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Transformation of the state sovereignty and the legal pluralism in Europe

1. Sovereignty of 21st century

Throughout ages, different definitions of sovereignty were established.[1] Some researchers associated sovereignty with the figure of a king with "absolute and perpetual power of a commonwealth",[2] others with a god-like lawmaker[3] or the one who gives commands and is obeyed.[4] Sometimes these ideas were challenged or simply negated – i.e. the sovereignty was attributed to law.[5] Although the absolute sovereignty, understood as the affirmation of absolutism, is "incompatible with the rule of law and with constitutional law itself"[6] and has little in common with contemporary world, notions of 'popular sovereignty', 'parliamentary sovereignty' and 'national sovereignty' have appeared and became widely accepted.[7]

Nowadays, the idea of sovereignty remains an ambiguous concept, understood differently in sociology, history, international public law, politics. These diversified fields are beyond the scope of this discussion which remains limited to the chosen challenges of law and politics in the 21st century and the possibility of reappearance of Carl Schmitt's theory in a legal perspective. However, limiting the scope of the research in this manner does not suffice to commence the analysis.

Due to the broadness of the matter and its multidimensional nature, it is pointless to immerse oneself into an interminable dialogue with the existing theories on sovereignty in terms of international terrorism, the global economic crisis, the European integration and globalisation.[8] The objective of the paper is to anticipate whether the notion of sovereignty can be equally applied to characterize entities – of both public and private character – acting within the international community. Should the sovereignty be seen only as the characteristic

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1 J. Czaputowicz, *Suwerenność*, Warszawa 2013, p. 15.

2 J. Bodin, *Sześć ksiąg o Rzeczypospolitej*, Warszawa 1958, p. 88: "absolute and perpetual power of a commonwealth" (trans. by the author).

3 The link of sovereignty with the determinacy of law is explicit in the classic theories.

4 J. Austin, *Province of Jurisprudence Determined*, ed. W. E. Rumble, Cambridge: Cambridge University Press 1995, *passim*.

5 H. Kelsen, *Das Problem der Souveränltät*, 1960.

6 P. Eleftheriadis, *Law and sovereignty*, http://www.trinitinture.com/documents/eleftheriadis2.pdf, p. 4.

7 The evolution of the idea of sovereignty is especially visible when it comes to the concept of social contract (J. Bodin, H. Grotius, T. Hobbes, J. Lock, J.J. Rousseau).

8 Current political issues including Brexit and the proceedings of the European Commission against Poland are therefore beyond the scope of analysis. In this context, N. McCormick's paper is worth revisiting. See. N. McCormick, *Questioning Sovereignty: Law, State, and Nation in the European Commonwealth*, Oxford University Press, 1999.

of the state entities or should be also attributed to other structures?[9] The cases of a non-governmental organisation, an entity of the Internet sphere and a multinational corporation are to be examined in the context of Carl Schmitt's understanding of sovereignty.

The analysis requires the rejection of assumptions about the reality of a sovereign entity and its singularity as only then this category becomes applicable to various social and political regimes[10] and allows the further investigation. The theory assuming that sovereignty is non-gradable is also to be refuted if the term is to be used in the context of a contemporary geo-political situation. Due to the elimination of the mentioned assumptions, the category obtained can be applied to entities in a variety of social and political conditions.[11]

Furthermore, the study is conducted from the European point of view. The processes described can be perceived differently from the American or Asian perspective for within these continents integration processes are not intensified.

The study is based on the comparative analysis of national legal frames and the existing Internet societies and environments as well as the global tendencies to focus on an issue, not geography. The notion of sovereignty is to be understood in accordance with C. Schmitt's theory.

