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The European Union's Rule of Law Promotion in its Neighbourhood: A Structural Foreign Policy Analysis

Raphaël Metais, Charles Thépaut &
Stephan Keukeleire (eds.)

DEPARTMENT OF EU INTERNATIONAL
RELATIONS AND DIPLOMACY STUDIES

EU Diplomacy Paper 04 / 2013

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EU Diplomacy Papers

4/2013

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Abstract

The promotion of the rule of law has become an important dimension of the European Union's relations towards its neighbourhood. The rule of law is, however, a complex and multifaceted notion and the EU's rule of law promotion policy has often been criticised for being either inefficient or self-interested. This collection of short papers offers an analysis of various case studies using the analytical framework of structural foreign policy (SFP) developed by Stephan Keukeleire. It aims to promote an original analytical perspective on the EU's foreign policy but also to critically test and further develop the SFP analytical framework. The contributions of this collection consist of the shortened version of students' Master's theses written at the College of Europe during the academic year 2011-2012 in the framework of the course "The EU as a Foreign Policy Actor" taught by Stephan Keukeleire, Chairholder of the TOTAL Chair of EU F oreign Policy in the Department of EU International Relations and Diplomacy Studies.

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1. Introduction: What Is Structural Foreign Policy?

Raphaël Metais & Charles Thépaut

The notion of rule of law lies at the heart of European integration and constitutes one of the core principles of the European Union (EU).[1] Considered a key dimension to the EU's success in bringing about peace, stability and prosperity to the continent, the rule of law has also permeated the EU's external relations and is today an essential dimension of its foreign policy.[2] The importance of promoting the rule of law internationally in order to strengthen international order and the EU's citizen's security was emphasised by the 2003 European Security Strategy.[3] Furthermore, the various bilateral political and legal instruments of the European Neighbourhood Policy (ENP) and the Stabilisation and Association Process (SAP) with the Western Balkan countries recurrently refer to this notion.[4] Rule of law has also been at the core of various EU missions carried out under the Common Security and Defence Policy (such as EUJUST Themis in Georgia, EULEX in Kosovo, and EUPOL COPPS in the Occupied Palestinian Territories).[5]

Rule of law, however, cannot easily be defined and has traditionally been presented as an "essentially contested concept".[6] Nevertheless, the view that the rule of law entails a formal/procedural and a substantive dimension seems to prevail.[7] Besides this first complexity, the EU's rule of law promotion policy has been criticised under two further accounts. On the one hand, the discrepancy between the EU's declared objectives and its concrete actions on the ground has been regularly underlined. On the other hand, critics have often pointed out that the EU's rule of law promotion

[1] Article 2 TEU lists the founding values of the EU.
[2] Article 21 TFEU on the general provisions of the EU's external action.
[3] European Council, *A secure Europe in a better world: European Security Strategy,* Brussels, 12 December 2003, p. 10.
[4] Concrete examples are given in the following contributions.
[5] G. De Baere, "European Integration and the Rule of Law in Foreign Policy", in J. Dickson & P. Elefteriadis (eds.), *Philosophical Foundations of European Union Law* Oxford, Oxford University Press, 2012; M. Ekengren and G. Simons (eds.), *The Politics of Security Sector Reform*, Aldershot, Ashgate, 2011; D. Spence and P. Fluri (eds.), *The European Union and Security Sector Reform,* London, John Harper, 2008.
[6] R. Fallon, "'The Rule of Law' as a Concept in Constitutional Discourse", *Columbia Law Review*, vol. 97, no. 1, 2007, p. 6.
[7] P. Craig, "Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework", *Public Law*, vol. 20, no. 4, 1997, pp. 467-487; N. Wichmann, *Rule of Law Promotion in the European Neighbourhood Policy: Normative or Strategic Power Europe?*, Baden-Baden, Nomos, 2010, p. 53.

can be equated to the promotion of its own interest at the expense of its partners' particularities.[8] This paper intends to contribute to this debate by providing different case studies of the EU's rule of law promotion from countries covered by the ENP and the SAP.

As often in the case of ENP analysis, the scope of this paper is broad and covers various countries, from Lebanon to Armenia. Methodological conditions were therefore required to make sure the different contributions could allow a minimum degree of generalisation of the findings. In this context, the paper's analytical foundations will be based on one specific framework that has the ambition to cover the analysis of various policy grounds. This framework is the one developed by Stephan Keukeleire in different publications,[9] focusing on the idea of structures to assess the impact of EU actions in different areas. For Keukeleire, structures refer to relatively permanent organising principles (such as 'capitalism' or 'democracy') that condition the various sectors of human activities at various levels and to the operationalisation of these principles through a complex constellation of institutions, laws, habits, etc. Structural power refers to the power of an actor to influence or shape these principles in a sustainable way. Keukeleire defines structural foreign policy (SFP) as "a foreign policy which, conducted over the long-term, seeks to influence or shape sustainable political, legal, economic, social, security and other structures which can be situated at various relevant levels (individual, society, state, regional, global…) in a given space" (see the matrix in Figure 1 below).[10]

The immaterial or ideational factors are important for the sustainability of structures, as they influence the degree or depth of internalisation of these structures. These immaterial factors are related to history, the evolving belief systems in and identity of a country or society and to the legitimacy of both the structures that are promoted and the actor that aims to have a structural impact (the role of mental structures is here of primary importance, as will be shown in the following contributions). The degree of internalisation can vary from structures not internalised at all (for instance,

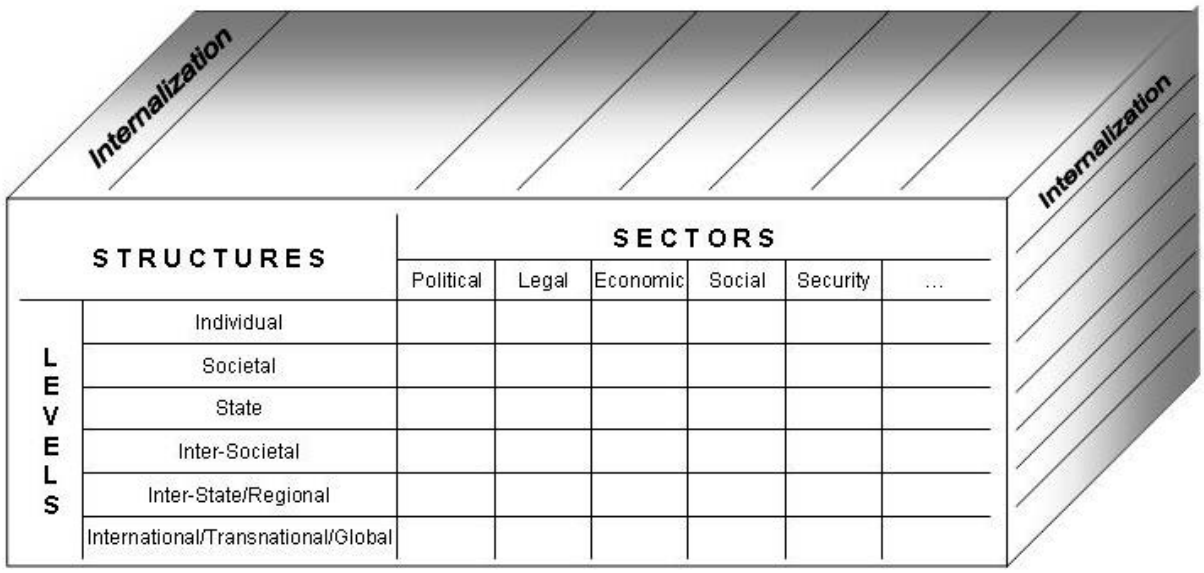
[8] See, for instance, on the Western Balkans I. Ioannides & G. Collantes Celador, "The Internal-External Security Nexus and EU Police/Rule of Law Missions in the Western Balkans", *Conflict, Security & Development*, vol. 11, no. 4, 2011, pp. 415-445.

[9] S. Keukeleire, "The European Union as a Diplomatic Actor: Internal, Traditional and Structural diplomacy", in W. Rees & M. Smith (eds.), *International Relations of the European Union*, London, SAGE Publications, 2008; S. Keukeleire, A. Justaert & R. Thiers, "Reappraising Diplomacy: Structural Diplomacy and the Case of the European Union", *The Hague Journal of Diplomacy*, vol. 4, no. 2, 2009, pp.143-165; S. Keukeleire & J. MacNaughtan, *The Foreign Policy of the European Union*, Basingstoke, Palgrave, 2008.

[10] S. Keukeleire, "Structural Foreign Policy", 2013 (forthcoming).

adopted in a purely declaratory way) to structures that are being deeply ingrained in the belief system, the culture and the identity of the population as well as the concerned elites.[11] Internalisation, legitimacy and identity will be recurrent themes throughout this paper.

Figure 1: Structural Foreign Policy: Sectors, Levels and Internalisation



Source: Keukeleire, "Structural Foreign Policy", *op.cit*, p. 11.

This framework appears to be particularly relevant to solve some of the issues related to the analysis of rule of law policies because it focuses the attention of various dimensions that are often neglected by conventional foreign policy analysis. While acknowledging the effect of 'hard power' and other means of more traditional foreign policies, the SFP framework assumes that other elements are crucial.

The SFP framework therefore positively contributes to foreign policy analysis in general, but it also provides useful tools and raises crucial questions when it comes specifically to EU external action. In its philosophy, in its processes and in the goals it sets for itself in the neighbourhood, the EU has a structural ambition. Through influence, for example, transfer of the *acquis communautaire* and direct bilateral cooperation, the EU wishes to orientate and shape the governance and the policy choices of its partners. In this regard, applying the SFP framework to the EU rule of law promotion is not only a way to challenge conventional wisdom of foreign policy or to

[11] Keukeleire, "Structural Foreign Policy", *op.cit.*, p. 11.

develop new tools of foreign policy analysis, but it is also a way to raise critical issues about the rationale and the method of EU foreign policy.

An important feature of the analytical framework is that SFP can be assessed at the different stages of the foreign policy-making, which also correspond to the stages of the policy-evaluation cycle.[12] First come the *policy objectives* (declaration and intentions). The second stage corresponds to their translation into a *policy output* (instruments and budgets), whereas the third stage deals with the actual *policy implementation*. The last stage consists of the *policy outcome* (results).

The analytical framework also suggests that SFP analysis is best conducted when resorting to an outside-in approach whereby the particularities of the target country (or region) are taken into account. If an international actor such as the EU is to design an effective SFP, the context of the target country (which is often different from that of the EU), its material (socio-economical) and immaterial (related to history, beliefs and identity) factors should be taken into account. This outside-in approach (based on thorough and interdisciplinary knowledge of the target country) helps judging what levels and sectors are relevant for the policy's long-term success.[13] Conversely, adopting an outside-in perspective helps explaining the successes or failures of foreign policy by pointing out the neglected or omitted dimensions.

The following essays consist of the summarised versions of five students' Master's theses written in the EU International Relations and Diplomacy Studies programme at the College of Europe in Bruges during the academic year 2011-12. These Master's theses were supervised by the Chairholder of the TOTAL Chair of EU Foreign Policy. Due to the space constraints of this publication, only the essence of their research is presented here. The first four contributions are case studies from the EU's neighbourhood. Essay 1 questions the EU's policies towards Bosnia and Herzegovina in the field of the fight against corruption. In essay 2, the SFP framework is applied to analyse the EU's commitment to promote the rule of law in Ukraine. Essay 3 is dedicated to the analysis of gender in EU-Armenian relations, whereas essay 4 focusses on the EU's micro-rule-of-law policies in Lebanon. Essay 5 offers a personal reflection on the use of the SFP analytical framework, underlining the strengths but also the ambiguities of the analytical framework.

[12] *Ibid.*, p. 17.
[13] *Ibid.*, pp. 14-15.

Three main findings can already be put forward. First, the SFP analytical framework needs to be adapted and complemented for the needs of the analysis at hand. It can hardly be considered a ready-to-use tool and requires, prior to being purposefully applied, a thorough theoretical reflection. The second finding derives from the first one. As the following contributions will show, the need to adapt the SFP analytical toolbox might lead to analyses developed in diverging directions while being based on the same conceptual basis. In other words, the SFP framework applied to different case studies might look very different. And thirdly, the relevant use of the SFP analytical framework hinges upon an excellent knowledge of the target country and/or policy field. A refined analysis of the relevant structures in the field of the rule of law at various levels in a given country indeed requires specific skills (e.g. language) and knowledge (e.g. the ability to use data and methods from various academic fields).

This paper therefore represents an effort to promote an original analytical perspective of the EU's foreign policy but also attempts to critically test and further develop the SFP analytical framework.

2. Corrupted Structural Foreign Policy: The EU's Support for Anti-Corruption Efforts in Bosnia and Herzegovina

Adnan Ćerimagić

Introduction: Conceptual Basis

The European Union (EU) has put the promotion of the rule of law and support for anti-corruption efforts high on the list of external action goals.[1] In Bosnia and Herzegovina (BiH), the EU has been very active in supporting rebuilding efforts since the mid-1990s. The EU has developed and deployed a wide range of instruments (political, military, security and financial instruments) with the aim to support rebuilding of political, legal, economic and social life in BiH. In 2000, rebuilding efforts were transformed in support of reforms and approximation to EU norms, values and standards, after the EU acknowledged BiH as a potential candidate country for EU membership.[2] Almost two decades after the EU started to support BiH, this country is still torn by corruption, "fraud, embezzlement and the sheer abuse of power".[3] Corruption is present in all spheres of public life, and it "threatens the consolidation of a viable, strong, multi-ethnic state and breeds politicians and institutions unable or unwilling to implement reforms that are crucial for the country's integration into the European Union and NATO's Partnership for Peace".[4]

In this essay I will assess why EU foreign policy failed to yield results in support for anti-corruption in BiH. I will use the concept of structural foreign policy as it provides the framework for a comprehensive study. This holistic concept provides not only a basis for researching the policy development phase, but also the policy results.[5] This conceptual framework enables an analysis in four stages that make up the policy-making cycle: policy development (policy objectives and policy outputs stages), policy implementation (policy implementation stage) and policy results (policy

[1] See Article 177(2) of the Amsterdam Treaty on development cooperation; Article 181a of the Nice Treaty and Article 21 of the Lisbon Treaty; and European Communities, Communication from the Commission to the Council and the European Parliament on a Union Policy Against Corruption, COM(97) 192 final, Brussels, 21 May 1997, Article 1.
[2] European Council, *Santa Maria de Feira Council Conclusions*, Santa Maria de Feira, 19-20 June 2000, chapter D, paragraph 67.
[3] P.C. van Duyne, "Corruption: Acts and Attitudes, in Combating Corruption in the European Union", *Series of Publications by the Academy of European Law in Trier*, vol. 31, Köln, 2001, p. 13.
[4] V. Devine & H. Mathisen, *Corruption in Bosnia and Herzegovina – 2005*, CMI Report, Bergen, 2005, p. 7.
[5] S. Keukeleire, "Structural Foreign Policy", 2013, (forthcoming), p. 3.

outcomes stage).[6] Dividing the analysis into these four stages is useful because it provides interdependent approaches to the research, whereby each stage can provide similar or different results. This concept is also useful as it emphasises the need for an outside-in approach that has been lacking in the literature on EU foreign policy in general.[7] Assessing the literature originating from an area that the foreign policy actor is aiming to influence, or by a researcher coming from that area, can provide useful insights on possible factors present that had a positive and/or negative influence on the foreign policy results. For this study the outside-in approach is also useful because it provides important data on the root cause of corruption.

This essay provides asks the following question: to what extent can the EU's rule of law promotion policy in BiH, through the support of anti-corruption efforts, be seen as structural foreign policy? Although the EU has set the promotion of the rule of law and support for the anti-corruption efforts in BiH high on its agenda, it has not managed to identify the root cause of corruption, nor to develop and implement a policy that would tackle the negative impact that corruption has on the overall progress in BiH and provide satisfactory results.

The essay is organised in five parts. I start with (1) an analysis of corruption in BiH. The analysis will focus on the root cause and the level of corruption in the country. The analysis will then address the four above-mentioned stages of the policy-making cycle suggested by Keukeleire: (2) policy objectives, (3) policy outputs, (4) policy implementation and (5) policy outcomes.[8] Special consideration is given to the following two characteristics of structural foreign policy: first, structural foreign policy has to be comprehensive, thereby aiming at creating new and/or shaping and/or influencing already existent *structures* within relevant *sectors* (e.g. the political, legal, socio-economic and security sectors) and at relevant *levels* (e.g. individual, inter-societal, societal, inter-state, state, regional, international and global) at the same time and for a longer period.[9] The second characteristic is that the impact of this type of foreign policy has to deliver sustainable internalisation even after the pressure caused by the actor implementing the policy has passed (regardless of whether the

[6] Keukeleire, *op.cit*., p. 17.
[7] R. Youngs, *The EU's Role in World Politics: A Retreat from Liberal Internationalism*, New York, Routledge, 2010, p. 2.
[8] Keukeleire, *op.cit*., p. 17.
[9] *Ibid.*, p. 11.

policy goal was creating, shaping or influencing structures).[10] In order to achieve sustainable internalisation in a majority of cases, the foreign policy also needs to aim at influencing mental structures.

