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(UN)SUCCESSFUL ENFORCEMENT OF DEMOCRACY: THE CASE STUDY OF THE HIGH REPRESENTATIVE IN BOSNIA AND HERZEGOVINA

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Abstract: The peculiar case of a strong and powerful international presence in Bosnia and Herzegovina embodied through the institution of the High Representative, as well as its impact on democracy has already been approached from various perspectives. However, some questions still remain, most notably those concerning one of the fundamental and necessary elements of democracy – the effective power to govern in the hands of the elected representatives. Focusing on this issue, the article attempts to provide an answer to two questions: firstly, what were the implications of arbitrary imposition of decisions by the High Representative for the effective power to govern of the elected representatives and secondly, why is the effective power to govern in the hands of the elected representatives a crucial component for successful functioning of democracy in Bosnia and Herzegovina? By relying on the theory of Embedded democracy by Wolfgang Merkel and methodology based on the understanding and measurement of power by Max Weber and Robert Dahl, the author seeks to contribute to current debates about democracy and democratic consolidation in post-conflict societies. However, he also tries to assess the implications of the use of the Bonn powers and the arbitrary imposition of decisions by the High Representative on the effective power to govern by the elected representatives and explain the reasoning behind the very idea of governance by the elected officials for the successful functioning of democracy.

Key words: Bosnia and Herzegovina, international community, High Representative, state-building, democracy, the effective power to govern, elected representatives.

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INTRODUCTION

The four-year war on the territory of Bosnia and Herzegovina was officially brought to an end in the Wright-Patterson air force base near Dayton, Ohio, the United States on 21st November 1995 with the reaching of *the General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP)*. It is known as the Dayton Agreement, officially signed in Paris on 14th December, which provided the framework for the future state structure of Bosnia and Herzegovina. This Agreement strongly advocated and supported by the international community, mainly the USA and the EU member states, proposed the model of ethnically based power-sharing between three major ethnic groups - Serbs, Croats and Muslims. At this point, this was considered the only possible institutional arrangement which could ensure their democratic legitimacy as well as peaceful coexistence and preserving the fragile peace (Josef 2013, p. 218). The agreement created two entities with essentially different internal setup – the Republic of Srpska, with a strong central authority, and the Federation of Bosnia and Herzegovina, with a federal government and internal division into 10 cantons. Interestingly enough, internal institutional systems of the Entities allowed them to act as practically sovereign states, but their wartime constitutions, in the end, became incorporated into the Dayton Agreement and together with the Constitution of the state of Bosnia and Herzegovina currently represent an essential part of the complex constitutional framework (Ibid, p.288).

The agreement itself is a rather complex document, consisting of two parts (military and civilian) and 10 Annexes, each of them dealing with a particular issue relevant for the new state and its post-war context. This is all the more important bearing in mind that this agreement was ‘unlike any other peace treaty of modern times, not merely because it was imposed by powers external to the conflict, but because of the far-reaching powers given to the international community’(Chandler 2000, p. 43). Related to the issue of democracy, Annex 4 foresaw that Bosnia and Herzegovina is to be “a democratic state, which shall operate under the rule of law and with free and democratic elections”². In order to achieve this, the international community in Annex 10 devised an institution which would supervise and monitor the process of implementation of the civilian part of the Agreement - the Office of the High Representative (OHR). This institution should fulfil the objectives of international involvement, one of them being ‘to establish and guarantee the irreversibility of democracy and to thus prepare the country for self-government’ (Dimitrova 2005, p. 44). Although its authority was more or less symbolical in the political sphere in the first two years, this severely changed in December 1997 during the meeting of the Peace Implementation Council (PIC) in Bonn, Germany. At the

² *Annex 4* Article I (2) to the GFA, 35 I.L.M., p. 118.

meeting, the so-called ‘Bonn powers’ were promulgated and the PIC welcomed the OHR’s ‘intention to use its final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement to facilitate the resolution of difficulties by making binding decisions, as he judges necessary’ (PIC 1997). This uncontrolled freedom of interpretation of the situation has created unprecedented consequences for political development in Bosnia and Herzegovina. Moreover, each OHR has been more ruthless in the exercise of the Bonn powers than its predecessors. It is considered that the number of legally binding decisions imposed by the OHR has practically doubled in just a couple of years, from 242 during the mandate of Wolfgang Petrich to 430 under the rule of Lord Paddy Ashdown (Franić 2013, p. 50), strongly affecting undergoing democracy-building.

During its first years, the international actors led by the OHR have ‘loudly professed to work for the installment of peace and democracy’ (Dimitrova 2005, p. 57) in Bosnia and Herzegovina. However, the results have been rather ambiguous, which is why it is of utmost importance to explore whether the internationally advocated Bonn powers and their exercise by the OHR have managed to fulfil this goal. From today’s perspective, this will provide an insight into the period of a quite intense international presence and exercise of powers by the representatives of the international community compared to the current relatively silent one, but with growing domestic voices for its final termination which might leave democracy in Bosnia and Herzegovina for the first time fully in the hands of its main actors.

THEORETICAL CONCEPTS: STATE-BUILDING AND DEMOCRACY

Approaching democracy in Bosnia and Herzegovina is a rather challenging attempt due to its complexity and ambiguity. Indeed, Bosnia and Herzegovina as a state presents a unique case in the international community. Therefore, to understand why one has to rely on the theory of state-building first which can provide some answers.

