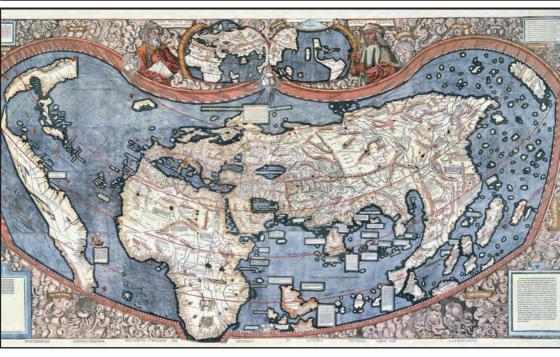
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The Institutionalisation of Structural Uncertainty: An Analytical Framework – The Case of Bosnia and Herzegovina

di Can Zeyrek

Abstract – This article examines the determination of structural uncertainties with which a political transition is afflicted with. However, these uncertainties arising from a political transition are difficult to determine theoretically and empirically as the dimension of a state collapse after an ethnicised civil war and the post-conflict situation – as in the case of Bosnia and Herzegovina (BiH) – is not systematically taken into account. These considerations give rise to the following research question: What are the regularities that could possibly lead to structural uncertainties at least for a limited period of time? In order to determine these uncertainties, a new 3-dimensional analytical framework is developed in this qualitative study, analysing and interpreting expert data from different indices. The results show that structural uncertainties can be localised in all 3 dimensions (clientelism, state-building, externally intervening variables) in BiH, institutionalising, slowing down the democratisation process despite the (however dwindling) intervention of external democracy promoters.

A particular research interest of Philippe C. Schmitter and Guillermo O'Donnell was the determination of the uncertainties with which a transition from an authoritarian regime is afflicted, which is why they refer to this process as the transition «to an uncertain something else»¹.

The question of how to determine these uncertainties is also relevant for this analysis. Political regimes can remain as hybrid systems of rule when it is unclear whether an area of transformation – such as the region of the Western Balkans – is «clinging» to the «zone of structural ambivalence»², that is, to the gray area between authoritarianism and democracy.

² A. Schedler, *The Menu of Manipulation*, "Journal of Democracy", vol. 13 (2002), n. 2, pp. 36-50.

¹ P. Schmitter - G. O'Donnell, *Transitions from Authoritarian Rule – Tentative Conclusions about Uncertain Democracies*, Baltimore, 1986, p. 3.

Jumping off from the research perspective of hybrid regimes, an extension to the theoretical approach of Philippe C. Schmitter and Guillermo O'Donnell will be undertaken.

Schmitter and O'Donnell follow a democracy/democratisation bias and against this background try to localise the structural uncertainties with which a transition from an authoritarian regime is afflicted. Yet, the dimension of a state collapse after an ethnicised civil war and the immediate post-conflict situation -as in the case of the former Yugoslavia- is not systematically taken into account. Especially if a development path of democracy cannot be assumed at first because state collapse and armed strife along ethnic-nationalist or religious-fundamentalist lines of conflict make state- and nation-building difficult or even hinder it. This paper will address this research gap.

In this paper, however, instead of reflecting a democracy bias as a reference point and consequently unlike Schmitter and O'Donnell, *hybrid regimes* (following a neopatrimonial logic of rule) and the institutionalisation of structural uncertainty³ will be referred to as central analytical research categories.

According to Christian Timm client relations play a crucial role within the framework of neopatrimonial logic of rule⁴ because, i.a., they can procure the institutionalisation of structural uncertainties. It is the specific empirical aim of this study, in the post-socialist or post-Yugoslav context, to capture these uncertainties in hybrid regimes that are subject to a neo-patrimonial logic of rule, with which a transition from an authoritarian *ancien régime* after a state collapse due to civil war is afflicted.

Institutionalisation of Structural Uncertainty

Timm⁵ states that the creation of an 'institutionalised uncertainty' occurs «through the continuous oscillation between two different

³ C. Timm, Jenseits von Demokratiehoffnung und Autoritarismusverdacht: Eine Herrschaftssoziologische Analyse post-transformatorischer Regime, in H. Albrecht - R. Frankenberger (ed), Autoritarismus Reloaded – Neuere Ansätze und Erkenntnisse der Autokratieforschung, Baden-Baden, 2010, pp. 95-118.

⁴ Timm, cit., in Albrecht - Frankenberger (ed), op. cit.

⁵ Timm, cit., in Albrecht - Frankenberger (ed), op. cit.

logics of rule [...] which can be explained as the central characteristic of neopatrimonial regimes and consequently creates a new kind of system logic sui generis». He defines regimes as neopatrimonial in which «forms of bureaucratic and patrimonial rule coexist as parallel channels of communication and decision-making and are mutually exploited by the ruling elites in such a way that an inherent» institutionalised uncertainty «is generated for social and political actors»⁶. Based on the double logic of rule that underlies neopatrimonial regimes in the form of the mutually complementary interplay of formal and informal institutions, Timm presents mechanisms that lead to the generation of 'institutionalised uncertainty'. He also points out that «the political gray area» shows a significantly high level of perceived uncertainty.

