EXPLAINING LOCAL SELF-GOVERNMENT REFORM IN BOSNIA AND HERZEGOVINA: AN EXTERNAL GOVERNANCE APPROACH

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ABSTRACT

This paper explores two aspects of local self-government reform in Bosnia and Herzegovina as it took place between 2001 and 2006. In particular, it looks at the process of drafting and adoption of framework laws on local self-government and laws on the allocation of public resources, accounting for the role played in this process by international actors. The aim is to offer an empirical basis for further research, determine the factors that influenced the outcome of the reform and contribute to the growing body of research on post-communist transition of Southeast Europe. The paper applies the theoretical framework of external governance, developed by Lavenex and Schimmelfennig. While it seeks to test its applicability on two cases where there was little direct involvement of the EU, it is primarily used as a means of organising the analysis. The paper demonstrates that reform strategies that rely on building broad coalitions of local stake-holders can be effectively supported by international actors at the level of both financial aid and expertise, thus enhancing their chances of success. The particular power-sharing institutional set-up of Bosnia, however, poses limits even to such consensual and deliberative approaches to international state-building.

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INTRODUCTION

After the European Union completed, in 2007, the largest wave of enlargement in its history, the countries of ex-Yugoslavia, along with Albania and without Slovenia, remain the last non-members on the Balkan peninsula. Their special position in contemporary Europe found its expression in the newly coined geographic denomination as "Western Balkans". The reality of being "the last ones out" has, of course, serious economic and political repercussions for the countries in question. The European Union, on the other hand, is walking a thin line between requiring the completion of wide-ranging reforms in these countries, without at the same time undermining the credibility of its commitment to eventually grant them membership.

Bosnia and Herzegovina (further referred to as Bosnia or BiH) is, to an extent, a special case in the region, given the reality of its ethno-territorial division, reflected in an extremely complex institutional set up. The weakness of its central state, complemented by the presence of competing national projects of its constituent peoples, accounts in great part for the slow progress in most fields of reform. The multiple transitions taking place in Bosnia are further characterised by the involvement of numerous intergovernmental organisations, foreign development agencies and international non-governmental organisations.

Much attention in the academic circles has been paid to the question of reforming Bosnia's political system, whose bases were laid out by the Dayton Agreement.[1] At the state

[1] The Constitution of Bosnia and Herzegovina is included as Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement).

level, Bosnia is a federation constructed along consociationalist principles.[2] This means each of the three constituent peoples (Bosnian Croats, Bosnian Serbs and Bosniaks) have their participation in parliamentary bodies guaranteed by a fixed quota, with each community possessing extensive veto rights over decision-making. This system is further complemented, albeit imperfectly, by the principle of territorial autonomy for each of the ethnic communities. In practice, this means that the state is divided into a highly autonomous and centralised Republika Srpska and the Federation of Bosnia and Herzegovina. Similar power-sharing arrangement is in place between the Bosnian Croats and the Bosniaks at the level of FBiH, making Bosnia a two-level federation. While preventing the domination of any particular ethnic group, the system is easy to block by any of them, which in part explains the slow progress of economic, legislative and administrative reforms in Bosnia. Overcoming the institutionalised ethnic division appears to be the only alternative to chronic political stalemates and continuing economic decline.

The Organisation for Security and Cooperation in Europe (OSCE) has used electoral system engineering to attenuate the centripetal dynamics experienced under this system. The High Representative (HR), an internationally appointed supervisor of the Dayton Agreement, has in turn imposed a number of measures intended to create incentives for inter-ethnic cooperation by reinforcing state-level institutions. By mid-2000s, however, the OSCE has transferred its role in managing elections to the local governing bodies and the practice of intervention on the part of High Representatives was on the wane. The EU has, in 2007, replaced its earlier funding schemes (CARDS, PHARE) with the Instrument for Pre-Accession Assistance, which requires candidate or potential candidate countries to take a more independent role in setting their reform priorities. At first sight, all these developments

[2] Sumantra Bose, *Bosnia After Dayton: Nationalist Partition and International Intervention* (London: Hurst & Co, 2002), 446-252.

reflect a trend of transferring responsibility to domestic political bodies. Nevertheless, the continuing importance of EU membership for Bosnia, the EU's application of "rolling conditionality", as well as the highly influential role played in the country by intergovernmental organisations such as the OSCE and the Council of Europe (CoE), seriously qualify this observation. Rather than a decrease in international intervention in domestic affairs, a transformation of the strategies and means applied appears to be underway.

In this paper, I examine the legislative reform of local self-government, as it took place in Bosnia between 2001 and 2006. The time period is delimited by the issuing of the first Recommendation document on local self-government by the Congress of Local and Regional Authorities of Europe (CLRAE) in November 2001 and by the adoption of the Law on Principles of Local Self-Government in the FBiH in July 2006. My aim is to examine and evaluate the impact of international actors and norms on the reform process. Simultaneously, I wish to assess whether the reform was a success or a failure, paying special attention to the factors that determined the outcome. Since the implementation phase of the reform remains a work in progress, I concern myself exclusively with the process of drafting and adopting the relevant legislation.

As noted by Mirko Pejanović, dean of the Faculty of Political Sciences of the University of Sarajevo, "previous attempts to reform local government in BiH were limited [and i]n each case, it was the international community, i.e. the High Representative, who initiated the reform measures or intervened to bring them about."[3] The legislative changes that are subject to analysis in this paper were significant in both scope and impact, and the adoption process was marked by a good deal of opposition from local veto players. The EU's

[3] Mirko Pejanović. "Local Self-Government: A Must for Democratisation, Civil Society and EU-Integration," in Peacebuilding and Civil Society in Bosnia-Herzegovina. Ten Years after Dayton, ed M. Fischer (Munster: Litverlag, 2006), 220.

lack of *acquis* in this policy area and the virtually non-existent involvement of the Office of the High Representative make the successful adoption of the norms under question still more remarkable.

An analysis of the local self-government reform in Bosnia promises to enhance our understanding of the impact of EU conditionality in areas where both strong incentives and related *acquis communautaire* are absent. Given the scarce literature dealing with this policy field in the South-East European (SEE) region, a detailed account of the process further represents an empirical basis for further studies.

In the Bosnian context, local self-government is a crucial issue with respect to the process of democratization. Increased accountability towards citizens has been achieved with the switch from indirect (council-appointed) to direct elections of mayors in April 2004. Efforts to enhance the financial and administrative autonomy and legal protection of local self-government bodies, along with an increased scope for citizen participation are all reflected in the new legislation and provided local political representatives with more substantial responsibilities to be accountable for.

Finally, this study accounts for the role of other intergovernmental bodies and foreign development agencies, demonstrating the impact they had not only by means of assisting the reforms, but also in defining their content. This raises interesting questions with regard to the theoretical framework of external governance, used in this study as the principal analytical tool.

The research leading up to this paper aimed at exploring the reform process by tracing the sequence of events and involvement of different actors: international political bodies (such as the Office of the High Representative (OHR), the EU Commission Delegation, the OSCE

and the CoE), agencies of foreign states (USAID, Swedish International Development Cooperation Agency - Sida), local political parties, non-governmental experts and associations of municipalities. The composite narrative then allows for an analysis of the impulses that led to the reform, the factors that worked both in favour and against the reform as well as the weight of different actors in the process.

LITERATURE REVIEW

The topic of this paper lies at the intersection of several areas of research, brought together by the particular circumstances of Bosnia and Herzegovina's post-war transition. In particular, the issues raised in the context of local self-government reform include the influence of international actors over the political life of Bosnia; the process post-communist transition in the context of EU enlargement; and the role played by local self-government in the wider context of Bosnian politics.

The study of international involvement in Bosnia progressed in two phases. Much of earlier literature focused its attention on the role of the High Representative. On the one hand, reports by think tanks such as the International Crisis Group (ICG)[4] focused primarily on the statebuilding strategies pursued by him and his political superiors in the Peace Implementation Council (PIC), advocating an interventionist stance with regard to strengthening of the central state's institutions. On the other hand, scholars such as David Chandler[5] or Mathew Parish[6] have been among the most vocal critics of the extensive

[4] Most ICG reports are available online at http://www.crisisgroup.org/
[5] David Chandler, *Bosnia. Faking Democracy after Dayton* (London and Sterling, VA: Pluto Press, 1999).
[6] Mathew Parish, "The Demise of the Dayton Protectorate," *Journal of Intervention and Statebuilding* 2:1 (2007).

executive powers vested in the High Representative after 1997 (the "Bonn Powers"). The exercise of the power to dismiss elected officials, as well as to impose and renounce legislation as a means of ensuring implementation of the Dayton Peace Accords has, according to these authors, made local political representatives more accountable to their international supervisors than to their voters.

An important complement to both policy analyses and research dealing with the international community's strategy in Bosnia are studies that focus on the particularities of Bosnia's political system. The key paradigmatic question for comparative politics researchers on Bosnia has been the viability and potential for change of its ethnic-based power-sharing institutional system. The more or less explicit driving force behind the studies of political scientists such as Bose[7], Bieber[8], Belloni[9] or Moore[10] is the notion that strengthening the central state is essential for the welfare of Bosnia's citizens. Their findings indicate that while the current system does not offer space for radical change, it can be transformed gradually through electoral engineering, institutional adjustments or constitutional reform. It could be argued in this context that the OHR's interventions (leading to the establishment of a state Border Service and a Ministry of Defence) have created important incentives for cooperation between the ethnic communities.

The second phase came as a consequence of the gradual winding down of direct interventionist practices on the part of the OHR in the second half of 2000s and the EU's increased commitment to facilitating the transition of SEE countries. Initialisation of the Stabilisation and Association Process in 1999 and merger of the post of High Representative

[7] Bose, *Bosnia After Dayton*.
[8] See for example Florian Bieber, "Institutionalizing Ethnicity in Former Yugoslavia - Domestic vs. Internationally Driven Processes of Institutional Re-Design," *Global Review of Ethnopolitics* 2:2 (2003).
[9] Roberto Belloni, "Peacebuilding and consociational electoral engineering in bosnia and herzegovina," *International Peacekeeping* 11:2 (2004).
[10] Adam Moore, "Grounding Consociational Democracy," forthcoming.

and the European Union's Special Representative (EUSR) in 2002 can be understood as two hallmarks of these changes.

The increased role of the EU in the region marks a point of confluence between the literature on international involvement in Bosnia discussed above and a second strand of research originally dealing with transition of post-communist countries of Eastern Europe in the context of EU enlargement. An essentially positivist, though qualitative, theoretical framework for the study of enlargement has been developed by Schimmelfennig and Sedelmeier[11] and conceptualised as "external governance". Early studies in the field drew on the experience of EU's enlargement by countries of Central and Eastern Europe (CEE). They revealed the dominant role played by EU conditionality, which offered the significant reward of EU membership in exchange for the adoption of the EU's *acquis communautaire* and the fulfilment of certain political conditions.

This model, presuming rationalist actors making cost-benefit calculations when facing strong, externally provided incentives, was expected to loose some of its explanatory force when applied to the countries of South-East Europe (SEE),[12] for a number of reasons. Given the particularities of the region's history, these countries face multiple transitions[13], made more challenging by a combination of weak state institutions and, in some cases, contested statehood claims. Furthermore, as observed by Phinnemore, EU's membership conditions became increasingly more strict and the prospect of membership ever more distant, given an overall drop in the EU's commitment to enlargement[14] and the requirement that each new member beyond Croatia must be approved by a popular referendum in France.

[11] Frank Schimmelfennig and Ulrich Sedelmeier, eds., *The Europeanization of Central and Eastern Europe* (Ithaca: Cornell University Press, 2005).
[12] Rachel A. Epstein and Ulrich Sedelmeier "Beyond Conditionality: International Institutions in Postcommunist Europe After Enlargement," *Journal of European Public Policy* 15:6 (2008).
[13] See for example Othon Anastasakis, "The Europeanization of the Balkans," *Brown Journal of World Affairs* XII:1 (2005).
[14] David Phinnemore, "Beyond 25—the Changing Face of EU Enlargement: Commitment, Conditionality and Constitutional Treaty," *Journal of Southern Europe and the Balkans* 8:1 (2006).

