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# Theoretical framing to address the question of the Common European Asylum System in an Enlarged European Union

## *Abstract*

*In this paper the concept of liberal intergovernmentalism is explored. This theoretical concept is examined and applied to my research question of how elites in Central Europe and engaging with the Common European Asylum System. There are many advantages of the application of liberal intergovernmentalism; however, there are also gaps. This paper concludes that liberal intergovernmentalism is a good concept to begin my theoretical framing, but due to its limits I anticipate that I will combine some of the main tenets into a theoretical framework.*

## **Introduction**

Since 2004 the European Union (EU) has enlarged three times and seen 13 new member states join. This has had implications for the European policy process by introducing a wide range of new actors, most of whom are considered small states. As is the case with larger EU members, small member states also have national interests and preferences which are informed by a variety of domestic and international concerns. These interests, in turn, inform the extent to which states engage with particular policy areas, as they seek to ‘upload’ their preferences to the European level. However, the ability of states, and in particular small states, to have influence depends on a range of factors. The central question of my research is to examine the interests of two of these new member states, Hungary and Czech Republic, in order to understand how each is engaging and informing the development of the Common European Asylum System (CEAS). In order to properly examine this question a clear theoretical framework is needed. Therefore, the purpose of this paper is to link my research to my proposed theoretical framework Liberal Intergovernmentalism (LI). In order to create this link my paper will first briefly expand upon my research question. This will be followed by an examination of the central values and limits of LI. Finally, I will link this theory with my proposed research question in order to examine the fit between my research and LI.

### *The framing of my research question*

The CEAS is a major EU policy which has been developed over sixteen years, but will not take full effect until the autumn of 2015. Therefore, the progress of the CEAS has run concurrently with the expansion of the Union and consolidation of its new members within its policy making structures. This research, offers an opportunity to test the extent to which new member states have engaged with the CEAS, the driving forces behind that engagement and the ways that they have sought to influence the debate. This will add to literature on the role of small states within the EU as well as new member state engagement. Furthermore, it will contribute to a deeper understanding of how the CEAS has evolved and how key political actors have viewed the development of this policy vis-à-vis their own national interests on asylum matters.

A central feature of the CEAS is that asylum seekers should have the same access, treatment and chances, regardless of which Member State their application is lodged. Currently this is not the case. Much of the existing literature on the CEAS notes how it reflects a balance between protection and securitization. However, it is not clear whether this balance is primarily driven by an acknowledgement of the genuine needs of asylum seekers or by a rational cost-benefit analysis. Addressing this lack of clarity will be an important goal of this research.

This research will employ a comparative case-study of two member states which acceded, Hungary and Czech Republic. Limited research on the impact of new members, with regard to asylum matters, has been undertaken to date. These two cases offer an interesting opportunity to look at a number of questions pertaining to how the CEAS has developed. Firstly, questions linked to whether a state's interest and participation in the CEAS policy process is driven by a steep increase in asylum applications as is the case of Hungary(see appendix), can be tested. Similarly, it is also possible to test whether lower levels of asylum applications, as is the case with Czech Republic, reflect the possibility of less engagement with the CEAS.

This focus on newer EU member states is also significant given the political, social, financial and historical rationales for their interest in asylum. The political rationale, which can differ from state to state, includes the rise of extreme parties in the Central European (CE) region. Asylum is a highly political issue, due to country's obligations under the Geneva Convention

and its Protocol, making the CEAS difficult to comprehend; and therefore, often unpopular. Also, new member state engagement at the supranational level is important in maintaining a strong union. The notion of solidarity is something that CE states are very supportive of; yet while political solidarity in the harmonisation and implementation of the CEAS policies are vital to the impression of the EU on the global scale, some countries have failed to fully adhere to the CEAS directives. This sets a poor example of EU unity and could raise questions about the functioning and health of the union. An example of this can be found in Hungary, which has recently approved legislation to extend detention periods. (Hungarian Helsinki Committee, 2013) Socially there can be indirect impacts to society. Cultural and linguistic differences which are more pronounced in the CE region could increase tensions and as a result impede education or health care services guaranteed within the reception conditions directive. The social impact can also be witnessed in the effects of the integration of refugees or hosting asylum seekers on a particular community. (Thielemann et al., 2010: 28) Direct financial obligations can be measured in the implementation and continued harmonisation of the CEAS as well as national policy responses. A range of factors must be considered including the number of asylum seekers to population (ratio), the overall population density and GDP. This may place a heavy burden on states which do not have the financial capacity to meet these obligations. Finally communist legacy may also have an impact on informing preferences. Central European (CE) member states have had a steeper learning curve than their western neighbours due to a lack of experience in asylum matters and the inability to debate the original *Acquis*. The EU accession process required the new members to adopt all 80,000 pages of the *Acquis* without proper debate (Schimmelfennig and Sedelmeier, 2005: 2). Therefore they may prove keen to have a greater say in how that legislation is developing now that they are members.

