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The Fragmented Legal Vocabulary of Globalisation

Reflections on the book entitled Global Law Without a State (*Global Law Without a State* edited by Gunther Teubner (Aldershot-Brookfiled USA-Singapore-Sydney: Darmouth 1997) xvii+305 p.

I. Preliminary observations

The impact of globalisation has fundamentally changed the regular scientific framework of social sciences that developed throughout the 19th and 20th centuries. Each of its branches has started an adaptation process related to the profoundly transformed circumstances of the global environment. In the 21st century any social fact could attain a different meaning from the regular one as a consequence of the new global conditions. It was anticipated that legal sciences, especially legal theory must integrate into his framework the impact of globalisation. Nevertheless this process of integration has started slowly and nowadays the science of legal theory has no comprehensive framework to interpret the phenomenon of globalisation. Otherwise legal theory seems to have difficulties in reacting to globalisation because post-modernity has raised many unanswered questions concerning the general background of social sciences and especially that of legal theory. However, the existence of this uncertainty does not mean that the research of this phenomenon from legal point of view would not be necessary.

One of the early attempts to make use of the experiences of globalisation in order to enrich the science of legal theory and legal sciences in general, is the book entitled "Global Law Without a State." It seems to be a very promising volume, and it could prove to be useful to analytically revise its conceptual background. This conceptual background probably has suggestions about the possible interpretations of the phenomenon of globalisation within the framework of legal sciences. Prior to analysing the book in further detail, it may be useful to dedicate a few sentences to the phenomenon of globalisation.

II. One of today's most frequently used words: Globalisation

The sole thing different authors agree on is that the phenomenon of globalisation exists. They all note that something is happening in the world that has never happened before. The essence of global conditions has changed gradually; anyone can sense that since the end of the Second World War the world has undergone a major transformation. There is something curious and unprecedented regarding the differentiating characteristics of our era. This curiosity is globalisation. But — until now — authors and researchers were incapable of creating a common comprehensible framework by interpreting the changes of the last decades. Therefore, since there is little chance to grasp the essence of globalisation easily, the only possibility remaining is to outline a few dimensions of the greatest social phenomenon of our time.

i. Economic interpretations

The majority of scholars — mainly economists —approached the phenomenon of globalisation from an economic point of view. These economic analyses are competing with each other just as much as the possible interpretations of globalisation, so it is difficult to find their common denominator. Another problem is that some of these scholars approach the subject with a descriptive attitude, while others rather apply the political attitude, that every time implies some sort of an evaluative step. Hence the brief presentation of two possible examples of the above-mentioned interpretations may prove to be solely illustrative.

John H. Dunning has made an attempt to analyse the most important features of this new era. He names this era 'global capitalism.' According to Dunning our age is the third stage of market-based, western-styled capitalism. Following the age of pre-industrial capitalism, which was mainly land and agriculture based, and the industrial, machine and finance based second phase of capitalism, a radically new economic phenomenon has emerged in the last decades of the 20th century. This new form of capitalism is now mainly knowledge-based and has a global dimension in contrast to the spatial diffusion of the earlier stages. Dunning collected five distinctive features of this new economic world order; (i) cross-border transactions are deeper and more interconnected than they have ever been, (ii) resources, goods and services are spatially more mobile than they have ever been, (iii) multinational enterprises play a more significant role in the creation and distribution of wealth than they have ever done before, (iv) the financial and real volatility has increased in a considerable degree, (v) the advent of digital environment and electronic commerce has completely changed the character of cross-border transactions.[1] These features could be eligible to encompass and define the distinguishing features of the new world economic order, but that is an other question whether this descriptive framework is a satisfactory attempt to explain and understand the essence of globalisation.

[1] Dunning 11-40 esp 13.

A considerable representative of political economy, Robert Gilpin[2] argues that a successful and manageable international economy is dependent on the secure and safe political foundation of international relations.[3] Discussing the importance of political foundations the author seriously questions the dogmatic statements of neo-liberal economic thought concerning the irrelevance of political factors in the economic sphere. According to Gilpin a stable world economy has three political preconditions: firstly, a single one or a group of nations has to promote economic and political leadership by maintaining stable macroeconomic conditions and establishing fair and impartial rules to govern the international trade system; secondly, this economic system shall be based on cooperation among the major economic powers, because neither of them could manage the system alone; thirdly, every nation of the world has to have confidence in free-trade and other forms of international commerce.[4] It seems that for Gilpin, after the dramatic fall of Seattle WTO summit of 1999, the essence of globalised economic processes is paradoxically rooted in the global political context, rather than in pure economic indicators. Thus, deriving from the analysis of Gilpin, globalisation also has a strong political dimension that can essentially determine the main direction of global economic processes. Therefore Glipin's work indicates the necessity of a deep analysis of these differing political aspects of globalisation.

ii. Other ways of interpretation …

Other approaches of the issues globalisation raises are even less consistent than the economic interpretations. Therefore it is very difficult to find any common points of them except for the rejection of the exclusively economic interpretation. These works sometime use the results of economic analyses, sometime they do not. Moreover, they often try to integrate other factors into their researches, such as world politics, environmental protection, cultural elements and other problems, to give a few examples of features worth analysing. To show the richness of these kinds of analyses it may be useful to briefly overview two of them.

