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4 MAGGIO 2016

The digitalization of cultural models: towards a new concept of cultural identity?

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1. Cultural rights and cultural identity in public international law

The first step of this analysis consists in an essential preliminary review of the cultural rights framework and of the mechanisms to preserve it. We will start, then, retracing the steps towards the recognition of cultural rights and their relationship with other fundamental rights, in order to approach the subsequent considerations on the position of cultural rights in the contemporary society.

1.1 The state of the art: steps towards a positive recognition of the cultural identity

The Committee on the economic, social and cultural rights asserts that «[c]ultural rights are an integral part of human rights and, like other rights, are universal, indivisible and interdependent»[1]. Indeed in recent international law, cultural rights existence is progressively interwoven with human rights discipline, founding its complete satisfaction in the enjoyment of some

* Articolo sottoposto a referaggio.
[1] *General Observation No. 21*, E/C.1 2/GC/21, 21 December 2009, §1, p.1.

fundamental rights[2]. Such a conclusion is the result of an increasingly broad interpretation of existing international instruments that has, finally, led to the awareness of the reciprocal link between cultural rights and general human rights, although an explicit recognition dates at the most recent years[3]. Actually, the first human rights instruments remained ambiguous in referring to the rights belonging to the cultural sector[4]. After all, the 90s and the first years of the XXI century were characterized by a progressive recognition of the importance of the *collective* dimension of fundamental rights. This achievement was realized thanks to the valorisation of people belonging to minorities as owners, among the others, of specific cultural rights[5]. The adoption of international instruments explicitly consecrated to this category of individuals, as well

[2] As underlined by the Inter-American Court on Human Rights, «the attention due to the cultural diversity seems to us to constitute an essential requisite to secure the efficacy of the norms of protection of human rights, at national and international levels», IACtHR, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, 31 Aug. 2001, § 14. More recently the Committee on economic social and cultural rights has recognized that «[t]he right of everyone to take part in cultural life is closely linked to the enjoyment of other rights recognized in the international human rights instruments. Consequently, States parties have a duty to implement their obligations under article 15 paragraph 1(a) [of the Covenant on Economic, Social and Cultural Rights] with their obligations under other provisions of the Covenant and international instruments, in order to promote and protect the entire range of human rights guaranteed under international law», *General Observation No. 21*, cit. Such an explicit awareness follows a previous verification on the role of participation in cultural life as «a central pillar of human rights» (UN Doc. E/C.12/1992/SR.17, §52). Indeed, the Committee considers that certain human rights – such as the right to housing (*General Comment No. 4*); the right to water (*General Comment No. 15*); the right to education (*General Comment No. 13*); the right to health (*General Comment No. 13*) – have to be coordinated with cultural rights: « [t]he way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing» (E/1992/23); «[a]ll water facilities and services must be […] culturally appropriate» (E/C.12/2002/11); «[p]rimary education must […] take into account the culture» (E/C.12/1999/10); «health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities» (E/CN.4/2000/4). See also the *Report of the independent expert in the field of cultural rights* of 2011, UN Doc. A/HRC/17/38.

[3] The Committee on Economic Social and Cultural Rights (CESCR) considered this issue for the first time in 2009, in its General Observation No. 21. A strong incentive came from the "Freiburg Group" that adopted, in 2007, a *Declaration on cultural rights*. The Preamble of this declaration recognizes that «human rights are universal, indivisible and interdependent and that cultural rights, as much as other human rights, are an expression of and a prerequisite for human dignity». Cfr. Y. DONDERS, *A Right to Cultural Identity in UNESCO*, in F. FRANCIONI (edited by), *Cultural Human Rights*, Martinus Nijhoff Publishers, Leiden, 2008.

[4] See, for example, art. 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) or art. 27 of the International Covenant on Civil and Political Rights (ICCPR). Some authors underline that «[l]*es questions culturelles* […] *ont plutôt été traitées à travers l'adoption d'instrument relatifs à la coopération culturelle et à la protection des patrimoines, sans références aux droits de l'homme*», M. BIDAULT, *La protection internationale des droits culturels*, Bruylant, Paris, 2009, p. IX-X.

[5] Numerous instruments specifically consecrated to the protection of minorities' rights were adopted during the '90s. Two significant examples are the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, adopted in 1992 under the aegis of UN and the *Framework Convention for the Protection of National Minorities*, adopted in 1993 under the aegis of the Council of Europe.

as a more broad interpretation of the existing HRs instruments, resulted in the concept of the "*cultural identity*" of persons belonging to minority groups[6]. These individuals are, thus, recognized as the holders of the right to *preserve* their own culture and of the right to *manifest* their cultural identity, safeguarding «the essential elements of their identity, namely their religion, language, traditions and cultural heritage»[7]. Although the distinction between "purely" collective rights – that is rights recognized to the community – and the rights recognized to the *members* of this specific community remains in some ways uncertain, international law accepts the community right to define its own cultural identity, inviting States to adopt the necessary means to allow the most free and complete manifestation of this identity[8].

Cultural identity depends on the *preservation* of cultural heritage but also on the *possibility to access to*, *recreate* and *hand down* this heritage. Especially when considering traditional "practices, representations, expressions or knowledge" of a community – that is its intangible cultural heritage – the connection with the daily way of life of that community is so indissoluble that it is hard to differentiate the cultural dimension from the surrounding environment. Then, the *natural* environment in which the community lives and evolves or, more precisely, the *management* and *exploitation* of this environment become sometimes the essential elements of the cultural identity of the community itself.

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[6] «[T]he individual right to personal identity [was] enriched with new contents, such as those deriving from the protection of the cultural identity of the community the individual belongs to and in which his/her social projection takes place», V. PIERGIGLI, *The right to cultural identity*, in *Annuaire International de Justice Constitutionnelle*, vol. 29 (2013), p. 597-619, 2014.

[7] Art. 5 par. 1 of the *Framework Convention for the Protection of National Minorities*.

