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POWERS AND LAWS IN THE AGE OF GLOBALIZATION

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Епоха глобалізації зумовила появу та розповсюдження суперечливих тенденцій. Серед них - зростання впливу недержавних організацій, підвищення ролі "м'якої" влади. Особливе місце посідає сфера глобальних законів: їх неодностайного тлумачення, неефективності стосовно воєн та злочинів, здійснених націоналістичними та фундаменталістськими організаціями, неможливості контролю (а звідси - і безкарність) великих та потужних держав. Тому сьогодні існує необхідність подальшого удосконалення глобальних законів паралельно із підвищенням ролі м'якої сили як на національному, так і на глобальному рівні.

Эпоха глобализации обусловила появление и распространение противоречивых тенденций. Среди них - рост влияния негосударственных организаций, повышение роли "мягкой" власти. Особое место занимает сфера глобальных законов: их неоднозначного толкования, неэффективности относительно войн и преступлений, совершенных националистическими и фундаменталистскими организациями, невозможности контроля (а отсюда - и безнаказанность) крупных и мощных государств. Поэтому сегодня существует необходимость дальнейшего совершенствования глобальных законов параллельно с повышением роли мягкой силы как на национальном, так и на глобальном уровне.

In the age of globalization the contradictory tendencies are present: (1) Power is becoming of largely independent of the power structures in individual states, yet it exerts an influence on states. Non-states entities are gaining more and more power and influence; (2) There is the increase of the role and importance of soft power and semi-hard power; (3) global laws arise in the process of autonomization of laws in relation to state. They are created largely independently of the will of states and imposed on states; (4) More and more non-state bodies are entitled to create the laws; (5)The contemporary world witnesses a growing status of the soft and semi-hard laws. They regulate the relations between states and institutions; (6) The large states (superpowers) striving for hegemony in the world do not comply with international and global laws and they do it often with impunity; (7) Some small states and fundamentalist or nationalist movements engage in brutal wars and acts of crime, contrary to international and global laws; (8) The global laws due to their generality and vagueness are variously interpreted and often are used to justify the action of violence; (9) There is the need to make efforts to ensure the more precise elaboration of global laws and more rapid increase of the role of soft power in national and global spheres.

Ключові слова: глобалізація, м'яка сила, напівм'яка сила, міжнародні закони, глобальні закони, недержавні організації.

1. States and laws in the age of modernity

The article aims to discuss the status of states and laws in today's globalized world. In order to outline the problem with a greater clarity, it seems apt to consider these relations in the age of modernity, prior to the onset of globalization which occurred in the 1960s. Traditionally, two types of laws were distinguished: internal and international. Internal laws were established by nation states which were sovereign, i.e. independent of any external entities in their legislative and judicial activities. The international recognition of state sovereignty was a constituent element of the legal status of states. At the same time, however, a state could accept a restriction of its material, personal or territorial sovereignty by granting privileges to certain groups or individuals – or consenting to the exclusion of a part of its territory from its jurisdiction (for example, Hong Kong was under British jurisdiction between 1898 and 1997). Sovereign states also created the international law which regulated relationships between different states. The international law was originated by the states and was meant to ensure their legal sovereignty, equality and security. The states had the status of legal persons endowed with the right to self-determination. Involvement in the establishment of international rights enhanced the prestige of states on the international arena, and their implementation in the state's territory depended on decisions made by the state's authorities[1].

[1] M. Koskenniemi, *What is International Law for?*, in: M.D. Evans (ed.), International Law, Oxford 2006, Oxford UP, s. 57-60

Treaties, agreements and other arrangements constituted the sources of the international law which governed three situations and generated three types of structures. Firstly, it provided a general regulatory framework for relationships between different states, such as terms and conditions of peaceful coexistence after wars. Until the Congress of Vienna in 1815, international affairs between the states were regulated exclusively by bilateral treaties which brought about territorial and political order. Typically, they were based on the principle of balance of power. Secondly, it regulated relations between states in specific matters. To that aim, international organizations or institutions were set up, involving representatives of multiple states. Depending on the needs, such entities developed detailed arrangements related to previously adopted general regulations, monitored compliance and provided a forum for promoting inter-state cooperation. Usually, they were organizations specializing in specific areas, e.g. the International Telegraph Union founded in 1965 or the Universal Postal Union established in 1874. Many similar agencies – e.g. responsible for trade, environmental protection or communications – were set up on the international level. Thirdly, it contributed to the elimination of certain phenomena that were detrimental to the functioning of all states. In this case, states simply adopted certain universal regulations and pledged to comply with them for their potential benefit. Examples include the obligation to combat maritime piracy or follow humanitarian principles during wartime (refraining from killing civilians and prisoners of war, etc.)[2].

This understanding of the international law rested on five assumptions: (1) the law was identified with hard law, i.e. actual binding laws – orders, bans and regulations carrying military and political sanctions for non-compliance; (2) the law was meaningless without implementation; (3) the implementation of laws relied on hard power (use of military and political means); (4) only states held the power required to ensure compliance with the laws and apply sanctions for non-compliance; (5) every international law, by its very nature, was recognized as objective, i.e. as a means of regulating relations between states taking into account formal and material standards which constitute the validation of law (generality, consistency and fairness). The states were thus (a) the only international law entities, (b) lawmakers and (c) law executors, (d) and were recognized as equal and possessing equal rights[3].

2. Power entities in the age of globalization

Global power differs from international power in that it is independent (or largely independent) of the power structures in individual states, yet it exerts an influence on states. It is state-independent in its genesis or as a holder of power. Global power arises from globally relevant activities pursued by non-state entities (persons, organizations, institutions, corporations, communities) or from the achievement of a hegemonic position by a single state (or a single organization). It can also emerge from international powers (institutions, structures, conventions) in the process of gaining independence from the control and activities of nation states and their representatives. Global power has an impact on the politics of states, organizations, communities and other entities, and on their legislation despite – and sometimes even against – their will. Its influence is largely one-sided, systematic and long-lasting[4].

