Bonds of Steel or Bonds of Straw? International Treaties and Anticorruption Policy in Slovakia[1]

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Bonds of Steel or Bonds of Straw? International Treaties and Anticorruption Policy in Slovakia. The paper is a case study of influence of international organizations on national/domestic policies. It analyses effect of major anti-corruption conventions of three organizations – OECD, Council of Europe and UN – on domestic policy in Slovakia to see whether these conventions matter for what actually happens in domestic policy. More broadly, it also looks at whether the current political science and sociological perspectives, with their dichotomy of external incentives and social learning, are appropriate for understanding the mechanisms through which such conventions operate. The conclusion is that, for domestic policymakers, international anticorruption conventions are not inherently either bonds of steel or bonds of straw. The external commitment would be used by domestic champions, but is not necessarily sufficient to override the domestic opposition.
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Introduction

Influence of international organizations on domestic policies has been extensively, but unevenly researched. While the impact of the European Union (EU) on its members is one of the key topics of contemporary political science in Europe, much less attention is paid to impact of other international organizations and also to interaction between the EU influence on its member states and what other international institutions do.

In this paper we adopt a case study approach to examine influence of international organizations on national/domestic policies. We look at anti-corruption policies in Slovakia and three organizations – Organisation for Economic Co-operation and Development (OECD), Council of Europe (CoE) and United Nations (UN) – that have invested significant effort over the last two decades to develop a set of legal instruments to influence national policies in this area. Among others, they have developed a range of treaties and conventions which they expect to be adopted by the member states and then transposed to the national legislations. These have been signed by all or nearly all EU member states.

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Do these conventions matter for what actually happened in domestic policy – are they unbreakable bonds of steel or rather feeble bonds of straw? How and why do they influence what is happening 'on the ground' in the member states? Are the current political science and sociological perspectives, with their dichotomy of external incentives and social learning, appropriate for understanding the mechanisms through which such conventions operate?

To the best of our knowledge, there is no scholarly literature addressing these questions from a political science perspective in the context of legal instruments such as treaties and conventions. There is a plethora of literature from various disciplines on how international organizations (e.g. OECD, World Bank and International Monetary Fund (IMF) influence domestic policies through their surveillance mechanisms and recommendations. The World Bank and the IMF also have extensive experience in using financial conditionality – conditioning financial support on policy change – and this has also been studied ad nauseam. As far as we know, there is also no research on impact of anticorruption conventions on domestic policy.

The paper is divided into six sections: introduction, theoretical background, methodology, findings, their interpretation and conclusion.

International Anticorruption Conventions and Their Potential Pathways of Influence over Domestic Policy

In this section, we are going to introduce available information on the international anticorruption conventions and their potential pathways of influence over domestic policy. It starts by briefly describing the three organizations studied in the paper and the multilateral legal instruments they have developed to combat corruption by binding countries to a set of commitments. It then examines what the literature tells us about mechanisms through which they can influence domestic policy-making. Due to the important role of the European Union in policymaking of the new member states, particularly prior to their accession, we are also going to review how the EU accession took place with regard to anticorruption policy and what the points of interaction with the conventions studied here were.

The Council of Europe (CoE) is a regional institution focusing on promoting human rights, democracy and the rule of law. Founded in 1949, it currently has 47 members including all the EU member states. Slovakia became a member of the CoE in 1993 following its independence. It works with three international anti-corruption conventions – Criminal Law Convention on Corruption (Council… 1999a), Additional Protocol to the Criminal Law Convention on Corruption (Council… 2003) and Civil Law Convention on Corruption (Council… 1999b). The Criminal Law Convention requires criminalization of corruption of the public as well as private persons

and it also deals with the bribery of the officials in the international organizations. It also defines formal authorities and their cooperation that are expected to fight against corruption. The Civil Law Convention requires signatory countries to adopt internal law for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage. At the same time in the context of the CoE it is necessary to mention the CoE organization GRECO (Group of States against Corruption), formed in 1999 (Council of Europe 1999a), which monitors the member states based on mutual evaluation of states – an application of the so-called peer review approach.

The Organization for Economic Cooperation and Development (OECD) is a global organization aimed at improving social and economic policymaking. Founded in 1961, it currently has 34 members from among the most economically developed states. Slovakia became its member in 2000 as the last of the Central European countries, but before other postcommunist countries. The OECD began to focus on the corruption reduction in the late 1990s, and thus operates with various anti-corruption tools. Similarly to the CoE, it has adopted and pushes among its members an anti-corruption convention, which is an object of our research: Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted in 1997. This convention has a relatively narrow focus and it requires signatory countries to introduce an offence of a bribery of a foreign public official to tackle corruption in the international business transactions as well as effective penalties, including introduction of the liability of legal persons. (OECD 2011) It also defines tools for identifying and prosecuting defined offences.

