

Compliance without governance: the role of NGOs in environmental policy formation and implementation in Bosnia-Herzegovina

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Introduction

The influence of foreign donors, in particular the EU, on environmental policy frameworks, plus the availability of project funding for environmental NGOs in acceding and candidate states across post-socialist Europe has undoubtedly shaped action repertoires, issue agendas and patterns of mobilization (Jehlicka and Tickle, 2004). It has also led to rather high expectations and assumptions on behalf of scholars regarding the development of environmental governance in post-socialist states (Vandevveer and Carmin 2004). At a superficial level at least, assistance from a host of bilateral and multilateral donors has served to institutionalize 'green' civil society networks via the emphasis placed by donors on building the capacity of recipients to participate in, for example, environmental impact assessment (EIA) processes and fostering policy-making norms that emphasize inter-sectoral partnership and deliberation and a multi-level governance approach to decision making. Whilst such intervention may well have generated environmental governance in the Central and East European states that entered the EU in 2004, we reveal, through combined quantitative and qualitative analysis of the capacities of environmental NGOs in Bosnia-Herzegovina, the extent to which donor assistance has seemingly fostered little more than superficial professionalism without necessarily building or laying the foundations of environmental governance.

We use the recently established and still rather embryonic EIA process in BiH as a lens through which to examine the role and capacities of donor-supported NGOs in environmental governance. Scholars of EIA processes in post-socialist states have documented the extent to which EIA norms are often poorly implemented or translated into practice, resulting in local NGO networks playing rather ephemeral roles vis a vis investors or more powerful interests (Fagan 2001, Almer and Koontz 2004, Branis and Christopolous 2005). In this paper we argue, from the perspective of the small core of Bosnian NGOs engaged with EIA processes, that whilst the capacity of NGOs is in fact lower than generally assumed, the lack of environmental governance can only partly be explained in terms of the capacity of non-governmental actors; the critical role played by state actors in ensuring compliance, orchestrating the interaction between actors, and casting a 'shadow of hierarchy' are critical determinants of governance (Borzal and Risse 2005, Scharpf, 1978). The experience of other post-socialist states would suggest that the provision of donor assistance tends to focus exclusively on building the capacities of non-governmental organizations without simultaneously seeking to augment the functional capacity of the state.

By combining a quantitative analysis of the data gathered by the Regional Environmental Center (REC) on environmental NGOs in South Eastern Europe (including BiH), plus qualitative semi-structured interview data with leading organizations, the paper first examines the extent to which a decade or more of donor assistance channelled through ENGOS has led to an increase in capacity to engage in policy deliberation and to mobilize communities in the context of EIA processes. What is revealed from our research is a discrepancy between the REC survey data on ENGOS operating in BiH, and the reality of what the main organizations actually do and can achieve. Despite claiming to engage in policy deliberation and implying that they have organizational/institutional capacity, even the more prominent ENGOS are small and are rarely involved in policy networks or in EIA processes. Indeed, we illustrate that the increase in capacity of a small proportion of the non-governmental sector is restricted to a very narrow spectrum of organisations, which are less likely than small community-based organisations to engage in EIAs. We conclude that whilst the increased managerial capacity of a handful of ENGOS may reflect a degree of compliance with EU norms, it cannot and should not be equated with the emergence of environmental governance and the institutionalisation of non-governmental actors within policy networks.

The paper begins with an overview of the EIA process in BiH in order to establish the extent to which an EU compliant framework is in place. The following section provides a summary of the main theories and debates around the concept of governance, with particular reference to recent debates around hierarchies of power and the nature of interaction between state and non-state actors. The remainder of the article consists of an exposition of the quantitative and qualitative data on which our argument is based.

The Environmental Impact Assessment (EIA) process: EU norms and the development of the process in BiH

The benchmark against which post-socialist states intent on EU membership have developed their EIA legislation is the European Council directive (85/337/EEC) passed in June 1985, and the Council amendment to the Directive of March 1997 (97/11/EC). Although there were considerations for public consultation in both directives, the framework was amended again after the Aarhus Convention, which focussed on ‘public participation in decision-making and access to justice in environmental matters.’ The United Nations Economic Commission for Europe (UNECE) drafted the document in June 1998 and the European Community ratified it in October 2001. The updated EIA directive (2003/35/EC) from May 2003 explicitly includes environmental non-governmental organisations having an interest in the decision-making procedures and these NGOs should thus be consulted during the process. Annex V to the 2003 document outlines the framework for public participation. First, the public will be informed when there is an application for a new or updated environmental permit, when a project requires an EIA, how to receive information about a project, and possible outcomes of the EIA. Second, the governing authority must provide the public with the relevant information during and after the EIA. Third, the public should be allowed to express opinions about the environmental impact to the relevant authority. Fourth, the results of the public consultation should be taken into account in the final decision. Finally, the state should determine the

method of informing the public to ensure that the public can prepare and participate effectively in the EIA process.

It is stipulated within the directive that large infrastructure projects with major effects on the environment require an EIA, and the relevant state authority should determine whether an EIA is needed for other projects that may potentially have adverse environmental effects. If an EIA is needed, the developer must assess the environmental impact on human beings, flora, fauna, soil, water, air, cultural heritage sites, material assets, climate, and landscape, as well the interaction between these factors. The developer must also provide a description of the project, proposed mitigation measures, the data needed to make an informed assessment, and reasons for choosing a particular plan among possible alternatives.

