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POLAND AND INTERNATIONAL COURTS: A CENTENNIAL PERSPECTIVE

Abstract: The purpose of this contribution is to look at the last century against the background of the ‘Polish’ approach towards international courts and tribunals: the Permanent Court of International Justice/International Court of Justice, the European Court of Human Rights, the instruments of international criminal justice and the International Tribunal for the Law of the Sea. This may be yet another aspect of scrutinising Polish foreign policy. It may be argued that the approach of a State towards international judiciary may heavily influence the international perception or position of that State and – more importantly perhaps – would also reveal the condition of its diplomacy.

Keywords: Poland, international courts and tribunals, Permanent Court of International Justice, International Court of Justice, European Court of Human Rights, international criminal justice, International Tribunal for the Law of the Sea

1. Introductory remarks

A hundredth anniversary of the restituted Polish statehood provides a splendid occasion to analyse a variety of different aspects using the

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machinery of international law. Following the kind invitation of the Editor-in-Chief, Professor Cezary Mik, we intend to look at the last century against the background of the 'Polish' approach towards international courts and tribunals. This may be yet another aspect of scrutinising Polish foreign policy. The proposed topic is far from being purely theoretical or of merely historical relevance. Among many other issues, the approach of a State towards international judiciary may heavily influence the international perception or position of that State and – more importantly perhaps – would also reveal the condition of its diplomacy.

In this regard, one should not forget that triggering international jurisdiction could be considered a kind of anomaly which reflects some defects in external relations or simply a lack of smooth functioning on an international plane. Not being able to solve a dispute on their own, the parties thereof rely on an external institution which seeks to provide an impartial solution based on law.¹

Before getting to the core of the proposed analysis, it is inevitable to first define international judiciary. The science of international law would define international courts and tribunals as 'permanent judicial bodies made up of independent judges which are entrusted with adjudicating international disputes on the basis of international law according to a pre-determined set of rules of procedure and rendering decisions which are binding on the parties'.² Such understanding, while underlining the permanent character, would exclude international arbitration from the scope of respective analysis.³

¹ See, e.g. M. Iwanejko, *Spory międzynarodowe: studium prawno-polityczne* [International Disputes: A Legal and Political Study], Warsaw 1976, pp. 231 ff.; J. Sutor, *Pokojowe załatwianie sporów międzynarodowych* [Peaceful Settlement of International Disputes], Wrocław 1979, pp. 180 ff.; K.J. Alter, *The New Terrain of International Law: Courts, Politics, Rights*, Princeton 2014, *passim*.

² Ch. Tomuschat, *International Courts and Tribunals*, [in:] R. Wolfrum (ed.), 'The Max Planck Encyclopedia of Public International Law', vol. V, Oxford 2012, p. 499 (§ 1). See also C.P.R. Romano, K.J. Alter, Y. Shany, *Mapping International Adjudicative Bodies, the Issues, and Players*, [in:] C.P.R. Romano, K.J. Alter, Y. Shany (eds.), 'The Oxford Handbook of International Adjudication', Oxford 2014, pp. 4 ff.

³ See also W. Czapliński, *Multiplikacja sądów międzynarodowych- szanse czy zagrożenie dla jedności prawa międzynarodowego* [Multiplication of International Courts – Chances or Perils for the Unity of International Law], [in:] J. Kolasa, A. Kozłowski (eds.), 'Rozwój prawa międzynarodowego – jedność czy fragmentacja?' [Development of International Law: Unity or Fragmentation?], Wrocław 2007, p. 78. In this regard, however, it is necessary to notice that the Polish doctrinal understanding would concentrate to

2. The World Court

The most traditional example of an international court is, of course, the World Court. In the interwar period, the Second Republic of Poland was a State that was very frequently party to proceedings before the Permanent Court of International Justice. This was obviously the result of being a newly re-instituted State. Some of the milestones in the jurisprudence of the Permanent Court of International Justice were directly related to Poland – not only in terms of interstate disputes, of which Poland was a party to, but also – in a more indirect manner – with regard to the advisory opinions delivered by the predecessor of the International Court of Justice.

As far as decisions of the Permanent Court in contentious proceedings are concerned, any adept of international law is certainly well-acquainted with such cases like *Chorzów Factory*,⁴ *Certain German Interests in Polish Upper Silesia*⁵ or *Rights of Minorities in Upper Silesia (Minority Schools)*.⁶ But it is also worth noticing that Poland decided to intervene in the first dispute concerning the *Wimbledon* steamship.⁷ In addition, a number of advisory opinions were delivered by the PCIJ with regard to legal questions directly related to the operation of Poland and the complicated relations with its neighbours.⁸

a lesser extent on differentiation between standing international courts and arbitral tribunals. J. Kolasa, *Wstęp* [Introduction], [in:] J. Kolasa (ed.), *Współczesne sądownictwo międzynarodowe* [Contemporary International Courts and Tribunals], 'Volume I: Zagadnienia instytucjonalne' [Institutional Issues], Wrocław 2009, p. 10. Any automatic transfer of the doctrinal views underlining the differences would not be welcome here.

⁴ *Factory at Chorzów (Jurisdiction)*, PCIJ Series A no. 9; *Factory at Chorzów (Indemnities)*, PCIJ Series A no. 12; *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów)*, *Factory at Chorzów (Merits)*, Judgment of 13.09.1928 (including the text of the declarations of Judge de Bustamante and Judge Altamira), PCIJ Series A no. 13; PCIJ Series A no. 17.

⁵ *Certain German Interests in Polish Upper Silesia (Preliminary Objections)*, PCIJ Series A no. 6; *Certain German Interests in Polish Upper Silesia (Merits)*, PCIJ Series A no. 7.

⁶ *Rights of Minorities in Upper Silesia (Minority Schools)*, Judgment of 26.04.1928, PCIJ Series A no. 15.

⁷ *S.S. 'Wimbledon'*, Judgment of 28.06.1923 (Question of Intervention by Poland), PCIJ Series A no. 1.

