JUDICIALIZATION OF INTERNATIONAL RELATIONS: DO INTERNATIONAL COURTS MATTER?

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Abstract: *The present article aims at reviewing the debate on the impact which international courts and quasi-judicial bodies have on the contemporary international relations. This impact is now aptly described in terms of judicialization of international relations. Building upon data from the previously published studies, the article identifies both legal and extralegal factors which stand behind the process of judicialization of international relations. On the other hand, while there is no doubt this process has reached unprecedented extent, its degree is not equal in the contemporary world. The recourse to judicial settlement of international disputes is frequent indeed in Europe, however, this is not necessarily true of the other regions. Moreover, it seems that even in the era of judicialization of international relations, the willingness to bring disputes before international courts and quasi-judicial bodies is overwhelmingly, albeit not exclusively, reserved to several distinct categories of disputes, especially those which stem from international economic relations. Purely political disputes are judicially settled with much bigger caution. Therefore, it seems correct to conclude that international courts and quasi-judicial bodies play non-negligible role in the contemporary international relations but, for the time being, they do not definitely constitute world government, as it is sometimes suggested.*

Keywords: *judicialization, international relations, international courts and quasi-judicial bodies, legal and extralegal factors, degree*

When the world was entering the 20th century, in the international system, there was no permanent international court which would have power to decide international disputes – just as it had been the case for many centuries before. Apart from political means of settlement, international disputes could merely be resolved by using international arbitration, recourse to which was, however, limited to only some countries.

The current situation – at least at first sight – is very different. In the contemporary international system, several dozens of permanent international courts and quasi-judicial bodies coexist. Their core powers consist in resolving international disputes but these courts and bodies frequently perform other functions as well. What matters is the fact that all of these powers do not remain only theoretical but international courts and quasi-judicial bodies actually exercise them. Under these circumstances, an important part of both the doctrine and the general public – including undeniable practitioners in the field of international relations – do not hesitate to refer to this situation as to the process of gradual judicialization of international relations[1]. As a consequence of this process, the interna-

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[1] For basic explanation see HIRSCHL, R. The Judicialization of Politics. In: WHITTINGTON, K. E. – KELEMEN, R. D. – CALDEIRA, G. A. (eds). *The Oxford Handbook of Law and Politics*. Oxford 2008, pp. 119–141; for more in-depth analysis see e.g. La juridictionnalisation du droit international. Colloque de Lille de la Société française pour le droit international. Paris 2003 or KEOHANE, R. O. – MORAVCSIK, A. – SLAUGHTER, A. M. Legalized Dispute Resolution. In: GOLDSTEIN, J. L. – KAHLER, M. – KEOHANE, R. O. – SLAUGHTER, A. M. (eds). *Legalization and World Politics*. Cambridge (Ma) 2001, pp. 73–104.

tional system is to an increasing extent being influenced by decisions rendered by bodies which make up the international justice.[2] The judicialization of international relations is very intense especially in Europe which makes it particularly important to have a debate on the legitimacy, functioning and the role of international justice in Europe and, therefore, also in the Czech Republic.

In the field of international law, the rise in number and scope of activities of international courts has until now led mainly to a debate on the extent to which these international courts contribute to the development of a uniform international law by the decisions they make and to what extent decisions of these international courts contain elements of divergence and, therefore, pose a threat of fragmentation of uniform international law. Lawyers, especially in Europe, tend to pay somewhat less attention to the analysis of the degree to which international relations are in fact influenced by international courts, in other words, to the analysis to what extent international relations are actually judicialized. Such analysis presupposes to identify both the quantitative and qualitative factors that have an impact on the role of international courts.

1. FUNDAMENTAL QUANTITATIVE FACTOR OF THE RISE OF INTERNATIONAL JUSTICE: PROLIFERATION OF INTERNATIONAL COURTS AND QUASI-JUDICIAL BODIES

The fact that during the 20th century the international justice system has fundamentally changed in terms of its quantitative parameters is only the first and most obvious factor which influences the process of judicialization of international relations. However, in any case, it cannot be overlooked that, before 1945, the only alternative to settling international disputes by the use of force, by political means, or by ad hoc arbitration, consisted in proceedings before the Permanent Court of International Justice (PCIJ). This was the only permanent international court in existence at the time. PCIJ came into being as the first tangible outcome of intense international debates dating back to the last third of the 19th century, which themselves, had been preceded by hundreds of years of theoretical contemplations.[3]

The current situation noticeably differs from the historical one. New permanent international courts have been established in the decades following the end of the World War Two and this trend has continued until the present day.[4] It must be noted that new international courts have been primarily established at universal (global) level; since 1945, the International Court of Justice (ICJ), a successor of the Permanent Court of International Justice, has been joined by a number of other permanent and universal international

[2] On the types of bodies that belong in this framework and their basic attributes, see infra, p. 210. Footnote 8.

[3] On these contemplations linked especially to projects of international organizations that would replace the fallen unity of the Christian world, see e.g. GAURIER, D. *Histoire du droit international. Auteurs, doctrines et développement de l'Antiquité à l'aube de la période contemporaine.* Rennes 2005, pp. 435–510.

[4] As for the periodization of the development of international courts in the current international system, see recently e.g. BORN, G. A. New Generation of International Adjudication. *Duke Law Journal.* 2012, No. 4, pp. 775–879; inspiration drawn from international human rights law leads to distinguishing several successive generations of international courts and tribunals; see also MACKENZIE, R. – ROMANO, C. P. R. – SHANY, Y. – SANDS, P. *Manual on International Courts and Tribunals.* 2nd edition, Oxford 2010, pp. X–XI.

courts whose jurisdiction *ratione materiae* is frequently specialized. Since 1945, the same trend has, however, also taken place on regional level. In response to the processes of regional political and economic integration or to specific regional problems, in several parts of the world, regional courts have appeared which, *ratione materiae*, have either universal, or specialized jurisdictions.[5] Although the dynamics of establishing new international courts has not been constant since 1945 – a significant increase[6] in the number of permanent international courts has occurred especially since the late 1980s and the early 1990s, i. e. since the end of the Cold War and transformation of the model under which international relations used to function during the Cold War – the term of *proliferation of the international judicial bodies*, borrowed from the medical science, is far from inept.[7] While opinions on what an international court or tribunal (fr. *cour internationale / tribunal international*) is and what its defining attributes are[8], in line with conclusions from the number of studies from the recent years it may be admitted that the number of bodies that can be beyond doubt considered to be a part of international justice is around thirty.[9]

In addition to this – at least numerically considerable – range of international courts, in the contemporary international system, there is also an increasing array of international quasi-judicial bodies (fr. *organes quasi-judiciaires internationales* or *organes non-juridictionnels*) that, in principle, did not exist before 1945. These bodies are not formally referred to as international courts, however, in reality, they are constructed in a similar way as international courts, i.e. these bodies are designed as more or less permanent, their architecture and proceedings are judicialized and, most importantly, their primary function consists – as in the case of permanent international courts *stricto sensu* – in resolving certain categories of disputes between states and international organizations (*international*

[5] On classification of international courts in line with their jurisdiction, see e.g. SHANY, Y. *The Competing Jurisdictions of International Courts and Tribunals*. Oxford 2003, p. 29–74.