2. Emergence of doubts

Previously, the link between a state and sovereignty appeared to remain unbreakable.[12] As underlined in literature: "[n]ot only have states been asserted to be the principal actors in the international arena, but they are also considered to be the only legitimate actors in international relations."[13] Accordingly, in the international community *sensu stricto* the only entities whose subjectivity in international public law raises no disputes are sovereign states.[14]

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[9] What is to be underlined, the analysis is being carried out from the European point of view, as the matter in question differs substantially if the United States, where the Westphalian system stays vivid, were considered. D. Bethlehem, *The End of Geography: The Changing Nature of the International System and the Challenge to International Law*, EJIL 2014, vol. 25, no 1, p. 11.

[10] R. Rosicki, *O suwerenności,* PNM 2010, no 4, pp. 63–72.

[11] If sovereignty is to be considered non-gradable value that can be attributed to an entity or cannot, limiting or fission of it is impossible. One is sovereign or is not. This assumption would lead to a simple conclusion that sovereignty nowadays does not exist, at least in Europe, as sovereignty understood in this manner excludes integration. Basing on this distinction and applying this method – the states that have delegated some of their power are no longer to be considered to be sovereign. On the other hand the entities to which a particular competence would be delegated could not be considered sovereign, as it would be able to decide on the example only in the cases connected to the delegated matter.

[12] J. Czaputowicz, *op. cit.*, p. 15.

[13] R. B. Hall, T. J. Biersteker, *The Emergence of Provate Authority in Global Governance*, Cambrigde University Press 2002, p. 3.

[14] The international community *sensu largo* includes other entities as well, i.e. governmental international organizations, non-governmental international organizations, multinational corporations, churches, unions of political parties. However, nowadays widely recognised as legitimised to undertake an action as full-fledged actors in the international public law are: states, governmental international organizations, states *in statu*

However, currently, due to ongoing globalisation and legal pluralism, the notion of sovereignty of public legal entities in the international law seems to evolve. Some claim that we have entered modern Middle Ages marked with the erosion of state sovereignty in the globalized world.[15] Contemporary world changes. Power is nowadays attributed not only to states but also to other entities – from international governmental and non-governmental organisations to religious institutions, private enterprises and specialized agencies. As in the Middle Ages, we should search in vain for the one and only sovereign entity governing its territory. The notion of sovereignty is no longer applicable when we are describing the modern world – either none of international actors or all of them should be attributed this characteristic.

Although it may be doubted whether such a firm statement is fully founded, it is visible that the political structure of the world has changed. The competences of state were delegated to other entities and also new and powerful political organisms have appeared.

Likewise, international legal order has evolved from a strongly hierarchic pyramid to a network with many delocalized centres – strongly bounded but not hierarchically organized[16]. The clear hierarchy of *fontes iuris oriundi*[17] prevails on the intra-state level[18] but having adopted an international perspective it is to be observed that the legal order of Europe consists of a set of normative networks, in theory hierarchic but practically formed by numerous coexisting and equally binding legal systems of EU and national origin. These are strongly connected by the conflict of law rules for their jurisdictions often overlap. What is more, both types of systems – of national and European origin – claim priority over the other.

How did these factors influence the sovereignty of a state? Are we facing the emergence of non-state world bodies that should be considered as full-fledged actors of the international public law? Does the legal pluralism lead us to the transformation of the international public order? These questions, although strongly related to the problem of subjectivity in the international public law, are also essential to determine whether states are still the only sovereign bodies or the other entities should be considered sovereign as well? Furthermore, maybe the state sovereignty in the modern world is given up for the sake of economic prosperity, political correctness and risk reduction?

nascendi, The Holy See and the Order of Malta. P. Filipek, B. Kuźniak, *Prawo międzynarodowe publiczne*, ed. 3., Warszawa 2006, p. 169.

[15] H. Bull, *The Anarchical Society: A Study of Order in World Politics*, Columbia University Press 1977, p. 254.

