

How the Brčko District became the most successful case of post-war peacebuilding
in Bosnia, and why it may ultimately fail

Adam Moore
Department of Geography
UCLA
amoore89@gmail.com
conflictgeographies.org

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Abstract

The Brčko District in northeast Bosnia is a remarkably successful example of post-war peacebuilding in a country with few such stories. In this paper I identify three primary factors which facilitated peacebuilding efforts in Brčko: the design of local political institutions, sequencing of political and economic reforms, and the distinctive practice and organization of international peacebuilding efforts in the District. Following this I offer a more pessimistic assessment of the sustainability of post-war peacebuilding in Brčko, especially given continued instability in Bosnia as a whole. This argument is based upon extensive, multi-year, fieldwork in Brčko, consisting of interviews, ethnography and archival research.

Introduction

If in the beginning of 1996 you would have asked informed observers to nominate the places in Bosnia in which peace and prosperity would be greatest a decade's time hence, and those in which they would be furthest from taking root, the town of Brčko in northeast Bosnia would have been much more likely to make the latter list than the former. Yet in less than a decade Brčko was being held up, in the words of the influential think tank, International Crisis Group, "both as the shining example of international stewardship in BiH [Bosnia and Herzegovina] and a model for emulation by the rest of the country."¹

Brčko is indeed a remarkably successful example of post-war peacebuilding in Bosnia, a country with few such stories. The site of some of the most vicious armed conflict and ethnic cleansing of the war, control of the town and its immediate surroundings was such a contentious issue between the Republika Srpska and Federation—Bosnia's two sub-state entities—that it threatened to derail the entire peace agreement at Dayton in 1995. At the last minute, and under pressure from the Americans who were threatening to close down the talks, the parties agreed to have the territorial dispute settled by international arbitration at a later date. In early 1997 the arbitral tribunal issued an initial ruling which placed Brčko under international supervision for an indefinite period of time. Two years later the tribunal issued a 'final award' which ruled that Brčko should become a local, multiethnic unit of government, which would be developed by the Office of High Representative (OHR) supervisory regime. The two entities would jointly hold the territory of the resulting Brčko District 'in condominium' but they would have no legal or political authority within its borders (Figure 1).

The transformation of Brčko in the years since this ruling is striking. Thousands of Croat and Bosniak residents have returned to their pre-war homes in downtown Brčko, while a number of ethnic Serb refugees originally from Croatia and cities in the Federation have also permanently resettled in the area. The District's multi-ethnic institutions operate well compared to other municipalities in Bosnia, contributing to some of the highest levels of economic development in the country. Brčko also boasts the only integrated school system in Bosnia, which was established a decade ago. In this paper I identify three primary factors which facilitated these achievements: the design of local political institutions, sequencing of political and economic reforms, and the distinctive practice and institutional organization of international peacebuilding efforts in the District. Following this I offer a more pessimistic assessment of the sustainability

¹ International Crisis Group, *Bosnia's Brčko: Getting in, Getting on and Getting out*, June 2, 2003.

of peacebuilding in Brčko, especially given continued instability in Bosnia as a whole. The three key factors which I single out are central themes or points of debate among contemporary practitioners and scholars, and thus this analysis of successful peacebuilding in Brčko—as well as the frailty of such success—has implications that extend beyond Bosnia.

Bosnia and Herzegovina



Figure 1

Why Brčko succeeded

So what explains the relative success of peacebuilding in the Brčko District to date? To answer this question it is first necessary to dispel the oft repeated claim that Brčko's transformation is a product of the degree of international resources—both of aid and personnel—expended in the area. This 'capacity' explanation is repeatedly cited by international officials in Bosnia as the primary cause of peacebuilding success in the District and has also been forwarded by Michael Doyle and Nicholas Sambanis in their influential analysis of peacekeeping missions.² However a

² Michael Doyle and Nicholas Sambanis, *Making War and Building Peace: United Nations Peace Operations* (Princeton: Princeton University Press, 2006).

brief comparison of Brčko and Mostar—a similarly divided, multi-ethnic, city in southern Bosnia—is sufficient to illustrate the weakness of this argument. To begin Brčko has not received a disproportionate amount of aid relative other areas in Bosnia. Former High Representative Paddy Ashdown has estimated that Bosnia has received \$16 billion in aid since the end of the war. He calculates Brčko's share to be only \$70 million while Mostar has received an estimated \$300-400 million, despite the fact that the two municipalities are similar in population (~85,000 in the Brčko District and 105,000 in Mostar).³

Doyle and Sambanis also highlight the significance of a robust military and civilian peacebuilding presence (SFOR troops, United Nations police monitors, expert consultants in administrative reforms, etc) in Brčko. Again a comparison with Mostar casts doubt on this being a decisive factor. Throughout the entirety of SFOR's mission in Bosnia a substantially greater number of military peacekeepers were stationed in Mostar than Brčko, due to the former's site as the headquarters of SFOR's southern multi-national division in Bosnia. International civilian-led peacebuilding in Mostar has also been similar in intensity to that in Brčko—and for a much greater period of time. For example, at the height of operations from 1994 to 1996 the EU-led administrative and police missions in Mostar were staffed with more than 70 civilian experts, over 180 police officers and roughly 300 local staff.⁴ A comparable civilian peacebuilding presence was not established in Brčko until late 1997. In short, international capacity may be a necessary condition of successful peacebuilding, but it is far from sufficient.

