not specify what would happen to the 49% of the territory to be allocated to the Bosnian Serbs. But it seems quite clear from reading through the text of this document that the Federation will be set up to operate as a completely independent and separate state under international law no matter what the Bosnian Serbs do. In other words, this document seems to contemplate that the Bosnian Serbs will be pretty much free to do whatever they want to do with the 49% of the territory allocated to them.

The Constitutional Court

53. This section of the document is grossly deceptive. The Constitutional Court is to play a critical role in breaking deadlocks in the Houses of the Legislature when they cannot achieve a consensus. But Chapter IX on Transitional Arrangements clearly states in Article 9(c) on page 45 that for the first five years after the Federation Constitution enters into force, three of the nine Judges of the Constitutional

Court must be foreigners who are not citizens of any neighboring state and shall be appointed by the President of the International Court of Justice after consultation with the President and the Vice-President of the Federation. This is an amazing situation to have so much power over any state to be vested in the hands of three foreigners!

54. The drafters of the document clearly contemplated that three of these Judges would be Croats and three would be Muslims. Therefore, the three foreigners on the Constitutional Court would really be the ones to decide all critical issues in the event of a deadlock. Why should the People and Parliament of Bosnia and Hercegovina allow your future to be dictated by foreigners on your own Constitutional Court? Given the key role assigned to the Constitutional Court to break deadlocks in the Legislature, basically you will have these three foreigners determining the very destiny of the Federation for its crucial first five years. And it does not appear very likely that this Federation will last much longer than five years before being absorbed by the Republic of Croatia pursuant to the terms of the Confederation Agreement to be discussed below. Is this what the Bosnian Parliament really wants? Your future in the hands of foreigners? What type of political independence is that? The drafters of this document seem to assume that the Bosnian People are not fit to govern themselves. Under this document, the Bosnian People are to become "wards" of the United Nations Organization and of Croatia.

The Supreme Court

55. It seems obvious to me from the description of the Supreme Court and the use of the words "original jurisdiction" that this entire document was probably drafted by American lawyers working for the United States Department of State. I find it difficult to understand how a document that will affect the very existence of the Republic of Bosnia and Hercegovina, its Membership in the United Nations Organization and System, and the lives and well-being of 4.4 million people should be drafted by lawyers working for any foreign state, no matter how well-intentioned that foreign state might be.

The Cantonal Legislatures

63. Of course in regard to the so-called Canton System, there are no maps here to determine precisely where the Cantons are or how big they will be. Does this arrangement represent a return to the Vance-Owen Plan? I do not know for sure. But if it does do so, then that will be a retrograde step, not a progressive step.

64. The Vance-Owen Plan violated the 1973 Apartheid Convention and the 1965 Racial Discrimination Convention. The same is true for the Owen-Stoltenberg Plan. Indeed, this document seems to combine the worst features of both the Vance-Owen Plan and the Owen-Stoltenberg Plan. This doc-

ument partitions the Republic of Bosnia and Hercegovina in accordance with the principles of ethnicity and apartheid (like Owen-Stoltenberg), and then "cantonizes" the so-called Federation in accordance with the principles of ethnicity and apartheid (like Vance-Owen). So this document is far worse than the Vance-Owen Plan where at least you kept 100% of your independent state. Perhaps the Washington Agreements should most appropriately be called the Vance-Owen-Stoltenberg Plan.

65. It seems to me then that what the drafters of this

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document really did was to combine the Vance-Owen Plan with the Owen-Stoltenberg Plan to produce this Federation and the Confederation. The net result will still be the same: The carve-up of the Republic of Bosnia and Hercegovina by Croatia and Serbia under the supervision of the United Nations. Only these two Washington documents are not as blatant, overt, and obvious as the Owen-Stoltenberg Plan. This Washington Carve-up Plan is more subtle and devious. But it is still a carve-up of Bosnia and Hercegovina between Croatia and Serbia, Milosevic and Tudjman. Only now, the drafters are calling the carve-up a "Federation" and a "Confederation." But the objective remains the same: Eliminate the Republic of Bosnia and Hercegovina and then the Bosnian People from the face of the earth.

