

**BOSNIA'S BRCKO:
GETTING IN, GETTING ON AND GETTING OUT**

2 June 2003



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BOSNIA'S BRCKO:

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

It is time to consider the future of Brcko District. In particular, it is time to chart an exit strategy for the supervisory regime that will serve both to preserve and extend its and the people of Brcko's accomplishments.

The Steering Board of the Peace Implementation Council (PIC), approved in January 2003 a Mission Implementation Plan (MIP) submitted by High Representative Paddy Ashdown. Among its specific goals is the legal, political and financial integration of Brcko District in the state of Bosnia & Herzegovina (BiH). Both Brcko Supervisor Henry L. Clarke and the United States government have since asked the PIC Steering Board to discuss the status of the district at its meeting in June. The Supervisor is expected to present his own MIP on that occasion.

Ownership of the divided and strategically vital Brcko municipality in north-east BiH proved too contentious to settle at Dayton in 1995. The question was left for binding, post-war arbitration. The result, in a series of three arbitral awards between 1997 and 1999, was to establish a fully-fledged international administration separate from and more all-embracing than that of the High Representative in Sarajevo. The Final Award of March 1999 decreed that the three wartime municipalities should be unified as a neutral and de-militarised district under the sovereignty of the state. But the district's powers of autonomous government derived from the entities, which were deemed to overlap in Brcko.

The first Supervisor, Robert W. Farrand, initiated the establishment of multinational institutions, the harmonisation and reform of entity laws, and the drafting of a district statute. On 8 March 2000 he

proclaimed the creation of the district and promulgated its statute. He proceeded to appoint an interim government and a 29-member assembly. These interim authorities are still in place.

Once seen as the most likely flashpoint for any renewed warfare in BiH, Brcko has since prospered to such an extent that it is regularly and rightly invoked both as the shining example of international stewardship in BiH and as a model for emulation by the rest of the country. Brcko's reforms of the civil and criminal justice systems, of education and of municipal government have led the way in BiH. The establishment of fiscal discipline, a sensible and effective tax regime, and a business-friendly environment have resulted in significant foreign investment, a promising privatisation program, and the highest average wages in the country. Success has bred success. Those 'cleansed' during the war have returned in large numbers. Displaced persons who came to Brcko have opted to stay. The American-led supervisory regime has served to attract the disproportionately generous donor assistance that has helped make all this possible.

Even though most other essential requirements of the Final Award have been or can soon be fulfilled and it has been three years after the formation of the district, there have been no district elections to test whether something viable and transferable has taken root in Brcko. The last municipal poll was six years ago, and no new vote is yet scheduled. However wise it was of the Arbitral Tribunal to leave it to the Supervisor to decide when to call elections, the Final Award does nonetheless require that they be held before the Supervisor can assure

either the PIC or the Tribunal that implementation is complete and secure.

The High Representative's MIP is testimony to the fact that the ad hoc arrangements mandated by Dayton for BiH are nearing their end. Although the PIC's target date of 2005 is likely to slip, it still provides a basis for planning in Brcko. The supervisory regime in Brcko need not wind up before OHR, but it cannot linger on thereafter. It would be useful, however, if the Supervisor were to go first. That could provide a salutary example of the reality of international disengagement while still leaving time for the High Representative to ensure that the state is in fact exercising its responsibilities towards an autonomous Brcko District.

District elections should be called no later than October 2004, when the next round of entity municipal elections is due to take place. Fear that the wrong parties might win is an increasingly lame excuse for their deferral, especially if the Brcko model of clean and effective multinational government is to have any salience for the rest of BiH. In any case, by 2004 the parties in government will have had plenty of time to win over the populace. Whether they do so or not, it will still be possible – and advisable – for the Supervisor to stay on for up to a year to mediate the transition.

The Arbitral Tribunal reserved for itself the right to vary the Final Award should circumstances so require. OHR's aim to integrate Brcko District in the state can be regarded as consonant with the Final Award, but only if the Supervisor and the Tribunal are satisfied that such integration preserves and protects Brcko's powers of autonomous self-government. Integration must thus be defined not as absorption or subordination, but as a guarantee of the district's constitutional status while the entities endure. This will be the best means of ensuring that as much as possible of what has been achieved in Brcko does not remain an isolated phenomenon of liberal colonialism, but is, instead, 'mainstreamed' into BiH. For this to happen, however, the PIC and OHR and the BiH authorities will have to buy in. This report aims to show why they should.

RECOMMENDATIONS

To the Steering Board of the Peace Implementation Council

1. Encourage the Brcko Supervisor to move towards completing his mandate, some time after the municipal elections.
2. Call upon the Council of Ministers to fulfil and elaborate upon their October 2002 cooperation agreement with Brcko District and in that context demonstrate their support for and relevance to the people of the district.
3. Support Brcko's bid to become the seat of the Sava River Commission.

To the Office of the High Representative

4. Work with the Supervisor to ensure he can fulfil the Final Award while OHR is still present to guarantee Brcko's effective integration into the state.
5. Ensure that the High Judicial and Prosecutorial Council respects the Final Award and recognises the integrity of the completed reform in Brcko.

To the Supervisor of Brcko District

6. Reorient priorities towards handing over and bowing out.
7. Complete preparations to call elections by October 2004. Avoid counterproductive efforts to make electoral defeat of the Serb Democratic Party (SDS) a principal object of the electoral exercise.

To the United States Government

8. Assist the Supervisor in finding an alternative use for Camp McGovern that will enhance both the security of the district and the role of the state.

To the Council of Ministers

9. Act to implement the October 2002 agreement on cooperation with Brcko District and to establish, in agreement with Brcko's government, viable mechanisms for regulating the district's relationship with the state while the supervisory regime remains in place.
10. Demonstrate the state's interest in and relevance to Brcko residents by insisting that Croatia permit the import of petroleum products through the district, and acting on the Supervisor's proposal to site an important state institution in Brcko.

To the Brcko District Government and Assembly

11. Operate a serious public information campaign to acquaint district residents with the aims and activities of the government and assembly.

Sarajevo / Brussels, 2 June 2003



BOSNIA'S BRCKO:

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I. INTRODUCTION

The Brcko District of Bosnia & Herzegovina celebrated its third birthday on 8 March 2003. In addition to a reception hosted by the district government in the newly renovated Grand Hotel Posavina, festivities included an art exhibition, the launch of a lavishly printed book entitled *The Brcko District of BiH: The Future Has Begun*, and a performance of *Pygmalion* by the Republika Srpska (RS) National Theatre from Banja Luka.¹

Visiting the district for the first time a few days earlier, on 5 March, High Representative Paddy Ashdown declared that "This city, which was once well-known as a 'black hole', is steadily becoming a model for the whole of BiH. When the rest of the country accomplishes what has been accomplished here, BiH will be a much more developed country."²

A discordant note was struck on the day, however, by the absence of the state and entity functionaries who had been invited to attend the reception and by the presence, outside the hotel, of several dozen demonstrators from

the Citizens' Association 'Ravne', there to protest the impending compulsory purchase of their landholdings for the redevelopment of 'Arizona Market' by an Italo-Bosnian consortium. Carrying placards proclaiming – in both Latin and Cyrillic letters – that "We are all Croats when it comes to expropriation" and "We also have the right to work", the protesters denied that the general good would be served if their private property rights were subordinated to those of the district and the developers.³

It is a mark of the transformation that has taken place in Brcko that a peaceful if unauthorised demonstration and the non-appearance of state and entity leaders should have been considered even vaguely newsworthy. For not only was Brcko once regarded as a 'black hole' of chauvinism, intransigence, criminality and despair, it was also seen as the probable flash point for the ignition of a new war in Bosnia & Herzegovina. Thus both the

¹ 'Brcko: Tri godine od proglašenja distrikta', *Nezavisne novine*, 8-9 March 2003; 'Okrenuti se prosperitetu regije', *Oslobodjenje*, 9 March 2003.

² E. Huremovic, 'Brcko postaje uzor za Bosnu I Hercegovinu', *Dnevni avaz*, 6 March 2003.

³ V. Matijevec, 'Godisnjica distrikta u znaku protesta zbog "Arizona"', *Nezavisne novine*, 10 March 2003. A delegation from the Republika Srpska National Assembly (RSNA), led by Speaker Dragan Kalinic, did visit Brcko on 14 March, along with Principal Deputy High Representative Donald Hays. Kalinic told the district's interim assembly that 'Republika Srpska [RS] is very interested in what happens in Brcko, because this city belongs as well to the citizens of the RS'. He also pressed for early elections. V. Matijevec, 'Parlamenti moraju usvojiti preporuke', *Nezavisne novine*, 15-16 March 2003; M. Djurdjevic, 'Narod bira predstavnike', *Glas Srpski*, 15-16 March 2003.

modest protest over property rights and the lack of interest in the district shown by the country's politicians are tokens of a normality that would have seemed inconceivable either when the fighting stopped in 1995 or at any time before the establishment of the district.

There were always hopes and schemes, based on the fact that the Dayton peace conference left the determination of the town's ownership to binding arbitration, that Brcko could and should serve as a model for something better than the national-territorial partition otherwise endorsed at Dayton – and ICG produced several such plans over the first years of Bosnia's armistice.⁴ The interim Awards in 1997 and 1998 sustained these hopes by creating and setting the terms of reference for an internationally supervised administration. The Final Award in 1999 decreed the unification of the pre-war municipality and its establishment as a demilitarised district under the sovereignty of the state, simultaneously belonging to neither and to both entities. But it was only after the actual formation of the district in 2000 that Brcko began to confirm its potential to serve as an exemplary solution to at least some of Bosnia's disorders, rather than as their epitome.

The choice of *Pygmalion* for Brcko's birthday party – and for International Women's Day – could not, therefore, have been more apt. Shaw's comedy about Professor Henry Higgins' experimental makeover of a Cockney flower girl – and her progress from screeching harridan to refined lady – is an argument both for nurture over nature in the matter of vowels and for nature over nurture in matters of the heart. Brcko's own progress offers similar testimony.

⁴ See ICG Bosnia Report No. 16, *Brcko Arbitration*, 31 August 1996; ICG Bosnia Report No. 18, *Brcko Arbitration: Proposal for Peace*, 20 January 1997; ICG Bosnia Report No. 31, *Brcko: What Bosnia Could Be*, 10 February 1998; and ICG Balkans Report No. 55, *Brcko: A Comprehensive Solution*, 8 February 1999.

II. WHY THE FUSS?

The pre-war municipality of Brcko, located in the Posavina region of northeast Bosnia, was one of the Socialist Republic's most prosperous. It owed its relative affluence to its well-developed agro-industries and its status as a commercial and transport hub providing links to the richer republics of Croatia and Serbia. Brcko's Sava River port, which served the Tuzla industrial and mining basin to the south, was BiH's most important.

As was the Yugoslav norm, the municipality is large in area (439 km. sq.). By BiH standards, it was also densely populated, with 87,332 inhabitants in 1991, some 41,000 of whom lived in the town centre and its adjacent suburbs. The national composition was thoroughly if unevenly mixed. No one nation comprised a majority in the municipality, though Bosniaks represented a plurality (44 per cent) and predominated in the town itself (56 per cent).⁵

This demography was changed utterly by the war, which also lent to Brcko a strategic, political and symbolic significance that eclipsed its previous economic and commercial importance. The town centre and swathes of land to the east and west along the Sava River were seized and 'cleansed' by Serb forces in May 1992. Their possession was and remained vital to the insurgents and their patrons in Belgrade because they provided the sole land corridor (only 5 km. wide south of the town centre) connecting the western and eastern areas of Serb rebellion. Without this link the viability of the 'Greater Serbia' and Republika Srpska projects would have been in jeopardy. The Serbs thus devoted both their best fighting units and their most artful wartime diplomacy with Zagreb to keeping it.⁶

Unusually in wartime BiH, local Bosniaks and Croats maintained a generally effective military

⁵ According to the 1991 census, the municipality's populace was 44.4 per cent Bosniak, 25.4 per cent Croat, 20.8 per cent Serb, and 9.4 per cent 'Yugoslav and other'. The town, however, was 56 per cent Bosniak, 7 per cent Croat, 20 per cent Serb, and 17.5 per cent 'Yugoslav and other'.

⁶ Laura Silber & Allan Little, *The Death of Yugoslavia* (Revised Edition, London, 1996), p. 256.

alliance in Posavina and in the southern two-thirds of the Brcko municipality that they successfully defended. It was there that the bulk of their 'cleansed' compatriots found shelter.⁷ In 1994, however, the residual municipality's 'government-in-exile' split when the Croats formed their own 'Ravne-Brcko' administration in the south-west corner of the former municipality.

When the war ended, the front line – to be formalised as the Inter-Entity Boundary Line (IEBL) at Dayton – separated two rural Bosniak and Croat municipalities belonging to the emergent Federation of BiH from a Serbianised town whose retention was judged crucial to the survival of Republika Srpska (RS). The Zone of Separation (ZOS) between the two on either side of the IEBL was a scene of utter devastation.

The estimated population of Brcko town in 1996 was 45,000, 97.5 per cent of whom were Serbs. Three-quarters of these people were displaced persons from the Federation or refugees from the one-time Republika Srpska Krajina in Croatia.⁸ The resettlement of Serbs in Brcko – like the subsequent packing of the electoral roll with absentee voters supposedly intending to make their homes there, including 31,000 refugees in Yugoslavia – was testimony to the Serbs' determination to hold on to the town and the land bridge it represented at all costs, up to and including renewed war.

The reunification of the municipality and its inclusion in the Federation was of only marginally less importance to Bosniaks and Croats. Without Brcko town, the Posavina Canton would be cut off from the rest of the Federation, the remainder of which would have no northern border with Croatia and, thus, no direct access to the motorway and mainline railway passing through Slavonia. Moreover, control over the river port had potentially great economic significance for the Federation and huge psychological significance for 'landlocked' Bosniaks. The port and the road and rail bridges at Brcko were, in Richard Crampton's words, "the nexus between Bosnia and its links with the outer world via the Danube valley."⁹

In any case, the continuing proximity of Bosniak and Croat displaced persons (DPs) to the homes from which they had been brutally 'cleansed' in 1992 constituted what they and the Federation government considered an irrefutable moral case for their claim on all of Brcko. As in the RS, voices were raised in the Federation threatening resort to arms if the arbitration were to go the 'wrong' way.

⁷ IFOR estimated in 1996 that about 39,000 Bosniaks and 11,000 Croats had fled from the Serb-occupied north to the 'free' south of the municipality. This means that half the pre-war Croat population had found refuge elsewhere. See ICG Report, *Brcko Arbitration*, op. cit., pp. 2-3.

⁸ OHR, Information on Brcko District, 28 August 2001. (All OHR documents cited here may be accessed at www.ohr.int.) That the 1996 population was not 100 per cent Serb was the result of early Bosniak returns to destroyed villages on the RS side of the IEBL, but inside the demilitarised ZOS. This was made possible by heavy U.S. IFOR troop deployments in the area and encouraged by the perceived need to stake a physical claim in advance of the arbitration. The Serbs sought to counter such 'claim-jumping' both through violence against returnees and the resettlement of Serb displaced persons (DPs) in what remained of non-Serb houses. Some 10,000 of the Serb DPs in Brcko town were estimated to hail from the Sarajevo suburbs transferred to the Federation of BiH in early 1996.

⁹ R. J. Crampton, *The Balkans since the Second World War* (London, 2002), p. 244.

