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Migration Dynamics and New Trends in European (In)Security Conference Proceedings 2018

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- Coordonatori -

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2018



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Adrian Liviu Ivan, Claudia Anamaria Iov, Raluca Luțai

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NEW TENDENCIES IN APPROACHING SECURITY THROUGH COMPETITIVE INTELLIGENCE

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Ionuț Daniel MOLDOVAN²

ABSTRACT:

THE BUSINESS ENVIRONMENT AND THE MEDIA SPECIFIC TO INTELLIGENCE ACTIVITIES SHARE AN IMPORTANT COMMON FEATURE: THE LACK OF CERTAINTY. DIGITIZATION AND TECHNOLOGICAL PROGRESS, EVEN IF THEY SHOULD EASE THE DECISION-MAKING JOB OF A MANAGER (THROUGH AN EASIER ACCESS TO INFORMATION); IN PRACTICE HE IS SURROUNDED BY THE LARGE AMOUNT OF DATA THAT HE HAS AT HIS DISPOSAL. THE DIFFERENCE IS MADE BY THOSE THAT GO FROM THE STAGE OF "CURIOSITY" TO THE "VERIFIED INFORMATION" STAGE.

ACHIEVING THIS DETAILED PROCESS OF COLLECTING RELEVANT DATA IS IMPETUOUSLY NECESSARY. AND THIS ACTIVITY IS THE FEATURE OF THE COMPETITIVE INTELLIGENCE STRUCTURES (C.I.). THE RAW DATA TRANSFORM INTO INTELLIGENCE - THIS CAN REPRESENT THE BASIS OF STRATEGIES AND ACTION PLANS (OR ANALYSIS, FORECASTS ETC.). FROM THIS RESULTS ONE OF THE MAIN STRENGTHS OF A COMPANY, NAMELY PERFORMANCE IN THE FIELD OF ANTICIPATION.

KEY WORDS: COMPETITIVE INTELLIGENCE, INFORMATION, SECURITY STUDIES, SOCIETAL SECURITY, ECONOMICAL SECURITY.

INTRODUCTION

THE SHIFT OF PARADIGM IN APPROACHING SECURITY STUDIES

The traditionalist vision implies a unique perspective of approaching security, namely the military one and the one involving the use of force. One of the representatives of this school of thought, Stephen Walt, says that a widening of the security studies would affect the logic, even the consistency of the ones above. He argues that the approaches of problems like the economical or environmental ones would only hinder the work of security decision-makers in the security field and it would make it make making quick and effective decisions more difficult. In his view, war has always been a central part of human existence, and certainly, unfortunately, this will not

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change; so the other problems become secondary, their level of importance fluctuates, so they must be analyzed alternatively³.

The NATO Summit in Rome in November 1991 brings into discussion, in addition to establishing cooperation with new partners from Central and Eastern Europe, issues related to the environment, scientific cooperation, the democratization of the relationship between the military and the civil society etc. And this makes us understand the paradigm shift and the beginning of a different orientation from the traditional one, a vision much similar to that of the Copenhagen School.

In the work of *People, State and Fear (1993)*, Barry Buzan, one of the founders of the Copenhagen School, redefines the well-known concept of "security", changing the optics upon it, as being not only a function of the military power but a function of preservation of societies. Even though within the society, the sectors in which it is divided and it operates (economical, political, military etc) can't be completely separated, the use of this way of approaching makes the research and the analysis work of the specialists easier and more comprehensive.

*"The analytical method of the sectors thus begins with fragmentation, but it must be finished with the reconstruction of the whole. Fragmentation is done only to simplify and clarify. But, to achieve a level of understanding, it is necessary to reunify the parties and study the way they relate."*⁴

The sectors to which reference is made and which are dealt in more detail in the quoted paper are: military (which is, according to the traditionalistic thinking the only one entitled to approach the security paradigm), economic, political, environmental and societal.

*"Threats and vulnerabilities can arise in many areas: military or non-military ones, but in order to count as security issues, they have to meet a number of strict criteria that distinguish them from the normal flow of exclusively political ones. They must be faced as existential threats to a object of reference by an actor from the security environment that thus generates the approval of emergency measures outside the rules that would otherwise be required."*⁵

According to the constructivist theory, an action (theme, movement) is impossible to be diminished at a stimulus-response level. It is the result of interpretation, of a system of codes and significations; it must be adapted to the social contextual etc.⁶

Bjorn Mollen, one of the Copenhagen School of Copenhagen (Copenhagen Institute of Peace, founded in 1985) contesters states that, even though this has played a particularly important role in the progress of peace studies, there is no uniform approach regarding research, if they are *for* or *about* peace.⁷

However, structuring security on five distinct sectors that differentiates the types of action and interaction is more than necessary in the current logical socio-political dynamic and it is welcomed both for the research environment and for the decision-makers.

³ Stephen M. Walt *The Renaissance of Security Studies*, International Studies Quarterly, (1991) , 213.

⁴ Barry Buzan, Ole Wæver, Jaap de Wilde *Security: A New Framework for Analysis*, (Cluj-Napoca: CA Publishing, 2010), 23.

⁵ Barry Buzan, Ole Wæver, Jaap de Wilde *Security: A New Framework for Analysis*, 18.

⁶ Diana Didă, A „relative” field. The Security, Identity Studies and Security after 1990. *Etnosfera* magazine, no 2, (2009).8.

⁷ Bjorn Mollen *Topical Issues in Nordic Peace Research*, (2001) https://www.sagepub.com/sites/default/files/upm-binaries/2953_12PRA01.pdf.

In this framework, I have tried to approach two of the security sectors(societal and economic, providing a working perspective within them, by using techniques specific to information and normative analysis from the field of Competitive Intelligence.

2. SOCIETAL SECURITY

Ole Wæver (1993) delimits the concept of social security like this: if the nation is a "community searching for a state", we cannot say that the security of the nation is the same as the societal security, because the societal security refers to the security from outside the state or "along" the state.

The security of the nation would, in this case, refer to the political security. The sense of identity, of community that the nation ensures is included in the context of societal security; if we reduce it to the security of groups, we operate a fragmentation of it; if we reduce security to the individual one, we return to the atomistic concept of security, from where one of the "national security" approaches (understood as the aggregate of the group and individual security) has inspired from.⁸ The Copenhagen School argues that security issues are built on the discursive act⁹.

At the same time, the Romanian Association for Social Security (established in 2007 as a collegiate, cultural-scientific and non-governmental community) defines social security as being a particular type of security of human communities in the absence of which their survival in history would not be possible, protecting the collective memory and identity, maintaining the social and cultural-symbolic cohesion in a society.

Although the phonetic difference between the *societal* and *social* terms is a small one, the semantic difference is significant, when we associate the lexeme *security* (creating social security and social security constructions) meaning changes significantly. In the first case, we refer to the way of identification of the collectivities (culture, religion etc.) and in the second case -to individuals (physical, economical, financial security etc.).

At the same time, the lexeme *society* cannot always be defined as a population of a state, because it may be composed of several distinct societal communities.

The founder of the Romanian sociology, Dimitrie Gusti, defines the notion of *community* as "the total autonomy of the individuals who live together and submit as manifestations of will an economic and a spiritual activity, ethically and juridically regulated and politically-administratively organized, conditioned by the cosmic framework, biological framework, psychological and historical framework."¹⁰

Culture can also be translated as civilization, that "cultural entity," an ensemble of cultural features and phenomena, "a specific chain of visions over the world, structures and culture that make a historical whole," while creating "creating at the same time " the largest cultural group of people and the widest level of people's cultural identity", apart from other common characteristics that differentiate them from other species.¹¹

Radu Baltasiu (2007) , in his work „*Introduction to sociology. Spirituality, nation and capitalism.*” observes that the elements of culture are collective and are often related to the collective unconscious, being a source of the phenomenon called sociality and sociability

⁸ Ionel Nicu Sava, *Security Studies*, (Bucharest, Romanian Center for Regional Studies, 2005), 49.

⁹ Claudia Anamaria Iov, Maria Claudia Bogdan, Securitization Of Migration In The European Union - Between Discourse And Practical Action, *Research And Science Today*, Spring 2017, No. 1(13)/2017, 14.

¹⁰ Dimitrie Gusti *Opere*, Vol. I, (Bucharest, Academy's Publishing House 1968).

¹¹ Huntington, Samuel P., *The Clash of Civilizations and the Remaking of World Order*, (Litera Publishing House, Bucharest, (trad.) by Liana Stan, 2012).

orientation frameworks. This means that the collective memory of individuals is a living element of the common vision of the world and experiences.

Ilie Bădescu, in his work *Noologia* (2002) speaks about the religious consciousness and about the communities' power to withstand the threats in which this consciousness has strong roots. The distinguished professor appreciates that communities can only be dissolved when the faith and religious manifestations end.

*"Who wants the destruction of a collectivity fights against its ideality, to weaken it and the feelings that people share, embodied in its value system."*¹²

According to B. Buzan, the social security agenda is set by different actors in certain regions over certain periods of time. He identifies four threats against the social security; three important ones: migration, horizontal competition (influences generated by the expansion of a neighboring culture), vertical competition (the existence of integration or secessionist systems) and a secondary one: depopulation (caused either by natural disasters or by human actions - war, extermination policies etc.). If the societal and political sectors have an active connecting bridge, the community's reaction against the threats is to transpose the problem they are facing on the national agenda. Another way to take action against the threat is through actions taken within the community concerned.

In order to be able to thoroughly observe the potential problematic events that may endanger a social group, it is important to take into consideration the civilization that has created the respective culture, with its values and social norms, traditions, symbols, linguistics and art.

"Societal identity can be threatened by a large number of factors, from suppression of one's own expression to the interference or lack of ability to reproduce through generations.

Examples of societal threats can include:

- *cultural cleansing*
- *the systemic approach towards destroying or limiting important institutions and/or cultural symbols that are important for the group's identity;*
- *ethnic cleansing*
- *deliberate or voluntary harassment, violence, crimes and/or deportation of members of a society by another society"*¹³

How can societies manifest themselves for the sake of their own protection, given the fact that they lack the means of the states?

*"The use of the societal security provides an analytical leverage when we evaluate what kind of developments can become threats and potential causes for a violent conflict. The use of the societal security makes it possible to explain how migration, television and radio broadcasts, election results, and linguistic education can contribute to a violent conflict between societies or between the state and the society."*¹⁴

Another important problem is the one related to the *positive discrimination*. A bad and vicious understanding of the human rights concepts can lead to the creation of excessively advantaged minority entities / groups and through this, to the discrimination of the majority.

"When the collective rights overcome the cultural autonomy, moving to the political, administrative or territorial autonomy - without a concrete basis to sustain such an intermediate alternative administration based on the principles of the minority between the state and the local

¹² Ilie Bădescu *Noological sociology. The Spiritual order of the society*, (Bucharest, Mica Valahie Publishing House, 2007), 139.

¹³ Iulian Chifu, Oazu Nantoi, Oleksandr Sushko, , *Societal security in the trilateral region: ROMANIA-UKRAINE-REPUBLIC OF MOLDOVA*, (Bucharest, Curtea Veche Publishing House, 2008) ,168.

¹⁴ Iulian Chifu, Oazu Nantoi, Oleksandr Sushko, , *Societal security in the trilateral region*, 170,171

administration and individuals - there is a clear basis for manifestation of some threats to the societal security and even a first step to threatening the national security."¹⁵

In contrast to these, the ideas of multiculturalism and social cohesion, that have been debated more and more lately, are considering a harmonic existence, the coexistence of several different cultures.

*"Societal Cohesion represents the other side of reality and existence of communities and represents the sum of values, norms, actions, behaviors, determining the confluence, coexistence and the vector of unity of the society."*¹⁶

Thereby, the dilemma regarding societal security is manifestly related to feelings of membership and culture, subjective perceptions, beside globalisation and integration.

3. ECONOMICAL SECURITY

With the dissolution of U.R.S.S. and the Communist Bloc, the perspectives of the international economy have changed significantly. If until 1989 we were dealing with two large blocks: the capitalist and the communist ones, fundamentally different and which did not have economic exchanges only on its territory, the beginning of the '90s comes with major changes. The liberalization of the markets (including capital markets), the emergence and development of new markets, the reorganizations of custom tariffs, all these have led to the need to give a greater importance to the economic security. The interdependence of states now rests on the ability of states to cooperate, to trade and to influence each other mostly from an economic perspective. They understand that their security depends now also on the domestic economic environment, but also on the international situation. It is important to note here that one of the initial arguments of the European integration was related to putting together of the heavy industries- of coal, steel, nuclear, and the replacement of independence with the interdependence of states in this regard.

The Global Risks Report 2018¹⁷, an annual study published by the World Economic Forum, globally examines, studies, identifies the risks that humanity is going to face in the next year. The latest report from January 2018 (emerged from the Davos-Switzerland meeting with a central topic of debate: *Creating a Shared Future in a Fractured World*), identifies an increase of risks in the following areas:

- 1) Persistence of social and economic inequalities
- 2) Political tensions on national and international level
- 3) Environmental hazards
- 4) Cyber vulnerabilities

Therefore, we can observe that one of the most notable problems that we are currently facing is of economic nature, of a major importance, with real possibilities to destabilize the local, national or international security.

If a state has enough leverage to cushion the negative impact of sudden changes/threats, a private company cannot do the same. At the same time, a bad management leads to bankruptcy and disappearance of a company on the market, thing that can't happen to a state (in the sense

¹⁵ Iulian Chifu, Oazu Nantoi, Oleksandr Sushko, , *Societal security in the trilateral region* , 172

¹⁶ Iulian Chifu, *Bosnia –Herzegovina: Societal cohesion, the scene of the national reconstruction and the road towards European integration*, (Europa XXI nr.6, 2008), 17.

¹⁷ The Global Risks Raport 2018, http://www3.weforum.org/docs/WEF_GRR18_Report.pdf, accessed on 15.09.2018

that it can go bankrupt but it doesn't disappear, and the economic crisis turns into a political one).¹⁸

From another point of view, however, one of the principles of economic security is that we go into any analysis from the assumption that the economic agents work more competitively on an uncertain market. It is known that in the economic environment we can't speak of safety and a perfect balance. So, uncertainty increases competition, stimulates the creative spirit and analytical and predictive capabilities.

4. MANAGING VULNERABILITIES AND THREATS THROUGH COMPETITIVE INTELLIGENCE

*"It is not the strongest of the species that survives, nor the most intelligent that survives. It is the one that is the most adaptable to change."*¹⁹ – Charles Darwin

Under these conditions, how do societies manage the vulnerabilities they are facing and overcome challenges and resist threats?

By keeping the proportions, certain strategies in the economic security environment can be applied within societies, allowing an analysis of the place, moment, influences, threats etc. The most efficient working method in this sense belongs to the Competitive Intelligence field.

*"When the rhythm of change outside of your organization is greater than the one inside it, the end is close."*²⁰ Jack Welch, former CEO, General Electric.

The quote above converges towards the Competitive Intelligence Division's²¹ mission, namely the one to create a decisional advantage for the beneficiary. In sports or politics, in war and in business, we cannot work efficiently if we don't know what the others are doing. In order to understand as complexly and correctly as possible the environment in which we operate (internal vs external), we have to make a detailed process of data collection (information); but turning this information into intelligence is the most problematic part. Like in the case of business strategies, the members of a community don't lack statistical or economic data; the difficulty consists in analyzing and linking a large number of data, indicators, news, open sources, and formulating analyzes, forecasts and relevant solutions based on these.

In the paper *Competitive Intelligence Gathering, Analyzing and Putting it to Work*, Christopher Murphy (2005) argues that "[...] any factor that imposes a risk for the opportunities or profitability is given to the CI department"²². By extrapolating, an analysis of some CI experts

¹⁸ Barry Buzan, Ole Wæver, Jaap de Wilde *Security: A New Framework for Analysis*, (Cluj-Napoca, CA Publishing, 2010), 154-160.

¹⁹ In 1963, the American professor Leon. C. Megginson from Louisiana State University, at a conference of the Association for Social Sciences (Southwestern Social Science Association) held a speech that is later published in the association's magazine. In this speech, he uses the famous phrase, summing up the central idea of C. Darwin's paper: *The Origin of Species*, and even if he does not use the appropriate symbols of a quoted text, he says the phrase: "That's what Charles Darwin says" Although the quoted phrase does not have quotations in the article published after the conference, the quote remains attributed to the brilliant English naturalist because, in essence, this is one of the fundamental ideas of his research, presented not only in the *Origin of Species* (1859) but also in *Human Origin and Sexual Selection* (1871).

²⁰ The National Electric Report for year 2000, section *Relishing Change*,
<https://www.ge.com/annual00/download/images/GEannual00.pdf> accessed on 29.08.2018.

²¹ I used the term *division* as representing the person/people who carry out the information analysis and transforming them into intelligence

²² Murphy, Christopher, *Competitive Intelligence. Gathering, Analysing and Putting it to Work*. (England, Gower Publishing, 2005).

is useful in order to avoid any sensitive / problematic situations that could appear and the domain of competence of this activity outweighs the domain of the economic field.

A close link between the CI department and the beneficiary allows his involvement in real time and clarification or detailing the needs.

In order to involve the beneficiary in an effective way, complex techniques must be used to identify needs and also to evaluate their own performance. The question we are asking is not: "What are your priorities in terms of information?", but "What do you want to achieve?", starting from the premise that the support provided is in the form of a relationship rather than of an event.

The resulting analytic products transform into *adapted services*, focusing on utility rather than simple propagation, working in analytical networks centered on the mission.

The CI specialist must be technologically and analytically trained, to be an expert when it comes to the political and business fields, to be able to understand geopolitics and to adapt the security policy to the changing demands of the beneficiaries.

He must impose three fundamental principles to the beneficiary for whom he works.

The first one of them is *Adaptability*

- is the success in anticipating and successfully responding to environmental changes.
- is a process that requires constant supervision of the external environment, the identification of threats, vulnerabilities but also opportunities
- the success through adaptability implies an active involvement and openness to external ideas and, necessarily openness to learn from experience.

The second principle is *Alignment*

- the adjust of all the system's components to ensure it good function
- represents the assurance of the unity of effort, but without falling into the conformism of thought.
- the degree of consistency and coherence between strategy, systems, processes and communication

The third principle is *Flexibility*

- is the skill to reconfigure the working processes in a short time and with minimal effort and minimal resources to take advantage of opportunities and overcome risks
- the response to unpredictable events must have a good speed and accuracy

Those three mentioned principles must be integrated and strengthened. Adaptability without Alignment generates chaos and loses resources; adaptability without flexibility leads to the possibility of seising the danger, but lack of efficiency in avoiding it.

Besides the obvious differences between the beneficiary and the CI specialist, the latter one must have the ability to emotionally detach from the environment they are analyzing. If in a society it would be indicated that the CI department is absolutely distinct, when we talk about the analysis of societal security, the analyst should know in detail the culture for whose advantage of he works for. This means that there is a significant possibility that the person (people) concerned to be from within the community. However, an objective overview is needed, also an alternative point of view, *a reality check* on one's perceptions.²³

Just like in the business field- the competitive/business intelligence activities shouldn't be confused, in this research an analysis of the societal security through CI is not confused with the

²³ Christopher, *Competitive Intelligence.Gathering*, 15-16

spying activity. This belongs to the state and not to the society. The competitiveness activity through information is one within the limits of legality and ethical principles.²⁴

Robert Steel, well-known financial expert and official of the United States' Government said that "*Information costs money ... intelligence makes money*"²⁵

Hence, the transformation of the raw information into intelligence brings net added value, superior to initial investment. And this transformation of data into analyses and predictions into solutions and strategies to follow is the value of intelligence *science*.

"Business Intelligence has two basic components:

- *Competitive Intelligence (CI)*
- *Competitive Counterintelligence (CCI)*.

*"If the CI field entails obtaining information about the business field in the beneficiary's domain of interest, the CCI is supposed to ensure its own security against external attempts to obtain information that would be further transformed into intelligence. The CCI wants to ensure the physical security, the security of documents, of informatics and communications systems."*²⁶

5. CONCLUSIONS

Douglas Bernhardt, (an economic and CI analyst), in his paper: *How to acquire and use corporate intelligence and counter-intelligence*, argued that "*the strategy that is not based on intelligence is not a strategy, but a guess.*"²⁷

The CI specialists work with a wide range of data with different and important representativities, from the moment of collecting them to turning them into intelligence, this latter stage being the most difficult but the most important part. Generic data are filtered, the relevant information being sifted, going from quantity to quality. Communities, for their own benefit need not only raw information but a summary and analysis of them, predictions and opinions about the future instead of simple information about present or past situations.

Therefore, both in the case of economic security and in the case of societal security, their preservation can be achieved through the techniques that are specific to informational activities and to the norms of analysis from the Competitive Intelligence field.

The goal is obtaining a complete vision of the issue, to realize a basic strategy on the long-term and the tactics that need to be adopted. Through information and counter- information work, the analyzed company/society/group is positioned internally and externally and is protected against possible destabilizing intrusions.

²⁴ In the US, "The Economic Espionage and Protection of Proprietary Information Act" has taken out the offense of violating the business secret and the one of stealing private information from under the jurisdiction of the local and state authorities and passed them under the jurisdiction of the federal authorities. There is no equivalent of this law in Romania's legislation nor in the European Union's law. However, there are more laws that incriminate the economic espionage.

²⁵ Larsonin, Mark, *Win loss analysis*, Primary Intelligence Magazine, 3 decembrie 2007, <https://www.primary-intel.com/blog/competitive-intelligence-tip-1-make-your-ci-produce-revenue/> accessed on 29.08.2018

²⁶ Medar, Sergiu, *Why business intelligence ?*, Competitive Intelligence-Business magazine, number 1, (2012).

²⁷ Bernhardt, Douglas, *Competitive Intelligence. How to acquire and use corporate intelligence and counter-intelligence*, (FT PrenticeHall (Financial Times), 2003), 87-90.

REFERENCES

1. **Barry Buzan ,Ole Wæver, Jaap de Wilde** (2010), *Security: A New Framework for Analysis*, CA Publishing,
2. **Bernhardt, Douglas**, (2003), *Competitive Intelligence. How to acquire and use corporate intelligence and counter-intelligence*, FT PrenticeHall (Financial Times)
3. **Bjorn Mollen**,(2001) Topical Issues in Nordic Peace Research,
https://www.sagepub.com/sites/default/files/upm-binaries/2953_12PRA01.pdf
4. **Dimitrie Gusti** (1968), *Opere*, Vol. I, Bucharest, Academy's Publishing House
5. **Huntington, Samuel P.**, (2012), *The Clash of Civilizations and the Remaking of World Order*, Litera Publishing House, Bucharest, (trad.) by Liana Stan
6. **Ilie Bădescu** (2007), *Noological sociology. The Spiritual order of the society*, Bucharest, Mica Valahie Publishing House
7. **Ionel Nicu Sava** (2005), *Security Studies*, Bucharest, Romanian Center for Regional Studies
8. **Iov Claudia Anamaria, Bogdan Maria Claudia**, *Securitization Of Migration In The European Union - Between Discourse And Practical Action*, RESEARCH AND SCIENCE TODAY, Spring 2017, No. 1(13)/2017, pp. 12-19.
9. **Iulian Chifu**,(2008), *Bosnia –Herzegovina: Societal cohesion, the scene of the national reconstruction and the road towards European integration*, Europa XXI nr.6, p.17
10. The Global Risks Raport 2018, http://www3.weforum.org/docs/WEF_GRR18_Report.pdf, accessed on 15.09.2018
11. **Iulian Chifu,Oazu Nantoi, Oleksandr Sushko**, (2008) , *Societal security in the trilateral region: ROMANIA-UKRAINE-REPUBLIC OF MOLDOVA*, Bucharest, Curtea Veche Publishing House
12. **Larsonin, Mark**, *Win loss analysis*, Primary Intelligence Magazine, 3 decembrie 2007,
<https://www.primary-intel.com/blog/competitive-intelligence-tip-1-make-your-ci-produce-revenue/>
13. **Medar, Sergiu**, (2012) , *Why business intelligence ?*, *Competitive Intelligence-Business magazine*, number
14. **Stephen M. Walt** ,(1991) *The Renaissance of Security Studies*, *International Studies Quarterly* ,p.213.
15. **Diana Didă**, A „relative” field. *The Security, Identity Studies and Security after 1990*. *Etnosfera magazine*, no 2, 2009
16. **Murphy, Christopher**(2005) , *Competitive Intelligence.Gathering, Analysing and Putting it to Work*. Gower Publishing, England
17. General Electric report -2000, *Relishing Change Section*
<https://www.ge.com/annual00/download/images/GEannual00.pdf> accessed on 09.09.2018
18. The Global Risks Raport 2018, http://www3.weforum.org/docs/WEF_GRR18_Report.pdf, accesat 15.09.2018
<https://www.ge.com/annual00/download/images/GEannual00.pdf> accessed on 09.09.2018
19. <https://www.primary-intel.com/blog/competitive-intelligence-tip-1-make-your-ci-produce-revenue/>, accessed on 29.08.2018.

THE EFFECT OF THE MASS MEDIA IN THE EU PERCEPTION

Alina-Monica BĂRĂIAN¹

ABSTRACT:

IN AN IMAGE CULTURE SUCH AS THE ONE IN WHICH THE MEDIA IS THE DECISIVE FACTOR IN THE PERCEPTION OF EVENTS, THE MENTALITY OF YOUNG PEOPLE IN ROMANIA AND BEYOND IS SHAPED BY THE IMPACT OF SOCIAL NETWORKS. THE MEANING OF THIS MODELING IS A POSITIVE ONE, BECAUSE THERE IS THE EXCHANGE OF INFORMATION, THE ACCEPTANCE OF DIVERSITY, THE UNDERSTANDING OF THE GLOBALIZATION PROCESS AND THE FACT THAT THE EUROPEAN UNION IS A GUARANTOR OF FREEDOM AND DEMOCRACY.

KEY WORDS: MASS MEDIA, IMAGE, FREEDOM, EUROPEAN UNION

INTRODUCTION

The present age can be described as the operational end of the concept of historicity, the present time dominating perception, especially due to the existence of visual and audio visual media. History is now the television network or the Internet where the information is instantaneous and simultaneous.

THE EFFECT OF THE MASS MEDIA IN THE EU PERCEPTION

Gianni Vattimo finds this context appropriate, saying: "There is a kind of fundamental immobility of the technical world that fiction writers have represented as a reduction of any experience of reality to an imaginative experience (no one really meets no one, everyone sees everything on television or computer monitors, which even, even more realistically, is perceived in the veiled and air-conditioned silence in which computers work"². Because everything is limited to transparency and surface, man can manifest himself predominantly as an appearance or image, being a surface of absorption or resorption of the networks that influence it Concrete is transformed by abstraction, computation, and cropping of snapshots. Based on imaging, everything comes extremely fast and concurrently, giving the impression of mixing: discourse, order, classification and The immediate consequence is the mastery of space only as a picture, in a parallel structure of the world and nature. The world is reconfigured under the impact of the

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² Vattimo Gianni, *Sfârșitul modernității*, (Constanța: Editura Pontica, 1993), 17.

visual media through the network structure, provided by the immense penetration of information and interrelationships. We are witnessing a kind of liberation in all fields as an effect of the extension of meanings, facilitated by the overcoming of classical thought based on the concept, towards contemporary, sign-based. Liberation is manifested in all areas: political, cultural, pulsational, economic, etc. The free mix of image meanings allows the exploration of uncharted aspects, even at the same time as their production, through famous live broadcasts.

In contemporary society, we feed us more and more with images. There is an immense appetite for the image: whether it's external, provided by TV or computer, or inside, provided by its own delusional scenarios. The imagistic culture of the information society places, paradoxically in its center, the inner image. We find old collections of ideas and mentalities staged in imaging interfaces. We are witnessing an interesting synthesis of esotericism, traditions and electronics. Whatever we desperately want and do not possess, we acquire a computer, and we build everything virtually, more by connecting to the network structure, expediting what we do to others through the Internet. So we get to see just what we want and only the aspects we resonate with. Our thinking has somewhat greater powers. The world seems to be the result of our consciousness. In the plurality of possible values we want or dream to join, we create a self that we want to be seen, posturing the creative capacity that we have without realizing through thought. The creativity of the human mind is thus stimulated by virtual environments, being immensable, more exerting collectively as a result of the thinking of the whole of humanity, that is, of the global network. Both science and mass culture cramming on these issues begin to observe them and analyze their consequences. The creative and manipulative power of the image can change the perceived world, for example a beautiful place, designing hatred and resentment can make it ugly, in a space of conflicts and each other, an anonymous space loaded with special media events becomes the most beautiful and desirable at some point. However, the extraordinary power of thinking and perception in this society of the image shapes its individual and his mentality differently, in the sense of gradually releasing the tradition under the tyranny of obstruction in prejudices. We observe a process of secularization of time in the sense of eliminating the useless old and of another imposing of values synonymous with the new and acceptance.

Man feels freely internally, independently, and the prejudices of others do not take them into account. Through what is being communicated globally, others will do the same. The community is reconfiguring. The patterns are constantly changing due to the growing range of offers offered by the global consumer society. This solution leads in the present world to preserving the difference in unity, each desiring a new interesting experience and experiencing diversity. Then, paradoxically, in a world centered on difference, each tends to imitate the other just because he sees it differently. So, the man of technical civilization assimilates different experiences and values, but they allow globalization.

The concurrency of the events transmitted by the live transmission produces a perception as if they really happened to the individual and induced a easier and more direct assumption of their significance. The event produced and perceived by individual live is not for him history and something outside, but is presently lived. We live all that happens to us, but also what happens to others in Europe or the world. It depends only on what we choose to track and focus on. The selection of the information we access from the media complements and builds our present life segment and shapes our mentality, shapes our opinions, influences our prejudices, or ingests ideas that we accept or reject. Our mind works like a sponge that absorbs what we offer it and arranges everything, as Kant said, in the two files: space and time. The age segment that best understands their meanings and meanings is obviously the younger one, because he has much

more contact with the media and social networks. Age-specific curiosity leads to a greater absorption of information and greater openness towards diversity, plurality, multiculturalism, and even alterity. In such a context, the values conveyed at the level of the European Union are, not only very easy to spread, but also very easy to multiply and internalize.

The impact of the media age is interesting in terms of young people's perception of the EU. This perception has crystallized in recent years under the impact of the media through four decisive causes that have generated it.

a) Potential of the unconscious, exploited mainly by the revolution induced by the omnipresence of the image in virtual environments, which is spectacularly liberated in countless social and artistic forms, which facilitates the acceptance of diversity and alterity.

b) The synthesis and fusion of perceptions according to the model of the consumer society and the accumulation of resources is another cause related to the assumption of globalization, without seeing it as a form of annihilation of the cultural specificity of a group.

c) Maybe the most important change lies in the resizing and revaluation of communication by continually replacing the traditional way of communicating and the possibility of visual simultaneity of the translated image through the image so that communication is possible at any time and is viewed as an advantage. Exchange of information facilitated by social networks means for young people: benevolence, acceptance and form of freedom manifestation.

d) The fourth cause complements the previous one, aims at the widespread use of the Internet. This results in an evolution from static to motion. The Internet is among the dynamic means, concentrating everything on the surface, simultaneity and concurrency. The opportunities that it offers perfectly reflect the mentality of postmodernity, under the sign of functionality, efficiency and mobility. Young people translate these aspects as reflections of European mentality and values, adhering to them and assuming them.

CONCLUSION

The image, as a central element of the media, is currently the one that matters and produces effects. It comes as an aid to the youth mentality and the acceptance of values common to the European space, such as freedom, democracy, multiculturalism, diversity, etc. It is also worth mentioning that the training of young people in the European spirit presupposes these key approaches of communication and interaction, which means openness to the community, national or European. Thus, media propagation greatly supports the strategy of promoting the European ideal by achieving two major objectives: taking key information about what the EU means and its importance and promoting ways to foster the formation of a solid European spirit.

REFERENCES

1. **Bărăian, Alina**; Secularizarea morții, Cluj: Dacia, 2008;
2. **Chelcea, Septimiu, Zamfir, Cătălin**; Manual de sociologie, București: Economică, 2006
3. **Dahl, Robert**; Despre democrație, Iași: Institutul European, 2003;
4. **Vattimo, Gianni**; Sfântul modernității, Constanța: Pontica, 1993;

ELECTORAL FRAUD METHODS – THE PARLIAMENTARY ELECTIONS OF 30TH NOVEMBER 2008

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ABSTRACT:

THE PARLIAMENTARY ELECTIONS OF NOVEMBER 30TH, 2008 ARE ACTUALLY THE FIRST PARLIAMENTARY ELECTIONS IN ROMANIA FOLLOWING OUR COUNTRY'S ACCESSION TO THE EUROPEAN UNION IN 2007. THIS ARTICLE HIGHLIGHTS THE MAIN ELECTORAL FRAUD METHODS USED BY THE POLITICAL PARTIES, BOTH DURING THE ELECTION CAMPAIGN AND DURING THE ORGANIZATION AND DEVELOPMENT OF THESE ELECTIONS. CONCURRENTLY, IN ORDER TO HIGHLIGHT THESE ELECTORAL FRAUD METHODS, THE 2008 PARLIAMENTARY ELECTIONS HAVE BEEN ANALYZED IN COMPARISON WITH THOSE OF 1946, WHICH LED TO THE IDENTIFICATION OF COMMON STRATEGIES REGARDING THE MANNER IN WHICH THE ELECTORAL CAMPAIGN WAS CARRIED OUT, THE UNFOLDING OF THE ELECTION DAY, ATTEMPTS AND EVEN SUCCESSFUL MANIPULATION OF THE CITIZENS IN CHOOSING CERTAIN PARTIES OR THEIR CANDIDATES. THUS, THE PARLIAMENTARY ELECTORAL FRAUD METHODS OF NOVEMBER 30TH 2008 MANIFESTED IN VARIOUS FORMS, SOME OLDER AND SOME MORE RECENT. THE PURPOSE OF THIS PAPER IS TO OBSERVE, THROUGH COMPARATIVE ANALYSIS, THE 2008 PARLIAMENTARY ELECTORAL FRAUD METHODS, NAMELY THE COMMON ASPECTS BETWEEN THEM AND THOSE OF NOVEMBER 19TH 1946, FROM AN ELECTION ORGANIZATION AND DEVELOPMENT POINT OF VIEW.

