

THE POLITICS OF NATIONAL SOVEREIGNTY VS. EU MEMBERSHIP IN HUNGARY

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Abstract

The paper takes a critical look at the National Consultation process in 2017 in Hungary to analyse the ongoing conflict between Budapest and Brussel. The Hungarian Government has been hostile to various EU policies arguing that they violate the sovereignty of Hungary. This paper seeks to refute this argument by showing that Hungary has the sovereignty to withdraw from the agreements, the obligations of which it refuses to honour. Rather, the Government is engaging in the politics of sovereignty, i.e. creating a sovereignty dispute in order to secure short-term political objectives, such as political survival. This dangerous trend can be observed in the populist politics of an increasing number of states, including the United Kingdom and the United States, and it presents a tangible threat to any order based on international law. The regimes in question use the politics of sovereignty in order to renege on their international obligations.

Keywords: Hungary, European Union, sovereignty, asylum, refugee crisis, national consultation

Introduction

It is a cold October morning when a thick envelope arrives from the Government of Hungary. The envelope contains the questionnaire of the 2nd National Consultation (NC) or *Nemzeti Konzultáció* in Hungarian, for 2017 as well as a signed letter from Prime Minister Viktor Orban. The letter states that Hungary is under attack from foreign forces who seek to undermine the sovereign authority of the state and endanger Hungarian citizens. It is a colourful and well-produced package, with a particularly unflattering image of George Soros included on its front page. It is also predominantly nonsense.

This paper asks a simple question: Is Hungarian sovereignty under attack? To answer this, one has to dissect the points contained in the 1st and 2nd National Consultations presented in 2017, albeit focusing on the first as the second is largely dominated by the Government attacking a non-existent plan. One has to understand what the Government considers an attack on the country's sovereignty by the European Union. Then one has to examine what the situation actually is, what the EU actually has said and done. Sovereignty in the international system is a complicated matter, certainly more complex than what the National Consultation allows space for. Hungary's sovereignty is not under a genuine attack, rather the Government follows the suit of the Conservative Party in the United Kingdom and Donald Trump in the United States as it engages in the politics of sovereignty to secure its own political objectives. A critical discussion on the issue at hand is especially necessary as the state of the European Union

continues to be fragile (Simms, 2012) and the politics of sovereignty constitutes a considerable risk of fracturing the political will necessary to maintain the union.

Consulting the nation in 2017

National Consultation is not a new thing in Hungary, despite it being an irregular occurrence. In theory its function is to offer an opportunity to ordinary citizens to voice their opinions on important issues of government policy. In practice, the format of the questionnaire is too restrictive to serve as a platform for meaningful policy discussion. Rather it is an opportunity for the Government to solicit support from its base and to reassure its legitimacy as it seeks to battle Brussels on various policy issues. NC 2017 posed six questions to the electorate (Index, 2017):

Brüsszel veszélyes lépésre készül. A rezsicsökkentés eltörlésére akar kényszeríteni bennünket.

Ön szerint mit tegyen Magyarország?

1. *Védjük meg a rezsicsökkentést. Ragaszkodjunk ahhoz, hogy a Magyar energiaárakat Magyarországon határozzuk meg.*
2. *Fogadjuk el Brüsszel tervét, bizzuk a nagyvállalatokra a rezsidíjak megállapítását.*

Az elmúlt időszakban egymást követték a terrortámadások Európában. Ennek ellenére Brüsszel kényszeríteni akarja Magyarországot, hogy az illegális bevándorlókat engedjük be.

Ön szerint mit tegyen Magyarország?

1. *A Magyar emberek biztonsága érdekében felügyelet alá kell helyezni az illegális bevándorlókat addig amíg a hatóságok döntenek ügyükben.*
2. *Engedjük, hogy az illegális bevándorlók szabadon mozoghassanak Magyarországon.*

Mára kiderült, hogy a Magyarországra tartó illegális bevándorlókat az embercsempészek mellett bizonyos nemzetközi szervezetek is törvénytelen tevékenységre ösztönzik.

Ön szerint mit tegyen Magyarország?

1. *Az illegális bevándorlást segítő tevékenységeket – mint az embercsempészet és az illegális bevándorlás népszerűsítése – büntetni kell.*

Brussel is preparing for a dangerous move. It seeks to force Hungary to abolish government policy concerning utility prices.

In your opinion what should Hungary do?

1. Protect the current utility policy. We should insist that Hungarian utility prices should be controlled by Hungary.
2. Accept Brussel's plan and allow big corporations to determine utility prices.

In the recent periods terror attacks followed one another in Europe. Despite this Brussels seeks to force Hungary to allow the entry of illegal migrants.

In your opinion what should Hungary do?

1. For the safety of the Hungarian people illegal immigrants should be place in the custody of law enforcement until a decision is made regarding their status.
2. We should allow free movement to illegal immigrants in Hungary.

By now it is clear that illegal immigrants heading to Hungary are aided or encouraged by not only human traffickers but certain international organizations in breaking the law.

In your opinion what should Hungary do?

1. Aiding or encouraging illegal migration – through human trafficking or by promoting illegal immigration – should be criminalized.