⁸ See *Polish Agrarian Reform and German Minority*, Order of 29.07.1933 (Application for the Indication of Interim Measures of Protection), PCIJ Series A/B, no. 58; *Polish Agrarian Reform and German Minority*, Order of 2.12.1933, PCIJ Series

In contentious cases, Poland was entitled to appoint an *ad hoc* judge. Such was the role played in the proceedings by Count Michał Jan Cezary Rostworowski and Professor Ludwik Ehrlich. The first Polish judge appointed permanently to the Court was Count Rostworowski, who served on the Court from 1931 until his death in 1940.⁹

In stark contrast to the interwar time, in which there had been many references to the 'Polish' questions in the PCIJ's judgements, the subsequent period meant the complete muting of the recourse to the International Court of Justice. Initially, this could, to some extent at least, be explained by the communist approach to international courts. The latter is perfectly reflected by a quotation from the 'Outline of public international law' published in the 1950s: 'In practice, the imperialistic States sometimes make use of the ICJ for their own purposes, which is supported by the fact that the majority of judges represent the capitalistic worldview. It may therefore sometimes happen that some of the judges would make decisions transgressing the statutory powers of the Court'.¹⁰ One of the main assumptions of the above-quoted approach would be the reliance on the new type of 'a whole group of socialist states of a homogeneous social character' and of truly fraternal relations with one another in the economic, social and cultural fields, relations which constitute in their totality a new

A/B, no. 60; German Settlers in Poland, Advisory Opinion of 10.09.1923, PCIJ Series B, no. 6; Acquisition of Polish Nationality, Advisory Opinion of 15.09.1923, PCIJ Series B, no. 7; Jaworzina, Advisory Opinion of 6.12.1923, PCIJ Series B, no. 8; Polish Postal Service in Danzig, Advisory Opinion of 16.05.1925, PCIJ Series B, no. 11; Jurisdiction of the Courts of Danzig, Advisory Opinion of 3.03.1928, PCIJ Series B no.15; Free City of Danzig and ILO, Advisory Opinion of 26.08.1930, PCIJ Series B, no. 18; Access to German Minority Schools in Upper Silesia, Advisory Opinion of 15.05.1931, PCIJ Series A/B, no. 40; Customs Regime between Germany and Austria, Advisory Opinion of 5.09.1931, PCIJ Series A/B, no. 41; Railway Traffic between Lithuania and Poland, Advisory Opinion of 15.10.1931, PCIJ Series A/B, no. 42; Access to, or Anchorage in, the port of Danzig, of Polish War Vessels, Advisory Opinion of 11.12.1931, PCIJ Series A/B, no. 43; Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory, Advisory Opinion of 4.02.1932, PCIJ Series A/B, no. 44; Polish Agrarian Reform and German Minority, PCIJ Series A/B, no. 58; Consistency of Certain Danzig Legislative Decrees with the Constitution of the Free City, Advisory Opinion of 4.12.1935, PCIJ Series A/B, no. 65.

⁹ See more: A. Wyrozumska, *Count Rostworowski as an International Lawyer and Judge*, 'International Community Law Review' 2011, vol. 13, pp. 59 ff.

¹⁰ A. Bramson, *Sądownictwo międzynarodowe* [International Judiciary], [in:] M. Muszkat (ed.) 'Zarys prawa międzynarodowego publicznego' [An Outline of International Law], vol. II, Warsaw 1956, p. 294.

type of intercourse among the nations that have freed themselves from exploitation'. Accordingly,

there [had] emerged a whole group of socialist states of a homogeneous social character', which 'not only put an end to the exploitation of man by man but [...] eliminated the economic causes of international conflicts which are concomitants of the imperialistic states striving for economic expansion and seizure of markets and spheres of capital investment'. Since 'the peoples of the socialist community [had] common interests at heart in defending revolutionary gains and national independence from the imperialistic states, [i]t is only natural that this community of interests requires unity and concerted action in the defence of peace and in the struggle against imperialism and colonialism'. Eventually, all '[those] factors constitute the basis of the social, economic and political community of their monolithic unity and invincibility.¹¹

Of course, the arguments quoted above have now completely lost their validity but – paradoxically enough – the democratic developments after the fall of the iron curtain did not bring any change in having recourse to the principal judicial organ of the United Nations. Quite to the contrary, one may observe a continuing reluctance in this regard.

The collapse of the Cold-War-order, however, also brought about a modification concerning the Polish position towards the International Court of Justice. Obviously, the mere ratification of the ICJ Statute would not be enough to trigger its jurisdiction in a given case.¹² What is needed in a given dispute is the consent for the ICJ's jurisdiction expressed by all the parties involved. There are several heads of the Court's jurisdiction: from treaties for the peaceful resolution of disputes, over the compromissory clauses and special agreements. Such a consent may, as is widely known, also be given by *forum prorogatum* (i.e. the respondent State's acceptance of the claim submitted by the applicant state), by means of the jurisdictional clause in a treaty or by lodging a facultative declaration accepting the compulsory

¹¹ C.V.M. Shurshalov, *International law in relations among socialist countries*, [in:] G. Tunkin (ed.), 'Contemporary International Law. Collection of Articles', Moscow 1969, p. 59 et seq.; see also: V.P. Karpov, *The Soviet Concept of Peaceful Coexistence and Its Implications for International Law*, 'Law and Contemporary Problems' 1964, vol. 29, pp. 858 ff.

¹² M. Dubisson, *La Cour internationale de justice*, Paris 1964, pp. 154 ff.; J. Collier, V. Lowe, *The Settlement of Disputes in International Law: Institutions and Procedures*, Oxford 1999, pp. 132 ff.

jurisdiction of the Court under Article 36(2) of the Court's Statute. It was on 25.09.1990 that Poland, as the first country from the region of Central or Eastern Europe, deposited a declaration with the Secretary-General of the United Nations accepting the compulsory jurisdiction of the International Court of Justice in accordance with Article 36(2) of the Statute of the Court. As noted by the main advocate of accepting the compulsory jurisdiction of the ICJ, Professor Renata Szafarz, it was rather a rare thing that the postulates put forward by a doctrine were promptly introduced into practice.¹³

In the respective facultative declaration, Poland recognized: as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation and subject to the sole condition of reciprocity, the jurisdiction of the International Court of Justice in all legal disputes other than: (a) disputes prior to the date of this declaration or disputes arisen out of acts or situations prior to the same date; (b) disputes with regard to the territory or State boundaries; (c) disputes with regard to pollution of the environment unless the jurisdiction of the International Court of Justice results from the treaty obligations of the Republic of Poland; (d) disputes with regard to foreign liabilities or debts; (e) disputes with regard to any State which has made a declaration accepting the compulsory jurisdiction of the International Court of Justice less than twelve months prior to the filing of the application bringing the dispute before the Court; (f) disputes in respect whereof parties have agreed, or shall agree, to have recourse to some other method of peaceful settlement; (g) disputes relating to matters which, by international law fall exclusively within the domestic jurisdiction of the State.

As can be seen, the catalogue of exemptions was indeed quite large, leaving not much to be effectively covered by the declaration.

