

05/04/2004

Belonging to the New Europe and preserving ethnic identity – the problem of the “hard borders” post May 2004.

Ian Barnes

Claire Randerson

Paper presented to the Political Studies Association Annual Conference 2004

University of Lincoln 6-8th April 2004.

Session 3 Politics of European Integration 16:00 – 1730

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Any comments on this paper will be gratefully received

Contact details

Ian Barnes, Jean Monnet Professor of European Economic Integration, Faculty of Business and Law, University of Lincoln, Brayford Pool, Lincoln LN6 7TS
ibarnes@lincoln.ac.uk

Claire Randerson, Lecturer in International Relations, Department of Policy Studies, University of Lincoln, Brayford Pool, Lincoln, LN6 7TS
mailto:cranderson@lincoln.ac.uk

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Abstract

The EU belatedly recognised that one of the overspill effects of the largest enlargement in its history was that it would acquire a new set of neighbours, and with these, a range of relationships would need to be stabilised. Generally, the hope was for harmony within the EU's wider borders as all concerned shared the advantages of membership. Amongst the new members, a degree of distrust has emerged concerning the way that ethnic groups are dealt with. This is particularly the case with respect to ethnic Hungarians, but other examples exist. These internal stresses are exacerbated externally, as a clear hierarchy of EU relationships has emerged. Those best placed have easy access to the internal market and can expect to cross into EU territory without difficulty. Those who live on the wrong side of the EU's "hard border" face substantial bureaucratic obstacles to the free movement of people. Whilst the issue of "hard borders" and the ethnic mix have been debated for some time in academic circles, it is remarkable that the serious practical implications of the emerging problems associated with this have been ignored during the enlargement process. Was this because of the way that the negotiations were conducted? If it was, how do we explain this oversight?

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Introduction

The EU belatedly recognised that one of the overspill effects of the largest enlargement in its history was that it would acquire a new set of neighbours, and with these, a range of relationships would need to be stabilised. Generally, the hope was for harmony within the EU's wider borders as all concerned shared the advantages of membership. The response to the external situation was to create a New Neighbours initiative, which seemed initially to offer a consistent and supportive set of relationships.

Amongst the new members, a degree of distrust has emerged concerning the way that ethnic groups are dealt with. This is particularly the case with respect to ethnic Hungarians, but other examples exist. These internal stresses are exacerbated externally, as a clear hierarchy of EU relationships has emerged. Those best placed have easy access to the internal market and can expect to cross into EU territory without difficulty. Those who live on the wrong side of the EU's "hard border" face substantial bureaucratic obstacles to the free movement of people. Whilst the issue of "hard borders" and the ethnic mix have been debated for some time in academic circles, it is remarkable that the serious practical implications of the emerging problems associated with this have been ignored during the enlargement process. Was this because of the way that the negotiations were conducted? If it was, how do we explain this oversight?

This paper argues that whilst the EU has had little experience of dealing with complex ethnic realities in the past, it now needs to take on board the new reality that it faces to

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the East. In particular, more needs to be done to avoid the sense that the process of enlargement, rather than uniting Europe, will simply shift the dividing line further east. The Commission, principal negotiator of EU enlargement and the guardian of the integration project, has tended to downplay many controversial issues in order to achieve its overarching goal of expanding the European project. Applicant states have generally subscribed to this same view, at least in their public pronouncements, if only to ensure that they achieve EU membership. In this sense, many applicant states have employed the rhetoric of constructivism in pursuit of rationalist objectives. (*Schimmelfennig and Sedelmeier, 2002*) reflecting both a commitment to the cause of European integration and a willingness to ignore short-term problems that arise as essential to gain from the future benefits of membership.

Finally, although enlargement involves negotiating the goal of membership and the effects it will have on both EU and applicant states, two sets of stake holders are almost entirely missing from the process. That is, those states left on the outside of the EU, (the so called New Neighbours) and representatives of ethnic groups scattered amongst various states, both within and outside the enlarged EU.