The United Nations is a global organization founded in 1945. With its 193 members, it is a cornerstone of global policymaking in numerous areas ranging from conflict prevention and resolution to economic and social well-being, Slovakia became a member of the UN in 1993 following its independence. In the context of corruption control, the UN works with legal and information tools, for the purposes of this research we focus on two UN anti-corruption conventions: United Nations Convention against Corruption (UNODC 2003) and United Nations Convention against Transnational Organized Crime (UNODC 2000). These anti-corruption conventions broadly deal with almost all the issues that are already covered by the Council of Europe anti-corruption conventions and the OECD convention.

These anticorruption conventions have been described and analyzed in an emerging literature – e.g. Rubin (1998), Posadas (2000), Tronnes (2000), Henning (2001), Armstrong (2005), Webb (2005) and Argandoña (2006). However, this literature shares a tendency towards descriptive legal point of

view or a normative analysis of the conventions themselves. Therefore, given our different research focus, the paper draws more on political science and sociological literature dealing with the transposition of international norms. Such literature analyses the acceptance of given rules and addresses the following questions – what is changed, how the change is made in the institutional process and why the change has taken place. When exploring the question *why the change is taking place*, researchers look at the 'basic logic of action by which human behavior is interpreted'. (March – Olsen 1998)

There are several schools of thought that try to explain the issue of change in the organizations, from which we depart our theoretical debate.

Isomorphism, which stems from sociological institutionalism, stresses that processes or structure of one organization can be similar to those of another and it is the result of imitation or independent development under similar constraints. Isomorphism highlights three factors – coercion, mimetism and normative pressures that are thought to lead to increasingly similar organizational forms. (DiMaggio – Powell 1983) Dimitrakopoulos and Passas (2003) more deeply elaborate on these three isomorphical pressures. Coercive isomorphism is the result of the formal or informal pressures of the organization on other organizations and they rely on relations of dependence. Mimetic isomorphism happens in cases where uncertainty and ambiguity reigns. According to Dimitrakopoulos and Passas (2003), the ambiguity of preferences and a poor understanding of a given context problem frequently lead to imitate those found in other areas of activity, countries of regions. This happens because these structures are successful and legitimate in tackling the same or similar problem. (Dimitrakopoulos – Passas 2003) Normative isomorphism relies on professionalism and it is related to formal education of decision-makers and the establishment of networks of professionals. (Dimitrakopoulos – Passas 2003) This theory shows that adoption of new rules can be influenced by internal or external incentives of decision-makers.

New institutionalism relates to intellectual framework developed by DiMaggio and Powell (1983) and is built on the work done by March and Olsen. These authors discuss two main logics of behavior – the logic of appropriateness and the logic of consequences. According to March and Olsen (2006), the logic of appropriateness is a perspective that sees human action as driven by rules of appropriate or exemplary behavior, organized into institutions, and rules are followed because they are seen as natural, rightful, expected and legitimate. They also state that following the logic of consequentiality implies to treat possible rules and interpretations as alternatives in a rational choice problem and it is usually assumed that 'man's natural proclivity is to pursue his own interests'. (Brennan – Buchanan 1985) To follow the logic of consequences means to choose the alternative that has

the best expected consequences; to act in conformity with rules that constrain conduct is then based on rational calculation and contracts, and is motivated by incentives and personal advantages. (March – Olsen 2006)

Within the research of international institutions, the debate is most frequently between rationalist and constructivist institutionalism. (e.g. Katzenstein et al. 1999) Rationalist institutionalists explain compliance by the use of positive and negative incentives and constructivists emphasize processes of international socialization meaning that domestic actors change their identities and preferences based on imitation argumentative persuasion. (Schimmelfennig – Sedelmeier 2005) Based on this debate, several authors have specified different institutional theories with alternative mechanisms of institutional effects and conditions of their operation. For example, Schimmelfennig a Sedelmeier (2005) explained the adoption of the new rules in the EU through external motivations, so-called *logic of consequences* or internal motivations, *logic of appropriateness*. They refer to hard motivations, such as the membership in the given organizations or the enforcement of the adoption of the rule through the court process, for example in the EU through the European Court of Justice. At the same time they point at the soft motivations, e.g. the pressure from other members/partners of a given organization (so-called peer pressure), reputation and other tools. (Schimmelfennig – Sedelmeier 2005) Pagani (2002) shows several potential functions of peer review, e.g. political dialogue, transparency or increasing capacity to develop public policies.

In relation to the probability of adopting new norms Schimmelfennig a Sedelmeier (2005) stipulate that probability in a given country increases if: the adoption of individual norms is associated with obtaining a form of reward; the decision not to adopt the rules leads to the enforcement of sanctions; the number of actors, which have the veto power is low and in the given state the policy makers and the society internalize these norms.

