



Improving Accountability of the Intelligence-Security Agency of Bosnia and Herzegovina

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Summary

The Intelligence-Security Agency of BiH was established in 2004. Prior to its establishment there were three different intelligence services, which were delineated along ethnic lines as one of the consequences of the war that ravaged the country in the first half of the 1990s. The robust approach that the international community took in BiH at the turn of the century resulted in a number of reforms in the security sector, including intelligence reforms. The European experts who prepared the legislation on the intelligence Agency composed a law of high quality, containing some of the most modern provisions. Oversight and control of the Agency were introduced among the features designed to ensure the democratic accountability of the Agency. However, because BiH society is in transition not only from conflict to peace, but also from an authoritarian into a democratic regime, some provisions in the law have been left neglected. This includes the inaction of officials, who do not take the matter of oversight and control seriously, which has resulted in the diminished accountability of the Agency. In addition, the legacy of the previous regime has been nurtured by the Agency's management, while oversight and control bodies have opted to overlook this issue. As a result of this inaction, some of the important provisions of the law on OSA have been overlooked by the Agency. A public report on its activities has never been published, despite the fact that this was clearly prescribed by the law, the relationship with the media and civil society is almost nonexistent and some of the laws governing this area have been found to be in conflict with each other. This study attempts to provide solutions for these shortcomings and evaluates three different

policy options. It concludes by offering an option that fits well with the current limitations in the institutional structure of BiH and the stance of political elites in the country. The recommended option is based on coordination among the bodies in charge of the oversight and control of the Agency, which is crucial for improvement in its accountability. This option seems to work at various levels of this equation. It not only improves the accountability of the Agency, but it also improves the functioning of these bodies. Overall, this would help build a more democratic environment for all those involved in the work of the Agency.

The overall aim of the paper's recommendations is to affect a clear break with the legacy of the authoritarian regime and therefore with the level of secrecy ascribed to it by such regimes. Because of the importance of intelligence work in the security sector, improved accountability of this Agency would also influence the accountability of other segments of this sector. Therefore, the openness and transparency that is proposed in this study will hopefully lead to a greater acceptance of the Agency by the public. The Agency would also be more trusted and its reputation would be marked with positive tones of democratic change.

¹ This was the personal experience of the author of this paper when a request for an interview - as part of research for his master's thesis - was emailed to the Agency.

² "The Agency shall prepare, and make available to the public, an annual report concerning its objectives, policies and the general focus of its activities based on non-confidential information.", Law on OSA, 22 March, 2004.

³ Valerie Sperling, *Altered States: The Globalization of Accountability*, Cambridge, CUP, 2009, p. 8.

⁴ Ibid.

⁵ Andreas Schedler, Larry Jay Diamond, and Marc F. Plattner, *The Self-restraining State: Power and Accountability in New Democracies*, Colorado, Lynne Rienner Publishers, 1999, p. 14.

1. Introduction

If an ordinary citizen, a member of the research community or a journalist were to contact the Intelligence-Security Agency of BiH (hereafter OSA) by email today and ask for general information on its work - i.e. not information that deals with its operational segment - it is questionable what the Agency's response would be. At best, they might be told to contact the parliamentary committee for the oversight of OSA's work for information. However, it is also possible that the Agency's reply would verge on the impolite, leaving the questioner wondering whether they have communicated with an actual person, or if the email in question is an automatic reply by a computer.¹

Unfortunately, many who have tried to conduct research on the Agency have received this type of treatment from the OSA, which indicates its lack of accountability. A prime example - apart from those similar to that mentioned above - is the Agency's failure to publish public reports, despite the fact that this is prescribed by Article 6 of the Law on OSA.² The principle of "answerability"³ as one of the two aspects of accountability is therefore not met by the Agency. As the Agency has consistently failed to perform this task, and there have been no sanctions by those in charge of the control and oversight of the Agency, this also reveals that the second aspect of accountability, "enforcement"⁴, is not carried out in this regard. This points to the basic hypothesis of this study which claims that the improvement of the Agency's accountability depends on the improvement of the work of the bodies in charge of oversight and control of the Agency.

This study aims to contribute to the solution of the particular problem - lack of OSA accountability - by offering policy recommendations that would improve this issue within the intelligence community. The study also aims to indicate how the policy gap that obviously exists in terms of oversight and control can be filled. This would not only make the Agency that is the focus of this study more accountable, but would also bring an additional advantage, by making the security sector more open to the public in general. It is crucial that the Agency itself becomes more open to the public and that it makes a clear break with the legacy of authoritarian regime, which is currently ascribed to the Agency by independent observers.

