



THE ROLE OF THE INTERNATIONAL COMMUNITY IN BOSNIA-HERCEGOVINA: THE CASE OF BRCKO DISTRICT



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Abstract

In today's world, the humanitarian interventions are not sufficient in preventing civil wars and violations of human rights. In order to have a sustainable peace, it is necessary to constitute democratic institutions. The new method of the International Community's peace implementation is State Building. One of the paradigmatic examples of the method of third-party State Building with all of its successes and weaknesses is Bosnia and Herzegovina. Within the framework of international administration in Bosnia, namely the Office of the High Representative (OHR), there is even a more specific example of the third-party State Building. This is the separate administration for the Brcko District. Brcko District was established as a multi-ethnic, democratic unit of local self-governance but under the exclusive sovereignty of Bosnia and Herzegovina. It was formally inaugurated in March 2000. The supervisor of the Brcko District enjoyed more Powers compared to that of the High Representative. Overall, the third-party State Building implemented in the Brcko District has borne satisfying results. In this paper, the results of the State Building are elaborated by focusing on the special status of the Brcko District.

Key words: International Community, State Building, Brcko District

ULUSLARARASI TOPLUMUN BOSNA-HERSEK'TEKİ ROLÜ: BRCKO DİSTRİKT ÖRNEĞİ

Öz

Günümüzde dünyada, iç savaşları ve insan hakları ihlallerini önlemek için insanî yardımlar yeterli değildir. Devamlı barışı sağlamak için demokratik kurumları kurmak şarttır. Uluslararası Toplumun barışı sağlamak için kullandığı yeni metodun adı 'State Building'dir. Tüm başarısıyla ve zaaflarıyla 'üçüncü taraf' 'Sate Building' metodunun paradigmatic örneği Bosna-Hersek'tir. Uluslararası Yönetim (Yüksek Temsilci Ofisi (OHR)) çerçevesinde üçlü taraf 'State Building' uygulamasının çok özel bir örneği Brcko Distrikt'tir. Eski Brcko Belediyesi, Bosna-Hersek'in egemenliğinin altında multi-etnik, demokratik ve kendi mahalli hükümeti ile kurulan ayrı bir birimdir yani Brcko Distrikt olarak kurulmuştur. Brcko Distrikt,

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2000 yılının Mart ayında resmen yürürlüğe girmiştir. Brcko Distrikt'te Supervizorun yetkileri Yüksek Temsilci'ninkinden daha fazlaydı. Üçlü taraf 'State Building' uygulaması Brcko Distrikt'te memnuniyet verici sonuçlar vermişti. Bu makalede, Brcko Distrikt'in özel statüsüne odaklanarak 'State Building'in uygulanmasının sonuçları incelenmiştir.

Anahtar kelimeler: Uluslararası toplum, State Building, Brcko Distrikt

In the 20th century, there has been a dramatic increase in the number of ethnic/civil conflicts, especially the armed ones. Accordingly, the International Community is engaged in humanitarian interventions. Yet these interventions are not sufficient in preventing ethnic/civil strifes and violations of human rights carried out during the strifes, and the result is conflict-ridden territories. Therefore, in the aftermath of civil wars, the International Community is engaged in a more difficult task: to build sustainable peace. An important element of achieving sustainable peace is the formation of a functioning state having democratic institutions. In that regard, the International Community has developed a new method for peace building: State Building.

State Building by third parties is a relatively recent practice. Particularly in the post-Cold war era, it is used in the international administration of conflict-ridden territories such as Kosovo, East Timor, Afghanistan, and Bosnia-Hercegovina (BİH). Bosnia is one of the paradigmatic examples of third-party State Building. The international administration was established as part of the peace process that concluded in the signing of the Dayton Peace Accords (DPA). Within the framework of international administration in Bosnia, namely the Office of the High Representative (OHR), there is even a more specific example of the third-party State Building. This is the separate administration for the Brcko District (BD). Formally inaugurated in 2000, the Brcko District would be a multi-ethnic, democratic unit of local self-governance.

The third-party State Building implemented in the BD has borne various results. The aim of this paper is to elaborate the results of the State Building in the Bosnian case by concentrating on the special status of the BD. In the first part of the paper, the role of the international community in BiH is addressed with a focus on the international administration as an example of State Building. The second part is about Bosnia's self-governing unit: the Brcko District. What kind of an administration do we come across in the BD? What are the positive and negative aspects of the administration in the BD? These are some of the questions that we seek an answer in this paper.

The International Community During the Bosnian War

Not long after the war started in Bosnia in April 1992, the international community took action and the UN Protection Force (UNPROFOR) was deployed in the country in June. The public opinion became more and more aware of the atrocities and the misery of the civilians who were subject to Serb shelling in Sarajevo and other cities. As a result an outcry for action grew in the international arena in the late summer, and the British government, as holder of the European Community (EC) presidency, called for a conference. It was held in London at the end of August. At the end of the Conference, International Conference on the



Former Yugoslavia (ICFY) was established as a successor to the EC Conference on Yugoslavia that had been formed a year earlier.

In late October came the first detailed proposal for a settlement of the Bosnian conflict from the co-chairmen of the ICFY. The proposal was ‘a “solution” arrived by taking the demands of the Serbs, Croats and Muslims and trying to find some geometrical mid-way point between them’ (Malcolm, 1994: 247). According to the Vance-Owen Plan (VOP), the shell of the unitary state would be preserved yet the basis of the internal distribution of territory would be ethnicity. Substantial powers would be in the hands of ten provinces, referred to as ‘cantons’.