2. Fogadjuk el, hogy létezhetnek olyan nemzetközi szervezetek, melyek következmények nélkül buzdíthatnak a Magyar törvények kijátszására.
2. Accept that international organizations exists that encourage the violation of Hungarian laws without consequence.

Egyre több külföldről támogatott szervezet működik Magyarországon azzal a céllal, hogy hazánk belügyeibe átláthatatlan módon beleavatkozzon. Ezek működése veszélyezteti függetlenségünket.

There is a growing number of organizations supported from abroad that operate in Hungary with the intent to influence domestic affairs. This poses a risk to our sovereignty.

Ön szerint mit tegyen Magyarország?

In your opinion what should Hungary do?

1. Kötelezzük őket arra, hogy regisztráltassák magukat, vállalva, hogy melyik ország vagy szervezet megbízásából, és milyen céllal tevékenykednek.
1. We should require them to register, clearly stating which country or organization they work on behalf of and what the purpose of their operations is.
2. Hagyjuk, hogy továbbra is ellenőrizetlenül fejthessék ki kockázatos tevékenységüket.
2. We should let them to continue their risky operations without oversight.

Magyarországon az elmúlt években azért volt eredményes a munkahelyteremtés, mert a saját utunkat jártuk. Brüsszel azonban támadja a munkahely teremtő intézkedéseket.

Increasing employment in Hungary has been successful in recent years because we adopted our own path. Brussel, however, is attacking measures aimed at creating new employment opportunities. In your opinion what should Hungary do?

- Ön szerint mit tegyen Magyarország?*
1. A Magyar gazdaság jövőjéőol továbbra is nekünk, magyaroknak kell döntenünk.
1. Issues regarding the wellbeing of the economy should be decided upon domestically by the Hungarian people.
2. Döntse el Brüsszel, hogy mit kell tenni a gazdaságban.
2. Brussel should determine what course the economy should follow.

Magyarország elkötelezte magát az adócsökkentés mellett. Brüsszel most emiatt is támadja hazánkat.

Hungary is committed to the reduction of taxes. Brussel is further attacking the country over it.

Ön szerint mit tegyen Magyarország?

In your opinion what should Hungary do?

1. Ragaszkodjunk ahhoz, hogy mi, magyarok dönthessünk az adócsökkentésről.
1. Insist that the reduction of taxes should be decided upon domestically by the Hungarian people.
2. Törődjünk bele, hogy Brüsszel diktálja az adók mértékét.
2. Accept that Brussel dictates the level of taxation.

The questions themselves are fairly leading and they give the appearance of the Government's position being the correct one. After all, nobody is in support of terrorism, dangerous illegal immigrants or paying more for utility bills. The second National Consultation adopts a yes or no question format, focusing on whether one would support particular elements of the so-called 'Soros Plan'. The questionnaire asks the followings (Magyarország Kormánya / Government of Hungary, 2017b):

Soros György arra akarja rávenni Brüsszelt, hogy Afrikából es a Közel-Keletről évente George Soros seeks to persuade Brussel to accept at least one million migrants from

legalább egymillió bevándorlót telepítsen be az Európai Unió területére, így Magyarországra is.

Soros György brüsszeli vezetőkkel együtt azt is el akarja érni, hogy az EU tagállamai, így Magyarország is, bontsák le a határvédelmi kerítéseket, és nyissák meg a határokat a bevándorlók előtt.

A Soros-terv része, hogy a nyugat-európai országokban összegyűlt bevándorlókat Brüsszel kötelezően ossza szét, különös tekintettel a kelet-európai országokra. Ebben Magyarországnak is részt kellene vennie.

A Soros-terv alapján Brüsszelnek arra kellene köteleznie minden tagállamot, így Magyarországot is, hogy minden bevándorlónak fizessen 9 millió forint állami segílyt.

Soros György azt is el akarja érni, hogy a migránsok enyhébb büntetést kapjanak az általuk elkövetett bűncselekményekért.

A Soros-terv célja, hogy az európai országok nyelve es kultúrája háttérbe szoruljon, annak érdekében, hogy az illegális bevándorlók integrációja hamarabb megtörténjen.

A Soros-terv része, hogy politikai támadást indítsanak a bevándorlást ellenző országok ellen, és kemény büntetésekkel sújtsák őket.

Africa and the Middle East into the European Union, including Hungary.

George Soros and the leaders of the Brussels want EU members, including Hungary, to dismantle their border fences and to open their borders to migrants.

It is part of the ‘Soros Plan’ that Brussels mandatorily distributes the migrants that ‘accumulated’ in Western Europe among member-states, especially those in Eastern Europe. Hungary would be forced to participate.

Based on the ‘Soros Plan’ Brussel would need to mandate all member-states, including Hungary’ to pay 9 million Hungarian Forint governmental aid to each refugee.

George Soros would like to achieve that migrants receive reduced punishment for crimes they have committed.

The goal of the ‘Soros Plan’ is to push the language and culture of the European country to the back in order to facilitate the speedy integration of illegal immigrants.

It is part of the ‘Soros Plan’ to launch a political attack against countries opposing migration and to institute harsh punishments against them.