[16] See. E. Łętowska, *„Multicentryczność" współczesnego systemu prawa i jej konsekwencje*, „Państwo i Prawo" 2005, no 4, p.5-6, E. Łętowska, *„Multicentryczność" systemu prawa i wykładnia jej przyjazna,* in: Rozprawy prawnicze. Księga pamiątkowa Profesora Maksymiliana Pazdana, Kraków 2001, *passim.*

[17] Acts of legislator containing norms of law.

[18] I.e. the hierarchy of norms is set usually by the constitution of a country in continental Europe legal systems.

2.1. Focusing on the issue – non-governmental organisation

The role of states has diminished as international and supranational organisations have been created, equipped with numerous state competences. Subsequently, the importance and popularity of international and global organizations and agencies has grown significantly. State competences are being delegated to newly-emerging agencies. These entities are not bound to the territory but to certain issues.[19]

Currently a significant number of problems turns out to be unsolvable at the local level – especially those concerning environment, health, migration, economy, trade, terrorism or balanced development. The Westphalian order[20] is falling into pieces as countries, previously enclosed within their strict borders, become more and more open.[21] Time and territorial barriers are disappearing, the flow of people, money, services, information surpasses frontiers virtually and physically, in mass.[22] What is more, separating the international matters and the intra-state issues becomes hindered. Cooperation between international entities and the state as well as the joint projects of the public and private investors impede making disjoint divisions between the private and the public, the domestic and the international.

Often relying on state-provided mechanisms turns out to be insufficient and, therefore, a regional or global coordination is necessary. Furthermore, technical knowledge and skills are required as well as highly specialized personnel. The mentioned phenomena triggered the creation of several international agencies acting in favour of not a particular country but rather of the humanity as a whole. They operate on different levels, some beyond states, others within them, frequently not state-based. They impose standards and legal rules. Their authority is not questioned by the international society, their legitimacy to impose rules, norms or shape policies is not levered. *De facto*, they exercise the power of a state, doing things associated exclusively with a state.[23]

What is more, non-market non-governmental organisations,[24] unified by the task or issue such as environmental policy, claim themselves as legitimised to represent interest of the mankind. They intercept tasks of states and governmental organisations or influence

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[19] D. Bethlehem, *The End of Geography: The Changing Nature of the International System and the Challenge to International Law*, EJIL 2014, vol. 25, no. 1, p. 12, i.e.: The Universal Postal Union, Interpol, the World Trade Organization, the World Customs Organization, World Nature Organization.

[20] The interstate law system characterised by granting countries the right to determine internal elements of the state – the term comes from the Peace of Westphalia, signed in 1648. The Treaty re-established borders of the states in conflict and granted sovereignty to the signatories, giving rise to a system where sovereign entities compete and cooperate on the basis of inter-state law, not entitled to intervene in other state's internal affairs. Therefore, the two focal points of the created system are clearly visible – the sovereignty and the territory. Recently, both of those elements are changing their character.

[21] The relativity of the openness of the states becomes especially visible when the immigration issues are taken into account and, therefore, it must be underlined that the tendency to abolish the frontiers and facilitate the flow of people exists mainly within the European Union.

[22] A. Rother, *Państwo postsuwerenne*, St.Pol. 2010, vol. 17, pp. 213–214.

[23] R. B. Hall, T. J. Biersteker, *The Emergence of Private Authority in Global Governance*, Cambrigde University Press 2002, p. 4.

[24] I.e. Médecins Sans Frontières, PATH, World Wide Fund for Nature International.

their policies. This leads to the dispersion of the competence to enact standards connected to a certain issue. As it is underlined in literature,[25] this situation is caused by the responsibility attributed to the regulation of some particular matters. States and governmental organisations tend to avoid assuming responsibility for regulating certain spheres even if that leads to the waiver of a competence to enact standards in a specific area. This allows non-market non-governmental organisations to attain more and more power as well as rights to decide and determine internal elements previously enclosed within states' frontiers, directly intervening in states sovereignty in that field.[26]