As far as the possible relationship between the logic of appropriateness and the logic of consequentiality is concerned, March and Olsen (2006) state that an unsatisfactory approach is to subsume one logic as a special case of the other. An alternative, according to them, is to assume a hierarchy between logics. The logic of appropriateness may be used subject to constraints of extreme consequences, or rules of appropriateness are seen as one of several constraints within which the logic of consequentiality operates. One version of the hierarchy notion is that one logic is used for major decisions and the other for refinements of those decisions, or one logic governs the behavior of politically important actors and the other governs the behavior of less important actors. (March – Olsen 2006) Despite these interconnections, March and Olsen

believe that the two logics are sufficiently distinct to be viewed as separate explanatory devices.

Many empirical studies have been conducted on this subject. Checkel (1999) for example looked at Europeanization and finds that there are many situations and aspects of integration where agents operate under the means-end logic of consequences favored by rationalist choice and some historical institutionalists (meetings of the European Council or the hard-headed interstate bargaining that features prominently in intergovernmentalist accounts). At the same time, the less static perspective favored by sociologists reminds us that much social interaction involves dynamics of learning and socialization, where the behavior of individuals and states comes to be governed by certain logics of appropriateness (informal communication in working groups of the Council of Ministers, European-level policy networks centered on the Commission). (Checkel 1999)

Goetz (2004) finds that power asymmetries during the accession negotiations between the EU and the existing members on the one hand and the applicants on the other hand do not necessarily imply that Europeanization follows a top-down logic. Rather, they may encourage 'institutionalization for reversibility' – as the EU pressures lessened, and once accession was 'in the bag', domestic preferences could strongly reassert themselves, with the result that, as in Hungary (Ágh 2003), administrative and political decentralization and regionalization initiatives are effectively stalled. Goetz (2004) also states that under conditions of shallow institutionalization, fluidity and uncertainty (Grabbe 2003), strategic interest-based 'rational' behavior by domestic actors is more likely than an action according to the 'logic of appropriateness'. Schimmelfennig (2003) has shown that both need to be considered in understanding decision-making about enlargement; both should also be kept in mind when one tries to explain differing trajectories of Europeanization in the new member states.

Goldmann uses two new explanative logics that are a part, but only a part, of the two prominent logics: logic of deontism and logic of egotism. He also identifies a 'mixed situation' where self-interest is defined as that 'which is appropriate in view of the fact that actor is fulfilling the obligations of a role and is adhering to the imperatives of holding a position'. In a mixed situation, only one of the logics is difficult to apply. (Goldmann 2005)

Entwistle (2010) based on his case study from the mid/late 1990s demonstrates a certain institutional contradiction and competition between the two logics and states that the emergence of a new 'cognitive script' (Hall – Taylor 1996) offering actors an alternative conception of the world cannot be denied. Clear dichotomization seems to be problematic; actors adopt changes for a broad set of reasons and the consequent findings often require references

to both logics. (Entwistle 2010) Bernstein and Cashore (2007) agree, claiming that both logics 'are almost always at play, but one or the other may appear to take priority in different contexts". In our paper, we use the adoption and implementation of international anticorruption conventions in Slovakia to examine the explanatory power of the two logics.

Methodology

In this section, we present our methodological approach. We examine anticorruption conventions of three international organizations, which Slovakia is a member of, namely Council of Europe, OECD and United Nations, and their influence on policymaking in Slovakia.

The real methodological challenge is how to establish a causal relation between what a totality of activities of an international organization does and what subsequently happens in a given country. This is particularly true if there is another important influence, which mediates impact of the international organizations – in this case, the European Union. In the paper, we address this challenge in the following way. First of all, we focus on legal instruments (treaties, conventions), their adoption and their implementation, rather than on the overall influence.

The second question is how to measure the influence of these legal instruments on actual domestic policies. One option is to rely on expert interviews. We excluded this option because it is inherently subjective and unreliable, particularly given the small number of potential experts on the issue in Slovakia. There is no single direct objective way available. Our approach is based on combining multiple partial approaches. Before explaining them in detail, we also need to address how to disentangle the EU influence from the influence of these international institutions, given that adoption of some of these instruments was an EU accession requirement. We do this by dividing all research findings into two periods – prior to the May 2004 accession and afterwards. The EU role was coercive prior to the accession. However, the accession conditionality has been missing since the accession, so there we can examine the impact of the conventions without the EU hand behind it. In other words, what happened after EU accession when the accession conditionality and thus logic of consequences was not available anymore? This is to say that examining separately the pre-accession and the post-accession period is not meant primarily to tell us about the EU influence, which has been researched extensively, but about what happens when it is removed.

The five parts of our research are as follows:

The first one examines the adoption of the conventions themselves. When and how quickly were they adopted? Can we see any difference between the pre-accession and post-accession periods?

The second one is a text analysis of key anti-corruption policy documents and recitals accompanying laws developed by Slovak governments. We specifically measure frequency and content of reference to the three international institutions and the anticorruption conventions. Two periods are covered within the analyses – before accession to the EU (1999 – 2004) and after accession to the EU (2004 – 2010). This research provides data for all examined conventions at all three international organizations.

