

Arbitration for the Brčko Area in Light of the Dayton Accords

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Introduction

A crisis regarding the solution of certain problems in the mutual political relations of the constituent republics of former Yugoslavia was already beginning to surface in the eighties. Tensions peaked in 1991 and caused the final collapse of the complex Yugoslav community. Slovenia's national program was announced in 1987, and the national question represented a dominant theme as far back as the seventies. The Democratic Opposition of Slovenia (DEMOS) was institutionalized on 7 December 1989 as a coalition of six anticommunist parties: the Christian-Democratic Party, the Farmer's Union, the Democratic Union, the Social-Democratic Union, the Greens, and the Union of Businessmen. In the elections of April 1990, this coalition won a majority of 54.8% and formed a moderate right-wing government, and Milan Kučan, the president of the Communist Party, was elected president. Two left-wing parties, the Party of Democratic Changes (the former Communist Party) and the Liberal-Democratic Party, having originated from the Communist Youth Organization, won 31.8% of the combined votes in this election. The programs of these two seemingly opposed coalitions were actually identical regarding the national question and Slovene secession from the former Yugoslavia.¹

In Croatia, the founding convention of the Croatian Democratic Union (HDZ) was held in Zagreb on 28 February 1989 as "an assemblage of democratically determined Croats," and Franjo Tuđman was elected president. HDZ became a political party at its first congress, one year after its initial assembly. Its primary goal was to establish the Independent State of Croatia within its historical borders—all the way to Zemun. One of the program goals of the party was the creation of a spiritual and cultural union between Croatia and Bosnia-Herzegovina, which were predestined to be together, in the words of Tuđman. In the April/May elections of 1990, HDZ achieved a decisive victory; in December of the same year, Tuđman was elected president of the

¹ Smilja Avramov, *Postherojski rat Zapada protiv Jugoslavije* (Veternik, LDI, 1997), 132.

Republic of Croatia. Immediately following this development, more than 100,000 Serbs were dismissed from their jobs. Threats and demands for expulsion were signs for alarm and provided the essential motivation behind the mobilization of Serbs. Consequently, the Serbian Democratic Party, clearly in favor of a democratic federation, was formed in Knin on 17 February 1990. The party elected Dr. Jovan Rašković as president.

In Macedonia, the Democratic Party of National Revival was formed, which represented the reincarnation of the Internal Macedonian Revolutionary Organization (VMRO), known as an ultra-nationalistic and terrorist organization. In the elections that were held on 11 and 25 November 1990, nationalists won 37 of the 120 seats available in the Macedonian Parliament. The Communists, now renamed the Social-Democratic League, won 29 seats, and the Albanian Party of Democratic Prosperity took 21 seats.²

Three parties were formed in Bosnia-Herzegovina. First, on 26 May 1990, the Muslims founded the Party of Democratic Action (SDA) and elected Alija Izetbegović as president. He had already become a well-known public figure through his *Islamic Declaration*, published much earlier, in 1970. The basic principles of his declaration are:

1. The unity of politics and religion.
2. The incompatibility of the Islamic and non-Islamic system.

This party possessed enormous financial resources, originating from various Islamic countries, and its staff was educated in Islamic centers. The Serbs in Bosnia-Herzegovina and Croatia were all in the same predicament: both groups were in danger of being transformed from a state-founding nation, recognized and protected by their own constitutions, to a national minority. Their status was degraded from that of an entity that constituted an essential and sanctioned part of the state to a national minority. On 12 July 1990 the Serbian Democratic Party of Bosnia-Herzegovina was founded, and Dr. Radovan Karadžić was elected as its first president. The foremost goal of this party was a democratic Yugoslavia, organized as a modern state. After the secession of the Muslim and Croatian communities and the recognition of Bosnia-Herzegovina as an independent state, the Serbs determined themselves to be in favor of their own state, and Dr. Radovan Karadžić was elected for the president.