III. THE ARBITRATION

A. PART I: THE ROME AWARD

Although the participants in the Dayton proximity talks of November 1995 succeeded in both putting a formal end to the war and agreeing to the transfer of important tracts of territory and human settlement in BiH and Croatia, they failed to resolve the ownership of Brcko. This turned out to be non-negotiable. Annex 2 to the Dayton Peace Accords (DPA) thus specified that “The Parties agree to binding arbitration of the disputed portion of the Inter-Entity Boundary Line in the Brcko area indicated on the map attached at the Appendix.”¹⁰ Since no map was in fact attached, the arbiters were required both to define the subject of their arbitration and to decide its disposition. The ‘Parties’ (the FBiH and the RS) would disagree about what was to be arbitrated, but they did manage beforehand to agree who the third and presiding arbiter should be. The choice fell on American jurist Roberts Owen, a long-time State Department Legal Advisor.¹¹

The Serbs held fast to the view that the job of the arbitration panel was to widen their corridor south of Brcko town to some 20 km. It was certainly not to award the town or port to the FBiH. Fearful that its stance might not prevail, the RS adopted the tactics of intermittent boycott and constant bluster. BiH Presidency member Momcilo Krajisnik threatened war if the territorial integrity and continuity of the RS were infringed at Brcko.¹² For their part, Bosniaks demanded that the arbitration should concern itself only with paring down the territory under RS control, arguing that the town, the adjacent port, and the road and rail links to both were of surpassing importance to the Federation. Nervous lest their interests be overlooked by their leaders in Herzegovina and their master in Zagreb,

some local Croats suggested a UN administration for Brcko town.¹³

The arbitration was meant to be completed within one year of the signature of the DPA, that is, by 14 December 1996. In fact, Serb obstruction delayed the issuance in Rome of what turned out to be an interim award until 14 February 1997.¹⁴ Citing the “ongoing failures” of the RS to allow either freedom of movement or refugee return in that part of the municipality under its control, as well as “the high levels of tension resulting therefrom”, the Rome Award decreed the establishment, for one year, of “interim international supervision of Dayton implementation in the Brcko area.” The High Representative was charged with appointing a deputy to serve as Supervisor in Brcko. He, in turn, was to devise and coordinate with international and local authorities an integrated peace-building strategy encompassing refugee return, freedom of movement, economic regeneration, trade promotion, democratic policing and – “before the end of the international supervision” – local elections in ‘the relevant area’. Although the IEBL was to remain in place over the following year, the Award gave notice that failure “to correct the situation” in Brcko town might require that it become a ‘special district’ of BiH.¹⁵

Just as significant for the whole international experiment in BiH, the Rome Award provided that the Supervisor be empowered to issue binding orders and regulations in furtherance of his mandate. These would not only prevail over all conflicting laws or decisions of the local authorities, but must be enforced by them.¹⁶ This meant that Brcko’s future Supervisor was being endowed with executive and

¹⁰ DPA, Annex 2, Article V, 1-5.

¹¹ Wesley K. Clark, *Waging Modern War* (New York, 2001), p. 54. Owen had served as a legal expert on Richard Holbrooke’s peace-making team and was a principal author of the BiH constitution. The Parties having accepted his candidature, he was formally appointed by the President of the International Court of Justice.

¹² ICG Report, *Brcko Arbitration*, op. cit., p. 4.

¹³ For more detail, see ICG Report, *Brcko*, op. cit., p. 3.

¹⁴ Peter C. Farrand, ‘Lessons from Brcko: Necessary Components for Future Internationally Supervised Territories’, *Emory International Law Review* (Vol. 15, No. 2, Fall 2001), pp. 543-544. The author, the son of Ambassador Farrand, quotes Roberts Owen as explaining that an interim award was necessary because ‘both sides were particularly sensitive about any changes in the status quo’ and would have regarded an outright decision in favour of the other as a *casus belli*.

¹⁵ Office of the High Representative, Brcko Arbitral Tribunal for Dispute over the Inter-Entity Boundary in Brcko Area, Rome, 14 February 1997, *Bosnia and Herzegovina: Essential Texts* (3rd revised edition, Sarajevo, 2000), pp. 258-259.

¹⁶ *Ibid.*

legislative powers that the High Representative would receive only ten months later at the Bonn-Petersberg meeting of the Peace Implementation Council (PIC), the international body that supervises the Dayton Peace Agreement. Brcko thus became an international protectorate before the rest of BiH.

The PIC Steering Board convened as a 'Brcko Implementation Conference' in Vienna on 7 March 1997. It approved the appointment of an American diplomat, Robert W. Farrand, as Brcko's first Supervisor and endorsed the secondment of two European deputies and several other officials to make up his office. Although he would possess more authority locally than the High Representative had nationally, the conference conclusions made it clear that Farrand would be expected to operate under the direction of the Office of the High Representative (OHR) in Sarajevo. Another paradox soon emerged. While certain decisions of the Vienna meeting appeared to restrict the Supervisor's writ to the RS-held portion of the municipality, the first major decision to emerge from his office on 24 April 1997 – a plan setting out procedures for "peaceful, phased and orderly" refugee and DP return – applied to the whole municipality.¹⁷

On the other hand, the Vienna conference went further than the Rome Award in urging that local elections to set up a multinational administration in the town should be held "as soon as possible in the implementation period", so affording the resulting democratic authorities the time needed to establish themselves while the supervisory regime was still in place.¹⁸ This sense of urgency accorded with the prevailing assumptions of the time regarding both the likely longevity of international engagement in BiH and the beneficent effect of elections – notwithstanding the confirmation in power of the nationalist parties that had forged and fought the war in the September 1996 general elections.

As it happened, municipal elections in the RS-held portion of Brcko took place alongside the first post-war, country-wide, and oft-postponed local polls on 13-14 September 1997.¹⁹ Fiascos and fraud

attended the registration of old residents, new residents and supposedly intending residents as the parties (and the Parties) hastened to pack the rolls with their own kind. The locally dominant Serb Democratic Party (SDS) threatened to boycott the poll if its stratagems were challenged too seriously. Zagreb put pressure on would-be Croatian Democratic Union (HDZ) voters to abstain. The RS authorities imposed road and bridge tolls in an effort to curtail freedom of movement and, when such ingenious measures were countered, organised a riot on 28 August directed at Brcko's foreign 'occupiers'. Even the internationally supervised vote count and long-delayed certification of the results raised suspicions of electoral engineering and/or incompetence. In the end, the ultra-Serb parties narrowly prevailed, taking 30 of the 56 seats in the Brcko assembly.

This opened at least a chink in Serb hegemony that the Supervisor was able to exploit to facilitate his mandate "to enhance democratic government and a multi-ethnic administration in the Town of Brcko."²⁰ Forearmed with the powers conferred by the Rome Award, elaborated by the Vienna conference, and refined by the 30 May 1997 PIC meeting in Sintra, on 10 October Supervisor Farrand promulgated an order (and imposed consequent amendments to the municipal statute) requiring that a multinational executive, assembly and administration to be "based on" both the election results and the electoral register should be formed by year's end. He specified the installation of tri-national officers of the municipal assembly and executive, called for the national integration of the administration and public services, and provided for qualified majority voting in the assembly on issues affecting the "vital national interests" of each national constituency possessing at

residents to vote in Brcko town or, in the case of HDZ supporters, to boycott the poll. This means, however, that no local elections have taken place on the territory of the former Federation of BiH municipalities since 1990.

²⁰ *Essential Texts*, op. cit., Rome Award, p. 258. See also ICG Report, *Brcko*, op. cit., pp. 6-7, and David Chandler, *Bosnia: Faking Democracy after Dayton* (2nd Edition, London, 2000), pp. 85-87. Although the Rome Award gave the Supervisor the power to alter election results in order to ensure multinational government, he determined to adopt a 'step-by-step' approach. R. W. Farrand to ICG, 13 May 2003.

¹⁷ Ibid, Brcko Implementation Conference: Chairman's Conclusions, Vienna, 7 March 1999, pp. 260-263.

¹⁸ Ibid, p. 261.

¹⁹ No elections took place in the Croat and Bosniak municipalities, since every effort was made to get their

least 5 per cent of the seats.²¹ Orders followed on what amounted to national quotas for the integration of the administration, judiciary and police.²²

Serb resistance to these efforts to dilute their electoral victory and to confound the very purpose of the RS was predictably intense. But it also looked likely to prove self-defeating in view of the forthcoming arbitral rematch. That SDS-led obstruction and occasional violence did not result in an award of Brcko to the FBiH in March 1998 was due to the widening split in regime ranks between President Biljana Plavsic, representing the more accommodating Banja Luka faction, and the hardliners loyal to Radovan Karadzic and based in Pale. Plavsic was prevailed upon in early November to endorse the Supervisor's integration orders and to suggest Serb candidates for office who would be prepared to tolerate multinational institutions.²³

By the end of 1997, therefore, Brcko had the rudiments of a nationally mixed executive, legislature and police force. Uniquely in the RS at this time, some 700 Bosniak families had returned, albeit only to the Serb side of the ZOS. Economically, the town remained a disaster area. The big food-processing plants were dead. The fields were planted with mines rather than crops. International reconstruction funds had yet to arrive. Public services and utilities were sparse or nonexistent. The only intimation of capitalism's

potential for rendering wartime divisions irrelevant was the sprawling, vibrant and seedy 'Arizona Market' on the southwest edge of the pre-war municipality.²⁴

B. PART II: THE SUPPLEMENTAL AWARD

The Arbitral Tribunal again declined to rule on Brcko's final status when it issued a Supplemental Award on 15 March 1998.²⁵ The FBiH had maintained its claim on the entire municipality in the preliminary proceedings in Vienna, arguing that the RS had been in flagrant violation of the DPA and the Rome Award throughout 1997. For its part, the RS had dropped its demand for a wider corridor, but pleaded for confirmation of the status quo on the basis of its existential need for territorial continuity.

Excoriating the RS for its record of systematic non-compliance, Roberts Owen noted that the main reason why he was not now ruling, in whole or in part, in favour of the Federation was that the RS record had improved since President Plavsic broke with Pale and had shown real promise since Milorad Dodik's assumption of power in Banja Luka on 18 January. The supervisory regime, meanwhile, had only lately begun to show what it could accomplish, even in the face of continuing SDS obstruction. The need for its prolongation was "overwhelmingly clear", regardless of whether or not a final ruling were made. As it was, the situation on the ground remained fragile, state institutions were patently unready to exercise responsibility for Brcko, and the entities were in some disarray.

In effect, the RS was being given a last chance to save Brcko from the clutches of the FBiH or the state by showing that it had "truly reversed course and committed itself to an apparently permanent program of

²¹ OHR, Brcko Arbitration, Order on Multi-Ethnic Administration in the RS Municipality of Brcko, 10 October 1997. The low threshold of 5 per cent was designed to protect the Croats from their abstentionist folly. The HDZ had won just three seats. According to Ambassador Farrand, use of both the results and the electoral register 'permitted us to come up with a legitimate (if incomplete) assessment of how many of each of the three ethnic groups would likely take up residence in Brcko again should we, as implementers of the Arbitral process, be successful in reuniting the Opstina. The 1997 elections gave us some reasonably objective numbers to work with in installing the beginnings of multiethnic government in Brcko'. R. W. Farrand to ICG, 3 February 2003.

²² Brcko town's multinational police force began operation on 31 December 1997. OHR Press Release, 'Brcko Multi-Ethnic Police', 2 January 1998.

²³ For details, see ICG Report, *Brcko*, op. cit., pp. 6-9. Plavsic's reward for this and other services was special RS elections in November 1997, for which she formed a new party, the Serb People's Alliance (SNS).

²⁴ Ibid. The market was so-named because it was set up in 1996 with U.S. IFOR approval on the highway codenamed 'Arizona'. However, the Croat municipality of Ravne-Brcko claimed the market as its own, disputing the right of Tuzla Canton to impose any controls on its semi-legal and illegal operations.

²⁵ In point of fact, it was the presiding arbitrator, Roberts Owen, who ruled, since his Federation (Bosniak) and RS (Serb) colleagues refused to endorse the Supplemental Award. OHR, *Essential Texts*, op. cit., Supplemental Award, 15 March 1998, p. 267.

full Dayton compliance and revitalisation of the area.” The Federation, meanwhile, was advised to strengthen its case by facilitating the return of Serb DPs, particularly to Sarajevo. Both entities were warned that the Tribunal would favour a final settlement in 1999 that shifted the IEBL to reunite the pre-war municipality, whether inside one entity or as a “neutral district” outside the exclusive control of either.²⁶

Finally, Owen ruled that Farrand should have the same powers as those conferred on High Representative Carlos Westendorp by the Bonn PIC in December. Farrand too would be entitled to sack any public official who obstructed Dayton implementation, the strengthening of democratic institutions, or the revival of the economy in the Brcko area.²⁷

C. PART III: THE FINAL AWARD

Neither the advent of Dodik nor the enhancement of Farrand’s powers was enough to produce an immediate breakthrough in Brcko. The town’s formally integrated institutions remained segregated in fact. Not only were non-Serb officials and policemen marginalised, they were also prevented from returning to live in the town.²⁸ Ordinary Bosniak and Croat refugees and DPs fared no better. The local power structure, composed of an interlocking directorate of SDS nabobs and their neo-fascist allies in the Serb Radical Party (SRS), organised occasionally violent demonstrations against would-be returnees, connived in other acts of intimidation, and ensured that no one was held accountable. Serb DPs in Brcko, meanwhile, were provided with every possible inducement – and subjected to every sort of pressure – to stay put. Far from increasing, returns fell off in the second half of 1998.

However formidable the Supervisor’s powers in theory, they were inadequate either to overcome the un-civil disobedience with which he was confronted or to transcend their territorial limitation to Brcko town. In

any case, the defeat of Plavsic by the SDS-SRS candidate, SRS leader Nikola Poplasen, in the RS presidential election of September 1998 offered a major fillip to obstructionist forces in Brcko as Poplasen manoeuvred to split and bring down Dodik’s (now caretaker) government. As the hinge between the more accommodation-minded politicians to the west and the secessionists to the east, Brcko epitomised the power struggle that proceeded in the RS in the run-up to the final bout of arbitration in Vienna.²⁹

In such circumstances, there could be little doubt that the RS authorities would be deemed to have failed the test Owen set for them in March 1998. Yet the entity’s politicians, press, and populace professed to be astounded – and were certainly furious – when Owen delivered his verdict on 5 March 1999. It was, in fact, a double whammy, for earlier that same day Westendorp had sacked Poplasen for abuse of power and unconstitutional efforts to unseat the “technical” government led by Dodik when there was no alternative premier capable of assembling a majority in the RSNA.³⁰

Not surprisingly, the Final Award embraced Owen’s long-mooted option of a unified, self-governing, demilitarised ‘neutral district’ under the sovereignty of the state, but existing simultaneously as a ‘condominium’ to be shared by both entities. They, therefore, would both ‘gain’ territory even as they ‘lost’ administrative authority. As Owen explained in a statement summarising the Award:

This solution is designed primarily to further the Dayton goal of allowing all wartime displaced persons and refugees to return to their original homes. Although the international community has pressed for significant returns to and from the Brcko area, those international efforts have been seriously obstructed by local nationalist groups. To remove the obstruction, control of the region will be placed in the hands of a new multiethnic district government under

²⁶ Ibid, pp. 268-273.

²⁷ Ibid, p. 272.

²⁸ In November the Supervisor modified his April 1997 pledge that Serb DPs occupying Bosniak- and Croat-owned properties would not be evicted in order to facilitate the physical return of such officials. See OHR, Order on Return of Non-Serb Members of the Municipal Assembly, Administration, Police, Judiciary and Others to their Pre-War Homes of Origin in Brcko, 3 November 1998.

²⁹ For details, see ICG Bosnia Report No. 62, *Republika Srpska – Poplasen, Brcko and Kosovo: Three Crises and Out?*, 6 April 1999, pp. 1-5.

