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The Future of International Private Law in the Context of Global Legal Pluralism

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Abstract: As a result of moving the political power of the state as the former, the end of the theory-based law on the state, and the start of the start of new theories of the law, based on legal pluralism (Global legal pluralism) a multiplicity of power centers in the world , and the multiplicity of entities producing legislation, known in the contemporary jurists of philosophy of law as postmodernism law (Droit post-moderne) , which is something to wonder about the developments that will hit the theory of law in general, and international law branches of public and private, so that the public international law was based on centering around the state as a pivot of persons of this law, also the private international law, who depends on the savigny approach of conflict of laws, has also in the framework based on state law, since it dealt with the phenomenon of conflict between all states laws, the solutions adopted on the idea of the state entirely dependent, so the question arises about the developments both laws will hit post the fall of the central state, and the emergence of new political entities of power in the world other than the state, it will remain within the public international law as it is linked to the state only? And how can the private international law should continue to approach of conflict based mainly on the resolution of the conflict between states laws? While the fact that there are new types of laws began to appear on the horizon, as a natural result of the multiplicity of producing legislation centers in the world, is it will withstand the general theory of conflict of laws in front of it, or are we facing a range unprecedented for conflict of laws, needs to approach new and different mechanisms radically from the traditional curriculum.

Keywords: Private, international, law, global, future, legal pluralism.

1Introduction

The ends of the last century saw a major development in the field of political power of the state, this power has moved to the new entities resulting from the phenomenon of globalization, a phenomenon which was based on the world regarded the whole global village and one without borders between the countries in all economic, trade, cultural and political fields, which evolved significantly to some extent establish parallel entities of state power reflects a new humanitarian communities beyond the central state, such as online communities, and sports communities, and communities of merchants in various

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fields, the issue did not stop at this point, the powers of State has moved also to entities or unions topped as in the EU, and to entities such as below institutions working in the areas of global regulation or universal joint, such as[1] telecommunications and postal institutions and effects, and that the state can no longer regulated[2].

As a result of moving the political power of the state as the former, the end of the theory-based law on the state, and the start of the start of new theories of the law, based on legal pluralism (Global legal pluralism) a multiplicity of power centers in the world[3], and the multiplicity of entities producing legislation, known in the contemporary jurists of philosophy of law as postmodernism law (*Droit post-moderne*)[4], which is something to wonder about the developments that will hit the theory of law in general, and international law branches of public and private, so that the public international law was based on centering around the state as a pivot of persons of this law, also the private international law, who depends on the savigny approach of conflict of laws,[5] has also in the framework based on state law, since it dealt with the phenomenon of conflict between all states laws, the solutions adopted on the idea of the state entirely dependent, so the question arises about the developments both laws will hit post the fall of the central state, and the emergence of new political entities of power in the world other than the state, it will remain within the public international law as it is linked to the state only? And how can the private international law should continue to approach of conflict based mainly on the resolution of the conflict between states laws? While the fact that there are new types of laws began to appear on the horizon, as a natural result of the multiplicity of producing legislation centers in the world, is it will withstand the general theory of conflict of laws in front of it, or are we facing a range unprecedented for conflict of laws, needs to approach new and different mechanisms radically from the traditional curriculum.

However we cannot get an answer to the previous questions, without being exposed to how the political power of the state moved to other entities, and what are these entities and the impact of this moving on the theory of law in general (section I), then show the impact of these changes on the legislative power of the state and the emergence of new models of laws (section II), then finally we will try to explore features of the scope of international law branches of public and private, after the political power of the state moved to other entities, and the multiplicity of entities producing legislation in the world, , and tries to find out a new approach in private international law which is adopting with the new scope of conflict of laws in the context of Global legal pluralism (section III), so we will divide the study plan to the following detective firstly Move of the political power of state within the framework of Globalization, secondly The fragmentation of legislative power - global legal pluralism, finally The scope of international law within the context of Global legal pluralism.

2 Move of the Political Power of State within the Framework of Globalization

1 Paul Schiff Berman : *Global Legal Pluralism*, Vol 80:1155, SCLR , 1203 , 2007

2 Pierre Pescatore : *Droit de l'intégration*, p 49, Bruylant, 2005, See also Jean-Bernard Auby: *La Globalisation, Le Droit et L'état*, P 147, L.G.D.J, 2010

3 Berman Supra note 1 at 1170, see also Jean-jacques Sueur: *Analyser Le Pluralisme Pour Comprendre la Mondialisation? In collection, La science du droit dans la globalisation*, 89, 95-96, BRUYLANT, 2012

4 Jacques Chevallier : *L'état post-moderne*, p 19, L.G.D.J, 2008

5 Savigny (1779-1861) German jurist is credited with attribution rules approach in the European contemporary private international law, those rules shall establish criteria for determining the law applicable to the dispute, and that the resolution of all the perceived conflict between the laws of the states only, see François Mélin, *Droit International Privé*, 30, Gualino, 5 édition, 2012.

Here we will divide our study into three parts, the first part to recognize on how to end the state's monopoly of political power and the second in which we will learn about the impact of this matter on the communities of international law, and finally the third will learn about the other parallel entities that have received the political power of the state.

2-1 End the state's Monopoly of Political Power

Increasing globalized activities or transboundary led to the decline of state authority in all areas. In the economic sphere, the state is able to maintain its independence is no longer, the world created a new space far from the state for the exercise of economic activities for transnational communities and multinational corporations, online trade entities.[6] at the political and legal spheres it has been the globalization of human rights rules and the imposition of international control them may sometimes lead to military intervention to protect human rights within the country (humanitarian intervention), it has been the imposition of international legal norms for trade and economy through the WTO, so that it became the duty of States to change its domestic laws to conform with these rules, in addition to the global organization of the issues of common nature of humanity, such as the environment and nuclear power, which has greatly impacted on the sovereignty of the state and political authority in the management of its internal affairs.[7]

It could be argued that the state power move started since the middle of last century, which saw the legal personality generator International to international organizations, it has crossed the International Court of Justice for the state's inability Affairs and various areas management alone, in its judgment in 1949, saying that "the areas of international life affecting different activities, so that they can be allowed to organizations that do not constitute state to take action in respect thereof, "and here is the recognition of international organizations legal status, to break the little unit completely state political power.[8]

And as such, the former ruling represents a historic shift to end the idea of the state's monopoly of political power from the international point of view, so that became paralleled by international organizations, has suspended some of the doctrines on this stage that "relations between the humanitarian broad masses, allowed the establishment of regional organizations at times, and specialized organizations at other times "since the end of the last century, [9]these relations began to take a larger trend, he began another world across the border in which human societies live shows, without taking notice of the territorial limits of the States,[10] which has greatly impacted the political power of the central state.

To move the political power of the state, did not just stop at this point, the end of the last century saw a radical shift in the entities of political power, so already shaken by the idea of the central state, or centering around the state as a legal framework, the state in which played the pivotal role in the joint teamwork , through the idea of the international community, has become a test of its sovereignty, when other entities began to play this role, making the joint collective action mechanisms in international law,

6 Benoit Frydman: *Comment Penser Le Droit Global? , in collection, la science du droit dans la globalisation*, 77, BRUYLANT, 2012

7 Hervé Ascensio: *Du Droit International Classique au Droit Global, in collection, La science du droit dans la globalisation*, 136, BRUYLANT, 2012

8 Lider Bal: *Le Mythe de la Souveraineté en Droit International, La Souveraineté des états à l'épreuve des Mutations de L'ordre Juridique International*, 348, Thèse, Université de Strasbourg, 2012

9 Id at 348

10 Frank Abikzher: *La Notion Juridique d'humanité*, p 20, Presses universitaires d'Aix-Marseille, 2005,

transmitted from the central state to the other new entities closer to human societies, where these communities established by other entities parallel to the state, expressing their interests, and holds the solution to their problems away from the state, something the consequent total change in the collective work in public international law philosophy.