¹³ R. Szafarz, *Poland and the International court of Justice – Today*, 'Droit Polonais Contemporain' 1992, no. 1-4 (93-96), p. 47. Indeed, this eminent scholar suggested that Poland made a respective declaration first in a scientific article published in a leading journal (see R. Szafarz, *Obowiązkowa jurysdykcja Międzynarodowego Trybunału Sprawiedliwości na podstawie klauzuli fakultatywnej* [Compulsory Jurisdiction of the International Court of Justice based on the Facultative Clause], 'Państwo i Prawo' 1989, no. 2, pp. 57 ff.). Any serious student of international law in Poland is of course well-aware of the magnificent in-depth monograph on that subject by the same author – see R. Szafarz, *Obowiązkowa jurysdykcja Międzynarodowego Trybunału Sprawiedliwości* [Compulsory Jurisdiction of the International Court of Justice], Wrocław 1991.

The declaration was supposed to be valid for a period of five years with automatic prolongation thereafter for further periods of one year if not denounced by notification addressed to the UN Secretary-General. Poland also decided include a right to add, by means of a notification to the Secretary-General, new reservations or supplements, or to amend or withdraw any of the reservations. In practical terms, Poland did not make use of the possibility of partially modifying the initial declaration but simply chose to substitute it with a new one. It was Dariusz Rosati, Minister of Foreign Affairs that made use of the denunciation clause on 25.03.1996.¹⁴ In practice, it differed from the predecessor in two respects: its reference to environmental disputes¹⁵ and deleting the clause on temporal scope application. With regard to the latter issue, the Government of Poland merely reserved:

its right to withdraw or modify the present Declaration at any time and by means of a notification addressed to the Secretary-General of the United Nations, taking effect after six months from the moment whereof.

When comparing the first declaration with the one presently in force, one needs to admit that the formal conditions for denunciation are now less strict, and it is, in practice, possible to modify or withdraw from the declaration at any time on six months' notice.

Despite the lack of 'Polish' cases in the docket of the ICJ, one should point out the constant presence of the Polish judges on its bench until 1993. Initially, Professor Bohdan Winiarski served as a judge since the very beginnings of the Court (and presided over it from 1961-1964) and was replaced after his death in 1967 by Professor Manfred Lachs, who from 1973-1976 was the ICJ's President. The latter's sudden death in 1993 before the end of his term opened a question as to who his successor should be. Traditionally, for the remaining time (until February 1994), a lawyer of the same nationality would be appointed as a member of the Court. The well-known and much-respected Krzysztof Skubiszewski was a natural candidate. The Minister of Foreign Affairs himself decided to take part in the elections, but one day before the parallel voting within the General Assembly and the Security Council, he made a dramatic decision

¹⁴ See: <https://www.icj-cij.org/en/declarations/pl> [accessed on 30.09.2018].

¹⁵ The phrase 'disputes with regard to environmental protection' replaced a rather lengthy and artificial formula ('disputes with regard to pollution of the environment unless the jurisdiction of the International Court of Justice results from the treaty obligations of the Republic of Poland').

to withdraw at the last moment from the election of judges to the ICJ.¹⁶ As a result of those events, Géza Herczegh, a Hungarian national, was elected to complete Lachs' term and then, subsequently continued his full term of 9 years. Now, since 2003, the Central-Eastern-European's seat at the ICJ has been occupied by a Slovakian, Peter Tomka, who from 2012-2015 presided over the ICJ. The splendid expertise of those international lawyers notwithstanding, one may express regrets for interrupting the continuing Polish presence on the bench of the principal judicial organ of the United Nations. The bitterness of the conclusion drawn above can only partly be mitigated by the fact that Skubiszewski was appointed ad hoc judge twice¹⁷ and then, from 16.02.1994 until his death in 2010, served as President of the Iran-United States Claims Tribunal.

3. The European Court of Human Rights

Another important point of reference in our analysis of Poland's approach should be the human rights bodies. Before paying attention to the approach towards the European Court of Human Rights, in order to shed some contextualised light, one may offer a more general conclusion that the initiatives concerning the protection of human rights have been officially supported. The validity of such a statement may also be maintained for the times before 1989. However, with regard to the latter period, one needs to note that Poland was among eight States that abstained from voting during the adoption of the Universal Declaration on Human Rights.¹⁸ The

¹⁶ As accurately pointed out by his disciple, Professor Jerzy Kranz, 'this post would have crowned his career, yet at the Prime Minister's request, he withdrew his candidacy and decided to stay with the Polish Government for the sake of preserving the government's stability, which was threatened by his potential resignation' (J. Kranz, *Sapere auso (To One Who Dared to Be Wise): On the Fifth Anniversary of the Death of Krzysztof Skubiszewski*, 'Polish Yearbook of International Law' 2014, vol. XXXIV, p. 34). This loyal behaviour did not prevent the Government from collapsing – see further: J. Łukaszewski, *Krzysztof Skubiszewski, 1926-2010. Człowiek – myśl – działanie – spuścizna* [Krzysztof Skubiszewski, 1926-2010. The person – thought – activity – legacy], [in:] R. Kuźniar (ed.), 'Krzysztof Skubiszewski – dyplomata i mąż stanu', Warsaw 2011, pp. 30-31.

¹⁷ For East Timor and Gabčíkovo-Nagymaros cases.

¹⁸ Yearbook of the United Nations 1948-1949, p. 535. The official reason behind it was a lack of any mention on the fight against fascism, but basically it was due to lack of consent concerning the universality of human rights.

situation improved with the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.¹⁹ Poland signed both Covenants on 2.03.1967 and ratified them on 18.03.1977. The subsequent initiatives placed Poland among the more active supporters and promoters of human rights. In 1978, Poland had already proposed the idea of a United Nations Convention on the Rights of the Child to be binding for all nations. Eventually, it took more than a decade before the General Assembly of the United Nations adopted the Convention on the Rights of the Child as part of Resolution 44/25 on 20.11.1989. Some additional impetus was gained after the political change of 1989.²⁰ It is not only for reasons of space we do not dwell here on the universal human rights mechanisms, as they do not provide for strictly judicial organs, and finally much ink has already been spilled on that particular issue.²¹

A more detailed analysis is required for the relation with the European Court of Human Rights. The efforts to accede the European Convention on Human Rights and Fundamental Freedoms in the aftermath of the Cold War did in fact extend over time due to the fact that fully democratic parliamentary elections had been delayed. It is mainly for this reason that Hungary or then Czechoslovakia joined the Council of Europe earlier than Poland did, despite the latter's greater achievements in terms of the scope and the pace of democratic reforms. Be that as it may, Poland ratified the Convention on 19.01.1993 and then recognised the jurisdiction of the European Court of Human Rights on 1.05.1993.

¹⁹ Both Covenants were adopted by the United Nations General Assembly on 16.12.1966 (Resolution 2200A (XXI), with the former entering into force on 3.01.1976 and the latter on 23.03.1976.