What entities can be classified as holders of global power? It seems that at least seven types of such entities can be identified: (1) traditional international institutions brought into existence by states and controlled to a greater or lesser degree by nation states, such as the UN, ASEAN and others; (2) hegemonic states; (3) crime and terrorist organizations, and extremist movements accepting the use of violence; (4) institutions and organizations originally established by states which later get out of their control and bring states under their control, e.g. global financial institutions; (5) international corporations and banks; (6) epistemic communities, lobbies and private organizations; (7) non-governmental organizations influencing state policies.

Re: 1) The UN has the authority to create international laws which are enacted by the UN General Assembly subject to approval by the Security Council or by the Security Council without dependence on the consent of individual states. Consequently, since the establishment of the United Nations, states which are not permanent members of the Security Council have enjoyed limited sovereignty, since they must abide by laws which are enacted without their involvement or passed by a majority vote by the General Assembly. In the case outlined above, however, state sovereignty is not abolished because the states are eager to accept such limitations by voluntarily joining the UN. As a general rule, member states ratify all laws passed by the UN. The UN has a legal personality and the capacity to enter into agreements and treaties which are binding on its members. For example, Article 105 of the Charter of the United Nations provides outright that the

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[2] H. Thirlway, *The Sources of International Law*, in: M.D. Evans, International Law, op.cit., pp. 115-140.

[3] M. Koskenniemi, *Carl Schmitt, Hans Morgenthau, and the Image of Law in International Relations*, in: M. Byers, The Role of Law in International Politics, Oxford 2001, Oxford UP, pp. 17-34.

[4] Ernest-Otto Czempiel, Janus N. Rosenau (eds*.), Governance without Government. Order and Change in World Politics,* Cambridge 1992 Cambridge UP.

UN enjoys such privileges and immunities vis-à-vis individual states as are required for the fulfilment of its purposes. Even though the UN has no military or police force, and relies on the armies of member states to ensure the implementation of enacted laws and decisions, it exerts its influence due to its authority as a globally mandated entity on the one hand, and owing to the political and military support of member states on the other.

Re: 2) Recent decades have seen a growing popularity of theories of hegemonic power[5]. Hegemonic power refers to the global power held by states with the strongest military and economic presence in the world. The United States is said to hold the political, moral and civilizational leadership over all states globally and at the same time – or perhaps above all – to be the world's unquestioned dominant military power. The hegemon state is not to be equated with the imperialist exploiting and oppressing colonies. It should rather be seen as a coordinator of international policy, and a guarantor of peace and stability. It performs the same functions globally as a state within its borders. Global order and security are public goods which are relevant to everyone. The Unites States is a country promoting religious freedoms and democracy, and fighting terrorism. The USA respects the views and interests of other entities, and value their culture and traditions. On the other hand, however, the United States does not tolerate policies that are hostile towards that state. It is a country capable of imposing its political will and economic rules on others. The US does not hold absolute power, yet it is more sovereign than other states[6] . The status of the American state rose after the dissolution of the Soviet Union, when the US became partially independent of international structures. As Z. Brzeziński stated, in December 1991 (following the disintegration of the Soviet Union), the United States was left standing tall as the only global super-power, and the US President as the leader of the world[7]. Nevertheless the global influence of the United States has been noticeably waning over the past years. In 1999, the UN Security Council refused to grant formal approval for NATO to intervene militarily against Serbia. Also, in 2001, the UN failed to support the military intervention of US troops in Iraq. Western European states increasingly criticize the American government and shun cooperation with the US authorities on the international forum. They demand co-decision making power in global matters, and call on the US to rethink its policy of unilateralism, and pursue a multilateral and multipolar approach. Multilateralism is a concept advocated by European Union member states which provides that global relations should be governed by varied and complex institutional structures created by individual states. The aim of the multilateral approach is to provide a system of institutionalized coordination of state activities on the global forum on the basis of general principles of action, with a view to establishing an international economic and political order free from any internal hegemonic relations. Any particular interests of the system's members would be subordinated to that system. Multipolarism is an approach which advocates the emergence of multiple – and relatively independent – poles of power across the world. The multipolar approach is meant to be a means of preventing the emergence of all types of hegemonic relations.[1] Irrespective of the multiplicity of trends arising in the Western world, there has been a revival of political and military powers (China, Russia, India, some South American states) that compete with the United States and openly challenge its global supremacy. International problems turn out to be far too complex and too widespread to be resolved by a single state, even if it holds the status of the world's superpower.

Re: 3) Global political power also assumes the form of supra-state crime organizations which use force to prompt individuals and entire social groups into behaving in a particular manner. The role and status of terrorist and crime organizations, mafia, gangs and arms traders has been on a rise in recent years. The category also includes extremist organizations and some populist movements. The best known and most dangerous seems today the Moslim fundamentalist movements, which ignore the laws and morality norms.

Re: 4) Global extrapolitical institutions and organizations, such as the World Trade Organization, International Monetary Fund or World Bank, were established by states, and have states as their members. Despite that, they make decisions and enact regulations which are independent of the will and interests of states, especially the poor ones. A certain degree of influence on the Bretton Woods organizations is exerted by affluent states providing them with financial reserved, chiefly the United States. The power held by these organizations is of a

[5] P. Bender, *Ameryka-nowy Rzym. Historia równoległa dwóch imperiów*. [America- New Rome.History of two Empires], Warszawa 2004, Sic; M. Hardt, A. Negri, *Empire*, Cambridge, London 2001, Harvard UP.

[6] R.O. Keohane, *After Hegemony,* Princeton 1984, Princeton UP; R.O. Keohane (ed.), *Neo-realism and Its Critics*, New York 1986, Columbia UP; S. Burchill, R. Devetak, A. Linklater, M. Paterson, Ch. Reus-Smith, *Teorie stosunków miêdzynarodowych*, [Theory of International Relations], Warszawa 2006 PWN.

