

## Brčko Unsupervised

### I. OVERVIEW

It is time to close international supervision of Bosnia's Brčko District. Once seen as a model of post-war reconciliation and good government, it is drowning in corruption and mismanagement that flourished despite its supervisors' best efforts. The territory is vital to Bosnia and Herzegovina (BiH)'s stability: it links the two halves of both Republika Srpska (RS) and the BiH Federation (FBiH), and belongs technically to both entities but is independently governed and multi-ethnic. Many of its former leaders are under suspicion in a corruption probe that may have only scratched the surface; several high profile development projects are collapsing in bankruptcy and litigation. RS has a strong influence on the district but is not threatening to undermine its status. Nevertheless, the international community should ensure that Serb leaders of that entity are left in no doubt that any move to take Brčko over would meet a strong reaction. Stability is now dependent on whether local politicians, law enforcement and the judiciary can take responsibility. International supervision is no longer helping, and a new strategy is needed.

A special international Arbitral Tribunal established as part of the Dayton Peace Accords created the Brčko District in August 1999 (the "Final Award"), under the exclusive sovereignty of Bosnia and Herzegovina as a multi-ethnic, democratic unit of local self-government. An international supervisor, who also serves as Deputy High Representative, was also appointed in 1997 to oversee implementation of the Dayton agreement in the Brčko area with executive authority to promulgate binding regulations and orders.

In 2009 the international community assessed that Brčko institutions were functioning effectively and apparently permanently, the main condition that had been set to enable closing down the special supervision. Since then additional conditions have been put mainly on the RS to demonstrate that it has no intention to usurp Brčko authority. The Serb entity is making no claim on the district, and apparently has formally fulfilled the final condition by acknowledging that the inter-entity boundary line (IEBL), which splits Bosnia's two entities, does not run through Brčko.

This may appear the wrong time to end international supervision. The district faces its greatest crisis yet of govern-

ance and economic development, due to hardening political positions and endemic corruption. All Bosnia is being shaken by a political and economic crisis. Over a year since the October 2010 elections, there are neither a state government nor 2011-2012 state budgets. Some fear the RS is increasingly intent on declaring independence from BiH, and Brčko will become the site of renewed violence in connection with such manoeuvres. But supervision there involves only the town's internal governance; it cannot affect BiH-wide security, which remains the responsibility of the already weakened High Representative (OHR) and the EU member state force (EUFOR).

The Brčko international supervisor has not stemmed corruption for more than a decade and has neither resources nor international support to impose change now. Retaining him as ultimately responsible in the town provides an easy way for local politicians to avoid finally exercising that responsibility and accountability which Bosnians must ultimately show themselves capable of to protect their own basic interests.

The FBiH has neglected Brčko District since its establishment, creating a vacuum RS is eager to fill. The Federation government, and the FBiH-based parties with branches in Brčko, should work to improve relations with local business and political elites to balance the weight of Banja Luka. For its part, RS has legitimate interests in the district and has contributed much to its economic revival; this benign influence should be encouraged to continue and grow. Working together through the BiH state, Serbs, Bosniaks and Croats should also cooperate in agreeing to locate at least one significant government agency in Brčko District. All should intensify efforts to fight local corruption, especially strengthening independence of police, prosecutors and judges.

Moreover, at the same time as the international community acts to compel local officials to take responsibility for their own affairs, it should take parallel steps to make clear that its commitment to the independence and territorial integrity of Bosnia remains firm and that any attempt by RS to violate the provisions of the Dayton peace dispensation including the special status of Brčko will be met decisively. RS's interests in Brčko must not be allowed to lead to a belief that it can successfully question the Final Award. Accordingly:

- At the Peace Implementation Council (PIC) meeting on 12-13 December, the Brčko supervisor should recommend that supervision close within a set number of months, but that the Arbitral Tribunal stay open as a safety mechanism. In case of a grave violation of Brčko's autonomy by RS (or the FBiH), the retained tribunal could reopen supervision or modify the Final Award and assign the district to the other entity. Closing supervision and retaining the tribunal were not foreseen in the Dayton Peace Agreement or in the Final Award of 1999 but is being seriously considered by PIC members. It seems unlikely that a claim against this strategy could be sustained if the PIC Steering Board, the Brčko supervisor and the head of Brčko Arbitral Tribunal, U.S. diplomat Roberts B. Owen, agree to these steps, as they have to the maintenance of the tribunal twelve years after the Final Award was made.
- The EU should give further indications of its intention to pay greater attention to Brčko. Its delegation to BiH should help Bosnian officials fight corruption through strengthening the rule of law and relevant institutions, and preparing for the EU accession, including by opening a new office in the district, as the regional office of the OHR headed by the supervisor closes. Most of the responsibility for adopting and implementing the *acquis communautaire*, the body of EU law, falls to Bosnia's entities and cantons – and on Brčko, which has a much smaller capacity. It will need support through gradual reform. A useful first step would be for the supervisor in his final months to work with the government to encourage adoption of the Anti-Corruption Strategy for 2009-2014, which the EU could help implement.

## II. WHY BRČKO STILL MATTERS

Bosnia's Brčko District is strategically located on the Sava river, splitting eastern and western parts of RS, cutting the northern tip of the Federation (Posavina) off from the rest; it borders Croatia and is close to Serbia. During the 1992-1995 war, combat and ethnic cleansing ravaged it.<sup>1</sup> The 1995 Dayton talks almost collapsed over Brčko. Unable to agree on its status, the parties accepted an international arbitration tribunal led by the U.S. diplomat Roberts B. Owen which culminated with the Final Award of 1999, establishing the Brčko District as a "condominium" owned

<sup>1</sup> In summer 1992, Serbian forces won control over the "Brčko corridor" linking RS and Serb-held lands in Croatia. Bosniaks (44 per cent pre-war population) and Croats (25 per cent) were brutalised and expelled. For details see Crisis Group Bosnia Report N°18, *Brčko Arbitration: Proposal for Peace*, 20 January 1997, p. 2.

equally by both of Bosnia's entities but not managed by either.<sup>2</sup> Now it is a unique administrative structure: a large multi-ethnic municipality with the powers and responsibilities of a federal entity,<sup>3</sup> with an international supervisor, who has shaped much of its legal and administrative environment.<sup>4</sup> In many ways it is a miniature Bosnia.<sup>5</sup>

For years, international observers and Bosnians alike saw Brčko as a shining example for the rest of the country that could help strengthen statehood.<sup>6</sup> Refugees returned in large numbers. Officials from rival parties cooperated while their colleagues elsewhere refused to work together. The district established a unique, multi-ethnic educational system and police force; internationally sponsored judicial reform was a model for BiH state-level reform. As early as 2003, based on the progress already made, Crisis Group called for "an exit strategy for the supervisory regime".<sup>7</sup>

The PIC set the first timeline for the closure of Brčko supervision on 24 June 2005, saying the aim "remains to create the conditions required to meet the provisions of the Final Arbitral Award if possible by the end of 2005".<sup>8</sup>

<sup>2</sup> Final Award, Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brčko Area, 5 March 1999.

<sup>3</sup> For further background see Crisis Group Europe Report N°144, *Bosnia's Brčko: Getting In, Getting On and Getting Out*, 2 June 2003. "Brčko" and "the district" are used in this report for the Brčko District (the city of Brčko and surrounding villages). "Bosnia" and "BiH" refer to the state of Bosnia and Herzegovina.

<sup>4</sup> The supervisor is also a Deputy High Representative and has by unwritten agreement always been an American. He has "authority to promulgate binding regulations and orders in aid of the implementation program and local democratization" which "shall prevail as against any conflicting law. All relevant authorities, including courts and police personnel, shall obey and enforce all Supervisory regulations and orders". Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brčko Area, Award, 14 February 1997.

<sup>5</sup> Official estimates of total population are about 80,000 but local and international officials think there are at most 40,000 full-time residents, with many others registered in Brčko but living in neighbouring cities, returning occasionally. The ethnic breakdown is hard to assess but Serb parties won about 44 per cent of votes in the 2008 local elections, followed by traditionally Bosniak parties (including the multi-ethnic Social Democratic Party) with 41 per cent and Croat parties with 14 per cent. Data drawn from Bosnia's Central Election Commission website.

<sup>6</sup> Since the entities' territories overlap in Brčko District, there is no way either can secede unilaterally. Brčko is also the only territory under sole jurisdiction of the Bosnian state.

<sup>7</sup> We also said then that this "could provide a salutary example of the reality of international disengagement while still leaving time for the High Representative to ensure that the state is in fact exercising its responsibilities towards an autonomous Brčko District". Crisis Group Report, *Bosnia's Brčko*, op. cit., pp. i, ii.