The Enlargement Process

The process of enlargement, in case of the EU, concerns a complex organisation with multiple issues to consider. With each enlargement this range of issues expands, even where the new members systems were closely aligned with the original members. The depth of integration has also increased over time, making the task of alignment of systems very difficult, especially for the former communist states. From the perspective of the applicants, the membership process is of importance. Unlike Norway and Switzerland there is limited scope for the Central and Eastern European

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States to free ride, that is taking the benefits of a more integrated Europe, yet remaining outside. The reason for this is in part financial, in that transfers of resources via the structural funds is an important motivational factor for membership, whilst funding for states on the fringes of the EU is less certain on a long-term basis. However, the major issue is surely that the hard borders exclude non-members from the east from taking full advantage of the EU single market, whilst the membership of alternative groups looks unattractive.

Theorizing the problem

When we look at the process of enlargement it is interesting to speculate how we managed to get to this present situation, where substantial issues have been ignored during the course of the negotiating period. We know that enlargement will have an impact upon existing EU states, new member states and those that are excluded from the process (those who do not qualify for membership or do not wish to be members). However, there are many aspects of the enlargement that are poorly explained. These factors have helped shape a new wave of enthusiasm for theories of integration that can be applied to enlargement. Helen Wallace (2002) welcomed the fact that at last the process of enlargement has become the subject of theoretical reflection as well as empirical commentary. Previous analyses have focussed on establishing the principles of enlargement and elaborating upon those, (Preston C. 1997) simply examining events *ex post* and concluding where we have reached. However, as the 2004 enlargement to the east and south of Europe is unlikely to be the last, it is important that we start to understand the nature of the overspill effects of enlargement, how they have arisen and their consequences.

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In their article 'Theorising EU enlargement', Schimmelfennig and Sedelmeier (2002) argue that both rationalist institutionalist and constructivist institutionalist factors contribute to an understanding of EU enlargements past and present. The rationalist perspective dominates analyses of the EFTA enlargement of 1995, whereas research conducted on the decision making process of the forthcoming Eastern enlargement tends towards constructivist explanations. The varying explanations and theoretical frameworks reflect in part, the different questions being posed about each enlargement round. Constructivist theories are more effective in their analysis of the eastern enlargement because much of our interest as researchers is focussed on explaining *why* the EU opened and concluded enlargement negotiations with the countries of central and eastern Europe, when so many potential political, social and economic problems and disparities remain. The rationalist perspective, with its emphasis on material factors, cost benefit analysis and its focus on states and their policies, cannot provide sufficiently satisfactory explanations for this decision making process. As a result, research conducted on the EU's macro-strategic approach to the eastern enlargement has a tendency to reflect constructivist factors such as the creation of a pan-European identity (Friis 1998), spreading/construction of liberal values, norms and beliefs (Schimmelfennig 1998, 2001; Fierke and Wiener 1999, Sedelmeier 2000). However, in addition to providing competing theoretical explanations for the various rounds of EU enlargement (Schimmelfennig and Sedelmeier, 2002), these two perspectives can in part, complement each other and provide an enhanced understanding of the processes involved in the eastern enlargement at both a macro and policy oriented level of analysis.

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Within constructivist theories 'enlargement is understood as the expansion of international community' (Schimmelfennig, 2001, p.47). The desire to promote this sense of community, with its shared identity, values and beliefs can be (is often) seen as strongest within the European Commission – the institution responsible for negotiating accession terms with applicant states. These motivations for enlargement, - the historic opportunity to unify a continent and create a pan European identity - provide a framework for understanding why some of the material problems regarding enlargement and policy implementation may have been disregarded, in the need to maintain momentum and consensus. Charles Lindblom's seminal article (1959) on 'muddling through' or incrementalism as the usual method of policy making, provides us with an explanation of the micro-strategic policy approach taken towards the enlargement process. Lindblom (1979) talks of 'smuggling change' into the system, arguing that policy making tends to be incremental as this is the best and most effective way of producing change within the system. He is positive about incrementalism, stating that '*incremental steps can be made quickly because they are only incremental. They do not rock the boat, do not stir up the great antagonisms and paralysing schisms as do proposals for more drastic change*' (1979, p.520). EU decision-making regarding the eastern accession negotiations has taken this incremental approach, postponing public discussion of the more controversial aspects of enlargement until the final goal has been secured. The 'compliance truce' evident in this round of the enlargement process, regarding such issues as migration and the eastern borders, reflects a reluctance within the EU to damage the fundamental consensus on enlargement.

