

Matthew Parish is a highly experienced international commercial lawyer who has qualified and practised law in both England and the United States. He worked as the Head of the Legal Department within the Office of the High Representative of Bosnia and Herzegovina in the regional office charged with overseeing implementation of the peace agreement in Brčko. He holds degrees from the University of Cambridge and the University of Chicago Law School. He lives in Geneva. For more details on his legal practice and writing, see www.matthewparish.com

A FREE CITY IN THE BALKANS

Reconstructing a Divided Society in Bosnia

MATTHEW PARISH

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This work is dedicated to William Quayle. A British military officer, William served as head of the refugees and returns task force (RRTF) in Brčko under US Ambassador and Supervisor Robert W. Farrand. William managed the process of orderly return of refugees to their pre-war homes in the Brčko area. As will be described in Chapter Four, his efforts were extraordinarily successful and were not repeated to anywhere near the same degree in other parts of the country. His sheer tenacity and strength of will made possible in Brčko what could not be replicated elsewhere. His work gave back to thousands of people a part of their lives that had been decimated through war. William died on 16 June 2007 at the age of 53, but the fruits of his labours live on in Brčko.

*And I will friend you, if I may
In the dark and cloudy day.*

A. E. Housman

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PREFACE

Between 1992 and 1995, a terrible war raged in Bosnia and Herzegovina. This book is about one very unusual effort made by the international community to reconstruct Bosnian society in one corner of the country after that war. The approach taken was highly experimental, but in certain ways very successful. It revitalised an old and forgotten concept of ‘internationalised territories’, the notion that an area under dispute between competing sovereign states would be placed under a regime of internationally supervised government. While this idea was once rather popular (multiple examples existed between the early nineteenth century and 1939), no territories had been successfully internationalised since the end of World War II, until the effort made that this book describes. The opportunity to attempt something experimental, and to rejuvenate an idea previously forgotten by history, was quite fortuitous. It arose from an inability by the warring parties to agree on the status of a piece of territory in north-eastern Bosnia when they signed the Dayton Peace Accords that ended the war. The area in question encompasses the town of Brčko, a border town with a port on a major river.

Brčko is a place few people outside Bosnia have heard of. Yet for the people of Bosnia and Herzegovina, it came to represent the worst brutalities and the most complete destruction of the 1992–1995 war. Because of its strategic importance, this northern Bosnian town was almost completely destroyed. Thousands of civilians were murdered, and ‘ethnic cleansing’ of the town’s majority Bosnian Muslim (‘Bosniac’)¹ and Croat populations, was complete. Through forcible population transfers, the town’s three ethnic groups, Serbs, Croats and Bosniacs, had been completely segregated by the hostilities. When the Dayton Peace Accords (DPA), ending the war in Bosnia, were signed in December 1995, the town lay in ruins, the scene of some of the severest fighting in the entire conflict. Yet come to Brčko today, and it feels like an ordinary town in the former Yugoslavia. Reconstruction has been mostly completed, ethnic reintegration has been achieved and there is a modicum of prosperity. Brčko is the wealthiest place in Bosnia and Herzegovina, more affluent even than the capital,

Sarajevo. The surface scars of war have all but disappeared. This stands in marked contrast to the rest of the country, where the painful process of recovery from war remains ongoing, and development has stalled or is even going in reverse. Brčko is an oasis of post-conflict comparative tranquillity in a country that otherwise remains deeply divided and troubled, but now even Brčko's status is under threat. This book tells the story of how this extraordinary transformation came to pass and its recent regression, and suggests there are some lessons in Brčko for the international community in how to manage post-conflict reconstruction. By comparing the Brčko experience with the less successful efforts made elsewhere in Bosnia, there are also a number of lessons to be learned in how *not* to manage international intervention in a war-torn society.

Immediately after the war, devastation in Brčko was complete and the town was commonly described by the international community as a black hole of despair. Only Serbs lived in the town; everyone else had fled or been murdered. But crucially, the status of the territory had been left undecided at the Dayton negotiations: because of its immense strategic value to both sides, no agreement on which of the warring parties should keep the territory was possible. The parties were therefore cajoled by the US mediators at Dayton into accepting that the final status of Brčko should be the product of 'international arbitration', a process establishing an international private court, called an arbitration tribunal, which makes a binding decision on the disputed issue. The status of Brčko could not have been more politically sensitive and emotionally charged. The outcome of the tribunal process would to a great extent determine whether Bosnia would remain as a unified single state or would fragment into pieces, and both sides were threatening a resumption of war if the decision went against them.

But the arbitration procedure turned out to be a cloud with a silver lining. It gave the international community – really, the US government – an opportunity to do something revolutionary, and to attempt a completely new model of post-conflict intervention. The tribunal formed did some astonishing things: it mandated the economic and political redevelopment of the District along multi-ethnic lines, and created a new international civil servant, the Brčko Supervisor, with unrestrained dictatorial powers to pursue these goals. In 1999, the tribunal ordered the complete reconstitution of all public institutions in the Brčko area, into a new highly autonomous unit of local self-government called Brčko District. Brčko became a *de facto* city-state, a 'free city' in the style of the historical examples of Trieste, Danzig and Cracow, politically independent from the rest of the country that was perennially bogged down in post-war ethnic squabbling.

Previous internationalised territories had all been created by treaties between the great powers. No court or tribunal had ever created one. There was therefore no legal precedent for what the international arbitration

tribunal for Brčko did, and its work sits at a rarefied confluence of international law and international relations. Little known in either sphere, the tribunal, and the international civil servants whose positions it established, have been going about their business without significant comment by either lawyers or diplomats outside the country of its operation. Yet the idea behind the Tribunal is extraordinary. By recreating the notion of an internationalised territory, the Tribunal was borrowing from an old and forgotten model in international relations. By creating an international governor, the Tribunal was setting a precedent for forced development by international dictate. The regime of international dictatorship which the Tribunal established continued for over eleven years, and oversaw enormous achievements. Through sheer hard work, a traumatised and fractured society was rebuilt. It was a time of unsung heroes. But these efforts eventually collapsed, in a wave of international indifference.

This book describes the Tribunal's genesis, its operation and the law it applied. It examines the international supervisory regime that the Tribunal established, and the different phases that regime went through. It discusses the new political institutions that were created, and seeks to explain the successes the Brčko model achieved. It compares Brčko with previous internationalised territories, and asks whether Brčko has successfully resurrected a historical model of dealing with disputed territory that before the Dayton agreement had fallen into disuse. An evaluation of the Brčko model will be undertaken, asking whether it is one worth repeating in other conflict zones worldwide. In undertaking this evaluation, a bias must be disclosed: the author was for a time one of its principal officers, so might be expected to give it a positive review. But the picture to be painted is mottled at best. Part of the analysis in this work will focus on both theoretical and practical problems that using international arbitration has engendered, and some of the criticisms that have been levelled at the international legal regime both in Brčko and in Bosnia as a whole.

Politics in post-war Bosnia is fiendishly complicated. The Dayton Peace Accords created an absurdly intricate system of government. Bosnia, a country of approximately 4 million people, has 13 prime ministers,² five presidents,³ one mayor with the powers of both,⁴ 14 general legislatures⁵ and three constitutional courts.⁶ A rash of political parties, legal agreements, government institutions, international legal instruments and domestic and international political actors infect the country's political system. Like any work written about the country's politics since 1995, this book is littered with acronyms and abbreviations. For the newcomer to Bosnian politics, at first this will all seem ferociously confusing. For ease of reference, each acronym used is explained when it first appears in the text and a glossary is provided at the end. It should be added that this book contains significant quantities of legal detail. What happened in post-war Brčko purported to be a process within the framework of international law, and a significant

part of this book examines whether that position can be credibly maintained. Therefore references are included to international treaties, provisions of the Constitution of Bosnia and Herzegovina and general principles of international law, where they are appropriate. Care is taken to explain legal concepts wherever they appear, as I hope this work is of interest to many readers without specialist law expertise.

What the international community did in Brčko in particular, and Bosnia and Herzegovina as a whole, was an experiment in state-building by foreign intervention. For many years intervention in Bosnia was perceived by the rest of the world as an enormously successful project, and that perception may have motivated subsequent similar attempts elsewhere, from Afghanistan to Iraq to Kosovo to Sudan to East Timor to Haiti. One of the purposes of this work is to hint that the truth about post-war international intervention in Bosnia is not nearly as simple as might be imagined. Through focusing upon a case study in one corner of the country, there is a great deal to be learned about the successes and risks of such a project. As a senior official in the international government of Brčko towards the end of the international community's intervention in the country, I was very much part of the project. From 2005 to 2007 I was the head of the legal department in the Office of the Brčko Supervisor. During this period I drafted the District's submissions to the arbitral tribunal, I drafted the Supervisor's orders, I redrafted the District's Statute (its mini-constitution), I managed relations with the District Judiciary and I bear a great deal of responsibility for the international community's later work in Brčko. I have made every effort to preserve intellectual impartiality, by sharing drafts of this manuscript with a variety of critics representing a broad spectrum of opinions about the international community's role in post-war Bosnia.

