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How a German Diplomat Jeopardizes Bosnian Democracy: A Controversial Intervention in the Balkan State's Recent Elections Risks Empowering Nationalist Extremists

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Before Russia's latest invasion of Ukraine in February and the ensuing carnage against the country's civilian population unleashed by Russian occupation forces, it was Bosnia and Herzegovina that held the dubious distinction of witnessing the deadliest war in Europe since 1945. For the nearly 30 years since the conclusion of the Bosnian War, the country has held another ignominious title: the most complex constitutional and electoral regime in the world.

That is because the U.S.-brokered Dayton Peace Accords, which ended the Bosnian conflict in 1995, did so by creating a labyrinthian constitutional structure that divided power in postwar Bosnia along explicitly ethno-sectarian lines between the country's three so-called constituent peoples (a term introduced via the accords): Bosniaks, Croats and Serbs. As a result, Bosnia, which is approximately the size of Costa Rica and today has a population likely well under 3 million, has 14 different governments and hundreds of ministers, nearly all of whom are appointed on an explicitly sectarian basis. Bosnia's constitution, which is an annex of the accords, has never been ratified by the country's Parliament.

Sitting atop this incredible, implausible structure is the Office of High Representative (OHR), an internationally-appointed diplomat who serves as the final authority on the implementation of the Dayton Accords and therefore also as the chief interpreter of Bosnian constitutional law. The current high representative, Christian Schmidt, a former German parliamentarian, can remedy any violations of Dayton, the constitution or Bosnian law more broadly through his so-called Bonn Powers — expansive executive authorities that allow him to amend and impose laws, sack elected officials and redirect funds within Bosnia's governing apparatus, among other prerogatives.

It is this office that now finds itself at the center of a firestorm of controversy concerning both the basic democratic legitimacy of the country's recently-concluded general elections and the direction of Western policy in Bosnia writ large.

In a previous essay for New Lines, I explored the broad contours of the country's

complex electoral reform process. As I explained then, starting in 2009, the Bosnian state lost a series of landmark court cases at both the European Court of Human Rights and the country's own Constitutional Court. These decisions found that large segments of the country's existing constitutional regime were flagrantly discriminatory, above all against Bosnians who did not identify with and/or were not members of the constituent peoples. Bosnia had to bring its constitutional and electoral norms in line with the liberal democratic standards that are meant to govern all member states of the Council of Europe.

The question since then has simply been: how? Yet, in Bosnia, the "how" is anything but simple.

Due to the expansive blockades and vetoes built into the Dayton regime, ostensibly meant to promote "power-sharing," small sectarian actors have considerable powers to shut down governance and thus obstruct reforms of the system. For much of the past decade, one actor, the Croat nationalist HDZ bloc, has used its approximately 9% returns in national elections to grind the entire state to a standstill. They have done so in concert with their partners in the main Serb nationalist party, the SNSD. For four years, the HDZ has blocked government formation in the Federation entity — the larger of the two primary administrative units created in Bosnia after the war, in which the majority of the Bosniak and Croat communities live. Meanwhile, the SNSD has used its government in the Republika Srpska (RS) — the other, Serb-dominated entity — to orchestrate a similarly yearslong secession crisis, with the backing of Belgrade and Moscow.

It was in this climate of political and legal crises that Bosnians voted in both presidential and parliamentary elections on Oct. 2. As of this writing, the results are still being processed, and it is both encouraging and sobering that in parts of the country as many as 20% of the ballots remain uncounted. But it was the actions of Schmidt, the high representative, in the moments after the polls closed that proved most decisive.

In terms of results, to begin with, for the first time in the country's history, a member of the multiethnic, left-wing SDP has won the Bosniak seat for the tripartite state presidency. Denis Becirovic resolutely defeated the unpopular long-time leader of the Bosniak nationalist SDA, who, along with his family and inner circle, has been involved in a slew of corruption and criminal scandals in recent years. Despite this, the SDA still did surprisingly well in the parliamentary elections, even as a heterodox coalition of reformist candidates captured over a third of the vote in various parts of the country, including Becirovic's former SDP colleague, who clinched reelection to the Croat seat on the state presidency on the back of moderate Croat, Bosniak and self-identifying Bosnian votes. This prompted another apoplectic reaction from the HDZ, which considers state presidency member Zeljko Komsic's support among the Bosniak community an act of disenfranchisement of their supporters. Yet the HDZ improved its own results in the parliamentary elections and their partners in the secessionist SNSD were able, once more, to stave off challenges from the marginally more moderate Serb parties in the RS entity.

Before any of this became clear, however, within minutes of the polls closing on Oct.