2. OSA's Accountability Problem

"Accountability refers to the various norms, practices and institutions whose purpose is to hold public officials (and other bodies) responsible for their actions and for the outcomes of those actions. It is concerned, in particular, to prevent and redress abuses of power."⁵ Accordingly, this definition of accountability obliges public officials to inform the public of their actions and to provide reasonable explanations for them. They are required to act upon criticisms or requirements that they encounter, and to accept responsibility for failure, incompetence, or deception. Thus, accountability requires transparency, as it assumes the necessity of sharing information with the public in a timely manner. This, of course, cannot pertain unconditionally to all aspects of governance, as there is a need to adhere to certain legal requirements of confidentiality for the sake of national security. Therefore, when it comes to intelligence agencies there is clearly a need to establish a balance between secrecy and transparency. On the other hand, freedom of information is one of the tenets of democracy and it represents a precondition for other freedoms. In 1946 the UN adopted a resolution which proclaimed that "freedom



of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated.”⁶ However, as Laurie notes, the intelligence communities in many countries see their work as secret with some exceptions, while in democratic societies the focus should be on openness with some exceptions.⁷ One of the most important reasons for the increased openness of security-intelligence services is based on the fact that without institutional oversight and public scrutiny there is a good chance that these agencies would be free of any restraints and control in their work. This was the case with the Central Intelligence Agency (CIA) of the United States, which was involved in a number of activities that were in contravention of US policies and legislation, and was increasingly seen as a government unto itself.⁸ US Senator Frank Church, whose committee played an important role in establishing the accountability of CIA labeled the agency as a “rogue elephant” due to its unaccounted activities.⁹ The need for accountability was reestablished after the 9/11 attacks and the extensive role that was allocated to intelligence agencies in some countries as a part of the “war on terror”, as well as after the invasion of Iraq, an event which occurred as a result of the politicization of intelligence agencies.¹⁰ However, it is not only the nonexistence of control mechanisms that has driven requests for openness, but also the fact that agencies need support from the public in order to function at a maximum level.

“... in modern democracies intelligence services require public support and need to earn public trust to be completely functional. Without such support and trust the services will not be able to obtain resources or recruit talented people and their judgments will be questioned by those who use the intelligence product.”¹¹

Accountability towards the public has been recognized by some western countries that are seen as pioneers in openness and transparency. One of the main activities undertaken in that regard was the publication of public reports on the work of their intelligence agencies. Minister of the Interior and Kingdom Relations of the Netherlands, Guusje ter Horst, in a foreword to the 2008 annual report of their intelligence-security agency stated that “the report has an important role to play in improving the security awareness of Dutch society as a whole: not by causing unnecessary alarm, but by making the nation more resilient to the threats we face.”¹²

This paper will also advocate for finding the fine balance between secrecy and transparency and will adhere to the limits posed by confidentiality, especially because the focus of this research is not the operational work of the Agency but its openness towards other state institutions, the public, the media, and civil society. At the moment the transparency of OSA is at a minimum and is failing to meet modern democratic standards in terms of these criteria. Despite the fact that intelligence sector reform in Bosnia is considered to have a firm foundation¹³ as the law establishing the Agency includes provisions that are aimed at ensuring accountability, its lack of implementation is what prevents the Agency from meeting the standards exercised in countries with similar legislation. The main hypothesis is that failure in terms of accountability of the Agency cannot be ascribed to the Agency only but also to the bodies in charge of oversight and control that have failed to make the Agency adhere to these standards. The case of OSA shows that quality legislation is not sufficient for ensuring the accountability of intelligence-security agencies. Peter Gill is one of the few authors who point out that merely adopting legislation is not the end of security reform, it is the implementation that counts.¹⁴ Gill’s research goes a step further, as most publications that deal with intelligence in essence only discuss the general types of oversight that should be exercised over intelligence agencies.¹⁵ However, almost no publications offer detailed coverage of the practical implementa-

⁶ United Nations General Assembly resolution 59 (1), 14 December, 1946.

⁷ Nathan Laurie, *Lighting up the Intelligence Community: A Democratic Approach to Intelligence Secrecy and Openness* (Policy Paper), Global Facilitation Network for Security Sector Reform, April 2009.

⁸ A short overview of this part of CIA’s history can be found in Arthur S. Hulnick, *Fixing the Spy Machine: Preparing American Intelligence for the Twenty-First Century* by, Westport-Connecticut, Greenwood Publishing Group Inc., 1999. See also Peter Gill, ‘The Politicization of Intelligence: Lesson from the Invasion of Iraq’, in Hans Born, Loch K Johnson, and Ian Leigh, *Who’s Watching the Spies?*, Washington D.C., Potomac Books, 2005

⁹ Arthur S. Hulnick, *Fixing the Spy Machine*. p. 176.

¹⁰ ‘Hans Blix: Allies used ‘poor’ intelligence ahead of Iraq invasion’, *The Guardian*, 27 July, 2010.

¹¹ Arthur S. Hulnick, *Fixing the Spy Machine*, p. 173. See also DCAF, *Intelligence Practice and Democratic Oversight - A Practitioner’s View*, Geneva, July 2003, p. 63 where it is claimed that public debate on some of those issues results in improved professionalism of intelligence agencies.

¹² General Intelligence and Security Service of the Netherlands, “Annual Report 2008”, available at <https://www.aivd.nl/english/publications-press/aivd-publications/@1579/aivd-annual-report/> Accessed on 8 October, 2011.

¹³ See for example Hans Born, and Ian Leigh, *Legal Standards and Best Practice for Oversight of Intelligence Agencies*, Geneva, DCAF, 2005.

¹⁴ Peter Gill, *Democratic and Parliamentary Accountability of Intelligence Services after September 11th*, (Working paper no. 103), Geneva, DCAF, 2003. p. 3.

¹⁵ See for example Born and Leigh, *Legal Standards and Best Practice for Oversight of Intelligence Agencies*, DCAF, 2005, or Born, Johnson, and Leigh, *Who’s Watching the Spies?*

tion of legislation in BiH. This research therefore aims to fill that gap and to provide information on practical implementation in a country that has quality legislation, but where impediments to implementation put into question the overall success of oversight and control, as well as the transparency segment of the legislation.