In locating the mechanisms that lead to institutionalised uncertainty, Timm primarily points out the importance of client relations, since «they both (1) have a system-integrating effect; (2) create political cohesion; as well as serve to (3) institutionalise structural uncertainty». Neopatrimonial regimes can «defuse moments of lack of resource flows or increasing demands on the part of the client networks by having political entrepreneurs withdraw to their formally ascribed positions and the option of state sanctioning power»¹⁰. In this context, Timm emphasises that clientelism can be understood as a condition for and as a response to institutionalised uncertainty¹¹. This institutionalised uncertainty is particularly noticeable in post-conflict societies, as will be seen using the example of Bosnia and Herzegovina.

As already mentioned, gray area regimes in particular, i.e., political orders that are located between authoritarianism and democracy, are characterised by a high degree of perceived uncertainty. Since the case of Bosnia and Herzegovina, used for the this study, is a hybrid regime, based on Timm's description and Erdmann's and

⁶ Timm, cit., in Albrecht - Frankenberger (ed), op. cit.

⁷ Timm, cit., in Albrecht - Frankenberger (ed), op. cit.

⁸ Timm, cit., in Albrecht - Frankenberger (ed), op. cit.

⁹ Timm, cit., in Albrecht - Frankenberger (ed), op. cit.

¹⁰ G. Erdmann - U. Engel, Neopatrimonialism Revisited – Beyond a Catchall Concept, "German Institute for Global and Area Studies" [online], 2006, no 16. Available on: https://pure.giga-hamburg.de/ws/files/21260632/wp16_erdmann_engel.pdf.

¹¹ Timm, cit., in Albrecht - Frankenberger (ed), op. cit.

Engels' approach to neopatrimonialism, a set of categories is deductively derived in order to initiate a concrete conceptualisation of mechanisms, which lead to the generation of structural uncertainty. Data will be used from the Bertelsmann Transformation Index (BTI) 2022 Country Report and the Freedom House 2022 Country Report, both on Bosnia and Herzegovina, to examine the following research question,

What are the regularities that could possibly lead to, institutionalise and stabilise structural uncertainty at least for a limited period of time?

Additionally, further variables are developed deductively, which take into account the specific dimension of the process of state-building. Correspondingly, concepts on the latter are based on¹². The state-building dimension plays a decisive role insofar as structural uncertainties can already be established in this early phase of the transition or transformation.

Following the development of the category system for the analysis, which consists of three different dimensions, the system is substantiated and checked for its relevance according to the research question, and hypotheses are generated.

The Analytical Framework

Category System Structural Uncertainty

The aim of this article is to develop a basic analytical framework for the preliminary analysis of the institutionalisation of structural uncertainty as a central analytical research category in order to take a first possible step towards the theoretical understanding of this characteristic and to test this framework in a preliminary empirical analysis. In particular, the dimension of the process of state-building, dealt with in the previous section, and that of the

¹² F. Rüb, Staatlichkeit, Staatszerfall, "künstliche Staaten" und Staatsbildung. Konzeptionelle Überlegungen zu Problemen und Perspektiven des Staates aus politikwissenschaftlicher Sicht, in M. Beisheim - G.F. Schuppert (ed), Staatszerfall und Governance, Baden-Baden, 2007, pp. 28-56; U. Schneckener, Fragile Staatlichkeit und State-building. Begriffe, Konzepte und Analyserahmen, in M. Beisheim - G.F. Schuppert (ed), Staatszerfall und Governance, Baden-Baden, 2007, pp. 98-120.

externally intervening variables are contextualised, in which structural uncertainty is already embedded in advance.

As previously touched upon, client relationships are relevant in connection with neopatrimonial logic of rule, which are characterised by appropriate resources, client networks, resource demands, political entrepreneurs and their sanctioning powers. Based on these characteristics and on additional externally intervening variables, these categories for the analysis of the institutionalisation of structural uncertainty in state building processes may be identified:

I. Dimension 'Clientelism' (deductive, based on Erdmann & Engel, 2006: 21 p. and Timm, 2010: pp. 104-109)

- (1) (non-existent) resource flows (What kind of resources are in question? What are the sources of the resources?),
- (2) political entrepreneurs (Which actors are in question?) and their
- (3) option of state sanctioning powers (What sanctioning powers do these actors have?

II. Dimension 'Structural, Procedural and Political-/Legal-Cultural Problems in State Building Processes' (deductive based on Rüb, 2007: 48 p.)

- A. Structural Problems
- (4) no uniform legal structure (How is the legal structure composed?),
- (5) no uniform tax administration (How is the tax administration composed?),
- (6) defective system of public finances (How is the system of public finances organized?),
- (7) no clear definition of the state borders (How are the state borders formed?),
- B. Procedural Problems
- (8) synchronous processes of state and nation building (Are state and/or nation building processes completed?),
- C. Political-/Legal-Cultural Problems
- (9) Consensus orientation of the political elite in order to strengthen the legitimacy of the state (Does consensus orientation exist among the political elite?),

III. Dimension Externally Intervening Variables'

(10) Role of the external actors (democratisation and the development of the rule of law, political conditionality, the granting of credits and external monitoring) (Are external actors successful in democracy promotion/the development of the rule of law?).

