A global society is not unique to our times; ancient civilizations also reached far beyond national borders. Today, however, these processes have accelerated. Globalization has led not only to economic, political and societal transformation but also to legal transformation, primarily with regard to such regulated areas as communication, transnational trade, immigration and foreign investment.

A growing number of legal questions, in the twenty-first century, transcend national borders. They affect all areas of law, including sales contracts between two parties in different countries (private law), regulation of environmentally harmful emissions across borders (public law) and fighting organized crime on a global basis (criminal law). For example, does German criminal law apply to a German company that bribes an official outside of Germany? In a global world, such challenges involve everything from climate protection to intellectual property and security in the face of terrorism.

TRANSFORMATION OF LEGAL NORMS

An important task of the law in a global world is to guarantee that certain rights and control mechanisms are transnational and implementable. Today, cultural and economic interactions, which increasingly cross territorial borders, are gradually challenging the legal authority of national governments and their regulations. Attempts to enforce laws outside of the home territory have historically been unsuccessful and are often of doubtful legality. An example is the pressure exerted by the US government on the Swiss Bank UBS to release banking data. Although UBS gave in to these demands, the competent Swiss court later declared the action illegal.

With the international power of the state waning, intergovernmental and supranational institutions such as the United Nations (UN), the Organization for Economic Co-operation and Development (OECD), the World Trade Organization (WTO) and the World Bank have moved into the legal realm, making recommendations, agreements, resolutions and other measures that address issues ranging from human rights to the environment. Many people are deeply affected by the decisions of such international or supranational bodies, from the credit decisions of the World Bank to the WTO’s agrarian subsidies. Human-rights committees, monitoring commissions, courts, and arbitration tribunals and committees are also taking on legislative roles; even narrowly focused organizations are broadening their mandates to help solve global problems. The European Union is a particularly strong supranational organization with executive, legislative and judicial powers that affect all aspects of life in Europe.

Private parties too have been starting to engage in law-making activities. For example, academicians, economists and other organizations have developed principles of European contract law and European corporate governance codices. International law firms play an important role in developing and interpreting this law, supplemented by political, societal and economic mechanisms, such as the OECD’s educational comparison system — the Programme for International Student Assessment (PISA). New challenges to state sovereignty also arise from religious communities whose beliefs might contradict national laws.

A WEAKENING OF THE STATE

These changes are weakening the power of the state, and leading to an internationalization and supranationalization of law, as well as to a de-facto privatization of law and an erosion of the borders between civil and public law. The legal situation is akin to that in the Middle Ages, when the discrepancy between the range of the official authority of the state and its ability to impose legal order corresponded with an emphasis on non-state legal structures. This raises important questions about whether the era of the sovereign nation-state has passed and who is wielding the power. It is clear, at any rate, that in the wake of these developments, the protection mechanisms of the democratic state that were developed during the Enlightenment are in jeopardy, and that there is a growing danger of the law passing into the hands of the economically or politically strong.

Following the entry into force of the Treaty of Lisbon, the Europeanization of criminal law is experiencing dynamic development. A research project conducted by the Max Planck Institute for Foreign and International Criminal Law is the first to systematically devise objectives and models from which specific solutions for the expansion of European criminal law can be derived. This basic research project offers both a foundation and criteria for the future criminal policy of the European Union (Sieber, U. ZStW 121, 1–67, 2009).
Globalization has broadened the territorial range and the complexity of legal issues that need to be addressed, and threatens the legal hegemony of the nation-state.

National legislation is increasingly replaced by activities of international, supranational and non-governmental bodies with a questionable legitimation.

New transnational models are needed to address global challenges.

ASSESSING INTERNATIONAL MODELS

A key question for the future is how to handle legal issues in a global world effectively, while maintaining the legitimacy and control exercised by democratically elected and constitutionally grounded sovereign states. This can be addressed to some extent via the harmonization of laws, which is a development that has already taken place in some areas — for example, with regard to the protection of intellectual property. Thus, an important task for legal researchers is to analyse the driving forces, the methods and the factors that lead to successful legal harmonization. Comparative analyses of national and international legal orders can serve as a basis for addressing these questions. As an example, a comparative analysis of the legal protection of European financial interests conducted by criminal law experts will be used as the basis for the development of a European public prosecutor’s office.

FUTURE RESEARCH

There are many possible solutions based on legal harmonization, including cooperation models (in which one state recognizes laws made in another state) and international or supranational models (in which numerous states commit to a unified legal agreement applicable in all their territories). The latter often suffers from legitimacy issues, particularly when the interests of one powerful party prevail at the expense of the interests of less powerful parties. In light of this, future research must focus on developing a comprehensive theory that integrates insights from legal scholars and the social sciences, in order to create models that address legal issues in a global world. These new models and solutions must not only guarantee an efficient global regulation but also provide legitimacy, control and human-rights protection.

International terrorism can only be combated by concerted international legal efforts.

Globalization involves both private and international interests, which should be controlled by an independent judicial system or authority.

The United Nations is but one of many intergovernmental institutions that make recommendations and draw up agreements addressing issues from human rights to environmental law.