The following sections will provide the background to the problem addressed in this study and will show how significant it is.

2.1. History of the Agency

In the immediate aftermath of the war in BiH three intelligence services existed, constituted along the lines of separation of the three warring sides: Croat, Serb, and Bosniak. After realizing that this intelligence sector structure must be altered in order for BiH to fulfill the conditions of Euro-Atlantic integration¹⁶, the High Representative (HR) of the international community in Bosnia rendered a decision on establishing the Expert Commission on Intelligence Reform in Bosnia and Herzegovina in May, 2003.¹⁷ The commission drafted the Law on the Intelligence-Security Agency of BiH and, after some prolonged debates on the creation of this service, the law was eventually passed by the Parliamentary Assembly of Bosnia and Herzegovina in March 2004. The OSA became operational in June 2004 with its jurisdiction covering the entire territory of BiH and its operation put under the executive control of the Council of Ministers of Bosnia and Herzegovina, while parliamentary oversight was to be exercised by a special committee.

2.2. Oversight and Control

The Joint Committee of the BiH Parliament for Oversight of OSA¹⁸ (hereafter referred to as the Joint Committee) has a mandate to be responsible for overseeing the legality of the work of the Agency. Apart from parliamentary oversight, executive control over the work of the Agency is also provided. The first instance of executive oversight over the work of OSA BiH is the Presidency of BiH. The Presidency is responsible for "directing the Inspector-General to conduct an inspection, audit or investigation concerning an actual or potential problem with regard to the work of the Agency..."¹⁹ The Council of Ministers of BiH (CoM) is the next in line when it comes to executive oversight. The Chair of the CoM coordinates the activities of the Agency and provides guidance regarding intelligence-security policy. "She/he shall supervise, and be politically responsible for the work of the Agency."²⁰ Additionally, the Executive-Intelligence Committee was established in order to advise the Chair of the Council of Ministers on these matters.²¹

Internal control is exercised by the Director-General, Deputy Director-General, and the Inspector General of the Intelligence-Security Agency. The Director-General is bound by the law on OSA to deliver reports on the work of Agency to the Executive Intelligence Board, as well as to report on the details of budget expenditure to the Joint Committee. The Inspector General is in charge of "Informing ... and of issuing recommendations to the Director-General and Deputy Director-General for remedying complaints against, or problems in, the Agency, as well as determining whether such recommendations have been implemented."²² The Court of BiH exercises judicial control over OSA in that it authorizes requests for secret data collection that are submitted by the Agency, while the Supreme Audit Office of BiH, the media, and civil society exercise additional control over the work of the Agency.

¹⁶ Establishment of a single intelligence service was one of the conditions in the EU Feasibility study which was brought about prior to signing the Stabilization and Association Agreement with Bosnia.

¹⁷ OHR, *Decision Establishing the Expert Commission on Intelligence Reform*, 29 May, 2003

¹⁸ Article 18 of the Law on Intelligence - Security Agency of BiH (official Gazette BiH n. 12/04) establishes the Joint Security - Intelligence Committee for Oversight over the Work of the Intelligence - Security Agency BiH jointly by the House of Representatives and House of Peoples of the Parliamentary Assembly BiH. With the entering into force of the Amendments to the Law on Intelligence - Security Agency BiH on 19.02.2009, the Committee's name was changed to *Joint Committee for Oversight of the Work of OSA BiH*.

¹⁹ Law on OSA, Official Gazette BiH n. 12/04, Article 7.

²⁰ *Ibid*, Article 9.

²¹ The Executive Intelligence Committee consists of the Chair of the Council of Ministers, two Deputies of the Chair of the Council of Ministers, or two Ministers from the Council of Ministers. The composition of the committee has to include representation of all the three major ethnic groups in BiH.

²² Law on OSA, Article 33.



Despite the fact that there are so many layers of oversight and control of the Agency, no measures have been undertaken to correct failures of the Agency, namely the failures to implement tasks stipulated by the law on the Agency, such as the publication of a public report and the auditing of the Agency. The law on the Agency has clearly offered a possibility to the CoM to correct these failures as this body is responsible for “providing general guidelines to the Agency for the performance of tasks within its competency under Articles 5 and 6 of this Law in a manner that shall promote the effectiveness and responsibility of the Agency.”²³ It is precisely Article 6 that obliges the Agency to publish public annual reports. The CoM also has at its disposal a measure to direct the Inspector General to “conduct an inspection, audit or investigation concerning an actual or potential problem within the Agency and to undertake necessary measures for the purpose of removing detected problems, examination of liability and possible sanctioning.”²⁴ The Joint Committee can also question failures of the Agency as the law prescribes that the committee can conduct an inquiry if it has “grounds to believe that the Agency is performing its duties in an unlawful manner.”²⁵ Furthermore, the Inspector General, who is in charge of the internal control function, has an option to review “the activities of the Agency to ensure they are conducted in accordance with applicable legislation and regulations”²⁶ and also to initiate “inspections, audits and investigations on his/her own initiative, where s/he deems necessary.”²⁷