Based on these 'dysfunctions', it can first be stated that the category system consists of three different dimensions, from which structural uncertainty may arise. The dimension of clientelism, the dimension of the state-building process and that of the externally intervening variables. These can already be reflected in the

institutions, political processes, procedures and socio-political interactions and may have an (after)effect during the initial phase of a state-building process as well as after its completion. If it fails to maintain the system-preserving functions and to reproduce them in a constant cycle¹³, states may consolidate as hybrid political orders. In the event of a regime transition resulting in a process of democratisation, i.e. the transition from an authoritarian regime, certain economic, political, social and cultural influences from the ancien régime can certainly survive, despite the fact that after the transition, old legal norms are overridden (negative transformation) and new rules are agreed (positive transformation)¹⁴. Here it is up to the implementation and acceptance of the new norms¹⁵ as well as the sanctioning of the imprints from the ancien régime, whether the democratic transformation is successful and thus a path of democratisation can be taken or whether a hybrid political order is established or a strongly defective democracy¹⁶ enforced. Based on these considerations and the above presented category system of structural uncertainty, the corresponding working hypotheses are now to be generated.

Tentative working hypotheses on the first research dimension (clientelism) of structural uncertainty:

- (H1) Irregular or non-existent flows of resources in client relationships or networks can lead to an unequal and thus tense relationship between the actors involved, which can generate structural uncertainty that is detrimental to democracy.
- (H2) Irregular, non-existent or unsatisfactory flows of resources can incite 'political entrepreneurs' to instrumentalise institutions, processes and elections along ethnically connoted lines of conflict and thereby generate structural uncertainty that is detrimental to democracy.

¹³ W. Merkel - J. Brückner - H.-J. Wagener, *System*, in R. Kollmorgen - W. Merkel - H.-J. Wagener (ed), *Handbuch Transformationsforschung*, Wiesbaden, 2015, pp. 31-45.

¹⁴ W. Merkel - H.-J. Wagener, *Akteure*, in R. Kollmorgen - W. Merkel - H.-J. Wagener (ed), *Handbuch Transformationsforschung*, Wiesbaden, 2015, pp. 63-74.

Merkel - Wagener, cit, in Kollmorgen - Merkel - Wagener (ed), op. cit.
P. Thiery, Demokratische Transitionen im späten 20. Jahrhundert, in R. Kollmorgen - W. Merkel - H.-J. Wagener (ed), Handbuch Transformationsforschung, Wiesbaden, 2015, pp. 405-420.

(H3) The greater the sanctioning powers of these actors, the greater the extent of structural uncertainty that may weaken democracy.

Tentative working hypotheses on the second dimension (State-Building Process) of structural uncertainty:

A. Structural Problems

- (H4) The lack of a uniform legal structure may, under certain circumstances, favor the generation of structural uncertainty that is detrimental to democracy.
- (H5) The lack of a uniform tax administration may, under certain circumstances, favor the generation of structural uncertainty that is detrimental to democracy.
- (H6) A defective system of public finances can encourage the generation of structural uncertainty that is detrimental to democracy.
- (H7) An unclear definition of the national borders can encourage the generation of structural uncertainty that is detrimental to democracy.

B. Procedural Problems

(H8) Processes of state and nation building that run synchronously may promote the generation of structural uncertainty that weakens democracy.

C. Political/Legal-Cultural Problems

(H9) If there is no consensus among the political elite, the legitimacy of the state cannot be strengthened and structural uncertainty, that is detrimental to democracy, can be generated.

Tentative working hypotheses on the third dimension (externally intervening variables) vow structural uncertainty:

(H10) The generation of structural uncertainty, that is detrimental to democracy, can depend on the role of external actors.

Justification of the category system structural uncertainty

The importance of each category that fall under the first dimension of investigation (clientelism) is due to the fact that they can institutionalise structural uncertainty, as will be seen in the empirical section addressing the issue of Bosnia and Herzegovina. These

categories are to be considered in the context of client relationships and each represent mechanisms that cause the institutionalisation of structural uncertainty.

The categories that fall under the second dimension of the category system (state-building process) relate to the structural, procedural and political/legal-cultural problems that already settle in an early phase of political transition and/or transformation and can also bring about structural uncertainty.

The third dimension concerns the externally intervening variables, which include the role, skills and capacities as well as the influence of actors such as external democracy promoters and/or local actors. The importance of the categories falling under this dimension arises from the fact that factors such as the influence of and (political) conditionality applied by external actors and the strengthening of statehood has an enormous impact on the institutionalisation of structural uncertainty.

Through the empirical analysis, the conditions of structural uncertainty in the case study of Bosnia and Herzegovina and thereby the institutional setting of neopatrimonial regimes will be captured in order to locate possible tendencies towards the consolidation of hybrid political orders. The empirical part will reveal the meaning and relevance of each category and the associated hypotheses for answering the central research question.

Finally, the institutionalisation of structural uncertainty, which is caused by the three dimensions of the developed category system, is a decisive factor in assessing whether hybrid political systems can consolidate and is therefore relevant to the central research question that guides this study.

Empirical Section: What's Behind Structural Uncertainty in Bosnia and Herzegowina? (Data collection based on the country reports of the Bertelsmann Transformation Index 2022 and the Freedom House Index 2022)

Dimension of Investigation: Clientelism and Patronage

The ethnicised civil war in the former Yugoslavia and the maintenance of inter-ethnic tensions during the transition and transformation process meant that corresponding «ethnic» patronage

systems and clientelism were able to survive. This has seriously undermined or continues to undermine the implementation of democratic and economic reforms. The 2022 Bertelsmann Transformation Index (BTI, 2022) country report on Bosnia and Herzegovina (BiH) confirms that the governing parties hold ingrained systems of patronage based on access to administrative resources. This patronage system affects in particular the area of employment in the public sector and state-owned companies.