As the mission was winding down and preparing to close, it was a good time to take stock of the project as a whole, and the principal purpose of this work is to record those deliberations. The main message I have sought to convey in these pages is one of deep moral uncertainty about the wisdom and efficacy of what the international community has recently been doing in the country. Towards the end of the period I was in Bosnia, as the organisation for which I worked collapsed, almost every day I asked myself whether my job could be viewed as a valuable contribution to post-conflict reconstruction, or only an absurd neo-colonial indulgence with no prospect of long-term sustainability. Only the next ten years of Balkan history will resolve that question decisively. This work is modest in its goals, in that it attempts only to explain why that question is so complex, and to suggest that assessing success will be likewise extremely complex in any other similar attempt at international intervention. Bosnia should not be taken as an off-the-shelf precedent for post-conflict state-building elsewhere in the world. The reality is far too subtle and ambiguous for that. There are

lessons to be learned from Bosnia, but it is remarkably difficult to say definitively what they are. Perhaps the principal themes of the work are to emphasise the importance of long-term commitment and strong long-term interests of foreign states, capable and motivated people, managing corrosive diplomatic interference and an understanding of the enormity of the task of changing historical and cultural attitudes. International intervention in failed states is not something to be undertaken lightly. If there is one message that this book aims to record above any other, it is this: the most noble political project can collapse notwithstanding the very best intentions and high abilities of its creators, if those who subsequently inherit it lack the incentive to persist. It is terribly sad to observe such disintegration, all the more so when one is part of it. To quote Kant, from the crooked timber of humanity, there is nothing that is straight that can be formed.

The first chapter of this book asks what we already know about state-building and includes a review of some of the recent academic literature. The conclusion is that at the current time we can be certain of remarkably little, but the purpose of this review is to fit the Brčko and the Bosnian experience into the broader debate about what makes post-conflict intervention successful. For those with less interest in a survey of this academic literature, the chapter can be safely skipped, or returned to later. Chapter Two begins with the historical background necessary to understand what the international community was attempting in Brčko, and does not presuppose knowledge of the discussion in Chapter One. The final chapter considers what the Brčko experience has contributed to the issues surveyed in the first chapter. This book refers to a number of towns and regions throughout the former Yugoslavia. The political boundaries, and battle lines in conflict, have been redrawn throughout the Balkans on many occasions. Familiarity with the geography of the region is generally assumed, but to assist the reader who is not so familiar, a series of maps are included in Chapter Two that show the shifting political boundaries of the western Balkans.

A few words should also be said about the language(s) spoken in Bosnia and Herzegovina. Prior to the wars in the 1990s, the prevailing language throughout Serbia (excluding Kosovo), Croatia and Bosnia and Herzegovina was called 'Serbo-Croat'. There were regional differences in dialects, but they were quite minor. There were also mild differences in accents. The principal difference, however, was the script: Croats and Muslims would use the Latin script, whereas Serbs would use both Latin and Cyrillic scripts. In Bosnia and Herzegovina, the most multi-ethnic of all the Yugoslav republics, most public signs would use both scripts. Since the end of the war, the term 'Serbo-Croat' is no longer heard. Bosniacs call their language 'Bosnian', Croats call their language 'Croatian', and Serbs call theirs 'Serbian'. The differences between the dialects have been deliberately exaggerated. Likewise, the three groups have developed divergent accents

to emphasise their differences. Although they sometimes pretend not to, they all understand one another completely. Bosnian Serbs now write predominantly in Cyrillic. In Republika Srpska, the Bosnian Serb political unit, only Cyrillic public signs are used for the most part; in the Federation, the remainder of the country,⁷ only Latin signs. In Brčko District, a strict policy of using both scripts on all public signs was used. In the Office of the High Representative, the international organisation governing post-war Bosnia which this book is in large part about, the phrase ‘lokalni jezik’ (local language) is used to identify the language without having to give it an ethnically partisan descriptor. Where local language words are used in this book, they are written in the Latin script, with local punctuation. For the English speaker, the best pronunciation guide is to remember the following few simple and inaccurate rules. ‘j’ is pronounced ‘y’; ‘i’ is pronounced ‘ee’; ‘č’ and ‘ć’ are both pronounced ‘ch’; ‘r’ is a vowel, pronounced as a trilled ‘er’; ‘š’ is pronounced ‘sh’; and ‘ž’ is pronounced as a soft ‘j’ or ‘zh’. The town which is the subject of this book, Brčko, is therefore pronounced ‘Berchko’, with the emphasis on the first syllable, and the vowels pronounced short rather than long. A resident of Brčko is called a ‘Brčkoak’ (‘Berchak’). Something should also be said about this book’s use of the English language. Because I am English, British English spelling is used in the text. Because the American government and American officials have played a dominant role in post-war Bosnia, many of the source documents to which this book refers were written in American English. When quoting those documents or US academic sources, the original (i.e. American English) spelling is used.

Large degrees of research were involved in mapping out the story of Brčko’s recent history. International organisations in general are highly secretive. They are typically above the law of the countries in which they operate, and therefore not subject to freedom of information legislation or legal disclosure obligations. Moreover, the opaque mechanisms of political accountability to which they are subject, in which international officials report behind closed doors to consortia of anonymous civil servants from interested governments’ foreign ministries, do not lend themselves to free circulation of information. All these things are true of the Office of the High Representative, the international organisation that has run post-war Bosnia, and they are likewise true of the morass of other international organisations that have permeated post-war Bosnian politics. Similarly, Bosnian government officials are notorious for their secretive attitudes, deriving from their communist heritage and a culture of corruption that discourages transparency. Many of the documents recording the activities of international organisations in the post-war period in Bosnia may not survive, whether through neglect, theft or deliberate destruction. Acquiring the necessary information to write this book relied upon the personal indulgences of a great many people, and that research may in the future

prove impossible to reproduce. Gratitude is due to Jasmin Adilović, Jayne Ansell, Dijana Asprer, Suzana Bursa, Mia Cukle, Jim Friedlander, Susan Johnson, Damjan Kaurinović, Gordana Kojić, Bojan Kovačević, Bill Krisel, Ivan Krndelj, Sophie Laguëny, Alan Mauro, Adam Moore, Asim Mujkić, Osman Osmanović, Mirjana Ostojić Parish (particularly for help with formatting), Lord David Owen, Howard Parish (particularly for help with illustrations), Margaret Parish, Branislav Perkić, Nataša Predojević, Sacha Quayle, the late William Quayle, Zora Radojević, Marijana Rakić, Melissa Ruggles, Dragan Sikimić, Russell Sleight, Cvijeta Tanasić, Mark Wheeler, Greg Wilson and Rebecca Wise, for all the assistance they provided to me, in some cases unwittingly. Particular thanks go to Henry Clarke, Bill Farrand and Roberts Owen, each of whom spent many hours labouring over and criticising early drafts of several chapters. To the extent this final product does not match their hopes or expectations, it is a matter of personal regret. I must also extend profuse gratitude to Lester Crook and Liz Friend-Smith, my commissioning editors at I.B. Tauris, for their patience, support and understanding in helping me bring this manuscript to fruition. Last but not least, an early version of this work constituted my thesis submission for the degree of Doctor of Jurisprudence at the University of Chicago Law School. The inconvenience and suffering I imposed upon my twin supervisors, Richard and Eric Posner, was outweighed only by the value of the indulgence, thought, advice and counsel they provided. Without them this work would have been a shadow of itself. Be that as it may, responsibility for all errors and omissions remains mine alone.

BUILDING STATES

The latest fad in international relations is intervening in foreign countries identified as having ‘failed’. Once so identified, international legal, economic and political experts are engaged to create new public institutions that are less likely to ‘fail’ again.¹ So the narrative goes, new, stable states are created from the ashes of disastrous governments that have collapsed amidst tyranny or civil war. Benign intervention thus promotes international stability and global prosperity, and reduces the risk of further wars. The contemporary label for efforts of this kind is called ‘state-building’. This book is about what may be the most successful attempt ever made by the international community to achieve this goal. It took place in a corner of a newly independent country called Bosnia and Herzegovina that emerged with a very fragile peace from the destructive 1990s wars of secession within Yugoslavia. The state-building exercise that occurred created a place called ‘Brčko District’, a small region of only approximately 100,000 people, virtually an independent city-state within the territory of Bosnia. It was a staggering success, yet little is known about it. It is now on the verge of collapse and its ugly dismemberment seems likely to follow. The purpose of this work is therefore two-fold. It is to examine what makes state-building successful, using the hitherto relatively unknown Brčko model as a case study. And it is to attempt an evaluation of the state-building concept as a whole, by asking what subsequently went wrong in Brčko, and whether the problems that infected even arguably the most successful project of its kind ever conceived will inevitably poison other similar attempts. Brčko is a small place, comprising approximately only 1 per cent of the territory of Bosnia and 2 per cent of the population. In one sense the scope of what was attempted there was relatively modest. If it is difficult to make even Brčko work in the long term, then other state-building efforts might by their natures be all the more improbable, because they are all the more ambitious in scope. Moreover, Brčko presents an unusual point of comparison. As a general rule, this book will argue, international intervention in post-war Bosnia was not well done. The international organisation responsible for coordinating the international

community's efforts in Bosnia, the Office of the High Representative, was a chaotic shambles of shifting policy initiatives, egregious abuses of power and mission overstretch. The efforts in Brčko, pursued by a renegade branch office of the same organisation, were vastly more successful. That raises the question of why things were done better in Brčko, and what lessons can be learned.