On 6 September 1990, the Croatian Democratic Union (HDZ) was founded in Bosnia-Herzegovina. Its principal goal was the creation of a separate national entity of Croatian people in Bosnia-Herzegovina. As in Slovenia

² Avramov, 134.

and Croatia, the nationalistic parties won the elections, held in November 1990, for the republic Parliament in Bosnia-Herzegovina. The Muslims won 86 seats in the Parliament, the Serbs 72 seats, and the Croats 44 seats. According to the Constitution of the Republic of Bosnia-Herzegovina, then in effect, the consensus of all three national communities was needed for every legislative decision. However, that principle was soon violated by the creation of the Muslim-Croatian Coalition, a union directed against the Serbs, that would later bring catastrophic consequences. The first serious conflict was provoked on 27 February 1991, when the Muslim-Croatian Coalition tried to pass a resolution in which the republic laws would take precedence over federal laws, as had already been done in Slovenia and Croatia. The Serbs considered this to be the first step toward secession. This effectively signaled a grave crisis, that would, later on, turn into a civil war with far-reaching consequences for this former Yugoslav republic. A parallel progression of events would take place in the Republic of Croatia. In Slovenia, more than 86% of voters opted for independence in the referendum held on 23 December 1990. In Croatia, 94% of the citizens voted for independence and the secession of Croatia in the referendum of 19 May 1990. Following this, the Croatian Parliament passed a constitutional resolution proclaiming the self-sufficiency and sovereignty of this former Yugoslav republic. The referendum in Macedonia was held on 8 September 1991 and 90% of the balloters declared themselves in favor of sovereignty for the state of Macedonia, which was proclaimed on 15 September 1991. Serbs did not participate in this referendum.

The Parliament of the Republic of Bosnia-Herzegovina passed two resolutions on 15 October 1991. The first proclaimed the sovereignty of Bosnia-Herzegovina, and the second proclaimed its withdrawal from the Yugoslav Federation. The Serbian representatives in the Parliament rejected both resolutions and expressed the desire to remain a part of Yugoslavia. The Serbian people, as a constitutionally sanctioned part of the Federation of Bosnia-Herzegovina, confirmed the position of their representatives in the referendum held on 9 and 10 November 1991, unanimously voting against seceding and in favor of remaining in Yugoslavia. This was a critical moment in the continuing development of the situation in Bosnia-Herzegovina. The constitutional system then in effect, which was based on the consensus of the three nations, did not allow the possibility of reaching a decision by outvoting. Despite this fact, on 20 December 1991 the Muslim-Croatian Coalition demanded the recognition of its independence, thereby ignoring constitutional protocol. The Serbs denied the legality of this demand, because acceding to such a demand would raze and disgrace the political principles on which the Federation was built. The European Community and its advisory organ, the

so-called Badinter's Commission, suggested that a referendum be held in Bosnia-Herzegovina. On 29 February and 1 March 1992, the Muslims and Croats again voted for secession in the referendum. The West accepted this as the basis for the formation of the new state.³

Considering their tragic experience during the Ottoman occupation and the genocide committed against them in the Independent State of Croatia during World War II, this desertion of the joint state not only negated the political goals that the Serbs had struggled for throughout the twentieth century, but also cast a doubt over the possibility of their physical survival in this territory. Thus, following the violation of the Constitution of Bosnia-Herzegovina by the Muslim-Croatian Coalition, the Parliament of the Serbian People in Bosnia-Herzegovina was formed on 24 October 1991. On the same day, the "Resolution of the Serbian People to Remain within the Joint State of Yugoslavia" was proclaimed.

Following the path determined by the plebiscite that was held on 9 and 10 November 1991, the Parliament of the Serbian People handed down a decision on 21 December of the same year that would become the basis for the formation of the Serbian Republic of Bosnia-Herzegovina. The declaration of Srpska Republika in Bosnia-Herzegovina was accepted by acclamation on 9 January 1992, in Sarajevo—this date later became the Day of Statehood for the Republika Srpska. However, this declaration was accepted conditionally: according to Article X, if the Croatian-Muslim faction withdrew their demand for recognition before 15 January 1992, the Declaration of Sovereignty of the Republika Srpska would be withdrawn as well.

Whereas such a withdrawal did not occur, the Constitution of the Republika Srpska was adopted on 28 February 1992, as outlined in the provisions of the Declaration.