This clearly indicates that there was a failure in “enforcement” as one of the aspects of accountability and represents a key problem when it comes to the improvement of the Agency’s accountability. Had the bodies that are in charge of oversight and control of the Agency been more active and determined in pursuing their obligations prescribed by the law, OSA’s record in this regard would look much better. This study therefore aims to produce policy recommendations that are not addressed directly to OSA, but to those bodies in charge of its oversight and control. To some extent the inadequate performance of oversight/control bodies can be ascribed to the lack of training or formal education on issues related to this field of security.²⁸ No one in the newly established Joint Committee for oversight has previous experience in these matters. Moreover, only one member of that committee has served more than one term on it.²⁹ However, it should be mentioned that the Law on Classified Data Protection prescribes obligatory training for members of oversight/control bodies.³⁰ New members of the Joint Committee have already been through two trainings,³¹ but other bodies are lagging behind. Members of the former Executive Intelligence Board (as the new one has not yet been established), the Chairman of the CoM, Minister of Foreign Affairs and Minister of Security, also lack expertise in this field. This lack of experts within oversight/control bodies could probably be transcended if the example of neighboring Croatia were followed, i.e. the establishment of a Citizens’ Council for oversight of the security-intelligence agencies. Croatian law on its security services prescribes that members of the council should have relevant educational background.³² However, given financial constraints, the formation of such a council is unlikely to happen in BiH any time soon, therefore the research will focus on the existing bodies for oversight/control and their shortcomings. After all, it is these bodies that have, over the years, ignored the problems that OSA has had in terms of openness, which now represents a huge obstacle in terms of its accountability. Hopefully recommendations from this study will provide ways to tackle them successfully. The following sections discuss the above-mentioned problems in greater detail.

2.2.1. Executive Intelligence Board

The new CoM of BiH was appointed in January 2012, even though elections were held in October 2010. Under its previous chairman, Nikola Špirić, the CoM seems to have completely ne-

²³ Ibid, Article 10, Item 1.

²⁴ Ibid, Article 10, Item 10.

²⁵ Ibid, Article 20.

²⁶ Ibid, Article 33, Item 1.

²⁷ Ibid, Article 33, Item 3.

²⁸ Profiles of all committee members are available on BiH parliament’s web page.

²⁹ Slavko Jovičić, from the Alliance of Independent Social Democrats (SNSD) party.

³⁰ The Law on Classified Data Protection, Official Gazette of BiH, No. 54/05, Article 72.

³¹ Interview with the Secretary of the Joint Parliamentary Committee, 4 January, 2012.

³² At least one member of the council has to have a degree in law, as well as one member with a degree in political science, and one member with a degree in electrical engineering. The President of the council is also the head of scientific research at the Croatian Police Academy.

³³ Joint Committee for Oversight of OSA BiH, *Report on the work of Joint Committee for Oversight of Intelligence-Security Agency of BiH in 2009*, 18 January, 2010.

³⁴ Interview with the Secretary of the Joint Parliamentary Committee, 4 January, 2012. See also Joint Committee for Oversight of OSA BiH, *Report on the work of Joint Committee for Oversight of Intelligence-Security Agency of BiH in 2008*, 12 January, 2009.

glected its role in terms of control of the Agency. The Executive Intelligence Board met only a few times, and its secretariat was never established. Collaboration with other bodies involved in the work of OSA was at a minimum.³³ Prime examples include the unwillingness to prepare reports on the work of the OSA, which should have been submitted to the Joint Committee, and the CoM's disregard towards invitations to attend sessions of the committee.³⁴ This demonstrates that the CoM has failed to carry out some of the most important pieces of legislation in terms of its work. Although the oversight and control bodies are not the only ones to ignore stipulations of the law, it is perhaps the approach of these bodies that has encouraged OSA's leadership to ignore some of the elements of the legislation as well.

2.3. Legislative Framework

One of the most serious problems that OSA is facing in terms of accountability is the neglect of certain legal obligations imposed on the Agency in the law establishing it. The legislative framework for control and oversight over the work of OSA was established in accordance with best practices of liberal democracies. Despite the fact that the law on the Agency is up to modern standards, its implementation is what causes concerns in terms of the Agency's accountability.

2.3.1. Public Report

One of the most obvious omissions regarding the law on OSA is that in the eight years of its existence the Agency has not published a single public report. Even though this is prescribed by the law its officials have not undertaken this crucial element of the Agency's transparency. On one occasion, Mirko Okolić, former Chair of the Joint Committee, even stated that he does not know why this institution does not publish reports on their work.³⁵

³⁵ *Nezavisne Novine*, "OBA četiri godine", 27 June, 2008.

When it comes to the content of the report, it should clearly not include details of the operative work of the Agency, as that could endanger the confidentiality of some of the information and perhaps compromise the security of the country. However, it should include general information that would make the public aware of the benefits of the Agency's existence for society as a whole. One of the best examples for the preparation of these reports is the Danish Security and Intelligence Service. Its public reports basically offer an insight into its achievements, actions and observations across its field of work. Issues covered in the reports relate to the fight against terrorism, political extremism, proliferation of weapons of mass destruction, etc. It also includes information related to the accountability of the service, changes in legislation that affect the service, as well as changes in the organization, policy and management of the service. Director General of the Danish Security and Intelligence Service (PET), Jakob Scharf, in a foreword to the 2008 annual report, stated that "[p]reventing security threats is not a task PET can perform on its own. It is, therefore, an important goal for PET to involve Danish society as such in the protection of the values on which our society is based." Director Scharf continues with emphasis on the transparency of the Agency: "[t]he involvement of citizens requires openness and transparency on the part of PET in relation to the general public."³⁶ *It is also noteworthy that all its reports are published both in Danish and in English language.*

³⁶ Danish Security and Intelligence Service, "Annual Report 2006-2007", http://www.pet.dk/upload/petannualreport_2006-2007.pdf Accessed on 8 November, 2011.

