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Transitional administrations in former Yugoslavia: A repetition of failures or a necessary learning process towards a universal peace-building tool after ethno-political war?

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Transitional Administrations in former Yugoslavia:

A repetition of failures or a necessary learning process towards a universal peace-building tool after ethno-political war?

Sarah Reichel

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Arbeitsgruppe: Internationale Politik

Leiter: Prof. Dr. Wolf-Dieter Eberwein

Tel: (030) 25 491 564

Fax: (030 25 491 561

e-mail: eberwein@medea.wz-berlin.de

Internet: http://www.wz-berlin.de

Wissenschaftszentrum Berlin für Sozialforschung

D - 10785 Berlin

Reichpietschufer 50

Zusammenfassung

Sind internationale Übergangsverwaltungen ein geeignetes und damit universell einsetzbares Instrument zur Friedenskonsolidierung in ethno-politischen Konflikten? Zur Beantwortung dieser Frage werden Bedingungen, Struktur, Auftrag und Ressourcen sowie das Ergebnis dreier Übergangsverwaltungen in Ex-Jugoslawien vergleichend geprüft. Die Untersuchung zeigt, dass die sukzessive von der Europäischen Union, den Vereinten Nationen und dem Büro des Hohen Repräsentanten für Bosnien eingerichteten Verwaltungen unterschiedliche Voraussetzungen mitbringen, um ihre Mission zum Erfolg zu führen, und demzufolge zu unterschiedlichen Ergebnissen kommen. Es wird deutlich, dass eine Reihe von Bedingungen erfüllt sein muss, damit die eingesetzte Verwaltung nicht zwischen den lokalen Parteien aufgerieben oder von ihnen zu ihrem Vorteil ausgenutzt wird. Zu den notwendigen Voraussetzungen für eine erfolgreiche Verwaltung zählen die politische Kohärenz innerhalb der verantwortlichen internationalen Organisation, Konsistenz im gesamten Aktionsfeld der Verwaltung sowie ihre Fähigkeit, Macht auszuüben. Weitere Ergebnisse der Untersuchung sind, dass, erstens, die Verbesserung der Lebensverhältnisse nicht zwangsläufig neues Vertrauen zwischen den ehemaligen Kriegsparteien entstehen läßt und damit zur Konfliktösung beiträgt, und zweitens, dass die Parteien weder durch materielle Anreize noch durch diplomatischen Druck zur Zusammenarbeit bewegt werden können, wenn ihre Interessen im Widerstreit zum Handlungsauftrag der Verwaltung stehen.

Abstract

Are transitional administrations a suitable and universally applicable peace-building tool after ethno-political war? In order to answer this question, this study compares the conditions, structures, mandates, resources and outcomes of three transitional administrations in former Yugoslavia. My analysis will show that the administrations, which were created in short succession by the European Union, the United Nations and the High Representative for Bosnia, brought along various assumptions as to how to fulfill their mission and, as a result, achieve different results. The lesson emerges that a host of preconditions must be in place to prevent the administration from becoming a mere plaything of the local parties or being exploited for practical advantage. These preconditions for a successful operation include political coherence within the responsible international organisation, consistency in the entire administrative field of action, as well as the capability to use the power at its disposal. Further insights emerge, first, that improvements in the standard of living do not necessarily lead to the reestablishment of trust between formerly warring parties nor contribute to permanent conflict resolution; and second, that the parties cannot be forced to cooperate in reward for material benefits or through diplomatic pressure, when their own interests run contrary to the administration's mandate.

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List of Abbreviations

ARSK	Army of the Republic of Serb Krajina
BH	Republic of Bosnia and Herzegovina
BSA	Bosnian Serb Army
CFSP	EU Common Foreign and Security Policy
DEM	Deutsche Mark
DP	Displaced Person
EC	European Community
ECHO	European Commission Humanitarian Office
ECMM	European Community Monitoring Mission
EU	European Union
EUAM	European Union Administration of Mostar
FRY	Federal Republic of Yugoslavia
GNP	General National Product
HDZ	Croatian Democratic Union
HVO	Croatian Army
ICFY	International Conference on Former Yugoslavia
ICTY	International Criminal Tribunal for the Former Yugoslavia
IEBL	Inter-Entity Boundary Line
IFOR	NATO Implementation Force
IPTF	UN International Police Task Force
JIC	Joint Implementation Committees
MoU	EUAM Memorandum of Understanding
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
OHR	Office of the High Representative
OSCE	Organisation for Security and Cooperation in Europe
RS	Republika Srpska
SDA	Party of Democratic Action
SDS	Serbian Democratic Party
SFOR	NATO Stabilisation Force
SFRY	Socialist Federal Republic of Yugoslavia
SRS	Serbian Radical Party
TEU	Treaty on the European Union
TPF	Transitional Police Force in Eastern Slavonia
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCIVPOL	United Nations Civilian Police
UNCRO	United Nations Confidence Restoration Operation
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNMO	United Nations Military Observer
UNPA	United Nations Protected Area
UNPROFOR	United Nations Protection Force
UNTAES	United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium
UPFM	Unified Police Force of Mostar
USAID	United States Agency for International Development
WEU	Western European Union
YNA	Yugoslav National Army

Introduction

For several reasons the Yugoslav war has challenged the international community to develop new strategies of conflict resolution and peace-building. First, it was an intrastate conflict imposing limits to international intervention beyond emergency relief assistance. Second, the conflict was a complex one, which revealed a tremendous brutality between various ethnical groups. And third, the inhumanity of mass murder, rape and wholesale destruction had not been seen in Europe since the Second World War. As a result, for four years no concerted conflict resolution effort of the international community could bring peace to the Balkans.

The concept of international administrations was assumed to meet the challenge. Consequently, three transitional administrations were established in rapid succession by different international organisations in former Yugoslavia to help accelerate the overall peace process through regional societal reconciliation, political development and physical reconstruction:

1) the European Administration in Mostar (EUAM), Bosnia and Herzegovina, 1994-96,
2) the UN Transitional Administration in Eastern Slavonia (UNTAES), Croatia, 1996-98,
3) the International Supervisory Regime of the Office of the High Representative in Brcko (OHR-North), Bosnia and Herzegovina, 1997- still operating.

With the European Administration in Mostar a new, post-Cold War, international agenda for peace-building was put into practice. This extended the sphere of international involvement in post-conflict situations from keeping warring sides apart to taking the lead in developing long-term political solutions in a multi-ethnic environment.[1] In the view of the international community the outcome of this first test for institutionalising transitional administrations was unsatisfactory. When the subsequent UN Transitional Administration (UNTAES) was established in Eastern Slavonia, it was referred to Mostar with the mandate "to draw lessons and avoid repetition of failures"[2]. The question arising is, what lessons were learned from Mostar for the later UN operation in Eastern Slavonia? As a consequence, was the UN in Eastern Slavonia more succesful? Furthermore, has the later established Supervisory Regime in Brcko drawn lessons from the earlier two transitional administrations? What can possibly be learned from the three transitional administrations for future international peace-building activities in ethno-political post-war conditions, e.g. Kosovo?

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1 David Chandler, Bosnia: Faking Democracy After Dayton, London 1999, p.79.
2 European Commission, Ad Hoc Ex-Yougoslavie, Doc Seance N° 164.

This analysis uses three indicators for measuring the success or failure of three multinational operations, as proposed by Thomas G. Weiss. The first and most essential indicator in measuring success is "(...) a judicious correlation between resources and rhetoric"[3]. The concrete question here is whether there is a gap between the agreed policy and the willingness to provide the necessary means to execute it in the field. A second indicator in determining success or failure of multinational operations is to measure their relative effectiveness in avoiding substantial shortcomings. A successful operation would represent "(...) an effective and coherent orchestration of civil, humanitarian and political efforts under a protective umbrella of military security"[4]. The third indicator should be "the comprehensive nature of inputs"[5]. Weiss is of the opinion that the approach of multinational operations should not be too narrow. When one aspect of the operation is in trouble, compensation by the pursuit of others should be possible.

The subsequently presented findings are preliminary and offered for discussion. There is no claim to being comprehensive.

1. Three transitional administrations: Origins and mandates

1.1 Mostar - The city of burnt bridges

Prior to the war, Mostar was an economical, political and cultural centre. The Mostar valley was a significant industrial area with factories producing helicopters, aluminium, beverages, clothes and agricultural products. The main river of the Herzegovina region, the Neretva, divides the city into two unequal parts, the greater and more developed West and the smaller and hilly East. In May 1993, after the Croats and ‘Muslim‘ Bosniacs had jointly resisted the Serbian siege of Mostar, the Croats turned against the Bosniacs and began a bloody ten-month ‘war within the war’. Both fought to claim the city as a place of cultural heritage and used torture, forced expulsion, rape and murder to that end. The Croats pursued the aim of controlling Mostar as the capital of the Republic of Herceg-Bosna, their self-declared Bosnian Croat state founded in the autumn of 1993.

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3 Thomas G. Weiss, The United Nations and Civil Wars at the Dawn of the Twenty-First Century, in: Thomas G. Weiss, The United Nations and Civil Wars, Boulder 1995, p.197.

4 Ibid., p.199.

5 Ibid.

1.1.1 From the Invincible Peace Talks to the European Administration (EUAM)

In September 1993, the Owen/Stoltenberg peace plan, which proposed a 'Union of the Republics of Bosnia and Herzegovina' consisting of three constituent entities was negotiated on board of the HMS Invincible.[6] A document was drawn up also proposing special administrative arrangements for the multi-ethnic and therefore difficult city of Mostar with the participation of the European Community (EC).[7] In October, while fierce fighting between the Croats and Bosniacs continued in Mostar, the Bosniac Parliament rejected this 'Confederation Plan'.[8] With this rejection, the 'Invincible Document' envisaging an European Administration in Mostar also failed. The matter was then left pending.[9]

Half a year later, after a grenade had struck again the central market in Sarajevo, killing at least 68 civilians, US President Bill Clinton launched a diplomatic initiative with the aim of preventing the spread of war and refugees in Europe. On 18 March 1994, the Washington Peace Agreement created a Federation between the Bosnian Croats and Bosniacs. By the end of March, the Parliament of Bosnia and Herzegovina unanimously approved the Constitution of the Federation,[10] consisting of eight cantons, four of which were to be Bosniac, two Croat and two mixed. Due to the lack of consensus concerning the areas of formerly fierce fighting, it was concluded that the two peoples would have to share the power in the disputed regions. One of those regions was the Neretva Canton of which Mostar is the capital, thus paving the way for the European Union Administration.

Following an invitation by the two parties that signed the Washington Agreement, the EU General Affairs Council formally decided on 16 May 1994 to carry out its first major Joint Action to support the administration of the city of Mostar. The Joint Action was

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6 For several months the three conflicting parties had not been able to reach an agreement on the questions regarding territory boundaries, access to the Adriatic Sea and Sava River, and the connecting passages between specified enclaves as well as for the multi-ethnic cities of Sarajevo and Mostar. Marie-Janine Calic, Der Krieg in Bosnien-Hercegovina, Ursachen-Konfliktstrukturen-Internationale Lösungsversuche, Frankfurt/Main 1995, S. 192.

7 The same arrangement was made for the complicated Sarajevo district with the involvement of the United Nations (UN). The Croats had objected the initial idea of the Contact Group also to establish a UN-administration in Mostar.

8 Their grounds were firstly the 31% of the republic's territory adjudged to the Bosniacs, which did not correspond to their percentage of 43,7% of the population. Instead, it approved the military situation on the ground. Secondly, the Bosnian Serbs and Croats were guaranteed the prospect of joining their mother countries later, while for the Bosniacs no similar opportunity existed.

9 In the meantime, a German initiative lead to the Petersberg I Agreement of 10 January 1994, which aimed at the establishment of permanent and integral peace between the Croatian and the 'Muslim' peoples in Bosnia and Herzegovina, and revived the idea of an European Administration in Mostar. Nevertheless, this agreement had not brought the expected peace but laid the foundation for the subsequent Washington Agreement.

10 Bosnia and Herzegovina: Constitution of the Federation, in: International Legal Materials, Vol. XXXIII, May 1994 (3), Art.1, p.775.

introduced with the Treaty on the European Union (TEU) as an instrument to bundle all available means for the effective pursuance and implementation of the aims within the Common Foreign and Security Policy (CFSP).

On 23 July 1994 the European Union Administration of Mostar (EUAM) was established.

1.1.2 The Memorandum of Understanding (MoU)

Mostar was to serve as a model for the obstacles that the Federation would need to overcome in order to ensure lasting peace in Bosnia and Herzegovina. Therefore, the President of Croatia, Franjo Tudjman, was present when Hans Koschnick[11], the European Administrator, inaugurated the administration, sending a clear signal to the radical nationalists among the Bosnian Croats that there was no possibility of the self-proclaimed Republic of Herceg-Bosna to join the Republic of Croatia.[12] Furthermore, in return for a Croat-Bosniac Federation economically, but not politically tied to Croatia, the Bosnian Croats were required to rescind their declaration of the Republic of Herceg-Bosna.

The EU Administration drew its mandate from the Memorandum of Understanding on the EUAM, signed on 5 July 1994 by the EU, the Western European Union (WEU) Member States, the two mayors of the town, Safet Orucevic and Mijo Brajkovic, as well as Alija Izetbegovic, the President of Bosnia and Herzegovina, Haris Silajdzic for the Federation and Jadranko Prlic as the representative of the Bosnian Croats.

The MoU stipulates that the municipality of Mostar would be governed by the EUAM for a maximum of two years. The EUAM's aim was to overcome the town's ethnic division between the Bosniac Bosniacs and Croats through a process of physical reconstruction and political and social reunification. The overall objective was to give the parties time to find a lasting solution for the administration of Mostar. Hence, the EUAM was to:

- contribute to a climate leading to a single, self-sustaining, multi-ethnic administration
- hold democratic elections before the end of EUAM
- assist the return to normal life in the city
- restore public utilities
- ensure protection of human rights
- enable the return of refugees and displaced persons
- assist in organising and providing humanitarian aid
- prepare and implement programmes for economic reconstruction
- ensure the maintenance of public order

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[11] Hans Koschnick is a senior German politician, who was the Mayor of the Hansestadt Bremen for 18 years.
[12] Interview with Hans Koschnick, EU Administrator, 26 July 1995, Bremen.