The structural foreign policy conceptual framework, however, needs to be complemented for our case study. Theoretical underpinnings regarding the different ways in which a foreign policy actor can influence, shape or create structures in a foreign environment are indeed absent from this academic literature and need to be borrowed from other sources. The EU enlargement literature describes the adoption of EU rules, norms and values by third countries engaged in the accession process to the EU as a p art of the 'EU's external governance'.[11] The 'external governance' is based on 'a rationalist bargaining process' in which countries adopt certain rules, norms and values because the EU makes their adoption a "condition that the [countries] have to fulfil in order to receive EU rewards".[12] This type of governance is criticised for the lack of sustainable internalisation as the rules, norms and values are sometimes adopted only in a period until 'the reward' comes.[13] An alternative type of 'external governance' occurs through 'the social learning model' developed by the social constructivist approach, whereby countries adopt certain rules, norms and values because they have "internalized identities, values and norms" as a consequence of their interaction with EU.[14]

Causes and Level of Corruption in BiH

In previous years, Transparency International has routinely placed BiH on its corruption perceptions index list among those countries with widespread and endemic forms of corruption.[15] According to these and similar reports, petty and administrative corruption has become part of the daily routine of a majority of citizens in BiH.[16] Other forms like "bribery, nepotism, embezzlement, the diversion of public funds, tax fraud, illegal rent seeking, kick-back schemes, etc." occur very

[10] *Ibid.*, pp. 25-26.
[11] F. Schimmelfennig & U. Sedelmeier, "Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe", *Journal of European Public Policy*, vol. 11, no. 4, 2004, p. 663.
[12] *Ibid.*
[13] *Ibid.*, p. 664.
[14] *Ibid.*
[15] Transparency International, *2009 Corruption Perception Index*, 2009.
[16] V. Devine & H. Mathisen, *Corruption in Bosnia and Herzegovina – 2005*, CMI Report, Bergen, 2005, p. 7.

often.[17] Corruption is present in the following sectors: political, legal (justice), security (police and military) and economic (state owned companies).[18] Because of the country's highly decentralised constitution, corruption occurs almost independently at the following levels: municipality, cantonal, entity and state level.[19] Corruption is closely linked to organised crime that goes beyond the borders of BiH and is part of corruption paths in the Western Balkans region.[20] In the early 2000s, legal provisions of criminal law on corruption dated from communist times; BiH did not have institutions specialised in assessing and dealing with corruption and it did not have an anti-corruption strategy.[21] Although citizens of BiH actively participate in corruption, a majority of citizens perceive corruption as something wrong and list it as the second biggest problem in the country, just behind unemployment.[22]

Since corruption exists in almost all areas of public life in BiH, it is important to identify what the possible root causes are. Following Hulsey, I argue that political parties are the root cause of corruption and the main obstacle to anti-corruption efforts.[23] As Andreas argues, the decisive impact on the development of three nationalistic political parties in BiH (and the spreading of corruption) was "the birth of a criminalized state" that occurred during the war.[24] Political parties have successfully developed and maintained a system of structures within the political, legal, social, security, administrative, health and economic sectors that rely on and encourage corruption as a (needed and almost unavoidable) system of functioning.[25] This phenomenon that caused corruption to flourish can be explained through the process of establishing political parties in a post-communist period, their members' profiles, ranging from former communist prisoners, and war lords to war-time

[17] *Ibid.*
[18] Transparency International, 2009 Corruption Perception Index, *op.cit.*
[19] *Ibid.*
[20] A. Politi, "The New Dimensions of Organized Crime in South-eastern Europe", *The International Spectator: Italian Journal of International Affairs*, vol. 34, no. 4, 1999, pp. 49-58.
[21] M. Pugh, "Postwar Political Economy in Bosnia and Herzegovina: The Spoils of Peace", *Global Governance*, no. 8, 2002, pp. 467-482.
[22] Transparency International, *2004 Corruption Perception Study*, 2004.
[23] J.W. Hulsey, "'Why Did They Vote for Those Guys Again?' Challenges and Contradictions in the Promotion of Political Moderation in Post-War Bosnia and Herzegovina", *Democratization*, vol. 16, no. 6, 2010, pp. 1132-1152.
[24] P. Andreas, "The Clandestine Political Economy of War and Peace in Bosnia", *International Studies Quarterly*, vol. 48, no. 1, 2005, pp. 29-52.
[25] For more information see D. Chandler, *Bosnia: Faking Democracy after Dayton*, London, Cippenham Pluto Press, 2000, 2nd edn., p. 36.

smugglers, and historical factors such as the privatisation of state-owned companies or the highly decentralised constitution.[26]

Policy Objectives

Policy objectives are understood as "the preparation, definition and adoption of policy objectives", their analysis aims to identify whether they are 'declaratory objectives' or whether they constitute 'intentions', and how far they take into account the two above-mentioned characteristics of the structural foreign policy (comprehensiveness and sustainable internalisation).[27]

Although the need to fight corruption was recognised by the Office of the High Representative (OHR) in 1999,[28] the EU's support for anti-corruption efforts emerged in 2002 as a policy objective 'almost out of nowhere'.[29] The narrative of the 2002 Council Decision on deployment of the EU Police Mission to BiH presents a clear intention of the EU to support anti-corruption efforts in BiH.[30] It furthermore shows the awareness of the link between political parties and corruption; the institution-building mandate of this police mission was to ensure that the police services in BiH are able to "undertake the criminal investigation of corruption cases regardless of political implications".[31] At that time, no other existing EU instrument had been mandated to support anti-corruption efforts directly. After the failure of the 2006 constitutional reform, the EU started to widen its support for anti-corruption.[32] The EU also shifted its objective from mandating the support for a development of new anti-corruption institutions to providing support for BiH authorities to implement their commitments towards international conventions on corruption and already adopted, but not implemented, national anti-corruption documents.[33] Furthermore, the EU set the

[26] See also D. Chandler, "Anti-Corruption Strategies and Democratization in Bosnia-Herzegovina", *Democratization*, vol. 9, no. 2, 2010, pp. 101-120.
[27] Keukeleire, *op.cit*., p. 17.
[28] Office of the High Representative for BiH, *A Comprehensive Anti-Corruption Strategy for BiH*, Sarajevo, 15 February 1999.
[29] Interview with an official 1, European Commission, via telephone, 5 April 2012.
[30] Council of the European Union, *Council Joint Action on the European Police Mission,* 2002/210/CFSP, 11 March 2002, Annex 1, chapter II, paragraph 4.
[31] *Ibid*.
[32] Interview with an official 1, *op.cit*.
[33] Interview with an official 3, DG Enlargement, European Commission official, Brussels, 20 April 2012.

support for anti-corruption as an objective of its (financial) assistance.[34] Statements made by some top-level EU officials clearly indicated that the fight against corruption was a condition of progress towards accession.[35] Despite the fact that the objective to support the fight against corruption went beyond a police mission and was integrated in aid and the enlargement process, the mandate of the EU Special Representative was widened to support anti-corruption only in September 2011.[36]

In the case of BiH, the EU's support for anti-corruption efforts is designed in two distinct ways. First, the EU sets effective anti-corruption policy objectives as a condition for signing trade agreements or for providing aid. Second, the EU explicitly states that it will support anti-corruption efforts in BiH by creating '*self-obligation*' (EU Police Mission in BiH).

Even though the EU has not only declaratory policy objectives but also clear intentions, it should be noted that apart from a police mission, the EU's objectives and intentions do not specify which structures, within which sector and at what level results are expected. Furthermore, assessed documents do not disclose any attempt to tackle the root cause, political parties, nor whether the objective is to create, influence or shape structures (again except for a police mission). It also does not provide any information on whether the EU is aware of the time needed to achieve these objectives, nor whether the method to achieve this objective would be based on conditionality or socialisation.

Policy Outputs

The policy outputs stage should provide an analysis of whether these objectives have been translated into "concrete operational measures and decisions" by using policy instruments, providing financial support, personnel and investing time and energy and how far they take into account two characteristics (comprehensiveness and sustainable internalisation) of the structural foreign policy.[37]

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[34] Council of the European Union, *Decision on the Principles, Priorities and Conditions Contained in the European Partnership with Bosnia and Herzegovina, 2008/211/EC*, Brussels, 18 February 2008, annex, paragraph 3.1.
[35] Romano Prodi: "support for the region has been firmly linked to progress in the fight against political corruption, organised crime and peace efforts following a decade of civil conflict.", in "Balkans EU entry 'Irreversible', says Prodi", *TheParliament.com*, 21 June 2006.
[36] Council of the European Union, *Council Decision on appointing the European Union Special Representative in Bosnia and Herzegovina, 2011/426/CFSP*, 18 July 2011, Article 3 (e).
[37] Keukeleire, *op.cit*., p. 17.

The policy instruments developed by the EU to support anti-corruption efforts in BiH aimed to influence *structures* within the *legal* and *security sectors* at the state and entity *level*. The Decision on deployment of the EU Police Mission to BiH foresaw a two-year mission with one headquarter and 24 monitoring units, a staff that would be seconded by the member states and financed by member states and from the EU budget.[38] The instrument of the Stabilisation and Association Agreement that the EU concluded with BiH foresaw an obligation for BiH to foster the Western Balkans anti-corruption cooperation.[39] With this Agreement the EU aimed to influence *structures* within the *political sector* at the *regional level*. The pre-accession financial instruments (CARDS and IPA) are based on a strong conditionality, used to support projects that would influence *structures* within the legal and security *sector* at the state *level*.[40] In May 2008, the Commission formulated nearly 50 requirements that BiH had to achieve in order to figure on the so-called white Schengen list, so that citizens of BiH could enter Schengen area without visa requirement.[41] Some of the formulated requirements were directly linked to the prevention of corruption and fight against corruption.[42] With the Visa Road Map, the EU aimed to influence the *structures* within the legal *sector* at the state *level*.

Depending on the decision and the instrument, the period of engagement varies: from two years for each EU Special Representative and the EU Police Mission to the five-year period for the IPA funds. No reference can be found to the intention of creating *sustainable structures* or to influencing *mental structures*. Interestingly, none of the instruments aimed to explicitly influence political parties. The period of two years for the EU Police Mission could not be seen as an awareness of a long-term commitment. Instruments were strongly based on conditionality (the Visa Road Map or financial instruments). On the other hand, the use of socialisation seems minimal (limited to BiH police staff training by police officers from EU member states), jeopardising long-term internalisation of new and/or changed structures. As already

[38] Council of the European Union, *Council Joint Action on the European Union Police Mission*, *op.cit.,* annex, chapter II, paragraph 4.
[39] Council of the European Union, *Stabilisation and Association Agreement Between the European Communities and Their Member States, of the One Part, and Bosnia and Herzegovina, of the Other Part,* 2008/0073 (AVC), Brussels, 6 June 2008, Article 6.
[40] European Commission, *Regulation on Implementing Council Regulation (EC) No 1085/2006 Establishing an Instrument for Pre-Accession Assistance (IPA),* EC/718/2007, Brussels, 12 June 2007, Article 7 (1h).
[41] European Stability Initiative, *The Visa Roadmaps*, 2012.
[42] European Commission, *Visa Liberalisation with Bosnia and Herzegovina: Roadmap*, Brussels, 5 June 2008.

mentioned, but important to note, the EU did not explicitly link the mandate of the EU Special Representative to the EU's overall support for the anti-corruption efforts until September 2011.[43]

Policy Implementation

The policy implementation stage of the analysis should provide an answer to the question of the extent to which these policy instruments, financial support, personnel and time and energy were actually used, and to what extent they take into account the two characteristics (comprehensiveness and sustainable internalisation) of the structural foreign policy.[44]

The EU Police Mission was used to influence *structures* within the security *sector* at the state *level*. The financial framework foreseen for the mission has proven to be insufficient.[45] Furthermore, there was a lack of expertise among the staff deployed, and their training prior to their deployment was insufficient, a great percentage of staff did not even have basic English skills.[46] This mission, although it was not foreseen by the Council Decision that launched it, has engaged in conducting public awareness campaigns and by doing so has tried to influence mental structures.[47] Out of 112 projects financed in BiH from 2007-2011, only two had as their main aim to support anti-corruption efforts; and 3 million euros were provided for this purpose. These projects provided analysis and advice on the legal framework and on the situation of the BiH Anti-Corruption Strategy.[48] Only 10 other projects mentioned support for anti-corruption efforts as their sub-goal.[49] The EU financial instruments were used to influence *structures* within the legal *sector* at the state *level*.[50]

Although some projects aiming at influencing structures within other sectors and on other levels could be linked to anti-corruption efforts, they do not explicitly mention

[43] Council of the European Union, *Council Decision on Appointing the European Union Special Representative in Bosnia and Herzegovina, 2007/427/CFSP,* Brussels, 18 June 2007.
[44] Keukeleire, *op.cit*., p. 17.
[45] A.E. Juncos, "Police Mission in Bosnia and Herzegovina", in M. Emerson & E. Gross (eds.), *Evaluating the EU's Crisis Missions in the Balkans*, Centre for European Policy Studies, Brussels, 2007, p. 63.
[46] *Ibid*.
[47] European Union Police Mission to BiH, *Campaigns*, 2012.
[48] *Ibid*.
[49] European Commission, DG Enlargement, *Financial Assistance Overview*, 2012.
[50] *Ibid*.

corruption but support public administration reform instead.[51] It is therefore possible to conclude that the focus is on structures within a small number of sectors and levels and that there is an absence of a comprehensive approach and awareness of aiming to create *sustainable structures*.

Depending on the instruments used, the timeframe of implementation was as short as several months for the EU Police Mission public awareness campaigns to as long as two years for the IPA projects. Some experts underlined that although some missions would last for a decade, their official mandate is usually set for two years (EU Police Mission), and then prolonged, which leaves little time to make long-term commitments and changes.[52]

The visa liberalisation process shows that the EU policy implementation stage is based on strong *conditionality* and minimal *socialisation* efforts, jeopardising long-term internalisation of structures.[53] The visa liberalisation process resulted in some progress: the EU insisted on the implementation of the 2006 Strategy to Fight Corruption, and on the adoption and the implementation of the Action Plans with a clear timeframe and sufficient human and financial resources for the Anti-Corruption Agency, with an aim to strengthen institutional capacity and coordination. The EU furthermore provided some initial funding for the newly established Agency.[54]

Policy Outcomes

The policy outcomes analysis should provide insights regarding the concrete policy results and their actual effect.[55] Research findings on the actual effect of the EU policy of support for the anti-corruption efforts in BiH show that the results are not remarkable. Experts agree that the EU Police Mission has achieved some progress, but the goal of making BiH police services politically independent and able to investigate corruption cases was not achieved.[56] Despite the fact that almost 98% of the people stated in 2000 that corruption was widespread in BiH and that they perceived it as something negative, the EU Police Mission invested time and funds in

[51] European Commission, *Public Administration Reform,* IPA National Programme 2011 – Bosnia and Herzegovina, 2012.
[52] A.E. Juncos, "Europeanization by Decree? The Case of Police Reform in Bosnia", *Journal of Common Market Studies*, vol. 49, no. 2, 2011, pp. 367-389.
[53] G. Knaus & A. Stiglmayer, Gewiner, "Verlierer und die Zukunft des Visaghettos 'Balkan'", [Winners, Losers and the Future of the Balkan Visa Ghetto], *Balkan Insight*, 16 July 2007.
[54] Interview with a former official 2, European Commission, via Skype, 19 April 2012.
[55] Keukeleire, *op.cit*., p. 17.
[56] Juncos, "Police Mission in Bosnia and Herzegovina", *op.cit.,* pp. 46-79.

organising public awareness campaigns.[57] Some progress has been achieved on a regional level, the EU has funded the work of the Regional Anti-Corruption Initiative for South Eastern Europe, which provided some results in collecting data.[58] Results of the visa liberalisation process are better, the Strategy for the Fight against Corruption and the 2009-2014 Action Plan for the Fight against Corruption[59] and a law on the establishment of the Agency for Prevention of Corruption and the Coordination of the Fight Against Corruption were adopted.[60] However, the Agency is still not working at full capacity; the selection of the director of this agency was a long and painful process and the budget is sufficient for salaries of only a few employees.[61]

The EU policy in BiH has provided results in structures within a limited number of sectors (legal and security) at a limited number of levels (state and regional). This policy has resulted in changes to existing structures (police forces) and in the creation of new structures (State Anti-Corruption Agency). These new structures have proven to be insufficient (police forces still not capable of investigating) and not self-sustainable (Agency not working properly), making the policy not internalised.

Conclusion

This essay has attempted to answer the question of the extent to which the EU's rule of law promotion policy in BiH through the support for anti-corruption efforts can be seen as structural foreign policy. Using the SFP conceptual framework combined with theoretical elements from other academic approaches (notably enlargement literature), we found that although the EU has set the promotion of the rule of law and the support for the anti-corruption efforts high on its agenda, it has not managed to identify the root cause of corruption (political parties), develop and implement a comprehensive policy that would tackle the negative impact that corruption has on the overall progress in BiH, and provide satisfactory policy results.

The absence of tangible results can be explained by the fact that the EU does neither address the root cause of corruption (the political parties) nor the various

[57] World Bank, "Bosnia and Herzegovina Diagnostic Surveys of Corruption", 2000, p. 2.
[58] Regional Anti-Corruption Initiative, *What We Do*, 2012.
[59] S. Nikolić, "Executive Summary of the National Report – Bosnia and Herzegovina", *The Western Balkan towards White Schengen List*, December 2009, p. 10.
[60] European Stability Initiative, *Bosnian Visa Breakthrough May 2009-September 2009*, 16 October 2009, p. 43.
[61] D. Muminović, "Agencija za borbu protiv korupcije BiH: Nisu nista radili, a potrosili 100.000 KM", [Agency for the Fight Against Corruption in BiH has not achieved anything except spending KM 100.000 (ca. 50.000 euros)], *Nezavisne Novine newspaper*, 28 August 2011.

structures within the legal and security sectors. This would, however, be required given the highly decentralised political system of BiH in which different levels (municipality, cantonal, entity and state) are key to the stability of the country. Furthermore, citizens of BiH perceive corruption as something negative. Therefore, attempts to influence mental structures should not focus on explaining why corruption is negative, but on how citizens can participate in anti-corruption efforts.