One feature of the Plan would contribute to the eruption of all-out war between the Croat and Muslim forces. As Malcolm (1994) emphasises, the Plan gave the impression that the boundaries shown on the map were not yet final. This situation incited competition between the two forces for the parts of central Bosnia where neither Muslims nor Croats constituted a majority. The Muslim-Croat alliance going on since the early times of war finally collapsed with this competition for territory. Not long after the collapse of the Muslim-Croat alliance came the demise of the VOP in the spring 1993. Following its demise, the UN Security Council decided to establish safe areas. The Bosnian Muslims were against the idea because they believed that the West would reward the Serb aggression by doing that. Moreover, they would be forced to live in these enclaves in their own country. Nevertheless, the UN Security Council declared Sarajevo, Tuzla, Bihac, Srebrenica, Zepa and Gorazde ‘safe areas’ on 4 June 1993 (Resolution 836). The UNPROFOR would be responsible for their protection. The establishment of safe areas was one of the ‘fatal errors of the West’ (*Unfinished Peace*, 1996: 72) because the UNPROFOR failed to protect them and they became targets for Serb aggression.

In July 1993, a new plan was developed by the ICFY mediators. It was different from the previous plans since it reflected neither the integrity of the Bosnian state nor the pre-war distribution of population. The new plan, drafted by Owen and Stoltenberg, who had replaced Vance, would have given the Serbs 53%, the Muslims 30% and the Croats 17% of the territory. The Muslims were placed in an extremely disadvantageous position, and unsurprisingly, the Bosnian government rejected the Owen-Stoltenberg Plan. In the following months different versions of the plan were discussed but none of the sides was happy with it.

The winter of 1993-4 witnessed a development that would change the course of the war. The Markala marketplace massacre in Sarajevo, taking place in early February 1994 and leaving about seventy civilians dead,¹ ignited a public outcry for action. The West had to do something immediately to bring the war to an end. NATO issued an ultimatum ordering ‘the Serbs to cease their attacks on Sarajevo and to withdraw their heavy weapons from an exclusion zone around the city or face NATO air attack’ (Burg and Shoup, 2000: 287). Likewise, the Bosnian government forces were warned not to launch any attacks from within the city.

¹ It was not possible to specify who was responsible for the massacre as a result of the investigations. Either side – the Muslim or the Serb forces – could have launched the shell (Burg and Shoup, 2000).



On the other hand, the USA had been trying to achieve a separate settlement between the Muslims and Croats so that the fighting could come to an end in central Bosnia. The foreign ministers of Croatia and the Bosnian government had already met under the auspices of the ICFY mediators in early January. Izetbegovic and Tudjman had had a meeting as well. It was a futile effort. Yet, within time, both sides had come to the point of gaining more from a cease-fire and an end to the fighting between them. Accordingly, the Croats agreed to a US-brokered plan which called for forming a joint Muslim-Croat federation in the territories they held then. The talks that started in Germany on February 18 finally led to agreement on a cease-fire between the two sides (22 February 1994). On March 1, an agreement to create a Bosniak (Muslim)-Croat Federation was signed in Washington. As Burg and Shoup (2000: 294) note, the agreement was a signal that the Croats had – at least formally – given up demanding the partition of Bosnia into three entities because, as stated in the Washington Agreement, the Bosniak-Croat Federation was to be a single entity composed of cantons.² Mostar was to be placed under EU administration.

After the signing of the Washington Agreement, a shift was observed in multilateral diplomacy. On the one hand, the Clinton administration was furious at the lack of progress in the ICFY negotiations and the UN opposition to the use of force against the Serb forces. On the other hand, the domestic political pressure about lifting arms embargo and using force increased every day. So the Clinton administration was pushed towards advocating use of force to bring the Bosnian war to an end. The ICFY, as the actor in favour of finding a diplomatic solution to the conflict, proposed the establishment of a Contact Group composed of the US, Russian, French, German and British representatives. The Contact Group was formed in late April.

The establishment of the Contact Group was something new because it changed the character of the international effort to achieve a settlement. Instead of direct, multilateral negotiations among the warring parties, there would be separate meetings between the Contact Group representatives and the parties. But even these meetings gave them the opportunity to present their demands. As the meetings proceeded, it was understood that the main issues the Contact Group faced and the positions of the warring parties regarding those issues were slightly different from those that had developed over the course of 1993 and early 1994. The positions of the great powers did not change much, either. The USA was still in favour of exerting military pressure on the Bosnian Serbs while the Russians were strongly opposed to the idea.

The Contact Group drafted a plan even though USA was reluctant about it. It was delivered as an ultimatum in the form of a map. The territories assigned to the Croats and Muslims were expanded. According to the division formed by the map, the Bosniak-Croat federation was to get 51 % of the territory while the remaining 49 % would be left to the Bosnian Serbs. The Bosnian government accepted the plan because there was no doubt that the Serbs would reject it. Indeed, the Bosnian Serb Assembly voted against the Contact Group Plan/Map. Like its predecessors, the Contact Group plan was doomed to fail.