The famous French professor and publicist, Ignatio Ramonet criticizes globalisation taking a very elaborated and 'orthodox' Marxist point of view as his starting point. He claims that for him the essence of globalisation is the unprecedented growth of inequalities. The main reason behind this serious phenomenon is the all-embracing dominance of the economic sphere over all of the other fields of life. Liberalisation, privatisation and competitiveness have been the key-words of world economy in the last decades of the 20th century. Through stressing them continuously and noisily, the

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[2] Robert Gilpin *The Challenge of Global Capitalism – The World Economy in the 21st Century* (Princeton and Oxford: Princeton University Press 2002) see specially the Preface and Chapter Ten: Globalisation and Its Discontent

[3] Robert Gilpin *The Challenge of Global Capitalism* … xv. p.

[4] Robert Gilpin *The Challenge of Global Capitalism* … xv. p.

economy gradually overruled the states and civil societies. The unipolarity of the world order that followed the fall of the iron curtain in 1989 also supports the dominance of neo-liberal values represented today by the official politics of the US. Thus, in Ramonet's eyes globalisation — that has economic, political and environmental aspects — has a really negative connotation, that represents the neverseen inequality of the world economic system, as well as the overall dominance of neo-liberal ideas. Ramonet argues that only the emergence of a global civil society — based on the fundamental values of solidarity and depoliticisation — can counterweight the pressure of global economic processes and actors.[5]

Although the famous work of Samuel P. Huntington does not explicitly deal with the phenomenon of globalisation, some of its conclusions can be very constructive contributions to the understanding of it. Huntington connects the emergence of a universal civilisation with the all-embracing process of modernisation. The counter points of these modern societies are traditional societies that were based mainly on agriculture, contrary to the industrial and knowledge bases of modern societies. Yet Huntington argues that to identify modern societies with Western societies is an absolutely false simplification, because the originality of Western civilisation is not rooted exclusively in modernisation. Huntington enumerates the significant distinguishing characteristics of Western civilisation to verify his earlier statement. Those are — in brief — the legacy of classical antiquity, the Catholic and Protestant religious traditions, the diversity of European languages, the theoretic separation of spiritual and 'temporary' authorities, the idea of the rule of law, the theory of social pluralism, the emergence of representative bodies and individualism.[6] The author emphasises that these elements can possibly develop in other civilisations, but the unique combination of them gave the West its distinctive feature. Why is this essential from the aspect of globalisation? Huntington's clarification of modernisation and his list of elements of Western identity can show the conceptual background from which the process of globalisation has stammed in the last decades of the 20th century. Through indicating the possibility of the clash between the dominant civilisations Huntington reminds us of the dangers the triumph of the universal globalisation process poses based mainly — but not exclusively — on Western characteristics.

III. Major words of the vocabulary

A possible way to discover the volume's main statements could be via the presentation of its conceptual background, through the peculiar system of a quasi-vocabulary. The 'message' of the whole book takes shape by collecting and analysing the most important concepts of its authors. Nevertheless, being familiar with this

[5] See: Ignatio Ramonet *Guerres du XXIe siécle – peurs et menaces nouvelles* (Paris: Éditions Galilée 2002) [Collection l'espace critque]

[6] Samuel P. Huntington *The Clash of Civilisations* ... 69-72. p.

conceptual background does not supplant a detailed knowledge of the whole book, it can only give a sketch of the most important contours.

i. Legal pluralism

The theory of legal pluralism provides for the general theoretical background of the authors' works. Every author incorporates legal pluralism — implicitly or explicitly — into his or her work in one form or another. Therefore it is worth knowing precisely how the authors interpret this major stream of legal thinking. In his introductory study Gunther Teubner discusses in detail his own concept of legal pluralism[7]. According to Teubner the new phenomenon of global law can only be adequately explained by the above-mentioned theory, but it is necessary to transform it parallel with the new conditions of the profoundly changed global environment.[8] Since the early years of the 1940s, when the concept of legal pluralism has firstly emerged in the work of Llewellyn and Hoebel — in their volume entitled The Cheyenne Way -, and has crystallised in the 1950s through the famous researches of Pospišil, this theory has focused on the interrelationship between the different dimensions of law: the law of the state and the diverse laws of the different communities. Teubner argues that in order to make the theory of legal pluralism eligible to the explanation of the new global legal phenomena, it is necessary to reformulate its core concepts by shifting the focus from diverse groups and communities to different discourses and communicative networks.[9] By shifting the scope of legal pluralism from the communities to the communicative processes the theory is ready to adequately explain the phenomenon of global law, because it is more able to incorporate into its general background the most of the new and thus revolutionary legal phenomena. Teubner also reminds the readers that the main distinctive feature *(distinction directrice)* of the legal phenomena is the use of the binary code: legal/illegal.[10]

