

# **Ownership and Sustainability of Democratic Institutions in Bosnia and Herzegovina**

## **I. Introduction**

### ***A. Bosnia and Herzegovina after Dayton***

The violence surrounding the breakup of Yugoslavia from 1992-1995 was the worst seen in Europe since the end of World War II, and it served as a shock to those who thought the end of the Cold War would result in a more peaceful world. The worst violence took place in Bosnia and Herzegovina as violence between Serbs, Croats, and Muslims produced over 200,000 deaths and over one million refugees. The violence was brought to an end by the negotiation of a cease fire between the three warring parties resulting in the Framework Agreement for Peace in Bosnia and Herzegovina. This agreement has been highly successful in regard to stopping the violence in Bosnia and Herzegovina, but establishing sustainable democratic governance has been a much more difficult challenge.

In addition to stopping the fighting, the Dayton peace agreement established a boundary between the Muslim and Croat Federation and the Republika Srpska, dividing the country into two Entities. Governing these two Entities is a federal government seated in Sarajevo, with a power sharing government such that any policy must be approved by each ethnic group. Additionally, the Dayton peace agreement established a role for international support with regards to civil and military matters. The military role has been performed by IFOR, a force consisting primarily of United States and NATO troops. The civil implementation of the Dayton peace agreement is delegated to several international organizations including the OSCE with responsibility for elections and the World Bank with responsibility for economic rebuilding. The Dayton agreement also established a High Representative, who would coordinate international

civilian implementation efforts in Bosnia and Herzegovina. The High Representative is chosen by the Peace Implementation Council, an *ad hoc* body of states contributing to the international effort to end the war in Bosnia and Herzegovina. In the original Dayton agreement, the High Representative had only limited power, however, after the first two years following the agreement saw disappointing progress in peace implementation, the PIC vested the High Representative with the power to remove officials who held up implementation and to enact legislation in those cases where the governmental organs laid out in the constitution were unwilling or unable to reach an agreement.

### ***B. Sustainable Solutions to Ethnic Security Dilemmas***

The puzzle to be addressed in this paper regards why Bosnian politicians continue not to enter into compromises in order to make and implement policy, instead leaving policy formulation and implementation to the High Representative. More broadly this paper will discuss the problem of ownership in international attempts at state-building in post-conflict situations. Ethnically-divided societies cannot have sustained democracy without the ability to compromise. Of interest to me in examining this issue will be the incentives for domestic and international actors created by the structure of the Dayton agreement, and the results of these incentives for self-governance. The theoretical background for this study will be the literature which describes the situation in Bosnia and Herzegovina as being characterized by an ethnic security dilemma as well as the literature on the problem of ownership as it relates to development and democratization aid. The literature on ethnic security dilemmas will inform my description of the nature of the problem to be solved in Bosnia. As such, I will assume that the ethnic security dilemma is a useful way to understand ethnic conflict in Bosnia and that this understanding presents possible solutions. I will then evaluate attempts to solve the ethnic security dilemma in

Bosnia according to the criteria set forth in the literature on ownership and sustainability. This theory will be discussed in more detail below.

In order to address this question I will examine the process of policy formation of two controversial issues under two constitutional structures in Bosnia and Herzegovina. The first structure is that of the country as a whole as defined by the Dayton Framework Agreement for Peace in Bosnia and Herzegovina. The second is the system established for the Brcko<sup>1</sup> district of Bosnia and Herzegovina, which was established as an exception to the Dayton agreement, and functions under a separate constitution. Brcko provides the possibility for an interesting natural experiment, because it serves as a microcosm of the worst problems faced by Bosnia as a whole. It was left out of the original agreement and left for later arbitration because it was seen as the most contentious area in Bosnia and Herzegovina and as the most likely place where the war could flare up again. Brcko has an ethnic composition similar to Bosnia as a whole, and was the site of extensive ethnic cleansing during the war. As a result of ethnic cleansing, the district is divided between the ethnic groups whereas before the war citizens of different ethnic groups lived side by side. Additionally, Brcko occupies a very important strategic location at the link point between the two parts of Republika Srpska, and is the only link between Banja Luka and Serbia which does not cross through territory not dominated by Serbs (see attached appendix A).

Brcko is of particular interest here because, despite these issues, Brcko has performed much better than Bosnia and Herzegovina as a whole in developing productive institutions where domestic actors reach compromises and implement policy. In this paper I will compare the way that policy is made or not made in each institutional setting, in order to draw out the reasons that Brcko has been more effective in infusing “ownership” into the policy making process while Bosnia and Herzegovina has not. Brcko is not, however, a perfect natural experiment, nor have

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<sup>1</sup> Pronounced “Birchko”

results in Brcko always been perfect. Brcko is a much smaller geographic unit than Bosnia and Herzegovina as a whole and because it was perceived to be a more difficult case it has received more attention and thereby more money per capita than in Bosnia and Herzegovina as a whole. It is one of these special provisions that is of primary interest to this paper, namely that domestic actors were consulted regarding the statute which established the constitutional structure in Brcko while domestic actors did not have input into the constitutional structure established by the Dayton agreement. I argue in this paper that domestic input in the constitutional process and the institutions resulting from that process are key in explaining the performance in Brcko as opposed to the lack of performance in Bosnia as a whole.