Empirically, the limits of EU conditionality in SEE have been explored in a number of studies. Trauner, for instance, shows that EU conditionality can still play an important role if the reward of membership is replaced by rewards in the form of various policies, such as visa liberalisation.[15] Gergana Noutcheva takes a closer look at compliance with EU requirements that touch upon sensitive statehood questions, concluding that these tend to evoke partial or fake compliance.[16] This partly coincides with Schimmelfennig's finding that non-compliance may result if the EU's sets political conditions that are highly salient for national identity of third countries.[17] As further shown by both Noutcheva and Anastasakis, the legitimacy of EU's political conditionality is closely related to the legitimacy of its intentions as perceived in the third countries.[18]

While studies dealing with SEE countries draw their conclusions from research on a variety of policy sectors, the area of local self-government is largely missing from this body of work. Local self-government in the Balkans has, however, enjoyed little international attention even outside the paradigm of external governance. An exception that confirms the rule is a volume edited by Kandeva, describing the state of local self-government in 8 countries of the Balkans. The section on Bosnia, written by Charles Jokay, draws extensively on a report published by the CLRAE,[19] bringing little additional value beyond reorganising its findings. Most importantly, the volume has been published in 2001, before the

[15] Florian Trauner, "From Membership Conditionality to Policy Conditionality: EU External Governance in South Eastern Europe," *Journal of European Policy* 16:5 (2009).
[16] Gergana Noutcheva, "Fake, Partial and Imposed Compliance. The Limits of the EU's Normative Power in the Western Balkans," *European Journal of Public Policy* 16:7 (2009).
[17] Frank Schimmelfennig, "EU Political Accession Conditionality After Enlargement: Consistency and Effectiveness," *Journal of European Public Policy* 15:6 (2008).
[18] Othon Anastasakis, "The EU's Political Conditionality in the Western Balkans: Towards a More Pragmatic Approach," *Southeast European and Black Sea Studies* 8:4 (2008).
[19] CLRAE, *Explanatory Memorandum CG (8) 23 Part II: Report on Local and Regional Democracy in Bosnia and Herzegovina*, CLARE, 2001.

commencement of reforms in Bosnia.[20] As far as accounting for the reform process itself, the issue of public revenue allocation has been covered in brief by Tony Levitas from the Washington-based DAI institute.[21] The reform of framework laws, as accounted for by Pejanović, unfortunately remains incomplete given that it was finished half-way through the reforms.[22]

Finally, given the EU's lack of *acquis* on issues of local self-government, the role of the Council of Europe and other international organisations in this area is crucial. Kelley is one of the few scholars who have tried to disentangle the link between the influence exerted by the EU and European institutions involved in democracy promotion. Looking at minority protection in the Baltic countries, she concludes that socialization-based efforts at securing compliance with international norms are rarely successful without the additional conditionality of EU membership. Importantly, however, the CoE and OSCE have played a significant role in determining the exact content of reforms in the cases she studied.[23]

THE RESEARCH QUESTION

The scarcity of empirical research on the process of local self-government reform in Bosnia was a strong incentive for my choice of this topic. Further, the fact that a large part of the literature dealing with reforms in SEE countries applies the external governance framework makes it an attractive theoretical choice, potentially allowing for comparison with

[20] Charles Jokay, "Local Government in Bosnia and Herzegovina," in Stabilization of Local Governments, ed E. Kandeva (Budapest: OSI/LGI, 2001).
[21] Levitas, Tony, "A Tale of Two Entities: How Finance Reform Builds Democracy in Bosnia and Herzegovina," *DAI Democracy Briefs* vol. 1 (2007).
[22] Pejanović.
[23] Judith Kelley, "International Actors on the Domestic Scene: Membership Conditionality and Socialization by International Institutions," *International Organization* 58 (2004).

other countries and sectors. Given the involvement of other international actors than the EU, applying the framework also allows for its testing. Finally, given the structural limits on the ability of state and entity levels of government in Bosnia to deliver policy responses to pressing economic and political problems, examining the process of local self-government emancipation promises to make a modest contribution to the body of literature dealing with the institutional set-up of Bosnia.

In order to address the gaps in existing literature, test the external governance framework, explore the changing nature of international involvement in the country and examine the significance of local self-government reform for the process of Bosnia's institutional and political transformation, I draw up three questions. What was the nature of international actor's involvement in this process? What accounts for the successes and failures of the reform of local self-government between in Bosnia? Which factors determined the content of the new laws?

THEORETICAL BACKGROUND

Systems of local self-government constitute a field of research in their own right. In this paper, however, I am not concerned with the efficiency, structure, legitimacy or other aspects of possible self-government arrangements. Instead, I look at the reform of legislation pertaining to local self-government as a process, with the intention of analyzing the nature of interaction between the EU, Bosnia and other international actors. I have chosen two cases of legislative reform that share a number of similarities. They took place at about the same time, dealt with the same policy area and touched upon the same politically sensitive issues (division of power between different layers of government).

The exceptionally strong position of international actors in Bosnian political life as well as Bosnia's ratification of the European Charter of Local Self-Government both suggest that external norms and influences possibly were part and parcel of the local self-government reform. I have chosen the framework proposed by Sandra Lavenex and Frank Schimmelfennig because of the possibilities it offers for comparison with other studies and on the grounds of its analytical appropriateness for my research.

With regard to the latter, two issues must be noted. First, the framework has been developed for the study of macro-level (framework programmes such as the European Neighbourhood Policy) and meso-level (sectoral rule transfers, for instance in the area of Justice and Home Affairs) rule transfers.[24] While local self-government arguably falls under the second category, the processes analyzed in this paper take place at the micro-level.

Second, the framework has been developed primarily in response to EU's enlargement into CEE, in which the European Union played the part of principal governance provider. At first sight, there appear, however, to be few methodological obstacles to applying the concept of external governance to processes where the European Union is not the principal governance provider. This may instead be another intergovernmental organisation or a powerful nation state. Testing the applicability of the framework on the chosen cases thus makes part of this study.

In order to facilitate the application of this framework, I formulate substitute research questions with the external governance framework in mind, use them to guide my analysis of the reform process, and reformulate the findings in a way that permits me to obtain answers to my original questions at the end.

[24] Sandra Lavenex and Frank Schimmlefennig, "EU Rules Beyond EU Borders: Theorizing External Governance in European Politics," *Journal of European Public Policy* 16:6 (2009), p. 979.

Taken together, resolving my first question amounts to the task of discerning whether the local self-government reform was an instance of external governance and, if so, what mode did it correspond to. An analysis informed by this question can simultaneously be expected to uncover the role of different international actors in driving and shaping the reform process. As far as accounting for the successes and failures of the process as well as for the content of new legislation, an adequate analysis can be carried out using the framework's theoretical tools for evaluating and measuring the effectiveness of rule transfer.

External governance

A growing body of theoretical work has tried in the recent years to account for, and conceptualize the affectivity of externally induced, guided and/or monitored reforms as well as the different forms this process takes. Studies based on instances where the dominant external power was the EU have gradually led to the formulation of a specific theoretical framework, conceptualised as *external governance*.

The concept of *governance* originates from the field of comparative politics, where its application corresponds to a perceived shift away from the traditional hierarchical system of rule associated with nation states. Its development is strongly linked with studies on European integration. As opposed to government, governance is characterised by its "horizontal instead of hierarchical nature, its focus on process rather than output, the emphasis on voluntary instruments in contrast to legal obligations, and its inclusive character [...]."[25]

With the largest wave of enlargement in EU's history underway in the first half of the 2000's, traditional theoretical tools of IR were proving inadequate to capture the processes through which the EU's internal policy-making processes were externalised beyond its

[25] Lavenex and Schimmelfennig, 795.

borders. Developing the concept of *external* governance was a response to these theoretical inadequacies. As noted by Lavenex and Schimmelfennig, this involved a shift to a different unit of analysis from that of traditional IR – from a unified state actor to systems of rules.[26]

The concept of external governance seeks to capture the "extension of internal rules and policies beyond formal membership."[27] Unlike governance in its strict sense, however, it covers both rule transfers that take place under hierarchical settings (governed by legal norms such as the *acquis communautaire*) as well as through more horizontal and participatory forms of governance.

Considering exclusively the legal act of rule adoption, however, provides an incomplete picture of the rule transfer process. Understanding compliance patterns of non-member states requires looking in detail at the process of rule selection (whereby third states select between norms originating from the EU and from other international actors), rule adoption and rule application (whereby third states implement the provisions of adopted rules).[28]

As mentioned earlier, the theoretical framework of external governance has initially been drafted by Frank Schimmelfennig and Ulrich Sedelmeier, who drew on the empirical experience with the accession of Central and Eastern European countries to the EU.[29] In a 2004 paper, they proposed three explanatory models as to why target countries adopt norms originating from the EU. At the centre of their attention was the logic behind the target country's compliance. Two of the models, the *external incentives* model and the *social learning* model directly reflected the work of March and Olsen, who distinguished between a "logic of consequences" and a "logic of appropriateness". With the help of a third, *lesson-*

[26] *ibid*, 794.
[27] *ibid*, 791.
[28] *ibid*, 780.
[29] Frank Schimmelfennig and Ulrich Siedelmeier, "Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe," *Journal of Euroepan Public Policy*, 11:4 (2004).

drawing model, Schimmelfennig and Sedelmeier simultaneously tried to account for the difference between domestically driven and EU-driven reforms.[30]

In a later work, Sandra Lavenex and Frank Schimmelfennig significantly modified the external governance framework to expand its usefulness for the analysis of potential candidate countries as well as non-candidate countries. The original models of rule transfer are discarded in favour of three "modes of external governance": hierarchical, network and market. The focus on the logic actors follow becomes less explicit, as the central question the framework is tuned to answer shifts from "What is the logic that drives states outside the EU to adopt its norms?" to " What determines the mode through which rules are transferred from the EU to thirds states?"

What distinguishes Lavenex and Schimmelfennig's modes from one another is the nature of institutionalization of the EU-third country interaction. The *hierarchical mode* of governance "takes place in a formalized relationship of domination and subordination and is based on the production of collectively binding prescriptions and proscriptions."[31] The model implies a degree of asymmetry between the rule producers and rule recipients. One should expect rule transfers to be guided by "precise rules, formal procedures, monitoring and sanctioning."[32]

The *network mode*, in contrast, corresponds to a relationship where actors are formally equal, though not necessarily possessing equal power. In EU's external relations, a network mode of governance would correspond to a "strongly institutionalized and unified system of

[30] James G. March and Johan P. Olsen, "The Institutional Dynamics of International Political Orders", *International Organization* 52:4 (1998): 943.
[31] Lavenex and Schimmelfennig, 797.
[32] *ibid*, 797.

policy coordination."[33] If legally binding norms are produced through these negotiations, they are likely to set out rules for the actor's interaction rather than define precise policy solutions. Finally, rule transfer that takes place under the *market mode* of external governance will be characterized by direct or indirect competition between different norms, rather than by hierarchical harmonization or policy co-ordination. As a result, third countries might recognize the usefulness of a particular EU solution for addressing a domestic problem, leading to rule transfer.

Lavenex et al. then go on to draw up three explanatory models for the mechanism through which a particular mode of governance is established: the *institutionalist* explanation, *power-based* explanation and *domestic structures* explanation. For the purpose of this paper, however, describing these models in detail is not necessary. My aim is not to test the validity of those hypotheses in Lavenex and Schimmelfennig's framework that seek to explain regularities between modes of rule transfer across countries and sectors. Given the length of this paper, my focus remains at the reform process in Bosnia and establishing the basic parameter for comparison – the mode of external governance.