Consequently, the disintegration of the complex Yugoslav state caused not only one of the biggest crises in the world during this century, but it also introduced a bloody civil war with tragic consequences. Tens of thousands of men, women, and children were killed in this bloody civil war, and hundreds of thousands were forced to relinquish the hearths their families had held for centuries. The Republika Srpska Krajina was erased from the face of the earth by the unheard-of crimes committed against the civilian population during the notorious Croatian operation "Storm." Previously, Serbs represented almost one third of the population in Croatia. Now, barely 1% of these Serbs are left, without any hope that their human rights and freedoms are guaranteed to measure up to the world and European standards. Furthermore, about half a million people have been forcibly expelled from the lands of the current

³ Avramov, 149.

Federation of Bosnia-Herzegovina. Formerly, 160,000 Serbs lived in Sarajevo, and today, barely 5,000 of them are left. Areas that had been almost exclusively populated by Serbs throughout history, like Grahovo, Glamoč, Drvar, Petrovac, and other towns, have been “ethnically cleansed.” Unfortunately, the international community required a considerable amount of time to fathom the true nature of these conflicts. For a long period of time, the Serbian people were accused of perpetrating the aggression in these areas, but, in the end, the Security Council of the United Nations characterized all of these conflicts as a civil war.

The Dayton Accords

A realignment of the positions of the opposing sides in the lands of former Yugoslav Republic Bosnia-Herzegovina was brought about by the NATO bombing of the Republika Srpska and by the inclusion of regular Croatian army units into the war during the period between 30 August and 13 September 1995. Preliminary conferences took place in Geneva on 8 September and in New York on 26 September, during which the “agreed basic principles” regarding the resolution of the four-year-old crisis were outlined. However, the longest negotiations on the cessation of the war and on the settlement of the crisis were held at the Wright-Patterson Air Base in Dayton, Ohio, in the United States, 1–21 November 1995. The various provisions were accorded in the General Framework Agreement for Peace in Bosnia-Herzegovina on that occasion, and the document was definitively accepted and signed in Paris on 14 December 1995. The official title of this agreement is “The General Framework Agreement for Peace in Bosnia-Herzegovina,” and it has been valid since the day it was signed, on 14 December 1995. It consists of two parts. The first part is regarding the “Agreement on the Military Aspects of the Peace Settlement,” which regulates the relationship between NATO and the three opposing sides: Bosnia-Herzegovina, Croatia, and Yugoslavia. Relating to regional stabilization and the so-called civil agreements, the second part of this agreement is comprised of eleven annexes that regulate the following areas:

- Regional Stabilization
- Inter-Entity Boundary Lines
- Elections
- Constitution
- Arbitration
- Human Rights
- Refugees and Displaced Persons

Commission for the Preservation of National Monuments
Establishment of Bosnia-Herzegovina Public Corporations
Civil Implementation of the Peace Settlement
International Police Task Force

The most important achievement of this agreement is that the bloody civil war was stopped and peace was brought to the lands of Bosnia-Herzegovina. This former Yugoslav republic was divided into two entirely equal Entities: according to the articles of this agreement, the Republika Srpska came to possess 49% of the territory, and the Federation of Bosnia-Herzegovina 51%.⁴

In the General Framework Agreement, Annex 4, which bears the title “The Constitution of Bosnia-Herzegovina,” regulates the responsibilities of and relations between the institutions of Bosnia-Herzegovina and the Entities. According to the articles of the Constitution, the agencies and institutions of Bosnia-Herzegovina have following responsibilities:

- a) Foreign policy
- b) Foreign trade policy
- c) Customs policy
- d) Monetary policy as provided in Article VII
- e) Finances of the institutions and for the international obligations of Bosnia-Herzegovina
- f) Immigration, refuge, and asylum policy and regulation.
- g) International and inter-Entity criminal law enforcement, including relations with Interpol
- h) Establishment and operation of common and international communication facilities
- i) Regulation of inter-Entity transportation
- j) Air traffic control

All governmental functions and authorities not explicitly awarded to the institutions of Bosnia-Herzegovina belong to the Entities. Thus, the following governmental functions are within the jurisdiction of the Entities: the military, the police, education, information services, culture, sports, etc.

⁴ The Federation of Bosnia-Herzegovina was founded by the Washington Agreement on 1 March 1994.