2-2 The Evolution of the Philosophy of the Joint Collective Work in International Law - from the International Community to the Global Humanitarian Community

The doctrine agree that the real beginning of the meeting between the countries, was to acknowledge the presence of the international community, which some see it was founded for one purpose and is subject to all States for the principles and rules of stable, unified at the international level, the international community created the collective association of countries in a number of common values and interests , which is called today a unitary direction of public international law, so that countries agreed on a set of common principles, such as the prohibition of the use of force in international relations, and international human rights norms.

In this way, we can say that the international community is a community of states, or is it based on the states community, who form the first frame to acknowledge the existence of a "common interests and values between nations", this component of states community is the one who wrote the foundations of the international legal system, which involves the peremptory "*jus cognes"* and international obligations towards humanity *"erga omnes"*.[11]

However the mid-twentieth century, has seen a significant change in the collective work in international law philosophy as it is the emergence of international organizations, the trend began about the introduction of new regulatory entities operating within the international community, to achieve the interests and common goals for all or some states, these entities started to work in various international frameworks, regional or specialized, but they contributed to the achievement of common goals for countries to fairly acceptable.[12]

Despite the emergence of international organizations and acquire legal personality, but that collective action under stationed around the state, remained very much the idea of the international community is the dominant idea on the basis of collective work among nations, so that international organizations have tried to impose itself and reality paralleled states, but they did not succeed in that , including the United Nations, which dominated its work for many years, the principle of the inadmissibility of intervention in the internal affairs of member states, which is based in terms of presence on the principle of sovereignty, for that reason, this organization did not succeed in being a legal framework that has a parallel authority with the state, but it was all its role is limited to coordination between Member States dominions.

But the former situation changed quickly towards a new philosophy for collective work in international law which, it has resulted in the decline of state power at the end of the twentieth century, the emergence of new frameworks for collective work in international law, these frameworks exceed completely the central state, to reflect the cosmic and universal ideas, have arisen "global humanitarian"

11 Juan Antonio Carrillo Salcedo: *Droit International et Souveraineté des États, cours général de droit international public*, Collected courses of the Hague Academy of international Law, 133, Martinus Nijhoff Publisher, 1996

12 Bal supra note 7 at 368

idea replaced the idea of the "international community", and began to talk about "common principles of humanity," and also appeared "crimes against humanity" and became "human rights" global affair does not belong to the state alone, [13] hence the "human" began to enter the hub of hubs international law after having been away for quite concerns within the international community.

Perhaps follower of the history of the evolution of the rules of public international law, he can allude fundamental change in the trend of international rule of Law, the international legal system, which is built on it represents "the rules governing relations between States and regional entities of equal sovereignty," but now "human" enter as a hub of hubs this legal system, surpassing "centralized state", the form in itself a major development in the rules of public international law,[14] and inaugurated the scope of the new rules of this law, in addition to "relations between states, " also joined "the global human community" and became a target of the law goals, to the point of creating a new branch of a specialist so-called international humanitarian law.[15]

And it has strongly influenced the idea of "global humanitarian community" on the central state, where the philosophy of joint collective work from the logic of participation, based on the international community, which was based on "cooperation and coexistence between nations," the logic of participation based on "the global humanitarian community " which exceeds the state completely and is based on the idea of humanitarian principles.[16]

In this way, the idea of common humanitarian principles played a major role in influencing the sovereignty of States, and led to a decline in the traditional rules of public international law, which were based on the state model and the principle of sovereignty, and the international community, where the principle of "co-existence between Supra-state humanitarian groups ", replaced the principle of " coexistence among nations ", and it became necessary to look for new entities is far from the central state, reflecting the global humanitarian groups without representation by the state.[17] These entities has become a mechanism for joint collective work in international law postmodernism, which is a fundamental change in the philosophy of international law.

As such, shaken authority of the state in the representation at the international level, as a result of the emergence of new entities beyond the state, and reflect directly the interests belonging to them regardless of regional affiliation, these entities may be supranational, do not run parallel with the State in the personal and even topped, and sometimes cancel authority completely in some matters, to be its relationship directly with citizens from different countries, such as the European Union in relation to the Member States, some have called it a move state power towards the top,[18] and on the other hand, some entities have emerged under national and pulled some specific powers from the state to their domain, without any formal representation on the part of the state, and turned from the national framework to the global framework, such as civil society organizations and some international federations which will be

13 Abikzher note 9 at 20

14 Ascensio note 6 at 133

15 Ludovic Hennebel: *Les Droits de l'homme dans les Théories du Droit Global, in Collection, La Science Du Droit Dans La Globalisation*, 140, 147-148, BRUYLANT, 2012

16 Ascensio note 6 at 133

17 Bal supra note 7 at 363

18 Id at 349

explaining later, that called some shifting of state power toward the bottom.[19] on the third hand increased the phenomenon of communities is regional (Supra-state), which reflects the individuals belonging to several countries, but bound together by an interest or a common end, make them undergo self their law,[20] including, for example, virtual communities online Below is a breakdown of these three phenomena .

2-3 Entities that have Received the Political Power of the State

The power of the state moved towards the top, and moved also to the downside of state, finally moved to non-regional communities, so we will discuss each one as the following.

2-3-1The State Power which Moved Upwards (*Un glissement du pouvoir vers le haut)*

Reflect the phenomenon of the rise of the power to the top of the overlap and integration among states, which is built on shared values and interests, and resulted in the establishment of entities supranational (*Supranational*) to protect these interests and values, the central state can no longer do all the jobs, and no longer the case could be dealt with the only problems afflicting human in a time of post-modernism.[21]

Some entities have formed a supra-national, and particularly regional ones, a clear example of the emergence of a new political power in the world, isolated completely from the state, and it has all the privileges of the principle of historical sovereignty, and perhaps the most striking examples of these entities, the European Union, that Union which cannot be described that traditional international organization in accordance with international law, so that the international organization whose members are always countries, but the European Union created a new situation of the direct relationship to citizens within the European member states.[22]

And it can demonstrate the foregoing, through a significant phenomenon in the European Union, the so-called European citizenship that have been entered in the European legal system for the first time under the Maastricht Treaty in 1992, and developed through other agreements later, and under this Treaty was granted citizens in the Member States, the number of political rights that can be claimed in any of the European countries, and may even have to demand its immediate EU itself, and these rights are the right of residence and the right to work and the right to vote in municipal elections in the countries where they reside, the right to propose laws, and the right to run for parliament European, and the right to file a complaints to the European Parliament and the right of litigation before the European Court of Justice.[23]

It is remarkable here, to give these rights of the European citizens, aimed at the creation put establishes a direct legal link between the citizen in the Member States and the European Union, the so-called European citizenship, which is undoubtedly a kind of citizenship supranational, and this type of citizenship beyond quite the state, because the relationship between the entity be directly above the

19 Ulrich Sieber : *Legal order in a global world- The Development of a Fragmented System of National, International, and Private Norms*,1, 22, Max Planck Yearbook of United Nations Law,2010

20 Berman supra note 1 at 1203.

21 Bal supra note 7 at 349

22 Id at 401

23 Marie-Laure Niboyet et Géraud de Geouffre de la Pradelle: *Droit International Privé*, 833, 3 édition, L.G.D.J, 2011

national such as the EU and between the citizens of the Member States, which establishes the identity of a supranational state, bypassing the central.[24]

In addition, the establishment of legal direct link between the European Union and its citizens, challenging the rudiments of *westphalien* " own political power, which was founded in essence, the state's monopoly of power regionally, there is no doubt that based on the Kantian universal ideas,[25] the creation of European citizenship removes state and allows down the national framework for relations, and announced the establishment of an area or a new political framework for after the *westphalien* (Post- westphalien), the European Union has established a new society, its citizens, representing directly in the European parliament (democratic representation at the supra-national level),[26] and have the right to direct litigation before European Court of Justice.[27]

As such, the European Union has become a multi-affiliations humane society, associated with individuals directly legal relationship, and has legislative, executive and judicial powers, independent from the Member States, in particular with regard to the authority of the legislation, which has become a stable union authority, issued at the European laws, influenced heavily on the authority of the Member States of the legislation in a manner regrettable we see later.