3. Promoting Justice Abroad: An Analysis of the EU's Rule of Law Promotion in Ukraine as Structural Foreign Policy

Daan Fonck

Introduction

Since Ukraine's independence in 1991, the Rule of Law (RoL) has been facing extreme perils, struggling to leave behind 60 years of totalitarian rule, and muddling through a very unstable political pathway of post-Communist transformation. Eight years after the Orange Revolution hopeful signals seem more distant than ever. The controversial case of Yulia Tymoshenko has come to stand as a symbol for the continuous application of 'selective justice' by the Ukrainian political elite.

In this essay, we aim to examine how committed the EU has been in fostering the RoL in Ukraine, the so-called 'pioneer' of the European Neighbourhood Policy (ENP). By applying the structural foreign policy (SFP) framework, we focus on the *outcomes* of RoL promotion, thereby taking up an explicit 'outside-in' perspective. After updating the SFP conceptual framework, we shortly look at the EU's approach to RoL promotion, before turning to the actual RoL reform record in Ukraine.

Updating the Structural Foreign Policy Framework

Operationalising the 'Rule of Law' and Defining the Independence of the Judiciary

Definitions of the RoL vary according to contextual factors and from author to author;[1] it is an 'essentially contested concept'.[2] Following Kaplan, we argue that any conceptualisation must purposefully serve the theoretical approach we apply,[3] that is, structural foreign policy. Against this background, the classic distinction made by Craig (among others) between *formal* and *substantial* RoL seems particularly relevant as it goes hand in hand with the distinction between *conventional* and *structural* foreign policy (see Introduction).[4] A formal conception of the RoL essentially prescribes the separation of law from politics and the accompanying conditions ensuring that separation. A substantial definition, on the other hand, goes

[1] A. Bedner, "An Elementary Approach to the Rule of Law", *Hague Journal on the Rule of Law*, vol. 2, no. 1, 2010, p. 48.
[2] R. Fallon, "'The Rule of Law' as a Concept in Constitutional Discourse", *Columbia Law Review*, vol. 97, no. 1, 2007, p. 6.
[3] A. Kaplan, *The Conduct of Inquiry: Methodology for Behavioral Science*, San Francisco, Chandler, 1964, pp. 51-53.
[4] P. Craig, "Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework", *Public Law*, vol. 20, no. 4, 1997, pp. 467-487.

beyond these procedural or formal aspects, and implies in particular that rights and liberties are guaranteed. It means that the RoL is internalised as a p ermanent organising principle for attaining justice.

The independent judiciary system is the primary guardian or controlling mechanism of the RoL.[5] Both policy-makers as well as academics generally follow the mantra that judicial independence protects and enhances the RoL, and that its viability is enhanced in a democratic environment. We claim that a strong distinction between *de jure* and *de facto* independence of the judiciary should be made and that the very independence of the judiciary can only be assessed by looking at its outcome. From the citizen's point of view, an independent judiciary system translates essentially in the right to a fair trial. This implies aspects such as a reasonable procedural period, 'access to justice', an impartial prosecutor, and the effective implementation of judicial decisions. In our analysis, we will adopt a substantial perspective towards judicial independence that enables us to 'check' the actual internalisation of the RoL, looking beyond *de jure* independence.

Rule of Law Promotion as Structural Foreign Policy

Table 1 displays a typology of RoL promotion conceptualised as SFP. Rather than a strict theoretical model, the table aims to illustrate the operationalisation of the SFP framework for the EU's promotion of an independent judiciary.

Table 1: Updated Typology – Dominant vs. Neglected Dimensions of Foreign Policy

	Conventional RoL Promotion		**Structural RoL Promotion**
Actors	states		non-state actors: EU, civil society, NGOs
Interests and objectives	self-regarding interests: Justice and Home Affairs agenda	collective interests	other-regarding interests: Judicial Independence
Security	territorial security and stability		collective and human security
Power and capabilities	material and hard power		immaterial and soft power
Means	hierarchy, no ownership, exclusive, unilateral		horizontal relationship, local ownership, inclusiveness
Focus	procedural RoL promotion		substantive RoL promotion
Policy Indicators	strengthening executive law enforcement, procuration, JHA externalisation	strengthening administrative capacity	strengthening judicial independence, access to justice

Source: compiled by the author.

[5] Bedner, *op.cit*., p. 67.

This typology represents a continuum rather than a clear distinction and that both categories are complementary rather than exclusionary. The 'policy indicators' give us an idea of what type of RoL promotion policies correspond to both dimensions. The *interests* and *security* dimensions need further explanation.

Interests and Objectives

In terms of interests, reference is made to George and Keohane's concepts of self-regarding interests, collective interests, and other-regarding interests.[6] As for the objectives, we use the distinction made by Cremona[7] and Wichmann[8], who split up the external dimension of the EU's fundamental values – such as the RoL – in constitutive and instrumentalist interpretations. Following the former, the promotion of the RoL is an objective in its own right as it reflects the promotion of internal values that constitute the Union's own identity. According to the latter, the RoL agenda serves other foreign policy goals related to (self-interested) economic or security and stability interests.

Security

The policy issues of migration, terrorism and cross-border crime show that internal and external security dimensions are intertwined. Consequently, the EU's self-interested security interests of RoL promotion take place in the European neighbourhood through the so-called external dimension of the Justice and Home Affairs (ED-JHA) policies.[9] This 'conventional' promotion of the RoL, or rather of 'rule and order', is clearly self-interested since it explicitly aims to ensure internal stability and security through foreign policy. A 'structural' RoL promotion, on the contrary, implies the promotion of security for the individual against arbitrariness of the state and guarantees legal certainty.

However, strengthening conventional security *could* also be structural, as it provides the necessary 'security umbrella' in which the RoL can develop in a structural way. Indeed, it is only by strengthening the executive law enforcement (making sure that

[6] A.L. George & R.O. Keohane, "The Concept of National Interests: Uses and Limitations", in A.L. George (ed.), *Presidential Decision-making in Foreign Policy: The Effective Use of Information and Advice*, Boulder, Westview Press, 1980, pp. 221, 230.
[7] M. Cremona, "Values in the EU Constitution: the External Dimension", *Working Paper,* no. 26, CDDRL, Stanford Institute for International Studies, November 2004.
[8] N. Wichmann, *Rule of Law Promotion in the European Neighbourhood Policy: Normative or Strategic Power Europe?*, Baden-Baden, Nomos, 2010, pp. 15-37.
[9] See T. Balzacq, *The External Dimension of EU Justice and Home Affairs: Governance, Neighbours, Security*, Basingstoke, Palgrave Macmillan, 2009.

criminals are arrested and effectively prosecuted by the procuration) that the acts of an independent judiciary can have their merit.

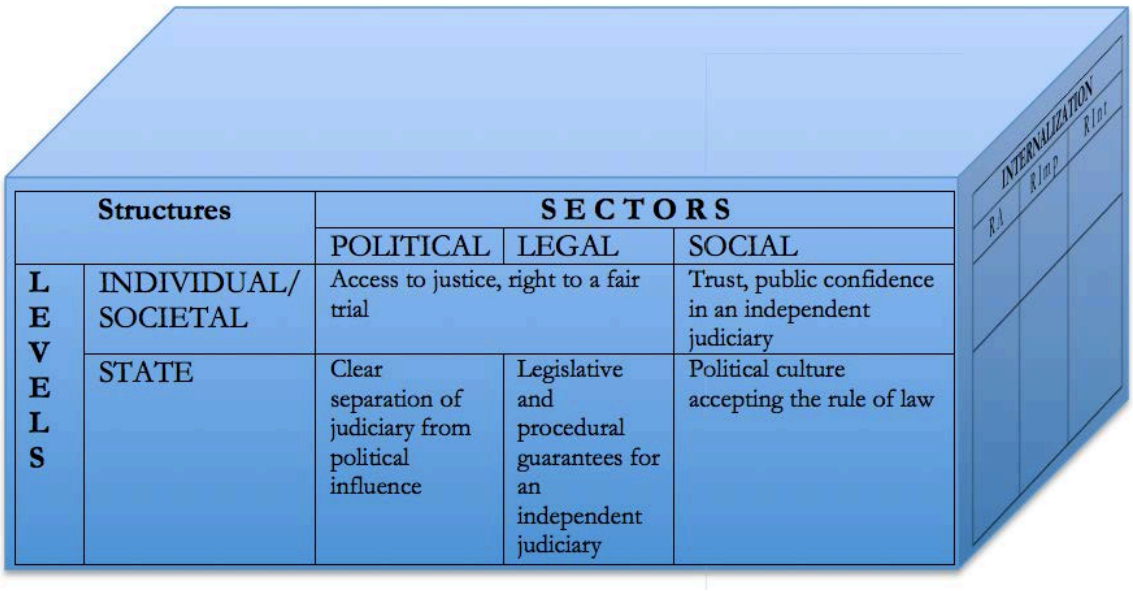
Measuring Internalisation: 'Layers of Impact'

A final update to the SFP framework is the qualification of the degree of 'internalisation' of the RoL. In order not to limit ourselves to legal and institutional change, but to include behavioural change, we take over the '*layers of impact'* model designed by Morlino and Magen as a guideline for our empirical analysis.[10] The model differentiates between three 'layers' of impact an external actor can have on the domestic level: Rule Adoption (RA), meaning the transposition of rules, standards and norms into domestic legislation; Rule Implementation (RImp), or the transformation of governing institutions and administrative structures that need to implement changes; and finally, Rule Internalisation (RInt), which is the very acceptance of the transferred rules by the elite as well as the population. The instigation of this chain of impact is dependent on a credible commitment of the international actor (EU) on the one hand, and on political will of change agents within the target country (Ukraine) on the other hand. Moreover, a shift in the cost-benefit analysis in favour of the promoted rules and institutions is needed to make decision-makers opt for RA.

Figure 1 below displays an updated SFP matrix, indicating the sectors and levels this essay will concentrate on, extended with the three layers of impact model.

[10] L. Morlino & A. Magen, "Methods of influence, layers of impact, cycles of change", in A. Magen & L. Morlino (eds.), *International Actors, Democratization and the Rule of Law: Anchoring Democracy?*, Abingdon, Routledge, 2009, pp. 39-50. The model is simplified.

Figure 1: Updated Structural Foreign Policy Matrix



Structures		SECTORS		
		POLITICAL	LEGAL	SOCIAL
LEVELS	INDIVIDUAL/ SOCIETAL	Access to justice, right to a fair trial		Trust, public confidence in an independent judiciary
	STATE	Clear separation of judiciary from political influence	Legislative and procedural guarantees for an independent judiciary	Political culture accepting the rule of law

Source: compiled by the author.

Inside-out: Is the EU's Promotion of Rule of Law *à la carte*?

When the EU promotes RoL in Ukraine, does it follow a conventional or rather a structural foreign policy approach? Does the 'constitutive' or the 'instrumentalist' RoL promotion objectives prevail? The analysis of the relevant EU programming documents for Ukraine show that the EU's approach depends both on the *policy field* and the *policy framework*.[11]

The ENP: Between 'Constitutive' Values and Self-Regarding Interests

The relevant ENP programming documents[12] predominantly maintain a 'constitutive' vision on the RoL: it is promoted as an objective in its own right. However, the reform of the judiciary is also often mentioned as an instrument for addressing (self-interested) 'security concerns' such as terrorism, organised crime, trafficking in drugs and arms, as well as an instrument to strengthen cooperation in migration and asylum. Very recently, in the aftermath of the Arab uprisings, the RoL promotion agenda has become much more 'substantial' as it aims to build 'deep democracy', where "the rule of law [is] administered by an independent judiciary and right to a

[11] Wichmann, *op.cit.*, pp. 52-85.
[12] These are the general neighbourhood strategy papers, the EU-Ukraine Action Plan, the EU-Ukraine Association Agenda, the Country Strategy Papers, and the National Indicative Programmes.

fair trial".[13] Nevertheless, the state-focused and institutionalist bias of policy interventions is heavily present and thus "undermines the milieu goal character".[14]

The 'Developmental' Approach of the EIDHR

The European Instrument for Democracy and Human Rights (EIDHR) is a thematic instrument aimed at providing support for the promotion of democracy and human rights. The EIDHR adopts a d evelopmental approach since it works exclusively through civil society organisations active in the promotion of these values.[15] Therefore, the degree of inclusiveness and local ownership is high. EIDHR clearly promotes the RoL as a 'constitutive' value by stressing the independence of the judiciary in terms of equality before the law and access to justice.[16]

The JHA Agenda: 'Instrumental' Means for Self-Regarding Interests

The ED-JHA is by nature a self-interested policy, which makes the RoL promotion an 'instrumental' objective. Within this policy field, the strengthening of the judiciary is consistently set out in terms of efficiency as it is needed to complement the EU's internal security agenda for fighting crime and terrorism.[17] The interaction between the EU and Ukraine is organised on an intergovernmental level through political dialogue and maintains a conditionality-like or rational 'cost-benefit' methodology.

An Outside-in Perspective on Rule of Law Promotion in Ukraine

The State of the RoL in post-Soviet Ukraine

Within the Soviet system, political, legal, economic and ideological powers were fused and monopolised by the communist party. The politico-legal paradigm of 'socialist legality' served to protect this system and stood in direct contrast with the 'capitalist' principle of the RoL. It made the law a subservient institution to sustain the

[13] Commission of the European Communities & High Representative of the European Union for Foreign Affairs and Security Policy, *Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: A New Response to a Changing Neighbourhood*, COM(2011) 303, 25 May 2011, p. 3.
[14] Wichmann, *op.cit*., p. 63.
[15] Directorate-General Development and Cooperation – EuropeAid, "The European Instrument for Democracy & Human Rights", 17 February 2012.
[16] Wichmann, *op.cit*., pp. 71-72.
[17] *Ibid*., p. 176.

regime and to direct a political course.[18] Therefore, Ukraine's transition towards a democratic regime faces three main challenges as far as the establishment of a fully independent judiciary guarding the separation of powers is concerned.

Firstly, the judicial branch is still underdeveloped. Interestingly, the politics of 'rule *by* law' in the Soviet system provided a frame of stability, structure and discipline for the judicial system and gave it the means to create and shape order in society (albeit in a dictatorial way). The collapse of the Soviet regime resulted in a 'legal vacuum' with no Ukrainian legal traditions and institutions to fill up the gap. The disappearance of this top-down system meant that the judiciary could not rely anymore on the executive power which previously guaranteed its institutional capacity.[19] The training of judges needs to be adapted to modern standards so as to set up a system in which the decision for selection or promotion of judges is based on merit and competence and no longer on political loyalty. [20]

Secondly, within the executive branch, the old instinct remains as if the judicial apparatus was part of a unified state structure and in fact an instrument of government policy.[21] This applies particularly to the prosecutor-general's office which was during Soviet times the most important supportive institution of the Communist Party.[22]

Thirdly, and probably most importantly, there is a need to overcome an old legal culture, where the law is no longer being thought of as the 'will of the rulers', but as the 'will of the people'. This change is needed in the minds of the elite as much as in that of the citizens, since the law derives its legitimacy and enforcement mainly through voluntary compliance.[23]

In short, the collapse of the Soviet-Union was anything but a simple and strict legal problem for the RoL and the judiciary. There is a need for a simultaneous and comprehensive shift in political, legal and societal sectors, at individual, societal,

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[18] H. Oda, "The Emergence of Pravovoe Gosudarstvo (Rechtsstaat) in Russia", *Review of Central and East European Law*, vol. 25, no. 3, 1999, pp. 373-374.
[19] Interview with Arkadiy Bushchenko, executive director of the Ukrainian Helsinki Human Rights Union, Kiev, 27 March, 2012.
[20] K. Hendley, *Trying to Make Law Matter: Legal Reform and Labor Law in the Soviet Union*, Ann Arbor, University of Michigan Press, 1996, p. 124.
[21] P. D'Anieri, "What Has Changed in Ukrainian Politics? Assessing the Implications of the Orange Revolution", *Problems of Post-Communism*, vol. 52, no. 5, 2005, p. 90.
[22] K. Malfliet, *De geest van het russische recht*, Leuven, Acco, 2010, p. 80.
[23] K. Ratushny, "Toward the 'independence… of judges' in Ukraine?", *Saskatchewan Law Review,* vol. 62, 1999, p. 583.

professional and elite levels (police and civil servants, the parliament, businessmen, law schools, judges, and ordinary citizens), indicating a collective action problem. The old habit of political interference in the judicial branch needs to be broken. At the same time, the judicial sector needs institution- and capacity-building. Moreover, these changes can only sustain for as long as they are accompanied by a simultaneous change of legal culture.

Two Decades of Justice Reform in Ukraine: Neglecting the Political Sector

In this final part we investigate to which extent the EU's RoL promotion activities have led to structural outcomes. We make use of the analytical framework and adjacent concepts of RA, RImp, and RInt so as to illustrate the degree of 'internalisation' of RoL promotion.