Theory of state-building presents a sort of a roof theoretical basis for understanding the phenomenon of international intervention in the first place. According to this theory, state-building is an externally driven process which deals with three main aspects: security and peace, economy and political sphere in order to create a viable state with sustainable and self-governing institutions. After the end of the Cold War and during the unstable 1990s in almost every corner of the world, this essentially political paradigm was particularly significant for the war-torn territories as well as weak and failed states where the international administration was set up in order to foresee the process from scratch (Caplan 2004, pp. 53-54). However, what distinguished it from the original form of internal state-building was the fact that it was almost completely driven by a neutral third-party. It was

considered that ‘one possible answer to the problems of building good governance/democracy, states and markets is a disinterested party to take charge simultaneously. The disinterested party should be able to see where the common good of a society lies and have no interest other than construction of an effective state’ (Robinson 2007, p. 14). In other words, it should be totally free from any kind of ideological bias or affiliation. Notwithstanding the very high number of employed international agencies, organizations and institutions which were dealing with various issues and aspects of state-building in Bosnia and Herzegovina, it could be said that the international presence was headed by the High Representative, legally incorporated into the Dayton Agreement, who transformed from the role of its guardian to one of its most vigorous enforcers.

State-building agenda in Bosnia and Herzegovina has attracted both support and praises as well as criticisms.³ What, however, provides the basis for a mutual agreement between the two sides is the undisputed necessity for some kind of international presence and the fact that there are visible discrepancies between the theory and its implementation in practice. Issues which remain in the ‘gray zone’ are questions of legitimacy, accountability and (evaluation of) the effect of the international intervention in Bosnia and Herzegovina. According to Oliver Richmond, state-building has to be ‘more accountable, democratic and law-governed...than at present’ (Richmond 2013, p. 387), but that does not mean it should be completely revoked. It does, however, point to the intrinsic vagueness of the concept and its main components, one of them being democracy building and strengthening.

Understanding democracy presents a challenge of its own, due to the concept’s inherent intricacy and vagueness, but also because of various different definitions and theoretical perspectives approaching it. However, for the purpose of this research, the theory of *Embedded and Defective Democracy* by Wolfgang Merkel has been perceived as the most comprehensive one in terms of its explanatory power and postulates it provides for the extensive understanding of the issue in question. According to this theory, both internal and external embeddedness of a democratic regime should be achieved to provide for a stable consolidated democracy. However, only the factors of the internal embeddedness are considered to present the necessary preconditions inherent to the very concept of democracy. There are five of them: (1) electoral regime (2) political rights (3) civil rights (4) division of powers and horizontal accountability and finally (5) the effective power to govern (Merkel 2004). What is of particular concern for this research is the last one, namely *the effective power to govern*, which according to the author means ‘the necessity that the elected representatives are the ones that actually govern’ (Ibid, p. 41).

³ See e.g. David Chandler (2000), *Faking Democracy After Dayton*, London, UK: Pluto Press, pp. 154-181.

If this is not the case, then it presents a serious impediment to democracy. As Philippe Schmitter and Terry Lynn Karl argue, democracy is in danger if ‘state managers retain the capacity to act independently of elected civilians or even veto decisions made by the people’s representatives’ (Schmitter and Karl 1991, p. 9). Furthermore, they stress the necessity of self-governance by questioning the democratic character of the state system ‘if its elected officials are unable to make binding decisions without the approval of actors outside their territorial domain’ (Ibid). A similar conclusion has been reached by Juan Linz and Alfred Stepan who emphasize that a system cannot be considered democratic if ‘democratic institutions coexist with nondemocratic institutions outside the control of the democratic state’ (Linz and Stepan 1996, p. 15). These conclusions are connected to the understanding of the very nature of democracy which essentially means government for and by the people or, in line with modern developments, the governance of the elected representatives that derive their legitimacy from the people and are thus accountable to the people. Notwithstanding the significance of four other necessary elements and their interconnectivity for the development and consolidation of democracy, the Bonn powers have had the strongest effect on the right of the government officials to exercise their authority as legitimate representatives of the electorate.

Further on, the accountability of the elected representatives is an issue that requires to be at least a little more elaborated for the purpose of better understanding of the examples that will be explored. This aspect of democratic behavior is very significant for both its theoretical and practical implications. Theoretically speaking, I fully agree with the fact that ‘“people power” is the root meaning that provides the inspirational source of most understandings of democracy’ (Alexander and Welzel 2011, p. 271). In its essence, but also literally, democracy is a system of governance in which people should decide and, through the representatives they have elected, freely govern their lives. For the elected representatives, on the other hand, this means pursuing objectives which are in the best interest of those that elected them and responsibility for both success and failure in pursuing these goals. Some authors argue that the rules and conditions for the election of the representatives as well as their accountability to the people are precisely two features that distinguish democratic from non-democratic ones (Schmitter and Karl 1991, p. 5). However, the other side of the coin points to the fact that the same democratic norms and rules should also exist for the removal of the elected leaders from office. If they are elected by and accountable to the people, democratic mechanisms should also be followed in the opposite case - the dismissals from office. This is of particular significance for Bosnia and Herzegovina, which will be further elaborated in the empirical part of this research.

