



The International Administration of Territory as an Interim Peace

A. Dirk Moses & Jessie Barton Hronešová

To cite this article: A. Dirk Moses & Jessie Barton Hronešová (15 Dec 2023): The International Administration of Territory as an Interim Peace, Journal of Genocide Research, DOI: [10.1080/14623528.2023.2291923](https://doi.org/10.1080/14623528.2023.2291923)

To link to this article: <https://doi.org/10.1080/14623528.2023.2291923>



Published online: 15 Dec 2023.



Submit your article to this journal [↗](#)



View related articles [↗](#)



View Crossmark data [↗](#)



The International Administration of Territory as an Interim Peace

A. Dirk Moses^a and Jessie Barton Hronešová^b

^aDepartment of Political Science, City College of New York, New York, NY, USA; ^bSchool of Slavonic and East European Studies, University College London, London, UK

Introduction

The Russian invasion of Ukraine has reached a new, critical stage, with a confluence of developments that could lead to a number of possible scenarios discussed in the press and by think tanks.¹ Currently, Russia has pummelled Ukraine – especially its electricity and water infrastructure – with missiles and Iranian drones, even destroying the Kakhovka dam of the Dnipro River, with catastrophic environmental and other consequences. At the time of writing (November 2023), the much-awaited Ukrainian counter-offensive has been underway for months, but making only slow progress against well-dug-in Russian defences. Ukraine's war aims remain unchanged, understandably reflecting international law: the recovery of its occupied and annexed territories. Naturally, these include not only those invaded since 24 February 2022, but also Donbas in the eastern part of the country (the proclaimed Donetsk People's Republic and Luhansk People's Republic), and Crimea, the peninsula illegally annexed by Russia in 2014. Soon closing the second year of the war and with public opinion shifting focus to other international issues, such as in the Middle East, much of the current debate turns around peace negotiations. So long as Ukraine gains ground and its allies are united, no useful purpose is served by peace talks with Russia, which would certainly seek to keep as much of Ukraine's territory as possible. But such a time may come if – and when – these war aims prove impossible to realize in the short or even medium terms, when human cost becomes too great, and when Ukraine's western backers change priorities – a glimpse of which we have seen in recent Slovakian elections.² The looming American elections where Donald Trump promises a comeback may prove a key turning point, too.

Meanwhile, we see a raft of global repercussions. Rising food prices and hunger stalk large parts of Africa that are dependent on Ukrainian and Russian grain, leading to the possibility of widespread political destabilization.³ If the war persists too long, it could have catastrophic regional and international consequences beyond Europe. In part out of concerns for food supplies and prices, African leaders visited both Kyiv and

CONTACT A. Dirk Moses  dirkmoses@ccny.cuny.edu  Department of Political Science, City College of New York, 160 Convent Avenue, New York, NY 10027, USA

¹ Shashank Joshi, "Three Scenarios on How the War in Ukraine Could Play Out," *The Economist*, 14 November 2022, Brian Michael Jenkins, "Consequences of the War in Ukraine," *RAND Blog*, 24 February 2023, <https://rand.org/pubs/commentary/2023/02/consequences-of-the-war-in-ukraine.html>.

² Johecová, Ketrin, "Slovakia halts Ukraine aid after pro-Russia Fico's election win," *Politico*, 6 October 2023, <https://www.politico.eu/article/slovakia-president-caputova-says-no-military-package-ukraine-aid-after-elections-results/> (accessed 30 November 2023).

³ Peyvand Khorsandi, "This War Must End: The Ukraine Crisis Seven Months On," *World Food Program*, 17 September 2022, <https://www.wfp.org/stories/war-must-end-ukraine-crisis-seven-months>.

St. Petersburg in mid-June 2023 to encourage peace talks, but little progress has been made given the irreconcilable war aims. Then there is Russia's vaguely issued but unmistakable nuclear threat, alarming some but dismissed by others, which adds an apocalyptic dimension to this conflict.⁴ While not caving into Russian blackmailing threats is important, the possibility of nuclear warfare should not be dismissed as ill-founded. Putin may not be a rational actor after all, and Russia has over 4,000 nuclear warheads at its disposal, many of which are designed for tactical use on battlefields.⁵ In mid-June 2023, he announced the stationing of such weapons in Belorussia and threatened their deployment if Russian territory was invaded. Does that include the illegally annexed territories that Ukraine is now seeking to recover?

The elephant in the room is how to administer Crimea and parts of Donbas if they remain partly or mostly in Russian hands but neither side can fully control or conquer them. Donbas, but especially Crimea, represent the nub of the security predicament. In crude terms, leaving aside rival historical – and, for Ukraine, legal – claims, possession of valuable industrial assets and mineral resources in Donbas, as well as access to the Black Sea and vital trade routes, is at stake. Crimea is also home to the cherished Russian Black Sea fleet.⁶ Given the stakes, the difficulty of regaining and keeping Crimea and the chances of Russia tolerating defeat there without disastrous escalation need to be considered.⁷ So does the possibility of an enduring conflict, with all its global consequences.⁸

How can populations of military enemies live together? How can such territories be managed, and by whom? With varied results, similar dilemmas had to be addressed in the past via an option that offers some guidance, many important lessons and warnings: international territorial administrations. International territorial administrations (ITA) have long featured in peace agreements in the past as an option to manage conflicting sovereignty claims and disputed territories. Recently in ex-Yugoslavia has produced some of the most far-reaching, consequential – and for some highly controversial – ITAs.⁹ ITAs present no panacea to the military and political dilemmas that need to be considered in Ukraine, but they can act as steppingstones towards negotiations, and need to be considered before any moves towards peace are made – mainly to avoid mistakes made in previously applied ITAs. There are indeed historical lessons that can be learned and mistakes that can be avoided from the raft of the existing territorial solutions.