[8] Working that way, the Inter-American Commission developed, during the '90s, the principle according to which «individual and collective rights are not opposed but, rather, are part of the principle of full and effective enjoyment of human rights […] [T]he Commission considered that the full realization by an individual of certain individual rights is only possible if that right is recognized for the other individual members of that community as an organized group […] Indigenous communities are the holders of the rights enunciated in the proposed Declaration. Those rights refer to the collective legal status of those communities and may be invoked, as appropriate, either by individuals, or by the representative authorities in name of the community», Inter-American Commission on Human Rights, *Doctrine And Jurisprudence Of The Iachr On Indigenous Rights (1970-1999)*. On the same way the UN Committee on economic, social and cultural rights explicitly refers to a "right to cultural identity" of indigenous peoples (Gene*ral Discussion on the Right to Take Part in Cultural Life as recognized in Art. 15 of the ICESCR*, UN Doc. E/1993/23) as well as the Working Group of the African Commission, that specifies that «*les peuples autochtones peuvent se prévaloir de l'article 22 de la Charte africaine qui reconnait à tous les peuples le droit à une culture et à l'identité*» (R*apport du Groupe de travail d'experts de la Commission africaine des droits de l'homme et des peuples sur les populations/communautés autochtones*, ACHPR, IWGIA, Copenaghen, 2005) and art. 33 of the *UN Declaration on rights of indigenous peoples*, according to which «[i]ndigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions» (*UN Declaration on the rights of indigenous peoples*, adopted by the General Assembly on the 13th September 2007).

Some recent (binding and declarative) international instruments are firm in recognizing the territorial dimension as one of the necessary elements of cultural identity of minorities and indigenous people. Art. 13 of the Convention No 169 on indigenous and tribal people argues that there is a general need to preserve «[…] the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship»[9]. The same conclusions are reached by the UN Declaration on the rights of indigenous people: «[c]onvinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs» (Preamble). The declaration goes further «[r]ecognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment». In doing so, it explicitly links the protection and preservation of cultural traditions with the protection of the natural environment in which the community lives and develops its cultural dimension.

As further proof of this intimate relationship between the cultural dimension and the natural (and physical) one, the opinion of contemporary international jurisdictional and quasi-jurisdictional organs undoubtedly deserves some attention.

1.2 Quasi-jurisdictional and jurisdictional organs on cultural identity: the international practice

Joining the quite uniform doctrine on the point[10], the implementation of the instruments we have referred to shows a high degree of consciousness on the relationship between the cultural identity of the communities and the surrounding environment in which they live.

[9] The Convention No 169 was adopted into the context of the International Labour Organisation in 1989.

[10] S. WIESSNER, *The Cultural Rights of Indigenous Peoples: Achievements and Continuing Challenge*, in *The European Journal of International Law*, Vol. 22, No. 1, 2011, p. 129; S. MANISULI, *The Development of Economic, Social and Cultural Rights under the African Charter on Human and People's Rights*, in *International Human Rights Law Review*; vol. 4, No. 2, pp. 147-193,2015; F. LENZERINI, A.F. VRDOLJAK (eds.), *International Law for Common Goods : Normative Perspectives on Human Rights, Culture and Nature*, 2014; P. MEYER-BISCH, ARANZADI, THOMSON REUTERS, *Définir les droits culturels*, in *Ana* M. V. GUTIÉRREZ (dir.), *Derechos humanos : elementos para un nuevo marco conceptual*, 2014; C. NAPOLI, *La renaissance des droits culturels dans le système international de protection des droits de l'homme*, in L. HENNEBEL, H. TIGROUDJA (sous la direction de), *Humanisme et droit : offert en hommage au professeur Jean Dhommeaux*, Pedone, 2013.

The *quasi-jurisdictional* dimension, from its side, is explicit in arguing on this point. After the adoption of General Comment No. 21, the Committee on Economic, Social and Cultural Rights (ESCR Committee) adopted several *Concluding Observations* in which it recognises a connection between cultural rights of indigenous people and the possession of their ancestral lands. Ancestral lands are explicitly acknowledged «[…] as an integral part of [indigenous] cultural identity»[11]. The protection of the surrounding natural environment guarantees the enjoyment of cultural rights of the indigenous people that inhabits it[12]. The Committee recommends, then, «[…] that State[s] part[ies] give due consideration in [their] land restitution programme[s] to the right of indigenous peoples to their ancestral lands, which are essential to the expression of their cultural identity and to their very survival»[13]. Nevertheless, while worthy of high consideration, the Concluding Observations of the ESCR Committee rest a *quasi-jurisdictional* source, lacking of binding effects.

The *jurisdictional* dimension shows, on the contrary, its dependency from the concrete framework in which it operates. The European context, even if undoubtedly one of the most productive in terms of case-law, does not really allow for further considerations on the link between cultural identity and ancestral territories. Indeed, it remains quite silent on the issue of the "territorial dimension" of cultural identity. Nonetheless, the European Court of Human Rights (ECtHR) is firm in recognizing the existence of «special needs of minorities and an obligation to protect their security, identity and lifestyle […] not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity that is of value to the whole community»[14].

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11 Concluding Observation on Argentina, UN Doc. E/C.12/ARG/CO/3, §25.

12 In its Concluding observation on Congo, the Committee affirms that «[…] abusive exploitation of forest resources […] has negatively affected the lands and the way of life of numerous indigenous peoples […] impeding the enjoyment of […] their own cultural identity», UN Doc. E/C.12/COD/CO/4, §36. See also the Concluding Observation on Madagascar, UN Doc. E/C.12/MDG/CO/2; the Concluding Observation on Chad, UN Doc. E/C.12/TCD/CO/3, § 35; the Concluding Observation on Russian Federation, UN Doc. E/C.12/RUS/CO/5, §35; Concluding Observation on Australia, UN Doc. E/C.12/AUS/CO/4, § 32; Concluding Observation on Cameroon, UN Doc. E/C.12/CMR/CO/2-3, §33.

13 Concluding Observation on Paraguay, UN Doc. E/C.12/PRY/CO/3, §33.

14 ECtHR, *Munoz Diaz v. Spain*, No 49151/07, 8th December 2009, § 60. See also *Chapman v. United Kingdom*, No 27238/95, 18th January 2011. Then, the case-law of the ECtHR recognizes the right to maintain the identity of an ethic or cultural minority, as well as the right to freely chose one's identity (*Ciubotaru v. Moldova*, No 27138/04; *Sejdic & Finci v. Bosnia and Herzegovina*, No 27996/06 and 34836/06), the right to a religious identity (*Sinan Isik v. Turkey*, No 21924/05), the freedom of thought, conscience and religion that represents, in itself, a manifestation of the right to cultural identity (*Cyprus v. Turkey*, No 25781/94; *Cha'are Shalom Ve Tsedek v. France*, No 27417/95; *Leyla Sahin v. Turkey*, No 44774798; *Dogru v. France*, No 27058/05), the freedom of association and reunion as instrumental to the promotion and

On the contrary, the inter-American case-law on that issue is rich and worth mentioning. The Inter-American Court of Human Rights (IACtHR) has widely admitted that «[…] the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations»[15]. The Court has consolidated and reinforced its position during the years, coming up to recognize that «[l]and is more than merely a source of subsistence for [indigenous people]; it is also a necessary source for the continuation of [their] life and cultural identity»[16].

