

GEOMODERNITY OF THE ECONOMIC AND FINANCIAL MECHANISMS OF THE NON-STATE ENTITIES AND DEVIANCES OF CRIME

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Abstract: *This paper looks at the modern state's role nowadays, in the global economy, at the role played by the non-state entities and at the effects of the organized crime in a Europe with many non-state entities. We live in a complex world, where everything changes quickly and, unfortunately, the man is the living target of the economic, commercial, banking and last but not least corporate interests. We consider that, in today's geomodern context, the non-state corporatist entities operating on the international markets aim at pursuing men's strength and weakness, creating an infernal machinery of bureaucracy and autocracy. We will also look at the role of the state from several perspectives and the Romanian government policy and regulation.*

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JEL Classification: *K14, K2, G38*

1. Introduction

Within the international society, where the metamorphosis of the relations and ties of any kind (political, economic, financial, banking, etc.) that take place at the global level, in addition to the countries of the world, the non-state entities have emerged as new actors operating in the global economy with great success and huge financial benefits. Non-state entities have various forms: national and international NGOs, indigenous and minority groups, autonomous groups; human rights defenders, terrorists, paramilitary groups, multinational enterprises, and, finally, individuals. Many of these groups promote human rights while others, on the contrary, condone crimes or even commit crimes

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affecting the lives and human rights of individuals. More and more scientists agree on the fact that local and international companies wield immense power and have a direct impact on governmental policies. On the other hand, transnational corporations have a duty to address corruption and bribery serving to deprive persons of their human rights. Theoretically, because companies influence governments' policies on various issues, they have a moral if not legal responsibility to use this influence to further policies and actions promoting human rights. It is common sense that non-state entities, especially international companies should have a wider international responsibility.

We live in a complex, impetuous world, where everything changes at an unprecedented dynamic rhythm, where, unfortunately, the man is the living target of the economic, commercial, banking and, last but not least, corporate interests.

2. The state's role

Many specialists think that the main role of a state is protection.

Even more specialists consider that a state has more principle roles, the most important legitimate roles of the state being not only protection, but also justice, correction of externalities, social insurance, and the provision of public goods.

On the other hand, the recent global financial crisis has given some credence to the idea that one important role of the state is an active involvement in the financial sector, a thing that can be helpful for stability and development.

Many legal and economic specialists consider that the state's very important roles are to provide well-defined regulations and to enforce them, to ensure healthy competition, and to strengthen the financial infrastructure.

There is also new evidence that supports the state's key role in promoting transparency of information and reducing counterparty risk.

At the theoretical level, a presumption in favour of the non-interventionist state has been established largely based upon the ability of freely functioning markets to achieve Pareto efficiency in general equilibrium.

There are many other alternative classifications of the roles of the State. Wilhelm von Humboldt says, "A State then, has one of two ends in view; it designs either to promote happiness, or simply to prevent evil" (Humboldt, 1996: 19).

Another German economist, Adolph Wagner, divides the role of the State into two different categories of objectives: 1) Law and Power and 2) Culture and Welfare (Reinert, 1999: 279).

Erik Steinfeldt Reinert, a Norwegian economist, found it useful to divide the roles of the State into three broad categories: (1) “The State as a provider of institutions in the widest sense (“establishing the rules of the game”); (2) The State as a provider of income distribution and as an “insurance company” (preventing evil); and (3) The State as a promoter of economic growth (promoting happiness)” (Reinert, 1999: 279).

Mancur Lloyd Olson, Jr., an American economist and social scientist, argued – in his book called *Power and Prosperity* – that the state was a ‘stationary bandit’, but one who was interested in developing the economy. Although it may seem to be a good thing, in fact, it is not, because those who control the state will try to extract the surplus over subsistence generated by those under their control.

We assist at a reduction of the state’s role as the key player in the socio-economic life of the nations, more and more specialists speaking about the very gradual disappearance of the state (Malita, 2001: 121) while other authors consider that the social state has ended its historic mission. In this context there is the tendency for a country to be ruled as a corporation, i.e. to adapt to the entrepreneurial requirements and dynamism that the non-state entities spread as an idea also stated by R. Zink (2015: 96). The topic, however, gave birth to multiple controversies, being extremely sensitive; still, in an overall assessment, the state cannot and will not ever end its historic mission. There are, of course, some limitations of the social control of the state in the political equation of the world; on the one hand, the state can give some of its attributes and responsibilities, but, on the other hand, it could equally have new functions.

We think that these new functions are required in particular by globalization or by the new appearance that its irreducible interests take in the new context of world (Malita, 2001: 124). Following the same ideas, in terms of internal order and the administration of justice that are only attributable to the states, several authors consider that just the globalization cannot provide them (Malita, 2001: 128).

Therefore, more than ever, the states and the judiciary responsible institutions are called upon to face the biggest challenges of crime generated by corruption, organized crime, drug and people trafficking, smuggling weapons, money laundering, cyber crime and, last but not least, international terrorism.

The equation of the geomodernity of the markets system, production and global trade can only operate within the rule of law, where order prevails, where the law is applied and where criminals are punished; otherwise it would be an inevitable slippage to the mafia systems (Malita, 2001: 146).