Thus it can be said that the authority of the state slid upwards, to a new supranational authority, has a direct relationship with the citizens even though they belong to different countries, to announce that the establishment of a new model of political power is the state.

2-3-2 The State Power which Moved Downwards (*Un glissement du pouvoir vers le bas)*

Resulted in a shift of internal regional problems to global problems, to become the domestic law of the regional phenomena need to be a global organization,[28] such as, for example, environmental pollution and natural resource problems, nuclear energy, all these phenomena were control internal regional framework for State alone, but now and then these problems turned from the inside to the impact on human life at the level of the whole world, it has increased the need for global regulation have, on the other hand, the phenomena is regional on issues of common nature of humanity such as telecommunications, the Internet, mail and weather phenomena, strongly emerged between the national sphere and the world together , the state no longer has a monopoly organization of such phenomena as was the case previously, but the need for stakeholders of the human masses in the various countries, to develop legislative controls to address these issues away from the state combine organizational entities emerged. These entities have been defined under the national entities (*Infranational*),[29] because they are approaching the state or are not linked in any relationship as in the European Union as an entity over and above the national Member States.

24 Bal supra note 7 at 397

25 Jean-Mark Ferry : *Europe, la voie kantienne, Essai sur l'identité Postnationale*, 203, Cerf, 2006

26 Laurent Dutoit : *Parlement Européen et Société Civile, vers de nouveaux aménagements institutionnels, 65, Édition Academia*, Université de genève, 2009

27 Paul Magnette : *Le régime Politique de L'union Européenne*, 153, SCIENCES PO, 2e édition, 2006

28 Auby supra note 2 at 75-96

29 Bal supra note 7 at 430

Perhaps one of the most important *Infranational* entities so-called civil society organizations, which is based within the state, but to practice in a global framework, without any representation on the part of governments of the countries,[30] such as environmental protection organizations, its membership includes a large number of organizations and entities of national non-governmental organizations, which shares in the regulation and legalization of solutions that address the problems of the environment as well as human rights groups, which is based within the state, but it is working with global organizations and entities in the field of human rights, and contribute with them in the development of human rights legislative standards on a global level.[31]

And practicing *Infranational* entities an important role also in the field of legislation in the different functional sectors, including what can be included under the so-called framework of non-governmental organizations, such as the International Organization for Standardization (ISO), in which the governments of the countries does not represent, but a membership organization for each country, this organization is concerned with the standardization of administrative and legal standards of institutions operating in all business areas, but it didn't just stop at the role played by non-governmental organizations, has begun looming models of *Infranational* entities among intergovernmental organizations themselves. the most important example is the Union of international telecommunication (ITU), which follows the United Nations, and its membership includes in addition to the states, national companies operating in the field of telecommunications, the latter has played a fundamental role in proposing and drafting legislative standards in all areas of communications in the world, affecting strongly the state power within these organizations, which some described rightly that it only became merely an observer, and approaching it too Universal Postal Union (UPU), as well as the World meteorological Organization (WMO),[32] it is noticeable that all of these entities are universal or cosmic scale, and is working to application of policy across the internal member institutions have, which are located regionally under the sovereignty of a country, but it has become a member of the global entities, surpassing the national state, and contributes with its interests in the formation of appropriate legislative rules for field work in the world, and thus weaken much of the Central state power representation in the areas of work, and even the movement of state power in these areas to entities operating under the regional scope and thus show a new model of political power, and in particular the legislation on a global level without the intervention of state power.[33]

30 It is noted that the jurists began to use the term global civil society, when this society began consists away from state control, and seeks to resolve the nature of cosmic such as environmental and human rights problems, which expresses a major development in the field of political power, certainly affect the scope the power of the state, see Auby supra note 2 at 163.

31 Chevallier supra note 4 at 42, jurists has confirmed that the State is no longer a monopoly on international relations, and after that for centuries was the main focus of this relationship, the one hand, relations between nations began composed through global civil society organizations in the absence of the state, those organizations that deal with the issues that belong to humanity such as the environment and human rights and paves a new phase in the history of international relations and international law. On the other hand, the jurists began to talk now about the global governance of the world or the global administration of the world, so that it appears through which the new centers of power represented in global civil society organizations supra-state as is the world's administration after the fall of the state institutions, for more details see Andre-Jean Arnaud: *Critique De La Raison Juridique, 2 Governants Sans Frontière, Entre Mondialisation et Post-mondialisation,* 281, L.G.D.J, 2003. See also Hennebel supra note 15 at 160

32 Bal supra note 7 at 451

33 Id at 507

2-3-3 The State Power which Moved to a Non-Regional Communities

Combined with the use of the term "non-regional communities," the development of international trade, it has been observed that some of the business communities began to take its laws and mechanisms for the resolution of disputes by the state. In the second half of the twentieth century began businessmen and multinational companies in the formation of the extent of autonomy community, by contributing in the creation of norms of international trade through their practices, and stay away from eliminate national states and resorting to international arbitration bodies,[34] which soon involved provisions in the so-called industry, international trade law, this law, which formed at the time of beginning of the phenomenon of the separation of legislation from the State authority (*La désétatisation*).[35]

However, the term "non-regional communities" have witnessed a new rebirth emergence of the international network of the Internet that network, which includes members from all over the world, overlap in the social and business relationships across different websites, creating this so-called virtual communities, and that the most important thing distinguishes it diverse communities comprising people from all nations, not linked to work in any country of the regional point of view, they are independent, operating under the "non-regional".[36]

The problematic regional basis of the law raised, since the first day to use the Internet for commercial transactions, from the beginning some jurists have tried to use the approach applied the regional national laws on these transactions, through the adaptation of traditional general rules even used in internet disputes,[37] it has insisted that some jurists of international private law, to use approach to national attribution rules in these disputes, although they are based on a purely regional basis, which is to identify the most law of the State of associated territory dispute, which ultimately led to put national judges in a real crisis, whereas impossible for them to link transactions concluded on the Internet and between the regions of their countries, given the nature of non-regional for these transactions, but that this difficulty is also extended to the application of the rules of international jurisdiction, which also operate in accordance with regional controls, making it difficult for national courts to determine "the domicile of the defendant" or "place of implementation commitment, or growing up ", despite persistent attempts to adapt the traditional jurisprudence these regional controls, for use in non-regional disputes online.[38]

Perhaps these difficulties, had paid part of the recently jurists to the recognition of the need to move away from national laws in internet disputes, those laws which are designed according to centered model around the state, and was characterized by the regional nature pure, so some have suggested that judges behaves through substantive rules and so instead on the attribution rules,[39] which always refers to

34 Eric Millard *: Rendre Compte Du Droit dans un Contexte De Globalisation, In Collection, La Science Du Droit dans la Globalisation*, 49-62, 56, BRUYLANT, 2012

35 Bal supra note 7 at 563

36 Frydman supra note 5 at 40

37 Jean-Michel Jacquet: *Contrats Du Commerce Électronique et Conflit De Lois, in les premières journées internationales du droit du commerce électronique*, 108, Litec, 2002

38 Hosam Shaaban : *The International Competence of National Jurisdiction and Arbitration Association in E- commerce Disputes*, 59, These, Alexandria University, 2008

