

The Role, Expectations and Challenges of High Representative in Bosnia and Herzegovina

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Abstract: *Bosnia and Herzegovina (BiH) longs for stability and development as it continues to be held back by the dysfunctional political system, weak institutions, rampant corruption and ethnonationalist rhetoric. It is caught in a vicious cycle of crises generated by some of its political elite that has hampered BiH's social, political and economic progress. The international community, including the Office of High Representative (OHR), has taken on the responsibility of safeguarding the rights of three Constituent people and Others, ensuring peace prevails in BiH (OHR 2022). In particular, the OHR was established to drive reforms and institution-building in BiH but has often been hobbled by inadequate and reluctant political support. Considering the uniqueness of the High Representative's position in BiH, further research is needed on its role, evolution, impact and acceptance. The research applies the role theory to examine the HR role (i.e., conception, performance and recognition). The OHR continues to play an essential role in BiH and cannot be closed until BiH makes significant progress toward state-building, which includes establishing strong institutions and addressing the democratic deficit, promoting a common national identity and the interethnic trust.*

Key words: *Office of High Representative, OHR, High Representative, Bonn Powers, Bosnia and Herzegovina, international community*

Introduction

Over the past few years, BiH has faced enormous challenges to reconciliation, state-building and Euro-Atlantic integration. Bosnia and Herzegovina as a state and the Dayton Peace Agreement (DPA) find themselves under the greatest existential crisis and tumultuous times since the ending of the war in 1995. On

paper, BiH has the necessary elements to blossom into a thriving and inclusive democratic country. Its institutions ‘correspond to an ideal-typical consociational democracy’ as ethnic quotas guarantee ethnic representation at all levels of government (Belloni 2006: 336). Regrettably, BiH is a highly decentralised country struggling with various problems, including political deadlocks due to its regime.

Merdžanović (2016) describes the BiH regime as an ‘imposed consociationalism’ as external actors, the international community, established it. Unfortunately, the consociationalism in BiH appears to work only when the international community exerts influence. Dijkstra and Raadschelders (2022) describe BiH as a controlled democracy since the Office of High Representative, with the support from the United States and European Union, helps keep BiH together as it experiences internal divisions and some external efforts to disrupt the already tenuous union. Cooper (2009) has introduced the notion of liberal international democracy, which not only consists of democratic (i.e., people elect their representatives) and liberal elements (i.e., protection of human rights) but also includes the international element (i.e., international institutions which protect the order when needed).

Following the end of the war, the international community was heavily involved in BiH. The Office of High Representative (OHR) was established to preserve peace, protect human rights and promote the democratic process (Szewczyk 2010). Unfortunately, BiH has been unheeded for years, resulting in the re-emergence of radical views, unsuccessful reforms and calls for secession. Thus, BiH remains a fragile state as it is governed by many demagogues and ethnic entrepreneurs who choose to keep ethnicity at the forefront of their political agenda instead of focusing on improving the lives of BiH’s people and achieving progress toward Euro-Atlantic integration. Some BiH political elites have either been inept or unwilling to internally resolve its differences, making it difficult for BiH to move forward.

Recently, the political elite in one of BiH’s two entities, Republika Srpska (RS), have pursued pernicious aims with the unilateral withdrawal from agreements regarding the transfer of competencies to the State. By opting out of the constitutional framework and taking on the competencies of a State, RS would dismantle state institutions and undermine the sovereignty and territorial integrity of BiH. These actions would be detrimental for BiH as a State as RS would achieve a *de facto* secession. Moreover, the Bosnian Croats have continuously called for changes to the electoral law, have stressed dissatisfaction among the Croat population and have favoured the idea of creating a third Croat entity in BiH.

The aim of the article is to provide a comprehensive understanding of the role of the High Representative (HR) and contribute to the study of the international community’s involvement in BiH. The article employs the role theory

to explore the uniqueness of the HR position, its role, status and legitimacy in BiH. I pose the following three research questions: Has HR's role evolved, and how has it been accepted in the last 27 years in BiH? What has (O)HR done to help BiH become a viable and safe country? Has the (O)HR been a stabilising or disturbing factor?

The article starts off with the theoretical framework and introduction of the role theory. It moves on to the Dayton Peace Agreement for the reader to gain a better understanding of how the role of the HR came to exist, further evolved and how HRs performed in BiH. Furthermore, the article will address the challenges faced, current developments and the perceptions of High Representatives by domestic and international actors. To gain a comprehensive understanding of the (O)HR's role and its past and present activities, I examined the High Representatives' decisions (1998–2022), the High Representatives' reports submitted to the Secretary General of the United Nations¹ and the RS Government's reports to the UN Security Council (2009–2021).²

Theoretical Framework

The role theory is applied to examine the HR's role conception, performance, prescriptions and recognition. Levy (1952: 159) defines a role as 'the social position given to the individual... These roles involve obligations, rights, and expected performances of the individuals who hold them' (159). Biddle describes a role as a 'behavioral repertoire characteristic of a person or a position; a set of standards, descriptions, norms, or concepts held for the behaviors of a person or social position; or (less often) a position itself' (Biddle 1979: 4). Lastly, Bengtsson and Elgstrom (2012: 94) define roles as 'patterns of expected, appropriate behaviour'. According to Biddle (1979: 4), role theory studies 'behaviors that are characteristic of the person within contexts and with various processes that presumably produce, explain, or are affected by those behaviors'. Moreover, Biddle and Thomas (1966: 7) stress the linkage between individual behaviour and social structure.

Three components define a role: role conception, expectations and performance. These components are closely linked but do not concur with one another (Aggestam 2004). While the role expectation portrays a role prescribed by other actors who expect the role-beholder to enact, the role conception represents the normative expectations of the behaviour by the role-beholder. Lastly, the

1 Out of 61 reports that the High Representative (HR) submitted to the Secretary General of the United Nations, the article examined 40 (i.e., reports 1–20 and 42–61) to shed light on the type of HR's actions immediately following the end of the war and HR's actions in the last decade.

2 In 2009, the Government of Republika Srpska submitted its first report to the United Nations Security Council (UNSC). During the period 2009–2021, RS submitted 27 reports to UNSC.

role beholder's actual behaviour (i.e., decision-making, action) demonstrates the role performance in the social context (Aggestam 2004).

The role theory can be applied to the HR's role in BiH as it focuses on the interaction between the agent and structure, which in BiH is the interaction between the international (OHR) and domestic (BiH political elite) agents and complex post-Dayton BiH. As Aggestam (2006) states, the sources of roles can be found in a nation's history, culture and social characteristics. The OHR stems from the Dayton Peace Agreement, which ended the war in BiH in 1995. The High Representative's role has evolved throughout the times.

The role conceptions between High Representative and some local and international political elite and actors have varied. While the High Representatives' conception of their role in BiH appeared to be consistent for the most part, the support for the OHR and expectations from some domestic and international actors have differed. This has most likely affected HR's decision-making, knowing that HRs might not receive the needed support from other members of the international community. In addition, the social and political environment in BiH, and the world in general, have influenced HR's performance and level of involvement.

The Role of a High Representative has often been contested. Rosenau (1987) addresses the difficulties experienced by individuals involved in decision-making (e.g., foreign policy decisions) due to conflicting role expectations placed upon them by different actors. Individuals' understanding of an HR role, performance and acceptance is congruent with the HR's power and legitimacy.

Barnett and Finnemore (2004: 29) argue that the power of any international organisation is 'produced by the authority that constitutes them... this authority enables them to use discursive and institutional resources to induce others to defer to their judgment'. Moreover, Barnett and Finnemore (2004: 29) define power as the 'production, in and through social relations, of effects that shape the capacities of actors to determine own circumstances and fate'. Barnett and Finnemore (2004: 20) describe authority as a social contract that 'requires some level of consent from other actors' (20). The High Representative's power is directly tied with the authority it has as the representative of the international community (Gilbert 2012).

According to Wagner (2005: 1), legitimacy represents 'subjective, normative convictions that usually differ between cultures, and there has been a plurality of democratic traditions and hence understanding of democratic legitimacy within the European Union'. Moreover, the domestic actors' perceptions of the role of HR, can influence its success or failure. Hence, HR's legitimacy is linked to its 'ability to represent, speak, and act according to the interests of the people(s) of Bosnia' (Gilbert 2012: 489).

Having authority and legitimacy is important for any actor trying to make a change as it gives an actor recognition and credibility. The High Representa-

tive's role was ascribed more legitimacy and power by having the Bonn powers to arbitrate civilian implementation obstacles and to levy sanctions and laws deemed essential for BiH's progress. However, the consistency of the use of power can influence individuals' views and acceptance of the authority.

Some domestic and foreign political elite have openly questioned High Representatives, their authority, role and legitimacy. Some label the HR's legitimacy as being negative legitimacy because it functions based on values, norms and customs not shared among BiH's constituent people (Dijkstra – Raadschelders 2022). Since the Office of High Representative was established by the Dayton Peace Agreement (DPA), a closer look at the DPA will provide a deeper insight into the importance of the HR's role.

