



Policy analysis



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The Myth about the Closure of OHR

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Introduction

The myth about closing down OHR was born around 2005. Formally, Political Directors of the PIC SB first announced that OHR would be closed down by 30 June 2007 at their meeting in Sarajevo on 22 and 23 June 2006. The Steering Board agreed to review and confirm in early 2007 the OHR closure, taking into account the overall situation in BiH and then seek endorsement by the UN Security Council.¹ This message was repeated 6 months later, stressing that preparations for the OHR's closure were ongoing.² However, at the next meeting in February 2007, 'following careful consideration', the PIC Steering Board decided "against confirming OHR closure at this time".³ The deadline was thus moved to 30 June 2008 instead, but by then the language had changed further and instead of the closure of OHR the PIC spoke about 'transition'. As a part of that change in approach, the time-driven concept had been replaced by an approach based on meeting benchmarks expressed in terms of five objectives and two conditions that had to be met prior to transition and closure of OHR⁴ - commonly referred to as the 5+2 criteria.

Having in mind the debate and different plans within the Peace Implementation Council Steering Board (PIC SB) about the closure of OHR, this paper raises several questions: What is meant by OHR closure? What does this entail? What is the legal procedure for closing down OHR, is the opinion or a decision of the PIC SB sufficient basis for a UN Resolution? Can OHR be simply closed down without transferring competencies to other institutions? Who becomes the interpreter of the Dayton Peace Agreement (DPA) in the absence of OHR? What is meant by transition – what is OHR transitioning into and what happens to its executive powers? Are the '5+2' really a reflection of the political situation on the ground and what do they have to do with the legal mandate of OHR to interpret the civilian aspects of the Peace Agreement. What do 5+2 have to do with the sustainability of peace? How far can the PIC SB go in reducing the role of OHR without resorting to the UN Security Council (UNSC)?

This paper attempts to separate wishful thinking from the realities on the ground and the challenges that lie ahead. It does not aim to provide definitive answers to those questions, but rather to open a debate and challenge some of the entrenched perceptions about the future role of the international community in BiH.

One clear message that this paper seeks to send is that, whether one likes it or not, OHR is an integral part of the legal and constitutional system of Bosnia and Herzegovina. Its abrupt removal would leave a legal void that could lead to constitutional and political crises.

¹ http://www.ohr.int/pic/default.asp?content_id=37503

² PIC SB Communique, 7/12/2006, http://www.ohr.int/pic/default.asp?content_id=38641

³ http://www.ohr.int/pic/default.asp?content_id=39236

⁴ The five objectives are: "(1) acceptable and sustainable resolution of the issue of apportionment of property between State and other levels of government, (2) acceptable and sustainable resolution of defense property, (3) completion of the Brcko Final Award, (4) fiscal sustainability (promoted through an agreement on a permanent ITA co-efficient methodology and establishment of a National Fiscal Council), (5) entrenchment of the rule of law (demonstrated through Adoption of National War Crimes Strategy, passage of Law on Aliens and Asylum, and adoption of National Justice Sector Reform Strategy)."⁵ The two conditions outlined are: (1) signing of the Stabilization and Association Agreement with the European Union, and (2) a positive assessment of the situation in the country by the Steering Board based on full compliance with the Dayton Peace Agreement.

The High Representative is an integral part of the BiH constitutional order

There is no universal rule for the introduction of international law into a country's legal system. International law imposes an obligation on states to ensure that international legal norms are respected within their respective territories. However, how they do so depends on whether they use a method of transposition or a method of adoption. The selection of one or other method directly depends on acceptance of a dualistic or monistic understanding of international law.⁵

According to the monistic interpretation which is applied to the case of BiH, international and national law are parts of a single legal system, which provides the principles of conflict resolution between the national law of a state and international law. International legal regulations affect the regulations of national law and vice-versa. Applying national regulations should thus not be contrary to the country's international obligations.⁶ Observing the structure of the BiH Constitution, it is notable that international obligations derive from international law – i.e. adherence to "*general principles of international law*" according to the BiH Constitution represent a constituent part of the legal system in Bosnia and Herzegovina. When the BiH Constitution was drafted there seems to have been an intention to achieve an automatic application of international treaties ratified by Bosnia and Herzegovina, probably due to the very complex decision-making system. Undoubtedly, however, the wording of Article III/3.b) of the BiH Constitution sets forth that general principles of international law are a part of the legal system of Bosnia and Herzegovina, irrespective of individual international agreements. These principles are a key part of the legal system in Bosnia and Herzegovina. Consequently, interpretations of legal norms, which are part of the legal system of Bosnia and Herzegovina, including the constitutional system, cannot be observed separately from general rules of international law. As an example of this, we can look at the wording of Article VI/3. c) of the BiH Constitution⁷:

*„The Constitutional Court shall have jurisdiction over issues referred by any court in Bosnia and Herzegovina concerning whether a law, on whose validity its decision depends, is compatible with this Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina; or concerning the existence of or the scope of a **general rule of public international law** pertinent to the court's decision.“*

This provision consists of two parts – the first refers to a classical notion of assessment of '*compatibility with constitution*' and provides the possibility for the Constitutional Court to assess the compatibility with the Constitution. The second part of the provision does not bind the Constitutional Court to refer to a specific legal provision, i.e. legislation, but instead it introduces the competence whereby the Court is obliged to examine "*the existence or the scope of a general rule of public law pertinent to the court's decision*". Applying a linguistic interpretation, this would mean that any provision in force in Bosnia and Herzegovina, including constitutional provisions as a pertinent part of the legal system of a state, may be subject to an assessment of compatibility with fundamental principles of international law.

Finally, as the last and strongest argument that defines the nature of Bosnia and Herzegovina legal system, we emphasise Article II/2 of the BiH Constitution⁸ which reads:

⁵ Degan, V.Đ. *International law, Law School in Rijeka*, 2000.

⁶ Degan, V.Đ. *International law, Law School in Rijeka*, 2000.

⁷ *Bosnia and Herzegovina, Essential texts* (2nd revised and updated edition), OHR.

⁸ *Bosnia and Herzegovina, Essential texts* (2nd revised and updated edition), OHR.

"The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law".

Very atypical for a constitution, this wording strongly promotes the notion that an international agreement as a legal act fully supersedes the whole legal system of a state. This principle is evidence of a restricted sovereignty, a hierarchy of legal norms, a hierarchy of values and the supremacy of the monistic approach in interpretation of the relationship between the international and national legal systems. From all of this one can conclude that the BiH Constitution is a typical example of such a radical, monistic approach to application of international law, no matter how contrary that may be to the traditional understanding of a state, sovereignty and relations between national and international law.

With all that in mind, it is important to emphasise the crucial element in support of the argument that OHR is an integral part of the BiH constitutional order. The Constitutional Court, in its various decisions interpreting the legal nature of the BiH Constitution, stresses that the Peace Agreement as a whole stands for *"a constitutional charter"* of Bosnia and Herzegovina. Based on case law it can thus be said that international treaties directly apply in Bosnia and Herzegovina without the need for legal codification. This includes the Peace Agreement and all its annexes. Taken together they represent a formal *"constitutional law"* of the state.⁹ This includes Annex X and the High Rep as integral and fundamental parts of that constitutional system.

Drafters of the Peace Agreement built into the decision-making system the High Representative as a mechanism to resolve disputes in cases in which there was no domestic institution empowered to do so. It is a mechanism for unblocking conflicting situations and disputes between the entities and the state. The Dayton Peace Agreement did not define or give powers to any other domestic institution to resolve political issues between entities and the State. Those powers were rested solely in Annex X and subsequently strengthened through the Bonn powers. The PIC Conference in Bonn thus defined the use of those powers, which would enable the High Rep to take *"interim measures to take effect when parties are unable to reach agreement"*. Their purpose is to *"facilitate the resolution of difficulties by making binding decisions, as he [the High Rep] judges necessary"*. The decision on the use of the Bonn powers was put solely on the shoulders of the High Rep, *"based on his own judgement"*. At that point, PIC was not meant to play a decisive role in the use of the Bonn powers.

Who's the boss?

In line with that, we raise a question about the role and responsibilities of the Peace Implementation Council. As the role of OHR and the PIC evolved over time, and as the PIC gradually grew stronger than successive High Reps, an impression was created that the PIC was the *'boss'* of OHR – that it *decided* on the substance of OHR's work and on its destiny. This is one of the perceptions we seek to challenge by referring to history and facts. The London Peace Implementation Conference held on 8th December 1995 concluded that a new structure was required to manage peace implementation and therefore decided that a Peace Implementation Council would be established with immediate effect under the chairmanship of the High

⁹ Marko, Joseph. *Pet godina ustavnog sudstva u Bosni i Hercegovini: Prva bilansa.*

Representative. What is interesting to note and remember is that it was not envisaged that the PIC SB would assume any supervisory role over the work of the High Rep, which still ultimately reports to the UNSC, and moreover it was the High Rep that was given chairmanship responsibilities over the Council.