ITAs come in place precisely at a time when military solutions are exhausted and when leaders are politically weakened – the context is important and each of the ITAs ever implemented was different. Certainly, on their own, ITAs do not bring peace; still, they have an important role to play so that warring parties have some grounds on which to

⁴ Masha Gessen, "Why Vladimir Putin Would Use Nuclear Weapons in Ukraine," *New Yorker*, 1 November 2022; Timothy Snyder, "How does the Russo-Ukrainian War end?" *Timothy Snyder Substack*, 5 November 2022, <https://snyder.substack.com/p/how-does-the-russo-ukrainian-war>.

⁵ Andrew F. Krepinevich, "Is Putin a Rational Actor? How and Why the Kremlin Might Use the Bomb," *Foreign Affairs*, 22 November 2022.

⁶ "A Ukrainian Attempt to Retake Crimea would be Bloody and Difficult," *The Economist*, 27 November 2022.

⁷ Shashank Joshi, "Three Scenarios for How War in Ukraine Could Play Out," *The Economist*, 14 November 2022.

⁸ Piotr Buras, Marie Dumoulin, Gustav Gressel, and Jeremy Shapiro, "Survive and Thrive: A European Plan to Support Ukraine in the Long War Against Russia," European Council on Foreign Relations, 9 September 2022, <https://ecfr.eu/publication/survive-and-thrive-a-european-plan-to-support-ukraine-in-the-long-war-against-russia/>.

⁹ For an early genealogy see Richard Caplan, *International Governance of War-Torn Territories: Rule and Reconstruction* (Oxford: Oxford University Press, 2005).

converge in most contemporary conflicts of global repercussions. They shared a common vision and agreement that there is an important role to be played by international actors who can assist in defusing emotional and painful situations, practically managing day-to-day administrations, and paving the way to longer-lasting solutions.

It is important to consider ITAs' benefits and pitfalls not only for the sake of Ukraine, but also for the conflict between Israel and Hamas. Our goal here is to offer historical lessons to showcase some of the benefits of ITAs, as well as some of their pitfalls – when ITAs turn into seemingly permanent neo-trusteeships,¹⁰ their peace-building role is superseded by their governance-hampering potential. Indeed, ITAs play an important role for peacemaking but their main pitfall is their ability to obstruct meaningful self-governance and domestic ownership. We proceed by considering and drawing lessons from past and current European peace negotiations and international administrations, especially in the territories of the former Yugoslavia since the 1990s. The history of international territorial administrations offers many lessons to learn but an equal number to unlearn.

The International Administration of Territory in the League of Nations and the United Nations

The historical roots of international territorial administration (ITA) can be traced to condominiums of great powers governing disputed territory in order to stop wars and/or keep peace.¹¹ For example, in 1815 the Congress of Vienna made Austria, Prussia, and Russia supervisory authority over the “Free City of Cracow.” Other territories such as Shanghai, Crete, and Tangier were subsequently also governed by multinational administrations, often linked to colonial politics. The latter example, which lasted from 1923 to 1957, was the result of British-brokered compromise between France and Spain both of which sought to control this Moroccan city. By agreement, it was demilitarized and eventually governed by eight European powers in the context of traditional regime of “capitulations” in which the Sultan of Morocco delegated broad powers to foreign consulates.¹² While a vestige of European imperialism cannot serve as a model today, the case teaches two lessons: internationalization can work if all parties are in agreement or incentivized to do so, and the denationalization of a territory with a diverse population fosters remarkable hybridity and cultural freedom – for which Tangier became renowned.¹³

This respect for diversity and independent non-national identity was also evident in the case of Fiume, which had enjoyed autonomy as a port city of mixed predominantly

¹⁰ Richard Caplan, “From Collapsing States to Neo-Trusteeship: The Limits to Solving the Problem of ‘Precarious Statehood’ in the Twenty-First Century,” *Third World Quarterly* 28, no. 2 (2007): 231–44; David A. Lake and Christopher J. Fariss, “Why International Trusteeship Fails: The Politics of External Authority in Areas of Limited Statehood,” *Governance: An International Journal of Policy, Administration, and Institutions* 27, no. 4 (2014): 573–75; James D. Fearon and David D. Laitin, “Neotrusteeship and the Problem of Weak States,” *International Security* 28, no. 4 (2004): 5–43; Bain William, “Trusteeship and Contemporary International Society,” in *Rethinking Ethical Foreign Policy: Pitfalls, Possibilities and Paradoxes*, ed. David Chandler and Volker Heins (London: Routledge, 2007), 228–32.

¹¹ Carsten Stahn, *The Law and Practice of International Territorial Administration: Versailles to Iraq and Beyond* (Cambridge: Cambridge University Press, 2010).

¹² *Ibid.*, 7.

¹³ “Tangier as an International City: A Hybrid Space Giving Birth to a Hybrid Literature,” *Morocco World News*, 4 July 2012, <https://www.morocoworldnews.com/2012/07/46745/tangier-as-an-international-city-a-hybrid-space-giving-birth-to-a-hybrid-literature-3>.