The Dayton Peace Agreement

The Dayton Peace Agreement (DPA) was negotiated in Dayton, Ohio, U.S.A., on 21 November 1995 and formally signed in Paris, France, on 14 December 1995 by the conflicting parties in BiH, as well as the representatives from the Federal Republic of Yugoslavia³ (i.e., made of Serbia and Montenegro at that time) and the Republic of Croatia. By signing the DPA, the neighbouring countries confirmed that the war was a regional affair, which required regional cooperation to achieve peace. Unfortunately, the DPA did not address the neighbouring countries' direct participation, looking at the war as merely an internal, ethnic war (Mlinarević – Porobić 2021).

The DPA's focus was on ending the war, not creating a sustainable BiH (Toal 2006). It allowed the territorial division of BiH into two nearly ethnically homogenous entities: Republika Srpska (with a mainly Bosnian Serb population) and the Federation of BiH (with Bosnian Croats and Bosniacs). Both entities represent a constitutional part of the state, and neither entity has a right to secede (OHR 2022). In addition to these two entities, BiH has the Brčko District, a multi-ethnic, self-governing administrative unit with an international supervisor.⁴

The BiH Constitution, the Annex IV of the DPA, has bequeathed a complex and incompetent four-tier governance (i.e., State, Entity, Canton and Municipal levels). Furthermore, the BiH Constitution divided competencies between the BiH State and its two entities. The distribution of powers and ownership of specific competencies remain points of contention and complex negotiations that slow down the necessary reforms. Thus, the international community has been tasked to define and construct the path for BiH through this uncharted

3 After Montenegro declared independence from Serbia, the Republic of Serbia positioned itself as the FRY signature at the DPA (Mlinarević – Porobić 2021).

4 Due to its strategic position, Brčko became a separate administrative unit as it divided Republika Srpska into Western and Eastern parts.

territory called the DPA that beckoned to them as the only possible solution to end the war. Close to 27 years later, BiH and the international community still work on implementing the DPA but struggle to make necessary reforms for an EU membership.

In the DPA, the ‘constituent people’ (i.e., Bosniaks, Croats and Serbs) were given the veto powers to protect their own ‘vital national interest’ and block decisions that would threaten them. The vital national interests were never clearly defined, leaving room for potential misuse of the veto powers in the name of protection of vital national interests. On the other hand, minority groups were heavily marginalised as they lacked political participation and representation opportunities. In 2009, the European Court of Human Rights (ECtHR) ruled that the Constitution of BiH, Article 4 of the DPA, violates fundamental human rights and discriminates against individuals belonging to groups other than the constituent people. While the DPA ended the war in BiH, it also created ‘a discriminatory and dysfunctional institutional framework that entrenched the marginalization of minority communities and led to broad deprivations of their rights’ (i.e., ECHR Cases: 27996/06 and 34836/06; discrimination based on ethnic affiliation, denial of the right to stand for election to the Presidency of BiH and the House of Peoples) (Minority Rights Group International 2015: 3).

Despite its shortcomings, the DPA became a blueprint for BiH’s reconstruction. It presented the constitutional framework for establishing a sovereign state and determining its political, social and economic system. However, due to the DPA’s multi-layered and fragmented institutional setup, implementing the DPA’s eleven annexes has not been easy.

The DPA is often challenged by BiH political leaders and interpreted in a way that best suits their interests. For example, Biljana Plavšić, the acting president of the RS in 1998, rejected additional competencies for the BiH state. She argued that these competencies were not included in the Constitution and would not accept Madeline Albright’s, U.S. Secretary of State, call to strengthen the state (BiH) in the ‘spirit of Dayton’. Plavšić stated, ‘we do not want to implement “the spirit of Dayton” but “Dayton”’ (as cited in Bieber 2006: 29). Since then, the RS political elite have continued to use the phrase ‘original Dayton’. Current High Representative Schmidt, as the responsible interpreter of the DPA, acknowledged that the use of the phrase ‘original Dayton’ by the RS political elite was disrespectful to BiH’s Constitution (OHR 2022).

Political elites from RS and the Federation of BiH have mutually agreed and approved the reforms and transfer of competencies from entities to the state level in the past. With the transfer of competencies to the State level (e.g., the state control of the armed forces), BiH’s entities lost their formal ethnonational dominance (Bieber 2006). With heightened ethnonationalist, warmongering rhetoric, some political elites are trying to overturn previously agreed

competencies,⁵ which would lead to BiH's downward trajectory and bring RS closer to its independence from BiH. Considering the current political situation, it is necessary to examine the role and impact of the Office of High Representative and its authority in BiH.

The Conception and Evolution of the Role of High Representative

The Office of the High Representative (OHR) was established through the General Framework for Peace in December 1995 and supported by the United States and EU countries. More specifically, Annex X of the DPA, Agreement on Civilian Implementation of the Peace Settlement, created the position and specified the duties of the High Representative in BiH. Article II (1) authorises the High Representative (HR) to 'facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation' (DPA Art. II (1) (d) 1995: 112). Article V of Annex X summarises the High Representative's role and authority. It states that the HR oversees the implementation of the civilian aspect of the Dayton Peace Agreement and has 'the final authority regarding interpretation of this Agreement on the civilian implementation of the peace settlement' (DPA 1995: 114). The following action verbs describe the HR's role: to monitor, maintain, coordinate, facilitate, participate, provide guidance, attend and/or be represented at meetings and report. The international community planned for the OHR to have a limited role as an international coordinator for civilian efforts.

Following the end of the war, the HR played a role of coordinator and facilitator between two entities, helping BiH's Presidency function (i.e., organising the meetings, writing meeting minutes, organising the transportation of BiH's members of presidency) (Dijkstra – Raadschelders 2022). The High Representative (HR) had limited authority and resources (Caplan 2007). More specifically, the High Representative struggled to move the peace process forward without having legally binding powers. The international community's decision to take a decentralised approach to the implementation of the civilian aspect of DPA showed no significant results two years after the war, leaving 'the OHR with a relatively marginal coordination role' (Recchia 2007: 15). It became clear that the international community had to strengthen the HR's mandate. The budget, personnel and power have increased.⁶ Thus, during the period from 1995 to 2005, the HR's role evolved as it became evident that there was the need for

5 Milorad Dodik, a Serbian member of BiH's tripartite presidency, has advocated for entities to have their own 'State Agency for Medical Equipment and Drugs', armed forces and police.

6 When the OHR was established, it had five staff members and a budget of 300,000 German Marks. In 2002. The OHR had a budget of € 25 million and 700 staff members (OHR 2021), which was significantly decreased by 2020–2021 when the OHR employed 89 (i.e., internationals and 76 nationals) and had a budget of €5.3 million (Dijkstra – Raadschelders 2022).

increased international engagement, an extension of the HR's responsibilities and the creation of the Bonn powers. Its evolution also directly influenced its direct involvement in BiH.

At the Bonn Peace Implementation Conference (PIC), which took place on 10 December 1997, the PIC members granted the OHR the Bonn powers. The High Representative was given executive and legislative control over BiH with the Bonn powers. Since then, the HR has been able to issue legally binding decisions, laws and executive decrees, amend constitutions and overturn judicial decisions. Moreover, the HR can remove elected officials and public officers unwilling to implement the peace agreement, interfere with the judiciary, mismanage public assets and engage in corruption. From a 'wait-and-see role', the HR's role was transformed into a more active one (Dijkstra – Raadschelders 2022). Lastly, becoming the Chair of the newly established Board of Principals⁷ in 2002 further strengthened the HR's authority (Dijkstra – Raadschelders 2022). As a result, the High Representative represents the highest international civilian authority in BiH that pursues a state-building agenda. According to the Council of Europe's Venice Commission, 'to all intents and purposes, it (OHR) constitutes the supreme institution vested with power in Bosnia and Herzegovina' (International Crisis Group 2007: 4).

Even with the additional Bonn powers, it appeared that the international community involved in the state-building of BiH lacked ideas, purpose and legitimacy (Chandler 2005). The international community continued to be involved with state-building through the Stabilisation and Association Process framework. In 2001, the European Commission presented a Country Strategy 2002–2006 for BiH, which further described a framework for EU assistance that heavily applied conditionality (e.g., the CARDS programme). The Directorate for European Integration (DEI) was given the key executive role and the task of preparing BiH's strategy of European integration and a 'rebrand of the anomalous Bonn powers of the High Representative' (Chandler 2005: 30). Ultimately, the EU's goal was to replace the Bonn powers, which were perceived as the 'push powers', with the 'pull powers' of European institutions (Chandler 2005: 30). According to former HR Bildt, the international community's decision to move out of BiH was replaced with the strategies to let BiH join the EU in 2000 (Chandler, 2005).

The OHR was the motor driving Bosnia forward at first, but it began taking a back seat wanting BiH's political leaders to step up during the second period. In 2005, a 'real' debate on constitutional reform began. Some of BiH's elite showed a willingness to reform the BiH Constitution, and the Venice Commission and key international actors pushed for the change justifying it with the

7 The Board of Principals consists of the permanent members: the European Commission, OSCE, EUFOR, NATO headquarters in Sarajevo, UNHCR and EUPM.

goal of European integration of BiH (Bieber, 2006). However, both BiH entities lacked the political will necessary to bring about changes that would lead to the OHR's closure and crucial reforms. The PIC expressed its hopes to close the OHR in 2006 when the EU would continue to aid BiH towards EU membership (International Crisis Group, 2009). BiH's EU membership is at a standstill since the OHR closure is a precondition for BiH to apply for EU membership (Tirak 2010).

