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Title:

The case of Brčko district: institutional perspectives and current political challenges

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To my beloved family

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Abstract

After the end of the Yugoslav wars, academics focused their work to analyze this multi-dimensional conflict through political, economic, geopolitical, historical and anthropological perspectives. Especially Bosnia was considered as an important case study, because of the atrocities, destructions and the international community's interest.

The Dayton Peace Agreement which has finished the Bosnian conflict, left the town of Brčko in an uncertain status because of its position in the map, connecting the northern and southern part of the Republica Srpska, having a multi-ethnic population and been claimed by both RS and the Federation. For that reason, an Arbitral Tribunal reached a solution for Brčko through the establishment of a Supervisor. In this vein, a Statute that been compiled, defined the status of the district and shaped the political and administrative framework in accordance with it can function.

The importance of the topic is due to its specific status and the international intervention in order to find a solution. More profoundly, the political and administrative organization in Bosnia are distinctive, complex and still uncertain with regard to effectiveness and functionality. In this content, the particular traits of Brčko within Bosnia in administration, public organization, education, police and other factors give different perspectives of how things can be organized after a conflict, in order for the citizens to live peacefully and reconcile the wounds of the war.

Taking all the aforementioned points into consideration, this thesis provides an analytical description of the Statute, the political administration, the power-sharing and its special features as compared with the rest of the country and the autonomous administrative units of the region, like schools, police and judicial system. My conclusion is that the Brčko District mechanism is a separate and divergent way of governance in comparison with the rest of the country. Through the years, positive and negative aspects of this policy could be traced, although Brčko can be used as an important and helpful example of how to deal with post-conflict societies.

«I hereby declare, that all the data used in this work, have been obtained and processed according to the rules of the academic ethics as well as the laws that govern research and intellectual property. I also declare that, according to the above-mentioned rules, I quote and refer to the sources of all the data used and not constituting the product of my own original work».

Eleni Siapikoudi

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Abbreviations

RS: Republika Srpska

Federation: Federation of Bosnia and Herzegovina

BiH/ B&H: Bosnia and Herzegovina

IDPs: Internal Displaced Persons

IEBL: Inter-Entity Boundary Line

ZOS: Zone of Separation

OHR: Office of High Representative

UNHCR: United Nations High Commissioner for Refugees

ICTY: International Criminal Tribunal for the former Yugoslavia

JWG: Judiciary Working Group

BLRC: Brčko Law Revision Commission

SFOR: Stabilization Force in Bosnia and Herzegovina

PIC: Peace Implementation Council

IPTF: International Police Task Force

DRA: District Revenue Agency

Introduction

After the end of the Bosnian war the Dayton Peace Agreement established peace in the region of Bosnia and Herzegovina of the former Yugoslavia. This Agreement determined not only the legal status quo of the country, but also a framework concerning inter-ethnic relations among the population.

More precisely, the Dayton agreement awards 51% of the territory to the Croat-Bosniak (Muslim)-dominate Federation of Bosnia and Herzegovina (Federation) and 49% to the Bosnian Serb-controlled Republika Srpska (RS). The only territorial question that could not be solved through the Dayton Agreement was the control over the vital Brčko corridor in north-eastern Bosnia, which joins the eastern and western portions of the Republika Srpska. The parties of the Agreement signed the establishment of an “Inter-Entity Boundary Line” (“IEBL”) between the Federation and the RS throughout Bosnia and Herzegovina, due to the fact that the allocation of Entity-control in the Brčko area did not reach to an end. That is why they formed the “Arbitration for the Brčko Area”, provided that the parties “agree to binding arbitration of the disputed portion of the Inter-Entity Boundary Line in the Brčko Area.”¹ In order to finalise the agreement, the parties agreed to submit this disagreement and to manage it through an international arbitration with a judgment to be delivered within one year.²

Nevertheless, in order to understand the importance of the district, it is crucial to analyse some main historical events and data before and during the war. So, before the war, the municipality of Brčko located in the Posavina region of northern Bosnia, was one of the most prosperous in the Republic. The main reasons for the prosperity of the region were its well-developed agro-industries and its status as a commercial and transport place, providing routes to Croatia and Serbia. Therefore, Brčko’s Sava river port was the most important port in Bosnia.³

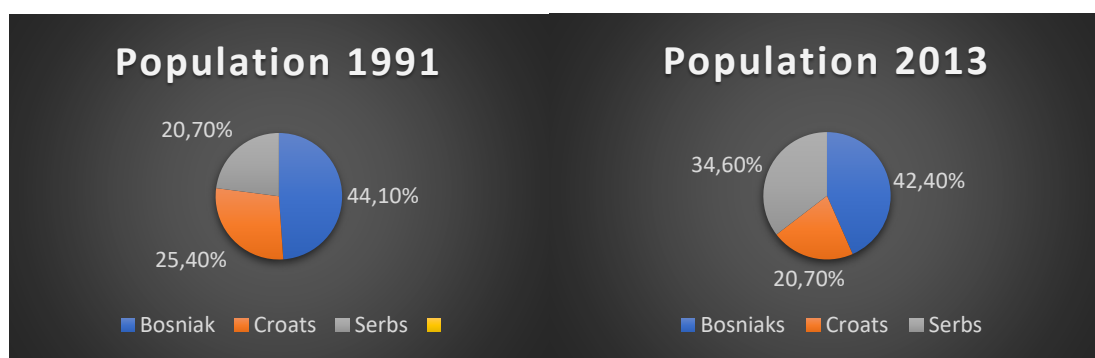
The municipality was also densely populated, with a strong representation of “Yugoslavs” in the urban area, that felt their strongest affiliation not to the national

¹ OHR, Brčko Arbitral Tribunal for Dispute Over the Inter-Entity Boundary in Brčko Area Award, http://www.ohr.int/?ohr_archive=Brčko-arbitral-tribunal-for-dispute-over-the-inter-entity-boundary-in-Brčko-area-award (Access at 20/1/2020).

² Caplan Richard, “Assessing the Dayton Accord: The structural weaknesses of the general framework agreement for peace in Bosnia and Herzegovina”, *Diplomacy and Statecraft*, 11:2(2000), <https://doi.org/10.1080/09592290008406163> (Access at 20/1/2020).

³ International Crisis Group, “Bosnia’s Brčko: Getting in, getting on and getting out.”, *Balkans Report* N°144, Sarajevo/Brussels (June 2003), p. 7.

group but to a multi-ethnic identity. While, prior to the 1990s, most neighboring villages had ethnic majorities, the town of Brčko was a multi-ethnic mix of Bosniaks, Serbs and Croats.⁴ Comparing the census of 1991 and 2013, the population did not change, but the ethnical composition changed in a great extent. In 1991 total population was 87.627 of which 38.617 (44,1 %) were Bosniaks, 22.252 (25,4 %) were Croats and 18.128 (20,7 %) were Serbs. While in 2013 census, the total population was 83.516 and the ethnical division was as follows, Bosniaks were 35.381 (42,4 %), Croats 17.252 (20,7 %) and Serbs 28.884 (34,6 %).⁵ The pre-war demographic composition changed utterly, as well as its strategic, political and symbolic significance.



The position of Brčko not only as a link point between the two halves of the Republika Srpska, but also as a provider of supply route to the Serb Krajina region of Croatia, gave the town a particular strategic significance for the Serb's territorial integrity. This importance translated to a series of atrocities against the Bosniak and the Croat population of the town since the Serbian occupation begun.

In April 1992 when Serbs invaded in the town, Bosniak and Croat women and children were expelled by force from the region, with the Bosniaks seeking refuge in the villages of Brka and Gornji Rahic and the Croats respectively in Dornji Skakava. It needs to point out, that from these close locations Brčko residents re-established their njesne zajednice (local communities) “in exile”, in order to function as focal points for the community.⁶ Moreover, the city was split into three sub-municipalities, the Brčko Grad

⁴ Stjepanovic Dejan, “Dual Substate Citizenship as Intitutional Innovation: The case of Bosnia’s Brčko District”, *Nationalism and Ethnic Politics* 21, Routledge (2015), p. 3.

⁵ Jeffrey Alex, “Building state capacity in post-conflict Bosnia and Herzegovina: The case of Brčko district”, *Political Geography* 25 (2006), University of Newcastle-upon-Tyne, p. 204.

⁶ Ibid, p. 205.

where Serbs lived, the south of the frontline Croat “Ravne- Brčko” and the Brčko-Rahic where the Bosniaks resident.

The brutalities of the war in Bosnia began a little later in Brčko, as the town’s strategic position was tied up with higher strategic plans. The Serb Democratic Party (SDS) soon realized that the control of the Brčko District, would be crucial in order to ensure their strategic position. By the end of 1991, the JNA had taken all the strategic military positions around town. In this vein, SDS make a proposition to divide the district ethnically. If this plan would be accepted, the Serbs would have been achieved a corridor through the Brčko area including the entire industrial and commercial center of the town. However, this idea could not be accepted by the other side, so the hostilities started 30 April 1992.⁷

The strategy of continuing destruction of the country during the war did not make exception on Brčko. Particularly, the destruction of the large hotel in the centre of the town, the removal of a number of numerous Yugoslav monuments, the demolition of all four mosques within the town and the renaming of the street network were some of the actions that had happened during the war. Serbs, also, attacked the urban fabric of the town, with the purpose to destroy symbols and spaces of cultural heterogeneity. This process of targeting urban spaces, known as “domicide” or “ubicide”, has been part of the ethnic-nationalist program to “eradicate difference in order to create and naturalise the idea of separate, antagonistic sovereign territorial identities”. Of course, this was a usual strategy during the Bosnian war. Although, the importance of the Brčko emerges in the distinctive approach taken by the international mediation, resolving the conflict in the municipality both during and after the negotiations for the agreement.⁸

In this content, the Croats and Bosniaks fought as allies and being organized together in municipal “government in exile”. This situation was differed in May 1993, when their unified local military unit split up due to the outbreak of fighting between Croat Defence Council (HVO) and Bosnian Army forces elsewhere in republic. In contrast to the rest of Bosnia where the Serbs was generally in advanced position, in the Brčko area the Serb forces were constantly under threat. The geographic position of the corridor and its strategic importance to transfer supplies to Serb territories to its west,

⁷ Parish Matthew, *A free city in the Balkans: reconstructing a divided society in Bosnia*, I.B.Tauris & Co Ltd: London 2010, p. 39.

⁸ Jeffrey, p. 206.

led both sides to devote their best forces in the area. In contrast with the distraction of the military, Bosniak and Croat political leaders continued to work in alliance, because they had a common enemy in the district and they claiming different regions in the district. More precisely, Bosniaks sought Brčko town, while the Croats intended to retain Orasje. In 1992 Bosniak and Croat forces cut through Serb corridor of territory to the west of the town, dividing the RS in two. This was the biggest fear of Ratko Mladic, the Bosnian Serb military commander, that claimed that he would lose all of western Bosnia and Serb Krajina, if this division last for a long period of time.⁹ Consequently, the Bosniak-Croat alliance in Brčko lasted until June 1994, when the Croats formed a separate municipality called “Ravne Brčko”.¹⁰

The critical question here is what had happened with the population of the district. When the city came under the Serb control the Bosniak and Croat population that had not already left, were forcibly expelled or killed. Moreover, concentration camps were established, with the most notorious to be in Brčko port (Luka). Despite the fact that international observers never visited the port, prisoners reveal the conditions that they had to endure. Sleep standing, starvation, mass rapes and execution, random beatings and widespread torture were some of the practices that were used in the concentration camp. Therefore, the important information here is that approximately 90 per cent of the pre-war population had been displaced and thousands died.¹¹

In short, the prove of the Brčko atrocities became known through same cases in International Criminal Tribunal for the former Yugoslavia (ICTY). One of the longest sentences handed down by the ICTY (40 years) was given to Goran Jelusic, the well-known “Serb Adolf”, for his participation in crimes that took place in Brčko port.¹² Another, ICTY decision that proves the random and brutal nature of crimes in Brčko, was that of Ranko Cesic, including casual murders and acts of sexual humiliation.¹³ In other words, Brčko and its citizens in the end of 1995 were devastated by the war.

⁹ Parish, p. 41

¹⁰ International Crisis Group (ICG), “Brčko: What Bosnia Could Be”, 10 February 1998, available at: <https://www.refworld.org/docid/3ae6a6d244.html> (Accessed September 18, 2019).

¹¹ Parish, p. 42

¹² ICTY, Summary of Trial Chamber Judgment, The Prosecutor v. Goran Jelusic, 14 December 1999, available at: http://www.icty.org/x/cases/jelusic/tjug/en/991214_summary_en.pdf (Accessed September 20, 2019).

¹³ ICTY, Sentencing Judgement, Prosecutor v. Ranko Cesic, Case No. IT-95-10/1-S, 11 March 2004, available at: <http://www.icty.org/x/cases/cesic/tjug/en/ces-tj040311e.pdf> (Accessed September 20, 2019).

Chapter I:

1.1 Arbitral Tribunal Decisions and the Statute of Brčko

When the Dayton peace talks started in 1995, the parties could not reach an agreement on whether the Brčko District should be part of RS Entity or the Federation and even more, in which of the inter-entity boundaries would be. For that reason, the solution to the problem had to be postponed. Moreover, in Dayton, the Inter-Entity Boundary Line (IEBL) had been formalized, separating the town in two sides. The first side was belonging to the emergent Federation of BiH, and as a consequence to the Bosniak and Croat municipalities, while the other side was the Serbian one. The Zone of Separation (ZOS) between the two on either side of the IEBL was a desolated area.¹⁴ Interestingly, Brčko seemed to be an unresolvable geopolitical problem, not only because of the division between the different ethnicities of the residents, but also because it was part of the intersection of their vital territorial interests.

Ultimately, the Dayton Agreement was accomplished, by putting off the question of Brčko. The responsibility was transferred to an arbitration tribunal, which had to find a final solution during the following year. This left the status of Brčko unresolved at that time, but made the completion of the war and the Dayton Agreement a reality.¹⁵ In short, during the negotiations, Bosniak and Croat delegates argued that if the Brčko passes to the Serb control, it would be a reward to ethnic cleansing policies, and also the federation would not have access to the Sava river. On the other hand, Serb negotiators were supporting that Brčko will provide integrity in RS or a different situation probably the whole agreement would collapse.¹⁶

In the stage of arbitration, two parts of a dispute come to an agreement that they will solve their dispute by a private court, called a tribunal. Usually, this tribunal will consist of a panel of several judges, known as arbitrators. Furthermore, the parties agree upon the scope of the dispute on which the arbitrators will rule, the law and the procedures that they will use, and generally they may restrict the tribunal's proceedings in any

¹⁴ ICG, "Bosnia's Brčko: Getting in, getting on and getting out.", p. 8.

¹⁵ Dhlman Carl and Gearoid O Tuathail, "Bosnia's Third Space? Nationalist Separatism and International Supervision in Bosnia's Brčko District", *Geopolitics*, 11:4, (January 2007), p. 10.

¹⁶ Mladen Klemencic and Clive Schofield, "Dayton in the balance? The continuing dispute over Brčko." *Boundary and Security Bulletin*, 6(1), (Spring 1998), p. 69.

possible way. Therefore, in Brčko arbitration the parties were the Entities, not the states, and the dispute had to do with the control within the Brčko area.¹⁷

The main issues that the arbitration had to deal with were the following: firstly, the main reason was to declare “the disputed portion of the Inter-Entity Boundary Line in the Brčko area indicated on the map attached at the Appendix”. More precisely, the appendix to Annex 2 of the DPA was a map of Bosnia and Herzegovina, in which located also the IEBL. Although, there was no indication of which part of the IEBL was ‘the disputed portion... in Brčko area’.¹⁸ Moreover, arbitration agreements usually do not have a time limitation within which the procedure must be completed, because in practice as we saw in the Brčko case, the dispute may turn to be more complex and cannot be fairly resolved within the prescribed time scale. Lastly, not only the legal rules but also the legal jurisdiction was narrow and with a lack of substantial guidance.¹⁹

The Tribunal’s First Award

After the end of the war, RS was reluctant to implement the Dayton Peace Agreement. In every opportunity, RS was trying to promote a specific political agenda, diametrically opposed to the policies of the international community, which sought to prevent the territorial integrity of a sovereign state of Bosnia and Herzegovina. But Serbs were not the only ones that act against DPA. Croats also had to promote their personal agenda within the already fragile environment of the country, establishing parallel institutions in Herzeg-Bosna territory.²⁰

Tribunal’s jurisdiction was dual. The first competence of the jurisdiction was to pronounce upon the location of the IEBL in Brčko opstina and the second to determine which of the Federation and the RS would control which parts of the territory in the Brčko opstina.

Though the tribunal had to face some unusual facts in the region. The city was devastated by the war. Ethnic cleansing, the destruction of buildings and houses and displaced persons were some of the main issues. Also, within Brčko three municipal governments existed at that time: the Republika Srpska Brčko municipality, the municipality of Brčko -Rahic (a Bosniak administration in the village of Brka to the

¹⁷ Dhlman and Tuathail, p. 11.

¹⁸ OSCE, The General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 2, p. 11.

¹⁹ Parish, pp. 52-53.

