

# **30 YEARS OF THE GENERAL FRAMEWORK AGREEMENT FOR PEACE IN BOSNIA AND HERZEGOVINA**

## **A condition for peace and stability in Bosnia and Herzegovina and the region**

### **Historical context of the General Framework Agreement for Peace in Bosnia and Herzegovina**

The General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter: the Dayton Peace Agreement), initialed on November 21, 1995, in Dayton, USA, and signed on December 14, 1995, in Paris, France, ended the bloody civil war in Bosnia and Herzegovina. Created after the harmonization of the Geneva and New York Principles, the Dayton Peace Agreement is the result of complex negotiations conducted between the parties — the Republic of Srpska and the Federation of Bosnia and Herzegovina — with active mediation by international actors such as the USA, the EU and Russia. The establishment of peace was also enabled thanks to the support of the Republic of Serbia and the Republic of Croatia, both signatories of the Agreement.

### **Constitutional and political structure of BiH**

The Dayton Peace Agreement enabled the initiation of a reconciliation and stabilization process in the region through the establishment of a complex constitutional and legal structure of Bosnia and Herzegovina, based on the equality of two highly autonomous entities – Republic of Srpska and the Federation of Bosnia and Herzegovina, as well as the equality of the three constituent peoples - Serbs, Bosniaks and Croats. Republic of Srpska and the Federation of Bosnia and Herzegovina are internationally recognized as state-legal entities with broad competencies, which have both retained and partially transferred their sovereignty to the newly created Bosnia and Herzegovina.

### **International legal status of the Agreement**

The Dayton Peace Agreement is a unique legal act that serves both as an international peace treaty and the constitutional basis for the existence of Bosnia and Herzegovina. The Agreement was verified by UN Security Council Resolution 1031, making it binding for all domestic and international institutions and subjects of international law. The Republic of Serbia and the Republic of Croatia, as signatories of the Agreement, have undertaken the obligation to support its implementation and ensure compliance with the agreed provisions.

### **Application of the *pacta sunt servanda* principle**

Unilateral amendments or violations of the Agreement represent a significant breach of the contract (Article 60 of the Vienna Convention). This principle obligates all contracting parties, including Republic of Srpska, the Federation of Bosnia and Herzegovina, Serbia and Croatia to act in accordance with undertaken obligations.

The principle of *pacta sunt servanda* ("agreements must be kept") represents the foundation of international law. According to Article 26 of the Vienna Convention on the Law of Treaties, every valid treaty is binding upon the parties and must be executed in good faith. This includes:

- The prohibition of unilateral modifications without the consent of the contracting parties.
- Respecting the original text of the treaty, including all annexes.

- The obligation of all actors, domestic and international, to act in accordance with the agreed terms.

Violating this principle, such as through unilateral interventions or the imposition of decisions contrary to the Agreement, constitutes a direct breach of international law.

### **Status of the Agreement annexes**

All annexes in the Agreement, including Annex IV (the Constitution of Bosnia and Herzegovina) and Annex X (the role of the High Representative), also have the status of an international treaty. The extent of autonomy, rights and competencies of the entities are guaranteed by international treaty, which implies that they cannot be unilaterally altered.

### **DEYTON PEACE AGREEMENT AS INTERNATIONAL TREATY WITH BINDING FORCE**

The Dayton Peace Agreement and all its annexes hold the unique status of an international treaty that is binding for all contracting parties. The agreement was also verified by the UN Security Council with the adoption of Resolution 1031, thereby not only affirming the significance of the Agreement but also proclaiming the international obligation to respect the Dayton Peace Agreement.

The contracting parties, Republic of Srpska and the Federation of Bosnia and Herzegovina, retain special rights and obligations regarding the interpretation and implementation of the Agreement. The Republic of Serbia and the Republic of Croatia, as signatories, have also taken on the obligation to ensure its full implementation.

### **The role of the contracting parties: Republic of Srpska and Federation of BiH**

As parties that were established earlier (Republic of Srpska before the conflict - January 9, 1992; Federation of Bosnia and Herzegovina by the Washington Agreement - March 18, 1994) and negotiated and agreed upon the text of the Agreement, Republic of Srpska and the Federation of Bosnia and Herzegovina retain the right to authentically interpret it in accordance with the original provisions. Their negotiating status grants them legitimacy in the interpretation of the Agreement, and at the same time, it enables them to demand its consistent application.

### **Status of Agreement annexes as international agreements**

All annexes of the Agreement, including Annex IV and Annex X, have the same legal force as the Agreement itself, which implies that:

- The autonomy and competencies of the entities cannot be unilaterally altered.
- The equality of the three constituent peoples cannot and must not be questioned, as it represents a fundamental condition for stability in Bosnia and Herzegovina.

### **The principle of constituent peoples**

The constituent status of the three peoples in Bosnia and Herzegovina represents not only a constitutional but also an international legal principle, incorporated into Annex IV. Violating this principle would directly jeopardize the entire legal order established by the Agreement. Any action that disregards or negates this principle constitutes a violation of international law.

The Dayton Peace Agreement has a dual nature. First, it holds the status of international law, as do its annexes, because it is an international treaty. Second, the Dayton Peace Agreement serves as a source of domestic law and the foundation of the constitutional order of the newly created Bosnia and Herzegovina, composed of two entities and three constituent peoples. The model of consociational democracy is embedded in the foundations of Bosnia and Herzegovina, representing one of the conditions for regional stability. Establishing mechanisms of protection, including the consistent application of the principle of *pacta sunt servanda*, is vital for preserving the rights of the contracting parties and ensuring the long-term stability of the region.