Until 2004, Ukraine's commitment to the independent judiciary was very weak, and EU-Ukraine relations were in general quite cold under President Kuchma (1994-2004). As in the 1990s the EU predominantly focused on the preparation of the Central and Eastern European countries for their accession to the EU, the Council of Europe was the major external actor promoting judicial reform in Ukraine. It was partly because of the latter's extensive pressure that some 'small justice reforms' were adopted in 2002. Relations with Kuchma stagnated during his second term when he pursued an increasingly authoritarian rule. On a judicial level, it meant there was almost no progress, since the oligarchic clans that came to organise themselves around Kuchma captured the courts. As a consequence, he vetoed many draft laws on strengthening judicial independence.[24] Soviet practices remained recurrent as the judiciary was often treated as being part of the civil service and continuously received instructions.[25]

From Kuchma's rule onwards, EU-Ukraine relations also became complicated by the 'membership issue'. Both sides were no longer on the same wave length, Kiev was waiting for a clear membership commitment from Brussels to encourage reform, whereas Brussels demanded an improvement of Ukraine's record of reform before

[24] T. Kuzio, "Is Ukraine Part of Europe's Future?", *The Washington Quarterly*, vol. 29, no. 3, 2006, p. 89.
[24] D'Anieri, *op.cit*., p. 90.
[25] H. van Zon, "Political Culture and Neo-Patrimonialism Under Leonid Kuchma", *Problems of Post-Communism,* vol. 52, no. 5, 2005, p. 16.

opening the door of accession.[26] Knowing that the first phase of 'Rule Adoption' (RA) is dependent on both credible commitment of the EU and the political will of the Ukrainian political elite, it is therefore clear that all three phases of RA, RImp, and RInt were unthinkable until 2004.

This started to change slightly in 2004 when the EU launched the ENP and things evolved in Kiev. The Orange Revolution brought a pro-EU and pro-democratic government to power. This period was of great significance for the independence of the judiciary. As many millions took the streets to protest against the fraudulent elections, the Supreme Court found the courage to nullify the second round of the presidential elections. All sides in the dispute, as well as the citizens, accepted the independent role of the Court.[27] However, soon it became clear that, despite glorifying words of democratic change, practices of politicisation of the judicial system persisted and reforms were not implemented. Within society, feelings of hope were soon replaced by feelings of disillusionment and cynicism.

Nevertheless, under the pressure of the EU and the Council of Europe, some initial RA was triggered. In November 2005, a Decree of President Yushchenko set up a 'National Commission on Strengthening Democracy and Rule of Law'. This resulted a year later in the approval of a 'Strategy Plan for improving the justice system to ensure the right to a fair trial' and the draft 'Law on the Reform of the Judiciary'. Yet, notwithstanding continuous promises, the president and parliament did not succeed in adopting any final legislation. Especially in areas of political corruption or abuse of office, no progress was made, resulting in a continued selective or arbitrary attitude towards the law.[28] Judicial independence reached an all-time low during the 2007 Constitutional Crisis, when President Yushchenko fired several judges of the Constitutional Court, who wanted to annul his decision to dissolve the parliament.[29]

With the election of Yanukovych in 2010, the political will on Ukrainian side further decreased when the new president slowed down the European integration course. However, the *Rada* did adopt the long-prepared 'Law on the Judiciary and the Status of Judges'.[30] The Yanukovych administration largely took over the existing concept law, yet excluded essential provisions or amended others, which distorted

[26] Kuzio, *op.cit*., p. 92.
[27] D'Anieri, *op.cit*., p. 90.
[28] *Ibid*.
[29] A. Trochev, "Meddling with Justice: Competitive Politics, Impunity, and Distrusted Courts in Post-Orange Ukraine", *Demokratizatsiya*, vol. 18, no. 2, 2010, pp. 134-135.
[30] B. Futey, "Law on the judiciary and the status of judges in Ukraine", US-Ukraine Foundation, *Commentary*, 14 October 2010.

its whole strength. In fact, it was clearly an intent to facilitate pressure on the judiciary.[31] In short, whereas the 2010 legislation on the judiciary finally signalled the initiation of effective RA in justice reform, it is clear that the government tried to maintain, if not increase, its *de facto* influence on the courts. Thus far no serious phases of RImp, let alone RInt, have taken place in the judicial sector.

It is clear that the continuous politically unstable climate is to a large extent an obstacle for serious reforms of the judiciary. Trochev argues that the EU, just as many other Western aid providers, was misled by the post-Orange leadership. They became entrapped in their 'narrow' judicial sector support.[32] Ukraine is no stand-alone case in which international RoL aid providers become 'entrapped' in their strong institutional fixation. An often-cited problem considers the programmes that provide computers and software to improve the efficiency of case management. These systems can be manipulated, so that the improved speed of case assignment might aggravate rather than improve the independence of the judiciary.[33] Similar observations by RoL promoters in Ukraine were made where computerised case assignment software could be manually bypassed to assign a judge to a case.[34] A second example is the setting up of semi-autonomous judicial councils in the selection and appointment process of judges. In Ukraine, this 'High Council of Justice' is strongly populated by executive and parliamentary representatives and has in fact become one of the main levers through which both branches try to influence judges.[35] Without tackling the political sector, trying to build judicial independence through institutions is like trying to dry out a flooded room without turning off the taps: "the underlying maladies of the original institutions end up crossing over and infecting the new institutions"[36].

Conclusion

The EU's conception of RoL promotion is rather dependent on the goal it is serving: in a JHA context, the RoL takes the form of an instrument serving security concerns, whereas in the ENP framework, the RoL and independence of the judiciary is presented more as a constitutive value or as a goal in itself.

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[31] Interview with Arakdiy Bushchenko, *op.cit*.
[32] Trochev, *op.cit*., p. 128.
[33] T. Carothers, "Promoting the Rule of Law Abroad: The Problem of Knowledge", *Working Paper No. 34,* Carnegie Endowment for International Peace, January 2003, p. 10.
[34] M. Zimmer, "Courts flout case selection law for judges", *KyivPost*, 1 March 2012.
[35] Interview with N. Vereshchinska, Director of the Centre of Judicial Studies, Kiev, 27 March 2012.
[36] Carothers, *op.cit*., p. 11.

The EU's structural RoL promotion is, however, limited to the first phase of rule adoption, far from the phases of actual internalisation. This indicates a lack of political will on the Ukrainian side as well as a lack of credible commitment of the EU. A study of the Ramzukov Centre on the implementation of the EU-Ukraine Action Plan indeed confirms that despite some considerable success in certain sectors, the judicial branch and corruption remained one of the most problematic areas, requiring the strongest political capital.[37]

The main activity of the EU is still based on political dialogue with the government as main contact.[38] This 'conventional' RoL promotion, with a preference for top-down programmes where governments – instead of the civil society – are the principal partners, neglect the fact that this approach is not the most efficient. In that sense, our case further confirms Goldston's general observation that there exists some general negligence by RoL donors that 'partner' governments can sometimes be the very obstacle to reform.[39]

The EU's RoL promotion lacks a 'comprehensive' approach. It looks at the institution of 'law' in a narrow, institutionalist and instrumentalist way. Judicial reform programmes were not tackling the political sector, where continued 'selective use of justice' is the main cause for judicial dependence. Therefore, judicial support initiatives risk being inefficient since the problem of political capture has not been overcome. This limitation is of course inherent to the limited ambition of the ENP. As it tries to organise intense external relationships with neighbours, but offers no membership prospects, the EU has no real leverage to address this political dimension. Although the EU helped to foster the maturation of the judicial sector, the observed collective action problem of judicial independence teaches us that no real improvement is to be expected as long as the political elite cannot be brought to respect the RoL.

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[37] Ramzukov Centre, *Ukraine-EU: From the Action Plan to an Enhance Agreement*, *op.cit*., pp. 146-172.
[38] Interview with operational expert at the Delegation of the European Union to Ukraine, Kiev, 29 March 2012.
[39] Goldston, James, "The Rule of Law at Home and Abroad", *Hague Journal of the Rule of Law*, vol. 1, no. 1, 2009, pp. 41-42.

4. EU Structural Foreign Policy and Gender: the Case of Armenia

Arianna Catalano

Introduction

This essay analyses gender and gender mainstreaming in the European Union's (EU) foreign policy towards Armenia through the lenses of Keukeleire's concept of structural foreign policy (SFP). This concept may be best understood as an umbrella-like research framework that allows to merge different analytical viewpoints, drawn from the whole set of social science-related academic works. As a matter of fact, the SFP perspective is here used as an over-arching 'meta-theory' which drives the whole analysis, following a deductive approach.

The main question we intend to answer is: to what extent has the EU managed, through gender mainstreaming, to re-structure gender roles' perceptions as well as social and legal structures concerning women in Armenia? Two underlying questions will also be addressed in the analysis: does an 'EU gender model' really exist and if yes, is it actually promoted towards third countries through the practice of 'gender mainstreaming'?

Our main hypothesis is that the EU's growing intervention might have led to changes in gender roles, not only at a micro/meso level (cognitive, societal) but also at an institutional level (rule of law concerning women's rights). The main obstacle to the thorough application of the EU's gender model seems to be the 'implementation deficit'. Factors explaining this deficit may be both 'structural' (cognitive and social structures opposing and/or rejecting the EU's gender model) and institutional (lack of enforcement mechanism, adequate resources and monitoring). The main challenge for the EU's action is to understand how to strengthen the implementation mechanisms through a gradual re-shaping of those structural conditions which negatively affect women's self-perceptions as autonomous actors and, in particular, their involvement in economic and political activities.

EU Foreign Policy and Gender: Complementing the SFP Framework

Updating the SFP Framework

The use of SFP for our analysis is justified by its ability to bridge the gap between the theoretical understanding of the EU's foreign policy and the empirical validation of

its impact on the ground. Given the complexity of a concept such as 'gender', and indeed its multi-dimensional character, the SFP analytical framework is a suitable tool to address the main questions of this research work. As Table 1 shows, however, we suggest complementing the various dimensions of the policy-making and evaluation cycle by using inputs from the EU socialisation literature.

Table 1: Policy-Making and Policy-Evaluation Cycle

1. Policy Objectives	✓ Declaratory ✓ Intentional	✓ Preparation ✓ Definition ✓ Adoption
2. Policy Output	✓ Policy instruments ✓ Decisions	✓ Operational measures ✓ Budget ✓ Personnel ✓ Time/energy
3. Policy Implementation	✓ Symbolic ✓ Fragmented ✓ All-embracing	✓ Monitoring ✓ Reporting ✓ Evaluation
4. Policy Outcome	✓ Policy results ✓ Effects ✓ Relevance	✓ Follow-up ✓ Best practice

Sources: S. Keukeleire, "Structural Foreign Policy", 2013 (forthcoming), pp. 17-18; L. Delcour & E. Tulmets (eds.), *Pioneer Europe? Testing the EU Foreign Policy in the Neighbourhood*, Baden-Baden, Nomos, 2008.

Policy objectives essentially refer to the EU official documents setting up the ENP's action framework towards Armenia, such as the Country Strategy Papers (CSPs), Commission Proposals and ENP Action Plans (APs). *Policy output* and *Policy implementation* will be described through the analysis of project documents and the project planning matrix (PPM) provided to me by the EU Delegation in Armenia; in addition, the 2011 Progress Report on Implementation will also be taken into account.[1] The review of *policy outcomes* will be conducted on the basis of my personal interviews with EU officials in Brussels and, when possible, it will try to provide a preliminary answer to the question of the long-term sustainability of changes.

Is There an EU Gender Model?

Throughout the process of European integration, the issue of gender has been

[1] European Commission, *A Medium-Term Programme for a Renewed European Neighbourhood Policy (2011 - 2014)*, SEC(2011) 650, Brussels, 25 May 2011.

extensively included in the EU's political agenda and gender equality in the work-place has been highlighted as one of the main components of the EU's social dimension. However, feminist literature stresses three main shortcomings.[2] Firstly, the EU's equality agenda is somehow limited to the policy area of employment. Secondly, the principle of mainstreaming is to a certain extent a symbolic effort towards gender equality and its effectiveness is still under scrutiny. Thirdly, the EU's gender dimension remains closely linked to economic objectives; it therefore ensures formal equality but does not thoroughly address the substantial causes for inequality.

From a feminist standpoint, gender equality can only be achieved if gender policies are designed so as to influence all the components of gender regimes - paid work, care, income, time and voice - given that "gender equality in the labour market alone is unattainable, because of systemic connections to inequalities in families, politics and civil society".[3] This all-encompassing understanding theorises the gender regime's concept as a crystalised order composed by production relations, power hierarchies, emotional relations (sexuality) and symbolic relations.[4] All these elements, moving throughout the continuum from domestic to public sphere, determine the degree of gender inequality characterising a given gender regime.[5]

It is therefore possible to speak of an EU gender model, even though its main focus is women's employment rights (see Table 2). The underlying rationale of this model consists in establishing the most appropriate conditions to ensure the EU's economic growth and fair competition in the common market. Citizenship and the private sphere dimensions (family policies, domestic violence and sexuality) are far from being effectively and uniformly tackled from a gender perspective. Furthermore, the existence of a commonly agreed 'EU gender model' is challenged by the high level of differentiation amongst member states' gender regimes.

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[2] R. Guerrina, *Mothering the Union: Gender Politics in the EU*, Manchester, Manchester University Press, 2005, pp. 39-64.
[3] Pascall & Lewis, *op.cit.*, p. 389.
[4] R. Connell, *Gender*, Cambridge, Polity, 2002.
[5] S. Walby, "The European Union and Gender Equality: Emergent Varieties of Gender Regime", *Social Politics*, vol. 11, no. 1, 2004, p. 10.

Table 2: The EU Gender Model

Anti-Discrimination Law		**Production Relations**	**Power Hierarchies**	**Emotional Relations (Sexuality)**	**Symbolic Relations**
Positive Actions	*Paid Work*	Equal opportunity	Equal access to quality job	Principle of non-discrimination	Parity principle
	Care Work	Flexible work; financial allowances	Daddy leave; leave facilities	Adoption rights (same-sex couples)	Reconciliation work-family; responsibilities-sharing
Gender Mainstreaming	*Income*	Equal pay	Splitting pension rights	Equal pay	Equal pay
	Time	Equal value for part-time job	Time control in household	Parental leave	Parental leave
	Voice	Equal opportunity machinery	Proportional representation; quotas	Homosexual rights	Sex discrimination

Sources: J. Kantola, *Gender and the European Union*, Basingstoke, Palgrave, 2010; S. Walby, "The European Union and Gender Equality: Emergent Varieties of Gender Regime", *Social Politics*, vol. 11, no. 1, 2004, pp. 4-29; G. Pascall & J. Lewis, "Emerging Gender Regimes and Policies for Gender Equality in a Wider Europe", *Journal of Social Policy*, vol. 33, no. 3, 2004, pp. 373-394; M. Bell, "Sexual orientation and anti-discriminatory policy: The European Community", in T. Carver & V. Mottier (eds.), *Politics of Sexuality: Identity, Gender, Citizenship*, London, Routledge, 1998, pp. 58-67.

Gender Mainstreaming in the EU's Foreign Policy

Gender mainstreaming (a soft law tool which includes practices such as benchmarking, guidelines and targets) has been advocated as a potentially feminist tool to include gender issues in all EU policy areas. In the EU's decision-making process, it has provided "new opportunities and innovative policy instruments for 'engendering' EU policies that have traditionally been 'gender blind".[6]

Gender mainstreaming has had a considerable impact on those policy areas already tackling gender issues such as employment, education and training, while "in other 'gender blind' EU policy areas such as the Internal Market, competition policy, trade, energy, transport and *external relations*, mainstreaming has, so far, had less impact".[7] The issue of gender has been included in the European Neighbourhood and Partnership Instrument (ENPI) but there is no clear definition of how it will

[6] S. Mazey, "Gender Mainstreaming Strategies in the EU: Delivering on an Agenda?" *Feminist Legal Studies*, vol. 10, 2002, p. 228.
[7] *Ibid.*, pp. 236-237.

be actually mainstreamed. The budgetary support for Armenia over the period 2007-13 (€75 million) aimed for instance at strengthening the country's administrative capabilities but it could not directly influence the adoption of gender-related actions.[8] For the year 2011, only €16.49 million have been invested in ENP countries to promote women's rights and economic empowerment.[9] However, the inclusive nature of the ENPI, where basically the whole set of EU priorities is taken into account, gives the impression that "gender equality becomes everybody's – and nobody's – responsibility".[10]

Adding an Outside-in Perspective: Role and Self-Perception of Women in post-Soviet Armenia

The analysis of the EU's gender policy towards Armenia requires to briefly look at the economic and social role and self-perception of women in post-Soviet Armenia in order to assess whether the EU's instruments (gender mainstreaming) are adapted and capable to yield results on the ground. The transition and post-transition period was characterised by the restructuring of the economy which had a very negative impact by raising the overall unemployment – over 26 million jobs disappeared in less than one decade and more than half were covered by women[11] – and worsening market access conditions. These changes were not gender-neutral and consequently, women's status in the job market deteriorated considerably, especially if we consider their impossibility to emerge in the raising private sector.[12] Although women have never been completely free from the double burden of simultaneously carrying on their paid job and housework, in the aftermath of 1989 the increasingly deteriorating situation relegated women again to all the set of activities related to unpaid work (housework, child and elderly care) or informal work. The main consequence of the collapse of the Soviet Union was the return of the traditional 'male bread-winner model', notwithstanding the great difficulties that men also encountered in finding a job in that period.[13]

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[8] *Ibid*. p 21.
[9] EU Neighbourhood Info Centre website, http://www.enpi-info.eu/main.php?id=26968&id_type=1, accessed 2 May 2012.
[10] Mazey, *op.cit.*, p. 228.
[11] UNICEF-ICDC, "Women in Transition", *Regional Monitoring Report*, no. 6, Florence, Innocenti Research Centre, 1999.
[12] K. Rittich, *Recharacterizing Restructuring. Law, Distribution and Gender in Market Reform*, The Hague, Kluwer Law International, 2002, p. 175.
[13] UN Women, *The Story Behind Numbers: Women and Employment in Central and Eastern Europe and the Western Commonwealth of Independent States*, Bratislava, March 2006.