Arbitration for the Brčko Area

Annex 2 of the General Framework Agreement regarding the establishment of peace in Bosnia-Herzegovina is entitled “Agreement on Inter-Entity Boundary Line and Related Issues (With Appendix).” This agreement defines the border between the Federation of Bosnia-Herzegovina and the Republika Srpska as the border between the Entities. Furthermore, this border exists as it is defined on the map in the Appendix. The parties may adjust the border between the Entities only by mutual agreement, but they are to inform the IFOR Commander before any agreed adjustment is accomplished.

Article V of Annex 2, which bears the title “Arbitration for the Brčko Area,” provides the following:

1. The Parties agree to binding arbitration of the disputed portion of the Inter-Entity Boundary Line in the Brčko area indicated on the map attached at the Appendix.
2. No later than six months after the entry into force of this Agreement, the Federation shall appoint one arbitrator, and the Republika Srpska shall appoint one arbitrator. A third arbitrator shall be selected by agreement of the Parties’ appointees within thirty days thereafter. If they do not agree, the third arbitrator shall be appointed by the President of the International Court of Justice. The third arbitrator shall serve as a presiding officer of the arbitral tribunal.
3. Unless otherwise agreed by the Parties, the proceedings shall be conducted in accordance with the UNCITRAL The arbitrators shall apply relevant legal and equitable principles.
4. Unless otherwise agreed, the area indicated in paragraph 1 above shall continue to be administered as currently.
5. The arbitrators shall issue their decision no later than one year from the entry into force of the Agreement. This decision shall be final and binding, and the Parties shall implement it without delay.

Article VII of Annex 2 of the Accords states that “The Appendix shall constitute an integral part of this Agreement.”⁵

On 14 June 1996 the National Parliament of the Republika Srpska appointed Dr. Vitomir Popović as its representative in the arbitration, thereby

⁵ See Annex 2 of the General Framework Agreement in Bosnia-Herzegovina. See “Agreement on Inter-Entity Boundary Line and Related Issues,” in *Dayton–Paris Documents*, ed. Vitomir Popović and Vladimir Lukić (Banja Luka, Institut za međunarodno pravo i međunarodnu poslovnu saradnju, 1997), 222–25.

fulfilling the obligations that had been assumed under the agreement. The Federation of Bosnia-Herzegovina named Prof. Dr. Ćazim Sadiković as its representative. However, at a subsequent meeting held in Sarajevo on 11 July 1996 the two arbiters were not able to agree on the selection of the third arbitrator, who would represent the international community during the negotiations. Before the proposal of the selection of a third arbitrator was submitted, the representative of the Republika Srpska was offered a proposal that was entitled "Agreement on the Selection of the Third Arbiter for the Arbitration of the Brčko Area." The proposal of this agreement was not accepted, because the "selection of the third representative" was not its only goal; in fact, there was an addendum concerning the fate of the Brčko area. The representatives of the Republika Srpska certainly did not object to the nominated third arbiter, who was an individual of the highest moral and professional quality. Rather, the representatives of the Republika Srpska strongly opposed any attempt to bring the city of Brčko into dispute, as Brčko had already been included, in its entirety, within the territory of the Republika Srpska with the ratification of the Dayton Accords. The delegation from the Republika Srpska had insisted that maps be presented, in which, according to Article V.1, the subject of dispute was defined as **a portion of the Inter-Entity boundary line in the Brčko area indicated on the map attached at the Appendix**. Therefore, there is no dilemma; the subject of the aforementioned dispute could not be the **Brčko area**, let alone the **city** of Brčko itself. The subject of dispute could only be the **portion of the borderline** in that area that is defined **on the map attached at the Appendix**. Mr. Carl Bilt, then the High Representative for Bosnia-Herzegovina, stated that the maps to which the Agreement refers do not exist and that he notified both Butros Gali, Secretary General of the UN, and the Security Council of this fact in the beginning of April 1996. This implied that either a new consensus would be reached regarding the definition of the subject of dispute, or that the situation would be otherwise adjusted and resolved, resulting in the fulfillment of the Agreement and the presentation of the maps. As these maps were the basis for the process of defining the disputed area, they were essential to the conclusion of the arbitral contract. The attainment of an agreement between the Entities regarding the length and width of the disputed boundary line, that is, the total disputed land in the Brčko area, was absolutely necessary to the arbitral process.