- re-establish all public functions
- and guarantee the national, religious and cultural identity of all the people in the area under EU Administration, in compliance with the Constitution of the Federation of Bosnia and Herzegovina.

Due to the existing gap in living conditions and economic activities between East and West Mostar, it was part of the mandate to support the people in Mostar East in order to equalize the living conditions, which would in turn facilitate normalisation and reconciliation with the Western part.[13]

In May 1995, the EUAM itself realised that its objectives were too wide-ranging and ambitious within a situation of continuing conflict, lasting mistrust and tension between the parties that had to be united. Therefore, the aims and principles were further developed in a strategy paper prepared by the Administrator. Although a single administration remained the fundamental objective, the main criteria considered essential to the commonly accepted concept of a unified city included:

- a population willing to live under a common set of rules
- a central municipal authority acceptable to the population
- a common legal framework
- guaranteed rights for all citizens independent of religion, language and culture
- a common public service, tax system, and police force
- and guaranteed freedom of movement.[14]

The principal assumptions upon which this strategy document was prepared were that:

- the Federation would remain intact and further developed
- the United Nations Protection Force (UNPROFOR) would remain in the region with its existing strength unchanged
- the shelling by the Bosnian Serb Army (BSA) would not reach a level that rendered the task of the EU Administration impossible
- and the EUAM would progressively gain the confidence of the citizens and not be obstructed in achieving its aims and objectives by any of the parties.

The same criteria will be applied on the other two transitional administrations to show where they emerged from and what their objectives were. The topic demands that each administration be dealt with seperately and in succession.

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13 "(...) to assist in the return to normal life for all citizens of the Mostar city Municipality (...)", MoU, Aims and Principles, Article 2.

14 Strategy for the EU Administration of Mostar, 13 May 1995.

1.2 Eastern Slavonia - The prosperous border region

The region consists of two sub-regions divided by the Drava river: Baranja in the north, and Eastern Slavonia and Western Sirmium, south of the Drava. Eastern Slavonia is a large fertile plain that had one of the highest per capita incomes in the former Yugoslavia. It served as its granary and has significant oil deposits in the south. Textile and heavy industry, petro-chemicals, intermediate food processing and consumer goods were the main industrial activities. Hungary borders the region to the north and the Federal Republic of Yugoslavia (FRY) shares the Danube river as a border with the region to the east. The regional economy is strongly integrated with the FRY.

1.2.1 From a United Nations Protected Area to the UN Transitional Administration (UNTAES)

In May 1991, a referendum was held regarding Croatia's future. On 25 June 1991, the Republic of Croatia declared its independence from the Socialist Federal Republic of Yugoslavia (SFRY). The Serb population in Croatia opposed independence, and Belgrade decided to use force to keep the country together. Eastern Slavonia, the far east Croatian region bordering the Serbian Vojvodina, was then overrun by the Yugoslav National Army (YNA) and became the theatre of heavy fighting. Under the Vance Peace Plan the region of Eastern Slavonia, Baranja and Western Sirmium, along with the Krajina region and Western Slavonia, became a United Nations Protected Area (UNPA) in Croatia.[15] In those Serb-held areas, UNPROFOR was deployed to create the conditions of peace and security required to settle the Yugoslavia conflict.[16]

In March 1994, after negotiations sponsored by the Zagreb-4,[17] a Ceasefire Agreement was signed by the Croats and the Croatian Serbs.[18] After several failed attempts to bring the two parties together, the International Conference on the Former Yugoslavia (ICFY)[19] succee-

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15 The UNPAs were areas of Serbian majority or a substantial minority where inter-communal strife had taken place.

16 UNPROFOR was deployed as per Security Council Resolution 749 of April 1992. Although greatly reduced by the presence of the UN troops, hostilities between the warring factions in the UNPA Sector East (Eastern Slavonia) continued.

17 A group whose members included the Ambassadors of the United States, the Russian Federation, representatives of the European Union and the UN.

18 With the signing of the CFA, UNPROFOR acquired the role of a classical peace-keeping force, positioned between the warring factions in Zones of Separation.

19 The ICFY was led by the International Contact Group comprising France, Germany, Russia, the United Kingdom and the United States, founded in April 1994 following a Russian initiative.

ded in having an Economic Agreement[20] signed in December.[21] In January 1995, Croatian President Franjo Tudjman announced that the mandate of UNPROFOR would not be renewed upon expiry on 30 March 1995. A Zagreb-4 Plan for the peaceful re-integration of Serb-held areas into Croatia was presented in February. The Croatian leadership gave a qualified endorsement to the plan as a basis for discussion. The Croatian Serbs rejected it. They considered the timing of the plan's presentation as rewarding Tudjman's hard line on UNPROFOR's mandate and made the renewal of its term a pre-condition for further negotiations. As a result, in March the terms of a transformed peace-keeping operation were set forth,[22] now called the United Nations Confidence Restoration Operation (UNCRO) to perform all functions envisaged in the Ceasefire Agreement: to facilitate the implementation of the Economic Agreement and to assist in the control of Croatia's international border with the Federal Republic of Yugoslavia and the Republic of Bosnia and Herzegovina.

On 1 May 1995, Croatia launched the military operation 'Flash' to reclaim the Krajina. With the operation 'Storm' in early August, Western Slavonia was brought back under Croat control. As a consequence, approximately 200,000 Serbs fled from Western Slavonia and the Krajina. Several thousand found their way to Eastern Slavonia. Despite the volatile military situation, fighting did not escalate in Eastern Slavonia. UNCRO began talks with the Croatian government and the local Serbs to reduce the tensions and encourage a dialogue on the future of the region. On 26 August 1995, these initiatives led to a ceasefire within the framework of the March 1994 Ceasefire Agreement.

The Croatian Parliament was dissolved in late September and elections were scheduled for October. Before its dissolution, the Parliament amended the Property Law, so that abandoned property would come under State control if not claimed within thirty days. Furthermore, it passed a bill postponing implementation of the Constitutional Act on Minorities. Both pieces of legislation raised questions about Croatia's willingness to create viable conditions for the normalisation of life for its Serb minority. Croatian policy appeared to follow a two-track approach, calling for the peaceful integration of the region while at the same time keeping the military option open. Consequently, a new round of diplomatic efforts initiated in the beginning of October by the ICFY, with Peter Galbraith, the United States Ambassador to Croatia

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20 The EA envisaged the opening of the Zagreb-Belgrade highway which passed through Serb-held territory in Western Slavonia, the repair of the oil pipeline running through the Krajina, the re-opening of the railroad through Western Slavonia and the repair of the water system in the same area.

21 United Nations Task Force to Establish the Transitional Administration in Sector East, Background Report on the Region of Eastern Slavonia, Baranja and Western Sirmium, Zagreb, December 1995, para 58, p.13.

22 As per Security Council Resolution S/1995/981 of 31 March 1995.

as mediator.[23] Croatian officials made public pronouncements that, if an accord on the region was not reached by 30 November 1995 or prior to the completion of the simultanous Dayton peace talks, other "necessary" means could well be used to reintegrate the region. This sense of urgency was further compounded by President Tudjman's announcement that Croatia would not renew UNCRO's mandate.[24] The threat of a third Croatian military offensive against the Serbs in Eastern Slavonia, accompanied by the realisation that no military support could be expected from Belgrade, paved the way for a political settlement.[25] After days of intense negotiations, chaired by Peter Galbraith and the UN Special Envoy Thorvald Stoltenberg, the Basic Agreement[26] calling for a transitional administration as well as an international force to be deployed in Eastern Slavonia was signed between the Croatian Government and the local Serb authorities on 12 November 1995. [27]

1.2.2 The Basic Agreement

With the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium, the UN Security Council was asked to establish a transitional administration, which should "govern the region in the interest of all persons resident in or returning to the region",[28] as well as to deploy an international force during the transitional period to maintain peace and security in the region.[29] A transitional period of 12 months was envisaged with the optional extension of another period of the same duration if requested by one of the parties.[30] The UN Security Council reserved its right to reconsider the mandate of UNTAES, if it received a report from the Secretary General that the parties had significantly failed to comply with their obligations under the agreement.[31] The main objective of the UNTAES was to reintegrate the

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23 This resulted in the formulation of principles to guide further negotiations on the future of the region.

24 United Nations Task Force to Establish the Transitional Administration in Sector East, Background Report on the Region of Eastern Slavonia, Baranja and Western Sirmium, Zagreb, December 1995, para 71, p.16.

25 The Prospects for Eastern Croatia: The Significance of the UN's Undiscovered Mission, Jacques Paul Klein, in: RUSI Journal, April 1997, p.20.

26 This was a considerably less detailed version of earlier drafts.

27 The Agreement was signed in Erdut by Milan Milanovic, Head of the Serb Negotiating Delegation; Hrvoje Sarinic, Head of the Croatian Government Delegation; Peter W. Galbraith, United States Ambassador and Thorvald Stoltenberg, United Nations Mediator.

28 Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium, signed on 12 November 1995, S/1995/951 (annex), para 2, page 1. Thereafter Basic Agreement.

29 Basic Agreement, para 3, p.1.

30 Ibid., para 1, p.1.

31 United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium, Published by United Nations Department of Public Information, DPI/1823, 96 13041, June 1996, Backgrounder: Steps leading to UNTAES, (c) Security Council Adopts Resolution 1037 (1996): Basic Agreement Enters Into Force, p.3.

region, demilitarised and secure, into the legal and constitutional system of the Republic of Croatia.[32] The principal elements of the agreement are:

- the demilitarisation of the region to be completed 30 days after UNTAES' deployment
- establishment and training of a temporary police force
- observance of human rights
- election to local bodies
- recognition of the right to return for those originally from the area, and the right to stay for those currently living there
- and normal functioning of all public services.[33]

In general, the UNTAES was to build confidence and contribute to the peace process in the region. Activities such as the sectoral policy review, reviving agriculture, industry and local/regional/external trade links, human resources and labour market development, banking and financial services, advisory services, local managerial capacity building and training were clearly outside the mandate of the UNTAES.[34]

1.3 Brcko - A microcosm of Bosnia and Herzegovina

The Brcko area is situated in a low-lying valley along the Sava River in northern Bosnia and Herzegovina near a nexus of the current borders between the Republic of Croatia and the Federal Republic of Yugoslavia. Brcko town is located along the Sava River in the northernmost corner of the area. Historically, the area has represented a cross roads between peoples and empires.[35] As a result, the area has been the home to a mix of Serb, Croat, Bosnian and other ethnic groups, Orthodox Christian, Catholic, and 'Muslim' religions, and

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[32] UN-Security Council Resolution, S/1996/1037, 15 January 1996. The general nature of the Basic Agreement had led to different interpretations by the two parties. The Serbs read the omission of reintegration literally, and insisted that the future status of the region was still an open issue to be determined by a referendum at the end of the transitional period. The Croats on the other hand saw the Agreement as an instrument enabling swift, peaceful reintegration of the region into Croatia. In fact, the Agreement does not state literally that the region would be brought back under the control of the Republic of Croatia. However, the Security Council resolution S/RES/1025(1995) of 30 November 1995 does reaffirm that the region is an integral part of the country. See: United Nations Task Force to Establish the Transitional Administration in Sector East, Background Report on the Region of Eastern Slavonia, Baranja and Western Sirmium, Zagreb, December 1995, para 75, p.17.

[33] Basic Agreement, paras 3-13.

[34] United Nations Transitional Administration (UNTA) for Eastern Slavonia, Baranja and Western Sirmium, unpublished paper of the UN, 21 December 1995, para 42, p.12.

[35] In 1699, following the conclusion of the Treaty of Karlowitz, the Sava River became the border between the Ottoman and Habsburg empires. For the next two centuries, Brcko represented the western-most reach of the Ottoman Empire. In 1878, at the Congress of Berlin, Austria-Hungary was allowed to occupy Bosnia and Herzegovina, which, however, remained under Ottoman sovereignty until 1908, when this too was assumed by Austria-Hungary.

European and Eastern cultures for centuries. Especially Brcko town is known for its multi-ethnicity.

In 1894, a railroad bridge over the River was built, which was complemented with the construction of the port in 1964. The Brcko area developed as both an agricultural and - because of its proximity to the Sava River and its link to the Tuzla Basin - transportation center for wood, coal, anthracite, agricultural/animal products and chemicals. With a current rate of 80%, unemployment is higher in Brcko than the average throughout the remainder of the Republika Srpska (RS).

When hostilities erupted between Croatia and Serbia in 1991, the town of Brcko, which housed a Yugoslav National Army (YNA) barrack, immediately found itself near the center of the conflict. In late 1991 Serb para-military troops arrived in Brcko and began to train local Serb volunteers. At the same time, the YNA confiscated weapons from the Bosnian Territorial Defence Force in Brcko. In April 1992, Serb forces - composed of YNA regular and irregular forces - began their assault on Brcko and destroyed the road and rail bridges over the Sava River. The Serb forces encountered limited resistance in the town. After six days of fighting Serb forces had taken control of Brcko and the area extending several kilometres south and west of the town.[36]

1.3.1 Towards a solution for the Brcko District

When the Dayton Conference ended the Bosnian war in November 1995, the fate of the strategically important municipality of Brcko was left unresolved. Based on the fact that the Serbs controlled some 48%[37] of the territory, including Brcko town, and the remainder of 52% was left to the other two peoples, both of Bosnia's newly formed entities (the Republika Srpska (RS) and the Federation of Bosnia and Herzegovina) claimed the entire municipality. During the peace negotiations, all parties agreed that the decision as to where to place responsibility for the future governance of Brcko would be left to international arbitration, with a final decision to be made in a year.[38] The area under dispute and subject to arbitration was understood to consist of the Brcko town in the RS and the Zone of Seperation (Inter-Entity Boundary Line), forming a narrow but strategic corridor because it links the east and west halves of the boomerang-shaped Serb entity. The southern, more rural portion of the

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[36] Arbitral Tribunal for the Dispute over Inter-Entity Boundary in Brcko Area, Republika Srpska vs. the Federation of Bosnia and Herzegovina, Award, Rome, 14 February 1997, para 49, p.15. Hereinafter Award.