In 2006, the Peace Implementation Council (PIC) began to prepare for OHR closure in June 2007. Furthermore, in its paper 'OHR-EUSR Transition: The Way Ahead', the High Representative positively reviewed BiH's progress. Unfortunately, BiH's leaders got locked in a standstill, and backsliding and stagnation followed soon after. With the ethnonationalist rhetoric on the rise and the necessary reforms moving backward instead of forward, some of the previous reforms and solutions began to fall apart. The closure of the OHR office did not take place as the result of 'severe deterioration in the political atmosphere' (International Crisis Group 2009: 1).

The international community and the OHR continued to face challenging times in 2006 and 2007 as they appeared indecisive and lacked a clear strategy for BiH. Even the Bonn powers, which were originally considered to be the 'strong arm of the international community', appeared to weaken in 2006 (International Crisis Group 2007: 4). Furthermore, the situation in Kosovo regarding its status and how it could affect BiH (considering the RS's desire for self-determination and independence) needed to be considered when determining when the High Representative could leave BiH. The concern was that the RS political leaders often linked Kosovo and RS. During the 2006 BiH elections, Milorad Dodik, the RS prime minister, advocated for a referendum without clearly specifying its nature. Thus, considering the Kosovo status talks and the RS inflammatory rhetoric, the HR and a few members of PIC argued for the need to extend the OHR mandate beyond summer 2007 (International Crisis Group 2007). At that time, BiH was perceived as 'far from being a functional, efficient and stable state' (International Crisis Group 2007: 2).

During these challenging times, the OHR's and the international community's credibility took a major hit, especially after BiH was permitted to sign a Stabilization and Association Agreement (SAA) with the EU without adopting necessary police legislation, a precondition for the accession process (International Crisis Group 2009). In February 2008, the political directors of the PIC Steering Board determined that the OHR would close once the BiH authorities met the requirements known as the 5+2 Agenda.⁸ Although constitutional

8 The first five objectives of the 5+2 Agenda include: solutions for the distribution of property between the state and other levels of government, a solution for military assets, implementation of the Final Decision for Brčko, fiscal sustainability and revival of the rule of law. The Steering Committee of PIC

reform is needed in BiH as it will help improve the work of BiH institutions, constitutional changes are not a precondition to close the OHR. Since then, the PIC Steering Board has regularly evaluated the progress in implementing the 5+2 Agenda. Unfortunately, many requirements are still not met. The progress has been closely tied to the OHR's involvement, leadership and actions. Therefore, it is necessary to look at the work and performances of the High Representatives and their accomplishments in BiH.

The (O)HR's Performance and Challenges

International actors, such as High Representatives, are selected for their expertise in matters that the international community finds missing in BiH (i.e., democracy, the rule of law, gender equality, etc.), not because of their expertise in BiH's history, language or culture (Gilbert 2012). Implementing the civilian aspect of the Dayton Peace Agreement (DPA) has been difficult. Institutional practices found in liberal democracies could not be easily implemented in BiH.

Although each HR was given the same powers, not all HRs used available powers or received the same support from the local and the international community. When the international community shares the same vision of the OHR in BiH and speaks in one voice, HR receives the needed support, which positively affects HR's performance, the number of decisions made and the extent of its actions. The HR's performance has often required support from the Peace Implementation Council (PIC) as it oversees the OHR. In addition, HRs have relied on the support of international peacekeeping troops, their own political credibility, and the parties' cooperation when enforcing their decisions (International Crisis Group 2006).

High Representatives (HRs) have set the agenda, constructed and recontextualised BiH's post-war reality. In the role, HRs have had to remain neutral and objective, capable of making rational, impartial and non-violent decisions that would serve all in BiH and maximise the values of human dignity. Nevertheless, Barnett and Finnemore (2004) argue that the authorities of international organisations cannot remain neutral in situations where one side has committed more serious human rights violations (e.g., genocide, ethnic cleansing, refugee return). Some RS political elites perceive the OHR as biased and continuously call for the OHR's closure in BiH.

From 1997 to 2009, HRs made 895 decisions (Szewczyk 2010). The decisions were grouped into eight categories, with the majority of the decisions being related to removals and suspensions of public officials from the office, which presented a threat to peace implementation, institutional integrity or democracy

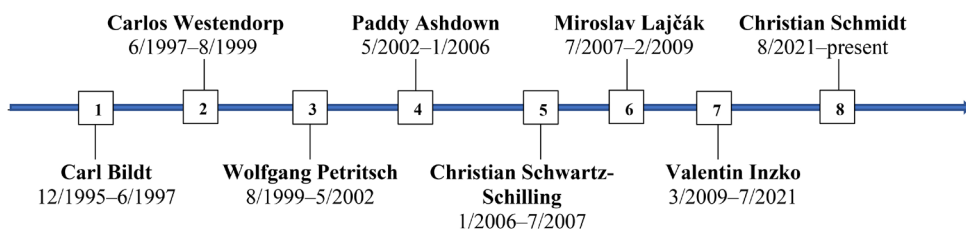
added two additional conditions: the signing of the Stabilization and Association Agreement (SAA) and PIC's positive review of the situation in BiH (OHR 2008).

in BiH (20,45 %), and judicial reforms (20.34 %).⁹ Based on data collected from the OHR website, the number of HRs' decisions significantly decreased between 2010 and now, with only 55 decisions made. These decisions differed from the decisions made in the first decade of the OHR's presence in BiH. Since 2010, 78 % of decisions have announced the lifting of a ban on public officials, stating that the individual no longer presents a threat.

Moreover, the HR has facilitated the local efforts in establishing political and constitutional institutions and coordinating the activities of organisations such as the Organization for the Security and Cooperation in Europe (OSCE), the European Union (EU) and the UN (Caplan 2004). The OHR brought about a few positive changes in BiH, which include: a single currency, common license plates, the Central Bank, the State Investigation and Protection Agency, the State Border Service, military reform, freedom of movement, property rights and refugee return, banking reform, a value-added tax and the abolition of payment bureaus (International Crisis Group 2007).

Unfortunately, there has not been enough polling data on the masses' perception of the overall performance of each High Representative. Thus, it is difficult to determine the level of support or opposition there is among BiH's citizens about the role and performance of the High Representative. The public opinion poll in RS in 2021 regarding the HR's decision on genocide revealed that most participants believed that there should be no place for glorifying war crimes in politics (29 % completely agree, 31 % somewhat agree). However, the RS public expressed that HRs should not have the authority to impose the law, which caused more problems than it solved (38 % completely agree, 19 % somewhat agree). The RS public recognised that politicians used the issue to avoid dealing with pressing issues such as the economy and corruption (35% completely agree, 27 % somewhat agree) (NDI 2021).

Figure 1: Timeline of High Representatives and their mandates



9 Other decisions were grouped into: 1. decisions in the field of property laws, return of displaced persons, refugees and reconciliations (13,3 %), 2. decisions related to state symbols, state-level matters and constitutional issues (12,40 %), 3. decisions related to individuals indicted for war crimes in the former Yugoslavia (12,40 %), 4. decisions in the economic field (10,61 %), 5. decisions relating to the Federation, Mostar and H-N Canton (8,49 %) and 6. media restructuring decisions (2,01 %) (Szewczyk 2010: 36).

I looked at each of the HRs' mandates to gain an insight into their performance, recognition, acceptance and challenges. In the last 27 years, Bosnia and Herzegovina has had eight High Representatives (HR), all responsible for the implementation of the civilian aspect of the Dayton Peace Agreement.

High Representative Carl Bildt (December 1995–June 1997)

Being the first High Representative, Carl Bildt had limited authority, budget and personnel. Moreover, neither HR Bildt nor the Implementation Force (IFOR) was willing or able to take over the control of the media and the economy from the nationalist prior to the first post-DPA elections in BiH. Instead of paving the way for the full implementation of the DPA and provisions of the BiH's constitution, it produced election results similar to the election results prior to the war in 1992 (Harland 2018). According to Bildt, BiH's political elite viewed peace 'as the continuation of the war by other means' (Council of Foreign Relations 2021).

During his mandate, HR Bildt focused on establishing the basic infrastructure for a common state (i.e., laws on foreign trade, customs, a state budget, citizenship and passport laws, and a central bank) (Sullivan 1997). Since his mandate ended prior to introducing the Bonn powers, HR Bildt never had them at his disposal. HR Bildt argued that the implementation process changed with the Bonn powers, going from asking for 'local consent' to 'external imposition' (Bildt 2021). While HR Bildt acknowledged that the Bonn powers helped speed up the implementation efforts, he contended that BiH leaders had to initiate changes as it was 'time to stop taking advantage of the Bonn powers. This is no longer a protectorate of the international community, and we should move forward' (Bildt 2021). In 2022, Bildt recognised that BiH was facing another crisis and called for the international community to reconsider its role, find a way for BiH's political elite to work together and ensure BiH's territorial integrity.