39 Eric Caprioloi: *Réglement Des Litiges Internationaux et Droit Applicable dans le Commerce électronique*, Litec, 2-7, 2002

the law of the state, so that the substantive rules are the rules designed international relations, and directly applicable to the dispute without the need to be a source of national law, and most famous of these rules is *Lex mercatoria* that apply in the field of international trade as well as (Lex electronica) that apply in the field of e-commerce, and (*Lex sportiva*) applied in the field of sports.[40]

It seems to the followers of history of the jurisprudence of private international law, that this recent trend did not come out from its predecessor, so that the substantive rules approach is the approach applied to the national judiciary, which is a resolution of the conflict of laws before national courts mechanisms, and therefore, this approach remains belong to the national mechanisms depends on the state sovereignty, and freedom in the application of these rules or not, according to the vision of the national jurisdiction, which caused again in giving regional dye solutions on issues related to the Internet.[41]

However, the last stage in the jurists of private international law relating to the Internet disputes, have developed amazing, establishes the birth of a new approach in this law, an approach of independence non-regional communities systems,[42] has tended jurists talk - with respect to disputes online - to call for the independence of virtual electronic communities from world of the regulations and national laws, so riding the world of Internet legislation and the courts and the authority of the implementation of its provisions, in what is known as the "online self-regulation" "*L'autoregulation*",[43] according to which some have become entities or gatherings virtual online, have the power of legislation and the development of laws regulating the behavior of the members of this assembly, and have the courts of the Member disputes broke up, as have the means to force them to implement its provisions.[44]

Given this recent trend, it can discover sophisticated new to the move of state power, what was owned by the state on the territory of the powers of legislation and spending and implementation, go to the entities present on the Internet, any non-regional world, these entities have the legislation, the judiciary and implementation in the face of communities authorities that comprise, which varied cultural backgrounds a way that they serve as a model for the idea of non-regional community.

It did not stop at this point, the phenomenon of non-regional community begun graduated from being a phenomenon specific to the Internet only, and is moving because the phenomenon is overtaking the state in several areas, most of which belong to individuals belonging transactions to the area of joint work is characterized by the global nature, such as, for example, sports communities various fields, it has totally independent from the national systems, so perfectly formed a world away from the authority of the state, has become a global sports unions has its laws,[45] its courts and authorities to implement its provisions, too, are completely guarantee moves of state power in these areas.

We conclude from the foregoing, that the political power of the state has moved up and down and to the non-regional communities, and singled out here transmission power of legislation to non-State entities, after it had been completely monopolized the national state authority, probably refers to the

40 Otto **P**fersmann: *Monisme Revisité Contre Juriglobalisme Incohérent, in collection, La Science Du Droit dans La Globalisation*, 85, BRUYLANT, 2012

41 Shaaban supra note 38 at 120

42Thomas Schultz : *Réguler Le Commerce Électronique par La Résolution Des Litiges en Ligne, une Approche Critique*, 438, BRUYLANT, 2005,

43 Id at 110

44 Shaaban supra note 38 at 110

45 Frank Latty: *La Lex Sportive, Recherche Sur le Droit Transnational*, 347, Martinus Nijhoff Publishers, 2007

transformation of the legislative process of concentration around the state to pluralism decentralization in the production of legislation, there are countries, international organizations, and entities supranational entities under national and non-regional communities, all of this suggests the birth of the phenomenon of law without a state (*droit sans les états*), so that multiple laws without top any of them over the other in It defines global legal pluralism.[46]

3 The Fragmentation of the Legislative Power of the State (*La désétatisation*) - Global Legal Pluralism

We have to talk here about the birth of the idea of global legal pluralism first and then show how it led to a multiplicity of centers of legislation production in the world.

3-1 The Birth of Global Legal Pluralism

Indicated earlier that the state is no longer the sole competent entity issuing legislation, but other entities other emerged, it became has legislation and laws in force in the field of competence validity, and this is expressed by some people that he represents the direction of international law towards the fragmentation of the depth of traditional state in the legal system or what is known as the legal system centered around the state.[47]

Perhaps this recent trend, embody clearly as we have mentioned earlier of multiple centers of power in the world, and the emergence of other entities have the power to legislate is the state, entities supra-national and sub-national communities is regional, and it all led to a rethink in the historic link between the state and the law,[48] or rethinking the theory of law in light of the declining power of the state in the field of legislation, industry, and the involvement of other entities in the industry, which resulted in a non-traditional results in the theory of the law, called by specialists of theory of law as a post-modernism law (Droit post-moderne).[49]

Thus, it can be said, that the multiplicity of power centers in the world, and the transition to new entities other than the state, has become of these entities the power of legislation, colorful do so places the production of legislation in the world in what is known legal pluralism cosmic, which formed the theoretical basis of the Law of postmodernism.

3-2 Multiplicity of Centers of Legislation Production is the Basis of the Postmodernism Law

We mentioned before, it resulted in multiple centers of power in the world, the multiplicity in the capable entities on the legislation, in what is known as the global legal pluralism, entities are *supranational* like the European Union, for example, has become has the power to enact legislation, which applies directly to citizens within the EU member states, as well as *infranational* entities in the global unions such as ITU, have become contributing to enact legislation apply directly to companies and authorities of national communications in all countries of the world, in addition to what we have

46 Frydman supra note 5 at 21, the writer mentioned to the necessary of thinking in law without the need for a so-called legal system, a system that its existence ended with the fall of the central state, and also writer refers to it should not be talking about the global legal system as an alternative to national or international legal system, so that the global environment is the case which may not be with her and embraces a system of laws, but the rule of multiple laws without any of them over the other, and it is no longer necessary to search in the idea of the legal system.

47 Auby supra note 2 at 97

48 Bal supra note 7 at 507

49 Chevallier supra note 4 at 19

referred to previously for entities represented non-regional communities, which also have the capacity to organize or self-regulation, all of these entities upgraded its power to the level of state power in the legislation, and the longer this phenomenon is the opposite direction of the phenomenon prevailing for centuries, namely, unilateral of law (*Moniste du droit*),[50] through which singled only the state monopoly of the legislation production in the world, as the only center of political power.

Perhaps this latter phenomenon is that allowed control of positivism school of law on theories of legal thought over the past two centuries,[51] the school that believes that the law is only what comes from the state, which is a unified system primarily through the state, so that the State is the only source for law production, and it was not envisaged by the law without a state, which monopolized the right to enact laws according to its political power in society, this has led to verbal equivalent between the law and the state. [52]

the emergence of legal pluralism – according to which we have referred to earlier - as a result of the multiplicity of places of production of legislation in the world, it led to the relevant discontinuity between the terms "law" and "state", or what we can call it the end of the state monopoly on the legislation power.[53]

Perhaps follower of the history of the law, can discover that this is not the first time in history, where the legal system is based on legal pluralism in the world, global legal pluralism appeared in Europe in ancient times,[54] which witnessed during this period coexistence of multiple legal systems in parallel and not hierarchical, so that the old Romanian Empire knew - before the emergence of the idea of the state- coexistence of several legislation parallel systems would not override each other, including the rules of national law (*Jus Civile*), which was applicable to the citizens, as well as the peoples Act (*Jus gentium*), which was applied on all foreigners or immigrants, and formed bases mixture of customs and habits Italian cities, which accounted for all nations under the Romanian empire.[55]

Thus, the legal pluralism old and new, abolish the vertical organization of the laws, which is based on the idea of high state law on other laws, or the height of international law on the law of the state, where pluralism on the parallel legislative regulations and equally, all laws, whether issued by state or non-entity State not override one over another, but equally together.

In this way, moving away the idea of legal pluralism from the positive school of law ideas, since they consider the regulations and legislative rules to non-state entities, as our laws, and support all of the rules issued by *supranational* and *infranational* entities or non-regional communities, as a parallel legislation with State legislation would not override one over another.