### ***Looking at Liberal Intergovernmentalism***

LI's rise can be linked to the downfall of neofunctionalism in the 1960s. Neofunctionalism failed to be able to provide an explanation for the standstill in European integration due to the 'empty chair crisis', in which the French President, General de Gaulle, refused to attend or cooperate with any further meetings or progress due to a conflict over the Common Agricultural Policy. Hoffmann argued that this limitation to integration was based on the power of national governments and their ability to control the rate of European integration. This perspective provided a more controlled measure of integration, as it was not a process

that spontaneously spilled over, rather, it could be controlled to suit the interests of national governments which comprised the member states.

According to Leuffen, Rittberger and Schimmelfennig (2013: 40-41) there are five central components of intergovernmentalism. First, states are the main actors, and they determine how European integration will occur based on their goals and interests. Limits of the integration process can be a result of specific traditions and situations, the power of national identities and the need to preserve these notions. Thirdly, they argue that the process of integration does not actually weaken the nation state; rather, it has strengthened economic relations. Indeed, these economic issues or low politics will be the limit of integration. Finally, based on these reasons supranational organizations will remain weak, as they lack the, “expertise, resources and popular support to expand their power at the expense of the member states.” (Leuffen et al. 2013: 41) Saurugger (2014: 55) states that, “cooperation, or pooled sovereignty, does not reduce the independence of states; on the contrary, it strengthens them by helping states to adapt to the constraints imposed by the international environment.”

However, the similarities of intergovernmentalism curtail, as the more traditional intergovernmentalists can be separated from liberal intergovernmentalism (LI). LI brought a type of renaissance to intergovernmentalism, specifically it was Moravcsik (1993, 1998),<sup>1</sup> who placed the state and its interests in the limelight, as interests are developed within the state by domestic actors, rather than interests being transferred from any other institution. Moravcsik’s version of LI incorporates two separate international relations concepts into a singular frame work. His understanding of LI is incorporating national preference formation from liberalism and intergovernmental analysis. (Moravcsik, 1993: 482) Essentially LI can be viewed as a three stage process, whereby: domestic actors are the main driver behind the development of national interests and goals, these interests are then inserted into negotiations with other states in which ‘bargains’ are struck and finally further negotiations result in the choice of the national governments to pool their interests. (Leuffen et al. 2013: 46) EU integration can best be understood as a series of rational choices made by national leaders. These choices responded to constraints and opportunities stemming from the economic interests of powerful domestic constituents, the relative power of each state in the

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<sup>1</sup> Moravcsik can be linked to IR scholars, including Keohane and Nye.

international system, and the role of institutions in bolstering the credibility of interstate commitments. (Moravcsik, 1998: 18)

The relationship between supranational institutions and LI are often complex. This issue will be discussed in greater detail below, but it is worth noting that Moravcsik does not view strong supranational institutions as the antitheses of LI. (1993: 507) A degree of risk is always present when political elites make any decision to shift a degree of their autonomy. But, rational actors are able to access if the risk outweighs the potential benefits. Aside from this the LI argues that strong institutions can even strengthen the power of national governments in two ways. Firstly, supranational institutions can increase government's effectiveness during the process of interstate bargaining and secondly these institutions serve to strengthen the autonomy of national elites. (Moravcsik, 1993, 507)

### ***Preferences in Liberal Intergovernmentalism***

How can we understand how these domestic preferences are formed? According to Moravcsik liberal theories of international relations examine the relationship between state and society in the formation of national preferences as they, “assume that private individuals and voluntary associations with autonomous interests, interacting in civil society, are the most fundamental actors in politics.” (1993: 483) The actual interaction can be deduced to interest and it appears those with the greatest financial resources are able to present their preferences in a more dynamic manner. Even though economic forces are a great push behind determining preferences, it is not the only factor, as a great amount of interest from the population could also result in their preferences being represented. It seems in many cases that those with either the most to gain or lose are the most vocal in coordinating measures to voice their preference.