As a result of this choice, however, a methodological obstacle needs to be tackled with regard to the factors Lavenex et al. draw up for evaluating effectiveness of rule transfers between the EU and third countries. The obstacle results from the fact that these factors are associated with individual explanatory models: the number of veto players, for example, is thus deemed important under the *domestic structures* explanation, but less in the *institutionalist* explanation. Importantly, the authors acknowledge the possibility that institutions, power and domestic structures interact, thus leaving open the possibility of freely

[33] *ibid*, 798.

recombining the factors.[34] For the purpose of clarity, I preserve their way of organising the factors according to the individual explanatory model.

Under the *institutionalist* explanation, effectiveness is expected to increase with greater legalization and/or legitimacy of the rules. As postulated by Lavenex, "the more precise, binding and enforceable" EU rules are, the greater the likelihood of their successful transfer. Greater legalization of rules is complemented by strong monitoring and sanctioning of the transfer process.[35] Legitimacy, elaborated in greater detail in the earlier work of Schimmelfennig and Sedelmeier, is in its turn deemed to depend on the clarity of rules, compliance with these rules across EU member states, their application to both member and non-member states, legitimacy of the process of their formation and their international acceptance. Legitimacy of rules also depends on the nature of the transfer process: it will increase if the transfer is deliberative as opposed to enforced.[36]

The *power-based* explanatory model presumes a direct correlation between effectiveness of rule transfer and the EU's bargaining power. A basic prerequisite for effective rule transfer under this model is an asymmetry between what the EU can offer non-member states and what these states can offer the EU. Drawing once again on the work of Schimmelfennig and Sedelmeier, the following factors can be expected to increase effectiveness of rule transfer: size and speed of both rewards and sanctions, their credibility and determinacy of conditions under which they are dispensed.

Finally, the *domestic structures* explanation expects domestic structures of third countries to be the key determinants of rule transfer effectiveness. Under this explanatory model, rules are more likely to be transferred if they resonate well with "domestic rules,

[34] *ibid*, 805.
[35] *ibid*, 802.
[36] Schimmelfennig and Sedelmeier, Europeanization of CEE, 18-20.

traditions and practices."[37] Another important factor is the ability of third countries' institutions to adopt and implement a given rule: Lavenex highlights administrative autonomy and openness, together with high state capacity as crucial factors in this respect. Schimmelfennig and Sedelmeier also deemed it necessary to incorporate domestic dissatisfaction with the status quo, prominence of EU-centred epistemic communities and both the number of veto players in the non-member country as well as the adoption costs of a given rule for these players.[38]

Measuring effectiveness

Lavenex and Schimmelfennig suggest that three different phases of rule transfer should be analysed: rule selection, rule adoption and rule application.[39] In their work, the key indicator of effectiveness on the level of rule selection is the proportion of rules that are selected from the EU "shelf" as opposed to those originating elsewhere. More specifically, effectiveness depends on whether "third countries accept EU rules as the focus of their negotiations and agreements[,] accept joint rules that reflect EU rules embedded in international norms or jointly negotiated rules".[40] Alternatively, third countries may also select rules defined by other countries, intergovernmental organizations or on their domestic norms.[41] In the first two cases, these external actors become themselves governance providers. While effectiveness can then still be evaluated at the level of rule adoption, measuring effectiveness in terms of rule selection becomes methodologically unviable. The

[37] Lavenex and Schimmelfennig, 804.
[38] Schimmelfennig and Sedelmeier, Europeanization of CEE, 23-25.
[39] Lavenex and Schimmelfennig, 780.
[40] *ibid*, 800.
[41] *ibid*, 801.

analyst is left merely with the task of identifying the origin of the rules and the restrains faced by third countries in making their choice.

Further, it is important to keep in mind that the rules that do not get selected will not appear in the resulting legislation. One way of accounting for "unselected rules" is paying attention to the debates that accompany the selection process. This may, however, be empirically difficult in case the study is conducted retrospectively. Furthermore, certain options may not even be discussed openly, leaving the EU (or another governance provider) appear as the sole source of rules that have been adopted.

Effectiveness of rule adoption is defined by Lavenex and Schimmelfennig as "the extent to which EU rules are effectively transferred to third countries".[42] In other words, it leaves the meaning of "effectiveness" unclear. Is it the precision with which the wording of an EU (or other external provider) rule is transmitted into the legal system of the third country? This would not be an unreasonable measure of effectiveness with regard to the EU *acquis*, but it seems less useful in the context of network of market modes of governance. Lavenex and Schimmelfennig's text suggests that the criteria will need to be adjusted depending on both the nature of rules in question as well as the nature of the transfer process,[43] but do not state this openly. Applying their framework thus assumes a degree of flexibility on the part of the researcher.

In a general sense, the question with regard to rule adoption remains whether third countries transpose the selected rules into their domestic legislation and practice or not. When examining the difference between the state of affairs prior and after a transfer process, the analysis also ought to take into account the process of compliance monitoring, should there be

[42] *ibid*, 800.
[43] *ibid*, 800-801.

one in place. This is because there may be a difference between how domestic political actors, different experts and the governance provider evaluates the level of compliance.

Due to space limitations I am obliged to focus exclusively on the selection and adoption phases of the process in this paper. Discussion of effectiveness at the level of rule application is thus unnecessary.

Applying the theoretical framework

In the following two chapters, I first trace the role of external actors in the reform process. Second, I identify the origin of rules in question and examine the characteristics of the process by which they were transferred. The degree of correspondence between these findings and the characteristics associated with individual modes of external governance (hierarchical, network and market) is then established. Third, I make an assessment of the effectiveness of the rule transfers, followed by an effort to account for this level of effectiveness.

CHAPTER 1: TRACING THE REFORM PROCESS

This chapter provides an overview of the process through which new legislation on local self-government was prepared and adopted between 2001 and 2006 in both entities. In particular, it focuses on the following legal acts: the Law on Local Self-Government adopted in RS in November 2004[44], the amendment to the Law on Budgetary systems made in RS in April 2006[45], the Law on Allocation of Public Revenues adopted in FBiH in June 2006[46] and the Law on the Principles of Local Self-Government adopted in FBiH in July 2006[47]. An important role in the reform process was played by the European Charter on Local Self-Government (further referred to as ECLCG or Charter).[48]

According to Srdja Obradović, national legal advisor at the OSCE office in Sarajevo, Bosnia signed and ratified the ECLCG already in 1993.[49] Interestingly, however, it appears that the Council of Europe has not acknowledged this early accession to the Charter, officially recognizing the date of signing and ratification as 12th of July 2002 and entry into force as 1st of November 2002.[50] In the context of this paper, it is the position of the CoE that matters and I therefore disregard the possibility of earlier ratification.

Providing a short review of the Bosnian legislative system is in place at this point. As explained earlier, the Bosnian state is a Federation composed of two "entities", the Federation

[44] *Zakon o lokalnoj samoupravi Republike Srpske* (Služneni glasnik 101/04).
[45] *Zakon o izmjenama i dopunama zakona o budžetskom sistemu Republike Srpske* (Služneni glasnik 128/06).
[46] *Zakon o pripadnosti javnih prihoda u FBiH* (Službene novine Federacije BiH 22/06)
[47] *Zakon o principima lokalne samouprave u Federaciji Bosne i Hercegovine* (Službene novine Federacije BiH 49/06)
[48] *European Charter on Local Self-Government*, October 15, 1985.
[49] Sdrja Obradović, interview by author, Sarajevo, Bosnia and Herzegovina, 4 May 2010.
[50] Council of Europe Treaty Office, "European Charter on Local Self-Government," Council of Europe website, http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=122&CM=8&DF=8/1/2006&CL=ENG c (accessed June 1, 2010).

of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS). Importantly, powers not explicitly vested in state institutions belong to the entities,[51] which means that jurisdiction over local self-government rests with the entities.

FBiH has a bicameral parliament composed of a House of Representatives and a House of Peoples. RS has a single parliamentary body, the National Assembly. Both entities can be generally described as parliamentary democracies, with executive power vested in the prime minister and his government. An important constitutional safeguard in the Federation is the possibility of the upper chamber of parliament, the House of Peoples, to identify a legislative act as a threat to a "vital national interest", whose list is included in the BiH constitution. It includes, among others, constitutional amendments, organisation of public authorities and territorial organisation.[52]

1.1 The Law on the Principles of Local Self-Government (FBiH), Law on Local Self-Government (RS)

There is no mention of local self-government in the current constitution of Bosnia and Herzegovina. The constitution of the FBiH contains only a few basic provisions describing the structure of local self-government: a council elected by universal suffrage, a mayor appointed by the council and a delimitation of the council's powers.[53] The September 1995 Law on the Bases of Local Self-Government adopted in FBiH in September 1995 further specified the legal status of municipalities, competences exclusively belonging to them, the

[51] *Constitution of Bosnia and Herzegovina*, Section III, part 3.
[52] *Constitution of Bosnia and Herzegovina*, Section IV, parts 5 and 6.
[53] *Constitution of the FBiH*, parts VI, VII and VI.B.

nature that supervision over municipalities could take, municipal financial resources and other guarantees of local autonomy.[54]

Since the Federation's constitution does not explicitly grant legislative jurisdiction to the entity government, the very generally formulated law from 1995 was intended to work as a framework for subsequent cantonal legislation. Indeed, more detailed provisions on local democracy have been introduced through cantonal legislation between 1997 and 2001 in each of the ten cantons.

Republika Srpska has no intermediate layer of government and unlike the FBiH, it has a Ministry of Administration and Local Self-Government[55], both testifying to the entity's more centralised and unitary character. Local self-government is listed as one of the basic principles of its constitutional order and a base for proportioning powers and responsibilities among its state institutions. The constitution further states that the RS electoral system must ensure appropriate representation of all municipalities. A special section lists numerous rights and freedoms guaranteed to bodies of local self-government and stipulates the requirement that local self-government be regulated by secondary legislation.[56] Prior to November 2004, local self-government was regulated by the Law on Local Self-Government[57], adopted in 1999.

1.1.1 The reform process

Bosnia's application for membership in the Council of Europe can be seen as the initial impulse behind the reform of local self-government in both entities. Although this took place already on the 10th of April 1995, it was not until January 1999 that the CoE Committee of Ministers asked the Parliamentary Assembly for an opinion with regard to Bosnia's

[54] *Zakon o osnovama lokalne samouprave* (Službene novine Federacije BiH 6/95)
[55] Ministarstvo uprave i lokalne samouprave
[56] *Constitution of the Republika Srpska*, Articles 5, 66 and 102.
[57] *Zakon o lokalnoj samoupravi* („Službeni glasnik Republike Srpske", 35/99, 20/01 and 51/01)

membership. In late spring/summer 2001, a number of CoE committees visited Bosnia, including a committee of the CLRAE, whose task was to draft a report on the state of local self-government in the country. A further impetus was provided by Bosnia's ratification of the ECLSG and its entry into force in November 2002.

Efforts at reforming local government legislation began at earnest in Republika Sprska in 2003. The process was assisted by the Council of Europe.[58] Work on the draft of a new framework law was initiated by the Ministry of Administration and Local Self-Government and apart from ministry officials, it also included representatives of the Association of Local Authorities of RS and a number of lawyers from the University of Banja Luka's faculty of Law.[59] In the Federation, the drafting was initiated by a group of parliamentary members and proceeded under the auspices of the Parliamentary Committee on Local Government. Similarly to RS, the parliamentary working group invited a number of academics from the University of Sarajevo to provide expertise.[60] A number of international actors became involved in the drafting process, namely the OSCE, the CoE and the OHR. In both entities, the progress made by local drafters (ministry officials, parliamentarians, local experts) was further debated in larger working groups, meeting bi-monthly at the initiative of the OSCE.