²⁰ Already three weeks after his appointment as Foreign Minister, on 25.09.1989, thus well ahead of the fall of the Berlin Wall, Minister Skubiszewski outlined the new Polish foreign policy before the UN General Assembly in a statement entitled 'The Polish policy at the dawn of independence'. He defined the following key challenges the international community had to face: the burden of the armament race, improvement of living conditions of people, prevention of environmental degradation and, last but not least, ensuring respect for international law and the protection of human rights. See: Z. Kędzia, *Human rights and the new Polish foreign policy*, [in:] J. Crawford et al., 'Professor, Minister, Judge – Krzysztof Skubiszewski 1926-2010', Warsaw 2014, p. 37.

²¹ See, e.g., Z. Kędzia, *Uwagi o uwarunkowaniach reform organów traktatowych ONZ w dziedzinie praw człowieka* [Remarks on Preconditions to Reform the UN Human Rights Treaty Bodies], [in:] G. Baranowska et al. (eds.), 'O prawach człowieka. Księga jubileuszowa Profesora Romana Wieruszewskiego' [On Human Rights. Liber Amicorum in honour of Professor Roman Wieruszewski], Warsaw 2017, p. 171.

The human rights protection system before the Strasbourg Court provides for each Member-State the right to designate a judge. The first Polish member of the Court was Professor Jerzy Makarczyk, who was then succeeded by Professor Leszek Garlicki. Since 1.11.2002, this post has been carried out by Professor Krzysztof Wojtyczek, a constitutional lawyer from the Jagiellonian University of Cracow.

In all proceedings before the European Court of Human Rights, Poland is represented by a government agent, i.e. a government plenipotentiary situated within the structure of the Ministry of Foreign Affairs and being also responsible for the coordination of the execution of ECtHR judgments. It was decided to vest the power of the representation of Poland before the European Court of Human Rights in the Ministry of Foreign Affairs and not in any of the sectoral ministers. Such a step was considered 'a more natural and appropriate solution', since it 'would assure the neutrality and impartiality of the government's legal representative, who, after all, adopts positions involving information and comments on the activities of various actors, including independent ones, for example, the common courts, administrative courts and bodies, and the police and healthcare administration'.²²

All Member States are to secure to everyone within their jurisdiction the rights and freedoms defined in the European Convention. Such an obligation also stems from Article 3 of the Council of Europe's Statute. Official statistic data, as provided by the Court, is not optimistic for Poland. Out of a total number of 20,637 judgments delivered by 2017, 1,145 were against Poland, thus according to the Republic of Poland the sad 6th position among the parties most frequently violating the European Convention (after Turkey, Italy, the Russian Federation, Romania, Ukraine).²³ Given

²² J. Stańczyk, *Historical perspective of proceedings against Poland before the European Court of Human Rights*, [in:] 'Representation of the Republic of Poland before the European Court of Human Rights – over twenty years of experience of the Ministry of Foreign Affairs', Conference organised by the Ministry of Foreign Affairs of Poland on 30.05.2017 in Warsaw, Warsaw 2017, p. 114. As explained further, 'The assignment of legal representation to one of the sectoral ministers would in effect also grant that minister precedence over the other sectoral ministers, which would run counter to the model of government operations adopted in Poland. It could also impede the execution of the Court's judgments, for example in situations when, as part of taking general measures, one minister would have to initiate or insist on legislative amendments encroaching on the remit of another minister' (ibidem).

²³ See: https://www.echr.coe.int/Documents/Stats_violation_1959_2017_ENG.pdf [accessed on 30.09.2018].

the relatively late acceptance of the Courts jurisdiction (as juxtaposed to the other contracting parties), the score by Poland is indeed appalling.²⁴

It is, however, important to note the contribution of Poland to the pilot-judgements procedure, included to the Rules of the Court in 2011,²⁵ ‘where the facts of an application reveal in the Contracting Party concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications’. In fact, given the first pilot-judgment ever delivered by the European Court was in the case of *Broniowski v. Poland*,²⁶ Poland may be regarded a ‘homeland of pilot judgments’.²⁷

²⁴ The scope of the present analysis does not allow for a closer scrutiny of the Polish applications. The overwhelming majority of them (74%) refer to violations of Article 6 of the Convention (own calculation relying on data referred to in the previous footnote). Some of them indeed attracted general attention as evidenced e.g. in the cases of *Alicja Tysi c* (*Tysi c v. Poland*, Application no. 5410/03, Judgment (Merits and Just Satisfaction) of 20.03.2007, ECHR) or the American rendition camps (*Al Nashiri v. Poland*, Application no. 28761/11, Judgment (Merits and Just Satisfaction) of 24.07.2014, ECHR).

²⁵ See Article 61 of the Rules of the Court.

²⁶ The case concerned the applicant’s entitlement to compensation for property that his family had had to abandon in the so-called ‘territories beyond the Bug River’, and the very essence of the pilot judgment was best reflected in §193 of the said judgment: ‘Although it is in principle not for the Court to determine what remedial measures may be appropriate to satisfy the respondent State’s obligations under Article 46 of the Convention, in view of the systemic situation which it has identified, the Court would observe that general measures at national level are undoubtedly called for in execution of the present judgment, measures which must take into account the many people affected. Above all, the measures adopted must be such as to remedy the systemic defect underlying the Court’s finding of a violation so as not to overburden the Convention system with large numbers of applications deriving from the same cause. Such measures should therefore include a scheme which offers to those affected redress for the Convention violation identified in the instant judgment in relation to the present applicant. In this context, the Court’s concern is to facilitate the most speedy and effective resolution of a dysfunction established in national human rights protection. Once such a defect has been identified, it falls to the national authorities, under the supervision of the Committee of Ministers, to take, retroactively if appropriate [...] the necessary remedial measures in accordance with the subsidiary character of the Convention, so that the Court does not have to repeat its finding in a lengthy series of comparable cases’.

²⁷ G. Mayer, *Execution of European Court of Human Rights’ judgments against Poland – achievements of the last twenty years*, [in:] ‘Representation of the Republic of Poland...’, p. 140.

The above-mentioned as well as other²⁸ cases confirm without doubt the cases of systemic violations of human rights, but, nevertheless, the end of the pilot-judgments-procedures also shows that the latter have so far been truly effective. Since the very beginnings, instead of passively witnessing the undertaken developments, Poland has played a very active role.²⁹

According to Article 46 of the European Convention, the supervision over the execution of judgments belongs to the Committee of Ministers.³⁰ Moreover, under the first paragraph of the said provision, '[t]he High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties'.³¹ Of crucial importance in that regard was the establishment on 19.07.2007 of the Interministerial Committee for Matters of the European Court of Human Rights. Thereby, the Prime Minister set up an advisory body aimed at ensuring that Poland implements,

²⁸ Another famous pilot judgment given against Poland was the Hutten-Czapska case (ECtHR, Case of Hutten-Czapska v. Poland, Application No. 35014/97, Judgment (Merits and Just Satisfaction) of 19.06.2006). Other pilot judgments delivered against Poland concerned overcrowding in Polish penitentiary facilities and excessive length of judicial proceedings.