[37] Representing an area of 225 square kilometres of the territory. The remainder under control of the Federation represented 239 square kilometres.

[38] General Framework Agreement for Peace in Bosnia and Herzegovina signed in Paris on 14 December 1995, Annex 2, Article 5, para 5.

municipality was left under Federation control and was not meant to be part of the arbitration process. Given the continuing failures to comply with the Dayton Accords in the RS area of the Brcko municipality, and the high levels of tension resulting therefrom, the international community decided to undertake a role in devising a detailed implementation strategy. Consequently, the first Tribunal's Award of 14 February 1997 called for an International Supervisory Regime, which was established by the Sarajevo Office of the High Representative (OHR). In March 1997 U.S. Ambassador Robert W. Farrand was selected to serve as the International Supervisor of Brcko.[39]

According to the first Award, in order to retain control of the strategic corridor, RS and local government officials were obliged to make significant progress in terms of returns of displaced Bosniacs and Croats to their pre-war homes and to show vigorous support for the envisaged town's multi-ethnic administration. Throughout 1997, officials of the RS - in flagrant violation of the Dayton Accords - stubbornly resisted all efforts by the Supervisor and the Federation to achieve the first Award's principal objectives. To give the leadership a chance to accomplish significant reforms, the status quo under International Supervision was maintained with the Supplemental Award in March 1998, pending a final arbitration phase to take place at the end of 1998 or early 1999. On 5 March 1999, Roberts B. Owen, the presiding arbitrator of the three-member Arbitral Tribunal issued the Final Brcko Award.[40] Notwithstanding the good intensions of RS Prime Minister Milorad Dodik, Owen, citing the near total failure of entity leaders to support minority returns and the multi-ethnic administration, concluded that Brcko should be governed neither by the RS nor by the Federation. Instead, the entire pre-war municipality was incorporated as a unified multi-ethnic "District" of Bosnia and Herzegovina under the enhanced powers of the International Supervisor of Brcko and his Office of the High Representative-North (OHR-North). Therefore, each entity was to delegate all of its powers of governance within the Brcko municipality to the new "multi-ethnic democratic government", which was to be known as

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39 Arbitral Tribunal for the Dispute over Inter-Entity Boundary in Brcko Area, Republika Srpska vs. the Fede ration of Bosnia and Herzegovina, Supplemental Award, 15 March 1998, para 4 (a). Hereinafter Supplemental Award.

40 After the two party-appointed Arbitrators failed to appoint a third Arbitrator within the required time, the President of the International Court of Justice, on 15 July 1996, appointed Roberts B. Owen as third Arbitrator and Presiding Officer of the Brcko Tribunal. As noted in paragraph 5 of the Award of 14 February 1997, the parties have agreed to modify the applied UNCITRAL Rules in order to provide that if a majority decision of the Tribunal is not reached, the decision of the Presiding Arbitrator will be final and binding upon both parties. Such an agreement was in fact a virtual necessity in this particular case: From the outset the positions of the two parties on its merits have been polar opposites and each party has explicitly refused to compromise. It was observed that both party-appointed Arbitrators encountered significant difficulties in conducting themselves with the usual degree of detachment and independence. However, both party-appointed Arbitrators refused to sign any Award.

"The Brcko District of Bosnia and Herzegovina", under the exclusive sovereignty of Bosnia and Herzegovina.[41]

1.3.2 The Final Arbitration Award

The International Supervisory Regime draws its authority from the Awards derived from Annex 2, Article V of the Dayton Accords. Hence, the function of the International Supervisor is to supervise the Dayton implementation throughout the Brcko area, subject to arbitration.[42] The Tribunal defines the Dayton Accord's objectives as:

- encouraging and enabling DPs and refugees to return to their pre-war homes
- helping to develop democratic multi-ethnic institutions
- ensuring freedom of movement
- the conduct of free and fair local elections under OSCE[43] supervision
- and a unified police force operating under a single command, with complete independence from police establishments of the two entities.[44]

Given the significance of economic revitalisation, a concerted effort toward economic reconstruction is considered essential to the reduction of ethnic and other tensions in the Brcko area. The Supervisor is therefore supposed to assist the various international agencies in developing and implementing a targeted economic revitalisation program.[45]

With the Final Award all parties have agreed that the Supervisory regime must continue to exist, and that the authority and the responsibilities of the Supervisor must now be expanded geographically. Supervision is to continue until terminated by the Steering Board of the Peace Implementation Council.[46] The Supervisor is to have the responsibility to effect coordination among the goverments of Bosnia and Herzegovina, the two entities, and the District.[47] The basic concept is to create a single, unitary multi-ethnic democratic government to exercise those powers previously exercised by the two entities and the three municipal governments. Thus, the Supervisor is to promote the re-integration of the municipality's parallel and overlapping political, economic and social institutions of the three ethnic groups. His foremost new task is to prepare a "Statute of the District Government" and a detailed plan and schedule for the formation of the District Government.[48] Furthermore, he is to make the

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41 Arbitral Tribunal for the Dispute over Inter-Entity Boundary in Brcko Area, Republika Srpska vs. the Federation of Bosnia and Herzegovina, Final Award, 5 March 1999, page 6, para 9. Hereinafter Final Award.
42 Award, Rome, 14 February 1997, VII. Award, I.B, p.40.
43 Organisation for Security and Co-operation in Europe.
44 Final Award, 5 March 1999, para 6-36, p.5-10.
45 Award, Rome, 14 February 1997, VII. Award, I.B(6), p.41.
46 Final Award, 5 March 1999, para 37, p.10.
47 Ibid., para 43, p.11.
48 Ibid., para 38, p.10.

initial appointments of (a) members for a joint implementation commission to assist him in the drafting of the District Statute (b) the members of the District Judiciary and the Prosecutor, as well as (c) a three-member commission with responsibility for proposing modifications of existing laws to produce a uniform system of law throughout the District. Such appointments are to be in accordance with any "ethnic formula" specified in the new District Statute. The Statute is furthermore to specify the structure of the District Police Department and is to provide for continuing United Nations International Police Task Force (IPTF)[49] guidance. In addition, it is to provide for the establishment of a District Customs Service which shall, in accordance with current practice, collect duties at the border. Furthermore, the Supervisor is to make provision in the Statute for an appropriate system of taxation within the District. The envisaged timeframe for the implementation of much what is included in the Final Award is the end of the year 1999.[50]

The Brcko Tribunal is to remain in existence until such time as the Supervisor, with the approval of the High Representative, has notified the Tribunal (a) that the two entities have fully complied with their obligations to facilitate the establishment of the new institutions, and (b) that such institutions are functioning, effectively and apparently permanently, within the Brcko municipality.

The Tribunal noted that there is reason to believe that, as displaced persons (DPs) from both entities increasingly return to their home, there will be a dilusion of hard-line nationalistic attitudes in both entities, thus reducing tensions overall in Bosnia and Herzegovina. The incentive is that Brcko becomes an example of the ideals the international community seeks to nurture in Bosnia and Herzegovina (BH) and the region.[51] On 19 August 1999, the Brcko Superviser Robert Farrand offered the vision in a press conference on the Annex to the Final Award that Brcko, as "the mother of all hope", will become the most progressive, prosperous and ethnically mixed community in BH.[52]

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49 Annex 11 of the Dayton Accords requires the IPTF to assist the governments of the entities in Bosnia and Herzegovina by providing training and monitoring services to the police forces, and to assist with the restructuring of both the police and criminal justice systems.

50 Press Conference by Principal Deputy High Representative Ralph Johnson and Deputy High Representative and Brcko Supervisor Robert Farrand on the Annex to the Brcko Award, Coalition Press Information Center Sarajevo, 19 August 1999, http://www.ohr.int/press/b990819a.htm.

51 Brcko Implementation Projects in Support of the March 5, 1999 Brcko Final Arbitration Award, Prepared for the May 20-21, 1999 Donors' Conference for Bosnia and Herzegovina, prepared by Ambassador Robert W. Farrand, Deputy High Representative and International Supervisor of Brcko, OHR-North, page 3.

52 Press Conference by Principal Deputy High Representative Ralph Johnson and Deputy High Representative and Brcko Supervisor Robert Farrand on the Annex to the Brcko Award, Coalition Press Information Center Sarajevo, 19 August 1999, http://www.ohr.int/press/b990819a.htm.

2. Means and resources

2.1 Mostar - Costly ad hoc operation lacking political and military support

While an Advance Party was laying the foundation in Mostar, the EU Member States nominated expatriate staff on the basis of proposals made by the German delegation, including a suggested allocation of posts between the then 12 Member States, as well as Switzerland, Sweden and Austria. There was no assessment of alternative candidates at the European Council level, nor was the Administrator able to influence the composition of his future team. The Advance Party submitted 28 separate reports to the European Council Presidency, many of which required written responses to practical questions, containing comment, guidance, advice or approval. The responses, however, were not forthcoming.[53] Furthermore, the arrival of the staff was not adequately coordinated with the Advance Party and resulted in logistical problems. For example, without informing the Administrator, two humanitarian advisors were sent to Mostar, one from the European Community Humanitarian Office (ECHO) and another from Denmark. The two worked in parallel for three months until the Administrator obtained the approval of the Council Presidency for the appointment of a single humanitarian coordinator from Denmark.

The EUAM, including the Ombudsman's Office, was then staffed by 39 expatriate civil staff (later increased up to 70), 6 additional staff provided by the European Community Monitoring Mission (ECMM), 300 local staff members, along with a Western European Union (WEU) police element eventually numbering 182 officers. In the end the following eight departments were set up: Finance and Taxes; City Administration; Economy and Transport Infrastructure; Reconstruction; Education and Culture; Cultural Life, Youth and Sports; Health and Social Services; as well as Public Order. The European expert heading each department cooperated with two local Co-Heads, one Croat and one Bosniac representative from the administrations in East and West Mostar, who were appointed by the Admnistrator and did not have any operational responsibility within the EUAM itself.[54]

The WEU police element was to provide the EU Administrator with information and give advice on all aspects of the public order. The WEU was to "(...) seek to restore and maintain peace, confidence, and individual civil rights within the overall mandate of the EUAM"[55]. Furthermore, the WEU was to build a framework that would ensure a smooth tran-

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53 Official Journal of the European Communities, 96/C 287/01, Vol. 39, 30 September 1996, para 40, p.6.

54 MoU, Article 9, para 3.

55 From Division to Unity, Policy Document of the UPFM, Western European Union, 25 September 1994, Mostar.

sition of the Unified Police Force to local control when the WEU and the EU mandates would expire.[56] Of the 182 international police officers promised by the WEU/EU-Member States, only 100 had arrived in Mostar by December 1994. The International Police Commissioner Col. Jan Meijvogel commented on this gap between resources and rhetoric by saying, "I am not able to drive in a car that only exists on paper".[57] By March 1995 the WEU police element numbered 152 and, by July, 163 officers.

A UN-Protection Force (UNPROFOR)-Liason officer was to inform and advise the EUAM about the military situation. Hence, the Administrator did not have control over UNPROFOR and was dependent on good relations with the troop Commander. When the IFOR troops, UNPROFOR's successor after the Dayton Accords, arrived, its commander made clear that IFOR, which was under NATO command, would not fulfill a similar role to UNPROFOR. Furthermore, IFOR would not sign a Memorandum of Understanding with the EUAM because IFOR did not feel responsible for the political process within the Federation, especially not for Mostar. In principle, IFOR would respond to military elements of the Bosniac or Croat side only in case of a direct threat.[58]

According to the MoU, the EU-Administrator was to have the powers necessary to fulfill the mandate's aims and principles while administering Mostar properly, efficiently and in correspondence with the views and wishes of the local parties and population. In exchange "the Receiving Party"[59] affirmed its unrestricted commitment to support the EU-Administrator in the exercise of his duties and to work cooperatively towards the achievement of the EUAM's aims and principles.[60] An Advisory Council, consisting of 5 Bosniacs, 5 Croats and five representatives of other groups, of which 3 were Serbs, advised the Administrator in weekly meetings. After consulting with the Advisory Council and observing the Federation's Constitution,[61] the Administrator had the right to introduce regulations applicable in the area of the EU Administration if he deemed them necessary for the functioning of the EUAM or considered them in the interest of the Mostar city municipality.[62]

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56 According to the MoU, Article 12, further details were to be laid out in a seperate document.

57 Interview with Col. Jan Meijvogel, Police Commissioner, EU Administration, 29 November 1994, Mostar.

58 Minutes of a meeting between Ambassador Klaus Metscher, Diplomatic Advisor to the EUAM, and IFOR Commander Leighton Smith, 14 January 1996, Mostar.

59 The MoU disregards the actual division of the city of Mostar, speaking only of one receiving party instead of two, the Croats and the Bosniacs.

60 MoU, Article 3.

61 Article 10, Chapter IX, Part B, stipulates that the Constitution "(...) shall apply in the Municipality of the City of Mostar while it is under international administration, except as otherwise decided by the international administrator (...)".

62 MoU, Article 10, para 3.

In daily practice, the Administrator was to cooperate with the Mayors of East and West Mostar, as well as a Serbian representative.

Having been appointed by the European Council of Ministers, the European Administrator had to follow the Council's instructions as well as to report regularly.[63] The Council reserved its right to replace the Administrator at any time during the period of implementation, after consultation with the Receiving Party.[64] Responsible for the actual implementation of Joint Actions, such as the EUAM, was the six-monthly rotating Council Presidency, assisted by an Advisory Working Party of Member States Representatives, and in association with the Commission. Accordingly, it decided upon practical orientations of the operation and determined the precise actions required to meet the needs identified by the EUAM-Administrator.[65] Therefore, the European Council Presidency also decided upon the release of funds, one instalment at a time.[66]

The EUAM budget of 1994 was made available by a previous Joint Action[67] which was adapted and extended so that Euro 32 million out of an overall budget of Euro 48,3 million would also be used to provide initial support for the administration of the town of Mostar by the European Union.[68] Out of the Euro 32 million, Euro 15 million were initially made up from the EU General Budget. The remaining Euro 17 million were provided by direct contribution from the Member States, assessed according to the General National Product (GNP) key. On 31 December 1994, a half year after the EUAM's estyblishment, Euro 4,9 million out of Euro 17 million owed by the Member States (representing 15,2% of EUAM's budget) were still unpaid. The 1995 budget was set at Euro 80 million and was entirely financed from the EU General Budget. In the wake of budget revisions due to changes in the overall political situation in Mostar the three-stage procedure (based on Commission procedures normally applied to individual projects) adopted by the Council to transfer funds led to cash-flow problems.[69] Finally, following a request from EUAM supported by the

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63 Memorandum of Understanding on the European Union Administration of Mostar, 5 July 1994, Geneva, Article 7, para 3.