² The agreements were never fully implemented but by bringing an end to the fighting between the two sides, a common military effort was established against the Serb forces (Burg and Shoup, 2000: 298).



At the end of 1994, an armistice agreement was signed between the Armija BiH and the Army of Republika Srpska (VRS-Serb forces under the command of General R. Mladic). The cease-fire was quickly broken in the Bihac area, but elsewhere in Bosnia the quantity of fighting decreased considerably. However, the armistice lasted for only four months. After it was broken, there was an intensification of fighting in many parts of the country. Towards the end of May 1995, over 350 UNPROFOR troops, many of them French, were seized as hostages as a response to NATO's bombing of Serb headquarters and ammunition depots in Pale.

After its soldiers were taken as hostages, France urged creation of a 'Rapid Reaction Force'. The French proposal was supported by most of the West European countries and the UN. It was time to react. The force was to be composed of 10,000 soldiers; French, British, Dutch, Belgian, and German contingents would be in the Rapid Reaction Force. While the Rapid Reaction Force was being brought together, the VRS started massing around the 'safe area' Srebrenica.

On 24 June 1995 came the Serb threat to demilitarise Srebrenica, yet it was not taken seriously by UNPROFOR. In less than two weeks, the VRS laid siege on the enclave and started bombarding, and the Dutch battalion responsible for protecting Srebrenica asked for NATO planes to be held ready for air strikes. However, the commander's request was turned down by the overall UN commander based in Zagreb, because the UN 'believed that the Serbs only wanted to take a small part of the enclave in the south' (Kumar, 1997: 88). On 8 July, the VRS forced the Dutch battalion to withdraw, and the next day as thousands of displaced civilians from surrounding villages and towns took refuge in the enclave, the VRS seized thirty UNPROFOR troops as hostages.

Albeit limited to tanks or artillery seen firing, air strikes were finally ordered on 11 July, and the Serb forces threatened to kill the hostages. So, the Dutch government asked NATO to suspend air strikes. Srebrenica fell in a couple of hours. Serb forces marched into the town the next day, and thousands of Muslim males, who had been under detention since the fall of Srebrenica, were 'taken on buses to what proved to be a number of killing grounds' (Gallagher, 2003: 159). After having watched the fall of the town, the Dutch battalion finally left Srebrenica on 13 July. After the fall of Srebrenica, the Serb forces passed onto their second target, Zepa. The town fell in eleven days (25 July 1995). The US was extremely angry at what was going on in Bosnia, and the Senate voted for the US to unilaterally withdraw from the arms embargo.

In early August, the course of war changed as the Croatian Army launched a full-scale offensive against the Krajina region which was under Serb control. But the real trigger came at the end of the month. The Markala marketplace in Sarajevo was shelled for the second time and 38 civilians were killed. The massacre took place at a time when the Western policymakers had already decided on the use of air force against the Serbs. Two days after the Markala marketplace massacre, the NATO began its air campaign 'Operation Deliberate Force'. The Republika Srpska Assembly announced that it had accepted the US proposal and agreed to negotiate. The proposal included the creation of a union between the Bosniak-Croat federation and the Republika Srpska. NATO continued its air campaign until September 12. In the meantime, an accord on 'basic constitutional principles' was produced. It called for mutual recognition of the existing borders of former Yugoslav republics and the



Bosnian state to comprise two ‘entities’: the Muslim-Croat Federation and a Republika Srpska.

The talks on the future political structure of Bosnia finally started among the three parties in Dayton, Ohio on 1 November. Everything was same in the sense that the difficulties and disagreements that had characterised the earlier efforts to broker a settlement were still in place. Negotiation was not easy because of differing interests of the parties. The Croats wanted the state power to be in the hands of the Muslim-Croat while the Bosnian Serbs preferred a strengthened Serb republic. The only party in favour of a unified Bosnian state was the Muslim side. These political differences marked the whole talks in Dayton.

The negotiations finally bore results and the peace agreement was initialled among the sides, namely the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia, on 21 November 1995. According to the agreement, Srebrenica and Zepa were to remain in the RS while Gorazde and a connecting corridor to Sarajevo would be under the Bosniac-Croat Federation control. The cease-fire and division of Bosnia-Herzegovina were to be guaranteed by an international force under the command of NATO. With the Dayton Peace Accords, the bloodshed that had been continuing for more than three years was finally brought to an end. After paying the price of Yugoslavia’s disintegration in a severe and bloody way, Bosnia was on the world stage as a product of the DPA.

State-Building in Bosnia-Herzegovina After Dayton Peace Accords

As noted in the introduction, after the signing of the DPA, third-party state-building began in Bosnia. The international administration was established as part of the peace process. The warring sides remained intact after the fightings stopped, and the international community, in the form of a high representative, was given the authority to “monitor” the implementation of the peace settlement in Bosnia-Herzegovina; to “promote” compliance with the DPA; and to “report” periodically on their progress (Caplan, 2004). The new state that emerged on the international arena was the creation of the international community.

The framework drawn with the DPA paved the way for a strong presence of the international community in BiH. Many organisations and agencies contributed to the reconstruction of the country in various fields. Among those the Office of the High Representative (OHR) has a special place because, as the guarantor for the implementation of the civilian aspects of the DPA, it has a direct role in the administration of the country. Others such as the OSCE and the EU assisted BiH in its recovery as well yet, for the purposes of the current study, only the place and role of the OHR is elaborated.

