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Some reflections on modern subsidiary law-making processes in public international law with special regard to diplomatic international law

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SOME REFLECTIONS ON MODERN SUBSIDIARY LAW-MAKING PROCESSES IN PUBLIC INTERNATIONAL LAW WITH SPECIAL REGARD TO DIPLOMATIC INTERNATIONAL LAW*

ABSTRACT	
Author analyses the concept of modern subsidiary law-making processes in public international law with special regard to diplomatic international law and in the light of so – called soft – law concept. The lack of real (permanent, quite fast and intensive, responding for international society needs) codification in diplomatic (and international in general) law creates the space (and some approvement) for untypical methods of lawmaking. On this ground special role play judicial decisions of international courts, that are the source of explaining, reasoning and understanding international norms.	L'Autrice analizza i nuovi processi di elaborazione normativa nel diritto pubblico internazionale, con specifico riferimento alla diplomazia internazionale alla luce dei cosiddetti meccanismi di soft law. La carenza di un reale (permanente, veloce e rispondente ai bisogni della società in ambito internazionale) sistema di codificazione in ambito diplomatico (ed in generale nel diritto internazionale) crea i margini per metodi di formazione delle leggi di tipo informale. Un particolare ruolo è svolto, in questi processi, dalle decisioni delle Corti internazionali, che rappresentano la fonte di interpretazione, spiegazione e comprensione delle norme di diritto internazionale.
Law-making - international law	**Formazione normativa - diritto internazionale**

1. Any analysis of the sources of public international law, aside from rulemaking procedures and their applications as the products of a complex process of creating legal norms, should also consider a range of indirect contributory factors that affect this process. Indeed, a complete separation of these additional elements, often only indirectly impinging upon the process, is impossible.

* Saggio sottoposto a referaggio secondo il sistema del doppio cieco.

Reaching international agreement on common rules regarding acting in a particular legal category is difficult[1], time-consuming, multistage and can lead to both an emergence of entirely new legal norms and either modification or termination of the existing ones. While identifying all the formal and informal factors affecting the end result of this process would be difficult, a prominent role among these certainly play expert opinions and judicial decisions of international courts. In reality, states, non-state actors and other participants in international relations seek less formalised ways of reaching consensus and shaping the desired and effective rules of conduct, particularly in procedural and strictly political matters, especially in the area of commerce, health, environment, investment and finance, as well as the protection of human rights. In all these areas of law, the processes of diplomatic negotiation that safeguard confidentiality and take into account the varied interests and opinions of the involved parties are undoubtedly crucial, even if they do not necessarily lead, for various reasons, to reaching an international agreement or a consensus on certain international legal practice.

2. The point of view presented here therefore considers the broad meaning of the processes of international diplomatic law formation and formal manifestations of these norms alongside identifying the factors and processes that influence it directly and indirectly. One of the reasons behind adopting such an understanding is the specificity of public international law and international diplomatic law in particular. In the case of international law in general, not to mention diplomatic law singularly, the problem of its sources must not be treated analogously to the one concerning domestic law due to the unique features of international law such as the lack of supreme legislature, the existence of facultative international courts as well as the lack of a supranational law enforcement apparatus.

The classic tripartite division of legislative, executive and judicial power does not work in international law in the same way as it does in domestic law. While the typology of the sources of international law established in Art. 38 of the Statute of the International Court of Justice reflects the times of its founding, its relevance in the modern world is questionable in the light of certain institutional crisis in law-making. The process of codification of international law is complicated, often too slow and ineffectual in regulating crucial issues such as diplomatic protection, jurisdictional immunity or diplomatic asylum.

For many years the doctrine of international law has been debating so-called soft law, understood – according to some – as regulatory instruments created in nonbinding legal obligations[2] or – according to others – as international organisations' rule-

[1] H. LAUTERPACHT, *Codification and Development of International Law*, in «AJIL», 49, (1955), p. 17.
[2] See i.e.: C.M. CHINKIN, *The Challenge of Soft Law: Development and Change in International Law*; *International and Comparative Law Quarterly*, in «ICLQ», 38/04, (1989), pp. 850-866; K. W. ABBOTT, D. SNIDAL, *Hard and Soft Law in the International Governance*, in «International Organizations»,

making[3], although for obvious reasons soft law[4] is not mentioned in Art. 38 of the ICJ Statute.