With these remarks Teubner accepts Luhman's interpretation of law and integrates Habermas' theory of communication into his pluralistic legal theory. Thus, this reconstructed concept of legal pluralism via the integration of the main elements from the oeuvre of Luhman and Habermas forms the general and broad background of all further research presented in the volume. With the elaboration of this new form of legal pluralism Teubner has created a comprehensible framework, which seems to be eligible — even from a narrow theoretical point of view — to the detailed research of the new global legal phenomena. Therefore it is easy to understand Jean-Philippe

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[7] Gunther Teubner „Global Bukiwona: Legal Pluralism in the World Society" in *Global Law Without a State* ed by Gunther Teubner (Aldershot, Brookfield USA, Singapore, Sydney: Darmouth 1997) 3-28. p.

[8] Gunther Teubner „Global Bukowina: …" 4. p.

[9] Gunther Teubner „Global Bukowina: …" 7. p.

[10] Gunther Teubner „Global Bukowina: …" 14. p.

Robé's statement that the theory of legal pluralism is the key concept of a post-modern understanding of law.[11]

ii. Global law

As a starting point of his discussion of the nature of global law, Teubner uses the concept of 'living law'coined by Ehrilch. Quoting a statement of Ehrlich[12], the author declares global law a *sui generis* legal order, which has its own characteristic and therefore "should not be measured against the standards of national legal systems."[13] He claims that global law does not have any structural deficiencies compared with national laws, its special characteristics distinguish it from the 'normal' law of nation states. The most characteristic feature of the global legal regime is its lack of any form of political and institutional support and its strong connection with socio-economic processes.[14] So it is a depoliticised body of rules, however, this depoliticisation does not inevitably mean that the emerging global law is value-neutral, as, for instance, some activities of MNEs proved it.[15]

How can the origin of this new legal phenomenon be determined? In his chapter Teubner rejects the 'traditional' political and institutional theories of law-making, those processes, within which the nation state plays a prominent role.[16] After rejecting the 'traditional' concepts of legal thinking, the author follows the above-mentioned theory of Ehrilch concerning the autonomous law-making of society. Since globalisation is reality, it has a uniquely distinctive feature: parallel with the globalisation of economic processes the emergence of a countervailing world society under the leadership of interstate politics is missing, therefore, it is a highly contradictory and fragmented process.[17] As a result of this lack of 'world politics' "global law will grow mainly from the social peripheries not from the political centres of nation states and international institutions."[18] Thus, global law does not have any contact with the traditional political institutions of law-making, it is growing out from diverse and fragmented social

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[11] Jean-Philippe Robé „Multinational Enterprises: The Constitution of a Pluralistic Legal Order" in *Global Law Without a State* ed by Gunther Teubner (Aldershot, Brookfield USA, Singapore, Sydney: Darmouth 1997) 56. p.

[12] "The center of gravity of legal development therefore from time immemorial has not lain in the activity of the state, but in the society itself, and must be sought there at the present time" Gunther Teubner „Global Bukowina: …" 3. p.

[13] Gunther Teubner „Global Bukowina: …" 4. p.

[14] Gunther Teubner „Global Bukowina: …" 4. p.

[15] Peter T. Muchlinski „'Global Bukowina' Examined: Viewing the Multinational Enterprise as a Transnational Law-making community" in *Global Law Without a State* ed by Gunther Teubner (Aldershot, Brookfield USA, Singapore, Sydney: Darmouth 1997) 102-103. p.

[16] Gunther Teubner „Global Bukowina: …" 6. p.

[17] Gunther Teubner „Global Bukowina: …" 5. p.

[18] Gunther Teubner „Global Bukowina: …" 7. p.

institutions that are actually closely coupled with the specialised — mainly economic — dimensions of globalisation.

Teubner indicates that the lack of a global political system and some global legal institutions may cause problems in the establishment of a global legal discourse. The lack of global politics shall be a serious problem because it is very difficult to imagine a global symbol of validity that is neither rooted in national laws, nor has any political support on global level.[19] At this point Teubner establishes a unique concept to solve this theoretic problem that can be termed a paradox as well. He claims that through the "deparadoxification" of the phenomenon of the so called 'self validating contract' *(contrat sans loi)* it is possible to explain how global law, that is primarily contract based, creates its own non-contractual foundations for itself. Via impressive argumentations, using the example of a special sort of commercial contracts, the so-called "closed circuit arbitration" contracts, Teubner solves this paradox through transforming the vicious circle of contractual self-validation into a virtuous cycle of two legal processes: contracting and arbitration.[20] With this "deparadoxification" Teubner proves that it is largely possible to make law without the intervention of the state into the law-making process. From this point on, a private legal order, that has global validity, is not longer unthinkable, for instance, the law of multinationals or *lex mercatoria,* both of which shall be discussed later.