In the DPA, the Office of the High Representative (OHR) is designated as the *ad hoc* international agency responsible for overseeing the implementation of the civilian aspects of the Peace Agreement. At the same time, the High Representative (HR) is supposed to be a coordinator of the activities of the civilian organisations and agencies in BiH. Since the DPA was signed, six people have worked for as the HR.³

³ The HRs, who have been in office, are as follows: C. Bildt (December 1995-June 1997), C. Westendorp (June 1997-July 1999), W. Petritsch (August 1999-May 2002), P. Ashdown (May 2002-January 2006). The fifth one,



The HR, as Caplan (2004) notes, has a chief state-building function and the mandate is clearly stated in Article 2 of the Annex 10 of the DPA (the Agreement on Civilian Implementation). Among the duties of the HR, monitoring the implementation of the peace settlement; maintaining close contact with the parties to the Agreement, to promote their full compliance with all civilian aspects of the Agreement; and coordinating the activities of the civilian organisations and agencies in BiH to ensure the efficient implementation of the civilian aspects of the DPA come to fore (*The Mandate of the OHR*, http://www.ohr.int/ohr-info/gen-info/default.asp?content_id=38612).

Initially the HR had a comparatively weak mandate reflecting the conditions obtained at the end of the war. First of all, none of the parties to the war was satisfied with the constitutional arrangements stated in the DPA. Secondly, the USA was afraid of a situation in which a strong role for the HR and other civilian agencies responsible for implementing the DPA would involve NATO-led IFOR in efforts to support the authority of the HR. So the functions of the HR were deliberately limited. Moreover, the HR had to follow a state-building agenda that was based on a Dayton-mandated constitution which established weak and unstable state-level governmental structures (Caplan, 2004).

The authority of the HR was strengthened as a result of a reinterpretation of his powers by the successor to the ICFY, namely the Peace Implementation Council (PIC). PIC is “the ad hoc international body that comprises 55 states and organisations and has effective oversight responsibility for the international administration of Bosnia” (ibid: 56). It was established in Peace Implementation Conference held in London before the official signing of the DPA in December 1995. It operates with the support of the UNSC⁴ and plays a key role in the OHR’s involvement in BiH’s political life due to the fact that first it funds the OHR⁵ and secondly both the mandate and focus of the OHR have been determined in accordance with the requirements of the PIC.

The PIC meetings are quite important in the peace implementation process in BiH because crucial decisions are taken regarding the mandate of the OHR. For example, the PIC Bonn meeting in December 1997⁶ is significant because the HR was authorised by the PIC

C. Schwarz-Schilling, took over from Ashdown in January 2006. His tenure in office was supposed to end in June 2008 with the planned phase-out of the OHR from BiH. Yet, Schwarz-Schilling failed to achieve progress in the constitutional and police reform. Therefore, he was replaced by a Slovak diplomat, Miroslav Lajcak, who started his new job on July 2, 2007. Lajcak was succeeded by an Austrian diplomat Dr. Valentin Inzko who has been working as the HR since March 2009.

⁴ PIC consists of 55 countries and agencies that support the peace process in BiH in various ways. Among the PIC members and participants, the USA, Turkey, the Russian Federation, Nordic countries, the ex- Yugoslav republics and other Balkan countries, the West European countries such as Germany, France, the UK, Arab countries such as Saudi Arabia and Oman, and some of the international and regional organisations such as the IMF, NATO, OSCE, UN and the World Bank prevail. Apart from the members and participants, there are observers in PIC as well (*The Peace Implementation Council and its Steering Board*, www.ohr.int/pic/default.asp?content_id=38563)

⁵ As of today, the EU has the biggest share in the OHR budget with 53 %. It is followed by the USA with 22 %, Japan with 10 %, Russia with 4 %, Canada with 3.03 %, OIC with 2.5 % and the others with 5.47 % (*Status, Staff and Funding of the OHR*, www.ohr.int/ohr-info/gen-info/default.asp?content_id=38608).

⁶ Before the Bonn meeting the PIC met in Sintra, Portugal in May 1997. In this meeting, the international commitment to a united and multiethnic Bosnia was underlined and the PIC took a tough position on issues that



‘to remove from office public officials who violate legal commitments and the DPA, and to impose laws as he sees fit if Bosnia and Herzegovina’s legislative bodies fail to do so’.⁷ These are called the ‘Bonn powers’ and some of the HRs have used them.⁸ Despite the broad powers of the HR regarding the governing of BiH, the concept of domestic responsibility is important because both the governmental officials and the citizens are called on to take responsibility for the peace process and take part in resolving the problems that BiH is faced with.

As noted above, an essential part of the peace process in BiH is the international administration. The framework of international administration is basically the Office of the High Representative (OHR). Yet there is even a more specific example of the third-party State Building. This is the separate administration for the Brcko District (BD). In the rest of the paper, the past of the BD is analysed as well its present situation and future.

Brcko District: Yesterday, Today and Tomorrow

Brcko District BiH is a specific local community, self-governing administrative unit under sovereignty of Bosnia and Herzegovina. It is formally part of BiH entities, the Federation of Bosnia and Herzegovina, and the Republika Srpska. Brčko is town located in the north east of Bosnia and Herzegovina. Brcko has international border with Croatia and there is a river bridge border crossing in the centre of town. The border with Serbia is about 25 miles to the east. Brcko as a border town always had a special multiethnic character.