Perhaps the greatest challenge in this paper is in selecting policy areas which both illustrate the workings of both systems while also choosing policy areas that are less sensitive to differences in size and economic investment. The first policy area I have chosen is education policy formation, which is a hot issue because of its importance for defining the future of Bosnia and Herzegovina. Developing curricula which do not perpetuate nationalist themes, desegregating classrooms, as well as staffing schools with teachers who do not preach nationalist themes is of utmost importance, and is considered by some to be one of the reasons for the dissolution of Yugoslavia as well as for the pre-World War II instability in the region. I am interested in both the process by which laws on education were passed and success in implementing those laws. The second policy area I will analyze is that of privatization. Despite its rather progressive form of communism and some privatization before the war, many important corporations before the war were owned by the state, and still more were taken over during and after the war to the benefit of local nationalist leaders. Privatization is aimed at

placing control of corporations either in the hands of workers or of “approved” –non nationalist – concerns.

In this paper, I will use IAD framework to elucidate the incentive structures in the two institutional situations as well as offer a short narrative of the way that these two structures came into being which I hope will explain the context in which the two institutional structures developed. Then I will trace the adoption and implementation of education policy and privatization policy to demonstrate the effects of the differing institutional environments.

The Dayton agreement vested most of the power for governance in the two Entities, the Federation of Bosnia and Herzegovina and Republika Srpska, an effective partition of the country in two. Progress in Bosnia has been slowed by the subsequent need to wrest power away from the Entities. This is a process shared by Brcko and the state government in Sarajevo. However, while the state government is attempting to impose its will onto both Entities, the Brcko district is essentially trying to establish an area nominally a part of both Entities, but which has extensive local governance. In both cases, there is the necessity of creating policies that are acceptable to both Entities, and thereby all three ethnic groups. This is the very type of policy formation and cooperation that is noticeably absent at the level of the state government and present in Brcko district.

## **II. Theory**

First, there are two bodies of theory which will be essential in this paper. The first is the theory most frequently used to explain Bosnia’s path to ethnic war, that of the ethnic security dilemma. The second is a theory of ownership as it is applied to development aid. A short introduction into these two theory areas will be us use in the next section when I apply the IAD framework to post-war Bosnia.

### **A. *The Ethnic Security Dilemma***

Even as the war in Yugoslavia was in progress, scholars began applying the realist international relations concept of a security dilemma to the escalation of that conflict as the federation violently broke apart. Scholars continue to discuss the international, economic, political, and cultural factors which combined to produce a security dilemma in Yugoslavia, however, there is broad consensus on ethnic security dilemma as the mechanism by which the conflict in Yugoslavia escalated into genocidal war. This discussion of particular factors is fascinating, but does not warrant discussion in this paper, instead a simple outline of the structure of the ethnic security dilemma is sufficient.

According to Barry Posen (Posen 1993), a security dilemma can arise in situations of “emerging anarchy” when newly independent areas begin to assess their security situation with regard to their neighbors. In response to perceived threats, regimes take measures to protect themselves, such as acquiring arms and mobilizing security forces. The security dilemma then is when “what one does to enhance one’s own security causes reactions that, in the end, can make one less secure” (28). This occurs because in many cases, actions taken in defense are impossible to distinguish from actions in preparation for offense, so, two parties can each prepare for defense while perceiving that the other is preparing for war (29).

This is further complicated by the application of the security dilemma in an ethnic context. In these cases, the acquisition of arms is secondary to the mobilization of the group. Since, in the former Yugoslavia the primary unit of warfare was lightly armed infantry, often with little or no training, the mobilization of groups alone may be sufficient to cause fear in the other side (30). Worse, in this situation it may also be impossible for the other party to distinguish between offensive mobilization and attempts at domestic political mobilization (31).

Two groups, mobilizing simultaneously in reaction to the perceived threat of the other results in a situation where “the drive for security in one group can be so great that it produces near-genocidal behaviour towards neighboring groups” (30). In Bosnia, it is clear that behavior went beyond the “near-genocidal”.

Bates, de Figueiredo, and Weingast (Bates, Rui J.P. de Figueiredo et al. 1998) offer a more complete game-theoretical analysis of the breakdown of Yugoslavia. According to their analysis, Milošević was losing a political battle against reformers within Serbia, and changed the dimension of politics from that of economic and political reform to one of ethnicification, by mobilizing an army and portraying the Croats as aggressive. The Serb people could not determine whether the Croats were aggressive and the Croats were in a similar situation of responding to Serb mobilization without a way of knowing Serb intentions. Bates et al. argue that without being able to ascertain the actual intentions of the other, both the Croats and Serbs chose ethnicification and mobilization rather than risk destruction at the hands of an aggressive and mobilized other (626).

There are two assumptions inherent to the structure of the ethnic security dilemma that are of utmost importance to this analysis. The first is that of anarchy. Posen argues that one of the roots of any security dilemma is the absence of a dominant force which can prevent the conflict from escalating to war. An ethnic security dilemma does not arise when there is either a third party to guarantee security and peace or one of the parties is sufficiently dominant that it does not fear the other. The second assumption of interest to me is that all parties must fear betrayal and be unable to trust or to reliably verify the intentions of the other. In the model provided by Bates et al., ethnicification was a dominant strategy for the median Serb or Croat only if their certainty that the other was peaceful was below a certain level (625).