Finally, the author collects four important features of the emerging legal phenomenon: (i.) the boundaries of this sort of a legal phenomenon are determined by 'invisible social networks' or 'invisible professional communities,' therefore they transcend territorial boundaries, (ii.) "global law is produced in self-organized processes of 'structural coupling' of law with ongoing globalised processes of a highly specialized and technical nature,"[21] (iii.) global law is not as insulated from the on-going socio-economic processes than 'normal' national law, it is closely dependent on them, (iv.) it is necessary to preserve the variety of legal sources of the globally unified law, because a total unity of global law would become a real threat to legal culture.[22] It is clear that these characteristics are fundamentally different from the traditional law of nation states, and according to Teubner they can partly prove the individual nature of global law.

iii. World society

Can we talk about world society nowadays? If so, how can we define its *genus proximum*? If world society exists, can it be a general milieu of global law? In his chapter Anton Schüzt attempted to sketch the contours of world society via the

[19] Gunther Teubner „Global Bukowina: …" 15. p.

[20] Gunther Teubner „Global Bukowina: …" 16-17. p.

[21] Gunther Teubner „Global Bukowina: …" 8. p.

[22] Gunther Teubner „Global Bukowina: …" 7-8. p.

deconstruction of classical conceptions of social and political theory[23]. His starting point is the autopoetic theory of Luhmann but he emphasises that the essence of autopoetic social theory is the deconstruction of the traditional cosmomorphic models.[24] Schütz unambiguously rejects that the distinction between system and environment can create a model where a system can encapsulate subsystems as their greater environment. The invention of the autopethic theory is the chance to liberate social thinking from the dominance and pressure of traditional social, political and legal concepts, that are rooted mainly in some from of hierarchy, as for example are sovereignty, state, power and law, and rebases it on the idea of heterarchy.[25] After the devaluation of the foundations of these concepts that incorporate some form of at least a bi-polar hierarchical relation, world society can theoretically be reconstructed.[26] According to the author these 'traditional' ideas are incapable of explaining our days' challenges that globalisation generated after the post-modern 'revolution'.

World society is founded on a "never ending cacophony of simultaneous conversations" on an order generated by noise instead of any mastery.[27] Schütz argues that world society is a *par exellence* challenge to the concept of the primacy of politics, because world society is not based on consensus but rather on the simultaneously ongoing communicative processes.[28] So the world society of Schütz does not have any external, spiritual or higher level mastery or control. It is 'based on' the refusal to take any responsibility for the activities of the others. The multiplicity of communications — the continuous noise — is capable of leading the affairs of world society without the intervention of any higher level, may that be real or fictional, moral or legal. It could be the 'realm of anything goes' as Schütz describes the world of economy.[29] The concept of Schütz is really exciting but it is highly questionable whether in the years of worldwide uncertainty — just think about the humanitarian, economic and environmental crises after 1989 — the disintegration of the remained moral basis of social and political thinking and the mystification of a value-neutral attitude would help the normalisation of the situation.

iv. Lex mercatoria

We can define *lex mercatoria* as a body of transnational law serving for the special purposes of word-wide economic transactions. Teubner argues that *lex mercatoria* is

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[23] Anton Schütz „The Twilight of the Global Polis: On Losing Paradigms, Environing Systems and Observing World Society" in in *Global Law Without a State* ed by Gunther Teubner (Aldershot, Brookfield USA, Singapore, Sydney: Darmouth 1997) 257-293. p.

[24] Anton Schütz „The Twilight of the Global Polis: …" 262. p.

[25] Anton Schütz „The Twilight of the Global Polis: …" 275. p.

[26] Anton Schütz „The Twilight of the Global Polis: …" 257-269. p.

[27] Anton Schütz „The Twilight of the Global Polis: …" 269. p.

[28] Anton Schütz „The Twilight of the Global Polis: …" 283. p.

[29] Anton Schütz „The Twilight of the Global Polis: …" 285. p.

the most successful example of global law[30], he indicates that this legal phenomenon incorporates all the characteristics that would be able to surpass — and to refute partly - the nation state based 'traditional' theories of law-making. *Lex mercatoria* is a paradigmatic case, and the experiences arising from it shall be important for all other emerging field of global law, therefore it is worth going into the details of this unique legal phenomenon.[31] The author expounds briefly the history of the "thirty years" war over the independence of global *lex mercatoria* and emphasises that the traditional schools of legal thought dominated by the overestimated role of the nation state — represented mainly by French and American scholars — were incapable of properly explaining the fundamental questions of global *lex mercatoria.* In order to give a proper explanation, it is necessary to break the taboo of the necessary connection of law and state. The phenomenon of *lex mercatoria* breaks down this taboo from two different directions. Firstly, it claims that 'private orders' can make law valid law, without the control and authorisation of the state. Secondly, this means that this body of legal rules — produced merely by 'private orders' — is valid outside the nation state and international relations also.[32]