³⁰ Ibid. . Also ICG interview with Roberts Owen and R. W. Farrand, 11 April 2003.

intensified international supervision and beyond the control of either entity.³¹

Owen emphasised that the entities were being treated even-handedly, and that each would pay "some price" for its failures to comply with the DPA and previous Tribunal rulings. If it seemed that the price to be paid by the RS was the higher, that was because the sins committed by "hard-line nationalist party members" in Brcko against Tribunal and supervisory orders were the greater, particularly their "continuing efforts to impede the two-way return" of refugees and DPs. Had it not been for "Dodik's pro-Dayton efforts during the past year, the Tribunal might have been obligated to award Brcko outright to the Federation."³²

This bouquet addressed to Dodik was inadequate to deflect him from quitting in protest. His gesture made no effective difference, however, since he merely became "caretaker prime minister in resignation" and remained both the only man with the votes to form a proper government and the only possible interlocutor for the international community. But his resignation did show solidarity with the popular outrage sweeping the RS over the alleged sundering of their 'state'. Poplasen's dismissal, meanwhile, was largely eclipsed by the national tragedy of Brcko, despite his refusal to accept it and his vice-president's unwillingness to take over until he did.³³

Developments between 15 and 25 March 1999 first eased the Poplasen-Brcko deadlock and then ensured it was overtaken by a new crisis. On 15 March Dodik withdrew his resignation on the understanding, encouraged by OHR, that the Brcko Final Award might be modified to meet Serb concerns. There was some scope for this because the Annex setting out the details of how the new district would be governed had been issued by Owen as a draft on which interested parties were invited to comment within 60 days.³⁴ Dodik could

thus 'return' to power in order to do his patriotic duty while the RS presidency remained in limbo.

The new crisis that filled the streets of RS towns with angry demonstrators, provoked bomb attacks on international outposts in the RS, and led to the wholesale withdrawal of foreign personnel from the entity was the start on 24-25 March of NATO's air war against Yugoslavia over Kosovo. Amidst popular calls to support Mother Serbia in her hour of need and rumours of plots to secede from BiH, the Brcko humiliation became less an occasion for revolt than a matter for inter-party recrimination.³⁵

³¹ OHR, Brcko Arbitration, Statement by Roberts B. Owen, Presiding Arbitrator for the Brcko Arbitral Tribunal, 5 March 1999.

³² Ibid.

³³ For the details, see ICG Report, *Republika Srpska*, op. cit., pp. 4-7, and ICG Bosnia Report No. 71, *Republika Srpska in the Post-Kosovo Era: Collateral Damage and Transformation*, 5 July 1999, passim.

³⁴ Both the original draft Annex of 5 March and its 18 August successor are printed in OHR, *Essential Texts*, op.

cit., pp. 284-291. For OHR's proffered emollients, see OHR Press Release, 'Dismissal of President Poplasen – Brcko Award', 8 March 1999.

³⁵ For details, see ICG Reports *Republika Srpska* and *Republika Srpska in the Post-Kosovo Era*, both op. cit.

IV. THE APOTHEOSIS OF SUPERVISION

As creative as the Final Award was in disposing of Dayton's last bit of unfinished business – and as promising as it might prove for BiH in jump-starting return, challenging apartheid, revitalising municipal government, and promoting the dignity of the state – its success depended upon an almost breathtaking intensification of supervisory powers. Although critics at the time (and since) decried the district as a 'third entity', what the Award and its August 1999 Annex really created was a fully fledged if small-scale international trusteeship. Its aims would be to teach the locals both how to govern themselves and how to live together again in civilised comity. This, as Farrand has acknowledged, was "benign proconsulship".³⁶ And it has worked. But as this paper will discuss below, the creation of a trusteeship within a protectorate would later pose problems when it came time to contemplate withdrawal.

The Final Award empowered the Supervisor to produce a statute and plan of government for the district and to determine the length of the transition period that would be required before the existing municipalities were merged, the IEHL eliminated, and the application of entity laws terminated.³⁷ Owen expressed the hope, however, that everything would be ready by the end of 1999. Although the Supervisor would serve at the pleasure of the PIC, the Tribunal would retain its authority to vary the Final Award should the Supervisor so recommend and the High Representative concur.

The accent Owen placed on the entities' failures to promote refugee and DP return led him, however, into taking "the liberty" of making recommendations to the High Representative on the encouragement of Serb returns to the Federation. He urged the Supervisor and High Representative to work together "to eliminate obstructive behaviour by local officials" in both the

Posavina and Sarajevo cantons. In particular, he recommended that the High Representative "consider undertaking additional measures of international direction in the formerly Serb suburbs of Sarajevo."³⁸ These proposals served to keep the idea of a state or capital district in Sarajevo alive, above all by associating it with the experiment commencing in Brcko.³⁹

The saga of the Annex to the Final Award, meantime, played out rather differently than Dodik must have anticipated when he withdrew his resignation. Sops to the RS were few and minor. Instead, the revised Annex of 18 August 1999 provided for another substantial increase in the Supervisor's already formidable prerogatives. It also anticipated the eventual district statute in numerous respects, most notably by excising all the references to 'constituent peoples', 'ethnic formulas' (or quotas), and 'vital national interests' that had appeared in the original Annex and, of course, remained in the Final Award. The Supervisor and his legal team, augmented by the Brcko Law Revision Commission (BLRC) set up in June 1999, knew increasingly what they wanted and were in a position to make the appropriate submissions to Owen. The Serbs, on the other hand, were unable to convince Owen that the Final Award harmed RS interests in any respect.⁴⁰

It is worth looking at the Annex's blueprint for Brcko's pro-consular governance in some detail.

Status of Brcko Residents. Unlike the draft, which decreed that district residents should have the right to choose the citizenship of either entity, irrespective of where they might live, the amended Annex authorised the Supervisor to decide if and

³⁶ R. W. Farrand to ICG, 3 February 2003.

³⁷ As paragraph 36 of the Final Award noted – complete with felicitous misprint – 'The basic concept is to create a single, unitary multi-ethnic democratic government to *exorcise*, throughout the pre-war Brcko Opstina, those powers previously exercised by the two entities and the three municipal governments'. Brcko Final Award, 5 March 1999.

³⁸ Brcko Final Award, Paragraph 47, 5 March 1999.

³⁹ Brcko Final Award, Paragraphs 25, 44 and 47. Paragraphs 58-62 provided a constitutional justification of district status that would apply as well to Sarajevo or any other potential state district. For earlier efforts to reorganise Sarajevo, see OHR, *Essential Texts*, op. cit., Protocol on the Organization of Sarajevo, 25 October 1996, pp. 307-309, as well as the 27 March 1997 documents on implementation and the 3 February 1998 Sarajevo Declaration, pp. 310-332. Although periodically revived, proposals to establish a Sarajevo district became less relevant but no less objectionable to Bosniaks as the years passed.

⁴⁰ P. C. Farrand, 'Lessons from Brcko', op. cit., p. 549, n. 92.

when the relevance of the IEBL should be terminated in this respect.

District Assembly. Instead of specific devices to ensure minority rights and to guard against majority dominance, the Annex gave the Supervisor *carte blanche* to select “any voting mechanism that, in his judgment, will promote full and fair representation of all elements of the District’s multi-ethnic population.” It empowered him as well to dissolve the existing municipal assemblies and to re-form them as he saw fit should he see the need for an advisory legislative body before district-wide elections were held.

Executive Board. The draft Annex had suggested a city manager system that would have converted the board into a non-executive body. The final version restored executive authority to what would become the district government (with a mayor) in the eventual statute. It further authorised the Supervisor to disband the current municipal governments and to reconstitute as an interim executive such of their professionally qualified members as he might choose, once he had imposed a statute.

Judicial and Penal System. The August Annex mandated more thoroughgoing judicial reform than its predecessor. The Supervisor would make initial appointments, after which a judicial commission should be established to complete the job of renewing the judiciary and the prosecutorial service. The district government, meanwhile, should have a justice department akin to a ministry.

Law Revision Commission. There was no substantive change in the injunction to the Supervisor to set up an internationally chaired commission to harmonise, re-write and unify the district’s laws. In fact, he had already done so. The Supervisor was to have the final say both in accepting and enacting the commission’s recommendations.

Law Enforcement. The new (and more detailed) paragraphs in the Annex emphasised the requirement that the district police should be fully unified and take over all policing and interior ministry functions. The Supervisor would appoint the first chief. In what may have been a concession to the entities, however, the district police were enjoined to cooperate with their entity counterparts and the right of ‘hot pursuit’ was recognised.

Customs Service. Another potential entity gain was the authority granted to the Supervisor to ‘contract

out’ the district’s customs service. Moreover, the district would be required to negotiate an “appropriate allocation of customs revenues” with the state and entities.

Taxation and Financial Matters. The August Annex’s more extensive provisions in this sphere left it to the Supervisor to decide between an in-district and a contracted-out tax agency. District residents were to have no tax liabilities to the entities, but the Supervisor was authorised to bring ‘Arizona Market’ within the remit of the tax laws. Pending the election of a district assembly, the Supervisor would set the budget. Even afterwards, however, he would have the final word. Exhorting the district to aim for fiscal self-sufficiency, the Annex nonetheless empowered the Supervisor to require the entities to make up any short-falls on the basis of one-third from the RS and two-thirds from the Federation.

Voting. The right of district residents to vote in both local elections and in state and entity contests (using the ballot of the entity of which the individual voter was a citizen) was confirmed. But the August Annex also gave the Supervisor the right to set the rules for any district election held prior to the enactment of a statute. The Organisation for Security and Cooperation in Europe (OSCE) was to oversee such an initial election. Post-statute elections, however, were to be monitored as the Supervisor might see fit. These provisions made it plain that the Tribunal continued to envisage an early district election.

Symbols. The only change in the provisions requiring nationally neutral symbols (“subject to final approval by the Supervisor”), prohibiting a district flag, and stipulating the equality of languages and alphabets was an affirmation of the applicability of state passport law.

Educational Curriculum. The final Annex broadened significantly both the reform agenda and the Supervisor’s authority. In consultation with an advisory committee that he was charged with establishing, the Supervisor was to integrate the district’s schools, harmonise their curricula, and purge textbooks and other teaching materials of offensive content. He would decide when and how the unification of the school system should take place.

Public Properties. Another major innovation gave the Supervisor the right not just to transfer publicly owned property to the administration of the district

government, but to privatise it in accordance with BiH law.

Military Transits. This new Annex provision sought to reassure the RS on the subject that had raised most nationalist hackles. Following the withdrawal of SFOR and its authority in this matter, the Tribunal opined that there should be no enforcement of entity or BiH law “unreasonably to prevent any military transit whose purpose and effect is to allow the movement of [entity] forces for non-aggressive purposes.”⁴¹

V. ESTABLISHING THE DISTRICT

According to founding BLRC Chairman Michael Karnavas, “Supervisor Farrand’s overriding objective was to instil the Rule of Law as a means of pacifying and/or reconciling the tense Brcko community.”⁴² Both the Supervisor and the BLRC would thus take a broad view of their mandate: not only endowing the district with a statute that provided for the separation of powers between the three branches of government, but also embarking upon a root and branch reform of Brcko’s divided, archaic and much-abused judicial and criminal justice systems. Further, they aimed to ensure that:

- ❑ all legislation was consistent with European Union standards;
- ❑ the public had easy access to uncompromised governmental institutions;
- ❑ enforcement mechanisms were in place to “promote transparency, accountability and uniformity in public services”;
- ❑ the judiciary was independent and professional; and
- ❑ instruments were established to foster multinational governance and public services throughout the district.⁴³

This agenda spelled trouble with the OHR Legal Department in Sarajevo. It and other OHR departments naturally aimed to assert their authority over ‘their’ Deputy High Representative in Brcko, to maintain a consistent policy line across BiH, and to prevent the Brcko tail from wagging the OHR dog. Equally naturally, the Supervisor and his helpmates were resolved to maximise their autonomy and to do everything that was required to implement the Final Award. They did not appear to care overmuch what the fainthearted busybodies in faraway Sarajevo might think.⁴⁴

⁴¹ All citations from Brcko Final Award, Annex to Final Award, 18 August 1999.

⁴² OHR-North, *Brcko Law Revision Commission: Chairman’s Final Report*, 31 December 2001, p. 4.

⁴³ *Ibid.*, p. 8.

⁴⁴ *Ibid.*, pp. 4-6. The BLRC was independently funded (to the tune of U.S.\$1 million) by the United States and responsible to the Supervisor alone.

However in-built this contention might be, it was based on divergent readings of the DPA, the BiH constitution contained therein, and the Brcko Arbitral Awards. Sarajevo gave precedence to the first two, while Brcko emphasised the third. The principal point at issue was whether Brcko District derived its self-governing powers directly from the strong entities, courtesy of the Final Award, or indirectly through the weak state. If, as the OHR Legal Department contended, it were the latter, then the Supervisor might also be legitimately constrained in the exercise of his powers, even within his Brcko bailiwick, by the High Representative.⁴⁵

On the other hand, the fact that Brcko supervisors would always be Americans who both enjoyed the support of the local U.S. SFOR commander at Camp McGovern and occupied an inside track when it came to winning U.S. financial assistance served to give them added clout.⁴⁶ But these advantages may also have evoked some resentment in OHR. Certainly it did not help relations between the two proconsuls when, over the next few years, the policies pursued and solutions found in Brcko proved more successful than those generated in Sarajevo. The scale and complexity of their respective operations might not be comparable, but joy over the achievements of OHR-North was far from unalloyed in Sarajevo.

The first task set by the Final Award – and already in train by the time Owen issued the August Annex – was to produce a basic law for the new district. The work of many hands, the Statute of the Brcko District of Bosnia & Herzegovina (hereinafter, the Statute) was complete by December 1999. It created the framework for the laws on executive authority, assembly rules and procedures, policing, and administration that would need to follow in short order after the district was proclaimed. The Statute was also designed “to provide the impetus for wide-range fundamental changes” in the district’s judicial, commercial, property and social sectors.⁴⁷ In order to guarantee that this impetus

would not be lost or frustrated by the entities, the international community or OHR, the Statute incorporated wording from the Final Award among the fundamental principles set out in its un-amendable Article 1.⁴⁸

Although the preamble invokes the need to respect “the national, religious and cultural identity of all people” and Article 7 confirms the equality of the three languages and two alphabets,⁴⁹ there are no nationally specific entitlements or protections. Rather, the Statute provides both for qualified majority voting by a 29-member assembly and for executive department heads to “reflect the composition of the population”. The requirement of a three-fifths or, in some cases, a three-quarters majority for the passage of important legislation nonetheless offers a safeguard to the smallest national community, the Croats.⁵⁰ The Statute thus accomplished the feat of expunging all references to ethnicity – on which Farrand had become

legislative branches before the Statute was finalised, since the BLRC was to some extent hamstrung by its terms.

⁴⁸ Ibid, p. 12. Thus, Article 1(2) provides that ‘The District derives its powers of local-self-government by virtue of each Entity having delegated all of its powers of governance as previously exercised by the two Entities and the three municipal governments within the pre-war Opstina...to the District Government’. Farrand described this provision as his ‘shoot-out at the OK Corral’ with High Representative Wolfgang Petritsch. ICG interview with R. W. Farrand, 11 April 2003.

⁴⁹ The notion that there are separate Bosnian, Croatian and Serbian languages – as opposed to evolving literary standards that emphasise such distinctions as exist – was, alas, recognised at Dayton.