According to Ishkanian, the worsened position of women in the labour market in the post-Soviet countries has not solely been produced by the inner rationale of the neo-liberal reforms, but it has also drawn on cultural, or better cognitive, elements such as traditional gender-related stereotypes defining roles for men and women.[14] Two main social images have indeed been characterising Armenian women's self-perception, notably the binomials 'woman-mother' and 'woman-protector of the family'. From an anthropological perspective, the concept of motherhood, traditionally considered sacral and associated with images of the woman as the 'pillar' and the 'light' of the family, is closely related with that of nationhood through the element of kinship as basic societal unit. Family, therefore, has always occupied the central space in the definition of Armenian women's identity.[15] These pre-Soviet identification elements have only been superficially changed during the Communist period, "[d]espite legal guarantees of gender equality, the socialist political system perpetuated oppressive traditions that treated childbearing and family duties as the primary focus of women's concern".[16] These remarks are also particularly important in the light of our analysis of Armenian women's proneness to act as economic actors and entrepreneurs and also agents for change.[17]

In the Armenian case, civil society promotion and democracy building managed to be mutually reinforced thanks to the involvement of active women in this process. This interpretation challenges an academic trend depicting women in developing countries as passive actors embedded in cultural schemes which impede their full capacity of action.[18] Although it would not be accurate to talk about a proper feminist movement in Armenia – indeed feminism is widely considered as a disruptive force which would not bring substantial benefits to the society[19] – Armenian women did start to act as agents of change through their active involvement in NGOs and civil society organisations. In particular, affiliation to or membership of NGOs constitutes a tool to build societal trust in comparison with the traditional and, in the Armenian case, very strong kinship and family ties. It is therefore noticed that despite

[14] A. Ishkanian, "En-gendering Civil Society and Democracy-Building: The Anti-Domestic Violence Campaign in Armenia", Advancement of Socio-Economics, Winter 2007, p. 494.
[15] *Ibid.*
[16] A. Hrycak, "Coping with Chaos: Gender and Politics in a Fragmented State", *Problems of Post-Communism*, vol. 52, no. 5, September/October 2005, p. 70.
[17] Ishkanian, *op.cit.*, pp. 484-485.
[18] *Ibid*.
[19] As a matter of fact UNICEF also acknowledges a certain "allergy to feminism" in transitional countries, notwithstanding the increasing advocacy for women's equality. UNICEF-ICDC, "Women in Transition", *op.cit.*, p. 22.

the economic and political setbacks produced by the transition to post-Soviet arrangements, women have found channels to take a more active stance in the country's social life. However, what is still to be discussed is to what extent women's participation as economic and political actors has increased and whether or not the EU's SFP has played a role in this process of change.

EU Action towards Armenian Women Empowerment

Why has the EU included gender-focused actions in its foreign policy, and above all, has this commitment proved to be effective?

The main rationale pushing for inclusion of women in the economic activities is obviously the positive effect on economic growth. There is a positive correlation between these two dimensions, given that economic growth creates new jobs which can be filled by women, which in turn sustain the economy.[20] Women empowerment is therefore instrumentally and normatively desirable. On the one hand, it allows women to fully participate in the economic development and growth of a country, contributing directly to the improvement of long-term living conditions. On the other hand, it allows women to fully and freely enjoy their potentialities as subjects entitled to rights and duties, therefore increasing their awareness as individuals, women and active citizens. Drawing on this assumption, the EU's foreign policy towards third actors might be adequately described as 'structural' insofar as it manages to foster change that spills over on other relevant sectors and levels. Thus women assume a very relevant role in the eyes of the EU as actors capable of bettering democracy and strengthening human rights through their more active participation as citizens, workers and entrepreneurs.

The main policy instruments, that the EU has to push forward projects with a clear gender dimension, are the European Instrument for Democracy and Human Rights (EIDHR) and the Development and Cooperation Instrument (DCI). Both policy instruments include specific reference to gender issues, assisting the ENPI in the implementation of the ENP's Action Plans.[21] The EIDHR addresses women's rights' protection as a component of the promotion of human rights and democracy,

[20] N. Forsythe *et al.*, "Gender inequalities, economic growth and economic reform: A preliminary longitudinal evaluation", *Employment Paper*, Geneva, Employment Sector, International Labour Office - ILO, 2003/45.

[21] Under the ENPI for the period 2007 - 2010, €98.4 million were granted solely to Armenia. Aslanyan, "A Gender Analysis of the European Union Development Aid in Armenia", *EU-CIS Gender Watch,* Gdansk, 2008, p. 4.

whereas the DCI operates through thematic programmes. In the case of gender equality, the programme 'Investing in People' is the main action framework. The most important feature of these two instruments is that they operate through civil society organisations without the involvement, or the agreement, of third countries' governments, thus retaining more steering space for manoeuvring on project planning and implementation.

The implementation phase usually poses the most serious challenges to the whole project's feasibility. Focusing on 'Investing in People', we actually see that the EU has adopted a 'structural approach' in its formulation because it aims at developing projects at 'macro level' (women's economic empowerment), 'meso level' (strengthening capacity of local self-government – LSG – to protect women's rights) and 'micro level' (gender-sensitive initiatives). At the identification stage, that is when the EU delegation selects the projects which will receive the grants according to 'evaluation criteria' (e.g. relevance of the action with regard to a country's needs, coherent project planning), the inclusion of gender is both rewarded and monitored. In the first case, women's participation and involvement is considered as the added-value of the project and therefore it allows to score five points for the relevant subheading. Moreover, every project should pass the Gender Equality Screening Checklist (GESCi), whose task is in fact to screen gender equality issues in the identification phase.

In concrete terms, project implementation starts in the EU Delegations which rely on first-hand information to define priorities and benchmarks. They decide whom to award the grants to on the basis of their contextual knowledge and their local human resources and networks. Some of the main rationale behind the choice of a given project is the non-overlapping with projects already on the ground and the principle of 'covering the gaps', namely tackling those aspects which have not been adequately covered by other sources of development aid or by the government. As DG DevCo suggests, the EU's cooperation should not be involved in services provision but it should focus on actors, being governmental or societal, in order to build up stronger capabilities and thus ensure results of long-term sustainability.[22] This is particularly true for all those projects which aim at strengthening LSG and participatory democracy, where gender concerns are usually included through a specific sentence which is always repeated because it allows to obtain

[22] Interview at DG DevCo, Unit D: Civil Society and Local Authorities, Brussels, 24 April 2012.

the highest score in the GESCi. Then, the chosen projects must go through the Quality Support Group (QSG), operating in the EU headquarters in Brussels, where checklists for specific standards address directly the inclusion of gender in the projects' planning, like in the case of the Gender Equality Screening Checklist (GESCf) employed at the formulation stage.

A realistic assessment is that the EU expects to obtain the highest level of effectiveness by combining gender mainstreaming and specific programmes.[23] Besides enclosing gender equality in the official EU-Armenia cooperation frameworks, the support offered to women willing to start up a business or coping with initial difficulties are a clear evidence of the EU's intentions to act on cognitive and social structures. The project, in analysis here, has in fact targeted women and operated in order to empower them in these areas where they have acknowledged their main shortcomings, acting through specific business-related trainings, access to credit, providing expertise to deal with administrative bodies, mentoring, organising business fairs and more generally speaking, establishing social networks for female entrepreneurs.[24]

However, it seems somehow unfeasible to produce permanent changes in social and mental structures in a 12-month time-span, despite the fact that changing the Armenian society's perception of women's capability to do business is the main expected result. Besides, measuring the impact of development projects on gender is a hard task in Armenia given the absence of research on the quality and efficiency of international aid.[25] Albeit limited, the impact of the EU's development projects should not be underestimated. The women's increased visibility in NGOs, local governance and business is the stepping stone to shape and sustain new perceptions about the role of women in society and to empower them as agents of change, both regarding men's assumptions on gender roles and stereotypes and women's self-awareness and self-confidence.[26] A concrete example is the recent creation of 'Women Entrepreneurs Network', acting as a p latform for building

[23] Interview at DG DevCo, Unit F: Geographical Coordination Neighbourhood East, Brussels, 19 April 2012.
[24] European Commission (EuropeAid - EIDHR), Project Document, *Entrepreneurship as a Tool for Raising the Role of Women in Society*, Brussels, 2010.
[25] Aslanyan, *op.cit.*, p. 29.
[26] For an enlightening report on strengthening women's entrepreneurial capabilities, their personal experiences and comments see EBRD, *BAS Programme. Armenia and Georgia*, London, 2011, pp. 9-24.

women entrepreneurs' social capital, linking women in business throughout Armenia and providing courses, training and mentorship programmes.[27] This initiative, together with a series of seminars on how to develop women's entrepreneurial skills, has become more frequent in recent years and they have been carried out by women-run NGOs.[28]

Conclusions: Structural Changes in the Making

This essay provided an outlook on how the EU's foreign policy, conceived as structural foreign policy, includes gender in its formulation and implementation. The analysis emphasised two dimensions in particular: firstly, whether the EU has managed to mainstream gender in its cooperation framework towards Armenia, both in terms of political commitment and actual implementation; and secondly, whether its action can be already gauged as effective as a means to foster structural changes at individual, societal and institutional level.

Our analysis shows that what the EU seems to do through its foreign policy towards Armenia is assisting and backing up on-going processes, rather than being their initiator. The EU, within the ENP framework, acts much more as a 'gap-filler' rather than as a proper actor for change. Gender is taken into account in every phase of the policy-making cycle through the practice of gender mainstreaming. Gender mainstreaming actually seems to offset the lack of explicit and direct commitment towards more concrete and gender-focused actions, thereby running the risk of diluting gender in every policy area without coping effectively with it. Without denying its relevance as policy strategy to embed gender in the EU's foreign policy, I argue that the EU should not solely rely on it if it really wants to have a deep impact on women's situation in third countries. Gender mainstreaming is a rather powerful instrument insofar as the EU wants to prepare the ground for more targeted actions, but it is certainly not enough when conceived as the only instrument available to cope with gender issues.

As regards the instruments used, the ENPI's limitedness, in terms of financial resources employed to tackle gender issues, shows that gender is by no means the main priority in the EU-Armenia cooperation framework. Furthermore, reliance on extra-

[27] *Developing Women Entrepreneurship in Armenia* website, http://businesswoman.am./en, accessed 3 May 2012. The initiative has been sponsored by the US Embassy in Armenia.
[28] *Armenian Young Women's Association* website, http://www.aywa.am/en/view/561, accessed 3 May 2012.

ENPI thematic policy instruments, such as the EIDHR and the DCI, does not help to single out gender as a priority for action within the ENP framework. A more effective EU policy would need to take further account of the national Armenian context and its peculiarities. Today, the identity of Armenian women is still strongly anchored in the ideas of motherhood and family. This cognitive framework should be primarily addressed in every gender-related EU policy formulation.

5. EU Micro-Rule-of-Law Policies in Lebanon: Abiding by the Rules of the Sectarian Game?

Tressia Hobeika

Introduction

Knocking on a "House of Many Mansions"[1] is no simple feat, particularly when it comes to the consolidation of the rule of law (RoL) from below. Lebanon's intricate socio-political system has hitherto presented an exceptionally challenging environment to any foreign policy actor interested in sowing the seeds of democratic reforms. And the European Union is no exception. Against this backdrop, and considering the recent trend to analyse the EU foreign policy conundrum, particularly in the midst of the upheavals on the southern shores of the Mediterranean, this essay takes a step back by delving into EU policies in Lebanon, the once most 'democratic' yet fragile state in the region.[2] More specifically, it deals with the extent to which EU micro-policies[3] in Lebanon shape sustainable rule-of-law structures. I argue that EU micro-assistance[4] to the RoL in Lebanon, instead of shaping sustainable rule-of-law structures, paradoxically runs the risk of reinforcing the *status quo* of unsustainable structures, thereby indirectly abiding by the local rules of the sectarian game.

Methodology and Conceptual Framework

Albeit the EU frequently resorts to the rule-of-law concept in its policy documents and discourses, there is little consensus on its general definition and overarching significance, thereby making it "an essentially contested concept".[5] Given this prominent uncertainty about the rule-of-law bedrock, the basic rationale of the rule-of-law assistance cannot but have the same fate. Even more, the rule-of-law term has

[1] K. Salibi, *A House of Many Mansions*, London, I.B. Tauris, 2003.
[2] F. Cavartota & V. Durac, *Civil Society and Democratization in the Arab World*, London, Routledge, 2011, p. 119.
[3] By micro-policies or micro-assistance for rule-of-law support, I refer to policies or projects concerned with rule-of-law strengthening in a 'bottom-up' fashion, that is, insofar as they go through civil society, or the so-called "legal empowerment". S. Golub,"Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative", *Carnegie Papers*, no. 41, 2003.
[4] In the following, I use the term RoL 'assistance', 'support' or 'strengthening' and not 'promotion' given that the latter implies a Western or international expert perspective of transplanting the RoL in a developing country without taking into account the local context. This remark is particularly coherent with the outside-in approach of this study.
[5] J. Waldron, "Is the Rule of Law an Essentially Contested Concept (in Florida)", *Law & Philosophy*, vol. 21, no.1, 2002, cited in B. Tamanaha, *On the Rule of Law: History, Politics, Theory*, Cambridge, Cambridge University Press, 2004, p. 3.

been increasingly present in the Union's jargon without, however, disposing of a "unitary rule-of-law model on offer".[6] In this context, in order to capture the entire range of EU micro-rule-of-law development programmes on offer, it would be fitting to adopt a comprehensive definition whereby RoL assistance can be channelled in a top-down or bottom-up fashion, in other terms, in a state-centred traditional or grassroots legal empowerment approach.[7] Having laid this all-inclusive definition, this study embraces a refined legal empowerment focus, given that the typical Western conception of civil society is definitely ill-suited for understanding the inherent dynamics of the state-society relations in a non-Western context like the Lebanese one.

It follows that Jamal's theory of democratic citizenship offers an adequate means to adapt the said definition of the rule of law, whereby "civic associations can serve as monitors or counterweights to the state [depending] on the [overall political] context".[8] According to Jamal, it is the same context that hinders or not some forms of participation and shapes one's attitudes and beliefs about political and civic participation.[9] Integrating Jamal's theory in the legal empowerment approach therefore leads to a persuasive theoretical framework because it forces the study to "examine the reality of the situation on the ground",[10] particularly the inherent state-society relations and the way associational activities are mediated.

In a similar vein, this study is specifically sensitive to an outside-in approach, which loads the dice heavily in favour of the "contextual differences and realities of the target country",[11] beyond the inward-looking approach of "EU navel-gazing".[12] This approach is also apt to shed light on the limitations of attempting to transplant legal norms and institutions to a target country, which also corroborates the usefulness of

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[6] A. Mungiu-Pippidi, "A house of cards? Building the rule of law in the Balkans", in J. Rupnik (ed.), "The Western Balkans and the EU: The Hour of Europe", *Institute for Security Studies Chaillot Papers*, no. 126, 2011, p. 153.

[7] The rule-of-law orthodoxy implies that a state-centred approach is undertaken whereby rule-of-law oriented projects are designed and implemented in cooperation with high-rank governmental officials. In contrast hereto, the more balanced legal empowerment approach, which goes beyond the rule-of-law orthodoxy, is grounded in grassroots needs through, *inter alia*, an emphasis on fostering civil society, its role and capacities, as well as its partnership with the state. Golub, *op.cit.*

[8] A. Jamal, *Barriers to Democracy: The Other Side of Social Capital in Palestine and the Arab World*, New Jersey & Oxfordshire, Princeton University Press, 2007, p. 9.

[9] *Ibid.*, p.10.

[10] Cavatorta & Durac, *op.cit.*, p. 30.

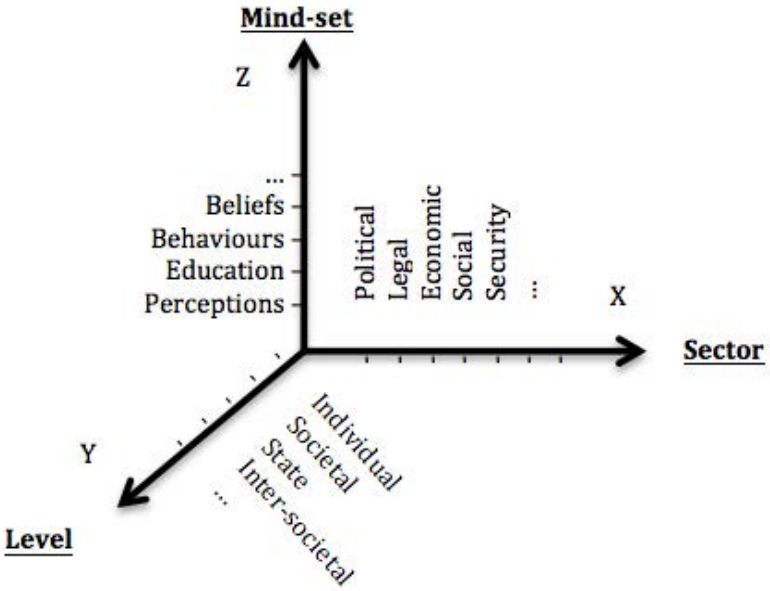
[11] S. Keukeleire, "Structural Foreign Policy", 2013, (forthcoming), p.15.