²⁰ Ibid, p. 55.

south of Brčko town, established by 1996) and the municipality of Ravne Brčko, a Croat administration, centered in the village of Seonjaci to the southwest of town. So, the territory to the north of the IEBL was controlled by Republika Srpska and RS law was being applied. The territory to the south of the line was treated by the Federation as part of Tuzla Canton and the laws of the Federation and Tuzla Canton were applied there.²¹

Despite the pre-war economic status of Brčko, by 1995 the economic activity was distinguished. Interestingly, after these years the Sava river was unnavigable because it had not been dredged for several years. What is more, the factories had been rendered unproductive due to the destructions of the war or had been used to torture the population. To deal with this situation, the US military established a checkpoint and permitted people to trade various products. Civilians on both sides of the ceasefire line could travel to the market without significant risk, due to the proximate US military presence. This initiative subsequently became known as the ‘Arizona market’ after the main road upon which it lies was named by US troops as the Arizona road. The market, therefore, became a meeting place for separated families and friends and a place for business and trade.²²

In this vein, Brčko Arbitration scheduled towards the end of 1996. As the deadline of the arbitration approached, tensions escalated and the rhetoric over the “Brčko question” became instantly heated. The International Arbitral Tribunal for Brčko led by Robert Owen representative from the USA, Cazim Sadikovic representative from the Federation, and Vitomir Popovic representative from RS. Moreover, the Tribunal decided to arbitrate over the entire pre-war Brčko opština. The procedure was not only part of events in the region, but also broader geopolitical actions of international intervention in Bosnia. The main concerns were the return of the refugees and the holding of democratic elections.²³

In practice, every time that refugees attempted to return to the area, Serbian authorities tried to avoid it, with enormous hostilities. This had, as a result, the withdrawal of Gojko Klicovic, the prime minister of RS of the arbitration proceedings in December 1996. However, when the formal arbitration hearing began in Rome in January 1997, the RS

²¹ Ibid, p. 58.

²² Ibid, p. 60.

²³ Jeffrey, p. 210.

thought that the area would be given to the Federation and decided to take part in the hearing.

The Rome Award of 14 February 1997, or the Interim Decision as it called, postponed the final solution of Brčko's political fate. The status quo of the region remained for one more year. Furthermore, the town and the surrounding area left under the control of RS, and the two entities had to continue to function in accordance with DPA, especially regarding the freedom of movement, the return of displaced persons, and the establishment of democratic institutions. Especially, Robert Owen comments that the previous year no further progress had been made towards that direction.²⁴

The nine days of hearing in Rome made clear that the solution would not be easy. The two opposing sides had different views and perspectives on what should be done. On the one hand, the Federation used the arguments of self-determination and fairness, supporting that Brčko was predominantly Bosniak and Croat region before the war and this proportion had altered due to the practice of ethnic cleansing. By contrast, the RS used the argument of consistency, to remain a viable political unit and that could happen only with the contiguous territory. Taking these into consideration, a compromise seemed impossible.²⁵

The tribunal's First Award created an interim supervisory regime 'to allow former Brčko residents to return to their homes, to provide freedom of movement and other human rights throughout the area, to provide proper police protection for all citizens, to encourage economic revitalization and to lay the foundation for local representative democratic government'.²⁶ For that reason, it has been decided that a Supervisor would be sent to the region, to supervise Dayton's implementation throughout the Brčko area and to strengthen local democratic institutions for less than a year. In this context, the Supervisor had extensive authority. He would take measures for the return of refugees, the local elections, the police, the economic revitalization, the reopening of Brčko port and the reopening of the borders with Croatia.²⁷ All these, of course, with a specific

²⁴ International Crisis Group (ICG), Brčko Arbitration: A Proposal for Peace, 20 January 1997, available at: <https://www.refworld.org/docid/3ae6a6ce24.html> (Accessed September 18, 2019).

²⁵ Parish, p. 61.

²⁶ OHR, 'Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brčko Area- Award', 14/02/1997, VI. Reasons for the Award, C. The Tribunal's Authority to Frame the Present Award, 95.

²⁷ OHR, Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brčko Area- Award, 14/02/1997, VII. Award, I. Interim International Supervision of Dayton Implementation in the Brčko Area.

purpose: to determine the final status of Brčko, with the liberalization of movement and safe return of refugees and displaced people.

When the Peace Implementation Council (PIC) took place in Vienna in March 1997, Carl Bildt, the High Representative, appointed Robert Farrand as Supervisor of Brčko for one year. It was decided that the arbitration tribunal would hold under International Supervision. 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.²⁸ In this way, the arbitration tried to facilitate the return of the refugees and the creation of a multi-ethnic administration. However, the failure from the Serb side to follow these demands and at the same time from the Federation to promote the return of the refugees were used as an excuse from the Tribunal to justify international supervision.²⁹

The Supplemental Award

The Tribunal's Supplemental Award dated on 15 March 1998. One year after the Rome Award, the Arbitral Tribunal did not manage to conclude to Brčko's final status. The Federation had maintained its claim on the entire municipality in the preliminary proceedings in Vienna, arguing that the RS had been violating the DPA and the Rome Award throughout 1997. On the other hand, the RS had dropped its demand for a wider corridor but pleaded for confirmation of the status quo based on its existential need for territorial continuity.³⁰

Nevertheless, Roberts Owen argued that despite RS's systematic non-compliance, some improvements had been achieved and real promise had been made after the broke with Pale from President Plavsic. Moreover, the Supervisor had a difficult task to implement, that is why only at the end of the one-year deadline begun to show what it could accomplish. Therefore, a further prolongation was needed, because of the fragile and unready situation at the institutional and political level.

Finally, "the supervisory regime established by the Award (at Para. 104(I)(B)) shall continue in existence, with the powers and responsibilities therein provided. The

²⁸ ICG, "Bosnia's Brčko: Getting in, getting on and getting out.", p. 10.

²⁹ Jeffrey, p. 211.

³⁰ OHR, Supplemental Award, Arbitral Tribunal for Dispute Over Inter-Entity Boundary in Brčko Area, 15 March 1998, II. The issue raised by the Parties.

Supervisor, being Deputy High Representative for Brčko, shall enjoy in the Brčko area powers equivalent to those conferred upon the High Representative by the Bonn Conference of December 1997, including the power to remove from office any public official considered by the Supervisor to be inadequately cooperative with his efforts to achieve compliance with the Dayton Accords, to strengthen democratic institutions in the area, and to revitalize the local economy.”³¹

Last but not least, with the Supplemental Award the Supervisor authorized and encouraged to take further measures towards the improvement of the economic position of the district. The economic re-integration of the district and the communication with the surrounding regions were the main elements of the reforms. So, the Supervisor had to create a duty-free or special economic zone to stimulate the region’s economy, to establish a program of privatization of state-owned and socially-owned enterprises in the area, and finally to activate the Bosnia and Herzegovina Transportation Corporation and facilitate international support for the Sava river port program.³²

In this vein, the atmosphere was prepared for the final decision in 1999. The Final Award for the Arbitral Tribunal declared that “the entire territory, within its boundaries, will thereafter be held in condominium by both entities simultaneously; the territory of the RS will encompass the entire opstina and so also will the territory of the Federation”. So, the Arbitrator has declared the Brčko opstina a condominium, a territory that belongs to both entities. That meant that neither entity could exercise any authority within the boundaries of the district and the area will administer as one unitary government.³³

In the year that passed between the Arbitral Tribunal’s Supplemental Award and the Final Award of 5 March 1999, the political situation in Brčko and the RS had not been improved. Neither the upcoming of Dodik nor the enhancement of Farrand’s powers was enough to finalize the regime in Brčko. The political institutions of the city remained segregated and the staffing of public positions remained without representation for every side, as it will be seen in the following chapters. Despite, the

³¹ OHR, Supplemental Award, Arbitral Tribunal for Dispute Over Inter-Entity Boundary in Brčko Area, 15 March 1998, III. The Supplemental Award.

³² OHR, Supplemental Award, Arbitral Tribunal for Dispute Over Inter-Entity Boundary in Brčko Area, 15 March 1998, III. The Supplemental Award.

³³ Bieber Florian, *Post-war Bosnia: Ethnicity, Inequality and Public Sector Governance*, (London: Palgrave Macmillan 2006), p. 135.

formation of impressive authorities of the Supervisor, in theory, it was difficult to overcome the un-civil disobedience in practice.³⁴

Substantially, the Tribunal took a final decision on Brčko's status on 5 March 1999, after a further request by the Federation for the continuing of the proceedings, which led to a new round of talks from 8 to 17 February 1999 in Vienna.³⁵ So, what was the special status that made every part to agree on? Interestingly, the so-called 'Final Award' presented Brčko as a special 'District', outside the political control of either of the Entities and subject to continuing international oversight through the Supervisor. More precisely, the District would be governed by "a single, unitary multi-ethnic democratic government to exercise, throughout the pre-war Brčko Opstina those powers previously exercised by the two entities and the three municipal governments".³⁶ Simultaneously, the Supervisor preserved his position, in order to promote the strengthening of democratic institutions in Brčko, continue the implementation of Dayton and promote economic reforms.

As Owen explained in a statement trying to summarize 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 Brčko 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 intensified international supervision and beyond the control of either entity.*³⁷

Besides, a law revision commission was established by the Supervisor, for the modification of already existing laws and for providing a uniform system of laws throughout the District. This commission was combined by three-members, one representative of the Federation, one of the RS and of one international jurist, which all would be selected by the Supervisor.³⁸ Accordingly, the Brčko Law Revision Commission (BLRC) was established in June 1999 and its chairman was to report

³⁴ ICG, "Bosnia's Brčko: Getting in, getting on and getting out.", p. 7.

³⁵ See paragraph 4 of the Final Award of 5 March 1999 (OHR 1999a).

³⁶ Brčko Arbitral Tribunal, Final Award (Vienna: Brčko Arbitral Tribunal for Dispute Over the Inter-Entity Boundary in Brčko Area 5 March 1999) para. 16.

³⁷ ICG, "Bosnia's Brčko: Getting in, getting on and getting out.", p. 13.

³⁸ Brčko Arbitral Tribunal, Final Award, op.cit., para. 6.

directly to the Supervisor. The Commission was intended to create a legislative drafting commission dedicated to the Supervisor and independent of the OHR, with the goal to ensure that the legal reform envisioned for the District would be carried out without interference or influence by the international community.

By definition, the Final Award established that the District is not anymore subdivided according to any ethnic basis, thus ending the tripartite and parallel administrations of Brčko during and after the war. Moreover, the Award was guaranteed that the District will remain without military forces, despite the SFOR military transit of the supervision. Finally, the Tribunal emphasized the need to come in compliance with Dayton's objectives for democratization and returning of refugees as key elements to the success of the new District. The purpose of the Final Award was to end the question of entity ownership over Brčko, but even in this way, the District did not lose the geopolitical interest among the nationalist parties.³⁹

This became very clear with the reactions of the parties. The Federation was in denial because Bosniaks had thought that they had convinced Owen to grant them Brčko. Also, RS rejected this solution and Prime Minister Dodik resigned as a symbolic protest, but in fact, his resignation did not have any practical difference. Despite all these, the Final Awards Annex was finalized and set out the details of the District's new institutional structure, including provisions for taxation, education, police and judiciary.⁴⁰

Taking all these into consideration, it is commonplace that the Final Award is an unusual and very unique legal document. Firstly, the Supervisor would create a new District with the borders of the pre-war Brčko opština, whose institutions would have complete legal independence from those of the Entities. The District would be, what has come to be known in international law, as a *corpus separatum*⁴¹, a unit of territory legally and administratively completely separate from its two larger Entity neighbors. What is more, the Supervisor had the obligation to prepare a new Statute for the District government and also to develop a detailed schedule for the formation of the government within a few months from the end of 1999. The presence of Entity police was forbidden.

³⁹ Dhlman and Tuathail, p. 17.

⁴⁰ Parish, p. 102.

⁴¹ This term was used from UN General Assembly resolution 303 (1947 United Nations Partition Plan for Palestine) for the internationalization of Jerusalem and the design as a "corpus separatum" - separate body. <https://unispal.un.org/DPA/DPR/unispal.nsf/0/2669D6828A262EDB852560E50069738A>.

Transit of RS armed forces through the District could occur with SFOR permission, but entity armed forces were banned in general.

As far as legislation is concerned, Entity laws would initially continue to apply in the District, RS law to the north of the IEBL and Federation laws in the south. However, the Supervisor and the District Assembly would be responsible to create a new District legislation in order to harmonize these laws. At the end of this process, the purpose would be to acquire a single set of laws that would apply in all over the District. For that reason, the Brčko Law Revision Commission (BLRC) organized and started to prepare legislation.

Following the Supplemental Award that provided great power to the supervisor, the Final Award added to increase his status. For instance, the Supervisor had the responsibility to appoint a 'joint implementation commission' to prepare a new District Statute. Moreover, his power could pressure directly the Entities to take actions, assisting the establishment of the District. The scheduling of the District government elections and the determination of voting roles was another important responsibility of the Supervisor. The judges and the prosecutors had to be approved by him and also tax, custom and budget were part of his supervision.⁴²

Last but not least, the Tribunal emphasized that it is going to preserve its jurisdiction for an unidentified time until the Supervisor '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 permanently, within the Brčko Opstina. Until such notification, the Tribunal will retain authority to modify this Final Award as necessary in the event of serious non-compliance by one or the other of the entities.'⁴³

Although, one important thing that differs Brčko from other internationalized territories could be explained by the fact that the Supervisor was going to complete his duties and finish his mission on the region. The Final Award anticipated the departure of the

⁴² Final Award Annex, 18 August 1999, para. 2-9 http://www.ohr.int/?ohr_archive=Brčko-final-award-annex (Accessed September 25, 2019).

⁴³ Final Award, para. 67.

Supervisor, which would be determined by PIC, once there was sufficient evidence that the institutions and the people could function without international oversight.⁴⁴

1.2 The Statute of the Brčko District of Bosnia and Herzegovina

In this sense, the Supervisor and the BLRC would have to follow what has been agreed in the Final Award. The main obligations were to provide a statute for the district that would guarantee the separation of powers between the three parties of the government, but also continue with reformations of Brčko's divided judicial and criminal justice system. Nevertheless, it was really crucial to ensure the following obligations:

- All legislation must be consistent with European Union standards
- The public will be provided with access to uncompromised governmental institutions
- Enforced mechanisms were in place to “promote transparency, accountability and uniformity in public services”
- Multinational governance and public services in the District had to be fostered with specific instruments

In essence, to achieve these goals, the BLRC had determined that instead of the draft and propose for every law at a time, all laws related to a particular sector should be presented as a whole. Once a sector has been decided to be reformed, a completed strategy was designed to ensure that any changes made fit within the overall context.⁴⁵

The Statute was expected to prepare the region for a unitary, multiethnic democratic government consisting of a) the District Assembly, a legislative body whose members will be selected through elections to be scheduled by the Supervisor, b) an Executive board, which will be selected by the Assembly, c) an independent judiciary, to consist of two courts, trial and appellate and d) a unified police force operating under a single command structure with one uniform and badge and fully independent from the police establishments of the two entities.⁴⁶

The Statute was finalized on 8 March 2000 and it referred to a range of sectors for the good governance of the District.

⁴⁴ Final Award, para. 37.

⁴⁵ OHR-North, *Brčko Law Revision Commission: Chairman's Final Report*, 31 December 2001, p. 5.

⁴⁶ Final Award, para. 36.

Fundamental Principles- The Legislative Branch

With the Statute, it was finally determined the status of the Brčko District. More precisely, it is presented as ‘a single administrative unit of self-government existing under the sovereignty of Bosnia and Herzegovina’.⁴⁷ The District encompasses the complete territory of the Brčko Municipality with the boundaries as of 1 January 1991 and derives its powers of local self-government by virtue of each Entity having delegated all of its powers to the District Government. Before that two Entities and three municipal governments were exercising their powers within the pre-war Opština.

In this vein, the District functions under the Constitution of Bosnia and Herzegovina. That means that all laws and decisions of the District authorities must be in conformity with the relevant laws and decisions of the country’s institutions. Officially, the name of the District was established to be ‘The Brčko District of Bosnia and Herzegovina’.⁴⁸

In accordance with Article 4, public officials in the District have to take an oath, that in fact unites all people of the District. The oath reads, “ I solemnly swear/affirm that I will conscientiously perform the duties entrusted to me; that I will uphold the Constitution and laws of Bosnia and Herzegovina, the awards of the Brčko Arbitral Tribunal, the Statute and the laws of Brčko District, and that I will protect the interests of Brčko District and the equality and freedom of all people within Brčko District”.⁴⁹ It is obvious that the purpose of this oath is to emphasize the specific status of Brčko. Public officials of the District in contrast with public officials anywhere else in Bosnia and Herzegovina have to obey not only in the country’s Constitution, but also in specific laws and legislation of the District Arbitral Tribunal.

Moreover, the District ought to cooperate with the Entities to facilitate the accomplishment of its functions and powers under the Statute and the law. It has also the possibility, to join agreements with national-international associations of cities and municipalities. Thus, the most significant element that will be analyzed is the equality among residents. On the other hand, the competencies of the public authorities are the economy, finances, public property/ services, culture, education, health care, social welfare, judiciary and urban development. All these powers shall be exercised solely

⁴⁷ Statute of the Brčko District of Bosnia and Herzegovina, (7 December 1999), Chapter I, Art.1 (1-2), available at: http://www.ohr.int/?ohr_archive=statute-of-the-Brčko-district-of-bosnia-and-herzegovina (Accessed September 28, 2019).

⁴⁸ Statute, Chapter I, Art.2(1).