## **REPUBLIC OF SRPSKA AS KEY NEGOTIATOR AND CONTRACTING PARTY**

Република Српска, заједно са Федерацијом Босне и Херцеговине, била је једна од двије стране у преговорима који су довели до потписивања Споразума. Делегација Републике Српске активно је учествовала у формулисању коначних одредби Споразума и свих његових анекса. Република Српска је овластила СР Југославију да потпише Дејтонски мировни споразу у име и за рачун Републике Српске.

- No provision of the Agreement, including those comprising Annex IV (the Constitution of Bosnia and Herzegovina), could have been adopted without the consent of the representatives of the Republic of Srpska.
- As a contracting party, the Republic of Srpska retains the right and obligation to interpret, implement and protect the Dayton Peace Agreement.

### **Right and obligation to interpret and protect the Agreement**

As one of the contracting parties, the Republic of Srpska has the obligation to:

- Interpret and protect the Dayton Peace Agreement, as well as all its annexes, ensuring respect for their original text to which all parties have consented;
- Protect the autonomy and competencies of the entities guaranteed by the Agreement and the Annex IV/Constitution of Bosnia and Herzegovina;
- Initiate legal mechanisms in cases of violations of the Agreement, including international arbitration;
- In the event of a fundamental breach of the Agreement and due to newly arising circumstances, consider the possibility of withdrawing from the Agreement in accordance with the Vienna Convention if the rights guaranteed by the treaty can no longer be protected within the institutions of Bosnia and Herzegovina.

### **Entities as key contracting parties of the Agreement**

The entities, the Republic of Srpska and the Federation of Bosnia and Herzegovina, are signatories to all annexes of the Dayton Peace Agreement and, at the same time, state-legal entities responsible for implementing the Agreement and preserving peace and stability in Bosnia and Herzegovina and the region.

- Annex IV, which has a dual character as both an international treaty and the Constitution of Bosnia and Herzegovina, guarantees the autonomy of the entities as well as the presumption of competencies in favor of the entities. The entities have incorporated their sovereignty into the Dayton Bosnia and Herzegovina and partially transferred it to the level of Bosnia and Herzegovina.

- No change in the competencies of the entities or the constitutional structure of Bosnia and Herzegovina is possible without their consent, as it would constitute a severe breach of the treaty.

### **Limitations of the High Representative's mandate**

The mandate of the High Representative, defined by Annex X, is limited to implementing the civilian aspects of the Agreement.

- The Bonn powers cannot exist as that would imply that the mandate and authority of the Security Council of the United Nations has been annulled. The Bonn powers were adopted without the consent of the signatory parties, at a meeting of an informal group called the Peace Implementation Council, which is not a Dayton category, nor is it foreseen by the relevant UN Security Council resolution
- According to Article 78 of the United Nations Charter, which prohibits trusteeship over a UN member state, as well as the provisions of the Dayton Peace Agreement, UN Security Council Resolution 1031, and international law, the High Representative has no right to act as a trustee, guardian or administrator over Bosnia and Herzegovina, nor can he change laws or violate the constitutional structure of Bosnia and Herzegovina.

### **Article 39 of the Vienna conventions: Changes in the international agreements**

According to Article 39 of the Vienna Convention on the Law of Treaties:

- Amendments to international treaties can only be made with the consent of ALL CONTRACTING PARTIES.
- The Republic of Srpska, as a party that negotiated and signed all annexes of the Dayton Peace Agreement, has the right to approve or reject any amendments.

### **Legal responsibility of actors**

Any subject of international law acting contrary to the Agreement may be held accountable before international courts.

The Republic of Srpska, as a key negotiator and party to the Dayton Peace Agreement, has the right and obligation to interpret, implement and defend the Agreement. Its status as the guardian of the Agreement is based on international legal principles, including the Vienna Convention and the principle of pacta sunt servanda.

## **RIGHTS AND OBLIGATIONS DERIVED FROM THE DAYTON PEACE AGREEMENT**

### **Immutability of the Agreement without the consent of the contracting parties.**

- No part of the Dayton Peace Agreement, including Annex IV (Constitution of BiH) and Annex X (Mandate of the High Representative), can be unilaterally amended, interpreted or rejected by any domestic or international subject.
- The principle of pacta sunt servanda requires that all subjects, including all constituent elements, as well as individuals, must respect the obligations arising from international treaties.
- Any violation of the Agreement constitutes a serious breach of international law and threatens the stability of Bosnia and Herzegovina.

## **Legal basis in the Vienna conventions on the Law of Treaties**

### **Article 60 – Significant breach of a treaty**

If one party breaches the provisions of the treaty, the other parties have the right to seek:

- Temporary suspension of their obligations.
- Revision or withdrawal from the agreement if the breach is significant and prevents the realization of the fundamental purpose of the Agreement.

Systematic violation of the Agreement, particularly Annexes IV and X, by the institutions of BiH, the High Representative, and other international actors, constitutes a "significant breach" of the agreement.

### **Article 62 – Principle of rebus sic stantibus (fundamental change of circumstances)**

- If the circumstances that were essential for the conclusion of the treaty have significantly changed, a party may seek the termination of the treaty.
- If the entities are unable to exercise the rights guaranteed by the Agreement due to systematic violations, the Republic of Srpska may determine that a fundamental change in circumstances has occurred, justifying the revision or termination of the Agreement.