According to 1991 census *opstina* Brčko (SRBiH municipality, including both the town and outlying villages and rural areas) had a population of just under 90,000, of which 44 per cent were Bosniac (Bosnian Muslim), 25 per cent Croat and 21 per cent Serb. When the municipal elections were held in November 1990, a multi-ethnic successor to the Communist Party came top. The so-called 'League of Communists Party of Democratic Change' (later to become the Social Democratic Party SDP) won 27 per cent of the votes, the most of any party. However, nationalism had already so infected the Bosnian body politic that they could find no coalition partner. The three nationalist parties, the SDA, HDZ and SDS won 26 per cent, 22 per cent and 14 per cent of the vote respectively, and in parallel with the government at the SRBiH level, formed a ruling coalition in the Brčko area (Kadrić, 1999).

The war in Brčko began in May 1992. Bosniacs and Croats who lived in Brcko and who had not fled the town were forcibly expelled or killed. Concentration camps were established by Serb forces, specially in Brčko port. Luka Brcko was the one of the most horrible concentration camps in Brcko. According to the reports of prisoners the terrible things, tortures, mass rape and killing of Bosniacs had happened there. When the war formally

affect Bosnia’s current and would-be residents. One of those issues was the need to amend the property laws that constituted a big obstacle in the path of return (Cousens, 2001).

⁷ (*The Mandate of the OHR*. www.ohr.int/ohr-info/gen-info/default.asp?content_id=38612)

⁸ As set out in the Conclusions of the PIC Meeting, ‘The Council [PIC] welcomes the High Representative's intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of difficulties by making binding decisions, as he judges necessary ...’ (*PIC Bonn Conclusions*. www.ohr.int/pic/default.asp?content_id=5182).



was finished the devastation in Bosnia and Herzegovina and in partical Brcko was almost complete. Surrounding villages, most of buildings in the town were destroyed. All mosques in Brcko were destroyed by Serb forces. Most of Bosniacs and Croats who lived in Brcko before the war were displaced and thousands of them were killed. The whole situation that was happening in Bosnia and Herzegovina like genocide, killing and torturing people in concentrations camps, bombing towns in Bosnia and Herzegovina affected the US administration to act. And the US administration forced the parties to sign a peace agreement. The agreement that was signed was a complex document, with 13 annexes, all of which were drafted by American lawyers from the US State Department.

According to the DPA, Bosnia and Herzegovina ('*Bosna i Herzegovina*', or 'BiH') would become a sovereign state with the same international boundaries as the pre-war borders of the SRBiH. But it partitioned the country into two 'Entities', the RS and the FBiH, roughly along the ceasefire line (with some horse-trading). There would be a central government of BiH, but its authorities would be weak, and within strictly delimited spheres; the bulk of legal powers would lie with the Entity governments within those territories, over which they would have exclusive control. A new constitution for Bosnia and Herzegovina, agreed at Dayton, reflected these arrangements. For the domestic politicians, Dayton was just a waypoint in continuing the straggle, not an end point. Brcko, because of its location became a problem in negotiations. The parties could not agree which Entity the Brčko would be part of. The RS insisted on Brčko being within its Entity, because otherwise RS territory would be split in two and it could never become a credible independent state. The solution was to postpone resolution of the Brčko issue to binding arbitration at a later date. High Representative for Bosnia after an arbitration process took the decision of establishing of Brčko Distrct. The Brčko District was formed of the entire territory of the former Brčko municipality, of which 48% (including Brčko city) was in the Republika Srpska, while 52% was in the Federation of Bosnia and Herzegovina. After the war, the EU has maintained a diplomatic peace-keeping presence in the area.

Article V: Arbitration for the Brčko Area

- 1. The Parties agree to binding arbitration of the disputed portion of the Inter-Entity Boundary Line in the Brčko area indicated on the map attached at the Appendix.*
- 2. No later than six months after the entry into force of this Agreement, the Federation shall appoint one arbitrator, and the Republika Srpska shall appoint one arbitrator. A third arbitrator shall be selected by agreement of the Parties' appointees within thirty days thereafter. If they do not agree, the third arbitrator shall be appointed by the President of the International Court of justice. The third arbitrator shall serve as presiding officer of the arbitral tribunal.*
- 3. Unless otherwise agreed by the Parties, the proceedings shall be conducted in accordance with UNICTRAL20 rules. The arbitrators shall apply relevant legal and equitable principles.*
- 4. Unless otherwise agreed, the area indicated in paragraph 1 above shall continue to be administered as currently.*



5. *The arbitrators shall issue their decision no later than one year from the entry into force of this Agreement. The decision shall be final and binding, and the Parties shall implement it without delay.* (Parish, 2010: 70-71)

The parties were the Entities, not states, and the issue in dispute was control by the Entities within the Brčko area. The final decision about Brčko's status was made by tribunal on 5th March 1999. The decision was made in form of 'Final Award'. It was tried to create a special unit which would be outside the political control of the both Entities and which would be under oversight of Supervisor. The Final Award contained an annex that would set out details of the District's new institutional structure, including provisions on the Police, Judiciary, public properly, elections, education and the legal system. The Final Award promised that the annex would be subject to amendment after receiving representations from the parties. The basic concept is to create a single, unitary multi-ethnic democratic government to exercise, throughout the pre-war Brčko opština, those powers previously exercised by the two entities and the three municipal governments. The District would be what has come to be known in international law as a *corpus separatum*, a unit of territory legally and administratively completely separate from its two larger Entity neighbours. (Parish, 2010:70-71)