If capacity is not an adequate explanation, what is? There are, I believe, three key factors. The first is institutional. Specifically, the District has been designed as an explicitly integrated political entity, in sharp contrast to the division of the rest of the Bosnia along ethno-territorial lines as prescribed by the complex consociational framework negotiated at Dayton. To date this integrative approach pursued in Brčko has been far more effective in mitigating conflict and producing effective multi-ethnic institutions.

Consociational compacts are based upon two broad principles: 1) proportional sharing of power, representation, and resources organized along ethnic lines, and 2) ethnic autonomy.⁵ Several measures are recommended in order to achieve the first goal, foremost being a proportional representation electoral system, governing coalitions consisting of representatives from all major ethnic factions—an 'elite cartel'—mutual group vetoes on major political issues and allocation of financial resources and civil service positions in proportion to ethnic membership in the country.⁶ Ethnic autonomy can be created through either corporate means, such as separate educational systems, independent cultural affairs councils, ethnically-based courts with jurisdiction over family or religious laws and language rights policies such as separate broadcast networks for different linguistic communities, or territorially, through the use of ethno-federalism as has been the case in Bosnia. In sum, the central aim of consociationalism is the

³ Hans Binnendijk, Charles Barry, Gina Cordero, Laura Nussbaum, and Melissa Sinclair. *Solutions for Northern Kosovo: Lessons Learned in Mostar, Eastern Slavonia and Brčko* (Washington D.C.: National Defense University, 2006), p. 44.

⁴ Sarah Reichel. *Transnational Administrations in Former Yugoslavia: A repetition of Failures or a Necessary Learning Process Towards a Universal Peace-building Tool After Ethno-political War?* (Berlin: Wissenschaftszentrum Berlin für Sozialforschung, 2000), p. 14: <http://bibliothek.wz-berlin.de/pdf/2000/p00-305.pdf>

⁵ Arend Lijphart, "Constitutional Design for Divided Societies," *Journal of Democracy* 15, No. 2 (2004): 96-109.

⁶ Arend Lijphart, "Consociational Democracy," *World Politics* 21, No. 2 (1969): 207-225.

organization of ethnic groups into separate political, cultural and territorial spheres, with ethnic elites designated the role of moderating brokers facilitating political bargaining between ‘their’ respective communities and providing the connective tissue that binds a divided state together.

Bosnia has been described as a "classic example of consociational settlement."⁷ At the state level the full suite of consociational measures guarantees the participation of all three ‘constituent peoples’ in Bosnia’s political process, while ethnic autonomy is provided by the division of the country into two entities, the Republika Srpska (RS) dominated by Bosnian Serbs, and the Bosniak-Croat Federation. The Federation is further divided into eight ethnically homogenous and two heterogeneous cantons, with the latter two in turn devolving significant political authority to their (largely) homogeneous municipalities. This ethno-federal consociational framework has done little to reduce ethnic tensions or produce a functional multi-ethnic state. Political paralysis is endemic as the country’s ruling nationalist elite have consistently proven incapable of achieving consensus on nearly any political issue. Moreover, the systematic privileging of ethnicity has marginalized parties that run on non-ethnic or multi-ethnic platforms and has stymied attempts by civil society activists to promote forms of political and social association that cross-cut the dominant ethnic cleavages. Instead nationalist parties from all three communities have continued to pursue divisive policies aimed at maintaining control over what they perceive as their respective ‘ethnic territories.’ Indeed, the perpetuation of dueling ethno-territorial projects is the defining characteristic of Bosnia’s post-war consociational system.

In contrast to the rest of Bosnia, where the division of the country along ethno-territorial lines has been instituted in the pursuit of the consociational goal of ethnic autonomy, the Brčko District was purposefully designed with the aim of achieving political and social integration of ethnically divided territory. This principle is clearly outlined in the arbitral tribunal’s Final Award which states:

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.⁸

Rather than decide how to best partition the territory of Brčko between the two sides—as was originally envisioned when international arbitration was proposed at Dayton—the arbitral tribunal effected a novel separation of territory from political authority in which Bosnia’s two entities jointly hold the territory of the entire Brčko area ‘in condominium’ but have no legal authority within the borders of the autonomous District government.

Unification of the three ethnically controlled territories in Brčko was a monumental task. Not only did it require the merger of three separate municipal authorities, police and judiciary into a single District government, it also entailed drafting a District Statute (in effect a local constitution) and reforming the entire legal and political system in the Brčko area, which was a contradictory hodgepodge of Yugoslav and entity-based laws. Perhaps the most ambitious task was the unification of the separate school systems. Education is one of the most contentious issues in Bosnia and integration been fiercely fought in the few remaining ethnically mixed

⁷ Sumantra Bose, *Bosnia after Dayton: Nationalist Partition and International Intervention* (London: Hurst and Company, 2002), p. 216.