Once the drafts were ready, the local working groups presented their drafts to the House of Representatives in FBiH and the National Assembly in RS for first reading. As a continuation of the effort to raise broad support for their proposal, the working groups in both entities then conducted a series of 14 round tables, organised in regional centres throughout the country (6 in RS and 8 in FBiH). These debates were fully financed by the OSCE and included representatives of all municipalities as well as experts from policy think tanks such

[58] Slaviša Šućur, interview by author, Sarajevo, Bosnia and Herzegovina, 23 April 2010.
[59] Obradovič, interview.
[60] Obradović, interview.

as the Razvojna Agencija Eda in RS or the Centar za promociju civilnog društva (CPCD) in FBiH. A number of comments collected during these debates were then incorporated into an updated version of the draft and submitted to the respective parliaments for adoption.[61]

In the Federation, opposition came mainly from the Croatian Democratic Union (Hrvatska Demokratska Zajednica – HDZ), the Croatian governmental party at the time. This is easy to explain, given the fact that cantons represent the base of the Bosnian Croat autonomy (as well as the base of HDZ's power). A Federation level law, albeit not fully sanctioned by the constitution, would constitute a legal source rivalling cantonal laws on local self-government. Furthermore, the mere fact of delineating more precisely the competences and guarantees of municipal autonomy meant a restriction on existing extra-legal practices and creative interpretation of legislation, favouring the cantons.

Although the government (i.e. the HDZ-controlled Ministry of Justice) in FBiH prepared and submitted for adoption its own version of a law on local self-government, the parliament rejected this, voting instead in favour of its own Law on the Principles of Local Self-Government in July 2006. The Law on Local Self-Government was adopted in RS without significant opposition in November 2004

It is important to note that the two processes did not take place simultaneously. The regional round tables were held already in late spring and early summer 2004 in the RS, but only in the winter 2005/2006 in the Federation.[62] In fact, according to Slaviša Šućur, the adoption of a local self-governance law in the RS served both as an additional impetus for the parliamentary reform initiative in the FBiH, and as a source of inspiration with regard to content.

[61] Šučur, interview.
[62] Obradović, interview.

The different time frames can partly be explained by the difficulties inherent in building a broad reform platform in both the parliament and within cantons and municipalities. Importantly, however, the drafting and adoption process was interrupted by efforts to increase its future impact by changing the Federation Constitution. The constitutional amendment, drafted and debated in late 2004, aimed at giving the Federation an unambiguous prerogative to legislate on issues of local self-government. Drafting of the amendments was a joint effort of the Association of Municipalities and Towns of the FBiH and the Parliamentary Committee on Local Government. Although the proposal passed the House of Representatives, it was eventually rejected at the House of Peoples.

2.1 Amended Law on Budgetary systems (RS) and the Law on Allocation of Public Revenues (FBiH)

A process that was in many ways similar to the drafting and adoption of the framework laws on local self-government took place with regard to the laws regulating allocation of public revenues in both entities. Despite the fact that sufficient allocation of funds to municipalities and cities represents a critically important factor of their autonomy, legislature on the allocation of public revenues is more general in that it involves both (or all three, in the FBiH case) levels of government. In that sense, it is separate from the issue of matching competences and funding with regard to municipalities, which dealt with under the framework of local self-government laws.

The state constitution does not contain specific provisions with regard to the allocation of revenue among lower levels of government, which means these competences belong to the

entities. They are, furthermore, explicitly mentioned in both Constitutions.[63] Insufficient allocation of public revenues to the municipal level can, nevertheless, result in a breach of the ECLSG. Together, the above mentioned facts delineate the different parameters of this reform as opposed to the reform of local self-government discussed in the previous section.

Until 2006, allocation of public revenues in the Federation was regulated by the Law on Allocation of Public Revenue in the Federation and Financing of FBIH, adopted in 1996 and amended in 1998.[64] There are two key observations to make at this point: first, as the FBiH constitution does not exclusively endow the entity government with the jurisdiction for legislating on the allocation of public revenues, their distribution between cantons and municipalities was governed by cantonal laws passed on an annual basis.[65] Second, the earlier system did not allow territorial equalization of revenues. Although the Federation collected a sales tax, it fully transferred it to the cantons on the basis of origin. In other words, it simply returned the revenues to the cantons where they were collected. The cantons, while keeping a percentage of the transferred tax in accordance with their own budgetary laws, then repeated the procedure with respect to municipalities. In sum, no system for redistributing revenue to economically weaker municipalities was in place.[66]

The Constitution of RS does not contain detailed provisions on the allocation of public revenue to municipalities, merely stipulating the requirement of further legislation.[67] Until the adoption of the Law on Budgetary Systems in 2003[68], the RS allocated resources to municipalities on an annual basis as well. In contrast to the FBiH, these laws, as well as the

[63] Part III, Article 1.(d) in the FBiH Constitution; Part VI, Article 103 of the RS Constution
[64] *Zakon o pripadnosti javnih prihoda u FBiH* (Službene novine Federacije BiH 26/96 and 32/98)
[65] Jokay, 116.
[66] Levitas, 2.
[67] *Constitution of the Republika Srpska*, Article 103.
[68] *Zakon o budžetskom sistemu Republike Srpske* (Službeni glasnik Republike Srpske, 96/03)

2003 law, undertook to redistribute revenue from economically more to economically less developed municipalities, using a formula based on municipal shares of collected sales tax.

2.1.1 The reform process

The entry into force of the ECLSG was again one of the impulses behind the reform initiative, complemented this time with a second, and arguably more prominent impetus. This was the EU's increased insistence, beginning in 2001, that Bosnia switches from sales tax to Value Added Tax (VAT), which was hoped to reduce the level of tax evasion.[69] While international actors such as the EU and IMF were primarily preoccupied with the introduction of VAT on a state level, "a small group of local government reformers recognized that the VAT reform represented an opportunity to rewrite BiH's intergovernmental financial arrangements, both to strengthen municipalities and to move away from the origin-based principle of revenue sharing that underpinned the country's dysfunctional system of subentity finance."[70]

Although the initiative appears to have originated from within the FBiH parliament, it was given a strong push by the involvement of USAID and the Sida, who jointly formed the Government Accountability Project (GAP) with the aim of assisting the reform of local self-government through both municipal field projects and policy intervention. The GAP became involved in April 2004 and helped to establish two working groups, one in each entity. In both cases, these included cantonal and municipal representatives, a number of external experts, as well as representatives of BiH's two municipal associations and a number of MPs from the

[69] Levitas, 3.
[70] *ibid*, 5.

parliamentary committees on the Fiscal System and Economy, and on Local Self-Government.[71]

GAP's policy intervention allowed for the creation of an interactive model of different revenue-sharing options. This was used during the first reading of the draft in both parliaments to demonstrate the redistributive impact of the proposed changes, making it clear who stood to gain and loose, depending on the parameters entered. After the first reading in the spring and summer of 2005, the draft was sent out for debate and commenting to meetings of municipal representatives, financed by the GAP and organised in regional centres throughout the country.

In both the Federation and the RS, the governments turned out alternative drafts in the final stages of the adoption process. In the Federation, opposition came primarily from the HDZ. As in the case of framework laws on local self-government, this is not surprising, given the fact that cantons represent the base of the Bosnian Croat. The draft law as proposed by the parliamentary initiative represented an enhancement of municipal financial autonomy and, in combination with the system of direct election of mayors and a shift of power to regulate municipal affairs to the entity level, it was seen as part of a trend towards reducing the power of cantons. In the RS, enhancement of municipal was in turn opposed by those parliamentarians who favoured further centralisation of the entity.[72] In favour of the law were representatives of the then-opposition parties.

Deciding to directly challenge the government-proposed alternative solutions that essentially tried to preserve the existing status quo, members of the Federation parliament

[71] Šučur, interview.
[72] Obradović, interview.

submitted their draft in December 2005 for approval to the Assembly of Representatives. It was subsequently approved by both houses of parliament in the FBiH, only to be challenged, however, by the Croat National Caucus (in the Assembly of Peoples) at the Federation's Constitutional Court. In April 2006 the Court nevertheless ruled that the law did not threaten the "vital national interests" of the Croatian people, opening way for its adoption in June 2006.

In the RS, an alternative draft of an amended law, prepared independently by the ruling coalition, was issued after the working group's draft has been adopted at first reading. The reform process was subsequently interrupted by a political crisis which resulted in the fall of the government. Although the new government turned an unfavourable eye to "anything prepared under its predecessor,"[73] given its participation on the drafting and earlier support of the working group's draft, it felt obliged to endorse it. The relevant amendments to the Law on Budgetary systems of RS were finally adopted in April 2006.

[73] Levitas, 7.

CHAPTER 2: UNDERSTANDING THE REFORM PROCESS

2.1 Laws on Local Self-Government in RS and FBiH

2.1.1 Origin of the rules

As a potential candidate country, Bosnia is expected to eventually adopt the full volume of the *acquis communautaire*. Significantly for my analysis here, however, the EU does not have practically any *acquis* relating to local self-government. It merely requires municipalities in candidate (or potential candidate) countries to fulfil the benchmarks set out in the ISO 9001-2000 norm on Quality Management and Quality Assurance in the management of public affairs.[74]

Certain broader, essentially political conditions with regard to local self-government still have to be fulfilled, however, if a third country wishes to become a member of the EU. These are summarized in the Copenhagen criteria, laid down by the European Council in June 1993. The Copenhagen criteria are extremely vague. The section that is arguably applicable to local self-government requires "that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities [...]."[75]

Despite the EU's increased engagement with the countries of Western Balkans since the Feira, Zagreb and especially the Thessalonika summits, these general criteria have not been further elaborated. In particular, none of the preparatory documents leading up to the

[74] Pejanović, 219.
[75] European Council, *Presidency Conclusions (Copenhagen, 21-22 June 1993)*. (Brussels: Council of the European Communities, 1993), SN 180/93: 11-12.

signing of a Stabilisation and Association Agreement (SAA) with Bosnia in 2006 mentions local self-government.[76] The sections dealing with democracy and the rule of law either focus on the state or, less frequently, on entity level. Although a number of issues included within the framework of EU's reform assistance to Bosnia have relevance for local governance, this is never stated explicitly. It is the case of, for example, civil service reform, administrative capacity building, taxation and budgeting.

Essentially, the EU focuses on effectiveness and outputs, not on democratic institutions *per se*. The EC Feasibility Study assessing Bosnia and Herzegovina's capacity to implement a Stabilisation and Association Agreement, published in November 2003, makes this point boldly: "In terms of European integration [...] it is important that partner countries are able to function properly; their various institutions must produce the results expected in a modern democratic country."[77]

The absence of specific criteria with regard to local self-government heightens the role played by Council of Europe. As mentioned above, the 2003 EC Feasibility Study does not elaborate criteria regarding local self-government. Importantly, however, it recommends that Bosnia should take action "to meet BiH's Council of Europe post-accession criteria, especially in the area of democracy and human rights".[78] This testifies to the fact that the EU, while setting political criteria for candidate states, *de facto* outsources their further specification and monitoring to the Council of Europe, which has the necessary capacities as well as the legal instruments to fulfil this role. The key instrument in the area that concerns us here is the

[76] In particular, this refers to the *EU Road Map* from 2000, *Bosnia and Herzegovina Country Strategy Paper 2002-2006* and the *Report from the Commission to the Council on the preparedness of Bosnia and Herzegovina to negotiate a Stabilisation and Association Agreement with the European Union* from 2003.
[77] European Commission, *Report from the Commission to the Council on the preparedness of Bosnia and Herzegovina to negotiate a Stabilisation and Association Agreement with the European Union*, (Brussels: Commission of the European Communities, 2003), COM(2003) 692 final, 6.
[78] ibid, 40.