Ignoring the fact that George Soros is not a representative of the European Union and that the so-called Soros Plan is an opinion piece by a private individual, taking these questions and those of the first national consultation show a deepening concern from the Government regarding national sovereignty in the context of the refugee crisis afflicting Europe. It is clear that the government fears that Brussels seeks to violate Hungarian sovereignty to force the unlawful settlement of millions of migrants in Hungary.

The basics of the European refugee crisis

The conditions in Syria are not conducive to the pursuit of a happy and particularly safe existence. These conditions have prompted the mass exodus of people seeking to escape the Syrian civil war, many of whom seek shelter in Europe motivated by the EU’s reputation for high living standards and robust social safety net. This is fairly straightforward. Unfortunately, there are numerous other regions on the globe where people are unhappy with their state of existence and would prefer to migrate to Europe. They are mixed with Syrian refugees and this creates the core of the conflict surrounding the European refugee crisis.

The prevailing international law concerning asylum seekers is based on the 1951 United Nations Refugee Convention and the 1967 United Nations Protocol on Refugees. The Convention defines a ‘refugee’ as a person who (UNHCR, 1951/67)

owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it

Hungary and other EU member-states are signatory parties of this convention. According to the convention such a person is entitled to certain protections from members of the international community, most importantly safe shelter and assistance from receiving states. Hungary has an asylum process adhering to the relevant UN protocol. (Bevándorlási és Menekültügyi Hivatal/a) Assistance is provided to anyone who is:

... a person whose life and liberty are threatened in his/her country of origin on account of race, religion, nationality, membership of a particular social group or political opinion, or whose fear of being subject to persecution is well founded, and who currently resides in the territory of Hungary and submits an application for asylum.

The only requirements are that (a) the person contacts the relevant government agency immediately upon arrival and (b) submits him/herself to the relevant procedures (identification process and a maximum of 6 months of detention depending on court order).

The European Union has its own common process to handle refugees called the Dublin regulation. (EUR-Lex, 1990) At the core of the protocol are two key components: (a) asylum seekers are processed in their country of arrival and (b) asylum seekers are resettled throughout the EU based on a quota system. A clear goal of the convention is to share the burden facing Europe: asylum seekers are distributed within the EU based on the means of the host country. Importantly Brussels does not simply leave the Schengen border countries to fend for themselves as the convention ensures that each member-state has to contribute to the solution of the crisis.

The problem is derived from the fact that not everyone seeking entry into Europe is a refugee. Looking back at the two National Consultation questionnaires, one can see that the Government references migrants, predominantly illegal migrants, rather than refugees or asylum seekers. It is the Government's contention that a large portion of people arriving to Europe are not legitimate asylum seekers but rather economic migrants not entitled to the aforementioned protections exploiting the refugee crisis for personal gain. Hungary refuses to accommodate the resettlement of such people under the Dublin process. The problem is further compounded by the fact that a large number of refugees and economic migrants have exploited lax border security to slip into the European Union illegally and are already within the borders of the Schengen area.

At the core of the Government's arguments is a fundamental misrepresentation of both the UN and EU asylum process. Anyone can seek asylum and under international law their application has to be processed. This means that Hungary and the EU has to process people whether they are refugees or economic migrants. However, neither the relevant UN conventions nor the Dublin process extends protections to economic migrants. If a person is found to have tried to exploit the asylum process in order to bypass immigration, then asylum status is not granted and the person is deported. The European Union does not require Hungary to settle economic migrants, only refugees, which is an obligation of Hungary independently from the European

Union based on Budapest being party to the relevant UN agreements. The Dublin process merely provides a common solution to a problem that has been deemed by EU member-states, including Hungary, to be beyond the capabilities of any single country.

Based on this, the position of the Government becomes clearer. The refugee crisis has created an extraordinary influx of people. Hungary alone had to deal with as six fold increase from 2014 to 2015 in asylum seekers. (Bevándorlási és Menekültügyi Hivatal/b) Processing such an amount of people would require extraordinary effort. Furthermore, there are concerns that due to the chaos created by the increase in people there is a pressure to rubber-stamp applications rather than determining whether someone is really entitled to asylum, allowing economic migrants to receive refugee status. The Government's solution is to remove itself from the problem by sealing the country's borders. Hungarian border fortifications facilitated an 81 percent reduction in the number of asylum seekers from 2015 to 2016. (Bevándorlási és Menekültügyi Hivatal/b) At the same time the Government refuses to cooperate with the Dublin process, especially when it comes to quotas for the resettlement of refugees. Looking at the country itself, the Government's resistance is understandable. Hungary is a relatively small country with modest economic means. Furthermore, it is a demographically homogeneous country. 85+ percent of the population is ethnic Hungarian, with almost 15 percent being unidentified. The largest minority (Romani) is a mere 3 percent. (CIA) The overwhelming majority is either Christian or non-religious. Besides Christianity and Judaism, no other religion has a major presence in the country. A melting pot the country is not. The resettlement of a large number of asylum seekers presents fears that it would alter the demographic composition of the country and negatively impact the social fabric of existing communities, especially those outside major urban centres. Integrating asylum seekers would be also difficult: Employment opportunities and funds for welfare are in short supply. Even if the EU offers significant assistance to resettle refugees, it would only create the perception of creating a 'privileged class' that was extended assistance the EU and Hungary does not extend to its own citizens. This perception is exploited by the Government when it directly references the supposed financial assistance it would be required to provide to migrants. 9 million HUF is more than what most Hungarians earn working for years. The idea of accepting extraordinary numbers of refugees is unsurprisingly highly unpopular domestically.