50 Pfersmann supra note 40 at 63

51 Bal supra note 7 at 508

52 Id 508-509

53 Laureline Fontaine: *Le Pluralisme Comme Théorie Des Normes, In Droit et Pluralisme*, 128, BRUYLANT, 2007

54 From the middle of the third century BC to the beginning of the third century AD, see Thomas **S**chultz et David Holloway **:** *Retour Sur La Comity, Deuxième partie, La Comity Dans L'histoire Du Droit International Privé*, n 2, JDI,3, 5-6 , 2012

55 Id 5

And it can be defined as legal pluralism, as the case of the coexistence of several parallel legal systems in the same community space, so these systems are sources of accepted law in this area,[56] and here the question arises about the communal space that legal pluralism operates now, and the answer to this question, it should be first to go back to the causes of the environmental conditions in which legal pluralism emerged throughout history, we will notice that when she appeared in Europe in the light of the Romanian empire, were not the idea of "state" originated legal as an idea, was not the principle of sovereignty also has been born, and when it began to loom on the horizon at the end of the last century, it was also the principle of sovereignty has begun to decline, and began falling of the central state.

It is this particular point, it can be clear to us communal space that legal pluralism operates now, this space which is based on the humanitarian community under the "non-state", or what is known as the global community, this means that modern framework of legal pluralism became globalism, the individuals and humanity in the world after the fall of the central state, so some call global legal pluralism.[57]

And as such, can assure that global legal pluralism, is the case of multiple legal systems that the question of the scope of the global humanitarian community transgressor of the limits of state control, those systems that coexist in parallel, without the altitude of one over another, it is the most prominent example of this, European law issued by the European Union and in light of the existence of the national laws of the Member States, as well as virtual communities or others of the non-regional communities laws, as well as *infranational* entities, it is possible that these laws govern a single issue without to mount one over another, and so for example, with regard to communications, specifically the establishment of communication networks decades, The matters contained in these contracts, can according to the European law controller (*Supra-national*), as well as the national law of the State to which the conflict (*National*), in addition to the international Telecommunication Union regulations (*Infra National*) and the rules established by the entities represented communities working in this field (non-regional communities).

Whatever the case, the global legal pluralism emergence as the former, the philosophical basis of the law postmodern form (post-fall of the central state), which will result in the total change in the foundations of modern law theory (traditional), which was based on the legislative unilateralism of the state, which raises the question of the impact of legal pluralism on the theory of global law in general, and international law in particular.

4 The Scope of International Law within the Context of Global Legal Pluralism

Resulted in the decline of the principle of state sovereignty upon which the modern public international law, the capacity of some other entities to replace the state in political power, particularly the power of legislation, which raised the question of the continuation of the state in defiance of international organizations are the only persons of public international law, or is it will vary to result in a new domain of public international law postmodernism in terms of the persons and the topic area,[58] also arises as well as the question of the scope and content of the rules of private international law relating to conflict of laws, so that the scope of conflict transformation of conflict between the laws of the countries to a

56 Ralf Michaels: *Global Legal Pluralism*,3-6, SSRN.com, 2009

57 Id 3

58 Ascensio supra note 6 at 134-139

conflict between the laws and legislation to entities other than states , and the rules of conflict of laws under Savigny approach, which has been stationed around the state with its territory and its people, now can it survive after the fall of the central state, or do we need a completely new approach? We will try to answer these questions through the following titles, firstly the scope of postmodern public international law, and secondly conflict of laws rules in the context of global legal pluralism postmodernism.

4-1 the Scope of Postmodern Public International Law between Expansion and Integration into the Global Law

The emergence of other authoritarian entities above and below the national state, this led to the multiplicity of political power centers in the world, resulting in a multiplicity also in the authoritative representation of individuals at the international level entities, has already made clear that *supranational* entities such as the EU now has a direct relationship with the citizens of the member States, surpassing the national state completely Lists, which creates a new non-State entities have the power to represent the citizens at the international level. In addition, the *infranational* entities as civil society organizations, international organizations and non-governmental entities, now has the authority of the legislative influence at the international level, despite the interruption official relate to the national state, and it could be argued that the scale profile of public international law postmodernism has widened and extended to include persons other than the State and international organizations.

It did not stop at this point, it has extended the winds of change to the substantive scope of public international law as well, which centered themes about the state and its actions legal, began extends to govern the actions of non-state entities, such as *supranational* unions and *infranational* institutions, and here began looming on the horizon new trend of relations of public international law, having been based on a bi-state / state, it evolved into other binaries multiple, as the State / supranational unions or state / infranational institutions, a binaries based on parity between the entities do not override each other, which reveals for a major development hit the general rules of international law postmodernism in terms of the qualitatively of the new legal relationships entered into its scope.[59]

However, the public international law the evolution of postmodernism has not only limited to the extension of personal and objective to entities other than states, this law began moving towards annexation of individuals also to its scope,[60] the individual becomes now one of the most important topic of the public international law postmodernism, so that the international human rights norms, become supranational rules applied in a manner completely beyond state sovereignty, this means that the state will be under international accountability before the international organizations if it violates the rights of individuals, which is entering a new bilateral scope of public international law postmodernism, a bi-state / individual.[61]

In this way, it extended the scope of public international law in terms of personal and objective, to include state / state, state / supranational entities, state / infranational entities, state / individual, as well as relationships between supranational entities/ infranational entities, supranational entities / individual, and finally infranational entities / individual, is worth mentioning here that, as well as new authoritarian

59 Id 134-139

60 Hennebel supra note 15 at 143

61 Ascensio supra note 6 at 133

entities other than the State, the individual emerged as a key player on the international level, as they bring him from being a subject of public international law postmodernism, which raises the question of retaining the traditional distinction between public international law, which was meant states relations and the private international law, which was meant relations of individuals at the international level, it has resulted in the transfer of the individual to the state level and supranational entities and entry with the state in equal relationships, absence of the need for the traditional separation between international law for individuals and the international law for states.[62]

It is noticeable that the public international law, private international law became overlap in several areas, so that a specialist is no longer able to determine which specializes virtue of some relationships,[63] such as foreign investment among countries and companies relations, as well as trade relations between multinational companies, and disputes arising from the environmental pollution, and violations of human rights,[64] all these areas are no longer control the traditional form upon which the public and private international law, and even formed a set of rules supranational that do not belong to a country or a specific national entity, to govern the relations between the subjects of law equals at the international level, after the fall of the sovereign central state, in what some call global law.[65]

Thus began the overlap between the areas of international public and private law, resulting in the birth of a new legal system, a global legal system, which emerged after the fall of the central state, to include all subjects of postmodern international law, here we can say that laws passed by both non-state entities is now characterized by the global nature, since they do not belong to a particular national framework for the state, as it touches with a global frame topics related to human beings, regardless of nationality or domicile, race, such as trade, the environment and human rights.[66]

From the above it is clear that the global laws coexist with the states laws, which still exists as a fact cannot be denied, but the most important characteristic of this coexistence, that coexistence for parallelism and parity (horizontal organization),[67] not for a top law of the State (vertical organization), this is the essence of postmodernism global legal pluralism, states and other entities that have partnered with them in power - particularly the legislature - integrated together in a new global legal system, different from based legal system around the state, this new global system centered on the individual or the rights of some of their affiliation to a state or religion or race or origin, and some of these

62 Thomas **S**chultz **et** David Holloway: *Retour Sur La Comity, Première Partie: Les Origines De La Comity Au Carrefour Du Droit International Privé et Du Droit International Public*, n 4, JDI,866-867, 2011.