<sup>8</sup> PIC Communiqué, 24 June 2005, OHR website. The PIC, which oversees the work of the OHR in BiH, is made of representa-

These conditions included that the district's institutions must be "functioning, effectively and apparently permanently".<sup>9</sup> The Final Award also indicated a sequence according to which Brčko arbitration was to close.<sup>10</sup>

In 2009 the supervisor determined that "Brčko District institutions, as a whole, are functioning effectively and apparently permanently" and the PIC Steering Board unanimously accepted his recommendation for a decision in autumn 2009 on closure of supervision if a few small requirements were met.<sup>11</sup> These were not fulfilled, and due to tensions in the district and in the rest of BiH, closure was once again postponed. But as will be described below, these conditions have now been met, and the supervisor is once again considering whether or not to inform the PIC that supervision can close. Since February 2008, termination of the supervision of Brčko is also a precondition for the closure of the OHR in Bosnia.<sup>12</sup>

Brčko is governed by a unity government with representatives of all of Bosnia's main political parties; none are in opposition. This removes much political or personal responsibility from the political system as citizens have few alternatives to turn to. The mayor, deputy mayor, main coordinator<sup>13</sup> and eleven heads of departments (who act as ministers), represent all main Bosniak, Serb and Croat parties, as well as the Social Democratic Party (Socijal

demokratska partija, SDP).<sup>14</sup> The Brčko Assembly consists of 31 councillors, currently thirteen Serbs, twelve Bosniaks, four Croats and two minorities (one Albanian and one Roma).<sup>15</sup> The SDP is the largest parliamentary group with eight seats while the bloc of RS parties has eleven seats and Croat national parties hold five.

The polarisation of Bosnian politics country-wide into two broad alliances<sup>16</sup> – the larger national Serb and Croat parties versus the main Bosniak and multi-ethnic ones – is beginning to influence Brčko's daily political life<sup>17</sup> and could negatively affect the October 2012 local elections.<sup>18</sup> Brčko's government runs by consensus<sup>19</sup> and if the balance of power between the three ethnic groups shifts in 2012, Serb and Croat parties could gain the upper hand in the assembly but the predominately Bosniak bloc would be able to stall any decisions. Formation of the district government after the 2004 and 2008 elections already took months; it is likely to be a difficult process again in 2012.

Since 2000 when the Brčko District was created, local institutions have been handling judicial matters, police, health, education and communal systems, which in some cases have been used as examples of efficiency and multi-ethnic promise for the rest of Bosnia.<sup>20</sup> The supervisor and entity governments do not intervene in their work. However Brčko has been unable to escape the patronage

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tives of key countries and international organisations engaged in BiH.

<sup>9</sup> Final Award, Arbitral Tribunal, op. cit. The Final Award spells out the process for closing the tribunal and supervision: "The Tribunal retains jurisdiction until such time as the Supervisor, with the approval of the High Representative, notifies the Tribunal that the Entities have fully complied with their obligations to facilitate the establishment of the District institutions as described in the Final Award and that such institutions function effectively and apparently permanently".

<sup>10</sup> Final Award, Article IV. 37: "Supervision shall continue until terminated by the Steering Board of the Peace Implementation Council"; and Article VIII. 67: "This Tribunal will retain jurisdiction over this dispute until such time as the Supervisor, with the approval of the High Representative, has notified the Tribunal (a) that the two entities have fully complied with their obligations to facilitate establishment of the new institutions herein described, and (b) that such institutions are functioning, effectively and apparently permanently, within the Brčko Opština. 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".

<sup>11</sup> PIC Communiqué, 30 June 2009, OHR website.

<sup>12</sup> The PIC Steering Board included closure of Brčko arbitration as one of the five objectives and two conditions required for closure of the OHR. For details on the 5+2, see Declaration of the PIC Steering Board, OHR website, 27 Feb 2008.

<sup>13</sup> Who functions as a secretary general.

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<sup>14</sup> The SDP is the biggest multi-ethnic, FBiH-based party active in BiH. Its membership includes representatives of all ethnic groups and minorities, yet over the past years its electorate has mainly been Bosniak.

<sup>15</sup> Article 23 of the Statute of the Brčko District requires that at least two of the 31 councillors represent national minorities. In the 2008 elections, these were by far the easiest seats to win, with only 71 votes winning a seat, while at least 700 votes were needed in races for positions of the three constitutive ethnic groups.

<sup>16</sup> For details on Bosnia's latest crises, see Crisis Group Europe Reports N°209, *Federation of Bosnia and Herzegovina – A Parallel Crisis*, 28 Sep 2010; N°214, *Bosnia: What Does Republika Srpska Want?*, 6 Oct 2011; and Europe Briefing N°62, *Bosnia: State Institutions under Attack*, 6 May 2011.

<sup>17</sup> The Alliance of Independent Social Democrats (Savez nezavisnih socijaldemokrata, SNSD), Serb Democratic Party (Srpska demokratska stranka, SDS), Croat Democratic Union (Hrvatska demokratska zajednica, HDZ) and its splinter party Croat Democratic Union 1990 (Hrvatska demokratska zajednica, HDZ 1990), cooperate at the state level, facing off against the "Platform" bloc consisting of the SDP, Party of Democratic Action (Stranka demokratske akcije, SDA), and two smaller parties, the People's Party (Narodna stranka, NS) and the Croatian Party of Right (Hrvatska stranka prava, HSP).

<sup>18</sup> Crisis Group interview, Dragan Pajić, Brčko, 1 November 2011.

<sup>19</sup> The statute has established several mechanisms to prevent outvoting of any ethnic group.

<sup>20</sup> "The education system in the district was used as a template for the entire state", Crisis Group interview, OSCE official, Brčko, 2 November 2011.

network system that remains entrenched in the rest of the country (and most of the region); in local administration, employment tends to be based on personal and political contacts, not professional background or expertise.<sup>21</sup>

Patronage and corruption have now caught up with the Brčko District as it faces what its supervisor, Roderick Moore, calls “perhaps the worst political crisis ... since its establishment” and “its most rigorous test”.<sup>22</sup> As described in detail in the following section, for nine months in 2011, the district government was tangled in a dispute over its mayor who was instructed to resign but continued to delay. The crisis almost completely blocked the district government and assembly. Just when a new mayor was appointed, an anti-corruption operation led to the detention of a former mayor and several other officials, and now other local officials are being investigated. Brčko’s prosecutor, judiciary and local leadership are expected to deliver justice fairly and effectively,<sup>23</sup> a test that institutions in the RS and the Federation are generally failing.<sup>24</sup>

Before the war Brčko was one of the most developed towns in former Yugoslavia, thanks to its strong agriculture, diverse industry and geostrategic position close to roads, railroads and river corridors. The international community tried to recreate this by granting Brčko its own customs and tax revenues.<sup>25</sup> After Bosnia adopted a value added tax (VAT) system in 2006, in 2007 Brčko was granted 3.55 per cent of Bosnia’s VAT income, or a minimum of 124 million convertible marks (KM) (€63.5 million). Local and international officials believe Brčko only accounts for about 3 per cent or less of Bosnia’s VAT revenues and thus gets more than its fair share.<sup>26</sup> VAT income is the largest part of Brčko’s budget and provides steady revenue, which has spoiled local authorities and contributed to corruption.<sup>27</sup>

Abundant funds have helped to reconstruct the destroyed and divided region into one of the biggest post-war success stories. The local Bimal factory, owned and managed

by Austria’s Seed Oil Holdings GmbH, is today the only producer of cooking oil in BiH and one of the region’s biggest.<sup>28</sup> The Brčko Port company, whose facilities have been partially reconstructed with Italian and World Bank funds, could become especially attractive if a regional project to clean the Sava river basin, now being prepared under World Bank auspices, is ever implemented.

But a long list of partly or wholly failed projects testifies to wasted investments and government corruption, lack of responsibility, accountability, capacity and know-how. \$28 million was invested in a water-purification plant with a capacity of 330 litres per second, while the old and leaky city water system can take only 80 litres per second. The rest of the clean, drinking water is dumped in the Sava. Almost \$10 million was invested in a new football stadium seating 15,000 spectators when the local second league club often attracts only a few hundred spectators and never more than 4,000. Several shopping malls, casinos, business centres and apartment buildings that were built without appropriate paperwork, feasibility studies, tenders or other project documentation are either unusable or bankrupt.<sup>29</sup>

Yet, Brčko could still prosper; its geographic location will keep drawing investors as long as minimal conditions are in place. Two important highway projects are scheduled to traverse the district, one from each entity.<sup>30</sup> RS hopes to connect to Russia’s South Stream gas pipeline via Brčko.<sup>31</sup> But Brčko needs to clean up its act and at the moment this seems unlikely while corrupt and inefficient administration and services continue to operate with hefty tax revenues filling the budget. EU officials are concerned that the district is ill-prepared for the EU accession process and that its further stagnation could delay Bosnia’s path to Europe.