This brings to the conclusion that states forgo part of their sovereignty to be freed from the responsibility of regulation of some spheres, previously governed by them but nowadays controversial, problematic or carrying a significant risk. Such a practice is justified in fields where regulation requires in-depth, extensive research and considerable human and technological resources that a particular state cannot afford. Therefore, in these areas delegating state competences is reasonable and is functionally similar to contracting a specialist to solve a problem instead of solving it by oneself. Such an action cannot be treated as limiting the sovereignty of a state. On the contrary, sovereignty is the right to decide about the internal affairs and it is exactly within the scope of this right to confer selected competences to a specialized body. What is to be underlined, entrusting a chosen entity with one of state's tasks does not annihilate the state's right to regulate that particular area but only obliges a state not to exercise it.

On the other hand, shifting responsibility in order to avoid making unpopular decisions should not be accepted. Similarly, the permanent waiver of the right to shape a certain sphere is controversial – although such a practise is adopted by some countries.

Summarising, the legal status of international organisations has been already discussed in the doctrine.[27] Governmental international organisations have been accepted as full-fledged actors of the international community. In contrast, non-governmental non-market organisations are treated by the modern international community as specialists. They are not attributed subjectivity in the international law but, nevertheless, they are highly influential.

2.2. Differentiated legal systems - new fields emerging

Law is no longer seen as a collection of national systems and a pyramid but rather as a set of normative networks, spanning over individual countries, overlapping and affiliated. Some of it is created by existing governmental and non-governmental organisations and other emerges in the growing, unregulated sphere of the Internet. The first tend to be connected and coherent with the existing legal systems, modifying them or enriching, while the second are rather parallel and functionally independent.

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[25] A. Rother, *op.cit.*, p. 216.

[26] The other source of power for non-market non-governmental organisations are their soft competences, basing mainly in influence they have over individual citizens' opinion about the state and the governing. A. Rother, *op. cit.*, p. 217.

[27] A. Rother, *op.cit.*; R. B. Hall, T. J. Biersteker, *The Emergence of Provate Authority in Global Governance*, Cambrigde University Press 2002.

As it is stated in the legal doctrine, the functionality of coexisting legal systems depends on the effective and clear conflict of law rules. This is why the international law and the conflict of law rules are so meticulously developed nowadays. However, the new regulations tend to focus on one task or issue so the scope of their application can differ substantially. Norms issued by one entity frequently can be considered autonomous and independent as i.e. the matter is not a subject of regulation of state any more[28] or the state is bound by an international agreement.

These situations are commonly considered self-evident. But yet these are not the only cases when a new centre of normative network appears.

With the beginning of the 21st century the process of internet expansion accelerated. Web, at first not regulated and considered a sphere of unlimited freedom, quickly evolved. Appearing Internet societies started to be governed by a set of rules, guaranteeing basic level of safety for their members. Certain mechanisms emerged, mainly based on reputation but also on technological tools, enabling internet societies to control their members and to force obedience of the rules. With the reduction of risk that followed, the online sphere became an important arena for various activities – trade, social relationship, communication, politics, etc. The evolving environments, growing not concurrently with legal frames but independently, formed their autonomous state-like systems.

However, as the Internet became so important, also state actors grew strongly interested in controlling the new virtual territory. It was indicated that the notion of sovereignty of a state should be broaden, so it would cover new emerging structures. The doctrine points out that currently the vertical fragmentation of the Internet sphere is taking place as states are constructing the appropriate conflict of law rules to successfully divide among themselves this sphere.[29] Simultaneously, the European Union undertakes legal initiatives to regulate numerous actions that take place online and to organise them in an appropriate manner.[30]

As it is clearly visible, two tendencies are to be observed: the first goes for commercial transnationalism and the other opts for protection of local values and return to the Westphalian system.[31] Eventually, internet societies formed online on different platforms are formally dependent and governed by domestic laws. Despite that they are factually reaping it for they have seized the unregulated sphere and created state-like organisms not having claimed the sovereignty yet.