64 MoU, Article 6.

65 The Presidency was assisted by an Advisory Working Party of Member State Permanent Representatives and operated in association with the European Commission. In actuality, the Advisory Working Party acted as the de facto management body. TEU, Article J.11,1.

66 Council Decision (94/308/CFSP) of 16 May 1994, para 2.

67 This was meant for the convoying of humanitarian aid in Bosnia and Hezegovina, which could not be executed due to the continuing combat. Nonetheless, the EUAM was considered to be more important and wide-ranging. Council Decision (93/729/CFSP) of 8 November 1993.

68 Council Decision (94/308/CFSP) of 16 May 1994, para 1.

69 Interview with Klaus von Helldorff, Head of Finance and Taxes, EU Administration, 11 April 1995, Mostar. See also: Bericht zur Bewertung der gemeinsamen Aktion der Europäischen Union in Mostar, Generalsekretariat des Rates der Europäischen Union, SN 1735/97, p.17, IV, 4.

European Court of Auditors, it was decided to simplify procedures by regarding all three budget years (1994, 1995, 1996) as one continous project. Consequently, the 1996 budget amounted Euro 32 million was again entirely financed from the EU General Budget. Thus, the available budget increased within the period of two years to a total of Euro 144 million, amounting to nearly Euro 2 400 per person in Mostar. At an additional estimated indirect cost of nearly Euro 35 million, Euro 585 per Mostar inhabitant can be added to that sum. This represents an unusually high concentration of funds compared to other assistance programmes in the world.

The only lever the EUAM had, was to withdraw the reconstruction funds. As a final option the Council of Ministers reserved the right to terminate the EUAM at any time if it deemed that there was substantial change in conditions or if any of the parties did not fulfill its obligations.[70]

2.2 Eastern Slavonia - Carefully set up with strong executive and military powers

Pending clarification by the Security Council on which organisation(s) would be responsible for running the Transitional Administration in Eastern Slavonia, it was suggested in December 1995 that the concept of an integrated structure be adopted in order to institutionalise inter-agency coordination by directly involving lead sectoral agencies, avoiding duplication, and ensuring a coherent arrangement approach under the Adminiatrator's leadership. Given all the uncertainties, a preliminary implementation structure for the UNTAES was proposed, which would be flexible enough to accommodate review and adjustment to meet emerging needs.[71] A coherent policy was to ensure cost-effective staff allocation with short-term highly specialised expertise, especially in the areas of economics and law. The idea was to staff the office of the UN Transitional Administrator with international civil servants, specialised and technical staff seconded by UN Agencies (UNHCR, UNDO, UNESCO, WHO, FAO, DHA, UNV etc.), other international organisations, (EC, WB, EBRD, OSCE etc.), and interested governments (civil and military engineers/staff).[72] Whenever possible local staff was supposed to be incorporated.[73] The Administration comprised the Head Office in Vukovar and six Field Offices. Departments were established in the fields Civil Affairs, Legal Matters, Public Information, Politics,

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70 MoU, Article 4, para 1.

71 United Nations Transitional Administration (UNTA) for Eastern Slavonia, Baranja and Western Sirmium, unpublished paper of the UN, 21 December 1995, para 4, p.1.

72 Secondment, consultancies, sub-contracting and other institutionally acceptable ad hoc arrangements were to be explored. Ibid., 21 December 1995, para 45, p.13.

73 Ibid., para 46, p.13.

Administration, Military Issues, Elections and Border Monitoring.[74] UNTAES personnel was build up to 455 civilian and 771 local staff, 5000 troops, 100 military observers, and 405 civilian police officers.[75] Through the liaison function of offices in Zagreb and Belgrade, the support of authorities was sustained to exert significant influence on the local decision-making process.

With the aim of keeping the structure of the UNTAES office simple, centralised and streamlined,[76] the governing structure was based on three mutually supporting pillars: the Transitional Administrator, the Administration Council and the Joint Implementation Committees. The Transitional Administrator was the chair of all three, the centrepiece of the executive system, governing under the policy umbrella of the Administration Council and through an executive mechanism of interrelated Joint Implementation Committees. The Administration Council comprised representatives from the Croatian Government, local Croatian and Serb authorities, local minorities, and UNTAES Civil Affairs Officers. Membership also included representatives of the United States, the Russian Federation and the European Union, in order to gain the necessary international political support. The Joint Implementation Committees (JIC) were to be chaired by a member of the Office of the Transitional Administrator and covered fields such as law enforcement, civil administration, public services, education and culture, return of refugees and DPs, health, human rights, elections, infrastructure and agriculture. Because the main issues facing the Administration were perceived as cross-sectoral and often multi-disciplinary, the JICs were to monitor the implementation of the agreement, to ensure integration of executive functions, to investigate allegations of violations, to adopt appropriate recommendations, to arbitrate disputes, and to coordinate and interface between sectors.[77] The chairman of each committee was to report on recommendations including the operational mechanisms and policy guidelines and to keep the Committee focused on the progressive establishment of ethnically balanced representation of governing bodies, aimed at strengthening local institutions.[78]

The Basic Agreement for the UNTAES states that the Transitional Administrator would be appointed to govern the region of Eastern Slavonia, Baranja and Western Sirmium in the

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74 They were established in Vukovar, Vinkovci, Ilok, Beli Manastir, Osijek and Erdut.

75 Figures taken from: UNTAES - An After-Action Report, 15 January 1996 - 15 January 1998, Christopher Holshek.

76 United Nations Transitional Administration (UNTA) for Eastern Slavonia, Baranja and Western Sirmium, unpublished paper of the UN, 21 December 1995, para 7, p.2.

77 Ibid., para 29, p.7.

78 Ibid., para 9, p.2.

interest of all persons resident in or returning to the region.[79] The opinions of the parties were to be sought from the preparatory phase, in which a consensus was desirable, but not essential, since the Administrator had the decisive vote. The concept of 'governing' was perceived as crucial for setting the stage for a credible Administration and for preventing interference during the implementation period. Thus, a firm governing style with clear executive powers was envisaged.[80] Consequently, the Security Council Resolution 1037 gave the Transitional Administrator overall authority over the civilian and military components of UNTAES.[81] In addition, strong international backing was seen indispensable to the implementation of the mandate, with a credible international force as its necessary manifestation.[82] The Force Commander, the Police Commissioner, and the Chief Administrative Officer were to report to the Transitional Administrator, who in turn reported directly to the UN Secretary General and to the UN Security Council.

The UN Force Commander had determined that the robust force of 9,000 plus, both in terms of quantity and quality, was required to accomplish the military aspects of the Basic Agreement.[83] The Croatian leadership in its public pronouncements had indicated that a small force would be preferred, arguing that anything larger would delay the implementation process. Then, the UNTAES military deployment was increased from 1,600 troops at the end of the UNCRO mission in January 1996 to almost 5,000 combat troops, support units and 100 UN Military Observers (UNMOs) in May.[84] Mechanised infantry battalions from Belgium, Russia, Pakistan, Jordan and Argentina maintained specific areas of responsibility, supported by an Ukrainian light infantry group, a Slovakian engeneering battalion and a Polish Special Unit as a rapid reaction force and a back-up to the Transitional Police Force. According to Security Council Resolution 1037 of 15 January 1996 the UNTAES forces acted under the

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79 Basic Agreement on the Region of Eastern Slavonia, Baranja, and Western Sirmium, Erdut on 12 November 1995, para 2.

80 An example of drastic action in exercising executive authority was to be the temporary replacement of local mayors and/or police chiefs by international staff, pending local elections. See: United Nations Transitional Administration (UNTA) for Eastern Slavonia, Baranja and Western Sirmium, unpublished paper of the UN, 21 December 1995, para 2 and 3, p.1.

81 S/1996/1037 of 15 January 1996, para 2.

82 Statement made by the Transitional Administrator Jacques Paul Klein when he was on a visit to Croatia and Serbia in December 1995. See: Jacques Paul Klein, My Visit to Croatia and Serbia, December 28-31, 1995, Report to the Secretary General of the United Nations, 5 January 1996, p.1.

83 Three kinds of force sizes have been under consideration: a small force of about 2,000 troops, similar to the force which was on the ground in Eastern Slavonia, presumably unable to achieve the Agreement's objectives; a heavily armed medium-sized force of 4,500, able to monitor and report on a demilitarisation process that would largely have to be carried out by the parties themselves; and a robust force of about 9,000, which would have been able to carry out the demilitarisation on its own, regardless of the extent to which the parties cooperated.

84 Backed by 34 tanks, 204 armoured vehicles, 21 mortars, six pieces of artillery, six assault and six transport helicopters.

provisions of Chapter VII of the UN Charter and were allowed to take military action to ensure the security and freedom of movement of the UN-peace-keeping operation personnel in the Republic of Croatia. This was a special arrangement, as peace-keeping operations are generally executed under Chapter VI, relying on the consent of all major parties. Here, learning lessons from the poor performance of the UNPROFOR as well as UNCRO, the forces had the coercive powers of a peace enforcement operation, although the consent of the involved parties could be derived from the Basic Agreement.[85] Coordination between the Administrator and his military force was institutionalised with the force's representation in both the Administrative Council and the Joint Implementation Committees. UNTAES and International Force Headquarters were co-located.

Furthermore, UNTAES established close links with IFOR[86] on the use of NATO air power. In the event of any significant military threat to the region that could not be dealt with by the UNTAES Force, IFOR could provide quick and close air or contingency extraction support. To ensure maximum coordination as required, a NATO air and an IFOR liason cell were located in UNTAES Headquarters.

A Transitional Police Force (TPF) was to be established, reflecting the ethnic composition as it existed prior to the war and to providing a framework for law and order for residents and returnees. The UN-civilian police (UNCIVPOL) was in charge of operational tasks, such as the investigation as well as training of the TPF, this was to ensure a homogeneous background (regional concept, e.g. Commonwealth or Nordic police).[87] The UNCIVPOL monitors did not have executive police functions, were unarmed and consequently did not have the power to arrest. They were only to conduct investigations and patrols.[88]

The UNTAES did not have an operational budget. Therefore, the Administrator initiated two Donors Conferences. The biggest donors were the European Union and USAID. The EU signed a contract with UNTAES on conditionalities for the expenditure of the pledges and deployed a Principal Adviser for coordination in the UNTAES Headoffice.[89] About US$ 400 million were provided for the deployment of the troops, military observers, civilian police,

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85 Defence Research Paper, Major Julien Neel, Belgian Army, Introduction, p.1.

86 These links were retained when IFOR handed over to its successor, the Stabilisation Force (SFOR) in December 1996.

87 United Nations Transitional Administration (UNTA) for Eastern Slavonia, Baranja and Western Sirmium, unpublished paper of the UN, 21 December 1995, para 44, P.13.

88 United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium, Published by the United Nations Department of Public Information, DPI/1823, 96 13041, June 1996, Backgrounder: Steps leading to UNTAES, (c) Security Council Adopts Resolution 1037 (1996): Basic Agreement Enters Into Force, p.3.

89 Interview with Didier Fau, Deputy High Representative for Economical Reconstruction, Office of the High Repreesntative, 5 July 1999, Sarajevo.

civilian international and local staff. Reimbursement was also included for 8 Ukrainian government-provided helicopters and for the maintenance and operation of 974 UN vehicles and 2,340 contingent-owned vehicles.[90]

Before the UNTAES was established, the designated Transitional Administrator Jacques Klein visited the region from 28-31 December 1995. Although both receiving sides had promised support during the vistit, he understood that the Presidents of Croatia and Serbia, Tudjman and Milosevic, differed on how quickly reintegration should occur.[91] Klein had found the local Serbs traumatized by their defeat in the Krajina and resigned to a future within the Croatian state. Nevertheless, he had left no doubt that lack of cooperation, particularly with voluntary demilitarisation, would lead to a withdrawal of the United Nations, leaving the Serbs perilously exposed to a further offensive by the Croatian army and the strong possibility of complete expulsion.[92]

2.3 Brcko - No money, 'no nothing'

The OHR-North office numbers 26 international and 71 local staff members with the following departments: Front Office, Political, Media, Legal, Human Rights, Returns, Economy, Admin/Finance and SFOR Liaison. Reporting to the Sarajevo Head Office is done by the departments and the Front Office. The Supervisor reports to the Arbitrator every six weeks. Administratively and budgetwise the Supervisor's office is an integral part of the OHR structure. In contrast, it derives its mandate from the Tribunal's Awards. Consequently, if OHR Head Office does not agree with the Supervisor's implementation plan for Brcko it can intervene with reduction of resources, e.g. budget or staff. This structural inconsistency originates from different mandatory sources of the OHR-North office and the OHR Head Office. Therefore, also known as the Dayton Accord Annex 2 (Brcko arbitration) vs. Annex 10 (general OHR mandate) debate.

In coordination with the High Representative, the Supervisor has the authority to formulate binding regulations and orders to assist the implementation programme and local democratisation. Such regulations and orders are to prevail against any law that runs contrary to

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90 United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium, Published by the United Nations Department of Public Information, DPI/1823, 96 13041, June 1996, UNTAES Composition & Financing, fact sheet 8.

91 Slobodan Milosevic, the President of Serbia, nominated his Foreign Minister as interlocutor for further detailed communication with the Transitional Administration. This was seen as a clear sign that he considered Eastern Slavonia as part of Croatia. See: Jacques Paul Klein, My Visit to Croatia and Serbia, December 28-31, 1995, Report to the Secretary General of the United Nations, 5 January 1996, p.2.