⁸ *Final Award of the Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brčko Area*, March 5 1999: Paragraph 36. http://www.ohr.int/ohr-offices/brcko/default.asp?content_id=5358

communities in the country, as it was when first proposed in Brčko in 2000. However the following year OHR Brčko successfully integrated the District's high schools under a single multiethnic curriculum, which has operated without serious incident in the decade since. This remains the only genuinely integrated school system in the country, providing an important setting for constructive, daily socialization across ethnic lines for the current generation of youth who have no personal memory of the war.⁹

To date this integrative approach adopted in Brčko has been quite successful. The police, courts, schools and administrative institutions are not just fully integrated, they also exhibit a high level of professionalism compared to the rest of Bosnia. In particular the institutions most responsible for upholding the 'rule of law'—the District police and judiciary—are the most politically independent in the country, which contributes to a relatively high sense of security for people of all ethnic backgrounds in Brčko, thereby facilitating reconstruction and reintegration. This has not gone unnoticed by District residents: polls conducted by the National Democratic Institute and other international organizations in Bosnia have shown that these institutions consistently receive high marks for trustworthiness and overall approval. The District also attracts a disproportionate amount of international investment compared to the rest of Bosnia due to its favorable reputation as a stable and safe place to do business, which contributes to one of the highest levels of economic development in the country.

The second reason behind peacebuilding success in Brčko involves the sequencing of political, economic and institutional reforms. While post-war peacebuilding in Bosnia resulted in rapid elections and privatization of public resources—to the extent that both developments preceded the creation of functional institutional frameworks—Brčko followed a path of intensive and lengthy institution-building prior to political and economic liberalization. As a result the temporal order of peacebuilding in Brčko has closely resembled Roland Paris' prescription of 'institutionalization before liberalization.'¹⁰

This was not a planned outcome, but rather the contingent result of independent decisions made by Brčko's first four supervisors—often in direct conflict with instructions from their distant superiors. For example, one of the earliest orders the first supervisor, Robert Farrand (1997-2000), issued upon arriving in Brčko was an indefinite ban upon privatization within RS-controlled Brčko town.¹¹ While this greatly disappointed his superiors in Washington D.C. who were pushing for rapid privatization in order to spur economic development, Farrand reasoned that absent credible institutions and a definitive legal framework privatization in Brčko would consist of little more than the looting of public resources.¹² Farrand's ban on privatization

⁹ The Gymnasium (high school) in Mostar has also been administratively and physically united, but Croat and Bosniak students still have a separate curriculum and classes for most subjects.

¹⁰ Roland Paris, *At War's End" Building Peace after Civil Conflict* (Cambridge: Cambridge University Press, 2004).

¹¹ OHR Brčko, *Supervisory Order*, June 11, 1997.

¹² Interview with Robert Farrand: February 2008. To provide an example of the pressure on Farrand to pursue privatization in Brčko, the 1998 Supplemental Award "authorized and encouraged" him to, "establish a program of privatization of state-owned and socially-owned enterprises in the area." *Supplemental Award of the Brčko Arbitral Tribunal for Dispute over the Inter-Entity Boundary in Brčko Area*, March 15, 1998: Paragraph 25.

http://www.ohr.int/ohr-offices/brcko/arbitration/default.asp?content_id=5345

continued until late 2001 when Brčko's third supervisor, Henry Clarke (2001-2003), ordered District authorities to establish a separate office to oversee privatization efforts.¹³

International oversight of privatization in Brčko did not end with Clarke's 2001 decision either. Prior to the formation of the first elected District government in 2004 staff from the economic department in OHR Brčko insisted on carefully vetting every proposed privatization with the fledgling District office. While this hands-on oversight slowed the process it ensured better results than elsewhere in Bosnia. Brčko also benefited from institutional structures which were not only rational on paper, but also effectively administered:

By the time of the first privatization negotiations in 2002, Brčko District had an independent, reformed and fully-functioning judiciary—applying completely new civil and criminal codes that later became models for the rest of Bosnia and Herzegovina. The District government was becoming known for its business-friendly attitude and procedures, having abolished many unnecessary regulatory obstacles before the rest of the country. Brčko also had a modern bankruptcy law and judges were being trained in the new procedures.¹⁴

Finally, Clarke—as Farrand before him—actively resisted implementing certain orthodox neo-liberal economic advice coming from outside consultants. In particular he opposed what he characterized as 'risky' proposals to privatize natural monopolies such as Brčko's port and water and electricity distribution networks, arguing that the District did not possess a sufficiently rigorous regulatory regime to protect the public interest against private providers of these services.