2.3.3. Auditing of the Agency

Another concern related to the legislation relevant for OSA is the conflict between the Law on



the Audit of Institutions of BiH and the Law on Classified Data Protection. Even though the Law on auditing stipulates that auditors have access to any document in the property of any BiH institution, the Law on Classified Data Protection prevents them from doing their work. When interviewed by the author of this study, a spokeswoman of the Audit Office of Institutions of BiH said that their office carries out the audit of the Agency, but that due to the nature of this audit it is not included in the public reports published by their office, which is one of the reasons why it is not generally available.³⁷ She did not mention problems related to the conflicting laws. However, the author discovered in an interview with the Secretary of the Joint Committee that the committee is working on a proposal for new legislation which should resolve the conflict between the two laws.³⁸ More information on this proposal for changes in legislation will be available to the public once the proposal is included on the agenda of the BiH parliamentary assembly. The Secretary seemed to be quite optimistic regarding the adoption of this law by new members of the parliamentary assembly.

Research on the auditing of the Danish Security Intelligence Service has revealed that a special audit procedure is carried out by the National Audit Office in collaboration with the audit section of the Ministry of Justice which performs executive control over the Agency. However, the revision of parts of the Agency's accounts, e.g. costs involving sources, is carried out by a specially authorized employee of the National Audit Office, who is assisted by the audit section of the Ministry of Justice.³⁹ Considering that the Danish intelligence service has a long history in terms of the transparency and openness of its work, this solution could also be applied to the auditing issue of the BiH Agency. It is likely that this would transcend the problem that exists in terms of the conflict of laws governing this area of the Agency's work.

2.4. Cooperation with Public and Civil Society Organizations

OSA's lack of cooperation with the media and civil society represents another key obstacle to the Agency's accountability. The failure to be more open to the public hinders both media reporting and research on OSA undertaken by civil society organizations (CSOs).⁴⁰ In the situation such as it is, it is impossible to obtain any statements issued by an OSA representative, hence the media resort to the limited information that the Joint Committee can provide.⁴¹ One example of the way that the media are treated by OSA is related to the proposal for an increase in allocations for salaries in the Agency of one million convertible marks (KM). When asked by the media about this increase, OSA answered: "For all requested information you can turn to our spokesman. Considering that we have no spokesman, you cannot obtain the information anyway."⁴² Moreover, the Agency's web site has not been updated in more than six years, which leaves the public with no insight into the Agency.

One of the ways in which this problem is tackled in the Danish Security and Intelligence Service for example is through its Front Office and the sub-section for press and media relations. This section of the Agency publishes press statements relevant to ongoing updates for the public regarding the activities of the Agency. One of the first agencies to adopt this openness in its dealings with the public was the CIA. It was under the leadership of Admiral Stansfield Turner that the Public Affairs Office was created. "[T]he American people were shelling out big bucks for the intelligence system and ... they deserved to know what it was doing with their money,"⁴³ Admiral Turner remarked when establishing the office. Regardless of the fact that this was looked at unfavorably by much of the security community in the US, and that it was

³⁷ Interview with Spokeswoman to the Audit Office of Institutions of BiH.

³⁸ Interview with Secretary of the Joint Committee for Oversight of OSA.

³⁹ Danish Security and Intelligence Service, "Annual Report 2006-2007", p. 17. A similar conclusion is offered in the OECD document "The Audit of Secret and Politically Sensitive Subjects: Comparative Audit Practices", SIGMA Papers: No. 7, Paris, 1996.

⁴⁰ Interviews with Emsad Dizdarević and Dr Armin Kržalić, Researchers at the Centre for Security Studies, a Sarajevo-based NGO.

⁴¹ See Emsad Dizdarević and Denis Hadžović, *Nadzor nad obavještajnim sektorom na zapadnom Balkanu: Studija slučaja Bosne i Hercegovine*, Centar za sigurnosne studije, Sarajevo, 2011. They quote an editor at *Radio Free Europe* who stated that cooperation between the media and OSA is virtually nonexistent.

⁴² *Nezavisne Novine*, "OSA traži još milion KM za plate", 13 March, 2007.

⁴³ Arthur S. Hulnick, *Fixing the Spy Machine*, p. 177.

abolished by Turner’s successor, the pressure of the public and the media has led to its reopening and its successful functioning to this day. This shows the importance of the existence of such an office within the agency’s structure and it is most likely that OSA would also benefit from the introduction of this office, particularly as it could also be in charge of the preparation of the Agency’s public reports. In addition, enhanced cooperation with civil society can work in the Agency’s favor, as it would present a way for the Agency to raise public awareness of the benefits of its existence. This cooperation could work towards the achievement of some of the goals of the Agency as well, due to the advocacy skills of CSOs, and the capability of the media to help raise awareness on issues relevant to national security.

