EVALUATING THE CREDIBILITY OF WITNESS AND EXPERT REPORTS IN ICJ PROCEEDINGS

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ABSTRACT

The study of the acceptability and validity of testimony and expert evidence before the International Court of Justice (ICJ) addresses the crucial aspect of evidence presented before this influential judicial body. the International Court of Justice, litigants are free to present any evidence, including oral evidence such as testimony and expert testimony, however, the court will consider oral evidence presented by litigants with special caution and only in circumstances where it has a special probative value. This study aims to shed light on the parameters used by the ICJ when determining whether witness testimony and expert reports. examines cases presented to the International Court of Justice in which litigants have used witnesses or experts to prove their claims, and their probative value in the proceedings of this Court is also described and explained. Moreover, this summary underscores the importance of maintaining a balance between the probative value of such evidence and fairness to all parties involved.

KEYWORDS

International Court of Justice, Testimony, Hearsay Evidence, the expert witness

1. INTRODUCTION

In the Statutes and Rules of Procedure of the International Court of Justice, there is no specific classification of the documents and evidence to be submitted by the parties to the proceedings; however, in practice, certain formats have been used for this purpose, and the Court has gradually established the status and probative value of each in its jurisprudence. of them, the evidence submitted can generally be divided into two groups, primary evidence and secondary evidence, in terms of their independence and probative value. Primary evidence includes documents and deeds, which are independent proofs of truth. Secondary evidence, on the other hand, secondary evidences do not directly have a positive effect and can only prove a truth together with other evidence. The point is that there is no hierarchy between evidence in international proceedings and it is the international courts that determine the probative value of evidence. Contrary to the rules of evidence, in trials in various cases the court finds that the expected evidence has value. has introduced the evidence" the possibility of presentation of various evidence by the litigants before the International Court of Justice is the identified part of the task of finding the truth of this judicial authority. The written form together with the submitted documents should be a part of the written accounts of the litigants. This type of evidence is referred to as "hearsay”. In international law, an affidavit is a written statement made by the party or person concerned to a competent domestic authority in connection with certain facts or the authenticity of documents supporting a claim. In international proceedings, it is also permissible for the parties to the case to present to the court, as experts, persons who provide technical and specific information governing

the case[1]. This article examines cases before the International Court of Justice in which plaintiffs have used witnesses and experts to prove their claims, and explains what probative value they have in the proceedings of this Court.

2. The Position of Testimony in the Proceedings of the ICJ

As the international jurisprudence shows and some authors[2] have also pointed out, it is not very common to present oral evidence in international lawsuits, and this matter is whether the witness presents evidence related to the facts of the case or whether he expresses his expert opinion It is also true. In other words, international courts have not had much desire to accept this type of evidence in the process of finding the truth. The reason for the existence of such a phenomenon, especially in the International Court of Justice, can be summarized in several factors:

First, in general, the proceedings governing international proceedings have been more influenced by the legal system, where less attention is paid to written evidence, secondly, the completely sovereign nature of the claims presented in the court makes it difficult to link the proof of an issue with the statements of a real person. Finally, the legal application of testimony in international proceedings is more based on the will of the litigants rather than the investigating judiciary, [1] the reason for this is largely due to the fact that no powers and tools have been provided for international courts as a guarantee for the implementation of the requirement of the presence of witnesses and informed experts. However, despite the above challenges, so far in various cases before international courts, the litigants have benefited from witnesses, especially expert witnesses. In the statutes and rules of proceedings of the International Court of Justice, the possibility of the presence of witnesses and expert witnesses during the oral proceedings is foreseen. Also, the fifth paragraph of Article 43 of the Statute of the Court specifies that (the court will conduct an oral hearing consisting of a hearing of witnesses, experts, liaison representatives, consultants and lawyers). Also, the second paragraph of Article 62 of the Rules of Procedure states that (if necessary, the Court can make arrangements for the participation of witnesses and or experts to provide the reason.) Articles 63 to 65 of the Rules of Procedure have also specified the conditions of their presence. Article 65 states: (The liaison representatives, consultants or lawyers of the parties to the lawsuit will ask questions from the witnesses or experts under the order of the president of the court. The president and judges can also ask questions. The witnesses must be outside the court before testifying.) Also, the right to introduce a witness should be considered as an inseparable part of the rights of litigants in every judicial branch. Governments have the right to use any possible means, including oral evidence, as evidence to prove their claim. Although, to a large extent, this category of evidence has a secondary status.

