

ORIGINAL PAPER

Post-communist Development in Bosnia and Herzegovina: What Future for Brčko District?

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Abstract

During the 1995 Dayton peace talks, the status of Brčko, a small town in northeast Bosnia, became a new source of tension which threatened to put the peace agreement on hold. Both entities, Republika Srpska (RS) and Federation of Bosnia and Herzegovina (FBiH) agreed that the final status should be decided by international arbitration. The tribunal's decision was that Brčko would belong both to the FBiH and the RS simultaneously and at the same time put under international supervision. Years after being remarkably successful example of post-war transformation considered а and peacebuilding Brčko District is now regarded as an anomaly of the already flawed Bosnian political system. It continues to be one of the most disputed zones in the country and the status of this hybrid condominium is challenging the sustainability of the political system as a whole. This paper seeks to summarize the recent developments surrounding the status of Brčko District as well as to explore the wider context of governancein Bosnia and Herzegovina. The paper will further focus on defining relations between entities and Brčko District and the way they contribute to already permanent political deadlock in the country.

Keywords: Bosnia and Herzegovina, Brčko District, governance, democratization, international arbitration

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A peaceful revolution that swept accross Central and Eastern Europe and brought down communists regimes took a violent turn in the Western Balkans. The region became entangled in bloody conflicts that took a heavy toll on its development and future prospects. Years after the Dayton agreement formally ended the war in Bosnia and Herzegovina, the country is still portrayed as the political black hole of Europe with its perplexing political system, tenacious nationalist disputes and the lasting political and economic deadlock.

Praised as a significant diplomatic achievement, the Dayton peace agreement was in reality a double edged sword. While it put an end to years of conflict, it also divided the country into two hostile entities that were unable and unwilling to reach any compromise. Some authors emphasize that the peace agreement was a "construction of necessity" (Keane, 2001: 61) and not meant for building a sustainable and stable political system. In terms of territory and international recognition, the new borders reflected the pre-war borders of SRBiH. This granted the external sovereignty and recognition of the Bosnian state. The internal sovereignty, on the other hand, was severely undermined with the concurrent partition of the country into two semi-independent entities – the Republika Srpska and the Bosniak-Croat Federation. The central government lost the majority of legal and executive authorities that were transfered to entity level. While it did create a *multi-ethnic state* consisting of three major ethnic groups (Catholic-Croatian, Muslim-Bosniak, and Orthodox-Serbian), the Dayton agreement at same time territorialized and politically institutionalized national cleavages and linked territories within the Bosnian state to particular national identities (Jeffrey, 2004: 88).

In practical terms, the Dayton peace negotiations were a process of dividing the land and assigning contested towns and territory to one of the entities. In this process a small northeastern town of Brčko became the last piece of the Dayton puzzle that threatened to crush the international efforts to achieve peace in the Western Balkans.

Brčko's important geopolitical position made both entities determined and uncompromising in their claims over its territory. In 1995 Brčko was not only split between Bosniak, Croat and Serb forces, but it was also situated at the intersection of their vital territorial interest (Dahlman, Tuathail 2006: 651-675) therefore becoming the "toughest of all issues at Dayton" (Holbrooke, 1999: 296). This article will seek to examine the initial success of Brčko District and its downfall in recent years. It will explain the (un)expected shift of Brčko District from a successful model of international peacebuilding to a potential flashpoint leading to renewed violence in BiH.

International arbitration and the establishment of Brčko District

The pre-war municipality of Brčko, was an important river port and a principal transit region connecting Bosnia with economically more prosperous republics of Croatia and Serbia. It was covering a relativelylarge area (439 km. sq.) with 87,332 inhabitants in 1991, some 41,000 of whom lived in the town centre and its surrounding suburbs (ICG, 2003: 3) Brčko was ethnically mixed comprising of 44,06 per cent Bosniaks, 25,39 per cent Croats, 20,68 per cent Serbs, and 10 per cent "Yugoslav and other" according to 1991 census (NSS Sarajevo, 234). This demographic structure was changed completely by the war as the town was seized and ethnically "cleansed" by Serb forces in May 1992. Brčko witnessed some of the heaviest fighting and ethnically motivated violence during the war, becoming the site of numerous war crimes and concentration camps, and this had a profound impact on later peace-building process and the restoration of peace (The city's

river port (Luka) became the seat of one of the biggest concentration camps in northern Bosnia; mass killings, torture and mass rapes were done by Serb forces especially during the first few months of the war. All city mosques were burnt to the ground and the town's infrastructure was almost completely destroyed). The estimated population of Brčko in 1996 was 45,000, 97.5 per cent of whom were Serbs (ICG 2003: 3).