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Now that the goal of enlargement has been secured, there are indications that this 'constructivist approach' is coming to an end. The reaction of EU members and new applicant states suggests a growing awareness of the material consequences of enlargement. States are employing a more rationalist, cost/benefit approach to potential problems of policy implementation. To a certain extent, this process was evident during accession negotiations, for example delaying the phasing out of structural fund payments to areas with limited claims upon these. However, the trend is more evident now that the overarching aim of enlargement has been achieved. Spain is actively attempting to secure continuing high levels of structural fund support for its regions and access to the Cohesion Fund if GDP rises above 90 percent of the EU average. (Yarnoz Carlos, 2004) Concerns about the impact of free movement of workers from the new member states became evident in January and February of 2004, resulting in a tightening of rules with respect to access to welfare payments in the UK. In most other member states, derogations with respect to labour market access were already in place, but reassurances have been given that these rules would be applied.

Applicant states are normally very concerned to minimise problems during membership negotiations. Compliance with membership conditions can often be superficial and national interests can, for a period of time, be minimised. However, issues thought resolved can re-emerge once the goal of membership has been achieved. Our concern within this article is to address complex ethnic issues and their emergence on the political agenda, issues arising with respect to ethnic minorities as enlargement of the EU comes closer to reality. The language of constructivism with its notion of international community is being challenged as potential sources of

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tension become apparent with the introduction of “hard borders”. It is difficult to permanently downplay the real cost of these borders for communities who understood that the fall of communism would lead to greater European unity. Communities complain that many of the promises made to them about their rights, have not been delivered upon, for example the Hungarian minority complain that the return of church property in Romania has been extremely slow especially where valuable real estate is concerned. These developments would seem to indicate that despite the predominance of constructivist explanations for the eastern enlargement of the EU; rationalist perspectives retain their relevance for a complete understanding of the enlargement process.

Ethnic Minorities within the Enlarged European Union

Within the region of Central and Eastern Europe there are many different minority groups contained within or straddling national borders. This fragmentation was of more limited consequence in the Europe of Empires, but different groups were cast adrift by the redrawing of boundaries during the twentieth century. Some of these groups were separated from their homeland, whilst others have no dedicated homeland, i.e. the Roma, found in large numbers within the Czech Republic, Bulgaria, Romania, Poland and Slovakia. Given the priority afforded to the respect of human rights within the EU enlargement process, the lack of a dedicated homeland for the Roma should in theory, not be too problematic, especially as this community has been the subject of extensive reporting with respect to the guaranteeing of their rights. However, now that enlargement is secure, the Roma may be seen as less of a priority. In Slovakia, the Roma population is amongst the very poorest in society and despite this, the community now feels that attempts to reform the national welfare

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rules have adversely affected them. The decision to reduce welfare benefits by half in 2004 may not be ethnically neutral. In the poorer eastern part of the country, unemployment amongst the Roma is as high as 75 to 90 percent in some villages. Now that their fate is not tied to successful completion of membership negotiations, the Slovak authorities may feel that they can progress with reforms said to be of benefit to the whole of society. Unrest and looting was reported in the media throughout the EU during February 2004, but the Slovak government has been able to push through the planned reductions. The unrest was blamed on a small group, largely incited by moneylenders (Anderson Robert and Fris Michel 2004).