In order to conclude the theoretical approach of this research, it is important to address briefly two more issues. Firstly, it is crucial to take into consideration the

specific post-war context of Bosnia and Herzegovina. It is not a nation-state in the modern sense of the word, but rather a loose federation comprised of three ethnic groups with still disputed sovereignty due to the presence and exercise of the authority of the international community on its territory. From this perspective, it might not seem possible to apply the theory of embedded democracy in this particular case. However, the existence of the OHR has been agreed and accepted by the representatives of the internationally recognized Entities and incorporated into the framework of the Dayton Agreement (Banning 2014, pp. 262-263), just like their constitutions. The issue of legitimacy, nevertheless, remains acute since no referendum so far has been conducted in order to obtain the consent of the people (Karan 2012, p. 301). Anyhow, these arguments point to the fact that the OHR is a part of the system of Bosnia and Herzegovina based on the Dayton framework and therefore can be perceived as an undemocratic institution outside of the control of the elected representatives, but still coexisting with them in the same political system.

Secondly, I argue the very aim of the international presence has been precisely to assist in the creation of favorable conditions for the eventual consolidation of democracy. This can be understood from the wording of Annex 10 of the agreement⁴ and was multiple times addressed even by the OHR itself. High representative Wolfgang Petrich has on one occasion stressed to the leaders and the citizens of Bosnia and Herzegovina that ‘this is their country, these are their problems, and they bear the primary responsibility for sorting those problems out’ (Knaus and Martin, 2003, p. 68). This implies the role of the OHR in the process of democratization and democracy promotion in Bosnia and Herzegovina. Its engagement, however, was not intended to be understood as an impediment to democracy, but quite the contrary, as assistance on the way of achieving it, leaving the decision-making process in the hands of the elected representatives. Still, without going deeper into the reasoning behind this decision, its influence has increased significantly since 1997 and its power of interpretation and implementation of the Agreement was confirmed by the Peace Implementation Council. The implications of these powers for the effective power to govern of the elected representatives will thus be examined and elaborated in the subsequent chapters.

⁴ *Annex 10* Article I (1) to the GFA, 35 I.L.M. p. 147 states that ‘the Parties agree that the implementation of the civilian aspects of the peace settlement will entail a wide range of activities including...*the establishment of political and constitutional institutions* in Bosnia and Herzegovina’, further declaring in the second paragraph that ‘the Parties request the designation of a High Representative...*to facilitate Parties’ own efforts*...’.

THE EFFECTIVE POWER TO GOVERN: TRACING A METHODOLOGICAL ASSESMENT

If the main aim of this research is to explore the impact of the Bonn powers to the effective power to govern by the elected representatives, then the main question is how to approach this notion of the effective power to govern? How to understand it? What does it entail? Starting from the very beginning, it is possible to dissect this concept in two parts: *the effective power* and *to govern*. A causal linkage between them is quite clear - to have the effective power is a necessary precondition in order to be in the position to actually govern the state. This is of particular importance precisely because of the existing discrepancies between this theoretical aspect and reality. Questioning the effective power to govern of the domestic leaders in Bosnia and Herzegovina is hence also possible with all of its specificities, which was elaborated in more detail in the previous chapter. Here, however, I would like to approach this notion from a methodological perspective which will allow for the main questions of this research to be answered in a comprehensive and concise manner.

Therefore, it is important to define these two elements of the concept in order to leave out any possibility of future doubts about their meaning. Starting from the second element, *to govern* can be understood as governing the state, having legitimate authority over state issues or more concretely - being in control of the process of policy-making and administration. If perceived as the main objective and goal of various actors in the political sphere, what should be determined is who actually has the power to do so. Power, however, presents a rather obscure concept with a potential risk of various possible meanings attached to it and not even one that can be detected as the most correct one. This also presents a burden for the researcher, due to a large number of available theories for exploration. Under the necessity to make a clear and unambiguous decision for the purpose of the scientific utility of this research, my choices are Weberian understanding of the concept of power and Dahl's understanding of the means to measure and compare power.

Although considered to be primarily a sociological theory, Weber's theory of power is very much political in nature. Moreover, it is considered that "the very phenomenon of power is intrinsically linked to the definition of a modern polity" but also 'to our very understanding of many things political: the human as a political being, the origins of political action, the political aim of order and security from fear, and the sphere of government' (Guzzini 2017, p. 97). Power seems to be inherent to the very essence of the political system, being the final goal of permanent competition between various actors in society. However, the sociological side of this theory can be best observed from his definition of power. According to Weber, power means 'within a social relationship, every chance (no matter whereon this chance is based) to carry through the own will (also against resistance)' (Walliman 1977, pp. 232-233). And although his original apprehension rests

primarily on the relationship between individuals, I argue that this understanding can be wider considering other actors in the society. This is the point in which Dahl's conceptualization and operationalization of power steps in.