At the time of the Dayton peace negotiations both entities defended their right over Brčko. The Serb side claimed that Brčko was vital to Republika Srpska's integrity as it was the only link connecting its northern and eastern part and that without it, the continuity and survival of the Republika Srpska would be put at risk (ICG 2003: 2). In sharp contrast, Bosnian and Croatian side vigorously and repeatedly argued that as the town and its surrounding villages had a pre-war Croatian and Muslim combined majority, under the principles governing the Dayton agreement, Brčko and its sorounding areas should be awarded to the Federation (Klemenčić, Schofield, 1998: 69). They insisted that assigning Brčko to Republika Srpska would be an act of rewarding war crimes and ethnic cleansing. The only agreement in relation to Brčko reached at Dayton was that the final decision would be made by an international arbitration.

Annex 2 of the Dayton Agreement (article 5) states that: *The parties agree to binding arbitration of the disputed portion of the Inter-Entity Boundary Line in the Brcko area on the map attached* (In reality there was no map attached and therefore the first task of the tribunal was to define the borders of the disputed area. During the war the Brcko Municipality was fragmented into three parts, based on ethnic divisions: Brcko Grad (Serb), Ravne-Brcko (Croat) and Brcko-Rahic (Bosnian). The arbitration process was supposed to find an effective strategy of governing this divided area) *in the Appendix [...] 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 11 days thereafter ... The third arbitrator shall serve as presiding officer of the arbitral tribunal (Dayton Agreement, Annex 2, article 5 in OHR, 2000: 37).*

As a result of this agreement the Brčko Arbitral Tribunal was formed in 1996. It included one representative each from the RS and FBiH (Dr. Vitomir Popović and Professor Cazim Sadiković respectively) and was presided over by Roberts Owen, a member of the US negotiating team, chosen by the International Court of Justice. Arbitration proceedings were originally scheduled to take place towards the end of 1996. Considering the intense political struggle for Brčko and escalating tensions and nationalist rhetorics, the Tribunal was hesitant to issue an award and risk reigniting armed conflict (Dahlman, Tuathail, 2006: 651-675). It was clear that arbitration decision could have serious consequences as it seemed that awarding Brčko to either entity would lead to a renewed armed conflict. Serb member of the Presidency Momčilo Krajišnik stated that the integrity of Republika Srpska via Brčko is more important than peace and that they "would go to war over Brčko" (Graham, 1997). With regards to such attitudes, Republika Srpska initially refused to participate in the deliberations of the arbitration panel and accused the Tribunal of favouring the Bosniak side (ICG 1997: 4). Once the formal arbitration hearings started in Rome in early January 1997, Republika Srpska, however, decaded to engage in the process, hoping that the arbitration would reaffirm the Serb control of Brčko.

After unsuccessful implementation of the Dayton agreement, particularly in terms of return refugees, and persisting instability in Brčko and its surrounding areas, Rome interim declaration (1997) pushed for radical increase of international intervention in

Brčko. The most important step towards achieving this was the creation of the Office of the High Representative in Brčko headed by the "Brčko Supervisor". According to the decision of Arbitral Tribunal, the supervisor gained very broad unilateral executive authority: *The Supervisor will have authority to promulgate binding regulations and orders in aid of the implementation program and local democratization. Such regulations and orders shall prevail against any conflicting law. All relevant authorities, including courts and police personnel, shall obey and enforce all Supervisory regulations and orders. The parties shall take all actions required to cooperate fully with the Supervisor in the implementation of this provision* (Arbitral Tribunal, Article II in OHR, 200 I).