European Charter of Local Self-Government, whose ratification was set by the Council as one of the post-accession requirements for Bosnia.[79]

2.1.2 The rule transfer mechanism

The principal external governance provider was essentially decided with Bosnia's aspiration to become an EU member, followed by its application to the Council of Europe. Its role was further enhanced in July 2004 when Bosnia ratified the European Charter of Local Self-Government. According to Caroline Revaud, Special Representative of the Secretary General of Council of Europe for Bosnia, this gave the Council of Europe a mandate to carry out monitoring and sanctioning of compliance with the Charter's provisions.[80] The Charter, however, neither includes a sanctioning mechanism, nor transfers such powers to the Council of Europe, which is merely mentioned in its role as a depository. The sanctioning mechanism, both in the pre-accession and post-accession phase, is therefore of a political, not legal character.

The lack of legal basis notwithstanding, the monitoring process is highly formalized, lastly by a 1997 CoE Assembly Resolution.[81]. The specific requirements that Bosnia is expected to comply with are drafted on the basis of Explanatory Memorandums, compiled by monitoring missions of the Congress of Local and Regional Authorities of Europe, a subsidiary body of the CoE. Their content, in a more concise form, is subject to approval by the Congress and complemented with bi-annual Council of Europe Assembly Resolutions on the progress made by Bosnia on the full range of commitments associated to its membership.

[79] Council of Europe Assembly, *Opinion No. 234: Bosnia and Herzegovina's Application for Membership of the Council of Europe*, 22 January 2002, 2nd Sitting, Article 15/iii/h
[80] Caroline Revaud, interview by author, Sarajevo, Bosnia and Herzegovina, 5 May 2010.
[81] Council of Europe Assembly, Resoulution 1115: *Setting up of an Assembly committee on the honouring of obligations and commitments by member states of the Council of Europe (Monitoring Committee)*, 29 January 1997 (5th Sitting).

In contrast to the general principles set out in the Charter, the evaluation and recommendations included in the CLRAE Explanatory Memoranda are highly specific.

For a deeper understanding of the rule transfer process, it is necessary to start by looking at the process through which the Monitoring Committee reports are compiled. The CoE Monitoring Committees draft their recommendations on the basis of field visits and exchanges with local administrative staff and political representatives. This suggests that local actors have a say in identifying the key problems with local self-government. At the same time, however, the framing used to identify these problems as well as the prism through which they are evaluated rests in the hands of the rapporteurs. Importantly, however, the CoE recommendations do not contain detailed policy prescriptions. This means that Bosnia has had a significant degree of leeway in finding appropriate policy responses to the problems identified.

At the level of adoption, this was partly compromised by the fact that Council of Europe representatives were present at the bi-monthly working group meetings where progress on the drafts was debated. Their role on these meetings was that of providing expertise on the compliance of any proposals with the principles laid out in the Charter.[82] Other international actors were also present to discuss the drafts, namely the OSCE and OHR representatives. While the OHR took a predominantly observant stance, OSCE representatives played a more active part during these meetings. In terms of ownership, a telling comment was made by Srdja Obradović, the OSCE participant. When talking about the drafting phase of the legislative reform, he outlined the role of the OSCE in inclusive terms by stating that "*we* started to work on the legislation"[83] (emphasis by author). When asked directly to describe the respective roles of the local working committees and the OSCE, he responded

[82] Obradović, interview.
[83] *Ibid.*

that "we [the OSCE] were pushing and they [the working committees] were steering."[84] Specifically, this involved frequent phone calls from the OSCE asking about the progress made and the OSCE's initiation of the larger working group meetings. At a later stage, it was also the OSCE's financial assistance that ensured the participation of all municipal representatives at the regional round tables, whose purpose was to get local stakeholders on board.[85] With respect to the role played by the OSCE, it is important to note that it's legal mandate, as outlined in the annexes to the Dayton Agreement,[86] did not include the area of local self-government beyond the management of elections.

In sum, there were two principal external governance providers in this case: the Council of Europe, whose impact was magnified by EU pre-accession conditionality, and the OSCE. The relationship between Bosnia and the CoE was marked by formalized inequality. Despite the fact that once member of the CoE (as of April 2002), Bosnia obtained a formal voice with which it could pursue re-negotiation of the Convention or the monitoring mechanisms, this still did not provide it with the possibility of changing post-accession criteria it agreed to honour. This indicates correspondence with the hierarchical mode external governance. The absence of detailed policy prescriptions in the CLRAE Explanatory Memoranda and Recommendations, however, as well as the absence of a clear sanctioning mechanism marks the limits of this correspondence. At the level of policy response, the most fitting mode would appear to be the market mode of external governance. A degree of lesson-drawing is apparent, given the freedom of choice local actors had when it came to drafting specific solutions to problems in the area of local self-government. The active presence of a second governance provider during the drafting process, as well as the "live" monitoring by

[84] *Ibid.*
[85] *Ibid.*
[86] This was limited to the areas of human rights, elections, confidence building measures and arms control.

CoE representatives, however, falls outside the framework of the market of external governance as outlined by Lavenex and Schimmelfennig.

2.1.3 Evaluating effectiveness of rule selection

As noted earlier, measuring effectiveness of rule selection cannot be done without according EU the role of a central governance provider. This is not an acceptable option given both the strong presence of other governance providers as well as the fact that the EU does not have specific rules concerning local self-government. An alternative approach to measuring effectiveness of rule selection is looking at the constraints Bosnia was facing when making its choice.

Bosnia could have drawn on purely domestic rules, as either embodied by the existing status quo, drafted new laws, or on rules applied in other states. Should these not be in line with the European Charter Local Self-Government, however, this alternative would have meant renouncing the ambition to become a member of the Council of Europe or not complying with the commitments this involved. The requirement to ratify the Charter must therefore be understood as part and parcel of Bosnia's bid for the membership in CoE and as such bound with numerous other CoE requirements and, ultimately, with EU membership. The selection of rules included in the Charter was further closely tied to a list of other requirements. As mentioned earlier, Bosnia also had a severely limited say in deciding what these requirements will be.

At the same time, Bosnian representatives decided to adhere to all the provisions of the Charter – a unique decision among Council of Europe members.[87] This would appear to indicate a strong European identity and a degree of voluntarism: one may conclude that Bosnia was willing to adhere to the principles regardless of any external incentives or possible sanctions. As noted by Caroline Revaud, however, post-war Bosnian political elites have acceded to a number of European conventions without giving due thought to the challenges of their implementation. This lends a degree of credence to her impression that these decisions amounted to little more than exercise in public relations, aimed at demonstrating Bosnia's commitment to "European values".[88]

In sum, although membership in the CoE is not an EU pre-accession requirement, given the *de facto* outsourcing of democratic standards monitoring to the CoE by the EU, there is a strong link between membership in the two organisations. Once Bosnia decided to adhere to the Charter, the space left for manoeuvre was limited. This meant that all the local actors had to adhere to its provision, irrespective of their political preferences.

2.1.4 Evaluating effectiveness of rule adoption

My task in this section is to evaluate what some researchers term "compliance", i.e. the degree of compatibility between the newly adopted legal norms and the selected external rules. It needs to be said that given the space left to local decision makers in drafting specific policy solutions, an element of rule selection is also present during the adoption phase.

[87] Obradović, interview.
[88] Revaud, interview.

Given the dominant role played in this respect by the CoE and its monitoring mechanism, I refer to the Charter and two CoE documents as the key sources for accomplishing my task. These documents are the CLRAE Explanatory Memorandum from November 2001[89] and the CLRAE Explanatory Memorandum from October 2006.[90] Generally speaking, the problems identified in these documents can be assorted into three categories: problems in applying the Charter caused by the highly complex institutional set up of Bosnia; problems of compatibility between framework laws on local self-government and the Charter; and finally problems arising from the discrepancy between law and reality. Due to the limited scope of this paper, I will only deal with the first two sets of problems.

The involvement of the OSCE, important during the drafting process, cannot be evaluated separately on the basis of rule selection or adoption, since the OSCE did not pursue the adoption of any formalized rules of its own. The OSCE has started a Local Self-Government Programme in 2003, deciding to focus on four areas: "increasing transparency and accountability in local government; improving local government outreach in the community; strengthening internal good governance within local authorities; [and] disseminating local government best practice throughout Bosnia and Herzegovina." [91] Among these four, only the first one is directly linked to the legislative reform discussed in this paper. It is crucial to note that OSCE's policy documents frequently refer to the ECLSG in terms of guiding principles and the 2001 Recommendation 103 of the CLRAE in particular. The OSCE explicitly sets out mission as "helping municipalities and cantons to understand the implications of the Charter for their work and to implement its requirements."[92] Although the

[89] CLRAE 2001.
[90] CLRAE, *Explanatory Memorandum CG (13) 30 part 2: Local and Regional Democracy in Bosnia and Herzegovina*," CLRAE, 2006.
[91] OSCE Mission to Bosnia and Herzegovina, Democratisation Department, *Local Government Programme: Overview of Planned Activities for 2004*, ND, part 1.
[92] *Ibid.*

OSCE undoubtedly also had preferences of its own, the length of this paper does not allow for their study in detail. It will therefore be sufficient to assume that there was a critical degree of overlap between rules whose transfer was pursued by the CoE and the OSCE.

2.1.4.1 Setting the targets: The CLRAE Explanatory Memorandum from 2001

The complexity of administrative and political arrangements in Bosnia is recognized in the CLRAE 2001 Memorandum by paying specific attention to framework legislation on three levels: the BiH state, entity (RS and FBiH), and the cantons. Little by way of criticism is raised in this respect, however. In evaluating existing legislation, the CLRAE 2001 Memorandum follows these three levels of government.

It is first noted that the state does not have competences in matters of local self-government, which means that legislative responsibilities belong to the entities. With respect to RS, the Law on Territorial Organisation and Local Self-Government from 1999[93] is deemed to be in conflict with the Charter in that it places undue limitations on citizen participation; allows for too much interference by the Entity government in determining internal structures of local self-governing bodies; does not stipulate merit and competence as the basis for staff recruitment; restricts the freedom of units of local self-government to associate.[94]

With respect to the FBiH, the CLRAE 2001 Memorandum merely states that only a few essential rules have been laid out, with the jurisdiction to legislate on local self-government issues resting with the cantons. Evaluation of the cantonal level legislation then

[93] *Zakon o teritorijalnoj organizaciji i lokalnoj samoupravi Republike Srpske* (Službeni glasnik Republike Srpske: 11/94, 6/95, 26/95, 15/96, 17/96, 19/96 i 6/97).
[94] CLRAE 2001, section III/7.

acknowledges that laws regulating local self-government have been passed in all the 10 cantons and notes the following outstanding issues in breach of the Charter: excessive powers of supervision vested with the cantonal level and lacking recourse to judicial remedy given to municipalities.[95]

The CLRAE 2001 Memorandum deals separately with domestic legislative compatibility with the Charter and „problems in the functioning of local and regional democracy."[96] The second category encompasses both problems of inadequate implementation of law as well as more complex structural problems. Furthermore, certain confusion arises from the fact that some problems appear to be the result of inadequate legislation, but are dealt with here instead of the section on legislation. Apart from the issue of administrative supervision mentioned in the previous section, this is the case with unclear division of competences between the cantons and municipalities in FBiH and the allocation of corresponding funds. The Memorandum asserts that the ambiguity of cantonal laws permits the "cantons [to] give substantial capital and operating responsibilities for infrastructure to municipalities without providing adequate revenues."[97] This is partly due to the possibility for cantons to assign extra-legal mandates to municipalities, which had to then post-facto lobby for the provision of adequate grants. Legislative measures could also be taken to address unresolved property issues, which lead to municipalities shouldering capital expenses for utilities belonging to Cantons.[98] Finally, the Memorandum notes that provisions regarding municipal borrowing are very unclear in a number of cantons, giving rise to numerous clashes

[95] *Ibid*, section II/5.
[96] *Ibid*, section IV.
[97] *Ibid*, section IV/14.
[98] *Ibid*, section IV/12.

between the municipal and cantonal level with respect to approval of debt incurrence and generally undermining the ability of municipalities to undertake development projects.[99]

As for structural problems, resulting mostly from the ethnic division of the country and the resulting institutional arrangements, the key problem identified has to do with administrative boundaries of certain municipalities. Numerous municipalities cut by the Inter-Entity Boundary Line (IEBL) tend to be too small and economically unviable. In the case of RS, this is in many cases aggravated by their geographical remoteness. Territorial reform is suggested as the most desirable solution. The Memorandum also laments the lack of communication and cooperation between the two entities as well as between cantons inhabited by different ethnic communities, which limits alternative solutions to the problem of economically unviable municipalities.

