

# BONN VOYAGE: IS IT TIME TO CLOSE THE OFFICE OF THE HIGH REPRESENTATIVE IN BOSNIA AND HERZEGOVINA?

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## THE ISSUE

*The complex system of international oversight led by the Office of the High Representative in Bosnia and Herzegovina, which was once crucial for promoting post-conflict stability, now seems outdated. Instead of resolving challenges, it increasingly generates more problems than it can address.*

The Dayton Peace Agreement (DPA) of 1995 ended the conflict in Bosnia and Herzegovina (BiH) among the three main ethno-national groups: Bosniaks, Croats, and Serbs. It established two entities: the Serb-dominated Republika Srpska (RS) and the Bosniak-Croat Federation of Bosnia and Herzegovina (FBiH). This peace agreement, brokered by domestic, regional, and international actors, includes 11 annexes of varying significance. Annex 10 established the High Representative (HR) with a soft power mandate to facilitate and interpret the implementation of the agreement. However, in 1997, the Peace Implementation Council (PIC), an informal group of 55 states and organizations meant to support the peace process but not mentioned in the Dayton Agreement and lacking a United Nations Security Council (UNSC) mandate, granted the HR expanded authority, which became known as the “Bonn Powers.” These executive powers allow the HR to impose binding decisions, override local parliaments and authorities, and dismiss officials. Since then, the HR has issued almost 1,000 decisions, including

amendments to legislation, primarily promoting integrationist models over power-sharing institutions in BiH. This has often had the unintended consequence of exacerbating inter-ethnic tensions among the three groups. The use of the Bonn Powers has raised significant concerns, particularly following the appointment of the current HR Christian Schmidt who took up the position of High Representative without UNSC endorsement.

This policy brief proposes three policy options for the future of the OHR: (1) Secure UNSC authorization for the Bonn Powers, accompanied by a review mechanism that includes participation from all Dayton Agreement signatories; (2) Relocate the OHR to Brussels using the Bonn Powers solely if required to avert a breakdown of territorial integrity of BiH; (3) Terminate the mandate of the OHR, with a clear provision that any future acts of secessionist or majoritarian domination would trigger severe regional and international isolation.



Sarajevo Skyline

### About Inclusive Peace: Citizen Inclusion in Power-Sharing Settlements

The Inclusive Peace project is an international collaborative research initiative which investigates the adoptability and adaptability of power-sharing settlements, including what influences a citizen's decision to endorse settlements and their capacity to shape those agreements over time. The project is funded by an Open Research Area 7 grant.

# KEY FINDINGS

## The legal uncertainty surrounding the HR and Bonn Powers

Annex 10 of the DPA created HR with soft powers, such as monitoring and supporting civilian implementation in Bosnia and Herzegovina. It gave the HR authority to interpret the agreement but did not mention the PIC, which was created later in 1995. It was only in 1997 that the PIC's Bonn Conference granted the HR the authority to make binding decisions, which means that "the Bonn Powers did not have a legal basis in Dayton."

The UNSC never explicitly "authorized" or "decided" these powers. Its resolutions only "welcomed" or "reaffirmed" the PIC's Bonn Conclusions, which is not a legal endorsement. Unlike missions such as UNMIK in Kosovo, the HR and the PIC have never received binding authority from the UNSC. These "not very legal" powers make the uncertainty persist to this day: after 2015, UN resolutions even stopped welcoming the Bonn Conclusions, HR, or PIC in operative paragraphs, which are essential to determine whether there is a UNSC mandate, and since 2021 even in preambular paragraphs, reflecting ongoing controversy over their legitimacy and legality of HR Schmidt appointment.

In practice, the HR's powers now exist largely as a political arrangement maintained by habit, rather than as a clear legal mandate. Without renewed UNSC backing, the OHR operates in a grey zone that can undermine both its credibility and BiH's sovereignty.

Moreover, the HR's "binding decisions" often go beyond what the Dayton Agreement and the 1997 Bonn conference intended. According to the PIC Bonn conclusions, the HR can only adopt temporary measures when domestic authorities cannot reach agreement in accordance with the DPA. These powers are meant to be short-term fixes, not permanent policy or substitutes for BiH's own institutions. However, the HR has repeatedly gone further. For example:

- In 2011, the HR suspended the decisions of the Central Election Commission, excluding Croat representatives from the FBiH government and bypassing domestic institutions. This strengthened autonomist aspirations rather than promoting centripetal tendencies.

- In 2023, the HR amended the entity constitution, temporarily suspending the Bosniak veto for just one day in order to shape a coalition according to his own design. This was done without regard for election results and left no space for local decision-making. Such measures intensified intra-Bosniak outbidding, meaning that reforms requiring cooperation with Croat and Serb parties have become increasingly difficult, as any form of collaboration is perceived as "treason."
- In 2023, the HR imposed amendments to the BiH Criminal Code "without amendment or conditions," thereby bypassing the BiH Parliamentary Assembly.

These actions exceed the HR's original mandate, undermine domestic governance, and fuel inter-ethnic tensions. Over nearly three decades, this pattern has eroded the legitimacy of BiH's institutions and disrupted the balance of power envisioned under the Dayton framework.

## Legal uncertainty in how High Representatives are appointed

Annex 10 states that "the Parties request the designation of a High Representative, to be appointed consistent with relevant United Nations Security Council resolutions." Christian Schmidt was nominated by the PIC on 27 May 2021, and notified to the UNSC. Unlike all previous cases, the UNSC gave no endorsement. From 1995 to 2021, the UNSC consistently confirmed HR nominations through resolutions, with the sole exception of 2006, when Christian Schwarz-Schilling's appointment was at least acknowledged in a UNSC letter. Schmidt remains the only HR without any UNSC confirmation.