In view of the aforementioned reasons, the third arbiter was not selected, and, on 15 July 1996 the International Court of Justice in The Hague appointed the American lawyer, Robert Owen, as the third arbiter and moderator of the arbitral tribunal.

Until September 1996, the official position of the National Parliament and Government of Republika Srpska was that the Republika Srpska would not

participate in the arbitral process until the maps were either presented or all parties had redefined the subject of dispute in another way in the General Framework Agreement. These maps were of critical importance to the Republika Srpska, as they illustrated the definition of the subject of dispute discussed in Articles V.1 and VII of the Accords. In the meantime, before entering into the arbitration process itself, panels of experts on law, economics, geodesy, geography, demography, history, and military science were mustered. The members of the panels worked on preliminary material and drafted articles for the forthcoming arbitration. These panels comprised the leading experts in their respective fields from the Republika Srpska, FR Yugoslavia, and abroad. The presiding arbiter of the tribunal informed the Republika Srpska that the deadline for an arbitral decision would be extended, since a decision could not be reached before the original envisioned deadline of 14 December 1996. The deadline was extended for two months, to 15 February 1997. The first session of the arbitral tribunal in which the parties actively engaged in the arbitral process itself was held in Rome, on 7–17 January 1997. During the course of this first session, seventeen witnesses were questioned, nine of whom were from the Republika Srpska and eight of whom were from the Federation of Bosnia-Herzegovina. The American law office of Reed, Smith, and Shaw from Washington represented the Republika Srpska, with Mr. Nikola Kostić's well-respected law office, based in Milwaukee, Wisconsin, acting as co-counsel. The American law office Barnes and Thornburg, out of Indianapolis, represented the Federation of Bosnia-Herzegovina.

The Federation began with the presumptions that the "Disavowal Doctrine" should be applied to the crimes committed during wartime in Brčko, and that Brčko represents the Federation's only northern exit-corridor. The Disavowal Doctrine is guided by the principle that everything taken by force must be returned.

The Republika Srpska asserted that the Dayton Accords ratified the control of the Republika Srpska over Brčko and verified the concept of continuity of territory. Furthermore, the Accords recognized the sovereignty of the Republika Srpska over 49% of the total territory of Bosnia-Herzegovina. Considering that the Republika Srpska is lacking 0.5% of its rightful territory, the Inter-Entity boundary line should only be moved to the south to increase the territory of Republika Srpska. Brčko plays an irreplaceable role in the regional and economic development of the Republika Srpska, and the corridor represents a key factor in the economic integration of the eastern and western halves of the Entity. Almost 65% of the production capacity is situated in the western portion of the Entity, and more than 60% of the population lives in the western portion of the Entity, but the majority of the raw materials and

natural resources (energy sources, mining operations, and lumber) is situated in the eastern portion of the Republika Srpska. The Brčko area must remain under the control of the Republika Srpska, so that the trade routes connecting the two parts of the Republika Srpska and the Federal Republic of Yugoslavia would be secure. It is only possible to adjust the boundary line by mutual consent. Namely, Article V.4 states that “unless otherwise agreed, the area indicated in paragraph 1 shall continue to be administered as currently.” The Republika Srpska has long contended that the repatriation of refugees, freedom of movement, and use of the Brčko port must be solved in harmony with the Dayton Accords. The issues surrounding the Brčko corridor should be resolved in the same manner that all other disputes in Bosnia-Herzegovina have been settled. The second session of the arbitral tribunal took place in Washington, on 4–7 February 1997, and a particular proposition was discussed. The presiding arbiter proposed that the final decision be based on the presumptions that “Brčko should be a separate Entity that would be in the territory of the Republika Srpska formally and legally, but under the control and jurisdiction of the central government of Bosnia-Herzegovina... Demilitarization must be carried out in this area and all three ethnic groups would combine resources to create a special police force for the corridor area. This special force would be regulated and controlled by an international police force for a period of three years... Under the patronage of the international community, a multiethnic government should be formed in Brčko...” The arbiter of the Federation of Bosnia-Herzegovina accepted this proposition. The arbiter of the Republika Srpska did not accept this proposal, because he believed that the proposition was in direct opposition to the provisions of the boundary agreement and related questions, the principles of the Constitution of Bosnia-Herzegovina, and the premises of the Constitution of the Republika Srpska. He quoted numerous passages that validate the presumption that the arbitral decision must be dictated by the Dayton Accords; by the terms that had been adopted earlier at the conferences in Geneva (8 September 1995) and New York (26 September 1995); and by the arbitral contract and other well-established rules of international justice and arbitral practice. The arbiter for the Republika Srpska also proposed adequate solutions, more in line with the Dayton Accords, which addressed the repatriation of refugees, freedom of movement, and the use of the Brčko port. Along with these proposals, the arbiter for the Republika Srpska had also offered thoroughly sufficient assurances of logistical feasibility and guaranties that the proposed solutions would be effectuated.