Before we commence the Brčko case study and our observations on international intervention in Bosnia in general, we should turn briefly to the recent literature on state-building. Brčko and Bosnia cast an unusual light on the debates that have emerged within that writing, and we will do well to be acquainted in advance with it. That is the purpose of this chapter. The aim is modest: only to survey the literature, rather than to explore it in any depth; and while debates will be introduced, there will be no attempt to take positions on them. A number of difficult issues will be left hanging in the air, for we wish only to anticipate what follows. Academic studies of state-building are all relatively recent, because attempts at state-building have, for the most part, all occurred since 1995. Indeed the impetus for attempting post-conflict state-building was the widely perceived success of the efforts in post-war Bosnia. The apparent Bosnian success story motivated subsequent similar attempts in one form or another in Afghanistan, East Timor, Haiti, Iraq, Kosovo, Sierra Leone, the Palestinian territories and several other places worldwide. One of the arguments of this study will be that Bosnia, the precedent for this rash of state-building activity, has not been nearly as successful as is commonly supposed. It would be far too quick to jump to the conclusion that all state-building projects are doomed to failure, but it may be that state-building is a skill, one in its infancy and about which we currently know comparatively little. The Brčko experience is, however, a complex Gordian knot of tough lessons for those who want to attempt it.

Much has recently been written on ending civil wars, what to do after they have ended, division of territory versus unification, the efficacy of international organisations in facilitating state-building and building new political institutions from the remains of failed states. Taken in the round, this literature is not particularly intellectually invigorating. Much of it is abstruse, and tends to pivot around a series of theoretical distinctions, such as liberal versus post-liberal and constructivist versus realist, the practical consequences of which are not immediately obvious. Most importantly, the detailed empirical work is lacking, and such as there is draws conclusions that for the policymaker are already obvious.² Every country that collapses into civil war does so for a different reason, and thus successful reconstruction will depend on different factors in each case. There will be general lessons to be learned, but they cannot be learned by abstract *a priori* theorising from the postulates of a rarefied political theory. The ebb and flow of the state-building debates have interwoven themselves closely with

the course of world affairs. But it is a telling indication of the quality of the academic debates that changes in practice have not followed from the theory, but vice versa. The theoretical debates have found themselves hostage to events on the ground, and policymakers have not been driven to any great degree by the theories that have been debated in their wake. This is perhaps indicative of how little the theorists currently know. State-building is a relatively immature science, and so far there is little theoretical work to guide the policymakers. Different styles of international intervention have been in vogue over the last 15 years. But relatively few academic conclusions have yet been drawn with any confidence, and there is little in the way of a corpus of well-accepted theoretical knowledge from which policymakers can cherry-pick when hunting for good ideas. Thus for the time being at least, policymakers must get their hands dirty and explore each client country in depth. Ideological commitment to one theory or another is an extremely poor second best behind detailed local knowledge and rigorous technical competence.

The recent explosion of academic writing on state-building or 'peace-building' began as a reaction to the perception in the 1990s that the international community had a range of novel opportunities to intervene in serious humanitarian crises worldwide. In the United States and the European Union it was realised that when, in the course of internal wars, civilians were dying in large numbers, it was suddenly within the gift of western governments to intervene to save life. Before the end of the Cold War, a confrontational approach to international relations had made such interventions difficult or impossible. Any foreign intervention (for example, the USA in Vietnam, or the Soviet Union in Afghanistan) was seen through the prism of an ideological conflict between communism and capitalism, thus inviting counter-intervention by the opposing power with the aim of frustrating whatever goal the intervening power was pursuing. With the end of the Cold War this cycle was broken and a more enlightened policy towards international intervention was possible. Intervention in foreign conflicts could be pursued to achieve purely humanitarian goals, or to promote political stability, with a far greater degree of international consensus. In principle, international intervention in strife-torn states could now be sanctioned by the UN Security Council, because there was no longer an *ex hypothesi* reason why one of the Great Powers would inevitably exercise its right of veto over Security Council resolutions. Humanitarian intervention was thereafter driven by pressure groups, who would publicise human suffering and create domestic political momentum within western states to send money, troops and reconstruction experts to foreign trouble zones.

But despite the new-found opportunity to intervene in foreign conflicts that the end of the Cold War had delivered, the international community was widely perceived as failing the early challenges that faced it. Civil war in Somalia began in 1991 and led to calls for humanitarian intervention to

help ameliorate widespread civilian suffering and loss of life. A succession of United Nations Security Council resolutions from April 1992 onwards authorised a peacekeeping mission intended principally to provide humanitarian assistance (mostly food aid) and to create a secure environment for that assistance to be delivered. An international military force, led by the United States, entered Somalia in November 1992 under codename Operation Restore Hope, to alleviate famine and ensure civil security. The mission was a debacle, with an impossibly broad mandate that suffered from inexorable mission creep as US forces attempted to disarm local warlords and were drawn into battle with them in the streets of the capital Mogadishu in October 1993. After the US army lost over 30 soldiers and two helicopters, the US government underwent a policy *volte face* and withdrew all its troops in March 1994. This set a precedent that the United States could not tolerate loss of life in peacekeeping operations, which fed into a policy of international community inaction in the next international humanitarian catastrophe, Rwanda. A civil war had raged between rival Hutu (majority) and Tutsi (minority) factions since 1990. Under an August 1993 peace agreement an uneasy armistice was reached, supervised by a small UN mission, but by January 1994 the head of that mission reported to the UN Security Council that preparations were underway for large-scale slaughter of Tutsis by Hutus. He requested permission to seize arms caches, a request which was refused by the UN as being beyond the mission's mandate. In April 1994, the anticipated Hutu uprising began after an aeroplane carrying the presidents of both Rwanda and neighbouring Burundi was shot down. During the next three months an estimated 800,000 Tutsis and moderate Hutus were slaughtered. The Security Council's immediate reaction was to reduce the size of the UN peacekeeping force to a mere 260 troops, with instructions to focus on evacuating foreigners. Controversial and ineffective French military intervention in the country was subsequently authorised in Operation Turquoise (the French had lobbied against broader intervention, worried about preserving its sphere of influence in the region), but the genocide came to a stop only when opposition Tutsi forces overran the country.

As these foreign policy disasters were unfolding during the course of the 1990s, the Bosnian war was also running its gruelling course. The war had begun in March 1992 and was contemporaneous with the US military fiasco in Somalia and the genocide in Rwanda. The historical detail of the war will be explored in the next chapter, but it suffices for now to note that the international community was also heavily criticised for failing to intervene sufficiently early or with adequate determination. A request in early 1992 by the Bosnian government for UN peacekeepers to man its border with Serbia, before war broke out, was rejected ostensibly because there was no precedent for pre-emptive peacekeeping but in fact because no country wanted to place its troops in harm's way on the front line. A UN

peacekeeping force with a weak mandate was sent to the country only in 1993, after the majority of the deaths in the war had already taken place. The massacre of thousands of Bosnian Muslims by Bosnian Serb forces in the UN-declared 'safe haven' of Srebrenica took place in July 1995 while UN peacekeepers stood by. After Somalia, the US was reluctant to send ground troops and only resorted to the use of air power to bomb the Bosnian Serbs to the negotiating table. Military intervention occurred in the context of a series of stop-start attempts to negotiate a peace agreement between the warring sides, hampered by the inability of EU and US governments to agree what peace treaty model to push. In all, five peace plans were advanced by the international community, the first three by the European Union and the last two by the US government.³ All five plans anticipated partition of the country into what in practice would have been mono-ethnic regions, but the lukewarm support of the US government for the EU-led plans caused the war to drag on far longer than it might otherwise have done. By the end of the Bosnian war there was a widespread perception that the international community bore significant responsibility for the extent of the Bosnian catastrophe, due to mismanagement, hesitancy and bungling (Rieff 1996).

It was in the context of these international community policy failures that academics started theorising about when it is appropriate to intervene in another country's civil conflict, and if so how to do it successfully. Rightly or wrongly, the problem in each of Somalia, Rwanda and Bosnia was perceived as being a lack both of determination and of coherent policy about when and to what extent to intervene.⁴ It was the UN Secretary General during these conflicts, Boutros-Boutros Ghali, who in many ways initially pushed the policy debate, in his seminal analysis *An Agenda for Peace* (Ghali 1992; Ghali 1995). Ghali argued for a broad doctrine of military-led humanitarian intervention in the domestic affairs of a sovereign state to save life, when sanctioned by the UN Security Council. But he went on to argue for the importance of subsequent post-conflict peace-building undertaken by the international community. Military intervention alone will not suffice; for without reconstructing broken governing institutions, renewed hostilities may break out when the peacekeeping mission departs. Ghali's view was that military intervention and post-conflict reconstruction should both take place under the auspices of the United Nations, thus giving the organisation a reason for its continued existence at a time when it was seeking a new role after the end of the Cold War. Ghali's thesis was taken a significant step further by the International Commission on Intervention and State Sovereignty (ICISS), a broad international research group established under the auspices of the Canadian government. The commission was given a mandate by the United Nations to explore the legal and policy principles underlying international humanitarian intervention in failed states, and it presented its report in 2001 (ICISS 2001).

ICISS proposed a liberal doctrine of international intervention, arguing for the position that state sovereignty can be violated where a state will not or cannot exercise its sovereign obligation to protect its own citizens, widespread civilian suffering is occurring as a result and other measures short of military intervention have been exhausted. Its report even goes so far as to suggest that the permanent members of the UN Security Council should not exercise their vetoes when considering approving such operations, and that in exceptional circumstances military intervention may be sanctioned even without UN approval. The report goes on to advocate substantial programmes of post-conflict governmental administration and reconstruction by the international community, as a necessary corollary of intervention and to prevent recurrence of conflict. Thus was the state-building agenda born. Essential to state-building, the report opined, is development of domestic security forces, promoting justice and rule of law, economic development and refugee returns. These became the central components of subsequent state-building missions by the international community.