For Robert Dahl, power is more a practical tool than a theoretical concept with a 'higher' meaning. Albeit sometimes disputed, the usefulness of his theory precisely relies on its practical use and the possibility of empirical verification. Dahl understands power as a device in the process of decision-making, which can be in the hands of various actors depending on their prevalence in different policy areas (Guzzini 2017, p. 98). In his *Concept of Power*, Dahl (1957) argues several things: firstly, that actors in a relationship of power do not have to be only individuals but can also include groups, offices and governments, even nation-states; secondly, he provides for a clear methodology of assessing power, namely (a) the *base* of power, understood as the source or domain of power, such as opportunities, acts and objects which are passive and thus have to be exploited (b) the *means* of power, perceived as the instruments of exploitation (c) the *amount* of power, grasped as its extent, and (d) the *scope* of power, considering the responses of those influenced by it; thirdly, he states two necessary preconditions for a power relation to exist in the first place (1) a time lag between the actor who exercises power and the respondent and (2) a connection between the actor and the respondent; and finally, the means of assessing power can also be used for power comparison between different actors in society (pp. 203-206). However, Dahl also argues, albeit with much less certainty, that there should be 'a successful attempt by A to get a to do something he would not otherwise do' (Ibid, p. 204). I argue that this does not necessarily have to be the case in every situation, precisely because if a (respondent) does not act due to fear, for example (a decision not to act is also an act of some sort) or rebels against the decision of A (actor), but A still continues with its own decision, then it is quite obvious that A has power, albeit more in a Weberian sense. In spite of the above-mentioned obscurity of the concept which can present a potential risk, the liberty of interpretation of concepts or at least some of their elements should exist in order to provide for the possibility of their empirical usage. Even Dahl points to this when he states that 'the particular definition one chooses will evidently have to merge from considerations of the substance and objectives of a specific piece of research, and not from general theoretical considerations' (Ibid, p. 207). Accordingly, the purpose of this research points to a necessity of a 'methodological mix' in order to achieve the results which will be of high scientific value and significance.

The work of the OHR, especially during the 'Bonn period', has been quite extensive which is why it seems to be more practical to focus on some key aspects and decisions that had a lasting impact on state structure and democracy in Bosnia and Herzegovina. Therefore, empirical research will consider three aspects: (1) the emergence of the Bonn powers, their legal basis and background, and their

subsequent development depicted in (2) the discretionary removal from office of the elected representatives, probably the most notable expression of the denial of their power to govern democratically, and (3) policy shaping, such as the case of police reform, which was practically dictated by the OHR. These cases are chosen as the representative examples of the two powers that marked the Bonn period: the power to impose laws and the power to dismiss any public official from office (ESI 2000, p. 26). They will not only demonstrate the effect of the decisions of the OHR but also how its powers changed during time. The elaborated methodology will be applied to these concrete examples and the power of the OHR over and vis à vis the elected representatives and their power to effectively govern the state will thus be empirically examined.

EMPIRICAL RESEARCH: THE BONN POWERS AND THEIR PRACTICAL IMPACT

The Bonn powers: their emergence and the ‘Transmitter war’

The period of the Bonn powers has certainly been the period during which the international community headed by the OHR has left the lasting traces on political system and democracy of Bosnia and Herzegovina. During this period, the OHR has deeply penetrated in all pores of the political system of Bosnia and Herzegovina shaping it not only from the outside but also from the inside, leaving visible marks on its functioning as we know it today. However, to fully understand the implications of the Bonn powers as well as their significance, it is important to trace back the roots for their adoption in the first place.

A crucial moment came in December 1997 during the meeting of the Peace Implementation Council in Bonn, Germany, where the annual strategic review had taken place. This, however, was not the only meeting of such character. Formally speaking, the powers of the international community have been amended in several meetings of the PIC, most notably at conferences in Florence in 1996, Paris in 1996, Sintra in 1997, Bonn in 1997 and finally Luxembourg in 1998 (Chandler 2000, p. 53). Still, the Bonn meeting in 1997 is remembered precisely because of the fact that this was the conference in which the PIC issued the famous and frequently cited statement in the ‘Bonn conclusions’. The officials adopted the document, whose wording was used by the OHR as a legitimate but also as a legal basis for the use of its powers. In the Bonn conclusions, the PIC (1997) stated that:

‘The council welcomes the High Representatives intention to use his final authority in theatre regarding interpretation of the Agreement on the Civil Implementation 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 an agreement, which will remain in force until the Presidency of the 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 measure 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.’

One thing seems to be quite obvious from this text, and that is the very wide discretionary power of the OHR. What is even more astonishing is the fact that the OHR itself was not only the interpreter of the Agreement but consequently of its own authority and powers. This is important to emphasize for the purpose of tracing the legal background of these powers, which indeed do present a controversial case in international law due to the fact that there is no solid legal basis for their adoption. Although the OHR has frequently stated that these powers were delegated to it by the PIC, there are strong arguments suggesting this was not even possible due to the fact that there is no principal-subordinate relationship between them. And even if it were, the sessions of the PIC which is not even mentioned in any regard in the Agreement, are chaired by the OHR which points to an opposite direction of influence from the one necessary to exist in order for these powers to be delegated in the first place, making this relation far more complex from a legal basis for such a simplified statement (Banning 2014, pp. 293-296). Tim Banning even goes further arguing that this ‘must be seen as a tragic form of wishful thinking of the OHR’ (Ibid, p. 296). Additionally, the position of the institution of the OHR in the political system of Bosnia and Herzegovina has been accepted by the Constitutional Court, which has argued that the OHR by intervening in the political system in a particular case represents a substitute for domestic authority, therefore, acting as the authority of Bosnia and Herzegovina (Franić 2013, p. 48). Whatever be the case, there is no doubt that this resulted in ‘the ceding of...policy-making powers to Bosnian institutions...now to be dependent on a broad range of “benchmarks” to be determined by the international institutions themselves’ (Chandler 2000, p. 55).