One more session of the arbitral tribunal was held in Washington on 12 February 1997, and a new proposal was examined. Most of the premises presented by the Republika Srpska at the previous session had been retained in

this new proposal. The arbiter of the Federation of Bosnia-Herzegovina was dissatisfied with the proposal, and he abandoned the arbitral session. The arbiter of the Republika Srpska did not sign the proposal for the following reasons:

- An arbitral decision cannot be conditional, as it was stated; rather, it must be “**final and binding**,” in accordance with Article V.5 of the Accords.
- Neither the presiding arbiter, nor the arbitral council, held the authority to extend the deadline for the final decision of the arbitration process by one year. That is an **exclusive right of the Entities**. The arbitration process ended the very moment that the arbitral decision was handed down.
- Considering that an alternate course of action was not “otherwise agreed,” the presiding arbiter could only ascertain the factual condition of the matter in accordance with Article V.4 of the Dayton Accords.
- It is not within the authority of the presiding arbiter **to decide** the merits of the dispute unilaterally, regardless of the letters from Slobodan Milošević and Alija Izetbegović. According to the UNCITRAL rules, only a majority of the members of the arbitral tribunal can finalize a decision, i.e. two of the three arbiters. In this particular case, two of arbiters did not vote for the proposal.
- Republika Srpska opposed Slobodan Milošević’s letter as well. During the negotiations of the General Framework Agreement, Slobodan Milošević was authorized by the Republika Srpska to cast a decisive vote on critical issues only if dissension within the united FR Yugoslavia-Republika Srpska delegation prevented its internal concurrence. Slobodan Milošević’s authority ended with the completion of the negotiations in Dayton and with the ratification of the General Framework Agreement and its eleven annexes in Paris, in December 1995. After this time, FR Yugoslavia became only a legal guarantor, offering assurance that the Republika Srpska would fulfill its obligations. According to the Constitution and laws of the Republika Srpska, only the Prime Minister and the Minister of Foreign Affairs are authorized to represent the Republika Srpska. The latter is to represent Republika Srpska in those international negotiations that fall within the responsibility of the Republika Srpska. Alija Izetbegović concluded a similar agreement that allowed Robert Owen, as the presiding arbiter of the tribunal, to reach a unilateral decision. Alija Izetbegović does not have any official function within the Federation and is not authorized to represent the Federation of Bosnia-Herzegovina, which is it-

self recognized in the arbitral contract as one of the participants in the arbitration. Therefore, his agreement does not have any legal validity.

- The legal nature of Slobodan Milošević's letter is also contested; this letter cannot have legal validity within the framework of the arbitral agreement. Namely, the additional authority that may be given to the presiding arbiter should have been addressed in the original arbitral contract; that is, in the annex in the existing agreement. It is widely accepted that the arbitral contract, or any other annex of the General Framework Agreement, which carries the weight of an international contract, can be changed only in a manner that had been predefined as legitimate protocol in the Dayton Accords.
- Republika Srpska raised objections to the explanations of the rationale behind the decision regarding the causes of the war in the areas of former Bosnia-Herzegovina and Brčko. The rationale stating that the Serbs began the war could not be accepted as true. It is generally understood that the civil war came to Bosnia-Herzegovina as a development stemming from the secession of Slovenia and Croatia from the Yugoslav community. Moreover, the tribunal was neither authorized to deal with the questions surrounding the causes of the war in this area, nor was any evidence presented in support of such rationale.⁶