Yet American and other diplomats and some local officials have broader security concerns; they fear that Brčko with its crucial geostrategic position, may be a flashpoint that could lead to renewed violence if BiH’s political cri-

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<sup>21</sup> Crisis Group interviews, local and international officials, Banja Luka, Brčko and Sarajevo, October-November 2011.

<sup>22</sup> “Statement by Brčko Supervisor Roderick Moore at a press conference in Brčko”, press release, OHR, 23 November 2011.

<sup>23</sup> Ibid.

<sup>24</sup> For details on Bosnia’s institutional failings, see Crisis Group Europe Reports N°209, *Federation of Bosnia and Herzegovina – A Parallel Crisis*, 28 September 2010; and N°214, *Bosnia: What Does Republika Srpska Want?*, 6 October 2011.

<sup>25</sup> The Joint State Border Service started operating in 2000. The value added tax (VAT) was introduced BiH-wide in 2006.

<sup>26</sup> Crisis Group interviews, international experts and local officials, Sarajevo and Brčko, October-November 2011.

<sup>27</sup> “Brčko is probably the only place in BiH, if not in the whole region, which is suffering from too much money”, Crisis Group interview, international official, Sarajevo, 19 November 2011.

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<sup>28</sup> Crisis Group interviews, local officials, Brčko, November 2011; Bimal website.

<sup>29</sup> Crisis Group interviews, Dragan Pajić, Ahmet Dervišević, Esad Atić, Ivan Krndelj and other Brčko officials, Brčko, 1-15 November 2011.

<sup>30</sup> RS is determined to build the Dobojski-Bijeljina-Belgrade highway to better connect its western part with eastern RS and eventually Serbia. The FBiH is preparing project documentation for the Orašje-Brčko-Tuzla-Banovići-Žepče highway. Crisis Group interviews, RS officials, Banja Luka, October-November 2011; Svetozar Pudarić, vice president of the FBiH and senior SDP leader, Sarajevo, 9 November 2011.

<sup>31</sup> Crisis Group interviews, RS officials, Banja Luka, October-November 2011.

sis worsens and especially if the RS attempts to break-away from the state.<sup>32</sup>

### III. CRISIS IN BRČKO

The Brčko District is plagued with many of the weaknesses in local governance and rule of law that affect the rest of the country. From January to September 2011, a conflict about the dismissal of the former mayor blocked the work of the Brčko government. Corruption in employment and tendering procedures have choked the economy, halted investments and led to a series of lawsuits that now threaten to bankrupt the district. As the district is relatively small, political and economic problems are more clearly and quickly felt by all.

#### A. GOVERNMENT CRISIS

On 27 January 2011, the BiH Election Commission ruled that Brčko Mayor Dragan Pajić had violated the conflict of interest law and should resign.<sup>33</sup> Pajić, a member of the Alliance of Independent Social Democrats (Savez nezavisnih socijaldemokrata, SNSD), the strongest Serb party, clung to his position for almost nine months, while citing a legal loophole that did not give a deadline to step down and claiming he would be ready to leave as soon as Brčko's ruling parties agreed on his replacement.<sup>34</sup> The leader of a competing party argued that he was delaying his resignation to hide evidence of corruption.<sup>35</sup>

The SDP led the vote on his removal at a Brčko Assembly session on 19 May 2011; most Serb and Croat parties walked out in protest.<sup>36</sup> On 20 June the Brčko Court of Appeal annulled the assembly's decision.<sup>37</sup> Supervisor Moore stepped in and negotiated with all political parties behind closed doors to broker a deal to give the position to another

SNSD candidate, Miroslav Gavrić.<sup>38</sup> On 13 September 2011, Pajić resigned and the assembly appointed Gavrić mayor, with all but SDP delegates voting in favour.<sup>39</sup> The crisis took almost nine months to be resolved during which the work of the government and the assembly was almost completely blocked.<sup>40</sup> It showed how external mediation can still help resolve local disputes but that international imposition is no longer necessary and increases Brčko leaders' propensity to avoid difficult compromises.<sup>41</sup>

On 3 October 2011, Pajić and six other current or former city officials and local businessmen were detained and 26 government and private premises in the district and both entities were searched as a part of an anti-corruption operation codenamed "Bingo".<sup>42</sup> Three days later they were all released and no charges have been pressed,<sup>43</sup> but other investigations continue.

#### B. ENDEMIC CORRUPTION

Corruption in Brčko is endemic, evident in hiring and tendering procedures, and threatening to destroy the district economically from within.<sup>44</sup> Tellingly, it is the only Bosnian jurisdiction that has failed to adopt the Anti-Corruption Strategy for BiH for 2009-2014, a key condition for visa-free travel to Schengen countries. Operation Bingo opened more questions than answers. According to a member of the District Assembly:

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<sup>38</sup> Crisis Group interviews, local and international officials, Sarajevo and Brčko, October-November 2011.

<sup>39</sup> "Miroslav Gavrić izabran za novog gradonačelnika Brčko distrikta" ["Miroslav Gavrić elected the new mayor of Brčko District"], Brčko government website.

<sup>40</sup> The new mayor is currently working normally with the old government. He is attempting to form a new government but prospect to reach agreement are bleak before the 2012 elections.

<sup>41</sup> Some senior international officials feel on the other hand that imposition would have been more effective. "For the past year the supervisor and his staff were in non-interventionist mode. This was deliberate to give more responsibility to local leaders. OHR staff was instructed to only advise and facilitate but not impose solutions. After one year there is a huge disappointment with the dysfunctional political system. Everything was blocked for nine months", Crisis Group interview, Sarajevo, 28 October 2011.

<sup>42</sup> "Bingo u Brčkom: Uhapšen Dragan Pajić" ["Bingo in Brčko: Dragan Pajić arrested"], Sarajevo daily *Oslobodjenje*, 3 October 2011 (online). According to police officials, the operation is investigating fourteen people in relation to possible cases of corruption, misuse of office and falsification of official documents; "Uhapšen Pajić i šest funkcionera" ["Pajić and six officials arrested"], RS daily *Glas Srpske*, 3 October 2011 (online).

<sup>43</sup> Crisis Group interview, Dragan Pajić, Brčko, 1 November 2011.

<sup>44</sup> Crisis Group interviews, local and international officials, Brčko, Sarajevo and Banja Luka, October-November 2011.

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<sup>32</sup> "Assessing the potential for renewed ethnic violence in Bosnia-Herzegovina: A security risk analysis", Atlantic Initiative Democratization Policy Council report published in October 2011.

<sup>33</sup> BiH Election Commission press statement, 27 January 2011 (online). The commission found that a representative of the Posavinalak company that was doing business with the Brčko District was Pajić's close relative.

<sup>34</sup> Crisis Group interview, Brčko, 1 November 2011.

<sup>35</sup> Crisis Group interview, Svetozar Pudarić, vice president of the FBIH and senior SDP leader, Sarajevo, 9 Nov 2011.

<sup>36</sup> "Smijenjen gradonačelnik Brčko distrikta Dragan Pajić" ["Brčko District mayor Dragan Pajić dismissed"], Sarajevo daily *Dnevni Avaz*, 19 May 2011 (online).

<sup>37</sup> Saying that nineteen votes were needed, when only seventeen had voted in favour. "Nestatutarna odluka o razrješenju Pajića" ["Decision about the dismissal of Pajić was against the Statute"], RS news agency *SRNA*, 24 June 2011 (online).

Bingo should be the beginning and not the end. If it doesn't go further it will prove to be only an attempt to pardon ten years of corruption. Citizens are looking and waiting to see what will happen, what will police and prosecution do now ... Corruption has taken hold and will destroy the district. Corruption is destabilising both inter-ethnic and political relations. We cannot behave like "he has stolen, so I will too" anymore.<sup>45</sup>

The district's "judiciary is not working as it should" according to an international official. He argues "there seems to be no willingness" to prosecute corruption in Brčko; "It is everywhere, in tendering, employment, abuse of office. It is not just the judiciary or the police, it's the whole government".<sup>46</sup>

Police in Brčko, supported by the State Investigation and Protection Agency (SIPA)<sup>47</sup>, is currently carrying out at least five other corruption-related investigations<sup>48</sup> that reportedly involve even bigger fish, including some of the top politicians, businessmen, and most senior officials from the district law enforcement agencies.

These investigations have increased tensions in the community and some kind of showdown seems to be approaching, with a senior police official and a senior judge preparing to press corruption charges against each other.<sup>49</sup> The same judge claims he is under surveillance by SIPA.<sup>50</sup> These investigations also have important political repercussions, since all these officials and business people belong to political parties, and conflict between them may affect not only the local political scene but even relations between top BiH party leaders.<sup>51</sup> In the past such big in-

vestigations, especially when they have required cooperation between BiH and Brčko authorities have come to naught.<sup>52</sup>

Brčko's system of ethnic quotas, by which key posts have long been distributed under the "4-4-2 rule", is another source of corruption.<sup>53</sup> Right after the war, the rule helped encourage reintegration, but over the years it has metastasised: "This is how people are selected, this is how money is divided, and this is how people get jobs".<sup>54</sup> Politicians and parties have employed more and more friends and relatives regardless of their professional background and skills, and local administration has swelled as every ethnic group, party and faction has claimed positions for themselves, from directors of public companies to night watchmen and cleaners.

