

DIFFERENCES RELATING TO INTERPRETATION OF ANNEX 10 OF THE DAYTON PEACE AGREEMENT BETWEEN THE OFFICE OF THE HIGH REPRESENTATIVE FOR BOSNIA AND HERZEGOVINA AND REPUBLIKA SRPSKA

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1. BACKGROUND

War in Bosnia and Herzegovina ended in 1995 with the signing of the General Framework Agreement for Peace (“GFAP”) in Bosnia and Herzegovina, usually referred to as the Dayton Peace Agreement, including 11 Annexes, on 14 December 1995 in Paris. The Office of the High Representative (“OHR”), an *ad hoc* international institution responsible for overseeing implementation of civilian aspects of the Dayton Peace Agreement, was created under Annex 10.¹ According to the latter,

“the Parties² request the designation of a High Representative, to be appointed consistent with relevant United Nations Security Council resolutions, to facilitate the Parties’ own efforts and to mobilize and, as appropriate, coordi-

* Views and opinions expressed in this article are entirely his own and do not necessarily represent the views and opinions of the author’s employer.

¹ Annex 10 to The General Framework Agreement for Peace in Bosnia and Herzegovina: Agreement on Civilian Implementation, 14 December 1995, available at: <https://www.osce.org/bih/126173>.

² The Parties to Annex 10 are not the same as the Parties to the Dayton Peace Agreement since the Parties to Annex 10 include not only the Parties to the Dayton Peace Agreement (the Republic of Bosnia and Herzegovina, the Republic of Croatia, and the

nate the activities of the organizations and agencies involved in the civilian aspects of the peace settlement by carrying, as entrusted by a UN Security Council resolution, the tasks”³

set out in Annex 10. Prior to the 1995 Paris Peace Conference, however, the Peace Implementation Conference was held in London, and adopted a decision to establish the Peace Implementation Council (“PIC”) and its Steering Board.⁴ Two years later, at the Peace Implementation Conference in Bonn, the PIC adopted certain conclusions relating to, *inter alia*, the High Representative’s mandate, which might be seen as vesting further powers in the High Representative (“Bonn Powers”).

The incumbent High Representative for Bosnia and Herzegovina is Mr. Christian Schmidt who was designated as the High Representative by the PIC Steering Board on 27 May 2021, and assumed position as of 1 August 2021. However, the validity of his designation has been contested by Republika Srpska on grounds that the UN Security Council did not endorse his designation as the High Representative. Moreover, the High Representative has taken certain measures that have likewise been contested by Republika Srpska on grounds that such measures exceed the High Representative’s powers. Thus, two important legal issues have arisen with respect to the interpretation of the Dayton Peace Agreement relating to the question as to whether the UN Security Council’s endorsement of the High Representative is mandatory, and to the question of the scope of the High Representative’s mandate. Given the escalating tensions between the involved actors, there is also a question as to who can provide an authoritative interpretation of the Dayton Peace Agreement, especially Annex 10, and propose a resolution to this crisis. This paper aims to succinctly highlight the key legal issues and the main legal arguments of both sides.

2. APPOINTMENT OF THE HIGH REPRESENTATIVE

The Dayton Peace Agreement, specifically Annex 10, lacks explicit provisions detailing the procedure for the appointment of the High Representative. Arti-

Federal Republic of Yugoslavia), but also the Federation of Bosnia and Herzegovina, and the Republika Srpska.

³ Annex 10 to The General Framework Agreement for Peace in Bosnia and Herzegovina: Agreement on Civilian Implementation, 14 December 1995, Article I.

⁴ The PIC comprises 55 States and agencies supporting the peace process in Bosnia and Herzegovina. Since the London Conference, the PIC has come together at the ministerial level another five times to review progress and define the goals of peace implementation: in June 1996 in Florence, in December 1996 in London, in December 1997 in Bonn, in December 1998 in Madrid, and in May 2000 in Brussels.

cle I of Annex 10 (in relevant part) states that the Parties⁵ request the designation of the High Representative and “to be appointed consistent with relevant United Nations Security Council resolutions”. Since no UN Security Council resolution prescribes the exact appointment procedure, the crux of the issue is, therefore, the interpretation of the relevant part of Article I of Annex 10. The critical question here is whether the High Representative has to be endorsed by the UN Security Council or not.