Therefore, should the notion of sovereignty of states be broaden, so it would cover new emerging structures (especially on the Internet)? Or rather the notion of sovereignty itself should be revised as it is no longer corresponding with the modern international arena? Currently widely accepted international arena actors are not able to control the new

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[28] The case of delegating the competence to regulate certain spheres by states affiliated in a one international organisation to the organisation itself (i.e. European Union).

[29] A double standard of jurisdiction for the regulation of Internet is proposed: based on the principle of targeting, used to sanction undesirable behaviour and the effects doctrine, to prevent unlawful actions.

[30] Recently the directive and regulation on ADR and ODR appeared in the legal order of EU.

[31] Th. Schultz, *Carving up the Internet: Jurisdiction, Legal Orders, and the Private/Public International Law Interface*, EJIL 2008, vol. 19, no. 4, p. 801, http://www.ejil.org/pdfs/19/4/1662.pdf.

structures or to impose binding standards within them. Nevertheless, they do not accept the sovereignty of the new-comers of the modern era but intend to take them into possession and merge them with their structures. At the time being it is impossible to anticipate the result of this process, however legislative tendencies[32] in European Union may suggest that the online sphere will at least partially enter into the states' regulatory domain.

2.3. International giants - private enterprises

What remains problematic is the character of non-state private entities of market origin, especially those imposing their will over states not having been legitimated by the delegation of a particular competence and those conquering newly emerging domains. Not only have they the power to influence the international politics but also make a claim for legitimacy and therefore – authority.[33] What is their status within international community?

Despite the fact that private enterprises are bodies of private law and cannot be attributed subjectivity in terms of the international public law, they are gradually becoming more and more influential. The phenomenon is not new for even in the 80-ies in the states of the socialist bloc the legal doctrine saw clearly the importance of transnational corporations[34] on the international arena.

Undoubtedly, international corporations contribute to the internal growth of countries of origin and the states in which they localize their agencies, but on the other hand they use their economic power to intervene in political and economic policies of these states.[35] However, the analysis would remain misleading if the historical background was neglected. This model of enterprise appeared at the times of the beginnings of integration processes (political, economic and military) and was triggered by the disappearance of colonialism. Making direct investments in developing countries whose sovereignty was being formed granted the metropolises of the previous era an access to the recourses of the ex-colonies. The immense growth of economic power of private multi-national enterprises has cemented their supreme position in the newcomers. The disproportion between transnational private investors and state is being deepened – firstly by avoiding paying taxes, transferring

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[32] Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165/63, 18.6.2013), Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) (OJ L 165/1, 18.6.2013), Proposal for a directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content.

[33] It is claimed that authority can be attributed to non-state actors. A. Claire Cutler, *Locating 'Authority' in the Global Political Economy*, ISQ 1999, vol. 43, no 1, p. 64.

[34] This would be used as the most popular term, although it is to be noticed that it does not fully reflect the nature of an entity. Other names are also used – such as: multinational corporation, international corporation, multinational enterprise. What is the most characteristic for these is: the nature of factors forming these companies, the scale and area of operation, the degree of availability of the centre for agencies. Z. Grzelak, *Suwerenność a działanie kapitalistycznych przedsiębiorstw międzynarodowych*, Warszawa 1982, pp. 9–10.

[35] *Ibidem*, p. 5.

their profits to the country of origin, passing on the cost of doing business on employees, buying local companies for their liquidation and destroying the environment. This is allowed partly due to the fact that corporations are considered to be a basic medium for the dispersion of innovation. In addition they have the *know-how* and are the ones of main sources of capital, lacking in developing countries.