Brčko's international overseers pursued an even more deliberate 'go-slow' strategy concerning political liberalization, as the first Brčko District elections were not held until 2004. Shortly after the District was formed OHR Brčko began to come under pressure to hold elections from both local and international interests. In early 2001 SDS—then the dominant nationalist Serb party in Bosnia—publically called for the organization of the first poll in conjunction with municipal elections scheduled across the rest of Bosnia in 2002. Behind the scenes Farrand's successors Gary Matthews (2000-2001) and Clarke were receiving similar suggestions from OHR Sarajevo and the State Department. As with privatization they resisted these calls, citing insignificant time to establish effective institutions and allow for the emergence of political leaders ready to represent District rather than entity interests.¹⁵ Ultimately Clarke was successful in persuading his superiors to delay elections in Brčko until October 2004. The resultant District government was a multi-ethnic coalition led by SDP, the most prominent non-nationalist party in Bosnia. Thus in contrast to the rest of Bosnia where early elections further entrenched nationalist

¹³ OHR Brčko, *Supervisory Order On The Conduct Of Privatization Of The State Capital Of Enterprises In The Brčko District Of BiH*, September 19, 2001. http://www.ohr.int/ohr-offices/brcko/bc-so/default.asp?content_id=5973

Earlier that summer Clarke had annulled several attempted 'capital for debt' privatizations which were little more than schemes to transfer remaining assets from public companies in Brčko to private entities in the RS and Serbia: "Consolidating Supervisory Order on Privatization in the Brčko District of Bosnia and Herzegovina," *OHR Brčko*: August 14, 2001. http://www.ohr.int/ohr-offices/brcko/bc-so/default.asp?content_id=6062

¹⁴ Henry Clarke, *Privatization in Brčko District: Why it is Different and Why it Works* (East European Studies at the Woodrow Wilson Center: Occasional Paper #72, 2004), p. 16.

¹⁵ OHR Brčko, *Brčko Weekly Report #41*, March 18-24, 2001; OHR Brčko, *Brčko Weekly Report #66*, September 9-15, 2001 (copies on file with author).

hardliners who came to power during the war, delayed elections in Brčko facilitated the emergence of alternative political figures who had proven themselves during the first four years of the District's existence.

Finally, the peace process has been profoundly influenced by international peacebuilding institutions and practices specific to Brčko. In particular, the OHR supervisory regime established by the arbitral tribunal possessed a strong mandate and significant political independence which improved the cohesion of peacebuilding efforts in the District and facilitated the development of more productive international-local relations than elsewhere in Bosnia. The initial award in 1997 gave Brčko's supervisory regime responsibilities and powers that were without precedent for international officials at the time in Bosnia. To facilitate the creation of multi-ethnic institutions it was accorded the authority to "promulgate binding regulations and orders" which would supersede "any conflicting law."¹⁶ The Final Award two years later further expanded the powers and responsibilities of OHR Brčko in the District. It was charged with writing a statute for the new District government; appointing an interim assembly; setting up a law review commission to rewrite the laws inherited by the entities; establishing an independent tax system and budget authority; constructing new, multi-ethnic institutions; and deciding when the Inter-Entity Boundary Line (IEBL) had no legal significance—and thus ceased to exist—within the Brčko area.¹⁷ As former OHR Brčko legal advisor Matthew Parish has put it, the Final Award makes the supervisor the "final authority in the District on virtually everything."¹⁸

These broad supervisory powers have been central to the success of peacebuilding in Brčko. To begin they concentrated policy authority in OHR Brčko's hands at a level unmatched in other local field offices in Bosnia. As former supervisor Henry Clarke has observed about the internal dynamics of OHR elsewhere in the country at the time:

...the 2001 Office of the High Representative in Bosnia and Herzegovina was a large, centralized staff in Sarajevo, which shared little authority and information about its plans with a deliberately weak set of field offices.¹⁹

The OHR Brčko office in contrast was relatively powerful and independent since its source of authority derived from the arbitral tribunal's awards. This political independence afforded supervisors has been crucial, as it allowed them to resist policy prescriptions from their putative superiors—like the calls for rapid privatization and elections mentioned above—which were inappropriate for the particular circumstances in Brčko. Additionally, the clear place-based hierarchy among international organizations in the District facilitated the coordination of peacebuilding activities and gave the supervisory regime significant influence over other Brčko-

¹⁶ *Award of the Arbitral Tribunal for the Dispute over the Inter-Entity Boundary in the Brčko Area*, February 14, 1997: Paragraph 104. http://www.ohr.int/ohr-offices/brcko/arbitration/default.asp?content_id=5327

¹⁷ The decision to annul the IEBL, and all remaining entity legislation within the District, was finally made in 2006. See, *OHR Brčko*, "Supervisory Order Abolishing Entity Legislation Within Brčko District and Declaring the Inter-Entity Boundary Line to be of no Further Legal Significance Within the District," August 4, 2006: http://www.ohr.int/ohr-offices/brcko/bc-so/default.asp?content_id=37764

¹⁸ Matthew Parish, *A Free City in the Balkans: Reconstructing a Divided Society in Bosnia* (London: I.B. Tauris, 2009), p. 107.

¹⁹ Henry Clarke, *Brčko District: An Example of Progress in Basic Reforms in Bosnia and Herzegovina* (Presentation to the Woodrow Wilson Center for Scholars, Washington D.C., October 25, 2004), p. 2. www.wilsoncenter.org/topics/pubs/MR293Clarke.doc

based international staff. Finally, the District's unique status also contributed to the tendency among internationals working there to view themselves as part of a coherent 'Brčko team,' an attitude which early supervisors shrewdly cultivated.