If we accept the ethnic security dilemma as described above as an adequate description of the process that led to the breakdown of Yugoslavia and subsequently the war in Bosnia, then the two assumptions listed above lead us to avenues for addressing the problem in Bosnia that have been pursued by international actors in Bosnia. Stuart Kaufman (Kaufman 2001) divides these broadly into peacemaking, peacekeeping or reassurance and peacebuilding. Peacemaking involves mediating an end to violence. Peacekeeping is the act of enforcing peace and providing verification and reassurance in the absence of trust. Peacebuilding is the long term process of building trust and cooperative practices in order to prevent the rise of a security dilemma in the future (39-44). Peacekeeping involves primarily preventing the anarchy which is necessary for a security dilemma. Peacebuilding involves building trust, or in absence of trust, creating means or institutions which approximate trust by providing for security and verification. Peacebuilding also promises a kind of self-sustaining peace not implied by peacekeeping. Peacebuilding, requires ownership.

### ***B. Ownership, Constitutional Design, and the Samaritan's Dilemma.***

The second body of theory which will be of interest to us is that involving the concept of “ownership” as it applies to the promotion of democracy. Unfortunately there is very little theory, as such, contained in most works discussing the difficulties of promoting democracy. However, I think it useful to use the requirements for ownership from the Sida report (Gibson, Ostrom et al. Forthcoming). According to our discussions in class, ownership of development projects requires demand at a local level, use of homegrown assets, the need for locals to obtain real benefits, and the need for locals to participate in the design and continuation of the project (15). So, in this case the target of development is democratic governance, and the challenge is to

establish not only democratic institutions but for those institutions to govern effectively and democratically over a sustained period. Ownership, according to the Sida report, is a necessary condition for the sustainability of any project (26). Ownership in this case, would mean domestic institutions would take the responsibility for developing policies and implementing them with minimal direct input on the part of the donor institutions. Domestic institutions would be taking ownership over the process of peacebuilding and thereby the effort to prevent the reemergence of an ethnic security dilemma.

For this paper, I will focus on one of requirements for ownership, the requirement that the aid recipients have input into the design of the project and in decisions about its continuance. From this requirement, one would expect that institutional settings where aid recipients had greater input into decision-making, there would also be greater instance of ownership. In the case of Bosnia and Herzegovina and Brcko, it means that in Brcko, where there was more local input into the design of the democratic institutions, there would also be more ownership, in this case defined as taking the responsibility for developing and implementing policies.

### **III. Implementing the IAD Framework at the Constitutional Level**

Having laid out the theory which is of importance to this investigation, the following section will describe the governing institutions which have developed in the two institutional situations of interest to this paper: the state government of Bosnia and Herzegovina and the Brcko district. Of particular interest will be the amount of local input into formal and informal institutional choice as well the effect of local input on the rules and norms of the resulting

institutions. The next section will then explore the performance of those institutions with regard to two policy areas.

### ***A. The State Government***

It is interesting to note that the constitutional structure of the state government in Bosnia and Herzegovina was almost an afterthought to the negotiations which ended the war in Bosnia and Herzegovina. Also interesting is the fact that the negotiations were in many cases not carried out by the most interested parties, but by their proxies who were most interested in bringing about a quick end to the war and a stop to the killing, doubtless and honorable goal (Holbrooke 1998).

For local actors, by far the most important issue for negotiation at Wright Patterson air force base in Dayton, Ohio was the dividing line, the Interethnic Boundary Line (IEBL) between the two Entities. Bosnia was to be effectively partitioned, with 51% of the land going to the Serb-dominated Entity, Republika Srpska, despite the fact that Serbs had made up only a third of the population before the war. This percentage was a recognition of the fact that the Serbs had held the upper hand through most of the conflict. The Serbs were willing to negotiate at least in part because their fortunes were beginning to turn, as international sanctions were eroding Slobodan Milošević's support for the Bosnian Serbs. Indeed, the key point leading up to the negotiations may have been convincing Milošević to accept responsibility for the Bosnian Serbs and to negotiate on their behalf. The Bosnian Serbs had fought for two years to create a republic of the Serbs which could then be united within a "Greater Serbia". The Dayton Agreement awarded them Republika Srpska, a territory which was once multiethnic but which after the war was estimated to be approximately 97% Serb (Constituent Peoples' Decision 2000). The other Entity was the Federation of Bosnia and Herzegovina, a federation primarily of Bosnian Muslims

(who now refer to themselves as Bosniaks) and Bosnian Croats. The Muslims and Croats in Bosnia had alternatively held common cause against the Serbs and engaged in ethnic cleansing against one another before signing a peace treaty in Washington in 1994.

Since much of the governing power was to be given to the two Entities, the most important negotiations were not in regard to the institutional structure of the state government, but in regard to the IEHL, the boundary between the two Entities. In perhaps the most dramatic scene of the negotiations, Slobodan Milošević, Gen. Wesley Clark, and others in the negotiating team worked late into the night on sophisticated mapping software to carve out the corridor connecting the Gorazde pocket with the rest of the Federation, which came to be alternatively called the Clark Corridor or the Scotch Road, named for the copious amounts of liquor consumed by the negotiators in the late night meeting (Holbrooke 1998).