92 Jacques Paul Klein, My Visit to Croatia and Serbia, December 28-31, 1995, Report to the Secretary General of the United Nations, 5 January 1996, p.1.

the supervision mandate. All relevant authorities, including courts and police personnel, are to obey and enforce all Supervisory regulations and orders.[93] According to the Final Award, all responsibility for overall coordination, and for issuing any needed directives to ensure that the entities fulfill their obligations with respect to the new District, is to be that of the Supervisor, who may delegate that responsibility to an appropriate Bosnia and Herzegovina institution. The entities were ordered to implement without delay any such directive, regulation or order issued by the Supervisor.[94]

The Supervisory Regime does not have its own operational budget. The region is part of the international donors' mechanism for the overall country. The Tribunal notes in the Final Award that financial support from international donors such as the EU, the World Bank, the United States, and the European Bank for Reconstruction and Development will be particularly important in implementing the District plan, and they are respectfully urged to provide the Supervisor with all necessary support in his economic revitalisation efforts.[95] Project proposals requesting the sum of Euro 60 million for the implementation of the Final Award were prepared for the international donors conference in May 1999. However, no funds were pledged specifically for Brcko.

Due to the countrywide deployment of the NATO led Stabilisation Force (SFOR), the successor to IFOR, the International Supervisory Regime in Brcko was not provided with its own forces and is therefore, like the EUAM in Mostar, dependent on good relations with SFOR.

The Supervisor is to coordinate the International Police Task Force in close liaison with SFOR to provide services with two principal objectives in mind: (a) to ensure freedom of movement, through highway patrols and otherwise, for all vehicles and pedestrians on all significant roads, bridges and port facilities; (b) to ensure that relevant authorities will undertake normal democratic policing functions and services for the protection of all citizens of Bosnia and Herzegovina within the affected area.[96] For those functions IPTF in Brcko shall be staffed with 258 police monitors and advisors.[97]

In the first Award of February 1997, the Tribunal gave notice that in the event of unsatisfactory compliance among the parties with the Implementation of the Dayton Accords' objectives, the Tribunal may conclude that the town of Brcko is to become a special district of

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93 Award, Rome, 14 February 1997, VII. Award, I.B (1), p.40.
94 Final Award, 5 March 1999, para 10, p.6.
95 Ibid., para 49, p.12.
96 Award, Rome, 14 February 1997, VII. Award, I.B (3), p.41.
97 Report from the Brcko Supervisor Office of the High Representative North to the Steering Board in Sintra, 30 May 1997, Introduction, p.1.

Bosnia and Herzegovina where the laws of Bosnia and Herzegovina and those promulgated by local authorities will be exclusively applicable.[98] With the Supplemental Award of 15 March 1998, the Tribunal pronounced that the political leaders of the Serbian Democratic Party (SDS), who were in power in the Republika Srpska (RS) throughout 1997, deliberately obstructed the Supervisor's efforts to achieve the reforms required in the Dayton Accords. Consequently, the burden was put on the RS to persuade the Tribunal not to transfer Brcko to the Federation with the Final Award or implement the Tribunal's earlier proposal to turn the Brcko area into a democratically-governed neutral district over which neither entity would have exclusive control.[99]

With the Final Award the neutral Brcko District was established and the entities were obliged to implement without delay the respective "final and binding" regulations, which could only have a chance of success with cooperative compliance by both entities. Serious non-compliance would therefore be subject to penalties imposed by supervisory order. Furthermore, the Tribunal would retain the authority to modify the Award in the event of serious non-compliance by either entitiy. Modification could include provisions for transferring the District entirely out of the territory of the non-complying entity and placing it within the exclusive control of the other.[100]

3. Implementation achievements

3.1 Mostar – Reunification aims versus reconstruction reality

At the time the EUAM began its work, Mostar was strictly divided along the former confrontation line, into a 70% destroyed and Bosniac controlled East and the less damaged West, controlled by the Croats. The city was under sporadic shelling by the Serb forces from the mountains only 3 kilometers away.[101] As a pre-condition for the establishment of the EUAM and after three weeks of difficult negotiations with both military commanders of the Croatian HVO and the Bosniac B&H Army in town, demilitarisation was carried out under the auspices of the Spanish UNPROFOR battalion. This transpired over night before the EUAM's official inauguration on 23 July 1994.[102] The battalion was then, along with the two

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98 Award, Rome, 14 February 1997, VII. Award, II.B, p.42.

99 Arbitral Tribunal for the Dispute over Inter-Entity Boundary in Brcko Area, Press Release, 15 March 1998, para 3.

100 Final Award, 5 March 1999, para 65-68, p.15.

101 This was a product of continuing warfare between the different parties until the substantial ceasefire in overall Bosnia and Herzegovina was reached in October 1995.

102 Interview with Ambassador Klaus Metscher, Diplomatic Advisor to the EUAM, 28 November 1994, Mostar.

seperate local police forces, in charge of observing the demilitarisation at check-points in the area of EUAM responsibility. Since the Unified Police Force was not operational at that stage and the mandate of UNPROFOR was weak, in that it only allowed UNPROFOR "(...) to use force to the minimum extent necessary and normally only in self-defence."[103], the demilitarisation process was already undermined by April 1995.[104]

During the first winter, the EUAM worked to "winterize" damaged residences. Due to various organisational problems caused by the local administrations, as well as to the lack of EUAM personnel, this programme focusing on the repair of 3,500 lightly damaged dwellings, was not conpleted until July 1995. The self-help principle was pursued with the Technisches Hilfswerk (THW) operating a building material procurement, warehousing and delivery service. In all, a total of 5,600 lightly damaged dwellings, 420 heavily destroyed houses and 16 blocks of flats for about 30,000 beneficiaries have been reconstructed. 28 schools,[105] eight kindergardens, eleven medical facilities and clinics, two old people's homes, a youth centre, two hotels, the Public Archive, a theatre, a children's library, a public library, five government offices, the railway station, the bus station, two court buildings, the Unified Police Headquarters building, three cemetaries, and a Bishop's Ordinate have been rebuilt. Buildings that had been more than 70% damaged have been demolished.

The question of the reconstruction of secondary schools was subject to a political decision about common education and free access to all schools for all pupils. According to the MoU the EUAM was intended to support an educational system with combined classes for all pupils, except in subjects like language, religion and history, due to the complexity of national cultural identities.[106] Owing to the fact that responsibility for regulating the educational sector lay with the canton, the EUAM lacked a lever with which to realise its concept.

Both universities in Mostar - the University of Mostar on the West side with approximately 4,500 students and the University Djemal Bijedic in the East with approximately 1,500 students - claim to be the legal successor to the former University of Mostar. Notwithstanding the fact that the city is far too small for two universities, the EUAM has not reached its ob-

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103 United Nations, Security Council, Report of the Secretary General pursuant to Security Council Resolution 721 (1991), S/23280, Annex II, Concept for a United Nations peace-keeping operation in Yugoslavia, para 4, p.15.

104 Interview with Chris Jacobs, UNPROFOR Liason Officer, EU Administration of Mostar, 12 April 1995.

105 The reconstruction of elementary schools for children up to the age of 14-15 years began at maximum speed, providing appropriate classrooms for about 12 000 children, who had been without education for two years.

106 Strategy for EU Administration of Mostar, 13 May 1995, No. 69, p.16.

jective to re-establish a single university with free access for all students of the city and the region.[107]

The health system collapsed during the beginning of the war. Since the health services had mainly been located on the West side, health organisation in East Mostar was conceived as a temporary emergency structure, when EUAM began its work. In the first phase the Department of Health executed a programme of data collection and planning as well as the execution of emergency intervention such as the restoration of war-damaged health structures, mainly on the East side, and public health measures, such as city cleaning and pest control, to reduce the risk of associated diseases. As the re-establishment of an unified health system for the entire city was the main objective of the EUAM, the repair of an important number of essential health facilities, the supply of basic hospital furniture and the supply and installation of medical equipment were some of its primary undertakings. The Administration has rebuilt eight Primary Health Care Centres and an Integrated Mother & Child Health Centre. Hospital capacity has been increased by adapting military barracks into a secondary hospital with 65 beds for general surgery, internal medicine and psychiatry, as well as outpatient clinics. A Medical Centre for Continuing Education has been established for medical personnel. A project to complete and equip the Bijeli Brijeg central hospital in West Mostar was rejected in the absence of satisfactory guarantees regarding freedom of access and equality of treatment for all citizens. For that reason only war damage has been repaired. In the Social Services sector the EUAM has increased the capacity for accommodating homeless elderly people by building two residences with a joint capacity of 150 beds. The Administration has also helped traumatized victims of the war, chiefly women, children and the disabled elderly, with specific projects.

After finishing an emergency programme of repair of the war damaged streets and traffic lights, which represented the first visible signs of reconstruction, the EUAM established a local bus company. This became the only functioning joint enterprise project between East and West. The service was operated by two different agencies on each side with a common management board. An attempt to run a line crossing from one side to the other failed. In Mostar, the town of bridges, seven out eight had been destroyed during the fighting against the Serbs in 1992. The historical Ottoman ‘Stari Most’ (old footbridge) from 1566 was destroyed by the Croatian Army in November 1993. Five bridges across the river have been rebuilt. Since the municipal infrastructure projects were designed to serve both sides of the city equally and to lead to a ‘silent technical unification’ of Mostar, the opening of the

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[107] Ibid., No. 70, p.16.

Carinski Bridge in April 1995 was a cornerstone. It was the first permanent bridge directly linking both sides of the town. Repairing the railway station of Mostar was the EUAM contribution to the reconstruction of the railway link between the Croatian port of Ploce and the Bosnian capital Sarajevo via Mostar, sponsored by the EU Member States.

During the conflict water and electricity lines had been damaged in West Mostar, and in East Mostar supplies had been completely wiped out. Fundamental repairs were undertaken at the wells, reservoirs, lines and pumping stations in West Mostar so that water and electricity could be provided for the East. Progress was held up by the West's attempt to use the connection as a lever to gain control of the hydro-electric site Salakovac, which represents a main source of potential power for the region and, which was in the hands of the Bosniacs. In March 1995 homes, offices and schools in the whole town were once more regularly provided with electricity and water. However, the available power in the area was still insufficient for industry. A rubbish disposal site was installed in East Mostar alone because, the West had refused to establish a common one. EUAM has equipped two Public Work Agencies, which collect and dispose rubbish and survey public sewerage on their respective sides, with rubbish lorries and bins.

Telecommunication links have been largely re-established. East Mostar had only seven operational telephone lines. EUAM created the technical preconditions to connect 7,000 telephones. The switching capacity in the whole city was, at the end of the mandate, 20,000 lines. The new system is designed with both sides able to operate on their own, taking into account the possibility of disconnection.

In order to relaunch economic activities and to create jobs, support for local enterprises was a priority for the EUAM. Some 70 medium-sized companies and 400 small businesses, providing basic services like plumbing and electricity on both sides of the city, received financial support through two phases of a Small Enterprise Programme, of which the total amount was about DEM 8 million. The businesses received support in the form of small grants (average about DEM 16,000) and short term loans (average about DEM 6,000) for the reconstruction of the premises and the purchase of new equipment and machines. EUAM also initiated an Investment Support Programme for large public companies of the textile, concrete, construction-equipment and fruit-juice industries. Selection for both programmes was based on the criteria of job creation and the need for the products in Mostar. Despite some unavoidable shortcomings (political interference, lack of experience) the programme was relatively successful, providing about 3,000 employment opportunities. This was significant in the light of the fact that over 40% of the adult population was unemployed. In

addition, training courses were organised for the staff of local companies of both sides in management, accounting and marketing. The aim here was "to assist in the transition from a former socialist economic system to a more liberal one which is expected and wanted by all"[108]. Some efforts have been undertaken to promote contacts between local industries and Western European companies and markets. Initiatives were launched at trade fairs, and contacts have been established with several European Chambers of Commerce. Three companies have started to export products like cigarettes, fruit-juice and compressors to France, Switzerland and Slovenia.[109]

Mostar's pre-war population was about 100,000, with Bosniacs and Croats nearly balanced and a sizeable Serbian minority of 19%. When the EUAM began to work in Mostar, the city had a population of about 62,000. Approximately 26,000 Mostaris had fled the city while an equal number of people had moved in, fleeing from other areas in Bosnia. Although according to the MoU, all persons who at the time of the 1991 census had their principal residence in Mostar have the right to return to the city,[110] the question of repatriation of refugees and DPs could not be answered in Mostar alone. The main problem remained the lack of political will among all parties in Bosnia and Herzegovina to repatriate minorities. Consequently, instead of returning to their place of residence before the war, people wanted to stay in majority areas, so that they needed new accommodation in a country with widespread destruction. The repatriation of one family often forces another to vacate the returning family's flat. Due to the resulting domino-effect, Mostar could not begin repatriation without the existence of an agreement on tenants' and property rights applicable on all levels of the Federation. According to the Dayton Agreement the reciprocal return of a substantial number of displaced persons to both sides of Mostar city should have taken place immediately. The Croats pointed out that population movements should not lead to changes in the current ethnical balance. They also insisted, that Mostar's particular problems with refugees should be placed in the context of the Federation.[111] Nevertheless, a pilot project was launched with the aim to repatriate 50 families to each side of Mostar. Inspection of the 50 dwellings, selected by both Mayors, revealed that only a few on the West side were acceptable for the purpose of return due to occupation or heavy damage. The result of that pilot project was that in East Mostar former inhabitants could move back into 87 reconstructed apartments while

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108 Strategy for EU Administration of Mostar, 13 May 1995, No. 56, p.12.

109 Interview with Didier Fau, Head of Department of Economy, Transport and Infrastructure, EU Administration of Mostar, 29 June 1996.