In practice this meant that the Supervisor gained almost unlimited authority and his decisions could not be questioned or overruled. The Tribunal once again postponed making the final award of Brčko as the situation in the town and the surronding area was far from peaceful. Refugees were prevented from returning to their homes with frequent episodes of violence and constant threats. As time the passed, the Arbitral Tribunal came under significant pressure to reach the final decision. In March 1999, after three years of hearings and negotiations, the Tribunal announced the Final Award of Brčko. The decision was that Brčko area would officially become a District that would be part of both entities and be shared by them in condominium. It would at the same time gain a level of de jure (if not de facto) independence from the entity governments: [...] upon the effective date to be established by the Supervisor each entity shall be deemed to have delegated all of its powers of governance within the pre-war Brcko Opstina to a new institution, a new multi-ethnic democratic government to be known as "The Brcko District of Bosnia and Herzegovina" under the exclusive sovereignty of Bosnia and Herzegovina. The legal effect will be permanently to suspend all of the legal authority of both entities within the Opstina [municipality] and to recreate it as a single administrative unit (Final Award, paragraph 9 in OHR, 2000a: 284-285).

None of the parties was actually satisfied with such a decision but they were aware that at the time it was the only viable option. Critics pointed out that the Tribunal was creating a merely temprorary solution to the problem by keeping the status of Brčko rather ambiguous and, in its essence, still disputed. On the other hand, the Tribunal justified the Final Award as a means of establishing a "multi-ethnic democratic District with strong connections to the Bosnian state, while producing an independent structure of governance over the territory that has the strength to resist incursions by either entity" (Jeffrey, 2004: 107). With the Final Award in place, Brčko became almost entirely self-governing. The District became sort of a corpus separatum, a unit of territory beyond the control of the Entities and under the exclusive sovereignty of Bosnia and Herzegovina (Parish, 2010: 70-71).

The Statut of Brčko District which represents the District's "constitution", established separate legislative, executive and judiciary powers, independent on the authorities of RS and FBiH. At the same time, the District also laid the foundations of independent health, education and tax systems as well as the police force. It is important to notice, however, that the District's self-government only applied to its relations with the Entities. Soon after the implementation of the Final Award there was an escalation in the powers of the international organisations in Brčko, in particular the Office of the High Representative (later renamed to "The Office of the Final Award").

The position and powers of the international Supervisor remained firmly rooted and the Supervisor continued to oversee and control the creation and functioning of all District institutions. The system that was established in the District resembled a dictatorship of the Supervisor considering that he was appointed and not elected and all political power rested in his hands. He was granted the authority to give and revoke political power any way he deemed suitable. All District supervisors have been American officials starting with a diplomat Robert W. Farrand who paved the way for the coming supervisors.

Brčko District – a Success Story?

In the first few years of its establishment, Brčko District became focus of unprecedented international attention and foreign investments were pouring in. Ethnic tensions that were holding the rest of the country back were tamed by better living conditions, more job opportunities and equal treatment and position of all ethnic groups. According to some authors (see Parish, 2010; Oner, Kirbac, 2013) the main reason behind such success lied in the established and firm authority of the Supervisor. Acting as the mediator between all three sides the Supervisor also exercised unchallenged authority in decision making.

Soon after the Final Award was announced he established a multiethnic assembly and appointed all senior public officials including a mayor, vice-mayor and heads of government departments. The Assembly of 29 members was meant to reflect and balance the multiethnic structure of the city. An unofficial *ethnic key* was introduced, under which job positions at all levels would be distributed in the ratio 2:2:1 (Bosniak:Serb:Croat) (This informal rule granted Croats a gross over-representation in District nstitutions considering that after the war they accounted for only 10 per cent of overall District population) (Oner, Kirbac, 2013: 14).

Brčko District offered an alternative to the idea of creating ethnically homogenous and distinct territories as means of achieving peace. Unlike the central and entity governments that held strong ethnic veto powers, the political system in Brčko allowed power sharing and encouraged cooperation between the ethnic groups. The longterm goal was to establish a strong multi-ethnic democratic system that would eventually grow out of need for international involvement.

Probably the most cited example of District's success is the educational reform that integrated the schools and made them multi-ethnic. The District government under the auspices of the Supervisor, approved new curriculums and decided that all first-grade students would attend school together, regardless of their ethnic background. Two exceptions had to be made when adopting the curriculums – native language (Bosnian/Serbian/Croatian) and history classes would be taught separately. Students of higher grades continued to attend classes separately (similar to "two schools under one roof" principle that was present in the rest of the country).