KEY WORDS: ELECTIONS, MANIPULATION, FRAUD, DEMOCRACY, 2008

INTRODUCTION

The year 1989 remained in human history as the year when communism regimes collapsed in Central and Eastern Europe. It was the moment when more or less previously accumulated noticeable developments spread in a spectacular way. Also, the Berlin Wall, symbol of the Cold War falls on November 9th, leading to the end of the communist regime in Easter Germany, while

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the violent collapse of Ceausescu's regime in Romania occurred only in the second half of December³.

The sudden collapse of communism placed the nations in a difficult situation⁴. In this respect, through free elections, citizens were to bring to power people who were able to build democracy. Years after the fall of communism, the difference between the countries⁵ led by leaders with a political will to coordinate their states to the rule of law and those which, on the contrary, did not have such guidance, became obvious. Together with Russia, Bulgaria, Ukraine and Moldavia, Romania too, is part of this second category⁶.

At the same time, it must be stressed that a major responsibility in the evolution or even involution of a democratic political system firstly belongs to the political elite. Depending on their specificity, some states were successful in the process of political consolidation, while others have had a modest evolution⁷.

Democracy necessarily means representative democracy where, the elected officials make decisions on behalf of the people. How are these people's representatives elected? This unchallengeable task within representative democracies is achieved through the electoral system. Hence, one can state that the electoral system is the fundamental element of representative democracy⁸.

Simultaneously, during the post-December construction, Europe, seen as a symbol of progress, was also the pretext for essential changes. For example, the "European constraints" were invoked to justify a radical reform of the Constitution and the electoral system⁹.

After 1990, the process of modernizing Romania and its admission to NATO on March 29th 2004, respectively to the European Union on January 1st 2007, were significant moments in its natural course of democratization and alignment to the European trend. Taking these reasons into account, we shall further address the Romanian parliamentary elections on November 30th, 2008, in the context of our country being a EU and NATO member.

With regard to our research hypothesis, we must state that this is an exploratory one, in which we shall try to find an answer to the question: Can there be common practices and methods in organizing and conducting parliamentary elections in completely different political regimes? Our analysis aims at highlighting the common political practices on illegalities, especially the electoral fraud methods used during the organization and development of the election.

³ Ion Bucur, introduction to *Anul 1990: partide, ideologii și mobilizare politică [Year 1990: parties, ideologies and political mobilization]*, (Bucharest: The December 1989 Romanian Revolution Institution Publishing House, 2014), 10, available at <http://irrd.ro/wp-content/uploads/2014/08/Anul-1990-Ion-Bucur-.pdf>, accessed on 17.06.2018.

⁴ Flavius Cristian Mărcău, „Central and Eastern Europe – necessary stages of democracy construction”, *Research and Science Today*, No. 2(8)/2014, November 2014, pag. 93-102

⁵ Flavius Cristian Mărcău, „Post-communist democratization: difficulties and crisis”, *Analele Universității „Constantin Brâncuși” din Târgu - Jiu, Seria Litere și Științe Sociale*, nr. 3/2013, pag. 100-104

⁶ Giovanni Sartori, *Teoria democrației reinterpretată [Reinterpreted democracy theory]*, translated by Doru Pop, (Iași: Polirom Publishing House, 1999), 11.

⁷ Daniel Șandru, *Ipostaze ale ideologiei în teoria politică [Ideology aspects in the political theory]*, (Iași: Polirom Publishing House, 2014), 160-161.

⁸ Arend Lijphart, *Sistemele electorale și sisteme de partide : un studiu despre douăzeci și șapte de democrații : 1945-1990 [Electoral systems and party systems: a study on twentyseven democracies: 1945-1990]*, translated: Ileana Petraș-Voicu, (Cluj –Napoca: CA Publishing, 2010), 18,.

⁹ Cristian Preda, *Partide și alegeri în România postcomunistă: 1989-2004 [Parties and elections in postcommunist Romania: 1989-2004]*, (București: Nemira Publishing House, 2005), 108-109.

Starting from the premise that the parliamentary elections of 1946 were known to have been forged, using the exploratory methods and the comparison, we will demonstrate which of the practices of 1946 can be found in a democratic regime at the elections of November 30th 2008.

THE DEVELOPMENT OF THE ELECTIONS OF NOVEMBER 30TH 2008

The parliamentary elections of November 30th 2008 are the first parliamentary elections that took place in Romania after its accession to the European Union in 2007. Thus, there was a series of legal amendments which led to the organization of these elections.

Democracy guarantees respect for fundamental freedoms. Without this freedoms, we could not even talk about free debates to express and resolve social divergences, namely the right to freedom of speech, freedom of association, freedom of movement and security. Also, democracy makes it possible to renew societies and replace the generations or the responsible ones who have become inefficient within a well-established process¹⁰.

In a system of free elections, the success of political parties is conditioned by the importance of the electoral support they receive and the manner in which they cultivate it. Also, political parties are an essential mechanism that allows for an effective expression of the people's preoccupations within the governmental process. In comparison, the most intransigent democrats of the 19th century Europe demanded for the parliamentary elections to take place on a yearly basis, focusing on an efficient control of the representatives. Nowadays, the task of governors and parliamentarians is completely different, and a one-year mandate does not allow them to efficiently administrate the economy, nor does it give them the possibility to actually see the effects of the policies they had committed to. Nowadays, the term of office for the Members of the Parliament is 4 years¹¹.

With regard to the normative framework of the parliamentary elections of November 30th 2008, Romania uses an original method of mandate allocation, namely the number of votes is transformed in the number of mandates. This is a mixed method combining equally proportional principles – with a strong tradition in Romania, and majority principles – with a limited application to the vote for mayors, city council presidents and the state's President¹².

With the first practice of the new electoral law, Law no. 35 of March 13th 2008 on the election for the Chamber of Deputies and Senate, and for the change and amendment of Law no. 67/2004 on the election of local public administration authorities, of the Local Public Administration Law no. 215/2001 and Law no. 393/2004 on the status of the elected local representatives¹³, the parliamentary elections of 2008 brought about many surprises for the Romanians as there were changes on mandate allocation. More precisely, the confusions regarding the process by which candidates who won their colleges (boards), lost their mandates,

¹⁰ David Beetham, Kevin Boyle, *Democrație. Întrebări și răspunsuri*, trad. de Corina Mărgineanu, (Editura Clusium, 2002), 8.

¹¹ Beetham and Boyle, *Democrație [Democracy]*, 12.

¹² Andrei Cristian, „Despre efectele sistemului electoral românesc, cu ajutorul unei simulări electorale,” în *Expert electoral* [„About the effects of the Romanian electoral system, with the help of an electoral simulation” in *Electoral Expert*], 2 (2013): 16, accessed on 18.06.2018, http://www.roaep.ro/prezentare/wp-content/uploads/2013/04/DTP-Expert-Electoral-7-Iunie-CL-final_black.pdf.

¹³ Hereinafter: Law no.35/2008.

and those regarding candidates coming on the second or third place, who still managed to win their mandates¹⁴.

Therefore, by adopting Law no. 35/2008, the proportional list vote was replaced by a uninominal one. This is, however, not part of the majority electoral systems, as it targets the proportionality between votes cast by the electoral body and the parliamentary mandates¹⁵.

Under the new law, deputies and senators are elected in uninominal colleges (boards) by uninominal vote, according to the principle of proportional representation. Each college is usually given a single mandate. The political parties obtain mandates in proportion to the number of votes obtained, and the independent candidate receives a mandate if he/she obtains 50% + 1 of the total number of valid votes cast in the college he/she has applied for. The representation rule for the election of the Chamber of Deputies is one deputy to 70,000 inhabitants, while for the election of the Senate, the rate is one senator to 160,000 inhabitants¹⁶.

Hence, to better understand the effects of introducing uninominal colleges, we will exemplify the following aspect: theoretically, even if the Social Democratic Party (PSD) was the winner of the 2008 elections in terms of percentage (33.09% versus 32.36% for the Democratic-Liberal Party (PD-L) for the Chamber of Deputies, respectively 34.16% versus 33.57 for Senate), PD-L obtained three extra mandates¹⁷.

The organization of elections meant the creation of electoral divisions in all the 41 counties, one division in the municipality of Bucharest and a separate one for the Romanians residing abroad¹⁸.

The Permanent Electoral Authority¹⁹ together with the Romanian Ministry of Home Affairs were the ones responsible for what the Central Electoral Bureau's auxiliary technical apparatus is²⁰.

Decision no. 10 of 22.10.2008 also refers to the electoral campaign, regarding the interpretation of art. 41, paragraph (6) and art. 50 letter o) of Law no. 35/2008. Thus, it was decided that continuing the electoral propaganda after the end of the campaign meant the display, launch or distribution of electoral materials of any kind after the 29th of November 2008, 7 PM. After the end of the electoral campaign, all electoral propaganda materials must be removed from the polling place²¹. As we will observe in our analysis, this provision was violated.

Another decision which requires our attention is that referring to the sealing of the stamps. In this respect, Decision no. 65 from 17.11.2008 highlights the obligation of the presidents of the polling place electoral bureau to seal the "VOTED" stamps immediately after the vote ended.

¹⁴ Andrei, „Despre efectele sistemului electoral românesc, cu ajutorul unei simulări electorale,” [„About the effects of the Romanian electoral system, with the help of an electoral simulation”], 16-17

¹⁵ Raport asupra organizării și desfășurării alegerilor pentru Camera Deputaților și Senat din 30 noiembrie 2008, [A report on the organization and development of the 30th November 2008 elections for the Chamber of Deputies and Senate] 8, accessed on 16.06.2018, http://www.roaep.ro/legislatie/wp-content/uploads/2015/06/raport_parlamentare-2008.pdf.

¹⁶ „Report.”

¹⁷ Disproporțiile proporționalului,” *Istoria unui dezacord: uninominalul*, (2008) [Disproportions of the proportional, „The history of a disagreement: the uninominal (2008)], 18, accessed on 20.06.2018, http://www.apd.ro/files/publicatii/brosura_uninominal.pdf.

¹⁸ „Report.”

¹⁹ This is the fundamental autonomous administrative institution of the Romanian state responsible with ensuring the organisation and development of elections or referendums.

²⁰ „Report” 95-96.

²¹ „Report” 99.

Concurrently, these stamps were to be placed in an envelope which had to be glued shut, signed and bear the polling place's control stamp²².

The elections for the Chamber of Deputies and Senate were organized at 18,104 polling places distributed in the 43 electoral divisions. The voting participation rate was 39.20%. Following the centralization of data received by the Central Electoral Bureau, the results for the Chamber of Deputies and Senate were: For the Chamber of Deputies, the total number of valid votes was 6,886,794, 210,994 votes were null and 139,139 were white votes²³.

The facts stated in the parliamentary elections report of November 30th 2008 on the official website of the Electoral Parliamentary Authority, conclude that all petitions and appeals submitted at the Central Electoral Bureau referring to the annulment of the elections and the recount of votes were rejected as unfounded on the grounds that they have not been supported by evidence proving that the voting process had been vitiated, so as to alter the mandate attribution or due to the fact that those who made the appeals did not have the necessary expertise²⁴. This is an aspect that can be carefully analyzed, in the sense that, following the 2008 parliamentary elections organization and development assessment, both during the electoral campaign and on the day of the elections, or immediately after, numerous "fraudulent" methods were identified. These methods not only could have represented a solid ground for appeals on annulment of the elections and recount of votes, but could have also been admitted, such as: the double vote, previously stamped ballots, destroyed stamps.

ELECTORAL PROCESS IRREGULARITIES – ELECTION FRAUD METHODS

As we have previously explained, several irregularities, deviations from the law, organizational deficiencies and malfunctions were reported to the authorities charged with sanctioning such offenses and electoral infringement.

Concurrently, there was also some information from the territorial branches of the Permanent Electoral Authority bringing to light negative aspects regarding the behaviour of certain electoral officials, some categories of voters, party representatives and representatives of the media or the civil society who have disturbed the good conduct of the elections. Hence, statistically speaking, following the press statements issued by the Ministry of Home Affairs and Administrative Reform, 341 incidents were recorded on the day of the election, of which 57.7% were urban and 42.3% were rural. At the same time, 62 criminal case files were drawn up and 92 legal sanctions amounting to 37,614 lei were applied. Regarding the electoral campaign and election organization and development period, 1,470 incidents were reported, against which, 1,378 measures were taken, 492 offenses were detected and 893 legal sanctions amounting to 469,667 lei in fines were applied. Related to the environment of origin, 49.46% of incidents were reported in rural areas and 50.54% in the urban areas²⁵.

With regard to the fairness of the electoral process, this can be severely compromised in three ways. Thus, the first refers to the advantage of exercising power given to the party or coalition forming the government. The second way of threatening the fairness of the electoral process refers to the fraudulent practices of party adherents and sympathizers: corruption, intimidation, usurpation of identity, double vote, etc. Concurrently, the third way compromising

²² "Report" 100-101.

²³ "Report" 114.

²⁴ "Report" 121.

²⁵ "Report" 126.

the fairness of the electoral process refers to the fact that because of personal fortunes and massive financial support, certain candidates or parties hold the advantage²⁶.

As for our research, we will focus on the second way that threatens the fairness of the electoral process, more precisely, we will refer to the fraudulent practices of party adherents and sympathizers: corruption, usurpation of identity, intimidation, double vote, etc.

The methods of parliamentary electoral fraud from November 30th 2008 manifested in various forms, some older, and some more recent. Thus, we will emphasize the main methods of electoral fraud used by the political parties both in the electoral campaign and during the organization and development of the parliamentary elections on November 30th 2008.

To better understand the meaning of electoral fraud from a political point of view, we will define the term “electoral fraud” exactly how it appears in the specific legislation. Hence, in accordance with art. 2 point (30) of Law no. 35 of March 13th 2008 on the election of the Chamber of Deputies and Senate and the amendment and completion of Law no. 67/2004 on electing the local public administration authorities, with the Local Public Administration Law no. 215/2001 and Law no. 393/2004 on the Status of elected local representatives, electoral fraud means: “any illegal action which takes place before, during or after the end of the voting process, or during the vote counting and minutes conclusion, and which results in the distortion of voters’ will and the creation of advantages through extra votes and mandates for an electoral competitor”²⁷.

Starting from the abovementioned definition, we will mention a few electoral fraud methods observed during the organization of the parliamentary elections.

1. The electoral bribery

The electoral bribery is one of the most accessible methods to persuade voters to vote with the candidates of a certain party. We will refer to some examples reported at a county level during the exercise of vote. So, in the Viisoara neighbourhood in Bistrita-Nasaud, the representatives of the Social Democratic Party-Conservative Party complained that the voters who vote for the PD-L candidates and take photos of their votes, would receive free drinks. Also, the County Electoral Bureau (BEJ) in Constanta notified the Prosecutor’s Office, following a complaint made by the PSD-PC Alliance, according to which, a member of the polling place in the Valu lui Traian township allegedly granted heating aids to voters, at the request of the PD-L mayor. Certainly, the term “electoral bribery” is a highly diversified one, manifesting in various forms during the electoral campaign, depending on the specificity of the area or the needs of voters, identified by the parties’ local leaders. For example, the PD-L leader in the city of Fieni is accused of bribing a voter with a bag of cabbage. He supposedly also offered him two buckets with the PD-L brand, thus violating the provisions on banning the continuation of the electoral campaign on the day of the vote²⁸.

Although these small tokens of “electoral attentions” were clearly forbidden during the electoral campaign, the parties could not refrain from offering voters numerous attractive opportunities to their benefit, just to gain their votes for the party, from trips within the country

²⁶ Beetham and Boyle, *Democrație [Democracy]*, 48-49.

²⁷ Law no. 35 of March 13th 2008 on the election of the Chamber of Deputies and Senate and the amendment and completion of Law no. 67/2004 on electing the local public administration authorities, with the Local Public Administration Law no. 215/2001 and Law no. 393/2004 on the Status of elected local representatives, accessed on 17.06.2018, <http://legislatie.just.ro/Public/DetaliiDocument/90301>.

²⁸ „10 metode de fraudare a alegerilor,” [*10 methods of electoral fraud*] accessed on 17.06.2018, <https://romanioliberal.ro/politica/institutii/10-metode-de-fraudare-a-alegerilor-140655>.

or abroad, to flour, oil, rice and sugar from the European Union. This statement draws the attention upon the thousands of pensioners from sector 5 who received from PSD free one-day trips to the Bran Castle. On the same note, they were informed about the benefits brought by a PSD governance, the people being constantly “notified” about the party’s activity throughout the trip. Also, the leaders of the National Liberal Party (PNL) have distributed flour, oil, rice and sugar in several towns in Bacau, on their behalf, but these aids were actually received from the European Union via the Directorate for Agriculture and Rural Development for the retired farmers and people with a guaranteed minimum wage. Moreover, the products were distributed with the personal vehicles of the PNL leaders’ relatives, bearing the party’s insignia²⁹.

2. The “minibus” method

The political parties’ ambitions focused on getting voters on the candidates’ side also prove to be increasingly obvious through this method. In Bistrita-Nasaud, the PD-L branch was called for to have allegedly give people rides with minibuses to the polling places and paying them for their votes. Timis county also received such complaints, the PSD representatives being accused of having transported several people to the polling places. In Alba, the liberals were accused of not only taking people from Zlatna to the polling places by minibus, but of also having made them swear on the Bible that they would vote with the PNL candidates³⁰.

3. The double vote

This electoral fraud method can be exemplified by the case of a 70-year-old individual from Dambovita, who is under criminal investigation for attempting to vote twice. The old man firstly voted on the permanent lists in Oncesti, after which he tried to vote a second time in Gemenea. At the same time, another man from the county of Vrancea is also under criminal investigation after having received two sets of ballots when entering the voting booth. He had supposedly taken the second ballot to vote on behalf of his wife who stayed at home³¹.

4. Already stamped ballots

Regarding this electoral fraud method, the case of the 18-year-old young man who reported to the chairman of a polling place located at the Drobeta Turnu Severin County Hospital that the ballot he received for the Chamber of Deputies had already been stamped “Voted”, is more than conclusive. Another such case regarding already stamped ballots is the one reported by PD-L Teleorman in the complaint filed with the County Electoral Bureau on the Perii Brosteni township, where the PD-L representatives had noticed that 300 votes, stamped “PSD” were illegally placed inside the ballot box. At the request of PD-L, the president of the polling place refused to seal the ballot boxes³².

5. The “blue shirt” and the “crowd” methods

The “blue shirt” method refers to the fact that a person, identified by a piece of clothing, is hired to accompany the voter inside the voting booth for the purpose of supervising him/her during the

²⁹ „Alegeri parlamentare Pomeni de la partide: excursii, mobile si faină de la UE,” [Parliamentary elections Handout from the parties: trips, mobile phones and flour from the EU] accessed on 17.06.2018, <http://www.ziare.com/alegeri/alegeri-parlamentare-2008/alegeri-parlamentare-pomeni-de-la-partide-excursii-mobile-si-faina-de-la-ue-506008>.

³⁰ „10 metode de fraudare a alegerilor,” [10 methods of electoral fraud]

³¹ „10 metode de fraudare a alegerilor,” [10 methods of electoral fraud]

³² „10 metode de fraudare a alegerilor,” [10 methods of electoral fraud]

exercise of the vote. The “crowd” method refers to the crowding caused at the entrance of the polling place by previously trained people for this purpose, making it difficult for other citizens to vote. This method is used to obstruct the voting process in polling places where a party is known to be favoured³³.

6. Juvenile offenders

As the name clearly states it, this method brings minors to the foreground. Thus, in Constanta, a young 17-year-old woman was caught near a polling place with a bag holding 47 ID cards belonging to some people whom she was to pay 100 lei each so that they would vote in favour of the candidates of a certain party³⁴.

7. Illegal electoral campaign

The illegal electoral campaign can also be considered a parliamentary electoral fraud method. For example, the PSD mayor of a township in Arad notified the Arad District Electoral Bureau that electoral flyers had been distributed on his behalf, encouraging citizens to vote for PD-L. A young man from Dolj was fined by the police after parking a car filled with electoral posters of a PD-L candidate in front of the polling place³⁵.

8. Destroyed stamps

Along with the other methods, the one concerning destroyed stamps is also on the list of the fraudulent parliamentary elections of November 30th 2008. A good example is the one in Vrancea, where two stamps were destroyed in a polling places, being thrown into the fire, which led to the temporary disruption of the voting process. At the same time, it was found that in one of the polling places in Odobesti, the control stamp was destroyed after one of the committee members threw it in the fire along with a series of papers. Also, at Jilava, the polling place was closed for almost an hour after a stamp had disappeared³⁶.

A COMPARATIVE ANALYSIS OF THE PARLIAMENTARY ELECTIONS OF NOVEMBER 19TH 1946 VS. THE PARLIAMENTARY ELECTIONS OF NOVEMBER 30TH 2008

Although unfolding in completely different political regimes, the parliamentary elections of November 19th 1946, and those of November 30th 2008 show certain ongoing aspects as to how candidates for power tried to win voters on their side.

Thus, following our analysis on both the 1946 and 2008 elections, we can objectively identify the existence of common strategies for campaigning, unfolding of the election day, attempts and even successful manipulation of citizens regarding the election of parties and their candidates. The aspects on which we shall focus and place under comparative analysis are those referring to the electoral fraud methods, events that took place during both parliamentary elections described in this paper.

³³ Metode de fraudare a alegerilor,” [Electoral fraud methods] accessed on 17.06.2018, <https://saccsiv.wordpress.com/2009/11/19/metode-de-fraudare-a-alegerilor/>.

³⁴ „10 metode de fraudare a alegerilor,” [10 methods of electoral fraud]

³⁵ „10 metode de fraudare a alegerilor,” [10 methods of electoral fraud]

³⁶ „10 metode de fraudare a alegerilor,” [10 methods of electoral fraud]

Regarding the parliamentary elections of November 19th 1946, we note that the Democratic Parties Bloc (BPD), the alliance established around the Communist Party managed to find means to secure its victory. The official data showed that 78.46% of votes belonged to BPD and only 17.34% to the historical parties. However, recent studies have shown that the BPD parties won only 20% of the votes by their own efforts, the rest being the result of fraud. On the other hand, the 1946 law is the second to give women the right to vote, this time, without any condition³⁷.

Concurrently, we remind you that a series of abuses were reported, such as: vote theft, the oppression of opposition candidates, the infiltration of violent people inside voting places, the introduction of ballots already stamped for the Democrat Parties Bloc in ballot boxes before the opening of the polling places. Also, illegalities and deviations from the legislative provisions were also reported during the parliamentary elections of November 30th 2008, which were the object of appeals to the Electoral Bureau. Thus, numerous criminal case files were drawn up and fines were applied. Other negative aspects related to the 2008 elections referred to the behaviour of some electoral officials, of certain categories of voters, party representatives, representatives of the media and of the civil society, aspects which led to the disruption of the elections organizations and development.

The polling places activity reports drawn up by the communists, identified in the archive funds underlying this research and the Salaj National Archives County Service provided us with essential information regarding the manipulation of the 1946 election results. According to these, the vote count took place inside the polling places, in the presence of the political parties' delegates and assistants. But, the same reports also show that in the county of Salaj, all the important places inside the room and polling place were taken by the best comrades from the communist party, continuously pointing out to citizens how to vote. Similar situations also occurred during the 2008 elections. Voters were guided and supervised on how to vote through the "blue shirt" method (a person identified by a piece of clothing who was paid to accompany the voter inside the voting booth to supervise his/her exercise of the vote).

Concurrently, as mentioned above, this method was used to obstruct the voting process in polling places where it was known that a certain party was favoured.

Under a first analysis of the day of elections, both in 1946 and in 2008, we conclude that, although the law prohibited it, the electoral campaign was carried on even on the day of the vote. Hence, in 1946, the Democrat Parties Bloc activists continued their electoral campaign even inside the polling places, while during the 2008 elections, certain party leaders continued their campaign through various methods, such as electorate SMS-ing or even direct contact with voters over the phone. Here we can also emphasize the fact that the electoral campaign was initiated before its legal start point, the so-called pre-campaign period.

During the voting process, other irregularities were also reported, such as: the sealing of ballot boxes prior to the arrival of the "opposition" representatives, appointing presidents and clerks largely among the communists, removing delegates of the opposition from the polling places, the plural vote. Making a parallel with the elections of November 30th 2008, we can conclude that the double vote was also present here. The case under our analysis is the one of a person who attempted to vote twice, the first time on the permanent lists in Oncesti, and then in

³⁷ „Sistemele electorale românești - de la 1831 până la instalarea comunismului,” *Istoria unui dezacord: uninominalul*, (2008) [„Romanian electoral systems – from 1831 to the establishment of communism”, *The history of a disagreement: the uninominal vote (2008)*] 14, accessed on 20.06.2018, http://www.apd.ro/files/publicatii/brosura_uninominal.pdf.

Gemenea. A similar situation we also mentioned was the case of the man from Vrancea who received two ballots when entering the voting booth, under the pretext of exercising the vote on behalf of his wife. An activity report from 1946 offered us details regarding another electoral fraud method, namely the preparation of a certain number of votes prior to the elections. From this point of view, the reports from the county of Salaj state that there were numerous votes already bearing the stamps of list No.1 (B.P.D), which were introduced into the ballot box on the day of the elections. We give as example the case of the two polling places in Zalau, where 500 votes were registered, with 300 being already stamped with list No.1 – the list of pro-communist coalition – on the morning of November 19th.

Such actions were also reported during the 2008 elections. Regarding this electoral fraud method, namely the already stamped ballots, we described the case of the young man who received his Chamber of Deputies ballot already stamped “Voted”. Further, we mention the case filed by PD-L Teleorman, where the representatives of the party reported that 300 votes already stamped “PSD” were illegally introduced and the president of the place refused to seal the ballot boxes.

Following the 1946 elections, those who were part of the B.P.D. wanted to reward the work and services provided by those who supported them in the good development of the elections. Thus, the Plowmen’s Front proposed to grant all drivers who serviced the Bloc the amount of 300,000 lei as reward. Also, the prefect of Salaj county proposed to approve the request of the Office of Telephony to grant 50,000 lei to each clerk who had thoroughly provided call services during the elections as reward.

Analyzing the development of the 2008 elections, we can see that similar cases also occurred in this situation, under the form of electoral bribery, the tokens of “attention” or material goods that were offered prior to the elections in order to win over the voters. Such cases were represented by actions of offering certain trips in the country or abroad, food such as flour, rice, sugar and even money to vote for a particular candidate. We can also mention here the “juvenile offenders” electoral fraud method through which minors had on them several ID cards of people who were getting paid 100 lei each, in exchange for the service of voting for the candidates of a certain party.

CONCLUSION

The historical information and analysis carried out in the document and specialty literature study process aim at capturing the events that took place and led to the falsification of the 2008 elections results, as well as the deficiencies, uncertainties and illegalities that came along, simultaneously carrying out a comparative analysis of the common elements identified in the elections of the November 19th, 1946.

Concurrently, by emphasizing the documents and information obtained from our research paper, we succeeded in creating a case study with great significance to the evolution of the Romanian society, by drawing a parallel between the elections of November 19th, 1946 and those of 2008, elections which took place under different political regimes, which, however, shared numerous common elements.

Starting from the researched archive papers and documents, we consider that the analysis of parliamentary elections from two governmentally distinct periods of time in Romania can contribute to a better understanding of the communists’ and the democratic forces’ techniques to seize political power. Thus, as a result of our research, we managed to answer the questions raised at the beginning of the scientific process, demonstrating that, both during the

parliamentary elections of November 19th, 1946 and of those of November 30th, 2008, methods of mass manipulation, illegalities or electoral fraud techniques were present.

The result of our research brings a black point for the post-December democratic political system in Romania, as the common techniques used by the political parties to seize power make us realize that after 60 years (2008 being a reference point), since the 1946 moment when elections were massively frauded, there still are common electoral methods used through which, candidates or parties try to “win over” voters and regardless of the fact that the political regime has changed compared to that of 1946, certain “fraudulent” electoral techniques from the communist period are still the same.

The comparative analysis of these two parliamentary elections – those of November 19th, 1946 and November 30th, 2008 – reveal similarities within the political factor, but in completely distinct timeframes. Hence, we can observe the way in which the electoral fraud methods continue to manifest in a democratic society in which, the freedom to exercise the right to vote provided for by the Constitution, can be overshadowed by the political desires and ambitions to seize power.

All these conclusions are all the more important as, since the elections of 1946, Romania joined the European Union in 2007, proving its international evolution, expanding the democratic values and aligning them to the European Union values. Although we have passed from a communist political regime in which the unique party had the power, to a democratic one where pluripartidism is a condition of the democratic system, the way in which elections unfolded with all the irregularities, uncertainties and frauds tend to make us rather think of a 1946-like type of system.

Perhaps the regulation of a harsher and more specific legislative system concerning the organization and unfolding of elections, be it local, parliamentary or presidential would prevent or, at least, limit the abuses and illegalities that take place on such occasions. Thus, it would just be unfortunate to imagine that these political factor validation methods are already grounded, and the Romanian society must get used to idea of electoral bribery, fraud and forged elections.

REFERENCES

1. **Bucur, Ion**; introducere la *Anul 1990: partide, ideologii și mobilizare politică*, București: Institutul Revoluției Române din Decembrie 1989, 2014.
2. **Sartori, Giovanni**; *Teoria democrației reinterpretată*, trad. de Doru Pop, Iași: Polirom, 1999;
3. **Boia, Lucian**; *Mitul democrației*, București: Humanitas, 2014;
4. **Șandru, Daniel**; *Ipostaze ale ideologiei în teoria politică*, Iași: Polirom, 2014;
5. **Lijphart, Arend**; *Sistemele electorale și sisteme de partide : un studiu despre douăzeci și șapte de democrații : 1945-1990*, trad.: Ileana Petraș-Voicu, Cluj –Napoca: CA Publishing, (2010), accesat în 20.06.2018,
http://www.ca-publishing.ro/sites/default/files/preview_sisteme_electorale_si_sisteme_de_partide.pdf.
6. **Preda, Cristian**; *Partide și alegeri în România postcomunistă: 1989-2004*, București: Nemira, 2005;
6. **Beetham, David; Boyle, Kevin**; *Democrație. Întrebări și răspunsuri*. Traducere. de Corina Mărgineanu. Clusium, 2002;
7. **Andrei, Cristian**; „Despre efectele sistemului electoral românesc, cu ajutorul unei simulări electorale”, în *Expert electoral 2* (2013), accesat în data de Iunie 20, 2018. http://www.roaep.ro/prezentare/wp-content/uploads/2013/04/DTP-Expert-Electoral-7-Iunie-CL-final_black.pdf;
8. „Raport asupra organizării și desfășurării alegerilor pentru Camera Deputaților și Senat din 30 noiembrie 2008.” Accesat în Iunie 16, 2018.
http://www.roaep.ro/legislatie/wp-content/uploads/2015/06/raport_parlamentare-2008.pdf;
9. „Disproporțiile proporționalului,” *Istoria unui dezacord: uninominalul*, (2008): 18. Accesat în Iunie 20, 2018, http://www.apd.ro/files/publicatii/brosura_uninominal.pdf.
10. „Sistemele electorale românești - de la 1831 până la instalarea comunismului,” *Istoria unui dezacord: uninominalul*, (2008): 14, Accesat în Iunie 20, 2018.
http://www.apd.ro/files/publicatii/brosura_uninominal.pdf;
11. Legea Nr. 35 din 13 martie 2008 pentru alegerea Camerei Deputaților și a Senatului și pentru modificarea și completarea Legii nr. 67/2004 pentru alegerea autorităților administrației publice locale, a Legii administrației publice locale nr. 215/2001 și a Legii nr. 393/2004 privind Statutul aleșilor locali, Accesat în Iulie 2, 2018. <http://legislatie.just.ro/Public/DetaliiDocument/90301>;
12. „10 metode de fraudare a alegerilor. ” Accesat în data de Iunie 17, 2018.
<https://romanalibera.ro/politica/institutii/10-metode-de-fraudare-a-alegerilor-140655>..
13. „Alegeri parlamentare Pomeni de la partide: excursii, mobile și faină de la UE. ” Accesat în data de Iunie 17, 2018. <http://www.ziare.com/alegeri/alegeri-parlamentare-2008/alegeri-parlamentare-pomeni-de-la-partide-excursii-mobile-si-faina-de-la-ue-506008>;
14. „Metode de fraudare a alegerilor.” Accesat în data de Iunie 17, 2018.
<https://saccsiv.wordpress.com/2009/11/19/metode-de-fraudare-a-alegerilor/>.

STRUCTURAL CHANGES IN NATIONALISM - MIGRATION AND INSECURITY

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ABSTRACT:

THE CURRENT GLOBAL CONTEXT WITH INSTABILITY AND ECONOMIC REDISTRIBUTION, CHANGES IN SOCIETAL VALUE SYSTEMS, ACCESSIBILITY AND DISSEMINATION OF MEDIA TECHNOLOGY, NEW CHANGES IN EDUCATION SYSTEMS OR POPULATION DEMOGRAPHICS (MIGRATION) MAKE SOCIAL CHANGE A PHENOMENON THAT CURRENTLY AFFECTS ANY SOCIETY.

SOURCES THAT INFLUENCE CHANGE ARE MULTIPLE AND ARE NOT USUALLY LIMITED TO INTERNAL CHANGES TO THE SOCIAL SYSTEM. THE EFFECTS OF SOCIAL CHANGE CAN BE FELT AT DIFFERENT LEVELS OF SOCIAL STRUCTURE, AND CHANGES AT EACH OF THESE LEVELS CAN LEAD TO MARGINAL CHANGES IN THE SOCIAL ORDER, BUT MOREOVER CAN CAUSE SYSTEMIC CHANGES AFFECTING COMPLETE SOCIETIES AND EVEN THE GLOBAL SYSTEM. SOCIAL CHANGE INFLUENCES HUMAN SOCIETIES AS HABITS AND NORMS CHANGE, NEW TECHNIQUES AND TECHNOLOGIES ARE INVENTED, ENVIRONMENTAL CHANGES LEAD TO NEW ADAPTATIONS OR EVEN MIGRATION, AND CONFLICTS LEAD TO REDISTRIBUTION OF POWERS AND MASSIVE MIGRATION AS SHOWN BY RECENT EVENTS IN SYRIA AND NOT ONLY.

KEY WORDS: SOCIAL CHANGE, NATIONALISM, NATIONAL IDENTITY, MIGRATION.