3. Options to Tackle the Existing Problem

The process of opening up the security sector to the public started in the United States more than thirty years ago with the introduction of a parliamentary committee in charge of overseeing their national intelligence service.⁴⁴ Various countries have since followed their example and have either copied solutions originating from the USA to a certain degree, or introduced new oversight and control mechanisms. Different countries also adopt measures at different paces, and it is noticeable that those countries with the legacy of an authoritarian regime are facing more difficulties in managing this change than those with a long tradition of democracy.⁴⁵ Bosnia falls into the former category and some of the issues mentioned previously in this study have already indicated which stage of the process this country is currently in. It basically comes down to the fact that those working inside the Agency are trying to preserve the excessively secretive nature of the Agency, while those in charge of its oversight and control are not showing signs of willingness to tackle the accountability issue in a professional manner. However, discontent with some of the above-mentioned dealings of OSA is slowly but surely building. This can be seen in the media, and also in the comments of some officials who are members of bodies in charge of overseeing the Agency’s work.

In order to solve the problems related to the accountability of the Agency, three policy options were taken into consideration. All options were evaluated in accordance with criteria relevant for this area of the security field and are included in Table 1.

Table 1: Outcome Matrix

Evaluation criteria	ALTERNATIVE 1 Current situation	ALTERNATIVE 2 Establishment of a coordination body	ALTERNATIVE 3 Coordination meetings of bodies in charge of oversight/control
Cost	No change, but without any effective long term use of finances	Significant increase	Minor increase
Technical capability	No change	Additional staffing required	No change
Political feasibility	No change	Difficult to achieve	Realistic change
Legal issues	No change	Requires changes in legislation	No change
Required time for implementation	Indefinite (and ineffective)	Probably long (and exhausting)	Feasible within prescribed limits
Extent of uncertainty	High	High	Low

⁴⁴ Peter Gill, *Democratic and Parliamentary Accountability of Intelligence Services after September 11th*, (Working paper no. 103), Geneva, DCAF, 2003. p. 1. See also Arthur S. Hulnick, *Fixing the Spy Machine*.

⁴⁵ DCAF, *Intelligence Practice and Democratic Oversight - A Practitioner’s View*, Geneva, July 2003, DCAF.



The 'cost' - as the first criteria used for evaluation - is one of the most important elements in terms of approval of policies to be adopted or changed. The financial crisis that has shaken the world since 2008 has influenced BiH as well, and governments at various levels in the country have resorted to austerity measures, and have sought support in order to avoid bankruptcy⁴⁶ which makes this criterion inevitable in the context of public policies.

The second item is 'technical capability', which is also closely linked to financial concerns as it considers the capabilities of the technical support, including staff requirements in order to implement given policy options.

'Political feasibility' is the next criterion considered. This is a highly important criterion for state-level institutions in BiH, as in order to have a law or strategy adopted, the political will of the representatives of all three ethnic groups is necessary. Therefore, evaluating the given policy options through this criterion is of paramount importance for this policy study.⁴⁷

As quite a significant amount of legislation is turned down at state level parliament in BiH,⁴⁸ the criterion of 'legal issues' also had to be taken into account during the evaluation.

Additionally, 'required time for implementation' was considered, as the time frame for the implementation of a policy is important due to the fact that policy papers are situated in a particular time frame.

Finally, 'extent of uncertainty' was also taken into consideration as all the above-mentioned criteria combined determine this.

⁴⁶ 'BiH entities cannot pay out the IMF loan', Al Jazeera Balkans, 11 January, 2012.

⁴⁷ As previously mentioned, it took BiH political elites more than 14 months to establish the CoM, one of the most important institutions in the country.

⁴⁸ The so-called entity voting mechanism which was supposed to protect interests of both BiH entities is now being used by Serbs to block adoption of laws that they perceive as weakening the Republika Srpska entity.

3.1. Policy Option 1 - Current policy

The first option evaluated here considers the current state of affairs regarding the control and oversight of OSA. There are a number of concerns that should be taken into account if the situation remains the same in the upcoming period. First of all, the cost would not change much, but in the long run, the efficiency of the Agency in terms of democratic accountability would also remain at the same low level, or potentially decline even more.

In terms of 'technical capability', of course, the technical capability already exists for things to remain as they are. Similarly, regarding 'political feasibility', it is most likely that the political elites will not notice the negative aspects of the existing situation, not even in the long run. The same is the case with the analysis of 'legal issues', as well as the 'time for implementation' criterion; however the 'extent of uncertainty' is quite high for this policy option due to the fact that if things remain the same, it is possible that some of the bodies that should control/oversee OSA will over time completely disregard this obligation, which in the long run would put a lot of uncertainty over this policy option. This basically means that the amount of control and oversight that is exercised at the moment would probably diminish even further if there is no initiative for change, or if the current state of affairs is not scrutinized.

3.2. Policy Option 2 - Establishment of a body that would coordinate the bodies in charge of control and oversight of OSA

The second policy option suggests the establishment of a body that would be in charge of

coordinating the bodies that control and oversee OSA. One of the main benefits of this option is that there would be a 'one stop shop' to go to regarding responsibility for any failures of control and oversight of the Agency. The body itself would be composed of a representative from each institution that has a role in the Agency's oversight and control, i.e. the Joint Committee, Audit Office of the institutions of BiH, Executive Intelligence Committee, as well as the Inspector General. The existence of this body would enable the continuous involvement of the representatives of these bodies and would streamline the process of control and oversight of the Agency. This would also help overcome existing obstacles in terms of cooperation between these bodies, e.g. between the Council of Ministers of BiH and the Joint Committee.