Some worry that if international supervision ends the problems will only get worse. Srđan Blagovčanin, executive director of Transparency International in BiH, said: "Corruption in Brčko is rampant. Problems that are now emerging there have been brewing for many years and the situation appears to be worse now only because there is no [international official] to control it anymore".<sup>55</sup> Others think that supervision actually facilitates corruption: "Brčko is a typical example; the bigger the protectorate, the bigger the possibility for corruption. It is a perfect example of the international approach: pump in money to show success. Brčko is just a small local community which could

<sup>45</sup> Crisis Group interview, Ivan Krndelj, head of the Brčko Croat Peasant Party (Hrvatska seljačka stranka, HSS) branch and deputy in the Brčko Assembly, Brčko, 2 November 2011.

<sup>46</sup> "We have the pervasive presence of corruption here; it is almost a parallel structure. Heads of caucuses and political parties have politicised the administration and corrupted the employment process. We have [a] very sophisticated system of kleptocracy". Crisis Group interview, international official, Brčko, 1 November 2011.

<sup>47</sup> The State Investigation and Protection Agency (known locally by its English acronym SIPA) is the main state-level police agency; many law-enforcement duties in Bosnia-Herzegovina are responsible of entities or cantons.

<sup>48</sup> Crisis Group interview, international expert, Sarajevo, 19 November 2011.

<sup>49</sup> Crisis Group interviews, senior police official and senior judge, Brčko, 15 November 2011; international expert, Sarajevo, 19 November 2011.

<sup>50</sup> Crisis Group interviews, senior judge, Brčko, 15 November 2011; international expert, Sarajevo, 19 November 2011.

<sup>51</sup> "Brčko District has been and still is a duty-free zone where main BiH parties and politicians play their games, engage in corruption and murky business with each other". Crisis Group interview, international expert, Sarajevo, 19 November 2011.

<sup>52</sup> Charges could not even be brought against dozens of suspects in a large scale ID counterfeiting ring who were investigated and detained across BiH because the BiH and Brčko prosecutions claim they cannot launch formal investigation because the district police has not provided them with the evidence. Correspondence between BiH Ombudsman for Human Rights, BiH and Brčko Prosecution provided to Crisis Group. One of the main centres of the counterfeiting ring was reportedly in Brčko, where numerous people were arrested in 2008 and 2009. "Privredeno dvadeset lica zbog izdavanja lažnih dokumenata" ["Twenty people detained for issuing falsified documents"], RS daily *Glas Srpske*, 28 May 2008 (online); "Kriminalci sa falsificiranim dokumentima BiH" ["Criminals with falsified BiH documents"], Izvor, publication of the Centre for Investigative Journalism, 22 January 2010 (online).

<sup>53</sup> Four positions go to Serbs, four to Bosniaks and two to Croats. The 4-4-2 model is also sometimes called 2-2-1. The former is applied for distribution of a larger number of seats and the latter for smaller groups.

<sup>54</sup> Crisis Group interview, international official, Tuzla, 28 October 2011.

<sup>55</sup> Crisis Group interview, Srđan Blagovčanin, executive director of Transparency International in BiH, Banja Luka, 7 November 2011.

never be compared with bigger towns like Banja Luka or Tuzla, but always had more money than they did”.<sup>56</sup>

Past Brčko supervisors reacted to corruption. On 12 November 2003, acting Supervisor Gerhard Sontheim dismissed the then Brčko mayor Siniša Kisić and another official because of court proceedings against the two for procedural mistakes and suspected corruption.<sup>57</sup> In October 2008, Supervisor Raffi Gregorian punished government officials by withholding their monthly salary for not adopting the district budget on time.<sup>58</sup>

Current Supervisor Roderick Moore has been promoting local ownership, waiting for domestic institutions to act, and not once using his supervisory powers in his year-long tenure. It is highly unlikely that a supervisor would ever again have the international political and enforcement support needed to dismiss a mayor like in 2003. Some local activists are upset<sup>59</sup> and say that their law enforcement is too timid. But if law enforcement and judicial institutions do not begin to punish those involved in corruption and other forms of abuse of power, the District, its inhabitants and entrepreneurs will soon begin to feel serious economic consequences.

### C. FLEEING INVESTMENTS

Corruption is frightening investors and Brčko is dying slowly with empty streets, abandoned shopping malls and closed businesses.<sup>60</sup> The growing political crisis in the district, as well as procedural mistakes caused by inadequate or politically connected administrative staff, have affected the capacity of the district government to spend its budget. As a result, tens of millions of euros sit in bank accounts<sup>61</sup>

waiting for local authorities to agree on how to use (and share) these funds and projects.

Even the iconic “Arizona” market west of Brčko town, which sprang into life right after the war along the Inter-Entity Boundary Line (IEBL), for Serb, Croat and Bosniak communities to meet and trade,<sup>62</sup> has fallen on hard times. The Final Award placed it within the boundaries of Brčko District, and the supervisors decided to promote it as a good investment opportunity. The Bosnian-Italian company was selected to invest \$100 million to purchase the land and develop the infrastructure. “By 2005 the Arizona market was the crown jewel not only of the Brčko District but of the Bosnian economy”.<sup>63</sup> Yet in 2011, it is a cluster of half-empty shops sitting in the middle of nowhere, with few customers and even fewer investors. Arizona failed for a variety of reasons, but most importantly when the Brčko government started collecting taxes and customs, it made it much less lucrative to buy and sell there.<sup>64</sup>

The story about Arizona market resembles that of Brčko itself; as long as the market and the district were allowed to benefit from preferential rules, they prospered, but as soon as they were required to comply with the regular legal and economic system, they faltered. After Brčko government finally revoked the market development contract in 2010, the company sued the government for damages worth 105 million KM (€54 million) and the case is still ongoing.<sup>65</sup>

Several other local and international companies are suing the district for more than 400 million KM (€205 million)

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<sup>56</sup> Crisis Group interview, Igor Radojičić, speaker of the RSNA and chief RS negotiator for Brčko-related issues, Banja Luka, 8 November 2011. Similar view expressed in Crisis Group interview, international expert, Sarajevo, 19 November 2011.

<sup>57</sup> “Smijenjen Siniša Kisić” [“Siniša Kisić dismissed”], RS daily *Nezavisne Novine*, 13 November 2003 (online).

<sup>58</sup> “Članovi Vlade ostali bez plate” [“Government members left without salaries”], Banja Luka daily *Nezavisne Novine*, 8 October 2010.

<sup>59</sup> “Supervision was super while it lasted, but it is gone because the supervisor doesn’t want to interfere anymore. While the supervisor was here we at least had someone to complain to. In the past year our organisation alone sent 32 memos which the administration failed to respond to. In the past we would complain to the supervisor and the administration would immediately respond. If supervision closes it will be a horror; when cat’s away mice will play”. Crisis Group interview, Jasmin Jašarević, youth NGO Proni, Brčko, 31 October 2011.

<sup>60</sup> Crisis Group interview, Jasmin Jašarević, youth NGO Proni, Brčko, 31 October 2011.

<sup>61</sup> Because of disagreements over how to distribute funds for development projects, Brčko was unable to initiate several pro-

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jects for which funding was already allocated to in the budget. Crisis Group interviews, local and international officials, Brčko and Sarajevo, October-November 2011.

<sup>62</sup> Drugs, prostitution, and trafficking were also part of the market and some international officials allegedly participated in the trade. “Sfor i IPTF u Bosni i Hercegovini trguju devojkama sa istoka. – Brčko centar prostitucije” [“SFOR (NATO-led Stabilisation Force) and IPTF (UN-led International Police Task Force) trade with the girls from the east – Brčko, the centre of prostitution”], Belgrade daily *Glas Javnosti*, 5 July 2000 (online). Dina Francesca Haynes, “Lessons from Bosnia’s Arizona Market: Harm to Women in Neoliberalized Postconflict Reconstruction Process”, *University of Pennsylvania Law Review* (May 2010), p. 1781.

<sup>63</sup> *Business Solutions for the Global Poor: Creating Social and Economic Value. Why Did the Arizona Market Survive and Flourish*, V. Kasturi Rangan (2007), p. 58.

<sup>64</sup> It was estimated that at the beginning, on a good day, the Arizona market was turning profit of over \$2 million. Crisis Group phone interview, international agency official, 26 November 2011.