Can these interests be considered to be completely autonomous from state priorities? This is a complex question; I anticipate that my research will generate a greater understanding of the situation within Czech and Hungarian societies. Arguably the post communist legacy has left a different imprint on these societies and their preference formation. I will test if “state priorities and policies are determined by politicians at the head of the national government, who are embedded in domestic and transnational civil society, which decisively constrains their identities and purposes.” (Moravcsik, 1993: 483) As governments aim to keep their position of power, this process of preference formation that trickles down to voters and

specific interest groups can be direct or indirect through interaction with various domestic political process and institutions. However, with a policy, such as the CEAS, which can be misunderstood due to its legal complexity and obligations, presents a challenge to domestic leaders. In particular, it is anticipated that this challenge is greater in Central Europe due to the post communist legacy and limited exposure to asylum practices which developed more progressively in Western Europe.

### *National Interests*

In this section national interest will be addressed. Firstly, the formation of coalitions as a representation of national interest followed by a discussion of the adoption of less than preferable national choices. As already stated LI argues that it is incorrect to consider the domestic political sphere to be, “invariant or unimportant” as national interests are produced through competition and conflict. (Moravcsik 1991) Within this process of competition and conflict fusions and alternatives to initial policy are developed. This process can be within coalition governments or various political actors. The result of this process is that strengthened and enriched policies emerge. Conversely, coalition governments present a challenge as competition and conflict can assist in generating multiple views which must be carefully balanced. The potential danger is that by balancing these preferences the results of the competition and conflict will be watered down in order to make the preference palatable to a coalition of interests.

Moravcsik argues that, “governments with attractive alternatives will not tolerate inconvenient agreements, while governments with unattractive alternatives gain from co-operation even if they have to compromise.” (1993:500) His analysis is a good fit when applying it to the Czech Republic and Hungary, as both countries adopted the Acquis completely with no debate or chance to apply their national preferences. However, according to the LI position, states will accept less than opportune situations if it is deemed that their compromises will be beneficial in the long run. Therefore, national elites in CE deemed it necessary to accept large amounts of EU legislation for the perks that membership presented. The LI perspective is also useful in presenting a greater understanding as when the, net expected costs are insignificant, ambiguous, balanced or uncertain, governments enjoy a greater autonomy from particular domestic groups that oppose co-operation, which they can employ to create support for broader societal goals.” (Moravcsik: 1993, 490) Indeed, national elites that aimed for European membership had the advantage that some commitments were not directly applicable as they were phased in gradually, which created less domestic

opposition. It is also possible to link the LI principle that national governments are willing to co-operate if this co-operation produces certain goals or results that would not have been possible by their own individual efforts. (Moravcsik 1993: 485) This is directly applicable to asylum; as these small states influence and control has been greatly strengthened to a greater degree than if they were forced to work alone.

### ***Critique of neo-functionalism***

LI is able to disprove some of the basic arguments of its main rival, neo-functionalism. First, the process of integration was not smooth, rather it was a series of starts and stops, with some time periods reflecting the stalled procedure, and other time period quickly leapt ahead. According to LI this is due to the will of national elites to control the rate of integration. Secondly, it focuses on the autonomous nature of supranational officials, whereas LI focuses on national leaders with a limited focus on the supranational apparatus. LI provides an explanation of actual decisions and implementation rather than simply a general understanding of integration.

### **Linking Liberal Intergovernmentalism and my research**

Applying this theoretical lens to my research question has some advantages. Firstly, it focuses directly on states and their involvement in the integration process. As my research looks at elite engagement of national actors at the supranational level, it can serve to explain how elites used their power to influence decisions and domestic political goals. Setting governments or political elite as the main actors is beneficial in engaging with my research question. Also, as my research aims to contribute our understanding of small state engagement at the supranational level LI argues that smaller states generally have greater interest in cooperation than larger states, as larger states have a greater degree security in their capabilities. I will question if smaller states have the ability to 'bind' larger states to particular policies and collective initiatives which serve their national interests. From a contemporary perspective LI provides an understanding of bargaining and national interest (Saurugger 2014: 67). Both national interest and the process of bargaining are significant components of my investigation.