⁵⁰ According to Article 34, a three-fifths majority of the total number of councillors is required to adopt the assembly’s rules of procedure, to enact the district’s budget and laws, and to dismiss persons elected or confirmed by the assembly, including the police chief and his or her two deputies. A three-quarters majority is required to amend the Statute, to enter into cooperative agreements with the entities or foreign bodies, and to vary the provisions on legal succession from the pre-district municipalities. The requirement (Article 60) that there be a police chief and two deputies is, of course, an implicit invitation to apply a national key. The injunction (in Article 48) that department heads should ‘reflect the composition of the population’ is no doubt ambiguous by design. It must have been thought that specific reference either to the 1991 census or to the then-current national composition would have been inflammatory and/or unrealistic. OHR, *Essential Texts*, op. cit., Statute of the Brcko District of Bosnia & Herzegovina, 7 December 1999, pp. 291-302.

⁴⁵ Ibid, p. 3 (footnotes 18 and 20) and p. 6.

⁴⁶ Why the U.S. has always held a special position in Brcko is discussed below.

⁴⁷ OHR-North, *Brcko Law Revision Commission: Chairman’s Final Report*, op. cit., pp. 11-13. With the benefit of hindsight, Karnavas maintained that it would have been wiser to draft the laws on the executive and

determined – while providing for the multinational institutions that he was mandated to establish.⁵¹

Even before the district had been formally proclaimed, the Supervisor ordered the formation of the Brcko District Police Service and appointed an interim chief and two deputies on 20 January 2000. The police would report to and operate under the instructions of the Supervisor until a provisional district government was formed.⁵²

D-day was 8 March 2000. High Representative Wolfgang Petritsch issued a 'decision' that Brcko District "shall be created" and Supervisor Farrand promulgated an 'order' declaring the Statute to be in force.⁵³ He issued another order appointing a mayor and a cabinet of nine department heads to serve until elections were held for the district assembly.⁵⁴

Farrand's appointments of the 29 members of the interim assembly followed on 21 March.⁵⁵ They were a carefully crafted lot. Working with OSCE, the

International Peace Implementation Council (IPTF) and other international organisations, Farrand sought "to appoint persons in an ethnically, politically, and gender-balanced way",⁵⁶ primarily from lists of candidates submitted by the political parties.⁵⁷ The Serbs (with thirteen seats) were deprived of the majority they had enjoyed in the assembly elected in 1997 in the former RS municipality, but retained their post-war plurality.⁵⁸ Bosniaks (nine seats) were under-represented in comparison to their pre-war share of the population, but got the post of assembly president. Croats (seven seats) were meanwhile offered compensation for their 1997 blunder in abstaining and extra encouragement to return. Women got eight seats.⁵⁹

Addressing the inaugural session of the assembly on 31 March, the Supervisor reminded Brcko's new councillors, cabinet members and police commanders that they had been selected for what amounted to a course of on-the-job training in democratic governance. While work proceeded on building the judicial pillar of government and he sought the funding required to regenerate the economy, international experts in modern city management and public administration would mentor the mayor and department heads. The BLRC, meanwhile, would assist assembly members in drafting and debating framework laws for district institutions. Their collective application to their lessons would be put to the test in elections "to be held in the future".⁶⁰ In contrast to the early poll envisaged by the Final Award, Farrand's intention at this point was to wait two years before calling elections.⁶¹

⁵¹ R. W. Farrand to ICG, 3 February 2003. Naturally enough, the supervisory regime is nowhere mentioned in the Statute. See P. C. Farrand, 'Lessons from Brcko', *op. cit.*, pp. 560-562, for an account of the drafters' gradual acceptance that special national entitlements would be both wrong and counterproductive. According to Assembly President Mirsad Djapo, however, an informal national key (2:2:1) for public service jobs does now prevail. ICG interview with Mirsad Djapo, 5 February 2003.

⁵² OHR, Supervisory Order on the Establishment of the Brcko District Police Service and the Appointment of the Chief and Deputy Chiefs of Police, 20 January 2000. The UN International Police Task Force (IPTF) would have a consultative role.

⁵³ OHR, High Representative's Decision on the Establishment of the Brcko District of Bosnia & Herzegovina; Supervisory Order on the Establishment of the Brcko District of Bosnia & Herzegovina, 8 March 2000. Petritsch's decision also enjoined the entities and state 'to effectuate' and 'to enable' the birth and self-government of the district, as required by the Final Award.

⁵⁴ OHR, Supervisory Order on the Appointment of Members of the Interim Government of the Brcko District of Bosnia & Herzegovina, 8 March 2000. The mayor, Sinisa Kisić, had latterly served as mayor of the former RS municipality. One of the department heads (a Croat) was also designated as vice-mayor. Of the ten appointees, four were Bosniaks, four were Serbs, and two were Croats. There was one woman. Farrand also appointed a (Bosniak) head of the District Revenue Agency.

⁵⁵ OHR, Supervisory Order on the Establishment of the Interim District Assembly of the Brcko District of Bosnia & Herzegovina, 21 March 2000.

⁵⁶ R. W. Farrand to ICG, 3 February 2003.

⁵⁷ OHR Press Release, 'Establishment of the Interim Brcko Assembly', 21 March 2000.

⁵⁸ As explained above (see footnote 5), Bosniaks held a pre-war plurality in the municipality.

⁵⁹ R. W. Farrand to ICG, 3 and 12 February 2003. With 24 per cent of the seats, Croats were within striking distance of their 1991 share of the population (25.4 per cent), but over-represented in terms of their current share.

⁶⁰ OHR, Speech by the Supervisor of Brcko, Robert W. Farrand, at the Inaugural Session of the Interim Assembly of the Brcko District, 31 March 2000.

⁶¹ R. W. Farrand to ICG, 3 and 12 February 2003. The new rules of the OSCE-led Provisional Election Commission required, however, the appointment of an election commission in Brcko. Farrand appointed an interim body on 26 May, 2000. OHR Press Release, 'Supervisor

VI. UNIFYING THE DISTRICT

He did not get the chance. Reportedly worn out by his battles with Petritsch and the “munchkins” who guarded the High Representative’s front office, Farrand resigned in mid-May 2000 and left Brcko at the end of the month.⁶² In the meantime, however, he set about tackling what would prove the most problematic issue in actually dismantling the entities’ powers in and over the district. On 16 March he had instructed the district’s three (Serb, Croat and Bosniak) payment bureaus to subordinate themselves to the newly established District Revenue Agency and to retain, on behalf of the district, all tax receipts, fees, social contributions, and payments of utility bills. All revenues collected by the entity bureaus in Brcko since 16 March were to be transferred to the district’s account in the Central Bank of BiH. On 13 April he issued a supervisory order to this effect.⁶³

Payment bureaus were the financial control mechanism of the former socialist state. Just as the League of Communists had depended upon them to maintain its monopoly over financial transactions in Yugoslavia’s semi-market economy, so too did its equally *dirigiste* nationalist successors aim to keep a stranglehold on money flows. Consolidating the functions and ultimately abolishing the payment bureaus in favour of the commercial banking system was, therefore, a precondition to asserting the district’s unity and fiscal viability.⁶⁴

Entity and OHR Economic Department opposition to Farrand’s pre-emptive strike on the payment bureaus

compelled his successor, Garry Matthews,⁶⁵ to roll back part of the 13 April order. The district would no longer seek to keep electricity charges and contributions to the entity health and pension funds.⁶⁶ Matthews explained that this concession was designed to produce constructive negotiations with the entities over their obligations to fund the district. It was not an abandonment of the Final Award’s proscription of parallel institutions in the district.⁶⁷

Meeting under Matthews’ auspices on 19 September, the district and entity governments agreed to find “specific solutions within the next 30 days” in those areas in which the entities were now putting the squeeze on the district. These included refugee returns; infrastructure maintenance and reconstruction; revenue-sharing; pensions, health care and social services; privatisation; the status of employees of the former municipalities; and, of course, the payments issue that had sparked the dispute.⁶⁸

Although an agreement on pension and health care contributions remained elusive, the entities accepted on 24 October that all other public revenues collected in the district would belong to it. The branch offices of the entity payment bureaus would be closed when the system itself was abolished early in 2001. In the meantime, the bureaus would harmonise their accounts with the District Revenue Agency. The district promised, however, that its future reforms of taxation and revenue collection would be “generally compatible” with reforms elsewhere in BiH. This agreement, which would become effective when the district adopted its first budget, went a long way towards securing the

Appoints Interim Election Commission of the Brcko District’, 26 May 2000.

⁶² ICG interview with U.S. diplomat, 31 March 2003; OHR Press Release, ‘Supervisor Farrand Announces His Departure from Brcko’, 18 May 2000.

⁶³ OHR, Supervisory Order on the Financial System of the Brcko District of Bosnia & Herzegovina, 14 April 2000.

⁶⁴ It was also ICG’s number one recommendation for a post-Final Award district. For details of the system and suggestions on how to abolish it, see ICG Report, *Brcko: A Comprehensive Solution*, op. cit., pp. 3-4. Farrand was anticipating in March-April 2000 what the High Representative would do for all of BiH in January 2001.

⁶⁵ U.S. diplomat Gary L. Matthews took up his post on 2 June 2000. He had previously headed the OSCE office in Mostar.

⁶⁶ OHR, Addendum to the Supervisory Order on the Financial System of the Brcko District of Bosnia & Herzegovina, 22 June 2000.

⁶⁷ OHR Press Release, ‘Statement of Ambassador Gary L. Matthews, Deputy High Representative and International Supervisor of Brcko, on June 21, 2000 Addendum on Brcko District Finances’, 30 June 2000.

⁶⁸ OHR, Memorandum of Understanding on the Implementation of the Entity Obligations from the Final Arbitral Award for Brcko, 19 September 2000. A separate agreement provided for the district to take over the housing and refugee return responsibilities of the entities and ex-municipalities. OHR Press Release, ‘Brcko District Government Takes Over Housing Issues’, 25 September 2000.

district's financial self-sufficiency.⁶⁹ The entities did not like the district, but they had apparently learned that they would have to tolerate it.

In fact, progress was so encouraging during the district's first year that Petritsch felt able to venture that Brcko was creating "the future Bosnia & Herzegovina in microcosm" when he and the PIC Steering Board ambassadors visited for the anniversary party on 8 March 2001.⁷⁰ Entity leaders came too. Congratulations and self-congratulations were the order of the day. Besides forging a single multinational government out of three municipalities with 85 separate agencies and establishing an equally multinational assembly that had passed 21 laws drafted for it by the BLRC, the district was on the verge of making appointments to both its restructured judiciary and its education reform teams. The police force was integrated and unified. The demilitarisation of the district had been accomplished. 'Arizona Market' was being cleaned up and was scheduled to move by June 2001. Perhaps most impressively, more than 5,000 'minority' refugees and DPs had returned to Brcko in 2000 (an increase of some 3,800 on 1999) and 40 per cent of double-occupancy cases had been resolved by the district's new Division of Housing and Refugees.⁷¹

The forces of darkness were not, however, yielding without a struggle. The introduction in September 2000 of a scheme to share secondary school buildings, with Serb and Bosniak pupils attending

in separate shifts, led by October to large and ugly demonstrations by Serb pupils, their parents, and the latter's political and ecclesiastical mentors. As marches and counter-marches proceeded over four days, Serb demonstrators attacked the properties and residences of both returnees and foreigners, shouting "Out Turks! Out Americans!" Although Mayor Sinisa Kistic stood up to the protesters and Supervisor Matthews successfully shamed the assembly into condemning the disturbances, they were an ominous intimation of the battle to follow in actually integrating classrooms, unifying teaching staff and management, and introducing common curricula in district schools.⁷²

The rabble of the Ravna Gora Chetnik Movement had been in the thick of the fray in October. Their leadership went on to issue an edict threatening punishment of Serb 'traitors' and their families for collaborating with district institutions and the international community. Matthews denounced the group.⁷³

Finally, the revival of the district's economy was lagging, and it was not at all apparent where the money would come from to support the ambitious schemes of the district government and the Supervisor. The international community had given itself the power to do what it wanted in Brcko and had found more willing 'collaborators' than might have been expected, but the means were far from secure.

After only ten months in Brcko, Matthews left in late March 2001 for a job in Kosovo. He was succeeded in April by another U.S. Foreign Service officer, Henry L. Clarke.

⁶⁹ OHR, Agreement on Implementation of Entity Obligations Set Forth by the Final Arbitral Award for Brcko, 24 October 2000. The district did not adopt a budget until May 2001.

⁷⁰ OHR Press Release, 'First Anniversary of the Establishment of the Brcko District of Bosnia & Herzegovina: Address by the High Representative, Wolfgang Petritsch', 8 March 2001.

⁷¹ OHR Press Release, 'One Year of the Brcko District of Bosnia & Herzegovina', 8 March 2001. See also Vehid Jahic, 'Covjek koji osjeca Balkan', *Oslobodjenje*, 17 March 2001. According to Petritsch, the record of the assembly 'puts the past Entity and State legislatures to shame'; though he hoped the new Alliance for Change coalition would 'follow your energetic example'. OHR Press Release, Address by Wolfgang Petritsch, 8 March 2001. Inverted commas surround the reference to 'minority' returnees because, in BiH law, no member of a 'constituent people' can be regarded as belonging to a minority, regardless of that people's numbers in a given area.

⁷² For contrasting accounts of the pupils' rebellion, see Hasan Hadzic, 'Posljedice petka trinaestog', *Dani*, 20 October 2000, p. 16, and V. Matijevic, 'Pucanje pilot projekta', *Reporter*, 25 October 2000, pp. 13-15. Both agree, however, that the district police and international community were unready for predictable trouble.

⁷³ OHR Press Release, 'Statement by Ambassador Gary Matthews, Deputy High Representative and Supervisor of Brcko', 5 November 2000.

VII. THE BRCKO MODEL

Getting in had proved long and difficult. Getting out might be thought about later. In the meantime, there was much for Brcko's anointed Supervisor and his appointed government and assembly to do. Not only did the Final Award set an almost infinitely expansive agenda, but one achievement seemed invariably to reveal the need for another. The tasks might become ever more technical, but they were none the less riveting for that. Any reader of Ambassador Clarke's annual reports to the PIC for 2001-02 and 2002-03 cannot but be struck by the depth of his engagement and the proliferation of his priorities.

The context, meanwhile, has changed fundamentally. More than in BiH generally, a provisional order has acquired an aura of permanence and, in the process, won a significant measure of popular support. According to a public opinion poll commissioned by the Supervisor from the U.S. State Department's Office of Research and carried out in spring 2002, 71 per cent of Brcko's residents endorsed the creation of a multinational district; 66 per cent assessed its impact upon themselves as positive and seemed to want the supervisory regime to be maintained; while 60 per cent believed the district was headed in the right direction. Save for the police, respondents had less confidence in district institutions.⁷⁴ But once-contentious issues like refugee return and integrated schools were no longer resisted, having become, in Clarke's words, "acquired rights, even if we haven't quite managed to convince Brcko Serbs and the DP population in particular."⁷⁵

The pace of refugee and DP return and property repossession remained vibrant in 2001 (with 4,960 returns), but shot up in 2002 to 8,952 registered and estimated returns.⁷⁶ The rate of property law

implementation, meanwhile, rose from 39 per cent at the end of 2001 to 74 per cent at the end of 2002.⁷⁷ This illustrates the extent to which the pool of potential returnees is being drained. The reality of actual return – as opposed to mere repossession – is affirmed by Housing Verification Monitors, who discovered an occupancy rate in Brcko of over 95 per cent.⁷⁸

On the other hand, Serb DPs in Brcko have shown little inclination and received less encouragement to return either to the Federation in general or to Sarajevo in particular.⁷⁹ Having embarked first in BiH on encouraging return while, at the same time, eschewing evictions of persons without alternative accommodation, Brcko has only been able to square this circle thanks to massive support by donors and the district government for housing reconstruction, flat rentals, and other expedients. More than 500 houses were rebuilt in whole or in part in 2002. The state Ombudsman has recently expressed concern, however, that Brcko appears to be giving preference to the right to alternative accommodation over the right to repossess property. It is meant to be the other way round in BiH.⁸⁰

The principal reason why relative stability, normality and multinational tolerance have come to reign in Brcko is that the district's economy has out-performed those of the entities. The fears that prevailed during the district's first year that the

⁷⁴ Department of State Office of Research Opinion Analysis, 'Brcko Residents Like District's Unique Status', M-48-02, 14 June 2002. There was some ambiguity about whether or not the two-thirds of respondents who endorsed Brcko 'as it is now' meant also to include international supervision. Not surprisingly, Bosniaks and Croats were keener on the district and its institutions than were Serbs.