⁴⁹ Statute, Chapter I, Art. 4.

for the purpose for which that power is intended, fairly and proportionately to the ends pursued.⁵⁰

As far as citizenship is concerned, all the residents of Brčko District can enjoy all rights and freedoms guaranteed under the Constitutions and laws of Bosnia and Herzegovina, the Statute and the District, without discrimination of any kind, including discrimination based on gender, race, sexual orientation, color, language, religion, national or social origin, political or other opinion, membership of a national minority, property, birth of other status. Of course, all residents have the potential to participate equally in the conduct of public affairs, but also are obligated to participate in the financing of the functions and powers of the District taxes, fees and contribution in accordance with the law.⁵¹

The Statute defines also the authority of the Assembly, which functions under the Rules and Procedure of the Assembly. The purpose was to institute procedures that will not only foster transparency but also would establish the necessary checks and balances between the executive and the legislative branches. More precisely, the District Assembly is the legislative body of authority in the District and can generally determine policies on the economy, finances, customs administration, public property, public services/ infrastructure, education, health care and other necessary services for the District to function as a single administrative unit of local self-government. Therefore, the Assembly is elected every four years.

The role of the District Assembly is extremely vital because except for these specific authorities, have to deal with more important issues that organize, and regulate the District as a whole. In this vein, the Assembly is authorized to amend the Statute and adopt the District budget, laws, decisions and resolutions. Moreover, it can decide on the District's public loans and indebtedness, subject to compliance with the rules and policies of the Central Bank of Bosnia and Herzegovina, but also to elect and dismiss the president and vice president of the Assembly, the major of the District and other officials. Therefore, monitoring the District government and the entire administration

⁵⁰ Statute, Chapter I, Art. 8.

⁵¹ Statute, Chapter II, Art. 13.

of the District, regarding the management of revenues and expenditures and their performance, provide significant power to the Assembly.⁵²

The Assembly is composed of thirty-one (31) Councilors, out of which two Councilors represent national minorities in the District. Another important element is that the Assembly can initiate the formation of Committees from among its members in order to prepare draft laws for the Assembly and perform other responsibilities according to the Statute.⁵³

The Executive Branch

The District is based on the division of powers. The legislative power is exercised by the District Assembly, the executive power by the District Government and the judicial power by the District Courts.⁵⁴

Under the Law on Executive Authority, the BLRC set out to establish a local government, in which authority and accountability rest with the chief executive, the major. In the previous structure of local governance critical decisions required consensus, which meant that no single public official could be held accountable for wrong decisions. Moreover, when it did not settle for half-measures, the Executive Board paralyzed, particularly if sensitive political matters were concerned. However, now the major has a privileged position, with more authority than the other board members.⁵⁵

The major acts during the term of the Assembly, which has elected him and shall remain in office until another major is elected. The law provides specific arrangements of transparency and openness of the government towards the residents, in order to be fully and properly informed. Accordingly, the major should inform for his decisions, plans and instructions with the publication of his actions in the Official Gazette. Moreover, the mayoral directives are to be posted on the District Notice Board to ensure their dissemination among District employees.

⁵² Karnavas G. Michael, "Creating the legal framework of the Brčko District of Bosnia and Herzegovina: A Model for the Region and Other Postconflict Countries", *The American Journal of International Law*, Vol. 97, No. 1 (Jan., 2003), pp. 111-131 Available at: <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/creating-the-legal-framework-of-the-Brčko-district-of-bosnia-and-herzegovina-a-model-for-the-region-and-other-postconflict-countries/494E48B6DCFB81A7E18B0D99F48CD86E> (Accessed September 28, 2019).

⁵³ Statute, Chapter III, Art. 23, 34.

⁵⁴ Statute, Chapter III, Art. 19.

⁵⁵ Karnavas, op.cit., p. 118.

In this sense, the responsibilities of the major are really obvious. Firstly, the major is responsible for scheduling District Government sessions and chairing them. Following that, the major has to implement the laws of Bosnia and Herzegovina and the District, and also has the responsibility for the management and the administration of the District. His position is authorized to submit draft laws and make recommendations to the Assembly, propose the budget of the District and produce the financial reports and other important responsibilities that are defined in the Statute.⁵⁶

An area with specific importance was how to deal with fiscal responsibility. The Final Award instructed the Supervisor to “make provision in the Statute”, in order to deal with this problem. Therefore, the detailed provisions establishment of the Brčko District Revenue Agency (DRA) and the adoption law explicitly call for a transparent and accountable process.⁵⁷ Since the mayor is responsible for submitting the District budget Assembly, the DRA is required to submit reports to the Executive Authority, including own projections on anticipated revenues. To foster the independence of the rector, unlike heads of government departments, is appointed by the mayor with sent of three-fifths of the Assembly, serves a term of five years, and may be reappointed; he may be dismissed only by a three-fifths majority vote of the Assembly.

Transparency was incredibly vital for the effective and organized governance of the District. Taking this into consideration, the Supervisor established an independent District Tax Agency and the DRA maintained the control over tax administration. In comparison with past corruption and abuse, a tax administration agency was established modeled after the DRA as a semiautonomous agency under the executive branch.⁵⁸

The Judicial Branch

The Judicial system was another part of the Statute. The latter provides a thorough description of the functioning of the courts, the public attorney’s office and the prosecutor’s office. In fact, the District Courts have to be independent and impartial. The judiciary consists of the Basic Court and the Appellate Court. The main purpose is to render justice impartially in accordance with the awards of the Arbitral Tribunal for the Dispute over the Inter-Entity Boundary and the Supervisory Orders. Although, the

⁵⁶ Statute, Chapter III, Art. 52.

⁵⁷ Karnavas, op.cit., p. 119.

⁵⁸ Karnavas, op.cit., pp. 119-120.

Courts have to comply with the Constitution and laws of Bosnia and Herzegovina, the Statute, and the District laws.⁵⁹

What should be kept in mind is the provisions for the Legal Aid Agency. This Agency should be an independent institution, which will be established by the District law. In this vein, the main responsibilities will be to provide legal advice and represent in criminal and civil matters to District residents of low income.⁶⁰ At the same time, the appointment and the dismissal of District Judges and District Prosecutors should be appointed by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. In order to ensure that the judiciary will be independent a Judicial Commission established by law.⁶¹ The Judicial Commission consists of seven members: the president of the Appellate the president of the Basic Court; the director of the Agency for Legal Aid; the prosecutor; the president of the Constitutional Court of Bosnia and Herzegovina and two residents of the District.⁶²

Interestingly, the selection process was peculiar. The Legal Succession had in view that all municipal administrators within the territory of the District on 8 March 2000, “ceased to exist”. The Brčko District of Bosnia and Herzegovina became the legal successor to the Republic Srpska Brčko Municipality, the Brka and the Ravne-Brčko.⁶³ In fact, the BRLC borrowed the system that Germany used during its unification, in order to acquire a unified legal system. For that reason, the BLRC determined that all judicial members and court staff would need to reapply and compete again to gain a position in the new judiciary.⁶⁴

Social Sector Reform

Return of Abandoned Property

A crucial concern of the OHR and the Supervisor was how to help displaced persons and refugees to return back in the District. Considering that peace and stability were depending on an effective return and settlement of refugees, the Final Award emphasized on this area. In fact, the procedures were incredibly complicated and the situation was not in favor of returning. That is why the BLRC needed strategic planning

⁵⁹ Statute, Chapter V, Art. 66.

⁶⁰ Statute, Chapter V, Art. 69.

⁶¹ Statute, Chapter V, Art. 71.

⁶² Karnavas, p. 121.

⁶³ Statute, Chapter V, Art. 77.

⁶⁴ Karnavas, p. 122.

for an effective process of returns. Therefore, the end result was the creation of a special law based on a mixture of tried and successful procedures, suggesting improvements in dealing with returns.⁶⁵

The educational system

Because of the war, a separate educational system was established in the Brčko area for each of the three-constituent people, the Bosniaks, the Croats and the Serbs. The importance of a unified education was highlighted by the Tribunal, which instructed the Supervisor to “integrate the District’s educational system, harmonize curricula within the District and ensure the removal of teaching materials”, which is considered being inconsistent with the views of the Final Award. For all these reasons, the creation of a single, unified whole in this multiethnic society was really challenging.

Substantially, the most controversial issues were:

- The establishment of unified, multiethnic integrated educational institutions
- The banning of national and religious symbols in schools founded partly or wholly by the District
- The planning of the curricula
- And the use of all three languages in the teaching process.

The Statute emphasizes the equal usage of Bosnian, Croatian, and Serbian language and the equality among the alphabets- Latin and Cyrillic. In practice, it will be ethnically mixed classrooms and the children will speak and do their homework in whatever language they (or their parents) choose, and the teacher will be required to respond to the child in that language. Additionally, the teacher must explain any linguistic differences to the other students.⁶⁶

Taking all these into consideration, it is obvious that the Final Award was the concluding element, which helped in the establishment of the District. On the one hand, the Statute provided a legal framework for the establishment of the government, the creation of a Judiciary Commission and the formation of a multiethnic educational system. Despite all these, the Award gave the BLRC the possibility to initiate a variety of legal reforms specially introduced, in order to promote equality and security in the

⁶⁵ Karnavas, p. 125.

⁶⁶ Karnavas, p. 126.

District. Indeed, the close partnership of BLRC with the district government, the Assembly, the political parties, national and District experts was a fundamental factor that proved essential to the reforming process.⁶⁷

⁶⁷ Karnavas, p. 130.

Chapter II:

2.1 Power-sharing in divided societies

One of the central questions in peacekeeping operations was and still is how to achieve long-lasting stability in fragile societies or states with a divided population. In particular, this concern has emerged after the decolonization, the dissolution of the Soviet Union and the former Yugoslavia, when intra-state conflicts came into the surface, requiring the revision of conceptual designs for internal state order. In this content, power-sharing is considered a solution for reducing inter-religious or inter-ethnic antagonisms. This policy is also proved that it is one of the reasons for continuing tension.⁶⁸

The theoretical framework of power-sharing in divided societies is separated into two distinct theories: the consociational theory and the integrative approach. The former has been presented by Arend Lijphart, trying to explain how and to what extent society can be organized after a conflict in the idea of power-sharing. Additionally, the integrative approach initiated by Donald Horowitz tries to question Lijphart's theory and provides more aspects of power-sharing policies with emphasis on the institutional mechanism and inter-ethnic elite cooperation.

It is obvious in the literature of conflict resolution and conflict management, that there are divergent views on how to deal with post-conflict societies, which have ethnic divisions that have led to outbreaks of violence and civil war. Although, there are two opposing perspectives about what can be done after the end of the war. One perspective promotes the restoration of peace, stability and democracy by designed strategies that promote these principles. However, if peace is not possible then another strategy is "forcible partition" or even the transfer of a part of the population. According to them, civil war and ethnic violence imply that civil politics cannot be restored in another way.⁶⁹

⁶⁸ Katharine Belmont, Scott Mainwaring and Andrew Reynolds, "Introduction: Institutional Design, Conflict Management and Democracy in Divided Societies", in *The Architecture of Democracy: Constitutional Design, Conflict Management and Democracy*, (ed.) Andrew Reynolds, (Oxford: Oxford University Press, 2002), p. 1.

⁶⁹ Chaim Kaufman, "When All Else Fails: Evaluating Population Transfers and Partition as a Solution to Ethnic Conflict", in *Civil Wars, Insecurity and Intervention*, ed. Barbara F Walter and Jack L Snyder, (New York: Columbia University Press, 1999), pp. 221-223.

The main question, therefore, is how to deal with ethnic conflict within the existing state boundaries. Scholars with this view are arguing that stability and democracy are achievable in ethnically divided states, providing mechanisms that can accommodate the needs of all the population. In order to achieve that, they argue that power-sharing between different groups in various areas such as politics, society, administration will decrease the basic security dilemmas in ethnically divided societies.⁷⁰

More precisely, McGarry and O' Leary identify two models for conflict management. The first one has to do with integrative methods, in accordance with these identities are characterized as malleable and transformable. They are opposed to political mobilization according to ethnic, national, cultural or religious divisions and it is often preferred not only by majority communities but also by small minority groups.

On the other side of the spectrum, accommodationists consider identities as fixed and unchangeable. In that case, the accommodation and the clearly designated representation seem the most suitable approach as a form of conflict management. The two crucial elements of the accommodation approach are consociational and centripetal power-sharing.⁷¹

Consociational Theory

Consociationalism is an accommodative arrangement for power-sharing for all significant groups in legislative and executive institutions. At this content, proportionality is being promoted within public administration, with a preference for proportional electoral systems.⁷² Lijphart defined the 'consociational democracy' as a government by elites designed to transform a divided democracy into a stable one. Comparing the two models of democracy, majoritarianism and consensus, Lijphart developed four mechanisms for consociationalism: grand coalitions, minority vetoes, proportional representation and group autonomy. In this way, Lijphart argues that

⁷⁰ Rannveig Cathrine Finsveen, "Power-sharing after civil war: An Analysis of Institutional Structures and Inter-ethnic Elite Cooperation in Mostar and Brčko", Master's Thesis, University of Oslo (2006), p. 19.

⁷¹ John McGarry and Brendan O'Leary, "Argument: Power Shared After the Deaths of Thousands", in *Consociational Theory: McGarry and O'Leary and the Northern Ireland Conflict*, ed. Rupert Taylor, (Abingdon: Routledge, 2009), pp. 16-18.

⁷² McGarry and O'Leary, pp. 16-17.

consociationalism would help to transform into a stable society and to avoid secession.⁷³

A great part of Lijphart's theory has to do with inter-ethnic elite cooperation within the institutional framework. The main assumptions are that elites play an undistinctive role in conflict management and that ethnicity is a relevant factor and cleavage in divided societies, which cannot be distinguished. It is crucial to identify ethnic division by including the principles of self-determination in a state and also to promote the rules of representation, territorial division of power and decision-making. In this vein, political security is promoted through the idea of group protection mechanisms and then the different groups find it rationally and morally right to cooperate.⁷⁴

According to this theory, there are some security mechanisms that promote inter-ethnic elite cooperation. Firstly, a grand coalition, with representatives from all significant groups of the society, that will ensure that all groups will be included in the decision-making process. In this vein, as minorities can be outvoted in a coalition, another important mechanism is the veto, in order to protect their vital interests. Moreover, the proportional representation of all groups in both public and political institution is considered as a crucial consideration.⁷⁵ Lastly, he prescribes that 'segmental autonomy' is the last element that is needed. In accordance with that, a form of self-government can be achieved. In that way, ethnic groups could be deal with their interests and specific issues that are not of common interest with the other ethnic groups.⁷⁶

The underlying assumption of Lijphart's theory is that antagonistic populations can peacefully coexist in case they are governed by a system which secures their cultural diversity and political participation, through groups' discrete but equal representation.⁷⁷ Moreover, this model needs some specific patterns in order to succeed. First, the segmentation in a society is a prerequisite as a pattern of social structure. Secondly, elites are needed to be part of decision-making and conflict regulation. Lastly, this

⁷³ Martin Wählisch, *Peacemaking, Power-Sharing and International Law: Imperfect Peace*, (Oxford: Hart Publishing, 2019), p. 21.

⁷⁴ Finsveen, "Power-sharing after civil war: An Analysis of Institutional Structures and Inter-ethnic Elite Cooperation in Mostar and Brčko", p. 20.

⁷⁵ Arend Lijphart, *Democracy in Pluralistic Societies, A comparative exploration*, (New Haven: Yale University Press, 1977), p. 25-41.

⁷⁶ Brighid Brooks Kelly, *Power-Sharing and Consociational Theory*, (Pennsylvania: Palgrave Macmillan, 2019), pp. 29-30.

⁷⁷ *Ibid* p. 19.

political culture is characterized by arising from historical circumstances.⁷⁸ Regardless of these patterns, there are also three factors that led to the implementation of consociationalism. In this vein, the existence of an external threat is necessary in order to promote cooperation between the different groups. At this point, the balance of powers is needed to reduce the possibility of domination of one group over another. Finally, it is crucial that the process of decision-making apparatus is not overloaded for the success of consociational power sharing.⁷⁹

Integrative Model

On the other side, Horowitz argues that the inter-ethnic elite cooperation will be promoted within an institutional structure that creates integrative dynamics and tries to disappear to ethnic divisions. This argument promotes the idea that identities do change and are fluid through political, historical and cultural events.⁸⁰ Therefore, elites will cooperate in order to become an integrative group with the same ideas and the same perspectives for future development.

The integrative model of Horowitz does not consist of specifically designed elements like that of Lijphart, but he identifies some specific principles that are needed. One of these concerns is that ethnicity does not play a main role in the transformation and the creation of new institutions and administration. More precisely, the ethnic cleavage is not considered as an important one, in order to build a common society. As far as the electoral system is concerned, he suggests that the integrative dynamics will be promoted by a preferential electoral system. In accordance with that, political elites and ethnic parties will find incentives through the political process to moderate their positions and to promote cross-ethnic approaches, which will be beneficial for all sides.⁸¹

Additionally, another instrumental device is considered to be federalism, which provides incentives for inter-ethnic group cooperation. This perspective claims that ethnically heterogeneous political units, which are argued to foster integrative dynamics. Therefore, the rationale for Horowitz is that people who coexist in the same

⁷⁸ Ibid, p. 25.

⁷⁹ Henry Jarrett, "The limits of Consociational Power Sharing", in *Consociationalism and Power-Sharing in Europe: Lijphart's Theory of Political Accommodation*, ed. Michaelina Jakala, Durukan Kuzu and Matt Qvortrup, (Oxford: Palgrave Macmillan, 2018), p. 40.