110 MoU Article 15,1.

111 Visit by EU Special Envoy Julian Garcia Vargas to Zagreb, Mostar and Sarajevo, Title IV, Part 4, 10 January 1996.

the West Mostar authorities led a boycott, not allowing Bosniacs to return.[112] Until the end of EUAM's mandate ten Croat families had returned to the East without security problems. Only a handful of family reunions between East and West could be accomplished. No Bosniac family returned to West Mostar although a survey revealed that 12,000 unoccupied flats were available. Despite the Decree on Stopping Expulsion from Houses and Apartments[113] issued by the Administrator on 22 October 1994, eviction mainly of Bosniacs living in West Mostar continued and was often accompanied by threats or acts of violence. The local authorities seemed unable to take any action whatsoever. At times they even appeared to participate in the evictions.[114] In March 1997, the time by which EUAM had already left Mostar, evictions of Bosniacs living in the Croat part of the town were still taking place.[115]

Due to Croat resistance, freedom of movement was from the beginning a stumbling point beyond which no meaningful progress was made for one-and-a-half years. As a result, until December 1995, Mostar was practically a divided city. With the exception of military-age men (between 16 and 60), in the entire history of the EUAM only 250 persons received permission to cross the former front line on a daily basis. A small number of people were able to obtain identity cards enabling them to cross to the other side for professional reasons. For security reasons the Croats constently objected to attempts to achieve further progress. They had no incentive to make any concessions, as they occupied the less-destroyed and better-infrastructured part of Mostar, which had free access to both Bosnia and Croatia. With the Dayton Accords in late 1995 the restrictions on numbers were lifted. Violent incidents during the first week of 1996, however, disrupted freedom of movement. After a diplomatic round sponsored by the Italian EU Presidency in Rome on 17/18 February, a policy of complete and unlimited freedom of movement for all citizens of Mostar was finally established on 20 February 1996. Due to lasting fear of attacks by uncontrolled elements, there was still reluctance, particularly among men of military age, to cross over to the other side.

A three-phase plan was to lead progressively to an autonomous unified police force (UPFM). Due to Croat security reservations only very slow progress was made toward the establishment of a Joint Operation Centre. After fruitful talks between the Administrator and high ranking diplomats of the Republic of Croatia and the Bosniac-Croat Federation, concurrent with the first anniversary of the Washington Agreement in March 1995, most of the ob-

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112 Interview with Amb. Bo Kälfors, Refugee Adviser, EU Administration of Mostar, 2 July 1996.

113 The Decree declared all evictions by private people, by force or harassment of the existing occupants to be considered criminal acts subject to prosecution.

114 Report on the Ad Hoc Group meeting on 10 December 1996, p.3.

115 Official Journal of the European Communities, No C 85/148, 17 March 1997, 12. Former Yugoslavia and non-compliance with Dayton Agreements, Resolution on the situation in Mostar and Brcko.

jectives of the first phase had been achieved, but not the recruitment of local police officers. Although on 18 September 1995 an agreement on the implementation of Phase II was reached and signed by both the Mayors and Police Officers of Mostar East and West, no progress was achieved, due again to Croat objections.[116] Concurrent with the Dayton peace talks Franjo Tudjman, the President of Croatia and the Bosnian President Alija Izetbegovic reached an agreement to strengthen the Federation.[117] The agreement included a plan to accelerate the political integration of Mostar, which was seen as a weak link. The goals of ensuring freedom of movement, holding free elections in the city and the establishment of joint police patrols were set forth. Some violent incidents in early January 1996, leading to the death of Croat and Bosniac police officers, underlined the problems the WEU had with the implementation of the joint patrols. At the summit in Rome on 17/18 February 1996, where the EU, together with the International Contact Group, met the Presidents of Croatia, Bosnia and Herzegovina and Serbia, the local parties agreed to begin with the deployment of the joint patrols on 20 February. To aid with the unification of the police force, the Croatian President Tudjman offered 100 police offers, and to balance those forces the Bosnian government also agreed to send 100 officers. The typical running patrol was now composed of two officers from the WEU, one Croat, one Bosniac, one Mostar Croat, one Mostar Bosniac, and one interpreter. With this composition, since their 20 February implementation, the joint forces have been functioning smoothly. In late April, in accordance with the Dayton Accords, the WEU opened the Joint Operation Centre. Although the final phase concerning transition and withdrawal was due to begin in March 1996 and end with the expiry of the EUAM's mandate on 22 July 1996, Phase II was still running as of the beginning of July 1996. In Phase III, after an intensive training programme for the local police officers, the WEU was to be withdrawn and control of the police force gradually handed over to the local officials. The UPFM should theoretically then have been able to continue the same independent and self-sufficient role of the EU Administration and the WEU police.

Article 21 of the MoU provides that all funds at the disposal of the two local administrations of Mostar East and West would be made available to the EUAM Department of Finance and Taxes, which would integrate them into the city's budget. Even though the two administrations were receiving outside funds, they have never declared them to the EUAM.

Concerning the unification of the city administration, the Interim City Statute published in the official Gazette of 7 February 1996 was an attempt to satisfy both the EUAM's

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116 Interview with Col. Pieter Lambrechtse, Police Commissioner, EU Administration of Mostar, July 1996.

117 Agreement on Implementing the Federation of Bosnia and Herzegovina of 10 November 1995.

objective of a unified government and the idea of dividing the city into ethnically based districts providing consideration for and protection of the individual cultural alignment.[118] From the very beginning of the political dialogue on the future status of Mostar in March 1995, the Croat representatives insisted on two districts in a 'unified city', which in effect entails confirming the results of the war and a de facto division of Mostar. After long negotiations both sides agreed in Dayton to divide Mostar into three districts on each side. However, because they could not reach an agreement on the districts' borders, the Administrator had to arbitrate. He introduced one neutral central zone containing federal, cantonal and city administrations. The Croats violently objected to his arbitration. They argued that the central zone, with a Bosniac majority, would favour the Bosniacs and would furthermore violate the Dayton Accords, in which only six districts were anticipated. Consequently, the Croats cancelled further collaboration with the EUAM. At the Rome summit in February 1996, the two Mostar Mayors agreed to a reduced central zone. That modified zone was only to contain buildings of common public interest, so as to constitute a core of integration between both sides, and was to be administered directly by the Mayor and the City Council. This outcome was endorsed by West Mostar's Mayor Mijo Brajkovic, saying that the compromise was a victory of reason which showed that the Croats were right to have protested. Subsequently, Croat authorities have launched projects in the central zone contradicting the spirit of the Rome Agreement, in particular, they laid a foundation stone for a Catholic Basilica and planned to build a Croat war memorial. On 26 February EUAM Administrator Hans Koschnick resigned because he viewed the compromise of Rome, initiated by the Italian Presidency, as a reward for Croatian violence.

Although the Mostar elections which, according the Dayton Accords were to be held 'no later than 31 May 1996'[119], were viewed as a test case for the September countrywide elections to be supervised by the OSCE, the EU alone was responsible for the organisation in Mostar.[120] The EUAM faced a major obstacle during the election preparations. The Croats and Bosniacs disagreed over the question who should be allowed to vote. The Croats contended that only those living in Mostar at the time of the elections could participate in them. The

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118 The central administration of the city was to have certain powers, such as taxation, urban planning, water, electricity, and public transport. The competency of the districts was to guarantee participation of citizens in local self-government. The multi-ethnic city council was to have 48 members, half of them elected by city-wide vote and the other half by the district councils. Each district was to have a 25-member council, reflecting the ethnic make-up according to the 1991 census.

119 Dayton Agreement on Implementing the Federation of Bosnia and Herzegovina of 10 November 1995, Section II, I:2, p.8.

120 The Interim Statute of the City of Mostar of 7 February 1996 included a Decree on the Conduction of the Elections defining the technical details for organising the elections for the city and district councils.

Bosniacs protested that the voting rules derived from the Dayton Accords would disenfranchise non-Croats who fled or were evicted from their homes in the Mostar area by Croat separatists during the 1993 war. The Bosniac SDA Party complained that prohibiting the expelled citizens of Mostar from participating in the elections would be tantamount to a European legalislation of the ethnic cleansing and division of the city and thus threatened a boycott. This disagreement led in mid-May to Bosniac non-participation in the organs for the election administrative bodies. The deadlock in the electoral process was finally overcome after a round of negotiations between the new Administrator Ricard Perez Casado and both Mostar Mayors, and President Izetbegovic and President Tudjman, which culminated on 25 May 1996 in the signing of an agreement by all parties on the local level. This agreement allowed all Mostarians who were registered in the 1991 census and left the city involuntarily to participate in the elections. Thus, Mostar residents who fled abroad were allowed to vote either in Germany, Switzerland, Norway or Sweden. Furthermore, the Administrator postponed the elections until 30 June 1996.[121]

The first post-war elections in BH proceeded more smoothly than expected, without any major incidents.[122] The national parties of the Bosniacs and the Croats, SDA[123] and HDZ[124], won the elections, while the list of five opposition non-nationalistic and multi-ethnic parties was surprisingly weak.[125] The pro-unification SDA, whose list included some Serbs and Croats in a coalition named 'For a Unified Mostar', won a landslide victory abroad, which in the final count helped the Bosniac ruling party to wield a narrow majority in the city council.[126] After the official election results were announced, the Bosniac-Croat Joint Election Commission annuled the votes from the polling station in Bonn, Germany. This annulment was immediately followed by an 'Objection' submitted by East Mostar Mayor Safet Orucevic for the list of citizens 'For a Unified Mostar'. The reason for their entire annulment was that 26 extra ballots had been cast in the German capital.[127] The Croat Commission members contested the election results and refused to confirm them. Although the extra votes hardly made a difference in the result of the Bonn vote, their entire annulment would have changed the overall result.

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121 Agreement on the Local Election Commision, 25 May 1996.

122 Freedom of movement and overall security was assured by the presence of more than 2,000 IFOR troops, so that voters could cross safely the former front lines by bus.

123 Party of Democratic Action

124 Croatian Democratic Union

125 They received only 3,2 % of the vote. Consequently, no minority parties were represented in the city council and the six districts were equally divided along ethnic lines.

126 The turnout was 60%.

127 Decision No. 68/96 of the City Election Commission.

On 6 July, the EUAM Ombudsman announced that the Mostar elections were valid and demanded that the Election Commission publish the results.[128] In reaction the HDZ appealed to the federal Constitutional Court in Sarajevo to rule on the irregularities and refused to take up its wish to unite the three city districts with Croat majorities. Consequently, at the end of EUAM's mandate on 23 July 1996 the city remained without an administration to which the EUAM could transfer control. After long negotiations involving US President Bill Clinton and Croatian President Franjo Tudjman, as well as talks by numerous European diplomats with Croatian Foreign Minister Mate Granic, the problem was solved with an agreement signed by both Mayors in August. Moreover, both accepted a Joint Action - nominating a Special Envoy for Mostar[129] - already decided by the Council of Ministers on 15 July[130] and assured their full cooperation concerning the establishment of a functional city administration. The two Mayors also took official note of the HDZ's objections against the decision of the EU Ombudsman regarding the election results in the Bonn polling station and its subsequent complaint to the appropriate Court of the Federation. It was also stipulated that the Mayor was to be a Croat,[131] taking into account that the governor of the Bosniac-led Neretva Canton and the Mayor of Mostar should be of different ethnic origin.

3.2 Eastern Slavonia - Authoritative reintegration truth

In the beginning of 1996, Eastern Slavonia was the base for approximately 10,000 armed Soldiers of the "Army of the Republic of Serb Krajina (ARSK)" II Slavonia Baranja Corps.[132] This conventional force was supplemented by three nationalist Serb para-military troops: the warlord Arkan's Tiger Brigade, Dragan's Red Berets, and Seselj's White Eagles.[133] UN sources estimate that Croatia had, in the immediate proximity of the region, a

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128 According to Article 11 of the Decree on Conduct of Elections for the City Council the EUAM Ombudsman can overrule the decision if only one of the parties has lodged an official complaint. His conclusion was that any suspicion of double voting in Bonn was unfounded due to the random distribution of the additional ballots. The distribution of the ballots showed that the irregularity should be attributed to material errors committed in the procedure by the Polling Committee rather than to fraudulent intentions.

129 To ensure the rapid reintegration of the city into an overall structure for peace implementation in Bosnia and Herzegovina by phasing out of the EU Administration, ending as soon as possible after 23 July and in any case not longer than 31 December 1996.

130 Council Decision (96/442/CFSP) of 15 July 1996. The successor of the Administrator Hans Koschnick, the Spaniard Ricard Perez Casado, wrote in a report to the Council of Ministers already on 13 May 1996, that he was sure that Mostar will not have a democratically elected town government in the near future but will still be a divided city. What in his opinion was needed was an extension of the mandate.

131 Following an official suggestion by a SDA of 10 July 1996 and already agreed to by Prime Minister Muratovic on 23 May 1996.

132 The ARSK had in total about 15,000 regular troops, 120 tanks, 120 artillery pieces, 140 mortars and 11 multiple-launch rocket systems (MLRS).

133 These forces came partially from the local command structure and were deemed to be more disciplined than regular units.With an effective size of 300-500, the Tiger Brigade was the largest of the special forces. It

total of 23,000 troops.[134] Considering this high presence of local forces in the area, demilitarisation was not only perceived as the most crucial and difficult aspect of the UNTAES's implementation package, but also as a pre-condition for the successful restoration of respect for the UN and the provision of a secure environment. Demilitarisation entailed the removal of Serb forces from the region; their replacement by a credible neutral force; the re-introduction of the Croatian Army to the region without destabilising the area; and self-repatriation of the International Force in phases.[135] Thus, in May 1996 the demilitarisation process formally began, with the majority of ARSK tanks and heavy weapons handed over to the Federal Military in Serbia-Montenegro.[136] The ARSK then disbanded and its former soldiers became civilians.[137] By the 27th June, after some difficulties with para-military troops based in the Djeletovci oil fields were overcome, demilitarisation was declared complete and UNTAES was proclaimed as the sole military force in the region. To try to take as many of small arms as possible, held by almost every adult, out of circulation, UNTAES began a weapons buy-back programme in October 1996. In return for cash payments funded by the Croatian government around 10,000 rifles, 5,000 disposable and 600 reusable rocket launchers, 15,000 grenades, 7,000 antitank weapons and 2 million rounds of ammunition were handed into UNTAES collection points during that year.[138] During demilitarisation the UN Military Observers' (UNMOs) task was to report on the removal of equipment. Later, they were to continue to maintain liaisons with the Croatian military forces and special police in the Osijek and Vinkovci areas and to contribute to civilian tasks with the Civilian Affairs department, e.g. to monitor eight of the 25 UN Document Centers, which issued the full range

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had evolved into a specially trained elite unit from its origins as a freelance, mercenary, para-military group and was used for training regular forces and volunteers from Serbia. Another important function was to discipline local troops and the civilian population. See: United Nations Task Force to Establish the Transitional Administration in Sector East, Background Report on the Region of Eastern Slavonia, Baranja and Western Sirmium, Zagreb, December 1995, para 37, p.10.