Most recently, the Court has given explicit form to an additional interesting profile on the connection of the cultural and natural dimensions: the Court underlines that a traditional management of ancestral territories often guaranties a more efficient preservation of environment quality. In a case of 2012 the IACtHR reached the conclusion that «the protection of the territories of indigenous and tribal peoples also stems from the need to guarantee the security and continuity of their control and use of natural resources, which in turn allows them to

protection of the cultural identity of a minority group (*Sidiropoulos & others v. Greece*, No 26695/95; *Gorzelik & others v. Poland*, No 44158/98; *Tourkiki Enosi XXanthis & others v. Greece*, No 26698/05; *Stankov & United Macedonian Organisation Iliden v. Bulgaria*, No 29221/95 and 29225/95).

[15] IACtHR, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, 31 Aug. 2001, § 149-149. With this case the IACtHR firstly admitted the existence of the link between land and cultural identity. The possession and exploitation of "ancestral lands" is, here, a prerequisite for the complete satisfaction of the right to cultural identity of indigenous peoples. The *Mayagna* case was followed by other cases, as: the *Moiwana Village v. Suriname* (2006) in which the Court affirms that «[t]he tragedy of uprootedness, manifested in the present case, cannot pass unnoticed here, as uprootedness (*desarraigo*) affects ultimately the right to cultural identity, which conforms the material or substantive content of the right to life *lato sensu* itself», §13; the case of *Xakmok Kasek v. Paraguay* (2010) where the Court admits that «[t]hese effects are one more indication of the importance of land for the indigenous and of the insufficiency of the view that land as merely "for production" when considering the conflict of interests between the indigenous and owners of private lands being claimed in replevin», §182. Very recently the Court has stated that «[…]

genas mantienen con la tierra debe de ser reconocida y comprendida como la base fundamental de s

n sino un elemento material y espiritual del que deben gozar plenament

genas corresponde a una forma de vida particular de ser, ver y actuar en el mundo, constituido a partir de su es

n, religiosidad y, por ende, de su identidad cultural […]», IACtHR, *Comunidad Garifuna Triunfo de la Cruz y sus miembros vs. Honduras*, 8 October, 2015, § 101 and IACtHR, *Caso Comunidad Garifuna de Punta Piedra y sus miembros vs. Honduras*, 8 October 2015, § 161.

[16] IACtHR, *Saramaka v. Suriname*, November 28, 2007, § 82.

maintain their way of living»[17]. Contemporary literature agrees on that point: traditional practices adopted by indigenous peoples appear strictly linked to (or, better, *depending by*) the surrounding ecosystem; in the same time biological peculiarities of a specific territory are often preserved by the same indigenous peoples that inhabit the considered territory and handle it according to their traditional culture[18]. The key of such a connection seems to be the traditional knowledge that the community hands down from one generation to another: it would maintain alive the affinity with the environment and, thus, lead to the consideration that «*cultural diversity is as essential as biological diversity*»[19].

1.3 Contemporary international law *vis-à-vis* cultural identity: unavoidability of the territorial element?

According to the current interpretation (and application) of the existing international instruments, the consolidated conception of cultural identity seems to be necessarily linked to a deeply localized, traditional, ancestral and unavoidable *territorial dimension*. Cultural identity is, thus, developed into a well-identified community, whose members share a common history and common traditions, have the same habits, the same customs, uniform rituals and identical language. The language of the community becomes the vehicle of this identity, the instrument thanks to which knowledge and traditions hand down from one generation to another, as well as the symbol of the community itself[20].

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[17] IACtHR, *Kichwa Indigenous People of Sarayaku v. Ecuador*, June 27, 2012, §146.

[18] See, for example, A. YUPSANIS, *Cultural Property aspects in International Law: the Case of the (Still) Inadequate Safeguarding of Indigenous Peoples' (Tangible) Cultural Heritage*, in *Netherlands International Law Review*, vol. LVIII, 2001, p. 335-361. For a deeper analysis, UNESCO and UNEP, *Cultural Diversity and Biodiversity for Sustainable Development*, UNEP, Nairobi, 2003, where the authors underline that «[t]he biologically diverse landscapes created and maintained by aboriginal Australians through their astute use of fire is but one well-documented example. Even the Amazonian rain forest, considered by many as the ultimate expression of pristine wilderness, has been shaped during millennia by the deliberate interventions of indigenous peoples», p. 9.

[19] UNESCO Universal Declaration on Cultural Diversity, 2001. Se also the *Florence declaration* of 2014 adopted on the occasion of the *Third UNESCO World Forum on Culture and Cultural Industry*: «[i]n many landscapes, concepts such as "natural" and "cultural" have lost much of their meaning, being replaces by a biocultural understanding, where not only settlements and agriculture, but also species and habitats are determined and preserved by people», art. 2.2 (*b*).

[20] In EctHR's words «[…] the right to respect for private and family life under Article 8 included a right to recognition of language as part of ethnic or cultural identity. Language was an essential means of social interaction and for the development of personal identity. This was particularly so where, as in the present case, language was the defining, distinguishing characteristic of a particular ethnic or cultural group […]», ECtHR, *Catan & others v. Moldova e Russia*, No 43370/04, 8252/05 and 18454/06, 19 October 2012, § 152.

In a "traditional" approach, cultural identity is therefore not distinguishable from the *context* in which it emerges and crystallises. And the only context that international law seems to comprehend is the *physical* (territorial) one: the one in which the community shares its common traditions, the one that allows the development of these common traditions, the one that is managed (and still exists) thanks to these common traditions. International case-law shows how deeply the "territorial" conception of cultural identity is rooted in the common feel. It illustrates the indissoluble link between the cultural dimension and the spatial, tangible, physic and biological one that surrounds the former, rather how the existence of the one depending on the survival of the other. It gives an "institutional" connotation to the apparently unavoidable territorial nature of cultural identity.

As a further proof of this connection, it is now unanimously accepted (and demonstrated) that cultural and biological diversity reflect ones another. The preservation of the first is, then, not just *functional* to the full enjoyment of both individual and collective cultural rights, but it «*forms a common heritage of humanity and should be cherished and preserved for the benefit of all*»[21].

2. New actors and new contexts: cultural identity faced to the a-territoriality of digitalization

The most recent years are characterized by a progressive opening of the markets and an increasing development in transnational investments and exchanges [22]. The opening of commercial frontiers promotes the movement of goods and services, while technological development leads to the increasing of economic activities – above all financial activities – not just between investors physically far one's from another, but also irrespective of a spatial location[23]. This progressive opening gradually involved other sectors beyond the economic one, becoming a multidisciplinary phenomenon worthy of high consideration[24]. Indeed, it includes a

[21] Preamble of the UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, adopted in 2005.