<sup>65</sup> Distriktu prijete finansijski krah [“Financial collapse looms over district”], Banja Luka daily *Nezavisne Novine*, 9 June 2010 (online).



with court rulings expected in 2012.<sup>66</sup> Some city officials are concerned that many of these lawsuits are justified and Brčko will be forced to pay. Even if half of the damages are granted, the district will lose the equivalent of its yearly budget, almost certainly bankrupting it.<sup>67</sup>

The Brčko auditor office warned:

There is no positive trend. Most institutions have no internal control. The situation got worse from 2009 to 2010. Audits have discovered numerous problems in tenders: the tenders for the new gynaecology ward, the new dialysis ward, both issued without any projects and without available funds. Most capital transfers lack documentation, which is why only 30 per cent of the transfers are effectively used in the budget year.<sup>68</sup>

The police and judiciary have reportedly done little to follow up on these reports, and the auditor, who claims to be under strong political pressure,<sup>69</sup> has no mandate to launch investigations.<sup>70</sup> Local authorities, who are themselves very often involved in business, have an interest to support anti-corruption efforts, if they do not want to see the valuable investment that has targeted Brčko quickly dry up.

#### IV. ENDING INTERNATIONAL SUPERVISION

Amid this political and economic breakdown the international community is seriously considering closing international supervision. Most conditions were met years ago but as the Bosnia-wide political environment worsened, in 2008 the PIC added new ones, often in an attempt to

ensure that the RS could not encroach on Brčko's autonomy. The council first required "adequate legal protections vis-à-vis Brčko's relationship with the state and entities",<sup>71</sup> meaning that the district should come under the jurisdiction and protection of the BiH Constitutional Court.<sup>72</sup> BiH legislators complied and in March 2009 passed a constitutional amendment giving Brčko access to the Constitutional Court (Bosnia's first, and thus far only, constitutional amendment).<sup>73</sup>

But a March 2009 PIC meeting then spelled out new conditions: "The Entities and the District must resolve remaining issues under the Final Award, such as mutual debts, entity citizenship, and a memorandum of understanding on electricity supply",<sup>74</sup> which it reasserted in June 2009.<sup>75</sup>

Electricity became a major stumbling block even though Principal Deputy High Representative and Brčko Supervisor Raffi Gregorian had scheduled the closing ceremony of the Brčko supervision for November 2009 and even

<sup>71</sup> Communiqué of the Steering Board of the PIC, 25 June 2008.

<sup>72</sup> "On Objective Three – Completion of the Brčko Final Award: The PIC Steering Board notes that the Brčko District itself must be given a mechanism by which it can have guaranteed access to the BiH Constitutional Court concerning disputes it may have with the Entities and the State regarding their obligations under the Awards of the Arbitral Tribunal and the status and powers of the District. The establishment of such a mechanism is a prerequisite for the Supervisor to notify the Tribunal that the conditions to terminate the role of the Arbitral Tribunal have been met, and thus pave the way for termination of Supervision itself". PIC Communiqué, OHR website, 20 November 2008.

<sup>73</sup> The PIC confirmed that the amendment "provides the District with effective, direct access to the Constitutional Court and ensures that no party can change the status or powers of the District as defined by the Arbitral Awards". PIC Communiqué, OHR website, 26 March 2009.

<sup>74</sup> "The Steering Board unanimously accepted the Brčko Supervisor's recommendation for a decision in autumn 2009 on closure of Supervision provided that the Entities and the State fulfil the remaining requirements needed by the Supervisor to be able to notify the Arbitral Tribunal of the completion of the Final Award", PIC Steering Board Communiqué, OHR website, 26 March 2009.

<sup>75</sup> Using the same terminology as the Final Award, the communiqué clearly states that conditions as listed in the award have been fulfilled since "district institutions as a whole are now functioning effectively and apparently permanently". Still, it adds that "the Entities have not yet fulfilled their remaining obligations under the Awards of the Tribunal to resolve mutual debts, allow for change of entity citizenship for Brčko residents, or to regulate the supply of electricity to the District. The matter of Brčko's share of gold and other proceeds from SFRY (Socialist Federal Republic of Yugoslavia) assets has also not yet been resolved. The PIC Steering Board calls on the Entities, and the State, where appropriate, to resolve these issues no later than 15 September 2009".

<sup>66</sup> Crisis Group interview, Jadranko Grčević, president of the Brčko main court, Brčko, 15 November 2011.

<sup>67</sup> "We could have made a miracle with a 220 million KM budget and 30-40,000 people but we have achieved nothing. We have started many things but we have not accomplished anything. Next year BiH has to start repaying an IMF loan and the district will have to start paying some of the lawsuits and this will bankrupt the district unless the international community saves us". Crisis Group interview, Damir Radenković, youth NGO Vermont, Brčko, 31 October 2011.

<sup>68</sup> Crisis group interview, official in the Brčko auditor's office, Brčko, 31 October 2011.

<sup>69</sup> Ibid.

<sup>70</sup> In Bosnia-Herzegovina, auditors operate independently in both entities, Brčko District and the state level. They investigate financial work of the administration and public companies and report to the parliaments and assemblies but have no mandate to call for or initiate investigations. Audit reports have over the past years identified and proved numerous cases of corruption, misuse of office and similar deeds on all administrative levels, yet only on few occasions those reports were used by prosecutors to launch investigations.



ordered the printing of invitations.<sup>76</sup> The celebration was not to be. The OHR reportedly obtained a secret RS plan according to which, RS was planning to withdraw from the state electricity transmission company and establish its own company. Believing this to be the first step towards an RS breakaway from Bosnia, the office acted<sup>77</sup> with High Representative Valentin Inzko on 18 September. They imposed a set of laws to maintain the normal functioning of the Bosnian power grid, and regulating issues of citizenship and electricity supply in Brčko.<sup>78</sup>

Angry at the new impositions, a complicated conflict between OHR and RS erupted, but ultimately on 11 February 2010, the RS National Assembly (RNSA) passed the OHR required citizenship law.<sup>79</sup> The electricity issue was more complicated.<sup>80</sup> But on 21 December 2010, the assembly adopted amendments which allowed the RS electricity company and Brčko communal company to sign a contract with the district power supply on 21 January 2011.<sup>81</sup> Yet closure of supervision was blocked by deep international worry about Bosnia's overall political stability.<sup>82</sup> In March 2011 the PIC noted that "it anticipates the prospect of being informed soon of the recommendations of the Supervisor and the High Representative on closure of the Brčko Arbitral Tribunal, which would allow the PIC SB to take a decision about the closure of the Brčko supervision".<sup>83</sup>

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<sup>76</sup> Crisis Group interview, senior OHR official, Sarajevo, 19 November 2010.

<sup>77</sup> Crisis Group interviews, senior OHR and western officials, Sarajevo, 2009-2010.

<sup>78</sup> See Crisis Group Europe Briefing N°57, *Bosnia's Dual Crisis*, 12 November 2009.

<sup>79</sup> Both entities were supposed to enact legislation allowing Brčko residents to freely choose and take citizenship of either of the entities.

<sup>80</sup> For details see Crisis Group Europe Briefing N°59 *Bosnia: Europe's Time to Act*, 11 January 2011. The law as imposed by OHR violated a European Commission (EC) regulation that the electricity market should be liberalised by 2014 and infringed on what should be the authority of the state aid agency. Crisis Group interview, senior European Commission official, Sarajevo, November 2010.

<sup>81</sup> "Brčko dobija jeftiniju struju, novi korak ka zatvaranju OHR-a" ["Brčko gets cheaper electricity, new step towards closing OHR"], Banja Luka daily *Glas Srpske*, 21 January 2011 (online).

<sup>82</sup> For details on the crises that have shaken BiH over the past few years, see Crisis Group Reports, *Federation of Bosnia and Herzegovina – A Parallel Crisis*, op. cit.; *Bosnia: What Does Republika Srpska Want?*, op. cit.; and Briefing, *Bosnia: State Institutions under Attack*, op. cit.

<sup>83</sup> PIC Steering Board Communiqué on 30 March 2011, OHR website.

