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The role of the Internet in the evolution of the international and diplomatic law on the millennium

Although the international law and the telecommunication are two different categories, but they have two important common characters enabling to examine them together: both of them have a widespread appliance, and both of them are essential instruments from the point of view of the worldwide communication.¹ This is a determinant fact because the globalization redounded not only to the enhancing of the social and political connections but even to the appearance of several international-featured problems evidencing that there is need to a worldwide cooperation in order to solve them, what can be realized only with a diplomatic strategy resting on efficient and successful communication.

In order to illustrate the important relation between the Internet and the international law, the first part of the paper highlights the relation between the Internet and international relations, while the second one presents the relation between diplomatic law and the Internet. Let's see both of them:

In order to understand the effect of the Internet taken on international relations, the change of the governance and the international law² must be examined at first:

Because of its special character, the Internet governance requires a unique regulation, involving both international and national elements equally. With accommodating states with different capacities and interests within the same international framework, the Variable Geometry Approach³ would be the best way to realize the criterion mentioned above. It is so important because efficient Internet governance requires cooperation among different stakeholders – states, civil society, international organizations, etc. – in order to accommodate them within a single Internet governance framework. In order to enhance the cooperation among these political actors, governments need to build-up a new foreign policy strategy resting on mainly the Internet. In other words: governments must accept the change of the political actors, and must adapt to using the technology to their advantage and more efficiently in order to realise or enhance the communication with civil society. It is another problem how the widespread intergovernmental cooperation could be regulated,⁴ mainly if the Internet is used by the government, because *there is no consensus* whether if it's needed to regulate the Internet application strictly or not. In spite of that, several governments decided to apply the ICT in favour of the betterment of their societies with giving them the opportunity to participate *indirectly* in the political processes. Its greatest advantage is that with starting to get confidence in the use of the technology, government can expect electronic consultation to develop significantly. Governments have to try with the establishment of the point at which the right to participate ceases as the government goes about its constitutional business of deciding policy, because in a participatory democracy a line is drawn between the right to participate and the authority of decision. It's important to decide about this and to create a standardized and efficient conception for the widespread, Internet-based communication between state and civil society because there are more and more opened policy debate and therefore the non-governmental actor is increasingly on the stage of the world-politics.

Besides the governance, the international law was also changed by the Internet. However there are some international law instruments dealing with areas of relevance to Internet governance, but there are some another elements of international law that could be used in the field of Internet governance; these are: treaties and conventions, customary law, soft law and *ius cogens*.⁵ However there are three elements of international law – human rights, telecommunication and international trade – being relevant in relation to the Internet governance, but on the ground of the proposal of the Internet Governance Project, Internet-related regulation could be enhanced to the other areas of the international law because of the similarities being between the United Nations Framework

1 Another interesting fact that both international law and internet are used mainly for military purposes in their beginning period and after a long time their peaceful purposive appliance appeared.

2 See more details about the connection between the international law, governance and foreign relations in. Jovan Kurbalija: *Internet Governance and International Law* p.106-115 (hereafter: Kurbalija) In. [http://www.hooghooch.com/Files/Articles/internet and intern law.pdf](http://www.hooghooch.com/Files/Articles/internet%20and%20intern%20law.pdf) (2010.09.24.); Richard Grant: *The Democratization of Diplomacy: Negotiating with the Internet* p.1-38. Discussion Papers in Diplomacy (hereafter: Grant In.http://www.clingendael.nl/publications/2005/20050900_ci_paper_dip_issue100.pdf (2010.09.23.)) and Nicholas Westcott: *Digital Diplomacy: The Impact of the Internet on International Relations* Oxford Internet Institute, Research Report 16, July 2008 p.1-15 (hereafter: Westcott) In.http://comp301.rice.edu/wiki/images/d/d9/Westcott-Digital_Diplomacy-2008.pdf (2010.09.24.)

3 See more details about this approach and Internet governance in. Kurbalija: *op.cit.* p.106-108.

4 See more details about the governmental use and regulation of Internet in. Grant: *op.cit.* p.28-32

5 See more details about these elements of international law in. Kurbalija: *op.cit.* p.110-113.

Convention on Climate Change and the Internet, because both of them involve several actors – such as NGOs – and several principles and norms with needing to establish procedures for dealing with future issues. There are serious differences about the main Internet governance principles and norms, therefore – in spite of the fact that framework-protocol approach would be ideal – the introduction of this conception requires more time in order to develop wider support for the main Internet governance principles and norms.