⁸⁰ Donald L. Horowitz, *Ethnic Groups in Conflict*, (California, University of California Press, 1985), p. 66.

⁸¹ Ibid, pp. 598-599.

region with elites who represent them in a federal unit will eventually develop common interests and desires for the future. For that reason, the will for more cooperation with each other will promote an integrative transformation of a divided society.⁸²

Comparison of the two approaches

Both Lijphart and Horowitz support that institutional structures are an important element in conflict management and group accommodation. The basis for their analysis is who elite act in institutions and how this promotes conflict management. Although, their main disagreement focuses on the mechanisms that are being used. While Lijphart believes that inter-ethnic cooperation is promoted by security mechanisms, Horowitz argues that cooperation comes as a result of institutions and mechanisms that will eventually reduce the role of ethnicity and the ethnic divisions will disappear.

On the one hand, consociational model mechanisms provide elements of the power-sharing model through territorial division of power, representation in political institutions and decision-making process. According to that, a status of autonomy or federalism is needed as a prerequisite in consociationalism. Proportionality in political institutions and ethnicity-based group representation are the elements of political representation. Also, the veto is vital for the promotion of interests and different representations.

Integrative model mechanisms are different and have some other perspectives. As far as the territorial division of power, the integrative model is based on the decentralization of heterogeneous units. The ethnic aspect in political representation is not considered to be important and a preferential system is more preferable. At this point, the theory does not give emphasis on veto power among the different groups, because the main concern is to become a unified body.⁸³

Power-Sharing Spectrum

Power-sharing concept is a wider concept which is understood in a broad way. Power can be shared on the political, territorial, economic and military level. In practice these levels are complementary and have a strong interaction.

⁸² Ibid, pp. 574- 579.

⁸³ Finsveen, "Power-sharing after civil war: An Analysis of Institutional Structures and Inter-ethnic Elite Cooperation in Mostar and Brčko", p. 27.

Initially, political power-sharing focuses on the distribution of shares in legislative and executive powers. As we describe above, this can include systems of proportional representation, grand coalitions or minority vetoes. These institutions manage conflict by establishing a stable balance of power among groups. While the ability of power-sharing institutions to balance power among groups is considered an initial step for a stable peace, long-term stability needs interaction between the different groups at the political center.⁸⁴ Moreover, after a conflict, post-conflict governments can be structured as coalitions, unity governments or even collective presidencies consisting of the key political groups.⁸⁵

In some other cases, territorial power-sharing is considered as an adequate solution of self-governance for parts of a state to avoid secession or requests for independence. With this solution, on the basis of federalism or regional autonomy, local control is guaranteed in some aspects of the political and social life of a specific group of people. For instance, a federation could be symmetric, where all ‘parts’ enjoy equal status and autonomy or could be asymmetric, where different groups hold more power than the other.⁸⁶

Additionally, economic power-sharing is another aspect of power partition. Economic power-sharing means that various groups share the wealth, which is most often achieved by shared control over natural and other economic resources. Major state corporations, agencies and state-owned enterprises could be distributed between conflict parties. Lastly, one more aspect of power-sharing is military power-sharing. Admittedly, this aspect does not integrate former non-state belligerents into the state’s army, but could only integrate a substantial number of officers into the national army, in order to weaken the remaining combatants.⁸⁷

⁸⁴ Caroline Hartzell and Matthew Hoddie, “Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management”, *American Journal of Political Science*, 47 (2), (2003), p. 320.

⁸⁵ Wählisch, *Peacemaking, Power-Sharing and International Law: Imperfect Peace*, p. 26.

⁸⁶ *Ibid*, p. 27-28.

⁸⁷ *Ibid*, p. 29-30.

2.2 Governance and Power-sharing in Post-war Bosnia

By the end of the war, the population of Bosnia was largely concentrated in three ethnically homogeneous territories. While the Dayton Peace Accords specified the freedom of movement within the country and the return of the refugees in their houses, the first years after the end of the conflict was characterized by minimal return of the refugees to areas where they now constitute a minority. This situation has as a consequence for Bosnia to remain clearly homogeneous with only small minorities from the other two nations. Therefore, it is acknowledged that the ethnic cleavage was vital in the political life of post-war Bosnia.⁸⁸

Regarding the fact that Bosnia's current political system is a product of a peace agreement, it is really important to acknowledge the significant role of the international community and the creation of a de facto protectorate, that is characterized by a loose federation with a weak central government. In this context, the Serb Republic inside the state is governed autonomously as a quasi-state and the Croat cantons in the Federation have a comparable self-governance. Also, the Bosniak dominated areas continued to function under Bosnian government control.⁸⁹ More precisely, the territory of Bosnia is divided into two entities, the Serb Republic and the Croat-Bosniak Federation of Bosnia-Herzegovina. In addition to these two entities, there is also the self-governed city of Brčko, which was transformed into a separate multinational district in 1999 and was placed under international administration in 2004.

Multi-ethnic governance was considered a great solution against nationalism and for the promotion of regional and international security and stability. Accordingly, the decentralization of political power and the provision of security to all ethnic groups are considered vital in multi-ethnic policy. This practice aims to protect the vital interests of all ethnic groups. So, to safeguard a unified Bosnia it is essential to ensure minority interests in the constitution. Accordingly, the peace agreement set the basis that the power of majorities at higher levels of government would be closely regulated and power was to be shared through the society, allowing greater self-government at the

⁸⁸ Florian Bieber, *Post-War Bosnia: Ethnicity, Inequality and Public Sector Governance*, (Basingstoke, Palgrave Macmillan, 2006), pp. 29-32.

⁸⁹ *Ibid*, p. 40.

local level. This devolution of power aiming to provide security to all three groups and provide a mechanism for institutionalizing support for a multi-ethnic society.⁹⁰

In accordance with the constitutional amendments that the High Representative has imposed in 2002, Bosnia can be described as a triple power-sharing system, with power-sharing not only in the entities and the cantons but also at the state level. At theoretical level, power-sharing is following the consociational definition of power-sharing by Arend Lijphart, based on grand coalition, mutual veto rights, proportionality and segmental autonomy. In this case, both entities and state level governments require the creation of a grand coalition. Federation is consisted of eight Bosniak ministers, five Croat and three Serb. Each minister has at least two deputies from the other two communities. Consequently, in the Serb Republic five ministers have to be Bosniak and three Croat. Lastly, in the state level, two-thirds of the ministers have to be from the Federation and one third from the Republika Srpska.

Veto is a crucial element of power-sharing in Bosnia, not only at state level but also in entities and cantons each community has the right to veto decisions by parliament that may not agree with the community's interests. Both entities need a two-thirds majority of the community's deputies in the House of People (Federation) and the Council of People (RS) for a legislation to fail. At state proposed legislation, only one-third from each entity can block a law. However, the veto rights are limited to "vital interests" (defined as adequate representational in legislative, executive and judicial authorities, issues of identity, constitutional amendments, the organization of public authorities, equal rights, education, religion, language, the promotion of culture, tradition and cultural heritage, territorial organization and public information system and these veto rights can be expanded by each of the three constituent people to any issue.⁹¹

Another important element is proportional representation because all three groups have to be represented equally at the state level. With the changes in 2002, the entity constitutions introduced proportional representation as a general principle for public administration. In most cases, the pre-war distribution of the population is considered

⁹⁰ David Chandler, *Bosnia: Faking Democracy after Dayton*, 2nd Edition, (London, Pluto Press, 1999), pp. 66-67.

⁹¹ OHR, "Decision on Constitutional Amendments in the Federation", Amendment XXXVII, 2002, available at <http://www.ohr.int/?p=66766> (Accessed January 8, 2020).

the basis of proportional representation to promote the return of refugees and the process of employment in public administration.

These initiatives were crucial for a politically legitimate system. More precisely, the division of power enhances the effective functioning of a government and secure the state against the abuse of power. Particularly in post-conflict situations, the need for a set of mechanisms provides a safeguard in which future conflicts can be solved in non-violent means.⁹²

The state level institutions

The structure of institutionalized power-sharing is used as a tool to distribute power among the different ethnic groups. The federal nature of the state and the high levels of decentralization has weakened the power-sharing, due to the lack of common decisions. In addition, the commitment to the state differs from a political party to another and this has an impact on the consociational system. So, the state institutions that work through power-sharing are weak and according to the Constitution these areas of policy are:

- Foreign policy
- Foreign trade policy
- Customs policy
- Monetary policy
- Finances of the institutions and for the international obligations of Bosnia
- Immigration, refugee and asylum policy and regulation
- International and inter-entity criminal law enforcement, including relations with Interpol
- Establishment and operation of common and international communications facilities
- Regulation of inter-entity transportation and
- Air traffic control⁹³

⁹² Chandler, p.77.

⁹³ Stipe Ivanda and Renata Coric, "Ustrojstvo Bosne I Hercegovine s osvrtom na Entitete," 24 *Pravni Vjesnik* 95 (2008), p. 98.

Additionally, the DPA established also joint institutions. The main institutions at the state level are:

- The presidency
- The council of Ministers
- The parliamentary Assembly (House of People & House of Representatives)
- The Constitutional Court
- The Central Bank of Bosnia⁹⁴

Presidency

Presidency in Bosnia is the highest state organ, which combines representative functions with the coordination of Bosnia's foreign policy which is characterized by equal representation and veto power for each other. The main element is that ethnicity is prescribed by the members of the presidency- one Croat, one Serb and one Bosniak- and the members are also elected by the two entities separately. As the main cleavage cutting across Bosnia is doubtlessly ethnicity, the Presidency members are arguably elected to represent primarily their respective nation and only secondarily their entity. Moreover, the members rotate every eight months and the Presidential decisions are adopted by consensus (Article V, par. 2).⁹⁵

The Council of Ministers

The Presidency nominates a Chair of the Council of Ministers and the Chair nominates Ministers and Deputy Ministers. In this regard, the Council of Ministers is formed by up to two-thirds from the Federation and one third from the Republika Srpska. Remarkably, the Chair of the Council of Ministers is not presided over by one who could emerge as a prime minister, but by two Co-Chairs of the Council of Ministers and a Vice-Chair. The co-chairs also rotate every eight months and take decisions by consensus.⁹⁶

⁹⁴ Constitution of Bosnia and Herzegovina, "Responsibilities of and Relations Between the Institutions of Bosnia and Herzegovina and the Entities", Article III, (September 26, 1995), p. 5, available at <https://www.wipo.int/edocs/lexdocs/laws/en/ba/ba020en.pdf> (Accessed February 8, 2020).

⁹⁵ Constitution of Bosnia and Herzegovina, Presidency, Article V, p. 8.

⁹⁶ Bieber, *Post-War Bosnia: Ethnicity, Inequality and Public Sector Governance*, p. 52.

Parliamentary Assembly

The Parliamentary Assembly has two chambers: the House of People and the House of Representatives. On the one hand, The House of Peoples shall comprise 15 Delegates, two-thirds from the Federation (including five Croats and five Bosniaks) and one-third from the Republika Srpska (five Serbs). In particular the Croat and Bosniak delegates are elected by the Federation and the Serb delegates are elected by Republika Srpska. Although, the House of Representatives is comprised of 42 members, two-thirds elected by the Federation and one-third by the Republika Srpska. Each chamber is obligated to select one Serb, one Croat and one Bosniak, to serve as the Chair and Deputy Chairs. While the Chair needs to be rotated among the three. All legislation requires the approval of both chambers. This approval was to be by a simple majority vote of those who are present and vote unless a majority did not include one-third of the members of each entity. In that case, the Chairs had three days to try and gain the approval of over one-third of both entities. If this fails, the majority decision would go through unless there was a dissenting vote which included two-thirds or more of the members of either entity.⁹⁷

The state level administration

Reflecting on the limited powers of the state administration, the institutions at the state level have been relatively small. Essentially, part of the previous administration was integrated into the new, post-war administration, but the positions were limited. Substantially, the dominance of the Serb Democratic Party in the first post-war years had as a consequence that the Serbs did not participate in the administration and also, they did not support it at all.

The state administration was only fully regulated after the imposition of the Civil Service Law in May 2002 by the High Representative. The representation of all ethnicity was difficult to be achieved because of the small size of the civil service and in reality, the representation of a nation has been the representation of the dominant political parties. By definition, the law sets the principles according to which the civil service is to be recruited. Also, an Agency for Civil Service was needed to be set up,

⁹⁷ Chandler, p. 69.

which would oversee the reform of the civil service. Therefore, the recruitment is based on three basic principles, which has been incorporated in both entities:

- I. The recruitment and the professional career advancement of a civil servant shall be based upon open competition and professional merit.
- II. The structure of civil servants within the civil service shall generally reflect the ethnic structure of the population of Bosnia and Herzegovina in accordance with the last census.
- III. National representativeness of civil servants shall be based upon voluntary declaration in accordance with this law.⁹⁸

On the other hand, cantons are responsible for:

- I. The establishment and the supervision of police force
- II. The creation of their educational policy
- III. The coordination of their cultural policy
- IV. The establishment of a policy plan for the public services
- V. The general coordination of the businesses and the communication services of the canton⁹⁹

[Governance in Brčko: A differentiation of power-sharing](#)

In comparison to the big image of governing and power-sharing in Bosnia-Herzegovina, there are some key cities that function independently and autonomously in order to have balance and to reduce disputes within the state. In particular, the key cities were and still are Sarajevo, Mostar and Brčko. Mostar is located in the middle of the Federation and is divided under Croat control in the west and Bosniak control in the east. Sarajevo is considered as a special case that as a capital has to promote safety and unity for all ethnic groups. Lastly, Brčko was claimed both by the Federation and RS and for that reason was placed under international arbitration. Therefore, it is obvious that despite the state, it is essential to look at the local level to understand the situation and the political circumstances in every case.

The case of Brčko and the establishment of the District in 1999 shaped a more complex political landscape in the country. Especially, the status of the district was complex, the

⁹⁸ Art. 2, Law on Civil Service in the Institutions of Bosnia and Herzegovina, 23/5/2002.

⁹⁹ Ivanda & Coric, p. 99

arbitration had yet to be resolved and a post-conflict recovery yet to be undertaken. Moreover, economic development was non-existent and international developments was hesitant.¹⁰⁰ In order to create a democratic and strong political environment, the Office of the High Representative established an office and a supervisor. More precisely, the first supervisor was Robert Farrand, who was nominated by the United States. Especially, the nomination of the supervisor gave greater importance in the region and provided different political developments in comparison with the rest of Bosnia.¹⁰¹

While legally, both entities retained sovereign over the district, Brčko was characterized as a ‘third entity’, due to its own governance and district laws. In particular, the district is governed by the major and has a 29-member district Assembly, which until 2004 were nominated by the Supervisor. More precisely, the first district elections took place in 2004 and was the starting point of the self-governance in the region. The Assembly was composed of 13 Serbs, 9 Bosniaks and 7 Croats, which were representatives of the main political parties in Bosnia, except for one independent member per nation.

It is worth mentioning that Brčko is the first and only District in Europe. While neither entity retained exclusive control in the District, each was obligated to it. The main purpose was to create a sovereign entity whose “neighboring predators would be invested in its success”. Hence, as a self-sustaining district, Brčko would be responsible for funding and providing all services to its constituents. Therefore, the police force, the school system, the court system, the legislative body, health care, utilities and public services would fall under the jurisdiction of a new district established government.¹⁰²

As it was referred on the Statute of the district, the Assembly has the power and the functions of a parliament and the major and department heads act as a government of the district. Even though, the assembly could propose and pass law, the real power was in the hands of the international supervisor. Until 2004, the supervisor could not only appoint the members of the assembly and the major, but also impose laws if they are

¹⁰⁰ Amanda N. Z. Leese, *Extended Engagement: US Development policy in Brčko, Bosnia and Herzegovina*, Thesis, Baltimore (2006), pp. 23-24

¹⁰¹ Chandler, p. 86.

¹⁰² Leese, pp. 25-26

not passed in parliament. These powers were incredibly similar with those of the High Representative and allowed the supervisor to shape the composition of institutions.¹⁰³

If we would like to add a privilege of the citizens of the district is the fact that they do not hold a separate citizenship, because they have to choose one of the two entities and the state, but they are eligible to vote except of the district elections in entity and state level elections. Here, it is obvious a paradox of this practice, because in fact Brčko residents can vote for governments and parliaments in the entities, that have no authority over their district.¹⁰⁴

Comparatively with other cases like Mostar, the international administration in Brčko tried to create not a proportionate system, but a fully integrative one. Most decisions of the supervisors were aiming to demolish the entity-structures that were established before the decision for arbitration. As was pointed out above, the new administration of Brčko tried to avoid ethnic lines, in comparison with the rest of Bosnia and Herzegovina, by replacing the mono-ethnic system.¹⁰⁵

A significant difference between the Brčko district and Bosnia as a whole was the lack of power-sharing arrangements. More profoundly, ethnicity is not the main concern in the creation of the assembly and the structures of administration. The only reference has to do with the regulation that heads of departments have to agree with the composition of the population.¹⁰⁶ In contradiction with, entities, state government and cantons, which have mechanisms to ensure the participation of all groups in the decision-making process, Brčko do not have such a mechanism. As far as the assembly is concerned, the elections are based on a proportional system, while the assembly of Brčko has three seats one for each of the three constituent nations.¹⁰⁷ Consequently, this perspective for proportionality and absence of ethnic reference was an attempt, especially from the supervisor, to prevent the discrimination among people from the region. Although, this practice could make governance more challenging.¹⁰⁸

¹⁰³ Bieber, *Post-War Bosnia: Ethnicity, Inequality and Public Sector Governance*, p. 136.