While it allows the maintenance of the status quo, the key problem with this approach is that it violates international law. By shutting out the refugee crisis, Hungary is failing to meet its international obligations both to the European Union and the international community at large. Hungary does not have the right under international law to determine whether someone is a refugee or a migrant without a due asylum process. Furthermore, as Hungary takes steps to disincentivize asylum seekers it only diverts the flow of people increasing pressure on other EU states to handle them.

The coercive powers of the European Union

Key central elements of the two National Consultation questionnaires are the Government's perception of attack and its fear of punishment. This references the EU's infringement procedures. The EU's primary enforcement powers are vested in the European Court of Justice. As a member-state of the European Union the rules and laws created by the EU through its various legislative organs and procedures (e.g. the European Council and the European Parliament) are legally binding. Non-compliance triggers the aforementioned infringement process (European Commission/a), which ultimately leads to the ECJ engaging in adjudication and potentially determining fines for non-compliant states. This is a fairly straightforward

process and common to numerous international organizations. International agreements that establish some sort of bureaucracy tend to establish dispute resolution organs. This is true, for example, for the World Trade Organization (WTO) or the United Nations Convention on the Law of the Sea (UNCLOS). The main difference is that, while most of these IGOs are highly specialized, the EU has a much more broadly defined scope, hence it tends to regulate more diverse issues. Within the EU infringement procedures are not extraordinary by any standards, at the moment the EU has some 2700 active infringement procedures. (European Commission/b) Once again, it is important to note that Hungary has voluntarily joined the European Union, and thus voluntarily submitted itself both to its binding laws and the jurisdiction of the ECJ.

The perception of diminishing sovereignty

The Hungarian Government interprets the above discussed issues as a threat to Hungarian sovereignty. The argument itself is fairly straightforward: Hungary seeks to pursue a certain policy direction. The European Union argues that this policy is not in accordance with existing laws and raises the possibility of a fine. The Government interprets this as a coercive influence that undermines the independence of Hungarian policy formulation, hence an attack on Hungarian sovereignty. However, such an interpretation is based on an absolutist interpretation of national sovereignty.

The issue of sovereignty, especially how it works in the context of the international community, has inspired a long academic discussion with many distinguished scholars offering their interpretation. The idea of absolute sovereignty, i.e. the idea that states can govern exclusively and without interference within their borders, has been criticised for decades. Nayar (2014) highlights that sovereignty continues to be a complicated subject as two contradictory forces – the growing porosity of state authority and the reactionary resurgence of statism – shape contemporary discussion of sovereignty. Similarly, Campbell, Kumar and Slagle (2010) highlights that while discussions of sovereignty in the 1990s focused on declining state authority, in the post-9/11 era one can observe a resurgence in focus on state authority and control. At its core, sovereignty is based on the principle of non-intervention: one state does not possess the right to intervene in the affairs of another (Krasner, 2001). This is a popular interpretation of sovereignty, and is enshrined for example in the key principles of ASEAN, a regional block that considers non-interference one of its cornerstones. However, such an interpretation is both vague and narrow considering to scope of activities a state undertakes. On the one hand, it fails to adequately define what constitutes intervention, e.g. whether criticism qualifies as interference. On the other, it ignores the fact that states do not act in a vacuum and that domestic and foreign cannot always be neatly separated. A state's domestic policies can have international implications in which case such a definition disregards the rights and interests of other states. In response to this, many sought to refine the concept of sovereignty. Janice E. Thomson argues that sovereignty should not be viewed as control but as authority. (Thomson, 1995) From a laymen perspective this might be considered a distinction without difference, but from a technical standpoint there is a meaningful difference. Control assume that the government can directly affect all aspects of life within its territory and sovereign control would assume that it can do so unchallenged. This was demonstrated to be untrue as technology empowered various agents to defy state control when it comes to the flow of capital, people and information. In contrast, sovereign authority means that the state is the only one with the legal right to intervene in society coercively. Essentially this approach substitutes rule setting to control. This chips away of the myth of absolute state sovereignty that failed to stand the test of time. More relevant to the discussion at hand is Oona Hathaway's

examination of the conflict between international delegation and state sovereignty. (Hathaway, 2008) She highlights that, while international treaties limit state sovereignty, the criticism of this trend often neglects to discuss the benefits of international cooperation such treaties make possible. Essentially, the argument is that states voluntarily accept some foreign interference in exchange for the benefits of international cooperation. Unfortunately, such a view is not represented in the Government's approach to sovereignty which boils down to the colloquialism of 'my way or the highway'.

One challenge for discussing this particular case is that much of the discussion focusing on the conflict between national sovereignty and what Kyl, Feith and Fonte (2013) describes as a 'transnationalist challenge' is concerned about entering into agreements. This is not the case in this particular scenario as Hungary has willingly and voluntarily entered the agreements already with seemingly little concern of how they will affect its sovereignty, hence this case falls beyond the limits of the typical discussion on U.S. sovereignty and Washington's unwillingness to enter into certain international agreements. The case of Hungary is more reminiscent of the trend shown by Donohoe (2013): attitudes towards what constitute acceptable limits on sovereignty change over time. One could reason that such trends are motivated by waning and waxing optimism towards the utility of such arrangements, especially when the – sometimes unanticipated – costs of these arrangements materialize.