High Representative Carlos Westendorp (June 1997–August 1999)

High Representative Carlos Westendorp was the first HR to use the Bonn powers to remove a public official, the RS President Nikola Poplašen. He was removed from the office for abusing his position, obstructing DPA implementation and making illegitimate attempts to unseat Milorad Dodik, the RS prime minister at the time.¹⁰ This decision set a precedent for the future as all OHR decisions became binding and were followed by the Bosnian political elite (International Crisis Group 2007). Despite his first reluctance to use Bonn powers, Westendorp increased the frequency of their use. During his term as HR, Westendorp im-

¹⁰ HR used the Bonn powers to prevent obstructions and illegal attempts directly toward Dodik, who has now become the most vocal critic of the OHR and the Bonn powers.

posed over 45 decisions and removed 16 high-ranking officials from their offices (Petritsch 1999). By doing so, HR Westendorp helped standardise a national flag, currency, telecommunication laws and common license plates (Toal 2006).

High Representative Wolfgang Petritsch (August 1999–May 2002)

The High Representative Wolfgang Petritsch used the Bonn powers to dismiss 81 officials and impose 166 laws and amendments. His decisions ordered the restructuring of the Constitutional Commissions in the RS, the establishment of the memorial for the victims of the Srebrenica genocide, economic legislation (i.e., pension and disability insurance laws) and the establishment of an Independent Judicial Commission. The state-building and establishment of institutions were accomplished through inter-entity agreements. Milorad Dodik, a Serb member of BiH's tripartite presidency, now describes these practices as 'legal violence' (Bassuener 2016). However, at that time, Dodik supported these agreements and constitutional reforms in the 2006 April Package.

Although HR Petritsch used his Bonn powers, he recognised the emergence of 'dependency syndrome' stating that local parties begin to rely opportunistically on the political intervention of the High Representative, especially when it comes to unpopular measures. They can behave, despite being in government, as they are in the opposition and defend their ethnonationalist goals without the need to compromise (as cited in Caplan 2004: 59).

Consequently, HR Petritsch introduced the 'ownership policy' for BiH political elite in 1999. High Representative Petritsch argued that lack of progress was connected with BiH's politicians' 'lack of responsibility' and citizens' 'lack of political maturity' (Gilbert 2017: 416). Lastly, HR Petritsch was best known for imposing uniform property laws in both entities, which helped overcome obstructions to refugee and displaced person returns (Toal 2006).

High Representative, Lord Paddy Ashdown (May 2002–January 2006)

High Representative Paddy Ashdown's primary focus was establishing the rule of law, improving the economy and stopping high-level corruption, which became known as the 'justice and jobs reform programme' (Merđžanović 2018). High Representative Ashdown made significant progress with defence and police reforms (Toal 2006). He expressed a genuine interest and love for BiH and was committed to its sovereignty and territorial integrity (Merđžanović 2018). High Representative Ashdown stated, '... when I act, I shall seek to do so in defence of the interests of all the people of BiH, putting their priorities first' (cited in Chandler 2005:310). Hence, HR Ashdown used the Bonn powers the most and

removed many politicians from the office.¹¹ High Representative Ashdown recognised that he was not supported in Republika Srpska because ‘They [Serbs] wanted to hang on to Republika Srpska and I wanted to make sure they lived in a state, not in an entity’ (as cited in Merdžanović 2018).

Moreover, HR Ashdown was committed to ‘putting BiH irreversibly on the road to Statehood and membership of the EU’ (OHR 2004). According to HR Ashdown, Dayton and the BiH Constitution should be viewed as the ‘foundation’ to be built on, not the ceiling (Merdžanović 2018). High Representative Ashdown also advocated for BiH’s self-propulsion into the EU and NATO, describing the next step as ‘from the push of Dayton to the pull of Brussels’ (Bassuener 2016: 107). In 2003, HR Ashdown was asked to begin phasing out the Bonn powers, starting with stopping the dismissal of public officials (Cox – Knaus 2003). High Representative Ashdown started to cut back on using Bonn powers, realising that BiH had to show on its own that it was capable of achieving an EU membership.

High Representative Christian Schwartz-Schilling (January 2006–July 2007)

Prior to HR Schwartz-Schilling’s term, the international community decided to begin preparations for the OHR’s closure. By accepting the position, HR Schwartz-Schilling knew that he would facilitate the closure of the OHR and its transition to EUSR. Compared to his predecessor, HR Schwartz-Schilling had a different, hands-off, mediator approach. He preferred having the BiH’s political elites reach a consensus instead of acting himself and being perceived as an enforcer (Smith Hrle 2015).

At first, it appeared that BiH was making strides toward state-building. High Representative Schwartz-Schilling adopted the ‘limited amnesty’ measure related to the status of previously removed public officials. High Representative Schwartz-Schilling was adamant that the Bosnian public should select its own public officials. Thus, HR Schwartz-Schilling never used the Bonn powers to remove public officials. Unfortunately, his approach resulted in a stalemate as reforms were not adopted in the planned timeline. The U.S. exerted pressure on HR Schwartz-Schilling to use the Bonn powers to enforce reforms, but HR Schwartz-Schilling refused, which appeared to be the reason why HR Schwartz-Schilling’s mandate was not renewed (Smith Hrle 2015).

Unlike during his mandate, HR Schwartz-Schilling now argues that the international community tolerates the aggressive and nationalistic rhetoric of many of BiH’s political figures instead of HRs using the Bonn powers. Moreover,

11 On average, HR Ashdown was adopting fourteen binding decisions a month (Caplan 2009). High Representative Ashdown dismissed 59 public officials on an *ad hoc* basis on 30 June 2004 (Banning, 2014).

HR Schwartz-Schilling criticised the international community for the lack of its constructive role, dividedness, lack of interest in changing the status quo in BiH and ultimately repeating mistakes from the 1990s.

High Representative Miroslav Lajčák (July 2007–March 2009)

High Representative Lajčák had the task of successfully finalising the reforms and the Stabilization and Association Process. Although HR Lajčák also preferred not using the Bonn powers, he made it clear that he would, if needed. For example, in October 2007, HR Lajčák threatened to use the Bonn powers and impose new voting rules for the Parliamentary Assembly if BiH's political elite did not. High Representative Lajčák compared the Bonn powers to 'the yellow and the red card' and the referee and players are aware of it, but no one knows when the card would be used (Knezevic 2007).

While the OHR and the U.S. supported HR Lajčák's actions, Bosnian Serbs, together with Russia, objected. A compromise on the new voting rules was reached after HR Lajčák issued an Authentic Interpretation of his decision to the Council of Ministers of BiH. This was the first time that HR partially retracted a decision due to pressure from local parties. However, HR Lajčák and his actions appeared to match the EU Commission's preferences (Smith Hrle 2015).

When explaining his decision to leave the OHR, HR Lajčák surprised everyone when he said, 'I don't want to be the rider on a dead horse' (Latal 2007). The debate began on whether the 'dead horse' was a reference to BiH, but HR Lajčák later clarified that he was referring to the state of international efforts in BiH. According to the RS Government, HR Lajčák left because he did not want to be part of the interventionist agenda (RS Report No. 2/2009).

Bieber (2009) stated that Lajčák's decision to step down as HR and become a foreign minister of Slovakia came at a worse time since the transition would bring a vacuum during a time when the closure of the OHR within two months was being discussed. The U.S. and Russia shared opposing views on the type of candidate that would replace HR Lajčák.

High Representative Valentin Inzko (March 2009–July 2021)

High Representative Inzko attributed BiH's challenges and lack of progress to the 'unwillingness or an inability of the part of the political establishment to change its mindset and its approach to politics' (OHR 2013). Despite recognising the negative impact of some political elites in BiH, HR Inzko did not use the Bonn powers to remove public officials from office. It is difficult to determine why HR Inzko did not use the Bonn powers since plenty of politicians posed a threat to BiH's sovereignty and territorial integrity and damaged its progress through a series of corruptions and affairs.

The Bonn powers had fallen into disuse during HR Inzko's 12-year mandate. Nevertheless, in September 2009, Inzko imposed eight laws mostly related to the Brčko District (i.e., laws allowing Brčko District residents to choose citizenship of either entity in BiH and laws regarding the state electrical transmission monopoly).¹² All laws were publicly rejected by Milorad Dodik, the prime minister of RS at the time, who also threatened to pull Serb representatives from the Bosnian government if any further measures were to be imposed, which would have resulted in a constitutional crisis. The RS Official Gazette, per the RS government's order, did not publish these laws that HR Inzko 'illegally attempted to impose' (International Crisis Group 2009: 2). The RS National Assembly (RSNA) also refused to accept the HR's decisions. Every decision regarding the transfer of competencies from the entities to the state led to the further RS rejection of the OHR. Instead of removing the public officials who endangered peace and engaged in corruption-related activities, HR Inzko issued warnings and asked for corrective behaviour instead.

