



SARAJEVO
GENEVA
VIENNA

CENTER FOR EUROPEAN INTEGRATION STRATEGIES

POLICY BRIEF NR 1 / 2007

– SECURITY BRIEF –

OHR: RESULTS FIRST, EXIT LATER

24 JANUARY 2007



CEIS security briefs are published with the support of DCAF



SENIOR ADVISORY BOARD

WOLFGANG PETRITSCH, GENEVA (CHAIR)
SONJA BISERKO, BELGRADE
ERHARD BUSEK, BRUSSELS
JAKOB FINDI, SARAJEVO
SIR MARRACK GOULDING, OXFORD
PIERRE HASSNER, PARIS
BOZIDAR MATIC, SARAJEVO
PREDRAG MATVEJEVIC, ROME
VRENI MUELLER-HEMMI, ZURICH
MANFRED NOWAK, VIENNA
JAMES C. O'BRIEN, WASHINGTON, D.C.
VESNA PUSIC, ZAGREB
HANNES SWOBODA, VIENNA
THEODOR WINKLER, GENEVA

SCIENTIFIC COUNCIL

DTHON ANASTASAKIS, OXFORD
ST ANTHONY'S COLLEGE
JUDY BATT, PARIS
INSTITUTE FOR SECURITY STUDIES
FLORIAN BIEBER, CANTERBURY
UNIVERSITY OF KENT
SUMANTRA BOSE, LONDON
LONDON SCHOOL OF ECONOMICS
MICHAEL DAXNER, OLDENBURG
UNIVERSITY OF OLDENBURG
JOSEF MARKO, GRAZ
UNIVERSITY OF GRAZ
ZORAN PAJIC, LONDON
KING'S COLLEGE
VLADIMIR GLIGOROV, VIENNA
WIIW
PAUL STUBBS, ZAGREB
INSTITUTE OF ECONOMICS, ZAGREB
SUSAN WOODWARD, NEW YORK
CITY UNIVERSITY OF NEW YORK

BOARD OF DIRECTORS

CHRISTOPHE SOLIOZ, GENEVA
SENAD SLATINA, SARAJEVO
VEDRAN DZIHIC, VIENNA
T.K. VOGEL, FREIBURG IN B.

REGISTRATION ID

AT: ZVR-782123875
BIH: RSMU-23/06

OHR: Results First, Exit Later

Executive summary

The Peace Implementation Council (PIC) should refrain from transferring all responsibilities of the Office of the High Representative (OHR) to the EU Special Representative (EUSR) or to any other institution and instead let the OHR focus, for a limited period, on completing its core mandate – the implementation of key provisions of the 1995 General Framework Agreement for Peace for Bosnia and Herzegovina (GFAP). This is critical at a time when the international investment in regional stability is also under threat from the impending Kosovo status decision and its possible spillover effects.

Bosnia still needs the OHR for three reasons: there is no domestic consensus on the direction the country should take as a political community; key reforms have not been fully implemented; and the country is not yet firmly anchored in Europe. The OHR must focus all its attention on these three aspects of peace implementation by developing constitutional principles to which all major forces in Bosnian society can subscribe; by securing the implementation of reforms that have already been agreed; and by pushing forward the six key reforms that are holding up the conclusion of a Stabilization and Association Agreement (SAA) with the EU. All other tasks should immediately be handed over to the EUSR and the various international agencies and organizations operating in the country.

Postponing the OHR's closure would contribute to the coherence of the EUSR's mandate and operations. OHR-specific tasks would be completed by the OHR within the mandate it was given at Dayton, rather than having to be grafted onto the EUSR's brief. A flexible and dynamic small office would do the job, using the Bonn powers whenever they are needed. This is the only way for the international community to protect its considerable past investment in Bosnia's future.

