

Annex to Brcko Final Award

Brcko Arbitration

Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brcko Area

ANNEX to Final Award

Arbitration for the Brcko Area

The Federation of Bosnia and Herzegovina
v.
The Republika Srpska

Appearances:

For the Federation of Bosnia and
Herzegovina

Frank McCloskey
Edward O. Delaney
Mark J. Dinsmore
Barnes & Thornburg
Jay D. Zeiler
Akin, Gump, Strauss
Hauer & Feld

For the Republika Srpska

Nikola Kostich
Styler, Kostich, LeBell
Dobroski & McGuire
Dr Radomir Lukic

ANNEX (Revised as of 18 August 1999)

1. Status of District Residents

Every present or future resident of the District who was a citizen of an entity prior to the establishment of the District shall remain a citizen of that entity. As to all other District residents, including persons born after the establishment of the District, the Supervisor may provide in the Statute for District Government, after taking into account applicable laws of BiH, that each such person shall have the right at an appropriate time to choose his or her entity citizenship. The Supervisor may also include in the District Statute, after taking into account applicable laws of BiH, a mechanism for allowing any resident of the District to change his or her entity citizenship, regardless of his or her location within the District. The entities shall not conscript District residents for military or other service, and residents of the District shall not participate in voluntary entity military service. Either the District Statute or subsequent District legislative enactments may provide for a system of alternative service by District residents in lieu of entity military service. No District resident who moves his place of residence from the District shall be subject to entity military service.

2. The District Assembly

All legislative responsibilities of the District Government shall be vested in the District Assembly. These responsibilities shall be those required for the functioning of the District as a unit of local self government. The total membership, composition, and modality of selection of the Assembly shall be as specified in the Statute for District Government. The initial election of members of the Assembly shall take place when directed by the Supervisor. All elections shall take place in accordance with the provisions of Paragraph 9 below. Following the preparation of the District Statute, and pending the initial District elections, the Supervisor may dissolve existing assemblies in the District and consolidate them in such a way as to serve as a legislative advisory body to the Supervisor and the District Government. The size and composition of this body shall be determined by the Supervisor.

3. The Executive Board

All executive functions of the District Government shall be vested in the Executive Board, provided, however, that the Statute and the Board itself may provide for appropriate delegations of the Board's executive functions. Following preparation of the Statute, the Supervisor may dissolve existing administrative bodies within the District and consolidate them into a new interim administrative body whose size and composition will be determined by the Supervisor. The Statute may contain provisions to ensure, as appropriate, that the Executive Board members and/or District secretaries be professionally and technically qualified for their positions.

4. Judicial and Penal System

The Statute shall specify the structure of the District Judiciary. Initially the number of judicial posts shall be determined by the Supervisor, but the number may subsequently be changed by the District Assembly with the consent of the Supervisor. The District courts shall be independent and shall have general jurisdiction. The Supervisor shall make the initial appointments of (a) the members of the District Judiciary, and (b) the prosecutor and deputy prosecutors. As to subsequent appointments, the District Statute shall provide for the establishment of a Judicial Commission, which shall have responsibility for the appointment, tenure, and dismissal of judges and prosecutors in accordance with District law. All such appointments and dismissals shall be subject to the approval of the Supervisor. All persons appointed to such positions must be professionally qualified.

The District Statute shall create within the District Government a District Judicial Department to assume the administrative functions currently performed by entity Ministries of Justice. The District Judicial Department shall include a District Attorney who will represent the District's legal interests.

Pending the establishment of District prison facilities, any person sentenced to imprisonment shall be sent to serve his or her sentence in the prison facilities of the entity of which he or she is a citizen, although the Supervisor may order some other imprisonment arrangement in the interests of justice. An individual without entity citizenship may be imprisoned in either entity subject to the Supervisor's approval. Such use of entity prison facilities will be arranged by agreement between the District and the entities. The District shall provide for pre-trial detention within the District.

5. Law Revision Commission

The Supervisor shall establish and appoint a Law Revision Commission with responsibility for proposing new laws or modifications of existing laws so as to produce an appropriately uniform system of laws throughout the District. The Commission shall be chaired by an international jurist and include representatives of both entities. The Commission's recommendations will be submitted to the Assembly for approval and thereafter

bc subject to approval of the Supervisor. If the Assembly fails to act, the Supervisor may determine the disposition of the Commission's recommendations after consulting with appropriate BiH and entity officials.

6. Law Enforcement

The Statute shall provide for the establishment of the District Law Enforcement Agency, which shall take over the functions of all police authorities currently in the District, including the uniform police, the border police, and the financial police. The IPTF will retain its authority over the District Law Enforcement Agency in accordance with Annex 11 of the Dayton Peace Accords. The Statute shall make clear that the principal responsibilities of the District Law Enforcement Agency shall be, not only to provide normal law-enforcement functions throughout the District, but also to ensure complete freedom of movement within the District with particular emphasis on freedom of movement both between the eastern and western portions of Republika Srpska and between the Federation and Croatia.

The Statute will also provide that cooperative law enforcement arrangements are to be established as between the District Law Enforcement Agency and the law enforcement authorities of the entities. Such arrangements shall be subject to IPTF oversight and the approval of the Supervisor. They shall include provisions for the right of "hot pursuit" of criminal suspects. In accordance with the provisions of Paragraph 40 of the Final Award, entity police officers may (1) enter the District for consultative meetings with the District Law Enforcement Agency and (2) transit the District while on official duty as authorized by the Supervisor and/or IPTF.