Despite the fact that this would be probably the best option in terms of efficiency of oversight and control, when evaluated by the criteria mentioned above this policy option has several evident shortcomings.

First of all, this option would be quite costly as it would require establishment of a new body and therefore staff and premises, which would entail salaries and running costs that would have to be covered by the state level budget. Considering the current situation in relation to public finances it is highly unlikely that the establishment of a new body would be viewed favorably in terms of the costs it would incur, regardless of the benefits that it may bring about. Moreover, the existence of an unwieldy public apparatus is not viewed favorably by the IMF or the World Bank, the organizations that governments in BiH have turned to in order to finance the deficits in their budgets.

In terms of 'technical capability', supporting staff would have to be hired in order to fulfill the tasks that would be allocated to this body.

In terms of 'political feasibility', one of the most important criteria when institutions at BiH state level are in question, it is most likely that it would be difficult to meet this criterion. It would be hard to gain the political will of the representatives of the three main ethnic groups in BiH to establish another institution for tasks related to security and intelligence, as this would most likely be seen as strengthening of institutions at state level, i.e. centralization, by some. This would not easily gain the support of all political actors.⁴⁹

⁴⁹ Most of the reforms, even those relevant for BiH accession to the EU have been halted for quite a few years now. Therefore, establishment of an additional body at state level would only serve as yet another chance to demonstrate unwillingness to compromise.

Regarding the criterion 'legal issues', establishment of this body would require changes in the Law on OSA, which would be improbable in view of the clear lack of support for reforms in the security sector. There is quite a good chance that due to the current constellation of strained relations between different parties, and also between ethnic groups, this attempt at a change of law would initiate other changes, which could end up eroding the essence of the Agency itself. Securing the necessary votes in the parliament for this change in the law could therefore be conditioned by additional, counterproductive changes, which should be avoided given the current stalemate in reforms in BiH.

Moreover, implementation of this policy option could require quite a lot of time, keeping in mind the obstacles that this policy might encounter in parliament in terms of adoption of changes in law, or in terms of recruitment of staff, provision of premises, budget for supporting staff and so on.

The examination of all of the criteria mentioned above paints a picture of quite a high level of uncertainty. Therefore it would be best to leave this option for a time when relations among



ethnic groups in BiH, and the political elites representing them, are less tentative, which would make this option more feasible. Until then, the bodies in charge of oversight and control of the Agency should resort to an option that meets more evaluation criteria and seems to be more feasible given the current structure of the political arena in BiH. This option is discussed in the next section.

3.3. Policy Option 3 - Coordination meetings of bodies in charge of control and oversight

Based on the research conducted in this study and taking into consideration the context in which OSA operates today, i.e. the political environment and complex institutional structure of BiH, this option is the most realistic in the given context, and is also implementable over a short period of time, despite some of the constraints that surround it.

This option proposes the establishment of coordination meetings between the most important bodies in charge of oversight and control of the Agency, i.e. Joint Committee, Executive Intelligence Board, Chief Inspector, and a representative of the Office for Audit of Institutions of BiH. As coordination among these bodies is currently almost nonexistent, this proposal of regular meetings of bodies in charge of oversight and control is put forward in order to make the process more efficient and streamlined than it is at the moment. In these meetings these bodies would report (verbally) to the Joint Committee. This introduction of a reporting segment would put additional pressure on e.g. the CoM to carry out duties prescribed by the law in terms of their responsibility towards the Joint Committee, which they have failed to carry out so far. Moreover, these meetings would serve to establish who has carried out the work that was prescribed by the law on the Agency. This would also expose those who permanently fail to carry out their duties in this regard. This would also strengthen parliamentary oversight as members of this committee are representatives of the people, and through reporting to the committee, the executive would actually be reporting to those endowed with legitimacy from the people.

In terms of the criteria used for the evaluation of the policy options, this would not be as costly as the previous option, as it does not require the establishment of a new body. This option would incur only slightly increased costs as it would only be necessary to provide resources to cover regular coordination meetings which would be held between these bodies. Technical capability is already there as within each one of these bodies there is a person – or a number of persons – in charge of dealing with OSA. Moreover, this option would be politically feasible as neither the proposal nor its implementation would require a broad consensus, and it would also not require any changes in legislation, as the activities foreseen by this proposal do not require any major legal undertakings. Furthermore, as obstacles related to political feasibility, legal issues and finances are reduced to a minimum, it should be possible to implement recommendations within a reasonable time frame. And finally, given the results of analysis regarding the above criteria, this policy option has a low level of uncertainty as most of the major obstacles present in the other two options are not present in this option, or at least not to the same extent.

Despite the advantages of this policy option, there are some shortcomings which should be mentioned as well. Should this coordination be agreed it still would not ensure full participation by all signatories. The last CoM provides a noteworthy example in as much as the Executive

Intelligence Board barely functioned under the previous Chairman of the CoM. Similar neglect and omissions might thwart efforts that would be invested in this attempt to reinvigorate oversight and control over OSA. This policy option is not perfect, of course; however it is probably the best one out there given the current environment and political context in BiH. It is additionally supported with recommendations that this study puts forward, resulting from or connected to this option. They can be found in the following sections.