134 Included in this configuration were two professional guards brigades, two professional ranger battalions, four home defence regiments and nine infantry regiments with 60 tanks and 240 pieces of artillery. These forces could potentially have been reinforced within 48 hours complemented by two machanised brigades and two artillery brigades, to give a total of 34,000 troops. Thus, the Croatian Army (HV) had significant flexibility and clear superiority in all elements over the "ARSK". See: United Nations Task Force to Establish the Transitional Administration in Sector East, Background Report on the Region of Eastern Slavonia, Baranja and Western Sirmium, Zagreb, December 1995, para 37, p.10.

135 United Nations Task Force to Establish the Transitional Administration in Sector East, Background Report on the Region of Eastern Slavonia, Baranja and Western Sirmium, Zagreb, December 1995, para 82, p.18.

136 On 15 April, the Administrator signed the "Schedule and Procedures for the Demilitarisation of the Region of Eastern Slavonia, Baranja and Western Sirmium", laying out in detail the procedures and timetable for the demilitarisation of the area and the demobilisation of the personnel of the Serb armed forces. The local military and police commanders were obliged to provide UNTAES with complete information regarding their units, weapons and equipment.

137 UNTAES - An After-Action Report, 15 January 1996 - 15 January 1998, Christopher Holshek.

138 UNTAES soldiers were authorised to disarm anyone openly carrying small arms and weapons, which have not been registered as 'hunting' rifles with the local authorities.

of Croatian documents necessary for voting to more than 90,000 people in the region. Furthermore, they worked on identifying vacant houses for possible returns, as well as on monitoring the human rights situation. A de-mining programme was coordinated by UNTAES. Around 400-600 de-mining personnel were working at any one time in the region, clearing several thousand mines. According to estimates the work will take up to 10 years to complete. UNTAES has worked to promote international support for de-mining and attracted funding for this vital work from the United Nations High Commissioner for Refugees (UNHCR) and the European Union.

A local police force based on a new concept and distinct from the para-military and infiltrated units that have been policing the region for the past four years was assumed to need training focusing on civilian issues. The concept of identifying a mixed group of local police officers for training abroad in a neutral environment was suggested to avoid the pressure of propaganda during their training and in preparation for the cooperative aspect of their future work. Consequently, a major initiative was the establishment of the Transitional Police Force (TPF) in July 1996, made up of 910 Serbs, 840 Croats and 50 members of other ethnic groups, to police the region in an even handed manner until Croatian control. UNCIVPOL provided the TPF with training and advice to help them operate to international standards. Along the region's international borders, UNTAES border monitors helped the TPF and the Transitional Border Control Force to operate customs and immigration procedures to recognised standards. At the end of the period, a smooth hand-over and transition to a joint ethnically balanced local police was achieved. A Police Support Group of 136 international civilian police monitors remained to further observe the local police's performance before this task was transfered to the OSCE police monitoring mission.

Croatian local government officials were brought into the region to help prepare for the smooth transition of town and country administrations into the country's governmental structures, reflecting Croat/Serb proportional representation on the basis of the 1997 voter registration lists. Croatian law was introduced in the region, while existing laws were phased out. School curriculum and qualifications have been harmonised and multilingual certificates issued. The pension system for old people and war widows has also been brought into line with those of Croatia. However, the functioning of local government remains incomplete in important financial and legal areas: most municipalities cannot provide basic communal services because they have not received sufficiant funds; only half of them have finalised plans for economic reconstruction; and the boundaries of the new municipalities drawn before the April 1997 elections have not been legally recognised, creating doubts as to their further

existance after the end of UNTAES. Postal, telecommunications, public utilities and banking regulations have been prepared for re-integration. Arrangements were made for 160,000 people to cross the former frontline to meet with relatives and friends. A weekly market started in August 1996 on a road in the Zone of Seperation where some 150,000 people from all over former Yugoslavia have gathered to buy and sell goods or meet friends and relatives.

Before 1991, Eastern Slavonia had been multi-ethnic, with Croats making up 45% of the population, Serbs 25% and other nationalities (Hungarians, Slovaks, Yugoslavs, Gypsies, Czechs, Ukrainians, Italians, Bosniacs, and Ruthenians) the remaining 30%. When UNTAES was established, about 85% of a population of approximately 140,000 people were Serbs, including 70,000 Serb refugees from other parts of former Yugoslavia,[139] and 8% were Croats (between 10,000 and 13,500). [140] UNHCR was the lead agency on issues relating to the movement of population, whereas UNTAES played only a secondary role.[141] Since Serb DPs who had escaped the Croatian military operations in May and August 1995 mainly occupied Croat houses, the return of Croat DPs to the region was complicated. Unless the Serbs were resettled, the Croats could not return home. The two-way return process had been held up by slow action of the governmental Office for DPs and Refugees, but also due to the uncertain security and economic situation as well as legal impediments to restoring property. Because of continued ethnic violence, harassment, and intimidation of Serbs inside the region by Croat extremists, often passively tolerated by the Croatian police, as well as the hostile propaganda in the Croatian media, the Serbs' confidence about their future remained low. A country-wide public programme of national reconciliation has been adopted by the Government of Croatia in October 1997, as called for in Security Council resolution 1120 (1997).[142] A few days later a multi-ethnic national Board for the Establishment of Confidence and Acceleration of Returns and Normalisation of Life was founded to implement the programme by working through regional, municipal and local reconciliation committees. The board remained inactive on all levels.[143] UNTAES, for its part, has contributed to reconciliation by organising several professionel reconciliation and 'conflict resolution' seminars with international donor support.

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139 Of which 5,000 were from Bosnia, 50,000 displaced persons (DPs) from Western Slavonia and 15,000 from the Krajina.

140 United Nations Task Force to Establish the Transitional Administration in Sector East, Background Report on the Region of Eastern Slavonia, Baranja and Western Sirmium, Zagreb, December 1995, para 10, p.4.

141 United Nations Transitional Administration (UNTA) for Eastern Slavonia, Baranja and Western Sirmium, unpublished paper of the UN, 21 December 1995, para 35, p.10.

142 Report of the Secretary-General on the UNTAES, S/1997/767 of 2 October 1997, para 19, p.6.

143 Report of the Secretary-General on the UN Police Support Group, S/1998/887 of 23 September 1998, para 26, p.6.

Until the end of UNTAES' mandate, some 6,000 Croats and 9,000 Serbs returned to their original homes.[144]

UNTAES had established a pro-active public awareness campaign to get its message out to people who had previously been confronted with hate propaganda in the daily newspapers, television and radio. A bulletin was published every fortnight and daily television and radio programmes were broadcast from their own transmitters.[145]

The Administrator had co-sponsored two international donor conferences that have raised US$ 45 million for the reconstruction of the region's water supplies, telephone systems, electric power grid, agriculture, oil, industry, residential accommodation, police stations, roads, ports and schools. This work continues, with estimates suggesting some US$ 1 billion is needed to get the region back on its feet economically. Some 5,000 work contracts in reintegrated public enterprises and institutions have been publicised, of which a third had been offered to Serbs.

The work of UNTAES and its presence has served as a bridge for the mutual recognition of Croatia and the Federal Republic of Yugoslavia (FRY). Relations between the two countries were normalised through increasingly cooperative bilateral agreements, including a "soft-border" regime and the reestablishment of normal commercial and traffic links. This is essential to the full economic development of the Danube border area. Already in May 1996 the Zagreb-Belgrade highway was reopened, leading through UNTAES area. The same day the Adriatic pipeline from Croatia to the FRY was reconnected. Mail and telephone service was resumed a week later.

On 13/14 April 1997 the political landscape of Eastern Slavonia was fundamentally transformed, as the region took part in Croatian town, country and parliamentary elections for the first time. The elections were an important milestone for the legitimate representation of the local population in the Croatian constitutional and legal system. Croatian and Serbian politicians and parties opposed each other in a free and fair election, co-ordinated and monitored by the UNTAES Electoral Unit. With the encouragement of UNTAES, the two main parties, the Croatian HDZ and the Independent Democratic Serb Party (SDSS) negotiated a power-sharing arrangement throughout the region.[146] During the UNTAES mission local Croat officials have not always implemented the decisions of the central government and have on several occasions been uncooperative, using bureaucratic

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144 Report of the Secretary-General on the UNTAES, S/1997/953 of 4 December 1997, para 6, p.2.
145 Defence Research Paper, Major Julien Neel, Belgian Army, p.6-7.
146 S/1997/487 of 23 June 1997, para 3, p.2.

manoeuvres and obstructions to delay or prevent promised support to the region. Therefore, UNTAES insisted on a mechanism to coordinate Croatian State activities in the region and to ensure that local politicians implemented national policies. Consequently, a State Commission[147] was formed. Nevertheless, President Tudjman's personal intervention was still required for more difficult issues.[148]

When UNTAES left the region, international engagement was handed over to the OSCE, whose misssion was to monitor the Croatian Government's compliance with human rights and other agreements.

3.3 Brcko - Rocky road towards multi-ethnicity

The area of responsibility of the International Supervisor was not demilitarised until the Final Award called for demilitarisation of the entire Brcko District. A plan for the closure of RS and Federation military bases and transfer of equipment and personnel is being developed under the guidance of SFOR.[149]

Due to the fact that print media are not widely read by a population that is 15% illiterate, OHR North uses television to underscore and complement their messages about freedom of movement, right of return, elections, democratisation, and economic revitalisation. Furthermore, an aggressive and energetic public information campaign includes an OHR newsletter distributed on both sides of the Inter-Entity Boundary Line (IEBL) as well as radio programmes.

In 1991, the popuation of the Brcko municipality was about 87,000 of which 44% were Bosniacs, 21% were Serbs, 25% were Croats, and 10% designated themselves as belonging to some "other" ethnic group. Brcko town had around 41,000 inhabitants, of which 56% were Bosniacs, 20% were Serbs, 7% were Croats, and 17% declared themselves as others.[150] According to the Award of 14 February 1997, it was estimated that 35,000 people live in Brcko town, and that of this number 34,000 were Serbs. Of the Serb population, approximately 8,000 were pre-war residents who remained there; 9,000 were former residents of towns in the Brcko municipality who moved into Brcko town after virtually the entire Bosniac and Croat population was expelled. The remainder were DPs (displaced persons) from the Krajina, Sarajevo, and a number of Bosnian towns.[151] Until the First Award of 14

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147 That was headed by the Deputy Prime Minister and the Minister for Reconstruction and Development.
148 S/1997/487 of 23 June 1997, para 7, p.3.
149 The RS may be granted legitimate need to move military forces and equipment through the District with SFOR permission. See: Final Award, 5 March 1999, para 41, p.11.
150 Award, Rome, 14 February 1997, para 45, p.14.
151 Ibid., para 53, p.17.

February 1997, there had only been returns of 15 Bosniac families to Brcko town. Fear was assumed to be the major impediment. South of the town, where Bosniacs had attempted to reconstruct their homes, 27 houses had been destroyed by bombings.[152]

Between the first and the Supplemental Award on 15 March 1998, the RS police systematically intimidated any Bosniacs and Croats who explored the possibility of returning to their former homes in the area. Those few Bosniac and Croat families who still lived in the area were put under pressure to leave.[153] The Federation's record of compliance with the letter and spirit of the Dayton Accords has also been hardly perfect. There was considerable evidence that Federation authorities have acted to inhibit the return of former Serb residents to Sarajevo and other communities within the Federation. This is of relevance to Brcko because several thousand Serbs who formerly lived in Sarajevo currently occupy homes of Bosniacs and Croats who would like to return to Brcko.[154] Nevertheless, more returns of DPs and refugees were achieved in the period up to March 1998 than throughout all the rest of the RS.[155] One must emphasise that no Bosniac and Croat returns were accomplished into Brcko town. Instead, they were confined to the rural areas south and west. The Bosniacs' main objection to return is the need to accept RS identity cards upon returning to RS territory.

During the hearings prior to the Final Award of 5 March 1999, the point was made that Serb DPs in Brcko are becoming more and more "cemented" in position, and that Bosniacs and Croats are beginning to abandon hope of returning to Brcko, moving off to other areas instead. During 1998 hard-line SDS officials encouraged Brcko's Serb DPs and refugees to stay where they were, whether or not recovery of their own homes elsewhere was a real possibility. The obstructions apparently had the desired results. According to UNHCR, in 1998 more than 7,600 Serbs returned officially to the Federation from various parts of the RS. The movement from Brcko to the Federation was negligible. Out of approximately 26,000 Serb DPs in Brcko, only 142 Serb families applied to return to the Federation; and far fewer actually moved. According to one local Serb official, during the two years, 1997-98, only nine Serbs left Brcko to the Federation.[156] Therefore, it was concluded that any further delay in the arbitration process would continue to reduce the chances of ethnic reintegration in the Brcko area.[157] It is the Tribunal's expectation that, with a greater degree of democracy in the area and a lessening of anti-return propaganda and intimiation, which must be accompanied by

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152 Ibid., para 54, p. 17
153 Supplemental Award, 15 March 1998, para 7, p.4.
154 Ibid., para 8, p.5.
155 Ibid., para 14, p.7.
156 Final Award, 5 March 1999, para 25, p.8.
157 Ibid., para 5, p.5.

increased return-facilitation by the Federation, the existing prejudices of Brcko Serb DPs against return to their original homes will be alleviated and that the flow of DPs out of Brcko will increase, thus facilitating returns both ways. By November 1999, 1477 minority families - c. 5900 individuals had returned to the RS portion of the Brcko municipality.[158] There is some hope to achieve more returns into town in the near future. On the other hand, finance for reconstruction is becoming a problem because donor aid is dropping off - for example the UNHCR budget has been reduced by 50% for 2000.