The Dayton partition has been decried as legitimating ethnic cleansing and rewarding nationalist violence, and the first years after the agreement bore out this criticism. However, other aspects of the agreement such as refugee return, the power of the constitutional court, and the role of the international community have served over time to begin the process of reversing the division of Bosnia and strengthening its cross-national institutions.

## **1. Formal Constitutional Structures**

The formal constitutional structures created by the state government for Bosnia and Herzegovina are summarized in the chart included in Appendix B. I will not describe in detail the entire system, rather I think it more productive to point out several of the most important aspects of the system.

This system conforms to a “consociational democracy” system as described by Arend (Lijphart 1977, 25). Its chief characteristics are that each group is guaranteed representation in

all bodies of government, each group exercises veto power over issues that effect its most important issues. At the level of the state government, the members of the Presidency, the House of Peoples, and the Council of Ministers are selected to fill positions that are designated as representatives of one of the three constituent peoples of Bosnia and Herzegovina (Bosniak, Croat, or Serb). There are no positions whose purpose is to represent Bosnia and Herzegovina as a whole, in part because there was no person who could fill that role credibly. Additionally the decision rules used by both the House of Peoples, the Assembly, and the Presidency contain provisions whereby bills must receive approval of at least a third of the delegates from each constituent people for initial passage. Failing to meet that requirement, there is a process through which the representatives of each ethnic group have the opportunity to work out a compromise. Should that, in turn fail to produce a resolution, the matter is then referred to.... Additionally, each of the constituent peoples can declare any piece of legislation to be “contrary to their national interests” at which point, the legislation is sent to the Constitutional Court for Bosnia and Herzegovina (General Framework Agreement for Peace in Bosnia and Herzegovina 1994, Annex 4).

The design of this system addresses the trust problem inherent in the ethnic security dilemma. The ethnic groups do not have to trust one another because at any time each ethnic group can block legislation that is contrary to its interests. In 1997, however, it became clear that this system was not working, as legislation foreseen by the Dayton agreement, especially that involving refugee return and an election law, had not been adopted by the state government. So, the Office of the High Representative, which had been provided for in the Dayton Agreement as a coordinator of international activities in Bosnia and Herzegovina, was given vastly expanded

powers by the PIC. The High Representative could now remove obstructionist politicians and enact legislation in cases where no action was taken by the domestic institutions.

## **2. The actors and their preferences**

In the following section I will attempt to describe the preferences of the most important actors within this action arena. This process is flawed, as I do not have direct contact with any of the actors, and I must rely on those accounts which are reported by Western news sources and in English. However, I will argue that many of the observed actions can be explained by fairly simple assumptions about actor preferences combined with an understanding of the preferences endogenous to their positions within the action arena.

### **a) International Actors**

There are two international actors which are of particular interest to the state government. First there is the Peace Implementation Council, which represents all of the countries and international organizations which signed on to the Dayton Framework Agreement for Peace. The PIC has a UN mandate to implement the Dayton agreement in Bosnia. The PIC's primary agent in Bosnia and Herzegovina is the High Representative, who is a European official with an American deputy, tasked with the everyday implementation of the accords.

The actions of the international actors are influenced most strongly by a series of sometimes conflicting norms.

- The war must not be allowed to restart, and stability must be maintained. This norm was considered to be the most important at the time that the Dayton agreement was reached, and its importance is reflected in the emphasis in the accords on physical security for all as a way to end the conflict.

- The politics of aggressive war and ethnic cleansing must not be rewarded. This norm, was secondary to ending the bloodshed, but is represented in certain provisions of the Dayton agreement, such as the right for refugee return. When it became clear that the war would not immediately restart, this norm has resulted in a strong preference on the part of the international community to strengthen the state government at the expense of the Entity governments, and especially at the expense of Republika Srpska, which gained because of the war.
- The third norm is that Bosnia and Herzegovina should be a liberal democratic country which respects human rights. This norm was codified by the emphasis on elections and human rights in the Dayton agreement, and has been reinforced by a series of elections since the end of the conflict. This norm has, however, undergone some change. Whereas in 1995 it meant that Bosnia and Herzegovina would assume the Western model, as time went on it has meant that Bosnia and Herzegovina would be prepared to join the European Union, and the membership requirements for accession into the EU have become the standard by which all policies in Bosnia are measured.

### **b) Domestic Actors**

The domestic actors of interest within this action situation include primarily the politicians elected by each of the ethnic groups. Immediately after the war, the three primary war-making parties became political parties almost overnight. Since that time, those nationalist parties have continued to operate on Bosnia and Herzegovina with the addition of a variety of other parties which offer alternate platforms with varying degrees of success. The other

important actors, of course, are the people themselves. One of the greatest sources of consternation for the High Representative and the PIC has been the fact that Bosnian voters have continued to broadly support nationalist parties and have not responded strongly to those parties who have attempted to attract constituencies from more than one ethnic group.