The Bosnian EIA process in comparative perspective

The EIA laws in the two Bosnian entities (the Federation of Bosnia-Herzegovina and Republika Srpska) broadly adhere to the EU Directive. The first step in the process is to determine whether the construction and operation of the proposed infrastructure will have a major environmental impact. In the Federation of Bosnia-Herzegovina (FBiH), there is legislation stipulating which projects are required to have an EIA, while this list has not been ratified in Republika Srpska (RS). For other projects, the decision to conduct an EIA will be made by the environmental ministry at the entity, cantonal or municipal level depending on the size of the potential environmental effects.

Phase I: If an EIA is needed, the developer must submit the information as above (called the Preliminary Environmental Assessment) to the state-level ministry (in FBiH) or the entity level ministry (in RS) to determine the scope of the EIA study.

Phase II: In FBiH, the ministry defines the scope of the EIA and gives the developer a list of local institutions that are permitted to carry out the EIA. In RS, the project developer requests an EIA, and the ministry at the entity level out-sources the EIA to one of the institutions on a list of authorised to carry out the assessment. For projects with smaller impact, cantonal or municipal ministries execute the same function.

For projects with major or moderate potential environmental effects, the entity ministry requires that there are public consultations for 30 days during Phase I and after the draft EIA is produced. After the draft EIA is written, it is made available to interested parties for 30 days for feedback. Following the consultation period, the entity ministries assess the report, approve the EIA and send a request for an Environmental Permit. If there are transboundary or inter-entity environmental effects, then representatives from the affected parties are also allowed to join the public consultation. For smaller projects, the consultation is only carried out at the last stage (when the permit is to be issued). After the consultation, the relevant local ministries approve the EIA and issue a request for an environmental permit.

How does the process in BiH compare with what is formally in place in other post-socialist states, and indeed across Europe? In some ways, the Bosnian EIA framework appears to be more robust than some of its Western and Central European counterparts: the legislation ensures that large projects proposed in either entity tend to have consultations at the preliminary 'scoping' phase, while the practice has not

been the norm in Hungary (Palerm 1999, pp. 217-218), Italy (Del Furia and Wallace-Jones 2000, p. 477) and France (Glasson and Bellanger 2003, p. 618).

The key criticism leveled at the Bosnian process is, quite rightly, that it is constrained by a complex and ineffective state administration with weak overall capacity. However the literature on EIAs reports that this is arguably also the case in Italy (Del Furia and Wallace-Jones 2000, p. 478), Portugal (Goncalves 2002, p. 259), and Bulgaria (Almer and Koontz 2004, p. 486).

Any evaluation of EIAs in BiH is likely to focus on the potential disparity between what happens in practice as oppose to the formal framework. Yet the pan-European literature suggests that similar social and administrative concerns are being expressed throughout Europe, not just amongst the post-socialist states of Hungary (Palerm 1999) and Bulgaria (Almer and Koontz 2004), but also the Southern European countries of Portugal (Goncalves 2002, p. 250) and Italy (Del Furia and Wallace-Jones 2000), where there is also a less robust and long-standing tradition of public participation within the political-administrative decision-making process.

Quite reassuringly perhaps, studies of EIAs in the new post-socialist EU member states confirm that BiH is not an outlier amongst the so-called transition group of countries. The suggestion from individual analysis of these states is that EU conditionality has delivered minimal formal compliance with EU 'best practice' (i.e. the transposition of the legislation to adhere to EU standards), but without a capable state administration and significantly engaged citizenry, there is no substantive multi-level governance in the EIA process in these countries. Quite alarmingly, the situation appears to be the same in Greece, which entered what was then the EEC in 1986 (Androulidakis and Karakassis 2006).

Governance: a definition

The central claim of this paper is that, whilst EIA legislation in BiH is broadly compliant with EU norms, environmental governance is not emerging in part because efforts of international donors have privileged building the capacities of non-state actors without recognizing that the absence of state capacity acts as a key determinant of effective governance. This section provides an overview of the concept of governance with the intention of highlighting the various embedded assumptions about power, the role of states/governments, and to emphasize the importance of moving beyond neo-liberal notions of the concept or depictions that implicitly and rather uncritically suggest that governance is about non-hierarchical interaction (Rosenau, 1995).

Whilst conceptual and theoretical contradiction tends to focus on why *governance* is being used instead of *government* and whether as an explanatory tool governance helps to locate or further obfuscate power (Rosenau 1995, Rosenau and Czempiel 1992, Barnett and Duvall 2005), the common denominator of all interpretations of the concept is the emphasis placed on multiple locations of power, authority and control that are both institutionalised and informal, involve state and non-state actors; what Pierre describes as 'the conceptual or theoretical representation of co-ordination of social systems and, for the most part, the role of the state in that process' (Pierre, 2000, p. 3), or what Mayntz refers to as institutionalized modes of coordination through which collectively binding decisions are adopted and implemented (2003).

However, not only is political power portrayed as being widely dispersed across disparate formal and informal agents, with the architecture of governance, in contrast to that of government, being far less fixed and institutionalised, but implicit within

most conceptualisations of governance is the embedded neo-liberal notion that the dispersal of power involves both the retraction and reconstitution of state power vis-à-vis the market and the non-governmental (or 'third') sector.

Power, hierarchies and new modes of governance

Whilst the plurality of actors and the co-ordination of diversity are largely uncontested components of the concept, grasping the configurations of power and the interaction between actors, and the contexts in which governance as a mode of co-ordination and decision-making is likely to occur are critical concerns.