2, news broke that Schmidt was preparing to use his Bonn Powers to amend the Federation entity's elections laws to address only one of the country's eight outstanding constitutional cases. He was going to address the Bosnian Constitutional Court's 2018 Ljubic decision, which dealt with the way delegates in the Federation entity's upper chamber, the House of Peoples, were apportioned. Schmidt's predecessor, Valentin Inzko, had taken the formal position that the Ljubic decision had already been implemented through technical amendments by Bosnia's Elections Commission, but the HDZ claimed otherwise and blocked the Federation government for the entirety of the post-2018 mandate on those grounds.
By 8 p.m., the OHR itself had confirmed the media reports and published the new law. It was an extraordinary moment. Even as Bosnia was awash with election-monitoring teams from all over the world, including high-level delegations from the U.S. and EU, the high representative was changing the country's elections laws. In any other country, such an event would have been considered a de facto putsch. The observation missions were indeed displeased, with numerous high-level members of the European Parliament issuing statements slamming Schmidt for the move, which they saw as a perversion of the country's democratic process.

In its public statements on election night and in the weeks since, the OHR has claimed the primary purpose of its intervention was to "de-blockade" the Federation entity. It has emphasized its inclusion of a set of functionality measures that limit but do not entirely remove the prospects for obstructionist activities on the part of the HDZ. But the most significant change in the law concerned the expansion of the three constituent peoples' caucuses in the House of Peoples and the amendment of their role in the nomination of the entity's president, who is the key actor in the government process, to strengthen the HDZ's domination in the chamber.

The primary effect of the law will be to raise the threshold required to nominate a candidate for Federation president from six out of 17 members (35.3%) to 11 out of 23 members (47.8%), explained the analysts Bodo Weber and Kurt Bassuener from the Democratization Policy Council to the online forum Just Security. A draft law previously floated by the OHR in July, which had prompted a wave of public and international backlash due to the inclusion of additional discriminatory ethnic provisions, had still envisioned a lower threshold for nominating the Federation entity president.

Moreover, the fear among critics is that the majority of the new Croat caucus members will be drawn exclusively from the HDZ's political heartland, meaning that regardless of how poorly the party fares in multiethnic regions of the country, its base will deliver it a permanent, vise-like grip on the Federation entity. Due to their close cooperation with the SNSD, there are also concerns the HDZ will now be able to (in)directly and permanently control how the state-level governments are formed as well.

If the aim was genuinely the "functionality" of the country's Federation entity, it is unclear why the high representative did not simply impose only those functionality amendments while leaving the country's elected officials to agree to a new format for the House of Peoples. If the counterargument is that those opportunities had already been afforded for years (and they had), it still does not account for the fact a new

parliamentary assembly had just been elected, with a small but significant increase in the number of credible reformist legislators. The OHR robbed them of the opportunity to amend their own country's legislative institutions and electoral processes.

In short, Bosnians had voted under one set of rules, but their ballots would be tabulated under another set. Depending on the outcome of the final election results, it is quite plausible that Schmidt will have changed who is able to form a government, at least in the Federation entity. That is to say, the high representative will have changed the results of the elections, functionally speaking, almost entirely in the service of a political party which the OHR claims is one of the chief architects of Bosnia's recent political chaos.

If this were not incendiary enough, Croatian government officials, who had spent years lobbying the OHR, the EU, NATO, the Council of Europe, the Organization for Security and Cooperation in Europe and individual Western capitals to impose these changes at the behest of its clients in the HDZ, immediately took to social media to congratulate themselves for their success in hijacking the electoral process in a neighboring country, before adding this was only the "first step" in a broader project to remake Bosnia in Zagreb's image.

Where Bosnia goes from here remains to be seen. The changes imposed by the OHR are, at first glance, so technical that most of the public will likely struggle to process the extent of their impact. Clearly, the central aim of making the changes as votes were being counted was for their full force to be dampened by the excitement from the returns of the elections themselves. It was, in effect, a kind of shock-and-awe approach by diplomatic fiat. In that regard, the effort has doubtlessly been a success.

Since then, however, Komsic has made an emergency filing with Bosnia's Constitutional Court to evaluate the legality of the changes imposed by the high representative. If the court rules on precedent, it should strike the law down on grounds of discrimination. Whether and when it will do so remain open questions. If the court does rule against Schmidt, the blow to his credibility would be irreparable.
The public response has been muted. Two weeks after the election, the prospects for a street-based backlash diminish.

The turnout at the elections — widely portrayed in local media as a historic opportunity to oust the entrenched nationalist establishment — was a miserly 50%. Emigration trends continue to be cataclysmic, while the country's birth rate is likewise flatlining. Now, the chief international institution in the country has intervened to further cement the ability of the nationalist oligarchy, those most responsible for the country's catastrophic socioeconomic conditions, to rule and plunder. In the structural sense, then, the danger of what Schmidt has done is to convince the few remaining Bosnians left in the country that even the idea of change has been taken away from them.

If that ends up being the long-term outcome of the OHR's intervention, then here too the international community will be seen by many Bosnians as having implicitly delivered on the agenda of the most extremist elements in this society: those Serb and Croat nationalists who want Bosnia to disappear entirely, or at the very least for most

of its peoples and historic lands to be divided among Zagreb and Belgrade, as was their aim for much of the wartime period.

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