Italian and Slavic population. With the collapse of the Austro-Hungarian Empire after World War I, Italy and the new Kingdom of Serbs Croats and Slovenes (SHS) claimed it.¹⁴ As in Tangiers, the great powers proposed the establishment of a free state to remove this apple of discord. The Free State of Fiume was created by treaty in 1920 after some violence. Unlike Tangiers, the dispute was resolved by the partition of Fiume/Rijeka in 1924, with the city going to Italy and its hinterland to the Kingdom of SHS. The Fiume question was, of course, resolved only in 1947.¹⁵

The formal commencement of modern ITAs is the League of Nations' (LoN) administrations of disputed territories after World War I. For the first time, an organization with an independent legal personality governed territory directly for the first time on behalf of the international community. The challenges faced by the LoN demonstrate the difficulties of ITA when dealing with expansionist or revisionist states, especially if they feel their co-nationals are "stranded" in neighbouring territory. Since the organizing principle of the LoN was the nation-state and the principle of self-determination, the purpose of ITA was transitional: governance until the popular will could be determined and/or the diplomatic dispute could be resolved. Thus the Saar region of Germany, which the French coveted for its coal, was governed by the LoN for 15 years until a plebiscite decided its fate. In the event, in 1935 ninety per cent of the population voted to rejoin Germany. But the ballot offered the option of permanent international LoN administration.¹⁶

Such permanence animated the solution for the disputed Danzig, a German city that found itself in the newly constituted state of Poland in 1918. To appease Germany, the Allies at Versailles made it and the surrounding territory a semi-autonomous free state. Because of its location, there could be no question of union with Germany, and because of its population, no incorporation into Poland was considered realistic. However rancorous the feelings between Danzig (today's Gdańsk) and Poland, it was governed peacefully by a LoN High Commissioner for nineteen years until the Nazi invasion in 1939, which effectively symbolized the German claims to the city.¹⁷

As these examples suggest, such experiments were unsuccessful when the LoN lacked the political will or means to enforce them. It was also hamstrung by its own commitment to self-determination. The Treaty of Versailles established the former German sea port of Memel (Klaipėda), which the new states of Lithuania and Poland wanted, as a LoN-administered territory. It contained a majority Lithuanian-speaking population as well as a sizable population of Germans but also Poles Jews and Russians. When, in 1923, Lithuanian forces marched in, the French administration did not resist. LoN protests and ensuing negotiations led to a compromise: the annexation was recognized while Memel enjoyed autonomous status in Lithuania.¹⁸ This solution had parallels to the terms of the LoN Mandates about respecting minority protection treaties, and to Sanjak of Alexandretta in the French mandate of Syria that gave cultural rights to the Turkish population. The layered sovereignty of minority rights needed to be considered in territory where populations did not match the national aspirations of the state.

¹⁴ Zara Steiner, *The Lights that Failed: European International History 1919–1933* (Oxford: Oxford University Press, 2005), 87–88, 336.

¹⁵ *Ibid.*

¹⁶ Andrew Thomas Park, "Administering the Administrators: The League of Nations and the Problem of International Territorial Administration in the Saar 1919–1923," *International History Review* 44, no. 3 (2022): 540–58.

¹⁷ Stahn, *The Law and Practice of International Territorial Administration*, 14.

¹⁸ *Ibid.*, 66–7.

The UN did not plan for ITA when it was founded in 1945. Instead, it envisaged an international trusteeship system under Chapter 12 of its charter, which established a Trusteeship Council to oversee the administration of territories until they could be independent.¹⁹ However, Article 24 of the UN's charter confers "primary responsibility" on the Security Council for the "the maintenance of international peace and security."²⁰ Under this article, the UN could effectively institute ITA. As might be expected, the immediate aftermath of World War II called for UN involvement. Again, Italy's border with Yugoslavia proved a flashpoint. It was especially the mixed city of Trieste, which in 1947 the UNSC placed under its authority as the Free Territory of Trieste. However, Italian and Yugoslav forces, which continued to occupy and administer the territory by agreement, never left, and the UN governance never eventuated. It was partitioned and annexed by both states in 1954, in the same manner as Fiume before it.

UN internationalization also failed in Jerusalem, which the UN partition plan for Palestine called for in 1947.²¹ It was to be "a special international regime ... administered by the United Nations," as the UN General Assembly Resolution 181 in 1947 put it. Resolution 194 in December 1948 called for a UN Conciliation Commission to implement the special international regime constituted by demilitarization, free access, the right of return for refugees and maximal local autonomy for its "distinctive groups" with the cooperation of a UN representative. The Jerusalem plan failed because some Arab countries rejected partition (Arab Palestinians were not asked) and the new state of Israel repudiated UN involvement. Unlike the cases discussed above, the unrecognized Israeli annexation of the entire city and adjacent land after 1967 cannot be said to realize the wishes and self-determination of the population. The systematic discrimination against Palestinian Jerusalemites, for instance, makes questionable the ideal of national sovereignty in such mixed population and contentious circumstances.

The UN gathered other forms of ITA in transitional arrangements in which it administered disputed territory in preparation for plebiscites, like in West New Guinea in 1962–63, and later in Cambodia, East Timor, Croatia, and Kosovo. The latter three, along with other post-Yugoslav cases, represent the most recent UN experiences with ITA. We focus on the Yugoslav cases with more consideration as they teach various and still applicable lessons.

International Administrations in the Former Yugoslavia

Ending the wars that accompanied the break-up of Yugoslavia in the 1990s included frustrating and seemingly unsolvable disputes over multi-national territories.²² Ethno-territorial claims repeatedly derailed peace negotiations, and successful peace agreements were concluded only through a variety of ITAs, in conjunction with changes in the military and power balances. The Yugoslav cases differ from Ukraine today, most obviously as Yugoslav wars did not involve a UNSC member directly but accompanied a break-up of a state. Yet, the break-up of Yugoslavia was a truly international

¹⁹ United Nations Charter, Chapter XII: International Trusteeship System, <https://www.un.org/en/about-us/un-charter/chapter-12>. United Nations Trusteeship Council, <https://www.un.org/en/about-us/trusteeship-council>.

²⁰ United Nations Charter, Article 24. <https://legal.un.org/repertory/art24.shtml/>.

²¹ A. Dirk Moses, "A Path to Peace: The UN Administration of Crimea," *The Hill*, 12 October 2022, <https://thehill.com/opinion/international/3683154-a-path-to-peace-the-un-administration-of-crimea/>.