Given the structure of the Bosnian electoral system as described above and in Appendix B, however, it is hardly surprising that nationalist parties continue to dominate elections and continue to avoid compromise with other ethnic groups. Studies in American politics have shown that in primary elections, candidates with more extreme programs tend to be more successful, owing to the fact that the median voter in the primary electorate is somewhat more extreme than the median voter in the general election (Summarized in Norrander 1989, although she argues against this conclusion). For most of the offices in the state government, there is in effect no general election. In an electoral system where a large number of offices are assigned specifically for the protection of one ethnic group or another, and where any legislation requires compromise between those elected officials, wouldn't the "rational" voter prefer the candidate which would most aggressively fight for the ethnic group's self interests? According to this logic, voters who are not strongly nationalist, but who are interested in protecting their own self interests, would still have a reason to vote for nationalist parties.

A further source of consternation for the High Representative has been the unwillingness or inability of elected parties to compromise in order to produce legislation. Under the current system, each ethnic group has the ability to block any policy it chooses to block. Facing such obstructionist tactics, and concerned that further obstruction would result in the permanent partition of Bosnia and Herzegovina or even the joining of Republika Srpska with what is now called Serbia and Montenegro, in 1997 the Peace Implementation Council increased the power of

the High Representative from a simple coordinator of international civil implementation to a kind of international proconsul over Bosnia and Herzegovina. The High Representative was given the power to remove public officials and enact legislation when the local institutions established by the Dayton constitution were unable or unwilling to produce necessary legislation. In making these decisions the High Representative is not subject to due process or any kind of appeals process. The use of these powers was at first only intermittent, however, with each passing year the number of decisions has increased, raising serious questions about the efficacy and appropriateness of these powers (Knaus and Martin 2003).

This change in the institutional structure for Bosnia and Herzegovina essentially introduces a second way for policy to go forward without compromise between the ethnic groups in Bosnia and Herzegovina. The first avenue, which has frequently been in use since the end of the war, was for the leaders in the state government to fail to reach compromise on the policies of the state government, thereby leaving most aspects of governance to the Entities, where compromise was not necessary. However, this solution was unacceptable to the international community as it reinforced partition, so a second option was introduced; the High Representative could simply enact legislation which was appropriate to strengthen the state government at the expense of the Entities.

There are two ways of viewing this relationship, with the difference between these two views depending on ones interpretation of the preferences of the local actors. The first is that this is essentially a principal-agent problem, where the principal and the agent have different preferences. The principal (the Bosnian nationalist politicians) prefer not to compromise and may prefer partition while the agent (the Peace Implementation Council) prefers compromise and

a stronger central government. In this case, the PIC has decided to implement its own preferences, assuming that it knows what is best for the principal.

A second interpretation is that the Bosnian politicians and the Peace Implementation Council have similar preferences but that the costs for implementing those preferences are higher for the local politicians than for the PIC. In this case we have something that looks a lot like the Samaritan's Dilemma as described in the Sida Report (Gibson, Ostrom et al. Forthcoming, 30-31). The Samaritan (the PIC) prefers a unified Bosnia moving toward EU accession and has a secondary preference that the Bosnians implement this vision themselves. The recipient (the Bosnian politicians) also prefer a unified Bosnia moving toward EU accession but find compromise with other ethnic groups to be very costly in terms of their electoral performance and thereby access to positions of power. So, the Samaritan will always act, but the recipient will give low effort, knowing that its preferred policy will be implemented without incurring the costs of compromise.

Aspects of both of these explanations can be seen in Bosnia and Herzegovina. It may be that the principal agent explanation is most appropriate for describing the action situation in the first years after the war when the constitution of Republika Srpska only recognized Serbs and citizens and explicitly called for the union of Republika Srpska with Serbia proper. In the same way, the Samaritan's Dilemma interpretation may be gaining in relevance as accession to the European Union and the Union's requirement of a stable, democratic, *unified* Bosnia and Herzegovina becomes a point of agreement between the PIC and the Bosnian politicians.

### ***B. Brcko District***

As mentioned above, Brcko district was left out of the Dayton Accords in order to secure an agreement, and instead the fate of Brcko district was left to binding arbitration. The capital of

the district is the town, also called Brcko. Before the war the town had a small Bosniak (Bosnian Muslim) majority and the district had a plurality of Bosniaks (44 percent). The Brcko district draws its importance from its location on the Sava River and the fact that it is the only land connection between the Banja Luka section of Republika Srpska and the rest of "Greater Serbia". Because of its importance, the town and the district were subject to intense ethnic cleansing by the Serbs during the war. At the end of the war, the northern portion of the district, including the town of Brcko itself, was in control of the Serbs, and the Bosniaks and Croats, including many who had been expelled from the Serb-controlled portion were in the southern portion of Brcko. In 1996 97% of the population of Brcko was Serb, with many of the Serbs fleeing to Brcko as refugees from other parts of Bosnia or Croatia now controlled by Bosniaks or Croats. Brcko was important to the Bosniaks and Croats not only because a number of Bosniaks and Croats had lived there before the war but because its port on the Sava was an important link to the Danube Valley and therefore was one of only a few connections between Bosniak and Croat controlled portions of Bosnia and Herzegovina and the outside world (ICG 2003, 2-4).