63 Ascensio supra note 6 at 136, Author believes that the fragmentation of public international law to the specific disciplines such as international economical law and international humanitarian law and international environmental law etc. this was a historic stage intended to move from the community of states to direct the humanity community, or the community of people, so that these disciplines are no longer only about the state, but also cater to the rights of individuals and businesses directly, resulting in a change in the content of the rules of this law, the law of states to respect the law addresses the hybrid states and individuals, which led to the overlap between it and the private international law relating to individuals. This phase will end inevitably merger laws in the global law.

64 Auby supra note 2 at 215

65 Id 219

66 Pfersmann supra note 40 at 66

67 Michaels supra note 56 at 19

developments and respond to the modern school in the liberal thought which defines the Neo- liberalism legal school.[68]

Consequently the neoliberalism differs from traditional liberalism, in that the latter has under-based legal system around the state, has built its view of the state that the purpose of existence is to protect the rights of individuals before the state, but neoliberalism has done in the framework of the global legal system (after the fall of the central state), has built its theory that the objective is protecting the individual rights before the global system, and thus replaced the state by the neoliberal global system, and became the new positioning of the entire universe around the individual.[69]

Perhaps the global system to replace the state in concentration on the individual and his rights, clearly expresses bypass the current legal system of the central state, and the trend towards the replacement of the international legal system by the global legal system,[70] or cancel the affected state's legal system, to be replaced by the global legal system, all of this means that completely transgressor of the existence of the State, which is what raises the question of the fate of the two branches of international law, public and private, which some jurists see that these two branches are not going to exist in the future, where they will replace them by global law, a new branch of law.[71]

Whatever the case, the global legal system and even though it is based on the fall of the central state, but it has not yet repealed the existence of states laws, which we mentioned before they coexist with global laws issued by entities other than states, which have already launched the global legal pluralism, but what raises the question is how to resolve the perceived conflict between these laws, and between them and the states laws on the other hand, could the general traditional theory of conflict of laws withstand against these developments.

4-2 Conflict of Laws Rules in the Context of Global Legal Pluralism Postmodernism

To discuss this issue, we must first search in the foundations of conflict of laws within the framework centering around the state, then we look after to features of conflict of laws in the framework of the law postmodernism - the global conflict of laws, and then finally we will discuss the traditional savigny conflict of laws rule in the face of global conflict of laws.

4-2-1 The Foundations of Conflict of Laws within the Framework Centering around the State

We mentioned earlier that the traditional theories of conflict of laws, built in the framework of the principle of territorial sovereignty of the state, which looks to the states as a regional units isolated relatively - in terms of power - from the others, is unique and alone the power to legislate on the domestic and international levels, so it has built the traditional private international law, on the basis that the perceived conflict of laws, is a conflict between the states laws only, and that the solutions of the conflict of laws issued by the state only with its sovereignty in determining the applicable law on its territory.

68 Berman supra note 1 at 1190

69 Frydman supra note 5 at 32-34

70 Auby supra note 2 at 215-221

71 Ascensio supra note 6 at 137-139

The return of traditional solutions of conflict of laws to the jurist Savigny, who created the famous conflict of law theory, known in his name sometimes, where it is said the Savignism rules of conflict of laws,[72] which are rules developed based on the analysis of the relations of the various legal actions, which indicate closer law related to the relationship, and these rules knows by attribution rules.[73]

Savigny approach is based on the idea of territorial sovereignty of the state, and centered around the state as an entity has a monopoly on sovereignty over the world, which was adopted so that the expected conflict is a conflict between the states laws only, and remove other legislative models from the conflict circle, which was limited only by the conflict between sovereign entities (states at the time), so-called international conflict of laws, relative to the states only are the members of the international community.[74]

The influences also by the idea of state sovereignty led Savigny approach to grant only the state power to enact the legislative rules that solve the problem of conflict of laws, known as mentioned as the attribution rules, the State is alone with its sovereignty, identifying cases that could allow the application of foreign law on its territory through the attribution rules, also state can enact internal rule stops the application of relative foreign law if it contradicts with the internal public order of the state.[75]

As such, it was considered private international law such as domestic law in the first place,[76] so that the state may unilaterally enact rules that unsealed international conflict of laws, without any coordination with other state or entity or international organization, which insert it into the internal national legislation such as civil law and business law , however the developments noted above related to the decline of state sovereignty and the movement of political power to other entities, led to a reconsideration of this traditional approach of conflict of laws.

72 Yvon **L**oussouarn**,** Pierre Bourel **et** Pascal De Vareilles-Sommière **:** *Droit International Privé*, 115, DALLOZ, 2013

73 Mariel Revillard : *Droit International Privé Et Communautaire : Pratique Notariale*, 11, DEFRÉNOIS, 7 edition, 2010

74 Ralf Michaels: *Globalizing Savigny? The State In Savigny's Pivate International Law And The Challenge Of Europeanization And Globalization*,9, SSRN.com, 2005, Author points out that it is truly curious, that Savigny ideas (1779-1861), who called the approach of the international conflict of laws in his name - were not linked to the state at all, Savigny was opposed to the emergence of the modern nation-state, he opposed the rationing in the field of private law, relying on proceeds from the habits and customs legislation, so he is a pioneer in the field "without the rule of law", it was felt that an independent private law precession from the state, and although the Savigny credited with founding aware of private international law rules which centered around the idea of state sovereignty, but it is less jurist of this law refer to the idea of sovereignty, Mancini, for example, he believed that sovereignty is a closed building in private international law, and also Joseph Story, who created the theory of comity in the application of foreign law to ease the tightening of the application of national law, stuck to his state sovereignty when applied to a compliment by insisting that is just the discretionary power of the state to apply comity or do not apply, and the Savigny has called for a courtesy such as imposing a state without any significance sovereignty, added to that approach Savigny-in conflict of laws based on the analysis of relationships between individuals to gain access to the applicable law, not analyzing states interests in the application of law to get to the appropriate law as is the case in other curricula, all of this was through his famous theory known as the "law community between individuals", then in his thoughts the only type of conflict was in matters concerning the interests of individuals, not states, and some contained opinions Savigny liberated from the power of the state to the difficulty of conflict perceived at that time between the laws of European countries that have common values, history and culture of one, so the writer doesn't think that Savigny believes that the conflict of laws is the conflict between the various sovereignties, and this writer believes that Savigny was more jurists belonging to the globalism and universal idea, contrary to what reflected in the approach of conflict called his name from the concentration on the state.

75 Revillard supra note 73 at 17-22

76 **L**oussouarn, Bourel, De Vareilles-Sommière supra note 72 at 68-69

4-2-2 Features of Conflict of Laws in the Framework of the Law Postmodernism - the Global Conflict of Laws

Resulted in a move political power of the state, particularly legislative, to other *supranational* and *infranational* entities and non-regional communities, that appeared the horizon new legislative models beside the state's legislative model, or what we might call the laws without the state,[77] which was founded explicitly to the phenomenon of global legal pluralism as mentioned above.

The idea of conflict of laws have strongly influenced by these new legislative models, where jurists begun referring to the possibility of a conflict occurred between the law of the state, and the law of another non state entity, and in contrast to what is stable in the traditional private international law, as well as the jurists talk began heading toward the revival of the global principles of conflicts of laws,[78] or what can be expressed as the trend towards consideration of private international law such as an international law not internal law as we mentioned before in the traditional theory, and the private international law must includes a set of supranational principles and rules that eliminate the perceived conflict between the states laws, the state - through the internal rules of attribution - no longer can control alone in the problem of international conflict of laws solutions.