At this point Teubner poses a crucial question: does a global "rule of recognition" exist for *lex mercatoria*? He claims that it is a law with an underdeveloped 'centre' and highly developed 'peripheres', therefore one shall look for the"rule of recognition" on these 'peripheres'.[33] So this legal regime of international business can be typified by the asymmetries of a weak institutional centre, which depends on strong socio-economic 'peripheries' stamming from the special circumstances of its global environment. As in the case of global law, Teubner here also tries to outline the main features of the examined legal phenomenon. The overriding feature is that *Lex mercatoira* is structurally coupled with economic processes, therefore it is very vulnerable to the interests and power pressure of economy. This openness might corrupt the originally value-neutral *lex mercatoria.*[34] *Lex mercatoira* seems to be an "uncoordinated ensemble of many small domains, a patchwork of legal regimes"[35] as the legal system of the *Heilige Römische Reich Deutscher Nation*. This means that commercial arbitration institutions — for instance the *Chambre de Commerce International* — are strong in the production of precedents (episodes), but they are inefficient communicatively linking them up with each other in order to produce a unified legal doctrine. Thus, the institutional background of *lex mercatoria* seems to be not as efficient and solid as the actors would need it, moreover, it is weak from the point of view of the — above mentioned — communicative links.[36] Lastly, *lex mercatoria* is a soft law mainly consisting of broad principles, not precise rules.

[30] Gunther Teubner „Global Bukowina: …" 3. p.

[31] Gunther Teubner „Global Bukowina: …" 8. p.

[32] Gunther Teubner „Global Bukowina: …" 10-11. p.

[33] Gunther Teubner „Global Bukowina: …" 12. p.

[34] Gunther Teubner „Global Bukowina: …" 19. p.

[35] Gunther Teubner „Global Bukowina: …" 20. p.

[36] Gunther Teubner „Global Bukowina: …" 20. p.

Teubner argues that this is not a deficiency because it compensates the lack of global enforceability by making it more flexible and adaptive to the rapidly changing global circumstances and unprecedented cases.[37]

In his chapter, Hans-Joachim Mertens is dealing with the problem of the application of *lex mercatoria*.[38] According to him there are two possibilities to define the essence of *lex mercatoria*. *Lex mercatoria* can be approached as a body of international legal practice if the legal system is defined as a system of norms. In this case *lex mercatoria* accounts for an independent legal system.[39] On the other hand, *lex mercatoria* can be regarded as a self-applying system beyond national law. From this point of view it seems to be an autonomous legal system independent of national law.[40] However these definitions do not guarantee a common understanding of this issue therefore it could be more useful to regard *lex mercatoria* as a potential to create norms in order to avoid the endless terminological debates. From this point of view this body of rules is a nearly complete potential for the resolution of international, commerce related conflicts.[41] Mertens argues that national monopoly of law-making is out of date today, thus exists only in theory, because in a number of cases the arbitrators have the rules of *lex mercatoria* at hand to apply. The explicit or tacit agreement of the parties is enough to establish the application of an independent body of law, and the necessities of global society are also in support of the applicability of *lex mercatoria.* Nevertheless, Mertens stresses the necessity of a special justification to the application of these rules, and emphasises the responsibility of the arbitrator when applying them.[42] These remarks are significant because Mertens precisely points out the immanent limits of the autonomous system of *lex mercatoria*.

v. Multinational enterprises

MNEs are the most important players of today's economic world order. Until the publication of this volume the *communis opinio doctorum* regarded them as major economic actors from an exclusively economic point of view. It made no attempt to develop a comprehensible framework to interpret their legal aspects. Therefore the two studies of the book dedicated to the issue can be regarded as serious efforts towards the establishment of such a framework, which can deal with the legal dimensions of the existence of MNEs. Jean-Philippe Robé[43] sets out to analyse

[37] Gunther Teubner „Global Bukowina: …" 21. p

[38] Hans-Joachim Mertens *„Lex Mercatoria:* A Self-applying System Beyond National Law?" in *Global Law Without a State* ed by Gunther Teubner (Aldershot, Brookfield USA, Singapore, Sydney: Darmouth 1997) 31-43. p.

[39] Hans-Joachim Mertens *„Lex Mercatoria: …"* 32. p.

[40] Hans-Joachim Mertens *„Lex Mercatoria: …"* 33. p.

[41] Hans-Joachim Mertens *„Lex Mercatoria: …"* 35-36. p.

[42] Hans-Joachim Mertens „Lex Mercatoria: …" 39-40. p.