Russian minorities within the Baltic States have not been the centre of civil unrest, despite their ambiguous status within Latvia and Estonia, but Russia is clearly determined to ensure that their rights are improved upon. Many of these Russians came to the Baltic States during the Soviet occupation and in the past, lived a privileged existence within their own ethnic enclaves. Russian was the predominant language and although schools for the national language groups did exist, the general ideology was towards a multi-ethnic society. This was difficult to reverse once the Soviet occupation was over. Lithuania has proven to be the least problematic of the Baltic States in that the extent of Russification was significantly less, amounting to perhaps only 8 percent of their population. Also nationality laws in Lithuania are more generous. (Gelazis Nida M. 2003: 48-49)

In Estonia, 25.6 percent of the population are of Russian origin. Only 80 percent of the population are citizens, whilst 7 percent are foreign, the remainder are stateless. This stateless minority can apply for citizenship and 177,000 were granted this status

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between 1992-2002. Passports are also issued to the stateless group but they have restricted rights with respect to certain areas of state employment. Immigration for family reunification purposes has also been an issue. (CEC 2002A: 30-330) Within Latvia, 22.4 percent of the population are non-citizens. This number is increasing due to a reduction in the citizenship fee and the provision of free language courses. Non-citizen passport holders, numbering round 600,000, find it easier to visit Russia than Latvian citizen passport holders because of differing visa requirements. Latvia has been criticised for restricting the rights of non-citizens to participate in the electoral process. (CEC 2002B: 30-33)

The significance of these issues is that they are unresolved and therefore create potential sources of tension for the European Union, despite the states concerned qualifying for membership. This is not a minor issue and it is surprising that accession can go ahead without its resolution. Within these states, there are concerns about the position of the stateless regarding EU citizenship, because it is citizenship of member states that confers EU citizenship. *Article 17* (ex Article 8) of the Treaty Establishing the European Community states that:

“1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.”

Also, Russia has declared the welfare of these minorities to be one of their key foreign policy interests. Following from this, Teija Tiilikainen (2003:18) suggests that these minorities could prompt Russia to intervene more actively in EU affairs. Finally, it is

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suggested that the existence of EU citizenship, reinforces the division of EU peoples into different categories.

Inevitably, these unresolved issues have come to the surface. In February 2004, the Economist commented that; “Strategists in Brussels no longer talk sweetly of encircling the enlarged European Union with a “ring of friends”, as it listed the issues outstanding between Russia and the EU. These include, recognition of Russian as an official EU language in Estonia and Latvia and visa free travel between the EU and Russia.

The Harder Borders

Centuries of migration throughout Europe created the ethnic mix that exists within many Central and Eastern European states. In addition, these migratory flows have been overlain by modern political developments, such as border changes following World War One and mass population expulsions after World War Two. In many areas where minorities remained, their identities were either suppressed or contained within state structures. These minorities within states persisted as a problem long after the collapse of communism. Administrative borders have tended to stay in place after the change in political system, with any fragmentation or secession resisted. Majorities have resisted change in boundaries and there is a general repugnance at the idea of enforced consolidation of ethnic groups. The wars in Yugoslavia that followed communism’s collapse graphically illustrate the extent to which the ethnic identity of minorities can be seen to challenge the integrity of the nation state.

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The international community would prefer to see borders as permanent and minorities having considerable rights that are respected. Even if conducted peacefully, the break-up of states is likely to be traumatic to all concerned. The process of maintaining rights is at the centre of the EU's support for pluralistic liberal democracy. The EU's stance is that as the process of European integration continues, there should be harmony across border communities within the EU; indeed the borders themselves should cease to have real meaning except in an administrative sense. However, this approach is a direct contradiction to what happens with the creation of harder borders on the EU's outer circle. Here significant obstacles are placed in the way of cross border community contacts. There are, in effect, "in" and "outs". This is a problem which can only be resolved by further enlargement, which in turn, moves the problem further outwards as other minorities are affected.