This type of data indicates whether the conventions are present in the bureaucratic and policy-making discourse. Their presence can stem from a variety of reasons – genuine transmission of international obligations, bureaucratic box-ticking, buttressing of domestically driven proposals. Their absence indicates that they are relevant neither for decision-making nor discourse. The content can indicate whether the influence is related more to the logic of consequences (e.g. 'this change has to be adopted due to the threat of sanctions') or the logic of appropriateness (e.g. 'this change should be adopted because it brings Slovakia to the European / global standards'). Comparison of pre-accession and post-accession frequency and type of reference indicates whether removing the 'hard' conditionality of the EU accession changed anything or not.

The third part is a similar exercise with regard to media discourse.

The fourth element of our research examines impact of the CoE monitoring mechanism. With GRECO, we have a unique frequent and detailed compliance monitoring mechanism. Approximately, every four years a group of international officials from the GRECO group monitor the country's anticorruption policies and issue specific recommendations. Their implementation is then also monitored. Slovakia has, so far, gone through three rounds of monitoring, out of which one occurred prior to the EU accession. This allows to quantitatively examine the impact of loss of external conditionality of the EU membership on compliance with the CoE recommendations.

The last part of our research is a case study of implementation of the OECD Convention, specifically the requirement to introduce criminal liability of corporate persons. It is a case study analysing transposition of the OECD anti-corruption convention rules after the accession to the EU.

We based our conclusions on synthesis and interpretation of findings from all five strands.

Presentation of Findings

Adopting International Norms

In this section, we examine the timing and speed of adoption as well as lack of adoption. We do not find the EU accession measurably slowing or blocking

adoption of the conventions themselves, as illustrated in Table 1. The adoption pathway for the treaties was concluded prior to accession for three of them, with an average time from signature to adoption of 35 months. For the remaining two, the average time elapsed was 18.5 months.
Additionally, we have not been able to find other international treaties not adopted by Slovakia during the recent decade despite a large number of other EU member states doing so. Therefore, there appears to be no evidence to suggest that the coercive logic of consequences influenced whether and how fast Slovakia adopted such conventions.

Table 1: **Adoption of international anticorruption conventions in Slovakia**

Conventions	Signature	Ratification	Effective	Signature to ratification (months)	Ratification to effectiveness (months)	Total (months)
Criminal Law Convention	27/1/1999	9/6/2000	1/7/2002	16	24	40
Additional Protocol to Criminal LC	12/1/2005	7/4/2005	1/8/2005	3	4	7
Civil Law Convention	8/6/2000	21/5/2003	1/11/2003	35	6	41
OECD Convention on Bribery of Foreign Public Officials	17/12/1997	24/9/1999	23/11/1999	22	2	24
UN Anticorruption Convention	9/12/2003	25/4/2006	1/7/2006	28	2	30
UN Convention on Transnational Organized Crime	14/12/2000	3/12/2003	2/1/2004	35	1	36

Source: Authors

Analysis of Recitals to Laws and Official Government Policy Documents
We start by analyzing frequency and content of references to the anticorruption conventions in recitals to laws and in official government policy documents. The data presented in Table 2 shows that the UN conventions have hardly ever been mentioned in such documents. The OECD and CoE conventions have altogether been referred to 21 times overall.

Quantitatively speaking, we observe that approximately a half of the references occurred prior to accession, while the other half of the references occurred after 2004. However, given the different number of years before and

after the accession in our sample, it is better to look at annual averages. There we see a significant decline after the accession for the CoE, but a stable number for the OECD Convention.

Table 2: **References to anti-corruption conventions in official government policy documents and recitals to draft laws, 2000 – 2010**

	CoE	OECD	UN	Total
Total references	12	9	2	23
Key references	3	5	0	8
Support references	9	4	2	15
pre-accession	**8**	**3**	**0**	11
post-accession	**4**	**6**	**2**	12
pre-accession – annual avg	2	0.75	0	2.75
post-accession – annual avg	0.57	0.86	0.29	1.71

Source: Authors

In terms of content, the two most frequently invoked documents are the OECD Convention and the CoE Criminal Law Convention. The references to the OECD Convention are almost exclusively related to justification of criminal liability of legal persons, an issue to which we devoted the fourth part of the research. References to the CoE Criminal Law Convention are almost exclusively in recitals of Criminal Code and Criminal Process Code and their amendments as justifications for a variety of changes.

This leads us to the conclusion that while the accession meant a difference in how often the CoE conventions are referred to in government documents, this is not true for the OECD Convention (or, less importantly, for the UN conventions).

Analysis of Frequency and Content of References to International Organizations and Conventions in the Slovak Media Anti-corruption Discourse

In this section, we look at how frequently and in what context Slovak media refer to the three institutions and particularly their anticorruption conventions. We examined articles published between 2000 and 2010 in the three principal 'serious' broadsheet Slovak daily newspapers – *SME*, *Pravda* and *Hosporárske noviny*. *SME* is a centre-right liberal newspaper, with *Pravda* being more to the left and *Hospodárske noviny* having an economic orientation.