²⁹ K. Szymański, *Representation of the Republic of Poland before the European Court of Human Rights – more than two decades of Ministry of Foreign Affairs experience*, [in:] 'Representation of the Republic of Poland...', p. 109.

³⁰ The supervision of the execution of judgments is governed by the special rules adopted by the Committee of Ministers on 10.05.2006 at the 964th meeting of the Ministers' Deputies. Any thorough examination of them would go beyond the framework of the present analysis, with its concentration on the Polish attitude towards international judiciary. Nevertheless, one needs to note Resolution 1787 (2011) of the Parliamentary Assembly of the Council of Europe, adopted in 2011 and mentioning Poland (alongside with Bulgaria, Greece, Italy, Moldova, Russia, Turkey and Ukraine) as a Member State with the greatest delays in execution of the ECtHR's judgments – see Resolution 1787 (2011): Implementation of judgments of the European Court of Human Rights, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17953&lang=en> [accessed on 30.09.2018].

³¹ In this regard, one may identify two main obligations of the State arising from the respective norm, i.e. that of non-denial of the Convention violation determined in the judgment and that of undertaking positive actions towards the execution of the said judgment – see I.C. Kamiński, R. Kownacki, K. Wierczyńska, *Wykonywanie orzeczeń Europejskiego Trybunału Praw Człowieka w polskim systemie prawnym* [Execution of the decisions of the European Court of Human Rights in the Polish legal system], [in:] A. Wróbel (ed.), 'Zapewnienie efektywności orzeczeń sądów międzynarodowych w polskim porządku prawnym' [Enforcing the decisions of international courts in the Polish legal order], Warsaw 2011, p. 93.

to the fullest extent possible, recommendations arising from the judgments of the European Court of Human Rights. The Committee has been entrusted with developing the Government's positions on communicated applications and ECtHR judgments, analysing the compliance of major bills with the European Convention and presenting relevant proposals. It is to monitor the execution of the judgments and decisions of the Court against Poland on the basis of action plans and reports submitted by competent ministers. It is for the Committee to analyse problems arising from communicated applications and ECtHR judgments and drafts proposals for relevant measures and also to serve as a forum for discussion on major issues relating to compliance with drafted amendments with the Convention which could lead to significant consequences for Polish law or its application.

There have also been some further steps aimed at ensuring better execution of the Strasbourg Court's judgements, e.g. the establishment on 5.02.2014 of the special parliamentary Subcommittee on Execution of Judgments of the European Court of Human Rights, which is to examine the information submitted by the Council of Ministers on the state of execution of judgments of the European Court of Human Rights by Poland and monitor the latter's judgments adopted in respect to Poland. The Subcommittee is also supposed to prepare draft desiderata or opinions for the Justice and Human Rights Committee and the Foreign Affairs Committee on the fulfilment by the Council of Ministers of the obligations to execute the judgments of the European Court of Human Rights.

All these activities may be conceived of as yet another form of ensuring the best implementation of the Court's judgments and of the European Convention in general, which was frequently postulated by the doctrine.³² It is worth stressing that 'the Polish government's dialogue with

³² See, e.g., A. Bodnar, *Instytucjonalne aspekty wykonywania wyroków Europejskiego Trybunału Praw Człowieka w sferze stanowienia prawa* [Institutional aspects of executing the judgments of the European Court of Human Rights, [in:] A. Wróbel (ed.), op.cit., pp. 257 ff.]; M. Ziółkowski, *Obowiązek przestrzegania wyroków Europejskiego Trybunału Praw Człowieka w świetle art. 46 Konwencji o ochronie praw człowieka i podstawowych wolności oraz rezolucji Zgromadzenia Parlamentarnej Rady Europy z 26 stycznia 2011 r. 1787 (2011)* [The duty to observe the judgments of the European Court of Human Rights in the light of Article 46 of the European Convention on Human Rights and Fundamental Freedoms and the Council of Europe's Parliamentary Assembly's resolution 1787 (2011) of 26 January 2011], [in:] P. Radziejewicz (ed.), 'Wykonywanie wyroków Europejskiego Trybunału Praw Człowieka przez Sejm' [Execution of the European Court of Human Rights' judgments by the Polish Diet], Warsaw 2012, pp. 23 ff.

the Court has been conducted continually since 2005, notwithstanding any changes of the political climate and the government'.³³

The above-mentioned initiatives also resulted in Poland's ranking at present among those Member States of the Council of Europe that possess advanced legal and institutional foundations for the execution of ECtHR judgments in the overall making of a particular contribution to the development of ECtHR procedures and their alignment with the challenges linked to structural problems.³⁴

4. International Criminal Justice

The development of international criminal responsibility of individuals reveals another interesting aspect of the Polish approach to courts and tribunals of an international character. Despite the earlier attempts, the actual beginnings of this process may practically be dated back to the aftermath of World War II.³⁵ Having been heavily affected by the scourges of the war, Poland unsuccessfully demanded special status at the International Military Tribunal. Such a denial could only partly be remedied by the underappreciated Supreme National Tribunal (Najwyższy Trybunał Narodowy) with its pioneering discussion of genocide and the first conviction of an influential Nazi German official for the crime of waging aggressive war.³⁶

During the Cold War period, Polish delegations actively participated in the projects aimed at progressive development of international criminal principles and mechanisms of justice, but it is only afterwards that the Security Council established the International Criminal Tribunals, for the former Yugoslavia and Rwanda, respectively. Both Tribunals were formally

³³ R. Degener, *Poland as a country engaging in efficient dialogue with the European Court of Human Rights*, [in:] 'Representation of the Republic of Poland...', p. 132.

³⁴ J. Stańczyk, *op.cit.*, pp. 117-118.

³⁵ G. Werle considered the Charter of the International Military Tribunal the birth certificate of international criminal law – see: G. Werle, *Principles of International Criminal Law*, The Hague 2005, p. 6.

³⁶ In the Greiser case. See M.A. Drumbl, *The Supreme National Tribunal of Poland and the History of International Criminal Law*, [in:] M. Bergsmo, Ch.W. Ling, Y. Ping (eds.), 'Historical Origins of International Criminal Law', vol. 2, Brussels 2014, pp. 563 ff.

established by the Security Council as the latter's subsidiary organs.³⁷ Although Poland was not a member of the Security Council at those times (and so did not participate in their establishment), it was obliged, as all UN Members were, to cooperate with the Tribunals, which may be very clearly seen in terms of enforcement of the sentence of Radislav Krstić within the territory of Poland.³⁸

According to Article 27 of the ICTY Statute, the imprisonment of convicts was to take place in one of the States that indicates their willingness to accept such persons and shall be carried out in accordance with the applicable law of that State, subject to the supervision of the Tribunal. Poland did express interest in assisting the Tribunal in this regard, and this cooperation formally started with the Agreement with the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia,³⁹ which was concluded on 18.09.2008 in The Hague. It was ratified by the President of Poland on

³⁷ See UN Doc. S/RES/827 (1993) and UN Doc. S/RES/955(1994).