¹⁰⁴ Bieber, *Post-War Bosnia: Ethnicity, Inequality and Public Sector Governance*, pp. 136-137

¹⁰⁵ Florian Bieber, "Local institutional engineering: A tale of two cities, Mostar and Brčko", *International Peacekeeping*, 12:3, (2005), p. 426.

¹⁰⁶ Statute, 1999, Art. 48.

¹⁰⁷ Milan Blagojevic, *Pravna Priroda: Brčko Distrikta deceniju Poslije*, (Banja Luka, Universitet za proslovni inzenjering I menadzment Banja Luka, 2011), pp. 121-123.

¹⁰⁸ International Crisis Group, "Bosnia's Brčko: Getting In, Getting On, and Getting out", 2 June 2003.

The electoral mechanisms and practices that were shaped in the Statute, had the intention to prevail the domination by one of the three constituent nations. In this vein, the election of the major by the assembly requires a three-fifths majority in the first round and a simple majority in the second round. Moreover, the logic of three-fifths majority is performed also in decisions such as law, budget, changes to procedural mechanisms, the dismissal of officials and the appointment of the chief and deputy chiefs of police.¹⁰⁹ As such, the two larger communities, Serbs and Bosniaks, are unlikely to outvoted. Hence, the idea of de-ethnification has not automatically promoted the decision-making process, because in some cases the supermajority could also have ‘veto powers’, even if they do not constitute a group veto.

Thus, it is admissible that Brčko has been an experiment in decision-making with this special institutional framework. However, international intervention in decision-making was not rare, due to the lack of consensus and agreement between the different nations, which are represented in the local assembly. Furthermore, an Administrative Support Department was established directly after the establishment of the district government. The purpose of this department was to facilitate and support the Major, but also to promote the recruitment and personnel restructuring. However, the Department was considered to be part of the District Government, particularly in the matter of budgeting, purchasing and expenditure controls.¹¹⁰

Analyzing more the composition of public administration, it is important to point out that there is a paradox. While there is a general commitment to the representation of different communities, the Statute emphasizes in the element of participation in public services, the ‘professional merit’ and the ‘welfare of the district and Bosnia and Herzegovina’ as the overriding concerns for council members over group membership. In this regard, there have been significant attempts in the district assembly and the administration to reflect the composition of the population, not only in terms of proportionality, but also in the positioning of office-holders. So, during the reconstruction of the public administration, 47 percent of all positions were filled by

¹⁰⁹ Statute, 1999, Art. 60.

¹¹⁰ William Sommers, “Brčko District: Experiment to experience.”, Paper at the Conference “Delivering Public Services in CEE Countries: Trends and Developments”, Krakow, 25-27 April 2002, p. 3.

Serbs, 38 percent by Bosniaks and 14 percent by Croats, following the distribution of population in the district at that time.¹¹¹

The uniqueness of Brčko's governance can be observed in many levels. In particular, governance structures not only removed policy-making from the political party competition for power at entity level, but also have been distinguished by any territorial decentralization along with ethnic groups. The special status, as a district, provided greater incentives for compromise than in other regions of the country. Moreover, the adaptation of a decision became easier, without the blockages of the ethnically-divided competitive party system. Therefore, it is crucial to highlight, that all these elements designate Brčko to a model, which focuses more on a gradualist approach towards integration. Comparing to other cases, while Brčko had stronger consociational elements, it left aside the territorial dimension of power-sharing and supported a focus on common and central institutions.¹¹²

Nevertheless, until recently the power of the institutions was limited, due to the actions of the supervisor in the district. In accordance with that, the real power and capability of the institutional arrangements in Brčko to operate independently and the safeguard of the main groups' interests had not yet been fully operated. As it is observed in other parts of Bosnia, this type of institutional settings is not easily fulfilled, where the dominance of one group can overlap the interests of the others.¹¹³

¹¹¹ Ibid, p. 10.

¹¹² Bieber, "Local institutional engineering: A tale of two cities, Mostar and Brčko", p. 427.

¹¹³ Bieber, *Post-War Bosnia: Ethnicity, Inequality and Public Sector Governance*, p. 138.

Chapter III:

3.1 Transitional Challenges in the society

After the war the basic concern not only for the communities that experienced the war, but also for international community was the way forward, the way for reconciliation. It is commonplace in academic literature, that after a conflict the society needs to heal the “wound” of the past and continue their lives. Especially, in civil or inter-ethnic wars this idea seems particularly crucial, in order to re-organize and re-build the society, public administration and governance after the war. In this vein, many scholars have some interest in define and identify the main elements that are needed in order to achieve a successful reconcile society.

The main idea indispensably connected with reconciliation is transitional justice. In theoretical framework, transitional justice is part of post-conflict reconstruction and rehabilitation. The main mechanisms through which transitional justice is been realized are truth commissions, tribunals and institutional reforms.¹¹⁴ Of course, the most important element for the achievement of reconciliation is to be promoted by an integrated group environment, which is comprised of citizens from all sides of the conflict.

Nevertheless, the process of reconciliation is not a simple process. Many aspects of political, social and administrative life have to be challenged, re-considered and changed. Firstly, the main aspect of reconciliation is the way of governance. Post-conflict societies have to organize their governing system in a way that everyone is satisfied and part of the decision-making process. Additionally, the legal system and police will be reconstructed on the base of inclusion and coherence. Lastly and more importantly, the educational system plays a significant role in the reconstruction of the society. However, to achieve an inclusive and diverse society, the main challenge is the return of refugees and displaced persons, who are forced to flee the area that they lived or even the country because of the war.

¹¹⁴ James Meernik, Nenad Golcevski, Melissa McKay, Ayal Feinberg, Kimi King and Roman Krastev, “Truth, justice, and education: towards reconciliation in the former Yugoslavia”, *Southeast European and Black Sea Studies*, 16:3, p. 415.

3.2 The judicial system in post-war Bosnia

After the war, the judicial system in the country continued to function according to the standards and the patterns of the former Yugoslavian judicial system. Hence, the Constitution of Bosnia delegates the organization and the responsibilities for the judicial system to the entities and the Brčko District. More precisely, in the Federation, the judicial system is structured in 31 Municipal Courts, 10 Cantonal Courts and one Supreme Court. In this context, the Municipal Courts can exercise jurisdiction over the different municipalities, while the Cantonal Courts correspond to the cantonal boundaries. Moreover, the Supreme Court is the highest authority, while the Constitutional Court is not counted as a judicial power, rather than as an organ to monitor the implementation of laws and other judicial matters.

Additionally, the judicial power in Republika Srpska is exercised by 20 General Courts, 5 District Courts and the Supreme Court. The General Courts are responsible for issues between municipalities and the several General Courts are under the authority of one of the District Courts. Equally with the Federation, the Supreme Court is the highest authority and the Constitutional Court deals with normative control. As we are going to examine more analytically, a separate judicial structure is organized in Brčko District. The judicial system comprises a General Court and a Court of Appeal.¹¹⁵

At the state-level the situation is more complex. Initially, the Court of BiH was established in 2007, with state-level jurisdiction authorities and highlighting an important moment for the judicial system of the country. Its duties are the effective implementation of central state's competencies and the protection of human rights and rule of law. Needless to say, that there is a need of a Supreme Court of BiH at the highest appeal board, but this movement means that entities' will lose part of their jurisdiction and autonomy.

Especially, the Constitutional Court deals with controversies between the entities, the central state and the entities and the central state institutions. In this court all state institutional actors have access, such as the Presidency, the Chairman of the Council of Ministers, the Chairmen and deputies of the two chambers of the Parliament and delegates from state-level and entity parliaments.¹¹⁶

¹¹⁵ Lidia Bonifati, "The Judicial System of Bosnia-Herzegovina: Between Courts and Politics", p. 5.

¹¹⁶ Bonifati, p. 6.

3.3 Brčko Judicial System

It was significant that the Brčko District needed a reformation in the judicial system, in order to be more transparent and inclusive for all people in the district. As supervisor Farrand points out, when the war has finished, the courts in Brčko was totally controlled by Serb judges, politically influenced by the situation. What he was trying to achieve was each judicial position had to be drawn into Brčko's tri-ethnic demographic equation. Therefore, a multiethnic judiciary in Brčko was a prerequisite for the effective representation and jurisdiction of all citizens.¹¹⁷

In this vein, with 'Order in Judiciary in the RS Municipality of Brčko' the Supervisor officially presented the elements of the new independent judiciary system. So, the provision and principles that have been emphasized in the order were the following:

- I. There shall be a President and a Vice President of the Basic Court (hereinafter: The Court) who shall be of different nationalities.
- II. The President and the Vice President of the Court shall be appointed or reconfirmed by the President of the Republika Srpska, Madame Plavsic, in consultation with the RS Prime Minister, Klickovic and the Supervisor, within 30 days after the technical certification of the municipal elections of 13 and 14 September 1997. If the President of the Republika Srpska fails to appoint the President and the Vice President within the given time frame, the Supervisor shall make the appointments.
- III. The composition of the Court shall reflect the composition of the population of the RS Municipality of Brčko, based on the voters' registry and as reflected by the results of the municipal elections of 1997.
- IV. The Municipality of Brčko shall have a Public Prosecutor and a Deputy Prosecutor who shall not be of the same nationality.
- V. Everyone shall have the right to be represented by an attorney of his/her choice, registered with a Bar Association within the territory of Bosnia and Herzegovina.¹¹⁸

¹¹⁷ Robert William Farrand, *Reconstruction and Peace Building in the Balkans: The Brčko Experience*, (Lanham: Rowman & Littlefield, 2011), p. 180.

¹¹⁸ OHR Brčko Arbitration, 'Order on Judiciary in the RS Municipality of Brčko', 10/10/1997. Available at: http://www.ohr.int/?ohr_archive=ohr-Brčko-arbitration-order-on-judiciary-in-the-rs-municipality-of-Brčko-2 (Accessed February 10, 2020).

In this vein, a Judiciary Working Group (JWG) was organized to discuss issues related to the order's implementation. Particularly, JWG is composed of members of the international community and judicial officials from Brčko and the Federation. The purpose was to improve access to law texts, automate offices, renovate the court building and expand public-information activities, including court monitoring and public access to free legal aid. Albeit these purposes, the RS desire was a judiciary fully compliant with politics. In addition to that, there was the issue of a huge gap between salaries paid to judges in RS in comparison with salaries in the Federation.¹¹⁹

With the establishment of Brčko District at the beginning of 2000, a separate administrative unit was organized in the region. As far as the judicial system is concerned, it was independent but has strong constitutional and legal ties with the Entities. This occurs through the idea of the District as self-governed and self-organized or through a voting system of the citizens, who can vote either for the RS or the Federation authorities.

In this sense, the judicial system consisted of Appellate Court and the Basic Court. The former has jurisdiction over conflicts of jurisdiction between the basic courts, conflicts from the territory of different districts, transfer of territorial jurisdiction from one court to another, ordinary legal remedies against decisions made by the basic court or extraordinary legal remedies. In this vein, there were specific requirements for the judges of the Appellate Court of the District. Judges should have a minimum of eight years of practical experience as a judge, prosecutor, attorney or other relevant legal experience. Moreover, his mandate shall be unlimited and shall be subject to resignation, mandatory retirement or removal from office. The president of the judges appointed to the Appellate Court can have a six-year mandate, which can be re-appointed.¹²⁰

On the other hand, the Basic Court operates for all criminal cases, regardless of the penalty that may be pronounced, all administrative cases, civil disputes, non-litigation procedure, minor offense cases, enforcement proceedings, land-registry procedures,

¹¹⁹ Farrand, p. 182.

¹²⁰ OHR, "Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina", Official Gazette of Bosnia and Herzegovina, 25/04, p. 12.

procedures of registration of legal persons into the court registry, providing assistance to the courts in BiH and the international legal assistance.¹²¹

Lastly, based on the Law on the Prosecutor's Office of Brčko District, there is only one prosecutors' office in Brčko. This office is an autonomous and independent body, undertakes the prescribed measures and actions in the detection and prosecution of perpetrators of criminal offenses and minor economic offenses, and performs other duties defined by law. In performing its function, the Prosecutor's Office of Brčko District participates in the proceedings before the Appellate and Basic Court of the Brčko District.¹²²

Recent reports, although, argue that there are some main problems regarding corruption cases on the judicial system. More precisely, the report of OSCE titled "Trial Monitoring of Corruption Cases in BiH: A First Assessment" presented the first assessment of issues negatively impacting the quality and effectiveness of the judicial response to corruption in BiH to representatives of the judiciary and law enforcement agencies today in Brčko. Despite the different organization and arrangement of the judicial system, the main problems of corruption and no-implementation of the law are obvious also in this region.¹²³

3.4 Multi-ethnic Police

Another aspect of public administration is the police. The war created a strange situation for police forces in Bosnia, due to their involvement in war crimes. For that reason, the reform of the police forces was part of the Dayton Peace Agreement and accomplished to a great extent, because of the actions of the supervisory role of the International Police Task Force (IPTF), which was established by the Agreement.¹²⁴ However, the first years after the war the police was remaining largely mono-ethnic and the need for reforms was obvious throughout the country.

Despite, the general homogenization of the population in the largest extent of the country, the creation of a multi-ethnic police force remained a tough task. This happened due to the difficulty of recruiting citizens from non-dominant communities.

¹²¹ Council of Europe, "The Judicial Power in Bosnia and Herzegovina", Opinion no. 648/2011, Strasbourg 2011, p. 22.

¹²² Ibid, p. 23.

¹²³ OSCE, "Assessing Needs of Judicial Response to Corruption through Monitoring of Criminal Cases", Project Report, February 2018.

¹²⁴ DPA 1995: Annex 11.

Nevertheless, efforts for multi-ethnic police were taken place only in two mixed cantons of the Federation and the Brčko District. As a result, in 1998, the only non-Serb policemen in whole Republika Srpska was in Brčko.¹²⁵

In the case of Brčko, the process was part of a general intention to transform the district into a multi-ethnic society, with the transformation of the administration. While much progress had happened in this direction, until the Final Award there were three separate police services still operating in the region- the Multi-ethnic police force north of the IEBL and the Bosniak and Croat police forces south of the line. Each of them was operating under different principles and procedures, with chains of command and little flexibility, because of the political patronage and party affiliation. So, the main purpose was for all these units to be integrated into a unified Brčko District Law Enforcement Agency.¹²⁶

As Brčko's supervisor reveals, the organizational problems of the institution were various. More precisely, there were no accurate records or writing reports by police officers. This was one of the main complications, due to the fact that important data on criminal activities were absent. Moreover, accurate crime statistics were available, but no one had the expertise or equipment to analyze the data for planning or operational purposes.¹²⁷

In this sense, the supervisor had to appoint the chief of police and the staff. In January 2000 the Brčko police force was established, with a new administration. Farrand refers in his book "While in equity terms alone, it would have been "mete and just," to use the Biblical phrase, to appoint either a Bosniak or a Croat to the chief of police position, we also needed to address the practical question of whether a non-Serb could, under the circumstances, effectively police a jurisdiction where Serbs still, de facto, overwhelmingly dominated the landscape. What you might gain in terms of moral rectitude you could very well lose in terms of effective law and order in the community". Therefore, he argues that he had to deal not only with morality rather with practicality.¹²⁸

¹²⁵ Bieber, "Post-War Bosnia", pp. 140.

¹²⁶ Farrand, p. 176.

¹²⁷ Ibid, p. 177.

¹²⁸ Ibid, p. 178.

In practical terms, during the process of creating a new multi-ethnic police force, the officers were required to vacate apartments, which belong to refugees or displaced persons. This was a crucial initiative in order to provide credibility to police forces and also the feeling of safety to the refugees for their return.

An important factor in this process was international organizations, who monitored the process through the IPTF. Despite the real power of the supervisor and the IPTF, the important factor was that it was the district government that administered the police force. In other cases, if for example the force has been created by an international force, then this had to be integrated into the district administration. Therefore, this move was a strategic step towards integration.¹²⁹

The official announcement of the new multi-ethnic police and the start of operations took place on 31 December 1997, in accordance with the Supervisory order on the formation of a multi-ethnic police force in the RS Municipality of Brčko. Significantly, the 230 police officers who make up the force have all gone through the IPTF certification process.¹³⁰ In this vein, the main functions and missions of the police were to maintain public safety and order in the District, ensure full freedom of movement within the District with a special emphasis on the freedom of movement between the eastern and western part of Republic Srpska and between the Federation of Bosnia-Herzegovina and the Republic of Croatia and to cooperate with various police forces within the country.¹³¹

In accordance with the supervisory order on police formation, the Brčko District Police Service was established on 5 March 1999 and appointed the main officers. Dusan Kokanovic was appointed as Chief of the Brčko District Police Service, Pero Androsevic as Deputy-Chief of the Brčko District Police Service and Mirsad Haseljic, as Deputy-Chief of the Brčko District Police Service. The new police unit had to report directly to the Supervisor and act under the instructions issued by the Supervisor and United Nations Mission in Bosnia and Herzegovina.¹³²

¹²⁹ Bieber, "Post-War Bosnia", p. 141.

¹³⁰ OHR, "Brčko Multi-Ethnic Police", 01/02/1998. Available: <http://www.ohr.int/?p=54478>

¹³¹ OSCE POLIS, "Countries Profil". Available at: <https://polis.osce.org/country-profiles/bosnia-and-herzegovina#Brčko-district-police-9981> (Accessed February 20, 2020).