As a result, states cannot impose any decision over those private investors as they are economically dependent on their activity. Therefore, their sovereignty turns out to be fictitious as their economic sovereignty is only a mirage.[36]

Corporations bear the internal costs related to the conducted business activities, flipping the external costs[37] on a hosting state. Herein, the state's right to enact safety and environment protection standards is limited. In conclusion, during the periods of prosperity corporations are demanding free market principles of *laissez-faire*. In contrast, risks connected with conducting business activities tend to be shifted on states – corporations are demanding state guarantees, financial aids (preferably non-refundable) and the protection of the state in which they invest.[38]

Even in much more powerful states transnational corporations have strong position, what became obvious during the financial crisis of 2007-2009 in United States of America.

To conclude, despite the fact that transnational corporations are not public actors according to the international public law, their economic potential and influence deprives developing states of the possibility to regulate certain spheres. Even though the corporations do not have the competence to regulate states' labour, economy or environment protection policies, they often actually determine them.

3. Definition of sovereignty – crucial elements

Why should the method used by C. Schmitt be adopted nowadays to verify the sovereignty of international actors?

First and foremost, despite the inglorious role it played during the Nazi period, this theory still allows to localise the entity (natural or legal person, body or institution) actually making decisions.

"Sovereign is the one who decides on the exception".[39] By "the exception" is meant a political or economic disturbance allowing to step outside the rule of law in public interest and undertake extraordinary measures. In the core of this conception lies the conviction that the rule and the routine cannot be considered reliable when it comes to determining sovereignty. Firstly, the routine tends to be regulated by law and no decision needs to be taken in normal circumstances as a mere subsumption of a legal norm is sufficient (and

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[36] *Idibem*, p. 76.

[37] By these the cost borne by the third party, not involved in transactions, are understood – the cost of impoverishment of environment, contamination of air, soil and water, the consequences for national budgets.

[38] S. Sala, *Wpływ procesów globalizacji na suwerenność państwa*, http://geopolityka.net/wplyw-procesow-globalizacji-na-suwerennosc-panstwa/#_ftnref10.

[39] C. Schmitt trans. by G. Schwab, *Political Theology Four Chapters on the Concept of Sovereignty*, p. 5, https://idepolitik.files.wordpress.com/2010/10/schmitt-political-theology.pdf.

provides the "is" and "ought"). Therefore, the only situation where the decision is to be taken is the one that has not been foreseen by the legislator.

On the other hand, the sovereign entity is the one entitled to decide whether the particular event fits into anticipated patterns or it is an example that needs to be solved independently. By this, indirectly, the sovereign determines what the routine is. Apart from that, the sovereign dispose of unlimited power to shape both spheres: the normal and the unexpected.

This theory proved itself to be powerful and politically useful during the Nazi period in Germany, putting ideological foundations for the dictatorship. Even nowadays, the simple link between the sovereignty and the power to decide on the exception remains alluring, especially as it allows to stand over the established norms.

Using the legal reasoning proposed by C. Schmitt in his theory one can verify whether the entity claiming itself sovereign really has the possibility[40] to determine its internal situation. The sovereignty of the mentioned entities remains dubious from the theoretical point of view. On the other hand, adopting more practical approach can lead to clearer results. By applying the method proposed by C. Schmitt it can be verified whether the previously mentioned entities should be considered sovereign. Adopting this thesis might be beneficial for it may open the possibility to attribute them the subjectivity in the international law and, as a consequence, facilitate binding them with international standards.[41]

4. Currently, who is sovereign?

Previously, authority as well as power itself rested on a state, so it was simple to conclude, that states were the sovereign. There were tendencies to associate sovereignty with a state and exclude the application of the notion in case of other entities.

Having said that, appears the question whether the fact that states nowadays delegate numerous competences to other entities influences their legal status. This query is not a new one. It also has been arisen shortly after Polish accession to European Union.[42]

The Constitutional Court[43] stated that "[d]elegation of powers "in certain cases" must be understood as both a general prohibition of the transfer of all competence of the body, the devolution of competence in all the cases connected with a particular sphere(…). It is therefore necessary so precisely identify the areas and the scope of the transferred competences".[44] Furthermore, no international agreement is granted priority before the Constitution. It can be deduced, that in the case of exception – extreme situation or risk that was not foreseen or that can put into danger the well-being of the state – the state has the right to decide despite the existing international agreements and obligations.