[12] S. Keukeleire, "Pitfalls in analysing (EU) Foreign Policy", *Paper presented at the Workshop 6 'Het externe optreden van de EU', Politologenetmaal 2004*, Antwerp, 28 April 2004, p. 3.

scrutinising the EU legal empowerment approach in its above adaptation. Above all, taking an outside-in approach is seminal for the detection of 'hidden' or 'neglected' dimensions of foreign policy, a common pitfall in the analysis of European foreign policy.[13]

It is therefore against the above theoretical backcloth that Keukeleire's structural foreign policy (SFP) remains the most cogent conceptual framework, chosen as a vehicle for analysis in this essay, since it clearly encapsulates these same neglected dimensions in a way to shape or influence sustainable structures in various sectors, levels and mind-sets, the RoL in Lebanon in our case. Accordingly, Figure 1 reflects the adaptation of Keukeleire's original framework.

Figure 1: SFP Structures



Source: compiled by the author.

Influencing or shaping sustainable structures ultimately means that one (or more) level(s), sector(s) and mind-set(s)/mental structure(s) should be targeted by the external foreign policy actor, the EU in our study. In this framework, comprehensiveness is a *conditio sine qua non* for the achievement of sustainable results. This consequently requires a cognitive effort to discern the interconnectedness between the relevant sectors and levels. Structure relevance is accordingly depicted in Figure 1, thus facilitating the visualisation of the 3D structures: the more relevant the

[13] S. Keukeleire, "Reconceptualizing (European) Foreign Policy: Structural Foreign Policy", Paper for the 1st Pan-European Conference on European Union Politics, Bordeaux, 26-28 September 2002, p. 2.

sector/level/mind-set, the closer to the origin of the structures-graph it is placed for the case at hand. More specifically, a foreign policy actor should make sure to influence the right sector(s), the right level(s) and the right mental structure(s) for a successful internalisation and viability of the structural change to be induced.

Identifying the structures to be targeted in a recipient-country should therefore be included as a preliminary and first stage of the policy-making and policy-evaluation cycle of the original framework (see Introduction). And this is no simple feat. This step perforce requires a great understanding of the country, its history, language(s), culture, and all other intricacies. The second stage undertakes a textual and discourse analysis of EU policy documents of legal and political nature, that is, of its policy objectives, in search for a potential discrepancy between rhetoric and commitment. This, therefore, allows the detection of the EU's intentions behind the neglect of a number of structures, in other terms, the hidden (unintentionally) or neglected (intentionally) structures. The third stage of analysis, in turn, juxtaposes these afore-mentioned policy objectives against reality, by scrutinising their translation into a tangible policy output, in other terms, into "concrete operational measures and decisions".[14] Whereas this analytical step specifically deals with policy output at the EU level, the fourth stage delves into the actual policy implementation in the local context, in a way to unpack the policy objectives and outputs and expose them to empirical scrutiny.

The Local Context: A 'House of Many Mansions'

In "strong societies and weak states"[15] like Lebanon, "citizens have no opportunity for representation outside the confines of their sect",[16] therefore leading to a practically inexistent "institutionalised citizen-state relationship".[17] Indeed, the most compelling literature in Lebanon has made clear that sectarianism has long permeated every aspect of the political, civil and social life of the Lebanese.[18]

[14] *Ibid.*
[15] J. Migdal, *Strong Societies and Weak States: State-Society Relations and State Capabilities in the Third World*, New Jersey, Princeton University Press, 1988.
[16] J. Choucair, "Lebanon: Finding a Path from Deadlock to Democracy", *Carnegie Papers*, no. 64, 2006, p. 3.
[17] *Ibid.*
[18] Sectarianism denotes the exacerbation of ethno-religious divisions, which are then reflected in a body polity. UNDP, "Lebanon National Human Development Report: toward a citizen's state", 2008-2009, p. 22.

Whereas the Ottoman Empire and the French mandate played a vital role in turning it into an umbilical cord, it was the National Pact of 1943 – *Al-Mithaq Al-Watani* – that "legally confessionalised"[19] the state-society relationship, thus placing it under the grip of a strong sectarian ruling cartel. The end of the devastating civil war (1975-1990) would not circumvent the confessional grip over this peculiar relationship. Rather, another fifteen-year-long Syrian occupation wrecked the little legitimacy left in the state institutions, hence exacerbating all facets of sectarianism, by sidestepping any sort of national reconciliation and undertaking a 'divide and conquer' strategy of all political and ethno-religious factions.

In the meantime, the post-war "confessional oligarchy"[20] or *zuama*, backed by heads of confession, had moved the bloody civil war to the political sphere, as true "unaccountable gatekeepers"[21] hijacking "the relationship between the state and 'its' citizens, not only in practice but through the law as well".[22] The 2005 Syrian withdrawal from Lebanese territories and politics engendered "a political game of musical chairs"[23] in which each ruling leader successfully sought a fair piece of the sectarian pie.

With this historical premise in mind, it is worth recalling that sectarianism in Lebanon is of political, civil and social nature. Whereas political sectarianism refers to the 'confessionalisation' of the state's institutions captured by the sectarian cartel, civil sectarianism represents the communitarisation of the citizens' personal status leading to a hegemonic patriarchal coalition between the ruling elite and the heads of confessions.[24] Finally, social sectarianism is a logical result of the above types of sectarianism, stemming from the "absence of shared beliefs about the appropriate boundaries of the state",[25] a typical aspect of divided societies. And while the state remains practically absent from the citizens' realities, they tend to find refuge in their

[19] *Ibid.*, p. 26.
[20] Choucair, "Lebanon", *op.cit.*, p. 6.
[21] L. Fioramonti, *European Union Democracy Aid: Supporting Civil Society in post-Apartheid South Africa*, London, Routledge, 2010, p. 5.
[22] UNDP, *op.cit.*, p.26.
[23] J. Choucair Vizoso, "How serious is the EU about supporting democracy and human rights in Lebanon?", *ECFR-FRIDE Working Paper*, London & Madrid, European Council on Foreign Relations and FRIDE, 2008, p. 1.
[24] All personal or family matters such as divorce, affiliation and succession fall under the 'personal status law' whereby each of the 18 religious communities has its own family law and religious court.
[25] B. Weingast, "Democratic Stability as a S elf-Enforcing Equilibrium", in A. Breton, *Understanding Democracy: Economic and Political Perspective*, Cambridge, Cambridge University Press, 1997, p. 28.

own confessions, hence strengthening the legitimacy of their sectarian leaders. However, it is the same obstinacy of the sectarian arrangements in place that paradoxically gives leeway for a certain degree of liberalism, expressed through a complex landscape of civil society organisations (CSOs).[26] One way to apprehend the latter is related to the their 'locus' on the state-society relationship, that is, their relative ties with the ruling cartel and their dependence on patron-client networks, whether sectarian or secular.

In essence, the inherent dynamics of the Lebanese socio-political system has led to a schism in associational life. At one end of the spectrum, some associations abide by the rules of the sectarian game, in an accommodating approach, and use patronage networks in order to fulfil their mandates, thus reinforcing the grip of sectarian leaders over their constituencies. At the other end of the spectrum, some other CSOs – usually secular in nature – adopt a more confrontational approach, although hampered by the elite and their religious allies. In the middle of the spectrum are those organisations that adopt a pragmatic approach with the leaders while doing their best to advance their agendas. Ultimately, albeit vibrant and numerous, CSOs in Lebanon cannot be detached from their socio-political context. As Jamal rightly pointed out, "[t]he overall political context in which associations operate […] shapes the way in which associations may or may not produce democratic change".[27] In this context, CSOs' engagement hinges on their locus in the state-citizen relationship and therefore its contribution to the consolidation of the rule of law.

In an attempt to heuristically probe EU policies in Lebanon towards the consolidation of the RoL from within, this essay builds, in the following part, on EU micro-rule-of-law programmes, AFKAR 1 and AFKAR 2, by casting light on the aforementioned stages of EU policy-making and policy evaluation cycles.[28]

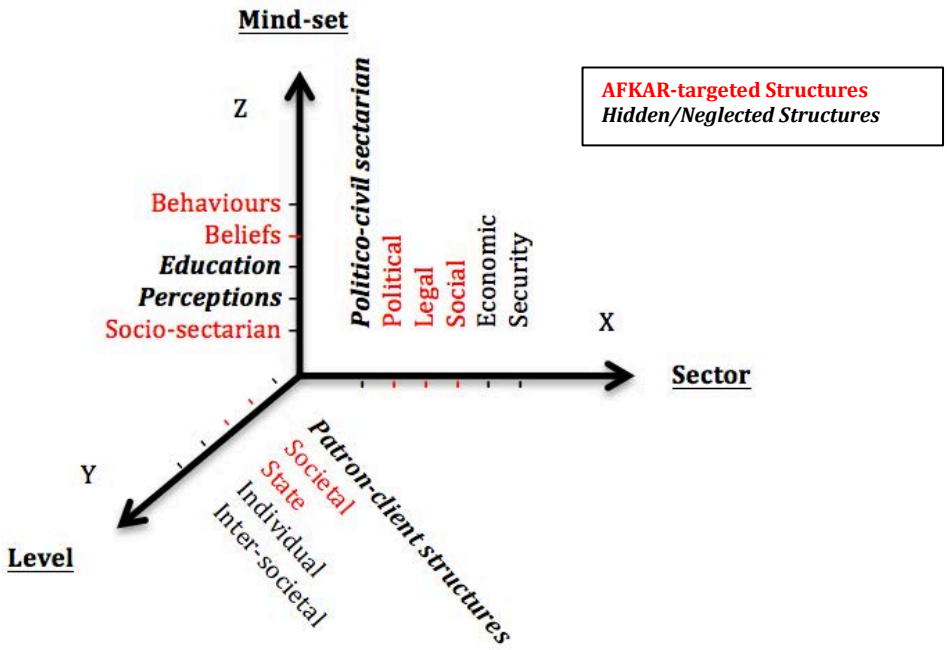
Stage 1 – Know Thy Structures

After a concise account of the local field, an SFP analysis in the first stage of its policy-making cycle takes off with a scrutiny of the structures targeted by the foreign policy actor in question. In our case, EU micro-RoL policies through the AFKAR programmes

[26] Cavatorta & Durac, *op.cit.*, pp.119-120.
[27] Jamal, *op.cit.*, p. 9.
[28] EU's AFKAR programme is a €4 million grant which funded 40 NGOs (16 for AFKAR 1 and 24 for AFKAR 2) in addition to 4 training sessions and 5 thematic exchanges. Its main objective was the strengthening of the action of Lebanese civil society in favour of respect of civil and political rights and the consolidation of the rule of law.

explicitly target rule-of-law structures, being sector-based, level-based and/or mind-set based. As already noted, knowing both the *project-related* structures and the *hidden/neglected* structures is seminal for the viability and sustainability of programmes in a recipient-country, as it can be seen in Figure 2.[29]

Figure 2: Rule-of-Law Structures



Source: compiled by the author.

A closer look at the Y-axis or the level-axis reveals AFKAR's objective to influence rule-of-law structures at both state and societal levels: "a programme of partnership and dialogue between the Lebanese government [state level], the European Union, and the different organisations of the Lebanese civil society [societal level]".[30] However, by aiming at creating a partnership and dialogue between the government and the civil society, the programme fails to discern – whether intentionally or not – the informal patron-client structures, these mafia-like structures that ostensibly trump the formal state structures. It also divulges a deeply embedded inside-out or EU/ropean perspective of the "concept of the civil society as a counter-power"[31] combined with

[29] The more relevant the sector/level/mind-set with regards to the project(s) at hand, the closer it is to the origin of the structures-graph. This cognitive exercise, of course bundled with an exhaustive knowledge of the field, could help detect the hidden or intentionally neglected structures.
[30] The Lebanese government is represented by the Office of the Minister for Administrative Reform (OMSAR). Call for Proposals, EuropeAid/123756/M/ACT/LB.
[31] Call for Proposals, *op.cit.*

the assumption of a pattern of functional politics in Lebanon as well as a Western-like state-society relationship.

The X-axis or sector-axis, in turn, displays the rule-of-law sectors to be influenced by the EU. It is clear that AFKAR targets the *politico-legal sectors* fulfilled by the state institutions and the *social sector* related to the CSOs' advocacy and awareness activities. However, ignoring – intentionally or not – the previously discussed politico-civil sectarianism in Lebanon, or in SFP jargon, the politico-civil sectarian level, does render the analysis of EU rule-of-law micro-policies in Lebanon incomplete.[32]

As for the Z-axis or the mind-set-axis, it gained a foothold in the analytical framework due to its pertinence to the study at hand. The more viably these mind-set-structures are shaped, the more internalised is the organising principle (RoL) along with its operationalisation. Given that "[s]tructures can be 'layered'",[33] it follows that these mental structures buoy to the surface as an amalgam of sub-structures in the case of the EU's AFKAR programmes. And the aforementioned social sectarianism is one of them (Figure 2). In fact, the socio-sectarian structure or sub-structure is deeply entrenched in the mental frameworks of citizens, in a country where "sectarianism is not an alternative to nationalism [...but] essential to it".[34] Remarkably, EU micro-RoL programmes explicitly recognise the need to shape the socio-sectarian structure in their stated objectives through, for example, "national reconciliation and inter-communal dialogue" in AFKAR 1.[35] However, the AFKAR-intended structural change cannot be viable without taking into account what Keukeleire calls the "dual legitimacy factor".[36] Indeed, the internalisation of the structural sustainable change is more likely to occur when seen as legitimate by the recipient-citizens.[37] Perceptions are therefore an "important factor in facilitating or opposing the achievement of EU-

[32] The economic sector could also be said to be missing, especially as some CSOs hamper the traditional patron-client channels due to their important network of service provisions, thus indirectly linking the rule of law with the socio-economic situation of Lebanese citizens.
[33] O. Waever, "Resisting the Temptation of Post Foreign Policy Analysis", in W. Carlsnaes & S. Smith (eds.), *European Foreign Policy: The EC and Changing Perspectives in Europe*, London, Sage Publications, 1994.
[34] C. Härdig, "Finding Unity in Fragmentation. The Role of Civil Society in Factionalized Polity", Paper presented at the 2008 Annual Meeting of the International Studies Association, San Francisco, 26-29 March 2008, p. 24.
[35] Call for Proposals, *op.cit.*
[36] Keukeleire, "Structural Foreign Policy", *op.cit.*, p. 15.
[37] *Ibid.*

sponsored policies".[38] This is clearly a matter of the EU's 'soft power' in Lebanon, which has been categorised by the Commission as a 'willing' neighbour in contrast to the other 'hesitant' ENP countries, in terms of its commitment to shared political values.[39] Accordingly, Lebanon is 'willing' to "see a strong EU involvement in supporting [its] internal political transformation towards […] the *rule of law*".[40]

Stage 2 – The Paper-Policy Discourse

The second level of SFP analysis is of paramount importance given that it delves into the "preparation, definition and adoption of the policy objectives", by distinguishing between declaratory objectives and real intentions, in other terms, between sheer rhetoric and actual commitment. In that sense, it provides a glimpse of the intentions behind neglecting a number of 'other' rule-of-law structures, therefore giving fresh insight on the neglected dimensions of foreign policy.

An analysis of the EU-Lebanon formal framework,[41] or a policy-on-paper analysis, reveals a flagrant inferiority of the rule-of-law clauses when compared with political dialogue, democracy and human rights along with a confirmation of the afore-mentioned conceptual inconsistency when it comes to the use of the RoL concept. What is nevertheless crystal-clear is the prevalence of the security component, such as in the 2003 European Security Strategy, which reads that:

> The best protection for our security is a world of well-governed democratic states. […E]stablishing the rule of law […is] the best means of strengthening the international order.[42]

'*Our* security' clearly implies a self-interested strategy, hence EU self-regarding interests. It also visibly infers to the profound link between RoL support and security goals in EU foreign policy, in other terms, between "milieu goals" and "possession

[38] S. Lucarelli & L. Fioramonti, "Introduction: the EU in the eyes of the others – why bother?", in S. Lucarelli & L. Fioramonti (eds.), *External Perceptions of the European Union as a Global Actor*, London, Routledge, p. 2.
[39] N. Tocci, "Can the EU Promote Democracy and Human Rights through the ENP? The Case for Refocusing on the Rule of Law", Workshop at the European University Institute, Florence, December 2006, p.6.
[40] *Ibid.* This claim has also been confirmed by an EU-funded Opinion Polling and Research project, which showed that "Lebanese values are broadly in line with perceived values of the EU. "Perceptions of the EU in Lebanon: Evolving Attitudes 2009-2010", *ENPI Info Centre*, 3 May 2011.
[41] A wide array of EU policy instruments reflects EU micro-policies in Lebanon such as the EU-Lebanon Association Agreement, the sole legal basis in the framework of the ENP or other formal documents, including the ENP-related documents.
[42] European Council, *A secure Europe in a Better World: European Security Strategy*, Brussels, 12 December 2003, p. 10.

goals".[43] Using a SFP conceptual lens, this finding effectively corroborates the analysis of structures in the previous stage of policy-making cycle and draws further conclusions, particularly when it comes to the politico-sectarian structures neglected by the EU-funded programme AFKAR. In fact, by favouring its possession goals of security over a real engagement with the neighbouring milieu, the EU has intentionally neglected the politico-sectarian structure, in a way to maintain the *status quo* and not put the stability of the region in jeopardy. Even though the EU has been criticised for its failure to discern the hidden politico-sectarian structure due to its "limited understanding of the political dynamics",[44] the above scrutiny clearly denotes an intentional trumping of a real milieu transformation by a mere possession goal. In a similar vein, this clearly swings the pendulum in the direction of a conventional foreign policy, hence entailing a low degree of EU SFP in Lebanon.