INTRODUCTION

Throughout history, there have been many outbursts of nationalism, either through the belligerence of other states, the anti-immigrant positions, or the crackdown on minorities in Eastern Europe, Asia and the Arab world.³

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³ Halliday, Fred. 2004. The crisis of universalism: America and radical Islam after 9/11. openDemocracy, accessed on September 16 at <http://www.opendemocracy.net>

In this paper we will focus on a number of factors influencing social change and in essence on one that contributes to the constitution of some of the variables of social science, the nature of modern communities, and which can affect the deep aspects of modern human identity.

In various theories, a variety of social transformations appear to be definitive of a certain historical period. In analyzing the debates on the periodicity of social change are not only the identification / labeling of the period, but what are the fundamental constitutive factors of the social organization.

When we talk about “the idea of nation”, in recent years, nationalist movements have been one of the most powerful agents of social change, being used as a tool for change both for the people and for the ideology of government. As a result, there are important perspectives on nationalist mobilization and factors (for example, migratory movements) that help to meet the conditions for the emergence and development of these movements. Interaction of social forces and nationalist mobilization can be conceived as a hierarchy, as interdependence in stages in which one of them leads automatically to the other.

SOCIAL CHANGE AND NATIONALISM

“We must see human social life as always structured but incomplete”.⁴ So, this structure, seen as a dynamic phenomenon, is more a process of change than a process of stability.

Social change is a significant human phenomenon that has important implications for adapting to the changes that have occurred. Starting from the economic and political changes to rural migration to urban areas (to development poles), to international migration, social change bring with them both challenges and opportunities for development. Rural to urban or international mobility is a world-wide phenomenon such mobility involves profound changes in life styles.

The vast majority of **demographic processes** determine changes at all levels of society, from the broadest, long-term, global models of human population development to the most contemporary trends in immigration. For example, a rapid and steady drop in birth rate, complementary to an increased mortality rate, has led to an extraordinary social transformation.

At the same time, demographic changes are linked to institutional and political changes as family systems are changing; societies are trying to influence these models through social policy.

Changing the population, through immigration, is probably the most basic form of social change. The focus is on determining what makes changes in the way migrants adapt and change the societies they live in.

Socio-economic barriers, conflicts between individuals, competition often generate "group conflict," which has been seen as a basic mechanism of social change, especially radical and brutal social transformations identified as revolutions. Marxists in particular tend to describe social life in capitalist society as a struggle between a dominant class wishing to maintain the system and a dominated class that strives to change radically. Social change is then the result of this struggle.

Technology is probably the most widespread issue when it comes to things from outside that give the system an impetus and this triggers a series of internal changes. It is clear that a new invention or technology (steam engine, internet, and mobile telephony) simply appears, generating changes in many aspects of social life. From this point of view, technology is its own mechanism, and the emergence at the right time of a new invention / technology is a sufficient cause for change. There is a clear tendency of social change to move only in one direction (for

⁴ P.Bordieu, *Le Sens Pratique* - Paris 1980; A. Giddens, *The constitution of society*—(Berkeley, 1986).

example the industrial revolution) in which mainly agricultural states have been transformed or have become compelled to adapt to industrialized societies but there is also little evidence of reverse.

The first **political factor** of social change is the law that acts as an instrument of socio-economic and political change in society because laws are state-supported and coercive, individuals being compelled by regulations to conform to them. Laws provide a degree of uniformity between different groups of individuals and their diverse cultural and behavioral patterns. The law also seeks to alleviate social deviations and raise the bottom sections of society. Laws also carry out reforming functions for society, trying to alter old habits that are considered to be immune to stability and social progress. The role of law as a tool for social change finds a total expression when the law comes into confrontation with social earthquakes. As a tool of change, laws go hand in hand with public opinion.

Culture is a determinant of social change, representing values, cognitive frameworks and accumulated knowledge. The social structure is the area of interest, supported individually and collectively by different powers. The elements that make up the culture and social structure can be arranged in a hierarchy of causal influences from deep factors, often unnoticed in everyday social activities but fundamental to its organization, as well as surface phenomena, more mutable and easier and also obvious. As elements, we define language and values as elements of culture, the first being fundamental, an instrument of human communication and the values as a motivating force behind the principle of individual or collective action. It is clear that new values and social beliefs can produce social changes, generating conflicts between old and new values, leading to the creation of a completely new value system.

In parallel with the constituent elements of the culture, those of the social structure are developed. These are not moral values but the specific and differentiated ability of the social actors to compel others to do something. We enter here a realm of power which, like the one of values, is at the deep level of social life, influencing a wide variety of outcomes in different ways. Max Weber's classic definition of power as an actor's ability to impose his will despite his resilience is still appropriate for her highlights the binding and coercive character of this basic element of social structure.

As I have already mentioned, the idea of the nation is fundamental to modern political and cultural discourse. This discourse is itself politically and socially influenced by shaping the way in which a multitude of diverse movements, policies and conflicts are understood. Nationalism is not simply an attribute of speech it is a product of discourse. The discourse of nationalism has been used throughout history for movements for ethnic secession, popular mobilizations, moves linked to the resistance of state construction to colonialism, hostility towards immigrants, each reflecting a different mix of subsistence factors and specific local conditions.⁵

The modern age makes us analyze how certain social changes force us to rethink the very theoretical categories by examining the modern distinctive discourse of national identity and nationalism. There are many types of nationalism, linked to an essential explanatory variable, such as state building, uneven economic development or persistent barriers to social mobility.

Ethnicity, religion or cultural traditions are the foundations of nationalism because they are historical memory, seen as a preconceived idea adopted. The influence of ethnicity in nationalism is in part a matter of transforming the cultural traditions of everyday life into more

⁵ Calhoun Craig, "Nationalism and social change" University of North Carolina, Chapel Hill, NC, USA. 1993

specific historical claims. When we talk about nationalism, we are talking about a way to satisfy and understand claims to identity and sovereignty, other political rights, and the way of thinking that keeps these problematic recurring statements under current geopolitical conditions.

A nation's claim / membership often invoke the presumption of national identity or pre-existing state / territory or land. In this context, religion interferes because, in many parts, the national earth is "holy" by religion or the history of a people, and is interwoven with the history of the followers of this religion. Some allegations of nationality fail to convince them because they are too obviously manipulated by the creators, or because the legend / idea offered do not refer to the circumstances and practical commitments of the people concerned.

“The traditions of nationalism were invented, being somewhat less real and valid”⁶ thus being potentially challenged and subject to more or less visible changes.

Nationalism has a complex and interdependent relationship with history. Thus, the invocation of national history, religion and primordial ethnicity are ways to respond to the problems of contemporary claims to nationality. For example, Zionism boasts to be secular, a large part of the Jewish ethnic identity spinning around the Jewish Bible and its associated customs. Because of this, the fact that the cultural content of the ancient Jews is being used, Jewish nationalism ultimately contains the desire to obtain and own the land of the ancient Jews. In addition, the leaders of the Zionist movement, like the leaders of Israel, have used religious symbols in establishing their national identity.⁷ A similar combination of modern nationalism and religious values also takes place in Islam and prevents the secularization of nationalism.⁸ This phenomenon is described as "religious nationalism", which aspires to "religion" of political culture and leads to the focusing or building of national identity around religion.⁹

Throughout history, nationalism was a claim of the peoples to the dynasties and hence to the domestic against the aliens, but also to the citizens against the illegal rulers. With regard to immigrants, France was much more willing to use the political and legal mechanisms to grant immigrants French citizenship, while Germany, even if it was just as open to immigration, in numerical terms, generally refused to grant immigrants German citizenship if they were not already ethnic Germans.¹⁰ All nations have the concept of territorial and ethnic principles and components, and a difficult confluence between a more recent civil model and an older genealogy model of organizing social culture.¹¹ Unlike other analysts who have tried to challenge nationalism that underlines ethnicity, Anthony Smith tried to demonstrate that nationalism has stronger roots in pre-modern ethnicity than others have accepted.¹² He said that nations cannot be seen as primordial or natural, but maintains that they are rooted in relatively ancient histories and in the perception of ethnic consciousness. The nations, Smith says, have long-term processes, are renewed and reconstituted continuously, require ethnic cores, golden epochs if they have to survive. Often these nationalist movements, regardless of whether they are in the service of the ruling elite or whether they are initiated from the bottom (by civil society), being oriented towards the supply of such elites or not, are modeled and oriented after the ideological conflicts

⁶ Eric Hobsbawm, Terence Ranger “The Invention of Tradition”, Cambridge University Press 1983

⁷ Dubinski, N. (1996). „Religion and State in Israeli and Palestinian Society”, 231

⁸ Shenhav, Y. (2007). „Modernity and the Hybridization of Nationalism and Religion: Zionism and the Jews of the Middle East as a Heuristic Case.” Theory and Society 36

⁹ Friedland, R. (2001). “Religious, Nationalism and the Problem of Collective Representation.” Annual Review of Sociology, 27

¹⁰ Roger Brubaker, “Citizenship and Nationhood in France and Germany”, Cambridge 1992

¹¹ Anthony Smith, “The Ethnic Origin of Nations” , Oxford 1986, 149

¹² Anthony Smith, “Theories of nationalism ” , London 1983

of their time. If we take this into account, a pattern of nationalist movements can be developed, but it only makes sense when it is set in a historical trajectory that can explain the conditions of appearance. Nationalism generates nationalism, but not for the same purpose, being a vehicle for ideological agendas embedded in certain interests / directions by the social forces, themselves embedded in the histories of nationalist assertion and taxation.

Nationalism does not stop from development, it has a continuous development, which is under the influence of modern factors, in the age of modernity. The first of these modern factors is the centrality of states. It is about the internal capacity to organize states, which has grown throughout the modern age, as well as the division and ordering of the world into a system of states. States have experienced a rapid development that has generated increased national integration capacity through administrative centralization, the construction of critical transport and communications infrastructures, the development, opening and standardization of educational institutions, and to some extent the development of human communication. In the era of globalization, it is often suggested that the era of the nation-state passes. Multinational companies, world trade (liberalization of markets), internationalization of culture and the media are offered as factors of the nation-state disappearance. At the same time, against the idea that the involvement of international organizations in the internal affairs of states will diminish nationalism by undermining the state power, we must remember that the nationalist discourse appears largely from the reluctance and ambiguity of the nation's towards these international bodies and the tensions between states which are largely driven by the international economy and other activity. The rhetoric of nationalism activates, often becoming the strongest where people feel weak, disadvantaged or feel that their state is weak in relation to international bodies. So the other side of state power and the world system of states is at odds. In part, precisely because the world is organized in a system of states with their limits, a wide variety of local aspirations can be expressed in the rhetoric of nationalism. Moreover, what creates nationalist conflicts, beyond boundaries, is the old ethnic identities and historical burden. Here are the new recognition opportunities opened by the international world system.

Like the other factors, war is not just a common rhetoric of nationalism, but rather a productive force. States, war and capitalism offer powerful practical reasons for developing / adapting nationalism.

The characteristics and the development of the nationalist discourse are closely linked to that of individualism. In other words, as individuals exist in their own modern vision, the nations are self-sufficient, autonomous and move on their own. Individualism is important not only metaphorically, but also as the basis for the central idea, namely that individuals are directly members of the nation, that each one is marked as an intrinsic identity and they communicate with it immediately and as a whole. Nationalism encourages the vision of identity as inscribed in the individual body merged with it. It promotes categorical / rooted identities to relational identities. Nations are primarily represented as categories of similar individuals more than through dial-up networks. This is a crucial basis for using appeals to nationalism to separate people who are in fact linked by kinship, friendship, community, economic interdependence, language and other ties.

MIGRATION AND SOCIAL CHANGE

Migration is a phenomenon of change and can in turn lead to further (more or more profoundly) transformations both in sending and receiving societies. When talking about migration, this mobility implies profound changes in lifestyles. Old traditions that are important in developing and maintaining the principles of a society become irrelevant. A problem

encountered in this process of social change is the mismatch between migrants' beliefs / behaviors and the requirements of the environments in which they want to settle.

What is important is that migration can prevent stagnation of the social system by exerting pressure on the innovation and creativity sectors. However, conflict within and between groups in a society can prevent the process of adaptation negatively affecting ordinary relationships, resulting in progressive weak creativity. The conflict of values and interests, the tension between what it is available, what it feels, what they want and they aspires for, is the conflict between interests and new strata and groups that demand their share of power, wealth, status and social representation. In this way, the conflict can not only generate new rules, new institutions, but it can be said to directly stimulate the economic and technological sector.

As a factor of change, migration has been analyzed from two perspectives, from a cultural perspective that emphasizes its potential for value / normative transformation and from a structural perspective that highlights its demographic and economic significance. By cultural factors we mainly refer to ideas, knowledge, values, beliefs, inventions and exchanges. These cultural "tool kits" also contain many other elements, from scientific and professional know-how to behavior, forms of expression, manners and generalities suitable for specific social occasions. Migration has been directly affecting the development of the European society, politics, culture and economy, with direct effects on the reduction of disparities between the developed and underdeveloped areas¹³.

The power of migration to make changes in sending and receiving regions and countries depends on three main factors: a) the number of people involved; (b) the duration of the dislocation; c) class composition.

As far as the first factor is concerned, it is obvious that small displacements have little causal power, rarely exceeding the lives of those involved and very close persons. At the other extreme, the "telluric movements" that involve the relocation of an entire people to other areas can have dramatic consequences both where they go and where they come from. For example Nakba or Al-Nakba, during the 1948 war, between 400 and 600 Palestinian villages were devastated, while Arab Palestine was almost completely erased from the face of the earth.¹⁴ The term "Nakba" also refers to the war period and the events that affected the Palestinians from December 1947 until January 1949. The exact number of refugees, many of whom then settled in refugee camps in neighboring states, is a matter of dispute¹⁵, but about 80% of Arabs have what Israel has become (half of all Arabs in Mandat Palestine) have left or been banished from their homes.¹⁶ About 250,000-300,000 Palestinians fled or were expelled prior to the declaration of Israel's independence in May 1948, a case presented as *casus belli* for the entry of Arab League armies in Palestine, triggering the Arab-Israeli War of 1948-1949. Permanent external migration can significantly alter the demographic structure of sending societies, as when entire regions are depopulated. Permanent migrants can also have a stronger influence on dispatching regions by weakening local productive systems and changing culture into the direction of emigration as the only normative path to mobility and social development.

¹³ Claudia Anamaria Iov, Maria Claudia Bogdan, (2017), Securitization Of Migration In The European Union - Between Discourse And Practical Action, *Research And Science Today*, Spring 2017, No. 1(13), 14.

¹⁴ Bardi Ariel Sophia (March 2016). "Architectural Cleaning of Palestine". *American anthropologist*. 118 (1): 165-171 available at <https://anthrosource.onlinelibrary.wiley.com/doi/abs/10.1111/aman.12520> , accessed on 27.09.208

¹⁵ Martha Crenshaw (2010). "The Consequences of Counterterrorism" Russell Sage Foundationp.356

¹⁶ Masalha, Nur (1992)."Expulsion of the Palestinians." Institute for Palestine Studies, this edition 2001, 175

In today's Europe, the fears expressed by immigration opponents typically presents a similar "tellurian" movement that rises and is sustained by cultural, religious differences and overwhelms the social systems and culture of the developed world. In terms of short-term circular flows, they tend to make a less sustainable change than permanent movements. Under certain conditions, as I said earlier, cyclical movements can strengthen existing social structures rather than change them.

The third factor, the composition of migrant flows, affects the potential for change, arguing that movements composed of people with high intellectual capital would have a greater impact on host societies because of the ability of these migrants to express themselves and protect themselves better cultural features. This argument is not always valid because educated migrants have greater flexibility and adaptability to the culture of the host country. Increasing human capital translates into creating better opportunities on the labor market and facilitating entry into the economic sphere of the host society as long as they do not activate socio-economic barriers. This is, in part, the reason why the migration of professionals is rarely seen as a problem in host societies. On the contrary, the flow of poorly educated workers may have a more sustainable impact due to the lack of adaptation to the host country's language and culture, which makes them adhere to their habits. At the same time, these considerably larger flows of migrant workers tend to generate visible cultural linguistic concentrations, generally in the marginal areas of host societies, while generating insecurity. Moreover, class flows, which include high-capital and low-capital migrants, are most likely to lead to ethnic enclaves in host countries. This is due to the fact that qualified immigrants are able to set up businesses that use their co-ethnic workers both as a workforce and as an outlet. In turn, less educated immigrants find in these ethnic enterprises an alternative source of employment opportunities and even a "training mechanism" to learn, to maintain their own cultural values. These types of complete enclaves are the most visible manifestation of change in host societies through migration.

Mass immigration can generate pressure from bottom to bottom, affecting certain organizations such as industries, labor, public schools, and forcing accommodation structures at this level. The phenomenon of immigration is a challenge to the traditional nation-state models. It can create two types of nationalism, namely that of minorities and majority nationalism. It is possible for a national minority to impose stricter immigration integration requirements than those imposed by the culture of the majority. In this context, it is necessary to analyze how the requirements of immigrants and national minorities are linked to one another, and how both respect and know the fundamental principles of liberal democracy, such as individual freedom and social equality. Two values of identity lie in opposite positions, namely cultural and religious rights of immigrants, perceptions and practices of ethnic and religious cultural differences in the host society. The host country can accept a greater or lesser degree of cultural and religious differences of immigrants and may create policies in this respect. The failure to integrate immigrants, the non-acceptance of migrant cultural values, the impoverishment of religious freedom, and the blocking of social mobility can lead to the spread of the nationalist idea and the politicization of the masses along ethnic lines. On the other hand, the fear of immigrants, the belief that their jobs are occupied, the social burden created by immigrants, the social problems created by them, as well as the securitization of the migrants' problem by the politicians (with the help of mass media), lead to the development of the nationalist nationalism.

CONCLUSIONS

This paper attempted to clarify the concept of social change in which it evolved, in connection with the development of nationalism, to develop basic observations of its evolution, and link it to migration, both as a result and as a cause of social change.

We look at social changes rather occasionally, but taking seriously into account the historical social changes is to analyze and observe the difference between superficial and basic social changes. In conclusion, we can say that nationalism is one of the most important examples of specific social changes. We can say that the changes are related to the development of new historical epochs by transforming the categories that constitute the social and cultural reality. The modes of action or interaction, the visions, the relationship between other aspects of existence, the meaning of ideas, and the long-term planning are all modified by such transformations.

Although it is clear that the movements of the masses induce social change, the lasting, profound effects of these movements, which evolve into a more and more trans nationalized global system, cannot be determined with certainty.

REFERENCES

1. **Bardi Ariel Sophia** (March 2016). "Architectural Cleaning of Palestine". *American anthropologist*. 118 (1): 165-171 available at <https://anthrosource.onlinelibrary.wiley.com/doi/abs/10.1111/aman.12520>, accessed on 27.09.208;
2. **Bloom, William**, "Personal Identity, National Identity and International Relations" New York: Cambridge University Press, 1990, 16;
3. **Brubaker Roger**, "Citizenship and Nationhood in France and Germany", Cambridge 1992.
4. **Calhoun Craig**, "Nationalism and social change" University of North Carolina, Chapel Hill, NC, USA. 1993
5. **Crenshaw Martha** (2010). "The Consequences of Counterterrorism" Russell Sage Foundation p.356
6. **De Haas, Hein**, "The Internal dynamics of migrations processes. A theoretical inquiry", *Journal of Ethic and Migration Studies*, 2010, 4;
7. **Douglas Massey, S.** "Social Structure, Household Strategies, and the Cumulative Causation of Migration." 1990;
8. **Duffy M. Meghan, J. Binder Amy, D. Skrentny John**, "Elite Status and Social Change: Using Field Analysis to Explain Policy Formation and Implementation" *Social Problems*, Vol. 57, Issue 1, pp. 49–73, University of California Press 2010;
9. **Dustmann Christian**. "Migration Economic Change, Social Challenge" Oxford University Press 2015;
10. **Hedström Peter**, "Explaining Social Change: An Analytical Approach" University of Oxford, Papers 80, 2006 73-95
11. **François Bafoil**, "Central and Eastern Europe - Europeanization and Social Change" PALGRAVE MACMILLAN, 2009;
12. **Friedland, R.** "Religious, Nationalism and the Problem of Collective Representation." (2001). *Annual Review of Sociology*, 27;
13. **Greenwood Jeremy, Guner Nezh** "Social Change" Discussion Paper No. 3485
14. May 2008;
15. **Giddens A.**, "The constitution of society - Outline of the Theory of Structuration" University of California Press, 1986;
16. **Halliday, Fred. 2004.** "The crisis of universalism: America and radical Islam after 9/11" *openDemocracy*, accessed on 20.09.2018, available at <http://www.opendemocracy.net>;
17. **Heal Kieran**, "Social Change: Mechanisms and Metaphors" Princeton University, August 1998;
18. **Hobsbawn Eric, Ranger Terence** "The Invention of Tradition", Cambridge University Press 1983;
19. **Iov Claudia Anamaria, Bogdan Maria Claudia**, *Securitization Of Migration In The European Union - Between Discourse And Practical Action*, *Research And Science Today*, Spring 2017, No. 1(13)/2017, pp.12-19.
20. **Katz Claudio J.** "Karl Marx on the transition from feudalism to capitalism", Loyola University- Chicago available at <https://libcom.org/files/feudalism%20to%20capitalism.pdf> accessed on 23.09.2018;
21. **Lewis A. Coser**, "Social Conflict and the Theory of Social Change" *The British Journal of Sociology*, Vol. 8, No. 3. (Sep., 1957), pp. 197-207;
22. **Masalha, Nur** (1992). "Expulsion of the Palestinians." *Institute for Palestine Studies*, this edition 2001, p. 175;
23. **Olzak, Susan** "*The Dynamics of Ethnic Competition and Conflict*" Stanford: Stanford University Press. 1992;
24. **Panić, Branka**, "Societal security – security and identity" *Carl Schmitt and Copenhagen School of Security Studies*, No 13, April–June 2009;
25. **Rajendra K.Sharma**, "*Demography and population problems*", Atlantic Publishers Distributors 2000;

26. **Rudolph Christopher** “Security and the Political Economy of International Migration”, *American Political Science Review*, Vol. 97, No. 4 (November) (2003), p. 603-620;
27. **Smith Anthony**, “The Ethnic Origin of Nations” , Oxford 1986.

APPROACHES TO PROVIDING SECURITY IN DATA QUALITY MANAGEMENT

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ABSTRACT:

TECHNOLOGICAL DEVELOPMENT HAS BEEN INCREASING IN VELOCITY AND THE COMMITMENT OF PROVIDING DATA QUALITY BECOMES PREREQUISITE ESPECIALLY FOR SECURITY PURPOSES. THUS, ORGANIZATIONS REQUIRE ONLY RELEVANT DATA IMPOSING AN INDISPENSABLE NEED FOR A COMPREHENSIVE COLLECTION, MEASUREMENT AND MANAGEMENT OF DATA. THIS ARTICLE IS A BRIEF OVERVIEW OF THE MAIN PRESUMPTIONS IN THE FIELD, IN ORDER TO PROVIDE A NOTIONAL UNDERSTANDING FOR DATA QUALITY MANAGEMENT AND ITS OPERATION TO INFORMATION SECURITY. THE CONCEPT THAT EVOLVED FROM A TREND INTO A REAL NECESSITY HASN'T BEEN EXHAUSTIVELY ASSERTED IN LITERATURE. THEREFORE OUR OUTLINE IS A CONSTRICTED PERSPECTIVE ABOUT ITS MEANING, PROCESSES AND APPLICATION ADDRESSED TO OUR FELLOW STUDENTS AND SCIENTIFIC RESEARCH COMMUNITY UNDERSTANDING. THE ORGANIZATIONAL SPECTRUM REQUIRES THE NEED OF SECURING DATA QUALITY ADMINISTRATION AS AN ESSENTIAL ASSET HENCE, THIS ASSUMPTION CALLS FOR A MORE DEEPEPENED ANALYSIS.

KEY WORDS: DATA QUALITY, DATA MANAGEMENT, INFORMATION SECURITY

INTRODUCTION

New technologies have opened up the world to us but at the same time have opened us up to the world as well. These high tech components have permitted us to create our own digital universe, operating in an always-on differential environment: we work online, we socialize online, we follow news, we bank online and everything we do leaves a digital footprint. Performing in such a climate requires us to share fundamental data conceiving a vast ocean of information. While the world has recognized an exponential data growth, the ability to look at it and analyzing it has been increasing. Hence, people and organizations encountered the necessity a prerequisite distinction between the relevant and irrelevant data. The process of distinction represents the data management and the quality lies in relevance vs. irrelevance of data.

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Our presentation outlines the main presumptions in the area of intelligence, in order to provide a notional understanding for data quality management and its operation to information security. Therefore, our synthesis is a constricted perspective about its meaning, processes, application and a requirement of the need to securing data quality administration as an essential asset. Through a descriptive, qualitative and quantitative analysis of the most representative publications in the field highlighting the chosen methodology, our aim is to introduce our public to the process of data quality management, formulating a brief literature review to its discipline.

Firstly, we consider of high importance to emphasize the basic concept that stands as a core principle of data quality management process: data. Secondly we have reviewed the attributions that data quality implies, in providing the security to a flourishing business. Lastly, in section 3 we evaluated the approaches of the scholars in regard with the effectiveness and efficiency of data quality management.

WHAT IS DATA?

Along with the evolution of technology, the world has found itself drowned in an “ocean” of data. What is actually data? Data represents a set of characters or meaningful symbolic constructs, (alphabetic letters, numbers, genetic sequences etc. as a basis)³ that has been gathered and translated for the purpose of analysis. The conducted analysis concluded in an indispensable demand and usage of information for the global development. Depending upon the nature of its use, data has various explications and can be utilized at different levels of filtration, as a result of the semiotic analysis.

Semiotics as a theoretical framework makes the transition from the physical world where signs are created, to the social world of norms where a meaning is attached to it. This leads to a comprehensive understanding of data, information and knowledge. The semiotic levels that can be attributed to the 4 concepts are: syntactic, semantic, pragmatic and empiric. The syntactic level conveys a set of signs structured and governed by formal rules together becoming data. The semantic level refers to the study of the meaning of signs which become useful, only when they indicate a certain action. When a meaning is attributed to the selected data, in a particular context it becomes information. Pragmatics is concerned with the relationship between signs and their behavior and involves information that has intentional use. Information becomes knowledge to the moment of its interpretation. Empirics is the physical property concerned with the signals used to code and transmit the message. Communication channels and their characteristics stand as the core to correct transmission of content.

Semiotics analysis can be used to understand the technical, formal and informal systems of an organization. The technical level involves technology and system security measures, while formal rules and procedures address the information systems security issues arising at the formal level. At the informal level, pragmatic concerns are paramount towards the development of security culture and environment. As we have discovered above, when speaking about data, we refer to the syntactic level of the semiotic analysis. What is actually the study of syntactics? It comprises the logic and grammar with an emphasis on the physical form of the system analyzed. Syntactics studies the relation of signs to one another and how complex signs originate from simple ones. Therefore, the concern at a syntactic level is rather on the formal and structural aspect, meaning that the information is viewed as just a simple raw material. Considering these

³ Gurvirender Tejay, Gurpreet Dhillon, and Amita Goyal Chin, “Data Quality Dimensions for Information Systems Security: A Theoretical Exposition,” in *Security Management, Integrity, and Internal Control in Information Systems* (Springer, 2005), 23.

elements, data represents empirical facts that have been arranged and organized according to a certain structure, to a set of meaningful rules. Moving forward with the semiotic analysis, the next level is expressed by semantics. This level concentrates on the meaning of the data, in order to transform it into information. In this regard, data needs a particular context to become meaningful and useful to the recipient. “Meaning is appropriated when we draw from our knowledge and apply understanding to information. Ensuring good quality at a semantic level therefore moves from maintaining quality of data to that of information”⁴.

Finally the pragmatic level, the last level in the semiotic analysis, is evaluating the relationship between the empirical facts and the meaning attributed to them. The beliefs, shared assumptions, expectations etc. are all part of the pragmatic structure. In this level, the information has an intentional use, thus becoming knowledge. Nonaka & Takeuchi (1995, pp. 58) suggest a relationship to knowledge: “...information is a flow of messages, while knowledge is created by that very flow of information anchored in the beliefs and commitment of its holder. This emphasizes that knowledge is essentially related to human action”.

A semiotic framework for understanding data quality objectives in the context of the decision process is more appropriate than using data quality objectives alone, because it reflects which quality objectives are most significant at each stage of the production process.

PROVIDING DATA QUALITY

Data quality is becoming a prerequisite priority in everyday life, as an important asset of data management. The aftermath of data analysis endorses data quality issues that are causing significant lose in money, time and opportunities. An aspect of poor quality is the cost usually hidden and not obvious to those not looking for it. In the security field, the necessity of understanding the data quality dimensions becomes essential. As such, semiotics helps us in this endeavor by providing a notional analysis of the dimensions at the 4 levels: empiric, syntactic, semantic and pragmatic. Therefore, data quality dimension represents a set of data quality attributes that represent a single aspect or construct of data quality.

The empiric level is concerned with the establishment of the means of communication and data handling. Hence, the dimensions of data quality performing at this level include: accessibility, timeliness, security, portability and locality. These dimensions are concerned with the problems of medium of communication rather than data itself. However, they are o highly importance as unavailable channels would hinder the access to data and unauthorized access would lead to massive security breaches.

Syntactics represents the imperative (momentous) level in the analysis of the data quality dimensions. These dimensions cover the logic, grammar and structural aspects that compose data in order to ensure the best quality of that specific data. The research literature has found these aspects as being consequential: accuracy appearance, arrangement, clarity, coherence, comparability, compatibility, completeness, composition, conciseness, consistency, correctness, ease of operation, ease of use, flexibility, format, freedom from bias, integrity, level-of-detail, objectivity, portability, presentation, readable, redundancy, robustness, uniqueness and usable. At a semantic and pragmatic level, the dimensions deal with the issues of information and knowledge rather than data. Nonetheless, facets associated with knowledge quality and information quality should be endorsed as part of any equation devised to address the problems of data quality. Thus, there is an inter-dependent nature between knowledge, information and data that should always be addressed when referring to data quality.

⁴ Tejay, Dhillon, and Chin, 25.

DEFINING THE CONCEPTS IN DATA QUALITY MANAGEMENT

Data quality and data management are part of a larger image when we address to a broader use of information. In order to have a proper understanding of the explanatory expansion of our article we will associate the concept of *data* to the concept of *information* which we will describe as “data that have been processed”.⁵ Manufacturing information is the development of data processing and it can be viewed as a processing arrangement that uses raw materials in order to create physical products. When producing information products managing for quality is particularly important because use of the data may expose broad impacts to the efficiency of an organization, to future scientific investigation, or to our society. Therefore, principles, guidelines and techniques are required for information products quality and knowledge has been created for data quality practice.

Information manufacturing comprises the evolution of data where the input is represented by raw data, the process is accomplished by the information systems and the output is represented by information products. For continuous investigation and advancement an organization would need guidelines in order to identify the critical issues and develop procedures to assess data quality projects. Information manufacturing system is referred to be a system that produces information products. The concept of information product asserts that the information products from the manufacturing information systems have transferable value to the consumers internal or external and we define three roles of the consumers in the process of information manufacturing systems:

1. Information suppliers are those who create and collect data for the information products.
2. Information designers are those who develop and maintain the data and the systems infrastructure.
3. Information consumers are those who use the information products in their work.

Also, we define information product managers as those who are responsible for managing the entire information product production process and the information product life cycle. Each of them is associated with a process or task:

- Suppliers are associated with data-production processes.
- Designers are dealing with data storage, maintenance, and security.
- Consumers are associated with data-utilization processes.

Poor data quality limits the usefulness of the information products establishment. Defining, measuring, analyzing, and repeatedly improving information quality is essential to ensuring high-quality information products. Therefore, a total data quality management is required. The definition of the total data quality cycle describes important data quality dimensions and the corresponding data quality requirements. The measurement component produces data quality metrics. The analysis component identifies foundation causes for data quality problems and calculates the impacts of poor quality information. Finally, the improvement component provides techniques for improving data quality. These components are applied along data quality dimensions according to requirements specified by the consumer.

DEVELOPING SOLUTIONS

⁵ Bruce McNutt, *The Fractal Structure of Data Reference: Applications to the Memory Hierarchy*, The Kluwer International Series on Advances in Database Systems 22 (Boston, MA: Kluwer Academic, 2000), 2.

The main aspect to discuss concerns the managerial approach, for example, the strategy that has to be adopted in an organization in order to take proper technical choices. The choices are in terms of data quality activities to be achieved, databases and flows to be treated, and techniques adopted. So, in the final stage of data quality management, the focus is moved from technical to managerial facet. The expansion of the steps which are: assessment, improvement and management of improvement solutions from an organizational perspective, provides evidence of the attention devoted to this concern. Specific tasks of the managerial perspectives involve:

1. Assessment of organization preparation in following data quality processes.
2. Analysis of customer satisfaction, in order to discover problems at the source, for example, directly from the service users.
3. Initial focus on a pilot project, in order to experiment with and tune the approach and avoid the risk of failure in the initial phase, which is typical of large-scale projects performed in one single phase. This principle is inspired by the well-known motto “think big, start small, scale fast.”
4. Definition of information stewardship, for example, the organizational units and their managers who, with respect to the laws and rules, have specific authority on data production and exchange.
5. Pursuing the results of the preparation assessment, analysis of the main barriers in the organization to the data quality management perspective in terms of protection, to change processes, control establishment, information sharing, and quality certification.
6. Founding a specific relationship with senior managers, in order to get their consensus and active participation in the process.

Before concluding, there are also a second set of major managerial principles we should take into consideration:

- “Principle 1. Since data are never what they are supposed to be, check and recheck schema constraints and business rules every time fresh data arrive. Immediately identify and send discrepancies to responsible parties.
- Principle 2. Maintain a good and strict relationship with the data owners and data creators, to keep up with changes and to ensure a quick response to problems.
- Principle 3. Involve senior management willing to intervene in the case of uncooperative partners.
- Principle 4. Data entry, as well as other data processes, should be fully automated in such a way that data be entered only once. Furthermore, data should only be entered and processed as per schema and business specifications.
- Principle 5. Perform continuous and end-to-end audits to immediately identify discrepancies; the audits should be a routine part of data processing.
- Principle 6. Maintain an updated and accurate view of the schema and business rules; use proper software and tools to enable this.
- Principle 7. Appoint a data steward who owns the entire process and is accountable for the quality of data.
- Principle 8. Publish the data where it can be seen and used by as many users as possible, so that discrepancies are more likely to be reported”.⁶

⁶ Carlo Batini and Monica Scannapieca, *Data Quality: Concepts, Methodologies and Techniques*, Data-Centric Systems and Applications (Berlin ; New York: Springer, 2006), 177.