Until May 2021, six of the seven High Representatives were designated by the PIC Steering Board and endorsed by the UN Security Council. In its Resolutions No. 1031⁶, 1112⁷, 1256⁸, 1396⁹, 1764,¹⁰ and 1869¹¹, the Security Council explicitly agreed to the designation of Messrs. Carl Bildt, Carlos Westendorp, Wolfgang Petritsch, Paddy Ashdown, Miroslav Lajčák, and Valentin Inzko. The only High Representative not specifically mentioned by an accompanying Security Council resolution was Mr. Christian Schwarz-Schilling who acted as the High Representative between January 2006 and July 2007. However, Mr. Schwarz-Schilling assumed his position subsequent to the letter from the President of the UN Security Council to the UN Secretary-General of 30 January 2006, in which it was stated that the UN Secretary-General’s letter of 20 January 2006 concerning the decision of the Steering Board of the PIC to choose Mr. Christian Schwarz-Schilling as the next High Representative for Bosnia and Herzegovina as of 31 January 2006 has been brought to the attention of the members of the UN Security Council, and they *welcomed* the decision of the PIC.¹² Therefore, it might seem that Mr. Schwarz-Schilling’s appointment also received the UN Security Council’s endorsement, albeit in a less formal manner.

⁵ As mentioned above, these represent: the Republic of Bosnia and Herzegovina, the Republic of Croatia, the Federal Republic of Yugoslavia, the Federation of Bosnia and Herzegovina, and the Republika Srpska.

⁶ Resolution 1031 (1995), adopted by the UN Security Council at its 3607th meeting on 15 December 1995.

⁷ Resolution 1112 (1997), adopted by the UN Security Council at its 3787th meeting on 12 June 1997.

⁸ Resolution 1256 (1999), adopted by the UN Security Council at its 4030th meeting on 3 August 1999.

⁹ Resolution 1396 (2002), adopted by the UN Security Council at its 4484th meeting on 5 March 2002.

¹⁰ Resolution 1764 (2007), adopted by the UN Security Council at its 5713th meeting on 29 June 2007.

¹¹ Resolution 1869 (2009), adopted by the UN Security Council at its 6099th meeting on 25 March 2009.

¹² Letter of 30 January 2006 from the President of the UN Security Council addressed to the UN Secretary-General (S/2006/61).

On 27 May 2021, the PIC Steering Board designated Mr. Christian Schmidt as the High Representative for Bosnia and Herzegovina. Acting upon the request of the PIC Steering Board to inform accordingly the UN Secretary-General, Mr. Schmidt's predecessor sent a letter to the UN Secretary-General on 3 June 2021, informing him of the decision of the PIC Steering Board to formally appoint Mr. Schmidt. It was further noted in the letter that Mr. Schmidt would assume the duties of the High Representative on 1 August 2021, when the resignation of his predecessor had become effective. Unlike the previous procedures, followed in cases of all other appointments, the UN Security Council issued no resolution or prior letter of endorsement of Mr. Christian Schmidt as the High Representative for Bosnia and Herzegovina.

This lack of prior endorsement from the UN Security Council has led Republika Srpska, as one of the Parties to Annex 10, to object to Mr. Schmidt assuming the duties of the High Representative. On the other hand, the OHR, relying on Article V of Annex 10 (Final Authority to Interpret),¹³ is of the view that the expression of support by the UN Security Council is not legally necessary for the decision of the PIC Steering Board appointing a new High Representative to take effect, though it must be consistent with its resolutions.¹⁴ According to the OHR,

“[a]ll High Representatives who were welcomed and agreed by the UN Security Council, with the exception of Mr. Carl Bildt, had already taken up the position by the time the UN Security Council acted”.¹⁵

The OHR therefore argues that

“[t]he absence of an explicit agreement by the UN Security Council did not affect Mr. Schwarz-Schilling's exercise of the duties vested upon the High Representative [and that] [e]xpression of support in resolutions is not obligatory”.¹⁶

Republika Srpska, *au contraire*, does not accept this line of reasoning and maintains that the endorsement of the High Representative by the UN Secretary General, as this has been practiced thus far, is necessary as per Article I

¹³ Article V of Annex 10 stipulates: “The High Representative is the final authority in theater regarding interpretation of this Agreement on the civilian implementation of the peace settlement.”