The performance and legitimacy of HR Inzko continued to be challenged by RS. In October 2010, the RS National Assembly supported a call for a referendum about the OHR if HRs continued to use the Bonn Powers to impose legislation. The referendum about the OHR would allow the RS citizens to express whether the RS Government should accept the HR's decisions surpassing the HR's mandate (RS Government 2010). The RSNA officially approved plans for the RS referendum on the OHR in April 2011. The idea of the referendum was revisited in 2015, and a very leading referendum question was prepared:

Do you support the unconstitutional and unauthorized imposition of laws by the High Representative of the International Community in BiH, particularly the imposed laws on the Court and Prosecutor's Office of BiH and the implementation of their decisions on the territory of Republika Srpska? (OHR 2015)

HR Inzko argued that this was the most severe violation of the DPA and expected the international community to support his use of the Bonn Powers to annul the referendum if the RS moved forward with the referendum planning. Instead, Miroslav Lajčák, former HR, and EU High Representative Ashton, met with Dodik, who used these meetings to boost his own image and cement his leadership position by getting the members of the international community to agree to discuss the judiciary in the Structured Dialogue, ultimately lessening

¹² Amendments to the Law on establishing the company for the transmission of electric power in BiH, Law on Amendments to the Law on the citizenship of RS, Law on Amendments to the Law on the citizenship of Federation of BiH, Law on Amendments to the Law on the citizenship of BiH, Law on Amendments to the Law on Electricity, Law on Amendments to the Law on Transmission of Electric Power, Regulator and System Operator of BiH). Inzko's decision to use the Bonn powers was supported and followed by Raffi Gregorian, his principal deputy and a supervisor of the Brčko District.

the impact of the Justice Sector Reform Strategy (Smith Hrle 2015). These meetings also diminished the international community's image and strength since the international community appeared to reward nationalist and obstructionist rhetoric (Smith Hrle 2015). Although the referendum never took place, the lack of a stronger reaction appeared only to encourage this hostile behaviour toward HRs. According to Dodik (2020),

Inzko has no support at the local level, but Inzko is working against two constituent peoples that wish to keep the peace. Stop this monster that is trying to impose solutions we do not want. He is a foreigner with poor knowledge, and we have not elected him, a malicious man that will cause the disintegration of Bosnia and Herzegovina (as cited in Petke – Corsulic 2021).

The HR's role had more of an advisory character. However, on 23 July 2021, on his way out of the Office, HR Inzko used the Bonn powers to outlaw genocide denial. High Representative Inzko recognised that individuals and public authorities publicly praised convicted war criminals and questioned the International Criminal Tribunal's judgments. Some of BiH's political elites offer discordant narratives about the past, deny war crimes, refuse to recognise the Srebrenica genocide and praise convicted war criminals. High Representative Inzko imposed amendments to BiH's criminal code to ban the public denial, condoning and justification of crimes against humanity, war crimes and genocide, instigating violence and hatred. Moreover, HR Inzko outlawed public incitement to violence on the grounds of race, religion, colour, descent or national or ethnic origin. Each violation carries a prison sentence.¹³

High Representative Inzko's decisions were not accepted in RS as many disputed the genocide in Srebrenica. According to Republika Srpska's Government, HR Inzko's decisions, directed at Serbs, caused BiH's current political crisis as it 'illegally handed down a decree criminalizing the expression of the certain opinions about BiH's 1990s war' (RS Report No. 27/2022: 5). On 30 July 2021, the RSN nullified Inzko's decisions by adopting the Law on the Non-Applicability of the Decision of the High Representative Enacting the Law on Amendment to the Criminal Code of BiH. On 15 July 2022, the BiH Constitutional Court backed the HR's decision by declaring the Law on Non-Application of the Decision of the High Representative in RS unconstitutional. The Court recognised that the HR acted as a legislative institution, a substitute for a domestic institution (i.e., the Parliamentary Assembly), and passed the Law. The Court further added that Inzko's Law on Amendments of the Criminal Code of BiH represented the decision of the institutions and the Law of BiH.

13 Public incitement to violence on the grounds of race, religion, colour, descent, national or ethnic origin was punished with a three-month to a three-year prison sentence. Public distribution of materials denying genocide carried a minimum one-year sentence.

High Representative Christian Schmidt (August 2021–present)

Considering RS' dissatisfaction with the presence of the OHR in BiH, it was clear that the new HR would face difficulties. High Representative Schmidt is not accepted as the legitimate HR in RS. According to Dodik, HR Schmidt's appointment had to go through the UN Security Council and was against the interest of the RS and the Serb people in BiH. Moreover, Dodik threatened to file a lawsuit against former High Representatives for violating international law (Popović 2021).

High Representative Schmidt was appointed by the Peace Implementation Council (PIC) Steering Board members, with the exception of Russia, which argued that the appointment of a new HR was only possible with a decision and confirmation by the UN Security Council.¹⁴ Moreover, China did not support the appointment of Christian Schmidt as the HR either. Ambassador Geng Shuang said the OHR had to be appointed through the Security Council's resolution or a President's letter. Therefore, according to Russia and China, HR Schmidt could not be given legal authority. Other countries argued that the unanimous support of the PIC was desirable, but not legally necessary (Jahić 2021).

On 11 May 2022, HR Schmidt presented his report to the Security Council. High Representative Schmidt stressed that changes to the constitutional order are only possible through joint parliamentary decisions, not unilateral ones. A few months into his mandate, HR Schmidt used the Bonn powers again to repeal Republika Srpska's property law, the Law on Immovable Property Used for the Functioning of Authorities. High Representative Schmidt's decision, which stressed that only the State of BiH has the right to dispose of State property or regulate the ownership over State property at all levels of authority in BiH, was supported by the Steering Board. Thus, individual entities could not claim the state property as their own since the state property should not be divided between entities, the State and lower levels. The State holds the sole right to administer immovable property. High Representative Schmidt vowed that he would not allow legislation that violates the structure of the Constitution.

In June 2022, HR Schmidt imposed a decision on financing the BiH's 2022 general elections, scheduled for 2 October 2022. The decision was made in consultation with PIC. The decision highlighted that BiH as a democratic state needs to 'operate under the rule of law and with free and democratic elections' to hold free, fair and democratic elections, representing people's basic rights (OHR 2022).

Prior to HR Schmidt's decision, the BiH's finance minister, Vjekoslav Bevanda,¹⁵ delayed the funding, citing procedural reasons. According to Bevanda, a special allocation of funds for elections was not 'in line with the law,

14 If the confirmation went through the UN Security Council, Russia, as one of its five permanent members with veto power, could have blocked the appointment of the new HR.

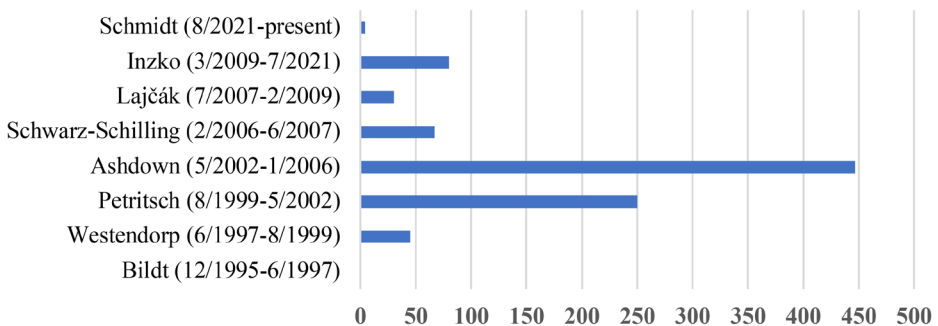
15 Member of the Croatian Democratic Union Party (HDZ).

and the budget needs to be voted on in a regular procedure’ (Kurtic 2022). However, Bevanda said that the Central Government would be able to lend the Central Election Committee 9.7 million Bosnian marks (KM), which was less than requested and needed. Since the Croatian Democratic Union Party (HDZ) had asked for electoral reforms, which did not happen, some speculate that Bevanda tried to block funding for elections, an attempt to block or delay elections. High Representative Schmidt underlined that the election did not represent ‘donations of the parties to people’ (as cited in Sito-Sucic, 2022).

High Representative Schmidt’s decision not only ensured that the Central Election Commission receives 12.528 million KM or 6.37 million EUR from state reserves to organise the 2022 elections, but it also guaranteed permanent financing of the elections in the future. Two members of the tripartite presidency, Željko Komšić and Šefik Džaferović, supported HR Schmidt’s decision. Komšić added that HR Schmidt’s decision ‘ultimately represent(ed) the victory of the Bosnian political factor, i.e., healthy political options that played a constructive role with international partners during the long political struggle to hold elections that the HDZ sought to block’ (as cited in N1 Sarajevo 2022). Contrary to Komšić and Džaferović, Milorad Dodik condemned the decision arguing that the use of Bonn powers by the ‘illegitimate’ HR further shows that ‘BiH does not exist as a sovereign state’ (as cited in N1 Sarajevo 2022). Moreover, Dodik announced that RS would file a lawsuit against HR Schmidt for ‘misrepresentation and harmful acts in BiH’ (N1 Sarajevo, 2022).

Apart from having the support from PIC members, the U.S. Embassy in Sarajevo and some members of the European Parliament (i.e., Tineke Strik, Viola von Cramon-Taubadel) supported HR Schmidt’s decision. On the other hand, Russia reiterated that HR Schmidt was not a legitimate HR. Thus, his decisions could not be binding (Oslobodjenje 2022).

Figure 2: High Representatives’ Decisions (1995–present)



By looking at each of the HRs’ mandates, one can learn that HRs have had various tasks and challenges to address (Tables 1 and 2).