³⁸ General Krstić was the first person to be found guilty of genocide by the ICTY, and, given also other confirmed charges convicted for persecution, crimes against humanity, and murder as a war crime, in effect sentenced by the Trial Chamber I to 46 years in prison (Prosecutor v. Krstić, Trial Chamber Judgment, Case No. IT-98-33-T, Judgment of 2.08.2001). The Appeals Chamber limited Krstić's responsibility for genocide from that of direct participation to only aiding and abetting and consequently reduced the sentence to 35 years of imprisonment (Prosecutor v. Krstić, Appeals Chamber Judgment, Case No. IT-98-33-A, Judgment of 19.04.2004). Initially, in late 2004, Krstić was transferred to the Wakefield prison in the United Kingdom to serve his sentence. During his stay there, in May 2010, the convicted was attacked by three Muslim inmates who slit his throat open. Krstić survived the assault, but the UK Government could not guarantee his safety, so he was transferred to the ICTY Detention Unit in order to await the determination of a new location for enforcement of his sentence.

³⁹ Umowa między Rządem Rzeczypospolitej Polskiej a Organizacją Narodów Zjednoczonych o wykonywaniu wyroków Międzynarodowego Trybunału Karnego dla byłej Jugosławii, sporządzona w Hadze dnia 18 września 2008 r. [Agreement between the United Nations and the Government of the Republic of Poland on the Enforcement of Sentences of the International Criminal Tribunal for the Former Yugoslavia, www.legal-tools.org/doc/6e589a/ [accessed on 30.09.2018], Polish OJ 2009, no. 137, item 1123.

9.07.2009⁴⁰ after having received the consent of the Polish Parliament.⁴¹ Thereby, under Article 91(2) of the Polish Constitution, it enjoys prevailing status over ordinary domestic legislation.

After some correspondence using diplomatic channels, the ICTY Registrar requested on 10.07.2012 the taking over of the enforcement of the remainder of Krstić's sentence on the territory of the Republic of Poland. Before rendering the respective decision, the Minister of Justice filed a motion to the District Court in Warsaw on the permissibility of transfer (takeover) of the ICTY sentencing judgement to be executed in Poland. After this requirement was met, the Minister of Justice formally agreed on 4.01.2013 to take over the enforcement of the sentence imposed on Radislav Krstić and informed the ICTY accordingly. This enabled the Tribunal to issue the Order designating the State in which Radislav Krstić is to serve the remainder of his sentence on 19.07.2013. In May 2014, the Warsaw District Court adjusted the sentence to 25 years of imprisonment, in conformity with requests from both the Defence and the Prosecution.⁴²

Against this background, it is important to note the symbolic value of Krstić's takeover.⁴³ After all, it was Poland that rendered the first conviction for the crime of genocide in the judgments rendered by the Supreme National Tribunal of Poland trying Nazi perpetrators.⁴⁴ These

⁴⁰ Oświadczenie Rządowe z dnia 3 sierpnia 2009 r. w sprawie mocy obowiązującej Umowy między Rządem Rzeczypospolitej Polskiej a Organizacją Narodów Zjednoczonych o wykonywaniu wyroków Międzynarodowego Trybunału Karnego dla byłej Jugosławii, sporządzonej w Hadze dnia 18 września 2008 r. [Government Statement of 3.08.2009 on the validity of the Agreement between the United Nations and the Government of the Republic of Poland on the Enforcement of Sentences of the International Criminal Tribunal for the Former Yugoslavia], Polish OJ 2009, no. 137, item 1124.

⁴¹ Ustawa z dnia 2 kwietnia 2009 r. o ratyfikacji Umowy między Rządem Rzeczypospolitej Polskiej a Organizacją Narodów Zjednoczonych o wykonywaniu wyroków Międzynarodowego Trybunału Karnego dla byłej Jugosławii, sporządzonej w Hadze dnia 18 września 2008 r. [The Law of 2.04.2009 on the ratification of the Agreement between the United Nations and the Government of the Republic of Poland on the Enforcement of Sentences of the International Criminal Tribunal for the Former Yugoslavia], Polish OJ 2009, no. 79, item 661.

⁴² See <https://www.prawo.pl/prawnicy-sady/gen-krstic-w-polsce-bedzie-odsiadywal-kare-25-lat-wiezienia,56212.html> [accessed on 30.09.2018].

⁴³ See O. Kuc, *Krstić Case Continued: Decision of the Circuit Court in Warsaw of 6 December 2012* (Ref. no. VIII Kop 222/12), 'Polish Yearbook of International Law' 2012, vol. XXXII, p. 323.

⁴⁴ Cf. P. Grzebyk, *The Role of the Polish Supreme National Tribunal in the Development of Principles of International Criminal Law*, [in:] M. Bergsmo, Ch.W. Ling, Y. Ping (eds.),

often-neglected judgments were delivered long ahead of the entry into force of the Genocide Convention, much advocated for by Raphael Lemkin, himself also of Polish origin.

Needless to say, the case of Krstić would definitely be a very important precedent as being the first official judicial pronouncement in favour of international judicial cooperation, which in itself may be relevant not only for the execution of the sentences ordered by the late ICTY⁴⁵ but, more importantly, for the future regime of cooperation with the permanent International Criminal Court.

Those positive prospects notwithstanding, some strong criticism should be levelled at the Polish passivism concerning the composition of the ICTY's bench. Unfortunately, during all years of the Tribunal's operation, it was impossible to appoint any of the judges of Polish nationality. The same would apply to the composition of the Rwandan Tribunal.

Much more involvement was indeed demonstrated during the establishment and then the shaping of the bench of the ICC. The Statute of the International Criminal Court was eventually adopted on 17.07.1998, by a vote of 120 to 7, with 21 countries abstaining. The Polish delegation to the Rome Conference was headed by Hanna Suchocka, then Minister of Justice, and included representatives of the MFA, Ministry of Justice and the doctrine (Professors Anna Wyrozumska, Jerzy Kranz and Michał Płachta). Poland signed the Rome Statute on 9.04.1999. After receiving statutory consent from the Parliament,⁴⁶ the Statute was ratified on 9.10.2001,⁴⁷ and then the instrument of its ratification was deposited on 12.11.2001.