[7] Z. Brzezinski, *Druga szansa*,[The Second Chance] Warszawa 2007, Swiat Ksiazki, p. 24.

[1] T. Buksinski, *Monocetrism and Multicentrism as Legal Theories in the Global Era*, „Archiwum Filozofii Prawa i Filozofii Społecznej", 2015 Nr1, pp.5-13

particular character. It relies on financial resources and loan activities. The organizations develop standards governing the (liberal) economic policy for the states borrowing money from them, and enforce compliance by means of financial and economic sanctions. They require the borrower states to uphold the rule of the law and free-market (sometimes libertarian) economic principles. Often, they pay no attention to the borrowers' interests. Global extrapolitical organizations are not democratic, for they make decisions, issue regulations, pass laws and release guidelines without taking into account the opinions of members or other states. They are binding on the states concerned, and are adhered to by them. Non-compliance is punished by financial means, for example by the refusal to grant a loan. Membership in such organizations affects the quality and content of national laws. For example, after joining the World Trade Organization China opened up to the international market, liberalized its business regulations, and improved the transparency of its economic laws. The jurisdiction of the World Trade Organization is compulsory and directly required of its members. The WTO establishes the global rules of trade between nations. There are several dozen state-independent organizations dealing with economy, trade and agriculture which enact economic laws and supervise their compliance.

Re: 5) Other entities including large corporations or regional organizations (e.g. the European Union) pass laws which are directly binding on their members, without asking their consent to the enactment of such laws. In addition, they influence their members through the general climate and the "rules of the game" which are at the heart of the organization concerned. They define the standards of action. The process of granting, both explicitly and implicitly, legislative and executive powers to a growing number of entities is increasing. Such powers are acquired today by corporations, multinational companies, economic institutions, and an array of different associations, committees and arbitration institutions.

All state-independent international institutions and organizations have their own agenda to push through, because they want to carry on and expand their activities. They also have their own set of principles – including mechanisms of forcing their members to fulfil their assigned roles. They also determine the costs of noncompliance with the rules, and the consequences of leaving the organization concerned. Typically, state-independent international institutions and organizations get progressively more bureaucratic and, along with the process, become independent of their founders and members[9].

Re: 6) The role of jurists, experts and specialists in the creation and interpretation of the international law has been consistently growing in importance. There is even a concept of epistemic communities which have an increasing influence on the global order. The communities are formed by lawyers, technocrats, managers, scholars and international specialists who all share common values, problems, knowledge and contacts. By issuing their opinions, exercising their competences and giving meanings to different phenomena, they create the general climate. Furthermore, they draft agreements, treaties and opinions, and assess existing risks. They have achieved independence of state interests[10]. A number of committees, chambers and tribunals have been established to create laws or hold powers to resolve conflicts arising between parties. Aside from epistemic communities, the global order is also impacted by lobbies, communities, minorities and private corporations. Their influence cannot always be viewed as positive.

Re: 7) NGOs are not established by states and they do not seek to subordinate states by virtue of their position. They have the status of private organizations tolerated by states. However, their role in the development of standards and criteria of action for states and other entities (companies, institutions, citizens) in the fields of ecology, human rights and democratization is not to be underestimated. All these entities restrict the sphere of state power. Even though they do not have military force, they do influence the politics of states and other institutions.

3. Increase in the status of soft and semi-hard power

Not all entities listed above possess the same kind of power. The first three make use of hard (military, physical) power, either legally or illegally. In contrast, the entities listed under items 4 and 5 above resort primarily to semi-hard power (economic, financial, legal pressure). Epistemic communities, social networks and non-governmental organizations (item 6,7) in turn utilize chiefly soft power (persuasion, argumentation, proclamations, demonstrations)[11]. Interactions between

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[9] T. Łoś-Nowak (ed.) *Organizacje w stosunkach międzynarodowych. Istota- mechanizmy działania-zasięg*, [Organizations in the International Relations. Essense- Mechanisms of Functioning- Domain],Wrocław 1999, Wyd. Uniwersytetu Wrocławskiego; E. Latoszek, M. Proczek, *Organizacje międzynarodowe we współczesnym świecie*, [International Organizations in the Contemporary World]. Warszawa 2006, Elipsa.

[10] A. Antoniades, *Epistemic Communities, Epistems and the Construction of (World) Politics*, Global Society, vol. 17, no. 1, 2003; B. Stern, *How to Regulate Globalization?* in: M. Byers, The Role of Law in International Politics, Oxford 2001, Oxford UP, pp. 247-268.

[11] J. Nye, *Soft Power: The Means to Success in World Politics*, New York 2004, Public Affairs; W. Havel, *Siła bezsilnych*, [The Power of the Powerless], Berlin 1987, Veto Verlag.

entities possessing different kinds of power lead to conflicts. Every type of power can be used to achieve morally and politically positive or negative objectives. Nevertheless, in open societies soft power – more than semi-hard and hard power – is geared towards pursuing morally commendable goals. Soft power is used to put pressure on holders of hard and semi-hard power to lead a policy ensuring the fulfilment of citizens' material and spiritual needs. It appears that in the age of globalization soft power is growing in significance at the expense of hard power, at least in democratic states. States, as well as political and economic institutions, are increasingly forced to consciously and voluntarily assume obligations which are not in their interest (the interest being an expansion of hard power). Vitally, they are not compelled to undertake such obligations by duress or under threat of violence. Public opinion, protests, manifestations, church declarations etc. create an axiological/normative climate which must be taken into account by politicians. For example, pressures of this kind contributed to the abolition of slavery, introduction of working hours and conditions or restriction of child labour. It was the soft power exercised by the Solidarity social movement in Poland that led to the downfall of hard-line Communist regimes. Social protests held in Maidan Nezalezhnosti in Kiev resulted twice in the change of (hard) political power. As summed up by Vaclav Havel, soft power is the power of the powerless.