²² Lenard J. Cohen and Jasna Dragović-Soso, eds., *State Collapse in South-Eastern Europe: New Perspectives on Yugoslavia's Disintegration* (West Lafayette, IN: Purdue University Press, 2008).

phenomenon and saw some of the first modern attempts at complex international administration as a peace-making tool that is useful for reflection.²³ Moreover, the Yugoslav ITAs included the participation of several actors at once, such as the European Union (to administer or provide police forces), UN (to govern and stabilize), NATO (to provide military protection), and OSCE (to run elections), among many others, reflecting the changing international importance of various organizations. They also point to the importance of timing and peacemaking reflecting power balances and military victories that can pave the way to effective territorial management.

Croatia

Today's Croatia offers some of the most instructive examples of effective ITAs and territorial reintegration. Each of the Croatian cases presents a combination of ITAs at a time of changing power relations and military balance. Early on in the war in 1992, the Prevlaka peninsula, the seat of an important fleet, claimed by the former Yugoslav republics of Croatia and Montenegro, was placed under ITA already. It was subsequently divided between Croatia (control over the peninsula) and Montenegro (territorial waters) through a temporary agreement. This diplomatic solution was effective after all military solutions failed to produce a clear result and diplomacy failed to end the war. Another reason was the change in motivation of the Montenegrin leadership that decided it was no longer beholden to Belgrade and relived to pursue independence. While Prevlaka – little known territory to many outside of the region – remains a pending territorial dispute,²⁴ its ITA prevented the peninsula from becoming a sore point during later peace negotiations over the war, and (after political changes in the affected countries) is currently being resolved by judicial rather than military means. Effectively, a tense point was postponed to be resolved later via an ITA.

A better-known case is that of Eastern Slavonia. The small border region of Eastern Slavonia with the pummeled city of Vukovar, a symbol of the war-time destruction in Croatia, was occupied by Yugoslav forces early on in 1991 and then became part of the Serb secessionist "Republika Srpska Krajina" (RSK). As a border region on the Danube with a significant Serb population, Eastern Slavonia became a key battleground until the end of the war. While Yugoslavia under Slobodan Milošević legally never recognized the separatist region, it provided it with vast financial and military support as documented in later war-crimes proceedings at the International Criminal Tribunal or the former Yugoslavia.²⁵ By early 1995, it became clear that RSK could not sustain its military secessionism and would have to be reintegrated into Croatia, later reinforced by military takeovers in Operations Flash and Storm where Croatian forces, aided by mainly the US, recaptured most of RSK and reintegrated it into Croatia. Yet Croatian forces did not advance into Eastern Slavonia proper and the situation of the local Serb population as well as the newly arrived Serbs from other parts of Slavonia proved hard to resolve. Belgrade continued expressing concern over this population until late 1995 (although it provided no real support for their

²³ Richard Caplan, *Trusteeship? The International Administration of War-Torn Territories* (Abingdon: Routledge, 2014).

²⁴ Samir Kajosevic, "Montenegro Pushes for Arbitration Over Prevlaka Dispute with Croatia," *Balkan Insight*, 5 October 2022, <https://balkaninsight.com/2020/10/05/montenegro-pushes-for-arbitration-over-prevlaka-dispute-with-croatia/>.

²⁵ For example, see ICTY's case against the then leader of RSK Milan Babic, <https://www.icty.org/en/case/babic>.

political cause after failed negotiations in the summer) and local separatist leadership has all but given up their ambitions.

The question remained how to manage the contentious region and its population. A five-country contact group (France, Germany, Russia, USA and UK) found a solution in an ITA for Eastern Slavonia in November 1995 in Erdut that guaranteed security of the Serb population and oversaw the transfer of the territory into Croatia (eventually realized in 1998). The agreement was short on detail on how to govern, and a special UN mission was mandated (UNTAES)²⁶ with the support of 5,000 troops. While the changes in military and power dynamics on the ground paved the way to a settlement, Erdut defused the tense situation in the region and allowed for a peaceful reintegration into Croatia – a fact often forgotten and overshadowed by other events during the war. While Eastern Slavonia was relatively easier to resolve as Croatia was its main destination and the main priority was to ensure the security of the Serb population, the ITA functioned as a trust-building mechanism and effectively managed to improve people's lives. This was secured through streamlined leadership of UNTAES, which was by some accounts "the most successful of all post-Cold War UN- or U.S.-led."²⁷ It operated on a small territory, where demilitarization, security (through a police mission UNCIVPOL), civilian control, and return of refugees were all centrally coordinated.²⁸

Bosnia and Herzegovina

Bosnia and Herzegovina (BiH) presents a mixed bag of successes and failures from which to draw lessons: it offers a case for peace achieved through diplomacy where ITAs play a key role but also unworkable governance structures.²⁹ BiH also serves as an example of some of the most extensive international administrative methods ever used, leading to frequent accusations of new colonialism and neo-trusteeship methods.³⁰ Once the US, European Union and, finally, Russia decided to engage in the war and agreed on military intervention (unlike in the current case of Ukraine), the warring parties were finally brought to the negotiating table in Dayton, Ohio, in November 1995, which set out Bosnia's governance, power divisions, and territorial divisions.

The General Framework Peace for Bosnia and Herzegovina of 21 November 1995, signed in Dayton, Ohio, US, was the result of 21 days of bargaining that tried to make all sides sign in what some called "a cartography of convenience" because of the painstaking disputes over territories.³¹ It was also the result of a military situation unfavorable to the Bosnian Serbs, who, some argue,³² would (and should) have lost, had the war not

²⁶ UNTAES, United Nations: <https://digitallibrary.un.org/record/202323?ln=en> (accessed 30 November 2023).