[6] See e.g. ALTER, K. Delegating to International Courts: Self-binding vs. Other-binding Delegation. *Law and Contemporary Problems*. 2008, No. 1, p. 38 and bibliography cited therein.

[7] This terms has been in continuous use since the beginning of the 21st century, see e.g. ROMANO, C. P. The Proliferation of International Judicial Bodies: The Pieces of the Puzzle. *New York University Journal of International Law and Politics*. 1999, No. 4, pp. 709–751; it has been, in particular, G. Guillaume, the president of the International Court of Justice, who has contributed to the spread and popularization of this term by using it in his speech presenting the annual report of the International Court of Justice, available at http://www.icj-cij.org/court/index.php?pr=85&pt=3&p1=1&p2=3&p3=1.

[8] On the defining attributes of international courts see recently e.g. ROMANO, C. P. A Taxonomy of International Rule of Law Institutions. *Journal of International Dispute Settlement*. 2011, No. 1, pp. 241–277; in more jurisprudential perspective with references to the differences that could result from descriptive or prescriptive approach to the definition of international court, see, in particular, ASCENSIO, H. La notion de juridiction internationale en question, In: *Juridictionnalisation du droit international*. Op. cit., pp. 163–202; the majority view considers the basic attributes of international courts to be: i) the body must render decisions in proceedings in which at least one party is a state or an international governmental organization, ii) the decisions rendered must be based on international law, iii) following pre-established rules of procedure and iv) decisions of this body must be binding for the parties.

[9] An updated inventory of international justice can be found e.g. in recently reedited manual by MACKENZIE, R. – ROMANO, C. P. R., – SHANY, Y. – SANDS, P. *Manual on International Courts and Tribunals*. Op. cit. However, this manual omits i. a. administrative courts of international organizations that are by their nature also international courts; the overview of international justice can be supplemented using the website of the "Project on International Courts and Tribunal"; a joint project of selected research institutions from the USA and the United Kingdom launched since 1997, available at http://www.pict-pcti.org/index.html, directly linked with the previously mentioned manual.

adjudication) on the ground of international law. Moreover, in some cases, these bodies also oversee the compliance with the international law in certain areas (*non-compliance procedures*). The exact number of such bodies is disputed, but the most common assessments assume there are around 50–80 of such international bodies in the contemporary international system.[10]

On one hand, the truth is, as it has been mentioned supra, when assessing the role of the international justice in the current international relations, the mere data on the number of international courts and quasi-judicial bodies cannot be overestimated because the existence of international courts and quasi-judicial bodies as such is merely a prerequisite for settling international disputes on the ground of law by employing judicialized procedures. On the other hand, the high number of international courts and quasi-judicial bodies implies that the contemporary international relations – and, in particular, the process of resolving international disputes and the international decision-making – are formally interwoven with international adjudication in the extent unprecedented in the whole history of the modern international system and international community.[11]

This development would not be possible without the willingness of dominant actors of international relations to establish and use international courts. This willingness itself must reflect certain changes in international relations and behavioral patterns of actors of international relations. In this regard, it can be assumed that the increasing number of international courts and quasi-judicial bodies is a manifestation of a more general trend, that of the growing emphasis on the *"rule of law"* principle in international relations, the principle, that has been become – probably, at least partially, under the influence of intrastate analogies – one of the important factors of legitimacy in international relations.[12]

2. THE RISE OF THE INTERNATIONAL JUSTICE: QUALITATIVE FACTORS

More than these changes in the quantitative parameters, however, it is the transformation in the qualitative parameters of the international justice system after 1945 that determines the role of the international justice in the contemporary international relations. This transformation in qualitative parameters of international justice clearly contributes to strengthening the impact which international courts and quasi-judicial bodies have on the international system and, at the same time, it favors the constitution of the system that is in some aspects really close to the "global community of supranational courts."[13]

In fact, a number of qualitative factors have been identified to stand behind the rise of the role of the international justice. These qualitative factors include not only factors stemming from the legal architecture of international courts but factors with undisputable po-

[10] Most recently, C. Romano refers to 75 such bodies, see ROMANO, C. P. A Taxonomy of International Rule of Law Institutions. op. cit., p. 255.

[11] Its embryonic existence could be traced back to the turn of the 17th century, as suggested by the development of the language and legal terminology, in e. g. the works of F. de Vitoria; see also PAGDEN, A. Gentili, Vitoria, and the Fabrication of a "Natural Law of Nations". In: KINGSBURY, B. – STRAUMANN, B. (eds). *The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of Empire*. Oxford 2010, pp. 349–350.

[12] See e.g. CLARK, I. *Legitimacy in International Society*. Oxford 2005, in particular pp. 207–226.

[13] SLAUGHTER, A. M. A Global Community of Courts. *Harvard International Law Journal*. 2003, No. 1, pp. 191–219.

litical and anthropological links as well.[14] Should we limit ourselves to factors that are primarily to linked to legal architecture of international courts, three factors can be identified that have particularly profound influence on the position of an international court or quasi-judicial body and its importance in international relations.