One could say that what is witnessed today is an international civil society made up of movements, non-governmental organizations and civic networks which put pressure on states to pursue a specific kind of policy. The number of global grassroots organizations making use of soft power is growing steadily. What is more, they become increasingly varied in terms of status, interests and types of action, and increasingly effective in their operations. There are dozens of thousands of international non-governmental organizations operating across the world today. Among them, the most prominent and influential are: Greenpeace, Amnesty International, Human Rights Watch, Medicins Sans Frontiers, Transparency International, International Red Cross. They perform the function of global consciousness. They function as soft power entities influencing governments and societies, other organizations and institutions in the name of supra-state public interests. It is pointed out that NGOs played a pivotal role in the adoption of the Convention on the Rights of the Child in 1992, the UN Declaration on the Elimination of Violence against Women in 1993, the Convention on the Conservation of Migratory Species of Wild Animals in 1979, the Convention on Biological Diversity in 1992, as well as bird protection legislation, the International Covenants on Human Rights in 1966. In addition, non-governmental organizations made a contribution to the establishment of the International Criminal Court in 1998 and to the adoption by industrial states (except for the USA) of the 1997 Kyoto Protocol which commits the signatories to fight global warming by reducing greenhouse gas emissions. The International Red Cross played an undeniable role in the development of humanitarian legislation, e.g. in the adoption of the 1997 Anti-Personnel Mine Ban Convention. Trade unions have contributed to the development of labour laws. Amnesty International reports on cases of human rights violations and condemns them, and Greenpeace embraces the mission of exposing global environmental problems and safeguarding legislation that protects nature and the environment. In their activities, they use Internet campaigns and protests. They denounce the practices of governments violating legal regulations and condemn them[12]. They participate in debates, negotiate, provide arguments and warnings. In this way, they create a favourable climate for the adoption of new international laws by different states, and boost the transparency of decisions on the international fora. All these activities are possible even though entities of this type do not have hard power at their disposal.

Their impact is felt not only by state governments but also other organizations and institutions. For instance, under the pressure exerted by (mainly American) environmental organizations the World Bank developed a strategy that seeks to address global environmental challenges. In the 1980s, the World Bank only employed five environmental protection specialists. At the beginning of the 21st century, the number exceeded 300. In addition, the World Bank was forced to withdraw from investing in environmentally hazardous projects or modify the financed programmes, for example, it suspended a loan for the Polonoroeste Road Project in Brazil's Amazon due to environmental issues and threats to the integrity of indigenous populations. A similar decision was made with regard to the dam-building project in India's Narmada river valley. Furthermore, the World Bank began, of its own accord, to put pressure on state governments to adopt laws protecting the natural environment. In response to intense pressure from environmental campaigners the idea of sustainable economic and environmental development took shape[13].

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[12] A. Klotz, *Norms in International Relations: The Struggle Against Apartheid*, Ithaca 1995, p. 19; M. Finnemore, *National Interests in International Society*, New York 1996.
[13] M. Boas, D. McNeill (ed.), *Global Institutions and Development*, London, New York 2004, Routledge; M. Barnett, M. Finnemore, *Rules for the World: International Organizations in Global Politics,* Ithaca 2004, Cornell UP.

Examples showing the increase in the importance of soft power are abundant and diverse. Soft power is also increasingly used by states, i.e. traditional holders of hard power, in their policies. The trend has emerged in response to a change in the international climate. Instead of threatening and intimidating, they employ persuasion, urge, and offer collaboration. A factor supporting the trend is the growing cost of warfare and war-related risks for the aggressor due to the development of newer and newer weapons. Consequently, states bring other states into compliance with laws (e.g. ownership regulations) by means of persuasion or through the formation of coalitions condemning non-compliant states or isolating them on the international arena. Since the Kellog-Briand Pact of 1928, war has been branded as unlawful.

One of the forms (or varieties) of soft power is authority. As opposed to hard power, in order to be effective, it requires the recognition and consent of the influenced entity because of certain properties and resources of the influencing entity[14]. Another contemporary phenomenon, aside from the increase in the importance of soft power, is the rise of the status of semi-hard (semi-soft) power types. Semi-hard power is exercised through economic duress, sanctions, promises of cooperation and assistance, and a stake in joint projects – or via interactions based on recommended standards and laws. Semi-hard power relies on the one hand on material resources (funds, riches, technologies) as an instrument of enforcing desirable behaviours and, on the other, on institutional and organizational structures of administrators of such resources. By the mere fact of creating an efficient organizational structure, the structure becomes a force which affects its surroundings. Human resources, rules of conduct and decision-making structures constitute a potential that can be utilized for exerting an influence on entities to achieve the desired goal.

Effective strategies include economic pressures, suspension of investments, threats to halt the supply of strategic raw materials or political pressures (without the use of force) placed on entities to induce them by peaceful means to adopt desirable measures. Semi-hard power is used both by states in their mutual relations, and by organizations and institutions which hold it. Apart from large and rich states, the best-known holders of semi-hard power are global financial organizations included in the Bretton Woods system established in 1944: the International Monetary Fund, the World Bank and the World Trade Organization. They have the greatest financial resources, give credits and loans, and provide consulting services. They also conduct their own economic policy. Sanctions imposed by such institutions usually take the form of credit denial, increased interest rates or provision of less favourable loan conditions. Bretton Woods institutions also have organizational strength which becomes a form of power helping to enforce actions that are in line with the general rules in force in these entities. They structuralize problems and social situations in accordance with their own ideas and standards, and compel others to embrace their interpretations of the social reality. For example, they set parameters for national economies based on the criteria of their liberality or their progress on the path towards liberalization, and evaluate and classify different economies accordingly. Then, they impose their evaluations on borrowers and other entities. Their opinions are respected by all state governments.

Their institutional/organizational power is also associated with the symbolic/normative power comprising standards and values (e.g. liberal ones) that are adopted for the pursued policies and widely promoted. They serve as a benchmark for defining problems and submitting proposed solutions, and for placing obligations on operating entities. The international organizations listed above, as well as others, are known to influence the international law-making (especially economic laws) and the legislative process in different countries. The post-communist countries have also been affected: after the downfall of the communist regime they are forced to implement libertarian reforms and stringent economic laws under the dictation of the International Monetary Fund and World Bank[15].

