

Is Brcko District a condominium, an entity or a municipality?

The short answer is “no,” according to the Brcko Supervisor. It is a self-governing District under the sovereignty of Bosnia and Herzegovina. Since the status of the District is important to the people who live in the District, to Bosnia and Herzegovina as a sovereign state, and to the Federation of BiH and the Republika Srpska, we also need a longer answer. At the end of the recent war, the entities could not agree on which side should govern Brcko. So the Dayton peace agreements established an International Tribunal to resolve the territorial dispute. The entities could still not agree, so the Tribunal decided to create a separate District with its own governing institutions.

Recently the media have reported opinions about whether the District is another entity, or a condominium. The term “condominium” usually means joint ownership and control, such as control by two or more countries over a colony like the 19th Century Anglo-Egyptian Sudan. It was unworkable then, and remains so today. There is no trace of the idea of joint control over Brcko by the two entities in the Final Awards.

The reference to “condominium” in the Final Award refers to its decision not to change the territorial allocation to the entities (51%-49%) prescribed in the Dayton Accords. The Final Award says that the territory of the former Brcko *Opstina* belongs to both entities, quickly adding that “Neither entity, however, will exercise any authority within the boundaries of the District, which will administer the area as one unitary government.” Each entity transferred “...all of its powers of governance...” to the new District. (Final Award, paras. 9-11)

The Final Award required the creation of a single, multiethnic District Government, an independent judiciary, and an Assembly with the power to adopt a whole new body of laws for Brcko District. The laws of the Entities have effect in Brcko District only so long as they have not yet been permanently replaced by District legislation. Many important laws have already been replaced, and the rest will be.

If Brcko District has all the powers of an entity, does that make Brcko an entity? No. Several important features of the entities were not transferred. The District is demilitarized, the entities have armed forces. There is no District citizenship. BiH citizens in the District are also Entity citizens and can vote in Entity elections. District is not mentioned in the BiH Constitution, because it was created later, but it remains covered by the Constitution.

Likewise, the relationship between Brcko District and the state institutions of Bosnia and Herzegovina is unique. Brcko District residents vote for elected officials at the state level only through their votes in Entity elections. Yet Brcko District is directly subordinate to the sovereignty of Bosnia and Herzegovina. Since the governing powers granted to the District by the Final Award are the same as the entities' powers, the state must exercise its constitutional powers over Brcko District directly, and not through the entities. This is why, for example, the District agreed to collect payments for state public radio and television, and not for the Entities' public media.

The Brcko Tribunal was required to solve a territorial dispute that could not be resolved by the entities themselves. It was not asked to create another entity, canton or municipality. Like other multiethnic, federal systems that have created a special district for their capital (such as Belgium, Brazil or the United States), the Tribunal created a special District to solve a specific problem.

Did the District gain advantages from its special status? Yes, it did. The reorganization of the judiciary and the government gave it an opportunity to hire judges, prosecutors and civil servants competitively, and to develop more professional public institutions. The requirement for new laws created an opportunity for these and many other reforms. But these advantages do not disadvantage any other part of Bosnia and Herzegovina. Reforms that have begun to work in Brcko, to strengthen the market economy, or to improve government services, are reforms that can work in the rest of the country.