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[40] Both – the right to determine and the sufficient power to exercise the right are needed.

[41] The matter requires further investigation and in-depth analysis.

[42] Award of the Constitutional Court, issued on 11th May 2005, K 18/04, http://trybunal.gov.pl/uploads/media/SiM_L_PL_calosc.pdf.

[43] Award of the Constitutional Court, issued on 11th May 2005 r., K 18/04.

[44] *Ibidem*, pct. 4.1. (trans. by the author).

Therefore delegation of competences, that takes place during the process of European integration, does deprive a state of sovereignty.

Herein, the conclusion turns out to be obvious. Despite delegating numerous functions and leaving some areas of internal affairs to be governed by others, a state shall maintain the right to decide about elements vital for its existence and wellbeing.

And still, some of the internal affairs are no longer determined by a state, despite the fact that no competence has been delegated. Simply another entity appeared, powerful enough to appropriate a certain sphere and impose new rules within it. This is the case of transnational corporations. The state waiver of the right is not, therefore, based on an agreement but forced.

Otherwise, in the case of internet societies, states undertake positive actions to regulate an emerging sphere but till now the proposed mechanisms are inefficient, inadequate, especially in e-commerce. As a consequence, the online sphere regulates itself and remains highly independent.

Therefore, it can be concluded that the sovereignty of states underwent several changes, as it detached from territory and focused on issue. From the hierarchical pyramid the legal system evolved to the set of networks, with delocalized centres, concentrated around a task or matter. The sovereignty understood as the absolute power is no longer applicable in this circumstances. However, the modern world is governed by neither luck nor chance – simply the distribution of decision-making centres has dispersed. And then, a question emerges – if the state sovereignty disintegrated and its elements are to be found in hands of different entities should any of the carrier of the partial-sovereignty be called sovereign? Should they all be considered sovereign or none of them?

5. Subsumption – what if we use Schmitt's definition?

In the age of globalisation and integration previously acceptable concepts of sovereignty are no longer adequate. Focusing on the issue and decreasing importance of territorial element induce a search for a theory of sovereignty that would stay in accordance with the characteristic of modern world. As demonstrated, nowadays decision processes are executed by several entities of different origin, shaping the states policies in different issues. What is their status within international community? How should we localise the entities truly governing the contemporary world – the sovereigns of our era?

The sovereign is the one deciding on the exception. Maybe that is the answer. Application of Schmitt's definition empowers one to successfully localise the entities shaping the contemporary world.

Accepting this manner of reasoning is to conclude that, despite the change in structure of law and power, it is possible to indicate that on the international arena the categories of entities which enjoy the attribute of sovereignty are: states, governmental organisations, nongovernmental organisations, transnational corporations and internet societies, but their sovereignty remains strictly limited to the areas in scope of which they can execute functions previously reserved for states. In conclusion, the sovereignty of the era of globalisation is not an absolute anymore but limited by the issue in question.

Summary

Due to globalization and ongoing discussions on legal pluralism, traditional understanding of the concept of sovereignty is to be challenged. The role of the state in the international community is gradually decreasing, while governmental and non-governmental international organizations are gaining importance. These entities are not bound to a specific territory-they are created to accomplish a particular purpose. On the other hand, multinational companies are using their economic power to intervene into the spheres previously regulated exclusively by state. The vision of law as a hierarchical structure evolves. Normative systems are now seen as a network with many delocalized centres – strongly bounded but not hierarchically organized, frequently due to the different scope of regulations. The development of the Internet triggered the emergence of independent social structures, equipped with autonomous normative regulations. Then, how should the sovereignty be understood? Should the changes lead to the recognition of the sovereignty of these new institutions?