Despite all of this, the presiding arbiter announced his decision in Rome on 14 February 1997. The decision expressed "concern over non-compliance with the provisions in the Dayton Accords pertaining to the Brčko area, specifically with regard to freedom of movement and the return of the former inhabitants of Brčko to their homes in Brčko. The Brčko area is currently under the control of the Republika Srpska. As a result of the high tensions caused by non-compliance, there is obvious need for the introduction of program to implement the Dayton Accords in this area." Special jurisdiction was issued to a supervisor, with the goal of completing the implementation of the Dayton Accords in the Brčko area for the duration of at least one year. The other objectives of the supervisor's program included the following: recruiting local democratic institutions; coordinating SFOR and IPTF; controlling freedom of movement; repatriating refugees and displaced persons; rehabilitating the port on the Sava River; promoting the local market and international economic development; and initializing negotiations with Republic of

⁶ Disaccord letter written by the arbiter of the Republika Srpska, Dr. Vitomir Popović, to the presidential arbiter Robert Owen, 4 March 1997. See *Brčko-makaze nad pupčanikom* (Belgrade, Institut za geopolitičke studije, 1997), 89–96.

Croatia regarding the opening of border crossing points between Bosnia-Herzegovina and Croatia in the Brčko area.

The subsequent process anticipated that claims for a new arbitral process would be at hand, and that a new date would be set for the final tribunal decision. New guidelines were issued regarding the schedule of the arbitration: claims for a new arbitral process had to be submitted between 1 December 1997 and 15 January 1998, and the concluding tribunal decision was due before 15 March 1998.

At a conference held on 7 March 1997, the American diplomat and ambassador, Robert Farand, was elected as supervisor. This position was responsible for overseeing the implementation of the arbitral decision.

The arbitral decision had been carried out over the course of the whole year in accordance with the implementation program, but the representatives of the Federation of Bosnia-Herzegovina submitted a new claim for arbitration.

The claim from the Federation of Bosnia-Herzegovina stated that the Republika Srpska had not fully complied with the arbitral decision and its predetermined program of implementation. Therefore, the argument continued, a new decision should be made that would take Brčko out of the jurisdiction of the Republika Srpska. The Federation retained its demands, first put forth 5–10 February 1998, holding that Brčko should be a separate entity under the jurisdiction of the central government of Bosnia-Herzegovina. In its claim, the Republika Srpska stated that it had fulfilled its obligations completely and in the manner prescribed by the arbitral decision and dictations of the supervisor. The Republika Srpska contended that a final decision should be returned in which Brčko would remain within the territory of Republika Srpska. During the session, considerable evidence was submitted and many witnesses were examined, including representatives of the international community. These representatives confirmed that a relatively large number of refugees had returned to Brčko, in comparison with other areas in the Federation and the Republika Srpska. They further testified that complete freedom of movement, both north-south and east-west, had been granted and that the local election results had been implemented wholly. On the basis of these elections, multiethnic institutions had been formed in the spheres of jurisprudence, law enforcement, prosecution, governmental administration, etc. It is particularly important that Supervisor Farand supported these assertions.

Justifiably, the Republika Srpska expected the arbitral tribunal to make a final and binding decision. However, the presiding arbiter decided, without the consent of the other two arbiters, to postpone the final decision for another year.

This period is characterized by the fact that the Republika Srpska consistently executed all of the supervisor's orders, even those that deviated from or were in opposition to the arbitral decision. Compliance was complete and unfettered because the Brčko area holds an exceptional national and state significance for the future and survival of the Republika Srpska.

In light of the aforementioned reasons, the Republika Srpska expects that the previous decision, published on 14 February 1997 in Rome, will become final and obligatory by the end of this year or the beginning of the next year. Thus will Brčko definitively remain a part of territory of the Republika Srpska.

Any other decision would not only be in opposition to the articles of the General Framework Agreement regarding the establishment of peace in Bosnia-Herzegovina, it would also represent a violation of the Agreement. Such a development could produce unforeseen consequences regarding the further implementation of the Dayton Accords and endanger the peace in these lands.

*Washington D.C., 18–20 September 1998**

Translated from Serbian by Sarah O'Keeffe

* *Editor's Note.* On 5 March 1999, in accordance with the final ruling in the arbitration on Brčko, the city and the surrounding area were removed from the control of the Serbian entity and placed in the hands of an independent District Government under the exclusive sovereignty of Bosnia-Herzegovina.