[43] Jean-Philippe Robé „Multinational Enterprises: …" 45-77. p.

the fundamental questions of MNEs, while Peter T. Muchlinski[44] observes MNEs as transnational law-making bodies.

The main issue of Robé's work is the nature of multinationals. According to his opinion the enterprise is only a socio-economic paradigm, not a legal concept, because it does not exist in the positive law of states. The positive national legal systems work with different concepts of legal persons (or *personnes morales*) but they never define the enterprise as an explicit legal person. Therefore Robé claims that the enterprise is an autonomous legal order, which does not need state recognition as a prerequisite to its existence. The author describes it as a unitary, closed and unique order that can define 'norms' for the persons under its jurisdiction and can create coercive means to guarantee respect for these 'norms'. Thus with the use of these mandatory internal behavioural rules the enterprise constitutes a legal order in the classical Werberian meaning.[45] Robé stresses the fact that every MNE has its own legal character so "each enterprise represents an island of law having the character of a truly legal order."[46] The emergence of such global deterritorialized legal orders — as Robé finally defines the MNEs — is a serious challenge to monist legal concepts. Only the pluralistic attitudes can incorporate the existence of partial — both territorial and functional — legal orders that are competing and cooperating at the global level, within a global legal system.[47]

According to Robé's hypothesis, each MNE constitutes an autonomous legal order. The next question is thus given: what is the origin of this constitutive power? He argues that this situation is an unambiguous consequence of classical liberal principles, that were incorporated into all liberal constitutions. The protection of property and the acknowledgement of the freedom of contract has produced such a legal framework where enterprises and after them MNEs could be born. So the nationalisation of law never resulted in the disappearance of legal pluralism in modern nation states.[48] Hence, the power of MNEs is derived from the classical principles of liberal constitutions, and this fact opened the possibility to create autonomous legal orders that are equivalent to that of the states from a legal point of view. The internationalisation of these liberal principles facilitated the evolution of a transnational civil society, where the major players are the MNEs and — maybe — the states.[49] For instance, in the US a newly emerging constitutional order is imaginable based on the

[44] Peter T. Muchlinski „'Global Bukowina' Examined: Viewing the Multinational Enterprise as a Transnational Law-making Community" in Global Law Without a State ed by Gunther Teubner (Aldershot, Brookfield USA, Singapore, Sydney: Darmouth 1997) 79-108. p.

[45] Jean-Philippe Robé „Multinational Enterprises: …" 52. p.

[46] Jean-Philippe Robé „Multinational Enterprises: …" 53. p. and the author indicates that the legal substratum of MNEs contains of contracts and property rights — which are fragmented in the positive law of states — as well as the MNEs have a unity of command, logic and rules, see 45. p.

[47] Jean-Philippe Robé „Multinational Enterprises: …" 49. p.

[48] Jean-Philippe Robé „Multinational Enterprises: …" 57. p.

[49] Jean-Philippe Robé „Multinational Enterprises: …" 62. p.

separation of powers between MNEs, states and the federal government.[50] This new 'style' of the division of power illustrates how the existence of MNEs can transform the realm of traditional legal concepts and theories.

In the other above-mentioned chapter Muchlinksi sets out from a statement of Teubner; the new living law of the world can be defined as "the proto law of specialized organizational and functional networks which are forming a global, but sharply limited, identity."[51] Muchlinski claims that some of the operational activities of MNEs show such a 'proto law' or 'law like' qualities, therefore it is worth examining them in detail. On the one hand the internal system of business organisations can be regarded as aspects of an emerging global law according to the meaning given by Teubner. If we think about law as communicative process based on the distinction of legal/illegal, three major groups of MNEs' internal activities can partially fall under this standard. According to Muchlinski certain cases within the managerial control, some of the contractual relations between the affiliated entities in the whole transnational network, and lastly, the adoption of intraenterprise codes of conducts as general guidance of behaviour.[52] Muchlinksi also indicates that these are not solid concepts with precise boundaries, there are many uncertainties in the interpretation of them, but some of them can be defined as cases of such a 'proto law'. If these operational activities demonstrate a considerable degree of consistency and generality of practice, these two characteristics can facilitate the acknowledgement of their 'proto law' nature. The existence of a binding duty shared by not only the directly involved persons can also strengthen the 'law like' quality of those internal activities.[53] On the other hand, MNEs can influence the external legal environment, and this activity can be an important way to convert their own 'proto law' into 'hard law' status. The activities of MNEs can directly influence the development of substantive rules of commercial law by their standardised contracts or commercial practices. Henceforth, they can affect the generation of whole national and international regimes via lobbying activities.[54] A result of these influencing activities could be the emergence of a global business law that may constitute a new world order with newly born legal principles and institutions.[55] The author emphasises many times that his consequences are not really unambiguous, in certain cases they do not have solid outlines, but indeed it is very essential to research the 'law like' phenomena of MNEs in order to understand their operations.