In order to apply customary law in Internet governance regulation it would be worth creating its special-featured version giving lower significance to general practice.⁶The conception named above could be an ideal solution for the regulation of the security related Internet governance issues as well. Soft law also provides advantages in relation to Internet governance issues because it doesn't require the official commitment of states thereby reduces potential policy risks, and it's flexible enough to facilitate the testing of new approaches and adjustment to rapid developments in the field of Internet governance characterized by many uncertainties. At last but not least, soft law provides greater opportunity for a multi-stakeholder approach converting it in to an international legal one restricting to states and international organizations.

Ius cogens is also a possible element of the Internet governance regulation because – in spite of that behaviours prohibited by the ius cogens can't be performed via the Internet – it could be applied in such situations when the Internet is used for promotion or organization of prohibited acts named above.

The international law changed by the Internet requires a new approach regarding to the international relations as well. As a result of the globalization and the growing of the role of the Internet, the international relations became more widespread and multi-faceted;⁷ in other words: more and more actors appeared and the stage of the world-politics. The multiplication of actors named above can be seen on almost every current global issue. The Internet reinforced the capacity of non state actors to participate in international-featured debates and outcomes.⁸ Cases like this gave the opportunity for the NGOs to adapt to the potential of the Internet to increase their influence in international affairs. Communication and advocacy is their core business and they devote significant resources to making best use of the Internet.⁹ It also facilitated an even wider diversification of actors by enabling groups without a collective voice hitherto to find one. Of course any individual can find a platform for their views. Unfortunately governments can't fully improve this opportunity yet. This kind of collaboration between the new actors creates a new dynamics. Collaborative working to a collective and being one of the underpinning principles of the Internet, is one of the very reasons for its creation initially as an academic network.¹⁰ The same appliance in public affairs is the best example for the ease with which hybrid alliances can now be put together on specific issues; so we can say: the variable geometry of world affairs has become more varied still. But this kind of collaboration may turn easily into polarisation because Internet enables to everybody publicise its one view and opinions therefore it could be an essential element of the connection being between public opinion and state actors. However– as it can be traced in the area of EPA and trade negotiations – to make reaching a consensus about the role of the Internet in the international relations and the relating regulation seems to be more rather than less difficult, sometimes even problematic.¹¹

The changed international relations require new diplomatic strategy. Let's see it in a few words:¹²

Although it was never directly admitted, there was always connection between the diplomacy and the media what can be perceptible even before the appearance and widespread use of the Internet. In this period two approaches can be regarded in the ICT-diplomacy relations: the "CCN-Effect-Thesis" and the "Manufacturing Consent Thesis". The first one is based on assumption that the news can make policy, or at least shape the environment of political decision making. The other one argues that the media doesn't create policy, rather that news media is mobilized – manipulated even into supporting government policy.¹³ The best way to resolve the conceptual contradiction between the theses named above to highlight the public and the virtual diplomacy. There is a common characteristic being found in both categories; the appearance of new actors in the world-politics

6 This view has been criticized since it underestimates the importance of practice which is the core element of customary law. See it in. Kurbalija: *op.cit.*p.112.

7 About the feature of the international relations see more details in. Westcott: *op.cit.*p.8-10.

8 Interesting fact that the Make Poverty History campaign in 2005 exploited the Internet to bring together diverse groups (and a few rock star activists) in to a coalition that helped Tony Blair push Africa up the agenda of the 2005 G8 Summit et Gleneagles, and secure commitments to increase aid for the poorest countries. See it in. Westcott: *op.cit.*p.8.

9 The famous international organisations – such as Amnesty International, or Greenpeace – have had a powerful web presence for years and are regularly used as a primary source of information by the web-surfing public. See it in. Westcott: *op.cit.*p.9.

10 The success of the open-source software and the Wikipedia as a store of open-source knowledge are good examples for it. See it in. Westcott: *op.cit. ib.*

11 See more details about it in. Westcott: *op.cit.* p. 9-10.

12 See more details about the diplomatic strategy changed by the Internet in. Said Saddiki: *Diplomacy in a Changing World* (hereafter: Saddiki) In. <http://www.alternativesjournal.net/volume5/number4/saddiki.pdf> (2010.09.27.) and Westcott: *op.cit.* p. 16-19.

13 See more details about these theses in. Saddiki: *op. cit.* p.94-96.

evidenced that diplomacy must be more transparent and widely disseminated in favour of the successful communication and widespread cooperation among relevant actors of the world-politics. With changing the diplomacy, the Internet gave the opportunity for non-state actors – NGOs, civil society organizations, etc. – to participate *indirectly* in the political processes, for diplomats to save time and money by negotiations and to facilitate its process, and enabled to the developing countries to create or enhance the cooperation with developed ones.¹⁴ Let's see the special characteristics of both categories.