[22] «*Depuis la fin de la seconde guerre mondiale, le commerce international a augmenté de 6,5% par an en termes réels, plus rapidement que la production mondiale. Les droits de douane moyens s'établissaient à 3% à la fin du XXe siècle contre 25% dans les années 1960*», J. A. SHOLTE mentioned in J. B. AUBY, *op. cit.*, p. 14.

[23] The main focus is on activities realized thanks to the use of new technologies (such as Internet) and, as such, indifferent to any territorial considerations.

[24] A part of the doctrine calls this phenomenon "globalisation", meaning a complex and heterogeneous "movement" or "process" in which different and distinctive elements interact ones another. For a brief overview see U. BECK, *What is globalization?*, Cambridge, Polity Press, 2000; P. DE SENARCLENS, *La mondialisation*, Armand Colin, 2e ed., 2001; J. B. AUBY, *La Globalization, le droit et l'Etat*, CLEFS, Paris, 2003; F. MEGRET, *Globalization*, in *Max Planck Encycolpedia of Public International Law*, 2009.

cultural dimension because of the circulation of values and common ideologies carried and diffused thanks to the new communication systems. Besides, it presents a *social dimension* originated as an effect of the circulation of people, customs and traditions that leads to a diffusion (and homogenization?) of life habits and behaviours. Last but not least, it presents a *legal dimension*: indeed, it has driven international law towards an extension of its borders, opening the door to new normative disciplines, as market regulation, international economic law, environment protection, telecommunication and obviously human rights, inevitably involved in the new socio-cultural and economic global processes[25]. In this context, new actors – such as international organisations (IOs), non-governmental organisations (NGOs) and multinational corporations – gain a new consideration in international relationships[26]. The dimensions in which they play the most pervasive role are *international economic law*[27] – where they are allowed to enter into agreements with international institutions such as WTO[28] or to act as *amicus curiae* in dispute settlement proceedings[29] – and *human rights law* – where they act to orient international subjects decisions, for example, using international institutions from the inside (as observer) to achieve

According to some authors: «[i]n the most abstract sense, globalization is the idea that the entire world is increasingly the frame of reference for human activity, and is often associated with notions of the *reduction of time and space*», F. MEGRET, *loc. cit.*, § 8. On the other hand, other writers focus on the multidimensionality of this phenomenon: «*la mondialisation* […] *c'est un processus complexe caractérisé par la multiplication, l'accélération et l'intensification des interactions économiques, socioculturelles et politiques entre les acteurs des différentes parties du monde qui y participant de façon variable*», H. RUIZ. FABRI (sous la direction de), *La Convention UNESCO sur la protection et la promotion de la diversité culturelles – Premier bilan et défies juridiques*, Société de législation comparée, Paris, 2010, p. 98.
This phenomenon should not be confused with the « globalisation of the law» as preconized by the very most recent doctrine. See, for example, R. ABI KHALIL, *Mondialisation et gouvernance mondiale…Quelles perspectives*, Paris, L'Harmattan, 2015; A. VLASSIS, *Gouvernance mondiale et culture – De l'exception à la diversité*, Liège, Press Universitaire de Liège, 2015; S. CASSESE, *Global administrative law : The State of the Art*, in *I CON*, Vol. 13, No. 2, pp. 465-468 ; R. B. STEWART, *The Normative Dimensions and Performance of Global Administrative Law*, in *I CON*, Vol. 13, No. 2, pp. 499-506 ; B. FRYDMAN, *Commen pernser le droit global?*, in J. Y. CHEROT, B. FRYDMAN (sous la direction de), *La science du droit dans la Globalization*, Paris, Bruylant, 2012, pp. 17-48.
[25] F. MEGRET, *op. cit.*, § 25 e ss.
[26] For a deeper analysis see M. NOORTMANN, A. REINISCH, C. RYNGAERT, *Non-State Actors in International Law*, Hart Publishing, Oxford & Portland, 2015.
[27] For a panorama on the actors involved in the global economic governance, O. PORCHIA, *Gli attori nel processo di globalizzazione dell'economia*, in S. CANTONI, A. COMBA, F. COSTAMAGNA, E. GRANZIERA, C. MANDRINO, A. ODDENINO, O. PORCHIA, M. VELLANO, A. VITERBO (a cura di) A. COMBA, *Neoliberismo internazionale e global economic governance – Sviluppi istituzionali e nuovi strumenti*, Giappichelli, Torino, 2013, pp. 41-68.
[28] *Ex* art. 5 § 2 of the World Trade Organisation Agreement.
[29] See, for example, the case *Shrimps Turtle*, WT/DS58/AB/R. Their role seems to be growing also thanks to recent initiatives like, for example, the CETA (EU-Canada Comprehensive Economic and Trade Agreement) of 2014, which recognizes a quite extensive role of *Amicus curiae* (§§44-47).

their goals[30]. Even when not officially recognized as subjects of international law, these new actors are able to orient the dynamics of supranational relationships as well as to contribute, in an indirect but effective way, to the production and circulation of international norms[31].

The following paragraphs aim to analyse the consequences of such a new framework on the cultural dimension, with a particular focus on cultural identity into the digital world.

2.1 The territorial dimension in the prism of new actors: loss of the territorial element?

As a consequence of the substantial growing importance of those new international actors we assist to a (partial) regression of the economic and political power of State actors[32]. Indeed, States share, now, their capacity to fostering public interest with non-State actors reaching the same objectives[33] and, at the same time, their economic weight is progressively eroded by multinational corporations[34]. In addition, States share now their (international) law-making power with those actors. On the one hand, as a consequence of a voluntary cession of a part of their exclusive competence to international organisations (IOs)[35] and, on the other hand, because of the indirect contribution of private actors that the new "borderless" framework makes more and more able to influence national legal orders, at this time permeable to transnational inputs. According to

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30 M. STEPHEN, M. ZURN, *op. cit.*

31 A certain place could be recognized to individuals too. Historically, *individuals* started to gain international consideration with the recognition of fundamental rights, enforced thanks to the adoption of specific (bounding) international instruments and to the creation of specific jurisdictional (or quasi-jurisdictional) mechanisms of complaint. According to some scholars «*Le droit international contemporain a consacré la personnalité internationale des individus, en reconnaissant aux personnes privées dans l'ordre juridique international des droit et des obligations, assortis souvent de mécanismes de mise en œuvre par voie de plaintes (personnalité active) ou de poursuites pénales (personnalité passive).*», J. SALMON (sous la direction de), *Dictionnaire de droit international public*, Bruylant, Bruxelles, 2009.