¹⁴ The OHR's view on the matter (“Appointment of the High Representatives”) was published on its website on 13 October 2023 and is available at: <<https://www.ohr.int/appointment-of-the-high-representatives/>>.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

of Annex 10, and consequently refuses to recognise Mr. Schmidt as the High Representative and to implement his decisions.

3. MANDATE OF THE HIGH REPRESENTATIVE

Pursuant to Article II of Annex 10,

“[t]he High Representative shall:

- a. monitor the implementation of the peace settlement;
- b. maintain close contact with the Parties to promote their full compliance with all civilian aspects of the peace settlement and a high level of cooperation between them and the organizations and agencies participating in those aspects;
- c. coordinate the activities of the civilian organizations and agencies in Bosnia and Herzegovina to ensure the efficient implementation of the civilian aspects of the peace settlement. The High Representative shall respect their autonomy within their spheres of operation while as necessary giving general guidance to them about the impact of their activities on the implementation of the peace settlement. The civilian organizations and agencies are requested to assist the High Representative in the execution of his or her responsibilities by providing all information relevant to their operations in Bosnia and Herzegovina;
- d. facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation;
- e. participate in meetings of donor organizations, particularly on issues of rehabilitation and reconstruction;
- f. report periodically on progress in implementation of the peace agreement concerning the tasks set forth in this Agreement to the United Nations, European Union, United States, Russian Federation, and other interested governments, parties, and organizations;
- g. provide guidance to, and receive reports from, the Commissioner of the International Police Task Force established in Annex 11 of the Dayton Peace Agreement.”¹⁷

During the 1997 Peace Implementation Conference in Bonn, the PIC adopted a conclusion amounting to what is usually referred to as the Bonn Powers since it

“welcome[d] the High Representative’s intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Im-

¹⁷ Annex 10 to The General Framework Agreement for Peace in Bosnia and Herzegovina: Agreement on Civilian Implementation, 14 December 1995, Article II.

plementation of the Peace Settlement in order to facilitate the resolution of difficulties by making binding decisions, as he judges necessary, on the following issues:

- a. timing, location and chairmanship of meetings of the common institutions;
- b. interim measures to take effect when parties are unable to reach agreement, which will remain in force until the Presidency or Council of Ministers has adopted a decision consistent with the Peace Agreement on the issue concerned;
- c. other measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities, as well as the smooth running of the common institutions. Such measures may include actions against persons holding public office or officials who are absent from meetings without good cause or who are found by the High Representative to be in violation of legal commitments made under the Peace Agreement or the terms for its implementation.”¹⁸

These conclusions were then welcomed by the UN Security Council¹⁹ which later reaffirmed that

“under Annex 10 the High Representative is the final authority in theatre regarding interpretation of civilian implementation of the Peace Agreement and that in case of dispute he may give his interpretation and make recommendations, and make binding decisions as he judges necessary on issues as elaborated by the Peace Implementation Council in Bonn on 9 and 10 December 1997”.²⁰

Nevertheless, the questions relating to the scope of the High Representative’s mandate under Annex 10 have begun to surface. In his report to the UN Secretary-General covering the period from 16 April to 15 October 2023,²¹ Mr. Schmidt highlighted an unprecedented level of attacks against the GFAP. The ruling coalition in Republika Srpska, according to Mr. Schmidt, continued to pursue a dangerous policy of unilaterally imposing a misleading interpreta-

¹⁸ PIC Bonn Conclusions, available at <<https://www.ohr.int/pic-bonn-conclusions/?print=pdf>> (12 December 2023).

¹⁹ See Resolution 1144 (1997), adopted by the UN Security Council at its 3842nd meeting on 19 December 1997.

²⁰ Resolution 1722 (2006), adopted by the UN Security Council at its 5567th meeting on 21 November 2006.