International Relations

67. Furthermore, even if the United Nations Organization were to guarantee by means of resolutions adopted by both the Security Council and the General Assembly that the Federation of Bosnia and Hercegovina will be the successor-in-law to the Republic of Bosnia and Hercegovina for all matters related to the United Nations System, this guarantee would not and could not legally bind other states to recognize this continuity, or even the Federation itself as an independent state. All other states would be free to determine whether or not the Federation of Bosnia and Hercegovina is the succes-

sor-in-law to the Republic of Bosnia and Hercegovina, or even whether or not the Federation is really a state under international law. These other states could very well take the position that the breakaway of 49% of the territory from the Republic of Bosnia and Hercegovina was sufficient to produce the dissolution of that state and therefore that the Federation of Bosnia and Hercegovina is not the successor-in-law and indeed that the Federation is not really an independent state entitled to be recognized as such under international law and diplomatic practice.

70. These conclusions become inescapably clear by analyzing Article 4, which provides: "International treaties and other agreements shall be signed and ratified in the name of the Federation by the Federation President." Only states can become parties to treaties, not governments. Hence it is clear that since these treaties are being signed "in the name of the Federation" of Bosnia and Hercegovina, that it will be the Federation of Bosnia and Hercegovina that will be the state party to the treaty, not the Republic of Bosnia and Hercegovina. Once again, the implication is quite clear that the Federation is being set up as an international legal state that is separate and apart from the Republic of Bosnia and Hercegovina. And, once again, the implication is quite clear that the currently existing Republic of Bosnia and Hercegovina will be partitioned, if not dissolved.

74. Once again, the distinction between the "Croat People" and the "Bosniac People" is artificial and dangerous. All Muslims, Croats, Serbs, Jews, and Gypsies, etc. are currently citizens of the Republic of Bosnia and Hercegovina and are therefore "Bosnians." Nowhere in this document is the term "Bosniacs" defined. Does this terminology mean that Bosnian Croats are not Bosnians? Certainly, that is one implication that can be derived from the use of this terminology.

76. Indeed, under international law all citizens of the Republic of Bosnia and Hercegovina are Bosnians and therefore possess Bosnian nationality. What this language is doing is distinguishing "Bosniac nationality" from "Croat nationality." Once again, such an artificial and dangerous distinction will simply call into question the loyalty of Bosnian Croats to the Federation as opposed to the Republic of Croatia. For similar reasons, this will only pave the way for the absorption of the Federation by the Republic of Croatia at some point in the not-too-distant future. In any event, such an artificial and dangerous distinction between "Croats" and "Bosniacs" in the Federation will only reinforce the apartheid nature of the state. Similarly, this distinction seems to freeze out the Serbs, Jews, Gypsies and "Others" from the Federation. What future will they have in the Federation? None that I can see from the terms of this document.

83. As some of you might know, at the request of President Izetbegovic, I was the one who drafted Bosnia's currently outstanding official proposal to turn the City of Sarajevo into something along the lines of the District of

Columbia in the United States. This proposal to turn Sarajevo into something like the District of Columbia was submitted by President Izetbegovic to David Owen, and then by President Izetbegovic to the United Nations Security Council in August of 1993.

84. David Owen wanted to, and still wants to, carve up Sarajevo. Hence, under no circumstances could I recommend that some "international administrator" be given the authority to derogate from the terms of your Constitution for any reason with respect to Sarajevo. Such an arrangement would simply mean that the Bosnian People are no longer in control of your own sovereign capital.