Further improving the coordination of peacebuilding efforts in Brčko is the fact that the relationship between civilian and military actors was also unusually strong over the years. Robert Farrand has identified this as one of the key reasons for his success:

It is crucial, insofar as getting results on the ground: the alignment of military and civilian objectives on the broader scale, and then the alignment in each of these little regional areas....you have to spend a lot of time talking, the different cultures.²⁰

While it helped that Farrand had served in the armed forces prior to taking up a diplomatic career, thus helping him better navigate the 'different cultures,' there is a second reason military-civilian coordination was superior in Brčko: From the beginning it has been something of an 'American' project in which both the Supervisor and local military commander were always Americans, unlike elsewhere in Bosnia where civilian and military posts have typically been headed by officials from different European countries. The point is not that Americans have been more effective than Europeans in Bosnia. Rather, it is much easier to bridge the civilian-military divide in peacebuilding environments in the absence of national differences which almost inevitably complicate matters.

The cultivation of good working relationships between local actors and international officials has also been fundamental to the success of peacebuilding in Brčko. Henry Clarke has perceptively observed that:

For Brčko, there could be no question of "top-down" versus "grass roots" reforms. To succeed, every major reform had to be introduced and sold at every level... To that end, coordinating at the local level was essential. *It is easier to lead, to coordinate and to negotiate reforms when you are meeting regularly, face to face, with all the key actors.* (italics mine)

In contrast, elsewhere in Bosnia:

OHR in Sarajevo could develop and even impose new laws but relied almost entirely on existing Bosnian institutions to implement them. The High Representative at that time, Wolfgang Petritsch, recognized and often cited the need for "ownership" of reform by the local people, but he did not have an effective mechanism for achieving it. In Brčko, we could not guarantee "ownership," but we could make reforms work, and that did give us support for more reforms.²¹

As Clarke points out, characterizing peacebuilding efforts as either top-down or grass-roots misses the point. More important for the successful development and implementation of reforms are productive relationships that can only be established through regular interaction and dialogue. Even during my main periods of fieldwork in Brčko (2005-2008)—a time in which the supervisory regime had pulled back dramatically from intense reform and oversight of District institutions—there was constant communication between members of the office and local authorities, either of which could arrange a meeting within a day with a simple phone call. This may seem trivial, but it is a stark contrast with local-international relations elsewhere in the

²⁰ Interview with Robert Farrand: February 2008.

²¹ Clarke, "Brčko District: An Example of Progress..." p. 2.

country. In Mostar, for example, a meeting between international and local officials would typically take weeks to arrange—if it ended up happening at all.²²

A fundamental reason for the development of unusually close international-local relations in Brčko is that the Final Award in effect ‘localized’ the supervisory regime by embedding it in the new District’s institutions and—more importantly—giving it the responsibility of protecting this fledgling political unit from the predatory entities in Bosnia, both of which sought to undermine the District’s independence. In doing so it created an enduring political alliance, based upon shared goals between the supervisory regime and political and economic elites in the Brčko District, which best resembled a patron-client relationship. My understanding of patron-clientelism here roughly follows James Scott, who defines it as:

... a special case of dyadic (two-person) ties involving a largely instrumental friendship in which an individual of higher socioeconomic status (patron) uses his own influence and re-sources to provide protection or benefits, or both, for a person of lower status (client) who, for his part, reciprocates by offering general support and assistance, including personal services, to the patron.²³

The key difference with Scott’s definition being that OHR Brčko’s ability to play the role of patron was based upon its higher political rather than socio-economic status—in particular the relative political independence afforded the supervisory regime by the arbitral tribunal’s awards. The resulting dynamic was that OHR Brčko used its influence and authority to provide protection for the District in the latter’s battles against the entities and their frequent ally OHR Sarajevo, with District authorities reciprocating by supporting—or at the least not actively opposing—the various substantial peacebuilding reforms which were being pushed by the supervisory regime and other international officials in Brčko.

I’ll give just one brief example to illustrate this relationship. By 2001 the Brčko District had established itself as a favored entry point for cross-border trade due the development of an efficient and relatively non-corrupt customs point with Croatia and marginally lower customs fees. At the time customs revenue was not shared, but belonged to the governing authority—in this case the District—of each individual customs point. Therefore these revenues made up a significant portion of the District’s budget. However in the view of the cash-strapped entity governments Brčko was stealing precious revenues from them. Brčko-based oil distributors in particular had become major importers and sellers of oil products in Bosnia. Besides channeling a significant amount of revenues through the District’s customs point their success also cut into the profits of politically-connected, entity-based, oil cartels. In October 2001 both the RS (formally) and Federation (informally) imposed prohibitions on oil distribution in their territories from non-entity companies and enforced this with police checkpoints on the main roads leading out of Brčko.²⁴

Since the District had no representation within the state-level institutions controlled by the entities it had no way of defending itself against these actions. Consequently it fell to the

²² Interview with Marko-Antonio Brkić, OHR Mostar: April 2007.

²³ James Scott, “Patron-client Politics and Political Change in Southeast Asia,” *American Political Science Review* 66, no. 1 (1972): 92.