Even the situation behind the decision of the PIC to promulgate the Bonn powers serves as an interesting case for analysis from the standpoint of power. The crisis, which became known as the ‘Transmitter war’, culminated in May 1997 when the international community was advocating for the independence of the media in the Republic of Srpska. At that time, the media was in the hands of the Pale fraction, close associates of Radovan Karadžić, the war leader of the Bosnian Serbs. This period has been openly described by the spokesman of the OHR as the time of

‘deliberate misinformation, inflammatory commentary, insulting language and highly based reportage’ (ESI 2000, p.24), all the result of the high level of political control over the media. Consequently, this crisis was one of the main topics of discussion of the Steering Board of the PIC in Sintra, when the OHR was encouraged to take all the necessary measures to ensure the enforcement of the Agreement. The letter of the OHR sent to Momčilo Krajišnik, the chairman of the board of Serbian Radio and Television (SRT) and member of the Presidency of Bosnia and Herzegovina, represents a good depiction of the rising power in the hands of this institution – he stated that ‘all this must stop – permanently... You should be quite clear that I will have the resources I need’ (Ibid, p. 25). Eventually, the transmitters were forcibly taken by the military forces, while the OHR put significant pressure on the members of the board of SRT, requesting their resignation as a condition for the return of the transmitters and in the end, ensuring the compliance of the Entities with the reform program of the media which would guarantee their neutrality and protection from political control.

Now, by applying suggested Dahl’s concept on power, we shall be able to draw the conclusion about the power of the OHR vis à vis the elected representatives in this particular case. First of all, the *base* of the power of the OHR can be clearly traced in the wording of the Steering Board of the PIC from Sintra, which declared ‘the High Representative has the right to curtail or suspend any media network program whose output is in persistent and blatant contravention of either the spirit or the letter of the Peace Agreement’ (Ibid). Moreover, the possibility to rely on military force presents a significant opportunity for the OHR to fully exercise its authority. This is precisely this passive source of power, as understood by Dahl, which has to be exploited to affect the behavior of others. Secondly, the *means* of power, in other words, the potential or actual use of the base, can be traced firstly in the open threat of the OHR to Momčilo Krajišnik, and secondly in the actual employment of the base, which is the holding down of the transmitters by the military forces under the request of the OHR. Thirdly, the *scope* of the power of the OHR is clearly seen in the compliance of the respondents, the resignation of the members of the board of SRT and acceptance of the suggested reform model by both Entities. Finally, the *amount* of power or its extent, which in this particular case is obviously very high if considered the probability that the respondents would not comply was far less possible than otherwise. All of this leads to a conclusion that the OHR has had power over the members of the board of SRT but also the elected representatives which, under pressure, had to accept something they otherwise would not, stripping them of their right to govern and decide by themselves. Finally, this case opened the door to the active use of the Bonn powers by the OHR in the political sphere for the next decade.

Appointments and dismissals of public officials

From 1997 and the Bonn conference of the PIC, the so-called Bonn powers have become the instrument used almost daily by the OHR for the purposes of implementation of the Agreement and ensuring peace in Bosnia and Herzegovina. The argumentation behind this practice emphasized the need ‘to speed the process of democratization and enable a measure of international disengagement’ (Chandler 2000, p. 37). The irony lies precisely in the fact that the rather aggressive top-down approach of the OHR was deemed as necessary in order to achieve self-government and democracy in Bosnia and Herzegovina. However, with time this became a highly controversial matter due to the rather low effects of the mostly short-term solutions with questionable legitimacy and accountability issues.

The number of decisions by the OHR has significantly increased through the years following their endorsement - according to some accounts, their number rose from 29 decisions in 1998 to 158 decisions in 2004, the year which also represents the peak of its powers (Franić 2013, p. 48). The subsequent period was marked by the slow but gradual withdrawal of the High Representative from the political system, although this did not mean the complete abandonment of its proactive approach. Decisions were made about various issues, some of them regarding citizenship, foreign investment, import duties, flag, coat of arms and the national anthem of Bosnia and Herzegovina, vehicle license plates, common currency, privatization, witness protection and property legislation (ESI 2000, p. 27), all of which left a profound impact on the functioning of the Bosnian state. From a standpoint of democracy, the problem lies in the fact that these decisions should essentially be adopted by the elected representatives themselves through and as a result of negotiations on all levels, which would provide stable consensus for their implementation in the future and respect in practice. However, this was at times regarded as impossible by the OHR, which is why it has relied on its power to discretionally decide to remove the elected representatives if they were, according to his own subjective interpretation, violating or obstructing the implementation of the Agreement.