85. Indeed, this so-called "international administrator" for Sarajevo might very well decide to derogate from the terms of this Constitution by partitioning Sarajevo. There is nothing in Article 10 to prevent the "international administrator" from partitioning Sarajevo. Indeed, this is exactly what David Owen wanted to do during the course of the Owen-Stoltenberg negotiations last summer. We definitively rejected the partition of Sarajevo by presenting the plan for Sarajevo akin to the District of Columbia that was submitted by President Izetbegovic to the Security Council. The language found in Article 10 will simply reopen this issue, and ultimately pave the way for the de jure partition of Sarajevo.

Languages

111. Finally, as a matter of drafting, I do not understand why the English language version of these documents is deemed "equally authentic" with the versions in the "Bosnian" and "Croatian" languages. I take it that the reason for providing equal authenticity to the English language version of these documents is that all the documents themselves were drafted by lawyers working for the United States Department of State who utilized English as their primary language. This gets back to a point I was making earlier: The U.S. State Department is no friend of the Republic of Bosnia and Hercegovina. I am sure you are all well aware of this.

112. Indeed, Congressman Frank McCloskey has already called for U.S. Secretary of State Warren Christopher to resign because of his negative attitudes and policies toward the Republic of Bosnia and Hercegovina. In my opinion, it would be foolish to trust the very future of the Republic of Bosnia and Hercegovina, the very future of your U.N. membership and international recognition, the very survival of your children and your grandchildren, and the very destiny of the People and State of Bosnia and Hercegovina to the United States Department of State and lawyers working for it. Based upon my seventeen years of practicing and teaching international law, I have never found any grounds to trust U.S. State Department lawyers. Why should you?

113. As far as I can tell, these documents were drafted for the express purpose of putting you out of business as an independent nation state. This is typical of the way U.S.

State Department lawyers do their dirty work around the world: Genocide by means of a word-processor.

Conclusion

114. On the basis of the above analysis it is my professional opinion and recommendation that the Bosnian Parliament should reject the Federation Constitution and the Confederation Agreement for the reasons already explained. Instead, I believe that the Bosnian Parliament must insist upon the preservation of the territorial integrity and political independence of the Republic of Bosnia and Hercegovina as currently constituted. This is the only State that you have or ever will have. You must do nothing that will jeopardize the sovereignty, territorial integrity, political independence, international legal personality, the U.N. membership, and treaty relations of the Republic of Bosnia and Hercegovina. Otherwise, you will suffer the same fate that the Palestinian People did back in 1947 when they were partitioned by the United Nations Organization and the same Great Powers of the world that are now trying to partition you. Then, partition solved nothing. Today, partition will still solve nothing. It will only exacerbate your currently-existing problems.

120. This analysis, then, leads to my conclusion that the best policy for the Republic of Bosnia and Hercegovina to follow is the so-called strategy of "lift and strike." Namely, to work for the lifting of the illegal arms embargo upon the Republic of Bosnia and Hercegovina, and for NATO air strikes upon Serbian military targets throughout the Republic of Bosnia and Hercegovina. The latest public opinion polls show that a majority of the American People would support NATO air strikes on Serbian military targets in the Republic of Bosnia and Hercegovina.

123. In this regard, I already drafted a 15 November 1993 Statement of Intention by the Republic of Bosnia and Hercegovina to Institute Legal Proceedings Against the United Kingdom Before the International Court of Justice that was issued at United Nations Headquarters on that day and filed by me with the World Court when I was Bosnia's Lawyer before the Court. This document outlines the theory of the lawsuit against the United Kingdom in order to break the arms embargo and stop the carve-up of the Republic of Bosnia and Hercegovina. Copies of this Statement are available upon request. As you may know, threats by the British government and several other European states forced the government of the Republic of Bosnia and Hercegovina to withdraw from this proceeding last December. But when I informed the Court of Bosnia's intention to withdraw, I also told the Court that the withdrawal was being made under duress, threats and coercion. I therefore reserved the right of the Republic of Bosnia and Hercegovina to sue Great Britain at any time. Now is the time for the Republic of Bosnia and Hercegovina to sue Great Britain in order to break the arms embargo and stop this carve-up!