In order for organizations to have a significant competitive advantage, they must structure, evaluate and implement an effective and efficient data quality management program. This program requires indispensable tools, brand-new techniques and effective information systems to maintain the integrity of the data as a valuable asset. To achieve tenacity in the outcomes of the process, a data quality assurance framework is needed to mitigate the consequences of misconceived and misapplied strategies calling for a commitment to security.

CONCLUSION

A taxonomy or conceptualization cannot be empirically confirmed and is not intended to provide prescriptive guidance; its value comes from its applicability and establishes the theoretical foundations for quality management, as well as to identify and develop techniques for quality improvement based on the comprehensive body of knowledge. Understanding the nature of quality enables us to focus on the most applicable issues for future research and development.

Production process are unique in three ways: unlike total data quality management the production process surrounds the generation of raw data and products derived from those data; the lifetime of the data product stored in an archive will be longer than the life time of the instruments that generated the data and their quality must be evaluated subjectively as well as objectively; and the continuous improvement process must include the clarification of data products in an archive, and the integration of continuous learning into the production process to enable the clarification.

Issues can have a very long life. We believe that some of them can live forever. This leads to the need for an explicit treatment of them. It also calls for issues to be very accessible in their own collection of data. Issue resolutions are often considered interruptive to the normal flow of work through departments that develop and deploy information technology. They will tend to get altered easily if not monitored and placed in front of management on a regular basis. These activities need to become the normal flow of work. Monitoring data quality and making corrections to improve it should not be considered an inconvenience, but should be considered a regular part of information systems operations. This article highlights the need to coordinate the activities of data quality assurance with the complete information systems agenda.

REFERENCES

1. **Abraham, Ajith; Grosan, Crina; Ramos, Vitorino**, Swarm intelligence in data mining, Studies in computational intelligence v. 34, Springer, Berlin ; New York, 2006.
2. **Batini, Carlo; Scannapieca, Monica**, Data quality: concepts, methodologies and techniques, Data-centric systems and applications, Springer, Berlin ; New York, 2006.
3. **Clarke, Roger**, „Quality assurance for security applications of Big Data”, în Intelligence and Security Informatics Conference (EISIC), 2016 European, IEEE, 2016, pp. 1–8.
4. **Craig, Terence; Ludloff, Mary E.**, Privacy and big data, O'Reilly Media, Inc, Beijing, 2011.
5. **Dasu, Tamraparni; Johnson, Theodore**, Exploratory data mining and data cleaning, Wiley series in probability and statistics, Wiley-Interscience, New York, 2003.
6. **Loshin, David**, Master data management, Elsevier/Morgan Kaufmann, Amsterdam ; Boston, 2009.
7. **Mcnutt, Bruce**, The fractal structure of data reference: applications to the memory hierarchy, The Kluwer international series on advances in database systems 22, Kluwer Academic, Boston, MA, 2000.
8. **Olson, Jack E.**, Data quality: the accuracy dimension, Morgan Kaufmann, San Francisco, 2003.
9. **Sadiq, Shazia**, Handbook of Data Quality, Springer Berlin Heidelberg, Berlin, Heidelberg, 2013, <http://link.springer.com/10.1007/978-3-642-36257-6>, data accesării 14 iunie 2018.
10. **Stackowiak, Robert; Rayman, Joseph; Greenwald, Rick**, Oracle data warehousing and business intelligence solutions, Wiley Pub, Hoboken, N.J, 2007.
11. **Tejay, Gurvirender; Dhillon, Gurpreet; Chin, Amita Goyal**, „Data quality dimensions for information systems security: A theoretical exposition”, în Security management, integrity, and internal control in Information Systems, Springer, 2005, pp. 21–39.

RUSSIAN INFLUENCE IN EUROPEAN POLICIES

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ABSTRACT:

THE PAPER WILL TRY TO EXPLAIN THE WAY RUSSIA MANAGED TO INFLUENCE THE EUROPEAN POLICY IN THE PAST 20 YEARS.

IT WILL REFLECT THE ROLE OF THE RUSSIAN BUSINESS DEVELOPERS AND SECRET SERVICES IN THE INTERNATIONAL POLICY, THE METHODS USED BY THEM TO INFLUENCE THE INTERNAL POLICY OF EX-SOVIET, EUROPEAN STATES AND THE INTERDEPENDENCES THAT APPEAR IN TIME BETWEEN EUROPEAN STATES AND RUSSIAN FEDERATION.

WE WILL INCLUDE SOME CASE STUDIES AND ARTICLES ABOUT THE IMPLICATION OF RUSSIA IN THE UNITED STATES ELECTION IN 2017 AND HOW THE TYPICAL DIPLOMATIC WAR GAINED A NEW DIMENSION AND HAS BEEN TRANSFORMED INTO A „HYBRID WAR” USING HACKERS, BUSINESS INTELLIGENCE PRACTICES LIKE BIGDATA THAT OFFERED THE POSSIBILITY OF A MORE EFFICIENT MANIPULATION OF THE POPULATION FROM THE „TARGETED”/„AFFECTED” STATES.

KEY WORDS: RUSSIA, EUROPE, BLACKMAIL, POLICY, CYBERWARFARE.

INTRODUCTION

THE FALL OF THE SOVIET UNION

For more than 60 years, the Soviet Union was an “empire” with a centrally planned economy that represented the second world economy by nominal GDP in 1991.² Until the well-known “Perestroika” reform, all the citizens were hired with a minimum salary and the status of the unemployed person was punished according to the law.

During this period the state controlled all that refers to resources, production, centralization and rationalization of production, purchasing power and the value of the currency. Also, this type of economy has remained in the memory of the population as the period of great discoveries and constructions. Why? Because the state promoted a policy of copying and replying the western world’s innovations and to assume it as a soviet creation. Also they were used to build big constructions like buildings, bridged, roads or factories that were meant to show the supremacy of the soviet power.

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² CIA World Factbook, (1991), <http://www.gutenberg.org/cache/epub/25/pg25-images.html> - accessed 19.05.2018.

As we mentioned above, things changed after 1980 with the beginning of “Perestroika”, a program started by the communist party that wanted to “restructure” the political and economic system of the Soviet Union.

The most interesting comes after 1991 when, after the fall of the empire, Boris Yeltsin decided to start the implementation of a series of “radical economic reforms such as price liberalization, mass privatization and stabilization of the ruble”³ that were meant to stabilize the economy of the new Russia. The privatization process had its own “black” part because of the president Yeltsin which allowed the privatization of approximately 70% of the economy and some natural resource by certain influent businessmen in exchange for loans meant to sustain the government budget and political/electoral support.⁴ This plan was fruitful until 2000 when Vladimir Putin won the presidential elections with a score of 53%.⁵

The new president is an ex-K.G.B agent who lived a few years in Germany working for Russian services, who came back after the fall of the Berlin and managed to enter some influent groups of senators and businessmen like Anatoly Sobchak (ex-mayor of Leningrad) that encouraged him to leave K.G.B in 1991⁶ or Sergei Pugachev who was an Russian investor and a member of Vladimir’s Putin inner circle⁷. In 1998 he was named the head of the main Russian intelligence service FSB by Boris Yeltsin. Many public figures and journalist insinuated that this wasn’t a coincidence⁸. His first actions were to give full immunity to the ex-president and to declare that Russia will maintain its democratic route, but no one knew that this were the words of a new “dictator”.

THE NEW ORDER OF “DEMOCRATIC” RUSSIA

Few after, Putin understood that the oligarchs will not let him reach his goals, so he decided to take them down, one by one. Also, he wanted to enhance his credibility by taking radical decisions in some critical situations and by “getting out of game” those journalists that decides to go against Putin.

The first one was Mikhail Khodorkovsky, the richest man in Russia at that period⁹ that was arrested in 2003 for 10 years and released after, by the president, with the conditions that he will leave Russia and “would not attempt to win back his shares in Yukos”¹⁰.

After him, we should speak about the second Chechen war and the Moscow theatre siege in 2002.

The Chechen war represented an armed conflict between 1999 and 2009. Officially, Russian troops entered this war to establish the rule in Chechnya, but in essence they just wanted to maintain their influence in the region. Putin has been criticized during this war by many

³ <https://www.investopedia.com/articles/investing/012116/russian-economy-collapse-soviet-union.asp> - accessed 18.05.2018.

⁴ <https://www.investopedia.com/articles/investing/012116/russian-economy-collapse-soviet-union.asp>

⁵ Richard Paddock; *Putin Rolls to Victory, Avoiding a Runoff*, (Los Angeles Times, 2000). <http://articles.latimes.com/2000/mar/27/news/mn-13176> - accessed 19.05.2018.

⁶ <http://tass.ru/politika/4344465> - accessed 20.05.2018.

⁷ http://www.lemonde.fr/europe/article/2014/11/27/le-milliardaire-russe-serguei-pougatchev-recherche-par-interpol_4529890_3214.html - accessed 20.05.2018.

⁸ <http://www.mediafax.ro/externe/viata-si-cariera-lui-vladimir-putin-ascensiunea-presedintelui-rusiei-de-la-periferia-leningradului-la-prima-scena-a-lumii-foto-14000241> - accessed 20.05.2018.

⁹ <https://www.theguardian.com/world/2017/feb/22/vladimir-putin-killer-genius-kleptocrat-spy-myths> - accessed 21.05.2018.

¹⁰ <https://www.theguardian.com/world/2014/dec/26/mikhail-khodorkovsky-life-after-prison-russia-after-putin> - accessed 19.05.2018.

journalists, one of them being Anna Politkovskaya, a Russian journalist that spent her time on the battle front and wrote about the reality from Chechnya. She described the life of the refugees from this country, how their families were killed by Russians, how Russia bombed towns and villages with civilians and how she was “hunted” by Russian agents.¹¹

Also Politkovskaya wrote about the 2002 Moscow theatre siege, when 40 Chechen militants headed by Movsar Barayev, took over 900 civilians. After three days, Russian security services entered the building by pumping sleeping gas and killing the terrorists. During this operation 130 civilians died because of the gun shoots and the gas. The bad part is that in this case the security services which are directly subordinated to the president decided to maintain the “secret character” of their mission and to neglect civilian’s life by refusing to negotiate with the terrorist.

Returning to Politkovskaia, she was killed or better say found death in 2007 in the lift of her block of flats located in the center of Moscow.¹² Coincidence or not, but she was killed exactly when president Putin celebrated his birthday, or two days after Ramzan Kadyrov celebrated his birthday. Why not a coincidence? Because both presidents were criticized by the journalist for their decisions, policy and the way they ruled their country. The killer was arrested but there are no more details about him or this case.

The same history had Boris Nemtsov, a successful politician during the ‘90s that played an important role in the process of introducing capitalism in Russia, and one of the biggest critics of Vladimir Putin.¹³¹⁴ He was found killed on a bridge near the Kremlin wall, with nine bullets in his body. In this case, the interesting fact is that Nemtsov was killed hours after he announced at the radio that he will write a book about the implication of Putin in Ukraine war.¹⁵

HOW RUSSIA INFLUENCES?

In this part of the paper we will speak about the manifestation of the Russian influence in Europe in the last two decades.

After 18 years of official governance, at his 4th mandate, president Putin managed to concentrate all the power in his hand through his people. Usually these people are oligarchs that accepted to cooperate with Putin to be able to maintain their business, former secret agents, school and university colleagues or some people who practiced judo with the president.

As we already mentioned above, after his first presidential mandate, Putin “brought the power” from all those who represented a danger for him. They were forced to leave the country (the case with Mikhail Khodorkovsky), forced to surrender their wealth to the state being threatened with criminal files, or they just decided to cooperate on their own initiative.

Speaking about the mechanisms Russia uses to influence the European policies? Gas and oil, a simple answer with a complex construction.

Why? Because of the way the presidential administration or better say Putin’s influent circle of people have captured this energy sector.

¹¹ Anna Politkovskaya; *Nothing but the truth*, (Random House, 2010).

¹² http://www.kommersant.com/p711307/r_530/Murder_reporter_Politkovskaya/ - accessed 20.11.2017.

¹³ <http://www.foxnews.com/world/2015/03/04/crossing-kremlin-nemtsov-latest-in-long-line-putin-critics-to-wind-up-dead.html> - accessed 20.05.2018.

¹⁴ <https://www.telegraph.co.uk/news/worldnews/europe/russia/11441466/Veteran-Russian-opposition-politician-shot-dead-in-Moscow.html> - accessed 10.05.2018.

¹⁵ <https://www.telegraph.co.uk/news/worldnews/europe/russia/11441466/Veteran-Russian-opposition-politician-shot-dead-in-Moscow.html> - accessed 22.05.2018.

First of all, we should know that, after '90 when the massive privatization process started, most companies/factories from all sectors including the energy one were bought by the state, or by oligarchs. An exception from this “dirty deal” was the Ministry of the Gas, or what is today known as Gazprom. This institution passed through a well-thought process and transformed from a Ministry into a corporation where the state owned more than 50% of action. The situation changed in the past years and now the state owns only 38.37%¹⁶, but this is just an official number because the state has the same influence.

About the importance of the natural resources president Putin wrote in his work “Mineral and Raw Materials Resources and the Development Strategy for the Russian Economy.”.

They managed to maintain their key role in the company by hiring former secret and special services agents as high ranked workers in Gazprom. During the years, the corporation managed to monopolize the energy sector by being helped by the president and his administration. A good example here is the history of “Yukos”, once the biggest non-state oil company that was completely dissolved after they claimed their bankruptcy.¹⁷

Another example of favor made by the governance was in 2006 when the rules were changed in favor of big companies that that obtained the full control on their territories. Gazprom used this occasion to create its own “army” equipped with Russian firearms and israeli UAV's that officially had the role of preventing sabotage, hijacks or hostage situations. With the time this service reached a total of 20000 men responsible for intelligence and counterintelligence inside the corporation, transport of valuables, body-guarding and were paid with a salary six or seven times bigger than a security state worker salary.

First cases when Russia used Gazprom to influence other countries policy were reported in 2004 when the gas that passed through “Drujba” pipe to Latvia was stopped, in order to encourage the privatization of some Latvian companies that were responsible for gas import by the Russian oligarchs.

Another case was reported in 2006 when Ukraine remained without gas for 24 hours because of the debts, or when Georgia was forced to accept to pay a double price for the imported gas.

Why is this a problem for Europe? Firstly, it is an example of blackmail and secondly because there are more than 50 gas intermediaries in the whole Europe that are used to represent their own interests. A good example for this can be the ex-German canceler Gerhard Schröder that was named as Gazprom CEO, after he signed an agreement with the company that raised the dependence of his country on Russian gas. Also we have the example with an audio recording between the polish oligarch Marek Dochnal and a Russian agent Vladimir Alganov when they were discussing about the privatization of the polish energy industry.

Talking about Rosneft, we will observe that it is a “giant” with a different story. First of all, if we will analyze its past, and will see that Rosneft was also favored by the Russian administration when they “absorbed” Bashneft, after its CEO Vladimir Evtushenko was forced to yield his company, losing \$7.2 billion.¹⁸

Rosneft was a company used more to show the importance of Russian oil, and this was shown when 19% of the company were privatized by unknown persons. Officially, the actions

¹⁶ <http://www.gazprom.ru/investors/stock/> - accessed 22.05.2015

¹⁷ <https://lenta.ru/news/2007/11/22/yukos/> - accessed 18.05.2018.

¹⁸ Cătălin Apostoiu. *De ce Rosneft, cea mai mare companie petrolieră a Rusiei, câștigă mereu*. Accessed 20.06.2018, <http://www.zf.ro/business-international/de-ce-rosneft-cea-mai-mare-companie-petroliera-a-rusiei-castiga-mereu-16707949>

were bought by Qatar, Glencore and the Italian bank Intesa Sanpaolo, making abstraction from the EU sanctions. Some analysts sustain that this was a well thought political move, to show the world that even with the EU sanctions, there are countries who trust Russia and believe in its stability. After some investigations it turned out that the real buyers were not Qatar, Glencore or Intesa Sanpaolo. The only thing that is known is that money and actions passed through some phantom companies from Cayman and Singapore, but nobody is ready to offer more details.¹⁹ Also an interesting case was reported in 2011 when ExxonMobil was allowed to conduct offshore exploration in the Black Sea and the Kara Sea in Siberia.²⁰ There were cases when the company violated sanctions on Russia in the period when actual secretary of state Rex Tillerson was the CEO. In 2017 The Treasury Department of USA fined Exxon Mobil \$2 million, which is not a significant punishment for this “mammoth”.²¹

The third influence mechanism used by Russia is the cyberwarfare.

According to *Oxford Dictionaries*, *Cyberwarfare* is defined as the use of computer technology to disrupt the activities of a state or organization, especially the deliberate attacking of information system for strategic or military purposes.

There were many cases when Russia was accused for attacking a state, institution or company using its special services hackers.

One of this attacks was reported in 2015 in France, when the broadcasting service TV5Monde was attacked by russian hacker. It's network system was destroyed with a malicious software. At the beginning, this attack was claimed by the “Cyber Caliphate”, but after a series of investigations, French authorities linked the attack in a GRU hacker group.²²²³

Another case was reported in 2015, when a german official declared a possible cybertheft of files from the German Parliamentary Committee. In 2016 Bruno Kahl warned of data breaches and misinformation campaigns steered by the Russia special agents.²⁴²⁵

Also we have a lot of more examples of cyberattacks committed by the russian hackers all over the world because they wanted to influence elections in some states (Germany 2017, United States 2017), to change the internal and European policy (the Brexit referendum) or to simply demonstrate their power.

CONCLUSION

Even if after the fall of the Soviet Union, Russia had to pass through a series of changes and to completely restructure its administration and structure, it is still an important actor on the international arena because it managed to recover its economy and to extend its authority in the whole world.

¹⁹ Bogdan Cojocaru. *Privatizarea Rosneft, promovată de Moscova ca un vot de încredere din partea investitorilor străini, este îngropată adânc în mister*, accessed 29.05.2018, <http://www.zf.ro/business-international/privatizarea-rosneft-promovata-de-moscova-ca-un-vot-de-incredere-din-partea-investitorilor-straini-este-ingropata-adanc-in-mister-16121643>

²⁰ Donna Borak and Egan Matt. *Trump denies Exxon permission to drill for oil in Russia*. CNN Money, retrieved april 21, 2017. Accessed 05.05.2018, <http://money.cnn.com/2017/04/21/news/companies/trump-exxon-russia-sanctions/index.html>

²¹ Alan Rappeport, *Exxon Mobil Fined for Violating Sanctions on Russia*, The New York Times, accessed 20.06.2018, <https://www.nytimes.com/2017/07/20/us/politics/exxon-mobil-fined-russia-tillerson-sanctions.html>

²² <https://www.bbc.com/news/world-europe-33072034> - accessed 23.06.2018

²³ <https://www.bbc.com/news/technology-37590375> - accessed 23.06.2018

²⁴ <http://www.dw.com/en/russia-behind-hack-on-german-parliament-paper-reports/a-36729079> -accessed 23.06.2018

²⁵ <http://www.spiegel.de/politik/deutschland/bundestagswahl-2017-bnd-chef-kahl-warnt-russischen-hackerangriffen-a-1123506.html> - accessed 23.05.2018

After Kremlin decided to invade Crimea, they faced a series of sanctions from Europe and United States that wanted to damage the economy and to make this state more vulnerable and more dependent. Despite of this, russian administration always managed to find a way to promote its interests, to annihilate its enemies and to manifest its influence using and creating new weapons and showing its power on the battle theaters in the Middle East. Also it was always able to use its non-conventional weapons in order to protect its interests and to influence the West Policy, demonstrating that it cannot be neglected because it still represents a big power.

The conclusion is that Russia is still one of the most influent states and it should not be neglected because they demonstrated that their power is not measured just in guns.

REFERENCES

1. **CIA World Factbook**, 1991, <http://www.gutenberg.org/cache/epub/25/pg25-images.html> - accessed 19.05.2018.
2. <https://www.investopedia.com/articles/investing/012116/russian-economy-collapse-soviet-union.asp> - accessed 18.05.2018.
3. **Paddock, Richard**; *Putin Rolls to Victory, Avoiding a Runoff*, Los Angeles Times, 2000. <http://articles.latimes.com/2000/mar/27/news/mn-13176> - accessed 19.05.2018.
4. <http://tass.ru/politika/4344465> - accessed 20.05.2018.
5. http://www.lemonde.fr/europe/article/2014/11/27/le-milliardaire-russe-serguei-pougatchev-recherche-par-interpol_4529890_3214.html - accessed 20.05.2018.
6. <http://www.mediafax.ro/externe/viata-si-cariera-lui-vladimir-putin-ascensiunea-presedintelui-rusiei-de-la-periferia-leningradului-la-prima-scena-a-lumii-foto-14000241> - accessed 20.05.2018.
7. <https://www.theguardian.com/world/2017/feb/22/vladimir-putin-killer-genius-kleptocrat-spy-myths> - accessed 21.05.2018.
8. <https://www.theguardian.com/world/2014/dec/26/mikhail-khodorkovsky-life-after-prison-russia-after-putin> - accessed 19.05.2018.
9. **Politkovskaya, Anna**; *Nothing but the truth*, Random House, 2010.
10. http://www.kommersant.com/p711307/r_530/Murder_reporter_Politkovskaya/ - accessed 20.11.2017.
11. <http://www.foxnews.com/world/2015/03/04/crossing-kremlin-nemtsov-latest-in-long-line-putin-critics-to-wind-up-dead.html> - accessed 20.05.2018.
12. <https://www.telegraph.co.uk/news/worldnews/europe/russia/11441466/Veteran-Russian-opposition-politician-shot-dead-in-Moscow.html> - accessed 10.05.2018.
13. <https://www.telegraph.co.uk/news/worldnews/europe/russia/11441466/Veteran-Russian-opposition-politician-shot-dead-in-Moscow.html> - accessed 22.05.2018.
14. <http://www.gazprom.ru/investors/stock/> - accessed 22.05.2015
15. <https://lenta.ru/news/2007/11/22/yukos/> - accessed 18.05.2018.
16. **Apostoiu, Catalin**; “De ce Rosneft, cea mai mare companie petrolieră a Rusiei, câștigă mereu”, accessed 20.06.2018, <http://www.zf.ro/business-international/de-ce-rosneft-cea-mai-mare-companie-petroliera-a-rusiei-castiga-mereu-16707949>
17. **Cojocaru, Bogdan**; “Privatizarea Rosneft, promovată de Moscova ca un vot de încredere din partea investitorilor străini, este îngropată adânc în mister”, accessed 29.05.2018, <http://www.zf.ro/business-international/privatizarea-rosneft-promovata-de-moscova-ca-un-vot-de-incredere-din-partea-investitorilor-straini-este-ingropata-adanc-in-mister-16121643>
18. **Borak, Donna; Egan, Matt**; “Trump denies Exxon permission to drill for oil in Russia”, CNN Money, retrieved april 21, 2017. Accessed 05.05.2018, <http://money.cnn.com/2017/04/21/news/companies/trump-exxon-russia-sanctions/index.html>
19. **Alan Rappeport**, “Exxon Mobil Fined for Violating Sanctions on Russia”, The New York Times, accessed 20.06.2018, <https://www.nytimes.com/2017/07/20/us/politics/exxon-mobil-fined-russia-tillerson-sanctions.html>
20. <https://www.bbc.com/news/world-europe-33072034> - accessed 23.06.2018
21. <https://www.bbc.com/news/technology-37590375> - accessed 23.06.2018
22. <http://www.dw.com/en/russia-behind-hack-on-german-parliament-paper-reports/a-36729079> -accessed 23.06.2018
23. <http://www.spiegel.de/politik/deutschland/bundestagswahl-2017-bnd-chef-kahl-warnt-russischen-hackerangriffen-a-1123506.html> - accessed 23.05.2018

BUSINESS INTELLIGENCE AND COMPETITIVE INTELLIGENCE: THE EVOLUTION OF THE TERMS

Horia Mircea BOTOȘ¹

ABSTRACT:

AT THE PRESENT MOMENT, THE TERM OF BUSINESS INTELLIGENCE TAKES YOU TO THE IDEA OF THE SUIT OF SOFTWARE'S BY THE MEANS OF WITH YOU CAN ANALYZE COMPANY DATA AND COMPETITIVE INTELLIGENCE IN THE HOLE OF THE PRACTICES BY WITH YOU STUDY A BUSINESS, ITS COMPETITORS AND THE SECTOR. BUT THIS WAS NOT ALWAYS THE CASE.

THIS PAPER AIMS TO STUDY THE TRANSFORMATION OF THE TERM OVER TIME IN ORDER TO GIVE A BETTER AND CLEARER PERSPECTIVE ON THE MEANING OF THE TERM, SHOWING THE IMPACT THAT THE USER HAD OVER THE USE IN THE ACADEMIC LANGUAGE. WE WILL TRY TO SHOW THE EFFECT HAD BY INTELLECTUAL MIGRATION ON THESE TWO TERMS.

KEY WORDS: BUSINESS INTELLIGENCE, COMPETITIVE INTELLIGENCE, INTELLIGENCE, TERMINOLOGY

THE SECURITY STUDIES CONTEXT

Security Studies is a sub-field of International Relations². It has been developed since the era of the Cold War and took place at the same time as the privatization of Intelligence Processes.

During the Second World War it became clear that the military sector could not adjust and be flexible enough to serve all the information access needs of a state and because of this they started to have private collaborations in order to gain flexibility and speed.

In this paper we do not plan to present the history of Intelligence and Security Studies, but to see how Business and Competitive Intelligence developed.

Business and Competitive Intelligence are both terms from the area of Economics that address the analysis and information understanding. The two terms have developed through the years, having different meaning from their original ones.

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² Wæver, Ole (2004) "New 'Schools' in Security Theory and their Origins between Core and Periphery" Paper presented at the annual meeting of the International Studies Association, Le Centre Sheraton Hotel, Montreal, Quebec.

At the present moment Business Intelligence is a wide term that represents the applications, tools, methods and infrastructure that enable the improvement and optimization of the decision process of a company. Competitive Intelligence is the action of defining, analyzing and distributing intelligence reports about products, customers, competitors, business environment, etc.

THE EVOLUTION OF TERMS

The Business Intelligence was used a term for the first time in the *Cyclopeadia of Commercial and Business Anecdotes* in 1865 by Richard Miller Devens. The term was used to refer to Sir Henry Furnese, a banker, understanding of political issues, instabilities and market needs ahead of the rest of his competitors. Furnese was active in Holland, Flanders, France and Germany, always being a step ahead of everyone else. This didn't stop him becoming a corrupt financier, but I showed the world the idea of gathering information for business purposes. Idea that grew over the years...

My definition of Business Intelligence started with "... a wide term that represents the applications, tools, methods and infrastructure...", but this was not always so. Technology didn't find its way into Business Intelligence until in the second part of the 20th century. Until that point Business Intelligence was referred to the "reading" of the business elements in the best way possible so that you would have optimal decisions and Competitive intelligence was regarded as a specialized analysis made on the performance and developments of your competitors.

Hans Peter Luhn, an IBM computer scientist, wrote a paper named "A Business Intelligence System" in 1958 that brought Business Intelligence to another league. In a wake of the post-World war, taking in in the technical and conceptual developments, a system that would "analyze and disseminate information to various sectors of any industrial, scientific or governmental organization" was seen as a good thing. Let's not forget that we were in a moment of massive technological and scientific development, massive data creation and elements of panic caused by the Cold War.

Luhn essentially saw Business Intelligence a particularization of Intelligence, that gave the possibility understand quick and easy large amounts of data so the decision making process could be optimized. Looking back at it, this could be the shortest way to define Business Intelligence.

In my opinion, Luhn research paved the way for the development and research of analytical systems that helped the for the Business Intelligence environment that we know today.

Another development point of Business Intelligence was the late 1980's. There has been technical development until this moment, but the advancements brought on by this period helped boom the 1970's initiatives. This first initiative was oriented towards accessing and organizing data, but it was difficult to use. The 1988 Multiway Data Analysis consortium gathering that took place in Rome, can be considered the moment of conception of BI analysis as we know it today.

Gartner's Howard Dresner 1989 establishment of a term as DSS (Decision Support system) and EIS (Executive information Systems), that were aimed to establish data storage and data analysis protocols. These systems evolved setting the path for the establishment of technologies as online analytical processing, data mining, process mining, complex event processing, predictive analytics, benchmarking, etc.

Modern day Business Intelligence handles large volumes of data, having as a purpose the identification, development and strategic development of business opportunities. These opportunities want to provide competitive market advantages and stability to business.

Because of this we can observe that specially in the Anglo-Saxon terminology Business Intelligence and Business Analytics are synonymous. The two terms being representations for the technologies used in order to support decision makers.

We can see that since 1958 Business Intelligence gently took an approach of being an analytical process, compared with its 1865 definition. Because of this Business Intelligence distanced itself because of technology from its definition, and its original function was taken over by Competitive Intelligence.

Examples of current day Business Intelligence providers are: SAS, SAP IQ, Tableau Software, Oracle, IBM Cognos, Domo, Microsoft (SQL platform, Power BI, etc.) and many others. 2016 figures record that this market has a \$9 billion profit margin, but the potential is big.

COMPETITIVE ANALYSIS

Competitive intelligence is a newer term in academic journal, being found for the first time in the 1970s. Which is interesting as the literature in the field of competitive analysis and Business Intelligence appeared decades before.

Competitive Intelligence can be seen as being the meeting point of Organizational Intelligence and Business Intelligence, at about the time Business Intelligence became more about Analysis protocols and methods and less about Business decisions.

Because of time line and protocol forming, Competitive Intelligence stands for the ability and science of learning the environment outside the organization in order for it to become more...if you didn't figure this out yet... competitive. This means understanding an industry and identifying relevant competitors quick.

Because of this the information sources used are various and limitless. Competitive Intelligence nowadays uses most of the results of Business Intelligence and other Economic-connected Intelligences (as Commercial Intelligence, Trend Analysis, Market Intelligence, etc.). But, with all this connections and collaborations with tactical and Intelligence fields, we have to keep some aspects clear:

- a. Competitive Intelligence is a legal business practice (it's not business espionage)³
- b. It is focused on what happens outside the business (inside the business you have Business Intelligence)⁴
- c. In order to be Competitive Intelligence there is a protocol of gathering information, converting and make it usable in decision making.⁵

All of the elements mentioned above, show us that Competitive Intelligence behaves different from Business Intelligence as it takes a macro-view of the business environment. Because of this it uses different tools, it does not used data bases, data mining or data warehouses...but it uses tools as the SWOT analysis, the Five forces model, PEST/PESTLE analysis, Scorecards or growth-share matrix.

The tools used by Competitive Intelligence or oriented better in showcasing risks and opportunities in the market, as these tools are early identifiers. Competitive Intelligence use elements of market statistics, financial reports, industry reports, regional reports or press releases to see elements otherwise not seen about the other competitors.

³ SCIP Code of Ethics.

⁴ Haag, Stephen. Management Information Systems for the Information Age. Third Edition.(McGraw-Hill Ryerson, 2006).

⁵ McGonagle, John J. , Carolyn M. Vella. The Manager's Guide to Competitive Intelligence. (Westport CT: Greenwood Publishing Group, 2003).

NOWADAYS TERMINOLOGY AND MEANING

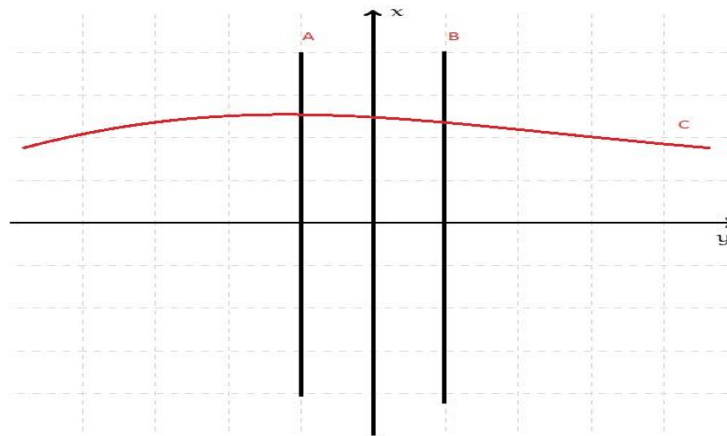
If we take as a reference point the 1970s we can observe that at this moment the original meaning and form of the two terms changed. If in the beginning Business Intelligence was about integrating your company's strategy the best you could in the market and Competitive Intelligence was understanding your competitors... after this moment things changes.

Business Intelligence started to get developed as a sum of analysis protocols, while Competitive Intelligence became a mix of competitive and business oriented practices.

If in the beginning Business and Competitive Intelligence could be identified as a two axis based model. Business Intelligence would be the vertical axis, the X, while Competitive Intelligence would be the Y. The vertical looking at the organization in its hole and how it integrates in the market and industry, while the horizontal would be the industry and the directions it develops its self. So the horizontal is the place from which you can see how the companies Innovations are representative, helpful, profitable.

In figure 1 you will find a visual representation of the use of the two axis. If your organization is situated between the A and B vertical limits as Business Intelligence, on the red C line of the Competitive Intelligence parameters, it means that its decisions are adjusted to the market in specs of Innovation and developments perspectives. If this analysis puts you on a downward stretch of the horizontal red line, this means that you need to make improvements to your competitiveness factors.

Figure 1. Two axis Business and Competitive Intelligence representation



Source: The author's perspective

CONCLUSION OF THE TERMINOLOGY DISCUSSION

In my opinion the understanding of Business and Competitive Intelligence change through the years, but I can not say if it helped to have a better understanding of the terms.

Many of today's academics and students know Business Intelligence as the sum of methods and protocols of analysis and they aren't that much concerned with the origin and direction of the data. Meanwhile, Competitive Intelligence has become a cumulus of everything connected with strategic and organizational decisions justified by economic facts. This is why we have a series of newly developed economic related Intelligence fields as Accounting Intelligence, Commercial Intelligence, Market Intelligence, Economic Security, Public and Business

Diplomacy, and others. Competitive Intelligence covering at this moment in time the original understanding of Business Intelligence and its own definition.