## A. THE REPUBLIKA SRPSKA'S VIEW

RS leadership is unhappy with the repeated delays to end international supervision and the imposition of new conditions. Since 1999, Banja Luka has resented the Arbitral Tribunal's Final Award which removed Brčko from both entities' sovereignty,<sup>84</sup> cutting the RS in two unequal halves, which had never happened when Serb forces controlled the municipality during and immediately after the war. RS officials claim that they nevertheless legally and politically accept Brčko arbitration.<sup>85</sup>

Serbs are more active on this issue because as Igor Radojičić, RSNA speaker and chief RS negotiator in charge of most Brčko-related issues explained: "RS was always present in Brčko District. That was very important for us. FBiH never had any strategic interest in the district aside from cutting RS in two".<sup>86</sup> With that view in mind, RS officials suspect it is no coincidence that Bosnia's biggest radical Islamic community is based on the southern edge of Brčko District.<sup>87</sup> The RS recently announced it was opening an office in there, but it remains unclear what it will do.<sup>88</sup>

The Serbs accuse the international community<sup>89</sup> of repeatedly moving the goalposts for closing supervision; in

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<sup>84</sup> On 7 March 1999 the RSNA passed a resolution explicitly rejecting the Final Award as being contrary to Dayton and the BiH constitution. "The National Assembly considers that the Award ... is unfair and in full contradiction with ... Annex 2 of the General Framework for Peace, as well as ... the Constitution of Bosnia and Herzegovina ... due to which the National Assembly does not accept it", *Službeni Glasnik* (official gazette) RS no. 5, 9 March 1999. RS officials underline that this resolution was a political statement, not a legal position.

<sup>85</sup> For example, RS officials claim the RSNA March 2009 "Declaration on basis for talks on eventual changes of BiH Constitution and protection of RS Interests" is clear in Article V which states: "Brčko District of BiH is under the jurisdiction of institutions of BiH, whose territory is in joint ownership (condominium) of entities. Brčko District is a unit of local self-governance in line with the Final Arbitration Award about IEBL in the area of Brčko. The position of Brčko District and the relationship towards BiH institutions and entities can be regulated with amendments on BiH Constitution and a law on Brčko District".

<sup>86</sup> Crisis Group interview, Banja Luka, 8 November 2011.

<sup>87</sup> In the village of Gornja Maoča (approximately 1,200 inhabitants). Local and international agencies believe that this is a potential security risk, especially after the November 2011 attack on the U.S. embassy in Sarajevo since the attacker, Mevlid Jašarević, had links with the Gornja Maoča community. Several raids carried out there found significant caches of weapons, explosives, amateur radios and other military equipment.

<sup>88</sup> "Otvaranje Ureda Vlade RS obustavlja promet u Brčkom" ["Opening of the RS government office is blocking the traffic"], Fena news agency, 10 October 2011.

<sup>89</sup> RS is interchangeably accusing both OHR and PIC for moving of the goalposts, since over the past few years PIC became

their view, they are being asked to make the bulk of the changes and the more they give, the more is asked of them. Especially since electricity and citizenship have been resolved, for Radojičić:

There is no political interest within the international community, especially the U.S., to close Brčko supervision and arbitration and no amendments or technical conditions will close it down. That question does not depend on us anymore. It never depended on us in all the past years, we only lived in an illusion that the supervision will close if we fulfil certain conditions. For us the story about Brčko supervision is closed and we have nothing to do with it anymore.<sup>90</sup>

It did not help Serbian efforts when RS President Dodik and other officials repeatedly challenged the authority of the BiH Constitutional Court<sup>91</sup> – the very institution that is supposed to secure Brčko’s protection – in spring 2011.<sup>92</sup> U.S. officials use this to claim that the RS is threatening Brčko, even though there are few or no cases where RS authorities have directly interfered with the functioning of the district’s institutions in violation of the Final Award.

In March, Supervisor Moore tried to obtain from Dodik guarantees that the RS will respect its constitutional obligations towards Brčko.<sup>93</sup> According to both sides the meeting was constructive. But when Moore sent a non-letter<sup>94</sup> with a summary of the meeting’s conclusions, Dodik saw this as another list of conditions he was supposed to publicly endorse.<sup>95</sup> After local media got hold of the letter and reported on it, he felt obliged to quickly and strongly rebuff

in public what was seen as yet another OHR imposition.<sup>96</sup> The episode was probably a miscommunication between the two officials, but it pushed the two further apart. After this, the PIC reiterated the request for clarification and guarantees from the RS government in its 7 July 2011 communiqué,<sup>97</sup> this time focusing on how Brčko is defined in RS maps.

On the basis of the Final Award, the supervisor decided in 2006 that no inter-entity boundary lines pass through the district to ensure that maps reflect that Brčko belongs to neither entity.<sup>98</sup> Yet the map submitted by RS to NATO and EUFOR about IEBL delineation<sup>99</sup> as well as others used on RS websites, show the IEBL passing through Brčko, in effect cutting it between the two entities. Radojičić claims that this was not a political move by the RS but a misunderstanding of the award:

The RS government issued an order<sup>100</sup> to settle these concerns on 6 July 2011, one day before the last PIC, and Europeans used it but the Americans decided it was not enough. This is a never-ending story. Whatever we do is useless, they will find a new reason to keep the supervision open.<sup>101</sup>

RS government has issued additional regulation on 1 December 2011 confirming that IEBL is erased in the Brčko district.<sup>102</sup> The move was welcomed by Bosniak officials

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the final authority for decision over High Representative’s use of powers.

<sup>90</sup> Crisis Group interview, Igor Radojičić, Banja Luka, 8 November 2011.

<sup>91</sup> “Dodik ... added that [BiH] Constitutional Court has in the past made many decisions based on political motives. ‘That does not mean that we have to accept that’, Dodik said”. RS daily *Blic*, “Dodik: Inckov nalog za nas nema nikakvu važnost” [“Dodik: Inzko’s order has no value for us”], 5 January 2011 (online).

<sup>92</sup> OHR saw this as a potential direct threat to BiH and indirectly against the district. Crisis Group interviews, senior OHR and other international officials, Sarajevo, October-November 2011.

<sup>93</sup> “I think that this is arrogant and [this shows a] wish of foreigners to stay here as long as possible. Asking me to respect the constitution and the IEBL was very rude. I am a politician, so I must follow the constitution. Whether I promise this or not, reality will show if it is possible or not”, Dodik on RS television RTRS, 17 March 2011.

<sup>94</sup> According to a senior OHR official this letter was just a draft and was neither signed nor officially sent. Crisis Group interviews, Sarajevo, October-November 2011.

<sup>95</sup> Crisis Group interviews, senior RS officials, Banja Luka, October-November 2011.

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<sup>96</sup> Crisis Group interview, Igor Radojičić, Banja Luka, 8 November 2011.

<sup>97</sup> “The PIC Steering Board awaits the prospect of being informed soon of the recommendations of the Brčko Supervisor and the High Representative on closure of the Brčko Arbitral Tribunal [...] It took note with interest of the varying actions relating to Brčko District, including the Decree adopted on 6 July by the RS Government, concerning cartographic publications of the RS territory and looks forward to being promptly informed on its practical effects”, PIC Communiqué, OHR website, 7 July 2011.

<sup>98</sup> A 4 August 2006 supervisory order says that entity laws have no effect on the territory of the district; and that the IEBL has “no further legal significance within Brčko District of Bosnia-Herzegovina”, OHR website.

<sup>99</sup> Copy of the map provided to Crisis Group by OHR.

<sup>100</sup> RS government regulation from 6 July 2011 states that borders of RS, as well as Brčko district, are drawn in line with the Dayton peace accord, Final Arbitration for Brčko, as well as state and entity constitution and law, *Službeni glasnik RS* no. 51, 15 July 2011.

<sup>101</sup> Crisis Group interview, Igor Radojičić, Banja Luka, 8 November 2011.

<sup>102</sup> “RS obrisala granicu kroz Brčko district” [“RS has erased the border through Brčko District”], Banja Luka daily *Nezavisne Novine*, 3 December 2011 (online).

and criticised by some Serb opposition parties.<sup>103</sup> OHR issued no immediate reaction.

OHR officials reiterate that “all these little things separately may not look problematic but when put all together they raise concerns”.<sup>104</sup> They justify their reluctance to close supervision quoting RS official statements about state institutions.<sup>105</sup> But they have run out of clear conditions and it is unlikely that the RS would make any further concessions, as past ones have changed little. Few international observers believe that RS is planning to make any move against Brčko after supervision but some fear that if RS ever declares independence from Bosnia they will first seek to take control of the district. As the FBiH has been largely inactive, the RS will by default increase its economic and political influence in Brčko. “Without supervision, Brčko could quickly end up being effectively part of RS. But we should not blame RS for the fact that FBiH keeps ignoring the district”.<sup>106</sup> Any formal attack on Brčko institutions would cause the FBiH and the state to react, together with the PIC and the tribunal.