In contrast, a policy-in-discourse analysis reveals an abundance of lofty declarations in Brussels about the EU's commitment to the RoL consolidation in Lebanon and its concerns over democratisation.[45] However, when it usually came to serious political or sectarian gridlocks in Beirut, the EU merely ignored all previous declarations and adopted a non-confrontational approach with regards to the politico-sectarian structure.

In a nutshell, whereas policy documents and agreements clearly loaded the dice in favour of a conventional foreign policy, officials in Brussels exhibited more engagement with the milieu transformation, thus reflecting a certain paper-discourse gap. This was seminal for the detection of the EU intentional neglect of the politico-civil sectarian structures in Lebanon.

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[43] Milieu goals aim at "transforming the environment […by reinforcing *inter alia*] the rule of law" whereas possession goals rely on certain degree of cooperation with status quo structures in the recipient country with the view of protecting EU's interests. Tocci, *op.cit.*, p. 10; A. Wolfers, *Discord and Collaboration: Essays on International Politics*, Baltimore, The Johns Hopkins Press, 1962, pp. 73-76.

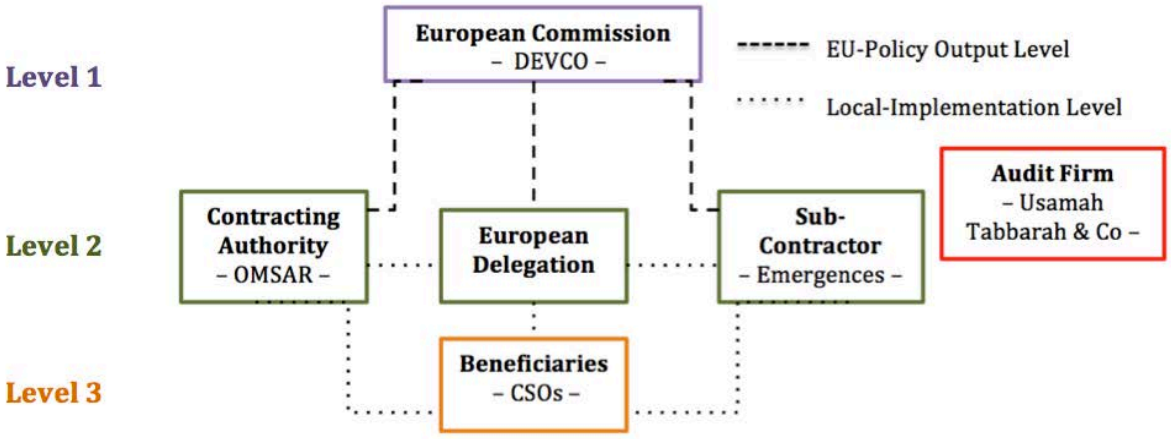
[44] R. Hanau Santini, R. Mauriello & L. Trombetta, "Taking the lead: EU mediation role assessed by Iran and Lebanon", in S. Lucarelli & L. Fioramonti (eds.), *External Perceptions of the European Union as a Global Actor*, London, Routledge, 2010, p. 65.

[45] See S. Füle, European Commissioner for Enlargement and European Neighbourhood Policy, cited in "EU-Lebanon: Increased support for reforms", MEMO/12/285, 26 April 2012; and E. Goes & R. Leenders, "Promoting Democracy and Human Rights in Lebanon and Syria", in I. Daalder, N. Gnesotto & P. Gordon (eds.), *Crescent of Crisis: US-European Strategy for the Greater Middle East*, Washington, D.C., The Brookings Institution, 2006, p. 95.

Stage 3 – From Words to Deeds

This third stage delves into the EU-policy output level, *inter alia*, AFKAR's stakeholders and application process.[46]

Figure 3: Policy Output and Implementation Levels



Source: compiled by the author.

A preliminary note starts off with a remark on the aforementioned AFKAR-intended "partnership and dialogue" between the Lebanese stakeholders (Figure 3).[47] At first sight, this partnership seems to be designed to "support [Lebanon's] own reforms"[48] instead of transposing the EU's own structures. In SFP language, engaging with 'other governmental actors' (in our case, OMSAR see *infra*) and 'non-state actors' while 'proactively' respecting their own dynamics are basically 'other dimensions of foreign policy', and somehow characteristics of a SFP.[49] However, a closer look at the actors' profiles and interactions suggests quite different conclusions. In fact, this 'partnership' was described in the academic scholarship as a state-centred approach resulting in the EU's "reluctance to demand genuine political reforms […] while making sure not to bypass state authorities even if this clearly diminished the value of democratisation on offer".[50] To put it more bluntly, the EU seems to have lowered its chances of implementing its objectives by "driving the principle of non-interference in […Lebanon's]

[46] A detailed analysis of the AFKAR-related policy outputs (rationale, stakeholders, budget, institutional set-up) can be found in: T. Hobeika, *EU micro-rule-of-law policies in Lebanon: abiding by the rules of the sectarian game?*, Master's thesis, Bruges, College of Europe, 2012.
[47] See stage 1.
[48] B. Ferrero-Waldner, "The Middle East in the EU's External Relations", speech, 'Madrid: Fifteen Years Later' Conference, Madrid, 11 January 2007.
[49] Keukeleire & MacNaughtan, *op.cit.*, p. 20.
[50] Goes & Leenders, *op.cit.*, p. 102.

political affairs to the extreme".[51] This definitely corroborates the non-confrontational approach previously detected in the discourse of European officials in Brussels.

The choice of the Office of the Minister for Administrative Reform (OMSAR) as the EU's contracting authority is also revealing. Since its inception in 1993, OMSAR has constantly received UNDP assistance, in terms of financial, personnel and technical support, which makes its staff the most qualified when compared to civil servants in other more corrupt Ministries.[52] OMSAR is not a Ministry but rather a mere support office of the Minister of State, and therefore lacks the prerogatives to implement serious reforms. This perforce casts doubts on the effectiveness of the so-called 'partnership' claimed by AFKAR. Recalling AFKAR's objectives to foster the RoL, the choice of OMSAR as a partner, albeit the best option for a short-term painless implementation of EU's micro-policies, could somehow undermine the claims of a long-term sustainable impact of a SFP.

Another element of the level-one-level-two analysis in Figure 3 could be the application process, as a quick look at the programmes' Calls for Proposals and their annexes reveals a lengthy application form with a strict format and rigid conclusions, beyond the expertise and scope of smaller CSOs. Applying for EU funds is so complicated that many CSOs have resorted to local 'EU grants experts' to draft the proposals for them.[53] In fact, many civil society activists in Lebanon complain that the EU "pick[s] its beneficiaries from a very small pool of NGOs […due to] the highly formalistic and complicated application procedures designed to secure fair bidding for projects defined by pre-conceived needs".[54] Would the EU not be unintentionally financing NGOs with other sources of funds, that is, from the aforementioned patron-client channels? This also implies that many effective CSOs with substantial constituencies but lacking know-how of the compulsory technical jargon in English or French cannot make it through the selection procedure. This definitely swings the pendulum away from a SFP.

Stage 4 – Separate the Sheep from the Goats

This stage of the policy-making cycle represents the actual policy implementation phase dealing with the dynamics between level-two and level-three actors in Figure

[51] *Ibid.*, p. 103.
[52] Interview with an EU Delegation official, Beirut, 3 January 2012.
[53] EU expert, OMSAR, interview, Beirut, 4 January 2012.
[54] Goes & Leenders, *op.cit.*, p. 104.

3. It is worth mentioning that very little empirical research has hitherto assessed the implementation of EU programmes on the ground, in a way to juxtapose rhetoric and objectives-on-paper against reality. In this respect, this empirical scrutiny is vital for the detection of further inconsistencies and perhaps the limitations of EU micro-RoL programmes even when genuinely and transparently implemented.

Level-two-implementation is mainly concerned with extra-EU actors, such as the OMSAR, the Contracting Authority entrusted with the implementation of the programme. [55] A closer look at the evaluation and selection process, for example, reveals that a local selection committee was "appointed by OMSAR and approved by the European Commission (observer)" with the assistance of an international expert in the case of AFKAR 2.[56] This screening process has been heavily criticised given that state representatives in the local committee were selected according to sectarian affiliation, thereby "raising serious questions about the non-governmental or political impartial nature of the winners".[57]

In fact, stringent EU rules forbidding personal contacts with the applicants implied that EU officials failed to "explore the field themselves" and therefore to recognise that some of these CSOs in reality served as a vehicle for the *zuama*'s political advancement.[58] Using an SFP lens, this clearly indicates that the EU has unintentionally neglected the hidden patron-client rule-of-law structure and eventually reinforced the grip of sectarian leaders on the state-society relation or the much-touted AFKAR 'partnership' between the Lebanese government and CSOs. This also suggests that even more 'potential applicants' were punished for their mere locus on the state-society relationship spectrum. A possible reason behind this neglect of structure could be the adoption of an inward-looking narrow definition of civil society, often considered as the "sand in the wheels of [a] political process",[59] therefore clearly lacking a complete understanding of the inherent dynamics in the local context. However, it is worth mentioning that the main innovation behind AFKAR is mainly the fact that it moves EU micro-policies in Lebanon beyond ready-made suggestions that simply disrupt or obscure the local context. Instead, it does compel CSOs to look for

[55] The implementation of the programme by the Contracting Authority implies, *inter alia*, launching the Call for Proposals, undertaking a selection process and following-up on the 'implementation of the action' by the beneficiaries.
[56] Call for Proposals, *op.cit*.
[57] Goes & Leenders, *op.cit.*, p. 102.
[58] *Ibid.*, pp. 103-104.
[59] P. Grajzl & P. Murrell, "Fostering Civil Society to Build Institutions: Why and When", Draft Version, Budapest & College Park, July 2008, p. 12.

creative solutions for their environment. However, a crucial question remains: which CSOs have been funded by the EU in a way to translate its micro-RoL policies in Lebanon, or better said, to influence the flawed rule-of-law structures?

Table 1 shows 14 of the 40 AFKAR-funded CSOs (level-three-implementation). A first look detects one sectarian organisation, the *René Moawad Foundation* (RMF), established by René Moawad's Maronite wife two years after his assassination, as a tribute to him.[60] Turning to the *National Committee for the Follow-up on Women's Issues* (NCFUWI), it has been described as an 'elitist organisation' that saw the light in the wake of Lebanon's preparation of the Beijing Convention, as a shadow NGO for the *National Commission for the Lebanese Woman Affairs*, a semi-official body of the state. The elite monopolisation of this organisation has indeed avoided addressing gender-based issues that could put the hegemony of the sectarian ruling elite in jeopardy,[61] thus displaying a blatant accommodating approach with them.

Detecting sectarian threads in associations enables greater insights into the hitherto drawn conclusions. In fact, by distancing its officials from the bidding process, the EU has unintentionally allowed parasite-CSOs to plague its programme, thus preventing it from influencing the patron-client structures. Arguably, by funding these associations, the EU has diverted its money from the right recipients to associations that already enjoy abundant funding. Moving slowly towards the other end of the state-society relationship, another type of CSOs appears on the way. *KAFA*, for example, has acted as a leading association in the drafting of the domestic violence bill, in a certain pragmatic approach, in a way that it is "better off with the ruling cartel rather than being without them".[62]

[60] Former president of Lebanon assassinated in 1989.
[61] E. Bray Collins, *Muted Voices: Women's Rights in Post-War Lebanon*, Master's thesis, Ontario, University of Toronto, 2003.
[62] L. Khattab, *Civil Society in a Sectarian Context: The Women's Movement in Post-War Lebanon*, Master's thesis, Beirut, Lebanese American University, 2010.

Table 1: AFKAR Rule-of-Law Funded CSOs

Programme	Advocacy Actions	Awareness Actions
AFKAR 1	Lebanese Association for Democratic Elections (LADE)	Youth Association for Social Awareness (YASA)
	René Moawad Foundation (RMF)	Association for Volunteer Services (AVS)
	National Committee for the Follow-Up of Women Issues (NCFUWI)	
AFKAR 2	National Committee for the Follow-Up of Women Issues (NCFUWI)	Forum des Handicapés au Liban Nord (FOH)
	Lebanese Council to Resist Violence Against Women (LCORVAW)	RESTART
	SKOUN	T.E.R.R.E. LIBAN
	Centre d'Étude Stratégiques pour le Moyen Orient (CESMO)	Lebanese Autism Association (LAS)
	Lebanese Association for Democratic Elections (LADE)	Association pour la Défense des Droits et des Libertés (ADDL)
	KAFA	Institute for Development Research, Advocacy and Applied Care (IDRAAC)
	MAHARAT	Centre for Development & Planning (CDP)

Source: compiled by the author.

Conclusion

To what extent do EU micro-policies in Lebanon shape sustainable rule-of-law structures? After a thorough analysis, it would be fair to say that the foreign policy pendulum has swung in both directions of the continuum throughout the four-staged-analysis, with nevertheless a lopsided orientation towards the characteristics and dimensions of a conventional foreign policy. Put simply, EU micro-policies in Lebanon paradoxically run the risk of reinforcing *status quo* rigid and unsustainable rule-of-law structures, instead of sustainably shaping them, thereby indirectly complying with the rules of the Lebanese sectarian game.

While coming up with new rules for a secular non-sectarian game cannot be done overnight, any step towards altering any of the existing deep-seated rules would be significant. Making the sectarian game less of a zero-sum game through its micro-policies takes off with a more thorough knowledge of the field and a more proactive approach with its Lebanese partners. The EU does enjoy a cross-sectarian credibility

and legitimacy in Lebanon that no other foreign policy actor has. It follows that lending more financial weight to shaping the mental structures, through continuous micro-support to cross-confessional engagement would definitely make a difference on the long run. Yet, this micro-assistance should be thought more strategically. As a first step, meddling into Lebanese internal political affairs at the micro-level would not only do no harm, but would also help EU officials separate the sheep from the goats when funding civil society organisations. On another level, engaging with more relevant but corrupt state actors, even though detrimental to the short-term success of its programmes, could be of paramount importance for a long-term consolidation of the rule of law.

6. Structural Foreign Policy: A Critical Appraisal for Students, Researchers and Practitioners

Clement Naylor

When applying the structural foreign policy (SFP) framework – whether in order to develop or to analyse a policy – one must confront a series of questions about what SFP is and how it should be used. I had to grapple with these questions when testing the capacity of the framework to explain the EU's performance in promoting economic reform in Egypt through the European Neighbourhood Policy.[1] In this essay, I will set out some of the issues I considered and some of the conclusions I came to about the framework's strengths and weaknesses. The first area that I will deal with here relates to whether the SFP framework should be used normatively or analytically. Secondly, this essay will address some general issues surrounding SFP's potential as a theoretical model and a policy-maker's paradigm, which can be questioned in terms of its parsimony, its comprehensiveness, and its generalisability. Thirdly, some more specific issues relating to how the SFP framework can be applied by students, researchers and practitioners will be explored: its division into sectors and levels, its splitting up of the policy process into four distinct phases, and its emphasis on internalisation and sustainability each have varied impacts on the framework's usefulness.

Normative or Analytical – How Should the SFP Framework Be Used?

Keukeleire presents the SFP concept as an 'analytical framework', inviting researchers and students to examine a foreign policy against the SFP framework to establish whether it qualifies as 'structural'.[2] Following this approach, students can, for example, test whether a particular EU foreign policy is a SFP by adapting the SFP framework to the relevant policy area and local context and analysing the extent to which this policy addresses the sectors and levels identified in the adapted framework. By using the SFP framework in such a way, students might also hope to draw our attention to often-neglected aspects of foreign policy action and implementation, and to reveal unexpected links between different sectors and levels of the policy context. However interesting these outcomes of a purely analytical use

[1] C. Naylor, *EU Promotion of Trade Reform in Egypt: A Structural Foreign Policy Approach*, Master's thesis, Bruges, College of Europe, 2012.
[2] S. Keukeleire, "Structural Foreign Policy", (forthcoming), 2013, p. 2.

of the framework might be, the principal finding of such an application of the framework will always be an answer to a 'Is policy X structural?' research question. The significance of any such conclusion is, however, limited if no further meaning is attached to it: as long as the conclusion 'this policy is/is not a SFP' means no more than 'this policy has fulfilled the criteria of (an adapted version of) Keukeleire's SFP framework', we can legitimately ask why we should care.

If the conclusions to be drawn from a purely analytical application of the SFP framework are of limited value, we might consider whether it is possible to add a normative dimension to the application of the framework, whereby the degree to which a policy fulfils the criteria set out in a SFP framework (adapted to the specific context of the policy under examination) is used as a way to explain the policy's performance. There is some tentative encouragement for such an application in Keukeleire's own presentation of the concept, in which he hints at its normative potential. For example, he presents SFP in terms of improving the legitimacy, effectiveness and sustainability of foreign policy action, implying that an SFP delivers better results in the long-term than other types of foreign policy.[3] If the extent to which a foreign policy is structural – the extent to which it addresses the sectors and levels set out in an adapted SFP framework – can explain the extent to which that policy is successful, the SFP framework might be used by researchers and students to predict and explain the performance of foreign policies and by practitioners to design foreign policies.