32 According to some authors it would be more appropriate recognize a *change* in the role and attitudes of States, instead of a loss of power: «[q]*uesta impostazione contrasta col ricorrente ma inutile dibattito, nella dottrina sociologica e politologica, relativamente all'affievolirsi se non…alla progressiva estinzione della sovranità degli Stati, in seguito allo sviluppo del processo di globalizzazione. Il problema è infatti mal posto, nei termini indicati, dato che gli Stati non cessano…certo di esistere, ma 'subiscono' e/o 'si aprono' al processo indicato, svolgendo sempre più delle nuove funzioni 'imposte' materialmente al loro stesso interno dal processo medesimo*», P. PICONE, *op. cit.*, p. 13 (footnote No. 29). Similarly R. MICHAELS, *Globalization and Law: Law Beyond the State*, March 15, 2013, Law and Social Theory, Banakar & Travers eds., Oxford, Hart Publishing, 2013, p. 8.

33 Among others, the non-governmental organisations (NGOs) or the territorial communities mentioned by Pr. J. B. Auby, *op. cit.*, p. 96. For an in-depth analysis on the emergence of new actors, see R. ABI KHALIL, *op. cit.*

34 The position that multinational corporations have reached is due to the economic power they have been able to gain into this new multiple and borderless context: very often this power «surmounts the economic capacity of some developing countries to which they extend», *ibidem*, p. 659.

35 Sometimes the transfer of competencies is so structured that IOs become a sort of proto-federal organisations, a perfect example of the contemporary global framework. The European Union is certain the most notable example.

some scholars, the emergence of those new actors brings the whole framework of international sources into question. Indeed, the sources of international law are conceived to be exclusively created by States[36]. But, the involvement of new actors leads the contemporary doctrine to wonder if this representation still reflects the international public law framework.

The background we have described displays a State obligated to deal with the flows that cross national borders as well as forced to communicate with non-State actors, even if till now able to keep its primary role in guaranteeing the legal security, market order and domestic equilibrium[37]. The permeability of national legal orders, the increase of transnational contexts and the heterogeneity of actors involved in the contemporary governance affect State sovereignty. Indeed, we assist to a move from the purely territorial dimension in favour of a sphere characterized by a necessary multiple and inclusive negotiation, which «[…] transcend[s] the control capacity of the modern state»[38]. As some authors have clearly demonstrated, modern States, even far from being integrally substituted by new international actors, cannot be described and understood leaving out the consideration of the global context they are identified with[39]: States still are the favourite interlocutors, but they identify themselves with a dimension *no more exclusively territorial*[40].

2.2 New Technology and the flow of cultural models

The progressive abstraction from the territorial dimension and the gradual importance of the role played by new actors lead to a change of perspective in favour of a more inclusive approach. That new perspective finds its justification into the awareness of the multilevel interactions between the geo-political, the geo-economics and the geo-cultural dimensions. Indeed, the flow of cultural models is now essential to understand the contemporary international relationships. It

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[36] According to traditional references (e.g. art. 38 of the ICJ Statute).

[37] «[I]t has become evident that states will not be abolished; instead their function will be fundamentally changed. States will become more permeable: they will act more and more as *"pouvoir intermédiaire"* between different legal orders - the national legal order, (in Europe) the supra-national legal order, and the international legal order» S. HOBE, *op. cit.*, p. 663.

[38] *Ibidem*, p.656.

[39] U. BECK, W*hat is Globalization?*, Polity Press, Cambridge, 2000, p. 132 ss. In the same way R. KEOHANE, *Hobbes Dilemma and Institutional Change in World Politics: Sovereignity in International Society*, in H. H. KOLM, G. SORENSEN (edited by), *Whose World Orders? Uneven Globalization and the End of the Cold War*, Boulder Colorado, Westview Press, 1995, p. 165: «Sovereignty is less a territorially defined barrier than a bargaining resources for a politics characterized by complex transnational networks»; «*les espaces symboliques qui définissent les cadres des interactions humaines ne correspondent pas forcément aux frontières étatiques. Ils n'en sont pas moins bien réels*», H. RUIZ FABRI, *op. cit.*, p. 99.

[40] H. RUIZ FABRI, *op. cit.*, p. 100. See also R. MICHAELS, *op. cit.*, pp. 9-10.

produces a mutual influence on the other dimensions of the new "borderless" framework, affecting (and being affected by) the movements of the market, the flow of social models, the political tendencies and the normative answer to those circumstances with a "dominoes effect"[41]. The flow of socio-cultural models is typically realized thanks to the Information and Communication Technology (ICT), among which Internet plays a leading role. Although 60% of the population has no phone line and 40% lacks electricity[42], the quite easy accessibility[43] and the practicality of the Internet make it the ideal vector of communication as well as a privileged space to meet different models[44]. ICT makes communications faster and indiscriminate: anyone who possess the necessary equipment is able to get in touch with any other user of the resource and, thus, to diffuse and share cultural models irrespective of their physical proximity. Telecommunication becomes thus a multitasking instrument to share experience: it acquires and collects information but, at the same time, it is able to transform that information in *knowledge* to be spread. It becomes, then, a useful tool to promote education[45] as well as a vehicle through which express and diffuse one's own thought. The access to this powerful resource should, then, be guaranteed in accordance with the freedom of expression as well as a corollary of the rights to education, information and sharing of knowledge[46].

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41 «*La sphère de l'imaginaire, des symboles, des valeurs et des normes joue un rôle primordial dans l'intégration sociale, dans la dynamique politique et même économique. Si les facteurs symboliques ont une assise économique et une portée politique, leur nature et leur rôle premier relèvent d'abord de 'ordre culturel : ils doivent donc être traités aussi comme tels*», J. TARDIF, J. FARCHY, *Les enjeux de la mondialisation culturelle*, Editions Hors Commerce, Paris, 2006, p. 63.

42 *Ibidem*, pag. 76.

43 Thanks to satellite connection and mobile phones' circulation. In the last 20 years no economic sector has had the opportunity to meet a comparable success: the spread of technology innovation and of the related economic investments in ICT is a unique example.

44 «Symbolised by the internet, the technological revolution allows practically anyone to communicate with anyone else around the globe, at any time. The entire economic sector makes use of the new technological developments» S. HOBE, *op. cit.*, p. 656.

45 The UNESCO executive council underlines that «[…] technological advancements will certainly cause educational practices to evolve […]» (UNESCO and the Use of the Internet in its Domains of Competence, § 18). Thus UNESCO introduces its activities in the field of ICTs development and management. The UN specialized agency promotes an educational use of the Net, that should be freely accessible, especially when it is used to diffuse e-learning programmes (see, for example, the *Information for All Programme – IFAP* at www.unesco.it).