The Schengen Treaty was incorporated into the Amsterdam Treaty that came into effect on the first of May 1999. The aim has been to create an area of free movement of people behind a border, designed to protect the citizens of the European Union from external threats such as terrorism and illegal migration. As a consequence, there has been limited progress in the harmonisation of free movement, common immigration and visa policies. Progress has been slow, particularly since 11 September 2001 as the security situation deteriorated. Slow growth in European economies has also reduced the general enthusiasm for inward migration. This was dramatically illustrated in 2004 by the tightening of member states' national rules with respect to migration from applicant states, and restrictions placed upon their access to welfare benefits. Skilled migrants are still welcome and a certain amount of unskilled labour is allowed in but with very few actual rights. Issues such as family

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reunification have now become far less of a priority. From the EU's perspective, there has been a need to ensure that:

- Border controls are robust in order to protect the perimeter of Schengenland
- Illegal migration and false claims for politician asylum are discouraged

Schengen is not very friendly to those states on the other side of the EU border but membership is compulsory for accession states, despite the opt outs given to the UK and Ireland.¹ Schengen has created discord because it tries to maintain the integrity of free movement within Schengenland, but fails to accommodate long-standing traditional links with non-member states.² Trading patterns that appeared to be mutually beneficial to parties either side of the border are now being strangled by a regime, which is designed to reduce the flow of undesirable entrants. It penalises those who wish to move across the borders on a legitimate but temporary basis.

Applicant states see that EU membership is their most immediate priority and have therefore been loath to raise objections to the imposition of Schengen's outward boundary controls. Alignment of Poland's visa policy with that of the EU has meant the introduction of visas for nationals from 15 countries. Whilst there was free movement across the border between Poland and Ukraine, the numbers now crossing the border are being significantly reduced, perhaps by as much as 40 percent. The number of visas that Poland will have to issue is likely to grow from 230,000 annually to 3.5 million. As a result, the Polish minority (300,000 to 400,000) living in the

¹Article 3.1 of the Act Concerning the Conditions of Accession states that; "The provisions of the Schengen acquis as integrated into the framework of the European Union ... shall be binding on and applicable in the new Member States from the date of accession."

² The exception to this are the wealthier states such as Norway and Iceland, who are actual members of Schengen.

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Ukraine will become more isolated. The Ukraine continues to face difficulties regarding visas because the country is a route for illegal immigrants, especially via Russia. (Wolczuk K. and Piorko I., 2001). Poland's adoption of the Schengen arrangements has effectively marginalized Ukraine.

Examples of the problem created by the new Schengen boundary can be found across Europe. For example, the Kaliningrad enclave - the Russian Community bordering the Baltic States and to the south, states that require visas such as Bosnia, Macedonia, Serbia and Albania, surrounded by visa free states such as Greece, Croatia, Hungary and so on. Unless there are real attempts to improve border crossings, these will be areas of conflict. Given the need to protect the integrity of borders, the need is for faster processing of documents, special border arrangements for particular communities and for multiple entry documentation. However, as might be expected, improving the speed at which these matters move, creates opportunities for fraud or at least the provision of misleading information. Over 2,500 residents of Kaliningrad suggested they were likely to be staying at the non-existent Olivia hotel in the Polish town of Olsztyn on their applications for Polish tourist visas. The hotel does not exist; the name was used as an example in the instructions for applications for a visa. (BBC 2003a)

Even where the Schengen visa is not required within Central Europe, there are restrictions in place. Romania gained visa free status to Schengenland in December 2001, but the authorities there impose restrictions of their own. Citizens going abroad are required to have up to €100 per day for the period that they leave the country, plus they should have health insurance. Although these requirements may have deterred

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some people from entering the EU, borrowing money from agents can circumvent these arrangements