Table 1: Overview of High Representative’s tasks and actions reported to the Secretary-General of the United Nations

OHR’s tasks	HR’s Actions specified in OHR’s reports to the Secretary-General of the United Nations
Assist with the post-war transitions	<ul style="list-style-type: none"> ▪ Stressed the commitment to a reintegrated and multi-ethnic BiH (1: 03/96). ▪ Set up its regional branch offices in Banja Luka, Mostar, and Tuzla (2: 7/96; 6:07/97).
Implementation of Human Rights	<ul style="list-style-type: none"> ▪ Established capacity to conduct pro-active, preventative, and follow-up actions, and to structure diplomatic efforts (5:04/97). ▪ Organized consultations with governments and organizations and ensured common BiH institutions became operational (5:04/97) and efficient (12:02/99).
Laws and Regulations	<ul style="list-style-type: none"> ▪ Initiated the Reconstruction and Return Task Force (5:04/97). ▪ Became a member of The Freedom of Movement Task Force (5:04/97). ▪ Chaired the Expert Group on Exhumations and Missing Persons (5:04/97). ▪ Organized the first constitutive session of the BiH Constitutional Court (6:07/97).
Economic reconstruction	<ul style="list-style-type: none"> ▪ Assisted with the harmonization of the Law of citizenship and passports (6:07/97), the Election Law (8:01/98), and the Law on the Flag of BiH (9:04/98). ▪ Co-created a plan for a uniform license plate system in BiH (8: 01/98)
Return of Refugees	<ul style="list-style-type: none"> ▪ Dismantled illegal checkpoints in FBiH and RS with SFOR’s support (6:07/97). ▪ Supported preparation of legislation regarding telecommunications, civil aviation, and immigration (9:04/98).
Media	<ul style="list-style-type: none"> ▪ Elaborated on a draft of Election law (9:04/98; 15:11/99). ▪ Established Intermediate Standards and Licensing Commission to help regulate media in BiH (9:04/98). ▪ Reported on the establishment of the Economic Task Force (5:04/97); development of the anti-corruption strategy for BiH (8:10/97); infrastructure, employment generation, and the restarting of production (5:04/97) ▪ Encouraged trade between entities (10:07/98). ▪ Reported on the international reconstruction aid in BiH (8:01/98) ▪ Established the Independent Media Commission (10:07/98). ▪ Chaired the Joint Exhumation Commission (10:07/98). <p>Note: HR has supported other initiatives and tasks (e.g., mine removal).</p>

Citation: Report number: Date (mm/yy) (e.g., 51:05/17)

- Committed to a judicial system reform (10:07/98).
- Prepared a list of basic legislation and drafted laws: Law on Privatization of Enterprises and Banks, Telecommunications and Immigration laws, Aviation Act (10:07/98).
- Monitored the Agreement on Special Parallel Relations between the FBiH and the Republic of Croatia (10:07/98).
- Established the OHR Anti-Fraud Unit (10:07/98).
- Participated in the implementation of the Textbook Review Project (11:10/98)
- Recommended to the authorities to fully cooperate with ICTY.
- Worked closely with the Commission on Human Rights (6:07/97).
- Imposed the Law on Privatization (11:10/98)
- Supported the reform of the criminal justice system (11:10/98)
- Established a Coordinating Group on Economic and Social Rights (13:05/99).
- Helped revise the Draft Law on the Organisation of the Federation BiH Railways (13:05/99).
- Imposed the BiH Framework Law on Privatisation of Enterprises and Banks (Framework Law) (13:05/99).
- Assisted in efforts to reform the education system at all levels (14:07/99).
- Involved in Anti-Fraud Corruption; drafted a new Witness Protection Law (14:17/99).
- Coordinated Rule of Law and Judicial Reform (15:11/99).
- Co-coordinates training programs for prosecutors and judges (15:11/99).
- Assisted with the Laws on Identity Cards and Temporary and Permanent Residence of Bosnia and Herzegovina (16:5/20).
- Removed public officials for serious obstruction of DPA (13:05/99; 14:07/99; 15, 16:17:10/00,18:03/01, 19:07/01; 20:09/01)
- Investigates corrupt practices in BiH (17, 19:06/01, 20:09/01)
- Stressed none of its decisions were meant to diminish the status of the RS; assured that there would be no redrawing of the map of BiH (59:05/21).
- Emphasizes on the "local ownership: (43:5/2013; 44:11/13; 45:05/14), 47:05/15, 48:11/15; 49:05/16; 50:10/16; 51:05/17; 52:11/17)
- Supported the efforts of the BiH authorities to register "prospective defence property" to the state (49:05/16)
- Assists BiH with the EU and NATO integration process (43:5/2013; 45:05/14; 47:05/15; 51:05/17)
- Lifted bans on holding office for individuals removed by previous High Representatives (46:11/14).

Table 2: Summary of challenges specified in HRs' reports to the Secretary-General of the United Nations

Challenges to:	Difficulties experienced in BiH
Post-war transitions	<ul style="list-style-type: none"> ▪ Resistance to inter-ethnic integration and widespread discrimination against ethnic minorities (5:04/97). ▪ Violations of freedom of movement, provocation, destruction of property, and discrimination based on ethnicity and political affiliation were observed in both entities, but especially in RS and areas with the Croat majority (6:07/1997). ▪ RS "continues the pretence of statehood" - many of its laws have provisions not in accordance with the BiH's Constitution (5:04/97; 6:07/97, 8:01/98). ▪ Lack of mutual trust and political will to cooperate constructively delays the implementation of DPA (6:07/97). ▪ BiH's authorities made little progress on passing legislation (e.g., election law) (8:01/98); Judicial Reform efforts were not proceeding quickly (10:07/98). ▪ The Agreement on Special Parallel Relationships between RS and the Federal Republic of Yugoslavia is inconsistent with the BiH Constitution (6:07/97). ▪ The Agreement on Special Parallel Relations between the FBiH and Croatia is inconsistent with the BiH Constitution (10:07/98). ▪ Difficulties implementing DPA due to FBiH's cantonal structure giving significant power and authority to local officials (15:11/99). ▪ Slow progress on removing offensive materials from textbooks of national subjects in primary and secondary schools (13:05/99).
Sovereignty and Territorial Integrity of BiH	<ul style="list-style-type: none"> ▪ RS politicians call for "peaceful dissolution," upgrade of the RS military capabilities (60:11/21) and ask for the withdrawal of the international military presence, which can pose a threat to the sovereignty, territorial integrity, peace, and stability (43:5/2013; 44:11/13; 45:05/14; 46:11/14; 47:05/15; 49:05/16; 52:11/17; 59:05/21). ▪ RS authorities refer to BiH "as a union of states with limited and derived sovereignty that was created by two pre-existing entities as sovereignty bearers" and refer to RS as "a state" of Serb people (52:11/17; 57:05/20). ▪ SNSD continuous attempts to unilaterally retake State competencies and define new entity structures for the judiciary, defense, and indirect taxes (61:5/22). ▪ Milorad Dodik and Dragan Covic suggested a territorial reorganization of the Federation. BiH House of Peoples delegate Mario Karamatic threatened the country's dissolution if the electoral reform issues were not resolved (42:11/18; 53:05/18). ▪ Croat political representatives suggested a "territorial reorganization," alluding to a "third entity" through the territorial reorganization of BiH, federalization (51:05/17; 52:11/17; 58:11/20; 61:05/22), revival of the idea of the former Croat Republic of Herzeg-Bosnia (50:10/16). ▪ <i>RS' threats to withdraw from existing transfer agreements</i>
High Representative's performance	<ul style="list-style-type: none"> ▪ The RS Government has refused to deliver session materials to the OHR, has prevented OHR staff from attending sessions, and questions the legality of the OHR and its decisions (61:5/22; 46:11/14; 47:05/15; 49:05/16; 56:11/19). ▪ Dodik's attacks directed toward members of the international community, independent media, NGOs, and HR Inzko (implied a connection between the WWII Nazis and HR Inzko); rejection of all "illegally imposed decisions and laws of the High Representative" (58:11/20; 60:11/21; 13:05/99)

Challenges to:	Difficulties experienced in BiH
The State Level Judicial Institutions/ Disregard for Constitutional Court	<ul style="list-style-type: none"> ▪ RS authorities reject final and binding decision/judgments of the BiH Constitutional Court and the BiH State (e.g., regarding state property (61:05/22), the registration of defense property, and the 9 January “Republika Srpska Day” holiday (59:05/21). ▪ Non-enforcement of Decisions of the BiH Constitutional Court (43:05/2013). ▪ Referendum on the RS Day, 9 January, against the decision of the BiH Constitutional Court (51:05/17 49:05/16; 52:11/17). ▪ RS adopted the draft Law on the RS High Judicial and Prosecutorial Council (61:05/22).
Human Rights	<ul style="list-style-type: none"> ▪ Lack of cooperation in handing over the person indicted by the International Criminal Tribunal for the Former Yugoslavia (2:07/1996). ▪ BiH’s political leaders (in RS and FBiH) failed to appropriately respond to discrimination and abuse on ethnic grounds (5:04/97). ▪ Hate speech, Srebrenica genocide denial, the relativization of war crimes, and glorification of war criminals (61:05/22; 59:05/21; 56:11/19);13; 51:15/17).
Media	<ul style="list-style-type: none"> ▪ Political influence, biased reporting, poor implementation of media legislation, and non-transparent ownership and financing (58:11/20).
Other challenges	<ul style="list-style-type: none"> ▪ Decreasing OHR budget and staff (58:11/20; 59:05/21). ▪ Concerns about increasingly antagonistic and unproductive relations among the political leaders in BiH (58:11/20). ▪ Lack of agreement between Bosniak and Croat political parties in the FBiH on electoral reforms (61:05/22). ▪ Harmonizing RS’ legislative and educational system of Serbia with no regards for the BiH legal system; RS celebrates with Serbia a new joint holiday, the Day of National Unity and Flag (60:11/21). ▪ Disregard for the rule of law and corruption (51:05/17). ▪ BiH has had an inflow of migrants and refugees and RS refuses to open reception centers (59:05/21). ▪ HDZ’s referral to Komšić as an “illegitimate” representative of the Croat people (55:05/19). ▪ Komšić, in his non-paper to Brussels, pointed out the increasing level of interference of Croatia and Serbia in BiH’s internal affairs (59:05/21). ▪ Due to a lack of the rule of law, political instability, corruption, and nepotism, 170,000 your people left BiH in 2021 (61:05/22) ▪ RSNA adopted a resolution proclaiming the “military neutrality” of the RS, despite being the exclusive competence of the State of BiH for foreign policy and blocked crucial processes (registration of defence property in RS under the BiH ownership and the submission of the annual national programme of BiH to NATO) (57:05/20).