Having the term Business Intelligence not covering any business aspects, in my opinion is not correct, but the technical developments that took place cannot be changed that easily.

Competitive Intelligence will always address more the aspects of actions competitor actions and less the methods by which they the business aligns to the industry.

It is important to keep in mind that Business Intelligence represents data analysis protocols for a company and Competitive Intelligence represents the market positioning and strategic aspects.

REFERENCES

1. **Luhn, H.P.**, *A Business Intelligence System*, 1958
<http://domino.watson.ibm.com/tchjr/journalindex.nsf/3d119440d938c88b85256547004c899a/fc097c29158e395f85256bfa00683d4c!OpenDocument>
 2. **Sutton, Howard.** "Competitive intelligence." Conference Board, 1988.
 3. **Prescott, J.E.**, *The evolution of Competitive Intelligence*, 1995,
<http://files.paul-medley.webnode.com/200000023-97ce398c7e/Competitive%20Intelligence%20A-Z.pdf>
 4. **Kahaner, L.**, *Competitive Intelligence: how to gather, analyze and use information to move your business to the top*, KANE Associates International Inc., 1996
 5. **McGonagle, John J., Carolyn M. Vella.** *The Manager's Guide to Competitive Intelligence*. Westport CT: Greenwood Publishing Group, 2003.
 6. **Negash, S.**, *Business Intelligence*, 2004
<http://aisel.aisnet.org/cgi/viewcontent.cgi?article=3234&context=cais>
 7. **Liebowitz, J.**, *Strategic Intelligence: business intelligence, competitive intelligence, and knowledge management*, Taylor & Francis Group LLC, 2006
 8. **Haag, Stephen.** *Management Information Systems for the Information Age*. Third Edition. McGraw-Hill Ryerson, 2006
 9. **Jordan Z., Kelly Rainer R., Marshall, T.E.**, *Business Intelligence: An Analysis of the Literature*, 2008,
<https://doi.org/10.1080/10580530801941512>
 10. **Watson H.J.**, *Tutorial: Business Intelligence – Past, Present and Future*, 2009,
<http://aisel.aisnet.org/cgi/viewcontent.cgi?article=3490&context=cais>
 11. **Agiu, D., Mateescu, V., Muntean, I.**, *Business Intelligence overview*, 2014,
http://dbjournal.ro/archive/17/17_3.pdf
- Web-sources**
12. <https://blogs.sap.com/2013/07/01/happy-birthday-to-the-father-of-business-intelligence/>
 13. <http://www.dataversity.net/brief-history-business-intelligence/>
 14. <https://www.datapine.com/blog/history-of-business-intelligence/>
 15. <http://www.businesscomputingworld.co.uk/the-history-of-business-intelligence-infographic/>

INTEGRATION OF THE INTERNATIONAL NORM

Paul POPA¹

ABSTRACT:

FROM THE PERSPECTIVE OF SOCIAL-CONSTRUCTIVISTS, THE NORM IS BUILT UP BY INTERACTION OF THE AGENTS. SOCIAL-CONSTRUCTIVISM HAS REMAINED THE DOMINANT THEORY IN RECENT DECADES AND THE ONLY ONE THAT DESERVES TO BE EVALUATED WHEN WE SPEAK OF INTERNATIONAL NORMS IN THE CURRENT SOCIO-POLITICAL CONTEXT. FROM THE PERSPECTIVE OF SOCIAL-CONSTRUCTIVISTS, AN INTERNATIONAL NORM IS BASED ON THE CAPACITY AND OPENNESS OF STATE AND NON-STATE ACTORS TO COLLABORATE AND INTERACT IN ORDER TO FORM THE NORM. THIS PROCESS PLACES THE INTERNATIONAL NORM ON A CENTRAL POSITION IN GLOBAL AFFAIRS, AS OPPOSED TO RATIONALIST APPROACHES IN WHICH INTERNATIONAL NORM IS DETERMINED BY INTEREST AND IMPOSED BY POWER. A GOOD WAY TO DEMONSTRATE THIS CENTRAL POSITION OF THE NORM, AND THE WAY TO DEMONSTRATE ITS CRUCIAL ROLE IN THE PERCEPTION OF INTEREST AND POWER, IS TO CHALLENGE THESE THREE IN AN EXERCISE.

KEYWORDS: INTERNATIONAL NORM, CONSTRUCTIVISM, INTEGRATION, PROCESS

INTRODUCTION

In order to be able to dissociate the image of the norm from its origin and strength, that is, interest and power, I must put the international norm to prove its capacity in relation to the two. Interest and power come mainly from states, so one of the great challenges to the state's interest and power is the ability and willingness of the international norm to impose upon them by integrating it into the internal structures of the state. I understand from previous presentations that the international norm is a product of interaction and is the result of foreign policy formulated nationally. But the interest-norm-power relationship raises serious assumptions about how international norms can be embedded at national level. We can ask ourselves what are the international norms that are embedded at national level, and especially why? To what extent do international norms constrain national behavior or create obligations? To what extent do national policy actors resort to international norms to justify national policies or to How influential is the international norm in the grinding of national political discourse and behavior? To capture how

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international norms can be integrated by a state, we must take the politics as the main benchmark. Both international political movements and national positions must be the starting point for the analysis.

Social-constructivists refer first and foremost to "rhetoric" and the discourse used by the national political elite about global business issues. In order to determine first of all a certain approach taken into account by these political factors, it is necessary to see how the internal policy, the discourse and the approach on a subject in which an international norm is to be adopted or not. It can be seen from the public outings of the national political elite that it will be the position on a certain field or norm. These political opinions can be a first sign, the importance of measures, the acceptance or not of certain international provisions within the national legal system. Also, one can not ignore that political discourse is by its nature an electoral responsibility, so it can be manipulative, misleading, vague or even a liar. But that does not mean that it can not be a first step to be seen in the next positions or a starting point when it is to be anticipated or projected what is to be decided, even if behind the "beliefs expressed, there are material interests".²

The actors' strategy is to use the norm to pursue ideals but also to fulfill their interests. In this sense, States can establish institutionalized structures, procedural mechanisms or legal principles that allow the acceptance and integration of the norm in national structures without their ideals changing their trajectory or the material interests to be changed according to the instructions of the norm. Also, accepting and integrating the norm does not mean that the state really has the beliefs on that norm, but, very often, this integration of the norm can be marked by the existence of interests, a "computed acceptance" to gain benefits without high costs. The true aims of integrating process can be concealed due to the coercive mechanisms of the international norm. If coercion does not bring about change, the state considers this norm to be appropriate, it may be motivated to integrate it.³ If this normativity coercion becomes or is gradually transforming into one that will influence national needs and interests, they will cause changes in national behavior and in its foreign policy.⁴

Even though social-constructivists have presented important criteria that are to be considered when a norm can be transposed in a state, criticism may be given to constructivist theorists in the sense that they must provide a mechanism for regulating the norm once accepted. It does not explain why there are some states that choose to integrate a norm, and others do not.⁵ Toward social-constructivists, rational theoreticians have developed rational institutionalism that explains "the emergence of norms and institutions." Also, the institutionalism proposed by the rationalists deals with issues related to mutual norm, conditions for interaction, strategic cooperation, which all come to be constrained by social norms, determining a "limited rationality" of the actors. In the view of constructivist institutionalism, this constraint represents the point of differentiation from rational institutionalism, as they see the emergence and

² Ideas found in Payne, Rodger A. (2000) *Habermas, Discourse Norms, and the Prospects for Global Deliberation*, Annual Meeting, International Studies Association, Los Angeles, California; Finnemore, Martha and Kathryn Sikkink (1998) *International Norm Dynamics and Political Change*, International Organization, p. 891., , Checkel, Jeffrey T. (1999a) *Norms, Institutions, and National Identity in Contemporary Europe*, International Studies Quarterly 43: 83-144 .

³ Mary E. Pettenger, *The social construct of climate change. Power, Knowledge, Norms, Discourses* , Western Oregon University, (Routledge Taylor&Francis Group, London&Ney York, 2016), 10

⁴ Finnemore, Martha and Kathryn Sikkink (1998) *International Norm Dynamics and Political Change*, cited by Mary E. Pettenger, *The social construct of climate change*, 24-25

⁵ Checkel, Jeffrey T. (1999a) *Norms, Institutions, and National Identity in Contemporary Europe*, 83-144.

dissemination of the norm by "accepting it as it is" (and eventually changing or choosing in case of normative conflict) and creating it in a purpose-oriented process.⁶

STAGES OF INTEGRATION

For socio-constructivists, the theory of the process of emergence and dissemination of the norm proposes and presupposes the existence of the "life cycle of the norm", which is made up of three important and distinct phases: in the first phase, the emergence of the norm referring to the issues already discussed in the present research, and which have more to do with the way the norm is built, the component elements or the environment that determines its appearance and construction. The second phase I have proposed to call it the imposition of the norm or as considered in the doctrine as a "waterfall" through which the norm is promoted, acknowledged, or better said the lobbying process to the relevant actors in viewing their value and accepting them. Imposing seems to me a better concept precisely because it actually surpasses a process of persuading the recipients and whose purpose is to subsequently enforce their norm. The third stage is the internalization of the norm, a process through which internal norms are transposed by specific mechanisms. According to the constructivists, each of these stages captures "different social processes of logic and action". They are characterized by different actors, different motives⁷ and "dominant social processes".⁸

According to Finnemore and Sikkink, two fundamental elements are found when it comes to creating the norm: "normative entrepreneurs" and "organizational platforms."⁹ In the first phases, those of the emergence and the enforcement of the norm are considered suggestions on what could be normalized. Perhaps at first sight, the constructivists do not propose at the outset a clear strategy attributed to these phases, because they propose vague criteria about "human agencies, valences, chances, context, etc." exploited through the "genealogy filter".¹⁰ When the analysis becomes concrete and a case study is provided, the constructivists talk about what "normative entrepreneurs" means to those who aim to persuade those directly affected by the importance of adopting such norms. This is a process of "normative persuasion"¹¹ achieved by considering the cultural and moral criteria of the recipients. Behavior in such a process, as proposed by the constructivists, is specific to the politics, but given the multitude of actors involved in such a process, as argued by social-constructivism, determines the development of an ample and complex mechanism. Actors, from individuals, communities, organizations, entities,

⁶ Thomas Risse, *Let's Argue! Communicative action in world in Domestic Politics and Norm Diffusion in International Relations. Ideas do not float freely*, Thomas Risse (editor) (Routledge, New York & London, 2017), 254-255

⁷ Finnemore, Martha and Kathryn Sikkink (1998) *International Norm Dynamics and Political Change*

⁸ Lisbeth Segerlund, *Making Corporate Social Responsibility a Global Concern. Norm Construction in a Globalizing World, Non-State Actors in International Law, Politics and Governance Series*, Stockholm University, (Sweden, Ashgate Publishing, 2010), 26

⁹ Lisbeth Segerlund, *Making Corporate Social Responsibility a Global Concern.*, 895

¹⁰ Lisbeth Segerlund, *Making Corporate Social Responsibility a Global Concern*, 896

¹¹ Often, the key factors in this persuasion process are the status of agents who initiate such an approach, the network of contacts and lobbying resources. But this does not exclude elements of marketing and promotion, the platform used in Finnemore, Martha and Kathryn Sikkink (1998) *International Norm Dynamics and Political Change*. Norms are more easily adopted by local agents if they fit with the needs, traditions and values they have in Amitav Acharya, *How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism, International Organization*, Vol. 58, No. 2 (Spring, 2004), pp. 168-170 Published by: Cambridge University Press on behalf of the International Organization Foundation, Stable URL: <http://www.jstor.org/stable/3877858> cited by Muhammad Shoaib Pervez, *Security Community in South-Asia: India-Pakistan*, Routledge Studies in South Asian Politics, (London & New York, 2013), 29

forums to states and international organizations, can take part in such a process in order to adopt the most optimal solution, transposed into a set of norms.

In relation to the third phase, concerning the way of integrating the international norm, two constructive factors are taken into account by the constructivists: the coercion or the belief.¹² First of all, those who stand out as supporters of the norm can resort to coercive mechanisms in which to mobilize national and international resources, political or other, to force policy makers to accept such a norm. These steps can be carried out both by means of coercion, most often, material or political, and by launching campaigns designed to determine no contrary positions both in the political spectrum and across civil society.¹³ A second mechanism taken into account by constructivists is that of the "education process" brought to the national leaders, through which the political leaders within a state must be convinced that the adoption of such a norm is a benefit to them and to the state they represent, and the effects that this norm produces are in line with the state's vision, ideals and interests.¹⁴

On the other hand, according to Mary E. Pettenger, this process of determining and persuasion of political factors can not exclude or disregard that the acceptance of the norm does not promptly imply a change in the behavior of that state. Policies for accepting the norm are important, but policymakers should not only be convinced of acceptance, but also of adopting and proposing mechanisms to enable it to be successfully implemented. Moreover, there are many situations where it is not only the politics who decides on the fate of the norm. There are some actors and stakeholders who can contribute to this process. Politicians are not the only category to address those interested in promoting and accepting the norm. There are many other representatives of all sort of entities that have to give their consent and support for such processes.¹⁵

For constructivists, it is important that these three phases are supported from the very beginning by enough parties, entities, individuals or political leaders, yet sufficiently determined

¹² Checkel, Jeffrey T. (1997) 'International Norms and Domestic Politics: Bridging the Rationalist-Constructivist Divide', *European Journal of International Relations* 3: 473-495; Checkel, Jeffrey T. (1999a) 'Norms, Institutions, and National Identity in Contemporary Europe', *International Studies Quarterly* 43: 83-144; Checkel, Jeffrey T. (1999b) 'Why Comply? Constructivism, Social Norms and the Study of International Institutions', Annual Meeting, American Political Science Association, Atlanta, Georgia cited by Mary E. Pettenger, *The social construct of climate change. Power, Knowledge, Norms, Discourses*, Western Oregon University, (Routledge Taylor&Francis Group, London&Ney York, 2016), 9-10

¹³ Risse, Thomas (2000) ' "Let's Argue!" op. cit, 1-39, cited in Mary E. Pettenger, *The social construct of climate change*, 9-10

¹⁴ Checkel, Jeffrey T. (1999a) *Norms, Institutions, and National Identity in Contemporary Europe*; Checkel, Jeffrey T. (1999b) 'Why Comply? Constructivism, Social Norms and the Study of International Institutions', Annual Meeting, American Political Science Association, Atlanta, Georgia citat de Mary E. Pettenger, *The social construct of climate change*, 25-26

¹⁵ Mary E. Pettenger, *The social construct of climate change*, 25-26. In the analysis made by Cortell și Davis(Cortell, Andrew P. and James W. Davis Jr (1996) 'How Do International Institutions Matter? The Domestic Impact of International Rules and Norms', *International Studies Quarterly* 40: 451-478) which proposes eight options for the acceptance of the international norm by national political leaders: irrelevancy (non-recognition of the norm and non-justification of choice) rejection (I know but rejects the international debate) domestic relevance (rejecting the norm but continuing the national debate) rhetorical assertions (the norm is accepted conditionally, but with coercion accusations) the external impact (the norm is adjusted at international level to be transposed) the national impact (the international norm is found in the national dialogue, the changes are justified) the prominence of the norm transformation into national policies) taken as such (the international norm is part of national law and its observance is automatic) in Loren R. Cass, *The Failures of American and European Climate Policy: International Standards, Domestic Politics, and Unquiable Commitments in Global Environmental Policy* , 2006 quoted by Mary E. Pettenger, *The social construct of climate change*, 25-26

and convinced of their cause, so that they can gather supporters and later clarify the recipients of the opportunity of these adoptions.¹⁶ Depending on persuasion capacity, even a small number of individuals can attract "a waterfall of statements"¹⁷ by adopting means and instruments specific to civilized state discourse by which constraining mechanisms are proposed.¹⁸ Once this clarification process has been completed and those who have been pressured or educated about effects of adopting the norm and have embraced the need to adopt that norm, the norm is considered to be "consolidated and internalized". It should be noted that this consolidation and internationalization is fulfilled when all the actors involved have accepted this norm. It becomes "a part of the actors' consciousness" is treated as such because its acceptance is, as we have seen, a reflection of their conscience. Their consciousness is in fact the culture and identity they are found in, so the position of the norm becomes a fixed one. Once this process has been completed, social-constructivists believe that even those who have been reluctant at first can accept and assimilate the norm, becoming perceptible with those who have supported it from the beginning.¹⁹

However, the modalities of distribution and dissemination of norms, their alternation and the changes that take place, but also the "intersubjective character" are situations that cause the analysis, study and evaluation of international norms to be challenging. As we have seen, one of the important features of international norms is that they are subject to a continuous process of adaptation, transformation and flexibility depending on the context in which they are located, doubled by the level of ongoing interaction. Despite some limitations, international norms remain "taken for granted". Adopting and integrating international norms most often involves debates about instruments used or instrumental rationality (which suggests analysis of the considerations that need to be made with regard to that norm, but especially the consequences that may arise). Functionality should also be considered in relation to the social or cultural environment, including with regard to impact opportunities. That is why the adoption and emergence of international norms is obligatory to consider a broad approach to culture, the definition of principles, characteristics and specificities.²⁰

Interaction promoted by social-constructivists is able to elucidate those aspects of legal positivism that can not explain the aspects of clarifying the validity hierarchy. Custom is much better explained and clarified by the constructivists, especially with regard to aspects of the concepts of *opinio juris* and *jus cogens*. " Explanations of constructivists can give a new interpretation of the differences between norms, both in terms of contextual applicability and space-time details. These perspectives of constructivism, but also the broad approach of the functionality of the norm integration process, determine the better applicability of these mechanisms and a better inclusion of the international norm. The social constructivists manage to explain and establish the best connection between what rationalists claim to be important, as in power and interest, "with what they disregard, that is, identity, culture and norms." Interactive

¹⁶ Finnemore, Martha and Kathryn Sikkink (1998), *International Norm Dynamics and Political Change*, 902-904

¹⁷ Timur Kuran, Cass R Sunstein, *Availability cascades and risk regulation*, Stanford University School of Law Stanford, Law Review, 1999, 683-768 cited by Geoffrey Brenan, Lina Eriksson, Robert E. Goodin, Nicholas Southwood(editors), *Explaining Norms*, (Oxford University Press, Oxford, 2013), 168-170

¹⁸ Geoffrey Brenan, Lina Eriksson, Robert E. Goodin, Nicholas Southwood(editors), *Explaining Norms*, (Oxford University Press, Oxford, 2013),168-170

¹⁹ Geoffrey Brenan, Lina Eriksson, Robert E. Goodin, Nicholas Southwood(editors), *Explaining Norms*, 170-171

²⁰ Yosef Lapid, Friedrich V. Kratochwil, *The Return of Culture and Identity in IR Theory*, *Critical perspectives on world politics International Peace Academy Occasional Paper Series*, Lynne Rienner Publishers, 1996 quoted in Lisbeth Segerlund, *Making Corporate Social Responsibility a Global Concern*, 13-14

constructivism proposes and offers ample perspectives not only on how the norm has been built and related, but also about the dynamics and the future of some approaches or changes to the international norm.²¹

Some constructivists talk about the possibility of norms being violated, and how these violations can be made and later sanctioned. Any violation of the international norms assumed may be subject to the sanction of the other actors. It should be noted that these sanctions are enforced by the state's partners when these violations of the international norm are done to their detriment, or they affect them in any way. But in order not to revert to the rationalist dialogue, it must be noted that these sanctions brought by the other actors do not mean that the norms are of no importance.²² Thus, we would break down any social-constructivist architecture. The process must be seen in its entirety, so for the beginning we have established that norms based on culture and identity become normative beliefs. They are not a strategy, and the persuasion process involving the three phases (the emergence, the imposition and the integration of the norm) should not be seen as phases of interest, but they are beliefs in which the supporters believe.

It should be noted that the norms are and must be "disseminated through normative persuasion and not by strategic considerations, imitation or copying." They are the design of cultural beliefs and identities, so these features are the basis for them to be accepted by everyone.²³ If they do not appear as a strategy, it would be thought that their emergence is spontaneous, or appear through the use of "positive (incentive) or negative (sanctions)" forms of coercion. However, in practice, Lisbeth Segerlund proposes two types of sanctions: those made by internal mechanisms and instruments, and those with external dimensions.²⁴ Internal imply rejection, while external sanctions made by policies of international entities (organizations, agencies, etc.) take into account legal pluralism as an institutionalized policy (as well as rhetoric in most cases), due to the fact that many of the sanctioning activities are granted in relation to the activity of non-state actors and informal systems. For sanction, both state and non-state actors, it is intended to use the rule of law to formalize the relationship with these actors.²⁵

The integrating of international norm nationally has seen that it involves some mechanisms aimed at ensuring integration based on the conviction of the main actors and agents that the state-level effects of that norm will be beneficial.²⁶ By means of persuasion, the norm can

²¹ Jutta Brunnee și Stephen J. Toope, Jutta Brunnee și Stephen J. Toope, *History, Mystery and Mastery, International Theory* 2013, p. 3, Edited by Jeffrey L. Dunoff și Mark A. Pollack(Temple University), (Cambridge University Press, Cambridge, 2013), 138-140

²² Geoffrey Brenan, *Explaining Norms*,168-170

²³ Geoffrey Brenan, *Explaining Norms*,168-170

²⁴ Lisbeth Segerlund, *Making Corporate Social Responsibility a Global Concern*, 13-14. When the rule under the norm relates to behavior and behavior, external sanctions are those applicable; when regulation addresses standards and patterns, internal "sanctions". These two perspectives on the norm (as guidance or as standards) are contrary to the rationalist vision. The issue of sanction in international relations is a challenge for international organizations in the absence of centralized authority. See also Vincent-Joel Proulx, *Institutionalizing State Responsibility. Global Security and UN Organs*, (Oxford University Press, Oxford, 2016).

²⁵ Helene Maria Kyed, *Introduction: International Development Interventions, Journal of legal pluralism and unofficial law*, 2011-nr. 63, edited by Melania G. Wiber, Helene Maria Kyed, pp. 3-6. In analyzing a map of legal systems, it can be seen that there are two systems of domination: the common law system and the civil law system (or, more precisely, the romanian legal system), both from the European level to the former colonies in William Twining, *Diffusion of Law: A Global Perspective*, 1-6, in *The Journal of Legal Pluralism and Unofficial Law*, 49/2004, edited by Gordon R. Goodman. This mechanism helps international entities to formulate the necessary policies to implement the rules. That is why legal pluralism is used for this purpose to foster this process.

²⁶ Benedeto Conforti, *International Law and the role of domestic Legal System*(tradusă de Rene Provost), (Martinus Nijhoff Publishers, Dordrecht/Boston/London, 1993), 10

be integrated in a state. Here, there are strictly technical procedures and instruments that effectively streamline domestic law. States have jurisdictions within them, where the specificity of procedures for the application and interpretation of norms made through public institutions may differ from one system to another. Thus, once the international norm has been integrated, its manifestation must be observed, for example, before the courts, when they are informed of its legality, interpretation and application. In order to truly discover the legal nature of an international norm, account should also be taken of the legal systems to which they apply. Given the different legal systems, such as common law, the civil system, etc., the functionality of the interactive norm is also found when they have to integrate into these types of systems through the courts. I do not want to go into the details of the features of these systems, often technical, because it is not the subject of this theme, or maybe it would be a continuation of the research. That is why I mention that, each system has about the same mechanisms of technical integration of the norm, which are mostly linked and applied to each system.

Benedetto Conforti proposes that we should consider the integration of the international norm and those "national operators" that establish the binding force of the international norm. Through operators we understand all those public institutions, political entities, courts that transpose the compliance of international norms with domestic law. Hence, the compliance of the domestic law with the international norm is not based solely on its binding force, but also on the national instruments, on their capacity and willingness to integrate the norm. The international norm, seen as a result of the "socio-economic²⁷-political dialogue", can be implemented as a "common ground shared by all individuals" irrespective of culture, nationality, citizenship and whose identity is reflected by "national operators".²⁸

CONCLUSIONS

It might be said that an international ethical norm, taking into account the characteristics presented in the preceding sections, but especially on account of the *equation* whereby a *necessity* if supported by a *possibility* then becomes *mandatory*, should at first sight not require hard integration mechanisms in a state. Ethical norms, as I have said, such as *jus cogens*, do not have limitations of applicability, but on the contrary they themselves are setting and imposing limits. Then why is there a need for persuasion mechanisms that can be adopted and integrated domestically? In this sense, I said that social-constructivism ignores some aspects of the relationship of norms with interest and power, the latter two can not be excluded in the analysis of the construction and manifestation of the norm. But in order to be resonant with the norm, it must be realized that power serves interest, as long as interest expresses ethical principles through norms. Power must become a means of the ethical norm to manifest itself, until the ethical norm is identified in the social consciousness with the power. It can be noticed that in ethical issues such as pollution, some norms can be perceived as economically challenging for internal policy but may be appropriate in terms of long-term image. In fact, I was saying that states should not be limited to short-term strategies, but must take into account long-term gains and the adoption of norms, such as environmental protection, may be a gain in image and then economically in the long run, compared to short and medium term strategic measures.

²⁷ For more details on the economic dimension of the construction of the international norm, or its economic nature, see Joel P. Trachtman, *The International Economic Law. Revolution and the Right to Regulate*, Cameron May, (International Law and Policy, Cambridge, 2006).

²⁸ Benedetto Conforti, *International Law and the role of domestic*, 10

Just as I said in the conclusion of a previous section, no doubt that most interpretations of international law have a Western perspective.²⁹ The impact of the international norm and the role of international law have a more Western-European or transatlantic valence. The international norm must have the same role and the same perspective in all legal systems or any state. Comparing this relationship between the international norm and the national or legal systems is best done through legal sources (legislation, instruments, cases) plus other sources of secondary character (such as doctrine). These sources help to implement international norms in different legal systems. Therefore, incorporation may vary according to the nature of the issue governed by the norm and the opening of the state to international policies. Any kind of position on an international norm can at some point be reduced or embraced by constraint or belief.

The international norm has this role to help establish links between different systems. David Haljan proposes some issues that need to be discussed in terms of the norm and for ongoing analysis and research. First of all, it should be seen how national courts in different systems come to apply the international norm. Here I believe that the principles of legality of different legal systems or states should be discussed and debated. This analysis must consider that the international norm is constantly changing and the challenges it raises are permanent and continuous towards the national public authorities and institutions. Moreover, as David Haljan mentions, the more the international norm is seen as a solution and as a response to all international issues, the more it is considered to be entitled to take the place of national norms³⁰ that prove unable to resolve the dynamics of globalization. International norm often replaces national norm, and this is an increasing phenomenon, found in all legal systems or states, which affects all the actors.

It also causes a change of perception on internal norms, constitutional rights, which are often strongly supported, complemented or even added to the national system. Thus the international norm, once internalized, forces us to invoke it more often than the internal norm, which over time acquires less tasks. The role of the international norm is growing because it is inclusive and universal, therefore it has a cause for the detriment of the national norm. The interaction between external and internal is always won by the outside, as it abolishes internal boundaries. National constitutionalism becomes a filter and not a source of rights, as it can invoke a new international constitutionalism that is captivating precisely because it offers more freedom and less limits.

²⁹ David Haljan, *Separating powers: International Law before National Courts*, TMC Asser Press, Springer, (Institute for Constitutional Law, University of Leuven, Leuven Belgium, 2013), 4-6

³⁰ David Haljan, *Separating powers: International Law before National Courts*, 4-6

REFERENCES

1. **AMITAV Acharya**, *How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism*, *International Organization*, Vol. 58, No. 2 (Spring, 2004), pp. 239-275, Published by: Cambridge University Press on behalf of the International Organization Foundation, Stable URL: <http://www.jstor.org/stable/3877858> citat de
2. **BRENAN, Geoffrey, ERIKSSON, GOODIN, Lina, SOUTHWOOD Robert E. Nicholas** (editors), *Explaining Norms*, Oxford University Press, Oxford, 2013, pp. 168-170
3. **BRUNNEE Jutta și TOOPE, Stephen J.**, *History, Mystery and Mastery*, *International Theory* 2013, p. 3, Edited by Jeffrey L. Dunoff și Mark A. Pollack (Temple University), Cambridge University Press, Cambridge, 2013, pp. 138-140
4. **CASS, Loren R.** *The Failures of American and European Climate Policy: International Standards, Domestic Politics, and Unachievable Commitments in Global Environmental Policy*, 2006
5. **CHECKEL, Jeffrey T.** (1997) 'International Norms and Domestic Politics: Bridging the Rationalist-Constructivist Divide', *European Journal of International Relations* 3: 473-495;
6. **CHECKEL, Jeffrey T.** (1999a) *Norms, Institutions, and National Identity in Contemporary Europe*', *International Studies Quarterly* 43: 83-144 .
7. **CHECKEL, Jeffrey T.** (1999b) 'Why Comply? Constructivism, Social Norms and the Study of International Institutions', Annual Meeting, American Political Science Association, Atlanta, Georgia
8. **CONFORTI, Benedeto** *International Law and the role of domestic Legal System* (tradusă de Rene Provost), Martinus Nijhoff Publishers, Dordrecht/Boston/London, 1993, p. 10
9. **CORTELL, Andrew P. and DAVIS JR James W.** (1996) 'How Do International Institutions Matter? The Domestic Impact of International Rules and Norms', *International Studies Quarterly* 40: 451-478)
10. **FINNEMORE, Martha and SIKKINK (Kathryn)** (1998) *International Norm Dynamics and Political Change*', *International Organization*, p. 891
11. **HALJAN, David** *Separating powers: International Law before National Courts*, TMC Asser Press, Springer, Institute for Constitutional Law, University of Leuven, Leuven Belgia, 2013, pp. 4-6
12. **KURAN, Timur & SUNSTEIN**, *Cass R Availability cascades and risk regulation*, Stanford University School of Law Stanford, *Law Review*, 1999, 683-768
13. **KYED, Helene Maria** *Introduction: International Development Interventions*, *Journal of legal pluralism and unofficial law*, 2011-nr. 63, edited by Melania G. Wiber, Helene Maria Kyed, pp. 3-6.
14. **LAPID, Yosef, KRATOCHWIL, Friedrich V.** *The Return of Culture and Identity in IR Theory*, *Critical perspectives on world politics International Peace Academy Occasional Paper Series*, Lynne Rienner Publishers, 1996
15. **PERVEZ, Muhammad Shoaib** *Security Community in South-Asia: India-Pakistan*, Routledge Studies in South Asian Politics, London&New York, 2013, p. 29
16. **PETTENGER, Mary E.** *The social construct of climate change. Power, Knowledge, Norms, Discourses*, Western Oregon University, Routledge Taylor&Francis Group, London&Ney York, 2016, pp. 9-10
17. **PROULX, Vincent-Joel** *Institutionalizing State Responsibility. Global Security and UN Organs*, Oxford University Press, Oxford, 2016.
18. **RISSE, Thomas** *Let's Argue! Communicative action in world în Domestic Politics and Norm Diffusion in International Relations. Ideas do not float freely*, Thomas Risse (editor) Routledge, New York&London, 2017, pp.254-255
19. **RODGER, Payne, A.** (2000) 'Habermas, Discourse Norms, and the Prospects for Global Deliberation', Annual Meeting, International Studies Association, Los Angeles, California;

20. **SEGERLUND, Lisbeth** *Making Corporate Social Responsibility a Global Concern. Norm Construction in a Globalizing World, Non-State Actors in International Law*, Politics and Governance Series, Stockholm University, Sweden, Ashgate Publishing, 2010, p. 26
21. **TRACHTMAN, Joel P.** *The International Economic Law. Revolution and the Right to Regulate*, Cameron May, International Law and Policy, Cambridge, 2006
22. **TWINING, William** *Diffusion of Law: A Global Perspective*, pp. 1-6, in *The Journal of Legal Pluralism and Unofficial Law*, 49/2004, edited by Gordon R. Goodman.

THE EVOLUTION OF THE INTERNATIONAL MIGRATION SYSTEM

Iulia COMAN-CRISTEA¹

ABSTRACT:

THIS PAPER INVESTIGATES THE IMPACT OF THE INTERNATIONAL MIGRATION SYSTEM AND HOW IT CHANGED IN THE LAST YEARS. THE CONCEPT OF THE MIGRATION SYSTEM, FIRST POPULARIZED IN THE 1970S, HAS REMAINED A STAPLE COMPONENT OF ANY REVIEW OF MIGRATION THEORY. AFTER A THEORETICAL BASE, THE PAPER ANALYZES ILLEGAL IMMIGRATION FIRST IN EUROPE IN GENERAL, THEN AS A SPECIFIC CASE STUDY, IN ITALY AFTER THE LAW "BOSSI-FINI" OF 2002. THE DEBATE ON ILLEGAL IMMIGRATION IN ITALY, CHARACTERIZED BY STRONG POSITIONS, BASED MORE ON EMOTIONALITY AND IDEOLOGICAL POSITIONS THAN ON STATISTICAL DATA, WAS ALSO AMPLIFIED BY THE "SPECTACULARIZATION" OF THE LANDINGS, ALTHOUGH A CAREFUL EXAMINATION OF THE DATA LEADS TO HIGHLIGHTING WHEREAS ILLEGAL SMUGGLING BY SEA ACCOUNTS FOR AROUND 10% OF THE PHENOMENON OF ILLEGAL IMMIGRATION. THE RESEARCH AIMS TO RETRACE THE HISTORICAL EVOLUTION OF EUROPEAN COMMUNITY AND OF NATIONAL LAWS COMPETENCES IN THE FIELD OF ILLEGAL IMMIGRATION IN GENERAL, BY LOOKING CLOSER AT THE ITALIAN CASE.

KEY WORDS: MIGRATION SYSTEM, ILLEGAL, EVOLUTION

INTRODUCTION

Migration, which can be defined as those human movements from one territory to another for subsistence or survival, is an ancient problem in human history, of which echo can be traced back to the Old Testament. Migrations have been from time to time, temporary (if not seasonal) or permanent, regular or irregular, international or within national borders, proletarian or colonial limited or in mass. From the time of Christ depended on persecutions or wars. In the more recent period they have developed a predominantly economic character, given the desire to find better living and working conditions, increasingly felt by a large part of the world's population.