²⁴ OHR Brčko, *Memo: End of Inter-Entity Trade in Petroleum Products: RS Establishes Monopolies, Police Harass Brčko Truck Drivers*, November 26, 2001 (copy on file with author).

supervisory regime to fight for the District's interests. During this oil 'war' then-supervisor Clarke was in constant contact with business and political elites in the District, inquiring about concerns and providing updates about the progress of negotiations, which eventually led to the creation of a state-level office for coordination of cooperation with the Brčko District.²⁵ In return for such actions elites from all three ethnic communities became strong supporters of the supervisory regime. For example, in late 2006, when OHR's departure from Bosnia appeared imminent, several businessmen in Brčko I interviewed were discussing proposals to extend the supervisory mandate beyond the end of the organization's existence. The reasoning behind this being that the continued presence of the supervisory regime remained necessary for economic and political protection against the entities and the attraction of further foreign investment.²⁶

Why Brčko may fail

If post-war peacebuilding in Brčko has been so successful to date why am I pessimistic about the sustainability of these achievements? There are three reasons. First, while Brčko's multiethnic schools, police, courts and municipal administration are among the most professional and respected institutions in the country, the District's integrative institutional framework is mitigated by an electoral system and Assembly veto procedures which hew more closely to consociational principles. Unfortunately there are signs that these consociational elements may prove to be Brčko's Achilles heel. Three points in particular stand out. First, elections for the District Assembly are conducted through an open-list proportional system which offers little incentive for parties or candidates to attempt to draw cross ethnic support from voters in the District. Consequently coalition building takes place after rather than before elections where it could promote the emergence of moderate political platforms which court cross ethnic voting, as is the case with more centripetal or 'aggregative' electoral processes.²⁷

Second, the decision to make the position of District 'mayor' determined through indirect election by District Assembly members both prevents voters in having a direct say in this important position, and further complicates post-election coalition talks. As in Mostar, where the position of mayor is elected by the city council, indirect election has led to extended and acrimonious negotiations with sub-optimal political outcomes. Following the 2008 elections, for example, coalition negotiations ultimately produced an unsatisfactory and unwieldy 'concentration' government, headed by a new mayor—Dragan Pajić, from the Serb nationalist party SNSD—which involved all of the parties which gained seats in the District Assembly.²⁸

²⁵ Interview with Gerhard Sondheim, former OHR Brčko deputy Supervisor: September 2006.

²⁶ As Ismet Dedeić, a prominent business figure and advisor to the Mayor of Brčko, put it to me: "All the people who have decided to invest here, in their mind was always the presence of the IC and active support of OHR to help them." Interview with Ismet Dedeić: December 2006.

²⁷ Benjamin Reilly, *Democracy and Diversity: Political Engineering in the Asia-Pacific* (Oxford: Oxford University Press, 2006); Donald Horowitz, "Conciliatory Institutions and Institutional Processes in Post-conflict States," *William and Mary Law Review* 49, no.4 (2008): 1213-48.

²⁸ This concentration government was actually pushed upon the reluctant parties by Gregorian as a way to break the political deadlock and avoid the election of an SDS mayor, in part because Gregorian had poor personal relations with SDS's leader, Mladen Bosić, who is from Brčko: OHR Brčko, *Supervisor Calls for Concentration Government in Brčko District*, January 13, 2009. http://www.ohr.int/ohr-dept/presso/pressr/default.asp?content_id=42915

Finally, in 2008 then-supervisor Raffi Gregorian (2006-2010) introduced mutual group veto provisions into the Assembly voting procedures whereby decisions on sensitive subjects such as religion, culture, education, monuments, language, budget and spatial planning now require support from at least one-third of councilors from each constituent people.²⁹ Prior to this decision the requirement of a three fifths supermajority on such subjects, combined with the fact that none of the three ethnic communities constitutes a majority in the District, served as a sort of informal veto mechanism. While these are, on their face, fairly mild veto provisions their formal introduction has created greater opportunities for political obstruction. Not surprisingly, then, the current coalition government has been mired in deadlock for most of the past two years.

The effect of embedding these consociational elements in Brčko's otherwise integrative political framework is a growing disjunction between cohesive and well functioning District institutions on one hand, and the lack of a concomitant consolidation among political elites in Brčko on the other. This is not, of course, the whole story. As I discuss below, political dynamics in Brčko have also been influenced by growing instability in the rest of Bosnia in recent years. However, as elsewhere in Bosnia, the District's consociational electoral system incentivizes nationalist political grandstanding which runs counter to the broader aim political and social integration. To date political tensions have had limited effect on the day to day functions of the District's institutions, but this is as much a product of ongoing oversight by the international supervisory regime as a reflection of robust institutional independence and sustainability.

A second, more fundamental, problem concerning Brčko's future is the persistence of ethnic tensions and political dysfunctionality in the rest of Bosnia, which inevitably spills over into the District. Ever since the failed parliamentary vote on constitutional reforms in spring 2006—and the divisive nationalist campaigns which dominated the general elections later that year—Bosnia has fallen into a downward spiral of political stagnation and mounting nationalist rhetoric, with political elites openly challenging the state structures established at Dayton. For example, in a speech before the United Nations in September 2008 the Bosniak member of the tripartite Bosnian Presidency, Haris Silajdžić called the RS a product of ethnic cleansing and genocide and questioned its right to exist.³⁰ In response SNSD head Milorad Dodik, the dominant political figure in the RS, has repeatedly characterized Bosnia as a failed state and threatened to hold a referendum on secession.