⁷⁵ Internal OHR Briefing Memorandum, 2 August 2002.

⁷⁶ Returns Summary to Bosnia & Herzegovina from 01/01/1996 to 31/03/2003, www.unhcr.ba.

⁷⁷ Statistics: Implementation of the Property Laws in Bosnia & Herzegovina, 31 December 2002. The overall implementation ratios (i.e., the percentages of repossession claims resolved) in the entities at the end of 2002 were 74 per cent in the FBiH and 62 per cent in the RS. By the end of March 2003, Brcko's implementation rate had risen to 81 per cent, while those of the Federation and RS had climbed, respectively, to 82 and 72 per cent. OHR Press Release, 'February 2003 PLIP Statistics for March 2003', 6 May 2003.

⁷⁸ 'Report from the Supervisor of Brcko to the Peace Implementation Council Steering Board on the Progress of Implementation of the Final Award of the International Arbitral Tribunal for Brcko (8 March 2002 – 8 March 2003)', pp. 2-3. Hereinafter OHR, 'Supervisor's Report, 2002-2003', pp. 2-3.

⁷⁹ Sarajevo Canton's implementation rate at the end of 2002 was a relatively lowly 61 per cent. Formerly Serb-held municipalities like Hadzici and Ilijas had rates in the mid-to-low 40s.

⁸⁰ Press conference by BiH Ombudsman Frank Orton, 25 March 2003.

whole experiment might founder if substantial international assistance were not forthcoming – or if the entities were to keep up their economic warfare – proved unfounded. More than KM 130 million (or some KM 1,450 per inhabitant)⁸¹ had been invested in Brcko by international donors by late 2002, concentrated on the reconstruction of infrastructure and housing. Not counting USAID projects, the U.S. Embassy in Sarajevo estimates that American assistance to Brcko has averaged U.S.\$2 million per annum since 1997.⁸²

By February 2003, the average monthly wage in Brcko was the highest in all of BiH: KM 690. In the Federation, by contrast, it was KM 512 and, in the RS, a lowly KM 385. Only Sarajevo Canton, where monthly pay packets averaged KM 650, came close to Brcko. What was more, the cost of a basket of essential items necessary to keep a family of four was lower in Brcko (at KM 412) than in either the RS (KM 442) or FBiH (KM 462).⁸³ The fact that the number of officially unemployed persons in Brcko at the end of 2002 (16,337) was far larger than that for those registered as possessing jobs (12,680) shows, however, that the district's economic success remains highly relative.⁸⁴

Aside from the preferential treatment accorded to Brcko by the United States, other donors, investors, project implementers, and entrepreneurs have been attracted by the existence of the supervisory regime itself, by what it has wrought, and by what it might become. Not only has the district never needed to invoke its right to claim budget support from the entities, it has latterly become a disproportionately generous contributor to the coffers of the state.⁸⁵

⁸¹ The KM (convertible mark) is pegged to the euro at an approximate ratio of 2:1.

⁸² ICG interview with U.S. Embassy officials, 31 March 2003.

⁸³ 'U Brckom prosjecna plata oko 690 maraka', *Oslobodjenje*, 2 May 2003.

⁸⁴ Data from Brcko District Office for Statistics, cited by *Vecernji list*, 6 February 2003. In Brcko, as elsewhere in BiH, the grey economy provides jobs for many registered as unemployed. Nonetheless, the district's unemployed were recently reported to be forming an association to fight for their rights and to press the government and Supervisor to take measures against those who have enriched themselves illegally. 'U Brckom prosjecna plata oko 690 maraka', *Oslobodjenje*, 2 May 2003.

⁸⁵ 'Supervisor's Report, 2002-03', p. 2. The district agreed a one-off KM 2.5 million contribution to the State Border

Since 2001, the assembly has consulted over, debated and adopted balanced budgets before the end of the calendar year. This is unique in BiH.

The honesty and efficiency of the district's customs service (sub-contracted to the RS administration, but with personnel policy, salary levels, and standards set by the Supervisor and monitored by the EU's Customs and Fiscal Assistance Office, CAFAO) have given it a competitive edge with importers and swelled receipts for the district budget. These totalled KM 76 million in 2002.⁸⁶ Owing to the long-continuing inability of the entities to agree or apply harmonised rates for sales taxes and excise duties, the district has also benefited from having marginally lower rates than the entities.

Following a 'sneak attack' by the RS privatisation agency on Brcko-based enterprises, the Supervisor promulgated a privatisation model for the district in September 2001 that improved upon the entities' schemes by ensuring both that purchasers acquire majority share-holdings and that they subsequently have every incentive to invest and maintain jobs. Four 'strategic firms' had been sold by early 2003.⁸⁷

The elaboration of an ambitious 2002-06 development strategy, and the increasingly well-founded expectation that the rule of law, equitable

Service in October 2002, but later suspended payment of the remaining balance (KM 800,000) because the Council of Ministers had failed to secure the lifting of Croatia's ban on petroleum imports through Brcko. The district also agreed a KM 3.9 million contribution to state institutions for 2003 at a per capita rate nearly double that of the entities.

⁸⁶ Ibid, p. 9. Part of this sum is a windfall resulting from the fact that the entities do not claim the customs receipts on cargoes cleared in Brcko that later disappear into the black economy. ICG interview with Ambassador H. L. Clarke, 5 February 2003.

⁸⁷ OHR Brcko Press Releases, 8 and 14 August 2001; Supervisory Order on the Conduct of Privatisation of State Capital of Enterprises in the Brcko District of BiH, 19 September 2001; 'Supervisor's Report, 2002-2003', p. 5. Purchasers acquire 67 per cent of a firm's shares, leaving 33 per cent in trust for holders of FBiH certificates, RS vouchers, and the so-called 'Markovic shares' from Yugoslavia's 1989-90 foray into employee privatisation. Disagreements between the entities over the use of these instruments had made it necessary for the district to go it alone.

taxation and even-handed administration will prevail in Brcko, have likewise contributed to the creation of a business-friendly environment. The KM 250 million-contract signed in December 2001 with 'Italproject' to redevelop (but not move) 'Arizona Market' has symbolised the district's commitment to growth. Unfortunately, it has also served of late as an example of the district government's inability always to deliver on its commitments in the face of national-political opposition.⁸⁸

High hopes and much money have been invested in restoring Brcko's inter-modal transport links. Italian aid permitted rehabilitation of the cranes at Brcko port in 2001. U.S. funding paid for a bathymetric survey to identify areas of the river requiring dredging in order to establish year-round navigability. The Supervisor meanwhile initiated negotiations, under Stability Pact auspices, among the four riparian states for the creation of an international navigation regime in the Sava basin. The parties signed a framework agreement creating a Sava River Commission in December 2002, so sustaining expectations that Brcko's port might again become a generator of wealth. The district is repairing the rail links to and within the port and the U.S. is funding a management study of the port company and its infrastructure.⁸⁹ Brcko has not yet won, however, its (and BiH's) campaign to be selected as the permanent seat of the commission.

The attention lavished by the Supervisor on the details of port reconstruction and navigation issues is a prime example of both his commitment to the 'economic revitalisation' mandated by the Final Award and the

open-ended nature of that mandate.⁹⁰ Although the Supervisor has sought to work with and through the institutions he and his predecessors have created – and to avoid impositions – the imperative to engage has heretofore outweighed pressure to disengage. Far from accelerating thoughts of letting go, the 'downsizing' of his office in 2002, and the prospective loss of two more sections by the end of 2003, moved Ambassador Clarke to warn the PIC that "While we welcome the opportunity to hand over functions to the District Government, fewer staff may require more time to end the Supervisor's mandate."⁹¹

⁸⁸ For a survey of the 'Arizona Market' project, see the special supplement to *Dani*, 'Trznica Arizona: Market buducnosti', 24 January 2003. If upheld on appeal, a ruling by the Brcko Basic Court on 19 March 2003 annulling the compulsory purchase orders on fifteen hectares of privately-owned land necessary for the project may jeopardise the current scheme and expose the district to large compensation payments. 'Sud presudio u korist vlasnika zemljista', *Oslobodjenje*, 20 March 2003.

⁸⁹ OHR Press Release, 'Brcko Supervisor on Agreements on Sava River Basin', 4 December 2002; 'Supervisor's Report, 2001-2002', pp. 6-7; 'Supervisor's Report, 2002-2003', p. 6. Passenger rail traffic between Brcko and Tuzla was restored in late 2002, as was a solitary daily train across the river to Croatia.

⁹⁰ Clarke emphasises that 'the requirement to "revitalise the economy" was a loaded one, and the rest of the effort would fail without it.' He has thus accorded an ever-higher priority to economic reform and fighting corruption, although he grants that Owen probably never 'imagined a Supervisor as heavily engaged in those topics as I am when he drafted the Awards.' He regrets that the international community largely neglected economic reform in BiH before 2002. Henry L. Clarke to ICG, 26 May 2003.

⁹¹ 'Supervisor's Report, 2002-2003', pp. 7-8.

VIII. ANNEX IMPLEMENTATION

The supervisory agenda over the past two years can be characterised as the period of the four Fs: fixing, finding, finishing, and forgetting. There has been more fixing of previous arrangements and more finding of new jobs to do than there has been finishing off Final Award requirements. And until lately, forgetfulness seems to have defined policy towards preparing for district elections, establishing meaningful relations with the state, and mapping out an exit strategy. Given the emphasis placed by the Supervisor on implementation of the Annex to the Final Award, it should be useful to assess achievements to date according to that rubric.⁹²

Status of Brcko Residents. The Annex had envisaged that the Statute would regulate entity as well as district citizenship. In fact, the Statute merely promises that the right of district residents to choose or change their entity of citizenship will be regulated by law. Although such legislation has long since been trailed – and Clarke has announced that drafting it is now one of his “top priorities” – its absence means that the IEBL retains some significance.⁹³

District Assembly. The passage of three years without district elections has meant that the interim assembly has acquired greater weight than Roberts Owen probably envisaged when he provided for “a legislative advisory body to the Supervisor”. Schooled in law-making by the BLRC, tutored in parliamentary processes by the European Public Law Centre (supported by Greece), and provided with new premises (thanks to matching funds from the U.S.), councillors have been productive in enacting the new and harmonised laws required to unify and revivify the district. They passed 42 laws in 2001 and 38 in 2002.

The Supervisor has only rarely imposed legislation or appointed persons who failed to win the backing of the assembly. Assembly President Mirsad Djapo credits Clarke with maintaining relations based on

mutual trust and partnership.⁹⁴ On the other hand, he has had to sack or accept the resignations of numerous councillors and to make new appointments, all the while maintaining the national (if not the party) balance. SDS councillors walked out of the assembly in October 2001 in protest at the Supervisor’s exercise of his right to appoint councillors; although two of the five later returned under different party labels. The SDS is now naturally keen on early elections.⁹⁵

The assembly, for its part, has sought to overcome its democratic deficit through public meetings, constituent ‘surgeries’ and radio broadcasts of its sessions. Nonetheless, only Bosniaks expressed any great confidence in the assembly to the State Department’s pollsters in 2002,⁹⁶ and implementation of the Annex will not be complete until elections are held.

District Government. Contrary to the assumption prevailing when the district celebrated its first birthday, the unification and integration of the pre-existing entity, cantonal and municipal administrations was also far from complete. On 19 September 2001 the Supervisor ordered that all such bodies would cease to exist from 31 October and that those members of staff not being re-hired by the district would be made redundant. More than 700 persons fell into this category.

Despite the lengthy ministrations of a USAID-funded District Management Team, Clarke had concluded by autumn 2002 that the efficiency, capacity, responsiveness, and operational transparency of the Brcko government machine were inadequate. The Supervisor brought in a new firm of American consultants to advise on restructuring the government.

⁹² Unless otherwise noted, the discussion of implementation that follows is based on the Supervisor’s reports for 2001-2002 and 2002-2003.

⁹³ The continuing presence of three separate post and telecoms operators in the district is another reminder of the IEBL.

⁹⁴ ICG interview with Mirsad Djapo, 5 February 2003. The Supervisor overrode the assembly in imposing the education law in July and the privatisation plan in September 2001. In February 2003 he appointed a new police chief despite the nominee’s failure to win the required majority.

⁹⁵ M. Djurdjevic, ‘Narod bira predstavnike’, *Glas Srpski*, 15-16 March 2003.

⁹⁶ ‘Brcko Residents Like District’s Unique Status’, 14 June 2002. 52 per cent of Bosniaks, 45 per cent of Croats and 25 per cent of Serbs surveyed voiced confidence in the assembly. Figures were similar in regard to the government, mayor and ombudsman. The courts and the Supervisor fared better.

As he told the public in February 2003, not only had the government violated its contractual obligations to 'Italproject' by its dilatory approach to site preparation and compulsory purchase orders at 'Arizona Market – and so made itself liable to pay "enormous damages" – but it had also failed even to begin the process of privatising socially owned flats six months after the relevant law was passed.⁹⁷ He insisted that the mayor should be provided with a manager delegated to ensure inter-departmental coordination, that responsibilities should be rearranged among departments, and that some heads should roll. "The mandate of the Supervisor," he noted, "includes reform of the public sector and revitalising the economy. It does not say that I am responsible for personally intervening to ensure coordination between Departments of the Government – as I have, too often, found myself doing."⁹⁸

Both Clarke's frustration and his proposed reorganisation highlight the extent to which a government that is responsible to the Supervisor will also be dependent on the Supervisor. The decision to provide the district with a government rather than the executive board envisaged by the Annex to the Final Award – combined with the passage of time since the interim government was appointed in 2000 – have likewise served to emphasise the growing need for an alternative and democratic source of legitimacy. Although, according to the Statute, the mayor will be elected from among popularly elected councillors and his appointees as department heads will be confirmed by the assembly, the interim mayor, Sinisa Kistic, has come to believe that the Statute should be

amended to provide for a directly elected mayor.⁹⁹ The Supervisor's current efforts to enhance the mayor's powers point in this direction as well.

Judicial and Penal System. Were it not for the international community's decision in February 2002 to tackle rule of law issues in BiH more energetically and systematically than it had to date, judicial and legal reform in Brcko District might be said to be substantially complete. Although the Brcko process has provided an illuminating example of thoroughgoing reform, the recent decision of the BiH High Judicial and Prosecutorial Council (HJPC) to subject Brcko's now permanently-appointed judges and prosecutors to a second bout of re-selection has taken some of the lustre off the district's achievement. As in the case of its refugee return policies, being a happy exception to the BiH norm in pioneering radical reform can pose its own problems.

Under the leadership of Michael Karnavas of the BLRC – and with the assistance of the American Bar Association's Central and East European Law Initiative, the European Public Law Centre and others – Brcko's judges and prosecutors were put through a rigorous scheme of general reappointment, retraining, and mentoring that created the first independent judiciary in BiH.¹⁰⁰ The five pre-existing basic and misdemeanour courts were merged and restructured as a single basic court by spring 2001. A new appellate court, a legal aid agency and a regulatory body, the Judicial Commission, were also established during 2001. The assembly was kept busy enacting the new or revised legislation – both criminal and commercial laws and procedural codes – drafted for it by the BLRC and required to give effect to a fundamentally reformed system incorporating such novelties as plea-bargaining, rules of evidence based on those of the Hague Tribunal, and an adversarial approach at trial. The role of the prosecutor was enhanced and that of the investigating judge abolished.