In more recent times, in order to deter Russia from supporting separatists in eastern Ukrainian provinces, Western states have imposed economic sanctions against that state. The measures seem to have had a significant negative impact on Russia's economy.

4. Globalization of legislation and jurisdiction

The globalization of political power is inextricably linked to the globalization of laws. The phrase "global law" is not a recognized term in legal theory or practice. It is used here for the purpose of identifying a certain sub-class of supra-state laws with specific properties. The drafting, content and implementation of international laws depend on the will of states. It is the strength and will of states that ensure their entry into force. Such laws continue to be an important constituent of the international order. They are founded on the tenet of equality of states before the law, and their

[14] J. Nye, *Soft Power*, op. cit., p. 36; R. Keohane, *International Institutions and State Power; Essays in International Relations Theory,* Boulder 1989, Westview.

[15] For a broader discussion, see T. Buksiński, *Współczesne filozofie polityki* [Contempoprary Philosophies of Politics), part two, Poznan 2004, WNIFUAM; Also see T. Buksiński*, Moderność* [Modernity], Poznań 2001, WNIF UAM.

sovereignty. In contrast, global laws arise in the process of autonomization of laws in relation to states – similarly to the emergence of global political powers. Global laws are created independently of the will of states and imposed on states – or they become autonomous from the states which have brought them into existence. They curb the sovereignty of states, and they do not perceive states as equal. They allow a privileged treatment – in actual or even formal terms – of some entities (states, institutions, organizations) over others. They are found in all spheres of social life. Global laws are in force even against the will of states, with states being forced to implement them. Such duress takes the form of soft sanctions (public opinion pressure, criticism, condemnation from different entities), semi-hard (economic, political) or hard sanctions (military interventions).

Global laws are sometimes referred to as "stateless". This means that: (a) they are not created by states but through custom or by institutions and organizations external to states, or they become independent of states which have created them; (b) they are binding on states without requiring additional codification; (c) they apply directly to citizens and state residents without the mediation of state laws, i.e. they are directly effective vis-à-vis individuals or communities or corporations and organizations; (d) all of them have an obligation to abide by the laws (e.g. human rights laws, environmental laws) and can be held liable. In the opinion of some law experts, the primary subjects of today's system of supra-state laws are individuals or social groups rather than states. The rights of individuals enjoy a superior status to the principle of state sovereignty. It is even argued that the international society is made up of people, not states[16].

More and more precise global and international humanitarian laws are passed to regulate the condition of prisoners of war and the civilian population during the war, as well as tourists, immigrants and refugees. Such laws have acquired an independent status of the will and interests of individual states. They are effective by the force of custom or convention – or on the principle of *ius cogens*. Such interpretation of the law permits individuals and other non-state entities a greater degree of emancipation from states and state laws. A specific form of legal globalization – aside from the globalization of legislation – is the globalization of jurisdiction, i.e. legal powers and competencies, to encompass new entities and new areas. For example, states prosecute arms dealers, drug traffickers and terrorists beyond their borders[17].

5. Soft and semi-hard laws and sanctions

Global laws usually differ in their status and nature from statutory state laws. The contemporary world witnesses not only an increase in the role of soft and semi-hard power but also a growing status of soft and semi-hard laws. They are seen to increasingly regulate the relations between states and institutions. Soft and semi-hard laws are non-juridical, non-compulsory and non-binding in the traditional sense, i.e. under pain of military sanctions, damages or legal orders. Failure to observe a soft law does not entail any hard penalties. Soft laws include quasi-legal instruments such as political and legal declarations; memoranda; resolutions; legal opinions; principles of prioritizing certain laws (e.g. written over unwritten); moral standards which are applied in practice or required by informal international consensus and other informal rules which are commonly embraced and valued, though not laid down in treaties and formal acts; general legal rules; rules of the international law; customary laws; legal precedents; institutional rules of conduct. All of these are sometimes said to fulfil a para-law function.

Soft laws can arise in a variety of ways: by virtue of decisions made by states and governments; on the basis of *opinio iuris*; through action practices used by states on the international or domestic levels; based on legal customs or traditions for resolving issues on the international forum; through proposals or arrangements made by international organizations and institutions. Soft laws can serve as instruments which tie together governments' activities based on treaties or constituents of treaty interpretations and means of their practical implementation. Similarly to intergovernmental treaties, soft laws frequently play a pioneering role in legislative frameworks, as they become a foundation for the formulation of international rules, standards and principles of cooperation. In that sense, they precede the establishment of hard laws.

A large proportion of soft laws take the form of declarations or resolutions passed by states at conferences, UN sessions or meetings of other international organizations. Examples include the Universal Declaration of Human Rights (1948), the Rio Declaration on Environment and Development (1992) or the Draft Declaration on the Rights of Indigenous Peoples (1992)[18]. In fact, more and more institutions and organizations issue and execute such laws. Consequently, the globalization of laws also manifests itself as legislative and jurisdictional pluralism.

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[16] Ph. Allott, *The Concept of International Law*, in: M. Byers (ed.), The Role of Law in International Politics, Oxford 2001, Oxford UP, pp. 69-90; R. McCorquodale, *The Individual and the International Legal System*, in: M. D. Evans, International Law, op.cit., pp. 307-333.

[17] T. Buksinski, *Prawo a władza polityczna* [Law and Political Power], Poznan 2009, WNIFUAM, pp. 257-307

[18] A. Boyle, *Soft Law in International Law-Making*, in: M.D. Evans, International Law, op. cit., pp. 141-158.