K. W. Abbott and D. Snidal see the reasons for both the evolution and the remarkable expansion of soft law precisely in its softness, or easiness – it is simply a far easier and more favoured way of achieving the aims of both state and non-state actors. The authors, however, warn against simply dismissing what they call 'soft legalization' of international law, which is the part of the international law-making process that results in soft law. In fact, they consider soft law a valuable framework in itself, one facilitating treaty regulation between international actors, encouraging practices that lead to customary rules and, finally, significantly influencing the development of international politics.

A. T. Guzman and T. L. Meyer, who also support the notion that soft law should be treated as a crucial, even essential, element of the international legal order, outline a very interesting, particularly in the context of diplomatic law, concept of International Common Law defining it as a process of creation of non-binding legal rules that international courts and other institutions apply to binding legal rules. The authors also point out that soft law, while non-binding, does have legal consequences.

Soft law and the role it should play in international law does have its critics in the doctrine, particularly as regards the matter of whether or not soft law should constitute a part (a module) of public international law. These radically critical voices come mostly from the traditional flank of the doctrine as, although liberalisation is the order of the day, diplomatic law remains deeply rooted in the centuries-old tradition. For reasons directly linked with the very nature of diplomatic law then, seeking solutions to the problems of international diplomatic law in subsidiary law-making processes in the light of the inefficacies of traditional legal instruments or failures to reach agreements leading to international treaties, can be seen as reasonably doubtful.

One of the critics of soft law is J. Klabbers who maintains that the relatively popular assumption that soft law is an integral part of international law is theoretically inconsistent and cannot be supported[5], even though domestic and international courts

(2000), pp. 421-456; U. MÖRTH (ed.), *Soft Law in Governance and Regulation, an Interdisciplinary Analysis*, Cheltenham , Edward Elgar Publishing, 2004; A. T. GUZMAN, T. L. MEYER, *International Soft Law*, in «Journal of Legal Analysis» (dalej jako: JLA) 2 (2010), pp. 171-225.

[3] For instance financial organisations, see i.e.: CH. BRUMMER, *Why Soft Law Dominates International Finance – and not Trade*, in «Journal of International Economic Law», 3, (2010), p. 623-643. See also: A. SCHÄFER, *Resolving Deadlock: Why International Organizations Introduce Soft Law*, paper for the EUSA Ninth Biennial International Conference, Austin, Texas, March 31- April 2, 2005 (text available at: www.aei.pitt.edu

[4] D. SHELTON, *Normative Hierarchy in International Law*, in «AJIL», 100, 2, (2006), p. 292.

[5] Similar opinion has been expressed during UN colloquium on sustainable development and progressive development of international law by Y. KOLOSOV, *Making Better International Law: The International Law Commission at 50*, in «Proceedings of the United Nations Colloquium on Progressive Development and Codification of International Law», (1998).

occasionally refer to these non-binding rules in their judgments[6]. The author argues that accepting soft law solutions as legal instruments would result in relativization of legal relations and obligations according to the following pattern: obligations 'less' and 'more' binding, agreements 'legally binding'[7] as opposed to agreements 'politically binding', agreements 'morally binding' versus agreements 'legally binding', etc. Klabbers rejects the argument of the proponents of treating soft law as part of international law whereby soft law becomes the panacea for the inflexibility of law (in general, but international and diplomatic law in particular) and its failures to 'keep up' with the needs of the international community. According to Klabbers, from the legal perspective international agreements can be considered solely in binary terms: as either binding or non-binding (alternatively, as regulated by domestic or international laws). Moreover, his line of thought suggests that the part of the doctrine in favour of soft law is motivated by the desire to curry favour from governments as well as political (and opportunistic) multiplication of the sources of law. Indeed, he considers the soft law framework, with its multiple normative orders/systems that are legally equivalent and opposing, theoretically untenable. In his opinion, the inclusion of politically or morally binding agreements and other soft law instruments in the international legal system is risky from the perspective of the democratic oversight of the evolution of international relations. He emphasises the lack of clarity and commonality in state practice as well as the fact that this practice does not always result in establishing new regulations amending, changing or replacing traditional treaties. Consequently, no other normative order can be a real alternative to public international law, or at least no state would intentionally opt for a different system. Etiquettes and morality change with time and with the changing makeup of societies but they are not wilfully and intentionally created. Therefore agreements cannot be made to bind only morally or honorifically while failing to bind legally. Politics is not an alternative to law; to the contrary, it is the law that provides a normative system for politics. Klabbers demonstrates that the judicial decisions of the Permanent Court of International Justice and its successor the International Court of Justice corroborate this argument. In his opinion, courts (not only the ICJ but also domestic courts and the Court of Justice of the European Union) above all do not apply (or rarely so) legal instruments other than treaties and never consider treaties as non-binding (notwithstanding the cases of invalidity of treaties mentioned in Art. 43-56 of the Vienna Convention on the Law of Treaties of 23 May 1969[8]) or binding in other than legal sense (system), whereas they (occasionally) apply in their judgments legal norms other than a treaty. And even if the courts – rarely – have decided that some agreements were not legal but binding based on a non-legal premise, they eventually returned to the concept of the treaty as the basis for judgment.