It has to be noted that the power of the OHR to appoint the representatives cannot and should not be regarded as necessarily bad at all times, considering the specific context of the post-war situation in Bosnia and Herzegovina which was still burdened with nationalist rhetoric and nationalist leaders who were holding key power positions even several years after the war. According to some accounts, it is considered that the institutions in which the international community has had influence over the appointment of the staff, have performed much better than those in which the staff has been appointed by the nationalist parties.⁵ The same can be

⁵ An example of such an institution is the Federal Ombudsman, whose candidates have been selected by the Organization for Security and Cooperation in Europe (OSCE) (ESI 2000, p. 32).

said for the discretionary removals from office of the elected representatives, albeit this presents a more dangerous practice for the overall democratic climate and development of political culture in a highly dysfunctional society burdened by war memories. And although a certain number of those dismissed were indeed relying on nationalist and war rhetoric causing a potential threat for the stability of the post-war Bosnia and Herzegovina, many officials and elected representatives were still removed for rather vague reasons, such as the frequently used notion of representing ‘the obstruction to the implementation of the Dayton Agreement’. The number of dismissals has steadily increased since 1997, amounting to a total of 187 dismissals in more than a decade (Franić 2013, p. 49). This has affected officials on all levels, both local and cantonal as well as on the level of Entities and state. An illustrative example is the removal of Nikola Poplasen, the President of the Republic of Srpska in March 1999 for not accepting the majority government of Milorad Dodik after the parliamentary elections the year before. The OHR stated that President Poplasen has ‘abused its power, blocked the will of the people and...obstructed the implementation of the General Framework Agreement for Peace’ (OHR 1999). This decision consequently created more damage than benefit for the political situation in the Republic of Srpska, since the new president was not elected for more than a year, resulting in a new legislative decision of the OHR which stated that ‘when there is a vacuum in the RS Presidency...the signature of the RS President on the adopted laws is not required’ (OHR 1999a). This case serves as a useful example of both powers frequently used by the OHR – the power to dismiss public officials and the power to legislate. Moreover, it represents a blatant overriding of all rules and procedures of both appointments as well as accountability of the elected representatives to the electorate. It indeed is the manifestation of the power of the High Representative over the elected public officials, which undoubtedly shows that their mandates were, despite the common democratic practice, in his own hands and dependent on his own discretionary interpretation of their actions without any chance of legal appeal against it.

Applying Dahl’s model of power, a similar conclusion can be reached as in the first suggested example. The *base* of power of the OHR can be traced in the wording of the Bonn conclusions, more concretely part XI, point 2, article (c) which states that in order to secure the implementation of the Agreement, the High Representative may take ‘actions against persons holding public office or officials... 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’ (PIC 1997). Consequently, the *means* of power is the potential or actual use of the base, which is the right to unilaterally decide to remove public officials from office or impose significant pressure on them by adopting sanctions or penalties, mostly of a financial character. The *scope* and the *amount* of power have been quite exceptional in these cases – there has been silent or almost no objection by the removed public officials.

The inability but also lack of legal or any other kind of possibility to react against the decisions of the High Representative points to the unquestionable and unchallenging power of this institution over the elected representatives in the political system of Bosnia and Herzegovina, stripping them once again of their legitimate and necessary effective power to govern.

Police reform and the dawn of the Bonn powers

The reform of the police and the forces of public order represents probably one of the most important reform processes in Bosnia and Herzegovina. It is suggested that ‘the OHR has been more engaged on police reform than other issues’, which does seem to be understandable because the police have during the war served as ‘a key ethnic cleansing instrument’, and despite some improvements, continued to be ‘highly politicized’ in the years after the war (ICG 2007, p. 14). On the other hand, this case, compared to the ‘Transmitter war’, shows the slow but ongoing process of weakening of the Bonn powers of the OHR and growing resistance against its top-down approach regarding the imposition of laws and their enforcement.

The request for the police reform came from the European Union (EU) in 2004 for the purpose of bringing Bosnia and Herzegovina closer to European standards in this field. According to the European Stability Initiative (ESI), the EU left quite enough space for negotiations between the parties about the model to be adopted. There were three possibilities, ‘all in line with the best European practice’ and to be achieved through ‘the domestic ownership of the process’ (ESI 2007, p. 4), but this did not prevent the High Representative to once more interpret the situation unilaterally and take matters in his own hands. Only three days after the EU report, the OHR has made use of its Bonn powers and imposed a Police Restructuring Commission with a clear mandate – to achieve a centralized model of structure and control over police forces – and without a possibility for any further discussion (Ibid, p. 5). The OHR has once again taken the power to effectively govern the state from the elected representatives, i.e. the power to have full ownership of the process of decision-making, which is even more important in such a sensitive case.

However, there is a notable difference compared to the other two mentioned cases that passed rather smoothly and without voices raised against it. This process almost immediately came to a stalemate due to the open opposition coming from the government of the Republic of Srpska, which was against any kind of centralization or cross-entity police forces (Belloni 2009, p. 364-365). The situation continued for the next three years during which an important change occurred – the mandate of the international community and actions undertaken by Lord Paddy Ashdown, former OHR (2002-2006), were questioned by his successor Christian

Schwarz-Shilling (2006-2007) who openly called the actions taken by his predecessor a form of ‘colonization’ and argued that the authority of the High Representative should be exercised with a clear mandate and in clearly defined boundaries and situations (Franić 2013, p. 50). This paved the way for the gradual weakening of the powers of the OHR and finally opened space for stronger voices opposing its rather aggressive top-down approach.