²⁷ James Dobbins, ed., *The UN's Role in Nation-Building: From the Congo to Iraq* (Santa Monica, CA: RAND Corporation, 2005), 123.

²⁸ Derek Boothby, "The Political Challenges of Administering Eastern Slavonia," *Global Governance: A Review of Multilateralism and International Organizations* 10, no. 1 (2004): 37–51.

²⁹ Richard Caplan, "Who Guards the Guardians? International Accountability in Bosnia," *International Peacekeeping* 12, no. 3 (2005): 463–76.

³⁰ Gerald Knaus and Felix Martin. "Travails of the European Raj," *Journal of Democracy* 14, no. 3 (2003): 60–74. ON the colonial background of trusteeships, see Christopher Allsobrook and Camilla Boisen, "Two Types of Trusteeship in South Africa: From Subjugation to Separate Development," *Politikon* 44, no. 2 (2017): 265–68.

³¹ Alex Jeffrey, "Building State Capacity in Post-Conflict Bosnia and Herzegovina: The Case of Brčko District," *Political Geography* 25, no. 2 (2006): 203–27.

³² Lise Morjé Howard, "US Foreign Policy Habits in Ethnic Conflict," *International Studies Quarterly* 59, no. 4, (2015): 721–34.

been stopped by western diplomacy in order to put an end to the bloodshed. Dayton's detailed 150 pages outlined issues from demilitarization (NATO-led 60,000 force IFOR), refugee return, human rights, and international administration through the civilian High Representative. Most importantly and problematically, Annex IV of Dayton represents BiH's constitution, probably the most consequential and unhelpful part of the agreement. Written in English, the constitution has proven to be the main sticking point for Bosnia's development (rather than any other parts of the peace agreement). Its inherent link to the peace agreement has proven to be very harmful to Bosnian governance.³³ The Dayton constitution divided the entire Bosnian territory into ethnicity-based "entities" – Croat-Bosniak Federation of BiH (FBiH) and Republika Srpska (RS) with a territorial distribution of fifty-one to forty-nine per cent respectively and introduced extensive power-sharing rights. The two entities became semi-autonomous while state institutions were given extremely weak powers, another major flaw. RS was ultimately granted significant territorial concessions in the spirit of a "compromised peace,"³⁴ while Bosniaks complained that Serbs were rewarded for their ethnic cleansing and genocide. No one party was fully satisfied with the deal, but all eventually agreed as the cost of war became too high.

Controversially, the Bosnian Serb leadership was at Dayton represented by Slobodan Milošević, a subsequently indicted war criminal, alongside some other participants. The issue of negotiating with those responsible for atrocities remains painful one but will have to be addressed in the Ukrainian case too. In the Bosnian case, such actors were included for the sake of peace rather than justice, which came later – and for some too late.³⁵ For many, this has delegitimized the peace agreement. Yet, the prevailing view remains that Dayton was not an ideal peace agreement to build trust and a functioning multi-national state but an agreement that has been surpassingly effective in stopping the bloodshed. The pragmatic peace versus moral justice considerations have thus loomed large over Dayton and are still relevant.

Dayton was riven with other contradictions, such as the guarantee of returns to territories dominated by the other groups but in parallel constitutionally granting the dominant "constituent" groups (Croats, Bosniaks, and Serbs) governance priorities (no other groups can run for top state offices), leading to legal clashes between individual and collective rights that have been later recognized by international courts.³⁶ The extensive collective rights for "constituent peoples" subsequently paralyzed BiH's state-level governance. To allow for the strengthening of the state, the High Representative was granted extensive executive powers in 1997. Bosnia has since become a hybrid international protectorate where the High Representative can impose new laws, sack elected officials, and even change electoral procedures – all in the spirit of peace implementation – while the country *de iure* functions as

³³ Florian Bieber, "After Dayton, Dayton? The Evolution of an Unpopular Peace," *Ethnopolitics* 5, no. 1 (2006): 15–31.

³⁴ Roger MacGinty, "Indigenous Peace-Making Versus the Liberal Peace," *Cooperation and Conflict* 43, no. 2 (2008): 139–63.

³⁵ Olga Martin-Ortega, "Building Peace and Delivering Justice in Bosnia and Herzegovina: The Limits of Externally Driven Processes," in *Transitional Justice and Peacebuilding on the Ground: Victims and Ex-Combatants*, ed. Chandra Lekha Sriam, Jemmima Garcia-Godos, and Johana Herman (London and New York: Routledge, 2012), 139–59.

³⁶ Marko Milanovic, "Sejdic and Finci v. Bosnia and Herzegovina," *American Journal of International Law* 104, no. 4 (2010): 636–41.

a democracy.³⁷ The Bosnian ITA thus presents an opportunity to learn from a successful cessation of war but extremely problematic multi-ethnic governance contained in Annex IV.

Brčko and Mostar

More instructive subnational cases within the Dayton peace settlement for today are two territorial sticking points: Brčko and Mostar. While Brčko provided a new way of creating a multi-ethnic local community under international administration and with limited formal power-sharing *after* Dayton, Mostar's administration was negotiated *before* Dayton and thus did not present a peace-blocking issue. And while Brčko may be seen as a comparatively successful case, Mostar has continuously struggled with its governance.