[6] J. KLABBERS, *The Concept of Treaty in International Law*, The Hague, Brill, 1996, pp. 157-164.
[7] J. KLABBERS, *op.cit.*, pp. 157-164 and 245.
[8] https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf

3. As a side note to this discussion, it is worth pointing out an interesting element of the concept introduced above, which is the role of parties' intent in any analysis of a treaty. According to Klabbers, despite the widespread opinion, this role is very limited and boils down to merely establishing the intention of being (legally) bound by the treaty – otherwise making a treaty is pointless. In addition, the intent of either party can only be assumed, and not proved, although establishing its existence can be useful in terms of separating treaties from political statements or legally binding one-sided agreements. Establishing intent thus plays a key role in separating what is – from what is not – law.

It seems that – despite the aforementioned substantial arguments – the nature of the international community nonetheless still requires what can be called 'subsidiary norm-making processes'. The reason for it is not only certain inefficiency of the treaty law-making procedures but also the changing needs and expectations of the international community. Where diplomatic relations are concerned in particular, the value of not necessarily binding agreements depends on the level of intensity (but also repressiveness) of bi- or multi-lateral relations as well as the quality and number of associated problems that cannot always be resolved within a formalized arrangement of a binding agreement.

If the term soft law is defined as any non-binding legal instruments applied in international relations that aim to exert influence on the conduct of states and sometimes have legal consequences, then international diplomacy (understood as the area of relations between states and other actors of international law regulated by diplomatic law) is certainly the area where they can be broadly applied but also one that demonstrates a profound need to do so. Considering that diplomatic law is an integral yet relatively autonomous part of public international law, its specific character cannot be overlooked and the following special features ignored: confidentiality, flexibility of the procedures created to facilitate agreements between states, a need to respect the will of states and a very careful formulation of demands. Diplomatic relations between states, more than any other affairs, call for any means by which states would not feel discouraged or pressured. These relations require patience, detailed knowledge of the given situation and painstaking, tedious daily labouring towards an agreement. From the perspective of diplomatic law, soft law is a well-recognised option despite the contradictions and imperfections it entails for a strictly legal reasoning. The current state of codification of international diplomatic law is a clear indication that the process of codification is not and must not be the only – albeit it will remain the central – factor shaping the norms of state conduct and other actors in the sphere of diplomatic relations. This sphere is not limited solely to obligations and non-obligations, law and non-law, treaty and non-treaty and to whether what-is-not-a-treaty does or does not legally matter. It is precisely this sphere of careful building of inter-state relations that more than any other area of international law requires these shades of grey that

Klabbers described as unbecoming of legal reasoning[9]. The political nature of international relations does not remove normativism from the rules of conduct yet it strongly influences the choice of legal and extra-legal instruments to safeguard effective execution of diplomatic goals. The political nature of these relations makes it difficult to persuade (encourage) states to regulate their interactions in particular matters through treaties, and even if it succeeds, the process is prolonged, sometimes ill-timed, incomplete and ineffective. This is where the only possible solution – whether permanent or temporary – is provided through soft law instruments. The law is not and must not be a dead letter but must serve to achieve concrete aims, in this case – to safeguard harmonious international relations.

4. Adopting the viewpoint that very broadly recognises all influences shaping the norms of international law requires a more in-depth reflection on the factors stimulating international, including diplomatic, processes of law-making. Among these factors, the judgements of international courts play a crucial role (similarly to the opinions of the doctrine, although these are outside of this discussion). The need for such a reflection derives from the transformation of the ICJ case-law (and the doctrine) in terms of the position, significance and degree of growth from the time of the adoption of its statute to its current status and relevance, adding the tremendous development of both areas.

The doctrine has already seen well supported arguments demonstrating that in order to advance in line with the needs and requirements of the international community, current international law will have to rely on less traditional and less institutionalised (informal) norm-making processes in addition to the traditional international agreement-making and evolving international customary law.