Annex 10 clearly ties HR designation to the UNSC. By bypassing this process, the PIC acted without legal mandate, leaving Schmidt's appointment on uncertain legal grounds. The UNSC's role in HR appointments is not a "courtesy" but an imperative under Annex 10 and UNSCR 1031. By bypassing this process, the PIC weakened the legitimacy of Schmidt's appointment. This legal ambiguity risks undermining both the authority of the HR and the credibility of the international community's role in the post-Dayton order.

# POLICY RECOMMENDATIONS

## Lessons for BiH

From a domestic perspective, key political actors and institutions increasingly question the role and legitimacy of the OHR and its reliance on the Bonn Powers. The BiH Constitutional Court has overturned several OHR decisions that have fueled inter-ethnic tensions for years. For instance, in 2002 HR Wolfgang Petritsch imposed amendments to the Federation of BiH's Constitution concerning electoral legislation, which the Court later found incompatible with the Constitution in the 2016 "Ljubić decision." In the meantime, institutional blockages persisted, reforms stalled, and tensions, especially between Bosniak and Croat representatives in the FBiH, deepened. In 2004, HR Paddy Ashdown imposed the "Mostar Statute," introducing new electoral rules later declared unconstitutional by the BiH Constitutional Court in 2010. Consequently, Mostar went twelve years without municipal elections, leading to institutional paralysis and declining public services. The prolonged vacuum deepened inter-communal tensions, underscoring the instability caused by externally imposed arrangements.

From an international perspective, evolving geopolitical dynamics affecting the UNSC underscores the need for a recalibrated approach. This is particularly relevant given that the United States, once a primary supporter of the OHR "is no longer pursuing nation-building or heavy-handed international intervention." In this context, forward-looking policy options are crucial to ensure that the OHR aligns with BiH's sovereignty and the international community's commitment to local solutions led by local actors and effective governance in BiH.

The following three proposals outline potential pathways for the reform of the mandate of the OHR:

**(1) Secure UNSC authorization for the Bonn Powers with a review mechanism.** Given current pressures at both the global and domestic level, a formal measure should secure UNSC authorization for the Bonn Powers. Such authorization would elevate them from politically endorsed instruments to legally grounded authority under Chapter VII of the UN Charter. A built-in, transparent review mechanism—in which local actors can express their positions and encourage the OHR to adjust decisions accordingly—should ensure the periodic reassessment of the scope and necessity of the Bonn Powers. The DPA signatories must be included in this process, providing legitimacy, renewed consensus, and shared responsibility for the continuation, adjustment, or termination of the HR's mandate.

**(2) Relocate the OHR to Brussels using the Bonn Powers solely if required to avert a breakdown of territorial integrity.** To reduce tensions and enhance legitimacy, the OHR could be relocated to Brussels, functioning as a strategic coordination hub rather than a permanent on-site authority in BiH. In this model, the Bonn Powers would be retained only to safeguard the territorial integrity of the state and would be activated under the mandate and oversight of the UNSC. The Bonn Powers may be invoked in situations involving armed intervention by regional actors or domestic paramilitary groups. This approach prioritizes mediation, facilitation, and reporting while minimizing direct intervention in domestic affairs, ensuring that the OHR operates transparently and proportionately, with the ultimate aim of eventual closure and full domestic ownership of governance.

**(3) Terminate the mandate, with strong provisions against secessionist or majoritarian domination.** Both the PIC and OHR acknowledged that its closure has been a declared goal and supported the Agenda 5+2, a set of criteria for closure proposed in 2008. However, this framework has increasingly been challenged by PIC members themselves, including the United States recently. As an alternative to this, the mandate of the OHR should be terminated by the UNSC and Dayton Agreement's signatories, transitioning BiH to full domestic governance. This process must include strong legal provisions to prevent secessionist movements or domination by any single ethnic or political group, ensuring the protection of minority rights and the stability of state institutions. Mechanisms such as constitutional guarantees, independent oversight bodies, and enforceable anti-majoritarian safeguards would provide continuity and security. By combining the end of international oversight with robust protections, BiH can achieve sovereignty, democratic accountability, and sustainable governance while minimizing risks of fragmentation or ethnic domination.



Office of the High Representative, Sarajevo



# LESSONS FROM BiH

## **1. Legal clarity under international law is essential**

The experience of the Bonn Powers demonstrates that granting extraordinary authority to an international body without clear legal grounding undermines both legitimacy and effectiveness. The HR's ability to issue binding decisions was politically endorsed by the PIC but never explicitly authorized by the UNSC, leaving decades of legal uncertainty. Future state-building interventions must ensure that any extraordinary powers are anchored in international law, formally recognized by relevant bodies such as the UNSC, and transparent to domestic stakeholders. Legal clarity not only protects international actors from challenges but also reinforces domestic acceptance.

## **2. International oversight must be coupled with accountability and domestic engagement**

Unilateral decisions by the OHR over decades, ranging from constitutional amendments to Criminal Code impositions, illustrate the risks of unchecked authority. Policymakers should design frameworks that include strong accountability mechanisms, such as mandatory reporting, review processes, and legal avenues for domestic institutions to contest decisions. Furthermore, involving international actors, regional and local actors in decision-making ensures shared responsibility and prevents perceptions of external domination. Accountability and engagement help balance international objectives with domestic sovereignty.

## **3. Gradual exit strategies strengthen domestic ownership and stability**

The long-term presence of the OHR, with extensive intervention powers, has often limited the capacity of domestic institutions to resolve disputes independently. A clearly defined, transparent, phased exit strategy is critical to promote domestic governance while maintaining stability. Transparent and gradual disengagement allows domestic institutions to build capacity, enhances local ownership, and ensures that international oversight supports rather than replaces internal governance mechanisms, reducing dependence and long-term tension.



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