Soft laws – particularly in the form of declarations – facilitate the legitimization of certain types of action. In effect, sometimes they are difficult to distinguish from hard laws, especially considering the fact that some of them garner immediate support and are effectively observed. In the light of the above, a question arises as to why declarations and resolutions are adopted instead of treaties and conventions. The main reason is pragmatism. Declarations do not require arduous and time-consuming negotiations between government representatives – nor protracted and precarious ratification procedures by state governments and parliaments. In this sense, they are a substitute of hard laws. Furthermore, soft laws are more flexible, and as a result they are more easily amended, added to or adapted to local conditions. They lay down parameters or chart out directions for the resolution of matters. Consequently, they are complementary to hard laws – or capable of filling in gaps in hard laws. They do not impost on states such rigorous obligations as hard laws. Declarations are usually formally binding, but not as precisely as formal treaties. Sometimes, they do not confer direct obligations on signatories but instead set out standards which are obligatory in nature. Soft laws are not always observed by all states (and other entities). For example, the adoption of the Montreal Protocol on Substances that Deplete the Ozone Layer was followed by the establishment of committees entrusted with the task of implementing the agreed measures. The committees, however, have no power to force anyone to take any actions, for the Protocol is not a hard law. They can only urge states and companies to limit the emissions of ozone-depleting substances, bring them into pacts, build up social pressure and create patterns of action.

Long-standing or widespread application of soft laws often transforms them almost automatically in hard laws. One example concerns ecology. General rules of environmental protection do not have the formal status of laws, yet they are commonly considered by societies as binding upon them. They are effective based on a common (extralegal) consensus[19].

Recent decades have seen mounting pressure towards restricting the power of states both by hard and soft laws. Social movements and international organizations demand such restrictions in the name of human rights, freedom and tolerance, peace and security, children's rights, cultural or ethnic minority rights, animal rights, in the interest of humanity as a whole, etc. Organizations and movements campaigning for these rights and interests come into existence. They work to achieve a favourable international climate for furthering their agenda, i.e. formulating and implementing laws limiting the power of states. In fact, declarations and resolutions often turn out to be a very effective instrument against totalitarian regimes. For example, the Helsinki Accords of 1975, signed by Western countries and governments of the Communist bloc countries, contributed to strengthening the position of dissident movements in the communist states. Ultimately, it was one of the factors playing a part in the downfall of the communist system.

In addition to soft laws, an increasing role in international relations is being played by semi-hard laws. It must be noted that in some cases, the distinction between the two types of laws can be blurred. Semi-hard laws are rising in importance for two reasons. One of them is the current international climate and the other is related to restrictions in the application of hard power. Article 2(4) of Chapter I of the Charter of the United Nations provides that members should refrain from the threat or use of force in their international relations (with the exception of self-defence – Chapter VII, Article 51). This law limits retaliatory measures taken by states following violations of treaties by their partners or infringements of other conventions. Consequently, coercion without force has recently been one of the most common strategies of enforcing compliance with international laws. Yet another trend is observed nowadays, with formally hard laws acquiring the actual status of semi-hard laws in international relations. This happens when states and organizations punish lawbreakers by applying measures laid down in the private law instead of hard sanctions. They included, for example, freezing of bank accounts held by other states (the measure was implemented by the USA against Iraq in 2005), ban on airplane flights of one state over the territory of another state; ban on the imports or exports of specific goods, ban on the entry of diplomats to the territories of other states (a sanction imposed by the European Union against Belarus in 2007 and against Russia in 2013), economic or technological embargo (imposed by the USA against Cuba and recently – though partially – against Russia). Such sanctions are gradable in terms of their severity and conditional on the acts of states that breach international and global laws[20].

A special area of application for semi-hard laws are global institutions and organizations such as the World Bank, the International Monetary Fund and the World Trade Organization. They lay down laws for their members and often also for other states. The laws are in force and are observed on pain of economic sanctions. Such organizations, however, do not establish hard international laws. Instead, they issue recommendations, declarations, decisions, agreements,

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[19] D. Shelton (ed.), *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System,* Oxford 2000, Oxford UP.

[20] Ibidem

opinions or guidelines. Although such documents lack a hard status, they are binding, and members comply with them. Consequently, the jurisdiction of the World Trade Organization (WTO) is effective in an obligatory and direct manner towards its members[21].

A semi-hard status is assigned to customary international laws. They emerge as a result of regular actions which are not codified either as statutory laws or in the form of treaties or agreements. They are accepted – either implicitly or explicitly – as valid, and apply mainly to the responsibility of legal entities for their actions, and their powers. They dominate in such regimes (i.e. subject-matter spheres) as: environmental protection, human rights, maritime regulations, economy and trade, Internet use, etc. They are subject to interpretations. Consequently, they represent an area of interface between political power and explicit laws.

The primary domain of semi-hard laws is economy. In this sphere, a special role is played by *lex mercatoria*, i.e. a set of customary rules for the resolution of conflicts arising during the exchange of goods and services. These are commercial laws, existing independently of local and state laws. Known since the Antiquity as merchant laws, they have recently regained their former position. Despite being private in nature, they are respected by states. As private laws, they exert their influence through the power of persuasion, tradition, and pressures applied by commercial entities. They are used, among other areas, in commercial arbitration.

Arbitration also represents a form of semi-hard law. As a method of conflict resolution arbitration can be non-formalized (i.e. operating *ad hoc*) or formalized, i.e. institutional and procedural in character. Arbitration has become popular as a technique for the resolution of disputes concerning compliance with contracts and interpretation of agreements. Instead of going to courts, disputing parties often prefer to appoint arbitrators to settle the issue of their rights and obligations with them, to be able to affect the choice of laws based on which their case is to be considered, to argue and seek to persuade others to their point of view[22].

The international market is regulated by a multitude of commercial agreements, treaties, state and international laws, laws imposed by individual institutions, quality standards, customs regulations, quality approval procedures, and customs governing the conclusion of transactions having the status private or customary laws, etc.[23].