One of the more significant and interesting research projects in this regard was conducted by the Hague Institute for the Internationalisation of Law, which involved over 40 scholars and practitioners between 2009 and 2011 and resulted in a book-length study Informal International Lawmaking[10]. The authors point out that the 'informality' of international law-making should be understood as dispensing with certain restrictive procedures traditionally required in international law regarding either the actors (participants) of the international norm-making process or the components (different stages, their order, criteria and content) of this process. The process of international 'legislative' cooperation can be de-formalised in the sense that the participants will be chosen informally (in contrast with traditional forums created by international organisations for the purposes of treaty negotiation and comprising solely the representatives of the states and organisations involved). It does not imply that the states and organisations in question will not be able to participate or even patronise the process (e.g. through sharing physical venues or permanent staff) or that certain

[9] J. KLABBERS, *op.cit.*, pp. 157-245.
[10] A. BERMAN, S. DUQUET, J. PAUWELYN, R. A. WESSEL, J. WOUTERS (eds.), *Informal International Lawmaking: Case Studies*, The Hague, Brill, 2012.

procedural elements will be completely absent. De-formalising can entail engaging non-traditional diplomatic actors (such as heads of state, ministers of foreign affairs and diplomatic attachés) in the process of communication and negotiation and also involving other ministers and public officials, independent agencies, representatives of industries (who can also serve as consultants), non-governmental organisations[11] and private actors. Finally, output informality can simply mean achieving unconventional results in the law-making process – instead of the expected treaty or international organisation's resolution, the process may produce a specific code of conduct, a guideline, a directive, a declaration or a particular principle or policy. It is worth emphasising, however, that this informal law-making process contains many normative elements, which would typically be side-lined or even excluded from the traditional law-making process.

The concept of soft law discussed earlier in the context of subsidiary normative processes in public international law as well as in international diplomatic law sheds light on the nature of the content of the existing law, but given the flawed functionality and efficacy of the formal international and diplomatic law-making processes, the question of subsidiary normative processes corresponds to its subjective side. Coming from this perspective and considering informal law-making, A. Boyle and C. Chinkin offer a compelling argument that in the modern globalised world (and somewhat in response to the growing threat of world terrorism) it is necessary to revise the traditional approach to the forms, instruments and actors of the international law-making process in its entirety. Soft law then is a concept that can be located on the output side of the process while as far as the legal actors are concerned, in addition to states, other non-state entities such as transnational networks, non-governmental organisations and even indigenous people can take part in international law-making. According to the authors, this multilateral (informal and led by non-state actors outside of international governing bodies) law-making is a form of practicing diplomacy.

Judicial decisions of the international courts play a critical role in the refinement and constant revision of both the treaty and customary norms[12], at times providing the only way to bring the latter to light. International tribunals in their decisions interpret the content of legal norms, clarify their application, ascertain the standards regulating conduct in various legal relations, indicate the loopholes, imprecisions and flaws in regulations, as well as contribute to the arrangement and development of law.

5. Facultative courts are one of the specific features of international law where courts are subject to the will of the state, which is often lacking when legal conflict or doubt is present. International courts have four major functions: administrative control

[11] About that see: A. BOYLE, *i Ch. Chinkin w swojej pracy The Making of International Law*, Oxford Universty Press, Oxford, 2007, pp. 52-97.
[12] W. GÓRALCZYK, *Prawo międzynarodowe publiczne w zarysie*, Warszawa, Wolters Kluwer, 2000, p. 71.

(exercised through interpreting administrative decisions in cases brought by individual actors), executive control (verifying state conduct according to the norms accepted by the international community and explicated by the court), constitutional control (intended to ascertain the position and legality of state legislation and governance in relation to the superior international law) and peace-making (conflict resolution and interpretation of international legal norms in cases brought to the court).

The judicial activity of international courts is a function of international relations and their dynamics and generally depends on the level on legal awareness and legal culture of the international community. This dynamic and legal awareness is largely shaped by diplomatic relations and the norms of diplomatic law, which is deeply rooted in the ancient legal cultures and which for centuries has been moulding a universal code of conduct and nurturing the need for respect in international relations.