Citation: Report number: Date (mm/yy) (e.g., 51:05/17)

All High Representatives in BiH have been involved in BiH's state-building. They tackled different problems, including the question of the legitimacy of their HR role. The HR role evolved throughout the years, but the use of the Bonn powers and their approval varied. The HRs regularly discussed the use of the Bonn powers in its reports to the Secretary General of the United Nations once they became available. In the last decade, the HRs' reports emphasised 'local ownership' instead. Looking at the OHR's tasks, actions and challenges following the end of the war and those in recent years, it appears that some of the work done and progress achieved had begun to unravel by ethnonationalists and their divisive rhetoric in BiH.

(Dis)approval of the Office of High Representative and the Bonn Powers

Bosnia and Herzegovina political actors remain polarised over the HR's role and the use of the Bonn powers in BiH. Those interested in further territorial divisions and secessions would prefer to see the OHR closed. Political elites in Federation BiH (FBiH) have mostly supported the OHR and called for its continued intervention. In contrast, the RS political elites have described the OHR as 'useless' (BalkanInsight 2015) and have asked for diminishing its Bonn powers and closure. Civilians in Sarajevo have urged the OHR to react to the destructive behaviour (i.e., hate speech) observed in the RS and by the RS authorities (OHR Report No. 61/2022).

The Office of the High Representative's (OHR) role, and its engagement in BiH, particularly the use of Bonn powers, have been criticised and questioned by some of BiH's political leaders, the international community and members of academia. The OHR has been described as an 'international protectorate', and the 'European Raj' (Banning 2014: 262), and 'a part of political disputes rather than a facilitator of solutions, and the High Representative's executive (Bonn) powers are no longer effective' (International Crisis Group 2009: 1).

Critics point out the lack of due process, arbitrariness and accountability in HRs' decision-making processes. The Bonn powers have been described as 'incompatible with the democratic character of the state and the sovereignty of BiH' (Venice Commission 2005: 22). Gilbert (2012) portrayed the Bonn powers as the 'democratization paradox – a promotion of democracy through undemocratic means' (484). Some HRs, using the Bonn powers, removed democratically elected officials for obstructing the implementation of the DPA.

The Venice Commission (2005) acknowledged that using the Bonn powers helped the post-war BiH. However, it also recognised the Bonn powers' inadequacies, pointing out they were inconsistent with democratic principles such as due process and the possibility of judicial control. Although HRs can use the Bonn powers to dismiss obstructive local officials from the office, BiH

judicial institutions, including the Constitutional Court, do not review the HR's decisions.

The Bonn powers were ad hoc and indefinite, which made BiH's institutions dependent on 'an ill-defined set of benchmarks to be determined by the PIC' (Chandler 2005: 27). According to the former High Representative Carlos Westendorp, '... Annex 10 even gives me the possibility to interpret my own authorities and powers' (Slobodna Bosna 1997). Moreover, HR Westendorp specified that the power was not just given to HR: 'You just seize it, if you use this power well no-one will contest it' (Chandler 2005: 310). The Bonn powers and their sanctions were too harsh, came without warning and were characterised by the lack of due process and the right to appeal the decision (Baros 2010). Lastly, claims were made that HRs inconsistently used the Bonn powers (Domm 2007).

Some domestic and international actors have remained dubious about the Bonn powers being the appropriate tool of international assistance in BiH, if and how they alter the dynamics of political processes, and whether the international community should relinquish these powers. The Bonn powers came with great responsibility, meaning that the OHR has had to consistently self-regulate the use of the Bonn powers in a way that would minimally interfere in domestic politics. At the same time, HRs have to know how their decisions can be enforced if challenged. Moreover, some argue that the High Representative cannot use the Bonn powers without the support from the EU member states (Bassuener et al. 2009). Lastly, HRs' reluctance to use the Bonn powers could also be related to the decreasing number of international troops in BiH.¹⁶

Over the years, the (O)HR's loudest critics have been the Serb member of BiH's presidency, Milorad Dodik. He has argued that the OHR represents a bone of contention among the international community (Keranen 2017) and creates a 'culture of dependency', making it difficult for BiH to become self-sustaining (Gilbert 2017). Thus, Dodik and the RS government have continuously called for OHR closure. They argued that the OHR had a destabilising and disruptive effect on the BiH political elite's consensus-building and reform efforts (RS Government 2009). The Council of Europe's Venice Commission (2005) observed that the attitude towards the Bonn Powers in RS was 'generally critical, even strongly hostile'.

In November 2019, the RS Parliament approved nonbinding resolutions consisting of various 'conclusions' proposed by the major political party, the Union of Independent Social Democrats (SNSD).¹⁷ These conclusions rejected the Bonn powers (Radio Free Europe 2019). In March 2021, the Parliament of RS adopted a resolution that called for the immediate closure of the OHR. Re-

¹⁶ In 1999, SFOR had 30,000 troops in BiH willing and able to support the OHR in case of serious confrontation (International Crisis Group 2007) compared to 2,500 EUFOR members in 2007. The number has increased to 3,500 in 2022 (Shannon 2022).

¹⁷ Milorad Dodik leads the Union of Independent Social Democrats (SNSD).

publika Srpska's grievances regarding the OHR have also been voiced in their reports to the UN Council. The review of the RS' reports to the UN Security Council revealed the main criticism of the OHR, which was grouped into the following categories:

OHR exceeds its Dayton authority	<ul style="list-style-type: none"> ▪ HR's mandate does not include an interpretation of the BiH Constitution (1-2009, 3-2010). ▪ OHR consists of the 'colonial foreign administrators and commanders' (2-2009: 22).
OHR is biased and centralises governmental authority at the RS Entity's expense	<ul style="list-style-type: none"> ▪ OHR reports to the UN Security Council are 'divisive and unbalanced' (2-2009: 16). ▪ OHR supports Bosniaks' agenda and unconstitutional centralisation of BiH (2-2009, 20-2018). ▪ OHR has sided with Bosniaks to the disadvantage of two other constituent people and has become a 'destabilizing source of paralysis and distrust' (22-2019: 3).
OHR acts 'above the law'	<ul style="list-style-type: none"> ▪ OHR has undermined judicial independence in BiH (5-2011). ▪ High Representative, a non-elected political authority, makes decisions that are impossible to appeal (22-2019). ▪ OHR violates the BiH Constitution and BiH citizens' human rights (1-2009: 9, 2-2009). ▪ OHR established the Court of BiH and BiH's Prosecutor's Office, which conflicts with the Constitution (13-2015). ▪ OHR commits ultra vires acts and uses 'muscular intervention' (1-2009:15). ▪ OHR interferes in the Brčko electricity market (4-2010). ▪ OHR misuses international military forces (SFOR) to enforce illegal and unauthorised decisions (4-2010). ▪ HRs have acted as 'dictators' whose continuous presence and 'illegal interventions' have been 'incompatible' with EU membership (27-2022: 10). ▪ HRs act 'illegally as colonial viceroys and work aggressively, through issuing anti-democratic and legally preposterous diktats, to replace the highly centralized BiH mandated by the BiH Constitution with the unitary "civic" state that was the Bosniak army's wartime goal' (27- 2022: 4). ▪ OHR inhibits BiH's economic development (Republika 4-2010).
The Bonn Powers	<ul style="list-style-type: none"> ▪ OHR has no legal basis for using 'peremptory' powers to suspend and remove public officers, block their bank accounts and seize travel documents (1-2009: 9). ▪ The use of Bonn Powers to remove public officials violates the Stabilization and Association Agreement between BiH, the European Communities and its Member States (2-2009). ▪ The Bonn Powers negatively affect the BiH Constituent people's efforts to negotiate compromises (2-2009). ▪ Annex 10 of DPA grants powers to HR to 'facilitate', 'mobilize' and 'coordinate', not to use the Bonn Powers (3-2010: 3). ▪ OHR imposes laws and extends the mandates of foreign judges and prosecutors by decree (4-2010). ▪ The Bonn powers are 'wholly unlawful', exceed powers granted in DPA, violate human rights and are used as extrajudicial punishments on public officials, especially the Serb ones (22-2019:15).