In the particular case of Hungary one would be hard-pressed to prove that Hungarian sovereignty has been violated. Rather, the issue at hand concerns Budapest honouring its international obligations. Hungary has voluntarily joined both the relevant UN Conventions and the European Union. As part of the process Hungary has been aware of the both the benefits and the obligations associated with the agreements. The current refugee crisis is not qualitatively different from issues covered by relevant UN conventions and the Dublin process, merely differ in scale. Thus, Hungary's obligations remain the same. The threatened EU infringement process is not as much a coercive influence to force Hungary to do something new as an expression of Brussels expectation for Hungary to do something it has already agreed to. Focusing on the refugee issue prevailing international law is clear: The 1951 UN Refugee Convention and the 1967 UN Refugee Convention requires the European Union and Hungary to process asylum seekers. The Dublin Process established the method for this on a continent-wide scale and is binding to members of the European Union as it is a result of a common decision. Under the process Hungary is obliged to (a) process asylum seekers arriving into the country and (b) comply with the resettlement of refugees across Europe or monetarily contribute to exempt itself from that. This is not a matter of opinion, this a matter of existing international law.

The argument that Hungarian sovereignty is under attack is further undermined by the fact that the Government has the sovereign authority to withdraw from all relevant agreements if it feels that the obligations imposed by these treaties no longer correspond to the country's interests, assuming that that it can muster sufficient support for such a step in the Hungarian Parliament – in which the Government enjoys a majority. The BREXIT sought after by London creates a clear precedent that if a country no longer feels that EU membership is in its best interest, then there is a process to exit the Union. Hungary is free to pursue its own 'HUXIT', regardless of how terrible the acronym is. However, it is clear that the current FIDESZ Government shows little interest in an actual exit from the European Union, which would likely turn out to be a disaster for the country. EU membership has conferred significant benefits to Hungary and the Government is eager to preserve these. Furthermore, any such move would likely encounter

significant popular resistance, especially if pursued without a popular vote. It merely wishes to renege on the obligations part of its membership.

Essentially the authority of the Hungarian state to independently determine policy is not substantially threatened as it has clear options to defy policy directions it does not agree with. This goes beyond a reasonable interpretation of sovereignty. The problem is that Budapest is unsatisfied with the fact that it cannot do so without suffering the consequences of its actions. Once upon a time, before reality inconveniently started to rear its ugly head, BREXIT was heralded as Britain having its cake and eating it too. Budapest desires something similar: Hungary wants to enjoy the benefits of international cooperation, benefits it feels entitled to, without accepting the costs of international cooperation, seeking to pick and choose whether to honour obligations based on political convenience. While such a desire is understandable, any form of acquiescence would create a dangerous precedent.

The sovereignty to defy obligations: the end of the international legal order

Law work differently on the domestic and international levels. In a domestic context laws are based on the disproportionate power of the state. In an international context a higher level of trust is involved as laws exist between sovereign agents in the absence of a higher enforcement power. International cooperation is based on states' trust that they will each honour their obligations. Take the idea of collective security: one state trust another that it will provide aid in case of a conflict, but there is little tangible guarantee that the other state will do so. Naturally states also have a desire to renege on their obligations or conflicts otherwise arise from the interpretation of international agreements. Hence states create various institutions, such as international courts, to resolve such issues. But at its core, all of this is based on trust: states can choose to defy agreements and international courts as sovereign agents. Countries such as the United States (defying the U.S. vs Nicaragua ruling of the International Court of Justice) and the People's Republic of China (defying the Permanent Court of Arbitration regarding the submissions of the Philippines) have established precedents for this.

This is exactly where the dangers present themselves in the issue discussed above. Hungary has agreed to certain rules – the UN Refugee Convention and the Dublin process – but seeks to renege on these rules unilaterally without exiting the agreements. If Hungary is allowed to do so it creates a precedent that this is acceptable, which in turn will encourage other states to do so. Other Eastern European states, most prominently Poland, has already joined the path set by Hungary. This erodes the relevance of existing international law. To use a light-hearted example, the 'pirate oath' is a central theme of the first Pirates of the Caribbean movie. It is presented as the law governing pirate life until one of the characters breaks it with the argument that it is not as much an oath as a recommendation, depriving it from any pragmatic relevance as it is no longer a code to adhere to. International law is the pirate code of international community and it is effective as long as everyone respects it. However, it loses much of its effectiveness if it is allowed to degrade into a mere recommendation. Naturally one does not talk about the immediate implosion of all international law. But incidents such as these represent a real risk of rot setting in the foundation of the international legal order. If they are not countered then over time the entire system risks collapse. It is with good reason that states that are non-compliant with international law are labelled as rogue states and vigorously opposed and punished by the community at large.