The knowledge of diplomatic law, acquired thanks to the judicial activity of international courts, should serve the states to cultivate and advance this law as appropriate – in this sense the decisions of international courts play not only a motivating role but also indirectly (in a loose sense) a law-creating one[13], as they have the potential to create standards of behaviour and desired rules of conduct that can be eventually codified if accepted by the international community; they can expose the flaws and imperfections of the existing treaties and thus encourage negotiation of better ones – more relevant, more precise and more universal. As S. Nahlik put it in reference to the role of the Permanent Court of International Justice, 'regardless of the ruling in a given case, which sometimes has only secondary or momentary importance, the analyses conducted by the Court and its statements based on these analyses assist in great measure in ascertaining or at least clarifying the meaning of a particular norm of international law'[14]. This claim is equally relevant in the case of modern international courts. Only the continued activity of international courts in resolving international conflicts deriving from international agreements can improve both these agreements and their execution[15]. Only an active, authoritative, well-functioning and dependable international court with universal competences can play the role of a catalyst for the creation of good (precise, inclusive of the interests and rights of all international actors, effective and universal) law as well as disseminate it. Although concrete decisions are only relevant to the parties in a particular case, the norm applied to the decision will be treated as the presumed norm of international law in subsequent decisions[16]. It will aid

[13] K. WOLFKE, *Rozwój i kodyfikacja prawa międzynarodowego, wybrane zagadnienia z praktyki ONZ*, Wrocław 1972, p. 81; also A. AUST, *Handbook of International Law*, Cambridge, Cambridge universty Press, 2009, p. 10.
[14] S. NAHLIK, *Prawo międzynarodowe i stosunki międzynarodowe*, Kraków, 1981, p. 99.
[15] L. EHRLICH, *Prawo międzynarodowe,* Warszawa 1958, p. 27; as well as I. GAWŁOWICZ, M. A. WASILEWSKA, *Postulat o integrującą rolę sądownictwa międzynarodowego w prawie międzynarodowym publicznym,* [in:] *Modele integracji międzynarodowej: uniwersalny, kontynentalny, sektorowy – a państwo, prawo, idee*, T. SMOLIŃSKI (ed.), Szczecin 2006, pp. 189-206.
[16] A. KLAFKOWSKI, *Prawo międzynarodowe publiczne*, Warszawa 1979, p. 128.

the rise of a global civil society[17], a new international community – an international community of law.

The argument that international judicial activity has a crucial, if indirect, impact upon international legal order is favoured by a number of opinion makers within the doctrine of international law.

In B. Lu's analysis of the doctrine's appraisals and criticisms of the effectiveness of the International Court of Justice as well as the means by which this effectiveness could be increased and its influence on international law-making augmented, he advocates deep restructuring aimed to reform the court in terms of its jurisdiction and broadening its interpretive role in international conflict resolution[18].

J. D'Aspremont takes it further by considering a systemic integration of international law through domestic courts, highlighting their role in interpreting public international law and their influence on the international legal order. While the author recommends strengthening the dialogue between domestic and international courts as a way of solidifying the relations between domestic and international legal systems, however, he also points out the dangers involved, including the possibility of limiting the role of public international law entirely. The process that gives shape to international law is fragmentary and decentralised[19].

Similarly critical towards the inefficacy of the International Court of Justice and the potential countermeasures, but even more forcefully expressed, is S. Gozie Ogbodo's opinion, rare in the doctrine, that appointing judges from the states that are permanent members of the UN Security Council, the so-called Great Powers, is detrimental to the International Court. The author, however, is less concerned with the impact of the Court on international law-making and concentrates more on concrete proposals to improve the procedures of the ICJ and to frame its output in the perspective of the emergent global concerns such as world terrorism, human trafficking and environmental challenges. Gozie Ogbodo recommends strengthening of the Court's advisory role, which in his opinion has been so far an underappreciated instrument, accessible to few but having the potential to become a forceful device in the hands of the Court which could use it to increase its real contribution to shaping the international

[17] A. WEJKSZNER, *Wpływ globalizacji na rozwój międzynarodowych organizacji pozarządowych i ewolucję globalnego społeczeństwa obywatelskiego*, in W. MALENDOWSKI (ed.), *Wpływ globalizacji na procesy rozwojowe współczesnego świata. Istota – uwarunkowania – tendencje*, Poznań, 2004, pp. 65 – 79.

[18] B. LU, *Reform of the International Court of Justice – a Jurisdictional Perspective*, in «Perspectives», 5, 2004, passim.

[19] J. D'ASPREMONT, *The Systemic Integration of International law by Domestic Courts: Domestic Judges as Architects of the Consistency of the International Legal Order*, in A. NOLKAEMPER, O. FAUCHALD (eds), *The Practice of International and National Courts and the (De-) Fragmentation of International Law*, Oxford, Hartpub, 2012, pp. 141-165.

legal order. This last recommendation seems particularly pertinent in the sphere of international diplomatic law[20].