The influence of the patronage system went so far in the years 2017 to 2018 that even the reform agenda 2015-2018 negotiated with the EU, which envisaged the country's increased commitment to the implementation of market economy reforms, almost completely failed. These reforms were intended, among other things, to combat the patronage systems. Due to the lack of reforms, monetary and fiscal stability could not be achieved. The BTI 2022 country report points to the rapid increase in public spending over the past 10 years, which has been accompanied by an increase in employment in the public sector and «non-needs-based transfer payments». Both are identified in the report as the two pillars of the country's patronage system. The violent riots of 2014 showed that the ethnically influenced systems of patronage and exclusion are partly responsible for social polarisation.

According to the BTI report, from the point of view of the ruling elites, the system of patronage is an integral part of the political system in Bosnia and Herzegovina that should be preserved, but which impairs the effectiveness of the institutions as a whole. For example, as in other reform areas, anti-corruption efforts have been poorly implemented due to a lack of political will.

The 2022 Freedom House country report on Bosnia and Herzegovina also confirms that an enormous network of patronage exists, allowing the incumbent governing parties to maintain their power, which in turn makes it more difficult for smaller, reform-oriented groups to achieve their own goals. Widespread corruption and patronage would also pose a major obstacle to free enterprise.

As a result, the system of «ethnic» patronage and clientelism are not only the cause of economic inequality in the country, but are also responsible for the politicisation of the curricula at all levels of education, which de facto prevents a cross-society and cross-institutional de-ethnicisation.

In the following, the categories of the first investigation dimension (patronage and clientelism) of structural uncertainty will be applied to the case study Bosnia and Herzegovina based on the data of the country reports of the BTI and Freedom House from 2022 and the corresponding hypotheses be checked:

- (1) Access to administrative resources is *the source of resources* for the ethnicised patronage system or structure in BiH used by the governing parties. These are in particular public employment positions and posts in state-owned companies¹⁷. Additionally, public resources are politicised¹⁸. Based on the two country reports, it can be assumed that the system of patronage in BiH is reproduced with every change of government and that administrative sources continue to be exhausted. There is obviously a lack of assertiveness and/or a lack of acceptance with regard to new norms, which could favour a successful continuation of a democratisation process.
- (H1) It can initially be assumed that the inner-ethnic flow of resources (allocation of public sector posts) is not irregular and does not fail to materialise. However, since it is still an "ethnised" patronage system or structure with correspondingly "ethnised" client relationships, one can speak of unbalanced and tense conflict relationships between the "ethnised" client networks. In this context, a structural uncertainty that burdens democracy is generated, which also has ethnic-nationalistic connotations. Taking into account the different ethnically defined patronage or client networks, this hypothesis can be confirmed.
- (2) The territorial subdivision of Bosnia and Herzegovina into a predominantly Bosnian-Croat Federation with ten cantons (with different ethnic group constellations) and a highly centralised Serb Republic (*Republika Srpska*) after the Dayton Agreement ultimately led to the fact that the state institutions were severely impaired

¹⁷ Bertelsmann Transformation Index (2022). *BTI 2022 Country Report. Bosnia and Herzegovina*. Available on: https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_BIH.pdf.

¹⁸ Freedom House (2022). Freedom in the World 2022. Bosnia and Herzegovina. Available on: https://freedomhouse.org/country/bosnia-and-herzegovina/freedom-world/2022.

in their functionality. The mechanisms of decision-making depend on «ethnic consensus building» and «ethnic veto rights». The 2022 BTI report highlights that maintaining inter-ethnic tensions in Bosnia and Herzegovina allows «ethnic elites» to maintain the patronage system¹⁹. By preserving the ethnic patronage or client structures, the «political entrepreneurs» strive on the one hand to anchor their own ethnically motivated and polarising political positions in order to secure access to further public resources. This continues to happen, inter alia, through the open provocation and mobilisation of groups susceptible to ethnic-nationalist rhetoric. In 2019, this development even led to a new public discussion about the possible outbreak of a violent conflict. The most prominent «political entrepreneur» is the former President of the Republika *Srpska* and the current Bosnian-Serb member of the three-headed state presidency of Bosnia and Herzegovina, Milorad Dodik, who often uses explosive rhetoric to question the legitimacy of the state as a whole and the coexistence of the various ethnic groups. The BTI report also confirms that the political elites' primary goal is to maintain the country's patronage systems.

The 2022 Freedom House country report on Bosnia and Herzegovina specifically highlights the country's problematic electoral law²⁰. Citizens who do not identify themselves with any of the country's «constituent peoples» remain excluded from elections to the presidency or the House of Nations (upper house). The European Court of Human Rights confirmed this circumstance, i.e. the exclusion of members of other ethnic groups, in its judgments of 2009 and 2016 as a violation of the European Convention on Human Rights. Due to the far-reaching veto rights of the representatives of the «constituent peoples» (Bosnians, Serbs and Croats), the corresponding dominant parties are able to manipulate the political system and weaken or marginalise other multi-ethnic parties.

¹⁹ Bertelsmann Transformation Index (2022). *BTI 2022 Country Report. Bosnia and Herzegovina*. Available on: https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_BIH.pdf.

²⁰ Freedom House (2022). *Freedom in the World 2022. Bosnia and Herzegovina*. Available on: https://freedomhouse.org/country/bosnia-and-herzegovina/freedomworld/2022.