To this end, scholars have been drawn to distinguishing between three broad ideal types of institutionalized rule structures: hierarchy, competition (market) systems, and negotiation systems (Borzel 2007, p. 4). The interaction between dominant and subordinate actors is referred to in the literature as 'coupling': in hierarchies a relationship of domination in which the power and influence of subordinate actors is constrained is referred to as 'tight coupling' (Scharpf 1997, pp. 36-50). It is immediately apparent that potential for any significant deliberation and the involvement of non-state actors is possible only in the context of competition or negotiation systems; political hierarchies will restrict access to all but public actors. A further distinction is made in the literature between the actor constellations occurring in negotiation systems and the level at which such negotiation is, or is not, likely to occur: trans-governmental negotiation systems (high-level diplomacy between states around, for example, international treaties or bi-lateral co-operation) tend to engage public actors in conventional, classic diplomacy; intermediate negotiation systems (inter-state policy development and sectoral co-operation) are most likely to engage non-state actors, including business and civil society representatives, and is thus the most probable location of 'governance', or 'new modes of governance' (Mayntz 2003, Rhodes 1997).

For some critics the problem with using governance is that it is a concept of limited analytical value that can only be used objectively to describe the diversity and variation in political decision making and control (Smouts 1998, p. 81). If it is employed as a prescriptive model for state and policy-making reform, its objective value rapidly diminishes: it cannot convincingly or effectively interpret the roles of actors, nor provide commentary on the asymmetries of power without either embedded neo-liberal assumptions coming to the fore, or a normative premise that effectiveness is possible and that 'an issue (can) be managed, a problem resolved (through) an accommodation of mutual interests' (Smouts 1998, p. 88). It is argued that attempts to use governance prescriptively as a means to fashion actor or policy networks in development contexts either fail to unmask the asymmetries of power, or implicitly suggest that the power of certain actors – normally the state – should decline vis-à-vis that of others – usually the market or NGOs.

However, recent scholarly analysis looking at the changing dynamics of state power in post-socialist states acceding to the EU have gone some way to challenge and move beyond this perceived embedded bias. Scholars looking specifically at the Central and Eastern Europe states have used the governance concept more prescriptively, both to locate power and to theorize the interaction between state and non-state actors, whilst acknowledging the diffusion of power between the two. Rather than endorse neo-

liberal assumptions regarding the need for the state to relinquish control and authority, or for NGOs simply to gain more power, they identify the determinants of new forms of interaction that potentially empower both state and non-state actors (Borzel et al. 2008). Whereas much of the 'governance beyond the state' analysis emphasizes the extent to which such non-hierarchical decision-making and coordination (or 'new governance') has increasingly become the norm (Hix 1998, Swyngedouw 2005), recent studies focusing on the Europeanization of post-socialist states have questioned whether such non-hierarchical modes of governance do indeed deliver better public policy, and if not, why this is so (Borzel et al. 2008).

The predominance of conventional hierarchical patterns of decision-making in the new EU-member states of CEE has been explained in terms of an absence of governance capacity on the part of both state and non-state actors (Borzel et al. 2008). What has been observed in the acceding states is low levels of co-operation between the sectors that rarely extends beyond superficial consultation, and if it does occur at all, does so only in the context of EU policy, where public or civil society participation is mandatory or a requisite for funding and assistance (2008, p. 2). Drawing on Mayntz and Scharpf's notion of the 'shadow of hierarchy', Borzel (2007) argues that the critical driver for closer and more effective participation between state and non-state actors is the capacity of policy makers to hierarchically impose outcomes in contradiction, if necessary, to private actors and civil society. In other words, non-hierarchical deliberation and the open exchange of opinion is most likely to occur within a framework in which compliance will ultimately be pursued by state actors or a policy making elite, who will exercise their authority to impose outcomes. Building non-hierarchical modes of governance in which state and non-state actors interact on an equal footing is therefore dependent on the fundamental capacity of elites.

Whilst measures to strengthen the capacity of non-state actors are certainly worthy, the critical driver of new modes of governance is mutual resource dependency: state actors need to become increasingly dependent on the resources of non-state actors to effect policy change and implementation, and vice versa (Rhodes 1997, Scharpf 1978). Thus, establishing such interaction in transitional and post-conflict states, where state capacity is likely to be limited by depleted resources, is particularly crucial insofar as it will encourage the emergence of 'webs of relatively stable and ongoing relationships which mobilize and pool dispersed resources so that collective (or parallel) action can be orchestrated toward the solution of a common policy' (Kenis and Schneider 1991, p. 36). In other words, the greater the involvement in decision making of affected non-state actors, the more likely the implementation and acceptance of policy outcomes, even if the interests of civil society actors have not been fully accommodated or are reflected in the final piece of legislation (Heritier 2003).