The first of these factors is the fact that, nowadays, the power of international courts to settle international disputes is not necessarily only facultative – as it used to be the rule within the international community since the early modern period. The number of cases in which an international court or quasi-judicial body has compulsory jurisdiction to settle international disputes has grown.[15] If since the Peace of Westphalia the consent of states – as sovereign equals – had been the basis of international relations and international law, an international dispute may have been submitted to a third party for a settlement based on the international law exclusively upon the consent of the involved states ("the consensual paradigm"). This consent could have been given but, in important political matters, the tendency was rather not to do so.[16] This situation was, at least until the early 20th century, accentuated by the view – deeply rooted especially in the imagery of traditional European great powers – that disputes in which the power and prestige of states were at stake, could not have been settled by applying law and legal procedures, even less so by mere lawyers.[17] It was, therefore, symptomatic that when the very first permanent international court with universal jurisdiction came into being in 1920 – the PCIJ, mentioned supra – its jurisdiction was, in spite of a lively discussion, only facultative, which meant that bringing a case before the PCIJ was conditional on the consent of the states concerned. In the absence of political consensus, the acceptance of compulsory jurisdiction of the PCIJ was left up to will of the states. This model still exists at the International Court of Justice. This historical situation sharply contrasts with the fact that since 1945, in particular in the recent two decades, facultative jurisdiction is being replaced by obligatory jurisdiction ("the compulsory paradigm"), as documented by empirical analyses of existing international courts.[18]

Accepting compulsory jurisdiction of a certain international court or quasi-judicial body, however, substantially limits the maneuvering ability or discretion that states and

[14] As for the identification of the factors that have an impact on the position and relevance of the international courts, also with respect to the European courts, see e.g. HELFER, L. R. – SLAUGHTER, A. M. Toward a Theory of Effective Supranational Adjudication. *Yale Law Journal*. 1997, No. 2, pp. 273–392.

[15] ROMANO, C. R. The Shift from the Consensual to the Compulsory Paradigm in International Adjudication: Elements for a Theory of Consent. *New York University Journal of International Law and Politics*. 2007, No. 4, pp. 791–872.

[16] This is clear from the data on the use of international arbitration – antecedent of permanent international justice – in the period before 1918; while for the period 1795–1922 sources refer to c. 350 bigger arbitrations, European states and especially European powers were involved very rarely; international arbitration was primarily used by English speaking countries and also by new states in South America, for more in-depth treatment see CHARNEY, I. J. Is International Law Threatened by Multiple International Tribunals. *Recueil des cours de l'Académie de droit international de La Haye*. La Haye 1998, No. 271, p. 119 and also ALLAIN, J. A. *Century of International Adjudication: The Rule of Law and Its Limits*. Hague 2000, pp. 17–18.

[17] By way of example, jurisprudence in the German Empire in the early 20th century basically held the position that international arbitration is incompatible with the principle of sovereignty of states, more on this issue see O'CONNELL, M. E. *The Power and Purpose of International Law. Insights from the Theory and Practice of International Enforcement*. Oxford 2008, p. 158.

[18] Compare with ALTER, K. *Delegating to International Courts: Self-binding vs. Other-binding Delegation*. Op. cit., p. 44 and pp. 63–64.

international governmental organizations have as far as dispute resolution is concerned. Compulsory jurisdiction implies that the relevant international court or quasi-judicial body is involved in the process of resolving an international dispute. Under these circumstances, pointless is to emphasize to what extent this phenomenon contributes to overcoming the decentralized nature of mechanisms which are normally employed for purposes of international disputes settlement and to overseeing the compliance with the international law, the decentralized nature that historically followed from the decentralization of international relations. At the same time, we cannot overlook the parallel between this development and the process of superseding the settlement of domestic conflicts by self-help, i. e. the process which, on the domestic level, historically contributed to the ascendancy of modern state and uniform political and legal organization. The importance of compulsory jurisdiction is quite obvious when looking at the examples of the two main regional courts in Europe – the European Court of Human Rights (whose obligatory jurisdiction extends to complaints over violations of the Convention for the Protection of Human Rights and Fundamental Freedoms by any of its Signatory States[19]) and the Court of Justice of the European Union (whose predecessors had the obligatory and exclusive power to decide on predefined categories of disputes concerning the bodies of the European integration and the Member States since 1952[20]). Today, thanks to the compulsory nature of their jurisdiction, both these regional courts regularly rule on many key political and legal disputes in Europe including those where essential interests and prestige of states is no doubt at stake.

The second prominent factor which accounts for the increased involvement of international courts in international relations is the fact that nowadays not only states and international governmental organizations – i. e. long the traditional and dominant actors of international relations – have standing to initiate proceedings before an international courts and a quasi-judicial body. In some contemporary international courts and quasi-judicial bodies, this standing extends also to individuals, i.e. natural and moral persons. While, historically, such construction used to be unique, since 1945 and especially since the end of the Cold War, this phenomenon has become more frequent.[21] On procedural level, this phenomenon corresponds to the increased recognition of an individual as the recipient of the rights and duties which directly follow from international law since 1945[22]. In this regard, it must be pointed out that the access of individuals to international courts was again firstly institutionalized in Europe, more precisely in both the European regional courts mentioned supra, and that the degree in which individuals have access to these regional courts in Europe remains to be one of the highest worldwide.[23]

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[19] Article 32–34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

[20] Article 19 sect. 3 Treaty on European Union in connection with article 344 of the Treaty on the Functioning of the European Union.

[21] As of 2006, K. Alter reports that individuals have access to 17 international courts; beyond these courts, individuals may also access a number of existing quasi-judicial bodies, see ALTER, K. *Private Litigants and the New International Courts. Comparative Political Studies*. 2006, issue 1, pp. 22–49.

[22] For more detailed treatment, see e.g. DAILLIER, P. – FORTEAU, M. – PELLET, A. *Droit international public*. Paris 2009, 8eme edition, pp. 709–812.

[23] Access of individuals to the bodies of the European system for the protection of human rights and, later, the European Court for Human Rights; also, access of individuals to the Court of Justice of the European Community of Coal and Steel, a predecessor of the contemporary Court of Justice of the European Union.

The access of individuals to international courts and quasi-judicial bodies has, however, important consequences. Firstly, once individuals are permitted to submit a complaint or bring an action before international courts and quasi-judicial bodies, the scope of cases in which international courts and quasi-judicial bodies are called upon to decide increases and this increase is significant. This is quite obvious when looking at today's Europe. If empirical studies have found out that the largest part of the existing international case-law has originated from the two abovementioned European regional courts,[24] the truth is as well that a large portion of this case-law stems from complaints and actions filed by individuals, in case of the Court of Justice of the EU, moreover, from preliminary references from Member States courts, which fulfill a special mandate based on European Union law in preliminary ruling procedure.[25] The role which individual complaints and actions play, is, furthermore, intensified by the overall increase in "litigiousness", tendency which is in purely anthropologic sense observed especially in the Western societies.[26] What matters as well, by conferring standing before international courts and quasi-judicial bodies to individuals, states and international organizations necessarily loose the exclusive control over the agenda of international courts and quasi-judicial bodies which they used to hold historically. In line with this standing, the ability of states and international organizations to prevent international courts and quasi-judicial bodies from adjudicating in matters in which states or international organizations would have wished international courts or quasi-judicial bodies not to interfere, is, at least formally, reduced.[27] The history of modern international relations shows that states used to tend – and sometimes still tend – to prefer to resolve their disputes by political means. This especially true of disputes which, as mentioned supra, the older legal doctrine referred to as to political disputes. By the way, this unwillingness is also confirmed from the regional courts in Europe despite the fact that the emphasis on the rule of law has had a relatively longer history here than elsewhere.[28] However, once proceedings before an international court or quasi-judicial body are open to individuals, it is just a question of time when such "political" international disputes will be submitted to the international court or quasi-judicial body. Based on sociological analyses, such submissions are often being brought by various interest groups that may be far from representing a majority view.[29] The access of individuals to international courts

[24] Compare e.g. overviews of case-law of international courts for the period since 1989 provided in ALTER, K. Delegating to International Courts: Self-binding vs. Other-binding Delegation. op. cit., pp. 57–60.