¹³² OHR, "Supervisory Order on the Establishment of the Brčko District Police Service and the Appointment of the Chief and Deputy Chiefs of Police", 20/01/2000. Available:

All in all, the Brčko police force was reintegrated into Bosnia's first multiethnic police force and has been able to exercise its powers in the District. In addition, for the success of the multi-ethnic police, an important prerequisite was the providing of good salaries. In this case, police salaries were almost double those earned by police forces in the two entities. Thus, the reform of the police has been promoted more than any other region in the country and for that reason, the positive aspects became obvious immediately.¹³³ In a public opinion survey in 2002, the public support for the District police was around 50% high and showed the strongest support in a public institution. So, the support of the population was the basic element and a key step in ensuring security.¹³⁴

For the years 2019-2023, there is a new strategic plan for the police of Brčko District. In accordance with that, its main values are the protection and respect of human rights and freedoms, legality, professionalism and responsibility, integrity and ethics, affiliation on multi-ethnic community and affiliation to the police.¹³⁵ Furthermore, the strategy refers that "Police of Brčko District of Bosnia and Herzegovina is an independent police organization that carries out tasks within the police jurisdiction in accordance with the relevant laws of Bosnia and Herzegovina and Brčko District of Bosnia and Herzegovina, and other applicable laws". Also, the highest management of the Brčko District Police is represented by the Police Chief and the Deputy Chief of Police.

The element of multi-ethnicity remains an important element. Accordingly, the organization is characterized as a multi-ethnic one until today, employing 263 police officers and 52 civil servants and employees (a total of 315 of 332 systematized jobs). Under these circumstances, the main strategic goals are the enhancement of the security in the community, institutional capacity, readiness to react to crisis and partnership with the community.¹³⁶

http://www.ohr.int/?ohr_archive=supervisory-order-on-the-establishment-of-the-Brčko-district-police-service-and-the-appointment-of-the-chief-and-deputy-chiefs-of-police (Accessed February 20, 2020).

¹³³ Bieber, "Post-War Bosnia", p. 141.

¹³⁴ Henry L. Clarke, "Brčko District: An Example of Progress in the Basic Reforms in Bosnia and Herzegovina, (Summary of Presentation, 2004).

¹³⁵ "Institutional and Capacity Building of Bosnia and Herzegovina Education System", February 2008, p. 2.

¹³⁶ "Strategic Plan of the Police of Brčko District of BiH 2019-2023", Brčko, December 2018. Available at https://policijabdbih.gov.ba/images/strateski_plan_2019_-_2023_eng.pdf (Accessed February 20, 2020).

3.5 Refugee return

Another important characteristic of the war in Bosnia was the great number of refugees and internally displaced persons during and after the war. From 1989 to 1992, 2.3 million people fled their homes and from these 600,000 people were from Bosnia, due to the war in all Yugoslavia. In the years 1992-1995 refugees from Bosnia and Herzegovina fled to Germany, Austria, Sweden, The Netherlands and Denmark. The number of the refugees in these countries were 320,000, 86,500, 58,700, 22,000, and 17,000 accordingly.¹³⁷

Taking these aspects into consideration, it is known that during the war in Bosnia reached one million refugees and an almost equal number of internally displaced persons, who were either forced from their homes or fled to avoid violence. At the end of the war, the Dayton Agreement gave great emphasis on the returning of all these refugees in their cities and homes. Due to the political nature of refugee returns, humanitarian intervention by the international community was met with persistent resistance and differentiation by the parties. According to the Annex 7 of the DPA, all refugees and displaced persons had the right to return to their home of origin and the fulfillment of entitlement would be a critical step to achieve peace.¹³⁸

The main problem was that refugees had to face house burnings, beatings, isolation, intimidation by local police, and attacks by paramilitary groups. Moreover, local authorities made obvious their intentions to eliminate the return of refugees. In this sense, local political leaders are rarely proactive in the implementation process and had never presented ideas towards that direction. Remarkably, security, safety and infrastructure process were not negligible problems for the refugees.¹³⁹

An important category of these people was the internal displaced persons. Inter-entity displacement was a crucial factor in the reconstruction of the country. To put it bluntly, internally displaced persons were not willing or were unable to return to their previous residents, wherein most of the cases the authorities in action were the same that made

¹³⁷ Mikkel Barslund, Matthias Busse, Karolien Lenaerts, Lars Ludolph and Vilde Renman, "Integration of Refugees: Lessons from Bosnians in Five EU Countries", Vol. 52, No. 5, (2017), pp. 257–263, Available at <https://www.intereconomics.eu/contents/year/2017/number/5/article/integration-of-refugees-lessons-from-bosnians-in-five-eu-countries.html> (Accessed February 20, 2020).

¹³⁸ DPA, "Agreement on Refugees and Displaced Persons", Annex 7, Art. I.

¹³⁹ Lauren Van Metre and Burcu Akan "Dayton Implementation: The Return of Refugees", United States Institute for Peace (ISIP), 1997. Available at <https://www.usip.org/publications/1997/09/dayton-implementation-return-refugees> (Accessed February 20, 2020).

them fled the region. Of course, this was a general problem for all opposing sides, because of houses of displaced persons of one group occupied by displaced persons of the other group. Therefore, this was the main obstacle for many people to return to their pre-war places of origin.¹⁴⁰

Furthermore, another obstacle was that if refugees or internally displaced persons would return to their homes, they would be minorities in areas dominated by other ethnic groups. That element added to many other problems such as insecurity, exclusion and isolation in their close social environment.

During the years of war, Brčko was badly affected due to its strategic position. Most non-Serb fled out the region after Serb forces occupied the city in May 1992. At the end of the war, the United Nations High Commission for Refugees (UNHCR) estimated that there were 52333 displaced persons in Brčko, where 35073 were in Federation parts (Ravne-Brčko and Brčko-Rahic) and 17261 in the RS part (Brčko Grad).¹⁴¹ Particularly, during and after the war, around 28,000 Serb refugees from other parts of the country and Croatia settled in the town, while approximately 39,000 Bosniaks from the town were displaced.¹⁴² Moreover, some 28,000 Serb refugees displaced from other places of the country, settled in Brčko changing the whole demographics of the city. In general, approximately two-thirds of the 87,000 pre-war inhabitants had become refugees or displaced in the war.¹⁴³

It is important to analyze the different aspects of war practices. When Serb forces had prevailed in the city, had “cleansed” all non-Serb residents. However, the houses of central Brčko remained intact without great destruction. Some argue that there was an agreement with Serbs and Croats to not destroy Brčko and the Gunja, the town located on the opposite bank of the Sava River. Others support that Karadzic and his colleagues wanted Brčko’s residential zone, in order to locate Serbs from other regions and avoid

¹⁴⁰ USCRI, “USCR Country Report Bosnia and Hercegovina: Statistics on refugees and other uprooted people, June 2001”, 2001. Available at <https://reliefweb.int/report/bosnia-and-herzegovina/uscr-country-report-bosnia-and-herzegovina-statistics-refugees-and> (Accessed February 20, 2020).

¹⁴¹ Alex Jeffrey, “Building state capacity in post-conflict Bosnia and Herzegovina: The case of Brčko District”, *Political Geography* 25, (2006), p. 209.

¹⁴² Bieber, “Post-War Bosnia”, p. 138.

¹⁴³ Bieber, “Local institutional engineering”, p. 430.

the return of those who previously resided there. Taking these theories into account can help us understand the situation as a whole.¹⁴⁴

Particularly, in order to understand the demographics of the city after the war, it is important to point out, that there were two types of Serbs in the area, those who had been born in Brčko and those that came during the war. The “newcomers” occupied 80% of the city and every one of them knew that they were occupying houses and apartments belonging to someone else. Of course, we have to consider that this was the general situation in the country, due to the fact that their own homes, were either occupied or destroyed elsewhere in BiH. Analogously, they were also living with insecurity and frustration, unable to voice their concerns, masked them in anger and hate for the “Other”.¹⁴⁵

In this vein, the first year after the war, the non-Serb population, who were refugees or displaced persons did not return to Serb-controlled Brčko. In 1998 the first substantial minority returns started to take place all over the country. Although, the arbitration decision from 1997 in Brčko had resulted in the creation of a Return Commission, which included the main international organizations and the three mayors of the city. Therefore, the number of returners exceeded those in other areas of the Republika Srpska.¹⁴⁶

Before the establishment of the district, the problem of refugees was the same as in other regions of the country. The Serb dominated administration and police made every possible attempt, in order to avoid the return of refugees and especially Bosniaks in the town. Strategies preventing their return has to do with deliberate relocation of Serb refugees in the house that were previously owned by Bosniaks. Moreover, police inactivity and attacks against returnees and their properties were other acts to impede the process. An important example of these policies was the creation of a monument of Draza Mihailovic, the leader of Serb nationalist Cetniks during the World War Two.¹⁴⁷

As far as the Return Commission is concerned, Supervisor Farrand established a procedure for the return of refugees and internally displaced persons on 24 April 1997,

¹⁴⁴ Farrand, pp. 86-87.

¹⁴⁵ Farrand, p. 87.

¹⁴⁶ Bieber, “Post-War Bosnia”, p. 139.

¹⁴⁷ International Crisis Group, “What Brčko Could Be.”, 1998. Available at <https://www.refworld.org/publisher,ICG,,BIH,3ae6a6d244,0.html> (Accessed February 20, 2020).

in order to help and promote the procedure. Farrand was the leader of the commission and cooperated with Real Property Claims, OHR, UNHCR, IPTF, UN Civil Affairs and the three area mayors. More precisely, people who have the intention to come back were instructed to notify the Return commission of their intent to return and the earliest date on which they expect to return, and file a claim for their property with the local Real Property Claims office. Then, the office checked if the property is available for the refugees to return. Despite of these efforts, the numbers of returners has incredibly disappointed. As Supervisor Farrand argues in his book about the situation: “Our thoughts were to begin slowly filling in communities inside the ZOS to the south along the IEBL, where houses were either totally destroyed or heavily damaged. We believed international military control of the Zone of Separation (ZOS) as mandated in the DPA would make Bosniaks and Croats feel more secure returning to local communities situated within its borders.”¹⁴⁸

Furthermore, this new commission affected positively the rate of returns for two reasons. Firstly, it had spread up the proves of claims and, secondly, due to the introduction of a new Brčko ID card without Serb symbols on the front cover. As the supervisor highlights, the lawyers in OHR-Sarajevo had advised him to provide internal identity documents in Brčko, in order to ease the freedom of movement.¹⁴⁹

The management of property claims was another barrier in the return of the refugees. After the establishment of the district, the share of resolved property claims increased substantially. Being part of Bosnia little progress had been made for obstructionist policies in the Republika Srpska. However, the share of resolved property disputes in Brčko increased from 14 to 81 percent from 1999 to 2002.¹⁵⁰

Accordingly, to OHR estimations, by the end of January 1998, 2,461 mostly Bosniak families had received approval to return, with the general estimation to be around 9,000. Of those, 710 families actually had returned, making Brčko the only area in Republika Srpska where there have been substantial minority returns in 1997.¹⁵¹ On the contrary, the conditions changed with the creation of multi-ethnic police in late 1997, the

¹⁴⁸ Farrand, p. 88.

¹⁴⁹ Jeffrey, p. 209.

¹⁵⁰ Bieber, “Post-War Bosnia”, p. 139.

¹⁵¹International Crisis Group, “What Brčko Could Be.”, (1998). Available at <https://www.refworld.org/publisher,ICG,,BIH,3ae6a6d244,0.html> (Accessed February 20, 2020).

dissolution of the previous administration and the establishment of the district. So, in 1999 around 1,200 people returned and this number increased to 16,611 in 2000 and 2002, rising to 20,000 people in 2004.¹⁵² These developments provide Brčko as one of the most successful cases for minority returns in Bosnia, but even in this case a large number of refugees that returned was followed many difficulties.¹⁵³

Even today the problem of refugees and displaced persons remain an obstacle to the fulfillment of peace and reconciliation. Out of 2.2 million people who left the country, 1,025,011 have returned. Particularly, from these the 72 percent, returned to the Federation, 26 percent returned to Republika Srpska and 2 percent in Brčko. Furthermore, this process could not be finalized without the reconstruction and renovation of houses. In this sense, 327,000 houses have been rebuilt. However, around 3,000 of these houses still don't have electricity, and 10,657 displaced persons or returnees do not have any health insurance.¹⁵⁴

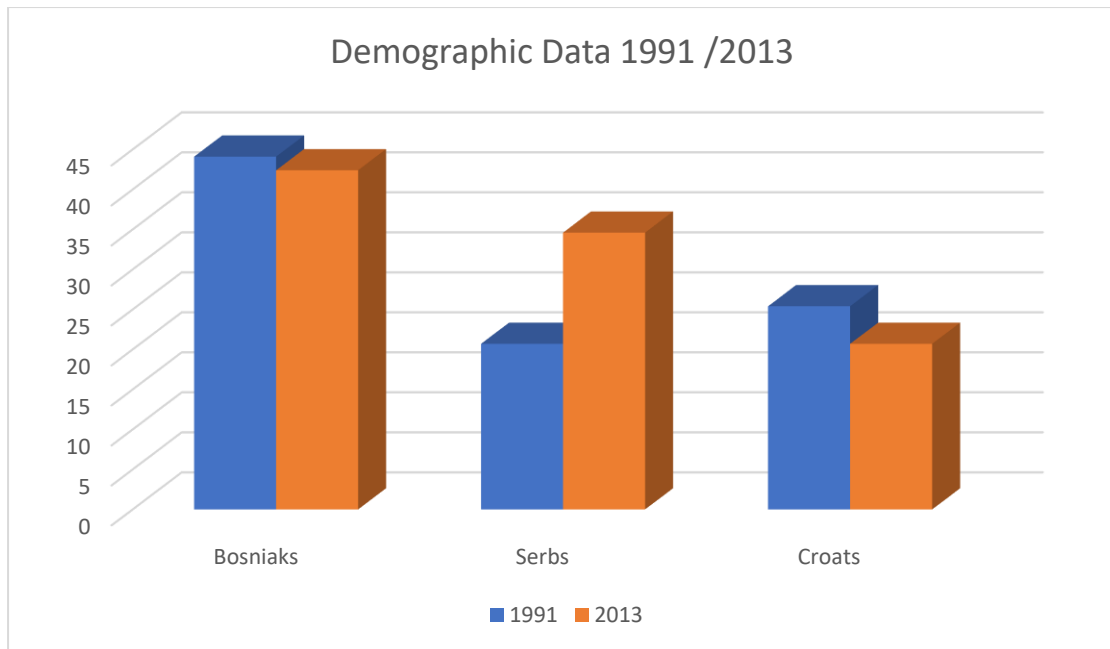
Looking at the demographics of the population, there is no considerable changes in the total population from 1991 to 2013. In accordance to the censuses, in 1991 the total population of the District was 87,627 and 83,516 in 2013. More precisely, the three ethnic groups were divided as following: Bosniaks 38,617 (1991) and 35,381 (2013), Serbs 18,128 (1991) and 28,884 (2013), Croats 22,252 (1991) and 17,252 (2013), Yugoslavs from 5,731 to zero and, lastly, Others from 2,899 to 1,999. Substantially, after the war, the overall population of the District remains the same with a slight reduction. As far as the ethnic groups are concerned, a reduction in Bosniak and Croat population and the doubling of the Serb population are observable as well. Moreover, it is noteworthy that today there is no one which is determined as 'Yugoslav'.¹⁵⁵ Therefore, the return of refugees and displaced persons have not changed the image of the District as it has been shaped in the post-war period. Although, in comparison to other regions in the country, Brčko is characterized by its multi-ethnicity and diversity.

¹⁵² UNHCR, "Returns to Bosnia and Herzegovina reach 1 million", Summary of Ron Redmond speech, 21 September 2004. Available at <https://www.unhcr.org/news/briefing/2004/9/414ffeb44/returns-bosnia-herzegovina-reach-1-million.html> (Accessed February 20, 2020).

¹⁵³ Bieber, "Post-War Bosnia", p. 139.

¹⁵⁴ Mladen Lakic, "Bosnia 'Still Struggling' to Resolve Refugee Problem", 27 December 2017. Available at <https://balkaninsight.com/2017/12/27/bosnia-still-fails-to-resolve-question-of-refugees-12-27-2017/> (Accessed February 20, 2020).

¹⁵⁵ "Popis 2013 u BiH – Brčko District". Available at <http://www.statistika.ba/?show=12&id=30163> (Accessed February 20, 2020).