Drawing on transaction cost and principal-agent theories,¹ it might be assumed that governments and state actors in post-socialist and post-conflict states, with depleted

¹ Transaction cost theory (c.f. Heritier 2003, Eppstein and O'Halloran 1999) argues that delegation and cooperation between state and non-state actors takes place to reduce the costs imposed by lengthy negotiations and discussions, thus providing an incentive for both sides to co-operate. Principal-agent theory argues that the lack of time and expertise on behalf of policy elites and government officials

state capacity, may be more inclined to engage non-state actors because of the additional value (knowledge, expertise) they can bring to decision-making and policy implementation. However, the flaw in this argument is essentially that when the state is too weak, and the capacity of the non-state/NGO sector is also undeveloped, neither side is provided with sufficient incentive to engage the other. Indeed, what is likely to emerge is ‘agency capture’ or ‘problem shifting’ whereby authority becomes shared between state and non-state actors with both lacking sufficient capacity (Hellman, Jones and Kaufmann, 2000). This raises a fundamental concern regarding the propensity of donor intervention to build the capacity of non-state and private actors to the point at which they have greater capacity and authority than state actors. The risk here being, first, that weak states are unlikely to recapture regulatory capacity once authority and power have been transferred to NGOs or the market, and second, over-empowering non-state or private actors, who are likely to bear the costs of compliance, can lead to ‘lowest common denominator’ policy decisions and solutions.

Under circumstances in which there is parity in the low level of capacity held by both state and non-state actors, donor-driven attempts to introduce and to stimulate new modes of governance can actually encourage the transfer of authority away from already demoralised and depleted states instead of fostering reform and effective public management. However it is not simply a question of donor assistance needing to focus instead on building the capacities of both state and non-state actors in situations where there is an absence of sufficient mutual resource dependency to stimulate new modes of governance. The capacity of the state to enforce policy outcomes is paramount and the outcome of intervention should not be to equate, or level, the capacity of both actors. Rather, the state needs to command a ‘shadow of hierarchy’ over non-hierarchical deliberations if policy effectiveness is to be augmented. If state actors perceive their role to be ephemeral and to be engaging with non-state actors from a position of weakness, then they are unlikely to engage positively in new modes of governance. Equally if there is a sense on behalf of state actors that interaction will result in loss of their agency and autonomy this will equally act as a disincentive for new modes of governance (Hellmann, Jones and Kaufmann 2000). Moreover, if non-state actors distrust the capacity of state actors to be able ultimately to enforce a mutually agreed decision, then this will also act as a disincentive for partnership and governance engagement (Mayntz and Scharpf 1995). Whilst the shadow of hierarchy will generate a desire on behalf of non-state actors to co-operate and engage in new modes of governance, and the degree to which state actors are capable of resorting to hierarchical modes of governance will increase such willingness, the reverse is also true for state actors: the greater their capacity for hierarchical policy-making, the less impetus there will be for co-operation with non-state actors (Mayntz 2004). This assertion is based on the rationalist claim that state actors seek to maximize or at least maintain their autonomy and capacity within policy processes, and will only relinquish a degree of autonomy to non-state actors if this delivers additional capacity. In other words, for state actors there has to be additional value derived from new modes of governance compared to the value obtained from hierarchical and more conventional forms of governance (Kohler-Koch 1996). In sum, as Borzel et al note, ‘state actors have to possess sufficient capacities in terms of both resources and autonomy in order to cast a credible shadow of

(principal) to deal with increasingly complex problems acts as an incentive to engage non-state actors who will provide knowledge and expertise (c.f. Moe, 1987).

hierarchy so that non-state actors have an incentive to co-operate, and state actors are not afraid of being captured. But...these state actors must not be too strong in order to provide an incentive for state actors to seek cooperation with non-state actors' (2008, p. 6).

In terms of understanding why new modes of governance may not occur or flourish, scholars such as Migdal (1988), Weiss (1998) and Evans (1995) have argued that resources and autonomy are not sufficient explanatory variables; much will depend on the specific political culture and dominant attitudes towards state-societal interaction. As Borzel (2003) notes, 'this is particularly true for countries with an authoritarian legacy and no sustained tradition of institutionalized state-society relations'. In post socialist states the emergence of new modes of governance is also constrained by the fact that non-governmental organizations and other non-state actors are perceived by both the elite hierarchies and the masses to be unaccountable and therefore non-democratic and illegitimate policy makers and enforcers (Sissenich 2007, Howard 2003, Fagan 2005). In post-conflict situations (such as BiH) or in cases in which state formation and sovereignty remain in their infancy (BiH, Kosovo and Serbia), the prospects for new modes of governance are even more remote.

REC data

The initial starting point for this research was the 2006 survey data compiled by the Regional Environmental Center (REC) on environmental movements in the states of South Eastern Europe.² The data was used to identify Bosnian environmental NGOs involved, or claiming to be involved, in EIA processes, and to assess their capacities. The REC field offices in Bosnia-Herzegovina have compiled a list of environmental organisations since 1997. The list was created through the inclusion of organisations that had attended REC activities, received the REC newsletter, and personal contacts.³ In 2001, when REC conducted the previous survey of environmental organisations, there were 127 Bosnian organisations on the list, of which there were 70 respondents. For the 2006 survey, the REC questionnaire was sent to approximately 200 organisations that address environmental issues, with 88 responses.⁴

As a measure of the capacity of ENGOs there are a number of significant shortcomings with the REC data. Firstly, whilst the respondents to the 2006 questionnaire represent a pretty good estimate of 'active' environmental civil society organisations, the threshold for inclusion on the REC database is, however, quite low: to confirm their status as 'active', representatives from organisations could send responses either electronically or via post, and the surveys were translated into local languages. Thus, only organisations that did not have the capacity for the minimal correspondence necessary for inclusion were excluded, the majority of which were

² http://www.rec.org/REC/Programs/NGO_support/PDF/ngo_directory_5th_ed.pdf (accessed 30th January, 2009)

³ Interview with Jasna Draganic, REC, Sarajevo, 4th November 2008.