Although the analysis of the international context in the second part of the first decade of the 2000s requires a separate detailed and exhaustive research, it has to be at least briefly noted that these years brought significant changes, with the focus shifting from Bosnia and Herzegovina to other important hotspots. Indeed, after more than 10 years from the Dayton Agreement, Bosnia and Herzegovina was considered a rather resolved question which on the other hand explains the loose interest of the international community in its internal affairs controlled and handled in large part by the High Representative. On a regional level, the diplomatic attention of the EU and other major players was turned to the issue of settling the final status of Kosovo to preserve the fragile stability of the region (Belloni 2009, p. 365). Globally speaking, however, the differences were much more profound – the continuous strengthening of NATO on one side and Russia and China on the other, together with rising tensions between them, best depicted in the antagonisms and eventual open armed conflict in Georgia (Bowker 2011, pp. 199-203), signified a major shift in the strategic priorities of these powers, thus leaving Bosnia and Herzegovina in the shadow.

Consequently, the process of reshaping the mandate of the international community and the High Representative simultaneously affected the blocked process of police reform. After Schwarz-Shilling, his successor Miroslav Lajcak proposed another deal to the parties. However, this was equally rejected by the government of the Republic of Srpska, headed by Milorad Dodik, who threatened that the representatives of RS would resign from their positions in state institutions if the High Representative was to use its powers to dismiss the elected representatives (ESI 2007, p. 7). And even though the OHR had to eventually rely on his powers to legislate due to resistance of representatives of the Republic of Srpska to comply amending Law on the Council of Ministers, which would allow for the decision to be adopted with a vote of only one member of the constituent peoples, the strong objection, in this case, brought concrete results – the High Representative had to accept a mild compromise which meant no cross-entity police regions and essentially a failure of the whole process (Belloni 2009, p. 365).

This example, however, from the perspective of power deviates from the previously suggested cases. Examined through Dahl’s concept of power we can see that the base and means of power have remained rather stable and in the same form as in the previous cases. The *base* of power is rather clear, established in the Bonn conclusions, part XI, article 2, point (b) which gives the right to the High

Representative to adopt interim measures effective immediately in the cases when there is no agreement between the parties. At the same time, the *means* of power is, as in the two previous cases, the potential or actual employment of the base, which in this case is the endorsement of a particular model of police reform by the OHR and creation of the Commission for its achievement. What is, however, different is the *scope* and *amount* of power – the decision of the OHR has produced open resistance rather than silent compliance and thus did not achieve the set goal, despite further unilateral decisions, which clearly shows how the responses of the respondents changed, consequently lowering the amount of power of the OHR or the probability of compliance of the respondents with his decisions. From Weberian perspective as well, it can be argued that the High Representative has lost its power over the elected representatives by not being able to exercise its own will against resistance and having to take it into account. Still, the fact that only the OHR itself was able to challenge its own powers shows their uncontested character which has had a huge impact on the power of the elected public officials to freely govern the state.

CONCLUSION

The main focus of this case study has been on the implications of the Bonn powers of the High Representative on the effective power to govern by the elected representatives as one of the five major elements for stable and embedded democracy in one society, or more concretely Bosnia and Herzegovina. This has been elaborated on three presented examples: (1) the ‘Transmitter war’ (2) the dismissals from the office of the public officials and (3) police reform, as an example of one of the major reform processes started during the peak of the so-called ‘Bonn period’. However, these examples were chosen not only as representative cases of the two powers frequently used by the OHR - the power to legislate and the power to dismiss public officials - but also as cases which demonstrate the power of the High Representative in a particular period. The ‘Transmitter war’ was the very case which provided for the base for the promulgation of the Bonn powers in the first place and it can be seen as the first unequivocal expression of the OHR’s powers over the public officials; the dismissals from office of the elected representatives represent a practice that has been present from the beginning to the end of the ‘Bonn period’, albeit with different intensity, but can still be seen as a constant expression of the OHR’s powers; and finally, police reform, which is an example of a major reform project which coincided with the changed perception about the very mandate of the High Representative and open objection with its top-down approach and imposed solutions, presenting the beginning of the end, the slow but gradual weakening of its powers.

The presented methodology of Robert Dahl and his concept of power and its empirical assessment on these three examples have indeed shown that the High Representative has, with its exercised authority taken away the effective power to govern from the elected representatives and thus has impeded the development of democracy and self-governance in Bosnia and Herzegovina. As demonstrated, the High Representative did not hesitate to intervene when it deemed necessary, arbitrarily deciding when a breach of the Agreement has occurred and imposing solutions with immediate effect without leaving enough time for any kind of negotiations, let alone consensus among the interested parties. Additionally, it did not leave time or possibility for appeal or any kind of legal remedy against its decisions. This was the most salient in the first years of the Bonn powers but has changed during the time when it became visible that the effects produced were not always stable and persistent. It, however, left an indelible track on the self-governance in Bosnia and Herzegovina which was postponed and neglected for mostly short-term political objectives.

For the purpose of clarifying the argument, it might be useful to consider a rather comprehensive and coherent analysis of this very issue addressed by the Venice Commission of the Council of Europe already in 2005, which examined in detail both powers of the High Representative and their practical impact. And despite their recognized benefit and necessity at times, the Venice Commission concluded that ‘the democratic principle of sovereignty of the people requires that legislation is adopted by a body elected by the people’ which is automatically revoked ‘if legislation is adopted by another body’ (Venice Commission 2005, p. 22), more so if that body is highly undemocratic in character. Furthermore, the Venice Commission inferred that ‘the termination of the employment of a public official is a serious interference with the rights of the person concerned’, the same being in cases of the dismissals of elected representatives when ‘the rights of their voters are also concerned’, suggesting that it should be based on ‘serious grounds with sufficient proof and the possibility of a legal appeal’ (Ibid, p. 23). If an institution of such significance and prestige in the international sphere, especially in terms of setting the standards for democracy and the rule of law, comes to this kind of a conclusion, it certainly does point to the gravity of the involvement of the international community, embodied in the powers of the OHR in the political system of Bosnia and Herzegovina.