During the hearings for the Final Award, the Supervisor emphasised that it is virtually impossible to persuade either donor governments or private investors to fund the badly needed economic revitalisation of the depressed Brcko area until a final decision is made.[159] OHR is particularly reliant on the expertise and funding of organisations such as the World Bank, USAID, the European Commission, and governments. In a document prepared for the donors' conference for Bosnia and Herzegovina in May 1999, the International Supervisor had proposed to establish a "Brcko Transitional Trust Fund" to equalize public salaries and pensions to citizens in the District and to be used as a depository for any revenue "shortfall" payments made by the entities until improvements and efficencies in the entities' tax collection and expenditures are achieved.[160] The Supervisor expected the fund to be needed for a maximum of two years and was to be managed by him with supervision and advice from a donor committee.[161] Unfortunately, no finances were made available for the "Trust Fund".[162] Neverthelss, as a consequence of the Final Award, the atmosphere in the Brcko area has changed from hard-line Serb nationalism to a more tolerant environment, in which internal and external investors are genuinely interested.[163] UNDP has launched a Village Employment and Environment Programme, supported by the European Commission, that targets employment, small business training and technical assistance, and the provision of additional small-to-medium business loans. The European Commission supports an agricultural reform project with Euro 4 million.[164]

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158 Figures provided by Tim Yates, Chief of Staff, OHR-North, 10 November 1999.

159 Final Award, 5 March 1999, para 5, p.5.

160 In 1998 the RS Brcko municipality allocated only 26% of its annual budget for employee salaries while nearly 40% was spent under the catch-all category of "other costs".

161 Brcko Implementation Projects in Support of the March 5, 1999 Brcko Final Arbitration Award, Prepared for the May 20-21, 1999 Donors' Conference for Bosnia and Herzegovina, by Ambassador Robert W. Farrand, Deputy High Representative and International Supervisor of Brcko, OHR-North, p.10.

162 According to Tim Yates, Chief of Staff, OHR-North, 10 November 1999.

163 Evaluation by Tim Yates, Chief of Staff, OHR-North, 10 November 1999.

164 Brcko Implementation Projects in Support of the March 5, 1999 Brcko Final Arbitration Award, Prepared for the May 20-21, 1999 Donors' Conference for Bosnia and Herzegovina, prepared by Ambassador Robert W. Farrand, Deputy High Representative and International Supervisor of Brcko, OHR-North, p.6.

Although deemed "shallowly rooted" by the Supervisor, in spring 1998 a multi-ethnic Municipal Assembly, Administration and Judiciary were in place.[165] The Supervisor noted that the process of integration was still characterised by a lack of support for the multi-ethnic governmental institutions, ranging from minor obstructionism to serious disobedience of his orders. In addition, the multi-ethnic administration made slow progress due to the lack of a genuine multi-ethnic environment. Furthermore, relations between the Mayor (Serb) and the two Deputy Mayors (Bosniac and Croat) were marred by the Mayor's failure to abide by the requirement that the Deputy Mayors countersign letters to the Municipal Assembly and by the Mayor's refusal to allow the Deputy Mayors to place issues on the agenda of the Executive Board (municipal government). Serb block voting both on the Executive Board and in the Assembly effectively prevented those bodies from acting on issues that they were required to address by the Supervisory orders and the Tribunal's Awards. Local leaders have also prevented ethnic integration in the lower ranks of the Brcko administration.[166] The Joint Implementation Committee to draft the District Statute has presented the Statute for 'The Brcko District of Bosnia and Herzegovina', encompassing the complete territory of the Brcko municipality of January 1991, in its final form in December 1999. A Legal Review Team was established which is looking at the harmonisation or, if necessary, drafting of legislation for the new District. According to the Statute, District Judges, Prosecutors, Members of the Judicial Commission and police officers shall not be members of political parties or endorse political candidates or political party platforms.[167]

The multi-ethnic police force is policing under IPTF monitoring significant new traffic over the Brcko highway bridge to Croatia and is patrolling throughout all areas of the city of Brcko as well as outlying districts. The Judiciary is working multi-ethnically, too. A Bosniac school was opened with a compromise educational curriculum in the RS portion.

The analysis has shown that the three transitional administrations worked in a similar environment but under unequal circumstances and with different resources. Consequently, their outcomes as well as the durability of their achievements differ. What lessons can be learned from the concrete findings will be discussed in the final paragraph.

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165 Supplemental Award, 15 March 1998, para 14, p.7.

166 Final Award, 5 March 1999, para 33, p.10.

167 Statute of the Brcko District of Bosnia and Herzegovina, December 1999, Article 15, Freedom of Association, p.6.

4. Conclusions: lessons learned from three international peace-building models

More than three years after the termination of the EUAM one could say that the European operation was a smoothly running spaceship with a weak link to the mission control. Due to well functioning operational procedures within the administration and sufficiant funds from the European Commission, the reconstruction part of the mandate was an enormous success. Politically, there was no such success: no joint projects could be executed covering both sides. The EUAM contributed greately to the return to normal life in Mostar but could neither achieve the city's physical nor its political and social reunification. The lack of success regarding the EUAM's political mandate can be attributed to many reasons of which none was lying within the administration's scope of control. First, the mandate was too ambitious. Considering the fact, that the brutal war between the two ethnic groups had only ceased four months before the EUAM was established, it was naive to believe that Croats and Bosniacs could resume cooperation immediately. Under the circumstances of lasting mistrust, the objective of a re-unified city was not achievable within two years.

Second, the EUAM was too weak. The Bosnian Croat leaders accepted the EUAM only under the pressure from Zagreb and the international community, and made clear that they perceived the administration as an imposed 'colonial' system.[168] The administration's mandate was based on the consent and cooperation of the local parties, not on coercion. Accordingly, the Administrator was lacking the necessary means to implement the EU Ministers' policy, e.g. executive power and military forces as its manifestation. Neither did the EUAM have a lever at hand to put pressure on the Croats toward compliance, nor did the numerous diplomatic rounds involving Croatian President Tudjman achieve more than verbal concessions toward that end.

Third, the duration of the European presence in Mostar was clearly fixed in advance. Consequently, the Croats knew how long they could ask for financial and technical aid and, simultaneously, hinder any attempt toward political unification of the city. Owing the fact, that West Mostar was less destroyed than the Eastern part of the town and that some Croat mafiosi had alternative financial sources, the EUAM's reconstruction aid neither represented a material incentive for the Croats nor did the withdrawal of funds pose a serious threat. On their side, the Administration was considered to be a tactical asset.

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168 The EU Administration of Mostar - a balance after one year, Hans Koschnick, EU Administrator, p.4.

Fourth, the EUAM began its work in absence of an overall peace agreement for Bosnia and Herzegovina, which not only hampered the process of return of DPs and refugees but also kept the parties' interests in constant flux, according to their gains and losses on the battlefield.

Fifth, the Administrator's scope of action over that political reality was limited by the European Council and its Presidency. For example, the May 1995 strategy document, which assumed the willingness of the parties to live under a common set of rules with a central municipal authority, was submitted to the Council Presidency. It was neither discussed by the Working Party, the management body of the Presidency, nor did the Administrator ever receive any feedback.[169] Consequently, it did not result in the expected political backing for a possible modification of the EUAM's mandate or the operation's termination, although the Council of Ministers had reserved the right to do so at any time if it considered that there was a substantial change in the conditions or if any of the parties was not cooperative. Furthermore, when the Administrator exercised his right to arbitrate the neutral central zone, the Italian Council Presidency overturned his decision, which led to the Administrator's resignation.

Sixth, the procedures and mechanisms of the Common Foreign and Security Policy (CFSP) were not ready to guarantee an effective and efficient handling of a broad and long-term policy action. Neither a preparation strategy and staff selection procedure upon qualifications nor a permanent structure for the overall supervision existed. The six-month rotation in the Council Presidency, however, has shown evidence of being ill-adapted to the need for continuity in the management of a longterm Joint Action. In addition, the decision making procedures on the different levels of council groups, often causing delays for further consultations with the capitals of the Member States, was too slow to respond to day-to-day matters concerning the preparatory work, the implementation process and financial matters.

Seventh, the maintenance of the EU presence in Mostar was justified with the idea that the consolidation of the Federation could not be achieved without a peaceful modus vivendi in Mostar. As a matter of fact, the Federation became successively a system with coexisting ethnically pure zones in which a unified Mostar lost its legitimacy. In the end, none of Thomas G. Weiss' indicators in determining success of multinational operations were fulfilled.

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169 Court of Auditors, Preliminary Observations concerning the Accounts of the Administrator and the European Administration, Mostar, (EUAM), para 64, p.25.

UNTAES, by contrast, could already learn lessons from previous UN peace-keeping missions. Earlier UN mandates in the Balkans articulated a set of complex and often disparate goals, e.g. in creating Safe Areas in Bosnia, that were impossible to implement in the absence either of a broader political agreement or/and of adequate resources. Therefore, careful advance planning, sufficiant military and civilian staff support, full executive powers as well as demilitarisation of the region, were identified as necessary requirements for a successful multinational operation prior to the UNTAES deployment. Furthermore, the UNTAES was established with the pre-requisite of a clear win situation perceived by both involved local parties. The Basic Agreement required an achievable agenda with the peaceful reintegration of the region into the sovereign control of the Government of Croatia as its main political goal. In contrast to the EUAM, UNTAES' timeframe was flexible, depending on realistic chances for progress. To achieve the entire set of mandated civilian tasks of economic, political, administrative and social reintegration of a region with a population of 140,000, UNTAES was staffed by a comprehensive team of 405 civilian staff members. In comparison, the EUAM with a more complex and difficult mandate operating in an ethnically divided city with a population of more than 60,000 was understaffed with 39 civilian staff members. The UNTAES was also allotted sufficient personnel to achieve its military objectives and to contribute significantly to the achievement of civilian goals. In view of the fact that no relatively short-lived operation can achieve a full reconciliation between indviduals who were recently embroiled in a painful fraternal war, UNTAES has created a framework in which reconciliation can take place. Furthermore, it has facilitated the normalisation of relations between the Republic of Croatia and the Federal Republic of Yugoslavia and with it contributed to broader regional stability. Refering to Thomas G. Weiss and his concept of the comprehensive nature of inputs, the UNTAES was successful insofar as it could continue to proceed, with minor failures being outweighed by success in other areas. The shortcomings in the field of humanitarian aid, for example, were compensated with success in the military and political fields. However, only a few months after the end of the mission, the Security Council expressed its concern about increasing incidents of harrassment and intimidation of the local Serb community.[170] Furthermore, because there are still no employment opportunities, the original residents were unlikely to remain and Croat DPs seemed unlikely to return. Following the wrap up of UNTAES in January 1998, the native Eastern Slavonian Serbs stayed in the

[170] S/Prst/1998/32 of 6 November 1998, p. 1.

region, but approximately 40,000 Serb DPs left for Serbia, while approximately 30,000 Serbs went to other places in Croatia and 21,000 Croats have returned.[171]

High expectations were raised concerning the achievements of the International Supervisory Regime in Brcko. According to Tim Yates, the Chief of Staff of OHR-North, Brcko is a microcosm of Bosnia and if Brcko does not work the Dayton Peace Accords would need to be revised.[172] As the Supervisor's Office is to effect the administrative reunion of three ethnic groups, that do not share common interests, while enjoying only inadequate resources - no budget, little power, insufficiant support from the OHR Headquarters - the chances for success are even worse than in Mostar. The lever of the International Supervisory Regime to withdraw the authority over the municipality from one entity and give it to the other was lost with the Final Award. On the other hand, has the local Serbs' compliance with the implementation efforts also been lacking with the threat of the Award. David Greenberg, Special Assistant to the International Supervisor, noted that rewarding one side could be destabilizing for the region and could hamper the overall peace process. If the town were awarded to the Serbs that would be interpreted by the Bosniacs and Croats as the public approval of "ethnic cleansing". The situation would naturally be reversed, were the Serbs to lose the strategic corridor, which is of vital interest to them because it connects the two halves of their entity.

To conclude, the following lessons can be learned from the comparative analysis of three transitional administrations, which operated in multi-ethnic post-war environment. First, coherence in all actions undertaken by different components of the administration, even more so in the political unity among the governments directing the effort, is a precondition for a successful peace-building operation. Second, a clear win situation for all involved local parties is a prerequisite for success. There is no evidence in history that conflict resolution in multi-ethnic environment has ever been successful without the willingness of the former warring parties.[173] Third, the Mostar case teaches that the improvement of living conditions does not necessarily renew ties of trust eventually leading to reconciliation, especially in the short run. Fourth, to put both, the civilian and military component, under a single authority not only simplifies coordination among the components; it also creates a more consistant and powerful image of the operation. Experience shows that the success or failure of an operation depends very much upon the leading agency's public image. This image exists only as long as

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171 Interviev with the former UNTAES Administrator Jacques Paul Klein, 1 June 1999, Sarajevo.

172 Interview in Brcko in June 1999.

173 Marie-Janine Calic, Szenarien einer postjugoslawischen Zukunft, Blätter für deutsche und internationale Politik, Heft 1, 1997 (42), p.58.

the people believe that it can be revitalised in emergency situations. Therefore, every transitional administration that is operating in an ethno-political post-war environment and is incapable of exercising its power and of demonstrating operational coherence is likely to become a mere plaything among the local parties. Fifth, the timeframe needs to be flexible and conditional as to the implementation achievements. Otherwise, the operation is likely to be taken as a tactical asset, and the achievements will be jeopardised as soon as international presence is withdrawn. Hence, the EUAM's departure on 1 January 1997 was followed by a number of violant incidents in Mostar. These incidents were aimed at further reinforcing the segregation between the Croat and Bosniac parts of the city. They were seen as a real danger to the EU's investment in the reconstruction of Mostar and its efforts to rebuild a multicultural, multi-ethnic and multireligious society.[174]

A political vision for the region's future and a strategic concept, which formulates guidelines for the international actors, and calls upon the local peoples to contribute to the reconstruction of their countries, have been sorely lacking in the Balkans. As far as the future is concerned, the international community needs to invest more time in better and broader planning to guarantee its multinational peace-building activities' effectiveness.[175] One can only hope that the experience gained in the three transitional administrations will lead to better success for the UN Administration in Kosovo (UNMIK), and that the lessons learned during the past years of the Yugoslav conflict will enable the Balkan Stability Pact to contribute to the longterm mission of conflict resolution in the region.

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174 Official Journal of the European Communities, No C 85/148, 17 March 1997, 12. Former Yugoslavia and non-compliance with Dayton Agreements, Resolution on the situation in Mostar and Brcko.

175 Marie-Janine Calic, Szenarien einer postjugoslawischen Zukunft, Blätter für deutsche und internationale Politik, Heft 1, 1997 (42), p.65.

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