6. The complexity of relations between human rights and political powers

The relations between global laws and political powers are complicated. The ambiguous status of the global laws and their intertwining with political powers is seen clear in the case of implementation of human rights. Human rights laws are a classic example of contemporary global laws. In the age of modernity, natural law holding the status of moral law was regarded as autonomous in relation to political entities. By reference to it, human rights and the right of nations to self-determination were recognized as binding and effective. Nevertheless, the origin and legitimization of human rights are not entirely clear. On the one hand, they are regarded as self-evident, natural, given, reasonable in themselves. On the other, however, they are considered an expression of the will of the nations or the will of the people. This dual status was given to them already in the Declaration of the Rights of Man and of the Citizen in 1789. In fact, they are associated with a different status (ethical, institutional, legal) in different frameworks. The universality of human rights is not preordained either. They are seen as universal but at the same time as applicable to the citizens of particular states. In the Charter of the United Nations adopted in 1945, human rights are not established but only reaffirmed, which means that they are recognized as natural. In the Universal Declaration of Human Rights adopted by the United Nations in 1948, the fundamental and inalienable rights and freedoms are proclaimed as a common standard of achievement for all peoples and nations. They were not endowed with a juridical status until the drafting of the European Convention on Human Rights in 1950 and the adoption of the International Covenants on Human Rights in 1966, with states being obliged to carry out their positivization. In 1966, the International Covenant on Economic, Social and Cultural Rights came into being too. Also, the Vienna Declaration of 1993 recognizes that human rights have a clearly universal and supra-state status as juridical laws. In this way the human rights transformed from moral rights, through soft laws to get the status of hard global laws. All states which officially accept them, undertake not only to observe them but also to protect them actively by creating an appropriate political/legal infrastructure. They cannot be abolished – but they are variously construed and employed.

But the situation is paradoxical. From one side there are many non-state actors, such as Human Rights Watchers, non-governmental organizations, religious, cultural and educational

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[21] M. Boas, D. Mc Neill (eds), *Global Institutions and Development*, London, New York 2004, Routledge.

[22] A. Tynel, *Międzynarodowy arbitraż handlowy w krajach Europy Środkowej* [International Trade Arbitration Countries of Central Europe], Warszawa 1999, Difin.

[23] M. Byers, *Custom, Power and the Power of Rules*, Cambridge 1999, Cambridge UP; F. Francioni, (ed.), *Environment, Human Rights and International Trade,* Oxford 2001, Oxford UP.

bodies, which control the observation of human rights in different countries. More and more organizations are established to support, promote, monitor, lobby for and supervise the observance of human rights. This way human rights protect the weak and vulnerable, because in principle allow citizens to emancipate themselves from state authorities and internal laws. Compliance with human rights standards is often enforced through international pressures and International Tribunals. From other side the obligation to observe and secure the rights are assigned to states as holders of hard power. States should (a) observe liberty rights (e.g. negative rights), (b) secure institutionally that liberty rights are respected by all people living in the state, (c) deliver goods and services to all (realize positive rights). To fulfil this obligations states are entitled to control the action of individuals and institutions. It concerns even the states, which violate rather than respect human rights. It means they extend the power of states over non-state actors and even over other states, justifying establishing systems of control, which is in the hands of powerful entities. But not all states observe them. Human rights are massively and routinely violated in Sudan and in orthodox Islamic states of the Middle East, in Indonesia, Pakistan and India. These regions of the world are affected by the persecution and murder of religious or ethnic minorities which are forced to flee in order to escape annihilation. Many countries in Asia and Africa interpret human rights in different way, accentuate the primacy of community rights over the individual rights. The states underline that human rights are neither supreme nor absolute and could be restricted by rules governing public safety, state security, crime prevention, protection of health and morality, etc. In turn the powerful states interpret the rights according to their interests. Rights are often accepted only to satisfy the demands of public opinion or in response to the general international climate or upon the insistence of international organizations and institutions. [24]. This situation show that the status of laws of human rights is in fact ambiguous, because the rights became formally hard law but in many situations and in many states have in fact the status of soft or half soft laws or even only the status of moral norms. Anyway the Declarations and Covenants of Human Rights help to mobilize energy for action to establish just and free conditions of social and political life. The human rights and laws of human rights functions at least as claim rights and entitlements of individuals and as aspirations of the communities in the states where rights are violating.

7. Politics outside the law?

It is somewhat paradoxical that the processes of gradual expansion of regulations to cover new areas of intra-state and international functioning and ever-increasing meticulousness of regulations and increasing the role of not hard laws are accompanied by a weakening of the status of laws – hard laws in particular. What happens is that laws become watered down, blurred and depreciated – and their interpretation and applicability to different matters get more and more arbitrary and ambiguous. As was already mentioned whenever recourse to law is needed, entities are free to choose between different laws. This is true, for example, for parties referring to courts of arbitration. What is more important, the above-mentioned process of autonomization of laws vis-à-vis political entities is accompanied by the trend of politics becoming increasingly independent of the law. It means that the rising status of new types of political, legislative and judicial bodies in supra-state politics and legislation should not overshadow the role of traditional entities on the international arena. States continue to shoulder the main responsibility for compliance with international and global laws in their territories, for they are the sole entities having the armed forces and the police. But often they try to evade the global and international laws.

Firstly, large states – particularly imperial states striving for hegemony – choose not to comply with international and global laws, and they do so with impunity. For example, the United States attacked Iraq in 2003 without UN authorization. Large states influence smaller states, manipulating them into acting for the benefit of large states, often without caring whether such practices comply with international or national laws. Serbian leaders are universally condemned and tried in court for crimes committed against Albanians. On the other hand, leaders of other big states responsible for crimes against ethnic or religious groups – or for acts of aggression – do not get to stand trial.