## B. FEDERATION OF BIH'S VIEW

The FBiH has been much less interested and active in Brčko than the RS. The former SDP mayor admits, “RS is much more present. They invest in culture and sports and Dodik has provided 2 million KM [€1.02 million] for infrastructure. FBiH is completely uninterested”.<sup>107</sup> Until recently “Most FBiH parties were thinking that it is enough to have the supervisor here and were relying on it remaining here forever”, said Ahmet Dervišević, head of the SDA branch in Brčko and a deputy in the District Assembly.<sup>108</sup>

Bosniaks and Croats are generally against ending the supervision. Svetozar Pudarić, vice president of the federation and senior SDP leader, believes that it is too early because once it ends the BiH state should take up its role but it is still too weak to do so.<sup>109</sup>

Brčko arbitration was an emergency solution and many people across BiH refuse or ignore solutions in which they themselves did not participate. We cannot bear responsibility for something we did not tailor ourselves, even if other tailored it for us because we were unable to agree.<sup>110</sup>

Such statements reflect growing frustration among mostly Bosniak and multi-ethnic parties, who believe that the international community cannot leave the country until it makes sure that the state is self-sustaining, its institutions functional and can resist any attempts to block decision-making.<sup>111</sup>

While many Croats in Brčko District prefer for the supervision to remain for the time being,<sup>112</sup> the leader of the strongest Croat party, HDZ, Dragan Čović, believes that supervision is not helping and could close. He also stresses that HDZ will get much more engaged in the developments in the district before and after the 2012 local election.<sup>113</sup>

Growing tensions between Bosniaks and Croats in the federation are felt in Brčko, where local Croat politicians are gradually taking more radical positions – often closer to the Serb than the Bosniak ones – and seeking an equal share of power with the other two communities.<sup>114</sup> Among the three ethnic groups, the Croats feel the least protected, few have returned and they rarely capture the attention of Mostar-based top Croat politicians. However this is likely to change soon; according to the government rotation rule applied in Brčko, the mayor after the 2012 local elections should be a Croat. As the SDP and HDZ are likely to com-

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<sup>103</sup> “Radojičić: Zatvaranje supervizije stvar politike” [“Radojičić: Closing of the supervision is political issue”], Banja Luka daily *Nezavisne Novine*, 4 December 2011 (online).

<sup>104</sup> Crisis Group interview, senior OHR official, Sarajevo, 28 October 2011.

<sup>105</sup> See footnote 91.

<sup>106</sup> Crisis Group interview, international official, Tuzla, 18 October 2011.

<sup>107</sup> Crisis Group interview, Mirsad Djapo, former Brčko Assembly speaker and former mayor from SDP, Brčko, 10 March 2010.

<sup>108</sup> Crisis Group interview, Brčko, 1 November 2011.

<sup>109</sup> This reflects a lingering dispute over the question of whether the state or entities have ultimate responsibility over Brčko. In this regard the Final Award explicitly puts Brčko under the

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“exclusive sovereignty” of BiH and outlines that both entities, although co-owners of Brčko, have no authority over it. This has been effectively reinforced by the 2009 constitutional amendment which places Brčko under the jurisdiction of BiH Constitutional Court. Yet aside from the court being responsible for resolving any Brčko-related disputes, the state has little other authority over the district.

<sup>110</sup> Crisis Group interview, Sarajevo, 9 November 2011.

<sup>111</sup> Those in favour of stronger BH state believe that state institutions should get powers that would substitute those of OHR, or Brčko supervisor, before the OHR or supervision closes. Others believe that this new centralisation is against the BH constitution as created in Dayton.

<sup>112</sup> Crisis Group interviews, representatives of smaller Croat parties and local communities in Brčko, October-November 2011.

<sup>113</sup> “The supervision did what it could. If we now have all these problems with the government and corruption in the district while the supervisor is still there, than why should we have it? We could just as well do without it”. Crisis Group interview, Dragan Čović, Mostar, 7 December 2011.

<sup>114</sup> Crisis Group interviews, Croat and Bosniak officials, Brčko, October-November 2011.

pete for this post, this will be a major test of the district's political maturity.<sup>115</sup>

If FBiH-based parties, SDA, SDP as well as Croat ones are serious about wanting to balance RS's presence, they should quickly become more active, rather than relying on keeping supervision in place for years to come. They are already years behind RS in establishing connections with people, businesses and local administration. Svetozar Pudarić has the right approach when he says that the FBiH government is also opening an office in Brčko, and preparing projects – such as a key north-south highway – that will show commitment to this region.

The BiH state, too, could play a role in the district, placing a government institution there, and directly supporting large-scale projects, such as the construction of the new gas pipeline or cleaning of the Sava river basin, which are located in the district but can provide benefits country wide. State institutions, especially the Directorate for European Integrations, should already start working to improve the capacity of Brčko administration to do its part in the EU accession process. However, most state institutions have been blocked and seriously weakened by political wrangling among the three ethno-political blocks over the past few years, and can hardly properly manage themselves, let offer help to the Brčko district. Furthermore, state institutions' work will be seriously jeopardised at the beginning of 2012, if the state budget for 2011 and 2012 is not adopted by the end of December 2011.

### C. INTERNATIONAL INDECISION

But the majority of top BiH political leaders, focused on state government formation, mostly ignore Brčko. In many ways "Brčko is not a problem of quarrels between different local but between different international positions".<sup>116</sup> The U.S. has traditionally played a leading role.

The Arbitral Tribunal's conditions seem to have long ago been satisfied, but supervision continues because of political and not technical concerns. Although the political situation in BiH and in Brčko is worse than in 2009,<sup>117</sup> when supervision almost ended, most EU member states wish to close it now. They believe that the conditions have been met; that prolonged international interventionism only

contributes to local leaders' indolence and corruption; and plan to use the 12-13 December PIC meeting to press for closure.<sup>118</sup> A European diplomat went so far as to tell Crisis Group:

We have to close the arbitration to create new dynamic. We must stop playing games. As long as arbitration remains, local leaders will not take responsibility and start new reforms. We have to close the arbitration even if it means that BiH falls apart. We don't want to be doctors of BiH forever. We do not want to be subsidising BiH forever.<sup>119</sup>

Other Bosnia-based European officials explain that their capitals are too busy with the euro crisis to revise their policies on BiH even as local political dynamics sour.<sup>120</sup>

The U.S., UK, Canada, the Netherlands and Turkey are the main parties who hesitate to close supervision. They are appalled by Brčko's rampant corruption and even more concerned with the RS's radical and separatist rhetoric country-wide. They worry that if RS pushes BiH dissolution further,<sup>121</sup> strategically located Brčko could be a key flashpoint that could see or lead to renewed violence.<sup>122</sup> They argue RS may challenge its obligations as spelled out in Dayton and the Final Award<sup>123</sup> and want clearer guarantees that it accepts the Final Award and Brčko's autonomy.<sup>124</sup> International officials say a RS president, government or assembly conclusion or declaration would be appropriate.<sup>125</sup> While these statements could help, as Crisis Group wrote in a report on the RS earlier this year, it sees little evidence that Banja Luka is planning to go for independence and will try to grab Brčko.<sup>126</sup> Even if this was to happen the supervisor would be unable to intervene.

<sup>115</sup> "After the 2012 local elections the HDZ should give the new district mayor. But we are well aware of the aspirations of Bosniak parties and SDP (to take that position), so we shall see". Crisis Group interview, Dragan Čović, Mostar, 7 December 2011.

<sup>116</sup> Crisis Group interview, Igor Radojičić, Banja Luka, 8 November 2011.

<sup>117</sup> Crisis Group interviews, various local and international officials, Brčko, Banja Luka, Sarajevo and Tuzla, October-November 2011.

<sup>118</sup> Crisis Group interviews, European ambassadors, Sarajevo, 19 October 2011, 9-10 November 2011.

<sup>119</sup> Crisis Group interview, European diplomat, Sarajevo, 19 October 2011.

<sup>120</sup> Crisis Group interview, European diplomat, Sarajevo, 10 November 2011.

<sup>121</sup> "Brčko is [a] critical factor in the case of the state dissolution. We must not leave any ambiguities. RS is leaving the option for the state dissolution open". Crisis Group interview, senior international official, Sarajevo, 28 October 2011.

<sup>122</sup> "Assessing the potential for renewed ethnic violence in Bosnia-Herzegovina", op. cit.

<sup>123</sup> Crisis Group interviews, U.S. and other international officials, September-November 2011.

<sup>124</sup> Crisis Group interview, U.S. official, Sarajevo, 10 October 2011.

<sup>125</sup> Crisis Group interviews, international officials, Sarajevo, October-November 2011.

<sup>126</sup> Crisis Group Report N°214, *Bosnia: What Does Republika Srpska Want?*, 6 Oct 2011.

Some U.S. officials acknowledge that the conditions set out in the Final Award have been met<sup>127</sup> and adding new ones has affected little. Senior U.S. and OHR officials also understand that currently supervision is not making things much better for Brčko – and maybe it is making them even worse.

A compromise may be in reach. Supervision could close but the tribunal would remain open as an “invisible security mechanism”.<sup>128</sup> While it exists, it can reopen supervision in case of dire need. Its authority to revise the Final Award in case of serious non-compliance is the international community’s most potent weapon against an all-out assault.<sup>129</sup> It is a much stronger deterrent than any penalty the supervisor – or the High Representative – could impose alone.