The arbitration called for in the Dayton Peace Agreement refers specifically to the disputed location of the IEBL as it ran through the Brcko district. The arbiter chosen to resolve the dispute was Roberts Owen, an American jurist working for the State Department who had played a leading role in writing the constitutions for the state government of Bosnia and Herzegovina (4). The status quo going into arbitration was, as in the case of the Dayton agreement, very much to the Serbs liking. They controlled the portions of Brcko district most important to them, and Republika Srpska was the de facto government of those portions under Serb control. Arbitration was meant to conclude within a year of the signature of the Dayton agreement, but no decision was issued until February of 1997. The Rome Award was an interim

award which sought to punish the obstruction of the Serbs by establishing international supervision in Brcko. The award threatened to move the IEHL to the Serbs detriment. The Brcko Supervisor was a deputy of the High Representative who was assigned power by the agreement that presaged the powers later given to the High Representative for the entirety of Bosnia and Herzegovina. Following guidelines set out by an additional meeting in Vienna in March 1997, the Supervisor oversaw the establishment of a multinational government for the district. It was still, technically separated between the two Entities, and its status was very much up in the air (6).

The following year, the Owen issued the Supplemental Award, which still did not resolve the final status of the district. However, it admonished the Serbs to fall in line with the efforts of the Supervisor or face the prospect of a Brcko which was separate from Republika Srpska, either as a part of the Federation or as a separate entity. It also stated that the following year would likely result in a final award (6). The final award issued in March 1999 established a district independent of both Entities and answering to the central government. In a curious compromise, the district was declared to be a physical part of both Entities but beyond the political control of either. This resulted in an uproar in Brcko that coincided with the Kosovo crisis and the NATO bombing of Serbia (8).

It is of particular interest to note that officials from each ethnic group within the district were present for each stage of arbitration and had some degree of input into the arbitration process. They were not given the opportunity to vote, however, they were given the opportunity to provide input. This is in sharp contrast to the negotiation of the Dayton agreement, where each group negotiated through a proxy, who were placed in the position of forcing the agreement onto their charges.

## 1. Formal Constitutional Structures

The Supervisor was given the power to produce a “statute” or constitution for the Brcko District. In many ways, his powers were legally identical to those of the High Representative, but the tension in the district resulted in the Supervisor taking a much more active role in reforming all aspects of governance in the district.

The Statute of the Brcko District provided for a District Government headed by a Mayor, a District Assembly, and District Courts. The Statute provided for a means for the election of Assembly as well as rules governing the passage of laws and the election of government officials by the Assembly. One of the most striking differences between the institutional structures set up by the Statute and those set up by the Constitution of Bosnia and Herzegovina is the complete absence of references to specific ethnic groups or ethnic group quotas. It does state that the members of the Government and the employees of the government must “reflect the composition of the population” (Statute of the Brcko District (2000), Article 21). There is also no explicit mention of ethnic groups in the decision rules for the Assembly. Instead all decisions of the Assembly require a qualified majority of three-fifths of the total number of members and a three-fourths majority for constitutional amendments. The election of members of the government by the Assembly provides for a first round of voting requiring a three-fifths majority, a second round requiring a simple majority, a third round with a run-off of the two highest vote-getters from the second round. There is no mention of a veto power for bills which are against one group’s “national interest”.

The Statute provides for an assembly and such an assembly has been in existence since the Statute was put into effect; however, until very recently there had been no election to fill the ranks of the assembly. Instead, the members of the assembly had been appointed by the

Supervisor from among qualified members of each nationality, and especially those elected to municipal posts before the formation of the district and the imposition of the Statute (ICG 2003, 13).

While the Supervisor has practically the same powers as the High Representative, those powers have been used in very different ways, which may be an important difference. The High Representative has imposed relatively many more laws than the Supervisor of Brcko while the Supervisor has removed many more officials relative to the number of officials in Brcko (Clarke 2004). This difference, in combination with the lack of offices dedicated to one ethnic group or the other may have been crucial in empowering moderates and discouraging spoiler tactics on the part of nationalist politicians.

## **2. The actors and their preferences**

I see no reason to argue that the preferences of the actors, international or domestic were any different than those for Bosnia and Herzegovina as a whole. For the international actors, the only difference was a sense that Brcko was a tougher problem area than the country as a whole, and therefore required more substantial action on the part of international actors in order to prevent a return of violent conflict. That is to say, I see no reason for the exogenous preferences of either the domestic or international actors to be different, however, the endogenous preferences of the actors assigned to them by their position within the institutions of Brcko do seem to be different. The primary difference between the two action situations is the institutional structure and the process by which that institutional structure came into being. In the next section, I will examine those institutional structures in action in order to explore the results of these differences.

## **IV. Cases**

### ***A. Education***

As Srebren Dizdar notes, in the early years of the war “the education system in Bosnia and Herzegovina almost vanished as an organized human activity (Dizdar 1996, 9).” In addition to the need to simply rebuild an education system which had been destroyed by war, there was also the need, like other post-communist countries, to adapt the educational system to Western (now international) standards. Additionally, an important aspect of peacebuilding is ensuring that the education system does not perpetuate the ideologies of nationalism and interethnic hatred and instead promote tolerance and interethnic understanding. These problems involve both addressing the structure of the educational system (school districts, school buildings, teachers, etc.) and the curricula to be taught in schools.