The District Law Enforcement Agency will be headed by a Chief of Police, who shall report to the Executive Board. The initial appointment of the Chief of Police and his or her staff will be made by the Supervisor. Subsequent appointments and staffing level decisions will be made in accordance with the District Statute and subsequently enacted District laws with the consent of the Supervisor. The District Law Enforcement Agency, under the direction of the Chief of Police, shall carry out all administrative functions currently performed within the District by the entity Ministries of Interior.

7. Customs Service

The Statute shall provide for the administration of customs services, including the collection of duties, within the District. The Supervisor, in consultation with the Executive Board, shall determine whether the most appropriate approach would be the establishment of an independent District Customs Service, or whether all or part of such customs services should be obtained under contract from other private or public agencies, or whether other approaches would be more appropriate. District customs authorities, once in office, will be responsible for negotiating with relevant BiH and entity authorities looking toward an appropriate allocation of customs revenues.

8. Taxation and Financial Matters

A. Taxation

After consultations with representatives of OHR, BiH, and the two entities, the Supervisor shall make provision in the Statute for an appropriate system of District taxation, including administration and tax collection. Consideration shall be given to the question whether an independent District Tax Agency should be established or whether tax collection and administration should be delegated by contract to outside private or public agencies. Consistent with the provisions of the Statute, the District Assembly shall have responsibility for enacting appropriate tax laws subject to the approval of the Supervisor. Upon an effective date to be

determined by the Supervisor reflecting the establishment of the District tax system, residents of the District shall no longer be subject to taxation by either entity except as provided by the District tax laws.

The Supervisor is authorized to bring economic activity in the area of the “Arizona market” into full compliance with relevant tax laws.

B. Budget

Responsibility for the preparation of an annual District budget shall be that of the District Executive Board under the direction of the Supervisor. Prior to the election of the District Assembly, the Supervisor will have the authority to adopt the District budget. Thereafter the budget will be submitted to the District Assembly for its approval. In the event that the Supervisor disagrees with the budget adopted by the Assembly, the Supervisor shall engage in consultations with the Assembly but shall retain the final authority in the event of continuing disagreement. The general goal is for the District to be financed by revenues raised locally and by an allocation of customs revenues as contemplated in Paragraph 7. In the event that the Supervisor determines that there has been or will be a “short-fall” between such revenues and the expenditures that he has approved in the budget, an appeal may be made to BiH authorities for additional revenue. If the needed additional revenue does not otherwise become available, it will be provided by the entities, two-thirds from the Federation and one-third from the RS, except as otherwise agreed or directed by the Supervisor. The District Executive Board will have responsibility for implementation of the budget.

9. Voting

Every District resident who is a citizen of BiH and is eligible to vote in the District under the relevant laws and regulations governing elections shall be entitled to vote (a) in District elections for the District Assembly and any other District electoral offices; (b) in entity elections for the BiH presidency and the BiH House of Representatives by casting an appropriate ballot in the entity of which the voter is a citizen; and (c) in the elections of the entity of which the voter is a citizen. As to any District election which may be held prior to the preparation of the District Statute, the Supervisor shall establish rules that are consistent (to the extent he deems appropriate) with relevant laws and regulations governing elections, and the initial election shall be supervised by OSCE. For all subsequent District elections the electoral rules and voting rights established in the District Statute shall conform (to the extent deemed appropriate by the Supervisor) to the relevant laws and regulations governing elections, and the supervision of such subsequent elections shall be as determined by the Supervisor. In establishing the District electoral system the Supervisor may select any voting mechanism that, in his judgment, will promote full and fair representation of all elements of the District’s multi-ethnic population.

10. Symbols

The District Assembly shall determine all symbols for the District, provided that all such symbols shall be politically and ethnically neutral and subject to final approval by the Supervisor. There shall be no flag for the District other than the flag of Bosnia and Herzegovina. The flags of both entities may be flown within the District, but only together with the BiH flag. The flag of one entity will not be flown without the other being flown on essentially equal terms. Both the Latinic and Cyrillic alphabets will be used on essentially equal terms for all official purposes. Any resident of the District shall have the right to request the issuance of official documents in any of the three officially-recognized languages and shall have the right to use any such language in official and all other correspondence. The District government shall be responsible for issuance of a District identification card in conformity with BiH law and Statutory provisions approved by the Supervisor, and the use of passports will be controlled by the laws of BiH.

11. Educational Curriculum

After establishing and consulting with an Advisory Educational Committee with balanced representation and international expertise, the Supervisor will integrate the District's educational system, harmonize curricula within the District, and ensure the removal of teaching material which the Supervisor considers to be inconsistent with the objective of creating a democratic multi-ethnic society within the District. Until otherwise directed by the Supervisor, each school within the District will continue to use its existing curriculum. Every resident of the District shall be given equal access to adequate education without discrimination, and teaching staffs will be employed on a non-discriminatory basis. The Supervisor will have final decision-making authority with respect to such matters throughout the period of supervision, after which that authority will be in the hands of the Executive Board.

12. Public Properties

All public properties within the District shall be administered by the District Government, which shall have the authority, with the approval of the Supervisor, to privatize public property in accordance with applicable BiH law. No public property in the District may be disposed of except in accordance with BiH law and with the approval of the Supervisor.

13. Military Transits

Paragraph 42 of the Final Award provides in effect that, after SFOR's regime has come to an end, entity military forces will be permitted to transit the District only "in accordance with the laws of BiH and the District." In order to clarify the intent of that provision, the Tribunal should state here that the laws of BiH and the District should not be so administered or enforced as unreasonably to prevent any military transit whose purpose and effect is to allow the movement of forces for non-aggressive purposes.

Office of the High Representative