3.6 Education in post-conflict societies

It is generally accepted that education plays a significant role in the framing of national identity. Accordingly, in post-war societies, education reform is considered as a good opportunity to connect conflicting sites, in order to educate a new generation of peaceful citizens, embracing new norms and forgetting the conflicts of the past. In many cases, in academic literature but also in practice, the first years after the war is characterized by differentiation and adaptation of a ‘curricular reconstruction’. This step has the intention to act against and recover from group violence and to promote tolerance. Therefore, the main purpose of this practice is to avoid the repeat of traditional narratives of ethnic superiority and prejudice against the other group inside the classroom.¹⁵⁶

One of the important functions of the educational system is the role of gathering people and especially children in the same building (something that is problematic and contested in the context of Bosnia, as we are going to see). Except from the basic knowledge that someone can acquire through education, another important element, even more, important for the society, is the fact that education has the ability to learn social norms and customs, that is accepted and adopted in a specific society. Even in divided societies, with different perspectives and ideas about social identity, a common identity must be adopted, in order for the society to develop further. So, the school as a

¹⁵⁶ Meernik, Golcevski, McKay, Feinberg, King and Krastev, p. 416.

societal gathering point can play a critical role in the integration or the segregation of society as a whole.¹⁵⁷

In this vein, the main purpose is to educate a new generation of peaceful citizens who embrace particular norms. These norms have to do with human rights education, the promotion of citizenship/ civic identities and behavior as a way to distance themselves from ethnic and cultural divisions. This perspective emphasizes the educational reforms as part of the transitional process, in order to deal with the problems within the society and the co-existence of the population.¹⁵⁸

More precisely, as Tropp and Pettigrew have argued in their paper there are four positive factors necessary for the reduction of prejudice. These factors are: equal status between the groups, common goals, intergroup cooperation and, lastly, support of authorities, law or custom.¹⁵⁹ Nevertheless, these postwar education reforms are often part of a wider set of changes related to institution building and reconciliation. To a wider extent, these changes are designed, supported and took place by external actors and shape postwar politics.¹⁶⁰ As part of the peacebuilding and democracy-building process, except of educational reforms, the main concerns are to replace political tensions, radical ethnic mobilization and violent conflicts with stability, peace and respect of democratic institutions.¹⁶¹

What is needed to highlight is that education can promote rehumanization and trust inside the society, elements that are critical in the process of reconciliation. Especially, in the case of Bosnia, many communities were multi-ethnic before the war. That means that the everyday life of people, who fought against each other and need to live next to each other, creates a conflict and tensional landscape. The main problem after the war has to do with the practice of ethnic cleansing (during the war), which created homogenous communities and a large number of refugees and detained people not only inside the country but in all over Europe. For that reason, the interaction and the co-

¹⁵⁷ Ibid, p. 416.

¹⁵⁸ Briony Jones, "Exploring the Politics of Reconciliation through Education Reform: The Case of Brčko District, Bosnia and Herzegovina", *The International Journal of Transitional Justice*, Vol. 6, (2012), p. 132.

¹⁵⁹ Tropp, Linda and Thomas Pettigrew, Relationships between intergroup contact and prejudice among minority and majority status groups. *Psychological Science* 16, no. 12 (2005): pp. 951–957.

¹⁶⁰ Jones, p. 128.

¹⁶¹ Sonja Grimm and Wolfgang Merkel, 'War and Democratization: Legality, Legitimacy and Effectiveness,' *Democratization* 15(3) (2008), pp. 451–471.

existence render the process of reconciliation incredibly problematic and difficult, especially the first years after the war. Therefore, schools were considered a great place to expose individuals to interact with other groups to lessen tensions and lead to a common understanding.¹⁶²

Education in Bosnia

The educational system in post-war Bosnia is an incredibly complicated system, that adds to the complexity of the country's system. The educational system in BiH reflects the consequences of the destruction of the war, the paradoxes of the Dayton Peace Agreement, and the weaknesses of the country's constitution. Comparatively, the education system in the former Yugoslavia, which was inspired by Tito's ideological regime for a socialist youth with a degree of a shared Yugoslav identity, with the ability to incorporate the diverse linguistic and cultural group into a multicolored Yugoslav nation. Although, during the war as the country was devastated by violence, the educational system became fragmented along ethnonational lines. Immediately, education was turned into a tool for nationalist political control and ideologies. Children were educated in a "tripartite pattern", which was based on the area in which people lived and the ethnicity to which they belonged.¹⁶³

After the war, there is not a unified educational system, where all students co-exist, learn, and have lectures and activities in the same area-building. Moreover, textbooks and curriculum differ for ethnic factors. The important factor is that the various ethnic groups do not need to coordinate through a specific ministry, institution or a common base, in order to be organized in a regular basis. Although, the coordination is encouraged by external factors, it is not mandated.¹⁶⁴

The Dayton Peace Agreement did not give a great emphasis on education. The only reference of education as a specific area is mentioned only in Article 1 of Annex 6, which is about "Fundamental Rights and Freedoms" and has to do only with individual rights in education. As a consequence, the Agreement did not provide guidance and authority towards the transitional aspects of education and also some standards or measures to prevent the use of education as a political tool. Moreover, not a single

¹⁶² Jones, p. 418-419.

¹⁶³ Azra Hroadzic, "Discourses of Integration and Practices of Reunification at the Mostar Gymnasium, Bosnia and Herzegovina", *The University of Chicago Press*, Vol. 52, No. 4, November 2008, p. 544.

¹⁶⁴ Jusuf Šarančić, "On Multiethnic Schools in Consociational Democracies: A Comparative Analysis of Brčko District and Bosnia-Herzegovina", Lawrence University Honors Projects, (2016), p. 8.

international organization was mandated to supervise education reforms in Bosnia. Therefore, the fragmentation and the divisions within the educational system is obvious every day.¹⁶⁵

In the state, there is not a state-level ministry of education. The Ministry for Civil Affairs is responsible for education at the national or the state level. Especially, Bosnia has 13 ministries of education: two at entity level (FBiH and RS), ten at the cantonal level and one at the district level (Brčko District).¹⁶⁶ Furthermore, the educational system is financed from the public resources of the entity, canton, Brčko District and municipality budgets respectively. For that reason, in terms of allocation, there are 13 separate education budgets in the country: two entity budgets, one in Brčko District and ten cantonal budgets. However, the state-level budget is inappreciable, spending approximately 4% in Republika Srpska and 6% in the Federation of their gross domestic product (GDPs) on education. The only “light at the end of the towel” is the Brčko District, which spends 11.2% of the district budget on its educational system.¹⁶⁷

Another important factor is that after the war the country lost a great number of its professional expertise. As is expected in the aftermath of the war, buildings, schools and facilities were destroyed to a great extent. In these limited facilities, schools had to cope with two groups of children with different needs: children who had witnessed atrocities and survived them, and children returning after internal displacement or abroad as refugees. All these children have to be integrated and part of the class.¹⁶⁸

Analogously, the language remains an issue of division. In BiH, there are three versions of the language and locals claim that Bosnian, Serbian and Croatian are actually three separate languages, something that is also acknowledged by the Dayton Agreement. According to Hromszic, this identification leaves the way open for the language issue to be used to erect barriers between the three ethnic groups within the state. The main differentiation between the three languages have to do with the fact that Serbian is commonly printed in the Cyrillic alphabet, while Bosnian and Croatian use the Latin

¹⁶⁵ OSCE, “Two schools under one Roof: The most visible examples of Discrimination in Education in Bosnia and Herzegovina”, November 2018, p. 9.

¹⁶⁶ Clare Magill, “Education and Fragility in Bosnia and Herzegovina”, Research Papers IIEP, (2010), p. 23.

¹⁶⁷ Kari Pitkanen, “Institutional and capacity building of Bosnia and Herzegovina education system: Final documents”, Book 1, (Finland: EU-ICBE/University of Jyväskylä, February 2008), p. 13

¹⁶⁸ Magill, p. 27.

alphabet. Thus, the language issue has clearly educational implications in post-war reconstruction.¹⁶⁹

The difficulties in the educational system are present in schools every day. The divided nature of the education system is also responsible for the absence of an official statistics database at the national level, which leads about various implications. Such a database could provide basic information of the education system in the country. Especially, this information will help to ensure that all children in the country, regardless of their ethnic or national group have access to education. Furthermore, it will be a good way to monitor the quality of education as a whole. According to the UN Special Rapporteur on the Right to Education, the lack of official statistics showing the general situation in the country makes the analysis of the situation in the country incredibly difficult. Therefore, planning, implementing and monitoring education reform cannot be finalized in post-war Bosnia.¹⁷⁰

Understanding the high level of fragmentation makes state-level coordination of education reform virtually impossible. In this vein, it is commonly accepted that in order to achieve societal reconciliation rather than division, it is crucial to develop an equitable and inclusive education system that will promote reconciliation. All the reports from International and other organizations that focus on reforms and processes after the war, highlight that education is an important aspect to reconstruct the country. More precisely, 2008 report by the United Nations Special Rapporteur on the Right to Education and in a 2005 Communique by the Steering Board of the PIC, argued that what is needed is the establishment of a state-level education agency.¹⁷¹

While there were efforts by the International Community to promote educational reforms in the first years after the war, the first sights of progress started in 2002, when the OSCE took the lead in reforms of education with the EU accession process. The main goal was to make education more inclusive and more intimate with European standards in the country. Therefore, the main argument was to achieve the reintegration of ethnically segregated schools and reconciliation among ethnically divided youth the main goals of successful nation-building in Bosnia. In accordance with this plan, 54 ethnically divided “two schools under one roof” were to be reunified. However, only

¹⁶⁹ Hroadzic, p. 556.

¹⁷⁰ Magill, p. 30.

¹⁷¹ Magill, pp. 29-30.

schools in Vares, Zepce and Mostar have officially transformed two schools into one legal body with two components. In other cities, the two schools have remained separate legal identities.¹⁷²

In brief, “two schools under one roof” have not specific characteristics identified by Bosnia’s authorities. Arguably, we can identify these schools as buildings or network of buildings, that in pre-war years housed a single primary or secondary school, but now house two. Children of different ethnic groups attend the same or similar programs in the same location but are divided. In some cases, children use separate entrances or have different shifts and there are also divisions by physical or non-physical barriers.¹⁷³ The ramifications of these practices could be the promotion of ethnic prejudice and a notion of artificial difference.

Peace education in BiH

The idea to use education as a variant for reconciliation and peacebuilding is not an important innovation, considering that education was always considered a crucial part of identity and state creation, by promoting common values and the idea of group identity. In particular, the educational system and history education were always used as a vehicle towards nation-building. In this sense, after the war, students and teachers in Bosnia, through different projects, have been introduced to peace education, teamwork, human rights and inclusive education, which are basic elements for the integration of peace values into the school.¹⁷⁴ The integrating elements of peace education that tried to be used were curricula revision, textbook revision and developing teaching manuals for teachers of the necessity of peace education in school curricula. The main purpose, though, was to create a more tolerant, inclusive and sustainable education system.

The first common subject in Bosnia in 2003 was civic education. The latter includes three elements: values, knowledge and skills. The main purpose was to educate students in the skills of critical thinking, debate and promote the values of freedom of speech, individuality and tolerance of diversity. In this respect, the aim is to produce responsible citizens not only for their actions, but also to make their government accountable for

¹⁷² Hroadzic, p. 544.

¹⁷³ OSCE, “Two schools under one Roof..”, p. 10.

¹⁷⁴ Eleonora Emkric, *Reconciliation and Education in Bosnia and Herzegovina: From Segregation to Sustainable Peace*, Cham: Springer, 2018, pp. 39-40.

their decisions. Secondly, another common subject was Democracy and Human Rights education. This subject is interesting because it provides knowledge to the students in order to recognize a violation of the Universal Declaration of Human Rights and to promote solidarity, tolerance and collectivity. Lastly, a subject called Life Skills and Attitudes was introduced in primary schools in the Brčko District. The beginning of this initiative in 2010 mainly offered an alternative class for those children who did not want to attend classes in religion, aiming to prepare students to understand and accept different cultures and moral and religious values.¹⁷⁵

Subjects like History, Geography and mother Language inspire segregation and division inside the country, without any shared values among the three major ethnic groups in Bosnia. These differentiations are represented in school books and reproduced in the class, promoting hatred and intolerance. For that reason, the main idea in peace education is to promote a Common Core Curricula (CCC) for all over the country, which will represent shared values, in order to avoid segregated curricula and promote a more shared system of values on the social level. Profoundly, after education reform in the country, it can be said that the CCC initiated a more unified education and reconciled certain attitudes in the education system of the country.¹⁷⁶

The program for CCC initiated and it was clearly a step forward for connecting education with society and the aim of long-lasting peace. However, there is a general disappointment in the country from teachers and professors that even this step is not enough. Due to the lack of governance at state level, the implementation and monitoring of the process have not been done properly. As a consequence, some schools have still not integrated the CCC into their everyday work.¹⁷⁷

In general, the practice of “two schools under one roof” is a violation of domestic and international legislation and is against EU recommendations. Thus, the new EU Strategy for the Western Balkans emphasizes on education, especially in terms of fostering tolerance, promoting European values and strengthening the cohesion of society.¹⁷⁸ Therefore, the current education system is not successful towards that

¹⁷⁵ Emkric, *Reconciliation and Education in Bosnia and Herzegovina*, p. 44.

¹⁷⁶ *Ibid*, p. 56.

¹⁷⁷ *Ibid*, pp. 57-58.

¹⁷⁸ EC, *A Credible Enlargement Perspective for and Enhanced EU Engagement with the Western Balkans*, 6 February 2018. Available at https://ec.europa.eu/commission/news/strategy-western-balkans-2018-feb-06_en (Accessed February 20, 2020).

direction. “Two schools under one roof” are producing generations of young people whose identities are founded on the idea that differences between people are irreconcilable and that division within the society is always justified.¹⁷⁹

Education in Brčko

On the opposite end of the spectrum, Brčko provides another idea of how education has to be after a war and how societies can be unified through the education system. Particularly, education reform in Brčko is central to a democratic project of postwar transition and is directly opposed to a project of ethnonational citizenship.¹⁸⁰ In brief, after the Brčko arbitration decision reforms proceeded in all aspects of life. One of them of course was education. The Supervisor established an Education Department within his office in July 1999 and an Annex to the Final Award, which confirmed the intent to integrate the education system¹⁸¹:

“...the Supervisor will integrate the District's educational system, harmonize curricula within the District, and ensure the removal of teaching material which the Supervisor considers to be inconsistent with the objective of creating a democratic, multi-ethnic society within the District.”¹⁸²

In this vein, the Education reform and Education Law were imposed by the supervisor in the Brčko District. It is noteworthy that, with the adaptation of the Law on Education and Harmonised Curriculum, the three different education systems for Bosniaks, Bosnian Serbs and Bosnian Croats were integrated in the Brčko District. More precisely, this reform brought many changes in the system such as: the opening of the education department, removal of religious iconography from classrooms, students being taught together for most of their classes, and students having the right to be taught in and to use their preferred language and script. Moreover, in order to avoid tensions and to enhance social integration and cohesion, schools were prohibited from naming themselves after a political event, military unit, or military figure, and from organizing gatherings commemorating such instances.¹⁸³

¹⁷⁹ OSCE, “Two schools under one Roof.”, p. 26.

¹⁸⁰ Jones, p. 137.

¹⁸¹ Šarančić, p. 34.

¹⁸² OHR, Annex to Brčko Final Award. Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brčko Area. 18 August 1999. Available at http://www.ohr.int/?ohr_archive=arbitral-tribunal-for-dispute-over-inter-entity-boundary-in-Brčko-area-final-award.

¹⁸³ Jones, p. 137.

In parallel, the return of Bosniak and Bosnian Croat population in the District shaped an ethno-nationally mixed area. In this sense, the reforms in education were aiming in changing the attitudes of students to make them more tolerant. Firstly, the curricula were revised and the new curricula were introduced. Secondly, the revision of textbooks and a new subject on democracy and human rights designed by local and international actors. Lastly, the language of instruction was established, meaning that students have the choice to express themselves in their mother tongue and on the other side teachers have to be prepared to teach in all three languages.¹⁸⁴

To put it bluntly, the Law on Education and the newly developed curriculum were imposed by the Brčko District Supervisor on 5 July 2001. In accordance with the Law:

- The students have the freedom to express themselves in his or her own language.
- School documents will be used in the language and alphabet requested by the students or parents.
- The ethnic composition of teachers should reflect that of the students in school.
- Because of the lack of new books, existing textbooks can be used if they are harmonized with the curriculum.¹⁸⁵
- From third grade, the equal use of both alphabets is guaranteed through a system of weekly rotation.
- Language and cultural instruction will be carried out in separate classes.
- The instruction of ‘non-national subjects’, such as mathematics, science, physical education and art are to be carried out in joint classes.¹⁸⁶

The Law on Education was not well received by the students, their families and the community in general. The necessity for reform became obvious in the riots of October 2000, when over 1000 Bosnian Serb students protested and demanded separate schools, rather than the morning/afternoon shift system. On the other hand, Bosniak students were injured during the riots and demanded better protection from the local and international authorities. It was obvious that, this riot was not about educational issues,

¹⁸⁴ Emkric, p. 47.

¹⁸⁵ Magill, p. 35.

¹⁸⁶ Valery Perry, “Reading, Writing and Reconciliation: Education Reform in Bosnia and Herzegovina”, European Centre for Minority Issues, Working Paper 18, September 2003, p. 79.

rather the incident represented the opposition to integration in the district and the opposition to make Brčko a special autonomous district.¹⁸⁷

Until the beginning of reforms, the three different curricula, RS law, the Tuzla canton law and the Posavina canton law were all in use in the district, creating a very complex system. To begin with, on 10 May 2000 an agreement was signed by the Ministers of Education. One year later, on 13 February 2001, the Brčko Supervisor mandated the development of the Education Collegium as a coordinating body for secondary education and the Board for the Quality of Primary Education. The education law was drafted by the Brčko Law Review Commission and approximately 25 public forums on the issue were held to raise awareness of the issue. However, the District government failed to pass the new law and for that reason, Supervisor Clarke imposed a single Law on Education and a harmonized curriculum on 5 July 2001.¹⁸⁸

At the beginning of the school year in 2001, the new curriculum was implemented and except the riots in 2000 the process continued peacefully. In particular, in Brčko there were four Bosniak, three Serb and one Croat school that became four premises. While the former classes remained segregated within the newly organized premises, the first-year students were officially integrated. In order to achieve this goal, the Supervisor worked through the education department, cooperating with local professionals and authorities, international organizations and NGOs.¹⁸⁹

In practice, the teachers make their lectures in the three national languages and in most of the cases use three different textbooks to present the various perspectives in the subjects. This is a general process, without taking into account the demographics of the class, because even if there is only one student of an ethnic group in the class, the teacher still needs to make the teaching in all languages. Another important element is the course of theology. In contrast to, the rest of the country, in Brčko at the end of every academic year, parents have the opportunity to choose what class could their

¹⁸⁷ Associated Press, Achieve: “Bosnia, Brčko, Student Protest”. Available: <http://www.aparchive.com/metadata/youtube/7949bd29dba607f52279206fed26d2df> & The Guardian, “Bosnian town split by pupils schooled in hate”. Available at <https://www.theguardian.com/world/2000/oct/20/2> (Accessed February 20, 2020).