⁴ However, one of the respondents has been duplicated, so the second entry for the 'Association for Development, Improvement and Promotion of Ecological Agriculture, Tourism and Environment Protection' in Tuzla has been omitted from the following analysis. The high non-response rate could be the result of name changes for these organisations, or simply that some organisations ceased to operate. Entries are not deleted from the full list REC list of Bosnian environmental civil society organisations, even if they are dormant. However, it is still possible to carry out a quantitative analysis of the responses, as others have done with the data from CEE (Carmin et al. 2008, Carmin 2008).

likely to be defunct. The findings from the analysis should, therefore, be viewed with some caution, since it is not possible to employ probability sampling to obtain a representative group of organisations.

A second concern is that the information contained in Part A of the questionnaire is quite basic and not particularly useful for detailed analyses. The budgetary information is coded in categories, not as a numerical variable, so it is not possible to reliably obtain basic descriptive statistics such as the mean and standard deviation. The sources of funding are dichotomous, i.e. organisations have a certain type of funding or do not. There is no additional information about the proportion of each funding source as a part of the budget. For example, if 95% of an organisation's budget is from domestic sources, and 5% from foreign sources, the data would only reflect that the organisation is funded by both, not that the funding is predominantly domestic. There is a similar problem with the way activities are reflected in the questionnaire. It is possible to ascertain whether an organisation claims to be involved in an activity, but not the depth of involvement. Moreover, REC did not distinguish between 'foreign' and 'EU' sources for any of the SEE territories, although it did so for the CEE surveys.

More fine-grained information about the proportions of funding and the amount of involvement in particular activities was collected in Part B of the questionnaire. However, only aggregate analyses of these data were included in the REC discussion on Bosnia-Herzegovina (2006, pp. 59-65), and none of the quantitative findings was reported.⁵

Instead of examining the descriptive statistics of individual activities, other analyses of the REC data have clustered the list of activities into six clusters or 'factors' (Carmin 2008, p. 6, Carmin et al 2008, p. 34): information dissemination, education/training, environmental management, civil society support, policy promotion and direct action. The coding scheme for the six factors was derived from the list of activities in the CEE questionnaire. We adopted a similar approach, though as the format of the SEE questionnaire is slightly different, the coding scheme needed to be changed.⁶

⁵ Our request to access Part B of the questionnaire data was turned down by the REC country office in Sarajevo in November 2008. Since we did not have access to the dataset from the responses to Part A of the REC questionnaire, we wrote a Perl script to download and parse out the information from the individual online directory entries found at http://www.rec.org/REC/Databases/NGO_Directory_SEE/Find.html. The resulting data were saved as a semicolon-separated plain text file, which was then read into SPSS. As mentioned above, one of the NGOs from Tuzla is listed twice on the database, so the duplicate entry was deleted. Therefore, there are 87 entries in the directory, not 88 as indicated by REC. The descriptive statistics of priority topics and activities were consistent with the summary by REC (2006: 57). The top five topics addressed by the organisations are: environmental education (92%), nature protection (82%), waste issues (78%), sustainable development (61%) and environmental legislation (58%). The top three activities are: awareness raising (98.9%), conferences/meetings (73.6%) and public participation (72.4%).

⁶ The activities in the questionnaire were clustered into six 'factors'. Direct action (Factor 1): campaigning/protest actions/direct action. Community and civil society support (Factor 2): community organizing and planning (LA21, LEAP); legal advocacy; negotiation and dialogue facilitation; networking; public participation. Policy advocacy (Factor 3): lobbying. Information dissemination (Factor 4): conferences, meetings; information dissemination; media/press; public meetings; publishing. Environmental management (Factor 5): advisory services; environmental management;

[Table 1 about here]

Activities

We first used the data to compare the capacities of Bosnian ENGOs with their counterparts in the new member states of the EU (Table 1). There are immediately some similarities between the CEE and Bosnia-Herzegovina data. In both cases, a significant number of organisations claim to be involved in information dissemination and education/training. Indeed, the proportion of Bosnian organisations claiming some involvement in environmental management is higher than in CEE. With the exception of the Eko Viking Association in Visoko, all other environmental civil society organisations reported being involved in one or more of the following: advisory services, environmental management, fieldwork, monitoring/measurement (technical), and policy implementation. The level of civil society support among Bosnian groups also seems higher than for CEE countries. This means that organisations are involved in one or more of the following: community organizing and planning (LA21, LEAP); legal advocacy; negotiation and dialogue facilitation; networking; and public participation. The levels of direct action are higher in Bosnia-Herzegovina, though this is the smallest factor (as in CEE).

Funding

If we look at the budgetary and funding situation among environmental civil society organisations in Bosnia-Herzegovina, the majority of the groups have an annual budget of less than 5000 Euros or no budget at all. However, there is a sizeable proportion of groups that have budgets over 50000 Euros per annum. Compared to the 2001 survey, there is a widening gap between organisations with larger budgets and those with smaller budgets (REC 2006, 58), though the total number of environmental groups is increasing.

[Table 2 about here]

To see whether there are any patterns between annual budget and other factors (following Carmin 2008, p. 9), we recoded the budget variable from eight categories to a dichotomous variable (i.e. whether organisations had an annual budget of more than 10000 Euros). One might expect certain 'factors' being more prevalent in certain groups. For example, policy-related work requires a more sophisticated administration, and therefore, a higher budget. By contrast, groups with less money might resort to direct action. A binary logistic analysis was done with the factors and funding sources as explanatory variables, with staff, volunteer and registration time as controls. Since the distributions of these controls were highly skewed, the natural log was taken. The results are displayed in Table 3.