Whereas the High Rep was provided with a mandate through the Peace Agreement and a UN SC resolution, the PIC Steering Board (SB) was given its mandate through the conclusions of an international conference. In line with that, the Conference stated that the PIC SB would give the High Representative "political guidance on peace implementation".¹⁰ This one line from the London conference conclusions is the only basis for the functioning of the PIC Steering Board. The Bonn PIC Conference repeated the same line. Other than 'giving guidance' to OHR, which is a vague formulation as it is, the PIC SB was not empowered to oversee the operation of OHR or the High Rep, whose responsibility is to decide and report to the UN Security Council in accordance with Resolution 1031 of 1995.

Because the political situation on the ground continued to be unstable during the first couple of years of peace implementation, the PIC proposed handing "new powers [to the HR] in the crucial areas of institutional reform, substantial legislation, and the personnel of public office".¹¹ The 'Bonn powers' were then endorsed by the UN Security Council on 19 December 1997 (UNSC Resolution 1144). However, the PIC itself was not endorsed with any powers to decide or approve the use of the Bonn powers by the High Rep. Their use was left solely to HRep's 'own judgement'. In practice, however, the PIC hi-jacked the Bonn powers from the High Representative to some degree. Gradually, the legal aspects of the division of responsibilities between the High Rep and the PIC SB were sidelined and individual political agendas of some PIC SB members surfaced. As a result, the OHR transition became a political question rather than a legal one.

Who closes down OHR?

While transforming the OHR closure from a legal to a political question, another misconception was constructed. A perception has been created (and it is surprisingly widespread) that the PIC SB has the powers to decide when to close the OHR. However blatantly obvious that it is false, this perception is nonetheless very strong. We thus want to reiterate that the mandate of the 'High Rep and his staff' is defined in Annex X of the Dayton Peace Agreement and was endorsed by UN Security Council resolution 1031 "following the request of the parties" (signatories to the Dayton Agreement) in order to "monitor the implementation of the Peace Agreement". It was the UN SC Resolution that confirmed "that the High Representative is the final authority in theatre" regarding interpretation of the civilian implementation of the Peace Agreement. The PIC had always been there just to provide 'guidance', not to decide when to close down OHR. In light of the language of UNSC Resolution 1031, the question is whether the closure of OHR can be requested by the PIC SB and without the consent of the signatory 'parties', notably the state of BiH.

Is there an OHR 'to do' list?

Another question concerns the criteria for OHR closure. Establishing the fulfilment of the '5+2' criteria as decisive for OHR closure divorced this question from the role of the OHR based on its UNSC mandate. Even if there was an OHR list of things to do that had been exhausted (such as would be implied by the 5+2), the fact is that OHR was never there to deliver such a list but to interpret the Peace Agreement which still remains in force. The very existence of the Peace Agreement requires an authority with a mandate to interpret it. The High Rep cannot be simply

¹⁰ http://www.ohr.int/pic/default.asp?content_id=5168

surgically removed from the Peace Agreement just because a list of practical items has been fulfilled. Instead, the High Representative is an integral part of the Peace Agreement that has been designed for the purpose of implementing and interpreting an international mechanism for maintaining peace in a post-conflict country.

With regard to that, one of the most important aspects of Resolution 1031, to which we would like to draw attention, is that it "affirms the need for the implementation of the Peace Agreement *in its entirety*".¹² Unlike the PIC SB criteria (5+2) which take into account specific reforms stemming from international commitments that have been undertaken (mainly towards the EU and NATO), the intention of the UN SC Resolution was to implement the Peace Agreement itself, *in its entirety*.

At the same time, however, parallel to the efforts of meeting 5+2, some EU members have repeatedly emphasised that an EU membership application by BiH could not be considered as long as the OHR existed or, as framed later, until the transition of the OHR to a reinforced EU presence had been decided. This was used by the political elites in Republika Srpska to label OHR as an obstacle to European integration and to oppose suggested decisions and policies coming from this office. Subsequently the EU wisely withdrew this position and reference to it was omitted from the last Progress Report. However, this example shows that there are players within the EU willing to use the closure of OHR as a political tool or a bargaining concession, rather than keeping it as a legal mechanism that is part of the Dayton structure.