There have been altogether 131 mentions in the newspapers during the period between 2000 and 2010. We divided them into two groups:

- references to institutions in the context of (anti)corruption issues without explicit reference to the conventions (45 references)

- references to institutions in the context of (anti)corruption issues with an explicit reference to the conventions (86 references)

The OECD represents a half of all the references and is even more represented in the references to the conventions (55%). The CoE and the UN divide the rest more or less evenly. References to the CoE drop off significantly in the second half of 2000s in both areas, whereas for the OECD and the UN, this trend is visible only in the references to the institutions, while the references to the conventions remain essentially the same.

Table 3: **CoE, UN and OECD in media in the context of anti-corruption measures**

Year	References to institutions				References to conventions			
	CoE	OECD	UN	Total	CoE	OECD	UN	Total
2000	2	2	3	7	2	1	1	4
2001	3	4	1	8	0	8	0	8
2002	3	0	2	5	4	4	1	9
2003	1	2	1	4	5	2	4	11
2004	2	2	1	5	1	3	2	6
2005	1	4	1	6	1	7	3	11
2006	0	0	0	0	0	2	1	3
2007	1	0	0	1	0	14	1	15
2008	1	0	1	2	0	0	1	1
2009	0	0	0	0	0	1	1	2
2010	0	4	3	7	5	6	5	16
total	14	18	13	45	18	48	20	86
pre-accession annual avg	2	2	2	6	3	4	2	8
post-accession annual avg	1	1	1	3	1	5	2	8

Source: Authors, using Newtonmedia monitoring service

In terms of qualitative analysis, during the pre-accession period, they mostly refer to the fact that Slovakia signed or ratified a given convention or that it became effective. In a smaller number of cases, there is a reference to the substance of the organization's work or the conventions in relation to Slovakia's efforts to curb corruption. After the accession, the analysis of the UN and CoE references shows that they generally refer to these organizations and the conventions as role models. Areas range from whistleblowing through police reform to origin of asset verification legislation. The OECD post-accession references can be divided into two groups. One contains a gaffe when a minister seemed to defend corruption in international trade and procurement, referring to the OECD convention. The OECD secretariat then refuted his claims. The second group contains repeated criticisms of Slovakia

by the OECD for not introducing criminal liability of legal persons (see more above). All these references are within the logic of appropriateness where the international institutions and the conventions are introduced in a normative manner without reference to sanctions or other material consequences for Slovakia.

Influence of GRECO on the Slovak Anti-corruption Policies

GRECO is a so-called peer review mechanism whereby commissions from public officials from various countries monitor implementation of the CoE anticorruption conventions and standards. There are regular four-year cycles which encompass two phases:

- Horizontal evaluation, which results in the recommendations for the adoption of the necessary legislation, or an institutional reform, in the form of the so-called *Evaluation reports*. Before 2010, three rounds of evaluation were completed in Slovakia. Each round is focused on a different problem of the anti-corruption policy.
- Evaluation of the implementation of recommendations in the so-called *Compliance Reports.* (GRECO 2003)[3] If not all of the recommendations were implemented, GRECO later publishes *Addendum to the Compliance Report* (CoE, 2005) which can also be called the *Second Compliance Report*.

Tables 4 and 5 show compliance with GRECO recommendations in Slovakia during the three rounds of evaluation so far. We can see that the compliance declined over time, whether measured by initial compliance or final compliance. The number of recommendations remained relatively stable, but the compliance went down dramatically, particularly in the last round which took place entirely after the EU accession.

Table 4: **Overview of *initial* compliance with GRECO recommendations in Slovakia** (based on the *Compliance Report*)

Evaluation round	Number of recommendations	Compliance	Partial compliance	No compliance
1 (2000 – 2005)	19	15	4	0
2 (2003 – 2008)	17	8	7	2
3 (2007 – 2010)	16	1	3	12
Total	52	24	14	14

Source: Authors

[3] *Compliance Report* (emphasis added) is written by two GRECO delegates chosen by the extent of their active involvement in the first phase of the monitoring, regional closeness and the legislative similarity of their countries of origin with the evaluated member state.

Table 5: **Overview of *final* compliance with GRECO recommendations in Slovakia (based on the *Second Compliance Report*)**

Evaluation round	Number of recommendations	Compliance	Partial compliance	No compliance
1 (2000 – 2005)	19	19	0	0
2 (2003 – 2008)	17	13	3	1
3 (2007 – 2010)	16	6	2	8
Total	52	24	14	14

Source: Authors

We examined areas which were the subject of the GRECO and were only partially complied with or not complied with at all. In the second evaluation round, this concerned a varied group – introduction of criminal liability of legal persons as well as expansion of ethics codes to all public officials and their legal basis and clearer definition to be used in detecting money laundering. In the third evaluation round, Slovakia complied with all recommendations concerning criminalization of corruption, but when it came to the political ones, it complied partially with two and not at all with eight. These results indicate that the decline in compliance was not just related to the EU accession, but also to the domestic costs of policy change in the specific area (political party financing).