In the contemporary world, there may be several protections against the undue exploitation by the state: independent courts, division of powers, a degree of control by voting. But trying to rule out a vast range of values from the political sphere by constitutional means will fail.

The new international architecture of the global state imposes precise laws and regulations, but, unfortunately, today we are witnessing the failure of the normative states; they cannot pass norms and legislation as fast as the pace of the development of the global corporate system, which has a supersonic expansion in order to conquer new markets, following huge profits, aspect caught by Toffler in his book, *Revolutionary Wealth*. “Everyone agrees that there should be a strong rule of law”, said the Nobel Prize winner for economics in 2001, Joseph E. Stiglitz in his book *The price of inequality*, published in the USA in 2001. And he also commented, “But it also matters what laws exist and how they are enforced” (Stiglitz, 2013: 338).

3. Deviances of the organized crime

The deviances of the organized crime have multiplied in the postmodern epoch becoming an international phenomenon particularly alarming because it produces negative consequences on the political, economic, social and cultural life. The opening of the borders of the EU member states, in addition to the positive aspects brought in the life of the Europeans citizens has facilitated, unfortunately, an intense activity of the criminal organizations operating on the European territory. (Predescu, 2016: 17)

In the last 30 years, globalization has overtaken the development of the global governance mechanisms. This has resulted in a lack of regulation. The conditions that have led to an openness never done or known before in trade, travel and communication are to be blamed for creating massive opportunities for criminals. As a result, organized crime has diversified. It has gone global and reached macro-economic proportions.

An international system which can confront non-state actors who become rich, powerful, and dangerous by respecting neither laws nor borders “is a major challenge for the member states and the UN system as a whole” as *Walter Kemp, spokesman and speechwriter of the United Nations Office on*

Drugs and Crime, wrote in 2009 on the site of the Stockholm International Peace Research Institute (SIPRI), the independent resource on global security.

At the launch of a new report published in June 2010 entitled *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*, Antonio Maria Costa, the Executive Director of the United Nations Office on Drugs and Crime (UNODC), said, “Organized crime has globalized and turned into one of the world’s foremost economic and armed powers”. (UNODC) Unfortunately, almost six years later, we cannot deny the truth of his statement, by asserting the opposite.

The conclusions of the report *The Globalization of Crime*, which diagnoses the problems of the European continent, are eloquent even nowadays for the need for cooperation of the states and for the coordination of the activities in the fight against crime at the EU level.

Statistics show that Europe has become the most developed regional market for heroin, worth 20 bn. Euros, Russia is the nation with the largest heroin consumer in the world (70 tons). Narcotics kill, as Mr. Costa found, “30,000-40,000 young Russians per year”. He also said, “World-wide there are millions of modern slaves traded at a price not higher in real terms than centuries ago” (UNODC).

As Winston Churchill said in his historic speech in the USA, at the University of West Minister, from March 6th 1946, entitled *Sinews of Peace*, *states generally pursue strength and weakness and the same interests are also pursued by the corporative system.*

4. A few things about Romanian government policy and regulation

The paradigm of the contemporary society resides in the state’s incapacity to exercise its normative function. In addition, the lack of the judicial tools counts a lot for the expanding criminality and especially for the ‘white collar’ crimes. So far, the judicial and financial structures have been an obstacle for the small and medium business entities to migrate to tax heavens, but the growing taxation from different countries spurred the ‘relocation’ of these companies to tax heavens. Tax heavens are, generally, small entities or states where low income people take refuge in. They spread significantly during the 60s while the multinational companies with foreign branches appeared.

Nowadays we witness an inter-state competition to attract foreign investment to the national economies. In this sense, most of the states are

struggling to build less burdening fiscal systems. Romania has also tried to assume certain particularities of tax heavens, establishing several free economic zones. Thus, law 84/1992 reinstituted the legal status of the free economic zones through the establishment of 6 such free zones: Agigea, Braila, Curtici, Galati, Giurgiu and Sulina. Articles 10 and 11 of Law 84/1992 stipulate that, based on certain licenses or permits issued by the administrations of the free ports, all natural and legal entities, whether Romanian or foreign, may carry out several services and activities specific for free zones.

In order to transform Romania into a more attractive investment destination, the Government endorsed the Emergency Ordinance no. 92/1997 regarding the incentive of direct investments, as subsequently approved upon amendments by Law no. 241/1998 (with further amendments). There are also other normative acts that grant natural or legal people or entities different fiscal facilities or benefits, especially the lowering of or exemption from the profits tax, for example, Law on sponsorship no. 32/1994 as amended and complemented by the Government Ordinance no. 36 of January 30, 1998. The scope of these enactments was to regulate the principles that would encourage foreign direct investments, to protect the rights of foreign investors, to define the terms of investment and investor in line with international standards and to increase foreign direct investments through established policies.