- The maintenance of the ethnic patronage and client structures is made possible by «political entrepreneurs». These are primarily high-ranking influential political elites of all «constituent peoples». The example of the former President of the Republika Srpska and current member of the State Presidency has already been mentioned. Since the system of ethnic patronage and client structures apparently reproduces itself, it can be assumed that, at least for the time being, there will be no irregularities or interruptions in the inner-ethnic flow of resources (allocation of public service posts). The reproduction of the patronage systems or client networks takes place precisely through the instrumentalisation of state institutions, political decision-making processes and elections along ethnically connoted lines of conflict and through the fact that the flow of resources is neither absent nor irregular at least at the present time. In this respect, this hypothesis cannot be confirmed, but nevertheless this generates structural uncertainty that burdens democracy.
- (3) The major political parties in Bosnia and Herzegovina are considered the most important and influential veto actors within the political order, which is based on a system of «ethnic power-sharing and policy-making». Through the already mentioned reproduction of ethnic patronage systems and client networks, coupled with a political majority and constitutional veto rights, these parties succeed in excluding political opponents from smaller multi-ethnic coalitions, for example. In this context, the BTI country report 2022 refers, among other things, to individual actors or interest groups who, through their proximity to the (big) parties, gain the opportunity to strongly influence the policy-making process in favour of their interests (e.g. posts in the public sector), companies or corruption networks²¹.

From what has been said so far, it is clear that both formal and informal sanction mechanisms and powers can become effective at all levels of the political order. The BTI report confirms the existence of a huge informal sector that is subject to the semi-formal

²¹ Bertelsmann Transformation Index (2022). *BTI 2022 Country Report. Bosnia and Herzegovina*. Available on: https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_BIH.pdf.

or informal control of political elites or parties. Within this framework, for example, the strong influence of the governing parties on the police forces or the steering committee of the public broadcaster in the *Republika Srpska* can also be seen, which also represent informal sanction mechanisms through which resources flow to client networks. The manipulation of the political system in Bosnia and Herzegovina by the ruling parties is also confirmed in Freedom House's 2022 country report²².

(H3) It can be confirmed that due to the formal (constitutional) and informal sanction mechanisms and powers of the ruling parties, both at the level of the state presidency and at the corporate levels (Bosnian Federation and *Republika Srpska*, cantons, etc.), the extent of structural uncertainty that weakens democracy is relatively large. It can also be confirmed that the constitutional veto rights for the «constituent peoples» guarantee the reproduction and preservation of the ethnic patronage systems and client networks. In this example, structural uncertainty is also generated by *formal* constitutional provisions.

Dimension of Investigation: Structural, Procedural and Political-/Legal-Cultural Problems in the State-Building process

A. Structural Problems

(4) It can be anticipated that Bosnia and Herzegovina does not have a uniform legal structure. It consists of four separate legal systems, which are respectively attached to the state level, the level of the two entities (Bosnian Federation and *Republika Srpska*) and the Brčko District. Nevertheless, the BTI country report from 2022 certifies that the country has a solid legal structure that, at least formally, aims to guarantee the independence of the judiciary²³. The report blames the lack of a harmonised legal structure and thus the ((ethnic)political) fragmentation of vertical and horizontal responsibilities for example for the weak administrative

²² Freedom House. (2022) *Freedom in the World 2022. Bosnia and Herzegovina*. Available on: https://freedomhouse.org/country/bosnia-and-herzegovina/freedomworld/2022.

²³ Bertelsmann Transformation Index (2022). *BTI 2022 Country Report. Bosnia and Herzegovina*. Available on: https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_BIH.pdf.

capacities in the environmental sector, in the social security sector, in education and also in the police sector. The inconsistent legal structure also affects important foreign policy issues. After initiating the NATO-Membership Action Plan, which envisages Bosnia and Herzegovina's joining, the leadership in the *Republika Srpska* blocked the formation of a government after the 2018 elections for 14 months. As a result, the action plan could not be implemented. The President of the *Republika Srpska* is empowered, among other things, to issue decrees that are often legally controversial. The BTI report underlines that the RS leadership's rejection of any delegation of powers to the central government level, coupled with a refusal to coordinate or harmonise entity policies, seriously impedes the provision of basic services to citizens.

The 2022 Freedom House Report also confirms that the existence of four independent legal systems (BiH, FBiH, RS and Brčko) contributes to an overall inefficiency²⁴.

- (H4) Due to the fact that Bosnia and Herzegovina does not have a uniform legal structure, the assumption about the generation of structural uncertainties that are detrimental to democracy can be confirmed. The heterogeneous legal structure and the correspondingly fragmented vertical and horizontal distribution of powers are subject to ethnic-political aspects, which reveal the general weakness of the administrative structures. This fragmentation is not only reflected in domestic politics. Even in crucial foreign policy matters, such as the question of the country's possible NATO membership, ethnically motivated concerns can have a problem-generating or disruptive effect on both domestic and foreign policy and decision-making processes. Ultimately, the lack of harmonisation of the legal structures prevents the provision of basic services for the citizens and, among other things, promotes the generation of structural uncertainty that burdens democracy.
- (5) The 2022 BTI report confirms that the exchange of tax data between the central state, the entities and the Brčko district is in

²⁴ Freedom House (2022). *Freedom in the World 2022. Bosnia and Herzegovina*. Availableon: https://freedomhouse.org/country/bosnia-and-herzegovina/freedomworld/2022.

place²⁵. By transferring powers, for example with regard to indirect taxes, to the central government, there has at least been an effort to harmonise tax administration.