2.1.4.2 Results of the reform process: The CLRAE Explanatory Memorandum from 2006

The CLRAE 2006 Memorandum, issued five years later, fails to mention a number of the above listed issues. This is in particular the case with respect to the RS: limitations on citizen participation, merit and competence as criteria for the employment of administrative staff; and restricts the freedom of units of local self-government to associate are not mentioned. With regard to the FBiH, no mention is made with regard to the issue of municipal borrowing. Given fact that the new laws do have provisions regarding these areas and that the purpose of the monitoring process is provide critical feedback, I take the absence of these issues in the Memorandum as indicating compliance.

[99] *Ibid*, section IV/14.

Other issues are seen as principally resolved, albeit with reservations. The Memorandum states that the "new laws have decisively improved [the] situation"[100] in both the RS and FBiH with respect to the problem of insufficient of recourse to judicial remedy. This has been complemented by favourable judgements of the Constitutional Court in FBiH. In RS, the problem of excessive rights of interference by the central government in municipal affairs has been addressed in such a strict way as to be likely to "encourage informal [or] para-legal interventions."[101]

However, some issues have not been satisfactorily resolved by the new legislation. A number of provisions of the framework law in both entities merely stipulates the need for further legislation. In particular, the Memorandum notes a "lack of concrete provisions [...] on such decisive matters as municipal property [and] delegation of powers,"[102] where the latter refers to regulations on assignment of extra responsibilities.

On the whole, however, the Memorandum considers the new laws in both RS and FBiH to "correspond to modern standards and [...] an undoubted step forward,"[103] mentioning a number of innovative and even experimental provisions, such as extended citizen participation.

The remaining part of the CLRAE 2006 Memorandum testifies to the limited capability of framework laws to guarantee the implementation of Charter provisions, especially in the Federation. Two key problems are identified. The first such problem is the issue of territorial reform. It is worth noting that the question has not been raised at all during the drafting or adoption process.[104] The second problem is the issue of jurisdiction over local self-government legislation. The central obstacle here stems from the fact that while the FBiH

[100] CLRAE 2006 Part 2/I/64.
[101] *Ibid*, Part 1/B/18
[102] *Ibid*, Part 2/C/45
[103] *Ibid*, Part 2/C/44
[104] Obradović, interview.

Constitution guarantees application of the Charter, it does not provide the FBiH government with tools for implementing it. The cantons thus have the right to legislate on local self-government, but are in turn not bound by the Charter. Uncertainty as to which of the two levels has competence over local self-government regulation means that in practice, both the new Federal law and the earlier cantonal laws remain in force. In this context, it matters little that the FBiH 2006 Law on Principles of Local Self-Government succeeds in clearly delimiting the tasks assigned exclusively to the municipal level, accompanied by rules for allocation of corresponding funds, since clashes with Cantonal laws are likely to occur.

In conclusion, it can be said that the new laws pertaining to local self-government in both Entities partly comply with both the general provisions of the Charter as well as with the more detailed recommendations of the Congress of Local and Regional Authorities of Europe. Among notable exceptions is the lack of precise regulations with regard to municipal property (both entities), regulations regarding the delegation of powers (both entities) as well as some more specific areas, such as education and health services (RS).

The failure to introduce the constitutional amendments in the FBiH that would grant jurisdiction over the area of local self-government to the entity level means, however, that a crucial precondition for the implementation of the new framework law is missing at the primary legislation level. This is further aggravated by the necessity to harmonize over 100 sectoral laws with the new framework law, most of which are in the competence of the cantons. This failure to shift responsibility for local self-government matters to the Federation cannot, however, be regarded as a failure to comply at the level of rule adoption, as it was not identified as a problem in the CLRAE 2001 Memorandum. Given its significance, it must nevertheless be taken into account in the analysis that follows.

2.1.5 Explaining the effectiveness of rule adoption

In line with the previous sections, my analysis here deals separately with effectiveness associated with the nature of the rules transferred and the process through which these were adopted. In terms of effectiveness criteria, I will be drawing on factors outlined in the Theoretical background section.

Keeping in mind the observation made by Caroline Revaud in describing the apparent lack of concern on the part of Bosnia's political elites about the consequences of ratifying binding international treaties, I expected there to be considerably lower degree of commitment apparent when it came to adopting specific policy solution. The fact is, however, that new legislation has been adopted, notably without any significant interference on the part of the OHR, and it shows a considerable degree of compatibility with the Charter.

2.1.5.1 Explaining effectiveness: actors and the rule adoption process

Given the strong legalization of principles contained in the Charter, it is significant that already the monitoring process took place in close cooperation with local representatives, helping to increase the legitimacy of the committees' findings. The first draft of the CLRAE 2006 Explanatory Memorandum, for instance, has been submitted to the discussion partners in Bosnia for commentary before being presented to the Congress.

According to Lavenex and Schimmelfennig, when rules are strongly legalized, like the provisions of the Charter, strong monitoring and sanctioning mechanisms increases the likelihood of successful transfer.[105] While the Council of Europe applies a well-developed monitoring process, weakness of the sanctioning mechanism is worth attention. As mentioned

[105] Lavenex and Schimmelfennig, 802.

earlier, the Charter does not envision material sanctions and the Council of Europe only has political sanctions at its disposal. This, however, does not mean that countries have no incentive to comply with its recommendations. The authority enjoyed by the Council of Europe in its field of activity increases its weight as a body that can "persuade, shame or praise actors into compliance."[106] Successful transfer in this respect could be related both to strong identification with the external community (embodied by the CoE)[107] or, taking a more rationalist view, with concerns for the country's reputation, important for future exchanges with other countries.[108]

The drafting process was also characterised by common deliberation of rules whenever the OSCE took an active part. Whether this enhanced the legitimacy of the adoption process also depends on the legitimacy of the OSCE and the Council of Europe and their involvement in the country. Although this would require a more detailed study, the fact is that Bosnia was or became the member of both organisations during the reform process (1992 and 2002, respectively). This means that their involvement approximated more closely a cooperation between two formally equal partners. Although the OSCE lacked a legal mandate for its involvement in the local self-government reform, the fact that it supported and contributed financial resources in order to enable the engagement of a broad spectrum of local stakeholders clearly contributed to greater legitimacy of the process.

The parliamentary origin of the reform move, as opposed to one initiated by an international body, also enhanced the legitimacy of the process. The strategy of building a broad consensus itself did not originate from the OSCE, but followed from an initiative of the chair of the Parliamentary Committee on Local Self-Government, Slaviša Šućur. The fact that Šućur and his allies aimed to gradually build parliamentary support for the reform,

[106] Kelley, 428.
[107] Schimmelfennig and Sedelmeier, Europeanization of CEE, 19.
[108] David M. Kreps. "Corporate Culture and Economic Theory," in Perspectives on Positive Political Economy, ed J. E. Alt and K. A. Shepsle (Cambridge, England: Cambridge University Press, 1990), 93.

complementing it with support from local stakeholders as well as preparing the ground for adoption in the House of Peoples and trying to involve the government, was crucial in paving the way for the eventual successful confrontation with opponents of the reform. In terms of factors used by Schimmelfennig and Sedelmeier to analyse effectiveness of rule transfers, these observations indicate the importance played by local "epistemic communities", among which strong resonance with the rules in question is experienced. The generally supportive stance of local experts (at universities and in policy think tanks) also falls within this category. Their influence, however, should not be overestimated. The strong support for the idea of territorial reorganisation expressed in the writing of Mirko Pejanović,[109] dean of the faculty of political science, did for instance not significantly enter the debates at any point.

2.1.5.2 Explaining effectiveness: the nature of rules

The considerable, albeit indirect, influence of EU conditionality at the level of rule selection has been indicated earlier. When looking at rules themselves, however, it must be remembered that local self-government is practically never mentioned among the EU's pre-accession requirements and that the one ISO norm related to municipal affairs remains dwarfed by the vast body of *acquis* that awaits transfer.

Lavenex and Schimmelfennig assert that apart from strong monitoring and sanctioning mechanisms, the likelihood of successful transfer increases with higher degree of legalization, clarity and precision of rules.[110] The provisions of the Charter largely fulfil these criteria and this undoubtedly facilitated the efforts to reach an agreement on the key components of the

[109] Pejanović, 221.
[110] Lavenex and Schimmelfennig, 802.

new legislation. The boundaries set by the Charter were broad, but precisely delimited and respecting them was sanctioned by an international treaty.

The legitimacy of the Charter itself may also have contributed to the effectiveness with which its provisions were transferred. All EU member states are signatories to the Charter and potentially subject to its monitoring mechanism. Further, all the other candidate and potential candidate countries were and are required to ratify the Charter and follow the recommendations of Council of Europe with regard to its implementation. In the light of such significant international recognition of the rules in question, it appears to matter somewhat less that Bosnia, as a new state, did not take direct part in drafting of the Charter or setting up of the CoE monitoring regime. With regard to the policy intervention of the OSCE, it is important to keep in mind that that the OSCE drew on the CLRAE Recommendation 103 and in terms of content, its suggestions fell within the principles of the ECLSG.

Finally, local self-government bodies – *mjesne zajednice* (local associations) – formed a traditional part of the Socialist Yugoslavia. This could be argued to have found its expression in the new FBiH framework law's sanctioning of the role of sub-municipal units of local democracy and indicates and overall resonance of the principle of local self-government, at least in the Federation.

The rule transfer was, however, only partially effective. It is noteworthy in this context that unlike the Charter provisions, the specific requirements contained in the CLRAE Recommendations and Explanatory Memoranda lack the same degree of legalization, clarity and precision. However these policy suggestions may have been be lacking in detail, they were specific enough to delineate specific strategies with serious implications for important political forces in the country. This can be clearly seen in the case of the suggested territorial reform, an issue that challenges the bases of the current political system, especially in the

FBiH. The CLRAE Memoranda do make the observation that drafting legislation for municipalities vastly different in terms of size, resources and population is a nearly impossible task. At the same time, the rapporteurs do not consider the option of adopting a multi-layered system of dividing responsibilities between municipalities and higher levels of government. Such a system would enable municipalities to choose a portfolio of tasks that correspond to their resources, while fully guaranteeing their other rights.[111]

The issue of territorial reform, however, went beyond the legislative deficiencies identified by the CLRAE 2001 Memorandum. With regard to the framework legislation, it is worth recalling that the CLRAE 2006 Memorandum expressed its general satisfaction with the rule transfer in both entities, with the new laws "correspond[ing] to modern standards." The quiet disregard of the suggestion of carrying out a territorial reform, and more importantly still, the failed attempt to introduce constitutional changes in the FBiH in October 2004, mark the point where factors contributing to effective rule transfer discussed above meet their limits.