¹⁸⁸ Perry, p. 78.

¹⁸⁹ Perry, p. 79.

children take part in. For students who do not want to register in the class of theology, OSCE provides a course with many students called peacebuilding and citizenship.¹⁹⁰

Regarding textbooks, since Brčko does not have its own publisher, they use books from both Republika Srpska and the Federation, which were drafted in accordance with the district's educational program. Particularly, in elementary school, children receive books of their national group, while in high school, children can choose textbooks, except language and religion.¹⁹¹

As far as the implementation is concerned, the supervisor tried to accomplish with every possible way the success of the educational system. For that reason, all the teachers in the District were fired and re-hired only on the condition that they sign a Code of Conduct, bounding them to support the new reforms. Moreover, teachers gain many incentives in order to support the project. Under the new contracts, their salary was incredibly high in comparison with the teacher's salary in the rest of the country (double). Towards this direction, the Education Department issues teachers with short-term contracts which were renewed annually and even bi-annually, so that they remain committed to the reform agenda.¹⁹²

In academic literature, scholars argue there are specific reasons that the "Brčko experience" became a reality. Firstly, the uniqueness of Brčko comes from the supervisor's power, which made the district an internal protectorate, promoting laws and policies that the local politicians could not succeed. That element provided a clear mandate which followed and executed by the Supervisor, while in the rest of the country there is no clear mandate and the attempts that took place were fruitless.¹⁹³ Secondly, other experts note that the success of the District is because of a high concentration of money, effort, attention and technical assistance from the international community, which is calculated to be double in comparison with the rest of the country. Last but not least, while some have promoted the entities to use the Brčko curriculum, others highlight that this curriculum did not achieve entirely the integration of students in national subjects.¹⁹⁴

¹⁹⁰ Šarančić, p. 33.

¹⁹¹ Andréa Carolina Schwartz Peres, "For Human Rights: Constructing the multinational Brčko District in Bosnia and Herzegovina", *Virtual Brazilian Anthropology*, Vol.15 No.3 Brasília 2018.

¹⁹² Magill, p. 35.

¹⁹³ Šarančić, p. 36.

¹⁹⁴ Perry, p. 80.

Education reform in Brčko, while conceived as a model of ethnonational integration and reconciliation, it has not always followed a smooth path of institutional change. Student protests, the closing of the entire secondary school system for approximately one month and the reopening of the schools with a year-by-year plan. As someone can understand, this situation provided insecurities for returning, housing and jobs in general. Profoundly, the main purpose is to prepare this new generation to play part in the wider reconciliation process in the district.¹⁹⁵

Despite this, the education example in Brčko District is a good example for reformation of the education system in post-war countries, which is a very complex process that requires not just changes in curricula and textbooks, but a whole transformation of the society. Furthermore, the Brčko system can be considered as a helpful example of how an education system can be reformed in such a way to develop a sense of unity in a complicated political situation.¹⁹⁶ However, the level of success has to be considered due to the political and social circumstances that facilitate reform and also are marginalized from the process and the willingness of average citizens-particularly students, parents and teachers- to work and cooperate together.¹⁹⁷

¹⁹⁵ Jones, p. 139.

¹⁹⁶ Ibid, p. 47.

¹⁹⁷ Perry, p. 81.

Conclusions

The purpose of this thesis was to identify, analyze, and comment on the institutional developments related to the Brčko District. The post-war Arbitral Tribunal, the Supervision mechanism and the political and administrative changes are very helpful in order to understand how the district shaped and evolved through the recent years.

Before the war, the municipality was densely populated with a strong representation of 'Yugoslavs' and other ethnic groups; its significance could be traced to its multi-ethnic identity. Unfortunately, the war did not leave the region unaffected. Destruction and hostilities have changed its image, just like it happened in the rest of the country. In this vein, the spatial dimension and the strategic significance for the Serbs' territorial integrity transformed the town into an ambiguous and contested area, not only during the war but also during the attempts to establish peace. Especially, during the Dayton Peace Agreement process, the parties involved could not reach a reasonable solution. For that reason, an Arbitral Tribunal was established and a Supervisor began to organize the region, in order to finalize its legal status.

A significant date for the region was 1999 when the Arbitral Tribunal issued the Final Award, which led to the establishment of the District and the Statute one year later. As it was highlighted in this thesis, the establishment of the District transformed the region as a whole into a single administrative unit of self-government within Bosnia and Herzegovina.

In the aftermath of the District establishment, it was crucial to identify how the region has functioned and organized in practice. For that reason, a literature review of the various power-sharing perspectives for divided societies facilitates the analysis of the political situation in Brčko and the differentiation that it may have with the rest of the country. Arguably, Bosnia's current political system, a product of a peace agreement, is characterized by a loose federation with a weak central government. This solution facilitated multi-ethnic governance in order to promote security and stability and to protect the interests of all ethnic groups (triple power-sharing system). The main political institutions and state administration function on the basis of equal representation, reflecting the ethnic structure of the population.

Compared with the political system of the country, the international administration in Brčko tried to create not a proportionate system, like the one in the rest of the country,

but an integrative one. More profoundly, ethnicity was not used as a key element for political and administrative organization and for that reason there was a lack of power-sharing arrangements. So, the uniqueness of Brčko's governance can be identified in the fact that despite its strong consociational elements, it leaves aside the territorial dimension of power-sharing and supports a focus on common and central institutions towards an integrative society.

Lastly, the third chapter was an attempt to highlight the transitional challenges that the Brčko district had to deal with. After a conflict and especially after an ethnic- conflict, the society needs to deal with its past, organize again the society with inclusion and equality to prevent hostilities, provide justice to the victims and reconciliation as an extent to the population. In this context, justice, police, education and the return of refugees have been used as indicators to examine the current situation, the processes that have been taken place and the results in everyday life.

The judicial system, police and educational system are independent and separately organized from the rest of the country, as it was presented. Particularly, the multi-ethnicity in these public administration units was promoted as an element of security and safety of all ethnic groups in the region. This process was part, as I argue, of a general intention to transform the district into a multi-ethnic society, with the transformation of the administration. Arguably, this transformation has been facilitated by the help and initiatives of International Organizations, who monitored and provided guidance.

Especially, the organization of police was an important element to promote reconciliation. Multi-ethnic police with the practice of inclusion provided a guarantee for refugees and IDPs, who were minorities to return in the region. Moreover, the movement within the region was secured to ensure full freedom of movement. Furthermore, the problem of refugee return has been also analytically explained. As in other regions of the country, in Brčko the 'newcomer' Serbs from other regions of the country occupied houses and apartments that belong to the non-Serb population. The first years after the war, Brčko did not differ in the situation of refugee returns although the Return Commission that was established and the initiatives of the Supervisor had effectively and successful results. Reports that raise the number of refugees to 20,000

people in 2004 transform Brčko into the most successful cases for minority returns. Of course, the reforms and differentiations played an important part in this development.

Another significant element of the Brčko District is the transformation and differentiation of the educational system in comparison with the Federation and RS. In literature and in practice, education considers as a crucial indicator to indicate a new generation of peaceful citizens, embrace a common understanding of the past and promote a common identity. That was the basis of the educational system in Brčko with the adaptation of a curriculum, common for all ethnic groups. Therefore, the purpose was to educate the citizens of the region on the same basis, in order to promote trust and security and a common concern that all citizens of the region share for their well-being.

Taking all these into consideration, there are crucial elements and characteristics that differentiate the Brčko District from the rest of the country. More precisely, there are many researchers and political analysts, who tried through their work to conceptualize and explain the developments in the district. In this vein, many arguments have been presented, attempting to conclude not only for the status of the region, but also for its advantages and disadvantages. The main issue was to test if Brčko can be used as a successful model in Bosnia as a whole and in other cases.

To put it bluntly, Brčko is a significant and unique example of a post-conflict region, that tries to function after the war and reconcile the wounds of the past. Analysts focus on its autonomy and self-governance, while there are others who even promote the idea that Brčko could be considered as the third entity of Bosnia and Hercegovina.¹⁹⁸ Despite its independence and its autonomous regime, Brčko do not have basic characteristics that the other two entities possess. In this theoretical debate, it is identified that the Brčko District is specific political and territorial entity in Bosnia and Herzegovina, novelty in constitutional law and theory of state and law, which cannot be fully qualified as a new entity in Bosnia and Herzegovina, but is still much more similar to a federal unit, rather than to local government unit.

The impact of Brčko's transformation and developments provide important elements of the model. On the one hand, it is acknowledgeable that Brčko has recovered relatively

¹⁹⁸ Zeljko Todorovic, Položaj Brčko distrikta BiH i njegove karakteristike. *Analiza poslovne ekonomije*, br. 16, str. 21–31 (2017), p. 26.

quickly from the war, with ethnic integration, economic development and other social indicators being the strongest in the country.¹⁹⁹ Developments in public administration, cooperation and educational system provide some basis for further reconstruction and a paradigm for further initiatives and developments.

Arguably, the presence of a supervisor to organize the city and the attempts of the international community to transform the city into an “open city” played an important role in these developments. Except for education and administration, Brčko was rebuilt in every sense. Between 2001 and 2004, more than 200km of roads were built and 8,000 jobs were created and thousands returned to the city. Better pay and conditions paved the way for radical reforms in education and policing, facilitating a more friendly environment for the citizens. Moreover, the town’s Arizona market – a haven for drugs, prostitution, guns and counterfeit merchandise during and after the war - was transformed into a licensed, regulated bazaar. While other Bosnian cities struggled, Brčko made huge steps towards multiculturalism.²⁰⁰

Although, this multiculturalism comes with increasing signs of division and self-segregation. The ethnic politics that cause a deadlock to many political decisions in the country, also affect the local assembly. Issues such as citizenship and corruption seem to trouble the district. Moreover, while Brčko’s multiethnic schools, police, courts and municipal administration are among the most professional and respected institutions in the country, there are signs that these consociational elements may prove to be Brčko’s source of problems. These problems have to do with elections for the District Assembly that are conducted through an open-list proportional system which offers little incentive for parties or candidates to attempt to draw cross ethnic support from voters in the District. Therefore, coalition building takes place only after the elections where it could promote the emergence of a moderate political platform. Second, the decision to make the position of District’s mayor to be determined through indirect election by District Assembly members, both prevents voters from having a direct say in this important position, and further complicates post-election coalition talks.²⁰¹

¹⁹⁹ Hans Binnendijk, Charles Barry et. al., “Solutions for Northern Kosovo: Lessons Learned in Mostar, Eastern Slavonia and Brčko”, Center for Technology and National Security Policy (2006), p. 44.

²⁰⁰ Peter Geoghegan, “Welcome to Brčko, Europe’s only free city and a law unto itself.”, *The Guardian* 14 May 2014.

²⁰¹ Adam Moore, “How the Brčko District became the most successful case of post-war peacebuilding in Bosnia, and why it may ultimately fail”, p. 12.

The embedment of these consociational elements for cohesion and well-functioning of the district is mixed with the lack of a concomitant consolidation among political elites in Brčko. Political instability and ethnic tensions in the country remain also a problem for dysfunctionality, which inevitably spills over into the district.²⁰²

However, Brčko's success may be connotated with the presence of the Supervisor. After the decision of the Peace Implementation Council Steering Board on May 23, 2012, ambassador Roderick Moore suspended his functions as Supervisor for Brčko District. Even today the role of supervision is still active and the current supervisor is Michael Scanlan from February 2019. In addition to that, the disproportionate amount of aid related to other areas in Bosnia is a strong argument for the positive steps that Brčko has done the previous years. Former High Representative Paddy Ashdown has estimated that Bosnia has received \$16 billion in aid since the end of the war. However, he calculates Brčko's share to be only \$70 million while Mostar has received an estimated \$300-400 million, despite the fact that the two municipalities are similar in the population (~85,000 in the Brčko District and 105,000 in Mostar).²⁰³

Lastly, it is also crucial to highlight that Brčko has been characterized not only as a model for institutional design but also as a success in peacebuilding. Any dysfunction or problem in the implementation of the Statute and the general policies for Brčko, can be justified in two ways. Firstly, Brčko's achievements in the long-term have not been translated into everyday inter-ethnic relations. For that, the main responsibility can be traced to local political elites and the population in general. Without such local input, an externally imposed peace may never establish deep and sustainable roots. Secondly, another argument of Brčko's failures can be connected with the image of the country generally, divided with problems and weaknesses. Therefore, when someone wants to examine how successful Brčko is, may bear all these arguments in mind.

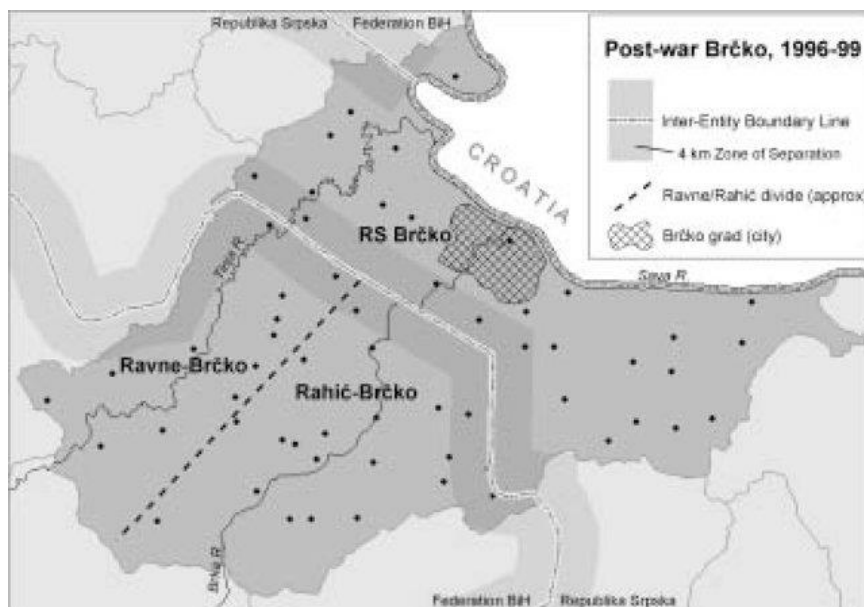
²⁰² Ibid.

²⁰³ Ibid, p. 4.

Appendix



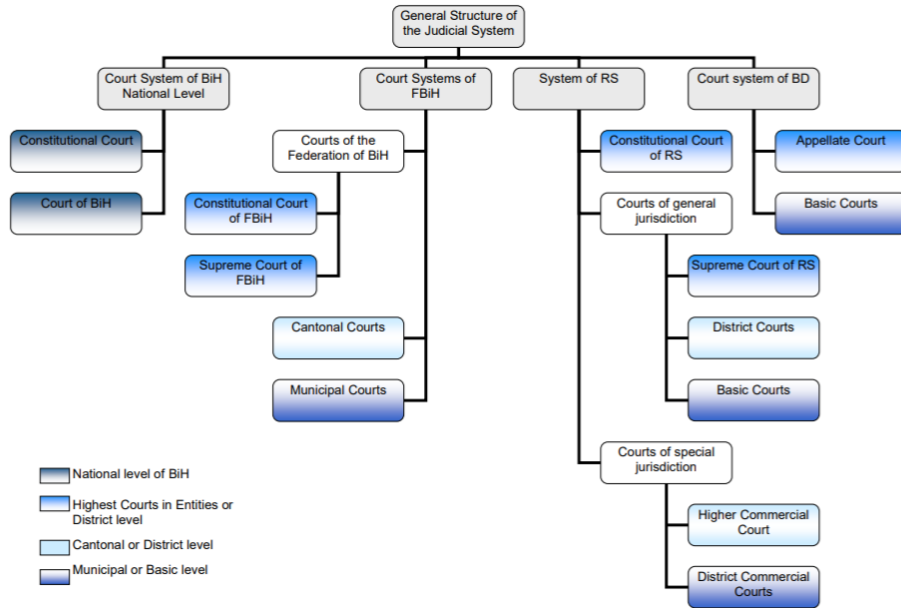
Source: <https://www.istockphoto.com/vector/bosnia-and-herzegovina-administrative-and-political-map-gm886585694-246165656>.



Source: Post-war tripartite administrative division of Brčko.²⁰⁴

²⁰⁴ Dhlman and Tuathail, p. 658

Table 1: Judicial System of Bosnia and Herzegovina



Source: The Judicial power in Bosnia and Herzegovina, Venice Commission, Council of Europe Opinion no. 648/2011, Strasbourg, 9 December 2011. Available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2011\)096rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2011)096rev-e).

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