Public diplomacy is based on using ICTs to support and serve official diplomatic goals it is always transmitted by government to other government and it is concerned *always* with issues related to the attitudes and behaviours of publics. In contrast with traditional diplomacy focusing on relationship between the representatives of states or international actors, public diplomacy is directed at foreign public in foreign societies as a principal target, in order to influence their attitudes. Its main function is the supporting of the objectives of the Foreign Affairs Ministry in abroad or reducing hostility to the homeland.¹⁵ Here can be mentioned also the soft power which is used for influencing or even persuading foreign public to adapt the goal of another country. Internet is very useful in this case because it provides a medium for active exchange of ideas that can't be ignored. It is essential to influence world public opinion not just state actors and diplomats by being present in the right virtual spaces and calibrating the message to the various virtual audiences it can be realised in several ways, –such as deliver speeches publishing pamphlet pass messages to the radio, TV, print media and Internet – but it always requires some re-thinking of how to manage policy participation in online discussion or exchanges where it is judged these will have real impact and whether wider engagement of policy experts rather than just ministers and spokesmen is desirable this reinforces the need for flatter hierarchies and swifter decisions within foreign policy establishments.¹⁶

The term “Virtual Diplomacy” is used for the integration of new ICTs in diplomacy practices in order to facilitate the achievement of diplomacy goals and for the performing the diplomatical functions, like negotiation, communication, etc. The appearance and spread of the ICTs changed fundamentally the diplomatic practice and its application.¹⁷ The reliable information and informed analysis was always so important and with appearance of new actors became more relevant than ever. In several cases there is needed to be a secure and trusted information network but unfortunately it's even absent from several governments and foreign political bodies but it will be needed to apply them so the volume of information that must be sifted and analysed has grown just as the audience the diplomats and ministers must address has changed, so working methods must also adapt at the same time.¹⁸

As I mentioned earlier Internet changed also the diplomatic activity with facilitating the online bi-, and multilateral negotiations between international actors. These are very useful because – as a result of their virtual conduction over the Internet– they reduce the travelling and negotiating time and costs for diplomats. Furthermore communication may be not only less confrontational, and more successful but even more efficient because time difference between world regions won't be barrier no more and because of the openness of the Internet, all participants of negotiations can reach each other all over the world in twenty-four hours a day. Internet also guarantees a certain degree of confidentiality in negotiations. This new strategy can help to resolve many mutual and collective disputes and to realise an efficient diplomatic practice.¹⁹ With guaranteeing the reducing of confrontation in virtual negotiations or even – in the case of denying carrying out the Security Council decision– interrupting civil communication and enabling military one in order to wage a “cyber-war”, Internet may play important role also in the settlement of international disputes.²⁰

As a result of the impact of new ICTs on diplomacy may create the opportunity to the appearance of virtual embassies. The low cost and the reducing of human resources could be the best reason for the replacing the classical embassies by virtualized and modernized ones.²¹

Besides the appearance of virtual embassies the function of the Foreign Ministries may also changed as a result of the virtual diplomacy; it has two possibilities: the first one is that if all ministries take part in many fields

14 See more details about it in. Won-Mog Choi: *Diplomatic and Consular Law in the Internet Age* p.118-120 (hereafter: Choi) In. <http://law.nus.edu.sg/sybil/downloads/articles/SYBIL-2006/SYBIL-2006-117.pdf> (2010.09.23.)

15 In Hans Tuch's opinion, public diplomacy is used for communicating with the public of a *foreign country*. See more details about it. Saddiki: *op.cit.* p.97. In contrast with Hans Tuch I mean: not *only* the communication with a foreign public can be the part of the *public* diplomacy but also the communication with the domestic public in order to establish a diplomatic strategy applicable in the negotiations with another country. In this case we could talk about sub-national public diplomacy.

16 See more details in. Westcott: *op.cit.* p.17.

17 For example the US Institute of Peace uses virtual diplomacy for conducting foreign relations and conflict resolution. See it in. Saddiki: *op.cit.* p. 99.

18 See more details in. Westcott: *op.cit.* p.18-19.

19 See more details in. Choi: *op.cit.* *ib.* and Saddiki: *op.cit.* p. 99-100.

20 See more details in. Choi: *op.cit.* p. 130.

21 See more details about it in. Saddiki: *op.cit.* p.100-101.