[Table 3 about here]

Only two of the variables are significant at the 5% level. There seems to be a negative relationship between funding from domestic foundations, which means that environmental civil society organisations with funding from domestic foundations

fieldwork; monitoring/measurement (technical); policy implementation. Education (Factor 6): education.

were less likely to have a higher budget. Also, there was a significant positive relationship between lobbying (Factor 3) and budget, which means that groups that are involved in lobbying tend to have higher annual budgets. Since lobbying effectively requires adequate staffing and a high degree of administrative capacity, this result is unsurprising. However, there are no other distinguishable patterns between annual budget and the other factors or funding sources.

Insofar as the main focus of this paper is the role of environmental NGOs during EIA studies, it is instructive to investigate whether there are patterns in the type of organisations that claim to focus on EIAs. By setting up a binary logistic regression with the dependent variable being whether NGOs indicate involvement in EIA studies, there are a number of possible hypotheses to test:

1. If the role of NGOs is predominantly as community organisers for public participation, then there should be a relationship between groups that are involved in civil society support (Factor 2).
2. On the other hand, if NGO involvement is mainly as technical consultants, then there should be a link between environmental management (Factor 5) and EIA involvement.
3. If capacity building for civil society in Bosnian EIAs is largely driven by external donors, then there should be a significant relationship between EIA involvement and foreign sources of funding.
4. Navigating the recent EIA laws requires a high level of legal knowledge, technical capacity and administrative capacity. It is more likely that organisations with more staff, volunteers and higher budget are more likely to be involved in EIA studies.

The results of the analysis are in Table 4.

[Table 4 about here]

None of the patterns hypothesised about EIA involvement is evident in the analysis. The one variable significant at the 5% level is education, which means that organisations that are involved in education-related activities are more likely to be involved in EIA studies. This may be the case since the capacities for knowledge dissemination and local community organisation are similar for education and EIA involvement.

One possibility for the lack of a budgetary or funding profile is that the dependent variable is itself vaguely defined. Involvement in an EIA could mean offering an expert technical opinion at a public hearing, helping with the organisation of the public hearing, or simply attending the hearing (with or without any active participation). To examine how NGOs are actually involved in EIA studies, it is necessary to conduct qualitative research on the organisation that claim EIA involvement. This will be the focus of the next section.

Qualitative data

To examine the particular roles of NGOs in EIA processes, we identified the organisations that claimed involvement in EIAs in the REC survey.⁷ Semi-structured interviews were conducted with most of the NGOs in November 2008.⁸

The main finding from the interviews is that the involvement of NGOs in policy deliberation in general and EIA processes in particular is exaggerated in the REC data. Many of the organisations have little substantive contact either with government or social mobilisation of the local community. For example, whilst Neolit has been quite active in certain campaigns around environmental protection within Sarajevo, its activities are mainly limited to letter writing and printing information leaflets.⁹ Eko Jasenica has successfully mobilised the local community for clean-up operations around Jasenica, but it has never actively participated in a public hearing. It can only campaign through the local media and does not directly contact the government.¹⁰ Although the NGO Wigwam is committed to the preservation of nature, it sees itself as a 'club' and therefore interacts primarily with its members. Wigwam conveys its message through the media and does not directly lobby the government nor does it participate in public hearings.¹¹

It is also the case that some of the organisations listed in the REC database are not specifically environmental NGOs are involved in ecological issues as part of a wider agenda and have not specialised in the environmental arena. The Banja Luka based organisation LIR (Lokalna Inicijativa Razvoja) defines itself as a 'development' organisation, but some of its projects have environmental aspects.¹² Similarly, BH Solidarnost focuses on human rights in Tuzla canton, though aspects of its work relate to environmental issues.¹³ Kontakt Plus is even broader in scope, working on ecological, development, health, social and faith issues. Whilst their projects are mainly in the realm of ecology, this reflects the fact that they have been more successful in securing funding in this area than a particular commitment to specializing in environmentalism.¹⁴ Some of the organisations admitted that they had planned to specialise in EIA studies but never did. One such organisation is the Youth Association of Scientific Research of RS. Though members of the NGO had technical expertise, they were unsuccessful in securing external funding and as a consequence the organisation is now 'not functioning'.¹⁵ The main officers of the NGO are now involved in the Institute for Protection, Ecology and Informatics (IZEI) in Banja

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⁸ Gathering information about the organisations' activities was done in two stages. First, organisations were e-mailed questions in English and requests were made for interviews. For the NGOs that did not respond in the first stage, the same questions were re-sent in local languages without a request for an interview. Follow-up phone calls were made for the remaining organisations that had not responded. NGOs that had replied in the first stage were interviewed. A summary of the responses is also included in Appendix 1. Eko-Jasenica had already been interviewed in a previous field visit in February 2008. The research has been funded by the UK Arts and Humanities Research Council (AHRC) as a part of the three-year "EU Compliance in Bosnia and Serbia" (ECoBHAS) project.

⁹ Interview with Helena Polic, Neolit, Sarajevo, 4th November 2008.

¹⁰ Interview with Dragan Soce, Eko Jasenica, Mostar, 15th February 2008.

¹¹ Interview with Kemal, Wigwam, Sarajevo, 7th November 2008.

¹² Interview with Slavisa Jelusic, LIR, Banja Luka, 5th November 2008.