It is at this point that the importance of veto players increases dramatically. Given the importance cantonal autonomy holds for Bosnian Croats, it is not surprising to see strong opposing on their part to any reform threatening to reduce the power of cantons. This includes efforts at delimiting their power, but becomes much more salient when legislative competences should shift towards the Federation level. This has been clearly demonstrated by the failure of adopting constitutional amendments with regard to local self-government, with the adoption costs being perceived by the HDZ as prohibitively high. It is worth keeping in mind, in this context, that the notion of adoption costs is a relational one. The general political

[111] Obradović, interview.

climate, characterised by the discourse of threat and rivalry between the main nationalist parties, contributes to raising adoption costs for any particular actor. In the RS, opposition came from within some political fractions that support centralisation. Once again, it is important to see the drive towards centralisation as part of the political landscape, defined in part by competing national projects. A centralised state is understood by some in the RS as a bulwark against encroachment of the other ethnicities on Serb power.

To sum up, the international organisations involved (especially the OSCE) appear to have followed a strategy that relied on building local ownership coupled with the provision of expertise, adopting agendas that went beyond the legislative level and providing both financial and technical assistance. The largely deliberative nature of the drafting process, albeit calling for more detailed research relying on constructivist and socialisation-based approaches, appears to have contributed to a greater effectiveness of the process.

The balance between setting up requirements and providing assistance seems to have been skewed in favour of the latter. Given the expertise of both the CoE and the OSCE with regard to either Bosnia or the area of local self-government, this could be argued to compare favourably with the general profile of EU involvement in the region. It certainly contrasts with the earlier hyper-interventionist approach adopted by the OHR.

It can further be asserted that both international and domestic legitimacy of the rules in question as well as their domestic resonance was high. While this has most likely contributed to their successful transfer, the effectiveness of rule transfer was compromised at the level of primary legislation, when the rules touched upon the bases of local political power. This worked both in favour of the reform (with most municipalities taking part in the reform process, providing it with extra legitimacy), as well as against the reform when cantonal

power – and by extension the basis of the Federation's inter-ethnic power-sharing arrangement – were challenged.

2.2 The laws on Allocation of Public Revenues in RS and FBiH

2.2.1 Origin of the rules

Norms dealing with the allocation of public revenues have two basic components, even if these are usually regulated through separate pieces of legislation. The first component has as its purpose to set formulas for the redistribution of public incomes between various levels of government. In the case of Bosnia, this means the state, entity and municipal levels, plus the cantonal level in case of FBiH. The second component corresponds to the country's tax collection system. The connectedness of the two components has a particularly prominent impact in Bosnia. This is because taxation does not only provide the means of financing public institutions and services, but also a system for redistributing wealth between different tax payers, levels of administration and territorial units. In Bosnia, this is an extremely sensitive question, with the pre-2006 system disallowing any significant territorial redistribution of wealth not only between the Entities, but also between the cantons (in the case of FBiH) and municipalities.

As mentioned earlier, the impulse for reforming the system of allocation of public revenues came with the efforts of European Commission aimed at convincing local political elites to switch from the sales tax (which allows minimising territorial redistribution of revenues) to the VAT (which does not allow for tracing of origin). Once again, however, the

EU does not have significant *acquis* related to the allocation of public revenues, as this depends both on the level and nature of a member state's decentralization and on its precise internal structure (and the level of centralisation).

Three external sources of rules can, nevertheless, be discerned. Firstly, Article 9 of the ECLSG stipulates that municipalities "shall be entitled [...] to financial resources [...] commensurate with the responsibilities provided for by the constitution and the law." This Article has been interpreted by the Council of Europe as a guarantee of municipal financial autonomy. A system of revenue allocation that does not provide for this autonomy will therefore come under criticism of the CoE. Violations of the principle of financial autonomy are indeed noted in the CLRAE 2001 Explanatory Memorandum.

Secondly, the reform was informed by the notion that redistribution disregarding territorial origin of public revenue is permissible. This principle was introduced through the shift from sales tax to value added tax pushed for by the EU and the IMF. The practice of territorial redistribution of public revenue is common to most nation states, including many states with a federal structure. On the broader level of the EU, it is embodied in the system of structural funds. The principle, however, is merely reflected in the VAT and was not, in itself, intended as an explicit subject of rule transfer. In short, while the EU has *acquis* relating to the VAT, the permissibility of territorial redistribution itself does not have a legal basis nor a formalized origin.

Finally, the Government Accountability Project (GAP), a joint venture of the USAID and the Swedish Sida, had specific goals (discussed below) it wished to achieve through its policy intervention in the reform process. The GAP became involved in August 2004 and drew in part on a Local Governance Assessment and Policy Recommendations paper drafted by the USAID.[112] GAP itself published its first Baseline Survey Report in March 2005.[113] The

[112] USAID BiH, *Local Governance Assessment and Policy Recommendations*, 2003.

absence of earlier monitoring corresponds with GAP's assertion that its aims were drawn up in collaboration with local stakeholders.[114] The origin of these rules thus cannot be considered without simultaneously considering the process through which they were elaborated.

2.2.2 The rule transfer mechanism

The role of the CoE and CLRAE in the process of rule transfer has largely been described in the previous section. One significant difference is that no CoE representatives were present at the debates that accompanied the drafting of the laws on allocation of public revenue. Its role in monitoring was thus restricted to identifying the problems and evaluating the results of the reform.

A prominent part was played indirectly by the European Commission and directly by the USAID & Sida through the GAP. The EC limited its efforts exclusively to the introduction of VAT on the state level, not linking the issue with any reforms of local self-government.[115] The fact remains, however, that with the *de facto* elimination of the possibility to trace the territorial origin of revenues, the existing system of public revenues allocation was bound to loose its key organising principle. In other words, the introduction of VAT created a legislative and administrative vacuum that needed to be addressed.

The reform move appears to have originated from PMs in the FBiH House of Representatives and followed by the RS Ministry of Finance, both of which formed a working group and began elaborating a recast of the system of revenue allocation in their respective entity. These efforts were consequently buoyed by the GAP. Denisa Sarajlić-Maglić, a GAP policy director, asserts that "[a]ll stakeholders were represented in each [entity's] Working

[113] Governance Accountability Project. *Performance Monitoring and Evaluation: Report on Baseline Survey*. GAP, 2005.
[114] Levitas, 5.
[115] Revaud, interview.

Group and for both GAP served as a technical secretariat, collecting data and preparing policy options.[116] Although ensuring local ownership was one of the key principles in GAP's strategy, its role did not remain limited to the provision of finance and expertise. To quote Tony Levitas, "[i]t took GAP several months to achieve consensus" about the need for abandoning the origin-based principle of revenue sharing.[117] This suggests an active and direct efforts at promoting a particular vision, as opposed to mere facilitation.

In terms of governance mode, the CoE was charged with monitoring the compliance of the final legislation with the Charter, which most closely corresponds to a market mode, bounded by more general rules transferred under a hierarchical mode. The legislation, however, was most strongly influenced by a principle not present in the Charter – that of territorial equalization of revenue. Which mode would describe the process most precisely? It is true, on the one hand, that local MPs adopted the principle on the basis of a utility argument,[118] which corresponds to the market mode. On the other hand, the cooperation between local representatives and GAP officials could be more readily classified as policy coordination, associated with the network mode. At the same time, as agencies of their respective states, the USAID and Sida have a purely external function. The process of rule approximation, if any, is thus strictly uni-directional. It would therefore seem more appropriate to describe the process of rule transfer as „assisted lesson-drawing" rather than policy coordination. This makes it questionable whether the process can be placed within framework proposed by Lavenex and Schimmelfennig.

[116] Sarajlić Maglić, Denisa, "Process Management and Finances - The case of Bosnia and Herzegovina" (paper presented the conference on Decentralisation between Regionalism and Federalism in the Stability Pact Countries of the Western Balkans, Tirana, Albania, June 9-10, 2006).
[117] Levitas, 5.
[118] Šućur, interview.

2.2.3 Evaluating effectiveness of rule selection

This section once again focuses on the limitations to Bosnia's choices with regard to rules concerning allocation of public resources. Under the provisions of ECLSG, adherence to the principle of municipal financial autonomy is obligatory. As in the case of other local self-government principles, the non-ratification option would mean either giving up on membership in the CoE or a failure to comply with its post-accession requirements.

Going against governmental efforts to graft the principle of respecting territorial origin of public revenues onto the VAT system, however, was a choice that had little to do with the Charter's provisions. Why was this choice made? The initiative to redraw the system of public finance originated from Slaviša Šućur, chair of the Parliamentary Committee on Local Self-Government, who was simultaneously working on the framework law on local self-government. According to him, the parliamentarians took advantage of the "VAT moment" to redress some of the problems experienced at municipal level that became apparent during the work on a framework law on local self-government.[119] This suggests that the principle of territorial equalization of revenue was selected on a utilitarian basis, in response to the dire financial situation of numerous municipalities. If we subscribe to this explanation, it will not appear surprising that an alternative government proposal that drew on the domestic practice of origin-based revenue sharing has been rejected by the parliament. A strong incentive must have been required to confront the government and neither institutional nor ethnic considerations seem to offer credible explanatory alternatives.

[119] Šućur, interview.

2.2.4 Evaluating effectiveness of rule adoption

Ideally, an identical approach to measuring the effectiveness of rule transfer should be applied as in the previous chapter. This would involve comparing findings of the CLRAE Explanatory Memorandum from 2001 with the one elaborated five years later.

This approach, however, is complicated by the limited notice the CLRAE 2006 Explanatory Memorandum takes of the new laws dealing with allocation of public revenues. The Memorandum states, for example, that the "distribution [of VAT proceedings] among the municipalities (and, in the FBiH, the Cantons) has to be provided for under the legislation of the Entities, following consultation of the municipalities (and Cantons)." The new legislation, however, does precisely that, as I explain in more detail below. Further, according to a GAP survey, the totality of 74 (FBiH) and 62 (RS) municipalities took part in commenting on the first draft of the law.[120] Judging by these recommendations, it appears justified to conclude that the just-completed reform of revenue allocation was largely ignored by the CLRAE committee. I therefore use these recommendations to instead complement those made in the CLRAE Memorandum from 2001.

Since no later Explanatory Memorandum is available as of now, an alternative method of measuring effectiveness has to be applied. I take the deficiencies identified in both CLRAE Memoranda as a basis for the evaluation, but draw on other sources in order to establish the progress made with the passing of the new legislation. Primarily, I refer to the laws themselves, using a report presented by Denisa Sarajlić-Maglić on a conference in 2006[121] as a complement. This appears justified, given the role GAP played as a second governance provider during the process of drafting and adoption of the laws.

[120] Governance Accountability Project, *PMP and MCI Survey Report: Regular Survey*, GAP, 2006, p. 16.
[121] Sarajlić Maglić.

2.2.4.1 Setting the targets: the CLRAE Explanatory Memoranda and GAP aims

The CLRAE 2001 Memorandum identifies two main problems directly related to the allocation of revenue to local governments. The section on the Federation of BiH focuses on an analysis of cantonal laws. This is because the Law on Allocation of Public Revenue in the Federation and Financing of FBIH from 1996 merely stated that municipalities shall be autonomous in matters of local taxation, leaving it to the cantons to pass more detailed legislation.

The first problem relates to the fact that revenue sharing formulas were adopted annually by the cantons. Given the municipalities' high level of dependence on transfers from the cantons, the absence of a stable formula made their medium-term financial planning extremely difficult.

Second problem identified as common to both entities was the lack of consideration given to economically weak municipalities, including extremely small ones at the IEBL. In the Federation, no specific mechanisms for the equalisation of resources was in place. In the RS, the system required municipalities "in crisis", to apply for extra funding under "rather arbitrary" selection criteria subject to political manipulation.[122]

The CLRAE 2006 Explanatory Memorandum reiterates the need for precise distribution criteria for allocation of revenues to municipalities and the need "to protect financially weaker local authorities [...]." It then adds further recommendations with regard to both the desirable content of the new legislation as well as to the process through which it should be adopted. In particular, it stresses the "requirement to consult local authorities on the

[122] CLRAE 2001, section IV/14.

allocation of the resources," further noting that "the introduction of VAT has reduced local taxation power and that compensation for that is needed [...]."[123]

Finally, the Government Accountability Project took up the principle of fiscal equalization (i.e. territorial redistribution of revenue) as introduced through the introduction of VAT. It further aimed to "harmonize municipal finance regimes across cantons [and] improve the overall fiscal position of municipalities,"[124] phasing the changes over time in order to protect sub-entity governments from budgetary shocks.