46 The most recent doctrine is, actually, incline to recognize Internet access as a fundamental human right. The debate divides between scholars who consider Internet access as a new manifestation of pre-existing right – such as the freedom of expression – and scholars who consider such a right as a new autonomous and independent one. For a deeper analysis: L. BELLI, *Net Neutrality compendium: Human Rights, Free Competition and the Future of the Internet*, Springer, 2016; D. JOYCE, *Internet Freedom and Human Rights*, in *European Journal of International Law*, Vol. 26, No. 2, 2015, pp. 493-514; P. FORD, *Freedom of Expression Through Technological Networks: Accessing the Internet as a Fundamental Rights*, in *Wisconsin International Law Journal*, Vol. 32, No. 1, 2014, pp. 142-170; C. HUSSON-ROCHEONGAR, *Les droits de l'homme sont-ils solubles dans Internet?*, in *Journal Européen des droits de l'homme*, No. 1, 2014, pp. 29-53; S. TULLY, *A Human*

Right to Access the Internet? Problems and Prospects, in *Human Right Law Review*, 2014, pp. 1-21; S. PARK, *The United Nations Human Rights Council's Resolution on Protection of Freedom of Expression on the Internet as a First Step in Protecting Human Rights Online*, in *North Carolina Journal of International Law and Commercial Regulation*, Vol. 38, No. 4, 2013, pp. 1129-1157; A. T. HOPKINS, *The Right to be Online: Europe's Recognition of Due Process and Proportionality Requirements in Cases of Individual Internet Disconnections*, in *Columbia Journal of European Law*, 2010-2011, Vol. 17, pp. 557-600.

According to this doctrine, the potentialities of the Internet make it an instrument of social inclusion to such an extent that «[…] non-access [can be] described as tantamount to non-existence» (A. S. IV HAMMOND, *The Telecommunications Act of 1996: Codifing the Digital Divide*, in *Federal Communication Law Journal*, Vol. 50, No. 1, 1997, pp. 179-185; O'HARA K., STEVENS D., *Inequality.com: Politics, Power and the Digital Divide*, Oxford: Oneworld Publications, 2006).

Accordingly, some States come as far as to adequate their judicial systems to the emergence of such a right, adopting specific normative instruments (Estonia, Finland, Spain, France – see for example N. LUCCHI, *Access to Network Serveices and Protection of Constitutional Rights: Recognizing the Essential Role of Internet Access for the Freedom of Expression*, in *Cardozo Journal of International and Comparative Law*, Vol. 19, 2011, pp. 645-678 – European Union – see the Directive 2009/136/EC of the European Parliament and the *Digital Agenda for Europe Action Plan* of the European Commission), introducing it at a constitutional level (Greece, art. 5A, § 2 of the Constitution) or anyway moving towards that way (Costa Rica).

On the contrary, at an international level the establishment of an autonomous human right to access the Internet is ambiguous. None of the existing human rights treaties explicitly contemplate such a right. Nevertheless Internet access is by the time universally supported. According to the UN Millennium Declaration, for example, Information and Communication Technologies (ICT) should be available to all (GA Res. 55/2, §2); the declaration of the World Summit for the Information Society (WSIS) recognizes that «the international management of the Internet […] should ensure an equitable distribution of resources [and] facilitate access for all […]» (Document WSIS-03 (GENEVA/DOC/4-E, §48); the 8 governments that take part to the G8 acknowledge the potentiality of Internet, encouraging «[…] the use of the Internet as a tool to advance human rights and democrating participation throughout the world» (*G8 Declaration Renewed Commitment for Freedom and Democracy*, G8 Summit of Deuville – May 26-27, 2011, §13).

Similarly, human right treaty bodies and international institutions show a progressive interest for this topic. The diverse Committees engaged in HRs monitoring adopted several Concluding Observations on Internet access and on the related human rights, expressing their concern about States control of ICTs and the consequent violations of freedom of expression that may derive (see Human Rights Committee (HRC), *Concluding Observations on the Syrian Arab Republic*, 3 October 2005, A/60/40 (Vol. I); HRC, *Concluding Observations on Sri Lanka*, 3 October 1995, A/50/40 Vol. I; HRC, *Concluding Observation on Armenia*, 21 October 1999, A/54/40 Vol. I; HRC *Concluding Observation on Kyrgyzstan*, 24 July 2000, A/55/40 Vol. I; HRC, *Concluding Observation on Kuwait*, 24 July 2000, A/55/40 Vol. I; HRC, *Concluding Observation on Argentina*, 26 October 2001, A/56/40 Vol. I; HRC, *Concluding Observation on Gabon*, 26 October 2001, A/56/40 Vol. I; HRC, *Concluding Observation on Peru*, 26 October 2001, A/56/40 Vol. I; International Committee on Economic, Social and Cultural Rights (ICESCR), *Concluding Observation on China*, 25 April-13 May 2005, E/2006/22,25; Committee Against Torture (CAT), *Concluding Observation on Estonia*, 16 May 2003, A/58/44; CAT, *Concluding Observation on Latvia*, 1 October 2004, A/59/44; etc.). Additionally, the HRC adopted in 2012 a Resolution on *The promotion, Protection and Enjoyment of Human Rights on the Internet* (UN Doc. A/HRC/20/L.13). At the same time other Committees underlined the "negative potentiality" of the Internet, anytime that it is used in violation of fundamental rights (see, for example, Committee on the Rights of the Child (CRC), *Concluding Observations on Uzbekistan*, 28 September 2001, CRC/C/111; CRC, *Concluding Observations on Estonia*, 23 June 2003, CRC/C/124; CRC, *Concluding Observations on Monaco*, 23 July 2001, CRC/C/108; CRC, *Concluding Observations on Croatia*, 12 January 2005, CRC/C/143; CRC, *Concluding Observations on Greece*, 14 May 2002, CRC/C/150; etc.). Almost the totality of these Committees askes States to adopt legislations, programmes and policies in compliance with the need to respect HRs "online" and to increase Internet access.