An important aspect of District's initial success were far reaching budgetary and revenue reforms that accounted for the District's economic self sustainability. Adoption of District's first budget in April 2001 was followed by establishment of the District Revenue Agency, an independent executive institution responsible both for revenue collection and treasury functions, with the objective of ensuring transparent expenditure of District funds by government departments (Oner, Kirbac, 2013: 11). Unexpected economic growth in the District created a vast budget for District institutions. By September 2003 Brčko District had the lowest unemployment rate in the whole country (around 45 per cent) and the highest average wage of 690 Bosnian Marks,or KM (approximately 350 Euros) per month. In comparison, the average monthly wage in the

Federation at this time was 512 KM; in the RS 385 KM (Oner, Kirbac, 2013: 12). Abundant funds have been invested to reconstruct the destroyed infrastructure and factories (some of the most mentioned examples are Sava port, Bimal oil factory, Arizona market etc.) and create new job opportunities.

Comparing to other parts of the country Brčko District achieved greater levels of integration between the different ethnic groups and formally recognised the equal right of each ethnic group to live there, to practice their religion, to speak with their own language and to write in their own alphabet (Jones, 2011: 5). Rather than to promote their ethnic identity, citizens of District were encouraged to adopt liberal democratic citizenship. This goal was to be achieved by ethnic mixing in all public institutions, the formal equality of the three main languages and two main scripts and the removal of ethnic symbols from public space (Jones 2011: 7). Street names have been altered to reference ethnically neutral subjects (e.g. the main square that was renamed during the war to The Serb liberation of Brčko is now called "Square of Youth").

Critics however point out that multi-ethnic democracy that was established in Brčko was conceived in strict mathematical terms and "involved recruiting people of the right ethnic origin for posts within executive and legislative bodies" (Jeffrey, 2004: 147). Such an approach in the long run removed the possibility of citizens developing a multicultural civic identity and kept them permanently locked in their ethnic positions. Similarly, the post-conflict strategy adopted in Brčko was focused on encouraging forgetting and avoiding any public debate about the war crimes, the victims or the punishment of the perpetrators. In some sense confronting the trauma of conflict became a taboo and silence about the war became an accepted social norm. Citizens were encouraged to accept the new authority of the Supervisory regime that promoted a hybrid unity (Jeffrey, 2004: 148).

However, the fact that Brčko portrays the image of neutrality when it comes to ethnic divisions is in no way an indicator of completed reconciliation process or the definite success of peacebuilding. Based on interviews done in December 2014, citizens of Brčko feel that District continues to be in a limbo where every matter is too politicized and where reconciliation is forced and merely cosmetic (Interviews conducted by the author in April 2015). The field research further shows that even though society is ethnically mixed at the administrative level, the town remains deeply divided. Most of the suburbs are inhabited only by one ethnic group, cafes and restaurants are separated and there is little communication between different ethnic groups in the private sphere.

Brčko District at Risk

In June 2006 Supervisor Schwarz-Schilling announced that the Office would be closing down and even though the mandate was later extended it was enough for everyone to stop taking the Office and its decisions seriously. The leadership became less effective and nationalist elites took it a as a sign that their time was approaching. The international staff working in OHR was just as unmotivated and ineffective as they realized that their mission was coming to an end. With the appearance of new threats to international security and new conflicts spiraling out of control (e.g Afghanistan, Iraq, Syria), the EU and the US lost their interest in Bosnia. This also meant that they stopped sending in the most qualified diplomats and staff and this resulted in the lack of comprehensive approach to District's future.

The most important act from this period was Supervisor Susan Johnson's decision to abolish all Entity laws in the District (2006, Supervisory Order "Entity legislation in Brčko District and the IEBL"). This decision shifted the District a step further from Entities grip and made the District's legislation supreme within its territory. In March 2009, under remarkable international pressure, the BiH Parliamentary Assembly adopted Amendment 1 to the Constitution, which defined Brčko's place in constitutional structures. The amendment guaranteed District a direct access to the Constitutional Court in case of political disputes with the entities or state institutions. However, it failed to resolve its legal status and provide the District with representation in state institutions.

In the meantime, rumours about dividing the city started to circle amongst political leadership and situation on the ground was changing dramatically. By the beginning of the September 2007 school year, schools were starting voluntarily to resegregate themselves, with "only 12 per cent of primary school children attending a school in which the majority ethnic group did not outnumber all other pupils combined by a ratio of 2:1 or more" (Oner, Kirbac, 2013: 14). The reason behind such a change was a policy that allowed parents to choose to send their children to any school they wished within the District. This was a clear indicator that the previous success in mixing the population was forced a did not really have a profound effect. This was also confirmed by election results in the District that once again put the power in the hands of the nationalist parties. National daily newspapers, both in Republika Srpska and in Federation, were filled with prognosis of Brčko being re-divided and the OHR could no longer influence the public opinion.