2.2.4.2 Results of the reform process

It is clear from the above that there was a significant degree of overlap between the two governance providers. Despite the missing CLRAE evaluation, some key observations can thus be made with regard to rule transfer effectiveness at the rule adoption level.

Both the amended Law on RS Budgetary Systems from April 2006 and the Law on the Allocation of Public Revenues from June 2006 provide a well-defined formula for the sharing of public revenues between entity, cantonal in the FBiH case, and municipal levels of government. In the RS, the formula for the calculation of funding further takes into account the size of the municipality/city, the size of its population and the number of high school students. There is therefore no correspondence between the amount of revenue collected in a particular municipality and the revenue it receives after redistribution. The principle of respecting territorial origin of revenue has been completely abandoned in the RS.

[123] CLRAE 2006, part 2/G/56.
[124] Sarajlić Maglić, section 4.

In the FBiH, the situation is different. The fact that the law takes into further account the number of primary school students is less significant than its incorporation of a sales tax/income tax ratio deemed to reflect the level of the municipality's development. This should in fact, go even further along the road of revenue redistribution from more to less developed municipalities than the simple arithmetic applied in the RS. Indeed, Tony Levitas concludes that "all subentity governments now have a stable, predictable, and transparent revenue stream that will radically reduce the disparities of per capita income that plagued the Federation. Indeed, the revenue differences [...] at the municipal level [...] will fall from more than 200:1 to 35:1."[125] These changes have been phased over a period of 6 and 10 years in the FBiH and RS respectively in order to give municipalities time to adapt to the changes.[126] As for securing additional revenue for municipalities, Sarajlić-Maglić reports that the municipal share of public revenue was increased "from 6.42% to 8.42 percent, by lowering the shares going to the Federation and the Road Fund."[127] In the RS, 23% of the collected VAT revenue is now shared with municipalities, which is expected to reduce the revenue disparity among them from 70:1 to 20:1.[128] Finally, compliance with Article 9.6 of the Charter that requires consulting local self-government units on allocation of public resources has been described in section 2.2.2 and can be seen as largely accomplished.

In conclusion, the effectiveness of rule transfer was high, with the new laws incorporating all the key requirements made by the CLRAE Explanatory Memoranda as well as the goals set by GAP or developed in collaboration with local representatives.

[125] Levitas, p. 7
[126] *Zakon o pripadnosti javnih prihoda u FBiH* (22/06), part III, Art. 21; *Zakon o izmjenama i dopunama zakona o budžetskom sistemu Republike Srpske* (128/06), Art. 9.
[127] Sarajlić Maglić, section 4.
[128] Levitas, p. 7

2.2.5 Explaining the effectiveness of rule adoption

My analysis here deals separately with effectiveness as influenced by the process of adoption and the actors involved and as influenced by the nature of rules transferred. I draw on factors outlined in the Theoretical background section.

2.2.5.1 Explaining effectiveness: actors and the rule adoption process

Identifying the weaknesses of the current system carried out by the CLRAE committees included measures of participation described in the section on local self-government framework laws: the initial findings were compiled through consultations with local representatives and the first draft of the CLRAE 2006 Explanatory Memorandum was presented to local interlocutors for comments. At the same time, the disregard of latest developments in the field of public finance legislation that carried over to the final version of the Memorandum seems to indicate the limits of local participation. While similar observations regarding the legitimacy of the CoE monitoring process can thus be made (e.g. the function of persuading, shaming or praising adoption), the role played by both CLRAE recommendations and the CoE monitoring process seems less significant in this case when compared with the involvement of GAP.

Given the image and role of both USAID and Sida as development agencies, the GAP can be presumed to have enjoyed a good degree of legitimacy in Bosnia, although this would need to be further explored in a separate study. The financial aid and extensive technical assistance it provided to the working committees was complemented with a strategy that involved consultations with a broad range of local actors, both during the phase of gathering information and during the drafting process. As in the case of the framework law on local

self-government, the reform initiative in FBiH came from members of the Assembly of Representatives, which enhanced the legitimacy of GAP's policy intervention. Given the similarity of impact the introduction of VAT had on both entities and the fact that redrawing of inter-entity financial relations was not part of the agenda, the reform initiative was arguably easily "transferable" from the FBiH to the RS, thus making it less relevant in which entity the reform impulse originated.

In the RS, a specific political development appears to have aided adoption of the new amendments to the Law on Budget Systems. The new government was, in essence, adopting a law on whose preparation it worked intensely while in opposition earlier.[129] Failing to support its adoption would have meant a significant blow to its credibility.

2.2.5.2 Explaining effectiveness: the nature of rules

With regard to the rules in question, the utility argument appears to have played a still greater role in the case of public revenue allocation than in the case of local self-government framework laws. According to Slaviša Šućur, this was partly the result of a technical tool utilized by the GAP for demonstrating the economic effects of various policy solutions for the equalization of public revenues. The interactive visual aid used during parliamentary debates made the policy options transparent and easy to understand, helping to garner support for the proposed solution to the problem of financial disparities between economically affluent and deprived municipalities. Although an alternative proposal has been issued by the government, drawing on the domestic practice of origin-based revenue sharing, it has been rejected by the parliament. Slaviša Šućur has suggested in this context that the vote shows the increased sensitivity of PMs to the problems faced by local self-government bodies.

[129] Mersad Beglerbegović, e-mail message to author, May 28, 2010.

The high effectiveness of the rule transfer is remarkable, considering the high adoption costs for some of the local veto players. The dramatic process that accompanied adoption in the FBiH (the House of the People's appeal to the Constitutional Court) testifies to the sensitivity the issue held for the defenders of cantonal powers (mainly the HDZ).

One explanation for this outcome would suggest that the principle of revenue equalization resonated well not only with the mayors facing financial difficulties, but also more generally with those who felt that redistribution of between more and less affluent municipalities is more just than the current system. The normative perceptions of the reform would, however, need to be studied through other means in a separate study. The provisions that envisioned a 6- to 10-year transition period must, in this context, be seen as a means of assuaging the fears of those who stood to loose from the new system. It is worth noting in this context the role played during the court proceedings by mayors who, despite their membership in the HDZ, spoke in favour of the proposed law upon an invitation as friends of the court.[130]

CONCLUSIONS

In this study, I have tested the external governance framework proposed by Lavenex and Schimmelfennig, explored the nature of international involvement in Bosnia within the context of two legislative reforms and offered a partial evaluation of the success of local self-government reform. The paper also allows for certain conclusions to be drawn with regard to the process of Bosnia's institutional and political transformation.

[130] Šućur, interview.

The applied theoretical framework was an excellent aid to organising my analysis. By applying it to two cases of legislative reform in neither of which the EU was directly involved, this paper further tested the limits of its usefulness. Although the presence of EU conditionality could be traced through the Copenhagen criteria, no EU agency took an active part in the reform process, nor did the EU play a part in specifying or monitoring compliance with local self-government requirements, a role that was left to the Council of Europe.

On the one hand, applying the external governance framework on these cases clearly stretched its application beyond the range of cases it is meant to cover. It was, nevertheless, a useful exercise in that it helped revealing what is it about the nature of the EU as a "governance provider" that makes it fundamentally different from other intergovernmental organisations, such as the OSCE or the Council of Europe. The question here is whether the two latter institutions, or policy advisory bodies such as the GAP, can engage in "governance" at all. In the case of Council of Europe, I would argue that this is possible. The key mechanism, whereby states jointly set up rules and an intergovernmental body then supervises their implementation, is present both within the EU and in the functioning of the Council of Europe. It is nevertheless questionable whether the Council of Europe can engage in all the three modes of external governance described by Lavenex and Schimmelfennig. The much less institutionalized and therefore less continuous and fluid process of deliberating common rules under the Council of Europe "regime" appears to be a serious obstacle to establishing both the network and the market modes.

With regard to the OSCE and the GAP, the process lacks not only the potential for multilateral policy adaptation inherent in both the networking and market modes, but also the formalized rules characteristic of the hierarchical mode. This makes external governance largely an unsuitable concept, a fact further underlined by the fine-tuning of its modes to the

macro- and the meso-levels of rule transfer. The policy advisory role played by GAP and the OSCE largely fell below this threshold.

Although my findings concerning the role of international actors do not neatly fit into modes outlined by the external governance framework, they represent a solid guidance for future research. It can be asserted that international actors were strongly present in the reform process. The different roles they have played shows a remarkably efficient division of labour, which, as far as could be ascertained through field research, did not involve formal or regular coordination.

International intervention penetrated the deepest level of policy making: the drafting of legislation. Interestingly, the OSCE as well as the USAID and Sida were careful not to initiate the reforms, nor to engage in cooperation with a narrow pro-reform group. Space was always left for purely domestic "working groups", where first drafts were produced or where policy options prepared by the "technical secretariat" (GAP in this case) were considered. The principle of ensuring local ownership of the process, if not the content of the reform, was also pursued with determination by both the OSCE and GAP through their support for regional round tables with municipal representatives. While the strategy of winning a broad consensus originated from local politicians, it may well be possible that they have chosen precisely in order to secure support from international actors.

Without subscribing to the dismissive stance some authors exhibit with regard to international involvement in Bosnia, this paper makes it clear that there is an intimate relationship between local political elites and international actors. While the heavy-handed interventions that the HR resorted to up until mid-2000s have largely disappeared, more nuanced strategies for influencing domestic political life continue to influence local political choices. Slaviša Šućur succinctly summarised the ambivalence of the Bosnian situation in this

context when he commented that: "there is no way this country could work under the current constitution without the international presence."[131]

The analysis presented in this paper further demonstrates that this intervention was successful in that it strongly contributed to the passing of new legislation in both cases. The role of the ECLSG in determining its content and enhancing the legitimacy of reform can hardly be overestimated, however, as both the OSCE and GAP followed its principles. The new framework laws in both the FBiH and the RS are largely compliant with these principles. They provide legal guarantees for the exercise of local democracy, despite the fact that a number of problems remained unaddressed, such as the issue of municipal property or regulations regarding the delegation of extra responsibilities to municipalities. Perhaps the most important changes took place through the reform of public revenue allocation system, which provided municipalities with an increased share of public revenue, enhanced the predictability of transfers and introduced a system for territorial redistribution of revenue.

Due to the space limits of this paper as well as the fact that implementation of the reform is an ongoing process, adequate attention to the rule application phase could not be paid. The analysis presented nevertheless reveals the limits of what can be achieved in the Federation of BiH through legislative reform, as long as it remains unaccompanied by relevant constitutional changes. The extremely slow pace of harmonisation of cantonal and sectoral laws with the new framework legislation testifies to these limits. The fact that competences over allocation of public revenue were successfully asserted by the Federation government is an important step ahead in the process of strengthening the Federation. In the larger context of Bosnian politics, a stronger FBiH may be able to offer greater incentives to

[131] Šućur, interview.

the Republika Srpska for pooling competences on the state level. This will be important in the context of any upcoming debate on broader constitutional reform and changes to the Dayton system.

The unsuccessful attempt to shift jurisdiction to the Federation level, however, demonstrates the essential role played by the Bosnian Croat community as a veto player. It is questionable whether a different political strategy could help a second attempt succeed. Under these circumstances, the stage on which advances in the reform of local self-government can be expected shifts decisively to the local level. Both the GAP and the OSCE have extensive programs focused on the municipal level, offering a rich field for future study of the interaction of local and international actors in the promotion of local democracy.

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