This new agenda rapidly gained international acceptance. Suddenly nobody feared peacekeeping missions any more; they were simply a prelude to an optimistic state-building exercise. UN peacekeeping and state-building missions sprang up all over the world, some of the most prominent being in Afghanistan (2001), Cambodia (1992), East Timor (1999), Guatemala (1997), Haiti (1992), Ivory Coast (2003), Kosovo (1999), Liberia (2003) and Sierra Leone (1999). All these operations have been open-ended: even as one mission closed it was rolled over into another⁵ and the UN retains significant presence in each of these countries up to the present day. The same philosophy was applied even in countries which did not have an immediate history of civil conflict. State-building policies were also developed and executed by a rash of international development institutions, most notably the international development banks.⁶

The perception of success by the international community in its early efforts in post-war Bosnia fuelled this newfound confidence and the calamities of Somalia, Rwanda and wartime Bosnia were soon forgotten. Indeed state-building became a burgeoning industry of independent experts and policy gurus. The components involved in a post-conflict peace-building programme rapidly grew to encompass the full gamut of models of economic development.⁷ According to the theory underlying all this activity, failed states are so because they have poor political and legal institutions.⁸ They are impoverished because there is no economic freedom and liberalised markets that together create wealth. They are politically unstable because they are dictatorships in which the government has no sense of legitimacy, and there are no inclusive political institutions to promote power sharing between different groups. Without effective democratic institutions, those competing for power have no forum in

which to reach compromise and accommodation, and thus they reach for arms. There is no security because the police, judiciary and courts are corrupt and controlled by political elites, and therefore cannot be trusted. In a pique of modernist dogma, the conclusion reached was that if only every failed state had the same political institutions and economic structure as western democracies, repetition of the conflicts from which they had suffered could be avoided. Thus the emphasis on post-conflict peace-building must be to reshape the country's public institutions in the mould of those found in the west. Democracy creates a venue for peaceful resolution of competing interests. Economic growth, created by liberalising market reforms, promotes social stability as the individual pursuit of wealth reduces the incentive to fight over ethnic or ideological differences, lest people lose the wealth they have accrued. Democratic political development will also promote global political stability and make genuine external wars less likely, because democracies do not generally go to war with each other (Eizenstat et al. 2005).

Thus state-building is seen as a principal component in an agenda for spreading western political values across the globe, as a result of which human history will enter a new era of unparalleled peace and prosperity (Fukuyama 1993). The standard model of post-war reconstruction would therefore be what came to be known as the 'democratic reconstruction model, involving constitution-making, elections within two years of the end of hostilities, funding for civil society, and extensive state institution-building' (Call and Cook 2003). These sorts of institutional transplant from western democracies were not just popular with left-wing liberals. They also became associated with an idealistic strain in recent Republican American foreign policy, often given the title 'neo-conservatism': the view that the US government should spread its principles of government, economics and culture to foreign states. In the United States, a remarkable inter-ideological consensus arose about how to achieve state-building and why it is a good idea.

This view was not without its opponents and sceptics, many of whom derived their differing perspectives from a more careful analysis of international intervention in post-war Bosnia. We shall consider their views presently, because they strike at the heart of what the international community was attempting to do in the country. But it is worth noting that because Bosnia remained more or less violence-free for the 12 years following the end of the war, it continued to be seen as a success and a model for the 'democratic reconstruction' approach. Its supposed lessons were thus replicated elsewhere. When NATO occupied Kosovo, a province of southern Serbia, in 1999, much the same approach to post-conflict reconstruction was used as had been applied in Bosnia. Elections were quickly held, institutional reform was imposed and a new constitution was

prepared.⁹ The same model was also applied in Afghanistan following the US-led invasion in 2001, and again in Iraq following invasion in 2003. At the time of writing, all three of these interventions have soured. The problem for Kosovo is the exit strategy, as Kosovar and Serbian politicians are embroiled in a loveless and increasingly violent deadlock after the province declared itself an independent state in February 2008, which seems likely to make international custodianship over Kosovo necessary for the indefinite future. In Afghanistan, it seems that the international military forces will be bogged down in the country for a long time, the central government having minimal control over the country's provinces and foreign troops engaged in day-to-day street fights with insurgents. Iraq appears disastrous, plagued by a vicious insurgency against US military occupation and ferocious inter-factional fighting, suicide bombers, widespread ethnically motivated murders, an ethnically fractured government and thousands of Iraqis dying each month. There is no coherent exit strategy for US troops and nobody knows what will happen when they do leave. It is yet to be seen what the international political fallout from these unsuccessful missions will be. It may turn out that we observe a profound loss of appetite for international intervention and state-building in future failed states, a degree of self-isolationism amongst the major western powers and a corresponding degree of hand wringing in the academic literature about the wisdom of international intervention in general. That will not be the appropriate response; the proper course will be to examine each conflict in detail, with the benefit of hindsight, and to try to establish what went wrong and what might have been done better. That is the purpose of this book.

'Post-liberal peace-building'

There are two schools of thought sceptical about the democratic reconstruction model pursued in post-war Bosnia. One school focuses upon the notion that transplanting democratic institutions into post-conflict societies is too quick. Although the ideal of democratic market-driven institutions is a laudable goal, a rapid exercise in constitution drafting and holding elections will not achieve the desired outcome. The so-called 'liberal peace building' agenda sketched above is naive, and an altogether more subtle approach, described as 'post-liberal' (Barnett 2006), is required. The other school of doubt about liberal peace-building argues that after an ethnic civil war of the kind found in Bosnia, Rwanda and Kosovo, attempting to recreate a multi-ethnic society on a liberal democratic model is simply impossible because rival national groups who hate each other sufficiently to commit mass murder cannot cooperate within a democratic political framework. State-building to reintegrate

mutually alienated ethnic groups is thus neither practical nor desirable, and at the end of a civil war territory and national groups should simply be partitioned. We shall consider the 'post-liberal' view, first followed by the partition theory.

The post-liberal writers on state-building fasten on to the observation that, taken in the round, attempts at state-building have not been desperately successful.¹⁰ Even after several years of intensive international efforts, many of the countries subjected to post-conflict reconstruction remain tremendously fragile, with endemic political instability, weak legal, security and judicial institutions, worryingly high levels of poverty and unemployment and insignificant foreign investment or economic growth. One reason for the lengthy periods for which UN missions find themselves intervening in post-conflict countries is that so little tangible progress is made by those missions, and the fear remains of renewed civil conflict once external support evaporates. The post-liberal writers perceive two reasons for these failures.

Peacekeeping...does not have an impressive track record. Certainly one reason is that it is virtually unimaginable that peacebuilders can create such a nearly ideal society with scant resources and little time under such unfavorable conditions...[second, i]n their effort to radically transform all aspects of the state, society, and economy in a matter of months (and thus expecting conflict-ridden societies to achieve what took Western states decades), peacebuilders are subjecting these fragile societies to tremendous stress. States emerging from war do not have the necessary institutional framework or civil culture to absorb the potential pressures associated with political and market competition. Consequently, as peacebuilders push for instant liberalization, they are sowing the seeds of conflict... (Barnett 2006)

The thought underlying the post-liberal view, then, is that transplants of democratic market institutions into countries without them do not work. This is not because western institutions are not the best; they are, but the more difficult question is how to create them in a post-conflict environment. The proper operation of western political and legal institutions assumes a history of their organic development, and a set of cultural values associated with political compromise, moderation, respect for law, acceptance of a differing majority will and the like. Without those cultural values, western institutions will not work; for while democracy, compromise and observance of the law may be mandated on paper, through constitutions, laws and procedures, those rules will not be obeyed by people who do not possess the corresponding cultural values. The mistake of liberal peacekeeping theory is to assume that creation of western institutions immediately produces western cultural and political traits; in fact the relationship

between institutions and culture is more symbiotic than that. In every western country with liberal political and legal institutions, those institutions have developed gradually, in a piecemeal fashion and in response to particular political incentives on the part of those who have pushed them. The political culture of the country has then gradually adapted in the face of the new institutional rules, things have settled down and then the political dynamic has created another piece of gradual institutional change in response to a new political pressure. Institutional reform is a step-by-step approach and has never happened all at once. There is thus no reason to believe that it can happen all at once in a developing country without a rich history of gradual institutional development, still less one in which all institutions have collapsed in the midst of civil war.

This is perhaps to pursue the post-liberal argument to its most extreme conclusion. There are arguable counter-examples to this view: for example, revolutionary France, and the United States after its revolution. It is outside the scope of this book to examine these counter-examples, save in passing in an endnote.¹¹ But this is the essence of the post-liberal viewpoint: institutional reform is a process of evolution, not transplant, and the dramatic transformations that liberal peacekeepers seek within the timescale of a UN intervention mission are simply not realistic. There are a number of consequences that it is argued follow from this position. Below I highlight three of the most common that are found in the literature. All of them are particularly pertinent for post-war Bosnia.

(1) At the end of a civil war, or after a period of totalitarian dictatorship, democratic political transplants create chaos. Democracy assumes the competing interest groups in the country will compromise and abide by democratic procedures; but in a post-conflict society the interest groups are incapable of doing that because they have no experience of doing so, or because there is a complete lack of trust between people who have been killing each other. Democracy and a free media can therefore make things worse. They unleash competing political agendas, previously suppressed by a totalitarian government or settled through stalemate or victory in civil war, but the people advancing those agendas perceive no reason to compromise. Typically, in an ethnically divided society, upon an election people will vote exclusively for representatives from their own ethnic groups, who will therefore have an agenda of advancing that group's interests to the exclusion of others. Thus inter-ethnic political compromise is exceedingly difficult. Democracy may simply produce gridlock in the political machinery, with no effective government possible because of failures to agree. Liberal democracy in a post-conflict society therefore perpetuates a failed state.