[25] ALTER, K. The European Court and Legal Integration: An Exceptional Story or Harbinger of the Future? WHITTINGTON, K. E. – KELEMEN, R. D. – CALDEIRA, G. A. (eds). *The Oxford Handbook of Law and Politics*. op. cit., pp. 219–220.

[26] For the reasons, see, in the context of judicialization of politics, e.g. HIRSCHL, R. The Judicialization of Politics. In: WHITTINGTON, K. E. – KELEMEN, R. D. – CALDEIRA, G. A. (eds). *The Oxford Handbook of Law and Politics*. op. cit., pp. 135–138.

[27] HELFER, L. R. – SLAUGHTER, A. M. Why States Create International Tribunals: a Response to Professors Posner and Yoo. *California Law Review*. 2005, No. 3, pp. 899–956.

[28] Quite rare are both interstate complaints lodged with the European Court for Human Rights, or interstate actions brought before the Justice Court of the European Union; generally, these interstate complaints or actions seem to be lodged especially in long-term disputes where the involvement of regional court has a symbolic potential.

[29] On the role of interest groups upon the example of the Court of Justice of the EU, see ALTER, K. The European Court and Legal Integration: An Exceptional Story or Harbinger of the Future? In: WHITTINGTON, K. E. – KELEMEN, R. D. – CALDEIRA, G. A. (eds). *The Oxford Handbook of Law and Politics*. op. cit., pp. 212–213 and pp. 217–218.

and quasi-judicial bodies, i.e. partial "privatization" of international dispute settlement and resolution of international law issues, thus, clearly catalyzes the involvement of international courts and quasi-judicial bodies in international disputes and relations. This is true although, as it is emphasized, the access of individuals to international courts and quasi-judicial bodies in itself may not always automatically guarantee an important role for the international court or quasi-judicial body in international relations.[30]

The third important factor which contributes to strengthening the role of international courts or quasi-judicial bodies in the international system is the independence of the members of international courts and quasi-judicial bodies. This independence undoubtedly helps international courts and quasi-judicial bodies to emancipate both *de iure* and *de facto* from the influence of the actors of international relations, especially that of the states. In this regard, taking into account the development from the recent decades, it must be concluded that the independence is generously guaranteed to members of an ever increasing number of international courts and quasi-judicial bodies. No surprise that, under such circumstances, it is occasionally concluded that the independence of international judges has become general principle of the international law and has formed part of its customary rules.[31] In the last decade, the exact role which the independence of international judges has on the importance of international courts or quasi-judicial bodies in international relations, has become subject of an intense debate which has taken place especially on the other side of the Atlantic. The shift in the position of an international judge from that of an agent appointed by states to represent them in a dispute, typical already for international arbitration, to that of an independent trustee upon whom states confer the authority to resolve international disputes of certain kind is increasingly apparent in contemporary permanent international courts or quasi-judicial bodies. In this regard, some authors defend the thesis that this shift results in reluctance of the states to use international courts in more intense manner. This reluctance should directly stem from the fact that decisions the members of international courts or quasi-judicial bodies who are independent of the states render, are *ex definitione* unpredictable for the states.[32] This view contrasts with the opinion that independent courts act as "trustees that increase the credibility of promises governments give each other" and that "by interpreting and identifying actions that break these promises, independent courts increase the probability that states will meet their obligations in situations, when compliance with the law generates short-term political losses, but bring long-term political profit."[33] Although in global

[30] K. Alter very interestingly points to the example of the Court of Justice of the Andean Community of Nations that can be approached, just like the Court of Justice of the EU, by individuals and that renders decisions based upon their seizure; however, the case-law of this regional court has not led to the development of an autonomous legal system similar to the one formed in the EU under the influence of the Court of Justice of the EU, see Alter, K. The European Court and Legal Integration: An Exceptional Story or Harbinger of the Future? WHITTINGTON, K. E. – KELEMEN, R. D. – CALDEIRA, G. A. (eds): *The Oxford Handbook of Law and Politics*, op. cit., p. 223.

[31] MALENOVSKÝ, J. L'indépendance des juges internationaux. *Recueil des cours de l'Académie de droit international de La Haye*. Leiden – Boston 2011, No. 349, pp. 26–47.

[32] POSNER, E. A. – YOO, J. C. Judicial Independence in International Tribunals. *California Law Review*. 2005, No. 1, pp. 1–74.

[33] HELFER, L. R. – SLAUGHTER, A. M. Why States Create International Tribunals: a Response to Professors Posner and Yoo. op. cit., pp. 932–933.

perspective this opinion may be too optimistic even today, it may be agreed that, realistically, the independence of international courts and quasi-judicial bodies has hardly any sensible alternatives and will remain a part of today's international justice.[34] This holds true especially for those international courts and quasi-judicial bodies that can be approached by individuals.

In any case, it is clear that independence guarantees to the members of international courts and quasi-judicial bodies a non-negligible margin of appreciation and frees them from the role of mere instruments in the hands of states which have appointed them.[35] An independent judge – and this is again not the prerogative peculiar only to international courts – can afford to have his or her own ambitions which he or she frequently indeed has. These ambitions can, in turn, mean that the border between the playfield for international courts or quasi-judicial bodies and that for international politics is not perceived identically by the independent judges on one hand and the states on the other. In this regard, a reference is frequently made to the case of R. Lecourt (1908–2004), a long-term judge and president of the Court of Justice of the European Communities whose personal ambitions and visions apparently had impact not only on the willingness to shape the Court of Justice of the European Communities as a strong and active judicial institution but also on the willingness to develop the law of the European integration as an autonomous legal system.[36]

Apart from these three factors, the role of the international courts and quasi-judicial bodies in the contemporary international relations follows, as it has been already stated, also from a number of other factors. In this respect, the extension of functions performed by international courts and quasi-judicial bodies which has taken place over the decades cannot be overlooked. Consequently, besides adjudicating on international disputes, international courts and quasi-judicial bodies are nowadays often called upon to oversee how states comply with commitments that stem from international laws and in some cases they play the role of quasi-constitutional and quasi-administrative courts, especially within the framework of institutional law of international governmental organizations.[37] The extension of the role of international courts and quasi-judicial bodies has obviously

[34] ALTER, K.: International Courts Are Not Agents! The Perils of the Principal-Agent Approach to Thinking About the Independence of International Courts. American Society of International Law Proceedings. 2005, pp. 138–142.