In this framework, the Web becomes the field of an incessant exchange of cultural models that disregards geographical and temporal borders. Therefore, in the contemporary global era, socio-cultural relationships free themselves from the physical and *territorial* dimension, reshaping the

Beside treaty bodies, other international institutions face Internet related problems. Both the European Union (EU) and the Council of Europe (CoE) are directly and deeply involved in promoting Internet access. The European Union focuses on "Net Neutrality issues" and in October 2015 the EU Parliament voted in favour for the first EU-wide net neutrality rules in order to assure that "every European [has] access to the open Internet [and that] all Internet traffic will be treated equally" (https://ec.europa.eu/digital-single-market/en/eu-actions-net-neutrality). The Council of Europe works for the respect of rights and freedoms protected by the European Convention on Human Rights (ECHR) in the use and development of the Internet. The main focus of the Council is, of course, freedom of expression, but all other rights should be respected also "online". The Committee of Ministers – the CoE's decision making body – adopted several declarations and recommendations on the *protection of freedom of expression and the right to private life with regard to Net neutrality* (CM/Rec(2016)1); on the *human rights for Internet users* (CM/Rec(2014)6) or *human rights with regard to search engines* (CM/Rec(2012)3); on the *protection of journalism and safety of journalist and other media actors*; on *gender equality and media* (CM/Rec(2013)1); etc. From a universal perspective, UNESCO too is interested in an open and indiscriminate use of the Internet. The organisation focuses on both the respect of individual rights depending from Internet access as well as the potentiality of the Net in promoting education and culture (See, for example, the UNESCO 2003 *Recommendation Concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace*, *infra* par. 3.3. *Supra*, § 2.3).
In sum, even if a human right to Internet access is difficult to establish under international law, the use of such a resource is undoubtedly linked to (and indispensable for) (certain) human rights preservation.
The call for «[…] a people-centred, inclusive and development-oriented Information Society […] so that people everywhere can create, access, utilize and share information and knowledge […]» (Tunis Commitment, 18 November 2005, WSIS-05/TUNIS/DOC/7-E, §2) has convinced a part of the doctrine to consider Internet as a global public good (GPG). According to the most distinguished doctrine on GPGs, Internet presents some attributes that link it to the GPGs category (D. L. SPAR, *The Public Face of Cyberspace*, in I. KAUL, I. GRUNBERG, M. A. STERN (edited by), *Global Public Goods – International Cooperation in the 21st Century*, Published for UNDP, New York-Oxford, Oxford Univ. Press, 199, pp. 344-362. See also the Declaration prepared by a group of Community Informatics activists and endorsed by consensus of the Community Informatics in 2013, *An Internet for the Common Good: Engagement, Empowerment and Justice for All*, in *The Journal of Community Informatics*, Vol. 9, No. 4, 2013; D. W. DREZNER, *The Global Governance of the Internet: Bringing the State Back In*; in *Political Science Quarterly*, Vol. 119, No. 3, pp. 477-498). Due to the complex nature of the Net, it is difficult to undoubtedly categorize it into a unique classification: both its tangible and intangible dimension should be considered. Referring to the latest, the majority of the doctrine agrees in gathering it to various categories of *common good*, depending upon the degree of exclusion Internet users are subjected to (J. HOFMOKL, *The Internet Commons: Towards an Eclectic Theoretical Framework*, in *International Journal of the Commons*, Vol. 4, No. 1, February 2010, pp. 226-250; C. HESS, E. OSTROM, *Ideas, Artifacts and Facilities: Information as a Common-Pool Resource*, in *Law and Contemporary Problems*, Vol. 66, No. ½, 2003, pp. 111-145; S. MONTALDO, *Internet e* commons*: le risorse della rete nella prospettiva dei beni comuni*, in *Il diritto dell'informazione e dell'informatica*, Vol. 2, 2013, pp. 287-306). Very recently the CoE supported such a doctrine, asking for a consideration of the Internet as a *public good* in respect of which «[p]ublic authorities have a duty to ensure the effective enjoyment of the right to freedom of expression online […]» as well as all other relevant HRs connected with the access to Internet. The Council recommends then that member States «[…] ensure the right to Internet access» and promotes cooperation between involved international institutions, such as the CoE itself and the EU (Parliamentary Assembly of the Council of Europe, *The right to Internet Access*, Doc. 13434, 4 March 2014)

interaction fields and, consequently, asking for a reconsideration of the role (and power) of *actors* (and not just "subjects") involved[47].

As we have already disclosed, a proper IT equipment allows anyone to access to the immense vastness of the digital panorama, where any kind of information can be shared, divulged and absorbed. Internet is something more than a mere instrument to diffuse information: therein ideologies, creeds, ways of life, symbols, political orientations, economic models, and so on travel to the other side of the world.

From this point of view, Internet looks like the "promised land" of cultural diversity: everyone seems free to manifest his own identity, as well as to create a new one, identifying himself with a specific model he has met thanks to the Web. A new cultural identity derives from this scenario and it looks so "new" if compared with the "classical one". Then, some authors ascribe this "digital" identity to a «*hyperculture globalisante*»[48].

Indeed, the "digital identity" acquired on the Internet is not linked to a common past, shared traditions or local customs that allow a specific group of individuals to consider itself as a member of the same social *community*. Not even it is linked to the sentiment of a common State's identity or of a specific geographic area. Actually, it is *completely emancipated from any physical data*. The cultural identity that comes from Internet has no past, no traditions, no morals: it is based on the sharing of symbolic models that Internet users recognize and embrace[49].

The underestimation of the territorial element that characterises contemporary international relationships reaches the maximum capacity when we consider the cultural dimension "online". Indeed, in considering the Internet dimension we can recognize the same features that typify such relationships: among the others, the interaction of different (and new) actors is the most evident one.

Even if this is not the right seat to go deeper into the matter of Internet governance[50], we cannot disregard the nature of Internet: actually, it is the perfect example of the interaction of private and public (or better State) power. Internet obeys to the same economic and political logics that

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[47] «*La mondialisation fait apparaitre de nouvelles aires d'interactions humaines qui affectent le lien traditionnel entre territoire et espace juridictionnel. Elle oblige à redéfinir non seulement les enjeux de pouvoir liés aux rapports entre territoire et sécurité (enjeux géopolitiques), entre territoire et économie (enjeux géoéconomiques), mais aussi et peut-être surtout entre espace et culture (enjeux géoculturelles)*», J. TARDIF, J. FARCHY, *op. cit.*, p. 69.

[48] *Ibidem*.

[49] «*Elle crée une nouvelle dynamique d'interaction entre deux pôles actifs: un espace virtuel ouvert qui offre un répertoire constamment renouvelé d'images* […] *dans lequel des individus de plis en plis nombreux peuvent puiser des éléments d'identification qu'ils vont agencer pour construire leurs histoires personnelles*», J. TARDIF, J. FARCHY, *op. cit.*, p. 73.

[50] For a deeper analysis, A. ODDENINO, *La governance di internet fra autoregolazione, sovranità statale e diritto internazionale*, Giappichelli, Torino, 2008.

guide any media, making it highly susceptible to abuses. The new "*hyperculture*" pays the penalty of such abuses: Internet becomes then the "land of promise" of cultural diversity as well as its bigger obstruction[51]. The risk of a cultural homogenisation is not just theoretical. The circulation of models that is not guided by cultural interests can easily become uniformity of contents[52]. Here is why someone cries out for a reaction of the International Community.