⁹⁷ The first ten of more than 3,500 flats slated for privatisation were in fact sold to their occupants on 25 March 2003. Another 700 sales were in process. V. Matijevic, 'Potpisano 10 ugovora o otkupu stanova', *Nezavisne novine*, 26 March 2003.

⁹⁸ OHR Press Release, 'Responsible Government: A Statement by Henry L. Clarke, Supervisor of Brcko', 6 February 2003. The proposed new structure is printed as an appendix to the Supervisor's 2002-2003 report. It envisages twelve rather than ten departments, as well as a legal services office and a beefed up secretariat to serve the mayor and coordinate departmental activities. For a sceptical and inaccurate account of this 'secret' scheme, see Nikola Trogrlic, 'Rekonstrukcija obavijena velom tajni', *Vecernji list*, 30 March 2003.

⁹⁹ ICG interview with Sinisa Kistic, 5 February 2003.

¹⁰⁰ For details, see OHR-North, *Brcko Law Revision Commission: Chairman's Final Report*, op. cit., 31 December 2001. An assessment of the Brcko model and its relevance to BiH generally is provided in ICG Balkans Report No. 127, *Courting Disaster: The Misrule of Law in Bosnia & Herzegovina*, 25 March 2002, pp. 49-55.

By 2002, the Supervisor's office turned its attention to developing the legal skills, drafting capacity and advisory competence of both the assembly and the district government's legal services team. The conversion of the former Yugoslav People's Army (JNA) barracks into a modern court complex was completed. Efforts were also undertaken to modernise the courts' speed and efficiency by introducing mandatory mediation in civil cases and a fast-track procedure for dealing with misdemeanours. Prosecutors, meanwhile, launched high-profile and complex cases against former officials charged with corruption, against the owners of so-called fictitious firms, and against tax evasion and financial crime in general.¹⁰¹

The Annex to the Final Award ruled that the district's Judicial Commission should have responsibility for the appointment, tenure and dismissal of judges and prosecutors. The Judicial Commission confirmed the appointments of 27 (out of 29) probationary judges, prosecutors and legal aid lawyers in March 2002. The proposal that these judges and prosecutors should now be vetted once more by the HJPC is not consonant with the Final Award, even if it may be a step towards integrating Brcko into the state.¹⁰² The district itself, however, has deviated from the Annex by failing to create a judicial department within the government equivalent to an entity ministry of justice. In fact, the reform process in Brcko improved upon the Annex by establishing a fully independent judiciary and prosecutor's office, while providing the government with an extra-departmental legal services section.

¹⁰¹ According to the district's tax administration, evasion of taxes by fictitious firms cost Brcko more than KM 12.5 million between 1999 and the end of 2002. V. Matijevic, 'Fiktivne firme budzet osetile za 12,5 miliona maraka', *Nezavisne novine*, 29-30 March 2003.

¹⁰² Both Clarke and Owen complain about the lack of prior consultation and the likelihood that entity representatives on the HJPC will be involved in any reappraisal of Brcko judges and prosecutors. ICG interviews with H. L. Clarke, 6 February 2003, and Roberts Owen, 11 April 2003. Article 68 of the Consolidated Text of the Law on the High Judicial and Prosecutorial Council of BiH (1 November 2002) provides that it will not apply to Brcko until the start of 2004, by which time district laws must be harmonised with this law. According to HJPC lawyer Tim Hughes, this means that Brcko's Judicial Commission must be subsumed in the HJPC by the end of 2003. ICG interview with Tim Hughes, 13 May 2003.

Law Revision Commission. According to Karnavas, "The BLRC did not complete its mandate under the Final Award. The Supervisor, at the insistence of OHR, dismantled the BLRC on 31 October 2001, even though sufficient funds were available to operate the BLRC for several more months."¹⁰³ Ambassador Clarke gave an insight into the nature of the tussle that he had just lost in a speech on 31 January 2002:

Some people have suggested that we have moved too fast, or that we have changed too much. They worry that what we have done is not sufficiently compatible with existing laws in the Entities. I want...to suggest the opposite: fundamental reform of the whole fabric of the rule of law in Bosnia & Herzegovina – judiciary, the police, the criminal laws – is long overdue. We cannot win the trust of ordinary people in these institutions by incremental or superficial adjustments. We owe it to the people of this country to move as rapidly and thoroughly as possible.¹⁰⁴

The BLRC's responsibility for drafting laws passed to the Supervisor's legal department. The foreign-run and Sarajevo-based Independent Judicial Commission (IJC) established a field office in Brcko to take over the BLRC mandate to mentor judges, help with court reform and implement laws. But following the decision of the PIC on 28 February 2002 to 'reinvigorate' rule of law reform in BiH, the BLRC was at least partly reborn when the IJC field office was rechristened the Brcko Legal Reform Office (BLRO).

Law Enforcement. The police were the first of Brcko's institutions to be unified and nationally integrated. In March 2002 they were the first force in BiH to be certified by IPTF for their professionalism and democratic standards. During the previous year they had cracked down on the district's previously notorious sex trade and begun, under the supervision of the prosecutor's office, to pursue cases of political corruption and financial crime. The crime rate fell

¹⁰³ OHR-North, *Brcko Law Revision Commission, Chairman's Final Report*, op. cit., p. v.

¹⁰⁴ OHR Press Release, 'Speech by the Brcko Supervisor Henry L. Clarke at the Brcko Symposium on the Law on Criminal Procedure of Brcko District', 31 January 2002.

between 2001 and 2002, although crimes against property increased. 'Ethnic' crimes were rare.¹⁰⁵ These achievements ought to have marked the fulfilment of the requirements set out in the Annex to the Final Award.

Yet the poll conducted on behalf of the U.S. State Department in April 2002 revealed that, while 76 per cent of Bosniaks and 57 per cent of Croats expressed confidence in the District Police Service, 60 per cent of Serbs *lacked* confidence, seeing the police as both corrupt and biased.¹⁰⁶ In early 2003 the district amended its regulations relating to the selection and conditions of service of the police chief to bring them into line with the entity laws on non-political police commissioners that had been pushed through by IPTF. (This is another example of Brcko needing to accommodate subsequent reforms in BiH, since the Statute does not, in fact, insulate the chief of police from political interference.)¹⁰⁷

A replacement police chief was nominated in February according to this new and transparent procedure. But the candidate chosen unanimously by the independent selection board, Milenko Milicevic, failed to win the majority required for confirmation by the assembly. The reason was that Serb councillors refused to support a candidate accused in the RS press of having participated in what Serbs recall as a notorious wartime attack on JNA soldiers. Although no evidence in support of

the allegations could be adduced – and Milicevic appeared before the assembly to dispute them – Serb councillors maintained their view that even false accusations would vitiate their constituents' faith in Milicevic. After conferring with the selection board, Clarke proceeded to appoint Milicevic on 18 February.¹⁰⁸

This dispiriting episode illustrates the continuing utility of supervisory power in a still-divided community. But it would be rash to argue that it also demonstrates the need for such power. As in the case of government reorganisation, the very existence of the supervisory regime encourages dependency. It also promotes politicking and invites intervention. In any case, the Brcko police have met the tests set by the Final Award.

Customs Service. Although Brcko's control over its efficient, honest, multinational and lucrative customs service has remained an object of contention and envy on the part of the entities and the state, it represents another sphere in which the Final Award has been fully implemented. OHR's current efforts to unify the country's three customs services and to introduce VAT on a state-wide basis will, if successful, render the provisions of the Final Award regarding customs irrelevant. Clarke has proposed, however, that the district's customs administration should serve as model for the new state service and that Brcko should become the headquarters for the planned Indirect Tax Administration or, at the least, one of its regional offices.

Taxation and Financial Matters. Despite what the Supervisor has termed – with some understatement – the "laboriously negotiated" agreements with the entities on the allocation of excise duties and the harmonisation of sales-tax rates during 2002, a species of trade war has continued. The entities also continue to owe the district nearly KM 10 million for pensions, health and other social contributions they agreed to assume in 2000. The Council of Ministers, meanwhile, has failed to insist that Croatia permit the import of petroleum products across the Gunja-Brcko bridge. The 24 October

¹⁰⁵ Report of Acting Police Chief Pero Androsevic to the Council of Ministers, 'Informacija o sigurnosnoj situaciji na području Brcko Distikta BiH', 30 January 2003. Ismet Dedeic, head of the Department of Urban Planning and Management, told ICG (5 February 2003) that the district 'is no longer a Balkan washing machine for money'. On the other hand, his home was the target of a bomb attack in November 2002, and the family of Deputy Mayor Ivan Krndelj was threatened with a grenade in July. OHR Press Release, 'Brcko Supervisor on the Explosion Incident at the Home of the District Government Official', 13 November 2002.

¹⁰⁶ Department of State Office of Research: Opinion Analysis, 'Family and Friends Enhance Security in Brcko', 16 July 2002. Overall, 57 per cent of respondents expressed confidence in the police, while 40 per cent disagreed. Department of State Office of Research: Opinion Analysis, 'Brcko Residents Dissatisfied with Political Parties: No Single Leader Widely Trusted', 29 July 2002.

¹⁰⁷ Article 60 makes the mayor responsible for appointing and dismissing the chief and deputies, albeit with the consent of three-fifths of the assembly.

¹⁰⁸ OHR Press Release, 'Supervisor Appoints Brcko Police Chief', 18 February 2003.

2002 agreement on direct cooperation with the state was supposed to produce this result.¹⁰⁹

Given these difficulties, both the Supervisor and the district government favour the introduction of VAT on the level of the state as much as they would welcome a unified customs service on the Brcko model. That does not mean, however, that they will be any less interested than the entities in the formula adopted for allocating revenues.¹¹⁰

The district has continued to tinker with its revenue-collection system, creating in 2002 a Tax Administration Office under the aegis of the District Revenue Agency. Tax revenue in 2002 was 34 per cent higher than in 2001. The establishment of a business register and the introduction of unique tax identification numbers assisted the fight against fictitious firms. The district has maintained its record of adopting balanced budgets on time.

As with the unification of the customs services, the advent of VAT on the state level would render most of the stipulations in the Annex relating to taxation irrelevant, provided the Supervisor is still in place and consents. The district has already fulfilled the admonition in the Annex that it should adopt self-sustainable budgets.

Voting. Brcko's supervisors have never been encumbered with the obligation to endure the equation of democracy with elections that has prevailed in BiH generally. The Tribunal obviously anticipated that district-wide elections would be held sooner rather than later, but their timing was left entirely to the Supervisor. Moreover, the Final Award made no connection between holding elections and ending supervision. The experience of the rush to the polls in BiH in 1996 – as well as of other international, post-conflict administrations – certainly testifies to the wisdom of both deferring elections and de-coupling them from strategies for withdrawal.¹¹¹

¹⁰⁹ ICG interview with H. L. Clarke, 6 February 2003. See also, OHR Press Release, 'Agreement on Cooperation between the State and Brcko District', 24 October 2002, and L. Stefanovic, 'BiH iskoristava Brcko', *Euro Blic*, 17 February 2003.

¹¹⁰ ICG interviews with Mirsad Djapo, Sinisa Kistic and Ismet Dedeic, 5 February 2003, and H. L. Clarke, 6 February 2003.

¹¹¹ See Richard Caplan, "A New Trusteeship? The International Administration of War-Torn Territories",

Yet three years after the establishment of the district and six years after the last local polls, the absence of district elections has begun to look decidedly odd in a polity justly proud of its multinational and 'democratic' institutions. Farrand had intended to call elections in 2002. Neither his successors, nor the members of the district government, nor most councillors, nor OHR and the principal powers have since appeared keen to run that risk. Only the RS political establishment has latterly pushed for municipal elections, a circumstance which has doubtless reinforced the wariness of the others. Like St Augustine's resolve to embrace chastity, they acknowledge the necessity of elections but, please God, not yet. In the meantime, Brcko residents have had their fill of voting in the country's biennial general elections.

By late 2001, however, Supervisor Clarke was at least ready both to start preparing the legal framework and to test the water of public opinion. The new state election law obliged the district to establish an electoral commission in good time for the first Bosnian-run elections in October 2002. The legacy of fraudulent voter registration in 1996-97 and subsequent refugee returns required work on a revised electoral roll. Moreover, eventual district elections would necessitate a new electoral law.

Among his nineteen priority tasks for 2001-02, Clarke listed two that hinted at an acknowledgement of a democratic deficit. The first was to "promote projects that encourage citizens to hold their own institutions and political parties accountable and to develop ownership of the District and its distinct institutions". The second was to carry out a public opinion poll. The former led to the adoption of laws both on public associations and foundations and on local communities (*mjesne zajednice*). The law on *mjesne zajednice* had the effect of transforming these lowest, socialist-era units of self-government into voluntary NGOs, thereby seeking to stimulate citizens' engagement while preserving the district's unitary structure of government.

Some of the findings of the public opinion poll commissioned by Clarke in autumn 2001 and carried out in spring 2002 have been referred to above. As a guide to whether Brcko residents either

Adelphi Paper 341, for the International Institute for Strategic Studies, 2002, pp. 60-64.

wanted early elections or could be trusted to vote 'responsibly' if they were held, the poll offered mixed signals. On the one hand, 50 per cent of respondents opted for assembly elections as soon as possible in 2002; fewer than 10 per cent preferred 2003; and only a tiny percentage chose postponement to 2004. A third of those polled, however, declined to express a view. Yet this apparent eagerness for elections was not matched by any marked enthusiasm for either their current local leaders or the available political parties, only one of which received the backing of as much as 29 per cent of any national constituency. Unfortunately, that party was the SDS. As noted above, support for district institutions was also no better than lukewarm.

The most encouraging finding was that respondents claimed to be more interested in bread and butter issues – and in the fight against corruption – than in nationalist agendas.¹¹² But when the 40 per cent of Brcko voters who bothered to cast their ballots in the October 2002 elections did so, they gave more support to the nationalist parties than to the alternatives. In the RS contests, for example, the SDS vote ranged from a low of 40 per cent for its list of candidates for the RSNA to a high of 49 per cent in the race to elect the Serb member of the BiH Presidency. The SDP came a poor second (with between 13 and 16 per cent of the vote) in the four RS contests. Among FBiH voters, the SDA and HDZ won more support than did their rivals, although Haris Silajdzic (Party for BiH) topped the poll for the Bosniak seat on the Presidency.¹¹³

¹¹² Department of State Office of Research: Opinion Analysis, 'Brcko Residents Dissatisfied with Political Parties', 29 July 2002.