Those in recent years, on the other hand, represent a real extension in a new scenario of the migrations of the origins, characterized by slow dynamics, which are now no longer connected with individual movements or groups, manifesting themselves more and more a form of sudden

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and mass exodus towards welfare regions such as Europe, now considered "Promised Land" and a favorite destination for most migrants in our time.

Indeed, it seems to be ongoing, a continuous reorganization of the population of the world driven by demographic, economic and political factors. The uneven international economic development, the growing gap between welfare areas and poverty, population boom in poor countries and declining birth rates in the most industrialized ones, wars and ethnic and religious conflicts are the engine of these new waves of international migration.

Over the last fifteen years, in the European and Italian political debate, immigration has become one of the most discussed arguments and a priority urgency. Although it is well established that immigration "is a necessity, a fact and, as such, is not negotiable", the EU and national institutions have considerable difficulties in formulating and implementing policies to stabilize the permanence of migrants in their own countries.

The real problem, in fact, is not to identify the most appropriate means to limit the growing number of "mass arrivals", which are one of the modern ways of illegal immigration; it would be important, instead, to learn to live with the phenomenon, to deepen all its aspects and to understand it.

It is necessary that the difficult problems related to the phenomenon of human migration - which have always existed in human history and are intended to increase in the future, though not necessarily in Europe - should not be examined only by researchers and approached by technicians with a wide and interdisciplinary vision, but at the same time they must be proposed to European citizens so as to lead to the involvement of their minds, not just their feelings. There is a need - above all else - for a better understanding of the sector in order to gain awareness that this sector raises questions not only of humanitarian but also technical-judicial and socio-economic issues, and that all should be treated together.

I do not think that so far has happened. In fact, in recent years - especially since the ongoing economic and financial crisis - the elections of European governments in this area have been characterized by the assumption of populist positions over a "short period". But no one explained that such choices could be a boomerang and, over time, show an increasingly evident fragility on their own - in financial terms - in a continent where the birth rate is on average less than the birth rate found in the other continents, and the total output is lower than that of the others.

In his Berlin speech in December 2011, Helmut Schmidt (German political scientist, former Federal Chancellor of Germany) - speaking of the role of the EU - while confirming that he is conscious and proud of Europe's historical role, nevertheless called "our little continent," reminding everyone of the harsh reality of a continent that begins to count: a) just for 7 percent of the world's population, compared to over 20 percent in 1950; b) just about 10 percent of world production, compared to 30 percent in 1950. Consequently, Schmidt's conclusion can be summarized as follows: if we want to prove that "Europeans are important to the world," we must work in close union, and it may be added that we need to be able to manage immigration in a different way because, in addition to being in line with the founding values of the European Union, it can have beneficial repercussions for the economy and can reverse the trend towards the sense of indignation, resignation and, essentially, a decline that for some time dominates the continent.

In other words, if the extent of the migration phenomenon is not understood and it is not understood why immigration has been and is needed in Europe, it simply means that it is not known how to look at the reality and at the future and that, for example, we ignore the cultural and economic contribution of immigrants living permanently in the European Union. Of course,

especially at this time when the Union is in crisis, the the road ahead is not easy or secure, but it must be found or rediscovered.

MAIN TEXT

Just as at the beginning of the European project - and, of course, with all the diversity of the case - we need to respond to the need to go back on track, to reject this Europe for "another and for better European unity" as it is written in the Ventotene Manifesto by Altiero Spinelli and Ernesto Rossi².

Since so far the EU's immigration policy - introduced into the Common European Asylum System (CEAS) - beyond the declarations of principle, is highly unbalanced in terms of law enforcement and border control, with the result that for all immigrants , policies and practices are dominated by what was actually defined as hostile "detention-expulsion" in the reception centers³.

Expulsion is more related to border control, which is the key element of the system. The route leading to increasing EU external borders control began in 1999 when the Schengen acquis was integrated into the legal and institutional framework of the European Union under a Protocol annexed to the Treaty of Amsterdam . Over time, with the gradual expansion of the Schengen area, the need to strengthen border controls has been increasingly felt by EU countries. Over the years, individual states - by sacrificing part of national sovereignty - have made their demands for compliance with EU rules, more and more demanding. So, with the Treaty of Lisbon, it has been established that the balance between the interests of public order and humanitarian operations that has previously been carried out as a priority by national legislators is made within the EU. This is due to the fact that, as a result of the Treaty and the Stockholm Program, policies on border protection, migration (legal and illegal) and asylum migration have been devised as "common policies" of the EU. So most governments have focused on implementing "administrative-police" cooperation that has led to the adoption or expansion of operational tools to support these laws, where they have invested considerable resources.

These common policies have managed over time the migration phenomenon since the establishment of: 1) EURODAC (for comparing fingerprints); 2) FRONTEX (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union), gradually improved; 3) C.D. Schengen Borders Code; 4) IT (Information Technology) systems, the area of freedom, security and justice, as well as support in addition to EURODAC, with the European Agency for Operational Management of IT.

This institutional device, certainly more advanced than the one previously existed, has implied a similar evolution in the regulations and practices of the individual EU states.

The tough nature of EU immigration policy has been further aggravated by the outbreak of the ongoing financial and economic crisis and the EU's "common asylum policy" is still "blocked" in two ways - ie between states and migrants - that the fact that most governments do not actually want to change the current situation and, on the other hand, the governments of states such as Italy or France do not strive to persuade other states to approve a substantial change in the law in this respect, - art. 80 TFEU (Article on the principle of solidarity and fair sharing of responsibility, including financially, between Member States in the field of border controls, asylum and immigration).

² Available at the address: www.altierospinelli.org/manifesto/it/manifesto_it.html.

³ G. Bascherini, „A proposito delle piu recenti riforme in materia di trattenimento dello straniero nei centri di indetificazione ed espulsione” in *Associazione italiana dei costituzionalisti, Rivista nr. 1 din 2012*, available also at the address: www.costituzionalistitaliani.it.

Despite the difficulties, managing migration policy and revising or adding to current European legislation are among the priorities of the European Commission, as outlined in President Jean Claude Juncker's political guidelines "A New Beginning for Europe"⁴.

Objectives identified as priorities are:

- the development of the common asylum policy
- promoting a new European legal migration policy aimed at attracting qualified migrants;
- combating illegal migration;
- ensuring border security and combating trafficking of human beings.

The continued increase in migratory flows linked to instability in the southern Mediterranean countries and the worsening humanitarian situation linked to this increase accelerated the process already launched by the EU institutions, bringing to light the need for effective intervention measures to provide help and support for the countries hardest hit by the impact of the crisis.

And linked to this trend change, it can be said that Italy, unlike other European countries, has only recently undertaken to develop immigration policies; in the 1970s and in the first half of the 1980s, the state preferred "not to decide" on immigration, leaving the free market forces to play, the task of regulating migratory flows and local authorities and social assistance organizations how to approach emergency rooms with reception centers, canteens, bedrooms.

These are policies that did not take into account the needs, and in particular the rights of those who came from another country and in the absence of a specific law, the only solution was found in expulsion with immediate return to the country of origin .

Only at the end of 1986, in states like Italy, we have the first immigration law, a period in which there is a need for state intervention to express the will to regulate migration flows, taking into account the rights of foreigners. This law (number 943) sets out some important news: recognizes the fundamental right of family reunification for workers living in Italy on a regular basis, and at least, in principle, declares equality of rights between Italian workers and foreign workers. Law 943 implements the first form of regulation of foreign workers' amnesty: in the face of a migratory flow, which in those years still has modest proportions, still does not think about how to act later on a schedule of flows with the labor market, nor does the expulsion, which is generically left to the "public security principles", is adjusted⁵.

In 1990, the Martelli Law (Law 39/90) was approved, resulting from a legislative cycle triggered mainly by the domestic political system. This law, acknowledged by the amnesty that accompanied it, was characterized by the establishment of major restrictive conditions for entry into the country and in order to meet the demands of other European countries, worried that foreigners in Italy , have reached their territory illegally. The Martelli Act, in addition to regulating a large mass of autonomous and dependent workers, abolishes the "geographical limitation" for asylum seekers (Italy has until now reserved its right to recognize political asylum only to citizens mainly from the Soviet bloc) . Since the beginning of the 1990s, Italy has begun the great streams of foreigners fleeing the political turmoil that is happening in their countries.

The Martelli Law introduces the visa requirement for almost all the countries from which migratory flows originate, reforming border controls and attaching great importance to expulsions, seen as not only a tool for containing foreigners behaviors as individuals, but also as a tool to combat illegal immigration as such. One year after the adoption of the law, the rules

⁴Cit. „Un nou început pentru Europa – Programul pentru ocuparea forței de muncă, creștere economică, echitate și schimbare democratică”, Strasbourg, 15 iulie 2014.

⁵M. Rovelli. *Lager italiani*, (Bur Biblioteca Universita Rizzoli, 2006), 111.

contained in it allow to send back within hours, thousands of Albanian refugees, a repressive operation that is unparalleled throughout the post-belligerent history of European migration policies⁶. The expulsion procedure for foreigners, both for the illegal ones and those who have criminal convictions for a number of specific offenses, has become a widespread practice.

It is the collapse of the regimes in Eastern Europe (symbolized by the arrival of ships from Albania, in the Italian case), when there is a significant change in the perception of migration processes. The mass of immigrants arriving on Italian shores is increasingly seen as a "fleeing from their country" rather than as an expression of demand for unskilled labor in the Italian economy. During the nineties, the following changes to the decrees (Dini Decree, 1995) altered the general line of Italian immigration policy, increasingly seen as a matter of public order and border defense. Then, at a few years away, a new law on migration, the Turco-Napolitano Law, emerges. In 1998, the first center government approved the first organic law on immigration, the so-called Turco-Napolitano (40/98), which decides to make a comprehensive reform of Italian immigration law.

Law 40/98, as far as monitoring tools are concerned, reformulates in depth the rules for border control and the expulsion of foreigners staying illegally, making possible both the immediate removal of intercepted foreigners during an illegal entry and the detention in special centers for foreigners that will be expelled. Detention in Permanent and Temporary Assistance Centers (CPT) is one of the news included in this law and will be maintained by subsequent laws. The CPT is not only an Italian phenomenon, it is a widespread tool across Europe after the adoption of a common migration policy with the Schengen agreements in 1995. These agreements have built a stable way for Europe's walls: on the one hand, blocking against migratory flows on the other hand, zero tolerance for illegal migrants, which means de facto exclusion of such persons from universally recognized rights and a growing discretion by the police for what is primarily considered a matter of public policy (stronger restrictions on asylum law, traditionally recognized by any constitution)⁷.

The next important law in the Italian case is the Bossi-Fini Law. In 2002, the center-right government adopted an Immigration Law, 189/2002, which implements a substantial change to the crucial components of the previous law, completely removing certain parts. A large amnesty also accompanies this law, where employers are directly involved for the first time. By paying a standard fee and a fair value for the transcript of documents, registered employers are forced to take action to declare the ongoing work relationship by concluding a pre-occupancy agreement, thereby regulating workers from the point of view of their legal residence on the territory⁸.

Law 198/2002 is a law that is fundamentally based on the fight against illegal immigration (which is closely associated with crime), where it replaces the importance of integration policies under the previous Turco-Napolitano law. The new law drastically reduces the possibility of legal entry (in the case of granting entry visas and family reunification); It also further emphasizes the precarious state of the migrant by reducing the length of residence permits, and in particular the rigid linking of the work permit⁹. Only a foreigner who already has a work contract in his pocket enters into Italy, according to an older requirement that has not changed over time, for which an explicit call is made to the foreign worker for employment (it is clear here the

⁶A. Colombo, G. Sciortino. *Gli immigrati in Italia*, (Bologna, il Mulino, 2004), 28-35.

⁷M. Rovelli. *Lager italiani*

⁸C. Artoni, P. Baiocchi. „L'Affare CPT sulla pelle dei migranti: dossier” in *Associazione ESSPER periodici italiani di economia, scienze sociali e storia*, (Vol. 6, Fascicol 36, 2006), 16-25.

⁹M. Rovelli. *Lager italiani*

problems resulting from taking over a worker who has never seen it, or several bureaucratic complications that stem from this process).

In order to give an idea of how this law was practically designed to provide a strong signal of rejection of migrants as such, mandatory border affiliation under Law 40/98 becomes a common form of execution of administrative expulsion, then introduced in a particular process of ordinary legal and methodological procedures¹⁰.

In order to close the descriptive framework of the law, I can only emphasize the lack of a real organic law on asylum: while international standards of refugee law provide for the detention of an asylum seeker as an exceptional measure, Law 198/2002 makes detention a rule ; in this way, people fleeing conflicts, political persecution, or societies in which rights are ignored or trampled are bound to prolonged detention when they land in the "land of liberty."

Following the presentation of the legislative framework and its evolution over the years, the description of the illegal or clandestine migration phenomenon and the difficulty of European countries such as Italy in the present case, will be much clearer.

ILLEGAL IMMIGRATION: A DIFFICULT PHENOMENON TO RECOGNIZE

Illegal immigration is a difficult phenomenon to quantify because of the many variables that come into play and because of the different conditions of those who feed this category of foreigners:

- persons who have escaped border controls;
- persons staying in the territory without the necessary documents for entry;
- persons affected by expulsion;
- persons staying over eight days of legal entry without requesting the issue of residence permits;
- those staying in the territory with a residence permit which expired after the deadline for the renewal application; undetectable persons, those who for various reasons can not be found and registered by the authorities.

In these situations, the status of "illegal immigration", as mentioned, refers only to foreigners who have entered Italy by escaping border controls or who remain in the territory without residence documents after entry. This particular part of illegal migration is not at all easy to quantify.

The problem of quantifying this component is the difficulty of knowing the true identity of the intercepted persons, difficulties that reverberate on the expulsion procedures: „È praticamente impossibile espellere i maghrebini...È impossibile espellerli perché non vogliono essere espulsi. La norma che prevede il possesso di un valido documento è una norma che noi non possiamo pensare di cancellare: nessun Paese si riprende un suo cittadino della cui identità non è certo...È rarissimo il caso in cui il detenuto abbia il passaporto o un qualunque visto consolare, un qualunque documento valido e, in special modo, voglia tornare nel suo Paese (It is virtually impossible to expel the Maghrebs ... It is impossible to expel them because they do not want to be expelled. The provision requiring possession of a valid identity document is a standard that we can not think of as an eliminable one: no country recovers a cognate whose identity is not certain ... It is rarely the case where the foreign prisoner has a passport or any other type of consular visa, any valid document and, in particular, wants to return to its country)”¹¹.

¹⁰IM. Rovelli. *Lageritaliani*

¹¹G. De Cataldo. *Gli stranieri in carcere*, (Editrice Sinnos, Roma, 1994), 71.

The reality is that no state is willing to allow a person to enter without the certainty that this is indeed one of its citizens. The result, in most cases, is that sometimes it pass several months before they can get, through the control procedures, the realities of the intercepted individuals. On the other hand, other factors outside the Italian system come into play. In fact, there may be countries where fingerprinting is a procedure only for those who have already had problems with the law, and others¹², where fingerprints are an action that concerns all citizens. However, in these cases, the problem may arise for children and for women, based on the age at which fingerprints were deemed necessary. In general, we can say that if fingerprints in migrants' home countries are likely to be available, hiding personal data or declaring a fake citizenship, determines in each case an objective difficulty that is difficult to overcome short term.

The main result is that most of the people who escape expulsion end up staying on Italian territory, in order to increase the illegal presence. The evaluations in this direction are based on the fact that the illegal presence is mainly fueled by all those foreigners who, from developing countries¹³, are bound to the compulsory visa system (for tourism) and remain in Italy after the expiry of the allowed time limit , without then regulating their situation. Indeed, it is reasonable to believe that these people coming from very low-income countries do not go to Italy exclusively for tourism, but to exploit such an opportunity to stay, who can then look for accommodation or remain in wait going to other countries.

Based on these indicators, the Permanent Crime Observatory attempted an approximate quantification of the illegal presence and evolution of immigrants' origins over the years. Based on this estimate, illegal presence on April 15, 1998 can be quantified in approximately 235,000 people. Its evolution is more specific in the following chart, which indicates in tens of thousands, people who have illegally arrived in Italy¹⁴.

Figura 1.0

¹²Precum Algeria, Maroc și Tunisia.

¹³There talks about developing countries, because irregularities mainly concern immigrants coming from geographical areas with strong economic and demographic imbalances. Irrelevant, however, is the incidence of illegal aliens from EU and highly developed countries.

¹⁴Source: *Estimările datelor Ministerului de interne.*



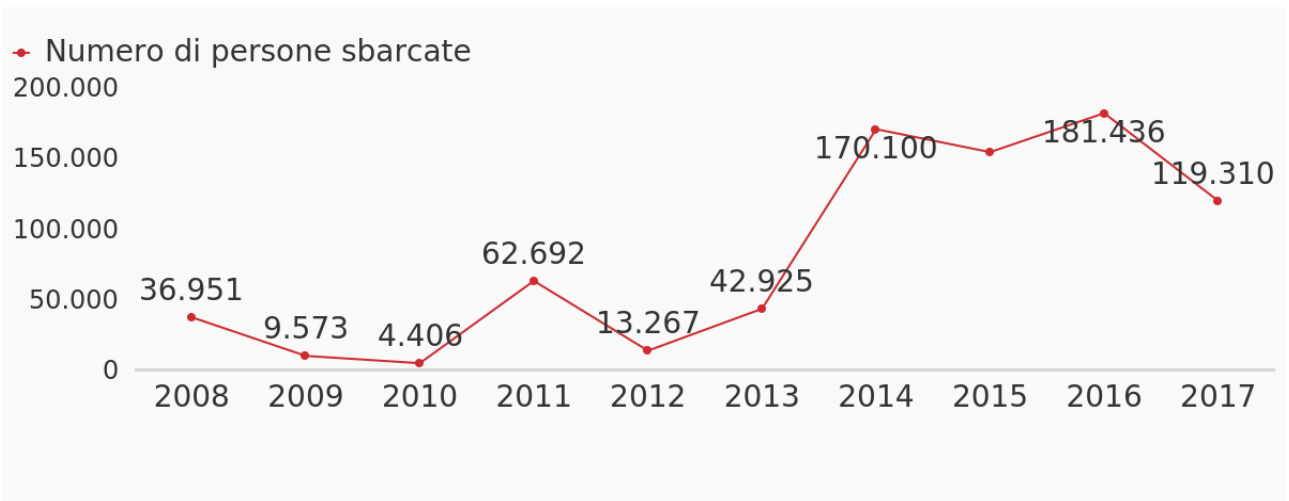
Finally, from a last point of view, ethnic groups, Albanians and Romanians are the ones who have the most calls for regularization. Eastern Europe is therefore the first area for a series of regularization applications. The countries of North Africa were fewer, although the portion related to Morocco remained significant, and Nigeria, Senegal, Ghana and the West African countries grew. Of the Asian countries, only Sri Lanka and the Philippines are in demand, even if the last country recorded in 1995, the highest share of demand among the countries in this area.

At the moment, however, the situation may seem a little changed as the number of clandestine immigrants arriving on Italian soil has grown enormously, most of them being native to the African continent.

The first peak of arrivals was in 2011, the year of the Arab springs and the military intervention in Libya. Then in 2014 the flow was at current levels. In 2017 there has been a noticeable reduction in arrivals but we will have to see this year if the trend is confirmed.

In the following graphic, the situation of landings on the Italian coasts, in recent years, is more explicit.

Figural.1



With regard to this international emergency related to the new migratory landings in southern Italy, all the views of the researchers and the views of the population gathered and analyzed can be summarized by the fact that, in order to stop the migration flows, tragedies at sea and smugglers' funding there is a solution that is effective because it directly affects the portfolio: assisted rejections. Not the naval blockade of the Lega Nord party, it should not interest Italy the fact that a commercial ship comes in or out of the port of Tripoli. They should only be interested in how to stop the boats of migrants. In this way, bringing them back to shore immediately with an army escort gives more good results: there is no risk of drowning in the sea, the smugglers in this trade are not enriched because the flow will cease. Who would pay thousands of euros to be brought back to Africa? If Italy continues to convey the message that nobody will be rejected, flows will continue indefinitely, because it lives much better in welfare in Europe than it can live in Africa. If Italy were to carry out assisted reject, it would have another advantage: it would ultimately force the United Nations into a humanitarian intervention to assist these refugees and repatriate them.

Based on these ideas and opinions on what should be done in relation to the current situation in Italy, many parties argue that Italy should not seek the help and consent of Europe. When Libya left groups of Quaid terrorists who had made incursions into Algeria, Algeria carried out military sieges against the foundations of these terrorists in the Libyan desert without requesting permission from anyone. In February 2015, when the Isis group killed twenty Egyptian children, Egypt rushed a week of air attacks and special forces raids in Derna, killing hundreds of terrorists, capturing 55 others that they took in Egypt¹⁵.

Stable countries protect and defend national interests against threats. For years, Italy has been threatened by illegal immigration led by criminal organizations linked to terrorist groups. The only thing Italy is capable of doing is operations that lead many people here without any necessary document for entry. And this is quite a desperate case of Europe in general. The presentation of the Italian situation as a case study describes to a fairly precise extent the migratory flows and their evolution in Europe.

CONCLUSION

Summarizing the arguments put forward, I might suggest the following:

¹⁵ http://tg24.sky.it/tg24/mondo/2015/02/16/egitto_raid_libia_isis_terrorismo.html

- Illegal immigration should be considered a global phenomenon rather than incidental and transitory;
- consequently, the management of clandestine migratory flows should be planned to be evaluated over a long period of time and should not be addressed through emergency and ex-post interventions which could contain the short-term phenomenon but do not solve the root causes, with the result paradoxically that the phenomenon could reappear in the longer term with a higher intensity (as we have seen between 2011 and 2016);
- The national and European immigration policy should be based on the right balance between integration and repression;
- Firstly, it is necessary to promote accurate information at national level, avoiding alarmism by focusing on the invasion of illegal immigrants that would affect the different countries;
- Secondly, the objective of combating illegal immigration at sea should be directed not just against migrants themselves, but against criminal organizations handling trafficking in human beings. It is positive to introduce rules to protect victims of trafficking;
- At European level, we must continue to involve the other EU countries, based on the principle that illegal immigration is a European phenomenon and not just Italian or Greek, as these two countries are not just the countries of destination of migration flows illegal, but also transit countries.

REFERENCES

1. **G. Bascherini.** „A proposito delle piu recenti riforme in materia di trattenimento dello straniero nei centri di indetificazione ed espulsione” in *Associazione italiana dei costituzionalisti*, Magazine nr. 1, 2012
2. **M. L. Bacci.** *La trasformazione demografica delle società europee*, Torino, Loescher, 1980
3. **Conf. Univ. Dr. Constantin Vert.** *Geografia populației și a așezărilor umane*, Timișoara, Universitatea de Vest din Timișoara, 2000
4. **Arrighetti, A. Lasagni.** *Rimesse e migrazione. Ipotesi interpretative e verifiche empiriche*, Milano, Franco Angeli Editore, 2011
5. The archives of the *Istituto Nazionale delle Statistiche* , del *Ministero degli Affari Esteri*, dell'*Istituto del Lavoro e della Banca d'Italia*
6. *Archivi di Stato online* - <http://www.archivionline.senato.it/>
7. *Fondazione ISMU* - www.ismu.org/

RECEPTION OF COUNTERCULTURE IN EASTERN EUROPE

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ABSTRACT

THE PAPER SUGGESTS THE ABSENCE OF COUNTERCULTURE POLAND AND CZECHOSLOVAKIA. COUNTERCULTURE IS A CONCEPT THAT DESIGNATES THE NEW AXIOLOGICAL ORIENTATIONS OF YOUNG PEOPLE DURING THE 1960S, INCLUDING THE PROTEST IN GENERAL, THE FIRST ROCK MANIFESTATIONS, THE WIDESPREAD USE OF HALLUCINOGENIC SUBSTANCES, TELEVISION VIEWING, INSTINCTUAL RELEASE AND THE SEXUAL REVOLUTION. COUNTERCULTURE AROSE AND WAS THEORIZED FOR THE FIRST TIME IN THE UNITED STATES OF AMERICA, AND THEN EXPANDED INTO THE WORLD. AT THE SAME TIME, THE DIFFERENT DEFINITIONS FOR AN UNDERSTANDING WILL BE REPORTED, WHICH ARE THE BOUNDARIES OF THE CONCEPT. DEFINED AS A CONCEPT IN PARTICULAR BY INTELLECTUALS IN THE WEST, IT HAS MANIFESTED ITSELF DIFFERENTLY EVERYWHERE. OUR ANALYSIS WILL STUDY THREE HISTORICAL SPACES - THE US, POLAND AND CZECHOSLOVAKIA IN COMPARATIVE APPROACH IN ORDER TO OBSERVE THE MANIFESTATION OF COUNTERCULTURE AND PROTESTS THAT HAVE TAKEN PLACE.

KEYWORDS: COUNTERCULTURE, PROTEST, GENERATION, LIFESTYLE

INTRODUCTION

The 60's of the last century offers a far-reaching historical and political perspective when it comes to mass-oriented mass movements. It is the decade in which the baby boom generation came to maturity, and with it came a new conception of the world. Being the result of accumulations over time, a change in collective mentality, or technical advances, it brings with it a new lifestyle reflected in the values of the time. The world is witnessing the formation of a new culture, one that prompted the show of sexuality and an extravagant style of clothing.

Some intellectuals assert that 1968 is similar to 1848, although unlike 1848 the year 1968 had a larger spread exceeding the borders of Europe. From Mexico to the US to Germany and Poland the students were protesting against the war and any model of authority.

Developing in the context of the Cold War, we can identify four major factors that contributed to the eruption of counterculture: 1) Civil Rights movement from the United States, 2) An alienated generation in relation to their societies, 3) The Vietnam War, and 4) the modern media means as the TV and the direct transmission. All in all, historiography pleads for an international counterculture.

The goal of this paper is to analyze in a comparative approach the counterculture in Czechoslovakia, Poland and the United States of America. Eventually it will argue for the lack of counterculture in the first two historical spaces.

APPROACHES AND HISTORIOGRAPHY

Mostly, the historiographical approach of the subject can be integrated in 2 major taxonomies: the historical approach and the socio-cultural approach

The research on the origins of social movements is of interest for many social sciences and the diversity of methodologies used had a significant impact on the development of this area of study. The interest for such subjects had a constant increase since the sixties. In 1960, most of

sociologists reached a point where they stated that the pluralism and pragmatism of the modern societies will eliminate the problem of mass protests. In the next years this claim was discredited because they observed the sixties as being full of mass movements, strikes, radicalism and activism. This fact favored an assiduous study of this period and by this reason, interdisciplinarity became a point of reference for its rich answers. In the next years the subject of mass movements became a major interest for historians, political scientists, sociologists and anthropologists alike and this strong collaboration strengthened the creation of international institutes having as a main goal the increase of paradigms and theoretical approaches concerning social mass movements. The new paradigms were historical, cultural and structural. In the last decade the structural and cultural approach became more and more different from each other. Among the remarkable intellectuals we find Jeff Goodwin and James Jaspers¹, Doug McAdam², Charles Tilly, Bert Klandermans³ and Arthur Marwick⁴. In the same time truly interdisciplinary approaches are limited due to ultraspecialization which makes it difficult the use of notions and concepts from other sciences⁵. While the structural approach focus on the distribution of material resources and political opportunities, the cultural one is oriented towards the interpretation of these factors, namely how social movements can comprehend their own context.⁶

In the structural approach, Jackie Smith and Tina Fetner assert that most of the structural analysis acknowledge the state as the main arena where the social movements take place. This engendered two important concepts- the political context and mobilization structured. This vision is however limited for two reasons; the global structures can switch and their influence upon various political context can fluctuate. Beside this, states are part of the global framework and they can change depending on the influence of the actors. Thus the true problem is how the global integration and social movements influence the nature of the state

The cultural approach developed as a reaction to the structural one. Jim Jaspers asserts that artifacts, words, rituals, individuals and art have carry symbolic burden and culture incorporates world visions, moral principles and institutions. Culture, according to Jaspers, contains cognitive processes and emotions on how the world should look like. Therefore, Jaspers argues for a reanalysis upon the structures, progress and causes of social movements.⁷

Although divided, there are some convergent positions inside both paradigms. For example, structuralists McAdam, Tarrow and Tilly stated: “ the necessity to take strategic interaction, consciousness and historically accumulated culture into account”⁸.

The three major paradigms are being sustained by the sciences which dispose of methodologies necessary for the research of social movements. Sociology is the major science which has a subject dedicated to this type of research. Sociological definitions are centering on collective behavior, institutionalism, communication networks, movements adherents and their

¹ Jeff Goodwin and James M. Jaspers, *Rethinking Social Movements : Structure, Meaning and Emotion*. (Rowman & Littlefield, 2003).

² Doug McAdam, John McCharty, *Comparative Opportunities, Mobilizing Structures and Cultural Framings*, (New York: Cambridge University Press).

³ Charles Tilly, *Contention and Democracy in Europe, 1650-2000*, (New York: Cambridge University Press)

⁴ Arthur Marwick, *The Sixties: Cultural Revolution in Britan, France and the Unites States, 1958-1974*, Bloomsbury Reader.

⁵ Bert Klandermans and Conny Roggeband, *Handbook of Social Movements Across Disciplines*, (Springers, 2007), 10

⁶ Bert Klandermans and Conny Roggeband, *Handbook of Social Movements Across Disciplines*, 11

⁷ Bert Klandermans and Conny Roggeband, *Handbook of Social Movements Across Disciplines*, 11

⁸ Bert Klandermans and Conny Roggeband, *Handbook of Social Movements Across Disciplines*, 22

capacity to create a macro-social impact. A greater emphasis was placed on how social institutions influence people's choices, thus trying to explain how collective movements become sources of change. The complexity of social movements represent a point of interest for Political Science which tries observe their impact in politics. David Meyer and Linda Lupo state that social movements never developed as part of political science, thereby its contributions are scarce, representing a few ties between the protests and the social capital.

The social-psychological perspective highlight the role of individuals in the social processes around him. Jacqueliën van Stekelenburg and Bert Klandermans outline four social-psychological characteristics of social movements- social identity, social cognition, emotions, and the link between collective identity and collective action. By the interaction of these factors a framework of possible motivations for collective action is formed. Similar to the cultural approach, anthropology has a tradition in researching the role of culture in social movements. According to Ton Salman and Willem Assies, anthropology has a considerable interest in studying the sole of culture in protests. The connection between culture and protests encompass the cultural factors of a society and the reproduction of culture by the movement⁹.

Finally, the historical approach is the most detailed and complex of all. Historians study the movements as a historical phenomenon and they evaluate their development on long term. According to Brian Dill and Ronald Aminzade, historians in comparison to sociologists do not seek to create theories or general answers for phenomena. The historians answers are detailed and rigorous, namely made for a single historical space. Historians contributions to the research of social movements consist in their detailed, and dynamic analysis¹⁰.

The causes of protests were highlighted since the beginning of sixties. Historiography pronounced itself upon a concept which define the mass movements- Counterculture. The term was first used by John Milton Yinger in an article (*Counterculture and Subculture*) published in *American Sociological Review* in 1960, he defined it as: "To sharpen our analysis, I suggest the use of the term contraculture wherever the normative system of a group contains, as a primary element, a theme of conflict with the values of the total society, where personality variables are directly involved in the development and maintenance of the group's values, and wherever its norms can be understood only by reference to the relationships of the group to a surrounding dominant culture."¹¹

A larger study regarding counterculture is made by Theodore Roszak in his book- *The Making of a Counter Culture* (1969). Roszak defines counterculture as: counterculture is primarily a rebellion against the application of the techniques of a fantastically productive industrial system to all areas of human life – to politics, education , leisure, the unconscious drives and even to the protest against technocracy itself."¹² Laurence Veysey and Kenneth Westhues are two other notorius specialists in the study of counterculture, although we have to take in consideration that the writings of those four intellectuals are mostly focalized on Western Europe and America¹³.

⁹ Bert Klandermans and Conny Roggeband, *Handbook of Social Movements Across Disciplines*, 22

¹⁰ Bert Klandermans and Conny Roggeband, *Handbook of Social Movements Across Disciplines*, 12

¹¹ J. Milton Yinger, *Contraculture and Subculture* in *American Sociological Review*, Vol. 25, No. 5 (Oct., 1960), 625-635, 6, disponibil pe www.jstor.org accesat in 23.03.2018.

¹² Richard Wasson, *The Making of a Counter Culture* by Theodore Roszak, Review, *College English*, Vol. 31, No. 6 (Mar., 1970), 624-628, disponibil pe www.jstor.org accesat in 26.03.2018

¹³ Keith A. Roberts, *Toward a Generic Concept of Counter-culture*, *Sociological Focus*, Vol.11, No.2 (April 1978), 111-126, 1, available on www.jstor.org

Counterculture is usually associated with the postwar generation. Their world was apperared as stultifying being marked by the overwhelmed rationalisation of the modern societies. In their attack against this, they used humanistic values as love, liberty, sprituality etc¹⁴. The Hippie Generation, the core of the counterculture was emotional, overly hedonist, infatuated rock and drug fans who preffered sexual freedom instead of sexual taboos. During the ascension of hippies, homosexuals found their opportunity to release their sexuality “If it feels good, do it !”¹⁵. Although counterculture was ubiquitous sustained by the most privileged members of the postwar consumerist societies, counterculture wasn’t about material things, but about spiritual values. The students of the Democratic Society in the United States of America was one of the many organizations who were warning the world about its true needs- civil rights, nuclear control and decolonization.

UNITED STATES OF AMERICA

The territory of the United States was marked not only by dissatisfied students regarding their universities or society, but also by a civil rights movement, a women rights movement, a gay rights movement and an environment movement. Counterculture created not only a generation of dissidends, but also one with a specific lifestyle.

The United States had by far one of the biggest and influencing generation of the sixties. In 1968 the US had two movements which were militating for black people rights. Stokely Carmichael, an activist from New York and the coordinator of Student Nonviolent Coordinating Comitee (SNCC) created the name „Black Panthers” accompanied the „Black Power” slogan¹⁶. The question might be why, but to understand this we have to go back in the fifties.