²¹ 64th Report of the High Representative for Implementation of the Peace Agreement on BiH to the Secretary-General of the United Nations, dated 2 November 2023, available at: <https://www.ohr.int/64th-report-of-the-high-representative-for-implementation-of-the-peace-agreement-on-bih-to-the-secretary-general-of-the-united-nations/>.

tion of the GFAP and the constitutional framework of Bosnia and Herzegovina around the hypothetical concept of “original Dayton”. Thus, the Report firstly quite thoroughly addressed the constitutional order under the Constitution of Bosnia and Herzegovina (Annex 4 of the Dayton Peace Agreement) and continued by stating that

“the ruling coalition of Republika Srpska, led by RS President Milorad Dodik, started to implement steps creating the preconditions for a potential future secession of Republika Srpska from BiH, which were outlined in a joint statement signed by the ruling parties of Republika Srpska on 24 April 2023. They include: Non-implementation of Decisions by the BiH Constitutional Court, readiness to withdraw Republika Srpska representatives from the state institutions, non-replacement of the Serb judges on the BiH Constitutional Court, non-implementation of the Decisions of the High Representative, readiness to declare the independence of Republika Srpska if the High Representative imposes a Law on State Property, readiness to re-examine all laws and decisions imposed by all High Representatives so far, and a termination of contact with the OHR as well as the U.S. and UK Embassies.”²²

According to the Report, the President of Republika Srpska, Mr. Milorad Dodik,

“continued to challenge the sovereignty and territorial integrity of BiH and threatened to limit my access to the territory of Republika Srpska. [...] In response to these direct and massive threats to the Peace Agreement, on 1 July 2023, I enacted a Decision that prevented the entry into force of the RS Law on Non-application of Decisions of the BiH Constitutional Court and the RS Law on Amendments to the RS Law on Publication of Laws and Other Regulations, which sought to prevent the implementation of Decisions by the High Representative in Republika Srpska. On the same day, I also enacted amendments to the BiH Criminal Code, expanding the criminal definition of ‘offenses against the constitutional order’, penalizing the non-application of Decisions by the BiH Constitutional Court, and adding an offense regarding the failure to implement the Decisions of the High Representative.”²³

The Report further reveals that

“on 11 September 2023, the BiH Court confirmed an indictment against Republika Srpska President Milorad Dodik and the acting Director of the

²² *Ibid.*, para. 11.

²³ *Ibid.*, paras. 13–14.

Republika Srpska Official Gazette, Miloš Lukić, for failing to implement Decisions of the High Representative,”²⁴

which further exacerbated the already highly tense situation. On the other hand, Republika Srpska continues to justify the RS Law on Non-application of Decisions of the BiH Constitutional Court with the absence of Serb judges in the Constitutional Court of Bosnia and Herzegovina, and continues to express its readiness to declare the independence if the High Representative imposes a Law on State Property.

Thus, the principal question that arises here relates to the exact scope of the High Representative's mandate, most notably whether his abovementioned measures fall within the ambit of his mandate under Annex 10 (supposedly extended by the Bonn Powers). According to the OHR, which under Article V of Annex 10 has the authority to interpret Annex 10, the PIC at the 1997 Peace Implementation Conference in Bonn elaborated on Annex 10 and

“requested the High Representative to remove from office public officials who violate legal commitments and the Dayton Peace Agreement, and to impose laws as he sees fit if Bosnia and Herzegovina's legislative bodies fail to do so.”²⁵

However, such position is contested by Republika Srpska on grounds that the Bonn Powers do not specifically mention the High Representative's legislative powers which are entrusted under the Constitution of Bosnia and Herzegovina (Annex 4 to the Dayton Peace Agreement) to the Parliamentary Assembly of Bosnia and Herzegovina. Republika Srpska also contests the High Representative's powers to provide an authoritative interpretation of other Annexes to the Dayton Peace Agreement (except for Annex 10), particularly of Annex 4 that represents the Constitution of Bosnia and Herzegovina, considering that Article V of Annex 10 explicitly limits his powers of interpretation to Annex 10, and that the High Representative is not considered as an organ of Bosnia and Herzegovina under the Constitution of Bosnia and Herzegovina. In other words, the crux of the issue lies in determining the extent of the High Representative's powers within the existing legal framework, and whether these indeed encompass legislative (and potentially constitutional) powers as they have been exercised thus far.

²⁴ *Ibid.*, para. 15.

²⁵ See section “Mandate” on the OHR's website available at <<https://www.ohr.int/about-ohr/mandate/>> (12 December 2023).