However, the Freedom House Report 2022 warns that repeated announcements by Serbian nationalist leader Milorad Dodik (most recently in October 2021) that the *Republika Srpska* would withdraw from the central government tax administration, among other things, clearly signals the danger of a secession crisis²⁶.

- (H5) Despite positive developments (exchange of tax data, more transparency, transfer of powers) with regard to the harmonisation of tax administration, no specific uniform tax administration can be identified. This is also being deliberately undermined by secessionist threats, particularly from leading political elites in the *Republika Srpska*. This circumstance has the effect of destroying democracy and favours the generation of structural uncertainty. This hypothesis can be confirmed at this point.
- (6) Due to a medium-term budget consolidation policy, the first signs of an improvement were initially visible. However, according to the BTI 2022 report, no new public financial management strategies were presented by the governments of the Federation and the *Republika Srpska* by the end of the reporting period²⁷.
- (H6) Despite shrinking tax revenues and increased spending (e.g. health sector due to the Covid 19 pandemic and economic subsidies) and a deterioration in public finances to a deficit equivalent to 5.5% of GDP, the willingness to develop common strategies regarding the state finance management by the Federation (FBiH) and the *Republika Srpska* (RS) is not given. As a result, there is no reconciliation of interests between the two entities, which ultimately puts a strain on

²⁵ Bertelsmann Transformation Index (2022). *BTI 2022 Country Report. Bosnia and Herzegovina*. Available on: https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_BIH.pdf.

²⁶ Freedom House (2022). Freedom in the World 2022. Bosnia and Herzegovina. Availableon: https://freedomhouse.org/country/bosnia-and-herzegovina/freedomworld/2022.

²⁷ Bertelsmann Transformation Index (2022). *BTI 2022 Country Report. Bosnia and Herzegovina*. Available on: https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_BIH.pdf.

the entire system of public finance. The disruption of fiscal consolidation policy, coupled with the resulting redistribution problems, leads to defects in the system of public finance and can generate structural uncertainty that is a burden on democracy.

(7) The constitution of Bosnia and Herzegovina, which was negotiated by the parties under the Dayton Agreement, provided for the reconciliation of competing notions of statehood, entity boundaries and self-determination rights for the country's three «constituent peoples«. However, since 2006, especially in the Serbian-dominated RS entity, ethnic-nationalist rhetoric has noticeably increased. The call for the Republika Srpska to secede from the Bosnian state as a whole and for a union with the Republic of Serbia was and is being called out again and again. The 2022 BTI report confirms that under the former long-serving RS President Milorad Dodik, a regime was installed that has become increasingly autocratic over the years²⁸. The situation finally came to a head when in September 2016 a referendum was actually held on the RS's secession from the state of Bosnia and Herzegovina, which the constitutional court declared to be unconstitutional. The report also confirms that the Bosnian-Serb leadership nevertheless continues to support secession, which has labeled the Bosnian state as an «unnatural and non-functional entity» and thus called into question the overall state legitimacy.

The Freedom House report also underscores fears of a secession crisis in Bosnia and Herzegovina, as the leadership in the RS again announced their withdrawal from various federal institutions as early as October 2021²⁹.

(H7) Despite the fact that the outer state borders and the inner entity borders of Bosnia and Herzegovina were clearly defined by the Dayton Agreement, these are repeatedly called into question by the Bosnian-Serbs. What was initially a

²⁸ Bertelsmann Transformation Index (2022). *BTI 2022 Country Report. Bosnia and Herzegovina*. Available on: https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_BIH.pdf.

²⁹ Freedom House (2022). *Freedom in the World 2022. Bosnia and Herzegovina*. Availableon: https://freedomhouse.org/country/bosnia-and-herzegovina/freedomworld/2022.

problem with the ethnic-political rhetoric of certain political entrepreneurs, especially during the election campaigns, turned out to be a political reality in 2016 with the holding of the referendum on secession from the state of Bosnia and Herzegovina. It is unclear how long the decision of the constitutional court against a secession will be accepted by the political leadership in the *Republika Srpska*. The state or entity borders are *de jure* defined, but *de facto* are not recognised by the RS. With reference to the autocratisation of the *Republika Srpska*, which was certified in the BTI report, and the enormous violations of the constitution, the generation of structural uncertainty that burdens democracy can be observed despite (*de jure*) clear definition of state and entity borders.

B. Procedural Problems

(8) One problem area is the external promotion of democracy, with which, among other things, efforts of state- and nation-building are linked. Since the start of the process of becoming state-building in Bosnia and Herzegovina in 1995, these efforts have aimed at establishing basic state functions - as also explained in the BTI report³⁰. For example, in 2006, the formation of a unified Bosnian-Herzegovinian army was realised by merging the three ethnic armed forces (Bosnian, Serb and Croat). This measure, which the BTI report describes as supporting the state-building efforts of the international community, should also be seen as a nation-building measure, since a common army requires a commitment to a common state. This is evident at least for the case of Bosnia and Herzegovina. The 2022 BTI report indicates that since 2006 the international community has moved from promoting state-building [and nation-building] to a more hands-off approach³¹. Since then, it has been observed that ethnic-nationalist actors and political elites in the Republika Srpska in particular have

³⁰ Bertelsmann Transformation Index (2022). *BTI 2022 Country Report. Bosnia and Herzegovina*. Available on: https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_BIH.pdf.