¹³ Interview with Danijel Senkic, BH Solidarnost, Tuzla, 3rd November 2008.

¹⁴ Interview with Osman Abadzic, Kontakt Plus, Tuzla, 3rd November 2008.

¹⁵ Interview with Predrag Ilic, IZEI, Banja Luka, 5th November 2008.

Luka. IZEI is one of the bodies registered to carry out EIA studies in RS. IZEI receives little funding from the government, so it receives its income from completing environmental studies and other related projects.¹⁶

Very few NGOs have the professional expertise to effectively engage with the developer and local governmental authorities. The EIA process is still seen as a technical exercise, so organisations that cannot use the proper 'scientific' language are excluded from the process, and are unable to act as a conduit between the developers and the public. This therefore leads to a de-coupling of 'technical' organisations from those deemed to be 'non-technical' and involved in 'soft' issues; for instance, CESD, a prominent Bosnian environmental NGO occasionally involved in EIA studies, is connected to the Institute of Hydrology in Sarajevo, so it has access to the university resources and has a body of technical expertise. Most of its work related to EIA studies is to provide expert opinions on the environmental impact of certain installations. CESD is not involved in mobilising the local community to participate in public consultations.¹⁷ By contrast, Ekotim consists of 'enthusiastic people' that have been involved in EIA public hearings for the canyon road in Rakitnica (Fagan 2006), the Klas bread factory and Corridor 5C.¹⁸ However, they do not have the technical expertise to address the supporting documents for EIA studies, and they do not have the staffing to take on every request. For example, Ekotim found it difficult to read the maps indicating the proposed route of the highway through Corridor 5C.¹⁹ Smaller NGOs such as Eko-Jasenica have similar problems. Since they have a very limited budget, it is difficult for them to pay for a consultant to read the documents.²⁰ Thus, it is difficult for these 'non-technical' organisations to interface with the technical aspects of the EIA process.

The interview data also confirmed what is suggested in the REC survey: there is a widening gap between the larger and smaller environmental NGOs. Whilst local ENGOS are more likely to become involved in EIAs, they tend to be quite small, lack capacity and donor revenue, and are inclined therefore to focus their resources on obtaining funding to survive instead of social mobilisation around public consultations. The small core of larger NGOs that have been successful in securing project funding do not regularly become involved in EIA public consultations as, in general, the donor-funded projects tend to focus more on tangible outputs such as printed materials, discrete educational initiatives and green service provision. Both the well-funded and less well-funded NGOs agreed that external funding favoured a few large NGOs instead of sharing the money more widely.

The director of REC (Sarajevo) felt that donors should 'take care of both large and small NGOs', and that there are 25-30 NGOs in Bosnia-Herzegovina that do not involve smaller organisations in their activities or support their campaign.²¹ However, the president of Ekotim noted that without the 5-10 relatively strong ENGOS with EU funding and the capacity to mobilise resources, the situation would be more difficult for smaller local organisations.²² Our interview data suggest that overall the objective

¹⁶ Interview with Predrag Ilic.

¹⁷ Interview with Tarik Kupusovic, CESD, Sarajevo, 4th November 2008.

¹⁸ Interview with Rijad Tikvesa, Ekotim, Sarajevo, 6th November 2008.

¹⁹ Interview with Rijad Tikvesa.

²⁰ Interview with Dragan Soce.

²¹ Interview with Jasna Draganic.

²² Interview with Rijad Tikvesa.

of attracting donor funding via short-term projects distracts organisations, whether large or small, from involvement in EIAs and other community-based activities. For example, in response to donor pronouncements on trans-national and cross-regional projects, one of the leading figures in BH Solidarnost, a well-established ENGO that had been involved in several local campaigns and EIAs, started a separate organisation (FRONT) solely as a means of accessing donor revenue.²³ A spokesperson for the organisation IZEI, who has been involved in the Youth Association of Scientific Research of RS for several years, felt that ENGOS are only getting involved in issues with a regional focus since it is these issues that catch the attention of international donors.²⁴

Smaller organisations can also be dependent on the larger national organisations as 'sub-contractors' on certain projects, so there is a 'hub-spoke' relationship between national and local organisations, which leads to little co-operation between local organisations. Neolit worked in Kakanj under the guidance of a larger NGO, Fondeko.²⁵ Many of the NGOs interviewed had done work on REC projects, including Ekotim, Kontakt Plus, LIR, Eko Zeleni (Tuzla), and AU Eko-Logic.²⁶ However, there is little evidence of smaller organisations working together. In fact, local environmental organisations are sometimes in conflict, trying to justify why certain installations should not be built in their community, instead of working together for the most 'green' solutions. For example, in Lukavac the local ENGO, Eko Zeleni, found itself in opposition to other organisations and the local community in supporting the construction of a dump and the ensuing EIA. Instead of working together through the EIA process to ensure that the detrimental impact of the dump was minimised, NGOs in the Tuzla canton became embroiled in NIMBY campaigns and ended up disagreeing with each other despite the fact that there was consensus on the need to construct dumps.²⁷

The entity laws on environmental protection necessitate a robust consultative process to include the public voice, yet this has not emerged due in large part to NGOs lacking capacity for environmental governance and despite numerous donor initiatives supposedly to address this. Examples abound of NGOs not getting involved in EIAs: a former member of the Youth Association for Scientific Research in RS noted that there were no NGOs present at a public hearing for a proposed chicken farm in Batkovic; Ekotim was unable to comment on proposals for the Sarajevo bypass in 2007. The director of the REC country office said that in general, NGOs tend to only mobilise around issues in their locality and were otherwise apathetic.²⁸ According to Ekotim, local NGOs are often reluctant to get involved in public hearings since certain projects promise economic gains for the local community, and organisations fear being brandished as opponents of much needed investment or development.²⁹ As AU Eko-logic pointed out, communities are often economically dependent on a particular factory, so environmental NGOs are wary of taking an unpopular stance.³⁰

²³ Interview with Danijel Senkic.