The closure of OHR has thus emerged as a collateral damage from a conflict between two concepts: the short-term view expressed through the time-driven and the benchmark-driven concepts of closing down OHR, and a long-term concern grounded on one hand in the actual deteriorating political situation and on the other hand enshrined in the UN SC Resolution that seeks to build long-lasting peace. While the first approach seeks to tick off as many boxes as needed to have an excuse for OHR closure, the fact is that it does not take into account the consequences of a premature closure of OHR. The second approach stems from recognition that lasting peace is and will be at risk for a long time to come. What the first approach disregards is the fact that removing OHR as an integral and inseparable part of the BiH legal system would cause an immediate and permanent blockage of the system. Having the Peace Agreement still in force, but not having a legal authority to interpret it, rapidly raises possibilities for its obstruction. A premature closure of OHR, without a prior transfer of its functions to domestic institutions, would create a legal vacuum that would lead to greater instability than any other political threat to the Peace Agreement so far.

Is OHR still maintaining peace?

Inversely proportionate to the role and political weight of different High Reps, the roles and political weight of the PIC grew or shrank. The stronger the High Rep, the weaker the PIC SB became, sticking to their original remit of providing guidance to OHR. The weaker the High Rep, the stronger the PIC became in assuming more of a supervisory and decision-making role. It can therefore be said that the transformation of OHR started at the time when the PIC took over the role of the High Rep and consensus was sought among all members of the PIC SB, instead of leaving those powers with a single person. Although it was never a consensus-driven body, the threat of not having a consensus inside the PIC (mainly based on Russia's dissenting opinions), resulted more and more in painful compromises and messages and communiqués based on the lowest common denominator. This led to a virtual balance of power between the High Rep and PIC SB which weakened the credibility of both in the eyes of the local political elites.

Given the deterioration of the political situation since the elections in 2006, exacerbated by the

¹¹ Knaus and Martin 2003: 64

post-election rhetoric of 2010 and 2011, the reforms achieved with the support of the PIC and OHR over the past fifteen years are now in danger. Some reforms are being challenged directly, like the State Court and Prosecutors, TRANSCO, Brcko arbitration, whereas others are under threat from the very fact that the situation has deteriorated to the point where threats of instability endanger the state-building project as a whole. Observing the times when different crises in the country unfolded, we noticed a direct correlation between the weakening of the role of the High Rep and greater demands to 'undo' Dayton. As OHR weakened, local political elites showed less regard for their international obligations and less respect towards international representatives on the ground. The visible diminishing of the role of the international community gave an impression that the lack of insistence on democratic norms and principles meant that they were negotiable. As a result, not only have attempts to undermine Dayton increased but it has become even more difficult for the international community to simply disregard this situation and pretend that everything will be fine. In this way they have made their own job more difficult with the reasons for keeping OHR increasing as demands for its closure became more prominent.

Given the intensity and severity of current attempts to undermine the state and its stability, we feel it is useful to remind of the original purpose of having OHR and the PIC – which was to maintain peace and the integrity of the state. Long lasting peace, as envisaged by the Dayton Agreement, can be secured only when all possibilities to challenge it have been removed. The success of the international mission to BiH will not be measured by how quickly or smoothly it closes down OHR but whether it leaves behind a long-lasting peace and stability. As another reminder, we quote the London Conference conclusions which spelt out what 'peace should result in':

- the creation of a climate of stability and security in Bosnia and Herzegovina and the achievement of a durable and lasting political settlement;
- the establishment of new political and constitutional arrangements for Bosnia and Herzegovina that will bring the country together within a framework of democracy and the rule of law;
- the protection and promotion of human rights and the early return of refugees and displaced persons;
- the normalisation of relations between Bosnia and Herzegovina and her neighbours, the region and the rest of the international community;
- the creation of a direct and dynamic contractual relationship between Bosnia and Herzegovina and the European Union within the framework of a regional approach....