As part of the Washington Agreement in March 1994 that settled the Croat–Bosniak conflict in Bosnia, Mostar came under the EU Administration in Mostar (EUAM)³⁸ and remained so until 1996. EUAM's main objective was to rebuild and reintegrate the city, but its capacities were constrained by the later negotiated Dayton. Mirroring some of the most paralyzing aspects of power-sharing at the Bosnian level, Mostar's governance suffered from constant invocations of veto rights, impossible super-majority votes, and obstructions by the two dominant Croat and Bosniak parties, leading to governing impasses until the High Representative imposed a new statute in 2004. But governance in Mostar remained a matter of brinkmanship that effectively prevented elections from happening for 12 years. Ultimately, in 2020, the US and EU again interfered and oversaw negotiations over new electoral rules that unlocked elections but rendered divisive results.³⁹ In short, Mostar is not an example to follow in governance terms. Although Crimea and Donbas may not necessitate such extensive power-sharing clauses, it is important to be wary of trying to introduce inflexible groups-based rights that will not be reflective of the evolving demographic and political situation, as in the case of Bosnia.

In contrast, Brčko bears some resemblance to the tricky status of Crimea although it has remained a dispute within a state rather than between two states. Once dubbed the "mother of all difficulties in Bosnia"⁴⁰ and "the most likely flashpoint for any renewed warfare in BiH,"⁴¹ the Brčko area is now surprisingly nearly forgotten. Yet as the key negotiator of the Dayton peace agreement, Richard Holbrooke noted, Brčko became the "toughest" of all the issues during the Dayton negotiations.⁴² There is much to be learned from this historical precedent. While Brčko and its surrounding areas did not possess any cultural or historical significance in pre-war BiH to the same degree that Crimea does, it was also a strategic port on the Sava River with links to the Danube, located on the border with Serbia and close to Croatia. During the war, it was also a

³⁷ Adis Merdzanovic, "A Few Thoughts on the Contemporary Role of the OHR in BiH," 30 June 2019, <https://adismerdzanovic.com/2019/06/30/a-few-thoughts-on-the-contemporary-role-of-the-ohr-in-bih/>.

³⁸ Information Note Concerning Special Report No. 2/96 of the Court of Auditors: Administration of Mostar by the European Union and the Administrator's Accounts., 3 July 1996, https://ec.europa.eu/commission/presscorner/detail/en/ECA_96_2.

³⁹ Mirsad Behram, "Ethnic Parties Reassert Grip on Bosnia's Mostar at Landmark Election," *Balkan Insight*, 23 December 2020, <https://balkaninsight.com/2020/12/23/ethnic-parties-reassert-grip-on-bosnias-mostar-at-landmark-election/>.

⁴⁰ Miruna Troncota, "Bosnia Herzegovina, Forever at Cross Roads? Constructing 'the other' in Brčko District," *Eurotimes Supplement* 3 (2010): 47–65, <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-293763>.

⁴¹ International Crisis Group, "Bosnia's Brcko: Getting In, Getting On and Getting Out," 2 June 2003.

⁴² Richard Holbrooke, *To End a War: The Conflict in Yugoslavia – America's Inside Story – Negotiating with Milosevic* (New York: Random House, 1999), 296.

connector to the two parts of the secessionist RS, leading to fierce contestation over its relatively small territory and brutal atrocities that displaced much of the pre-war population. By the end of the war, Serbs formed 97.5 per cent of the Brčko area population, although before the war they formed only twenty per cent.⁴³

Endangering the overall peace negotiations, the impasse was finally broken with Belgrade's agreement to postpone the Brčko solution to a later time and internationalize its administration via a multi-partied arbitration, overseen by the US but negotiated by both entities within a year. Three arbitrators – one from RS, one from FBiH and one internationally chosen by the International Court of Justice (ICJ) – were appointed in 1996 onto the Tribunal. Initially, RS refused to participate as it assumed favoritism of FBiH⁴⁴ (in the same way one might assume that Russia would) and a flare-up of the conflict was threatening. After reassurances that the process would consider all sides and constant engagement with RS authorities, RS cooperated. Due to poor security of post-war returns and explosive elections, the final decision took another four years. During that time, the Tribunal made three awards⁴⁵ that set out as detailed ITA over the wider Brčko area (of the approximate size of Munich). To govern Brčko in the meantime, the Arbitration Tribunal decided to appoint an international Supervisor to be fully in charge of the local governance but govern through a multi-ethnic composition of the Brčko Municipal Government and assembly that were to be represented by the three main groups and the “other” minority groups. The American Supervisor had a British and Russian deputy, jointly assuming nearly unlimited powers.

The Final Award of 1999⁴⁶ unified the three municipalities of Brčko in a “neutral” and multi-ethnic “Brčko District” as a condominium. The Tribunal specified that Brčko's territory would de facto belong to both entities but BiH state authorities would have the dominant jurisdiction – it seemed as a Solomonic judgment as both entities gained territory but lost governance over the area. Brčko simultaneously belonged to neither and both entities. No party was satisfied but no one was equally aggrieved to the degree that another conflict would flare up. The international Supervisor remained tasked (until 2012 when it was suspended) with turning Brčko into a single administrative unit through multi-ethnic governance and institutions. Its currently run as a self-governed area by a mayor and an assembly.

Brčko operates on different principles of power-sharing than the rest of Bosnia. It became close to self-governing as the only Bosnian territory where parity in multi-ethnic governance and policymaking is exercised including multi-ethnic and multi-lingual education, including for the “others.” It also uses proportional elections. By 2003, Brčko had very similar ethnic composition to its pre-war population and recorded the lowest unemployment in BiH.⁴⁷ While Brčko remains plagued by similar problems of governing as in BiH where identities are perceived as rigid, its postponed multi-party

⁴³ International Crisis Group, “Bosnia's Brcko: Getting In, Getting On and Getting Out,” 2 June 2003, <https://www.crisisgroup.org/europe-central-asia/balkans/bosnia-and-herzegovina/bosnias-brcko-getting-getting-and-getting-out>.

⁴⁴ International Crisis Group, “Dayton: Two Years On: A Review of Progress in Implementing the Dayton Peace Accords in Bosnia,” 19 November 1997, <https://www.refworld.org/docid/3de2054e4.html> (accessed 30 November 2023).