Case study – OECD Anti-Bribery Convention and the Introduction of Criminal Liability in Slovakia

Our research already demonstrated that the OECD Anti-Bribery Convention and specifically the introduction of corporate criminal liability engendered in the convention was the most politically salient and controversial aspect of international anticorruption conventions in Slovakia. It is defined in the Article 2 of the OECD Convention: 'Each Party shall take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official'[4]. The case study described repeated attempts by Slovak policymakers to introduce such liability into the Slovak legislation and interaction with the OECD monitoring and criticism.

Prior to the signature of the OECD convention, Slovak criminal law did not contain any elements of corporate criminal liability. All criminal acts could be committed only by individuals even in their role as corporate officials and an organization could not be criminally prosecuted or criminally punished.

[4] It is also stated in the Convention that if the legislation of the signatory country does not contain the criminal liability of the legal persons, it is the duty of the given state to ensure the possibility to impose financial penalties on legal persons for the bribery of foreign officials. (OECD 2009)

Therefore, compliance with the convention did not require broadening of the Slovak criminal law, but the introduction of a completely new concept.

The compliance with the Slovak commitments was regularly monitored and evaluated by the OECD Working Group on Bribery in International Business Transactions dedicated to the control of compliance with the commitments of the signatories of the OECD Convention. The monitoring took place three times:

- in February 2003, in the Review of Implementation of the Convention and the 1997 Recommendation, Slovakia was criticized for the missing legislation introducing the criminal liability of legal persons (OECD 2010a)
- in 2005, in the Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions[5], Slovakia again received strongly worded suggestions to immediately introduce the criminal liability of legal persons (OECD 2009)
- in January 2010, Slovakia was evaluated as not having adopted 'sufficient measures to ensure criminal liability of companies'. (OECD 2010b) The OECD also published a press release criticizing Slovakia for not introducing the criminal liability of legal persons. (ibid.)

It needs to be emphasized though, that in neither of the mentioned documents or statements did the OECD state any specific punishment which Slovakia could face in case of continued non-compliance with its commitments. This means that Slovakia did not face any specific sanctions from the OECD in case of non-adoption of the set rules, including the non-adoption of the criminal liability of legal persons.

During this period, Slovakia attempted to introduce corporate criminal liability five times altogether, finally succeeding in the narrowest manner possible in 2010.

The first attempt for the introduction was in 2003 when the Minister of Justice Daniel Lipšic submitted to the parliament a proposal of the new Criminal Code which introduced a direct liability of the legal persons. The liability was quite strong: it allowed imposition of financial penalties, oversight, permanent or temporary closing of the legal person or its part or the confiscation of property. (Ministry of Justice of the Slovak Republic 2003) During the discussion of the proposal in the parliament, there was a mounting criticism against the introduction of the criminal liability of legal persons on the part of the entrepreneurs and lawyers who warned of the possible abuse of this measure. The measure was also rejected by the liberal pro-business government party ANO (Alliance of the New Citizen) (Pravda 2005). In May

[5] OECD (2005), Slovak Republic, Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions.

2005, the parliament passed the Criminal Code (Law no. 300/2005 Coll.), but the criminal liability of the legal persons was dropped from the proposal. (National … 2005) When submitting the proposal of the Criminal Code Minister of Justice Daniel Lipšic stressed the international commitments of the Slovak Republic to introduce criminal liability of the legal persons.

The second attempt to introduce criminal liability of legal persons to the Slovak legislation was undertaken later in 2005, when Lipšic submitted a separate draft law on criminal liability of legal persons. In the explanatory memorandum to the draft the need to pass the bill was justified by the commitment of Slovakia to introduce criminal liability of legal persons resulting from the international conventions, including the OECD Convention. (Ministry of Justice of the Slovak Republic 2005) In March 2006, a governmental draft proposal on the criminal liability of legal persons was put though for the debate in the parliament. It was similar to the first version in being both direct and with robust sanctions. It was never voted on by the parliament though (National Council of the Slovak Republic, 2006a). Due to early elections, parliamentary caucuses of all parties have agreed to support further debate only of such bills where there was a consensus. There was no consensus on corporate criminal liability and the proposals were dropped from the programme. (National Council of the Slovak Republic, 2006b)

The third attempt to introduce this measure dates to 2007 when the Minister of Justice Štefan Harabin submitted a draft bill amending the Criminal Code. This draft proposed a so-called *indirect liability* of legal persons, which means that the legal person could not be prosecuted and the bill only proposed sanctioning of legal persons through confiscation of property or a specified amount of money. In the explanatory memorandum, this proposal refers to the international commitments of the Slovak Republic primarily resulting from the OECD Convention. (Ministry of Justice 2007) The former minister Lipšic stood up against this proposal, which he criticized mainly for the fact that the legal person could not be prosecuted. (Pravda 2007) From the opposite side, two business lobbies – the Association of Chemical and Pharmaceutical Industry of the Slovak Republic and the National Union of Employers – opposed the bill, fearing its 'abuse'. (Trišťan, 2007) The government interrupted the discussions of this proposal, since there were disagreements between various ministries on the draft, which then did not get to be discussed in the parliament.