[35] Albeit not absolutely, because current states still dispose of many channels through which they can influence international justice system, see brilliantly ALTER, K. J. International Courts Are Not Agents! The Perils of the Principal-Agent Approach to Thinking About the Independence of International Courts. op. cit., pp. 139–141; or HELFER, L. R. – SLAUGHTER, A. M. Why States Create International Tribunals: a Response to Professors Posner and Yoo. op. cit., pp. 945–954.

[36] RASMUSSEN, M. Constructing and Deconstructing 'Constitutional' European Law: Some reflections on how to study the history of European law. In: KOCH, H., – HAGEL-SØRENSEN, K. – HALTERN, U. – WEILER, J. H. H. (eds). *Europe. The New Legal Realism*. Århus 2010, p. 639–660; ALTER, K. The European Court and Legal Integration: An Exceptional Story or Harbinger of the Future? In: WHITTINGTON, K. E. – KELEMEN, R. D. – CALDEIRA, G. A. (eds.). *The Oxford Handbook of Law and Politics*. Op. cit., p. 213; or VAUCHEZ, A. The European Themis and its Social Fabric Review, Reflections and New Directions for Studies of the European Court of Justice. In: Vauchez, A. (ed.). *The Fabric of International Jurisprudence An Interdisciplinary Encounter*. EUI Working Paper RSCAS 2012/51, p. 9.

[37] ALTER, K. Delegating to International Courts: Self-binding vs. Other-binding Delegation. Op. cit., pp. 68–72; MACKENZIE, R. – ROMANO, C. P. R. – SHANY, Y. – SANDS, P. *Manual on International Courts and Tribunals*. Op. cit., pp. XIII–XIV.

increased their potential to interfere with international relations and functioning of the international system. From somewhat sociological point of view, it is hard to deny as well that in many states the pressure on the recourse to international courts and quasi-judicial bodies is exerted by national courts. For many reasons, there seems to be real solidarity or "ecology" between these national courts on one hand and international courts on the other.[38] In purely political perspective, in the international system in which growing number of states disposes of nuclear arsenals whose existence clearly dissuades from settling international conflicts by the use of force, states are simply obliged to have recourse to peaceful means of international dispute settlement. This situation has necessarily impact on the degree in which judicial means are employed for purposes of international dispute settlement.[39] Moreover, judicial means of international dispute settlement may also provide certain benefits in terms of strengthening international legitimacy and prestige of states, i. e. elements which are vital in the international system as shown i. a. by constructivist theories of international relations. Furthermore, judicial means allow for reducing the costs that would be involved in international dispute settlement based on the use of force.

All of these factors, in sum, have resulted into the situation in which the role played by international courts and quasi-judicial bodies in international relations is far from virtual. Moreover, it seems that the intensity of this role has been increasing since 1945 and, in particular, since the end of the Cold War. Thus, at least since the end of the Cold War, through the interpretation and application of international law, the reality of international relations has been actually co-shaped by international courts and quasi-judicial bodies which can be, therefore, included between actors of the contemporary international relations. The judicialization of international relations, therefore, really takes place, as confirmed by those who not only follow international relations in the long-term perspective but also possess tangible experience in this field.[40]

3. INTERNATIONAL COURTS AND QUASI-JUDICIAL BODIES IN BOOKS AND IN ACTION: POWERS VERSUS THE USE OF INTERNATIONAL COURTS AND QUASI-JUDICIAL BODIES

On the other hand, there seems to be no reason that would justify the claim that the role of international courts and quasi-judicial bodies in the current international system is as all-embracing as e. g. the role of constitutional judges in politics and societies of some of the contemporary Western countries. Although international courts and quasi-judicial bodies have no doubt influence on the contemporary international relations and their features, this influence is far from being dominant, or permanently dominant, as it is

[38] Upon the example of the Court of Justice of the EU and courts in the EU Member States, see e.g. VAUCHEZ, A. Conclusion. La magistère de la Cour. In: MBONGO, P. – VAUCHEZ, A. (eds). *Dans la fabrique du droit européen. Scènes, acteurs et publics de la Cour de justice des Communatés européenne.* Bruxelles 2009, pp. 243–246.

[39] Compare e.g. McNAMARA, R. S. – BLIGHT, J. G. *Wilson's Ghost: Reducing the Risk of Conflict. Killing, and Catastrophe in the 21st Century.* New York 2001, pp. 169–216 or KROENIG, M. *Beyond Optimism and Pessimism: The Differential Effects of Nuclear Proliferation.* Harvard Kennedy School, Working Paper No. 2009–14, pp. 8–10.

[40] KISSINGER, H. *Does America Need a Foreign Policy? Toward a Diplomacy for the 21st Century.* New York 2002, p. 273.

sometimes argued.[41] Today, as in the past, the role of international courts and quasi-judicial bodies, as it may appear from legal perspective, must be systematically confronted with data on the real use of international courts and quasi-judicial bodies, on the nature and structure of their workload, and on the real effects their decisions have.

In the first place, thus, it must be taken into account that the role of international courts and quasi-judicial bodies in the contemporary international relations is limited by their judicial nature. This nature implies that, unlike international political bodies, they cannot create their own agenda. Their agenda – and, correspondingly, the extent in which they may decide on the disputed issues within the international system – existentially depends on whether they are seized by other actors of international relations and in which affairs.