It is noted, that since the end of the last century, the traditional attribution rules began to fall much application, jurists criticized these rules because it is entrusted with the international nature of the relations to the domestic law may not be compatible with it, so that reason turned jurists and judiciary in many countries to rely on the approach to the subjectivity rules,[79] rules that have originated outside the framework of the central state, and was designed from the entities and persons of different nations, to take over the rule of some of the issues of international nature, and national courts relied on these rules too much to face the traditional attribution rules inability to cope with the incident developments in the field of international relations.[80]

The issue did not stop at this point, it has led the changing of the type of legal relations of international relations to global relationships (after the fall of the central state), or what is known non- regional relationships, to complete paralysis in the application of attribution rules,[81] because it was relied heavily on regional controls based on the idea of "site" or "place," which is related only to state territory, as well as it also relied on personal controls, such as citizenship, which is based on the idea of the unique identity of the person associated with the state only, all these rules in a world that is moving towards multiple identities and affiliations to entities other than states, which would make it difficult application of these rules in many of the new patterns of relationships that emerged in the global postmodern world.

And as such the modern jurists began thinking of alternative solutions for the conflict of laws to take into account developments in the legal relations postmodernism, in terms of the universality of these relationships or non- regional of its nature, as well as take into consideration the inadequacy of the national attribution rules of global legal pluralism, which are based on a different reality completely

77 Michaels supra note 74 at 22

78 Schultz et Holloway supra note 62 at 864

79 Hisham Sadek, The Applicable Law on The International Commercial Contracts, 529, Monshat Almaaref, Egypt, 2005, see also Niboyet et De Geouffre De La Pradelle supra note 23 at 227.

80 **L**oussouarn, Bourel, De Vareilles-Sommière supra note 72 at 79

81 Thomas **S**chultz : *Réguler Le Commerce Électronique Par La Résolution Des Litiges En Ligne, Une Approche Critique*, 62, BRUYLANT, 2005

from reality that it faces regional points of attachment based on the state, which threatens the need to search for a new approach to conflict of laws.

In other side some of jurists believes that it should find out a new solution of conflict of laws on the idea of global conflict of laws, rather than international conflict of laws, namely the replacement of "based legal system centered around the state by " the legal system based on a lack of concentration on any entity" or what is known as global legal pluralism,[82] that's including address the problem of exclusive recognition of states laws only in the field of conflict by invoked all the other legislative models issued by non-state entities,[83] and this is the starting point in thinking about the global conflict of laws.

Therefore, the previous point lead to the recognition equally among all the laws and legislative models in the field of conflict of laws, there is no overhead for the law of the state exists on other entities laws, as well as no overhead in the power of development of solutions to conflict of laws, it should insure the participation of other entities which has the power to legislate.

Resulted from the above it is no longer worthwhile to look at the problem of conflict of laws as a problem of national belonging to the state alone, but should be viewed from a global perspective, beyond the national state and its vision of territorial sovereignty which became part of the history, here it should be reconsidered classification of private international law that domestic law, or even ranked as "international", because the conflict is envisaged will not be internationally conflict of laws, but it will be between the issued laws from different entities, including state and non-State law, so we prefer to classified it as global law , that the expected conflict will be between global laws, where the state law is still existing, and all legislative models issued by entities other than states, which is something to wonder about the validity of the approach of savignism rules of conflict of laws to face the global conflict of laws, and the case that it was built on the system centered around the state, and what are the solutions that could be proposed to meet the new types of conflict.

4-2-3 Savigny Conflict of Laws Rule Facing the Global Conflict of Laws

The savigny approach conflict of laws is based on the idea of attribution rules, which shall instruct the judge to the closer law related to the dispute or case of conflict of laws, and these rules are assigned relationship to the national law of the closest state to the dispute, on the basis that this state represents either " place of the conclusion or implementation of the legal action "or" domicile of one of the parties "or" place of the disputed money" or "nationality of one of the parties", notes on the attribution rules that it have stabilized in the various laws on some indicators, which can be described as based on the idea of classification of the legal act in regional basis, within the territory of a State, to get to be considered the law of this state is the applicable law.[84]

It is observed on the attribution rules of savigny approach that it designed to meet the international conflict of laws, any conflicts between the states laws only,[85] as it has - in terms of content - on two ideas centered both around the state, namely the territory of the State (location Law, Headquarters Law, the law of the place implementation, the law of the country of conclusion, domicile law), and the people of the state (the Nationality Law), and these two ideas powerful are undergoing a real crisis within the

82 Berman supra note 1 at 1228

83 Michaels supra note 56 at 9,10

84 **L**oussouarn, Bourel, De Vareilles-Sommière supra note 72 at 133, See also Berman supra note 1 at 1229

85 Bernard Audit, *Droit International Privé*, 74, Economica, 2em édition, 1997, see also Id 136.

framework of the global conflict of laws, it is first hand, raised now legal relations are no longer, can be easily concentrated within the "territory of the State", because the adjective which was characterized by legal relations postmodernism be universal relationships (non-regional), beyond-based legal system around the state, and it cannot be domesticated in the territory of a State, such as, for example, e-commerce relationships, the environment disputes, investment, and multinational corporations.

On the other hand, the idea of attribution based on the people of the state (citizenship), became experiencing a real crisis in light of the multiplicity of entities that belong to the human postmodernism, has indicated earlier to the emergence of supranational entities such as the EU, which became directly associated with the citizen in the states members, and surpassing state to which he belongs, which is what gives the citizens in the member states is another dimension to belong to Europe as an entity above the state, as we indicated earlier to the emergence of quasi-independent legal communities, which also gave the human another dimension in the career of belonging to entities beyond the state, and so the multiplicity of identities has become a phenomenon worthy of study, in terms of their impact on the effectiveness of citizenship as an indicator of attribution, this last idea, which settled work out centuries ago, as the only membership association between the individual and authoritarian entity, which is where anthropology scientists questioned in the modern era where they pointed out that in light of the global system postmodernism, it is possible that multiple affiliations to different entities, even if the state did not represent, this reveals new images of affiliation far from the nationality idea.[86]

Thus became the reliance on the idea of belonging people to the state in the creating of attribution rules, is not enough in the postmodernism world, people now are no longer the people of the state alone, but rather a multi-affiliations global people, belongs to the state, and they belongs also to supranational entities, and sometimes belongs to non-regional legal communities.

The modern jurists has faced the crisis of the fall back of attribution to the elements of the state such as the people and the territory, by using non-traditional ideas where some of them mentioned that after the fall of the "state", the alternative is to be "community," which parties belongs to or the dispute linked to, whatever this community,[87] whether a community regards supranational entities, or a community of non-regional legal communities, community of the state, which still remains, and so this trend fall the attribution centered around the elements of the state, replacing it by attribution to the community.

It seems that the previous trend raises the idea of "localization of relations in the community" as a substitute for the idea of " localization in the state," which is normal in the postmodernism world and the fall of the central state, that the world is divided into "communities" instead of "states", after becoming some "communities" are independents from the "states", resulting from this phenomenon that

[86] Michaels supra note 56 at 16,17, see about the nationality idea in Savigny approach at Michaels supra note 74 at 20, Author mentions that Savigny was not interested in the standard of the nationality of the person as much interest in the standard of his domicile, which he was used it in a lot of conflict of laws solutions, this reveals for us once again the global or universal thought of Savigny, and its distance from the state, so that the domicile is an indicator doesn't centered around the state, because it's easy for individuals to change their domicile, according to their freedom of movement and commerce between states without limits, while nationality standard is still centered around the state which keeps the individual captive to the law of the country of his nationality without esteem by changing the place of residence or domicile.

[87] Berman supra note 1 at 1229,1230

the jurists becomes talking about the "Community without state",[88] which supports the idea of attribution to the community rather than the state in postmodernism private international law.