The fourth attempt to introduce criminal liability also took place in 2007 when two opposition MPs Daniel Lipšic and Gyula Bárdos submitted a private bill to introduce criminal liability of legal persons. The bill was defeated in the first reading. In the explanatory memorandum of the draft, the OECD

Convention was mentioned as one of the international documents demanding the enactment of the criminal liability of legal persons. (National… 2007)

The last, *fifth attempt* to introduce criminal liability dates to 2010 when the Minister of Justice Viera Petríková submitted amendment to the Criminal Code which was approved in March 2010 by the parliament. It was passed narrowly by the government coalition MPs. The then opposition MP Lipšic labeled this norm to be 'a mockery of a fight against unfair practices in business' (SITA, 2010) and just a formal compliance with the OECD demand with indirect liability and weak sanctions. The main business lobby – the National Union of Employers – was again opposed to the draft, but its spokesperson stated that the proposal was more acceptable than the previous ones. (Štulajter 2010) The explanatory memorandum mentions the OECD Convention as the main international document which leads to the necessity to sanction legal persons.

Consequently, since September 2010, Slovakia introduced indirect criminal liability of legal persons. (National Council of the Slovak Republic, 2010b) In this case, there is no directly determined criminal liability of legal persons, but legal persons can receive a so-called criminal penalty. According to the author of the bill this type of indirect liability was introduced, because in Slovak legal system requires the fulfilment of a crime to have intent as a component, which a legal person does not have. It also introduced, as possible measures, confiscation of financial assets and confiscation of property. (ulclegal, 2010)

Interpretation of Findings

In this section, we interpret findings from the previous section. We proceed in two steps – from analysis of developments in Slovakia to broader conclusions about the nature of influence of international conventions on domestic policies.

The previous sections made it clear that, prior to the OECD and EU accessions, membership conditionality of both institutions was a powerful instrument of influence over Slovakia's domestic anticorruption policy. Slovakia signed and ratified the OECD anti-corruption convention before the accession to this organization. The OECD Convention entered into force in Slovakia in November 1999. Before the EU accession, Slovakia ratified the CoE's Criminal Law (2002) Civil Law Convention (2003). The EU explicitly demanded this as a part of the accession process. For the EU, the CoE conventions served as a tool to ensure the adoption of anti-corruption rules by the candidate countries due to on the one hand the non-existence of the explicit EU anti-corruption acquis and on the other the limited capacity of European institutions to define its own rules at the time. In other words, the EU membership conditionality spilled over into adoption and implementation of the CoE conventions. At the same time, in the first round of the GRECO evaluation which was focused on the formation of the national anti-corruption

bodies, all of the recommendations were complied with. The EC monitored the compliance with the GRECO recommendations as a part of the preparation of the candidate countries to the EU accession[6].

However, Slovakia also signed the two UN conventions despite no membership conditionality attached to them. Several new EU member states signed the UN anticorruption convention *after* (emphasis added) their EU accession (e.g. the Czech Republic, Malta). We have not been able to find any evidence that signature or ratification of these conventions would be linked to membership conditionality.

In other words, prior to the OECD and EU accessions in 2000 and 2004 respectively, the logic of consequences – working through membership conditionality – appears to be a plausible explanation for adoption and implementation of international conventions. However, even then it is not a *complete* explanation (as the UN conventions indicate).

After 2004, the membership conditionality disappears and we can observe the following.

First of all, willingness to sign, ratify and implement international anti-corruption conventions has not undergone visible change for better or worse. One additional (CoE) convention was signed and two additional ones (one CoE and one UN), signed earlier, were ratified and became effective.

Even the presence of the conventions in policy and media discourse does not markedly decline. We see that the CoE references decline significantly despite increasing non-compliance with the GRECO recommendations, while the UN always had a marginal presence. References to the OECD do not decline.

When it comes to implementation of the conventions, the commitment also declines, but remains non-negligible. Implementation depends primarily on domestic costs. For this purpose, two cases have been particularly instructive.

In case of the GRECO monitoring mechanism of the CoE, the sharp fall of post-accession implementation of recommendations by the Slovak government appears related not only to the fact that the EU membership conditionality was removed, but also to the nature of the recommendations. This can be demonstrated by a comparison of the second and third rounds of the GRECO monitoring, which took place largely after the accession, but also with the first, pre-accession round. In the second round, the level of Slovakia's compliance was still very high though not as complete as in the first round.