The politics of sovereignty

The sections above showed that there is little merit to the Government's claims that Hungary's sovereignty is under a substantial attack. Yet the Government has invested significant resources to conduct two National Consultation campaigns on the subject, as well as investing its own credibility into this fight. The question then is why the Government would do that. The answer is that the Government is engaged in the politics of sovereignty, the theatrical display of being under attack, in order to achieve its own domestic political goals.

Populist politics are on the rise as they present a convenient avenue to garner support from the general public. Unfortunately for the discussion at hand the general public tends to have a simplistic view of sovereignty, especially when filtered through the lens of popular nationalism. This is largely unavoidable as the international order becomes increasingly complex and an increasing number of cooperative regimes beyond the understanding of the average citizen are created. Hathaway notes the problems arising from transferring power from local authorities to a culturally and physically distant powers. (Hathaway, 2008) One can combine this with the fact that the average person holds a rather unsophisticated view of state sovereignty and it is not hard to see why the politics peddled by Government are popular. And they are popular. In case of the first National Consultation of 2017, the respondents expressed overwhelming support for the government's position:

Questions #1: 99.1% supports that the government's policy on utility price reduction needs to be protected and that the government should insist that utility prices need to be determined domestically.

Question #2: 99.3% supports that illegal immigrants should be detained by the authorities until their refugee status is approved.

Question #3: 99.2% supports that supporting illegal immigration, e.g. through human trafficking, should be criminalized.

Question #4: 99.1% supports that NGOs receiving foreign funding should register with the government and reveal their foreign benefactors.

Question #5: 99.1% supports that economic policy should be decided upon domestically.

Question #6: 99.1% supports that the government should insist that tax rates should be determined domestically.

A total of 1 688 044 questionnaires were sent back to the government. (Magyarország Kormánya / Government of Hungary, 2017/a) In 2014, FIDESZ needed slightly above 2.2 million votes to maintain a stranglehold on the Hungarian Parliament. It is clear that there is a large group of people receptive to the Government's rhetoric.

The politics of sovereignty allows the Government to present a simple political narrative to appeal to the sensibilities of a nationalist/conservative base. Instead of Paul Revere warning that the British are coming, it is the Government on horseback spreading the news that Brussel is coming, and that they are coming for the freedom, security and welfare of the Hungarian people. There is qualitatively little difference between this and the U.S.'s continued refusal to join mundane international agreements in fear of UN black helicopters. It is important to note that the Hungarian Government is not alone in its reliance on the politics of sovereignty. The Conservative Party in the United Kingdom employed it to gain and maintain power through appealing to pro-BREXIT constituents. Similarly, Donald Trump often employs the technique of threatening to withdraw from international agreements, whether it is the Paris Climate Accord, the Iran nuclear deal or the North American Free Trade Agreement, to appeal to a

nationalist crowd who views such agreements as a constraint on U.S. sovereignty regardless of their pragmatic value.

In the politics of sovereignty one can observe a trend similar to that of securitization: certain policy issues are elevated to the level of a fight for sovereign rights in an attempt to remove them from normal political discourse. They are used as a rallying cry and citizens are expected to fall in line to fend off supposed threats to sovereignty. Interestingly the second National Consultation 2017 does not ask whether one believes in the existence of the 'Soros Plan'. It is treated as an unquestionable fact. The questionnaire only offers two options: one is either in support of the Government's fight for sovereignty or one is a traitor supporting the selling out of the country to foreigners. This is not far removed from the 'with us or against us' mentality of the War on Terror.

In the end, by employing the politics of sovereignty the Government is exchanging long-term stability for short-term political goals. Essentially, causing long-lasting damage to the foundation of a cooperative international order is viewed as an acceptable cost to garner support for the next election. Unfortunately the quality of politics is largely determined by the quality of the electorate: as long as the politics of sovereignty remains an effective tool, one should expect political powers to try to exploit it, regardless of costs. In this instance one can see the unfortunate failure of the European Union to demonstrate to large segments of society how the Union benefits them and why its continued existence is to their best interests. Whether the EU leadership likes it or not they have to descend from the ivory tower of Brussels and fight for the survival of the EU in the trenches, capturing the hearts and minds of previously neglected constituents. The alternative is the continued ramping up of populist rhetoric and gradual degradation of the Union.

The politics of sovereignty in economic policy

The politics of sovereignty is not limited to the refugee issue. It is also employed in the context of economic policy. As shown above, the first National Consultation in 2017 has dedicated significant space to the idea that Hungary is under attack due to its economic policies. The central components of the Government's economic policy are the implementation of social welfare programmes and a focus on trickle-down economics. First, the government has significantly revised the tax code in order to reduce the financial burdens faced by the electorate. The original tiered personal income tax system was abolished in favour of a flat-rate system. Originally the rate was set as 16 percent, regardless of income, however it has been further lowered to 15 percent in the following years. (Jogtár, 2015) Similarly, the Government has recently reduced corporate tax to a flat 9 percent from 10 percent (small and medium enterprises - SMEs) and 19 percent (large corporations). There are two points to note concerning these moves. One, the Government seems to favour an American-model of trickle-down economics: One key goal of the reduction of taxes is the expectation that the money saved will be reinvested by both citizens and corporations, e.g. through increased consumption of goods. Two, the Government is adopting an aggressive strategy to attract multinational corporations (MNC) by undercutting corporate tax rates in other member states. MNCs play a crucial role in the economies of the region, the arrival of a new manufacturing plant or logistical centre creates hundreds and thousands of jobs, as well as promote infrastructural and urban development. The government is eager to capture the attention of such MNCs by offering more favourable conditions compared to neighbouring states.