4. THREAT TO INTERNATIONAL PEACE AND SECURITY AND THE WAY OUT

In its Resolution 2604 (2021),²⁶ dealing with Bosnia and Herzegovina, the UN Security Council explicitly determined that the situation in the region of the Former Yugoslavia continues to constitute a threat to international peace and security. Within Bosnia and Herzegovina, the parties accuse each other of being the main source of this threat. Mr. Schmidt has already expressed opinion in his abovementioned Report that the acts of Republika Srpska constitute serious violations of the GFAP that threaten peace and stability in the country and the region, thereby warranting an appropriate response. Consequently, it is indisputable that all concerned parties agree that the current situation in Bosnia and Herzegovina is on the brink of escalation to a degree that might render it unmanageable. Therefore, the differences between the OHR and Republika Srpska, along with all their possible consequences, constitute a threat to international peace and security.

While it could be maintained that the current situation in Bosnia and Herzegovina indeed represents a threat both to regional and international peace and security, thus necessitating an appropriate response as Mr. Schmidt suggested, the main issue that arises is: who holds the authority to respond appropriately? It is difficult to accept the position that the OHR is the overarching and final authority when it comes to the interpretation of the Dayton Peace Agreement and its 11 Annexes as a whole. In this regard, it is pertinent to mention that the Parliamentary Assembly of the Council of Europe adopted the Resolution 1384 (2004) that considered that it is

“irreconcilable with democratic principles that the High Representative should be able to take enforceable decisions without being accountable for them or obliged to justify their validity and without there being a legal recourse”,

and to that end asked

“the Venice Commission to determine how far this practice complies with the Council of Europe’s basic principles, and in particular with the Convention for the Protection of Human Rights and Fundamental Freedoms.”²⁷

Acting pursuant to such a request, the Venice Commission determined in March 2005, *inter alia*, that

²⁶ Resolution 2604 (2021), adopted by the UN Security Council at its 8896th meeting on 3 November 2021.

²⁷ Resolution 1384 (2004) of the Parliamentary Assembly, Council of Europe, Assembly debate on 23 June 2004 (20th Sitting).

“the need for the wide powers exercised by the High Representative certainly existed in the early period following the conclusion of the Dayton Agreement. However, such an arrangement is fundamentally incompatible with the democratic character of the state and the sovereignty of BiH. The longer it stays in place the more questionable it becomes [...] The main concern is however that the High Representative does not act as an independent court and that there is no possibility of appeal. The High Representative is not an independent judge and he has no democratic legitimacy deriving from the people of BiH. He pursues a political agenda, agreed by the international community, which serves the best interests of the country and contributes to the realisation of Council of Europe standards. As a matter of principle, it seems unacceptable that decisions directly affecting the rights of individuals taken by a political body are not subject to a fair hearing or at least the minimum of due process and scrutiny by an independent court.”²⁸

However, the key issues at hand concern the authority to interpret the Dayton Peace Agreement and its Annexes as a whole and in accordance with the most authoritative set of interpretation rules in the international legal system, provided under Articles 31 to 33 of the Vienna Convention on the Law of Treaties (“VCLT”). This implies that the Dayton Peace Agreement and its Annexes shall be interpreted in good faith and in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose, while also taking into account subsequent agreements between the parties regarding interpretation or application of the provisions in question, and subsequent practice in the application of the treaty at hand (Article 31 of the VCLT reflecting general rules of interpretation). Such interpretation would thus necessarily entail a deeper assessment of the ordinary meaning of the relevant terms contained in Article I and Article II of Annex 10, while considering: (1) previous practice of appointing the High Representative, including all relevant UN Security Council resolutions in this regard, and (2) the legal nature of the Bonn Powers which supposedly vested the High Representative with additional powers. It should also be noted that although under Article V of Annex 10 the High Representative is the final authority to interpret Annex 10, this does not preclude any international adjudicating body, if validly seized of the matter, to offer an independent and impartial review of the interpretation presented by the OHR, especially if it is highly contested by one of the Parties to Annex 10 and the situation amounts to a threat to international peace and security.

²⁸ Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative adopted by the Venice Commission at its 62nd plenary session (Venice, 11–12 March 2005), paras. 90 and 96.