⁴⁵ Tomas Vail, “The Brčko Arbitration: A Process for Lasting Peace between Non-State Actors,” in *Non-State Actors and International Obligations: Creation Evolution and Enforcement*, ed. James Summers and Alex Gough (Nijhoff: Brill, 2018), 313–41.

⁴⁶ Arbitral Tribunal for Dispute Over Inter-Entity Boundary in Brcko Area, 5 March 1999, https://1997-2001.state.gov/www/regions/eur/bosnia/990305_arbiter_brcko.html (accessed 30 November 2023).

⁴⁷ Adisa Avdic-Kusmus, “Post-Communist Development in Bosnia and Herzegovina: What Future for Brcko District?” *The Free Library*, 1 October 2015, <https://www.thefreelibrary.com/Post-communistdevelopment+in+Bosnia+and+Herzegovina:+what+future+for+...-a0433121463> (accessed 30 November 2023).

arbitration saved the peace negotiated in Dayton and the multinational ITA ensured it was able to prosper in relative terms. Critics argue that Brčko's future is uncertain because of Bosnian dysfunctionality. There is no denying that its prosperity hinges upon BiH's development as it currently belongs under BiH's jurisdiction. Yet Brčko offers interesting and innovative ways to analyse and crucially a lesson similar to that of Prevlaka – ITAs can pave the way for peace and buy time so that when a more lasting solution is negotiated, emotions won't run as high and judicial option may be more palpable.

Kosovo

The final set of lessons of a contested peace – and lessons that should in general be unlearned – provides Kosovo. Part of Yugoslavia as an autonomous region and later province (de iure not a republic as Croatia and BiH), Kosovo sought a return to its previous extensive self-rule throughout the 1990s, eventually leading to a direct confrontation with Yugoslavia.⁴⁸ The 1998–9 war saw atrocities mostly committed by the Serb forces⁴⁹ that ultimately led to extensive international involvement and a proposed ITA in Rambouillet.⁵⁰ Among other demands, which were difficult to accept by the then Yugoslav President Milošević, international negotiators in Rambouillet proposed far-reaching international powers on Kosovo's territory, including military control by NATO, and a referendum about Kosovo's status in three years. The agreement was unacceptable to Belgrade (Kosovo was still a part of Yugoslavia), and having failed to reach any solution, the alliance launched an air campaign over the remainders of Yugoslavia in March 1999, controversially labelled "humanitarian."⁵¹ Justified as atrocity prevention, the campaign did not receive UN backing, as it was directly opposed by Russia, leading to a disputed legal mandate. (To this day, Moscow sees the NATO intervention as a humiliation.⁵²) The crushing campaign eventually forced Belgrade to sign a peace treaty in Kumanovo.

While independence was not on the cards for the UN as outlined in the 1999 UN Resolution 1244⁵³ that guaranteed Yugoslav territorial integrity and placed Kosovo under indefinite ITA of the UN, it soon became clear that Kosovo Albanians would not settle for anything but independence. After regional violence broke out in 2004 (started by ethnic Albanians), the UN commissioned a report written by Martti Ahtisaari⁵⁴ who proposed a supervised independence but without any meaningful consultations with Belgrade. The lack of consultations and Serbian buy-in has proven to be a critical obstacle for Kosovo's future and governance. Short of any other solutions to the impasse, Kosovo declared independence in 2008 unilaterally, later recognized by over 100 UN members, including the USA but excluding Russia and five EU states, together with Serbia. To this

⁴⁸ It even declared independence in 1991 but was not recognized as it was not officially considered a republic.

⁴⁹ "31600 documents undoubtedly confirm death or disappearance of 13535 individuals during war in Kosovo," 6 February 2015, Humanitarian Law Center, <http://www.hlc-rdc.org/?cat=218&lang=de>.

⁵⁰ Rambouillet Accord, https://peacemaker.un.org/sites/peacemaker.un.org/files/990123_RambouilletAccord.pdf.

⁵¹ Laura Wise, "Was NATO's Intervention in Kosovo in 1999 'Just'?" *E-International Relations*, 21 June 2013, <https://www.e-ir.info/2013/06/21/was-natos-intervention-in-kosovo-in-1999-just/>.

⁵² Masha Gessen, "Crimea Is Putin's Revenge," *Slate*, 21 March 2014, <https://slate.com/news-and-politics/2014/03/putins-crimea-revenge-ever-since-the-u-s-bombed-kosovo-in-1999-putin-has-been-planning-to-get-even.html>.

⁵³ Security Council Resolution 1244 (1999) on the situation relating Kosovo, 10 June 1999, <https://peacemaker.un.org/kosovo-resolution1244>.

⁵⁴ Secretary General of the UN to the President of the Security Council, 26 March 1991, <https://www.un.org/depts/oip/background/reports/s22366.pdf>.

day, the legality of the independence remains disputed, although the ICJ deemed it as not in violation of international law and the Kosovo case stands as *sui generis*.⁵⁵

NATO (KFOR), UN (UNMIK) and later the European Union (2013 Brussels Agreement and EU Rule of Law Mission, EULEX) have all provided military, political, diplomatic, and administrative backing for Kosovo's peace and governance. The various territorial arrangements in Kosovo to accommodate the Serb population on its territory have so far failed (such as the Association of Serb-Majority Municipalities that was agreed in Brussels in 2013 but that Kosovo refuses to implement),⁵⁶ and Kosovo remains a contested state in international politics. While peace was re-established through bombing, extensive foreign funding⁵⁷ and administration, Kosovo is the most legally problematic of all the ex-Yugoslav cases as many international rules and principles were bent and broken, justifiably leading to accusations of western hypocrisy.⁵⁸ It provides more lessons about how *not* to behave rather than what to do. While an ITA and placing Kosovo under a protectorate stopped the bloodshed (similar to Dayton), the flawed international treatment of the Kosovo-Serbia dispute, lack of commitment and changing priorities has crippled its governance and plagues the region to this day.