Second, the Government seeks to limit utility prices in order to ensure that further disposable income is available, especially to families, which can be reinvested through consumption. Utility prices in Hungary have risen sharply and were eating up a significant portion of a family's total income, inflicting significant burden on lower income households. Consider the following example: A single person household doing administrative work could earn 150 000 Hungarian Forint (HUF), which is significantly above the minimum wage. The heating bill alone living in the capital could mount up to at least 20 to 30 000 HUF during the winter (October/November to March/April depending on weather). Paying for utilities, rent or loan repayment for a residence and fuel could leave families with little to no funds for discretionary spending. The Government sought to tackle this issue with its 'rezsicsökkentés' programme (translates to utility price reduction). The method by which the programme achieves its goal is by mandating that the utility bill for a yearly period cannot be more than 93.5 per cent (in the case of natural gas) of the bill for the same usage during the previous yearly period. (Jogtár, 2013) The specific reduction is mandated by law each year. While the method employed might look needlessly complex, it was adopted with a clear goal: to prevent utility providers from using any technicality to pass on the costs to consumers. Furthermore, the Government has been particularly hostile to foreign energy providers as it perceives them to syphon funds out of the country: High utility bills not only tie up financial resources, negatively impacting consumption, but much of the profits are repatriated by foreign utility providers, benefiting their home countries rather than Hungary. It is hardly surprising that a nationalist party such as FIDESZ finds such a state of affairs to be egregious.

Third, the Government considers increasing employment to be crucial, instead of relying on welfare spending, especially as many people have lost their jobs during the economic crisis. Once again, the Government adopted an aggressive strategy of significantly increasing the country's public works programme to make a dent in unemployment. From 2013 to 2016 alone the number of people employed by the public works program grew from 115 thousand to 180 thousand, (Központi Statisztikai Hivatal / Central Agency for Government Statistics) and the program in general has ballooned significantly compared to its pre-economic crisis size. People enrolled in the public works programme primarily do menial labour seeking to benefit their community, often part-time, and usually for below the minimum wage, e.g. collecting rubbish, repairing public spaces, etc. The unemployment system has been redefined to push people towards public works rather than seeking unemployment benefits.

The EU has been critical of most of these measures. However, looking at these criticism one cannot observe the malice perceived by the government. The European Union at its core is based on a simple principle: Europe is strongest when states cooperate. A fractured Europe cannot offer effective solutions to common concerns and a shared rule-setting is necessary to protect the interests of European citizens. In the absence of common institutions much of Europe would be preoccupied with competing with each other, losing much of the continent's potential for global influence. Unsurprisingly, Brussels has not been receptive to the Government's rhetoric of following its 'own way' in opposition to common EU policies. The EU has formulated a number of criticisms towards the Hungarian policies discussed above.

In the economic realm the EU is not primarily opposed to the spirit of the welfare policies as the government would like one to believe, but rather is critical of their execution, voicing fears that they might exert a disruptive influence on the common European economy. A central component of EU economic policy is to avoid another Greece, i.e. the financial meltdown of a member-state due to unsustainable economic policies. In regards to the expansion of the public works programme, the EU is primarily critical of its potential to distort the Hungarian labour market. While the government heralds the programme as a solution to high unemployment, the

EU views it as an attempt to hide the dire state of the labour market. While the programme does offer some income to people in desperate need, it does not offer a sustainable, long-term solution. The public works programme offers little opportunity to develop skills that would be valuable on the labour market, and thus it does very little to facilitate peoples' transition from the programme back to the regular labour market. Essentially by eradicating the statistical perception of unemployment the Government reduces pressures to adopt systemic reforms. Combine this with the mismanagement and corruption associated with large government projects and the programme becomes problematic. Once again contrasts can be drawn between Malaysia and Hungary: Malaysia responded to its own employment issues with the expanding of the civil service. Both the expansion of the public works programme and the civil service create a ballooning government workforce of questionable economic value. From a narrow moralistic viewpoint it makes sense that people prefer recipients of government assistance to contribute back to society through painting fences and collecting rubbish. However, funds could be more effectively used if the programme focused on skill training and facilitating re-entry into a competitive labour market.