In this respect, if one looks into the statistics pertaining to the proliferating international courts and quasi-judicial bodies, even twenty years after the end of the Cold War it must concluded that the number of cases submitted to international courts and quasi-judicial bodies is in fact not as large as it is often intuitively assumed.[42] This is noticeable when looking at the agenda of the International Court of Justice that has served as a prototype for many other international courts since 1945 and that, for many reasons, could formally aspire to be the "court of courts."[43] In more than six decades of it existence, not more than 125 disputes were submitted to the International Court of Justice, around 40 % of them only since 1991 when the role of the ICJ was revived with the end of Cold War but when competition with other international courts developed as well. Besides contentious agenda, during these more than six decades, the International Court of Justice also provided opinions in 26 cases.[44] These figures cannot be clearly considered as overwhelming, especially when considering the number of international crises which have taken place in these 60 years. Somewhat unexpectedly, these numbers also contrast with data on the activities of the Permanent Court of International Justice which worked in much more fragmented international environment with smaller emphasis on the *rule of law*.[45] Thus, the International Court of Justice has an impact on the international laws and international system – it is its contribution to the development of international laws in many previously deaf areas which is particularly appreaciated[46] – but definitely not on everyday basis. Even more interesting picture is provided by the agenda of the International Crim-

[41] E.g. KISSINGER, H., op. cit., warns that judicialization of international relations pushes to the extremes which brings the risk that the tyranny of governments will be replaced by the tyranny of judges because "historically, the dictatorship of the virtuous has often led to inquisitions and even witch-hunts."

[42] Quantitative overview of the decision-making of international courts can be found, e. g., in ALTER, K. Delegating to International Courts: Self-binding vs. Other-binding Delegation. op. cit., pp. 57–60.

[43] The status to which at least some of its members aspire, see e.g. GUILLAUME, G. La CIJ, cour suprême mondiale? In: CHEMAIN, R. – PELLET, A. (eds.). *La Charte des Nations-Unies, constitution mondiale?* Paris 2006, pp. 189–193.

[44] See at http://www.icj-cij.org/docket/index.php?p1=3&p2=2&lang=en.

[45] In twenty years of its existence, the PCIJ issued decisions in 27 disputes and rendered several opinions, see MACKENZIE, R. – ROMANO, C. P. R. – SHANY, Y. – SANDS, P. *Manual on International Courts and Tribunals*. Op. cit., pp. 34–35; for even more critical view, see POSNER, E. A. – YOO, J. C. *Judicial Independence in International Tribunals*. Op. cit., pp. 34–41, although their methodology is in some aspects criticized on the right ground by HELFER, L. R. – SLAUGHTER, A. M. *Why States Create International Tribunals: a Response to Professors Posner and Yoo*. Op. cit., pp. 909 et seq.

[46] MACKENZIE, R. – ROMANO, C. R. – SHANY, Y. – SANDS, P. *Manual on International Courts and Tribunals*. Op. cit., p. 36.

inal Court (ICC). Its creation is, not without a justification, presented as at least a symbolical milestone in the development of international law and there is no doubt the ICC has a considerable potential of contributing to the judicialization of international politics.[47] However, although this first permanent international criminal court in modern history came to life as early as in 2002, it has not rendered its first judgement until early 2012.[48] Moreover, it is questionable whether the ICC will be used at all,[49] or whether it will not be transformed into a sort of permanent international political court for Africa.[50] Truly high workload – and the intense use – is, therefore, typical mainly of those international courts and quasi-judicial bodies that have obligatory jurisdiction and, simultaneously, that can be accessed by individuals (either directly or via national courts), as it has been mentioned supra. This is especially the case of the both European regional courts, i.e. European Court for Human Rights and the Court of Justice of the European Union. The number of their cases goes to dozens of thousands,[51] which is, compared to other international courts and quasi-judicial bodies, an astronomical figure.[52]. Considerably smaller, yet significantly higher number of cases compared to other international courts and quasi-judicial bodies, is also handled by quasi-judicial bodies created by universal treaties on the protection of human rights.[53] The case of the Dispute Settlement Body of the World Trade Organization (WTO) is also of interest because, in particular and unlike in European regional courts and quasi-judicial bodies, this Body is open to states and international governmental organizations that are members of the WTO.[54] Till the onset of the world financial crisis, this Body had been witnessing increases in number of cases brought before it.[55] To sum up, there are definitely certain international courts and quasi-judicial bodies that are increasingly used by states and non-state actors of international relations. There is, however, also a significant number of cases in which the use of international courts and quasi-judicial bodies is much more limited which implies their limited or even marginal role in international relations.[56]

When assessing the role of international courts in the contemporary international relations, however, not only the workload of international courts (i.e. the quantitative di-

[47] BUSSY, F. – POIRMEUR, Y. *La justice politique en mutation.* Paris 2010, pp. 186–188.

[48] Compare e.g. AMBOS, K. The First Judgment of the International Criminal Court (Prosecutor v. Lubanga): A Comprehensive Analysis of the Legal Issues. *International Criminal Law Review.* 2012, No. 2, pp. 115–153.

[49] BORN, G. *A New Generation of International Adjudication.* Op. cit., p. 794.

[50] International Criminal Court Cases in Africa: Status and Policy Issues, available at http://www.fas.org/sgp/crs/row/RL34665.pdf.

[51] ALTER, K. Delegating to International Courts: Self-binding vs. Other-binding Delegation. Op. cit., pp. 57–60.

[52] ALTER, K. Delegating to International Courts: Self-binding vs. Other-binding Delegation. Op. cit., pp. 57–60; cultural determinants of this phenomenon can be deduced from the cases of regional courts in the other parts of the world, which are constructed upon European models but whose role remains far behind their European counterparts; on this issue, see ALTER, K. An Exceptional Story or Harbinger of the Future? In: WHITTINGTON, K. E. – KELEMEN, R. D. – CALDEIRA, G. A. (eds.). *The Oxford Handbook of Law and Politics.* Op. cit., pp. 220–224.

[53] ALTER, K. Delegating to International Courts: Self-binding vs. Other-binding Delegation. Op. cit., pp. 57–60.

[54] MACKENZIE, R. – ROMANO, C. P. R. – SHANY, Y. – SANDS, P. *Manual on International Courts and Tribunals.* Op. cit., pp. 72–97.

[55] ALTER, K. Delegating to International Courts: Self-binding vs. Other-binding Delegation. Op. cit., p. 61.