As will be explored in later chapters, this is precisely what happened in post-war Bosnia. National elections were held in 1996, principally at the behest of the US government, determined to show 'progress' in Bosnia in

an election year and when there was strong US domestic political pressure to withdraw US peacekeeping troops from the country. Local elections were held soon after, in 1997. Both sets of elections brought nationalist politicians to power, elected by each of the country's three ethnic groups exclusively from their own constituencies. Once elected, those politicians' uncompromising agendas meant that they could agree upon nothing and the country lacked any effective central government. This trait, once established, continued to the present day; many commentators agree that post-war Bosnia has *never* had a functioning central government. Once the precedent for obstruction and failures of cooperation had been set, it proved impossible subsequently to break the pattern. Likewise, permitting immediate freedom of the press unleashed gargantuan problems. None of the post-war Bosnian media was independent or neutral, each outlet being controlled in practice by one political party and siding with the interests and perspective of one national group against the others. Again this is a trait which continues to the present day. The media rhetoric became so bilious that in 1997 the US army stepped in to jam Bosnian Serb radio and television transmitters; for more on this see Chapter Four.

(2) The prescription following from this observation is that peacekeeping should promote a strong state even if it is not perfectly democratic (Barnett 2006). It is more important to create strong institutions than to have elections. If effective public institutions are created, then even in the absence of elections rival groups in a divided society can learn slowly how to cooperate with one another through the medium of those institutions. Release of a traumatised post-war society into the freedom of democracy needs to be gradual. Therefore one should impose institutional reform before allowing elections. Unelected institutions, of a kind that can be transformed into democratic institutions with elections later, allow disputing parties gradually to develop the necessary skills of political consultation, consensus building and compromise to work together (Paris 2004). These institutions can be initially closely supervised by the international community, and external control over them can be gradually relaxed until the country is ready for autonomous democracy. When elections are finally held, local elections (where the stakes are lower and cooperation is easier) should precede national elections, as a dry run in practising democratic cooperation.

This thought did not generally hold sway amongst the international community in post-war Bosnia. The course taken immediately after the end of the war, to hold quick elections, required the state-builders to work with the newly elected officials to create the new domestic institutions mandated by the constitutional framework set out in the Dayton Peace Agreement. But the officials so elected were mostly wartime figures, in each case representing extreme nationalist politics in the minds of the other ethnic groups. Because these politicians did not want to cooperate with one

another over anything, the international community had to grant itself broad coercive powers to force the recalcitrant officials to obey. The international community thus had to use threats and force to compel politicians to do things that they did not have electoral incentives to do, and it had to indulge itself in some breathtaking legal fictions to bestow upon itself the authority to do this (see Chapter Four). All this was hardly healthy. Under such a forced, artificial model, progress in institutional development was naturally painfully slow. It was like trying to force a river to flow uphill. The Bosnian approach might be taken as a lesson in how not to do things: after an initial burst of 'liberalisation' there was a belated realisation of the calamity the international community had unleashed. The Office of the High Representative (OHR) thus had to turn itself into a colonial governor to hold back the tide, which it did in December 1997, shortly after the second (local) set of disastrous elections.

In Brčko, the post-liberal approach was embraced to a far greater extent. Local elections were also held in the Brčko area in 1997 and as in many places they were rigged (see Chapter Four). However, those elections mattered little in the long run. The international community effectively annulled their results less than two years later, when the Final Award of the Brčko Arbitration Tribunal declared that the municipal assemblies to which representatives were elected in those elections were to be abolished and recombined in a single multi-ethnic Brčko District assembly. When that Assembly was established, in early 2000, there were no immediate elections; instead international officials handpicked all its members as representative of the various competing political groups. The international community also chose and appointed the mayor (the head of the District's executive branch) and all senior government officials, who under the law were supposed to be appointed by the elected Assembly. Finally, international officials handpicked all the judges too. Thus institutions were created within a democratic legal framework, but for an unspecified interim period there would be no elections. Once elections were held, they would fit neatly within the institutions created, and there could be reasonable continuity between the internationally appointed officials and the District's first elected officials. The question of timing of elections was left open; a judgment call would later be made about when the new District institutions were sufficiently mature to withstand the liberalising effect of elections. In the end, elections were not held until four and a half years after the establishment of the new institutions, and the newly democratic institutions remained under close international scrutiny for two years after that. Still that did not appear to be enough, and the District's elected institutions seem in danger of imminent irreversible fracture at the time of writing (see Chapter Eight). However, Brčko was perhaps the first, and the most concerted, attempt to apply this kind of post-liberal theory in the context of the modern peacekeeping debate. The successes and problems of the

Brčko project, which this book explores, may to a great extent be seen as a scorecard for post-liberal theory.

There have been few other instances where the post-liberal theory of institution-building before elections has actually been applied. This may be because it requires complete domination of the domestic political institutions by the international community. That was possible in Brčko, because those institutions were created from scratch by foreigners; but usually international intervention takes place in the context of pre-existing, albeit dysfunctional, domestic institutions. There are some historical examples concerning occupation of Axis countries by Allied military powers in the aftermath of World War II, when new institutions were created to replace fascist government structures in Germany and Austria. The first public officials were appointed and then elections were permitted later.

Another partial recent example of the post-liberal approach is post-invasion Iraq, but it was undertaken in a far more haphazard way and the net result was disastrous. An interim US government administration, called the Coalition Provisional Authority (CPA), ran Iraq from the invasion in April 2003 until June 2004, and did some primitive institution-building.¹² On its way out it established an interim domestic executive authority, whose senior officials were chosen by the US administrators. The Iraqi Transitional Government stayed in power until May 2006. In the meantime legislative elections were held in January 2005, to select legislators tasked with drafting a new constitution. A general election was then held under the new constitution in December 2005. But the security situation spiralled downward so rapidly that the country had become virtually ungovernable even by the end of the CPA's tenure. The new constitution required power sharing between the democratically elected representatives of Iraq's three principal groups, but there was zero supervision time between enactment of that constitution (October 2005) and elections pursuant to it (December 2005) and thus no opportunity to engender the necessary cooperative political culture to make the new constitution work. At the time of writing the future of Iraq is most uncertain. Because of the negligent manner in which the state-building process was executed, Iraq cannot be seen as sound evidence either way for the post-liberal theory, but Brčko can.

(3) Another prescription of post-liberal peacekeeping is that state-building is necessarily a very long-term exercise. Using off-the-shelf legislative transplants, changing legal rules can be very quick, and the hope for a rapid exit from post-conflict intervention, found in liberal peacekeeping theory and neo-conservative agendas alike, is necessarily premised upon the assumption that a rapid legal transplant will be immediately implemented. But that never happens. US President Bill Clinton had promised that US peacekeeping troops would leave Bosnia in 12 months; they stayed for over eight years. President George W. Bush likewise foresaw a rapid exit for US troops following the overthrow of Saddam Hussein's Iraq;

four and a half years later, in October 2007, there were approximately 170,000 US troops fighting a seemingly endless array of terrorist and insurgent groups. One cannot just write a new constitution mandating that everyone will cooperate, then pull out the troops, because changing a political culture so that new legal rules can thrive takes an enormously long time. At the time of writing the international community's mission in Bosnia has lasted over 12 years and the country seems as politically unstable as ever. The post-liberal theory of intervention explains why. It will take several election cycles of close supervision to procure a political culture of compromise and consensus-building. In Brčko, with a long lead-in time to elections, the process of politicians learning to cooperate in a multi-ethnic democratic environment only began in 2004 with desperately chaotic endeavours to form a multi-ethnic coalition after the election results. As will be explored in Chapter Seven, it was only with careful international community mediation that it was possible to form any Brčko District government after its first elections. The thought that by the time of the next elections all these problems would have magically evaporated due to a radical change in political culture in the course of just four years seems, on the post-liberal analysis, rather optimistic.

Long-term, and often highly sophisticated, international interference with a state's sovereignty may be necessary to keep a troubled state on the rebuilding track,¹³ and it will often be no easy task for the international community to extract itself from this level of commitment once it has begun. This book will therefore argue that one of the most important lessons for state-building in a post-conflict environment is that it requires a generation of foreign commitment. That message is probably quite unpalatable to policymakers in western countries, working as they do to short electoral cycles and demotivated by a loss of domestic interest when the problems of a foreign country such as Bosnia disappear from the news headlines. But if it will always be impossible for western governments to stay the course, one ought to ask whether the west ought to engage in state-building missions at all, save in the most unusual circumstances. These might include instances where one can be guaranteed a useful result in a tolerably short period of time, or where the country will probably rebuild itself even without external assistance, so the international aid is only reinforcing an inevitable process and can be phased out at will without calamitous consequences. Cases of this kind will be relatively rare.