Even the most superficial observer of BiH politics today would agree that none of the above conditions has been entirely fulfilled or that there is a long-term prospect of peace given the current state of political affairs. The question is, how bad would the situation need to be for the international community to recognise that OHR's mandate is not fulfilled? Or, in fact, would it be too late for that recognition once a decision is made to reduce the international presence in BiH? Finally, what kind of political change inside BiH is the international community still hoping for in order to be able to say with confidence that there would be no more threats to the stability and integrity of BiH in the future? In 1998/99 the international community thought the change would come through SNSD as the main opposition party in the RS. Ten years later, they became the biggest opponents of OHR. In 2006 change was hoped for through a 'reformed' SDS, but SDS decided to go back to its old, (mildly altered), ideologies. In 2001 the IC successfully managed to curb the aspiration for a third entity only for this project to re-appear ten years later. In the first five years, most of OHR's efforts were expended on curtailing open attempts to undermine the state and the Peace Agreement, whereas the strongest threats have actually reappeared fifteen years after Dayton was signed.

Mission (in)complete?

With all that in mind, OHR's mission cannot be declared complete. The Peace Agreement is not implemented. In as much as we appreciate the evident international fatigue, the fact that there are arising threats to international stability in other parts of the world, the fact is that threats to peace and stability to BiH are still very real, and the international community is still formally responsible to prevent it from deteriorating. Threats have not been swept under the carpet, nor have opportunities for such challenges been removed through fifteen years of state-building reforms. As long as threats of secession of the RS and calls for a third entity are part of the daily political rhetoric, and now becoming concrete actions, peace and stability in BiH will not be sustained.

In that respect OHR can still be regarded as a deterrent. It may not be a deterrent in the daily running of politics, but continued international presence with an executive mandate to maintain peace is a deterrent to all those who seek to challenge the integrity and sovereignty of BiH. OHR's very existence as a mechanism to resolve conflicts, even without the frequent use of the Bonn powers, sends a message that the international community is here to protect the integrity of the state and regional and wider stability. The greatest illusion of all is that the EU alone, through its 'strengthened' mission and mandate, would be able to meet such challenges. The EU might be prepared to take the lead in the state building process, but its existing toolbox does not equip it sufficiently to maintain peace or respond to more serious challenges to the stability and integrity of the state. The dependence on the consensus of all 27 member states for the use of any serious restrictive measures puts a question mark over the efficiency of its mechanisms.

Strengthened presence can only come through strengthened policy

The plans for the transition of the EUSR offices and staff from OHR building to the EU Delegation building have started and have been accelerated with the arrival of the new EU Deputy Head of Mission. Without going into the merits and practicalities of the concept of 'double-desking', it has to be made clear that the transition of EUSR staff in no way and by no measure stands in place of the transformation of the role of the High Rep. Coupled with the latest EU restrictive measures, they can provide some grounds for optimism that the EU delegation will be strengthened both politically and through its new mechanisms. However, a strengthened presence can only come through a strengthened policy and not the other way round.

Now that they are finally going to be decoupled, there needs to be a clear distinction between the responsibility of the EU and that of the rest of the international players. In which instances will a response be required by the EU and when will it be the role of OHR to respond. Decoupling may have so far resulted in separation of offices, but it needs to result in separation of their job descriptions. This is not to say that the process of decoupling has been managed poorly. This point is being made just to stress the fact that both institutions need clear and separated terms of reference. Decoupling of the two missions is a good opportunity to write clear job descriptions for each – and in particular to point out very clearly in which situations executive powers and restrictive measures will be used and how.

Where will the red lines be?

BiH is constantly on the brink of a constitutional crisis and red lines are closer than some would like to admit. There are parties which clearly do not refrain from unconstitutional behaviour never mind unconstitutional rhetoric. Their threats are no longer of an abstract nature regarding the future, they are concrete and real. Advocates of keeping OHR often state that it is needed for the purpose of the worst case scenario, i.e. in case another war or some milder form of organised violence breaks out, or there are formal attempts to secede. However, the situation that followed the implementation of 2010 election results in FBiH and the conclusions of the RS National Assembly on a referendum on the State Court showed that the system can be brought to a halt even without going as far as the aforementioned 'worst case' scenario. The High Rep's intervention to suspend decisions of the Central Election Commission was clear evidence of the kind of action that will continue to be required. This proves the point that the High Rep is needed not just as a deterrent in the worst case scenarios, but to unblock obstruction to Dayton structures whenever needed, simply because the system has been designed to depend on OHR for that kind of constitutional protection. Removing OHR without transferring its competencies to local institutions would be like removing a Supreme Court in the US without providing the system with any other institution with equivalent appellate jurisdictions. It would simply leave a void.