In 1954, the US was the wealthiest society on earth. The remainings of Great Depression and war ceased to exist. The goods movement and the destruction of european industries reflected in great enrichment and eventually in a baby-boom. The number of births increased by 19% between 1945 and 1945, then by 12% in 1947 keeping an ascendance until the sixties¹⁷. In this years we can notice a change in everyday life symbolism, long roads and infrastructure began to symbolize freedom while cars were becoming the symbol of succes and comfort. The change in the social fabric determined a great increase in services along with the number of students enrolled in universities. Expenses plummet from 749 milion dollars in 1945 to 6.9 bilion dollars in 1965.

The Old Left was reconfiguring itself after the war, especially after the atomic bomb had been detonated. The bomb has drawn a line between the generations, for the ones who lived the war this was fact because their country became prosperous, but for the youth it was nothing more than savagery. Music, media and cinematography began to focus mostly on youth. Intellectuals as Paul Goodman, Herbert Marcuse and William Appleman were writing „rebel” books trying to attract the sympathy of youth. In fact, nothing more influenced the new generation in the world's states than the means of broadcasting and mass propagation.¹⁸.

In 1958 and 1959 the first politics, sex-talking and literature clubs appeared. Columbia and Berkely’s campuses were already notorius for their jumble. A New York young activist-David McReynolds was defining the values of the new generation - *The beat generation by its*

¹⁴ Bert Klandermans and Conny Roggeband, *Handbook of Social Movements Across Disciplines*, 624

¹⁵ Bert Klandermans and Conny Roggeband, *Handbook of Social Movements Across Disciplines*, 126

¹⁶ Mark Kurlansky, *1968. The Year thar Rocked the World*, (Ballentine Books, New York, 2004)

¹⁷ Todd Gitlin, *The Sixties. Years of Hope, Days of Rage*, (Bantam Book, 1987), 22

¹⁸ Matza, *Subterranean Traditions*, 116

*very existence serves notice on all of us who are political that if we want to involve youth in politics we must develop a politics of action. The beat generation can understand Gandhi much better than they understand Roosevelt. They can understand Martin Luther King much better than they can understand Hubert Humphrey. They can understand the Hungarian workers much better than they can understand Mikoyan.”*¹⁹

In 1960 the first countercultural germs reach the surface. In Greensboro, North Carolina four afro-american students (Ezell Blair, Franklin McCain, Joseph McNeil and David Richmond) enter a bar for “whites-only” and they required services. They were members of Youth Council of National Association for Advancement of Colored People (NAACP)²⁰ and while being refused in the fifth day after, a protest of three hundred people was announcing the war against racial segregation.

United States had the biggest youth movement on whole earth and it was a point of reference for every student movement. Abbie Hoffman and Jerry Rubin were the first to announce the foundation of an international party (Youth International Party) with the purpose of uniting every movement in world.

POLAND

In 1968, the idea that the Eastern Bloc was having internal problems was widespread in the Western world. For poles, 1968 meant students protests, an anti-Semitism campaign and political tensions. USSR was facing a rebellion from Romania and Yugoslavia but it had a bigger interest in stopping Wladyslaw Gomulka gaining more power in Poland. Although Gomulka was confident that USSR was enough weak and his chances obtaining concessions were high, he was sure that Kremlin won't accept two things- the contestation of Warsaw Pact and the contestation of Moscow monopoly of power. First of all, Gomulka had problems in maintaining his power- the economy was stagnant and several factions were seeking to eliminate him, the most important one being Moczar's faction, the head of Internal Affairs Ministry.

Moczar didn't read Marx but he knew how politics work. Moczar was leading “The Partisans” a faction which fought the Nazis and who were the main opponents of the muscovite faction lead by Gomulka. In order to gain support, Moczar used an old trick- the jewish card.

Jews are part of Poland's history since XV century and their anti-Semitism was present over time. During the years of Second World War, the poles didn't hesitate to collaborate with the Nazis in order to get rid of jews, but socialism that came later promised to eliminate the problem of anti-semitism. Although the total jewish population was about 3 million people in the interwar era, after 1945 it started to decline dramatically.

While Gomulka and Moczar were struggling for power the students were rising as a movement. The young generation was troubled by their society. Most of them were the sons and daughters of important communists and party members, with a good material condition, but this didn't prevented them to criticize the values of their parents.

The protest of 1968 have their roots in the year 1956, which marked the end of Stalinism in Poland and the reorientation toward a more liberal state policy. After 1956, the intellectuals Jacek Kuron and Karol Modzelewski tried to use this context in order to attack the system from within. Modzelewski created in 1956 the Revolutionary Youth Union, which after one year, has

¹⁹ David McReynolds, “*Youth ‘Disaffiliated’ from a Phony World*”, Village Voice, Martie 11, 1959, in MacDarrah, Kerouac and Friends, 215

²⁰Todd Gitlin, *The Sixties. Years of Hope, Days of Rage*, 83

been incorporated in the Socialist Youth Union. This union had several factions and the most radical was called *Komandosi*.

The Polish youth was aware of their lack of freedom and they began to be inspired by Herbert Marcuse who was criticizing the Polish communist system. As dissidents the students developed ways of gathering information from *New York Times* and *Le Monde*. In 1968 they already heard about Martin Luther King's success. In 1964, Kuron and Modzelewski along with Adam Michnik, a history student at Cracovia first talked at radio Free Europe about a communism with "a humane face".

The protests began in 1968 after the party banned the poem *Dizady* written by Adam Mickiewicz, an important Polish poet from the XIX century. The poem message had an anti-Russian burden. The theatre became a great symbol of freedom, which is why the party chose to close the National Theatre. This galvanized the *Komandosi* members and requested "independence without censorship"²¹ and they marched toward Mickiewicz's statue. On 16 February they sent a petition to *Sejm* condemning censure. On February 11th the Union of Polish Writers were writing a manifest opposing the intervention of state in culture, as a response the party used repression in both cases.

The students were aware about the danger of protesting right in the street but being young and radicals they weren't fearing repression. They protesting against Moczar, others at Warsaw University campus but in short time trucks full of workers arrived and aggressed the students. In March 11th the students were protesting at Cracow, Poznan and Lodz but they were brutally repressed by the police. In short time, the police cut off the communications between universities. The youth was inspired by what Dubcek managed to do in Czechoslovakia "We are waiting our Dubcek!"²². Meanwhile the communist party took action against any possible intellectual that was supporting in any way the students arresting Kuron, Modzelewski and Michnik. Various foreign publications paid attention to the Polish events, writing about Jews, hooligans, Stalinists and how the leaders of the students had been arrested.

At the end of March 1968, the student movement ceased to exist due to brutal repression of the party. Warsaw University closed 8 departments and 7000 had to repeat their year. Approximately 2700 people were arrested and 15 000 Jews emigrated due to anti-Semitism. The strategies of protest used were similar to those in West. Most of them were letters sent to superior institutions and the export of documents for example in France where they were published in *Kultura* edited by Jerzy Giedroyc.

As a general view the protests of 1968 failed and none of the students requirements was implemented. The culture remained restrictive, Michnik had his career destroyed and was imprisoned.

CZECHOSLOVAKIA

The spring of 1968 in Prague was the first initiative to reform the "top" system and marked the beginning of the transformation of the eastern bloc system. The historical process is significant because it did not mean breaking society from the communist regime as it happened in Poland in 1980 or Hungary in 1956. The process was led by a notorious Communist then Alexander Dubcek. The reform attempt ended, however, with the invasion of Soviet tanks and the destruction of the hopes of creating a "communism with a human face". The country has been

²¹ Martin Klimke and Joachim Charloth, *1968 in Europe. A history of Protest and Activism, 1956-1977*, Palgrave Macmillan, 2008p.182

²² Mark Kurlansky, *1968. The Year that Rocked the World*, 133

occupied for more than 25 years, political leaders have been arrested and deported, and on 26 August the "reformers" signed a pact in Moscow to restore Czechoslovakia.

Who was Alexander Dubcek? Dubcek received a political position at 46, was enigmatic, tall and charismatic. He was the son of a Slovak tailor, Stefan Dubcek, who emigrated to America and became a pacifist. He married a Slovak from Chicago and became Marxist. In 1921 they returned to Slovakia, who had become Czechoslovakia because they did not find the freedom they were looking for in America. At home, Stephen wanted to get involved in the socialist construction of his own country. In 1925 he moves with his family in Kyrgystan to work in an agricultural cooperative. They arrived there but they endured long period of poverty so that in 1938 would return to Czechoslovakia. Alexander was 17 years old and was a Communist figure.

The Czech Republic was fortunate to be a privileged province of the Habsburg Empire, which meant early industrialization and modernization. The Slovaks, on the other hand, had another status and their region was backward, but they were in good relations with the Czechs. In 1920, the Czech Republic was already one of the most important workers' unions and the Czech Communist Party was among the most powerful in the Comintern, gaining about 10% of the votes during the interwar period.

After the war, the policy of Czechoslovakia reoriented from itself to the USSR, which it saw as a protector, after the West had disappointed them with the Great Economic Crisis, the Nazi invasion and the Vienna Dictate. Respect for Moscow grew with the coming of the red army that left immediately after the war, leaving Czechoslovakia the only unoccupied country at the beginning of the post-war era. The Communist Party came to power through a "short march" due to the people who supported it, the political program that promised a "specific road to socialism" and the anti-capitalist sentiment manifested by the rejection of the Marshall Plan²³.

The nationalization of the industry and the transformation of society also meant atrocious repressive policy, 250,000 arrests and 500,000 victims of religious discrimination.

The demobilization proposed by Khrushchev after Stalin's death had a favorable echo in Czechoslovakia, which caused it to be pachyphist, and that is why the system almost collapsed. Dubcek was a worker and in 1953 he was already a regional secretary in a region in the center of Slovakia. In 1960, the interpretations of Marxism by Gramsci or the Frankfurt School reached Czechoslovakia and questioned the domination of socialism in socio-human sciences, and students demanded more and more freedom in terms of book circulation. Until 1967, the cultural differences between the young generation and their parents were growing.

In 1960, Dubcek was working in the Kolder Commission, which analyzed government abuses in the 1950s. During that time, he had several conflicts with Novotny, the first secretary general who opposed him. In 1963, the commission had enough power to remove the secretary, instead they chose Dubcek for his candidacy. The situation worsened considerably for Novotny when Hrushev was removed by Brezhnev and had to make concessions. Thus he reduced censorship, and writers and artists are given more freedom. However, the state was still very repressive and the economy had significant problems. Due to the censorship relaxation, the Czechs and Slovaks had contact with the West. Interesting in the case of Czechoslovakia is that it quickly formed a generation as in the West. Hippies were present, and in Prague most young people in Europe were wearing jeans, long hair, shirts with flowers or they were listening to rock n roll. Prague became famous and visited by several hundred thousand tourists annually.

²³ Karel Kaplan, *The Short March: The Communist Takeover in Czechoslovakia, 1945-1948*, (London, 1987)

In 1967, a group of young people decided that they could do what the Westerners did best - to protest. They imitated closely the style of the West, in the morning they were carrying the candles that symbolized the study time, but at the end of the march they were watched by policemen who did not hesitate to become violent.

On Jan. 5, 1968, Novotny is removed from the party's presidency in favor of Alexander Dubcek. Dubcek was silent, and the reason why he liked the new generation was that he was anti-authoritarian and created the impression of a leader who was willing to dialogue with anyone. His mission was not easy, he had to enjoy Moscow and give the impression that he was a reformer, and more, to win the support of Novotny's men.

Dubcek failed to keep the situation under control, and perhaps his biggest mistake was that he did not remove Novotny's men. Dubcek made very vague statements, people just knew he wanted to reform the econ On February 15th, the youngsters in the country and in the country in Prague celebrated the victory of the hockey team against the unbeatable team of the Soviet Union. Supporters discussed the event for weeks.

Media, radio and television were under the control of state propaganda, but to the surprise of listeners and readers, it promoted democracy, the communist. The Union of Writers was allowed to create his own magazine, and the resistance especially manifested by bureaucracy decreased as Dubcek eliminated more and more of Novotny's supporters.

For a man with a true communist education "Democracy is not the only right and chance to pronounce one's own views, but also the way in which people's views are handles, whether they have a real sense of co-responsibility, co-decision, whether they really feel they are involved in making decisions and solving important problems.²⁴ "Students were very confident in Dubcek, so they even thought the political situation in the past would never return.

Dubcek held a speech in April that spoke of a new model of democratic socialism. He advocated the Czechs' equality with the Slovaks and argued that the main role of the government is to build socialism. The ideas were contrary to their own beliefs, but Brezhnev did not accept the disappearance of the party's monopoly. The Pravda articles in Moscow condemned Dubcek's "bourgeois elements" and later came to the idea that anti-Soviet propaganda is being made in the Czech Republic. But Dubcek managed to persuade the Soviets that his liberalization was not an attempt to undermine Soviet authority, nor to destroy socialism.

Freedom that institutionalized in Czechoslovakia brought with it a powerful explosion of hippie culture. Young long-haired jeans who listened to rock and jazz filled the streets. The New York Times wrote, "Prague is essentially a Western-minded city in all things from the type and quality of its cultural life to the recent mania for turtleneck sweaters.²⁵" However, it should be noted that Prague has always been a cosmopolitan city in which German was the second official language, unlike Bratislava.

The most delighted scenario at the theater is "Who's afraid of Franz Kafka?", returning after being banned on the grounds that it is bourgeois creation. In the world of cinema, the Cannes International Festival featured three Czech films, including the work of Jiri Menzel *Closely Watched Trains*, which won Oscar in 1968 for the best foreign film.

Communism in Czechoslovakia was still very well seen by the overwhelming majority of the population, but the Soviets feared that the situation would fall out of control and the revolt would extend to Romania and Yugoslavia as well. Brezhnev and Kadar tried to persuade Dubcek

²⁴ Mark Kurlansky, 1968. *The Year that Rocked the World*, 246

²⁵ Mark Kurlansky, 1968. *The Year that Rocked the World*, 252

to quit, but he and the high presidency voted to ignore the order of Moscow because he was convinced of his friendship with the Soviets.

On June 30, the first Soviet soldiers appeared in Czechoslovakia. And Dubcek was forced to resign. In the context of this liberalization, in the field of international relations, the attitudes of the Czechs and Slovaks were sympathetic to the West, which they wanted to approach.

CONCLUSION

In general terms, Counterculture has been an international rebellion against forms of authority, but it is not limited to simple opaque definitions and mechanical manifestations. Counterculture is a lifestyle of liberation from all points of view. If we are to relate to the four factors on which historiography has agreed, Poland and Czechoslovakia did not have the post-war economic boom that propelled economies into consumerism. Thus, the TV was not so widespread as to represent a lifestyle (as it was in the West in general at that time), and the number of students was reduced, being conditional on the material state, so most of the students were sons and daughters party members and notorious communists. The Czechs and Poles had little freedom, they did not consume hallucinogenic substances, they did not have festivals like the West, they did not experience a sexual revolution, and the freedom of association was low. The symbolism of counterculture, thus, did not go beyond the simple frame of the garment. The programs of both peoples were especially focused on reforming and removing the Soviet system, and not on spreading peace in the world or on civil rights. Our analysis testifies the failure of the two countries to meet the definition and practices of counterculture. The appearance of this generation in the 1960s was more of a protest of a generation of reforming students who found the opportunity during the liberalization period to expose their anti-systemic programs.

REFERENCES

Books

1. **Arthur Marwick**, *The Sixties: Cultural Revolution in Britain, France and the United States, 1958-1974*, Bloomsbury Reader.
2. **Gitlin, Todd**, *The Sixties. Years of Hope, Days of Rage*, Bantam Book, 1987.
3. **Goodwin Jeff and Jaspers James M.**, *Rethinking Social Movements : Structure, Meaning and Emotion*. Rowman & Littlefield, 2003.
4. **Kaplan, Karel**, *The Short March: The Communist Takeover in Czechoslovakia, 1945-1948*, London, 1987
5. **Klandermans Bert and Roggeband Conny**, *Handbook of Social Movements Across Disciplines*, Springer, 2007, p.10
6. **Kurlansky, Mark**, 1968. *The Year that Rocked the World*, Ballentine Books, New York, 2004.
7. **McAdam Doug, McCharty John**, *Comparative Opportunities, Mobilizing Structures and Cultural Framings*, New York: Cambridge University Press.
8. **McCharty, Charles**, *Contention and Democracy in Europe, 1650-2000*, New York: Cambridge University Press.
9. **McReynolds, David**, “ Youth ‘Disaffiliated’ from a Phony World”, Village Voice, March 11, 1959, in MacDarrah, Kerouac and Friends.

ARTICLES

1. **Keith A. Roberts**, Toward a Generic Concept of Counter-culture, *Sociological Focus*, Vol.11, No.2 (April 1978), pp.111-126, p.1, available on www.jstor.org
2. **Wasson, Richard**, The Making of a Counter Culture by Theodore Roszak, Review, *College English*, Vol. 31, No. 6 (Mar., 1970), pp. 624-628, disponibil pe www.jstor.org accesat in 26.03.2018

THE NATURE OF THE INTERNATIONAL LAW SYSTEM AND ITS SYSTEMIC CONSEQUENCES

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ABSTRACT

INTERNATIONAL LAW IS A SYSTEM. DEPENDING ON THE TYPE OF SYSTEM, VARIOUS MANIFESTATIONS AND CONSEQUENCES MAY APPEAR. POSITIVISM, ALTHOUGH ITS SCOPE IS ENSURING THE PREDICTABILITY OF NORMS AND THE SECURITY OF THE LEGAL RELATIONS BETWEEN SUBJECTS OF LAW, SHIFTS THE ATTENTION FROM SYSTEM ANALYSIS TO THE CONSEQUENCE OF THE SYSTEM. A QUESTION THAT NEEDS TO BE PUT FORWARD IN THIS CONTEXT IS “WHAT MAKES THE INTERNATIONAL LAW SYSTEM ROBUST?” THIS ARTICLE AIMS TO SHIFT THE PERSPECTIVE FROM CONSEQUENCE ANALYSIS GENERATED BY THE POSITIVIST MOVEMENT, TO SYSTEM ANALYSIS OF INTERNATIONAL LAW, AND EXPLORE SOME MAIN CHARACTERISTICS OF SYSTEMS THAT MIGHT HELP ONE UNDERSTAND WHAT ARE THE COMPONENTS OF THE SYSTEM THAT MAKE IT ROBUST.

KEY WORDS: SYSTEM, INTERNATIONAL LAW, CUSTOM, NOMOS, ROBUSTNESS.

I. INTRODUCTION

This article aims to determine robustness of the system of International Law (IL), by means of systems theory. Using the lens of system analysis, IL is not seen through its finality, but rather through its inception. By stressing the question of “What is the inception of the international law system?”, one stumbles upon its scope, which is reflected (or rather should be reflected), in its prime components, that is, its sources. It is this ‘should be’ which poses the problem of robustness.

The scope of positivism is ensuring the predictability of norms and the security of the legal relations between subjects of law, by focusing on the “law as it is” and not on the “law as it ought to be”². The direct effect is that the positivist paradigm does not permit systems theory to make its entrance into the realm of law.

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² Raymond Wacks., *Understanding Jurisprudence. An Introduction to Legal Theory* (Oxford University Press, New York, 2012) 57-60.

Systems theory applied to IL shifts the attention toward its scope, which aids in determining the system components that give IL a robust character. Thus, the first part of the article shall focus on the problem, by exposing the main drawbacks of positivism and presenting the benefits of systems theory. The second part of the article will be a practical application of systems theory to IL, to determine what type of system it is and finding its main components that give the system a robust character.

II. PRELIMINARIES

A. Legal positivism and its drawbacks

A new perspective on a subject matter should assume presenting the present perspective. For this reason, a short introduction into the positivism paradigm is appropriate.

The positivist line of thought presents itself as the incipient effort of utilitarianism, with Bentham and Austin as its founding fathers. The premise of positivism is the separation between law as it is and law as it ought to be (i.e. *lege lata* from *lege ferenda*, or law from morals). Common law, which has its basis in equity, is constructed bottom - up, forming abstract norms by considering every judgement pronounced and applying its logic to similar cases (the rule of precedent). On the other hand, civil law is constructed top - down. There is an abstract authority (i.e. the legislator) that sets the content of abstract norms, trying as best as possible to cover all possible *de facto* situations. Thus, common law makes it impossible to create an absolute separation between law and morals having equity as its basis of formation, while civil law makes this separation with great ease, because its basis is merely imposing various behaviours on the subjects of law. In both cases though, the prime motive for separating law from morals lies in the fact that they represent different dimensions of society, and a confusion between the two may generate instability in relations between subjects. Consequently, the scope of positivism is ensuring the security of legal relations between subjects of law and the predictability of norms. For securing such legal relations in international law for example, State parties to a treaty have the possibility of invoking *rebus sic stantibus*, in cases where the original circumstances that led to the signing of a treaty have been modified in such a way that compliance with the clauses of the treaty has become very costly.³ Also, for guaranteeing the predictability of norms, the international community has set out on a quest for the codification of customary international law.⁴

The drawbacks of positivism are numerous. Some of these drawbacks deserve attention in this context. Firstly, as a consequence of positivism in civil law, the scope of the legislator is to adopt norms that cover every possible *de facto* situations also taking into consideration the moral dimension of law. For this reason, a judge should base his solution only on the content of *lex lata*, not taking into consideration the morality of *lex lata* in that particular case. A judge should only *apply* the law, not judge its content. It is very difficult for a norm, as abstract as it is, to cover all possible factual consequences, due to the fact that a society is a complex system with many interacting components that sometimes produce unpredictable consequences. For this reason, a judge should substitute the legislator in case there is a danger of pronouncing a *non liquet*. This is forbidden in civil law due to its very roots.

³ Valentin Constantin, *Drept Internațional* (Universul Juridic, Bucharest, 2010) pg. 161.

⁴ Valentin Constantin, *Drept Internațional*, 111-115; Malcolm D. Evans, *International Law* (Oxford University Press, Oxford, 2003), 134-136.

Secondly, some norms tend to fail in reflecting the empirical. Legal doctrine⁵ classifies sources of law in formal and material sources. Traditionally, the *formal* sources of law are those generally accepted sources from which arise binding norms, while the *material* sources represent the ensemble of states' actions that lead to the creation of formal sources. So, formal sources confer upon the rules and obligatory character, while the material sources comprise the actual content of the rules.⁶ In other words, while material sources represent the spark, formal sources provide the fuel that, together “ignite” a norm into existence. Examples of material sources include, and are not limited to, unilateral state actions (such as recognition of states), resolutions of major international organizations, United Nations General Assembly Resolutions, etc. The supra-positivist line of thought tends to ignore these material sources, considering them of limited applicability, and of therefore, importance. What positivists oversee is the fact that these material sources represent the bridge between the empirical and the law. If that bridge is not used, then no communication is established between norms and society.

Thirdly, positivism can legitimize atrocities. In contrast to Kelsen's arguments, totalitarian regimes, such as the Nazi regime, found their form of manifestation because of the separation between law and morals.⁷ It is also worth mentioning an apparent paradox in the Nazi regime's legal dimension. Carl Schmitt makes use of naturalism to legitimize the national-socialist doctrine.⁸ It is apparent, in that Schmitt does not make use of the moralist doctrine that naturalism predicates.

Finally, there is light at the end of the tunnel. Customs are bottom - up norms (i.e. from concrete to abstract) that will forever reflect the image of the society while in effect. If their utility is lost, they even have “auto-destruction” mechanisms, such as desuetude, that permit them to disappear and may be replaced by another custom. They will always keep intact that component of morality that positivism tries to separate from law. In international law, customs, as opposed to treaties, are shielded from any finite scopes, due to the fact that there are no determinate parties to a custom, but rather the international society as a whole.

B. A brief summary of systems theory

Systems theory is designed to analyse phenomena that are taking place around us and see them as a whole. “The whole is more than the sum of its parts”, goes the expression. As trivial as it sounds, this saying has deep implications in the mind of the system analyst, because the *elements* of a system added up alone, do not constitute the system. There are also the *interactions* between the elements that make up that system and bestow life to that system.⁹ This leads the systems scholar to understand that all systems function with *stocks* and *flows*. Stocks are accumulations of material or information that have been built up in a system over time (its elements), and flows are materials or information that enter or leave a stock over a period of time (its interactions).¹⁰ One can thus see the simplest phenomena as an accumulation of stocks and flows (such as a bathtub filled with water, that drains over time), all integrated within a system

⁵ Valentin Constantin, *Drept...*, pp. 101-102; Vladimir Hanga, and Liviu Marcu, *Istoria dreptului românesc, Vol. I* (Editura Republicii Socialiste România, Bucharest, 1980), 203.

⁶ Malcolm Shaw, *International Law, Seventh Edition* (Cambridge University Press, 2014), 51.

⁷ HLA Hart, “Essay 2, Positivism and the Separation of Law and Morals” in *Essays in Jurisprudence and Philosophy* (Clarendon Press, Oxford 1985), 72-75. It is to be mentioned that this position is not originally from Hart himself, it belongs to Gustav Radbruch, who renounced the positivist tradition after his experience in the Nazi regime.

⁸ Karl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum* (Telos Press Publishing, New York, 2006).

⁹ Ludwig von Bertalanffy, *General Systems Theory* (Braziller Publishing, New, York, 1968), 55-56.

¹⁰ Donella H. Meadows, *Thinking in Systems. A Primer* (Earthscan Publishing, London, 2009), 187-188.

(the bathtub system), or more complex phenomena, such as social systems (such as the economy, the various systems of law, etc.).

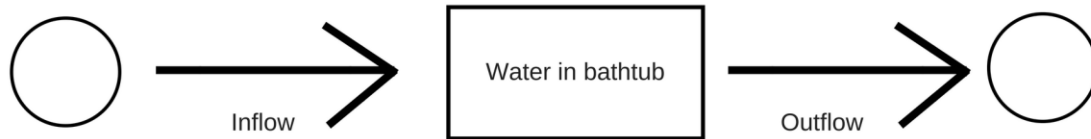


Figure 1. The structure of a bathtub system.¹¹ Author: Cantemir Pacuraru.

The stock is represented by the amount of water present in the bathtub, and the flows are represented by the arrows. In this system, we have two flows, one inflow representing the amount of water that fills the bathtub, and one outflow representing the amount of water drained from the bathtub. The circles stand for wherever the flows come and go. In this figure, the first circle represents the faucet, while the other, the drain.

This simple design is presented to illustrate the basic components that constitute any system, be it simple or complex. The systems scholar can detect through this simple figure, a series of behaviours: there is water flowing in the bathtub, because the faucet is, or was turned on, and that there is water flowing out of the bathtub, because it is equipped with a drain pipe, because of the existence of gravity, etc.

Of course, the interactions between stock and flows do not stop here. Constant behaviours and patterns can be observed over periods of time (these periods depend on the complexity of the system, as we will later see). Such patterns and behaviours can be hints for the existence of *feedback loops* which are mechanisms (be them rules, information flows, or signals), that permit the modifications in a stock to also affect a flow into, or out of that stock.¹² There are two types of feedback loops, one that is designed to balance, to stabilize the stock level, and therefore the system itself, and another that is designed to reinforce, to amplify the system's stock level. The former is termed *balancing* feedback loop, while the latter, *reinforcing* feedback loop.¹³ An oversimplified illustration of the systems of population dynamics may be useful to illustrate how these two types of feedback loops behave.

¹¹ This Figure is inspired by Meadows' representation of systems. I have used her method of illustration because it is very simple to understand. See Donella H. Meadows, *Thinking in Systems*, part I.

¹² Donella H. Meadows, *Thinking in Systems*, 25; 187.

¹³ For a general introduction into these types of loops, see Donella H. Meadows, *Thinking in Systems*, 27-34.

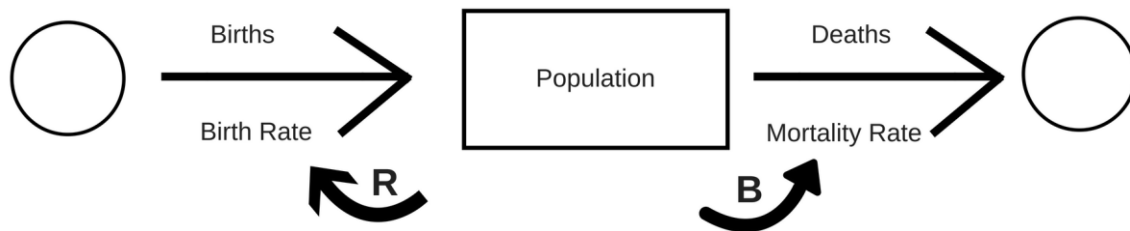


Figure 2. The basic feedback loops that govern population dynamics. Author: Cantemir Pacuraru.

The population system is characterized by the ratio between the birth rate and the mortality rate (inflow and outflow). If the birth rate is higher than the mortality rate, then the population increases (the stock). Vice versa, and the population decreases. We can observe that the stock has an in-built reinforcing feedback loop (R), that boosts that stock through the inflow, i.e. the birth rate. In addition, that same stock has an in-built balancing feedback loop (B), ensuring thus that the population will not grow too much, too fast. By analysing these two loops, the systems scholar can discover patterns and behaviour within the system. If these two loops are equal (they are not, of course), than the system manifests simple behaviours (it is linear). If not, then the value of the stock will change and fluctuate (depending on the dominant feedback loop), determining the behaviour of the system to be non-linear. For example, in 2017, the global birth rate was 1.86%, and the world mortality rate was 0.78%, amounting to a total growth rate of 1.06%.¹⁴ We can observe thus, that the reinforcing feedback loop dominates the system.

Through the lens of systems theory, positivism can be understood as a reinforcing feedback loop that shifts the analysis from the initial scope of the legal system to its consequences in society.

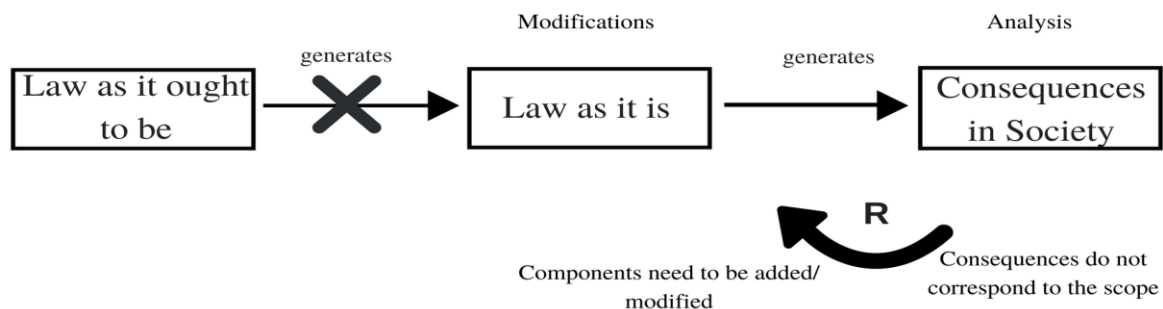


Figure 3. Positivism ignores the law as it ought to be, in the light of its scope.

Positivism sacrifices the analysis of law as it ought to be (i.e. morals) from law as it is (i.e. law in itself), by seeing the consequences of the law as it is upon the society. If the consequences do not correspond to the scope of the system (i.e. the predictability of norms and the security of the legal relations between subjects of law), then intra-system components (such as legal norms) are added or modified. This system tinkering is in itself faulty, due to the fact that

¹⁴This data represents the 2016 estimates, published by the CIA World Factbook, last accessed: 07.08.18. <https://esa.un.org/unpd/wpp/DataQuery/>

consequence analysis creates a reinforcing feedback loop that perpetuates the problems. This explains why States with a large number of legal norms have faulty legal systems.¹⁵ This also explains why many laws change in very short periods of time.¹⁶

There are two last important attributes that are common to every system, which are worth mentioning here.

Firstly, depending on the complexity of the system (such as the number and value of the stocks and feedback loops and the level of flows), the reaction time of a system can suffer delays. The Functional Indeterminacy Theorem (F.I.T.) in systems theory says that “in complex systems, malfunction and even total non-function may not be detected for long periods of time, if ever.”¹⁷ Following this line of thought, any feedback from complex systems may not be detected for long periods of time, if ever. There is an old Romanian proverb that states “The counting at home does not fare well with that at the fair”. Corollaries in English include “don’t count your chickens before they are hatched” or “best-laid plans of mice and men oft go astray”. Delays in response are common knowledge even in everyday life. Forgetting to take into account these delays in response is very common with policy makers, especially in the economic sector. Even in law systems, evaluations of impact concluded by policy makers rarely take into account this important factor.¹⁸

The second attribute is the resilience of the system, i.e. its ability to survive and persist within a variable environment.¹⁹ Resilience evaluates the robustness of systems, and is developed through the existence and/or creation of feedback loops. This attribute of systems makes them immune to some unpredictable events. This brings us to the last and most important characteristic of *some* complex systems: self-organization. The ability of systems to structure themselves, to create new structures, to learn, diversify and complexify,²⁰ is the attribute that gives systems their characteristic of *antifragility*.²¹ An antifragile system is one that can *benefit* from unpredictable events, not only be robust. This concept of antifragile was introduced in systems theory by Taleb, forming thus a triad to characterize systems as being fragile-robust-antifragile. Of course, the latter is the most efficient characteristic of systems, although it could have catastrophic consequences if the system’s initial scope is not met.

Resilience and self-organization have in common the same unfortunate fate. Due to the complexity of systems, and especially social systems, delays in response exist. Those same policy makers that do not take into account this factor, sacrifice the system’s resilience and its self-organization for short term solutions in the name of productivity and stability that only fragilize the system, and sometimes even leading it to total collapse. This is one of the main arguments against legal positivism; the pursuit of ensuring the predictability of norms and the

¹⁵ Presently, there are 233 normative acts adopted in the Romanian Parliament only in 2018. I did not even consider the secondary norms, such as administrative acts, which may even be ten times as numerous. Last accessed: 26.08.2018.
http://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2018&emi=2&tip=1&rep=0&nrc=1.

¹⁶ Between its initial adoption in February 2014 and August 2018, the Romanian Criminal Procedural Code has undergone at least three major changes, and around 10 other minor changes.

¹⁷ John Gall, *How Systems Work and Especially How They Fail* (Quadrangle/The New York Times Book Company, Inc., New York, 1977), 55; 91.