²⁴ Interview with Sanja Tepic, IZEI, Banja Luka, 5th November 2008.

²⁵ Interview with Helena Polic.

²⁶ Interviews with Rijad Tikvesa, Osman Abadzic, Slavisa Jelisic. Additional interviews: H. Simicic, Eko Zeleni, Tuzla, 3rd November 2008; and Dragan Chomich, AU Eko-Logic, Banja Luka, 5th November 2008.

²⁷ Interview with H. Simicic.

²⁸ Interview with Sanja Tepic.

²⁹ Interview with Rijad Tikvesa.

³⁰ Interview with Dragan Chomich.

Weak state capacity?

Whilst the qualitative research reveals the lack of NGO capacity for EIAs, the interview data also suggests that ENGOs' engagement is also constrained by the absence of state/governmental capacity. All the organisations interviewed for this research indicated the importance of state involvement for effective governance during EIA processes. Indeed, the director of REC, when asked to clarify the nature of weak state capacity, pointed to the fact that the responsible ministries are either woefully under-staffed, or there is not enough money to hire people with the requisite skills. Moreover, there is a need for more officials within the ministries to be able to communicate in English.³¹ A related issue is that within government agencies responsible for EIAs there is a high turnover of staff and thus the reservoir of expertise is low. This then allows the consultant (hired by the project investor) to exert a powerful role in determining the terms of the process, such as which organisations are 'stakeholders', and provides an opportunity for corruption and manipulation.³² LIR, which has provided expert opinions for Bosnian studies on greenhouse gases, noted that the quality of EIA studies is quite poor.³³ Even in cases where NGOs seem to have the capacity to contribute to environmental governance, their role in EIAs is constrained by a lack of state capacity. For example, whilst Zelena Brda has secured funding for projects to preserve karst habitats in Eastern Herzegovina, and forged links with other NGOs in Bosnia, Croatia and Montenegro, as well as local media and community members, the role of this organization within EIA processes has been constrained by a lack of transparency with regard to how state actors manage natural resources near Trebinje.³⁴

However, arguably the most fundamental constraint on the emergence of governance interaction between state and non-state actors is the the legacy of the highly decentralised post-war Bosnian state (designed to ensure territorial and non-territorial autonomy for Serbs, Croats and Bosniaks). The fact that there is no clear responsible authority for EIAs perfectly reflects the overall political paralysis that stymies any attempt to strengthen the functional capacity of the state or augment policy enforcement. In contrast to the CEE states, there is no central state Environmental Protection Agency or ministry; much of the authority is devolved to the two sub-state entities, Republika Srpska (RS) and the Federation of BiH (FBiH). The environment portfolio is often part of a larger ministry. For example, environmental issues are handled by the Ministry for Civil Engineering, Physical Planning and Ecology in RS, and by the Ministry for Environment and Tourism in FBiH. Moreover, there is an additional level of cantonal authority in FBiH. The ten cantons also have separate ministries for environment and thus for a certain project, developers may receive planning permission from the municipality, canton or entity authority. The consequence of this is that developers, NGOs and the authorities themselves are uncertain about which level of government has jurisdiction over the process, including the organisation of EIA studies.

³¹ Interview with Jasna Draganic.

³² Interview with Tarik Kupusovic.

³³ Interview with Slavisa Jelusic.

³⁴ Interview with Brian Lewarne, Devon Karst Research Society, London, 24th October 2008. The Devon Karst Research Society co-operates with Zelena Brda (Trebinje).

Conclusion

From the perspective of the EIA process in BiH, our research challenges the implicit assumption that compliance with EU legal norms and procedures is likely to result in the emergence of new modes of governance. Essentially we contest the suggestion that progress in the former realm should be seen as tacit evidence of imminent new patterns of political interaction or decision-making. What our research suggests is that the capacity of ENGOs to engage in EIAs is overestimated by the REC data, and thus assumptions regarding the impact of donor-driven capacity-building assistance ought to be subjected to careful scrutiny. Indeed, any assumptions about increased capacity must be tested against qualitative data generated from interviews with recipient NGOs. Whilst it is evident from the research that a small cohort of ENGOs has clearly benefited from capacity assistance and these organisations have increased their professionalism as a consequence, this does not seem to enable them to deploy their newly acquired skills in the context of environmental governance; even the organisations with the most revenue and the greatest expertise play an ephemeral role in EIAs and rarely engage the state at a higher level or with any regularity.

From the perspective of the recent literature on new modes of governance, we would argue that this apparent anomaly is best understood in terms of weak state capacity acting as the most significant constraint on environmental governance and the efficacy of NGOs within EIA processes. The emphasis placed by international donors on supporting the development of NGOs without also focusing on the absence of state capacity is seemingly the critical issue: that a core of Bosnian ENGOs have, courtesy of the EU and other donors, augmented capacity to deploy towards EIA processes means very little if the authority of the state is opaque and uncertain, and the capacity of state officials to conduct EIAs remains depleted.

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