#### **1. Bosnia and Herzegovina**

Following the war, the question of education was left to the Entities and in the Federation this responsibility was further delegated down to the level of the Canton. Since each ethnic group was essentially given the opportunity to establish the educational system of their choice, Republika Srpska and the Croat-dominated Cantons in the Federation adopted the educational systems, including textbooks of Serbia and Croatia respectively. This situation was a serious impediment to so-called minority refugee return, as facing a hostile educational system prevents rightful returnees from returning to settle in their prewar communities. As late as 2000, then High Representative Wolfgang Petrisch described it as “educational apartheid” (Petritsch 2000).

The first step in the reform of the education system was to stop the practice of using textbooks with treatments of “national subjects” such as history, literature and social studies that encouraged ethnic hatred. Beginning in Spring 1998, officials of the two Entities, as there is no official for education at the level of the state government, began to meet under the auspices of international organizations (Bender 2000). These meetings resulted in a series of agreements on acceptable textbooks which were in turn enforced by the Office of the High Representative through spot-checks of which textbooks were in fact being used in classrooms (Petritsch 2000).

The next major step was the passing in 2003 of the Framework Law on Primary and Secondary Education, which among other things finally set out a core curriculum that would be followed by all schools in Bosnia and Herzegovina. This bill was written and passed by the institutions of the state government, however, in order to implement its provisions, it was necessary for the High Representative to first cut public funding to some political parties and later to simply change education laws in some Cantons of the Federation (Ashdown 2004).

After this very positive step in the direction of ownership of reform, the failure of the state government to reach an agreement on the Law on Higher Education ahead of a World Bank deadline for countries to adapt to the European Higher Education Area. The failure of the local institutions to meet this deadline cost Bosnia 12 million dollars in World Bank funds. The measure failed because Bosnian Croat officials claimed that the bill violated their national interests by creating a Bosnia-wide authority for Higher Education, which they feared would endanger the Croat university at Mostar (Bayrasli 2004).

## **2. Brcko**

The Brcko district faced the same problems as those faced by Bosnia and Herzegovina as a whole when it came to reforming education. In October 2000 violence broke out when the Brcko government attempted to physically join schools, placing schools of different nationalities within the same building, but with separate administrations (ICG 2003, 25). During the course of that school year the Brcko Supervisor formed a commission of all three nationalities to harmonize the three school curricula. The supervisor also engaged in a public relations campaign meant to overcome nationalist propaganda about the means and aims of education reform. There would be no more segregation by nationality, and instructors would be expected to teach pupils from all ethnic groups and allow pupils to speak in their own mother tongue. Primary schools would be fully integrated, however, their rather small school districts would mean that most would have pupils from only one ethnic group. However, in the secondary schools, where the districts are larger, each year the incoming school classes would be integrated, while leaving existing school classes as they were. Despite this gradual form of integration, the Serbs in the Assembly refused to accept the reform, prompting the Supervisor to impose the law. Despite the need to impose the law, the reforms took place as planned with no repeat of the violence (25). When a state-wide education law was finally passed in 2003, the Brcko district was the first to comply with the new law, in part because for the district the law wasn't new at all, rather it was a continuation of district education policy of the previous two years.

A comparison of the process of education reform in Bosnia and Herzegovina as a whole and Brcko reveals interesting similarities and contrasts, which are in some ways the opposite of what we might expect. The basic path of education reform is similar in both cases. Domestic actors prefer to keep education separate, but "peacebuilding" and especially minority refugee return require that schools and school curricula be integrated. In both cases reforms were

formulated by commissions consisting of local education officials, international officials, and NGOs. The resulting legislation was then considered by the legislative body. In Brcko, that body could not reach a compromise, resulting in the law being imposed by the Supervisor, while in Bosnia and Herzegovina the Framework Law on Primary and Secondary Education was passed, although the Law on Higher Education failed to pass. While the implementation process was not always smooth in Brcko, it has thus far been far more successful than the process in Bosnia and Herzegovina as a whole. As of this school year there are still many incidents of “two schools under one roof” (Arnautovic 2004).

### ***B. Privatization***

The privatization of state enterprises and banks is a problem common to all post-communist countries; however, the impact of the war has made this process much more difficult in Bosnia and Herzegovina. Peter Andreas (2004) argues that the criminalized economy that grew up during the war in order to provide goods and services which were otherwise unavailable has had a profound impact on the post-war economy. War profiteers emerged from the war as the new elite, with much of the old elite either marginalized or having emigrated. That elite was then not only well connected with the political elite, due to their essential role in the war effort but many also had built large financial empires and were well-placed to take advantage of the opportunities presented by privatization. Michael Pugh (2002) describes the almost blind assertion by the international community that Bosnia’s economy would be best served by a rapid privatization and thereby modernization of its economy, and argues that this blind assertion has been very costly. However, from the perspective of the international community, the goal of privatization was largely unchallenged, instead the focus was on removing direct or indirect links

between political parties and enterprise and making the Bosnian economy more efficient, thereby attracting foreign investment.