All in all, the aforementioned suggests that the arbitrarily imposed decisions of the High Representative were continuously taking away the power of the elected representatives to effectively govern the state. However, it is even more important to address now the question why this is seen as something necessarily detrimental to the stability of one political system and how does it affect the overall conditions for further democratic development in Bosnia and Herzegovina. Above all, this relates to the issue of the majorly distorted behavior of the elected representatives.

Removing the process of decision-making from the elected bodies and placing it in the hands of another non-elective body has resulted in high dependency of the elected representatives on some other source of power in society, in this case the OHR, which is making decisions on their account. It is true when stated that ‘the incentive of Bosnian politicians is to acquiesce quietly in international demands, rather than to develop an independent policy agenda’ (ESI 2003, p. 3) precisely because they are aware of the fact that their jobs and positions depend on their compliance with the suggested policy solutions coming from the High Representative. On the other hand, by favoring the so-called ‘moderate’ political actors while trying to discredit the nationalist ones, the OHR has either intentionally or unintentionally made them dependent on its own powers and less aware of their own responsibility. Furthermore, ‘if they are encouraged to believe that they enjoy unconditional support in their fight against nationalist parties, they have no need to engage in compromise and consensus-building with their political opponents’ (ESI 2001, p. 8) creating a vicious circle of dependency and ultimately no benefit for others than themselves. Therefore, only if the political candidates are left to freely compete with their opponents without some of them being favored by another outside body will they have the incentives to actually fight for the votes of the people and consequently, if they win, justify their political support with decisions made for the benefit of the electorate. Moreover, only then will they be able to have stable negotiating positions, allowing them to reach compromises and consensus on issues of high importance for society. The decisions emerging from discussions involving political actors representing the majority of social strata will thus be stable, persistent and will ensure long-term solutions to the best interest of the voters. Finally, only if the composition of the post-conflict state is decided by the inhabitants of that state, thus ensuring the ownership of the peace process, only then its implementation will be successful (Von Hippel 1999, p. 204).

To conclude, this research has surely raised some new-old questions that ought to be explored in the future. One of them is the *legitimacy* of the powers of the High Representative, an issue that has been brought up several times but continues to present a pertinent matter for many scholars and academics. However, what might be interesting to see is the new aspect of research of the old problem. One possible way to approach it could be through Max Weber’s theory of legitimacy and authority, which may provide new insights into this subject. The same goes for the question of *accountability* of the international power structures in Bosnia and Herzegovina and its fundamental contradiction – while seeking to enhance accountability of domestic structures, they remain unaccountable themselves in many ways (Caplan 2005, p. 464). These two problems represent yet just another part of a much more complex puzzle. Nevertheless, their unquestionable importance points to the need to approach them in a comprehensive and coherent

way to achieve, together with this research, a complete and clear picture of the international presence and its powers in Bosnia and Herzegovina.

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(NE)USPEŠNO SPROVOĐENJE DEMOKRATIJE: ISTRAŽIVANJE SLUČAJA VISOKOG PREDSTAVNIKA U BOSNI I HERCEGOVINI

Apstrakt: Jedinstvenom slučaju snažnog i moćnog međunarodnog prisustva u Bosni i Hercegovini, otelotvorenog kroz instituciju Visokog predstavnika, kao i njegovom uticaju na demokratiju je već uveliko pristupano iz različitih perspektiva. Ipak, neka pitanja još uvek ostaju, a pre svega ona koja se tiču jednog od fundamentalnih i neophodnih elemenata demokratije – efektivne moći upravljanja u rukama izabranih predstavnika. Fokusirajući se na ovaj slučaj, članak pokušava da pruži odgovore na dva pitanja: prvo, kakve su implikacije proizvoljnog nametanja odluka od strane Visokog predstavnika za efektivnu moć upravljanja izabranih predstavnika i drugo, zašto je efektivna moć upravljanja u rukama izabranih predstavnika ključna komponenta za uspešno funkcionisanje demokratije u Bosni i Hercegovini. Oslanjajući se na teoriju Ugrađene demokratije Volkfanga Merkela i metodologiju baziranu na razumevanju i merenju moći Maksa Vebera i Roberta Dala, autor teži da doprinese aktuelnim debatama o demokratiji i konsolidaciji demokratije u post-konfliktnim društvima, ali takođe da proceni implikacije upotrebe Bonskih moći i proizvoljnog nametanja odluka od strane Visokog predstavnika na efektivnu moć upravljanja izabranih predstavnika, kao i da objasni razloge koji stoje iza same ideje o upravljanju od strane izabranih zvaničnika za uspešno funkcionisanje demokratije.

Ključne reči: Bosna i Hercegovina, međunarodna zajednica, Visoki predstavnik, izgradnja države, demokratija, efektivna moć upravljanja, izabrani predstavnici.

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