Another ordinance that is attractive for the non-resident investors, either individuals or legal entities, is the one according to which they may acquire treasury bonds from the primary market through primary brokers, in accordance with the regulations in force regarding transactions with treasury bonds and under the conditions provided for by Government Ordinance no. 66/1997, republished based on Law no. 792/2001 (with further amendments). Very appealing is the fact that the repatriation of the portfolio of the investments made and of the revenues obtained from the transactions with treasury bonds is free, made in convertible currency, and is not subject to taxation in Romania.

Thus, theoretically, the Romanian legal framework encourages a solid competition market for business and ensures equal investments opportunities both for domestic and foreign investors. Nevertheless, Romania suffers from the lack of foreign investors. The answer to the unasked question is: foreign investor do not rush because of the instability of the legislative, the excessive bureaucracy, the absence of certain fiscal advantages that could really stimulate

foreign investments in the Romanian economy and, last but not least, corruption.

In order to add some facts to the above answer, we read a survey carried out by the Foreign Investors Council whose results were published on the 4th November 2016 by Romania Insider. We would like to quote some of the findings of the survey as they belong to the present time. One important finding is that the legislative process has worsened and this has direct implications on businesses. 70% of the member-companies of the Foreign Investors Council (a big business associations in Romania whose members represent a significant share of “foreign direct investment in Romania, summing up about two-thirds of the total, with an important contribution to Romania’s GDP”) consider that “the lack of transparency and policy coherence makes Romania moderately or significantly uncompetitive compared to other countries where these companies carry out business” (Romania Insider 2016). Another important finding of the survey is that, in spite of tax cuts, half of the member-companies of the Foreign Investors Council find the fiscal burden uncompetitive while only 38% of them rate it as competitive, according to Foreign Investors Council representatives.(Romania Insider 2016).

These are the relevant elements that might affect the stability and the economic and financial interests of our country.

We would like to end this chapter on an optimistic note, quoting another finding of the survey carried out by the Foreign Investors Council: “A majority considers that Romania is still competitive when it comes to the availability of adequate workforce” so the good news is that “60% of the investors expect their business to grow next year” (i.e. 2017).(Romania Insider 2016).

Conclusions

We appreciate that in today’s geomodern context, the non-state corporatist entities operating in today’s international markets aim at *pursuing the strength and weakness* and the earnings are accordingly. The problem is: who wins and who loses. Man definitely lost and will lose even more in this infernal machine of bureaucracy and autocracy, where the man is supposed to be part of the organizational gearbox. Unfortunately, the paradigm of the contemporary society resides in the state’s incapacity to exercise its normative function and the foreign investors are the first to feel this lack.

References

1. Churchill, W., (1946). *Sinews of Peace* [discourse] available at <http://www.historyguide.org/europe/churchill.html> (accessed 10th December 2016).
2. Guvernul Romaniei, (1997). *Ordonanța de urgență nr. 92 din 30 decembrie 1997. (Emergency Ordinance no. 92/1997)* In Monitorul oficial nr. 386 din 30 decembrie 1997.
3. Humbolt, W., (1996). *The Sphere and Duties of Government* (1854, German original in 1852), Bristol: Thoemmes Press.
4. Kemp, W., (2009). *Organized crime: a growing threat to security*. [essay] available at <https://www.sipri.org/commentary/essay/thu-06-25-2009-14-00/organized-crime-a-growing-threat-to-security> (accessed 10th November 2016).
5. Malița, M., (2001). *Zece mii de culturi, o singură civilizație. Spre geomodernitatea secolului 21*, 2nd edition, București: Nemira Publishing house.
6. Olson, M. L., (2000). *Power and Prosperity: Outgrowing Communist and Capitalist Dictatorships*, New York: Basic Books.
7. Predescu, Ov., (2016). Globalizare, globalitate și criminalitate. In Predescu, Ov. (ed.), *Devianță și criminalitate – Evoluție, tendințe și perspective*, București: Universul Juridic Publishing House, pp. 15 – 19.
8. Reinert, E. S., (1999). The role of the state in economic growth . [pdf] In *Journal of Economic Studies* 26, 4/5, pp. 268 – 326. available at <http://www.othercanon.org/uploads/state-paper-pdf.pdf> (accessed 10th November 2016).
9. Romania Insider (2016). *Foreign investors complain about lack of policy coherence in Romania* available at <http://www.romania-insider.com/foreign-investors-complain-lack-policy-coherence-romania/> (accessed 26th November 2016).
10. Stiglitz, J., (2013). *Prețul inegalității. Cum societatea divizată din ziua de astăzi ne pune în pericol viitorul*, București: Public Publishing House.
11. Toffler, Al., Toffler, H. (2006). *Avuția în mișcare*, București: ANTET Publishing House.
12. UNODC, *Organized Crime Has Globalized and Turned into a Security Threat* [press release] available at <https://www.unodc.org/unodc/en/press/releases/2010/June/organized-crime-has-globalized-and-turned-into-a-security-threat.html> (accessed 15th December 2016).
13. Zink, R., (2015). *Instalarea fricii*, București: Humanitas Publishing House.
14. Free Zones Law no 84/1992 available at <http://www.aneir-cpce.ro/chapter5/laws/l84.htm> (accessed 16th December 2016).