According to M. Balcerzak, the specific regimen of treaties protecting individual rights does not create conditions separating them from international law; to the contrary, they still constitute its integral part, where international (here: regional) courts, in addition to interpreting and applying the normative rules within their jurisdiction (which is their fundamental role), also make contributions to the classical international law[21]. Particularly significant here is the opinion of L. Antonowicz who points out that international jurisdiction is an integral fabric of the evolution and codification of international law[22].

Improving international diplomatic law, refining it, identifying and fixing the loopholes in it has become, somewhat 'incidentally' in an effort to advance public international law, the central role of the active international jurisdiction and it is worth emphasising the special role the courts play in interpreting customary norms, whose origin, meaning and scope are often highly difficult to establish.

International diplomatic law in particular often appeals to good faith and good will of the parties, to trust and confidentiality, to an open and accepting attitude. Executing the decisions of international courts therefore requires implementing additional safeguards and protective measures. Practical implementation of the decisions of the ICJ and other international courts should be guaranteed by effective, independent and impartial world institutions. The Security Council[23] is not adequate in this area and the Court itself could be equipped with the added authority to impose fines on noncompliant parties or request suspending members; such competencies could also be granted to the United Nations General Assembly.

The statute of the ICJ plays a crucial role not only in public international law but also in the sphere of diplomatic law. The regulations of Art. 38 of the ICJ Statute are invoked in the doctrine always in the context of the sources of international law and the opinions regarding their relevance can be divided into two main strands. According to some, Art. 38 of the ICJ Statute directly enumerates (in a technical, formal sense) the grounds for court's jurisdiction and, for the purposes of establishing the sources of international law, the Article should be treated as a guide. The second set of opinions argues that since the preamble of the Statute states that the Tribunal's decisions are based on international law, Art. 38 of the ICJ Statute determines not only the basis of

[20] S. GOZIE OGBODO, *An Overview of the Challenges Facing the International Court of Justice in the 21st Century*, in «18 Annual Survey of Int'L&Comp Law», 1, (2007).
[21] M. BALCERZAK, *Immunitet państw i organizacji międzynarodowych a ochrona praw człowieka. Uwagi na tle orzecznictwa Europejskiego Trybunału Praw Człowieka*, in «Kwartalnik Prawa Publicznego», 3, (2003), pp. 109-110.
[22] L. ANTONOWICZ, *Podręcznik prawa międzynarodowego*, Warszawa, Allegro, 2000, p. 34.
[23] M.N. SHAW, *The International Court of Justice: a Practical Perspective*, in «The International and Comparative Law Quarterly», 46, (1997). See also: W.M. REISMAN, *The Enforcement of International Judgments*, in «The American Journal of International Law», 63, (1969), pp. 11 – 26.

its own sentencing but also the sources of international law[24]. If some of the statements of the Court's Statute are of such key importance to international law and its understanding of fundamental issues, then so should be the decisions of the Court itself.

International courts thus have a significant, if indirect, impact on the development of diplomatic international law, even though both the impact and the development have little to do with the traditional way of understanding the process of law-making.

The lack of active involvement of international actors in international jurisdiction can lead to a devaluation of the courts' role and position in international law, which would be a highly undesirable result. The most universal international court in the world, the World Court, or the International Court of Justice, is not particularly active and this limited judicial activity does not produce conditions for maintaining a role suitable for a court of this magnitude. The significance and role of international courts in general seem to be rising, however, as international judiciary has experienced tremendous growth in recent decades. International courts of human rights have been established for the benefit of individual applicants; specialised courts with recognised competences in a specific field (e.g. the International Tribunal for the Law of the Sea) and finally international criminal courts. Global developments, threats to the peace, the intensity of international relations and their remarkable expansion clearly point to the need for strengthening the role of the international court system (and the ICJ in particular) in today's world as well as modern international law, together with diplomatic law. In some issues, such as diplomatic protection or the use of privileges and the application of immunity where treaty regulations are negligible or non-existent, the guidance of international courts is virtually indispensable.

[24] J. GILAS, *Prawo międzynarodowe*, Toruń 1999, p. 50; see also: S. NAHLIK, *Wstęp do nauki prawa międzynarodowego,* Warszawa, Allegro, 1967, p. 373 as well as: D. J. BEDERMAN, *International Law Frameworks*, New York, Foundation Press, 2001, p. 12.