4. Steps to Take on the Road to Improved Accountability of OSA

a) Memorandum on collaboration to be signed between bodies in charge of oversight/control
This is one of the main aspects of the implementation of the favored policy option. The memorandum would regulate the coordination of activities among the relevant bodies. Coordination would entail regular meetings in order to report to the Joint Committee and to discuss other issues related to the oversight and control of the Agency. The meetings would be held at least twice a year, and more often if necessary. These details would be regulated through the memorandum on cooperation. This option would give a forum for those involved in activities of control and oversight and would thereby help make their work more efficient and effective. The lack of cooperation between the CoM and the Joint Committee, for example, could be overcome should the CoM designate a member of the Executive Intelligence Committee to attend these meetings.

b) Bodies in charge of oversight/control to put pressure on OSA to establish Press Office
This undertaking would open the door of OSA to the public and the media, as well as those interested in OSA in a scientific manner. All statements and news releases prepared by this office would have to be authorized by the Director General, but this would still lead to a more open Agency and would establish a precedent which would be hard to revert even if the Director General were replaced by someone else. This office would facilitate regular web site updates, sending the message that OSA is active in its work. Furthermore, this office could work on preparation of the public report, which is the subject of the next recommendation.

c) Bodies in charge of oversight/control to ensure that OSA publishes public reports
In order for OSA to improve its performance with regards to accountability it would be necessary to publish public reports. These reports should not be regarded as revealing too much information about the Agency, but rather as giving an overview of the objectives of the Agency and fulfilling the intelligence platform adopted by the BiH Parliament. A sample report should first be provided by these bodies in order for the Agency's management to become acquainted with similar developments in the world. Appendix 1 of this document could serve that purpose. A clear deadline should be set for the publication of the report; e.g. a report for the previous year should be published by April of next year.

d) Legal assessment of laws governing oversight/control of OSA to be conducted
In order to avoid possible conflicts between existing laws, it would be necessary to propose amendments to the legislation in question. Input from all bodies would be beneficial as this would be a forum where all perspectives would be presented. In this way the current situation - in which the spokeswoman of the Audit Office of Institutions of BiH is not aware of proposed changes to laws regulating their activities - would be avoided.



e) The Audit Office of BiH to appoint auditor for particularly sensitive areas of OSA's operations
Changes in the legislation should remove the obstacle that the Audit Office of BiH is currently facing in terms of the auditing of the Agency. The changes should be made in accordance with the practice that exists in countries mentioned previously in the study: a special auditor would be assigned for the auditing of particularly sensitive areas of OSA's operations. This would ensure that OSA is adhering to the same standards as other institutions that are financed from state budget, and would additionally assist the audit office to fulfill its task of unhindered auditing. Prior to his/her appointment the special auditor should successfully pass security clearance conducted by the Agency.

f) Joint training to be organized for members of oversight/control bodies

Training should be organized for all members of all oversight/control bodies, not only the Joint Committee. If organized jointly, these trainings would also serve as a window of opportunity for members of these bodies to learn from each other in their dealings with OSA. Due to the fact that there is quite a high level of fluctuation of membership of these bodies, it would be beneficial if those who are more or less permanently appointed to these bodies were able to share institutional memory with new members, who will most likely continue to alternate in the future as well.

5. Conclusion

As mentioned earlier in the study, the law establishing OSA was – and still is – considered to be of high quality. However, sometimes things do not turn out in practice the way that they were envisaged, as was the case with this agency. One of the reasons control and oversight was introduced in the first place was to take these agencies from the controlling hands of unaccountable individuals and to put them under the watchful eye of those entrusted with the people's confidence through elections. However, even when all elements of a mechanism have materialized there is still a chance that not all of its notches will fall into place, and that is what happened with oversight and control of OSA. The little accountability that was exercised by OSA was mainly through the good will of the management of the Agency, not through their strict adherence to the provisions of the law. Bodies that are in charge of oversight and control have done very little - some of them even nothing - to improve the state of affairs in that regard.

This study aims to respond to this policy problem as well as to understand why the problem appeared in the first place. As a result, the research has led the author to recommendations that stem from the major policy option that is proposed as a solution to this problem. Improved coordination between the different bodies in charge of oversight and control should be introduced in order to tackle this problem successfully. Regular meetings between these bodies should provide checks and balances among them. This means that they would not only scrutinize the work of the Agency but would also hold each other accountable for their part of work related to oversight or control. Moreover, the Joint Committee, as a body comprised of representatives of the citizens of the country, would have a chance to streamline the oversight and control activities, and hopefully implement long-term solutions that would lead to an improved situation in that regard.

It seems that with the new Joint Committee, together with recent establishment of the new CoM some problems that exist in terms of this part of the intelligence work will be transcended successfully. The author of this study is hopeful that this research and recommendations will facilitate that process.

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Interview with Dr Armin Kržalić, Senior Researcher, Center for Security Studies, 29 November, 2011.

Interview with Muamera Numić, Secretary of the Joint Committee of BiH Parliamentary Assembly for Oversight of OSA, 4 January, 2012.

Interview with Ivona Krištić, Spokeswoman, Audit Office of the Institutions of BiH, 6 January 2012.

Interview with Johannes Viereck, Head of Politico-Military Section, Office of the High Representative in BiH, 13 January, 2012.

Interview with Dr Krunoslav Antolišom, President of the Council for Citizens' Oversight of Security-Intelligence Services of the Republic of Croatia, 14 May, 2012.



Appendix 1

Content of the Annual Report 2008-2010 of the Danish Security and Intelligence Service.

Danish Security and Intelligence Service Annual Report 2008-2010

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