## **1. Bosnia and Herzegovina**

As with education, the power for establishing rules and regulations for privatization was not at first given to the state government, but to the Entities. In this way, all public property was assigned to one of the two Entities according to its physical location. Privatisation took some time to get underway after the war, during which time those enterprises were often badly managed and sometimes even sabotaged in order to lower their valuation ahead of privatization so that the very directors who committed the sabotage could afford to buy them (ICG 1999,12). Also like in the area of education, the first attempts at privatization established offices in each Entity as well as in each of the 10 cantons of the Federation. This not only created a confusing array of policies, but also placed the control over privatization in the hands of the very people who controlled the enterprises to be privatized (ICG 2001, 20). At first, privatization was handled according to a voucher system patterned after a failed system used in the former Czechoslovakia, whereby authorities allocated vouchers to individuals who could then invest those vouchers into enterprises, essentially becoming shareholders. However, there were problems with the distribution of vouchers, including large numbers going to war veterans, as well as voucher regulations which made that system unworkable, in large part because it brought in no new capital for enterprises and discouraged foreign investment (18-19). The voucher system was replaced by a tender system whereby commissions work with international experts to prepare enterprises for foreign and domestic investment. This system, however, still falls under the purview of the Entity and cantonal privatization authorities, who retain the power to overrule actions taken by those authorities (21). The result has been that many smaller concerns have

been privatized, but that larger and strategic concerns continue to languish in need of capital investment.

## **2. Brcko**

Beginning in 1997 Brcko was exempted from privatization policies of the two Entities (Farrand 1997) and following attempts by Republika Srpska to privatize enterprises in Brcko district in 2001, the Supervisor developed a policy for privatization which was an improvement on those established by the Entities (ICG 2003, 17). The Brcko policy required prospective purchasers to have a majority stake while leaving room for voucher-holders and employee owners from before the war to also hold one-third of the shares of privatized enterprises.

Under this policy the Brcko district government negotiated the privatization of the “Arizona Market” one of the most unique enterprises in Bosnia and Herzegovina. The market emerged in the demilitarized zone in Brcko between the two Entities and served as one of the few places where goods could be easily moved across ethnic boundaries. However, the fact that the Market was beyond the control of either Entity meant that it was largely untaxed and that it became a center for smuggling and organized crime. The Market has been purchased by an Italian firm working with Bosnian investors, and what was once a street lined with rag tag shops has been converted into a kind of strip mall (18). The role of the Supervisor has primarily been as a mediator between the purchasing firm and the merchants of the market, many of whom oppose attempts to privatize the market and bring it under government control.

Unfortunately, the differences in privatization between Bosnia and Herzegovina and Brcko seem to largely be a function of size and intensity of oversight. As in other areas, Brcko has benefited from the attention paid to it by the international community and particularly from the effective use of authority by the Supervisor in conjunction with local leaders.

## V. Conclusion

Returning to the question of ownership addressed in the theory section of this paper. I hypothesized that when locals are involved in the design of democratic institutions then we would expect to observe more “ownership,” as manifested in taking greater responsibility in developing and implementing policies. In a very general sense we can say that this hypothesis is supported by this study. Brcko district, which had much more local input into the design and development of the government, has also seen much less obstruction by local politicians and more interethnic compromise to develop and implement policies. However, the two case studies of the development of specific policies are insufficient to show that assertion in action, and in fact raise many more questions than answers.

In choosing my policy areas I tried to control somewhat for the difference in size between Bosnia and Herzegovina and Brcko District. In so doing I chose policy areas according to their importance and according to the difficulty in reaching a compromise in a large state as opposed to a small district. In both cases, however, the difficulty was not so much in reaching a compromise on policy but in implementing that compromise, which is much easier in a smaller area. This is a failing in my research design, but does it also point toward a useful conclusion? namely that smaller administrative units will make for better policy implementation. Perhaps, and there is a trend in Bosnia toward municipalization, the process of devolving power away from the Entities down to the municipalities. However, it may also be that the difference is the concentration and quality of international oversight in Brcko. The Office of the High Representative has been criticized for concentrating power in Sarajevo and not doing enough to empower the regional offices of the High Representative (Clarke 2004). Additional research would be necessary to test that assertion.

It may also be that the performance observed in Brcko is in part due to its much more flexible constitutional structure, especially with regard to assigning seats to ethnicities and voting rules of the assembly. While it would suit this paper to conclude that greater input into the design created more suitable institutions, it is more likely that those institutions are the result of lessons learned from the Dayton Constitution, which had been in operation for more than half a decade when the Brcko Statute was written.

In conclusion, Brcko District's success offers several possible lessons for Bosnia and Herzegovina as a whole as well as for other efforts to promote democracy in post-conflict situations. While it is not possible within the context of this paper to be certain about the relationship, at the very least allowing greater input from local politicians has not hurt democratic promotion in Brcko and has almost certainly helped promote ownership. Additionally, it is clear that any institutional design would benefit from taking into account the preferences of the actors and the interaction of those preferences with the institution.

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Appendix A: Map of Bosnia and Herzegovina (Source: [www.ohr.int](http://www.ohr.int))



Appendix B: Chart of Legislative and Executive Bodies in Bosnia and Herzegovina

(Source [www.ohr.int](http://www.ohr.int))

**BiH's Legislative and Executive Bodies**