Considering that the current situation represents a threat to international peace and security, it is clear that the only appropriate organisation to address this issue is the UN itself. Article 11 of the UN Charter stipulates that the General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations and may make recommendations with regard to any such question to the State concerned or to the Security Council or to both. Furthermore, the General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security. Thus, the Security Council may also step in and address the situation, considering that the situation poses a threat to international peace and security. It is worthwhile to note that from 1 January 2024 Slovenia will occupy a non-permanent seat on the UN Security Council. This not only represents a unique opportunity to improve the country's international reputation and recognition, but also entails a significant responsibility to ensure that the maintenance of peace both regionally and globally. Having shared a common history with Bosnia and Herzegovina, Slovenia is a country that understands the culture(s) of Bosnia and Herzegovina's peoples and is uniquely placed to help mediate an urgent resolution of the presented differences between the OHR and Republika Srpska.

However, despite the UN General Assembly and the UN Security Council may indeed significantly contribute towards the resolution of the current situation in Bosnia and Herzegovina, they cannot provide for an authoritative interpretation of the Dayton Peace Agreement and its Annexes. This task is perfectly suited for the principal judicial organ of the UN, the International Court of Justice ("ICJ"). Pursuant to Article 96 of the UN Charter and Article 65 of the Statute of the International Court of Justice, the UN General Assembly or the UN Security Council may request the ICJ to give an advisory opinion on any legal question, including the one discussed here. Although not of a binding nature, such an advisory opinion would greatly help to clarify the legal issues highlighted above by offering the most authoritative interpretation of the Dayton Peace Agreement and its Annexes as a whole, most notably in respect of the appointment of the High Representative and his exact powers under the current legal framework.

Considering the highly tense situation in Bosnia and Herzegovina, and the differences surrounding the validity of the appointment of Mr. Schmidt to the position of the High Representative, as well as the legality of his decisions, it seems that the most prudent way to seek to resolve these issues would indeed be to raise them before the UN organs, especially before the principal judicial

organ of the UN, by requesting it to give an advisory opinion on the following questions:

1. What is the procedure for the appointment of the High Representative for Bosnia and Herzegovina under Annex 10 of the Dayton Peace Agreement, and does the UN Security Council need to endorse such an appointment?
2. What powers does the High Representative have, namely do these powers include legislative or even constitutional powers?

RAZHAJANJA GLEDE RAZLAGE ANEKSA ŠT. 10 K DAYTONSKEMU MIROVNEMU SPORAZUMU MED URADOM VIŠKEGA PREDSTAVNIKA ZA BOSNO IN HERCEGOVINO TER REPUBLIKO SRBSKO

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Vojna v Bosni in Hercegovini se je končala leta 1995 s podpisom Splošnega okvirnega dogovora za mir v Bosni in Hercegovini (angl. *General Framework Agreement for Peace in Bosnia and Herzegovina*), ki je splošno poznan tudi kot Daytonski mirovni sporazum. Tega sestavlja tudi 11 aneksov in na podlagi Aneksa št. 10 je bil ustanovljen Urad Visokega predstavnika za Bosno in Hercegovino, ki je kot *ad hoc* mednarodna institucija pristojna za nadzor nad implementacijo civilnih vidikov Daytonskega mirovnega sporazuma. Leta 1997 je nato v Bonnu Svet za uresničitev miru kot telo, sestavljeno iz 55 držav in agencij podpornic miru v Bosni in Hercegovini, ki je bilo ustanovljeno leta 1995 na mirovni konferenci v Bosni in Hercegovini v Londonu, sprejel sklepe, ki se danes štejejo kot podlaga za podelitev dodatnih pristojnosti Visokemu predstavniku za Bosno in Hercegovino (tako imenovane Bonnske pristojnosti). Zaradi načina imenovanja trenutnega Visokega predstavnika za Bosno in Hercegovino Christiana Schmidta in njegovih ravnanj oziroma sprejetih odločitev pa je prišlo do razhajanj med Uradom Visokega predstavnika za Bosno in Hercegovino ter Republiko Srbsko kot ene od pogodbenih strank Aneksa št. 10, in sicer glede postopka imenovanja Visokega predstavnika za Bosno in Hercegovino ter njegovih pristojnosti. Posledice omenjenih razhajanj so resne, saj sta v regiji ogrožena mir in varnost, saj Republika Srbska trenutnemu Visokemu predstavniku za Bosno in Hercegovino ne priznava tega statusa in ne spoštuje njegovih odločitev.