'Historical Origins of International Criminal Law', vol. 2, Brussels 2014, pp. 603 ff.; M.A. Drumbl, *'Germans are the Lords and Poles are the Servants': the Trial of Arthur Greiser in Poland, 1946*, [in:] K.J. Heller, G. Simpson (eds.), *'The Hidden Histories of War Crimes Trials'*, Oxford 2013, pp. 411 ff.

⁴⁵ One should not exclude such a possibility. According to the assessment of the Ministry of Justice, presented during the parliamentary deliberations concerning the Agreement on the execution of the ICTY judgments, it was expected that the five convicted could serve their sentence within the territory of the Republic of Poland, see <http://orka.sejm.gov.pl/Biuletyn.nsf/0/76DB191077873B22C1257575004B8C42?OpenDocument>, [accessed on 30.09.2018].

⁴⁶ Ustawa z dnia 5 lipca 2001 o ratyfikacji Rzymskiego Statutu Międzynarodowego Trybunału Karnego [The Law of 5.07.2001 on ratification of the Rome Statute of the International Criminal Court], Polish OJ 2001, no. 98, item 1065.

⁴⁷ Polish OJ 2003, no. 78, item 708.

There had been some serious constitutionalists' debates before the ratification took place.⁴⁸ First and foremost, it was questioned which ratification procedure should be chosen. The majority of scholarly authorities advocated for ratification according to Article 89 of the Polish Constitution as a 'sufficient ratification mode'.⁴⁹ Some opposing views were also articulated, with a suggestion to use a more complicated ratification mode under Article 90, which was originally thought of as a European clause (i.e. defining the ratification mode for accession to the European Union⁵⁰). It was also warned against creating in such a way 'a precedent with unforeseen effects for the future ratification practice', as e.g. Article 90 had not been applied for ratification of the North Atlantic Treaty.⁵¹ Members of the Polish delegation, Professors Wyrozumska and Płachta, opted for the ratification mode of Article 89,⁵² and such a position eventually prevailed.

There had also been some additional controversies accompanying the ratification of the Rome Statute. These included compatibility with the Constitution of Article 27 of the Rome Statute on irrelevance of official capacity,⁵³ which were then overcome by means of a friendly interpretation of the domestic law.

⁴⁸ Cf. K. Karski, *Ratyfikacja Statutu Międzynarodowego Trybunału Karnego (Zagadnienia prawnomiędzynarodowe i konstytucyjne)* [Ratification of the Statute of the International Criminal Court (International Law and Constitutional Issues)], 'Państwo i Prawo' 2001, no. 1, pp. 50–63.

⁴⁹ See opinions by Professors Sarnecki and Lankosz, *W sprawie ratyfikacji przez Polskę Rzymskiego Statutu Międzynarodowego Trybunału Karnego* [On Ratification by Poland of the Rome Statute of the International Criminal Court], 'Przegląd Sejmowy' 2001, vol. IX, no. 4(45), pp. 153 and 166.

⁵⁰ Cf. opinions by Professors Z. Galicki, A. Szmyt, C. Mik and M. Granat, *W sprawie ratyfikacji przez Polskę Rzymskiego Statutu Międzynarodowego Trybunału Karnego* [On Ratification by Poland of the Rome Statute of the International Criminal Court], 'Przegląd Sejmowy' 2001, vol. IX, nr 4(45), pp. 138, 140, 141 ff. and 144.

⁵¹ J. Kolasa, *W sprawie ratyfikacji przez Polskę Rzymskiego Statutu Międzynarodowego Trybunału Karnego* [On Ratification by Poland of the Rome Statute of the International Criminal Court], 'Przegląd Sejmowy' 2001, vol. IX, no. 4(45), p. 149.

⁵² M. Płachta, A. Wyrozumska, *Problem ratyfikacji Statutu Międzynarodowego Trybunału Karnego (Uwagi polemiczne w związku z artykułem Karola Karskiego)* [Ratification by Poland of the Rome Statute of the International Criminal Court (A polemic with the article by Karol Karski)], 'Państwo i Prawo' 2001, no. 5, pp. 87-97.

⁵³ In a similar vein, the government argued in its ratification motion submitted to Parliament that immunities as provided by the Polish Constitution would not bar responsibility before international criminal tribunals, which in itself has a solid basis under international law – see: *Uzasadnienie wniosku o ratyfikację Rzymskiego Statutu*

On the other hand, the reference to the surrender of persons to the International Criminal Court brought about one of the two hitherto changes to the Constitution, specifically to its Article 55, which originally had barred extradition.⁵⁴ The amendment resulted not only from collision with the Rome Statute, but was first of all a consequence of the Constitutional Tribunal's judgment of 27.04.2005, case P 1/05, concerning the European Arrest Warrant.⁵⁵

Relevant for our analysis is paragraph 3 of Article 55 which does not require the compliance with the above-mentioned conditions for extradition which is requested by an international judicial body established under an international treaty ratified by Poland, in connection with a crime of genocide, crime against humanity, war crime or a crime of aggression covered by the jurisdiction of that body'. It refers directly to surrendering persons to the ICC, with some additional guarantees as provided in a subsequent (4) paragraph.⁵⁶ According to Article 55(5), the admissibility of extradition is adjudicated by the courts.

On the other hand, and still against the background of the ICC, it is necessary to note that the Agreement on the Privileges and Immunities of the International Criminal Court, adopted by the Assembly of States Parties to the International Criminal Court on 9.09.2002,⁵⁷ was only

Międzynarodowego Trybunału Karnego, p. 8, document no. 2431, <http://orka.sejm.gov.pl/RejestrD.nsf/druk?OpenAgent&2431> [accessed on 30.09.2018].

⁵⁴ Ustawa z dnia 8 września 2006 r. o zmianie Konstytucji Rzeczypospolitej Polskiej [The Law of 8.09.2006 on the Amendment of the Constitution of the Republic of Poland (Polish OJ 2006, no. 200, item 1471). The respective amendment modified the original formulation of Article 55 and added several paragraphs to that provision. Accordingly, no longer shall the extradition of a Polish citizen be completely prohibited, as paragraphs 2 and 3 specify cases in which it is permissible.

⁵⁵ Where the Tribunal declared Article 607t §1 of the Penal Procedure Code as not conforming with the Constitution to the extent it referred to Polish nationals – see Judgment of 27.04.2005, P 1/05 (Polish OJ 2005, no. 77, item 680).

⁵⁶ According to the mentioned provision: The extradition of a person suspected of the commission of a crime for political reasons but without the use of force shall be forbidden, so as to an extradition which would violate the rights and freedoms of persons and citizens.