[50] Jean-Philippe Robé „Multinational Enterprises: …" 71. p.

[51] Gunther Teubner „Global Bukowina: …" 7. p.

[52] Peter T. Muchlinski „'Global Bukowina' Examined: …" 80-81. p.

[53] Peter T. Muchlinski „'Global Bukowina' Examined: …" 85. p.

[54] Peter T. Muchlinski „'Global Bukowina' Examined: …" 85. p.

[55] Peter T. Muchlinski „'Global Bukowina' Examined: …" 86. p.

vi. State

Although neither chapter of the book specialises on the questions of state explicitly, the studies reflect a solid attitude concerning it. Therefore it is useful to analyse how the authors look at the state, because it shows certain outlines of the post-modern conception of state. Starting from the theory of legal pluralism it is unambiguous that the authors want to liberate the legal thinking from the dominance of the nation state. Before the emergence of global law the centre of gravity of law and politics obviously was in the nations state, the authors argue, but by the appearance of the first fragments of global law this situation has been seriously challenged. In consequence of the prominent role of the internal dynamics and plurality of 'global society,' moreover, its highly specialised sub-systems in the evolution of global law the traditional political theories of law are not capable any longer of understanding the global law, argues Teubner.[56] Thus, the emergence of global law could be a serious chance to rethink the role of the state in the legal thinking or in legal processes.

Talking of *lex mercatoria,* Teubner proves in detail that it is possible to create law exclusively by 'private orders' and this type of law will be valid without the recognition of the state. Mertens supports this approach when he claims that the national monopoly of law-making is a simple illusion, because the arbitrators can base their decision on the rules of *lex mercatoria* independent of state, without any material obstacles.[57] It can clearly be observed that the authors try to establish the foundations of such a legal science where the state does not have a prominent role in legal issues, it is no more than an actor in the field of law amongst many equally significant actors. In the global or world society of the future the cases of autonomous law-making — *lex mercatoria,* internal law of MNEs, and other meanwhile appearing special areas - could be much more important than the 'normal' field of law-making where the dethronised state might be involved. Following this line of thought it is easy to imagine that in the affairs of the world society of the future the state will not have any serious relevance.

The growing significance of MNEs as independent legal orders strengthens the earlier conclusion. If every MNEs constitutes an independent and unique legal order, and these legal entities are diffusing beyond and between national borders the exclusivity of state sovereignty will not be maintainable in the long run. Otherwise Robé acknowledges that the security structure of the world still based on the nation states, but the emergence of MNEs has weakened the traditional framework of diplomacy and other state-specific actions. Diplomacy between states and MNEs could be more considerable in certain — mainly economy and business related — cases than the traditional diplomacy between nation states. The proliferation of international organizations as representatives of partial economic interests — for

[56] See: Gunther Teubner „Global Bukowina: …" 5-6. p.

[57] See: Hans-Joachim Mertens *„Lex Mercatoria: …"* 39-40. p.

example: WTO, certain free-trade zones and specialised representative bodies — has also altered the traditional 'playground' of interstate diplomacy.[58]

The main question raised by these well-founded conclusions concerning the state is the following: does the fundamental transformation of the modern context of statehood, indicated by the emergence of global society and law, follow the disappearance of the state as a general social phenomenon? It shall not be forgotten that the main characteristic of this developing global regime is the lack of any 'traditional' political background at global level, or the lack of politicisation, in accordance with Teubner. Is it possible that the dream of Engels shall be realised via the gradual emergence of global law and society? Nobody can be brave enough to answer this question with full certainty. It is only possible to indicate a contribution to the interpretation of this serious question. Statehood was never a monolithical concept, its precise outlines have changed continuously parallel to the transformation of the social context. The Greek idea of *polis* differs from the medieval concept of *regnum* and both notions differ from the modern concept of the nation state that is basically founded on the sovereignty doctrine of Bodin and on the monopolisation of coercion as in the theory of Weber. Therefore, it is thinkable that parallel to the emergence of global law and society a new idea of the state will appear via the continuous adaptation to the radically changed global context, instead of the definitive disintegration of statehood.

vii. World public order

Legal literature traditionally uses the concept of public order *(ordre public)* — especially in the fields of international private and public law, and with reference to human rights questions — to determine the possibility of state intervention into the autonomous legal processes. The justification of such an intervention is based by and large on generally accepted common values of a given state; such are for example morality or public health. In his study Andrea Binachi reconstructs this traditional concept of public order in order to create a fundamental concept of the emerging global law.[59] Binachi claims that the emergence of the doctrine of international human rights has definitively altered the traditional paradigm of public international law.[60] Non-state actors — mainly human beings — have gradually become subjects of international law beside the nation states. Parallel to the development of the human rights doctrine the idea of world public order has gradually emerged. Fundamental and universal values have crystallised in the regime of international law since *erga omnes* norms had been defined through the development of *ius cogens* and the

[58] Jean-Philippe Robé „Multinational Enterprises: …" 46-47. p.