The previous ideas maybe seems to some readers as an imagination cannot be achieved, however, that the modern judgments respond to that, because they used in several cases the idea of "community" as a substitute for the reference to "the location or place of the legal action" or "nationality",[89] for example, the famous case of Yahoo's popular site,[90] in which French citizen demanded before the French courts for compensations of damages arising from the yahoo publication of slogans Nazi, on its own page with users in France, the French court has been used completely different approach, in order to impose its jurisdiction and legislative, despite US nationality of yahoo site, and US domicile, main administration headquarters, which is located in the United States, and despite well as the download of data occurred in the host country which is also US, but this data is not linked to one country only, but transmitted via the Internet to all countries of the world, which makes there multiplicity in places of harmful which establishing the commitment, as a jurisdiction indicator in French law, but the Court had used the idea of "community" or the idea of connection to French community," to consider that the harmful act occurred in France, as it replaced the idea of the "State of the occurrence of harmful act" by the idea of "community" in which the harmful act occurred," and this means that they have replaced the state by community, in order to reach it to impose legislative and judicial competence.[91]

In spite of that the court used the idea of "community" to reach the application of the law of the state and not the community law (French law), but using the idea of localization of the relationship in the community rather than the state, is a very important indicator of the future of the interpretation of attribution rule in the context of declining the relations centered around the State for the benefit of non-regional relations (global context).

It is worth mentioning that the traditional jurisprudence - under the control of the central state - had used the idea of an approach to the method of the former court to gain access to the application of community law and not a state, namely the idea of the social milieu, which was used to cope with attribution difficulties to the state laws, for the conflicts that occur in the areas not submit to the sovereignty of any country, such as the high seas, for example, that some of the jurists decided to submit it to the maritime norms, as a social milieu in which the tort or harmful act occurred .[92]

according to the previous, we can discover that the idea of "social milieu" that some jurists advocated its use - in light of the central state - for areas not submitted to the state sovereignty, is once again displayed but on a large scale, because of the growing relationships that occur outside the framework of the state sovereignty in global framework or non-regional context, such as online transactions, and the environment disputes, international trade, all these relations would be a natural alternative to the state is a community or social milieu that relationship occurred.

88 Michaels supra note 56 at 15-17

89 Berman supra note 1 at 1230

90 Paul Schiff Perman, *Choice Of Law And Jurisdiction On The Internet, Towards a Cosmopolitan Vision Of Conflict Of Laws Redefining Governmental* 153:1819, U.Pa.L.Rev, 1823-1839, 2005 *Interests In a Global Law*, Vol

91 Berman supra note 1 at 1230

92 Sergio M.Carbone: *Conflit De Lois En Droit Maritime*, Académie de droit international de la Haye, 65-66, Martinus Nijhoff Publishrs, 2010, see also Audit supra note 85 at 163,164

5 Conclusions

Back to the horizontal regulation of laws requiring deceleration of the end of Savigny conflict of laws approach and reliance on new approaches to global conflict of laws:

deduce from the above that the new reality in postmodernism private international law, looks at all the laws as a parallel, without distinction between the states law and the law of another entity does not constitute a state, what is known as horizontal regulation of laws, a global reality in which laws are parallel to swim, without search of belonging to the national or international legal system, as some jurists called it global laws market ,[93] which these laws and legislative models disputed without any overhead to the state law,[94] so we go back again to the image of a conflict of laws that existed in the old Romanian empire before the emergence of the idea of the state , where multiple personal laws for individuals in parallel, without preference for any of them on the other, this horizontal organization of the laws had produced solutions to the conflicts of laws based on the personal element (community affiliation) and not regional, because the Romanian empire was to have two laws, one of which is the citizens law known as (*Jus Civile*), which applies to Roman citizens, and the other is the law of nations known as (*Jus gentium*), which applies to all residents of foreigners, and has a set of rules derived from the customs and habits of all Italian cities, making it a real model for the idea of global common law, which coexists with national law in the same regional framework, and perhaps this fact that had prevailed under the old Romanian empire, strongly approaching the current reality in which we pointed out to in the pages of this paper, this parallel coexistence between law of nations and the citizen law is the same global legal pluralism we have mentioned as the basis for a new law postmodernism,[95] which will result in the need for the use by the conflict of laws that prevailed under the Romanian empire, especially the idea of community affiliation, and avoids depending on solutions of the conflict of laws based on the idea the state.

However, the reality of postmodernism private international law differs from reality in the light of the ancient Romanian empire, so that postmodernism global legal pluralism of a large number of laws, and not just legal systems as in the case of the Romanian Empire, because now there are states laws and the laws of supranational and infranational entities and non-regional legal communities laws, so we see that the idea of community affiliation of the Parties adopted by Rome ancient settlement of conflicts between the citizen law and the law of nations, which will accommodate postmodernism to consider belonging to a variety of communities, including states communities and other communities of supranational and infranational entities, In addition to the non-regional legal communities.

And as such, will drop the idea of "international conflict of laws" to be replaced by "global conflict of laws", which is equal in the conflict between all laws, whether issued by the state or entity does not constitute a state, and therefore will disappear with the Savigny approach of conflict of laws, which is

93 Jean-Jacques **S**ueur: Analyser Le Pluralisme Pour Comprendre La Mondialisation, In Collection, La Science Du Droit Dans La Globalisation, 112, BRUYLANT, 2012

94 Was our professor Hesham Sadek had expressed earlier about this trend at the end of the last century, and calling it the trend of private international law towards solving the conflict between the legal systems not based to a regional authority with a sovereign state, which led some so-called law of this section, law of multiplicity of systems, It seems that the first signs of this idea in arab jurists was Ahmed Sadek AlKoshiry which predicted that the next conflict the will be a conflict between canons and not of conflict between the state laws, see Hisham Sadek : Conflict Of Laws, 26, 30, Dar Almatobaat Algamaiya, 2007

95 **S**chultz **et** Holloway supra note 54 at 5, 27

based in his theory on the idea of regional attribution only to the states laws, and that makes his solutions inappropriate to deal with the reality of postmodernism private international law, this reality where the different types of global laws swim in it and coexisting with each other in parallel, without any significance to belong to the national or international legal system.

We conclude from the above that re-building of a new approach of conflict of laws, admits the horizontal organization of the laws, and to adopt solutions of conflicts of the global laws,[96] without

reliance on the idea of territory, but centered around the idea of community affiliation of the parties, respect their regulations of their own. Which would be a victory for individual liberty of community affiliation away from the state, [97]that freedom formed its features under the neo-liberal school, which sees the entire universe as one village without boundaries of countries, and the entire universe is centered on the individual.

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[96] Some argue that there is a need for a transition for states stage, where the application of non-State entities laws accept, through a return to the idea of *comity* advocated by Dutch jurists in the ends of the seventeenth century, which was established to accept the application of foreign law in front of the national judiciary based on courtesy (*comity*), where this idea came natural reaction to alleviate the principle of territorial sovereignty of States, which has led to a tightening of the application of national law on a regional basis, the modern jurists see that we now need to comity again, so that the national judiciary accept entities laws which are not states such as laws conflict with state law, and applies them in its territory on the basis of comity, see this idea in detail at **S**chultz **et** Holloway supra note 62 at 867.

[97] It is noted that the idea of community affiliation of the parties differ on the idea of personality of laws which created by Mancini (1817-1888) in the nineteenth century, the latter built on the basis that the laws follow the person wherever he went, which means that each person submit to his personal law, but it should be stressed here the personal law is intended person's nationality law, and, as noted earlier idea of citizenship linked to only the state, and it was not inconceivable in light of the idea of personal laws, to have someone applies the laws of his society or another entity, law was not separated from the state, and this is the fundamental difference between the idea of community membership currently on the table and the personal laws idea, the former is based on the multiplicity of personal laws for individuals not only limited to the nationality law, this means that the solutions will not depending on the states laws only, but rather to recognize the laws of the various communities, see the Mancini ideas in general **L**oussouarn, Bourel, De Vareilles-Sommière supra note 72 at 116

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