While the Final Award suggests that the tribunal’s jurisdiction ends with the supervisor’s there should be enough leeway in the text to allow the former to continue.<sup>130</sup> The head of Brčko Arbitral Tribunal, U.S. lawyer and diplomat Roberts B. Owen, told Crisis Group that in the light of reportedly growing tensions in BiH and Brčko District itself, he would hesitate to close the tribunal without being advised of interested parties’ positions on closure.<sup>131</sup> Owen could then amend the Final Award (as he already did in an Annex in August 1999) to allow closure of supervision but retain tribunal jurisdiction. International officials and representatives of international organisations also say that they are now actively considering the option of supervision closing first and the tribunal at a later stage.<sup>132</sup>

The U.S. and others resisting closure might become more flexible if convinced that the EU will become more active in Brčko. At least one widely respected analyst has called

for a greater EU security presence.<sup>133</sup> NATO’s last troops left Bosnia in 2004 handing over to EUFOR which now has 1,200 troops in the country, including a small group of liaison officers in Brčko. Force generation is a challenge and EUFOR worries that the figures will drop to below 1,000 in 2012.<sup>134</sup> But EU contributing states should take this relatively small commitment seriously, and ensure that EUFOR liaison officers at least remain in the district. Other recommendations, such as the establishment of a NATO training facility in Brčko, have not found the necessary political support.<sup>135</sup> The new EU Special Representative (EUSR) and Head of EU Delegation Peter Sorensen, together with his colleagues from Brussels and Sarajevo, should become directly involved in Brčko. They should open a small EC-EUSR office to eventually replace the existing OHR operation<sup>136</sup> and promote dialogue and reform with local counterparts. Some EU agencies, such as EU Police Mission (EUPM), have deep district knowledge and contacts, which should be utilised by the new office to deal with pre-accession (under the EC hat) and political (under the EUSR hat) issues.

In addition, as BiH starts moving closer to the EU membership, Brčko will be hard pressed to adopt the same reforms, laws and regulations as other state administrative units. European officials estimate that only 20 per cent of the EU *acquis* – the body of law that member states must integrate – applies to the state level, with the rest falling to the entities (and FBiH cantons). Most of this legislation will have to be adapted, passed and then implemented by a district administration that struggles with far more modest tasks.

In 2003 Crisis Group argued that if the supervisor was to go in 2005 or soon thereafter, “that could provide a salutary example of the reality of international disengagement while still leaving time for the High Representative to ensure that the state is in fact exercising its responsibilities towards an autonomous Brčko District”.<sup>137</sup> The same is true today but in addition the maintenance of the tribunal would be a useful test for a plan that is getting more and more international attention, for the reconfiguration of the

<sup>127</sup> Crisis Group interview, U.S. official, October 2011.

<sup>128</sup> Crisis Group interview, senior international official, Sarajevo, 28 November 2011.

<sup>129</sup> According to the Final Award, Article 13, “the Tribunal will retain authority, in the event of serious non-compliance by either entity, to modify this Final Award as necessary – eg, by placing part or all of the District within the exclusive control of the other entity”.

<sup>130</sup> The Final Award indicated at the expected sequence of events at the closure of the Brčko arbitration; once the supervisor would inform the tribunal that all conditions have been met, the tribunal would close itself while the PIC would then vote on the closure of the supervision. Yet many international officials interviewed by Crisis Group believe that the Final Award does not rule out change in the sequence, where the supervision would close first and then the tribunal at some later stage. Crisis Group interviews, European and American officials, Sarajevo and Brussels, October-December 2011.

<sup>131</sup> Crisis Group phone interview, Roberts B. Owen, 5 December 2011.

<sup>132</sup> Crisis Group interviews, European and American officials, Sarajevo and Brussels, October-December 2011.

<sup>133</sup> Daniel Serwer, “Here’s an idea for Bosnia”, 29 June 2011, [www.peacefare.net](http://www.peacefare.net).

<sup>134</sup> Crisis Group interview, senior official, EUFOR, Sarajevo, 2 December 2011.

<sup>135</sup> See Crisis Group Europe Report N°198, *Bosnia’s Incomplete Transition: Between Dayton and Europe*, 9 March 2009.

<sup>136</sup> Once large and powerful, the OHR office in Brčko has only one international and five to six local operational staff, and could close down within three months. Crisis Group interview, international official, Brčko, 1 November 2011.

<sup>137</sup> Crisis Group Report, *Bosnia’s Brčko*, op. cit., p. ii.

international presence, through the downsizing and relocation of the OHR outside Bosnia.<sup>138</sup>

## V. CONCLUSION

Brčko is facing an economic and political crisis but the way out is for its leadership, law enforcement and judiciary to begin prosecuting those who have taken advantage of the district's lack of regulations. The supervisor has no authority to impose indictments or arrests. His presence instead increases local decision makers' ability to evade responsibility and deflect blame.

The EU should take over some of the institution building reform and assistance which the supervisor and the OHR have done, and encourage more progress to help move Brčko and Bosnia towards EU candidacy. It should also open a small office in Brčko. The transition of the EUSR position from Valentin Inzko (who remains HR) to Peter Sorensen, which took place in September, could be repeated on a smaller scale in Brčko, where the OHR office could close with some of its staff – as well as other experienced local staff from other EU agencies – becoming the core of a new, smaller EU operation in the district.

The PIC should close the supervision but recommend the Arbitral Tribunal remain open until OHR itself closes. Closing supervision but retaining the tribunal would also neatly test a plan that is getting more and more international attention for retaining the High Representative's powers outside Bosnia after closing OHR.<sup>139</sup>

If Brčko faces a real external threat from the RS, if it begins to try to block the functioning of its institutions or usurp its authority, the international community should react quickly and firmly. The PIC should immediately refer the issue to the tribunal whose head can invite the parties to express their opinions on the crisis. As a last resort move, the tribunal could put Brčko under the Federation's authority.

One of the Final Award's strengths was the creation of a territory under Bosnian state sovereignty, but outside the reach of the rival entities. Bosnia's council of ministers should help reinforce governance in Brčko. It should locate at least one state agency on district territory, either

an existing agency or a new one. The FBiH government should also promptly open up its office in Brčko and undertake other measures to establish long-missing ties with the district. RS on the other side should realise that the lingering Brčko supervision is one of many consequences of RS leaders' rhetoric and attempts to weaken the state. Continuation of that tactic can further hurt RS' own interests – in Brčko and across BH – and should cease immediately. Instead of stressing what kind of Bosnia they do not want, RS should engage in negotiations with other leaders to find a concept that would satisfy the needs of all ethnic groups and residents in Bosnia.

Outsiders, whether in Sarajevo or abroad, cannot repair the district; they can only help its institutions do the necessary hard work. The gradual worsening of the situation in Brčko and the whole of BiH is evidence that international monitoring and management are only short-term fixes. Sooner or later the maladies return, until local institutions strengthen. Brčko can only prosper if all local leaders, as well as their party chiefs in Sarajevo, Mostar and Banja Luka, find common interest to clean their house, reinforce the rule of law and support district development for their mutual benefit. Without this, Brčko, like the rest of the country, will continue decaying.

**Sarajevo/Istanbul/Brussels, 8 December 2011**

<sup>138</sup> This idea emerged several years ago but is now getting greater traction among EU governments. According to this plan, the OHR would close but High Representative would remain, with his current mandate, but oversee developments in BiH from abroad. See Council Conclusions on Enlargement and Stabilisation and Association process, 5 December 2011, p. 10.

<sup>139</sup> Crisis Group interviews, Western officials and diplomats, 2010-2011.



## APPENDIX A

### MAP OF BOSNIA AND HERZEGOVINA



Based on UN map no. 3729 Rev. 6, March 2007.



## APPENDIX B

### MAP OF BRCKO DISTRICT



*Reproduced with permission from the Office of the High Representative, OHR.*

## APPENDIX C

### ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is chaired by former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since July 2009 has been Louise Arbour, former UN High Commissioner for Human Rights and Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

Crisis Group's international headquarters are in Brussels, with major advocacy offices in Washington DC (where it is based as a legal entity) and New York, a smaller one in London and liaison presences in Moscow and Beijing. The organisation currently operates nine regional offices (in Bishkek, Bogotá, Dakar, Islamabad, Istanbul, Jakarta, Nairobi, Pristina and Tbilisi) and has local field representation in fourteen additional locations (Baku, Bangkok, Beirut, Bujumbura, Damascus, Dili, Jerusalem, Kabul, Kathmandu, Kinshasa, Port-au-Prince, Pretoria, Sarajevo and Seoul). Crisis Group currently covers some 60 areas of actual or potential conflict across four continents. In Africa, this includes Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Nigeria, Rwanda, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Bangladesh, Burma/Myanmar, Indonesia, Kashmir, Kazakhstan, Kyrgyz-

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**December 2011**

## APPENDIX D

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