³¹ Bertelsmann Transformation Index (2022). *BTI 2022 Country Report. Bosnia and Herzegovina*. Available on: https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_BIH.pdf.

deliberately and intensively undermined the state of Bosnia and Herzegovina. To a lesser extent, this development can also be observed among certain Bosnian-Croat actors. It is obvious that the state- and nation-building process in Bosnia and Herzegovina is not completed.

(H8) After initial efforts to advance the state- and nation-building process in Bosnia and Herzegovina after the breakup of the former Yugoslavia, the international community began to withdraw from these processes in 2006. This has led to the fact that both processes have come to a standstill and it does not seem possible to continue these processes at the moment. In this respect, one cannot speak of synchronous processes of state- and nation-building. The absence of one or both of these processes provides favorable conditions for the undermining of the state by ethno-nationalist actors, which weakens the basic state functions, i.e. statehood itself, and prevents the emergence of a culture of citizenship. As a result, the generation of structural uncertainty that weakens democracy is favoured.

C. Political-/Legal-Cultural Problems

(9) The BTI Report 2022 clearly shows that the political actors in Bosnia and Herzegovina have shown themselves to be unwilling to reach a consensus even on fundamental questions of politics or constitutional norms. In this respect, there is no consensus among the political elite when it comes to questions about the formation of possible multi-ethnic coalitions in the general sense³². Another assessment of the report states that Bosnia and Herzegovina's EU integration process would not produce a high degree of consensus building among the political elites. One of the reasons may be that the EU accession process involves the implementation of difficult reforms, some of which run counter to the interests of ethnic-political entrepreneurs. Only during the initial phase of the reform agenda from 2015 to 2016, which dealt with structural economic reforms, a consensus between the various government actors could be observed. This consensus orientation, which was limited

³² Bertelsmann Transformation Index (2022). *BTI 2022 Country Report. Bosnia and Herzegovina*. Available on: https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_BIH.pdf.

is a burden on democracy.

in time, was only made possible by temporary pressure from the European Union or by political conditionality, to which the release of financial resources was linked, as well as strict monitoring by international financial institutions. According to the BTI report, this consensus orientation almost completely collapsed in 2017, when international pressure eased in the immediate run-up. There is no consensus among the political elites in Bosnia and Herzegovina. There is also no consensus on important foreign policy issues, such as the country's EU-membership. This is because domestic or ethnically motivated political preferences are also given priority in this issue, which also prevents the emergence of a culture of compromise. The options for «enforcing» a willingness to reach a consensus, e.g. through political conditionality pressure from external actors, are limited. As a result, there is still no consensus among the country's political elite, which weakens the state's legitimacy and generates structural uncertainty that

Dimension of Investigation: Externally Intervening Variables

(10) During the first post-war decade (1995 to 2005), the international community was the driving force behind democratisation, economic reform and state-building. However, it has already been mentioned that from 2006 onwards the externally intervening international actors switched from promoting state- and nation-building to a more «hands-off» approach. According to the 2022 BTI report, this gradual withdrawal of international actors is also accompanied by a decline in mediation measures and consequently a lack of joint governance at state, entity and cantonal levels³³.

In addition to a lack of governance, according to the BTI report, Bosnia and Herzegovina has been continuously plagued by political instability, the dysfunctionality of state institutions and a continuous undermining of democracy and the rule of law, especially since 2019. In its statement on Bosnia and Herzegovina's application for EU membership and an expert report in 2019,

³³ Bertelsmann Transformation Index (2022). *BTI 2022 Country Report. Bosnia and Herzegovina*. Available on: https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_BIH.pdf.

the European Commission criticised the lack of rule of law. In this respect, certain priorities have been identified, including key structural reform conditions, with a focus on the rule of law and constitutional reform, in order to start accession negotiations. Membership was made conditional on deep structural reform of the judiciary. The BTI report confirms that practically none of the rule of law reform conditions and recommendations were implemented in the period 2019-2020.

Also with regard to the granting of international loans – which is linked to economic structural reforms or political conditions –, the BTI report notes a total failure of the reform process in 2018. The result was that the so-called Extended Fund Facility (EDF) of the International Monetary Fund for Bosnia and Herzegovina of 2016 ended prematurely without extensive implementation. According to the BTI report, no subsequent regulation was agreed during the reporting period³⁴. This shows that there is a lack of both national and international mechanisms that examine or, if necessary, enforce the implementation of policies and reforms.

(H10) The gradual withdrawal of international actors from the processes of state- and nation-building, democratisation and the development of the rule of law in Bosnia and Herzegovina has generally meant that these processes have either slowed down, come to a standstill, backslide or even failed. In this respect one could also assume that the external actors themselves recognised that their intervention was unsuccessful and one can rather speak of a mutual lack of success. The ongoing instability, the dysfunctional nature of the institutions and the ongoing undermining of the process of democratisation and the rule of law favour the generation of structural uncertainty that is detrimental to democracy.

Conclusion

The transition from an authoritarian regime is fraught with structural uncertainties. Philippe C. Schmitter and Guillermo

³⁴ Bertelsmann Transformation Index (2022). *BTI 2022 Country Report. Bosnia and Herzegovina*. Available on: https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_BIH.pdf.