2.3 The replay of international actors to new geo-cultural challenges

The International Community tries to balance the effects of the new (digital) cultural dimension with the adoption and promotion of specific programmes to preserve cultural diversity, even in a digital dimension.

One of the examples of those efforts is the multiplicity of campaigns that UNESCO promotes to preserve multilingualism online. In the wake of the Convention on intangible cultural heritage of 2003, UNESCO adopted, in October of the same year, the *Recommendation Concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace*. This document explicitly recalls the main international instruments protecting human rights (HRs), recognizing that «[…] linguistic diversity in the global information networks and universal access to information in cyberspace are

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[51] The danger of Globalization, that ICT's instruments amplify, was already perceived by the *UNESCO Universal Declaration on Cultural Diversity* («*Considering that the process of globalization, facilitated by the rapid development of new information and communication technologies, though representing a challenge for cultural diversity, creates the conditions for renewed dialogue among cultures and civilizations* […]»). This preoccupation assume a compulsory form with the *Convention on the Protection and Promotion of Cultural Diversity*, adopted in 2005: «[…] *that while the processes of globalization, which have been facilitated by the rapid development of information and communication technologies, afford unprecedented conditions for enhanced interaction between cultures, they also represent a challenge for cultural diversity, namely in view of risks of imbalances between rich and poor countries* […]».

[52] A branch of the doctrine identifies the right to participate in culture and the right that culture shall be protected with the so-called "participatory goods", that is goods produced and enjoyed publicly by those who participate in them. Such a category belongs to the more general theorisation of "group's rights", rights that are hold by a group (and not recognized to the members of a specific group). Some exponents of these theories (D. REAUME, *The Group Right to Linguistic Security: Whose Right, What Duties?*, in J. BAKER (ed.), *Group Rights*, Toronto Univ. Press, 1994, pp. 118-141; D. REAUME, *Individuals, Groups, and Rights to Public Goods*, in *University of Toronto Law Review*, Vol. 38, No. 1, 1988, pp. 1-27) go more far away asking whether the attribution of such goods to a group entails this group to impose the enjoyment of the concerned goods. Admitting that its own culture or its own language are participatory goods, is the holder group authorized to constrain the freedom of dissident members of the group to ensure the continuance of the culture or the promotion of the minority language? For a deeper analysis of these theories: W. KYMLICKA, *Multiculturalism and Minority Rights: West and East*, in *Journal of Ethnopolitics and Minority Issues in Europe*, Vol. 14, No. 4, 2015, pp. 4-25; W. KYMLICKA, *Liberal Multiculturalism: Western Models, Global Trends, and Asian Debates*, in TB. SAUL, C. RENSHAW, *Human Rights in Asia and the Pacific*, Routledge, 2014; W. KYMLICKA, *Multiculturalism and minority Rights in Arab World*, Oxford Univ. Press, 2014; W. KYMLICKA, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, Oxford Univ. Press, 2001. For an overview on the topic: *Group Rigths* in Stanford Encyclopedia of Philosophy, First published 22 September 2008, available at http://plato.stanford.edu/entries/rights-group/.

at the core of contemporary debates and can be a determining factor in the development of a knowledge-based society […]». To this purpose it predisposes a system of intervention structured on four different levels: the development of multilingual content and systems; the facilitation of access to networks and services; the development of public domain content; the balance of rights-holders interests and the public ones. The Recommendation exhorts Member States to take all « […] legislative or other steps are required to give effect within their respective territories and jurisdiction to the norms and principles […]» it enumerates and «[…] recommends [them to] bring this recommendation to the attention of the authorities and services responsible for public and private works on ICT […]». Each Member State shall transmit to the Organisation its results that will be resumed in a consolidated report[53].

The UNESCO's efforts on this topic are not exhausted in the single context of this recommendation: the Organisation pursues the promotion of studies, activities and workshop on the monitoring of multilingualism level online along the whole subsequent decade. Indeed, UNESCO believes in the direct connection between multilingualism online and offline: languages that register a considerable presence on the Web would be then sufficiently rooted into the specific (physical) community and, as such, they can answer to the needs of identity processes. Trying to keep the numbers of this equation as higher as possible, UNESCO looks for the cooperation of other actors involved in the Internet governance and signed, in December 2009, a cooperation agreement with ICANN [54] (Internet Corporation for Assigned Names and Numbers). This agreement was followed in 2010 by a letter of intent with the purpose of providing assistance to the Internet users that access from Cyrillic countries[55]. This second document, in turn, was followed by a series of reports including the results of six linguistic cases the two organisations had analysed: the Arabic, Chinese, Cyrillic, Devanagari, Greek and Latin ones[56].

[53] The last consolidated report was prepared in 2011 and it is available at www.unesco.org.

[54] ICANN coordinates the Domain Name System (DNS), the IP addresses, the country codes and every other question related to the assignment of digital addresses. It was born as a no-profit organisation and, thus, as a subject of domestic law with international competences. These competences are assigned by the US Trade Department, which every three years renews the Memorandum establishing its powers in such a domain of public interests. It thus realized the contested medley of private and public power that characterizes the Internet. See A. ODDENINO, op. cit., p. 20 e ss. e p. 52 e ss.

[55] Available at www.portal.unesco.org.

[56] *Ibid.* See recent developments at www.icann.org.

3. Conclusions

The analysis we have proposed here suggests the emerging of a clear detachment between the tangible-physical dimension and the digital one. The cultural identity as the one described by International law seems wanting nothing to do with the hypercultural, globalised and globalising one. The latter is susceptible of a faster diffusion, it reaches contexts to which it had never belonged, it puts in contact individuals with no social, moral, historical or territorial proximity that, in spite of this, are all seeing themselves reflected into the same identity model. It seems thus right to wonder about the nature of such an identity and, above all, about its relationship with the "traditional" identity that international judges – truthfully very recently – link to common traditions, customs, past, language and territoriality. The International Community has immediately perceived the potentiality as well as the danger of ICT. It has tried, then, to keep intact, even online, the same cultural identity that connects it to the enumerated values and that represents the only one it recognizes. However, we cannot deny the constant development of this new "open" and "borderless" reality, whose main features – the mixture of different spheres; the interpenetration of apparently unrelated disciplines that, on the contrary, produce in this global context reciprocal effects; the involvement of actors that (till now) do not still have the full international recognition – will continue to affect the cultural dimension whatever will be the efforts of the International Community to keep unaltered the characteristics already adopted by international law.