* Mnenja in stališča v tem prispevku so v celoti avtorjeva in ne predstavljajo nujno tudi mnenj in stališč njegovega delodajalca.

Prvo pravno vprašanje je, kakšen je postopek imenovanja Visokega predstavnika za Bosno in Hercegovino oziroma natančneje, ali Visoki predstavnik za Bosno in Hercegovino za veljavno imenovanje na položaj potrebuje potrditev Varnostnega sveta OZN. Dejstvo je, da Aneks št. 10 postopka imenovanja natančno ne ureja, saj je v I. členu Aneksa št. 10 omenjeno le to, da pogodbene stranke Aneksa št. 10 zahtevajo imenovanje Visokega predstavnika za Bosno in Hercegovino »v skladu z relevantnimi resolucijami Varnostnega sveta OZN«. Urad Visokega predstavnika za Bosno in Hercegovino je v skladu s V. členom Aneksa št. 10 kot končna avtoriteta za razlago Aneksa št. 10 zavzel stališče, da za veljavno imenovanje na položaj Visoki predstavnik za Bosno in Hercegovino pravno gledano ne potrebuje potrditve Varnostnega sveta OZN, saj to iz besedila I. člena Aneksa št. 10 ne izhaja. Na drugi strani Republika Srbska vztraja pri stališču, da Visoki predstavnik za Bosno in Hercegovino potrditev Varnostnega sveta OZN za veljavno imenovanje na položaj potrebuje, saj naj bi to izhajalo tudi iz dosedanje prakse imenovanja Visokih predstavnikov za Bosno in Hercegovino, ki jih je vse tako ali drugače podprl Varnostni svet OZN.

Drugo pravno vprašanje pa se nanaša na domet pristojnosti Visokega predstavnika za Bosno in Hercegovino oziroma natančneje, ali pristojnosti Visokega predstavnika za Bosno in Hercegovino vključujejo tudi zakonodajne (ali celo ustavne) pristojnosti. Daytonski mirovni sporazum namreč v II. členu Aneksa št. 10 določa pristojnosti Visokega predstavnika za Bosno in Hercegovino, ki se nanašajo na implementacijo različnih civilnih vidikov Daytonskega mirovnega sporazuma, šele tako imenovane Bonnske pristojnosti, na katere se sklicuje tudi Urad Visokega predstavnika za Bosno in Hercegovino, pa neposredno omenjajo možnost, da Visoki predstavnik za Bosno in Hercegovino lahko sprejme tudi vse tiste ukrepe, ki so po njegovi presoji nujni za zagotovitev implementacije Daytonskega mirovnega sporazuma po vsej Bosni in Hercegovini, vključno z začasnimi ukrepi, če pogodbene stranke Aneksa št. 10 ne morejo doseči sporazuma, in z ukrepi proti osebam, za katere Visoki predstavnik za Bosno in Hercegovino meni, da kršijo zaveze iz Daytonskega mirovnega sporazuma. Stališču Urada Visokega predstavnika za Bosno in Hercegovino nasprotuje Republika Srbska, ki meni, da Visoki predstavnik za Bosno in Hercegovino nima zakonodajnih pristojnosti, prav tako pa ne more avtoritativno podajati razlage ustavnega reda Bosne in Hercegovine (to je Aneksa št. 4).

Na koncu se postavlja vprašanje, kdo lahko ponudi rešitev nastale situacije in kot možen odgovor se ponudi OZN. Tako Generalna skupščina OZN kot tudi Varnostni svet OZN lahko vsak na svoj način ustrezno obravnavata situacijo v Bosni in Hercegovini glede na to, da pomeni grožnjo miru in varnosti v regiji. Sicer pa se kot najbolj optimalna pravna rešitev ponuja v tem, da se obe sporni vprašanji v skladu z Ustanovno listino OZN predloži v reševanje Meddržav-

nemu sodišču, ki s svojim svetovalnim mnenjem kot glavni sodni organ OZN lahko ponudi avtoritativno razlago Daytonskega mirovnega sporazuma, predvsem pa Aneksa št. 10, in s tem dokončno (po pravni poti) reši predstavljena razhajanja glede razlage Aneksa št. 10 k Daytonskemu mirovnemu sporazumu med Uradom Visokega predstavnika za Bosno in Hercegovino ter Republiko Srbsko.