The Final Award unified the former Brčko opština (municipality) in a neutral and multi-ethnic "Brčko District of Bosnia and Herzegovina". At the heart of the award was the unification of the pre-war Brčko municipality, to which each entity delegated all of its powers of governance (Final Award, paragraph 9 in OHR, 2000:284). This decision meant that Brčko would nominally be part of both Entities, their territory uniquely overlapping, while the Bosnian state-level institutions would protect the interests of the District itself. This solution meant that the Entities would both 'gain' territory even as they 'lost' administrative authority (ICG: 7). This consolation was not enough to stop the resignation of Milorad Dodik in protest at what was perceived by many in the RS as the division of Serb territory in Bosnia. Serb discontent was exacerbated by the NATO air strikes in the Federal Republic of Yugoslavia (FRY) in late March 1999 at the culmination of the Kosovo crisis. (Jeffrey, 2006:12)

The Constitution of Bosnia and Herzegovina provided that there would be only two Entities; thus in the Final Award Owen himself was at pains to emphasise, rather unconvincingly, that the District he was creating would *not* be a third Entity. The role of the Supervisor, and that of the BrčkoOHR more broadly, has been to implement the Final Award (indeed, in September 2002 the OHR Brčko office, formerly 'OHR-North', changed its name to 'The Office of the FinalAward'). The legal structure initially created for the District, created by the first Supervisor and his staff, reflected this anticipation: domestic legal instruments would never refer to the Final Award and orders of the Supervisor, the presumption seemingly being that the international legal aspects of the District could simply be 'lifted off the domestic legal regime at some subsequent stage once the decision to terminate supervision had been made. But the anticipation underlying this theory - that the District could outlast the Supervisor — was perhaps one of the weaker points of the Final Award.



Brcko Distrikt became an internationalised territory. The interesting point is although it became an internationalised territory we can say that in the early period great success was made in Brcko District. According to Parish, the reason for this may have been that the Supervisor and his office were already established and recognised, the Supervisor's authority and reputation were acknowledged and through the Supervisor's mediation all three sides were already in dialogue and cooperating. Moreover the genuinely local actors from all three sides the people who were from Brčko before the war wanted to reconstruct the society in which they had previously lived. The three municipal administrations existing in the Brčko area were forcibly integrated. Significant budgetary and revenue reforms were also introduced that have proved an essential component of the District's financial self-sustainability. The first budget for the District was adopted in April 2001, and was balanced the first balanced budget in Bosnia and Herzegovina in living memory. A new budget law, adopted in November 2001, provided for the budgetary independence of the judiciary, yet another novelty and essential for preserving judicial independence. A District Revenue Agency was inaugurated, an independent executive institution responsible both for revenue collection and treasury functions, and with a compliance function to ensure transparent expenditure of District funds by government departments. A single bank account was used to collect and disburse public revenues, in contrast to a series of 'special purpose' accounts prevalent in the communist era that facilitated the mysterious spiriting away of public funds. Finally, Entity control over public revenues collected within the District was eliminated by abolishing the Entity payment bureaux. Brcko District became some sorts of laboratory for international development experts, keen to put their theories of neo-institutional economics into practice in a receptive microcosmic environment. (Parish, 2010)

All these reforms were adopted and accepted remarkably well at the time New District court buildings were constructed under a USAID project, at the American courthouses. Senior public officials were appointed by the Supervisor, including a mayor, vice-mayor and heads of government departments (OHR 2000b); an Assembly of 29 councillors with members from the full spectrum of local political parties (OHR 2000c) and all judges and prosecutors (OHR 2001a). An informal 'ethnic key' was introduced, under which jobs at all levels would be distributed in the ratio 2:2:1 (Bosniac:Serb:Croat). It is worth noting in passing that the system produced gross over-representation for Croats, who are estimated to amount to only 10 per cent of the post-war population of the District. Under the 1991 census, there were more Croats than Serbs 24 per cent compared to 21 per cent. However, few Croats who were expelled from or fled their homes in the Brčko area returned.

The Supervisor first chose the mayor, a moderate ex-communist Serb called Siniša Kisić. It was agreed that the first mayor had to be a Serb, so the international community perceived, to ease transition from the Serb dominance of Brčko town to multi-ethnicity. After that, appointment of other senior positions was fairly straight forward. B. Farrand appointed Mirsad Djapo the first president of the District Assembly. Djapo was a capable Bosniac politician who would subsequently become Brčko's first elected mayor. The Deputy Mayor was therefore to be a Croat, Ivan Krndelj, the former Chief of Police in Seonjaci. The heads of departments were subsequently divided up between the ethnic groups accordingly, to secure a fair balance of power. It is important to emphasise that the entire system was initially based upon dictatorship by the Supervisor. All positions of political power and authority depended upon the gift of the Supervisor and could be (and on occasion were)