¹¹³ Turnout for the RS races was only 38 per cent, while among FBiH voters it was 50 per cent. Brcko Croats and Bosniaks were less inclined to vote for the nationalist parties than were their brethren in the Federation. For example, Dragan Covic (HDZ) won 53 per cent of the ballots cast for the Croat seat on the Presidency in Brcko, but 62 per cent in the FBiH as a whole. In the contest for the Bosniak seat, Silajdzic took 45 per cent in Brcko, but 35 per cent overall. The corresponding figures for the winner, Sulejman Tihic (SDA), were 31 per cent and 37 per cent. Brcko Serbs, however, gave a larger share of their votes to the SDS than did RS voters generally. Mirko Sarovic took 49 per cent of the votes for the Serb place on the BiH Presidency in Brcko, but won the contest with just 35.5 per cent of the total. Dragan Covic, the victorious SDS

The principal fear of the Supervisor, his government and the U.S. State Department is that district elections will be hijacked by nationalist or entity-related issues and, in particular, that Brcko's still-disaffected Serbs will vote *en masse* for the SDS. It was for this reason that the pollsters asked residents whether they might support a newly-created party or independent candidates. (40 per cent said they *might*.) Reviewing the poll's results for OHR, Clarke noted that a "reasonable assurance that the electoral process will serve the interests of District residents, and not be subject to outside, entity-guided interference" would be a "primary consideration" in his determination of when to set the date. In the meantime, OSCE and "expert agencies in the field of political party development" would work on ensuring that a pre-election campaign in Brcko focussed on locally substantive issues in order to enhance the accountability of those eventually elected.¹¹⁴ The U.S. National Democratic Institute (NDI) has since been engaged to promote "party development and constituency outreach".

District elections remain vital: not only to implement the Final Award, but also to test whether the Brcko Model is a model for anything other than the perpetuation of 'benign pro-consulship'. The question of elections will be discussed again below.

Symbols. Unlike the rest of BiH, the district has adopted a law on holidays (providing both for secular festivals and a balanced but limited number of religious holidays), got rid of provocative names for streets and squares, and passed legislation on the protection of national monuments – all without intervention by the Supervisor. Implementation of the Annex can be considered complete in this area.

Educational Curriculum. Even the indefatigable Supervisor has proclaimed the Final Award requirements of national integration, curricular harmonisation and textbook detoxification of Brcko's schools to have been fulfilled. In any case, OSCE took over responsibility for coordinating further educational reform in the district in October 2002. There will, of course, be more to do in the way of modernisation; but

candidate for the RS presidency, also did better in Brcko (44 per cent) than in the RS (36 per cent). Brcko results courtesy of Izborna Komisija/Povjerenstvo Brcko Distrikt BiH, 20 May 2003. For BiH results generally, see www.izbori.ba.

¹¹⁴ Internal OHR Briefing Memorandum, 2 August 2002.

in its path-breaking achievements, Brcko has been a beacon illuminating the possibility of successful education reform in BiH since the beginning of the 2001-02 school year.

The October 2000 riots against 'two schools under one roof' – which was as much integration as the international community then dared to push – provided ample warning that radical reform of schooling would encounter formidable resistance. It was necessary, therefore, for the government, BLRC and Supervisor to proceed in a cautious and calculated fashion, to ensure the widest possible popular understanding of and professional buy-in for what was afoot, and to be both firm when it came to principles and flexible when it came to details. The government appointed separate boards for primary and secondary education in early 2001. Composed largely of teachers, they were charged with harmonising the three national curricula, planning the national integration of pupils and staff, and providing the public with timely and truthful information about the changes proposed. The BLRC, meanwhile, drafted and led public meetings on the law that would give all this effect.

The reform sought to balance the Annex's injunction that each child should have 'equal access to adequate education without discrimination' with concessions in regard both to the so-called 'national subjects' (language, literature, history and some music), which would be taught separately to older children, and to practicality. Thus teaching staffs were to be integrated immediately, with teachers required to make themselves intelligible to pupils who would be entitled to use their native tongues. But most primary schools would only integrate gradually, as their catchment areas were desegregated. On the other hand, the first year of secondary school would be fully integrated from the outset, but forms already established would continue unchanged until that class left school. This meant progressive, year-by-year integration.

The concessions were inadequate to mollify the SDS and the Serb Orthodox Church. They objected both to the equality of languages, insisting that schools should be monolingual, and to the removal of national and religious iconography from the schools. Their opposition deprived the new education law of an adequate majority in the assembly. The Supervisor thus imposed it on 5 July 2001.

The government education department had meanwhile subjected teaching and administrative staffs to reselection. During the summer they were

trained in the new curriculum and the operation of an integrated system. The Supervisor joined in the effort. Addressing teachers on 22 August 2001, he both instructed them on their responsibilities to prevent and contain any disturbances and assured them that the police would now be equipped to help. Just as importantly, he explained the place of education reform in the transformation of Brcko's institutions:

Some people talk about Brcko as a laboratory. I do NOT consider Brcko a laboratory. We are NOT testing anything, or anybody's theory. *We are making the minimum changes that are essential to reconstruct Brcko after a destructive war, and to give our children the chance for a better life.*¹¹⁵

In the event, there was no trouble when the school year commenced in September and more than 10,000 pupils started attending more or less integrated schools. Not only did this happy outcome reflect the effectiveness of the authorities' preparations and the availability of considerable international support, but it also owed something to the Serb nationalists' self-diversionary pursuit of a scheme to set up Orthodox Church schools. In the absence of public or private funding, however, this bid to opt out of the integrating system came to nothing.¹¹⁶

Public Properties. The authority granted by the Annex to the district government (and Supervisor) to administer public property has been utilised to increase income by leasing business premises and agricultural land. As noted above, the privatisation of socially-owned enterprises and flats has commenced.

Military Transits. This once-neuralgic issue has ceased to have any great significance. Contrary to expectations in 1999, SFOR is still present to enforce the district's de-militarised status and to regulate the movements of entity armed forces. Any EU-led successor would certainly do the same job. The RS Army, meanwhile, has joined in flood relief and demining operations in the district. The

¹¹⁵ OHR Press Release, 'Remarks to Secondary School Teachers by Henry L. Clarke, Supervisor of Brcko', 22 August 2001. Emphasis as in original.

¹¹⁶ By the 2002-2003 school year, Bosniak pupils were the most numerous in district primary schools (48 per cent), but Serbs remained a majority in the four secondary schools. ICG interview with Esad Atic, head of Brcko Education Department, 6 February 2003.

Supervisor is now urging, however, that a use should be found for Camp McGovern that would maintain the deterrent effect of U.S. troops after their departure. He has suggested the base be used for training a joint BiH peace-keeping unit. The State Border Service might be an alternative tenant.

IX. INTEGRATING BRCKO

The future of Brcko, the relevance of its example, and the duration of its supervisory regime nowadays command little interest outside the district. Neither the county's national-political establishments nor most of the international community pays much attention. Steering Board ambassadors rarely if ever discuss Brcko. As one Western European ambassador to BiH told ICG, EU governments simply assume that the Americans will mind the shop. They appear to have no official policies on the future of the district.¹¹⁷ On the other hand, continuing efforts on the part of OHR to downsize and prioritise its activities in line with shrinking funds and a target date of 2005 for relinquishing the High Representative's executive powers have caused at least some officials to turn their thoughts to Brcko.

Several questions arise. Need the supervisory regime be wound up before OHR itself? In other words, does completion of Dayton implementation necessarily imply the prior fulfilment of the Final Award stemming from Dayton? If so, how and when might this be accomplished, and can it be made to serve international state-building objectives in BiH more generally? If not, can Brcko remain an international (or American) trusteeship after the High Representative has decamped and BiH has become enmeshed, as is hoped, in the processes of European integration?

Both the Supervisor and the United States have asked the PIC Steering Board to consider Brcko's future and, in particular, the state of Final Award implementation at its June 2003 meeting. In the meantime, OHR's Mission Implementation Plan (MIP), approved by the PIC in January 2003, includes the integration of Brcko ('legally, politically and financially') in BiH state institutions as one of its programs under Core Task 4: "Strengthening the capacity of BiH's governing institutions, especially at the State level." In Brcko, the 'transition point' at which the program will be judged complete or handed over to the BiH

¹¹⁷ ICG interviews with several EU ambassadors, 5-6 May 2003.

authorities ('often in concert with another international organisation') is defined as follows:

The Brcko District is financially self-sustaining and the Entities have accepted that their authority has been delegated to the District. The BiH State is effectively administering the District and protecting its interests in cases of conflict with the Entities. Within the District, the Inter-Entity Boundary Line has no further significance.¹¹⁸

The district is already self-supporting. The relevance of the IEBL will be largely nullified with the passage of the citizenship law now promised by the Supervisor. The other two benchmarks are more problematic, however, as is their relationship, both one to another and to the Final Award. They are considered below.

OHR's MIP suggests no time frame. But Ambassador Clarke will be preparing his own MIP for the June PIC. Like the other twenty program 'contacts', he will also be expected to report on progress every six months.

A. ACCEPTANCE OF BRCKO

Although Brcko gets a fairly good press from all BiH newspapers save the pro-SDS *Glas Srpski*, the present attitude of the country's political elites can be characterised as one of toleration rather than acceptance, whether of the entities' delegations of power or of the concept of the district itself. Their reasons, of course, are dissimilar.

RS maps continue to show a divided municipality, with Brcko town inside the RS. Most RS-based politicians refer to the district as a 'third entity'

which they regard with varying degrees of envy, greed and *inat* (spite).

Former State Presidency Chairman Mirko Sarovic (SDS) sees elections as urgent if the district is to have any legitimacy. Its existence is anomalous: based on legalised theft from the entities and outright criminality. Brcko has an annual budget of KM 170 million, while Banja Luka, with nearly three times the population, has to make due with KM 80 million. His idea of how the condominium ought to function is that the two entity premiers should agree on what binding orders to give the mayor. This hardly constitutes 'acceptance' of the district. Elections, he says, are the precondition for the abolition of the supervisory regime.¹¹⁹

Milorad Dodik, leader of the opposition Alliance of Independent Social Democrats (SNSD), thinks the international community has both favoured and misused the district, allowing it to get away with commercial shenanigans prohibited to the entities. He demands that Brcko respect BiH law.¹²⁰ His party colleague and Brcko trouble-shooter when he was in power, Krstan Simic, emphasises that the problem of Brcko will disappear when the district is put under the authority of the state.¹²¹

RS Prime Minister Dragan Mikerevic (PDP) also believes that Brcko's fiscal autonomy has sabotaged efforts to create a single economic space in BiH. The district should no longer be allowed a competitive advantage over the entities. Although RS citizens do not understand the purpose of the district, it is now an object of commercial rather than national or territorial discord. He would, however, just as soon see the back of the High Representative as of the Supervisor.¹²²

RS President Dragan Cavic (SDS) wants early elections and the departure of the Supervisor and his imperial powers. Brcko is a 'third entity', not a condominium of the two. It should become an ordinary municipality, though the RS is no longer obsessed with the issue.¹²³

¹¹⁸ OHR Mission Implementation Plan, January 2003. The other five core tasks are: (1) 'Entrenching the rule of law'; (2) 'Ensuring that extreme nationalists, war criminals, and organised criminal networks cannot reverse peace implementation'; (3) 'Reforming the economy'; (4) 'Establishing State-level civilian command and control over the armed forces, reform the security sector, and pave the way for integration into the Euro-Atlantic framework'; and (5) 'Promoting the sustainable return of refugees and displaced persons'. OHR sources tell ICG the MIP was an American demand. State Department sources say it was as much Lord Ashdown's initiative.

¹¹⁹ ICG interview with Mirko Sarovic, 31 January 2003.

¹²⁰ ICG interview with Milorad Dodik, 6 February 2003.

¹²¹ ICG interview with Krstan Simic, 7 February 2003.

¹²² ICG interview with Dragan Mikerevic, 7 February 2003.

¹²³ ICG interview with Dragan Cavic, 20 February 2003.

As far as BiH Foreign Minister Mladen Ivanic (PDP) is concerned, Brcko is a 'mini-entity' rather than a 'third entity'. It should continue to enjoy autonomous local government, including control over education, but in other respects it should conform to municipal norms. Elections are overdue. They should signal the end of supervision. Given Brcko's peaceable normality, he sees no reason why it should again become a bone of contention.¹²⁴

Federation-based politicians are also prone to describe the district as a 'third entity' and to exhibit little more love for it than their RS counterparts. Dissatisfaction stems, however, from the perception that Brcko is an obstacle to – or a complicating factor in – projects for constitutional reform.

Sulejman Tihic (SDA), the Bosniak member of the Presidency, deprecates the 'third entity' jibe. He believes that it is far too early for the international community to be contemplating withdrawal. Elections should be held in due course, after which the state Ministry for Civil Affairs should take over responsibility for Brcko. The district model must not, however, be replicated. It would be madness to set up more districts when the aim should be to simplify BiH's structure and to get rid of the entities.¹²⁵

Council of Ministers Chairman Adnan Terzic (SDA) agrees that it would be rash to contemplate withdrawing the Supervisor before Brcko's future is secure. The CoM will fulfil the 24 October 2002 agreement to establish a special body for coordination with the district. Meanwhile, OHR should be worrying about sorting out Mostar rather than Brcko.¹²⁶

Security Minister and HDZ President Barisa Colak also believes the CoM can exercise its responsibility for Brcko, and that BiH as a whole will benefit from the positive example of problem-solving in the district.¹²⁷

The other top HDZ leaders are more critical. Federation President Niko Lozancic regards Brcko both as a 'third entity' and as a now-redundant experiment in a country that has been subjected to too many experiments. If any municipality ought to

be a special district, it should be Srebrenica. Brcko should be an ordinary municipality in a country without entities.¹²⁸ State Presidency Member Dragan Covic thinks Brcko ('a state within a state') should be subordinated to the CoM as quickly as possible. It is a 'duty free shop' that damages the state economically and legally, and must lose its right to keep customs receipts when the entities do. Brcko should be a model, but not as a district. Its role should be to promote the 'municipalisation' of an entity-free BiH.¹²⁹

Party for BiH founder Haris Silajdzic is equally keen that Brcko should demonstrate that an alternative model of economic and historical regions is possible in BiH. The district has already become the driving force in a natural economic region that obliterates entity borders in Posavina and Semberija. But Brcko need not lose its special status until the entities and cantons wither away.¹³⁰

SDP leader Zlatko Lagumdžija sees Brcko at present not as a 'third entity', but as a separate state. The supervisory regime remains necessary, however, and should not go before OHR. If the Supervisor were to be withdrawn prematurely, there could be an explosion that would make it impossible for the High Representative to depart. The Supervisor should stay on after elections (probably in 2004) as an insurance policy against things going wrong. Responsibility for the district should eventually fall to the catch-all Ministry of Civil Affairs, with Brcko enjoying the competencies of a canton rather than an entity. In this way it could contribute to a new-model BiH in which the powers of both the municipalities and the state would be enhanced, while the entities and cantons would disappear.¹³¹

Although politicians in BiH are always ready to express a view on anything, ICG's interviews do not reveal a high level of interest in or concern over Brcko. The most striking result is the eagerness of RS politicians to offer assurances that Brcko is no longer a matter of surpassing importance to them.

¹²⁴ ICG interview with Mladen Ivanic, 19 February 2003.

¹²⁵ ICG interview with Sulejman Tihic, 28 January 2003.

¹²⁶ ICG interview with Adnan Terzic, 5 March 2003.

¹²⁷ ICG interview with Barisa Colak, 19 February 2003.

¹²⁸ ICG interview with Niko Lozancic, 18 February 2003.

¹²⁹ ICG interview with Dragan Covic, 30 January 2003.

¹³⁰ ICG interview with Haris Silajdzic, 11 March 2003. According to Brcko Assembly President Mirsad Djapo (SDP), Brcko's integration in the state would cause the neighbouring municipalities that share in its relative prosperity to ask if they might join the district. ICG interview with Mirsad Djapo, 5 February 2003.

¹³¹ ICG interview with Zlatko Lagumdžija, 7 March 2003.

They have accommodated, if not accepted, its 'loss', and will not rock the boat. In fact, preservation of the district is tantamount to preserving the Dayton constitution on which they are so keen, which may help explain their current equanimity. Bosniaks remain wary and are in no hurry for change, though the district would have to go if their hopes of replacing the entities with an integral state were ever to be realised. HDZ leaders, meanwhile, are impatient with the district, seeing it an obstacle to their new state-building and power-sharing agenda. They thus favour its rapid incorporation in the state.