Lessons Learnt?

Without a doubt, most of the cases reviewed here – and most notably the Yugoslav cases – would not have succeeded under different geopolitical circumstances. As for the former Yugoslavia, in mid-1990s, Russia was politically re-opening and trying to cooperate with the West. Rump Yugoslavia (dominated by Serbia) was militarily and economically on its knees, crushed by economic sanctions and continuous fighting, isolated internationally, and short on allies. Both in Bosnia and then in Kosovo, negotiating various sets of compromised peace ended up as the only option for Belgrade. It allowed it to at least pretend victory when in fact on the brink of military defeats – an undeniable fact that eventually precipitated the fall of Slobodan Milošević in 2000. Yet the compromised peace kept several issues open. Kosovo is still in international limbo, Republika Srpska keeps derailing Bosnian functioning through secessionist threats and territorial disputes are still dealt with via courts. The role of the international administrators remains a sore point of disputes.

So what purpose have the ITAs served? What have been the benefits? First, they were critical ingredients for peace negotiations over disputed territories. Without them, the prospect of endless wars was real. Second, some of them (e.g. in Danzig, Memel, and Croatia) prevented further expulsions of populations and accommodated for a mixed governance in multi-national areas. While the jury is still out how such management will pan out in the future for other ITAs still in place today in the former Yugoslavia, they provided a creative option at the time that ruled out further homogenization of territories. Third, ITAs bought time. They can be effective in proposing a temporary solution that can be later resolved under situations with fewer animosities and emotions. The bottom line is that in some cases – such as in Bosnia – it was the only effective way at the time to stop violence and

⁵⁵ International Court of Justice, "Accordance with international law of the unilateral declaration of independence in respect of Kosovo," <https://www.icj-cij.org/en/case/141>.

⁵⁶ Marina Vulović, "How the EU can Secure the Implementation of the 'European proposal,'" SWP Comment, no. 36 (July 2023), https://www.swp-berlin.org/publications/products/comments/2023C36_WesternBalkans.pdf.

⁵⁷ "Net Official Development Assistance Received (Current US\$) – Kosovo," The World Bank, <https://data.worldbank.org/indicator/DT.ODA.ODAT.CD?locations=XK&view=map>.

⁵⁸ Jade McGlynn, "For Putin, Invading Ukraine Is Revenge for NATO's Kosovo War," *Foreign Policy*, 3 March 2023.

save lives. Without the international backing and the often-convoluted formulas for governing that were painstakingly negotiated in Dayton, the fighting could have continued, and more lives would have been lost. Whether “giving war a chance” as Edward Luttwak argued⁵⁹ would have been a preferable option from a long-term perspective is not only an exercise of virtual history but also ethically problematic. Suboptimal solutions they may be but ITAs – at least in some cases – saved lives.

The joint experiences from the former Yugoslavia and elsewhere serve as lessons on what is feasible (demilitarization, security, and international arbitrations with set deadlines) and what is not (complex ethnic power-sharing and veto rights). International commitment and backing of any ITA are equally imperative. Investments in Bosnia and Kosovo in particular have been jaw-dropping. Committing to peace is costly but certainly not as costly as the continuation of wars.⁶⁰ The option of any ITA in Crimea or even Donbas may sound radical or even unworkable at present. The degree of radicalism turns on the question of sovereignty: whether it is a transitional, peace-keeping operation until a transparent arbitration is held; or an autonomous region within Ukraine; or an internationally administered Free State of Crimea with a new international legal personality. While risks are unavoidable, we have sufficient experience from a raft of historical cases to draw important positive and negative lessons. The primary one is that a resolution can be found with sufficient international determination if equipped with significant resources and military backing for the long haul; if Ukraine engages with it; and if Russia agrees to cooperate. Indeed, the latter question is the biggest challenge for ITAs but if it were up to Russians, pre-war polling suggests there was the willingness to entertain many options.⁶¹ There is hope for the future too.

Acknowledgments

This article expands and updates our article, “A Diplomatic Option To Avoid Endless War In Ukraine,” published in Noema Magazine on 5 December 2022, <https://www.noemamag.com/a-diplomatic-option-toavoid-endless-war-in-ukraine/>.

Disclosure Statement

No potential conflict of interest was reported by the author(s).

Notes on Contributors

A. Dirk Moses is the Anne and Bernard Spitzer Professor of International Relations at the City College of New York, CUNY. He is the author of *The Problems of Genocide: Permanent Security and the Language of Transgression* (2021) and is the senior editor of the *Journal of Genocide Research*.

Jessie Barton Hronešová is a lecturer in political sociology at the School of Slavonic and East European Studies at University College London. She was formerly a Marie Skłodowska-Curie Global Fellow at the University of North Carolina-Chapel Hill and Ca' Foscari University in Venice, funded by the European Union (2021–2023), and an ESRC postdoctoral fellow at the Oxford Department of International Development (2019 to 2021). She is the author of *The Struggle for Redress Victim Capital in Bosnia and Herzegovina* (2020) and many articles on southeast and central European politics.

⁵⁹ Edward N. Luttwak, “Give War a Chance,” *Foreign Affairs*, 1 July 1999.

⁶⁰ Christoph Zürcher, Carrie Manning, and Kristie Evenson, *Costly Democracy: Peacebuilding and Democratization after War* (Stanford: Stanford University Press, 2013).

⁶¹ “Ukraine and Donbas,” Levada Center, 16 April 2021, <https://www.levada.ru/en/2021/04/16/ukraine-and-donbas/>.