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revoked by him. Farrand picked individuals whom he thought would cooperate and make the system work. Bill Farrand left in May 2000. The second Supervisor was Ambassador Gary Matthews, who stayed for only nine months from June 2000 to March 2001. After Matthews's departure, there was an interregnum of six weeks during which the long-standing German Deputy Head of BFAO, Gerhard Sontheim, acted in lieu. Sontheim, a former German military officer, joined the Supervisor's office in August 2000 and has worked in the role without interruption until the time of writing. He served as acting Supervisor twice, between Matthews and Clarke, from March to April 2001; and between Clarke and Johnson, from September 2003 to January 2004. The third Supervisor, Ambassador Henry L. Clarke, was appointed and served from April 2001 to September 2003. Clarke was a retired US diplomat. Throughout the course of the mandates of Matthews and Clarke there was consistently high economic growth in the District, in marked contrast to the rest of the country. The atmosphere was good and it encouraged many investors who thought that the District offered a degree of legal certainty, investment security, relative lack of corruption and high quality of interlocutors within the international community that were lacking elsewhere. Clarke, who had significant State Department experience in transition economies, initiated a programme of privatisation of former state-owned enterprises in the Brčko area. Virtually all such companies had stopped operating during the war and had not started again since, so they were little more than asset sales of whatever had not been damaged beyond repair (or stolen) during the war. These sales followed a significantly different model from privatisations elsewhere in the country, which failed to produce economic revitalisation because they merely consolidated political control of public companies (*Strategija Razvoja Brcko Distrikta za period 2000-2005*).

The educational reforms in Brčko had an important goal: to integrate the classes. In the first academic year following the new law, only the youngest class of children in each primary school (i.e. the class of children new to the school) would be integrated. In this way, school classes already constituted would not be disrupted and the onset of multi-ethnic classrooms would be gradual (*Lessons From Education Reform in Brcko; A report prepared by the OSCE Mission to BiH Education Department, October 2007*).

The other important thing that was positive were duties. Duties were also lower than anywhere else in the country. In this period Brčko became the principal crossing of choice for commercial vehicles in northern Bosnia, and the District collected customs revenues for its coffers far disproportionate to its size. As much as one third of all the oil imported into Bosnia and Herzegovina came through Brčko, and regular tailbacks of oil trucks at the border post became a common Brčko eyesore. By the time of Clarke's departure in September 2003 Brčko was the wealthiest place in Bosnia and Herzegovina, by a significant degree. It had the highest average wage in Bosnia and Herzegovina, of 690 Bosnian Marks, or KM (approximately 350 Euros) per month net, although this was due principally to civil servants' salaries being much higher than elsewhere in the country. The average monthly wage in the Federation at this time was 512 KM; in the RS 385 KM; in Sarajevo Canton 650 KM. The Mayor of Brčko remains the highest paid civil servant in the country; in 2007 his salary was 5,427 KM (approximately 2,800 Euros) per month net, more than the members of the tripartite State Presidency or the Chairman of the state Council of Ministers. The District also had the lowest official rate of unemployment in the country at around 45 per cent (although true unemployment rates are hard to calculate because of false benefits claims).



Economic growth in the District created a huge budget for District institutions: approximately 170 million KM for the calendar year 2003, roughly the same as the budget for the same period for Tuzla Canton, an area in which approximately seven times as many people live. Public sector wage inflation in Brčko District, together with a large District budget to distribute to interested political groups, had been a deliberate policy to 'buy' multi-ethnic cooperation. It was also intended to reduce corruption on the theory that well-paid people do not need to take bribes, although as the subsequent chapters show, this theory was not born out in practice. Although many complained about the bloated civil service in excess of 3,000 people, at around 3 per cent of the population this was somewhat lower than the Bosnian average (around 5 per cent), itself not untypical of transition economies, or even on the low side (ESI 2004b).

What distinguished District institutions, and created incentives for public sector cooperation, were high salaries and a large government budget. In conclusion, Brčko was an astonishing success, testament to what skilled and committed international community officials can do in a small area, unencumbered by democratic institutions (there had been no elections since the District was established) and without external political interference. Brcko district was at that time the most attractive place to live in in whole Bosnia and Herzegovina.

In 2006, under the Supervisory Order all "Entity legislation in Brčko District and the IEBL" were abolished. The ruling made by the Brčko Supervisor Susan Johnson abolishes all Entity Laws in the District also abolishes the Entity Border Line. The ruling makes the Laws of the District and the Laws of the State of Bosnia and Herzegovina (including the laws of the Socialist Republic of Bosnia and Herzegovina) paramount within the District.

In its final years (from mid-2006), the turning-down and closure of OHR in general and Brčko supervision in particular were characterised by bewildering incompetence on the part of the international community. There was the stop-start approach towards closure of the mission: a mere eight months passed between Schwarz-Schilling announcing its closure (June 2006) and conducting a sudden volte-face announcing its extension (February 2007). Right up until January 2007 the decision to extend OHR's mandate was still not being seriously entertained. In the end, the extension decision was last minute and ill thought through. Rumours about the closure of OHR had circulated from 2005, and repeated extensions of its mandate created directionless leadership and prevented the office from being effective. Because there was a three-year period in which everyone anticipated its imminent closure, domestic politicians started ignoring it, confident that they could unwind whatever it imposed once it had shut its doors for good. Its staff was perpetually on the lookout for new jobs and lost faith in its goals. A succession of High Representatives meant repeated changes in leadership direction and long learning processes as each one arrived. It took about nine months for any new international official to learn enough about Bosnia to be stripped of initial optimism and confidence in the country's future. Because foreign governments had lost interest in Bosnia, the diplomats in charge of the projects within Bosnia became second-rate; the best people were not sent, and those who were had no clear instructions. Constitutional amendments relating to Brčko District were eventually enacted in March 2009, but they fell far short of that necessary to secure the District's future. (Parish, 2010)