Partition theory

Let us now consider the partition theorists.¹⁴ Those who write about the merits of partition have often had Bosnia in mind, but they make a general point. Theories of this kind start by distinguishing between ideologically motivated and ethnically motivated civil war. So the theory goes, the former

kind are much easier to resolve, usually by outright military victory (Vietnam) or stalemate leading to territorial division (Korea). But ethnic civil wars do not admit of such relatively straightforward solutions. When ethnic groups who are intermingled within a portion of territory start fighting one another, they face a security dilemma that can only be resolved by physical separation of the competing populations, which entails widespread population movement. In an ethnic civil war, everyone becomes fearful of attack by their neighbours from the opposing ethnic group(s). Unlike people of differing ideological views, people from different ethnic groups are easily identifiable and their affiliation is clear. They could attack at any time, and they will be unwaveringly loyal to invading forces from their own ethnic group because they can be easily distinguished from the enemy group. No other group will protect them, so any other course would be foolish. In this environment of fear, cross-ethnic political appeals are likely to be drowned out and will not inspire loyalty. As soon as a threshold is crossed at which members of one ethnic group believe that the murder or other abuse of their members is considered acceptable by another group, it becomes intolerable to live amongst them, either because they may kill you (if they are in the majority) or they may collaborate with invading forces (if they are in the minority). A survival instinct motivates this security dilemma and the dilemma becomes impossible to resolve while the populations remain mixed. The only solutions available for either ethnic group are to retreat to an area where one's own group is dominant, or to expel the members of the opposing group from one's territory. There can be no security when one's enemy is living in one's midst. This security dilemma becomes rapidly reinforced by cultural traits of hatred, fear and avoidance. Thus in every major ethnic civil conflict, there have been large exercises in population displacement, either voluntarily or through compulsion and murder.

The evidence of what happens upon partition is not particularly rosy. After partition of India and Pakistan in 1947, about 14.5 million people participated in a massive population exchange to ensure that the new nation of Pakistan would be principally Muslim, but the entire process was managed in an extremely chaotic way leading to vast loss of life. Anticipation of Indian independence from Britain provoked countrywide civil unrest and violent conflict between Hindus and Muslims in 1946, on a scale not unlike contemporary Iraq. A plan was rapidly developed by the British government to partition the country into two states, one majority Muslim and the other majority Hindu. A new viceroy was sent to India to execute this plan in March 1947. Legislation in the British parliament in June 1947 provided that India would become independent on 15 August 1947, whereupon it would be partitioned into two sovereign nations. Sir Cyril Radcliffe was appointed to head a five-man commission to demarcate the partition boundaries (one in the west, through Punjab, and one in the east,

through Bengal). He arrived in India less than six weeks before the planned independence date and the whole exercise was absurdly rushed. The other members of the commission, representatives of Hindu and Muslim populations, refused to talk to one another, meaning Radcliffe essentially had to make a unilateral decision. The commission's problems were overwhelming, from insufficient time to prepare a survey, to inadequate specialist knowledge (Radcliffe had never before been to India), to strategically important areas that Radcliffe declined to assign on the basis of ethnic predominance, to lack of representation of minorities neither Hindu nor Muslim. The border was drawn straight through the middle of populated areas rather than around them. Radcliffe left India before the award was even published, and enforcement was left to the parties. As people came to learn where the partition line had been drawn, civilians started mobilising *en masse* to ensure they were on the right side of the line. It is thought that around 1 million people died in the process, through starvation, disease, exhaustion or slaughter in the course of civil unrest, and the partition ultimately produced at least three wars, in 1948, 1965 and 1971.¹⁵

Consider next the partition of Cyprus between its Greek and Turkish populations. The Turkish army invaded northern Cyprus in 1974, after a Greek military coup overthrew the civilian government of the then united island of Cyprus. In the course of the invasion, over one-third of the island was occupied by Turkish forces. Greek Cypriots in the occupied area fled their homes in the face of the oncoming army or were forcibly expelled. Virtually the entire population of the occupation zone (some 150,000 people) fled; virtually all the Turkish Cypriots living in the remainder of the island (some 50,000) fled to the north. Thousands of Greek and Turkish Cypriots were killed. A partition line, called the 'Green Line', subsequently divided the island at the farthest occupation point of the Turkish military. This partition has kept an uneasy peace since then, but all attempts to reunite the island have so far failed.¹⁶ Finally, the Greco-Turkish War of 1919-1922 tells a similar story of population partition between Greece and Turkey, albeit on a vastly greater scale. During World War I, the Allied powers had promised Greece territorial gains in Turkey at the expense of the collapsed Ottoman Empire, in those areas where the 2.5 million Greeks living in Turkey comprised a majority (principally Western Anatolia and eastern Thrace). To enforce these claims, Greece invaded Turkey in 1919. Greece eventually lost the war and retreated from the territory that is now modern Turkey, but the war was long and bloody, and massacres and ethnic cleansing of civilians were committed by both sides. The animosity between the sides resulted in the ensuing Peace Treaty of Lausanne including provisions for an agreed mutual forced population exchange between the two countries' territories to eliminate significant ethnic minorities. Approximately 2 million people were expelled from their homes and relocated as a result.

These partitions all occurred with extraordinary levels of human suffering, as did the partition in Bosnia. *Prima facie*, then, they might be seen as cumulative evidence against partition. But the partition theorist does not argue that it was good that these partitions took place. Instead his (or her) position is that once partition has taken place, however ugly it is, the only pragmatic policy consequence is to acknowledge it, complete it and redraw political boundaries accordingly. The Lausanne Treaty did just this; the Green Line in Cyprus achieved the same thing; and while extremely bloody at the time, mass population shifts in India and Pakistan resulted in a more or less enduring peace. The subsequent wars on the Indian subcontinent have been the result of negligent demarcation of the boundaries, but inter-ethnic violence within the successor states to the British Raj has been significantly reduced. Thus the partition theorist draws the conclusion that however an ethnic civil war may end, the end state can be stable only when:

the opposing groups are demographically separated into defensible enclaves. Separation reduces both incentives and opportunity for further combat...While ethnic fighting can be stopped by other means, such as peace enforcement by international forces or by a conquering empire, such peaces last only as long as the enforcers remain. (Kaufmann 1996)

In Bosnia, the communists enforced multi-ethnicity upon Yugoslavia's feuding tribes for 45 years. But it was not enough. When the power vacuum evaporated after Tito's death and the collapse of communism, the rivalries resurfaced. Whereas in Bosnia there was significant multi-ethnic mixing and a bloodbath resumed where it had left off in 1945. The policy consequence of partition theory is therefore that in imposing a settlement upon a civil war from outside, one needs to pursue partition of territory into viable mono-ethnic contiguous units. To the extent that population separation has not occurred through murder, terror, expulsion and voluntary separation in the course of the war, the international community must complete the task. It need not be done using methods as brutal as those that occur in wartime, and those displaced can be compensated and provided with new homes. But encouraging return of refugees to hostile territory is foolish. Civil war achieves the separation of people who cannot live together; rather than pursue the hopelessly idealistic course of persuading irreconcilable people to change their minds about one another and find common ground: would-be interveners should recognise what has happened as irreversible.

Partition theory is deeply unpopular with the majority of international activists. It is perceived as racist, bearing an underlying moral theme that ethnic mixing, principally the product of population movement during the Age of Empire, is unnatural and must be undone. This is unfair. The partition theorist need not make any comment about the desirability of

ethnic mixing in peaceful societies; all (s)he is committed to is saying that where relations between ethnic groups get so bad that they start killing one another, partition is the only solution. Nonetheless, to many the theory appears monstrous. It is said that it legitimises genocide and ethnic cleansing, wars of aggression and war crimes against civilians. It is also an unwelcome recipe for 'Balkanisation' of countries: that is to say, splitting multi-ethnic nations into a multiplicity of ethnically pure mini-states of questionable viability. These criticisms are probably also unfair. The partition theorist's response is that commission of war crimes, like any criminal act, is a matter for criminal prosecution of those responsible. The partition theorist is not legitimising war crimes against civilians, and where they occur they should be punished. But a sense of moral outrage at the crimes committed in a civil war should not blind the policymaker to the steps necessary to end that civil war once it has begun and those atrocities have been committed. The partition theorist ought not be characterised as immoral or racist. Rather his is a position of profound pessimism about human nature and incentives. Viewing intractable ethnic conflicts through the lens of history, (s)he simply does not believe there is anything that can be done to resolve them short of the most radical medicine of physical separation of violent people. It is all too easy for a natural sense of collective identity to spiral down into animus for others. There is something almost primordial in ethnic identity that mankind is unable to overcome: a preference to associate with others like oneself and to shun difference. By contrast, for the liberal peace-builder and his somewhat more hard-nosed post-liberal counterpart, there is an almost Kantian philosophical optimism that these kinds of hatreds and fears can in time be overcome. People are capable of developing rational modes of cooperation from which everybody benefits. Simplistic emotional hatreds and fears can be overridden by a polity based upon reason. The liberal may well be right about this: such things are in principle possible, as is demonstrated by the many multi-ethnic countries that operate well within a liberal political culture. But what if liberal political society takes centuries to develop, yet can be destroyed in just a few years of internecine war? Once it is gone, is it worth the impossible effort of trying to rebuild it?