[56] Compare POSNER, E. A. – YOO, J. C. *Judicial Independence in International Tribunals.* Op cit. passim, and HELFER, L. R. – SLAUGHTER, A. M. *Why States Create International Tribunals: a Response to Professors Posner and Yoo.* Op. cit., passim.

mension of the activities of international justice) must be analyzed but also the material structure of this workload (i.e. the qualitative dimension of the decision-making by international justice). The analysis of the structure of the workload of international courts and quasi-judicial bodies – in other words, the analysis of cases in which international courts and quasi-judicial bodies are called upon to judge and the analysis of the importance of these cases – leads to quite unambiguous conclusion that even in the era of proliferation international courts and quasi-judicial bodies most of the cases before international courts and quasi-judicial bodies relate to certain particular areas of international law and international relations. The first prominent category of cases consists of disputes which stem from international economic relations, whether from universal or regional trade law or law of economic integrations.[57] The second important category of cases includes disputes related to international human rights law, whether universal or regional, in particular, to complaints over human rights violations by states.[58] Thirdly, especially due to the existence of several international ad hoc or mixed tribunals for international crimes which have been active since the 1990s,[59] non-negligible place within the workload of international courts and quasi-judicial bodies is occupied by prosecution of selected categories of international crimes.[60] Although there is no doubt that especially disputes over violations of international human rights law and international criminal law usually have strong political and social implications, considering the workload of international courts as a whole, it may be observed that proceedings before international courts or quasi-judicial bodies are normally used in order to settle several well-defined categories of international disputes while other categories of international disputes are brought before international courts or quasi-judicial bodies with more caution, especially when it comes to courts or bodies in which only states have standing.[61] In this regard, it is not possible to neglect the fact that a great number of fundamental political disputes which have emerged in the international system in the last decades, have never been submitted for settlement to any international court of quasi-judicial body. Frequently, judicial means of settlement of these disputes have not been even considered at all.[62] This clearly holds true for the disputes over development and storage of weapons of mass destruction contrary to international law in Iraq, over the alleged violations of international commitments by Iran pursuing its nuclear program, or over the territorial claims in territorial disputes in the South China Sea.[63] If we, thus, look at the role of international courts in the light of the structure and importance of their workload, a question arises whether even in the contemporary world

[57] ALTER, K. Delegating to International Courts: Self-binding vs. Other-binding Delegation. op. cit., p. 61.
[58] Ibid.
[59] Ad hoc international criminal courts for the former Yugoslavia and Rwanda, mixed courts for Sierra Leone, East Timor, Cambodia and Lebanon, see e.g. DAILLIER, P. – FORTEAU, M. – PELLET, A. *Droit international public.* Op. cit., pp. 808–812.
[60] ALTER, K. Delegating to International Courts: Self-binding vs. Other-binding Delegation. Op. cit., p. 61.
[61] Or lead states to limit standing of individuals.
[62] By the way, this state of affairs contrasts even with extremely sovereignist period before 1914 where, moreover, the ban on the use of force did not exist; while there was no permanent international court to which international could be submitted and only cautiously political disputes were referred to international arbitrators, it is well known that before the outbreak of the WWI recourse to international arbitration was regularly considered as at least a theoretic alternative to settling some of the important political disputes of the time.

there is not – *via factii* – a certain difference between legal disputes on one hand and political disputes on the other, with political disputes being only reluctantly submitted to international judges by states, except perhaps for Europe where both principal regional courts have obligatory jurisdiction and are open to individuals. While contrary to the past, the current internationalist doctrine mostly declines to distinguish between legal and political international disputes, arguing somewhat sophistically that no international dispute is either exclusively legal, or exclusively political,[64] data on the workload of international justice seem to indicate that the political dimension of a given international dispute plays a certain role when it comes to whether such dispute would be submitted to an international court or quasi-judicial body. Moreover, it can be observed that even where international political disputes are being submitted to an international court or quasi-judicial body, the court or body treats the case rather with caution, as can be seen even in Europe in which international relations are considerably judicialized.[65]

When seeking the answer to the question how important role international courts and quasi-judicial bodies play in the contemporary international relations, another substantial moment cannot be ignored, which is linked to the analysis of the material structure of the workload of international courts. If we study the workload of international courts and quasi-judicial bodies in the current world, it is clear that both the willingness to accept authority of international courts or quasi-judicial bodies and the readiness to use these courts and bodies to settle international dispute is not homogeneous, whether in the geographical, or geopolitical sense.

The geographical heterogeneity is apparent as soon as one looks at the map of international courts and quasi-judicial bodies. Although, as we reasoned above, the number of international courts and quasi-judicial bodies is not *per se* the decisive factor with regard to the judicialization of international relations, it certainly has its importance. In this regard, the degree of judicialization of international relations grows if the network of courts and with a universal jurisdiction is completed with regional courts and bodies. Yet, the map of the current world clearly indicates that such regional courts and bodies have been created and functioned especially in Europe and Americas. Already when it comes to Africa, the view is different – although there is a considerable number of regional courts

[63] Out of all big international crises of the last decades, only the Kosovo case reflected before international courts: actions were lodged before the International Court of Justice (Serbia and Montenegro vs. 9 NATO Member States, 15 December 2004) and also European Court for Human Rights (Bankovič and others vs. 17 NATO Member States, 19 December 2001) whose aim was to seek international responsibility for the NATO operation in Yugoslavia in 1999; no material decision was taken because both courts found the lodged actions to be inadmissible; regarding the question of unilateral declaration of independence by Kosovo, it is quite symptomatic that the issue was not submitted to the ICJ as a dispute, but rather as a request for an opinion; the opinion of the International Court of Justice was, moreover, formulated with an extreme caution.

[64] DAILLIER, P. – FORTEAU, M. – PELLET, A. *Droit international public*. Op. cit., p. 960.

[65] As for the Court of Justice of the European Union, see recent decisions on the status of Gibraltar (C-145/04 Spain vs. United Kingdom and the Commission, 12 September 2006 and T-211/04 The Government of Gibraltar and the United Kingdom vs. The Commission of the European Community, 18 December 2008; an appeal was filed against the decision – C-107/09 P Spain vs. the Government of Gibraltar and the United Kingdom, pending), on Cyprus (C-420/07 Apostolides vs. Orams, 28 April 2009), on legal regime of state visits (C-364/10 Hungary vs. Slovakia, 16 October 2012), or on a dispute over action against Federal Republic of Germany lodged before Italian courts (C-466/11 Gennaro Curra and others, 12 July 2012).

in Africa, they mostly seem either to exist on paper, or to be unable to face the depth of conflicts and challenges which Africa faces for a long time.[66] And the situation is radically different in Asia where, up to now, the proliferation trend has not really manifested.[67] Thus, in the current world, the degree of judicialization of international relations is not apparently equal.