In that regard, it can be said that the closure of OHR is an attempt to resolve non-existent political problems, while it could actually create new and fresh, unforeseen problems. Time and energy should instead be used to design a long term strategy for sustaining peace through a careful and gradual transition from OHR to domestic institutions. The first step in that direction could be a functional review that would look into all areas where the different international bodies, OHR included, have built the system and become a part of that system, in order to identify where a void would be created by the IC's sudden departure. Parallel to this would be a functional review of domestic institutions and their capacities to assume new roles that would be gradually transferred from OHR and other international bodies. This process should have one ultimate goal – to create structures which can ensure sustainability of peace, stability, integrity and sovereignty of the state in the long run. It will not come easy or cheap, but anything less than this would prove more costly for the international community financially and politically, especially if a 'worst case' scenario of any sort were to follow the departure of OHR.

Who will take the lead?

The international community in BiH has found itself in the most uncertain position since the signing of the Dayton Agreement. The 'decoupling' exercise and strengthening of the role of the EU creates the illusion that it carries with it the transformation of OHR. The EU, however, does not have a mandate to implement the Peace Agreement nor can that mandate be formally 'transferred' to the EU. Russia and Turkey are respectively attempting to gain more weight in the PIC SB, but their ongoing involvement can formally be ensured only through the continued existence of the PIC. Germany's "initiative that never became an initiative" seems to be losing steam. There are likely to be other sporadic individual attempts to close down OHR as was the case with the Butmir negotiations, but none of the above will remove from the shoulders of the IC the responsibility for ensuring peace in BiH, the region and Europe as a whole. Some mixed messages and signs of indecisiveness are coming from the US. On one hand the frequent visits by high-level officials send a message of continued commitment, but on the other, the US has not presented a clear strategy of where to go next or whether to take the lead. The talk of a special envoy has been put on the table and taken off again too many times to be an indication of a strategy. The same could be said for the plans with Brcko supervision.

Meanwhile, compromise has been sought through attempts to 'relocate' OHR. The final destination changes every week – first Brussels, then New York, now Geneva and Vienna. The idea of relocating OHR is a somewhat flexible interpretation of Article 5 of Annex X of the DPA which says that the High Representative is the final authority *in theatre* regarding interpretation of the peace settlement.

In order to contribute to finding compromise solutions that would still lead to sustainability of peace and stability and would protect the integrity and sovereignty of the state, the following recommendations are our attempt to stimulate a debate.

First, we recommend that a debate about a quick and painless transition of OHR to EU is shifted onto a debate about a long-term gradual transition from OHR to domestic institutions, however painful that may be at first. Gradual transition of OHR presupposes that OHR is dedicated to helping create functional institutions capable of taking over ownership of competencies. Until such transition, OHR needs to retain its integral role.

Secondly, the strengthened EU presence on the ground will result in some shift in the balance of power between the EUD and OHR in favour of the former. The question is where does the strengthened EU presence leave the rest of the international players, and who will take the lead in implementing peace? The US took that lead sixteen years ago, and the lead in implementing peace needs to follow suit of the lead in designing peace. In order to stimulate that discussion, we offer three options through which this could be achieved:

- I. Through appointment of a US Special Envoy who would work closely with the High Rep based in Sarajevo.
- II. Through appointment of a first US High Rep based in Sarajevo with a number of international deputies, some of which would include other permanent members of the UNSC.
- III. A US High Rep based in Washington DC, with a small expert office based in Sarajevo. The OHR office would work closely with the EU Delegation and use their expertise and advice in as many fields as possible.

In the end, we want to reiterate that this paper is not intended to be another critique of the role of the international community in BiH, to point fingers or play blame games. It attempts to inform a debate about the closure of OHR, emphasising the legal and procedural aspects of such plans. Most importantly, we want to point to a need to consider the legal, political and security consequences of an abrupt removal of OHR from the BiH constitutional and legal system. As argued earlier, the Peace Agreement acts as the "constitutional charter" of Bosnia and Herzegovina and before removal of one of its integral parts there needs to be a process through which domestic institutions capable of absorbing its responsibilities can be identified, and whose capacities need to be built in order to be able to resolve disputes between entities and the state, to unblock obstruction of the functioning of the system, and to prevent and sanction any attempts at disintegration. Meanwhile, OHR needs to retain its original mandate to maintain peace and protect the integrity of the BiH constitutional system.