Democratic regimes add an extra layer to LI as international bargaining normally results in agreements being made, however, these decisions then need to be ratified by each national parliament which draws out the process. It also presents another bargaining tool to the

national elites as if the proposed agreement is rejected, then it enables them to return to the bargaining table with a firm set of demands that need to be fulfilled in order for the ratification process to be completed. This tactic has been adopted during Member States intergovernmental bargaining. For example, France and the Netherlands both voted against European Constitution. And more recently in 2008 Ireland was the only Member State to hold a referendum regarding the treaty of Lisbon. The population rejected the Treaty of Lisbon, and this resulted in the Irish being able to have specific requirements recognised. After these specific demands were accepted a second referendum was held and the population voted in favour of the Treaty of Lisbon. This example shows that it is possible to have domestic preferences upheld at the supranational level. Another consideration which is particularly useful to my research is that Ireland, the Czech Republic and Hungary can all be classified as 'small' states; therefore, it is anticipated that referendums may be a useful tool for these small nations to uphold or guard their domestic preference from the supranational level's influence.

### ***Limits of Liberal Intergovernmentalism***

There are significant issues that LI fails to properly address. Firstly, it overlooks the importance of the role of the European Commission. Indeed, the Commissioners are selected on a national basis; however, their objective is to serve the European interest rather than their particular national interest. Certainly there is some debate if completely surrendering one's national interest is possible. Assuming this is possible, LI lacks strength. This is particularly true for my specific area of research, as the Commission has been incredibly important in formulating and pushing through the legislation for the CEAS as a type of political policy entrepreneur (Kaunert, 2009: 150) Indeed, the Commission was essential to the process and it is not possible to completely overlook their role. This could be a result of the Amsterdam treaty moving Justice and Home Affairs from the third to the first pillar. Specifically, "the Council shall act on proposals from the Commission; the Commission shall examine any request made by a Member State and submit a proposal to the Council." (UNHCR, 2003: 15)

Another supranational body the European Court of Justice and influence is not clearly explained by Moravcsik. He states that the, "expansion of judicial power presents and anomaly for the functional explanation of delegation as a deliberate means by national governments of increasing the efficiency of collective decision making. While supranational delegation undoubtedly creates benefits for governments, the decisions of the court clearly transcend what was initially foreseen and desired by most national governments." (Moravcsik

1993: 513). In fact, since the publication of this initial piece on LI by Moravcsik the European Court of Justice has further expanded its jurisdiction. Arguably, this has not been the preference of the majority of national governments. This leads me to disagree with a premise of LI, “that the EU does not hold more power than the states want it to have and deem necessary to provide for stable intergovernmental cooperation.” (Leuffen et al. 2013: 49) Indeed, the Commission and the European Court of Justice have both grown in their influence.

The next weakness is that LI doesn't consider the situation in which there are no specified domestic preferences present. In particular this issue applies to CE as many groups in society, such as NGOs and various citizens' coalitions, are still developing their capacities and the ability to present their preferences. Therefore, if these domestic groups are not able to fully articulate their position and demands then a main belief of LI is compromised. Under this paradigm it also assumes that all interests are direct; however, do indirect interests also present themselves? These indirect or multifaceted interests present a challenge to LI. In addition, many NGOs have the title, but in reality they are indirectly linked to funding provided by the government and in many cases this funding comes with certain strings. Finally, the argument that national elites envision that all integration is within their boundaries and to the desired level does little to actually generate an understanding of why and how member states are working in unison.

### ***Conclusion***

There are certainly aspects of LI that are clearly suited to my research. In particular, the fact that Moravcsik argues that the European Community has been established by a series of intergovernmental bargains (Moravcsik, 1993: 473). This is a key point as it is a credible argument that the basic structure was completed through a complex process of intergovernmental bargaining. Therefore, if this process was the basis of the Community then elements such as the representation of interests are expected to remain similar.