This conclusion is clearly supported also by the analysis of data on the willingness of states to accept jurisdiction of universal international courts and quasi-judicial bodies and to actually use them. Besides the geographical distribution of the cases submitted to international courts and quasi-judicial bodies, it is also interesting to take into account what geopolitical importance states which seize international courts or quasi-judicial bodies (either by themselves or by their nationals) have, especially what proportion represent the *leader states* of the international system, or the other states.[68] In this regard, globally, it seems that states irrespective of their geographical and geopolitical status are prone to using international courts or quasi-judicial bodies in order to settle those disputes that relate to the international economic relations. The parties to these disputes before international courts or quasi-judicial bodies include both *leader states* and the third-world countries, whether from the West or Asia. However, as far as purely political international disputes are concerned, the situations seems to be different, as exemplified by the case of the USA, the leading superpower of the current world which due to its national traditions is considered as a pioneer of the principle of *rule of law*. Not only has the USA never ratified treaties that led to the establishment of the International Criminal Court or of the control bodies under international human rights law, but they have also had an ambivalent relation with the International Court of Justice which is, to a large extent, an offspring of the American political thinking and approach to international dispute settlement.[69] Similar patterns can be seen in the behavior of other great powers or superpowers, such as China and Russia. Again, traditional European powers may represent exception to this pattern of behavior although, even in Europe, international justice is not used for purposes of settlement of the principal interstate disputes on an everyday basis.[70] This seems to suggest that a role that international justice may play is, besides geopolitical aspects, predetermined by cultural, political and historical traditions that actors of international relations share. It is certainly true that the acceptance of international justice and its role does not depend on these extralegal factors exclusively, as shown e. g. by the case of the WTO dispute settlement system,[71] however, their relevance can hardly be denied.

[66] Compare e.g. ROMANO, C. P. A Taxonomy of International Rule of Law Institutions. Op. cit., p. 266 and p. 269.

[67] ROMANO, C. P. A Taxonomy of International Rule of Law Institutions. Op. cit., p. 276 and bibliography cited therein.

[68] On this see e.g. YEE, S. Sovereign Equality of States and the Legitimacy of "Leader States", In: JOHN, S. – MacDONALD, R. – JOHNSTON, D. M. (eds.). *Towards World Constitutionalism*. Leiden – Boston 2005, pp. 736–772.

[69] As can be seen for example on the actions taken by the USA in well-known cases of Nicaragua, or La Grand; see in detail, MURPHY, S. D. The United States and the International Court of Justice: Coping with Antinomies. In: Romano, C. (ed.). *The Sword and the Scales. The United States and International Courts and Tribunals*. Cambridge 2009, pp. 46–111.

[70] When it comes to the International Court of Justice, the only European great powers to have accepted its obligatory jurisdiction include the United Kingdom and Federal Republic of Germany; as for the use of the ICJ by European states, if we leave aside disputes resulting from the Kosovo crisis, since 2000, the European states submitted only about 5 disputes out of 29 the ICJ has dealt with.

4. CONCLUSIONS

Should we summarize all the preceding reflections on the role of international courts and quasi-judicial bodies in the contemporary world, in our view, it cannot be denied that these courts and bodies definitely matter in the current international relations. The role they play primarily corresponds to the degree in which international courts and quasi-judicial bodies influence how other actors of international relations – in particular, states and international governmental organizations – interpret and apply international laws. Moreover, the role of international courts and quasi-judicial bodies stems from the fact that their case-law contributes to overcoming the gaps or disputed issues which exist in positive international law.

On the other hand, even today it would not be adequate to claim that the judicialization of international relations has advanced so far that international courts and quasi-judicial bodies have turned into the key actors of international relations and that the substantial part of disputes existing within the international community is being settled before them. There is no doubt that, especially in Europe, international justice – represented primarily by two principal regional courts, i. e. the European Court of Human Rights, and the Court of Justice of the European Union – profiles itself as an important player whose case-law has an undisputable impact on the actions of both the states and the other actors of international relations in Europe, including actions in disputes over purely political questions.[72] However, this prominent role of international justice in Europe stems, firstly, from the specific judicial architecture of both principal regional courts (especially from their obligatory jurisdiction combined with wide standing of individuals in proceedings before them) which is still rather rare in broader comparison. Secondly, it must not forgotten that the emphasis on the rule of law in international relations – and, therefore, also on the role of courts in dispute settlement and governance – has its distinct political, historical and cultural determinants whose precise importance may be debated but certainly not denied. Especially these extralegal circumstances may not be necessarily present in the other parts of the world in the same way as they are in contemporary Europe with her burdensome historical experience of settling international conflicts by the use of force.[73] This divergence may imply – and it seems to imply indeed – lower level of readiness to establish and use international courts and quasi-judicial bodies in international relations outside Europe. When assessing the role of international justice in the global perspective, its image is sensibly different than the one provided by contemporary Europe. As it has been mentioned supra, globally, the international justice plays role in several distinct categories of international disputes, primarily, in disputes which follow from international economic relations. Much more caution is paid to the use of international courts and quasi-judicial bodies when it comes to settlement of substantial disputes of overwhelmingly political

[71] HELFER, L. R. – SLAUGHTER, A. M. *Why States Create International Tribunals: a Response to Professors Posner and Yoo.* Op. cit., pp. 919–922.

[72] BUSSY, F. – POIRMEUR, Y. Op. cit., pp. 172–173.

[73] Leading also to the quasi-complete abandonment of her own military capacities and strategies development, and to heavy reliance on the USA, see recently e. g. VEDRIN, H. Réponse à Régis Debray sur l'OTAN, Le Monde Diplomatique. 2013, avril, p. 10.

nature. Although this pattern has been partially transforming as a result of disputes over the compliance with international human rights law, or international criminal law, the later phenomena are too recent to assess their long-term impact on the international relations with precision. Last but not least, it cannot be neglected that since 1945, fortunately, international courts and quasi-judicial bodies have not faced such a deep global political and legal crisis – challenging legitimacy of international justice and law as a whole – as was the crisis which had led to the outbreak World War II.[74] The potential of the existing international justice with regard to influencing the core of international relations has not been, therefore, tested by an open, large-scale power conflict. Consequently, it is more than questionable whether, on the global level, the existence of international community of law with the strong role of international courts could be postulated in the same way in which the existence of such community has been quite persuasively described for Europe since the 1980s.[75]

However, although international courts and quasi-judicial bodies do not constitute world government in the global perspective – or, their participation on a world government is, at best, limited – they do have the capacity to influence international relations. This explains why their role, whether present or future, must be publicly discussed, in particular, in Europe and in small and middle-sized countries. A fact remains that international justice is one of the few rational and at least partially transparent alternatives to resolving international disputes by political means whose outcomes may not necessarily result only from the intensity of military strength available to the parties in dispute, but they do definitely depend on the geopolitical importance these parties hold.

[74] And that has been connected with the questioning of the role of the international law, which was dealt with aside of the judicial means of resolving international disputes.

[75] STEIN, E. Lawyers, Judges, and the Making of a Transnational Constitution. *American Journal of International Law.* 1981, No.1, pp. 1–27.