⁵⁷ Agreement on the Privileges and Immunities of the International Criminal Court Adopted by the Assembly of States Parties, First session, New York, 3-10.09.2002, Official Records ICC-ASP/1/3; United Nations Treaty Series, vol. 2271, p. 3.

ratified by Poland in February 2009 and respectively entered into force on 12.03.2009.⁵⁸

The drafters of the Rome Statute foresaw a Review Conference to consider any amendments to it to be convened seven years after its entry into force.⁵⁹ The respective amendments on expanding the notion of war crimes committed during non-international armed conflicts and definition of the crime of aggression (and conditions under which the Court could exercise its jurisdiction with regard to that crime) were adopted at the Conference in Kampala in June 2010.⁶⁰ Again, their ratification by Poland required a prior consent granted by statute.⁶¹

In late September 2014, Poland, alongside Spain and Latvia, submitted the ratification documents concerning all these amendments. Given the relatively slow pace of developments, Poland may be considered as avant-garde in expanding the jurisdiction of the ICC. It is then important to note that in March 2015, Professor Piotr Hofmański was appointed Judge at the ICC and was assigned to the Appeals Division.

In summary, one may thus observe a clear improvement as far as the Polish approach towards the ICC is concerned.

5. International Tribunal for the Law of the Sea

The present survey may not ignore the International Tribunal for the Law of the Sea, as foreseen by the United Nations Convention on the Law of the Sea.⁶² Poland was actively involved in preparatory works and

⁵⁸ See Polish OJ 2009, no. 64, item 534.

⁵⁹ See Article 123 of the Rome Statute.

⁶⁰ B. Krzan, *Frieden und Gerechtigkeit nach der Kampala-Konferenz: Einige Überlegungen zur Rolle des Sicherheitsrats in der Völkerstrafgerichtsbarkeit*, 'Archiv des Völkerrechts', vol. 48, no. 4, December 2010, pp. 467-485.

⁶¹ Ustawa z dnia 21 lutego 2014 r. o ratyfikacji poprawek do Rzymskiego Statutu Międzynarodowego Trybunału Karnego, sporządzonego w Rzymie dnia 17 lipca 1998 r., przyjętych podczas konferencji rewizyjnej w Kampali (rezolucje nr 5 i 6) w dniach 10 i 11 czerwca 2010 r. [The Law of 21.02.2014 on Ratification of the Amendments of the Rome Statute, adopted during the Kampala Review Conference (resolutions nos. 5 and 6) on 10-11.06.2010], Polish OJ 2014, item 500.

⁶² The Convention was adopted by the Third United Nations Conference on the Law of the Sea and opened for signature, together with the Final Act of the Conference, at Montego Bay, Jamaica, on 10.12.1982.

signed the Convention at the end of the Jamaican Conference. However, ratification took place long after the system change of 1989. The Law of the Sea Convention was ratified on 29.07.1994 and entered into force in respect to Poland on 13.11.1998.⁶³

Article 10 of Annex VI provides only vaguely that ‘the members of the Tribunal, when engaged on the business of the Tribunal, shall enjoy diplomatic privileges and immunities’. Therefore, on 23.05.1997, the seventh Meeting of States Parties adopted the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, which entered into force on 30.12.2001. This latter agreement was ratified by Poland only in 2008,⁶⁴ which may seem quite surprising, as Stanisław Pawlak has been a Member of the Tribunal since 1.10.2005. He was re-elected as from 1.10.2014 and has been President of the Chamber for Marine Environment Disputes since October 2017.

The International Tribunal for the Law of the Sea was established in 1996 on the basis of Annex VI containing the Statute of the International Tribunal. As widely known, Article 287(1) provides States with the freedom to choose, by means of a written declaration, one or more means for the settlement of disputes concerning the interpretation or application of this Convention.⁶⁵ Such a comprehensive regulation of dispute settlement may be considered to be a far cry from a traditional rule of international law, according to which a State may decline to refer a dispute to an independent (judicial) entity.⁶⁶ This system of dispute settlement may be assessed from different angles, especially given the complicated rules concerning delimitation of competing jurisdictional schemes.⁶⁷ There have been some strong doctrinal postulates that Poland makes a declaration on

⁶³ Polish OJ 2002, no. 59, item 543 – appendix.

⁶⁴ Polish OJ 2008, no. 13, item 78.

⁶⁵ These include: (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI; (b) the International Court of Justice; (c) an arbitral tribunal constituted in accordance with Annex VII; (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.

⁶⁶ See E. Karska, *Międzynarodowy Trybunał Prawa Morza* [The International Tribunal for the Law of the Sea], [in:] J. Kolasa (ed.), ‘Współczesne sądownictwo międzynarodowe’ [Contemporary International Courts and Tribunals], ‘Volume I: Zagadnienia instytucjonalne’ [Institutional Issues], Wrocław 2009, p. 107.

⁶⁷ See A. Wiik, *Choice or default? UNCLOS, other dispute settlement systems and choice of procedure pursuant to Article 287 UNCLOS*, [in:] B. Krzan (ed.), ‘Jurisdictional Competition of International Courts and Tribunals’, Wrocław 2012, pp. 121 ff.

the compulsory dispute settlement procedure,⁶⁸ but so far the Polish Government has consistently refrained from doing so, which may be heavily regretted.

6. Concluding remarks

International justice has taken a long journey over the past century. The approach of the reinstated Polish State towards international judiciary reveals the complexity of its history and the respective political and legal changes. This also goes in line with the developments of permanent international courts and tribunals, in themselves rather recent phenomena on the international plane.

The most striking point is the radical change of the post-war Poland vis-à-vis the International Court of Justice, especially when juxtaposed to the respective approach of the Second Republic towards the predecessor, i.e. the Permanent Court of International Justice. With regard to the post 1945 period, it is important to underline the changing attitude reflecting the political changes of 1989, with the submission of the facultative clause being the most noticeable development.

The catalysing effect of the democratic changes may also be observed with regard to the European system of human rights protection. Some of these developments were, however, only introduced in recent times as the ITLOS or the international criminal jurisdictions. With regard to the latter, it is somehow ironic that Poland, so heavily affected by WWII atrocities, was so ineffective in approaching the modern international criminal justice mechanisms.

All in all, one may offer a rather comforting conclusion that over the last century, the Republic of Poland has in general been supportive of international courts and tribunals. Throughout all this time, Poland has manifested a *de iure* readiness to engage with international judiciary and, at the same time, to contribute to developments in the respective fields.

⁶⁸ J. Symonides, *Międzynarodowy Trybunał Prawa Morza – specyfika, orzecznictwo, perspektywy* [International Tribunal for the Law of the Sea – specific features, jurisprudence, perspectives], *Gdańskie Studia Prawnicze* 2013, vol. XXIX, pp. 220 ff.

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