In 2012, after 15 years of international supervision, the High Representative closed the office in Brčko and suspended Supervisor's powers. Such decision was justified with claims that District's institutions have achieved a significant progress and were ready to set their own agenda and implement their decisions independently. Some safeguards continued to be in place. Supervisor Adam Moore in his letter to the citizens of District states that "the High Representative, the Arbitral Tribunal, the BiH Constitutionall Court, OSCE and the EU will have powers to protect the progress achieved in Brčko" (Moore, 2012). Since then the District began to face its greatest crisis of governance and economic development. In the past five years, all Bosnia, including the District, was shaken by a political and economic crisis. Massive anti-government protests that spread around the country in 2014 within the couple of days reached the District. The angry crowd threw eggs at the government building and surrounded and threatened the mayor when he tried to address them. To make matters worse, just a few months later, the entire region suffered deadly floods and landslides that destroyed much of the infrastructure as well as private homes and buildings. The flood damages in the District were calculated to millions of euros. These events created additional tensions and citizen dissatisfaction with the whole District arrangement.

Many authors (Parish, 2010; Dahlman, Tuathail, 2006: 651-675) agree that Brčko remains a geopolitical space under construction and contestation. Closing the Office and suspending the Supervisor's powers put the District at a great risk as the political leadership from both Entities, and the RS in particular, never really accepted District's existence or gave up their claims over its territory. In the words of Henry Clarke who served as the District's Supervisor from 2001 to 2003, entity intrusions into District's territory are a serious threat and "Entities would eat Brcko alive when the Supervisor is gone" (Jeffrey, 2006: 214). Without international supervision there is little District authorities could do if one or both of the entities tried to destabilize the situation in Brčko.

The question that remains is if questions is if Brčko District can survive until the country as whole moves beyond ethnic animosity and reaches a relative state of political stability.

The development of political situation in the region directly influences the situation in Brčko. After Kosovo's declaration of independence in 2008, Republika Srpska saw it as an opportunity to seek and justify its own independence. The president of Republika Srpska, Milorad Dodik threatens with holding a referendum that would legitmize the final secession of his entity. The possibility of Republika Srpska's seccession is vigorously opposed by the international community. Unlike Kosovo that was a constitutionally defined territorial unit in ex-Yugoslavia with similar authorities and rights as the republics, Republika Srpska did not exist as a unit until its unilateral proclamation of independence in the beginning of the Bosnian war. Regardless of the historic and legal reasons, accepting Republika Srpska's independence would be seen as legitimizing the ethnic cleansing and crimes against humanity that led to its establishment in the first place (see Malcolm, 2010). This could only be achieved if Republika Srpska would reach territorial integrity and Brčko District since its establishment and created a vacuum RS is eager to fill (ICG 2011: 9).

Conclusion

The Dayton agreement failed to resolve the status of Brčko and it was only in 1999, under immense international pressure, that Brčko District was established. The international Tribunal granted Brčko a special status of almost complete independence from the Entities and the city soon began to resemble a protectorate under the auspices of the international Supervisor. His powers were virtually unlimited and extended to all areas of social, political and ecnomic life in the District.

In the early period, Brčko District achieved a great progress in terms of political stability, refugee returns and economic growth. By 2003 it had become the most attractive place to live in the whole Bosnia and Herzegovina.

Sinc Supervisor's powers have been suspended in 2012, the District experienced political and economic instability, becoming less and less attractive for potential investors and ever more attractive for radical nationalist politicians. Developments beyond Brcko (primarily the relations between the Entities, Kosovo's declaration of independence and subsequent plans of Republika Srpska to secede and overall lack of international attention and interest in the region) fuel the ethnic tensions and divisions in the District. The progress that was achieved by large-scale international engagement is now put at risk by nationalist politics and the weakness of the entire state-level political system. Economic decline, re-segregation of formerly multi-ethnic schools and increasing nationalist rhetorics only show that the District is in no way distant or detached from political disputes in the rest of the country. The future of District will therefore be decided by developments beyond its territory, primarily the level of strength that the central government will exercise in controlling Republika Srpska's advances and ambitions.

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