Last fall's general elections in Bosnia have done little to change this dynamic. While Silajdžić was defeated by Bakir Izetbegović, a more moderate politician from the Bosniak nationalist party, SDA, Dodik—who was elected President of the RS—has stepped up his challenges against the authority of a number of state institutions created in the post-war period. Most significantly, under his direction the RS National Assembly recently voted to hold a referendum on whether the entity should recognize the legitimacy of Bosnia's state court and prosecution office.³¹ Political crisis has also engulfed the Federation. Disaffected by what they perceive as

²⁹ OHR Brčko, *Supervisory Order Amending the Statute of Brčko District, Enacting the Election Law of Brčko District, Enacting the Rules of Procedure of the Assembly of Brčko District and Amendments to Respective Regulations of Brčko District*, May 6, 2008: http://www.ohr.int/ohr-offices/brcko/bc-so/default.asp?content_id=41660

³⁰ For a full transcript of the speech see, http://www.un.org/en/ga/63/generaldebate/pdf/bosniaherzegovina_en.pdf

³¹ Andrew Bowen, "Bosnian Serbs to Challenge Central Judiciary with Referendum," *Deutsche Welle*, April 14, 2011, <http://www.dw-world.de/dw/article/0,,14988757,00.html>

Bosniak political dominance within the entity the two main Croat nationalist parties, HDZ and HDZ 1990, recently convened a ‘Croat National Assembly’ and renewed long dormant calls for the establishment of a third, Croat dominated, entity.³² In light of these escalating tensions both domestic and international commentators have issued warnings about the specter of renewed conflict in the country.³³ If this were to happen Brčko would be caught in the crosshairs since it serves as the chokepoint connecting—or dividing, depending on one’s point of view—the eastern and western halves of the RS. Ultimately, then, the District’s fate is tied to that of Bosnia as a whole; given the declining trajectory of political and social relations in the latter it is difficult to be optimistic about continued stability in the former.

The final reason for pessimism is that international officials have, in recent years, increasingly lost both the will and the capability to prevent further deterioration of the political situation in Bosnia. Early last decade a number of influential analysts began to argue that Bosnia’s problems were caused by the unhealthy and outsized influence that unelected international officials played in the political process³⁴ (e.g., Chandler 1999; Knaus and Martin 2003). In particular they maintained that OHR has frequently overstepped its authority by imposing laws and dismissing democratically elected Bosnian politicians who resist its mandates. The result was that Bosnia more resembled an international protectorate than sovereign state. In January 2006 a new High Representative closely associated with this point of view, Christian Schwartz-Schilling, replaced Paddy Ashdown, who had been the most ambitious and interventionist High Representative to date. He immediately declared that OHR would no longer attempt to dictate politics in the country. Instead Bosnia’s politicians would have to take ‘ownership’ of the political process themselves and find compromises on reforms necessary for membership into the EU. This change in policy proved to be a disaster. As noted above, the previously negotiated agreement on constitutional changes unraveled and was defeated in a vote in Parliament that April. Plans for police reform also collapsed in acrimony that summer. In an abrupt about-face Schwartz-Schilling was sacked in early 2007 but a weakened OHR had irrevocably lost the ability to set the agenda.

Despite growing concern about political tensions in Bosnia, appetite for robust international intervention has continued to wane in recent years. This is especially the case within the EU, which suffers from enlargement ‘fatigue’ and the lack of a single coherent policy for the country.³⁵ A decline in international capability and will was perhaps most apparent during the hastily conceived and poorly supported ‘Butmir’ conference in October 2009, at which renewed negotiations on constitutional reforms necessary to further Bosnia’s accession to EU membership collapsed in acrimony.³⁶ Since this desultory failure EU and U.S. policy efforts in Bosnia have been adrift.

³² Eldin Hadzovic, “Bosnian Parties Split over New Croat Assembly,” *Balkan Insight*, April 21, 2011, <http://www.balkaninsight.com/en/article/reactions-to-croatian-assembly>

³³ See, for example, Paddy Ashdown, “We Must Stop Bosnia from Becoming another Libya,” *The Times*, April 12, 2011, p. 21.

³⁴ David Chandler, *Bosnia: Faking Democracy After Dayton* (London: Pluto, 1999); Gerhard Knaus and Felix Martin, “Travails of the European Raj,” *Journal of Democracy*, 14, no. 3 (2003): 60-74.

³⁵ International Crisis Group, *Bosnia: Europe’s Time to Act*, January 11, 2011.