However, there was a sharp drop for the third round, not corrected even in two rounds of subsequent compliance reports. The third round concerned two areas – criminalization of corruption and the politically extremely sensitive

[6] European Union (2003), A Comprehensive EU Anti-Corruption Policy.

matter of political party financing on which neither of the major parties appeared to be eager to move. Slovakia complied with all six recommendations in the former area, while not complying with *any* (emphasis added) of the ten recommendations in the latter (partial compliance for two, no compliance for eight).

The second case concerns introduction of criminal liability of legal persons as required by the OECD Convention, which was finally passed in 2010, after four unsuccessful attempts to push the law through the parliament and three critical reports from the OECD evaluators. Facing resistance of the business community and its political allies, it was adopted 11 years after ratification of the convention and in the narrowest form possible that would still conform to the international commitments. This shows that, on the one hand, the commitment towards the OECD was the moving force of the adoption, but on the other hand, that its force was limited.

In other words, for domestic policymakers, international anticorruption conventions are inherently neither bonds of steel nor bonds of straw and can be both or anything in between. The pre-accession situation, where domestic political costs of noncompliance were high due to the membership conditionality exercised by both the OECD and the EU, is a clear case of bonds of steel.

Here, we are more interested in what happens after the domestic political costs of noncompliance with international conventions drop dramatically. We find that if domestic costs are low, the international conventions continue to be adopted and implemented and can thus be seen as an effective mechanism of policy change. The situation becomes more complex when a given measure engenders significant domestic political costs. In such a scenario, the external commitment will be used by domestic champions, but is not necessarily sufficient to override the domestic opposition. Even in this case, the international commitment can tip the scale as shown by the OECD case study, though it can take a longer period and require continuous oversight and reporting. On the other hand, the CoE GRECO oversight mechanism was not sufficiently strong to push through reform of political party financing despite its rather dogged nature.

These developments lead us to question whether the two logics – of consequences vs. appropriateness – are sufficiently discerning. Even after gaining membership in the OECD and the EU and the entire period with respect to the UN conventions, we were in fact witnesses to the continuation of the processes of adoption and implementation of rules despite the fact that there are no effective tools that would be used to punish / reward the country in accordance to the logic of external motivations.

International organizations do have some tools to affect the action of the state actors – external reputation and impact on domestic discourse, but these tools appear to be of limited cost to the domestic policymakers. We could not find any evidence that Slovakia's international reputation was measurably harmed due to the long-standing non-compliance in the areas of corporate criminal liability or political party financing. The examination of the media reflection of the OECD criticism of Slovakia in the context of implementation of the Convention as well as the reactions to the GRECO conclusion which pointed out the non-compliance with the conclusions, shows, that the media dedicated some, but very limited, attention to them (more significant only in the case of the OECD and the criminal liability of legal persons). The same applies also to the reflection of this criticism in the legislation and public policy documents.

If we took the interpretation of these mechanisms narrowly and mechanically, we could classify the external reputation as the mechanism of the logic of consequences and the effect on domestic discourse as the mechanism of the logic of appropriateness, but we do not consider it to be conceptually correct. Costs / benefits are relatively low and the motivation is primarily in the effort to 'look good' in the given area in front of the partners and has no other advantages or disadvantages. At the same time, an important factor is the interaction of external and domestic mechanisms. Conversely, if the domestic costs become more substantive, it leads to the blocking of the change, which shows the 'weak' nature of the given logic.

Conclusion

In this paper we adopted a case study approach to examine influence of international organizations on national/domestic policies. We examined major anti-corruption conventions of three organizations – OECD, CoE and UN – and their effect on domestic policy in Slovakia.

We wanted to see whether these conventions matter for what actually happens in domestic policy. Are they unbreakable bonds of steel or rather feeble bonds of straw? More broadly, we wanted to examine whether the current political science and sociological perspectives, with their dichotomy of external incentives and social learning, are appropriate for understanding the mechanisms through which such conventions operate. The paper adds value since there is no scholarly literature addressing these questions from a political science perspective in the context of legal instruments such as treaties and conventions. There is also no research on impact of the anticorruption conventions on domestic policy.

We find that logic of consequences and membership conditionality can explain adoption and implementation of these conventions in Slovakia prior to

the OECD and EU accessions, respectively, in 2000 and 2004. However, we find that even after the accession, there has been a continued adoption of new commitments and continuing pressure to conform to the international commitments even when it required additional policy action. We also find that this pressure is successful when domestic political stakes are low.

Two cases informed our analysis of what happens when domestic political costs are significant – GRECO pressure for reform of political party financing and OECD pressure to introduce corporate criminal liability. Our conclusion was that, for domestic policymakers, international anticorruption conventions are not inherently either bonds of steel or bonds of straw and can be both. The external commitment would be used by domestic champions, but is not necessarily sufficient to override the domestic opposition. Even in this case, the international commitment can tip the scale as shown by the OECD case study, though it can take a longer period and require continuous oversight / reporting. On the other hand, the CoE GRECO oversight mechanism was not sufficiently strong to push through reform of political party financing despite its rather dogged nature.

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