To this, the partition theorist answers no. He or she will say that attempts to reintegrate formerly warring people in a single state in which they share power is simply naive. The security dilemma – which by the time a civil war is in full swing is entirely rational – cannot be overcome. Inter-ethnic cooperation will become impossible, because each party to any individual potential cooperation agreement will inevitably ask whether that cooperation could be used to oppress or harm him further. Thus representatives of each ethnic group will use every political negotiation as an opportunity to achieve an advantage over the other, and to resolve the security dilemma for that group. With two or more ethnic groups engaging

in that kind of behaviour, compromise is impossible without radical changes in social psychology that take generations. Only with external enforcement can such cooperation occur. But this implies that external enforcement must be virtually indefinite. And this is a commitment that very few foreign powers are ever prepared to make. Moreover, the phenomenon of 'Balkanisation' is an irrational fear. States can be viable even when extremely small. Liechtenstein exists as an entirely feasible modern country with a distinctive national identity and a thriving economy, despite having a population of barely 30,000 and a capital city of 5,000 people. San Marino, Andorra and Monaco are of similar population size and are likewise economically sustainable. Montenegro, the last but one new state to have emerged from the demise of Yugoslavia, has proved itself quite credible as a small middle-income country with a population of fewer than 700,000. Indeed there are eight internationally recognised sovereign states in Europe with a population of less than 1 million.¹⁷ Small size can be an advantage, in that political decision-making can be far more streamlined. Indeed there are far more countries in existence now than 100 years ago, principally due to the demise of colonialism. There is no credible argument that the proliferation of smaller states is in some way detrimental to the global polity. It makes multi-party negotiations more complex, as there are more actors with whom to liaise; but small countries have a greater incentive for cooperation with other states, because they are well aware that they cannot survive in autarchy. Thus they are frequently more willing multilateral partners than are larger states. Balkanisation is not something about which we should be gravely concerned if that is what keeps the peace.¹⁸

Partition theory is empirically controversial, and a literature has built up over whether the partition theorist's historical examples are justified or represent a fair cross-section of the outcomes of ethnic civil wars. In particular, it is argued that population separation creates just as many, if not more, grievances than rebuilding a multi-ethnic society and so may itself create great subsequent instability.¹⁹ It is also arguably pernicious: even if the theory is right, advocacy of it creates an incentive for nationalist politicians to pursue murderous agendas of ethnic cleansing, because once they commence the slaughter partition theory prescribes they will end up with their own state. Thus it encourages the break-up of otherwise viable states. Nonetheless, it was developed as a direct response to the war in Bosnia once it was at an advanced stage, in which physical separation of the warring parties was widely perceived as the only measure that could stop such intransigent people from continuing to kill one another. Notwithstanding official statements to the contrary, in which the US government described the Dayton Peace Agreement for Bosnia as preserving the territorial integrity of Bosnia and Herzegovina as a single state, it was in truth a partition plan, which recognised the front line between the forces at

the date of the peace agreement and devolved power to local mono-ethnic government units to the maximum extent practical (see Chapter Two). It was thus described as 'the partition that dare not speak its name' (Mearsheimer and Van Evera 1995), subject to some principles of central government that partition theorists rejected as regressive. The principal academic proponent of Bosnia's partition (Kaufmann 1996) said this, in spring 1996:

[T]he [Dayton] agreement, at least nominally, seeks to reconstruct some central government institutions with nationwide authority and a rotating presidency. It also requires all parties to permit the return of refugees. These provisions are undesirable and unenforceable, and should be allowed to die quietly. The procedures provided for compensating refugees for lost property should be followed instead.

Another contemporary advocate of partition (Lind 1995) made the following remarks in December 1995, just days after the Dayton Peace Agreement had been signed.

If the US tries to provide the muscle for a powerless central government with a complicated multiethnic constitution and little legitimacy among rival populations...or to take sides with one group rather than another in an attempt at 'nation-building' by outsiders...the NATO effort in Bosnia is likely to end in failure and humiliation. The US must choose between enforcing a de facto partition of the defunct Bosnian state and a more ambitious attempt to reconstruct a federal Bosnia under a new central government with a complex and probably unworkable constitution.

Both these quotes should be kept to the forefront of the mind while reading this book. They were ominous prophecies that ring depressingly true to the veteran of the state-building project in post-war Bosnia. The central institutions of Bosnian government never worked, and they still do not work over 13 years after the end of the war. Refugee return was achieved in substantial numbers only in Brčko, the highly unusual experiment within Bosnia which this book is about. The Dayton Constitution proved quite ruinous when any attempt was made to implement it. To the extent that multi-ethnic institutions have been created in Bosnia, they seem perilously fragile and unsustainable once international community intervention ceases. To their credit, the partition theorists predicted these problems from the outset. Moreover they argue, with some force, that the international community in post-war Bosnia has been engaged in an intellectual schizophrenia about partition. All the peace plans for Bosnia were partition plans, including the Dayton plan finally signed in December 1995. It was widely understood at the time that separating the parties into their own

mini-states, in which they would have maximum autonomy over their own affairs and a minimum of encroachment by the opposing ethnic groups, was essential to achieving peace and securing the consent of all three sides. But by 1998, the international community had committed itself to a broad state-building project, in which state laws and central institutions would be created from scratch and the local, highly federalised system of government anticipated by Dayton would be undermined. At what point, then, was the insight lost that partition would be best? And was it a good thing that it was? Writing this in early 2008, the answer is very unclear. In Brčko, the subject of the most focused and successful effort in the entire country to reintegrate, this question reaches its zenith. The conclusion of this book is that multi-ethnic Brčko is about to collapse. Were the partition theorists right?

The arguments of partition theorists will haunt this book, and the efforts of the international community in post-war Bosnia must be measured against the alternative of partition that was rejected by the international community at some point between December 1995 and mid-1998. To the extent that the partitionists' pessimistic predictions have turned out to be true, we must ask whether they were right all along or whether it was due to incompetence, lack of commitment or some other factor that Bosnia has ended up being the catalogue of failed state-building projects that it is today. Morally unattractive as partition seems to be at first glance, so much in the experience of the international community in post-war Bosnia suggests that, for Bosnia at least, partition might have been the right approach. At least one thing is clear: if a policy of reintegration driven by the international community is to be successful, it will be a matter of decades rather than years before foreign intervention can be considered complete. Given a limited period of time, partition may be the only realistic option.

International organisations

Government in post-war Bosnia has been run by an international organisation called the Office of the High Representative (OHR), a UN specialist agency established by the Dayton Peace Accords that ended the war. As shall be seen in Chapter Four, OHR granted itself extraordinarily broad powers to supervise every public institution in the country, to appoint and remove public officials (even if democratically elected) and even to invade people's private lives, by freezing their bank accounts and banning them from holding positions in political parties. It also took upon itself to block media, including television and radio, which it considered to be disseminating unacceptable propaganda. None of this took place within an accountable legal framework; there was no way of challenging the decisions and actions OHR took, which were made behind closed doors

and without the benefit of any public scrutiny of the decision-making process. OHR set its own rules in deciding how and when to act and changed them or broke them at will. Successive heads of the organisation had radically different ideas about when and how to intervene in the country's domestic affairs; their visions went mostly unchecked and OHR's actions thus became capricious. Bosnia became an absolutist dictatorship. But this power was not wielded by the President of Syria or the Politburo; it was exercised by the UN, in the name of enlightened post-war state-building.

It should already be obvious to the most casual reader that this model embodies extraordinary dangers, and much of this book is about the problems it caused. But those dangers seemed not to occur to the officials within OHR, and the international community as a whole went along with the international dictatorship of OHR without significant comment. This in itself is remarkable, and should cause us to pause to consider why OHR's conduct was so pathological. This is an issue on which some of the pre-existing literature on international organisations may shed light. In many ways OHR displayed faults ubiquitous in larger international organisations, including a culture of frustrating bureaucracy, suppression of dissident ideas, political interference behind the scenes in what should be neutral policy decisions by the sponsoring states' embassies and foreign affairs ministries, and fixation with internal norms at the expense of sound external policy. Many of these failings derived from its status as a bureaucracy and its lack of accountability, features it shares with other international organisations. The perverse and inefficient behaviour of international organisations on account of these features has already been catalogued in considerable detail.²⁰ To understand the background to these criticisms, one needs to be acquainted with some of the more theoretical distinctions drawn in the academic literature on international relations. International relations theorists have traditionally divided themselves into two camps that have come to be known as realism and liberalism. It is impossible to characterise these positions briefly while doing full justice to the debates between them, as each movement has spawned a series of variants under a range of abstruse titles.²¹ However, the broad difference can be stated fairly simply. Realists perceive the international order as an anarchic competition between self-interested states, with the possibility of cooperation between states impossible save in the short term and where it is in all states' self-interest.²² By contrast liberalism, associated in the first instance with US President Woodrow Wilson, sees states as having moral preferences that may be distinct from pursuit of their own self-interest, and those preferences may motivate their conduct. This opens the possibility of at least some states (typically liberal democracies) entering into mutual agreements to promote their common values, including the formation of international organisations to execute altruistic policies. International law

and international organisations can therefore be a good thing and make a real difference.

A third school of thought, sometimes called constructivism, sits uneasily astride this debate, maintaining that ideas other than the pursuit of self-interest may influence outcomes in international relations.²³ It is not axiomatic that states will pursue their own naked self-interest; other principles, to which they have ideologically committed themselves, may shape the goals they pursue. However, use of the word constructivism may imply neutrality about whether that influence is positive (as liberals maintain, who will assert concepts of human rights and international law as shaping the behaviour of states and international organisations), or negative, because the ideas created by international relations discourse turn out to be perverse. Negative constructivism finds its origins in the sociology of Max Weber, who turned the Marxist view of economics on its head. Whereas Marx had thought that economic forces determine all other changes in society, Weber saw other social forces, such as religion and the growth of bureaucracy, as affecting economic development. By analogy, the ideologies promoted by international organisations may constrain the economic anarchy of competition between nation states. Two recent academic criticisms of international organisations draw from these theoretical debates: from realism in one case, and from a negative form of constructivism in the other. Both are highly relevant to Bosnia.