Regional security and GFAP implementation

For many years, the presence of the Office of the High Representative (OHR) in Bosnia has weighed on Western sensibilities, which are no longer used to the notion of controlled democracy. It was clear from the very beginning that the OHR and the body overseeing it, the Peace Implementation Council (PIC), were transitional institutions that would close down once their mission had been achieved. In early 2006, the current High Representative, Christian Schwarz-Schilling of Germany, was appointed by the PIC with the task to prepare for the OHR’s phase-out, and in June of that year, the PIC formally declared its intention to terminate the OHR in June 2007, pending a review of progress to be undertaken in February 2007. Events since then suggest that closing the OHR would be premature; several governments represented in the PIC, as well as the High Representative himself, seem to have come to accept this view ahead of the upcoming PIC meeting.

GFAP implementation review		
Annex 1	Military aspects:	not the formal responsibility of OHR.
Annex 2	IEBL:	OHR involvement in the Brcko status is critical; therefore, Annex 2 should be considered unfinished.
Annex 3	Elections:	implementation is satisfactory, no unfinished elements remain that would necessitate OHR’s presence.
Annex 4	Constitution:	there is widespread recognition that the current constitution is unsustainable, and that OHR involvement in constitutional change is critical.
Annex 5	Arbitration:	Bosnia’s entities and state can resolve policy disputes through the legal and political institutions. OHR involvement is not critical.
Annex 6	Human rights:	while human rights advocacy could be handed over to EUSR, and OSCE could ensure that the successor to the HRC and the new state Ombudsman Office fulfill their obligations, OHR should focus on the country’s full cooperation with ICTY.
Annex 7	Refugees and displaced persons:	following the transfer of responsibility to the Bosnian government, OHR involvement is essentially completed.
Annex 8	Commission to preserve national monuments:	while the annex cannot be considered completed, the government has assumed responsibility and OHR involvement is not critical.
Annex 9	Establishment of public corporations:	nothing has been done in this field, but OHR involvement through its Economic Implementation Unit could be handed over to EUSR.
Annex 10	Civilian implementation:	OHR involvement remains critical to declare annex 10 completed – which would pave the way to OHR closure.
Annex 11	International Police Task Force:	while the EUPM (successor to the IPTF) could easily be handed over to EUSR, police reform is a key issue that still needs OHR involvement and, potentially, use of the Bonn Powers.

Indeed, the biggest challenge of 2007 in the Balkans – the eventual independence, however circumscribed, of Kosovo – raises the question whether Bosnia is stable enough to withstand possible spillover effects, and policy-makers and observers are tending to answer in the negative. The international community is clearly still responsible for regional security in the Balkans at a time of great potential danger. In Bosnia, before key provisions of the 1995 General Framework Agreement

for Peace (GFAP) have been implemented, the PIC cannot simply transfer the OHR's responsibilities to a new institution such as the EU Special Representative (EUSR). (For some time now, the High Representative has at the same time served as EUSR as well.) This means that any assessment whether the OHR should be closed hinges on an assessment whether, and to what extent, key GFAP provisions have been implemented (see box).

Contrary to what some Western observers argued, the presence of the OHR has not undermined the development of an effective Bosnian state – quite the opposite. Rather than being a quasi-protectorate, the international presence in Bosnia constitutes a new experiment in “controlled democracy,” a hybrid regime combining democratic and non-democratic structures in which external actors are key players. The challenge of controlled democracy is to strengthen domestic democracy, which makes ownership strategies indispensable in order to guarantee full implementation of imposed and/or agreed reforms. Success stories in Bosnia are the creation of the State Border Service and SIPA, and the advent of the single account, the ITA, and VAT.

Following significant progress in addressing the 16 key priorities identified by the 2003 Feasibility Study, negotiations on a Stabilization and Association Agreement (SAA) with the EU began in late 2005 and progressed well throughout 2006, at least at the technical level. EU experts recognized the professionalism of Bosnia's negotiating team. The fact that the SAA has not yet been signed is due entirely to political stalemate. Despite this lack of political progress, Bosnia was invited to join NATO's Partnership for Peace (PfP) on 14 December 2006, exactly eleven years after the Dayton-Paris Peace Accord.

The technical completion of SAA talks and membership in the PfP are achievements that suggest that the June 2006 decision by the PIC to begin preparations for phasing out the OHR by 30 June 2007 may have been correct. However, the decision also foresaw that the PIC Steering Board would, on 26 and 27 February 2007, reassess the situation and determine whether the achieved level of implementation of the civilian aspects of the GFAP would allow the closure of the OHR. The CEIS believes that it does not.