³⁶ International Crisis Group, *Bosnia’s Dual Crisis*, November 12, 2009; Florian Bieber, “Constitutional Reform in Bosnia and Herzegovina: Preparing for EU Accession,” *European Policy Center*, (April 2010): http://www.epc.eu/documents/uploads/1087_constitutional_reform_in_bosnia_and_herzegovina.pdf

There has also been a decline of international supervision in the Brčko. To begin, the patron-client alliance was shattered in 2007 when then-supervisor Raffi Gregorian went behind Brčko officials' backs in order to stop proceedings before the arbitral tribunal—which were initiated by the District—to determine whether the entities could transfer certain governing 'competencies' to the State of Bosnia without the District's approval.³⁷ Gregorian's actions to short-circuit the arbitration proceedings convinced local elites in Brčko that supervision no longer means that the District has a patron ready to defend its political autonomy or economic interests. Previously close and productive international-local relations also deteriorated under Gregorian's watch due to his neglect and evident disinterest in the workings of the District. By the end of 2007 he was spending nearly all his time in Sarajevo, visiting Brčko only one or two days a month. Instead he preferred dealing with 'national' issues in the capital, seeing the role of supervisor as minor and beneath his diplomatic status.³⁸

In response to these developments District officials also became less willing to work constructively with Gregorian, leading him to resort to personal threats and intemperate supervisory orders to get his way. For example, in May 2007 he fined a District Assembly councilor from Silajdžić's party, SBiH—with which he was publically squabbling—for making an obscene gesture on television.³⁹ That December he suspended the salaries of every member of the District government and Assembly because the latter was one day late in adopting an annual budget, despite the fact that the District's Statute contained provisions for the use of an interim budget in the event that a new agreement was not reached by the year-end deadline.⁴⁰ With the arrival of Gregorian's replacement, Roderick Moore, last September international-local relations have improved. A more pressing concern now is what will happen when the supervisory office in Brčko is closed, a move which has been delayed several times, but which appears increasingly likely before this year is out.⁴¹

Ending the supervisory regime now would be a serious mistake for two reasons. First, political elites from both entities—and the RS in particular—have never fully reconciled themselves with the District's existence. One former member of the District Assembly summarized the political situation in this way:

Everyone is against the District except Americans and a few politicians in the District...it can only survive as long as it has a 'mentor' [the Supervisor]...very soon it will be as in Mostar if you give this District to the European Union.⁴²

³⁷ For a detailed account of this disastrous decision see, Paris, "A Free City in the Balkans..." chapter 8.

³⁸ Paris, "A Free City in the Balkans..." p. 188. A further, personal, reason Gregorian preferred staying in Sarajevo is that is where his Bosnian girlfriend—later wife—lived: Mirsad Fazlić and Nedim Hasić, "Vjenčanje najuticajnijeg Američkog diplomate Olga i Raffi Gregorijan," *Slobodna Bosna*, January 3, 2008.

³⁹ OHR Brčko, *Supervisory Order Ordering the District Assembly to Amend its Code of Conduct and Fining Mr Semso Sakovic Councilor in the Assembly of Brcko District*, May 8, 2007. http://www.ohr.int/ohr-offices/brcko/bc-so/default.asp?content_id=39708

⁴⁰ OHR Brčko, *Supervisory Order on Temporary Suspension on Payments of Salaries and all Remunerations to the Members of Brcko District Government and Councilors of the Assembly of Brcko District*, December 4, 2007. http://www.ohr.int/ohr-offices/brcko/bc-so/default.asp?content_id=40944

⁴¹ ICG, "Bosnia: Europe's Time to Act," p. 15-16.

⁴² Interview with Djordje Ristanić: November 2006.

Indeed, only in spring 2009 did Bosnia's Parliament—under significant international pressure—pass a constitutional amendment enshrining the District's status within the country's constitution and guaranteeing it direct access to the Constitutional Court in the event of future political disputes with the entities or state institutions. Even with this progress there are concerns that the RS still harbors ambitions to undermine and eventually re-divide the District along ethnic lines. In June 2009 OHR banned several RS private security companies from operating in Brčko after discovering that they had been conducting 'hostile' intelligence activities against District officials and OHR Brčko personnel.⁴³ Moreover, official maps in the RS continue to show the now legally extinguished IEHL, which previously divided the Brčko area into Federation and RS controlled territories.⁴⁴ Without international supervision there would be little District authorities could do if one or both of the entities tried to destabilize the situation in Brčko.

The second reason that the supervisory regime in Brčko should be maintained is that it is one of the most effective means by which future conflict in Bosnia—and in particular any secessionist movement by the RS—can be kept in check. As mentioned above, the District is a highly strategic territory as it bridges the eastern and western halves of that entity. Therefore it is one of the main levers available for influencing the behavior of the RS, and to a lesser extent the Federation. This leverage, though, is dependent upon a continued international presence in the District. Paradoxically, then, the very success of peacebuilding in Brčko to date—which is animating the drive to end supervision—may play a role in undermining the continued stability of both the District itself, and Bosnia as a whole.

⁴³ OHR Brčko, *Supervisory Order Preventing Certain Private Security Agencies from Operating in the Brčko District of Bosnia and Herzegovina*, June 8, 2009, http://www.ohr.int/ohr-offices/brcko/bc-so/default.asp?content_id=43584

⁴⁴ Dejan Šajinović, "OHR-u Smetaju Mape RS kroz Distrikt," *Nezavisne Novine*, April 22, 2011, <http://www.nezavisne.com/novosti/bih/OHR-u-smetaju-mape-RS-kroz-distrikt-87163.html>