[59] Andrea Binachi „Globalisation of Human Rights: The Role of Non-state Actors" in Global Law Without a State ed by Gunther Teubner (Aldershot, Brookfield USA, Singapore, Sydney: Darmouth 1997) 179-212. p.

[60] Andrea Binachi „Globalisation of Human Rights: …" 182. p.

construction of the international crimes system.[61] Binachi argues that these different legal concepts that are based on a common respect for human rights create the world public order. This universalistic concept is built on certain commonly-shared values —with the human rights doctrine in the centre — and is respected by the whole international community. Thus, world public order can be regarded as a minimum level of protection that has to respected by all actors of the international community. The universalism of these values is based on the globalisation of human rights as primary values via the growth of a transnational civil society.[62] It is obvious, thus, that the idea of the world public order is really eligible to create the quasi-ethical foundations of the new global legal regime.

viii. Maxwell case

The quickly growing complexity of global business affairs can produce a number of unprecedented situations when the national and internationals legal regimes have no adequate answers. In these cases the 'practice' itself has to solve the new problems via constructing such normative 'answers', that fulfil the normative void. The bankruptcy of the Maxwell empire, in 1991, produced a paradigmatic case, that can illustrate how these processes of autonomous law-making have operated on the very special and technical fields of socio-economic procesess. John Flood and Eleni Skordaki present the main question of this insolvency procedure by focusing mainly on the differences of the British and American insolvency regimes.[63] They argue that the Maxwell protocol — produced as a final result of the cooperation between these two diverse insolvency systems — is a special hybrid: it is neither a contract nor an act of legislation, it is a form of private governance.[64] As an example of private governance it is also an example of valid law produced by — partly — 'private orders'. The protocol has swiftly acquired the status of a model, and it could be a 'precedent' for future insolvency procedures when there won't be any rules to govern these enormous, cross-border cases.[65] The example of this protocol and conflict settlement process demonstrated clearly the internal functioning and unique processes of global law.

The above mentioned elements are only the major mosaics of a much more greater picture. After the overview of these rudiments it is possible to reconstruct the image of global law in accordance with its main characteristics reflected in the studies.

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[61] Andrea Binachi „Globalisation of Human Rights: …" 183. p.

[62] Andrea Binachi „Globalisation of Human Rights: …" 203. p.

[63] John Flood and Eleni Skordaki "Normative Bricolage: Informal Rule-making by Accountants and Lawyers in Mega-insolvencies" in in Global Law Without a State ed by Gunther Teubner (Aldershot, Brookfield USA, Singapore, Sydney: Darmouth 1997) 109-131. p.

[64] John Flood and Eleni Skordaki "Normative Bricolage: …" 113. p.

[65] John Flood and Eleni Skordaki "Normative Bricolage: …" 125. p.

IV. Concluding remarks

The reviewer does not feel to be competent enough — due to his young age and relatively "inexperienced" status — to draft an overall evaluation of the above-observed book. Therefore the reader must be contented only with some special remarks.

The volume reflects the general uncertainty concerning the essence of globalisation within social sciences. With respect to the majority of the observed problems the authors did not intend to formulate as exact or definite statements as the greatest classicals of legal and political science — for example Kelsen or Duverger — have done it. But this lack of certainty — if we think about it more thoroughly — is not necessarily a serious deficiency. Moreover, it could be even considered a merit of the book. Through the indication of the terminological, interpretative or other-like difficulties the authors suggest the necessity of self-restriction in scientific attitude. In the age of globalisation the belief in omniscience is not more than a mere — and a little bit ridiculous — illusion. In our age, when the availability of information is much more rich than ever before, the possibility of erring or at least the fact of uncertainty has to be accepted.

The editor and the authors have a consistent conceptual and philosophical background. They primarily applied the concepts and philosophical ideas of Luhman, Habermas, Foucault and Teubner. To sum up, the editorial concept of this volume is based partly on the post-modern results of social sciences and incorporates the political presuppositions of modern liberalism. This alloy of post-modernity and modern liberalism formulates a solid and sure conceptual background and ensures the unity of the authors' attitudes. Furthermore, it proves to be truly practical because the book can represent a unified attitude with solid common points contrary to many other articles or books. Solely one question remains in this respect: stamming from differing streams of thinking, take conservative ideas or the social doctrine of the Catholic church for instance, would it is possible to arrive - at least in the major points — at similar conclusions?

The standard of the publication of the volume by all means befits the highest criteria. The editing seems to be perfect and elegant; there are no misprints in the volume. Lastly, what seems to be one of the most crucial points for the reviewer, each chapter has an impressive system of notes and list of references that can be very useful for any researcher who wishes to further elaborate his insight into either dimension of the emerging global legal system. The volume advocates such high level of intellectual activity that should serve as an example for the young researchers of our posterity to follow.