Expanding government spending for welfare programmes also puts a pressure on the government to match it in increased revenues. The inability to do so was a strong contributor to the Greek financial meltdown. Combining populist welfare spending with a trickle-down economic model is contradictory. While the Government expands the public works programme and offers various benefits to families, it also has reduced most taxes and offers tax breaks to selected groups, such as young married couples or families with multiple children. To make up for the revenue lost, the Government has introduced a host of special taxes, often targeting specific industries. There is a tax targeting energy firms. There is a special banking tax that is sometimes popularized as a punitive measure against banks profiting at the expense of the voters, especially following the collapse of the foreign currency-based lending market. There is also a tax targeting telecommunication businesses and insurance firms. (PWC) These special taxes often target business sectors unpopular by the electorate or those viewed to profit unfairly on basic necessities as part of the Government's populist programme. Unsurprisingly the EU has been critical of these special taxes, voicing concerns that they negatively impact investment into the Hungarian economy. Furthermore, special taxes create an unfavourable precedent even for companies that are not affected by them. Any corporation investing into Hungary can reasonably wonder whether it is their industry that receives such taxes next if they fail to tow the government line or run afoul of public opinion. Reduced investment carries the risk of unbalancing the Hungarian economy in the long run. At the same time the trickle-down model used by the government is not without risks on its own. The Government cut tax rates expecting that the money saved will be reinvested into Hungary and that it will improve tax compliance. However, there is no guarantee that it will achieve such a goal. It is reasonable to expect that tax breaks to the lower and middle classes will contribute to higher consumption, which the government can take advantage of through atypically high value added tax (VAT) rates in Hungary. But large corporations and high income individuals have proven time and time again that they do not conform to the expectations of the trickle-down model, taking advantage of the tax breaks without reinvesting the gains. Furthermore, from a Europe-wide perspective Hungary's aggressive tax policy could intensify the race to the bottom that can be seen in Eastern European countries desperately trying to attract large corporations. While in the short run the move might benefit Hungary, in the long run it gives power to corporations, a direction the EU has been pushing against recently, as seen for example in the case of invalidating tax breaks offered by Ireland. While the Hungarian economy is not unravelling at the moment – the Government successful reduced government debt – it is not surprising that the EU is critical of its execution as a faltering Hungary would exert a negative influence throughout the EU's

interconnected economy. Such criticism is further warranted by the fact that the EU has invested heavily into propping up the Hungarian economy. It is a contradictory stance to demand to follow one's own way while receiving funds from the very organization it seeks to defy.

But moving away from the abstract, one can demonstrate how the Government's economic policies directly interfere with common European projects. The European Union is in the process of creating a Europe-wide common energy infrastructure. As one expects this is a monumentally complex undertaking. The blueprint for this project can be seen in EU Parliament and Council Regulation 347/2013. (EUR-Lex, 2013) The key goal of the project is to create an integrated and modern common energy infrastructure that eliminates inefficiencies present within the current fragmented nation-based infrastructure. One issue for such a project is financing: who and in what manner should pay for such an infrastructure. The EU prefers to limit direct government investment, favouring private sector financing, i.e. to incentivize privately owned energy firms to build this infrastructure. The goal is to execute the project without significantly increasing government expenditure. However, private corporations are self-interested entities. Investment into national energy markets is conditional on the profitability of said markets. And this is why the EU is primarily concerned about the Government's utility policy. By cutting the profitability of the Hungarian energy market the EU anticipates a reduction in private investment, especially when it comes to financing new infrastructure projects. A 2014 overview of the EU energy markets highlights that the Government's utility pricing policy has contributed to reduced investment and the mothballing of non-critical assets in Hungary as private sector players are discouraged from committing resources to a hostile market environment. (European Commission, 2014) Furthermore, the perceived move of the Hungarian energy markets move towards a more centralized government-owned state is antithetical to the EU's development plan that favours the privatization of the industry. And energy companies are also targeted by the aforementioned special tax, further reducing the attractiveness of the Hungarian market. Hungary's 'own way' goes against a common strategy seeking to solve a continent-wide problem that is well beyond the Government's narrow domestic view.

Once again one can observe that, while the Government appeals to popular nationalist sentiments to quash EU criticism, the issue cannot be satisfactorily reduced to the EU merely meddling in the domestic affairs of Hungary. Hungary has voluntarily joined the European Union exactly because of the Union's ability to coordinate on the European level and it explicitly endorsed or became signatory to the Europe-wide plans against which it seeks to rebel now. The dangers of this process are the same as discussed above in the context of the refugee process, i.e. the potential undermining of the credibility of EU agreements and thus the EU's ability to coordinate on the supranational level.

Conclusion

Hungary has been dealing with major issues, whether it is the refugee crisis or economic planning. There is room to debate on both issues, e.g. the procedures by which the EU awards refugee status need to be reformed to accommodate the interests of all member-states. However, the Government chooses to pursue its 'own way', often contrary to existing international law. At the same time it deflects all criticism by employing the politics of sovereignty to paint any criticism as an attack. This is a largely unproductive process that removes much needed space for discussion on whether Hungary is on the right track on the

first place and where it can do better. The nationalist fervour surrounding the issue makes productive discourse rather difficult as critics are perceived as foreign agents.

Besides the damage it inflicts on Hungarian political discourse, the politics of sovereignty also undermines the very foundation of the current international legal order by seeking to normalize the notion that international agreements can be reneged at will and often unilaterally. It is not a facilitating factor for mature discussion of international issues. And as evidence shows, there is rarely a happy end to these politics. Whether one considers the economic damage suffered by the United Kingdom or the policy chaos of the Trump White House, one has no reason to be optimistic about the effects of such populist politics.

In the end the only thing one can do is to correct the record. Facing the fantasies of populist policies one's only refuge is the realm of cold hard facts. And the cold hard fact is that there is no concentrated effort to undermine Hungarian sovereignty, only calls to hold the country accountable for its own promises and agreements.

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