Ever since the September 11 attacks, the role of political factors in international law has been rising – and so has the tendency to circumvent the law. One example is the imprisonment of 775 members of the Taliban in the Guantanamo Bay detention camp by the Americans. Not uncommonly, the policies of world powers cast a shadow on the international law. Five world powers – which are permanent members of the UN Security Council – hold a privileged place in politics and law-making, for they can veto any substantive Security Council resolution. Their special

[24] W. Talbott, *Which Rights Should Be Universal?,* Oxford 2005, Oxford UP; T. Dunne, N. J. Wheeler (ed.), *Human Rights in Global Politics*, Oxford 2001, Oxford UP; J. Donnelly *Universal Human Rights in Theory and Practic*e, Ithaca, New York, London 2003 Cornell UP; O. O'Neill, *The Dark Side of Human Rights,* in: T. Christiano, J. Christman (eds), Contemporary Debates in Political Philosophy, Oxford 2009, Wiley-Blackwell, pp.425-436.

status testifies to the great role which powerful states continue to play worldwide. Formally, all entities are equal before the law. However, the reality is that stronger states have a larger room for manoeuvre in evading the law without suffering any consequences. Still, there is no global hegemonic power capable of imposing its rights on all other entities without their consent.

Secondly, smaller states also wage brutal wars, kill without trial, engage in acts of murder, ruthlessly fight the opposition. Crucially, all these acts take place with the implicit consent of the global communities – even though as UN members they are expected to observe human rights. Since 1945, the world has seen over a hundred armed conflicts which have claimed the life of more than 20 million people. Around 1.5 million people, mainly from the Tutsi tribe, died during the Rwanda conflict. States which disregard and violate international and global laws are not always countered by an appropriate opposing power, and often cannot be forced into compliance with existing laws. In view of the above, efforts should be made from one side to ensure an even more rapid increase in soft power and from other side to define more accurately global laws and the possibility of their synonymous implementation in the national and global spheres. Sometimes it is quite difficult to determine to what extent actions taken by states and extra-state entities conform to the laws. Basic laws and human rights laws are recognized as being superior to others. However, due to the generality of their provisions they can be variously interpreted. Consequently, even human rights violators try to justify their actions and show them to be compliant with human rights legislation. The US military intervention in Haiti in 1991 and the NATO intervention in Kosovo in 1999 were justified by the need to protect human rights. The Falklands War which broke out between Argentina and the United Kingdom in 1982 was justified by historical claims to these islands. The Russian invasion against Georgia in 2008 was claimed to be an operation launched to protect the ethnic minorities in Abkhazia and Ossetia. Russia's support for eastern Ukrainian separatists was said to be necessary to safeguard the identity and freedom of the Russian minority.

Thirdly, what is seen today are specific manifestations of the phenomenon of symbolic violence. Global or national mass media, as well as pressure groups standing behind them, pressurize state and extra-state politicians and law-makers by means of actions that walk a fine line between legal and illegal. They use a whole arsenal of techniques and methods of exerting influence, such as manipulations, concealment of inconvenient facts, exaggeration of facts that cast an unfavourable light on the opponent, insinuation of facts, one-sided interpretations of actions, development of models for people to follow and model behaviours. They create representations of desirable social states, proper behaviours, and patterns of correct thinking and acting. Also, they identify directions for political and cultural fashions Symbolic violence is a form of soft power. It is concealed, tricky, hard to pin down in legal categories. It eludes the law. Verbal actions are not unambiguous in their intentions. Although one may perceive them as unjust or untrue, or see that they violate common standards of decency, ethics or the law, they are rarely subject to penalty. Symbolic violence is based on interests and has no axiological dimension. The global mass media, considered the fourth branch of power, become global-age monopolists in the dissemination of information and – not uncommonly – in the interpretation of events. In the global dimension, only a few corporations are capable of setting up a global information delivery system. They create the main line of political interpretation and, most importantly, they become an indispensable tool in the struggle to gain and maintain political power, especially in democratic systems. Their success depends on how often they appear in the media, in what situations, and what journalistic commentaries they provoke. The mass media take advantage of their political importance, and pursue to some degree their own independent policy as an autonomous entity with its own interests. As a rule they interpret the political phenomena according to their own interests or interests of big economic corporations[25]. Global mass media are the example of the ambiguous role that could be played by soft and semisoft power. The phenomena which are sketched above have been addressed by a number of theorists. Difficulties with the interpretation of current phenomena are perhaps best reflected in Ulrich Beck's ideas. He claims that global power is supra-legal, i.e. neither legal nor illegal, neither legitimate nor illegitimate. It is private in its law-making aspects, and at the same time performs the function of a quasi-state. It is independent of the territory and invisible – yet evident. It possesses the qualities of ubiquity, discursiveness and flexibility. There is no alternative to it[26].

Summing up the discussion above, national, international and global laws (including para-laws) are an effect of the power game played by state and non-state entities. The global law is vulnerable to the changing configurations of worldwide powers (hard, semi-hard and soft), and is

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[25] Compare W. Schulz, *Komunikacja polityczna. Koncepcje teoretyczne i wyniki badań empirycznych na temat mediów masowych w polityce*, [Political Communication. Theoretical Concepts and Results of Empirical Reasearch Concerning the Massmedia in Politics], Cracow 2006, Wyd. UJ.

[26] U. Beck, *Władza i przeciwwładza w epoce globalizacji. Nowa ekonomia polityki światowej*, [Power and Contrpower in the Global Era. The New Economy of World Politics], Warsaw 2005, Scholar, p. 92 and 113.

not neutral in their content towards them. In addition to having a legal dimension, decisions issued by international courts always have a political aspect, for they try to reconcile different interests of different parties, taking into account their power and position, and also considering the general interests. Such general interests – sometimes referred to as general goals or values – are to ensure peace, security, freedom and ownership. By taking due account of them, international courts and legislative entities, as well as global soft organizations lay down certain standards of behaviour in the global dimension. They mould the legal and political culture of states, institutions and citizens in spite of pressures from particular hard political and semi-hard economic powers.[27]

[27] R. W. Cox, *The Political Economy of a Plural World. Critical Reflections on Power, Moral and Civilization,* London 2002; A. Buchanan*, Justice, Legitimacy and Self-determination: Moral Foundations for International Law*, Oxford 2004, Oxford UP; Ch. Reus-Smit, *American Power and World Order*, New York 2004, Polity Press.