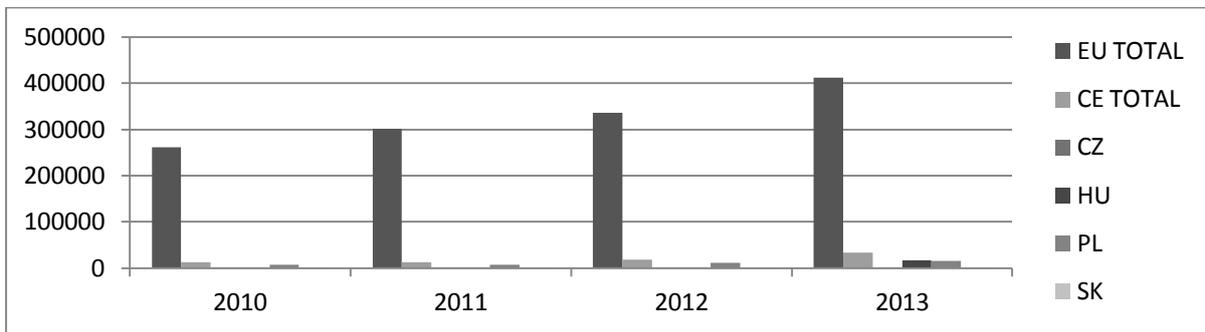
Although this premise is similar it is also important to note that domestic preference is not static and has the ability to change and adjust across time and issues. There are a multitude of shortcomings as well that fail to completely encapsulate the issue. As a result, I will need to consider other theoretical frameworks and consider if combining them is efficient and effective.

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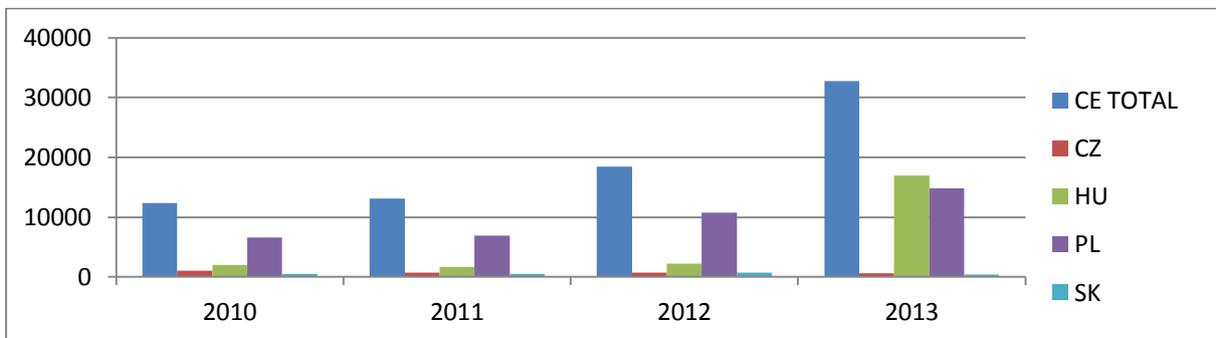
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Appendix

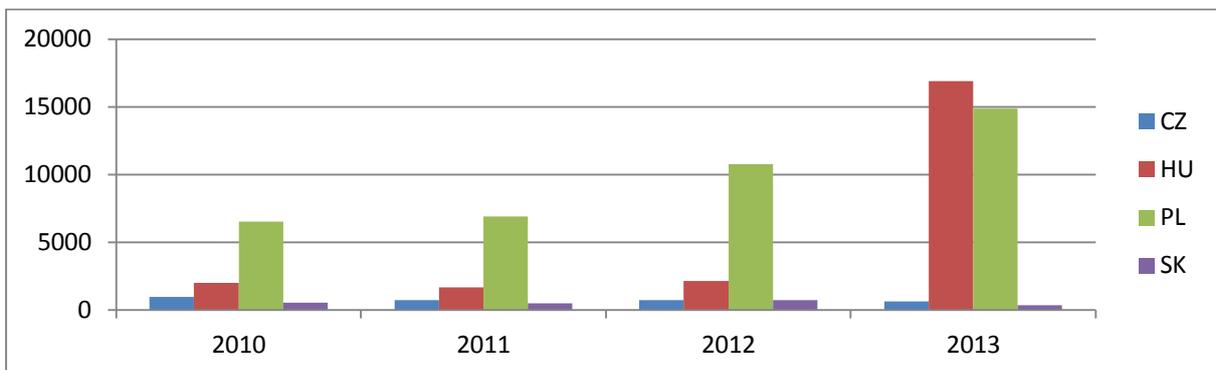
EU totals<sup>2</sup>



CE total



CE countries isolated



<sup>2</sup> Eurostat, "Asylum and New Asylum Applicants by Citizenship, Age and Sex Monthly Data (rounded)," January 10, 2014. <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>.