Attempts by the Hungarian state to assist Hungarian minorities³ abroad reflects an acceptance that actual national borders will not change. Properly called the 'Act on Hungarians Living in Neighbouring Countries', the Status law passed the Hungarian National Assembly in June 2001 with a 92% majority. (Kingston Klara, 2001) The act is the result of recommendations made by the Hungarian Permanent Conference to confer a special status on ethnic Hungarians abroad and reflected the concern of FIDESz about the prospects for these communities' cross border activities upon EU enlargement. Inherited by the Socialists and implemented by them in diluted form, the act positively discriminates in favour of ethnic Hungarians, the aim being to facilitate preservation of the Hungarian cultural and national identity via the issuing of Hungarian certificates and the provision of financial benefits for education in Hungarian to those who consider themselves Hungarian by birth or marriage. In its original format the law covered the issuing of work permits and provision of health and social security benefits. These were ultimately revised, due in part to concerns about significant migratory flows from these communities to Hungary, and as a result of strenuous objections from Romania and Slovakia over the law's assumption of extra-territorial rights and interference in their sovereign affairs.⁴

The purpose of the Status Law is to:

³ The precise numbers of ethnic Hungarians resident in neighbouring states is unclear Estimates vary from 2.9 to 4 million.

⁴ The Status law received a more favourable response from the Ukraine and Croatia (latter is intending to introduce a similar law for Croatians outside Croatia)

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“...ensure the well being of Hungarians living in neighbouring states in their home-state, to promote their ties to Hungary, to support their Hungarian identity and their links to the Hungarian cultural heritage as expression of their belonging to the Hungarian nation; “ (Hungarian Government 2003)

The law reflects enduring concerns amongst Hungarians that EU enlargement and the application of Schengen will create new divisions between their ethnic communities and strangle vital cross border economic and cultural activities which help sustain the identity of Hungarians abroad. The law demonstrates the conflicting pressures on successive Hungarian governments, to satisfy EU technical requirements on strong borders, whilst maintaining co-operative relations with their neighbours and simultaneously responding to concerns of the electorate on the fate of Hungarian communities abroad.

Slovakia remains hostile to the Status law whereas Romania accepts it with reservations. (Gal Andras, 2003) This acceptance may well be an indication that the real impact of the Status Law has been so diminished that much of its original purpose has been lost. However, the whole debate has drawn attention to such laws in other states and opened up a debate about what the appropriate relationship should be between states and ethnic minorities abroad.

Ethnic groups have organised themselves in response to these developments. In Romania, the Hungarian Democratic Union in Romania (HDUR) gained 7 percent of all votes in the 2000 election. HDUR has 27 seats in the Chamber of Deputies and 12

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seats in the Senate, making it important in terms of the overall balance of power. The party has two main factions, one of which advocates territorial political autonomy. At a regional level, attempts are being made to claim autonomy for Szecklerland, including Mures, Harghita and Covasna Counties. There are suggestions that this autonomous region might appoint their own police and president, with judicial positions being allocated according to ethnic the mix. Not unnaturally, these attempts to form regional assemblies and to push for greater autonomy, have met with strong disapproval. (BBC 2004)

Conclusions

This paper considers two perspectives by which the process of enlargement might be analysed. They can, to some extent, complement each other and provide an enhanced understanding of the processes involved in the eastern enlargement at both a macro and policy oriented level of analysis.

The constructivist approach provides a good explanation as to why, motivated by the desire to promote shared identity, values and beliefs, many of the material, policy oriented problems associated with enlargement have been suppressed. This also explains why compliance with membership conditions has, in many cases, been minimalist. At the same time, the rationalist approach explains the calculation of costs and benefits which inevitably surfaces once the goal of enlargement has been fully achieved.

The reaction of EU members, new applicant states and the new neighbours suggest an increasing awareness of the material consequences of enlargement. States are

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employing a more rationalist, cost/benefit approach to potential problems of policy implementation. The rationalist approach to enlargement raises many uncomfortable problems as groups seek to establish their best interests in the political market. Slovakia now feels less concern about upsetting the Roma; the Russian Federation sees the fate of ethnic Russians in the Baltic States as a potential source of leverage. Finally, ethnic Hungarians and concerned to gain a degree of autonomy or better access across the new harder borders, see this as a good time to press their claims, whilst recognising that the greater Hungary will never reappear.

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