¹⁸ Of course, there are exceptions. The Romanian Criminal Code of 1936, adopted under the rule of Charles II, is a collection of norms borrowed from other criminal codes in Europe (especially the Italian one), and tinkered to reflect Romanian society at that time. The evaluation of impact was done by studying the Italian Criminal Code and its impact upon the Italian society, also taking into account the fact that the criminal code had been in force for more than five years. This study in the delays of response gave birth to one of the best criminal codes Romania ever had.

¹⁹ Donella H. Meadows, *Thinking in Systems*, 76; 188.

²⁰ Donella H. Meadows, *Thinking in Systems*, 81.

²¹ Nassim Nicholas Taleb, *Antifragile. Things that Gain from Disorder* (Penguin Group, London, 2013), 5.

security of the legal relations between subjects of law often leads policy makers to adopt norms that serve as short-term solutions to long-term problems.

C. Benefits of applying systems theory to international law

When referring to various dimensions of law, everyone tends to refer to them as *systems*. The civil law system, the common law system, the international law system. This is not done by accident. Every one of these three dimensions of law are separated into systems, and perform under the same theorems as any other system, be it the society, be it the human body, etc.

And like any other system, the IL system has a scope. The problem with complex systems, such as IL, is that too much attention is given to a small part of that system. Positivism does just that. One systems theorem, the Fundamental Law of Administrative Workings (F.L.A.W.), states in Corollary Number 2 that “to those within the system, the outside reality tends to pale and disappear”.²² This ‘outside reality’, as we will see, is the element which gives the system of law its scope. The more complex the system is, the less information may be processed accordingly, and therefore the easier it is to lose focus of the ultimate scope.

Shifting the attention from positivism to the entire IL system (ILS), one may observe that international law also has an inception and a *raison d’être*. Also, one may observe what type of system IL is, be it an open system or a closed system, and also what flows, stocks, and feedback loops are built in its structure. This, of course has deep implications regarding the various factors that might influence the IL system and pull it into one direction or another. In the next part of the article, attention will be given to the characteristics of international law seen as a system, and the consequences of those characteristics.

III. THE SYSTEM OF INTERNATIONAL LAW

A. International Law: open or closed?

“International law is often, in fact off-handedly, called a system. If we take seriously this proposition that it constitutes a system, we just might change forever the way we think about international law and the role it plays in international relations.”²³ The first step is indeed thinking about international law as a system, the next step is to identify the type of system international law is. I will first delimit what part of the ILS I will be referring to throughout the rest of the article, and proceed to analyze it.

Every system is created to serve a purpose. The problem is that every system, also creates its own goals,²⁴ which can cause damages, not to the system itself, but to the the subjects of the system (i.e. living or non-living entities). To bypass this problem, one must search once more for the initial scope of the system. For that, searching into the law forming mechanisms of the ILS is a good start. Thus, I will be referring to the sources of international law, with special attention to customs and the collective conscience that confers legitimacy upon them and works to perpetuate the system.

There are many classifications of systems, but for the purpose of this article, I will only be referring to one: closed systems and open systems. Ludwig von Bertalanffy is one of the first to propose the study of a general systems theory, and classifies systems as being either open or

²² John Gall, *Systemantics*, 39-41; 89-90.

²³ Anthony D’Amato, *International Law as a Unitary System* (Northwestern School of Law, Public Law, and Legal Theory Series No. 08-02), 5. Accessible here: <http://www.long-damato.northwestern.edu/AdobeFiles/SSRN-int-law-Unitary-sys.pdf>

²⁴ John Gall, *Systemantics*, 59-60; 91-92.

closed. Open systems are “systems exchanging matter with their environment.”²⁵, while closed systems are “systems which are considered isolated from their environment.”²⁶ This means that one of the key elements that differentiate open systems from closed systems is communication. Bertalanffy describes conventional physics as a closed system where the “final state is unequivocally determined by the initial conditions.”²⁷ It is a common example that of the calculations and predictions made in planetary movements. This is why we can predict the next 100 lunar eclipses. This means that conventional physics is sufficient in itself, and does not necessitate inputs and outputs (i.e. communication) from other systems. Open systems, on the other hand, receive input from other systems and generate, through their internal mechanisms, output to other systems. Examples include living systems (such as animals and plants), and every social system (such the economy, history, politics, law). Of course, this makes open systems infinitely more complex than closed systems, due to the fact that, not only do the intra-system components interact with each other, they also interact with other systems’ intra-systems components.

The ILS can be described as an open system.²⁸ This is the generalized premise which I extract from the analysis of custom, and from the characteristic of systems as being fractal.²⁹ From these two initial suppositions, I extrapolate my argument that the ILS in its entirety is an open system. I later hope to apply the method of falsification to the rest of the ILS.

This view, of course, has its opponents, be it, specifically the ILS, or law systems in general. Valentin Constantin, referring to the ILS, describes it as being a closed system, and at the same time, permeable.³⁰ Constantin argues that the system became a closed one, from the moment when a general accord in the international community had been reached about the valid formation of international norms, because this way, the system can only refer to itself.³¹ Later on, he argues for the permeability of the system, in that it possesses secondary norms that ensure the effectiveness of the norms in other systems.³² As we will see, custom, as a formal source of international law, communicates with the international society, to form valid norms.

Gunther Teubner, referring to law systems in general, argues that they are closed, by applying the theory of autopoiesis.³³ According to Teubner, legal systems are self-organizing systems, and at the same time autonomous. Self-organizing, in that they are self-constituting,

²⁵ Ludwig von Bertalanffy, *General Systems*, 32.

²⁶ Ludwig von Bertalanffy, *General Systems*, 39.

²⁷ Ludwig von Bertalanffy, *General Systems*, 40.

²⁸ There are also some who voice this opinion. See James Carwford, *International Law as an Open System* (Essay 1, Cameron May, London, 2002); Anthony D’amato, *International Law as an Autopoietic System* (Rüdiger Wolfrum & Volker Röben, Max Planck Institut für ausländischen öffentlichen Recht und Völkerrecht Beiträge, 177) pp. 335-399.

²⁹ Donella H. Meadows, *Thinking in Systems*, pg. 80. For more details about systems as being fractal, see Benoit Mandelbrot, *The Fractal Geometry of Nature* (W.H. Freeman and Company, New York, 1977).

³⁰ Constantin, V., *Drept...*, 36; 83.

³¹ Constantin, V., *Drept...*, 36.

³² Constantin, V., *Drept...*, 83, and afterwards, in a footnote, acknowledges the fact that the ILS is an open system, in so far as it can incorporate norms from other systems or can maintain other relevant relations. A system cannot be open or closed, depending on where one places the lens of system analysis. Even if, at present, the system can be dubbed self-referential, the theory is falsifiable from the moment an unpredictable event will occur and challenge the system’s auto-sufficiency. The invasion of Crimea, hybrid wars, and cyber attacks are relevant examples of the need for systems to find external mechanisms.

³³ Gunther Teubner, *Autopoiesis in Law and Society: A Rejoinder to Blackenburger* (Law and Society Review, volume 18, number 2, 1984, pp. 291-301), 293: “Self-referential systems, as closed systems of self-producing interactions, are necessarily, at the same time, open systems with boundary trespassing processes”, quoted from Peter Hejl, *Die Theorie autopoietischer Systeme: Perspektiven für die soziologische Systemtheorie* (Rechtstheorie, volume 45, number 13, 1982).

self-referring, and self-describing.³⁴ These three characteristics of self-organization, Teubner claims, makes the system autonomous. Continuing this line of reasoning, if the legal system is organized autopoietically, then it does not directly regulate social behaviour,³⁵ but what it does is create legislative goals, that change social behaviour so as to reflect the system, and not the other way around.³⁶ This is what happens in consequence analysis, done through the lens of positivism, when the needs of society are neglected. Law should reflect society, not the other way around.

B. Customary Law and its Interactions

Throughout time, different peoples have felt the need, generally for trading rationales, to establish various concrete conducts so that commercial exchanges could be done without the outbreak of a conflict. One example, that in the “mythology” of international law is said to be the beginning of the system, is documented by Herodotus.³⁷ Around the VIth Century B.C., Carthaginians engaged in the practice of ‘silent trading’ with a tribe from northern Africa. The Carthaginians, once at the shores of the tribe, would pile their goods on the beach and return to their ships. In exchange, the tribe members would take the goods and pile an amount of gold in their place. The Carthaginians would return to shore, inspect the amount of gold left in return, and if satisfied would take the gold and leave. If not, they would return to the ship without the gold, and the tribe members would return and add to the initial amount. This practice took place until both sides were satisfied.

From practices similar to the one mentioned above, the first customs were formed,³⁸ and along with them, international law. Anthony D’Amato argues that the term customary law is misleading, and that the appropriate name is general international law. Customary international law has been borrowed from Pitt Cobbett in 1890, which invented a saying that remained: customs are like footsteps across a common that eventually becomes a path habitually followed by all.³⁹ One more reason for my extrapolation to the whole of the ILS is the fact that customary law is actually general international law.

Customary law is seen as an attempt to create normative structures and rules to constrain and evaluate the conduct of states, but these structures and rules are, *themselves*, drawn from the conduct of states,⁴⁰ while custom is defined as a “spontaneous, natural, and informal mode of creation of a legal norm, that reflects the force of tradition.”⁴¹ Basically, customary law is formed through a norm that needs time to transform into a legally binding rule in international law, apropos of delays in response within systems. From a systems point of view, customs are components of the ILS, that communicate with external sources. From the point of view of the United Nations, customs are formal sources of international law that the International Court of Justice can apply in any case brought before it; “the Court [...] shall apply: [...] b. International custom, as evidence of a general practice accepted as law.”⁴²

³⁴ For a harsh critique of Teubner’s theory of autopoiesis, see Anthony Beck, *Is Law an Autopoietic System?* (Oxford Journal of Legal Studies, Volume 14, Issue 3, 1 October 1994, 401–418).

³⁵ Gunther Teubner, *Is Law...?*, 297.

³⁶ Gunther Teubner, *Is Law...?*, 298.

³⁷ Evans, M.D., *International Law*, 32-33.

³⁸ Taking into account the formal requirements of today for the formation of custom, and seeing that those practices cannot be deemed likewise, we shall name them *proto-customs*.

³⁹ Anthony D’Amato, *International Law as...*, pg. 2, citing Pete Cobbett, *Leading Cases in International Law* 5 (4th ed. 1922)

⁴⁰ Başak Çalı, *International Law for International Relations*, (Oxford University Press, 2010), 123.

⁴¹ Valentin Constantin, *Drept...*, 104.

⁴² Statute of the International Court of Justice, article 38.

The creation of a custom in international law is dependent on two conditions to be fulfilled: the material fact and the existence of *opinio juris*. Many positivists regard custom formation with suspicion, mainly due to *opinio juris*. The material fact does not pose great problems, for it necessitates empirical evidence for the existence of a custom, in that State practice has to be general, uniform, public, frequent, etc.⁴³ On the other hand, *opinio juris* is the psychological component of a custom, meaning that States have to conscientiously exercise the custom, knowing that their action has legal consequences. States are said to be acting with *opinio juris* in the exercise of a custom. Clearly, States do not possess a conscience, and thus *opinio juris* cannot be proved. Positivists argue that one only has to look at the actual practice of the States, meaning the material fact, to determine the formation of a custom.

This criticism in relation to custom formation is precisely the positivist attitude that severs the relation between law as it is and law as it ought to be. It automatically isolates the law system from social reality, and leads to faulty and extreme interpretations of law systems, such as Teubner's. It is evident that States are artificial constructs, and therefore they cannot possess beliefs. But States possess a general course of action, which can be seen by the material fact, throughout the course of time. So, *opinio juris* is dependent on the material fact, and on the passage of time. In addition, custom, i.e. the material fact plus *opinio juris*, is dependent on the social reality, and this is the prime interaction between this formal source of law and the outside world of the ILS. In legal doctrine, this is known as the material source of law.⁴⁴ For example, the necessity of commercial exchanges is what determined the proto-custom of silent commerce to form between the Carthaginians and the African tribe. From a metaphysical perspective, what is beyond the ILS and what determines custom formation is the *nomos*.

The *nomos* is defined as not only referring to explicit laws, but also to moral rules that people expect in their everyday activities.⁴⁵ "It would therefore probably be nearer the truth if we inverted the plausible and widely held idea that law derives from authority and rather thought of all authority as deriving from law [...] in the sense that authority commands obedience."⁴⁶ Authority is legitimised through law, and at the same time enforces law. This means that 'law' has an a priori existence, and not be wholly dependent on the existence of an authority. This is, I believe, the essence of the *nomos*. Whether we term these a priori phenomena 'law' or 'social rules', is a matter of terminology, that has an importance only if we see the system through the positivist lens. Thus, customs interact with society through the *nomos*.

One can see in this respect, that the intra-system goal of the ILS is to reflect society. The *nomos* only works to shape the systems so that it corresponds to the social reality. What is essential, is that the scope for which the ILS has been created and perpetuated (i.e. to maintain international peace and security)⁴⁷, is in accord with the intra-system goal.

C. The Influence of the *Nomos* on the ILS

As formal sources, customs cannot exist in the absence of pre-existing social conducts, or social norms, or social laws. In other words, the *nomos* is what determines customs to exist in the ILS. It is the outside flow that constantly feeds into the ILS, shaping custom formation. Thus, we can identify a balancing feedback loop between the *nomos* and the ILS.

⁴³ Malcolm Shaw, *International Law*, 54-58.

⁴⁴ For more details, see *supra* 2-3.

⁴⁵ F.A. Hayek, *Law, Legislation, and Liberty*, Vol. 1, (Routledge, London, 1993), 96-97.

⁴⁶ F.A. Hayek, *Law, Legislation...*, 95.

⁴⁷ Article 1 of the United Nation Charter.

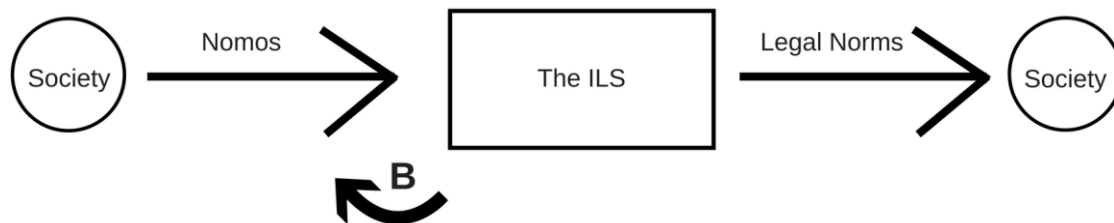


Figure 4. The ILS is an open system that interacts with, and is influenced by the international society, through the nomos. Author: Cantemir Pacuraru.

In respect to international law, society is understood as being the international society, meaning the corpus of States and State to State relations. The ILS is the main stock in the illustration, and the nomos is the main inflow, which facilitates communication between the international society and the ILS. The result of the interacting components of the ILS are the legal norms which represent the outflow, and produce consequences upon the international society. Thus, one can observe from this simplified illustration, that the ILS is an open system that constantly communicates with the international society and its subsystems.

Another consequence of separating law from morals is that, in the process of law making, the actors may easily forget the existence of the nomos or, being aware of its existence, ignore it. This is the case with voluntary norm creation, such as laws passed in Parliament or contracts between parties, in the case of domestic legal systems, or treaties, as in the case of international law. The formation of customs is a natural one, since it is shielded from the actors' bounded rationality.⁴⁸ The provisions of a treaty may very well reflect the interests of the parties, but they are unlikely to take into consideration the interests of society. On the other hand, custom is dependent in its formation on the good and the interests of all actors simultaneously, and thus it constantly communicates with the international society by way of the nomos. The balancing feedback loop that is created from the stock of ILS through the customs' communication with the nomos, works to balance out the system. In this respect, custom ensures the survival and perpetuation of the ILS, and bestows upon it the characteristic of resilience, making the system robust.

IV. CONCLUSION

International law is an open system. Like all systems, the ILS manifests some common patterns, such as self-organization and resilience. These two attributes are seen at a later time, due to the complexity of the system that manifests delays in response. This is why, in domestic legal system, policy makers who do not understand this fact, end up incorrectly modifying intra-system components. The ILS is fairly shielded from this, due to the fact there is no central policy maker.

International law is a fairly decentralized,⁴⁹ open system, whose formal sources are treaties, customs, and general principles of law recognized by civilized nations.⁵⁰ Being an open

⁴⁸ Bounded rationality refers to the decision-making process of an actor as being based on the available information, which is unlikely to be perfect. For more information on bounded rationality, see Herbert Simon, *Theories of Bounded Rationality*, *apud*. Donella H. Meadows, *Thinking in Systems*, 106.

⁴⁹ Malcolm Shaw, *International Law*, pg. 3; Valentin Constantin, *Drept...*, 39.

⁵⁰ Article 38 of the Statute of the International Court of Justice.

system, the ILS communicates with other social subsystems. One of the main inflows is represented by the nomos, which can be equated to some respect with the material sources of law, which reflect the norms of society; that 'law' which has an a priori existence, necessary for the legitimization of authority. The nomos is important, because it represents the intra-system scope of the ILS. If that scope is not respected, the survival of the system is endangered, and the system will kick back. The actors of the ILS (i.e. principally states), rarely take into account the nomos, due to bounded rationality. On the other hand, components such as customs, are a product of the nomos, and their communication acts in this respect as a balancing feedback loop that ensures the survival and perpetuation of the ILS, making it robust to unexpected events that might occur.

REFERENCES

A. Books and Articles

1. **Beck Anthony**, *Is Law an Autopoietic System?*, Oxford Journal of Legal Studies, Volume 14, Issue 3, 1 October 1994, Pages 401–418;
2. **Bertalanffy, Ludwig von**, *General Systems Theory*, Braziller Publishing, New, York, 1968;
3. **Çali, Başak**, *International Law for International Relations*, Oxford University Press, 2010;
4. **Constantin, Valentin**, *Drept Internațional*, Universul Juridic, Bucharest, 2010;
5. **D'amato, Anthony**, *International Law as an Autopoietic System*, Rüdiger Wolfrum & Volker Röben, Max Planck Institut für ausländischen öffentlichen Recht und Völkerrecht Beitrage, 177;
6. **Evans, Malcolm, D.**, *International Law*, Ed. Oxford University Press, Oxford, 2003;
7. **Gall, John**, *How Systems Work and Especially How They Fail*, Quadrangle/ The New York Times Book Company, Inc., New York, 1977;
8. **Hanga, Vladimir, and Marcu, Liviu**, *Istoria dreptului românesc*, Vol. I, Editura Republicii Socialiste România, Bucharest, 1980;
9. **Hart, HLA**, “Essay 2, Positivism and the Separation of Law and Morals” in *Essays in Jurisprudence and Philosophy*, Clarendon Press, Oxford 1985;
10. **Hayek, F.A.**, *Law, Legislation, and Liberty*, Vol. 1, Routledge, London, 1993;
11. **Mandelbrot, Benoit**, *The Fractal Geometry of Nature*, W.H. Freeman and Company, New York, 1977;
12. **Schmitt, Karl**, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, Telos Press Publishing, New York, 2006;
13. **Shaw Malcolm**, *International Law*, Seventh Edition, Cambridge University Press, 2014;
14. **Taleb, Nassim Nicholas**, *Antifragile. Things that Gain from Disorder*, Ed. Penguin Group, London, 2013;
15. **Teubner, Gunther**, *Autopoiesis in Law and Society: A Rejoinder to Blackenburg*, in *Law and Society Review*, volume 18, number 2, 1984, pp. 291-301;
16. **Wacks, Raymong**, *Understanding Jurisprudence. An Introduction to Legal Theory*, Oxford University Press, New York, 2012.

B. Websites

1. CIA World Factbook, last accessed: 07.08.2018. <https://esa.un.org/unpd/wpp/DataQuery/>;
2. Website of the Romanian Parliament, last accessed: 26.08.2018
1. http://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2018&emi=2&tip=1&rep=0&nrc=1.

C. Treaties

1. Statute of the International Court of Justice;
2. United Nations Charter.

ASPECTS OF THE THEORY OF NON-EXISTENT ADMINISTRATIVE ACTS

Andra-Ioana ROȘCA⁵¹

ABSTRACT

THE ADMINISTRATIVE LEGAL DOCTRINE HAS DRAWN UP THREE MAIN THESES ON THE NULLITY OF ADMINISTRATIVE ACTS. THESE ARE: THE THESIS OF UNIQUE THEORY OF NULLITY IN ADMINISTRATIVE ACTS, THE BIPARTITE THESIS OF ABSOLUTE NULLITY AND RELATIVE NULLITY, AND THE TRIPARTITE THESIS OF ABSOLUTE NULLITY, ANNULABILITY AND NONEXISTENCE. OF THESE THREE, THE MAJORITY ACCEPTED THEORY BY THE LEGAL LITERATURE WAS THE TRIPARTITE THESIS WHICH ALSO SETTLED DOWN THE NONEXISTENCE OF ADMINISTRATIVE ACTS. THIS STUDY PRESENTS ASPECTS OF THE LEGAL NATURE OF NONEXISTENT ADMINISTRATIVE PROVISIONS, EXAMPLES OF SUCH LEGAL ACTS, AS WELL AS CONSIDERATIONS ON COMPARATIVE LAW.

KEYWORDS: NONEXISTENCE, ADMINISTRATIVE ACTS, NULLITY, FRENCH LAW

INTRODUCTION

The theory of nonexistence of administrative acts appeared in Romanian law during the interwar period, a period that established the tripartite theory of nullities according to which administrative acts may be nonexistent, null and void or voidable. Nonexistent acts *"lack the factual elements inherent to their nature or object, without which they cannot be logically conceived"*⁵².

During this period, Professor Paul Negulescu was the most important proponent of this approach. According to him, in the administrative law there are nonexistent acts, *"which do not require any findings"*⁵³, and null and void acts, *"which have a legal appearance, but do have an original flaw so deep, and therefore their nullity may be pronounced whenever the existence of this flaw is discovered, as this flaw cannot be covered by the passage of time"*⁵⁴.

As an example of nonexistent administrative act, the professor took into consideration the decree signed by the successor to the throne before taking the oath, which according to the Constitution of the time, conferred them the exercise of royal powers. Also, if a royal decree was

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⁵² Tudor Drăganu, *"Actele de drept administrativ"*, (București: Științifică, 1959): 150

⁵³ Paul Negulescu, *"Tratat de drept administrativ. Principii generale"*, ediția a IV-a, vol. I, (București: Institutul de Arte Grafice "E. Marvan" 1934): 425

⁵⁴ Paul Negulescu, *"Tratat de drept administrativ. Principii generale"*..., 425

signed only by the king and was not countersigned by the minister, it was considered nonexistent because "Art. 87 of the Constitution states that such an act has no power"⁵⁵. The same happened also with a decision of a minister that regulated certain matters for which a royal decree was necessary. The nonexistent administrative act did not produce any legal effect and the person aggrieved by such an act could "*rely on this nonexistence in any era, for such irregularity is neither prescribed nor ratified*"⁵⁶. Nonexistence could be raised either by way of an action or a plea in objection. Since such acts did not produce any legal effect, it was not necessary for the court to declare their nonexistence.

COMPARATIVE LAW

In France, the nonexistence of administrative act is recognized at both doctrinal and jurisprudential level. Nonexistence is set out from nullity and implies that the administrative act be impacted by more severe flaws compared to nullity. Furthermore, it is operated the distinction between materially non-existent acts and legally non-existent acts. The usefulness of establishing nonexistence is that any public authority may note it, at any time, in order to "*correct procedural rules that seem too stringent when applied to acts whose irregularity is flagrant*"⁵⁷. As regards the establishment of the nonexistence of administrative act at jurisprudential level, prof. Paul Negulescu notes in his work some examples of decisions by French authorities. Thus, by decision of May 13, 1881 (Brissy-Recueil 1881, p. 493), the State Council of France ruled that cumulative and previous failure to fulfil the conditions necessary for an administrative act to be valid, results in the nonexistence thereof. In this case, the decree signed by the President of the Republic only and not countersigned by the minister, by which the reintegration of a person into the Legion of Honour personnel was declined was nonexistent even if the respective minister stated later he agreed with the presidential decision. The Council's argument was that through the communication of the vitiated administrative act, it has become final and no further ratification could cover such flaw. Also, by decisions of February 21, 1890, Mimieux, Rec. p. 201, and from January 10, 1908, Legouez, Rec., p. 9 respectively, the State Council noted that the decision to refuse retirement signed by an official lacking competence could not be appealed because such decision was nonexistent and had no value⁵⁸.

LEGAL NATURE

Regarding the legal nature of nonexistent acts, three dimensions of their legal status have been set in the legal literature. First, it has been shown that the presumption of legality operates no more as the violation of law is so obvious "*that a person of average intelligence cannot admit them, even for one moment, their legally binding nature*"⁵⁹. According to the presumption of legality, an act emanating from a public administration body is considered legal until proven otherwise. In the case of a nonexistent administrative act, the presumption of legality is removed because "*we are in the presence of an act which is not only in contradiction with law, but lacks an actual essential element which, according to its nature, may come into being*"⁶⁰. The limits of presumption of legality must be specifically established for each case and not in the abstract. The

⁵⁵ Paul Negulescu, "*Tratat de drept administrativ. Principii generale*"..., 430

⁵⁶ Paul Negulescu, "*Tratat de drept administrativ. Principii generale*"..., 430

⁵⁷ See Ana Rozalia Lazăr, "*Considerații privind nulitatea și inexistența actului administrativ*", *Revista de drept public* 1 (2002): 28

⁵⁸ See Paul Negulescu, "*Tratat de drept administrativ. Principii generale*"..., 430-432

⁵⁹ Tudor Drăganu, "*Nulitățile actelor administrative individuale*", *Studia Napocenaia, seria Drept*, vol. I (1981): 64

⁶⁰ Tudor Drăganu, "*Actele de drept administrativ*"..., 152

legal literature has shown that the nonexistent act does not create, modify or extinguish legal relations according to the will of the author of the act, but has the ability to produce legal effects of a legal material fact⁶¹.

Secondly, the rightful subject, the recipient of the administrative nonexistent act, has the right to refuse fulfilment of obligations under such act by invoking the nonexistence thereof before any public authority. If the act was enforced and reinstatement of previous situation is wanted, based on the principle that no one can do justice to themselves, the person concerned would have to go to court⁶².

The third legal nature of nonexistent acts arises from the right of the recipients thereof to refuse their execution/enforcement. Correlative to this law, public administration bodies have the obligation to not enforce such acts by default. Therefore, the act is not enforceable anymore and the coercive force of the state cannot be imposed any longer under *executio ex officio* principle. Thus, in the event the nonexistent act is enforced, it is a "*way of fact (and not of law), which entails public administration accountability, and of its officials respectively for the damages caused*"⁶³. In this respect, if the administrative act was previously executed, "*a legal action is, however, possible against the public official whose personal liability (civil or criminal) is engaged in the execution of such an act, because his correct attitude should have been passive resistance to the act*"⁶⁴. In this case, the recipient of the act has the right to appeal the administrative court at any time, even if the act falls within the category of exceptions provided for by Law no. 554/2004 on administrative procedure, published in the Official Gazette of Romania, Part I, no. 1154 of December 7, 2004, as amended and supplemented. So, if the plea of illegality is raised before any court of law, the same may note the nonexistence of the act and proceed to its removal from the proceedings when settling the plea.

In French doctrine, it has been also admitted that nonexistent acts may be revoked at any time by public administration bodies. Unlike these, the null/void acts may be withdrawn only until expiry of the appeal.

JUDICIAL PRACTICE

In the socialist legal practice, the distinction between null acts and nonexistent ones enrooted based on the courts' lack of jurisdiction to decide the nullity of administrative acts. Since the courts had no power to declare administrative acts void, they would have reached a situation where they would have had to make a ruling considering that certain acts were valid, although they were issued in violation of administrative competence. In this respect it is reminded the Civil Decision no. 5/1959 in case no. 9399/1958 by which the Cluj Regional Court decided that the notice authorizing the partition of a land issued by the department of architecture and systematization of a people's council executive committee, cannot constitute the basis of a partition without the consent of all co-owners. Thus, this is a notice and not an authorization issued in compliance with legal provisions⁶⁵.

It has been shown in the legal literature that the minutes made by a financial controller after this capacity of them terminated is a nonexistent administrative act because in his case the

⁶¹ See Ioan Santai, "*Drept administrativ și știința administrației*", vol. II, (Cluj-Napoca: Risoprint, 2003): 148

⁶² See Constantin Rarincescu, "*Contenciosul administrativ român*", ediția a II-a, (București: Alcalay & Co, 1936): 341

⁶³ Antonie Iorgovan, "*Tratat de drept administrativ*", vol. II, (București: All Beck, 2008): 78

⁶⁴ See Ana Rozalia Lazăr, "*Considerații privind nulitatea și inexistența actului administrativ*"..., 36

⁶⁵ See Tudor Drăganu, "*Actele de drept administrativ*"..., 154

presumption of legality does not operate for a second. There are also considered to be nonexistent, the acts issued under repealed laws or those of a local council that settled a civil litigation under the jurisdiction of courts⁶⁶.

In support of the nonexistence of administrative acts, in the socialist literature was stated that the courts were required to verify the existence of legal rules before applying them. The existence of the law involves its publication and its lack of repeal, that is the efficiency of the law. This verification should be done under an official edition of law. Therefore, if the courts have the right and obligation to verify the existence of public administration regulations, there is no impediment for them to study the existence of individual administrative acts⁶⁷.

In recent judicial practice it has been considered that a payment commitment not signed by the person intended to make the pay is a nonexistent administrative act which cannot be cancelled by the administrative court "*as this would amount to the implicit and indirect validation of nonexistent administrative acts of the same kind, which, however, were not appealed in administrative courts*"⁶⁸.

REGULATION OF NON - EXISTENCE AT CONSTITUTIONAL LEVEL

Currently, the nonexistence of public administration regulations is established at constitutional level. According to Art. 100 (1) of the Romanian Constitution, republished, the failure to publish Presidential decrees in the Official Gazette of Romania entails their nonexistence. Also Art. 108 (4) of the Romanian Constitution, republished, requires publication in the Official Gazette of Government judgments and orders, subject to their nonexistence. There is an exception to this rule where the decisions are of military nature and are communicated only to the interested institutions. Thus, it may be concluded that publication is a condition of validity of the act, the same becoming valid only after its publication even if it was legally adopted, and nonexistence is the penalty for the failure to fulfil the mandatory publication obligation⁶⁹. Regarding the validity of emergency ordinances to be approved by the Parliament, its convocation is mandatory and the "*failure to fulfil this constitutional provision is punishable by considering the emergency ordinance in question nonexistent*"⁷⁰.

As regards the nonexistence of laws, there were some in the literature who thought that one can speak of such an institution under the following conditions: "*from the data published in the Official Gazette of Romania it does not appear that that act would be a law (does not bear such name); from the data published in the Official Gazette of Romania it does not appear that the law has been passed by both Houses of Parliament; in the Official Gazette of Romania the decree of promulgation of such law issued by the President of Romania is not published and the law is not published in the Official Gazette of Romania (since the official publication is the only evidence of the existence of law, and it cannot enter into force since it was not published)*"⁷¹. It has also been noted that the failure to indicate that the law was passed by both Houses of Parliament, subject to the publication in the Official Gazette of Romania of both the law and the

⁶⁶ See Tudor Drăganu, "Actele de drept administrativ"..., 153 și Antonie IORGOVAN, "Tratat de drept administrativ"..., 78

⁶⁷ See Tudor Drăganu, "Actele de drept administrativ"..., 155-156

⁶⁸ See *Decizia nr. 710 din 10 iunie 2000* a Curții de Apel Cluj, *Buletinul jurisprudenței*: 470

⁶⁹ See Antonie Iorgovan, Mihai Constantinescu, "Constituția României – comentată și adnotată", (București: Regia Autonomă Monitorul Oficial, 1992): 241.

⁷⁰ Ramona Delia Popescu, Andrei Gheorghe, "Producerea efectelor juridice ale actelor normative", *Revista Transilvană de Științe Administrative* 2 (2012): 129

⁷¹ See Ana Rozalia Lazăr, "Considerații privind nulitatea și inexistența actului administrativ"..., 31

decree of promulgation, does not attract the absence of the law because "*to the ordinary individual, the presumption of legality is working*"⁷². Since the constitutional provisions do not expressly govern the unconstitutionality of laws and their nonexistence, it remains only theory.

CONCLUSION

In conclusion, unlike civil law, in administrative law the theory of nonexistence of legal acts is mostly admitted. The nonexistent administrative act does not enjoy a presumption of legality, its recipient may refuse enforcement and public authorities are obliged to refrain from enforcement upon them. With regard to the normative administrative acts, the Romanian Constitution, republished, stipulates that failure to publish decrees of the President of Romania, decisions and Government orders in the Official Gazette of Romania, entails the nonexistence thereof. It is noted that the nonexistence of certain normative administrative acts is of constitutional level.

⁷² See Ana Rozalia Lazăr, "*Considerații privind nulitatea și inexistența actului administrativ*"..., 31

REFERENCES

1. **Drăganu, Tudor;** *Actele de drept administrativ*, București: Științifică, 1959;
2. **Negulescu, Paul;** *Tratat de drept administrativ. Principii generale*, ediția a IV-a, vol. I, București: Institutul de Arte Grafice "E. Marvan" 1934;
3. **Lazăr, Ana Rozalia;** *Considerații privind nulitatea și inexistența actului administrativ*, *Revista de drept public* 1, (2002);
4. **Drăganu, Tudor;** *Nulitățile actelor administrative individuale*, *Studia Napocenaia*, seria Drept, vol. I, 1981;
5. **Santai, Ioan;** *Drept administrativ și știința administrației*, vol. II, Cluj-Napoca: Risoprint, 2003;
6. **Rarincescu, Constantin;** *Contenciosul administrativ român*, ediția a II-a, București: Alcalay & Co, 1936;
7. **Iorgovan, Antonie;** *Tratat de drept administrativ*, vol. II, București: All Beck, 2008;
8. **Iorgovan, Antonie; Constantinescu, Mihai;** *Constituția României – comentată și adnotată*, București: Regia Autonomă Monitorul Oficial, 1992;.
9. **Popescu, Ramona Delia; Gheorghe, Andrei;** *Producerea efectelor juridice ale actelor normative*, *Revista Transilvană de Științe Administrative* 2 (2012);
10. *Decizia nr. 710 din 10 iunie 2000 a Curții de Apel Cluj, Buletinul jurisprudenței.*