B. BRCKO AND THE STATE

OHR's aim to integrate Brcko District in a state that is capable of defending its interests against entities that have accepted the delegation of their powers is potentially consonant with the Final Award.¹³² Ironically, it also represents an acceptance by OHR of what it contested in 1999-2000: i.e., that Brcko derives its authority from the entities. Whether or not there has been a lapse of historical memory, there has certainly been a convenient change in circumstances. For as the balance of power shifts gradually from the entities to the state – thanks to such current projects as the unification of customs services, the introduction of VAT at state level, and the establishment of a single military command and intelligence service – so will the autonomy of the district also be curtailed. This means there is no *necessary* contradiction in the MIP's stipulation that the state should be 'effectively administering' as well as 'protecting' the district before 'transition' takes place. But in its likely eagerness at last to find a means of reining in the supervisory regime, OHR appears to have neglected to consider the current constitutional niceties. Unless the phrase 'effectively administering' is redefined to

¹³² This provides that the district 'be subject to the powers of the common institutions of BiH as those powers are enumerated in the BiH Constitution. All other powers of governance within the Brcko Opstina, having been delegated by the two entities, will be exercised exclusively by the District government, subject, however, to supervised coordination with the two entity governments' [in questions of sharing expenses and revenues]. The Supervisor is further empowered to ensure that the entities fulfil their obligations to the district, but 'may delegate that responsibility to an appropriate BiH institution'. Final Award, II (10).

mean something other than the words imply, there is trouble ahead.

Although it is not apparent from the MIP, it cannot have escaped OHR's attention that the Brcko Arbitral Tribunal remains in being and retains the authority to vary the Final Award.¹³³ Roberts Owen is hale, hearty and engaged. He will need to be satisfied – or at least satisfied that the Supervisor is satisfied – with the arrangements for Brcko's transition. This means, in turn, that the U.S. must be satisfied. The suggestion that the state should actually administer the district – as opposed to facilitate and guarantee its self-administration – strikes at the heart of the Final Award. The state cannot administer the district unless and until the Dayton constitution is amended or replaced.

On the other hand, there is certainly scope for the sort of integration envisaged by politicians as diverse as Dragan Covic and Zlatko Lagumdžija: an ever-strengthening state balanced by increasingly autonomous municipalities. Brcko's integration in the state could thus contribute both to the affirmation of the state and to its effective 'municipalisation'. This might prove a recipe, too, for ensuring that Brcko's successful reforms, governmental practices and habits of multinational cooperation are taken up elsewhere. While the new CoM is not likely to be averse to taking the district under its wing, it will require considerable international encouragement to make this happen, let alone to make the most of it.

C. BRCKO AND THE UNITED STATES

The Americans took responsibility for peace implementation in north-east Bosnia because their European allies were reluctant to deploy in an area where resistance to Dayton was expected to be formidable. Their more heavily armed and less compromised troops were

¹³³ '[T]his Tribunal will remain in existence until such time as the Supervisor, with the approval of the High Representative, has notified the Tribunal (a) that the two entities have fully complied with their obligations to facilitate the establishment of the new institutions herein described, and (b) that such institutions are functioning, effectively and apparently permanently, within the Brcko Opstina. Until such notification, the Tribunal will retain authority, in the event of serious non-compliance by either entity, to modify this Final Award as necessary – e.g., by placing part or all of the District within the exclusive control of the other entity' Final Award, II (13). That 'e.g.' is potentially significant.

happy to oblige, in part because the region would also be the easiest to quit should disaster strike. The U.S. right to name Brcko supervisors thus derived from local military clout as well as from principal responsibility for the DPA and the Arbitral Tribunal that stemmed from it. A legacy of this longstanding regional engagement is that U.S. officials continue to view Brcko as a fragile and potentially dangerous place where any renewed conflict in BiH is most likely to start.¹³⁴

The Americans see no need to end supervision in Brcko before OHR completes its own mandate. The two missions should slim down and bow out together. But the Final Award and Annex must be implemented first. The State Department has consulted with Owen and Clarke about the issues to be resolved before Owen can sign off on the Final Award. Among these are preparing for and holding district elections and completing the harmonisation of laws. Clarke is reported to be handicapped in these spheres by the absence of an adequate legal staff. U.S. diplomats do not share Owen's and Clarke's alarm over the proposed re-selection of Brcko's judges and prosecutors. They expect this will come late in the process, thus affording time for a compromise that will guarantee both a 'light touch' and the exclusion of entity representatives.

Like the members of Brcko's government, the U.S. is opposed to calling elections the SDS might win. As one diplomat remarked, all parties in BiH may be corrupt, but the SDS is also 'evil'. An SDS victory might undo everything. But elections could take place in 2004, alongside the country-wide municipal polls. There should be no rush, however, either to call elections or to withdraw the supervisor thereafter. There might even be a need for a post-supervisory mission, perhaps run by OSCE.

The Americans share OHR's aim to integrate the district in the state, but worry that OHR does not share their view of the wider applicability of the district's reforms. The U.S. ambition is to 'mainstream' Brcko's successes – in reforming education, the judiciary, the tax and customs administrations, and privatisation procedures – in the rest of BiH. Most of all, the U.S. wants to see the replication of Brcko's example of multinational

cooperation. But for either integration or mainstreaming to happen, the state itself must buy in and function.

As an example of his faith in Brcko's achievement, one American diplomat told ICG that he expected the district to provide a disproportionate share of BiH's future leaders: people who had been educated in integrated schools and grown up in a milieu of multinational tolerance and relative prosperity.

¹³⁴ This section is based on non-attributable ICG interviews with U.S. diplomats in Sarajevo and Washington in March and April 2003.

X. CONCLUSION: LETTING GO OF NURSE

From a starting point that was among the very worst in BiH, Brcko has achieved more in its years under international protection than has either Mostar, which was also subjected to a special regime, or the rest of the country. This fact should neither occasion surprise nor be seen as an invidious comparison. The scale of the Brcko enterprise has been small. The district has enjoyed disproportionate resources. The Tribunal equipped Brcko's supervisors with both a program for governance and powers sufficient to see it through. They were charged with unifying and fundamentally reforming a single municipality. High representatives, by contrast, have had an incoherent and inchoate mandate. They have had to abide by and cope with the multiple divisions affirmed by Dayton. They have latterly been hamstrung by possessing more notional responsibility than real capacity. In Brcko, the supervisory regime was able to start afresh from first principles, to design and enforce its own rules, and to select its own collaborators. Supervisors have not had to work with refractory governments thrown up by democratic elections or would-be rivals in the international community – save, of course, OHR itself. Success has bred success. Multinational forms have become multinational realities.

Brcko now exhibits, however, pronounced symptoms of separation anxiety. Both the Supervisor and his charges are reluctant to let go of one another, to lodge their trust in the institutions they have created, and to invite the electorate to judge. Give us, the politicians say, another year or two to demonstrate our achievements and to convince the people we deserve their confidence. The forces of darkness remain too strong. The Supervisor, meantime, continues to find new tasks to take up and old arrangements to revisit as he seeks after 'reasonable assurance that the electoral process will serve the interests of District residents'.¹³⁵

Local officials and, presumably, a good part of the populace are naturally wary of exchanging the embrace of their American protectorate for protection by a state that may have neither the

inclination nor the capacity to do the job. Why fix what ain't broke? Why subject the district's judges and prosecutors to re-selection by outside authorities? Why alter successful policies on refugee return because they place as high a priority on securing alternative accommodation for DPs as on restoring properties to returnees? And why confront now, in the interests of integration, the likely need to revise Brcko's 'ethnically blind' Statute in order to make it consistent with the 2002 amendments to the entity constitutions and their elaborate mechanisms for guaranteeing collective national rights and interests?

The answers are several. One is the favourite of former British Prime Minister Margaret Thatcher, long known to journalists as TINA (from her fondness for the expression 'There is no alternative'). Decolonisation is coming. It may not happen in 2005, but it will not be long deferred. It is as difficult to imagine BiH signing a Stabilisation and Association Agreement while the Supervisor rules in Brcko as it is to envisage this happening while a High Representative remains in place and in power in Sarajevo. Despite their special fondness for Brcko, the Americans will not want to stay forever. They are, in any case, among the principal movers behind OHR's MIP exit strategy. The financial and military burdens they bear in Bosnia may be slight – and those of Brcko infinitesimal – but they are now seen as historical anomalies in Washington. The requirement that Ambassador Clarke should prepare his own robust MIP should serve to concentrate his mind as much as the analogous process has done in OHR.

There are positive reasons as well for why Brcko residents, the Council of Ministers and the international community should welcome integration. Not only will it offer an opportunity to 'mainstream' at least some of Brcko's reforms, it will also give the CoM something constructive to do. State-building requires the exercise of responsibility. BiH's virtual state has lacked either the functions or the means through which it could demonstrate its relevance to its citizens. In Brcko the state would acquire responsibility for a financial asset and a nascent, cross-entity economic region; for a successful model of municipal government; and for an exemplar of what used to make BiH special – its natural multinationalism.

The supervisory regime need not go before OHR, but it cannot stay on thereafter. There would be

¹³⁵ Internal OHR Briefing Memo, 2 August 2002.

some advantage to be had, however, from going first. A declaration that the Final Award had been implemented and that the CoM was assuming its responsibilities towards the district would be more likely to have the beneficent results suggested above if the High Representative were still on hand to assist. Moreover, Brcko could serve once more as a model – this time, of disengagement – and testify to the reality of the process.

District elections are the essential precondition for fulfilment of the Final Award. They should probably be held at the same time as the entities' municipal elections in October 2004. Elections outside the cycle would be more likely to encourage and facilitate a trial of strength among the nationalists, promoting a census rather than a campaign based on local issues. Such a long lead time might also confirm the hopes of current government and assembly members that the results of their endeavours will eventually translate into support for their parties, as well as the hopes of the Supervisor that his latest government shake-up and his deployment of NDI will help make this come true. Another reason for waiting until 2004 is that refugee return is expected by then to be complete.

But whichever date the Supervisor sets, fear of the SDS should not be a major factor in his calculations. Treating the party as a pariah may be morally and historically justified, but it is likely also to be counterproductive. In any case, by participating in the spring 2002 negotiations on amendments to the entity constitutions and, then, by ensuring they were more or less enacted by the RS National Assembly, the SDS leadership effectively bought its ticket for readmission to government. Now that it is again officially sharing power at both the RS and state levels, it would be otiose to treat it any differently in Brcko.

Although elections will be the beginning of the end of supervision, they should not be followed by an over-hasty retreat. The Supervisor should remain on hand for up to a year to ensure a smooth democratic passage and to assure residents, investors, the PIC and, above all, the Tribunal that the district is secure. The state and the international community should assist. Confidence in Brcko's future would be enhanced if it were to win its bid to become the seat of the Sava River Commission and if the Supervisor's proposal that Camp McGovern should be deeded over to a significant state security institution were agreed. The CoM should also fulfil

its promises to the district regarding the border regime.

More importantly, real progress needs to be made immediately in elaborating and realising the ways and means by which the CoM will begin to discharge the state's responsibilities towards the district. It should be debated whether the establishment within the CoM of a 'special body for coordination' with the district – and to which Brcko would send a representative – is the optimal solution.¹³⁶ It might be better, as several of ICG's interlocutors have suggested, to assign responsibility for relations with Brcko to a single ministry, most likely that for Civil Affairs. (Unfortunately, the district's status as an entity condominium precludes the direct election of representatives to the state parliament.) The Supervisor and OHR should press the CoM to engage seriously with Brcko's mayor.

One of ICG's early papers on Brcko was subtitled 'What Bosnia Could Be'.¹³⁷ That was an expression of faith in 1998. The odds may still be long, but the bet is now worth making.

Sarajevo / Brussels, 2 June 2003

¹³⁶ OHR Press Release, 'Agreement on Cooperation between the State and Brcko District', 24 October 2002.

¹³⁷ ICG Bosnia Report No. 31, *Brcko: What Bosnia Could Be*, 10 February 1998

APPENDIX A

GLOSSARY OF ABBREVIATIONS

BiH	Bosnia & Herzegovina
BLRC	Brcko Law Revision Commission
CoM	Council of Ministers
DP	Displaced Person
DPA	Dayton Peace Accords
FBiH	Federation of Bosnia & Herzegovina
HDZ	Croatian Democratic Union
HJPC	High Judicial and Prosecutorial Council
IEBL	Inter-Entity Boundary Line
IFOR	Implementation Force
IJC	Independent Judicial Commission
IPTF	UN International Police Task Force
JNA	Yugoslav People's Army
MIP	Mission Implementation Plan
NDI	National Democratic Institute
OHR	Office of the High Representative
PDP	Party of Democratic Progress
PIC	Peace Implementation Council
RS	Republika Srpska
RSNA	Republika Srpska National Assembly
SDA	Party of Democratic Action
SDP	Social Democratic Party
SDS	Serb Democratic Party
SFOR	Stabilisation Force
SNS	Serb National Alliance
SNSD	Alliance of Independent Social Democrats
SRS	Serb Radical Party
USAID	U.S. Agency for International Development
ZOS	Zone of Separation

APPENDIX B MAP OF BOSNIA



Map No. 3729 Rev. 2 - UNITED NATIONS
January 2000

Department of Public Information
Cartographic Section

Source: UNDP/ICG Cartographic Section, amended by ICG.

APPENDIX C

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (ICG) is an independent, non-profit, multinational organisation, with over 90 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

ICG's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, ICG produces regular analytical reports containing practical recommendations targeted at key international decision-takers.

ICG's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made generally available at the same time via the organisation's Internet site, www.crisisweb.org. ICG works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The ICG Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring ICG reports and recommendations to the attention of senior policy-makers around the world. ICG is chaired by former Finnish President Martti Ahtisaari; and its President and Chief Executive since January 2000 has been former Australian Foreign Minister Gareth Evans.

ICG's international headquarters are in Brussels, with advocacy offices in Washington DC, New York, Moscow and Paris and a media liaison office in London. The organisation currently operates twelve field offices (in Amman, Belgrade, Bogota, Islamabad, Jakarta, Nairobi, Osh, Pristina, Sarajevo, Sierra Leone, Skopje and Tbilisi) with analysts working in over 30 crisis-affected countries and territories across four continents.

In *Africa*, those countries include Burundi, Rwanda, the Democratic Republic of Congo, Sierra Leone-Liberia-Guinea, Somalia, Sudan and Zimbabwe; in *Asia*, Indonesia, Myanmar, Kyrgyzstan, Tajikistan, Uzbekistan, Pakistan, Afghanistan and Kashmir; in *Europe*, Albania, Bosnia, Georgia, Kosovo, Macedonia, Montenegro and Serbia; in the *Middle East*, the whole region from North Africa to Iran; and in *Latin America*, Colombia.

ICG raises funds from governments, charitable foundations, companies and individual donors. The following governments currently provide funding: Australia, Austria, Canada, Denmark, Finland, France, Germany, Ireland, Japan, Luxembourg, The Netherlands, Norway, Sweden, Switzerland, the Republic of China (Taiwan), Turkey, the United Kingdom and the United States.

Foundation and private sector donors include Atlantic Philanthropies, Carnegie Corporation of New York, Ford Foundation, Bill & Melinda Gates Foundation, William & Flora Hewlett Foundation, Henry Luce Foundation Inc., John D. & Catherine T. MacArthur Foundation, John Merck Fund, Charles Stewart Mott Foundation, Open Society Institute, Ploughshares Fund, Ruben & Elisabeth Rausing Trust, Sasakawa Peace Foundation, Sarlo Foundation of the Jewish Community Endowment Fund and the United States Institute of Peace.

May 2003

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