Citation: Number of the report – year: page (e.g., 2-2009: 22)

Besides being criticised in RS, Russia also does not have a favourable opinion of the OHR and the Bonn powers. Russia criticises the OHR for its ‘protectorate methods’ (BalkanInsight 2015). Although a PIC member, Russia has tried to undermine the work of the OHR from the start and has supported the idea of RS seceding from BiH (Mujanovic 2020). Russia argues that the OHR is controlled by the West and opposed by the Bosnian Serbs (BalkanInsight 2015). In July 2021, Russia and China offered a draft resolution on the abolition of the OHR in BiH to the UN Security Council. Only Russia and China supported the resolution, while 13 council members abstained. Therefore, the OHR office was not abolished¹⁸ (Sarajevo Times 2021). Russia and China also share the RS’ opinion that the OHR should be dismantled and closed by 31 July 2022.

Undoubtedly, the international community is divided on many issues concerning BiH, including the OHR. Considering the complexity of the situation in BiH and the lack of progress between BiH’s political elite, the OHR has made decisions that were not welcomed by certain political elites and the international community. Thus, the OHR has been perceived as both a stabilising and disturbing factor in BiH.

Concluding remarks

There is no denial that BiH is one of the world’s most unique and complicated countries. Bosnia and Herzegovina has one of the most complex systems of governance (i.e., four-tier governance, rotating tripartite presidency, numerous ministries), and the international community also holds executive powers. Bosnia and Herzegovina struggles with its weak institutions, dysfunctional political system and corruption. Often, BiH’s political elites impede and damage BiH’s overall progress by concentrating on their party interests instead of focusing on required reforms, fighting corruption and improving the opportunities for all citizens. Thus, BiH still requires the international community’s engagement and protection from the political elites, both domestic and international actors, who tend to obfuscate the issues of BiH’s identity, sovereignty and territorial integrity.

The foregoing review of HRs’ decisions and reports to the UN Security Council revealed the extent of HRs’ involvement and the tasks they accomplished. The HR’s focus has been on the operational coordination of civilian implementation activities in BiH. Following the end of the war, the immediate attention was on encouraging BiH’s authorities to take on joint responsibility for the implementation of the DPA, the establishment of BiH’s common institutions and economic reconstruction (OHR 1997). Undoubtedly, many of BiH’s post-war accomplishments (i.e., refugee return, reconstruction of the country, freedom of movement,

¹⁸ Nine council members had to vote in favour of the decision, with no vetoes from any of its five permanent member states, in order for the OHR to be abolished.

currency, elections and progress toward the EU and NATO membership) resulted from the OHR's efforts. Unfortunately, following a decade of positive reintegration, BiH's progress has been mainly stalled by political forces interested in ethnopolitical divisions and rolling back achieved progress and key reforms.

Since its establishment, the OHR has issued 950 decisions meant to help BiH implement the civilian aspect of the DPA, rebuild the country and help it transition into a self-sufficient democratic country capable of achieving EU membership. Bosnia and Herzegovina would not be able to make any progress if the OHR did not act. The OHR has not had an easy task bringing about positive changes in BiH, but its inaction in recent years provided an opportunity for ethnonationalists to undermine already made progress. Thus, it is crucial for HRs to have support from the rest of the international community when deciding to use the Bonn powers as many factors may influence their implementation (e.g., PIC's approval, regional and global political environment, etc.). Therefore, HRs have had to carefully decide when they choose to use the Bonn powers to issue decisions and implement them.

Some have questioned whether the Bonn powers have become an obstacle to state-building, the development of effective institutions and the reduction of a democratic deficit as they may lead to a lack of ownership and reinforce the passivity of BiH's politicians. Using the Bonn powers to overcome political obstructions and establish the state-level institutions might have lessened the need for state-level negotiations among the national groups (Cox 2001).

The Venice Commission (2005) acknowledged that using the Bonn powers helped BiH become a more stable and viable country. They have helped overcome the DPA's shortcomings and the nationalist tendencies to stall and endanger BiH's sovereignty and territorial integrity. However, it also recognised the Bonn powers' inadequacies, especially since they were not consistent with democratic principles such as due process and the possibility of judicial control. The Commission supported phasing out Bonn powers and providing more subtle means instead, but this should be postponed to a later date. Recently, former HR Inzko stated: 'Perhaps the international community made a mistake when it changed gears too quickly from what we had – a robust, strong, international presence – to domestic responsibility, domestic solutions' (as cited in Jahić 2021).

Unfortunately, the lack of the international community's focus on BiH in recent years and a harmonious plan for BiH worked in favour of secessionist politics. Moreover, due to the rise of nationalism and the fragile world peace, some members of the international community expressed concern about the deteriorating political situation in BiH and have called for greater international involvement. Bosnia and Herzegovina should be considered the international community's moral responsibility, considering BiH's suffering during the 1992–1995 war. The international community cannot give up on BiH and must continue to support it in a way that would allow BiH to flourish and keep its

political leaders accountable. Thus, the Bonn powers to remove uncompliant BiH leaders should remain an option.

The EU-US previously preferred a 'local ownership' policy for BiH does not seem achievable right now as BiH faces many existential threats (i.e., calls for secession/'peaceful divorce' by Milorad Dodik). These threats would amplify if the OHR closed. Former HR Schwartz-Schilling called the international community to help BiH as he recognised the 'egoism of the political parties, especially the leadership of the three national ethnic groups, which think only of their own well-being, are the biggest obstacles on the road to Europe' (N1 Sarajevo 2021). Former HR Inzko stated, 'the same old mistakes – putting the interests of a private, privileged political class before those of the country and its citizens – continue to be made' (OHR 2014). The Bonn powers remain the only feasible option for resolving crucial deadlocks when the Bosnian political elites are unable and unwilling to find and implement the best solutions and reforms for BiH. In its current state, BiH cannot withstand the removal of the OHR as its international tutelage. Therefore, BiH still very much relies on the guidance and actions of the international community. The international community, including the OHR, must first ensure BiH's sovereignty and territorial integrity, help the country reach its potential and move towards Euro-Atlantic integration. However, considering the global environment, the international community most likely will choose not to take extreme measures in BiH and instead continue to tread lightly to avoid any escalations.

Bosnia and Herzegovina needs responsible and committed leaders who demonstrate credibility and commitment to multiculturalism and completion of the 5+2 Agenda while ensuring the best interest of the country. Moreover, BiH needs support from a robust and effective OHR committed to preserving BiH's territorial integrity. All decisions that the HR makes must first and foremost keep the best interest of all BiH's citizens at heart. Once BiH's political elite is focused on BiH and its progress instead of its personal gains, the OHR will be able to close its office in BiH. In the meantime, the OHR has to act decisively as BiH's citizens need an HR willing to make tough and necessary decisions instead of just expressing 'deep concerns'.¹⁹

As I was finishing this article, the news broke that HR Schmidt was considering using the Bonn powers to amend the Election Law in favour of the Croat Democratic Union's (HDZ BiH) proposal.²⁰ The draft decision was sent to the

19 Former HR Inzko often expressed "deep concern" about the situation in BiH without using Bonn powers or taking any other actions to remedy the problems (Mujanović 2020). To the public, deep concerns became synonymous with inaction.

20 Dragan Čović, the leader of the Croat Democratic Union (HDZ BiH) and a former member of BiH's tripartite presidency has disputed the legitimacy of the Croat member of BiH's presidency, Željko Komšić arguing that Bosniaks helped elect him. In 2005, HR Ashdown removed Čović from his position as a Croat Member of BiH's tripartite presidency (OHR 2015).

Embassies, and HR Schmidt met with representatives of political elites in FBiH, but the OHR has not consulted with or provided any information to the public. Based on the leaked information, the concern is that proposed changes to the electoral law would lead to further ethnic divisions within BiH, would bolster Croat nationalists' representation, and lead to the creation of the third, Croat entity. While previous HR Schmidt's decision to ensure the funding for the elections was welcomed by individuals wanting to practice their fundamental right, the right to vote, this potential decision that would only allow Cantons with most Croats to give delegates to the federal House of People, concerned many. It would lead to further ethnicisation of the country if collective ethnic rights were tied to a specific territory (Kojovic 2022). It would strengthen the position of nationalistic parties resulting in discrimination of others in FBiH. If the speculations turn out to be true, the decision would be tantamount to BiH's further division without announcing it.

The HR needs to carefully consider the future implications of the decision and the effect on the individual rights of all citizens in BiH. The oversights in the DPA (i.e., violation of human rights) showed that the devil is in the details and that any piece of legislation is difficult to change in BiH later. Whatever decision the OHR makes, it needs to discourage rather than reinforce any further divisions along ethnic lines that could lead to BiH's downfall. High Representatives' actions need to be directed toward finding a common solution that is in the best interest of all people and BiH as a state. In the past, the international community missed many opportunities to protect BiH and allowed ethnonationalists to cause instability in BiH. Thus, the international community, including the OHR, has a moral and legal duty to prevent anything that would roll back twenty-six years of peace implementation reforms and bring BiH closer to collapse.

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