Achieving little more than recognising its existence, they left the District's legal status wide open, declining to address the 'transfer of competences controversy' and neglecting to provide the District with representation in state institutions. Sensing for some time that the end was near, domestic District politicians had started informally discussing partition of Brčko, and areas of Bosniac, Serb and Croat dominance were emerging in different parts of the town. By the beginning of the September 2007 school year, in an ominous indication of the District's future, schools were starting voluntarily to re-segregate themselves, with only 12 per cent of primary school children attending a school in which the majority ethnic group in that school did not outnumber all other pupils combined by a ratio of 2:1 or more. This had been achieved in part by a proliferation of small schools in mono-ethnic villages and in part by the introduction of a policy allowing parents to choose to send their children to any school they wished within the District, leading to self-segregation within the schools in multi-ethnic areas. By mid-2008, local politicians started talking openly of Brčko being absorbed either into the RS or into Tuzla canton (Dnevni list 2008), something unthinkable even a year previously. The office dropped into free fall with no direction and no valuable role. Local people still respected the institution, but local officials all but ignored it and were busy fighting out their ethnic vendettas and pursuing their own corruption agendas virtually unchecked. OHR Brčko staffs were still drawing their salaries, but they were just waiting for the final axe to fall. This mirrored the picture of OHR in the country as a whole. In appearance still pushing police reform as a precondition for Bosnia's signature of an SAA with the European Union, the mission was achieving nothing and became increasingly irrelevant. PIC meeting on 23 May 2012, it was decided to suspend, not terminate, the mandate of Brcko International Supervisor. Brcko Arbitral Tribunal, together with the suspended Brcko Supervision, will still continue to exist.

The District's best hope for a successful future is the possibility that it can fit into a newly agreed constitutional order for Bosnia and Herzegovina, as a local region or a federal unit. It must therefore survive in its current legal limbo and politically unstable form until such time as national politicians representing all three ethnic groups may reach a 'post-Dayton' deal on the constitutional future of the country. It is far from certain that Brčko can survive that long without a Supervisor. If the District remains wealthy, and local political compromises can continue to be ironed out between domestic politicians, it is conceivable. But it is hard to foresee such a rosy scenario when it is unrealistic to anticipate it elsewhere in the country.

The October 2008 elections results were against the coalition. State institutions comprise a coalition of nationalist parties with no common points on their political agendas, and are notoriously dysfunctional as a result; without continuing intense international scrutiny, it is hard not to see District institutions going the same way. What we can hope is that Brčko remains low priority for the state and the Entities, so that for the time being they leave it alone. If it happens so, local politicians might continue compromising with one another in a rough and ready pragmatic way. But if one or another national political leader decides that fomenting unrest in Brčko is in his own political interests, and directs the local Brčko politicians under his influence to create friction, Brčko could quickly collapse irrespective of the levels of competence and pragmatism otherwise exhibited by local politicians when unsupervised.



Any move by senior RS politicians to push for RS independence would probably create renewed armed conflict in Brčko. Protecting the reforms of Brčko, and building on them, will require close articulation with strengthened state-level Bosnian institutions. Strengthening the Bosnian state is a strategic objective of the High Representative and constitutes a significant part of the requirements for Bosnia's accession to the EU. It is the nature of this relationship between Brčko and the Bosnian state (and the state and the EU) that will determine whether Brčko becomes a model of peace-building for the next 10 years after Dayton, or an anomalous territory which has only succeeded through intense international intervention and the suspension of antagonistic politics (Jeffrey, 2005:21). What we can say in the end is that Brčko District was a center for different state building programs run by foreign governments, particularly the United States.

Conclusion

As the war came to an end in Bosnia, a new state entered the international arena as an example of third-party state building. The state structure established with the DPA is complex indeed. The Bosnian state has two entities, one self-governing unit (Brčko District), and three constitutions. One of the entities is a federation and the other entity acts as if it is an independent state. The role of the international community is quite important. Although the OHR is an *ad hoc* agency formed to oversee the implementation of the civilian aspects of the DPA, it plays a key role in governing of the country because it is the High Representative who has the last word regarding several issues. The plan was to terminate the OHR in mid-2008, but it has not still taken place. The HR is a same time the EU Special Representative. If the OHR is terminated, the tasks will be transferred to the EUSR. This means that the international community will continue to be present in Bosnia in the near future.

Brčko District is even a more specific example of third-party state building. It has a single and unitary Government working under the auspices of an international supervisor. So the District became an internationalised territory. Interestingly, albeit being an internationalised territory we can say that in the early period great success was achieved in Brčko District. Taking this success into consideration, if the Brčko District gains real support and engagement of the International Community, local politicians including the politicians of two Entities, it can be again a role model for the whole county. But the most important thing is to strengthen the state of Bosnia and Herzegovina because a strong Bosnia and Herzegovina means a strong Brčko.

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