This 'normative' application of the SFP framework is both considerably more ambitious and, potentially, considerably more meaningful than the analytical approach described above. However, it is, at present, unjustifiable: in order to be able to use the SFP framework in such a way, its explanatory capacity first needs to be proven. If it is shown that structural foreign policies are successful foreign policies, then the framework can be used in this normative way. Students might consider testing SFP's explanatory capacity by applying an adapted SFP framework to an EU foreign policy and assessing the extent to which it helps to explain that policy's performance. Students' case studies could form part of a body of evidence to support a future normative application of the SFP framework, either in policy development or policy analysis. Two criteria against which the framework's explanatory value might be judged are its comprehensiveness – the extent to which it

[3] *Ibid.*, pp. 14-15.

explains performance – and its parsimony – the extent to which it does so in an efficient, practicable manner. Some preliminary conclusions about the SFP framework's fulfilment of these criteria will be explored below.

The Framework's Potential as a Theoretical Model and a Policy-Maker's Paradigm

Several of the SFP framework's weaknesses are relevant regardless of whether it is used analytically or normatively, while others relate only to a normative application. The first issue is that in order to operationalise the SFP framework, as will be demonstrated in preceding essays, it must be adapted into case-specific frameworks based on certain research-based assumptions about the relevance of different sectors and levels to a particular policy in a particular context. This sort of adaptation of the framework, evident in all of this paper's case studies, is necessary if it is to be relevant to the context to which it is being applied – a SFP looking to improve gender equality in Armenia will clearly have to deal with different sectors and levels compared to a SFP seeking to address corruption in Bosnia and Herzegovina.

This adaptation does, however, have several effects that are detrimental to the SFP framework's analytical and explanatory value. Firstly, it harms the parsimony of the model, which, as preceding essays in this publication show, needs significant adaptation to make it ready for use in any given context. Secondly, the necessity of this secondary stage effectively means that the SFP framework is not generalisable; it is in fact an umbrella for an as-yet-undeveloped group of case-specific frameworks. While many theories in the social sciences require small adaptations before they can be applied to a given phenomenon, the nature of the SFP framework – its emphasis on comprehensiveness and sensitivity to context – makes this adaptation particularly arduous and difficult to replicate. This reduces the explanatory and analytical capacity of the SFP framework *per se* – it needs to be significantly adapted, to the extent that it effectively becomes a new framework before it can tell us anything about a policy.

Thirdly, this secondary stage of context-specific model refinement makes it very difficult to test the validity of the overarching SFP framework. If a researcher attempts to test the explanatory value of the SFP framework by assessing the extent to which a context-specific framework, based on the SFP framework, explains the performance of a particular policy, he/she will find it very difficult to locate the origin of any flaws in the explanatory capacity of his/her framework – whether they lie in the SFP frame-

work itself or in the way in which the researcher has adapted it to the specific context. This makes it impossible to falsify the original framework – a lack of explanatory capacity can always be blamed on weak adaptation to the specific context under examination. Given that Keukeleire provides little guidance as to how exactly the SFP framework should be adapted to make it appropriate to the context to which it is being applied, the way in which any researcher chooses to modify the framework will inevitably depend to a large extent on the (evidence-based) choices that he/she makes about the sorts of sectors and levels that are relevant to a particular policy. This makes weak adaptation likely. Thus, although the adaptability of the framework may reflect the difficulty of reducing policy-making to a set of universal rules, and thus serve as a strength for a policy-maker, it hampers its parsimony, generalisability, and testability, and therefore its value, both as a paradigm for policy-makers and as an explanatory theory for academics.

A second limitation to the explanatory value of the SFP framework arises from the fact that, although it highlights the various levels and sectors that might be relevant to a SFP, it does not seek to explain the processes by which structural change occurs within these settings. Certain suggestions of factors influencing the sustainability of structural change are put forward in the Introduction's discussion of sustainability and internalisation;[4] however, the exact mechanisms by which this change occurs would require the use of further explanatory theory. This use of additional theory is not problematic in itself and is welcomed by Keukeleire,[5] but it further reduces the parsimony of the approach and predicates its explanatory value on a further set of choices to be made by the researcher or policy-maker.[6] A student seeking to explain the performance of a policy using the SFP framework might, for example, find that this policy addresses the sectors and levels that he/she has deemed relevant but that it has not performed well. Whether the SFP framework succeeds in explaining this poor performance or not will depend on the supplementary explanatory theory that is attached to it. The SFP framework itself does not offer much guidance on how a policy should address the levels and sectors that it identifies.

Finally, one possible remedy to issues related to parsimony and explanatory capacity discussed here might be the development of a typology of context-specific SFP

[4] See Introduction, p. 5.
[5] Keukeleire, *op.cit.*, p. 20.
[6] For examples of theoretical adjunctions, see Cerimagić; Fonck; Catalano; and Hobeika in this collection.

frameworks. This typology could also include different theories to aid the explanation of the mechanisms of structural change in different case types. It would increase the usefulness of the SFP framework to policy-makers and would accelerate the process of analysis for researchers, who might be able to avoid developing their model from scratch. However, the development of a typology would not escape the issues relating to testability and generalisability discussed above – potential would remain for errors in terms of the choice of model and the uniqueness of each policy context would still necessitate some degree of adaptation.

The Specifics of the SFP Framework

Beyond the general issues relating to the suitability of the SFP framework for serving as a theoretical model or as a paradigm for policy-makers, a more detailed examination of the way in which the SFP framework is intended to be applied raises certain more specific issues.

Sectors and Levels

Firstly, the divisions between sectors and levels set out in the Introduction might be questioned on the grounds that they artificially separate areas of activity that are in reality interwoven. It is important, therefore, to underline the function of these divisions – they are not intended to reflect exactly the reality of life, and structures, on the ground, but rather to provide a framework with which to approach policy-making. It is less important to delineate the clear boundaries between each sector and level than it is to ensure that no relevant areas, and no links between them, are missed.[7] The divisions are not, in themselves, hugely important. More important is that the comprehensive coverage encouraged by the different sectors and levels of the SFP framework can direct our attention to often neglected areas, including 'low-political' and social processes not usually considered as central to foreign policy.[8]

Although this shift of emphasis has a positive effect on many areas of analysis, it should be highlighted that a movement away from 'high-political' analysis can be detrimental to the explanation of certain foreign policy developments. This suggests that the SFP framework might be able to explain the performance of some types of foreign policies better than others. By testing the framework against a range of different foreign policies, students may be able to establish the sorts of policies that it

[7] Keukeleire raises this point in Keukeleire, *op.cit.*, p. 11.
[8] See in particular Hobeika in this volume.

can explain well and those that it struggles to grapple with. While it might be expected that the framework will deal better with long-term, low-political foreign policies, my experience with the SFP framework suggests that even in this type of policy, high-level political decisions can often be taken in a way that an SFP matrix struggles to explain. This may make it necessary to supplement the framework with more actor-focused approaches to give it comprehensive explanatory value.

The Phases of the Policy Process

The division of the policy process into four separate phases may also be problematic. For example, in the iterative reality of the EU foreign policy-making, it is often difficult to distinguish separate 'objectives' and 'output' phases: objectives can be set, adjusted, and re-set several times, while instruments and resources also change over time. Such adjustments conform with Brighi and Hill's conception of foreign policy activity as being shaped by interaction between foreign policy actors and their context.[9] This conception calls into the question the possibility of treating a SFP as a linear process. Thus, while Keukeleire's four phases are valuable in that they draw our attention to neglected parts of the policy process and allow us to locate the point at which issues with a particular policy emerge and to demonstrate that a foreign policy might be 'structural' at one stage but not at another, it may be that the divisions that they suggest are too far from the reality of the policy-making process to make them valuable. The case studies in this collection shed light on the practical usefulness of Keukeleire's policy-phase divisions.[10]

Assessing Internalisation and Sustainability

Two final elements of the SFP framework that may be problematic are the concepts of internalisation and sustainability. Internalisation is difficult to quantify, particularly when protracted fieldwork is impossible. Sustainability can only be assessed over the long term, meaning that nothing more than tentative conclusions about the sustainability of contemporary SFPs, such as those examined in this paper, are possible. Despite this, the framework's emphasis on sustainability focuses attention on long-term processes that could be ignored in conventional work on foreign policy.[11]

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[9] E. Brighi & C. Hill, "Implementation and Behaviour", in S. Smith *et al.* (eds.), *Foreign Policy: Theories, Actors, Cases*, Oxford, Oxford University Press, 2008, pp. 118-120.

[10] See Cerimagić and Hobeika in this collection who both suggest the addition of a preliminary step in the policy-making and analysis cycle.

[11] On the internalisation of structural change, see Catalano and Fonck in this collection.

Conclusions

This essay has briefly set out some of the key issues that any researcher, student or practitioner seeking to make use of the SFP framework has to confront. The principal limitations of the SFP framework appear to reside in its reliance on individual contextual analyses, and its failure to provide explanations (without supplementary theory) of processes, including, but not limited to, those relating to high-level political decisions. Until there is a reliable typology of SFP frameworks – to which this paper will hopefully contribute – these issues will continue to hinder SFP's parsimony and comprehensiveness. The SFP framework also suffers from a m ore fundamental problem – it is, at present, suited only to a purely analytical application, providing answers to the question 'Is this policy structural?'. As discussed above, the significance of these answers can legitimately be questioned. Its future capacity to be applied normatively, either as a theory used to explain policy performance or as a paradigm for policy-makers, will depend on students' and researchers' assessments of its explanatory capacity.

Despite these limitations, this essay suggests several strengths of the SFP framework that have been illustrated in this collection's case studies. First amongst these is its capacity to highlight often-neglected, but highly relevant, areas of foreign policy and the context in which it is implemented, including long-term, low-political processes. By demonstrating the importance and complexity of context, the SFP framework serves to underline the difficulty of bringing about sustainable change through foreign policy, often leading to the conclusion that SFP requires huge resources and a significant level of penetration into its target country. The examples Keukeleire gives of successful SFP – the Marshall Plan and EU enlargement – reinforce this point. The SFP framework can thus indicate the sorts of instruments and activities that are necessary for successful SFP and, where these are impossible to implement, to alert policy-makers and researchers to deficiencies in a policy and adjust their expectations accordingly. By locating the points in the policy process at which such deficiencies first emerge, the SFP framework can also give more precision to researchers' and policy-makers' foreign policy analyses, helping them to identify possible mitigating actions.

7. Concluding Remarks

Stephan Keukeleire

This collection of essays analyses the EU's rule of law promotion in the European neighbourhood through the conceptual lens of the 'structural foreign policy' (SFP) framework (see also the Introduction of this paper). Each author critically reflects upon the SFP framework, points to its potential and limitations, builds upon it, refutes some aspects, or complements it with other analytical frameworks. The application of the SFP framework on four relatively different cases also allows us to gain more insight in both the practical applicability of the SFP framework and in the complexities of rule of law promotion. These concluding remarks aim to provide some reflections on the SFP concept and on the related challenges for EU foreign policy research.

The SFP framework was designed to provide an analytical tool to examine a dimension of foreign policy that is often neglected in the analysis of foreign policy: influencing and shaping structures as a major objective of foreign policy. The focus on the EU's rule of law promotion in this publication is only one example of SFP analysis; the same methodology can also be applied to EU foreign policy (or to the foreign policy of other actors) that aims to realise structural changes in other fields, such as democracy, human rights, etc.

The comprehensive nature of the SFP framework – the attention to structures on various levels and in various sectors, taking into account both material and immaterial factors – aims to force the analyst to look beyond those structures which the EU (and EU foreign policy analysts) considers important. Thus, it also forces to include structures which may be of crucial importance in the context of and from the perspective of a third country or region. This leads to a first major challenge: the need to have a sound knowledge of not only the EU's foreign policy, instruments and actions towards a third country and region, but to also have a sound knowledge of the third country or region that is the 'target', 'recipient' or 'subject' of the EU's policy. This is well highlighted in the contribution by Tressia Hobeika on EU micro-rule-of-law policies in Lebanon. One of the subtitles in this essay succinctly formulates the related challenge: "Know thy structures". Understanding the EU's rule of law promotion in Lebanon requires from the analyst a profound understanding of the existing structures: not only on the level of the state (the level which gains most

attention in both the conduct and academic analysis of EU foreign policy), but also on the societal level and on what Tressia Hobeika labels as the micro-level. A sound knowledge of the Lebanese society is essential to see and understand the existence and impact of the existing politico-sectarian and socio-sectarian structures that are often hidden from outside observers. This knowledge is required to understand that the EU's rule of law promotion initiatives may, in fact, not serve to strengthen the rule of law in the way the EU has in mind, but may unintentionally rather strengthen hidden patron-client rule of law structures that are part of the sectarian organisation of Lebanese society.

The need for expertise on the society, country or region that is targeted by EU foreign policy explains why the analysis of the latter is very well served by linking it to area studies (Middle-Eastern studies, Balkan studies, South-Eastern Asia studies, China studies, etc.); by involving scholars from the countries concerned; by using not only Western sources of information but also sources written in local, non-Western languages; and by including non-Western conceptualisations. In short, it requires the adoption of what can be labelled an 'outside-in approach'.[1] More generally, it implies that the analyst also needs an open mind to see, recognise and accept 'difference' instead of generalising developments and features specific to European processes and European assumptions about space, time and sovereignty to the rest of the world.[2]

A second challenge is related to the explanatory power of the SFP framework itself. As explained in various publications,[3] this analytical framework points to factors which help explaining the success or failure of a f oreign policy in shaping or influencing structures and pursuing structural changes. These include, for instance, the need to take into account the relevant structures on the various interrelated levels and in the various interrelated sectors (and thus not only to focus on what is considered important in the EU). It also points to the importance of immaterial factors (such as legitimacy and internalisation) in addition to material factors.

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[1] For the various dimensions of an outside-in approach, see S. Keukeleire, "Lessons for EU Diplomacy from an Outside-in Perspective", in S. Gstöhl & E. Lannon (eds.), *The Neighbours of the European Union's Neighbours: Diplomatic and Geopolitical Dimensions beyond the European Neighbourhood Policy*, Farnham, Ashgate, 2013 (forthcoming).

[2] D. Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference*, Princeton, Princeton University Press, 2007; N. Inayatullah & D.L. Blaney, *International Relations and the Problem of Difference*, London, Routledge, 2004.

[3] See Introduction, footnotes 9 and 10.

However, the comprehensive nature of the SFP framework, as well as the required sensitivity to the context, make it hard to identify clear causal relations and, particularly, to increase the explanatory power of this analytical framework. This is also underlined in the essay by Clement Naylor, who also points to another drawback of the sensitivity to context: the problem to generalise the specific findings of an analysis. This brings us to one of the dilemmas in the analysis of (EU) foreign policy: the SFP framework has been designed to provide a tool to overcome the pitfalls of simplification and reductionism (the focus on only a limited number of recurrent factors) in the analysis of EU foreign policy; but the downside is indeed that this leads to a too great complexity and thus a lack of parsimony which allows scholars to generalise and provide clear explanations.

The wish to increase the explanatory power of the analysis is also one of the reasons why several authors in the preceding essays connect the SFP framework to other analytical frameworks. Examples of these connections are: the linkages with the literature on 'external governance' and 'socialisation' (in the contributions of Adnan Ćerimagić and Arianna Catalano); and with the 'layers of impact' model of Morlino and Magen (in the essay of Daan Fonck).

Another solution to further strengthen the analytical and explanatory power of the SFP concept is to develop carefully-designed research projects, which explicitly focus on a limited number of sections or boxes of the matrix presented in Figure 1 of the Introduction. When studying the EU's rule of law promotion in a specific country (or another dimension of a foreign policy that aims to promote structural changes), an analyst can concentrate on the relationship between only two or three boxes of the matrix, thereby examining, for each box, what the organising principles are; how these organising principles are institutionalised and operationalised; what the inter-relationship between these boxes is; the extent to which and through which approaches and instruments the EU's policy touches upon these sections of the matrix; and what the potential impact of the EU's policy can be. Hypotheses or research questions can be formulated with regard to each section of the matrix, to the interrelationship between these sections and to the role of the EU therein.[4] A scholar who wants to examine the extent to which the EU succeeds in creating or strengthening national judicial structures (the box 'legal sector / state level') can link this to, for example, the various boxes in the economic sector:

[4] See also Keukeleire, *op.cit*., 2013, p. 18.

- '*economic sector / individual level*' (the sustained availability of decent salaries for judges – or alternatively the need felt by judges to systematically resort to 'informal practices' to guarantee a sufficient income);
- '*economic sector / state level*' (the sustained availability of a budget for the Ministry of Justice required to pay decent salaries and of a sound chain of payment system to guarantee that the salaries are transferred to the judges);
- '*economic sector / global level*' (what are the macro-economic and financial rules of the game imposed by the IMF or the World Bank on that country and to what extent do these impact upon the national budget – and thus also the salaries on the individual level?).

Moving away from the economic sector, other boxes that can be subject to analysis may include:

- '*security sector / individual level*' (to what extent is the personal security guaranteed of judges who want to abide by and command respect for the rule of law?);
- '*legal sector / societal level*' (to what extent is 'rule of law' seen as a legitimate principle in a society and are courts and judges considered trustworthy?).

This last example is also related to the third dimension of Figure 1, 'internalisation', which is an essential dimension in view of the sustainability of structures and structural changes.[5]

[5] The various factors that influence the internalisation of structures can, in turn be subject to further dissection and to more specific research projects. See the literature in Introduction, footnotes 9 and 10.

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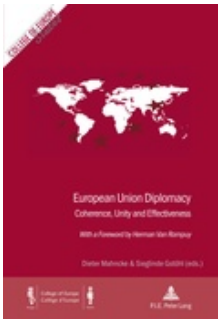

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