(1) The first criticism, associated with realism, posits that international organisations are in some sense irrelevant. Their actions make no difference to international relations, because their behaviour will merely reflect an amalgam of short-term interests of the states that agree to form them. Whatever rules international organisations operate under will be altered or subverted when the interests of the powerful states underlying them change. The consequence of this theory is that international organisations are epiphenomenal – they have no causal influence upon the world events over which they purport to preside. World events cause reactions by powerful countries, and some of those reactions involve the creation of international organisations. But international organisations are only children of those events, not real actors within them. They are created out of the balance of power between the principal powerful nations of the world, rather than affecting that balance of power. The charge against them is thus that they do not make any difference to outcomes: ‘institutions cannot get states to stop behaving as short-term power maximizers’ (Mearsheimer 1995). They do not have their own independent policy-making personality; they will do whatever the most powerful member states that fund them and support them tell them to do. International organisations are only a shroud of international legitimacy for the exercise of powerful states’ foreign policy. Thus the difference between a US colonial occupation of Bosnia and military occupation and dictatorship under the auspices of OHR

(which until 2006 the US to a great extent controlled, because it was the biggest contributor to its budget and the greatest contributor of foreign peacekeeping troops) is solely one of moral perception.

The literature on this topic has had large multi-national international organisations in mind, such as the United Nations, the World Trade Organisation (WTO) or the World Bank. However, the general point may be applied by analogy to the work of a smaller organisation specific to one country, such as OHR. OHR was always a creation of its funding commitments. The relative size of the financial and military contributions by the various European powers and the United States very much determined policy influence within the organisation's walls. Russia, although formally a participant, never contributed significant resources and its influence in the organisation was minimal after the early years when it maintained some troops in Bosnia. By contrast, the United States contributed tens of thousands of peacekeeping troops in the early years and thus had an enormous say. Although in theory the European Union appointed the High Representative (the head of the organisation), in practice every High Representative would need US approval. A High Representative who lost the support of the US embassy would soon be out of a job, as Chapter Eight describes. Moreover, the muscular dictatorial role OHR came to adopt from December 1997, which made it possible for the international community to push a centralising state-building agenda, was at the instigation of the US government (see Chapter Four). And when the US government tired of intervention in Bosnia, OHR and the country's central government promptly peeled open (see Chapters Seven and Eight).

Ultimately the interests of the various foreign powers in international intervention in Bosnia were always relatively weak and were mildly inconsistent. The principal US interest was to avert mounting domestic criticism of inaction over a humanitarian catastrophe. There was also a lesser interest, in the face of American concern over the rise of fundamentalist Islam, to prevent the emergence of an exclusively Islamic state within Bosnia. Part of the American agenda for promoting a unified state was the thought (however misconceived) that a mixed Bosnia would entail watered-down Islam. The contemporary European interest, by contrast, was far narrower: to secure return of the vast number of Bosnian refugees that were creating political and economic problems for a number of countries in continental Europe. Subsequently an interest arose in integrating the western Balkan region into the European Union, but that was also a weak interest given the prevailing Brussels view that no country should be forced to join if it is not ready for the necessary political and institutional reforms that precede membership. Finally, the Russian interest was to keep Slobodan Milošević, President of the rump Federal Republic of Yugoslavia and a Russian ally, in power after his country had collapsed under the weight of UN sanctions. Most of these interests rapidly faded:

the media gaze averted its attention from Bosnia, the refugees returned and Milošević was abandoned as a hopeless liability after a subsequent repetition of Bosnian atrocities in Kosovo. A lingering preference remained to ensure that Bosnia would not be a source of renewed conflict, but the country's impoverishment through war rendered the risk to regional instability relatively minor. The absence of strong foreign interests in Bosnia led to a diversion of attention from the international community's projects in the country, and this lack of focus contributed to OHR's dysfunctionality. The important practical lesson to learn from this criticism of international organisations is that they cannot operate in a vacuum. Being funded by foreign governments and their most senior officials being appointees of those governments, they need a clear policy direction and mandate from foreign capitals. For peacekeeping missions, that direction will only be forthcoming when there are strong foreign interests in the host country's successful reconstruction. Without those interests, they will flounder, directionless, in a sea of bureaucratic petulance.²⁴ You cannot do state-building if you don't care.

(2) The constructivist argument against international organisations is that to the extent they do make a difference to policy, that difference is detrimental. This argument is, at least at a theoretical level, inconsistent with the realist argument that international organisations make no difference or are just a hamstrung amalgamation of competing interests. But notwithstanding the two perspectives' mutual theoretical hostility, there is insight in both of them. The constructivist's case draws on the theory of bureaucracy of German sociologist Max Weber. It observes that international organisations create their own rules and procedures, which have a rationality all their own and which create distinct sets of aims. The organisation then inevitably pursues those aims notwithstanding the dictates of its paymasters. Because the lines of accountability to the states that formed the organisation are imperfect, the organisation's aims may over time turn out to be quite different from those the founding states wish to pursue. Most notably, an internal legal culture may prevail that shapes the way the organisation will act, even if there is no external compulsion for it to act that way (Barnett and Finnemore 1999). That culture may define and redefine itself perennially, without restraint, and become quite irrational.

The Office of the High Representative became severely handicapped by problems of this kind. After OHR was granted broad legislative and executive powers in December 1997 (see Chapter Four), all manner of arbitrary internal rules began to take shape about how the organisation could or could not use its power. It started to see itself as the final authority in interpreting the peace agreements which created it and thus it could set its own mandate. Those members of the international community outside the country, cocooned in the foreign affairs departments of governments around the world, knew little of the complex situation on the ground in

Bosnia, or of the detailed and opaque legal and political work in which OHR was engaging. They were thus reliant upon OHR to explain what the organisation was doing, where the country was going and for OHR's assessment of its own performance. OHR could therefore decide what it saw fit to involve itself in and it suffered from inexorable mission creep. In ebbs and flows, OHR would involve itself in matters of enormous political importance and micro-management of low-level detail. The goals of the organisation slipped from one project to the next as different High Representatives were appointed, mostly with relatively short tenures, each espousing different philosophies and agendas. Because of staff turnover both within the organisation and amongst foreign services in western capitals, continuity of OHR's agenda was limited. Because it evaluated itself, OHR became immensely arrogant. It decided that it had a unilateral right to interpret the Constitution of Bosnia and Herzegovina and all legislation, howsoever passed. It decided that it had a unilateral mandate to instruct all public officials in the proper execution of their duties. It became the singular authority on every issue, from legislative drafting to economic development to political progress to judicial reform to criminal justice to taxation to property ownership to public administration reform. But the organisation simply did not have sufficient expertise to dabble in all these areas. It thus blundered into policy thickets in which it was not competent, and once it engaged with a topic it frequently failed to follow through on sophisticated policy problems that required far more effort than it was prepared to give. OHR found itself prone to a catalogue of negligent errors and incompetence that went unrectified due to its unaccountability.

Moreover, the lack of legal or political accountability rendered the organisation prone to egregious abuses of power, and this book is replete with anecdotes and instances of wrongdoing by international officials. The explicit power of the organisation was such that it felt it could publicly declare that it was removing public officials without any right of review or due process, it could refer to secret and unchallengeable intelligence reports as the explanation for the decisions it took, it could impose legislation over the wishes of democratically elected parliaments without even giving those parliaments a chance first to consider the legislation, it could freeze the bank accounts of private individuals because it merely suspected them of abetting fugitives, and it could revoke the identity and travel documents of people it suspected of wrongdoing without an order of the court and without even alleging that they had committed a criminal offence. In short, the arrogance of OHR was such that it could publicly admit to conduct which by all international standards was a flagrant violation of the most fundamental human rights. Even the most brutal third world dictators usually have sufficient decorum to hide their human rights abuses behind the veil of supposedly fair institutional procedures, but the Office of the

High Representative apparently did not feel so restrained. OHR must count as one of the most dysfunctional international organisations on record.

The experience of the Office of the High Representative in Brčko serves as a partial counterexample to the account described above. As the story elaborated in this book will explain, the Brčko branch of the organisation developed on a track entirely parallel with its Sarajevo-based parent. This organisation had a much clearer and more detailed mandate, and its understanding of its purpose began to fade only in late 2006. It was slightly more accountable, although still not perfectly so: it only really answered to one government, that of the United States, but that government took a closer interest in the office's affairs than a committee of foreign government representatives did in the activities of OHR as a whole. Hence while the US State Department retained an interest in what the office was doing, there was a genuine sense of political accountability. This, combined with a self-imposed restraint in the face of fiendishly difficult domestic political conditions that constantly threatened to erupt into violence, helped the office to maintain a sense of institutional discipline. However, once the State Department lost interest, the same ailments that cursed the organisation as a whole began to creep into the international organisation running Brčko. The story of the rapid collapse of that office is one of the most intriguing details in the story of post-war international intervention in Bosnia and it illuminates much of the theoretical narrative about the potential failings of international organisations set out in this chapter.

For now, this chapter comprises sufficient theorising and generalisations about both the peculiar country of Bosnia and the curious organisation that has run it since 1996. His (or her) appetite having been whetted with allusions to the radical and the unusual, it is hoped that the reader will now want to delve into the fascinating detail. For that purpose it is with an introduction to the history of Bosnia, and to the anomalous town of Brčko, that we should begin.