Key deficiencies

The PIC Steering Board has to face up to the fact that the positive results mentioned above are under threat from three factors. First, there is no domestic consensus on the future of Bosnia as a political community. Second, many key reforms have been passed but not fully implemented. Third, the country is not yet firmly anchored in Europe: the SAA has not been signed and will not be signed unless Bosnian politicians agree on police and public broadcast reform. A package of constitutional reforms failed in parliament in April 2006; in the meantime, the parties with the least compatible views on Bosnia's future have done well in the October general election. It would be irresponsible for the PIC to disengage at such a critical juncture by closing down the OHR.

Indeed, the OHR cannot be satisfied with reforms that are partly genuine, partly window-dressing. The OHR must focus all its attention on making sure that Bosnia is a functioning state, through agreement on, and full implementation of, meaningful reform. All other tasks should immediately be handed over to the EUSR and the various international agencies still operating in the country. While politics can never be entirely separated from technical issues, the latter should as much as possible be handled by the EUSR and other structures while the former will require the OHR's undivided attention.

This recommendation is not new. In its sixth policy brief, the CEIS called on the OHR to focus on its mandate rather than on shutting down.¹ As outlined in that document, this involves three critical areas: supporting necessary changes to the constitution, working towards more secure borders, and preparing the transfer from the OHR to the EUSR. If anything, these questions have become more acute in the meantime, though we would like to reiterate them with a slightly different emphasis: while the third issue – handover to the EUSR – must be addressed by the EU and the PIC, the second issue depends essentially on the forthcoming decision on Kosovo's status; both are beyond the control of the OHR. The OHR should therefore focus its full attention on constitutional reform and on advancing Bosnia's integration into European structures. Much time has been lost already as policy-makers ignored the seriousness of the situation.

Three critical tasks

Constitutional change – be it through substantial amendments or an entirely new draft – takes time, and it would therefore be naïve to expect the OHR to see that process through to the end. Instead, the OHR should develop key constitutional principles to which all major forces in Bosnian society can subscribe. In operational terms, the OHR should help establish or upgrade an existing office inside the government and the High Representative should have a standing invitation to the meetings of the Bosnian Presidency and the Council of Ministers to ensure effective partnership with legitimate authorities. The government should also conduct a broad consultation process in order to involve all stakeholders. This should be the OHR's top priority before its phase-out.

The second priority is to secure the implementation of reforms that have already been agreed. While the technical side can be immediately delegated to the EUSR and other bodies, the OHR must ensure consensus among political elites at all levels that the reform process is of critical importance for the future of the country. This concerns notably decisions to hand over cantonal and entity responsibilities to the state. It has often been the case in the past that such transfers took place only on paper, while the lower levels kept their prerogatives. Tackling this issue would generate immediate benefits by helping to downsize inefficient administrative structures. This would send a clear signal to taxpayers – in Bosnia and abroad – that the considerable amounts of public money spent in Bosnia in the last eleven years has not been lost.

The third priority consists of the six key reforms that are holding up completion of the SAA, and therefore the consolidation of Bosnia's relationship with the EU: full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), full implementation of the Agreement on Police Restructuring of October 2005, adoption and implementation of all the necessary public broadcasting legislation at state and entity level, ensuring that all state-level ministries and institutions are adequately financed and properly equipped, adoption and implementation of a comprehensive action plan for public administration reform, and ensuring the existence of a real internal market across the entire country. In close cooperation with the Directorate for European Integration, pressure must be exercised in order to obtain agreement on these reforms as well as their full implementation. Completion and signing of the SAA in 2007 is a second benchmark that should be reached before the OHR phases out.

OHR-EUSR transition

To date, the EUSR has been a largely virtual body with little operational reality. The CEIS is now urging the PIC and the EU to work out a clear division of labor between the two institutions since both

¹ CEIS, "How (Not) to End: The OHR's Last Days in Bosnia," CEIS, Sarajevo 12 July 2006.

are, for the time being, necessary. In operational terms, however, the OHR can still be downgraded to focus only on key political questions with the full backing of the Bonn powers and the PIC.