O'Donnell³⁵ had already pointed out the difficulty of locating these uncertainties theoretically and empirically. The determination of these uncertainties was also their research goal. However, both pursued a democracy or democratisation bias. The dimension of a transition after state collapse through an ethnicised civil war and the immediate post-conflict situation were not taken into account. The Western Balkans region (the former Yugoslavia) in general and Bosnia and Herzegovina in particular represent a special case, since for more than 27 years a clear and stable path of democratisation has still not been identified. The violent conflicts and the state collapse ran along ethnic-nationalist lines of conflict that made the process of state-building and nation-building more difficult or even impeded it, and institutionalised structural uncertainties right from the start, which continue to have an impact to this day. Based on these considerations, the aim of this study was to use a newly developed analytical framework to localise structural uncertainties that can already nest in the initial stages of a state-building process after an ethnicised civil war and an immediately subsequent state collapse. In addition to the theoretical approach of Schmitter and O'Donnell, no democracy or democratisation bias was followed, but instead a hybrid regime, such as that of Bosnia and Herzegovina, was used directly. Deductively, based on theoretical concepts such as clientelism³⁶ and Structural, Procedural and Political-/Legal-Cultural Problems in State Building Processes³⁷, categories of analysis could be developed with which institutionalised structural uncertainties could be identified which can have a negative impact on the system and democracy over a longer period of time. If structural uncertainties are institutionalised, hybrid regimes can establish themselves in the long term, so that the path of democratisation cannot be taken. Other states in the Western Balkans, such as Kosovo or Serbia, are also characterised by structural uncertainties to varying degrees.

Based on the developed analytical framework and the empirical study, it could be determined that an inherent «ethnic» clientelism prevails in Bosnia and Herzegovina, which considerably restricts

³⁵ Schmitter - O'Donnell, op. cit.

³⁶ Erdmann - Engel, *op. cit.*; Timm, *cit.*, in Albrecht - Frankenberger (ed), *p. cit.*

³⁷ Rüb, cit., in Beisheim - Schuppert (ed), op. cit.

all state institutions in their functionality, occasionally even blocking them with far-reaching veto rights. The established «ethnic» client networks are constantly striving to maintain these networks, in particular in order to assert themselves in the allocation of public service posts or to influence the policy process in favor of their own ethnic group. This situation is also made more difficult by the fact that there are no uniform legal structures. A highly fragile tax system and weak financial management were identified as further structural problems. The constant questioning of entity and external borders appear to be particularly dangerous problem areas that are an indication of a state and nation-building process that is at least faltering. The absence of a consensus orientation challenges the legitimacy of the state, for which the country's political elites are primarily responsible.

Finally, the "hands-off" approach of the external actors, who are still active on the ground in certain areas, is partly responsible for the halting of the democratisation process and the undermining of the rule of law, accompanied by a decline in mediation measures and international/national mechanisms that examine or enforce the implementation of policies and the necessary reforms. These circumstances contributed to the fact that certain problems were able to establish themselves and even escalate from time to time. This escalation potential continues today and endangers state structures and statehood in Bosnia and Herzegovina.

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I *Quaderni di Scienze Politiche*, la cui pubblicazione è iniziata nel 2011 sotto la denominazione di *Quaderni del Dipartimento di Scienze Politiche*, si ispirano ad una tradizione scientifica interdisciplinare orientata allo studio dei fenomeni politici nelle loro espressioni istituzionali e organizzative a livello internazionale e, in un'ottica comparatistica, anche all'interno agli Stati. Essi sono promossi dal Dipartimento di Scienze Politiche dell'Università Cattolica del Sacro Cuore, costituito nel 1983 e interprete fedele della tradizione dell'Ateneo.

Il fondatore dell'Università Cattolica del Sacro Cuore, Padre Agostino Gemelli, affermava nel 1942 che diritto, storia e politica costituiscono «un tripode» sul quale si fondano le Facoltà di Scienze Politiche, delle quali difendeva l'identità e la funzione. Circa vent'anni dopo, Francesco Vito, successore del fondatore nel Rettorato e già Preside della Facoltà di Scienze Politiche, scriveva: «Noi rimaniamo fedeli alla tradizione scientifica secondo la quale l'indagine del fenomeno politico non può essere esaurita senza residui da una sola disciplina scientifica. Concorrono alla comprensione della politica gli studi storici, quelli filosofici, quelli giuridici, quelli socio-economici». Per Gianfranco Miglio, Preside per trent'anni della Facoltà di Scienze Politiche dell'Università Cattolica e per otto anche Docente di Storia dei Trattati e Politica Internazionale, la storia è il laboratorio privilegiato della ricerca politologica.

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In copertina: Martin Waldseemüller (1470 ca.-post 1522), *Mappa della terra*, 1507. Edito a Saint-Die, Lorena, attualmente alla Staatsbibliothek di Berlino - Foto: Ruth Schacht. Map Division. © 2019. Foto Scala, Firenze.

La mappa disegnata nel 1507 dal cartografo tedesco Martin Waldseemüller, la prima nella quale il Nuovo Continente scoperto da Cristoforo Colombo è denominato "America" e dichiarata nel 2005 dall'UNESCO "Memoria del mondo", è stata scelta come immagine caratterizzante dell'identità del Dipartimento, le cui aree scientifiche hanno tutte una forte dimensione internazionalistica.



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