In order to underline the EU's continued strong interest in Bosnian affairs, an EUSR with a strong mandate – which includes heading the European Commission's Delegation in Bosnia, on the model utilized with some success in Macedonia – should be appointed to take up his or her post on 1 July 2007. While some prerogatives of the High Representative – advising on and monitoring the implementation of reforms, coordinating the activities of the IC – can be transferred to the EUSR right away, others will either have to be completed by the OHR or transferred only later. This division of labor would help the OHR focus exclusively on its tasks while giving the EUSR time to build up its capacities to play a leading role in facilitating political agreements, promote continued stability, and broker necessary reforms.

Thus, postponing the OHR's closure does not have to create the sort of problems for the establishment of an EUSR office that some experts fear. On the contrary, the added value of this approach would contribute to the coherence of the EUSR's mandate and operations. OHR-specific tasks would be completed by the OHR within the mandate it was given at Dayton, rather than having to be grafted onto the EUSR's brief. The other option, maintaining the role of High Representative in the guise of the EUSR, including the Bonn powers, would only be confusing: the EUSR must find and affirm its specific role, distinct from the OHR's.

One important issue for the new EUSR will be to involve non-EU partners in the process of strengthening Bosnia, especially the United States. In the current system, this is achieved through the PIC; such a formal involvement will no longer exist in the case of the EUSR, hence the need for other, institutionalized means of keeping non-EU countries firmly engaged. This is especially important in light of the fact that the EUSR will eventually, after the OHR has closed its doors, have to assume some sort of political leadership among the international community in Bosnia as well.

Conclusion

The three pressing matters outlined above mean that the OHR must act rapidly and effectively in order to secure Bosnia's European future. A flexible and dynamic small office would do the job, using the Bonn powers whenever they are needed. This is the only way for the international community to protect its considerable investment in Bosnia's future.

Failure in Bosnia would deal a serious blow to multilateral action to end wars; to the EU's scenario of bringing peace through enlargement and association; and to all the citizens of the former Yugoslavia. That is why Bosnia must be at the heart of a genuinely regional approach. This is all the more important at a time when the EU enlargement strategy has hit a snag; consolidating democracy and the fragile states of the region should be absolute priorities for the international community and especially European policy-makers. The Slovenian presidency of the EU in the first half of 2008 should be seen as an opportunity to reinvigorate the membership prospects of the countries of the Western Balkans; in the meantime, the OHR needs to ensure that the job is done in Bosnia.

Geneva, 24 January 2007

CENTER FOR EUROPEAN INTEGRATION STRATEGIES

EXECUTIVE DIRECTOR
CHRISTOPHE.SOLIOZ@CEIS-EU.ORG

DIRECTOR – SARAJEVO OFFICE
SENAD.SLATINA@CEIS-EU.ORG

SENIOR EDITOR
TOBY.VOGEL@CEIS-EU.ORG

DIRECTOR – VIENNA OFFICE
VEDRAN.DZIHIC@CEIS-EU.ORG

The core mission of the Center for European Integration Strategies (CEIS) is to monitor, analyze, and advise on processes of state-building, democratization, regional cooperation, and European integration in Bosnia and Herzegovina and the countries of the Western Balkans. In its work CEIS will rely on a network of academics, analysts, and journalists established and fostered in past years by its predecessor organization. Their professional expertise is reflected and further developed through the future activities of the CEIS.

CEIS activities include, but are not limited to:

- **Publishing** analytical and investigative briefings on political, economic, social, human rights and other trend-setting issues in Bosnia and Herzegovina and the wider region;
- **Fostering** public dialogue through round tables, conferences, and other public debates on important developments in the society;
- **Training** political analysts, especially those involved in local government and on European integration issues;
- **Supporting** the work of emerging voices in the region in CEIS areas of interest;
- **Promoting** local ownership in policy processes and policy research in the region.

Visit us at www.ceis-eu.org

The publication of this brief was financially supported by the Geneva Center for the Democratic Control of Armed Forces (DCAF). The opinions expressed in this brief do not necessarily reflect the official views of DCAF.