2.1. Description of the Expert Witness

The importance of the testimony of witnesses and expert witnesses is raised in court in those cases that have a quasi-criminal nature or where proof of some facts is required. Also, the presence of expert witnesses has been discussed more in cases that have technical and specialized aspects. Of course, the important point is that the responsibilities of witnesses and expert witnesses are only limited to thematic matters and they do not have a duty to state the law governing the lawsuit. However, it is possible to use experts specializing in domestic law in disputed cases, because the aforementioned rule is only limited to international law and does not include the domestic law of countries, which may be the subject of litigation. Expert testimony in international disputes mainly refers to specialized non-legal issues. However, in some cases, the

[1]A Dialogue at the Court, 2006: 29
[2] James Crawford,2004: 32.

legal theory of experts can also be used regarding the internal laws of countries.Despite different titles in practice, [2]it is not always possible to define a specific title for people present in the court said.A person may participate as a witness in court on behalf of a party to a lawsuit while performing the duties of an expert witness or vice versa.This is the reason why the title of expert witness has been created. This lack of separation in the titles is largely the result of not accepting the application of narrow rules of procedure in international proceedings.Expert witness is not foreseen in the statute and rules of proceedings, but in practice it has been accepted by the courtan expert witness refers to someone who can make statements regarding the facts of the case as well as regarding the issues in which he has expertise[3].An expert witness can be present in court as a witness or as a member of the legal team (lawyer and consultant).

The issue of separation between people in terms of the title and also the description of the title of an expert witness is of practical importance in the court, for example, one of the issues that comes up with the expert witness is that if these people are considered as witnesses, as a result, the other party can If they ask questions or if these people come as part of the legal team, such as a consultant or a lawyer, the other side cannot question them and answer them directly. For this reason, in terms of judicial strategy, it is difficult to name a person. It is because being in each of these titles brings advantages and benefits."Under any circumstances, the distinction between an expert and a lawyer is not clear as it should be".

The International Court of Justice does not have strict rules regarding the persons who can appear before the Court, although Article 42 of the Statute states that the representative of the government can have an assistant advisor or a lawyer before the Court, in addition, the rules of procedure are similar to "adviser and lawyer". It refers to the way they are considered different from experts and intuitions, for example:

Articles (58 (2) and 61 (2) of the Rules of Procedure of the Court), of course, there is no provision according to which only people with specialized legal characteristics should appear before the Court as advisors and lawyers, regarding the fact that governments usually determine the legal team What factors do they have?

In practice, there is an inverse mechanism, and whoever a party to the lawsuit introduces to the court to present the material is considered as a "consultant" and "lawyer". introduce his team to the court, because there are not many restrictions in this regard, just like legal systems.In this case, it is possible for a person to appear on behalf of a government and in the course of defending that government, express something from a personal point of view, in this case it will be possible to ask him questions.(*Ibid*) In the Electronica Scicola case, one of the people who defended the United States spoke from his personal point of view and not as a consultant or lawyer, Italy immediately brought the matter to the notice of the court and asked the court to consider his statements as The witness is also recorded and Italy should be given the opportunity to question and answer about his statements.Finally, the court agreed to this request[4].The statutes and rules of proceedings distinguish between "experts" and "witnesses”. The people who are called as experts by the litigants must take the special oath mentioned in Article 64 of the Rules of Procedure and be inspected by the consultants approved by the President of the Court.However, in practice, we have seen people who were part of the legal team and provided some expert information, for example, the task of proving historical facts is usually followed in part of the bills (legal teams), whether written or oral.[3]Therefore, in the presentation of the expert opinion, there will be no questions and answers. The expert lawyers in each team usually respond to the historical evidence claimed in the statements of the other party. In the rules of

[3]Speech by H.E. Judge Rosalyn Higgins, *op. cit*.
[4]*ElettronicaSicula S.P.A*, I.C.J. Reports 1989: at 19

procedure, these people are treated as "consultants" or "experts". We are also witnessing a phenomenon in the court, as an expert member of the litigants' team, in connection with the proof of facts and evidences that are not related to historical facts, but are more technical and specialized[5].Also, in some cases, litigants have attached expert opinions to their written bills for the court's information. For example, in the *GabčikoNagimaros* case, Slovakia and Hungary submitted numerous expert opinions in writing to the court. In some cases, governments have used experts to explain their opinions, while in other cases, members of the legal team have tried to explain their opinions (Ibid).According to Article 51 of the Statute, during the hearing, according to the conditions mentioned in Article 30 of the Rules of Procedure, any questions can be asked of the witnesses and experts[6].In general, in relation to the method of hearing witnesses, it seems that the court is more interested in the Anglo-American legal system or the common law. Although in most cases, the proceedings have often tended to the subject law system. One of the differences between the expert appointed by the court and the experts introduced by the litigants is that according to Article 68 of the Rules of Procedure, if the court orders the appointment of an expert, he must also bear their wages and expenses. Of course, the procedure of the Permanent Court was different in this field. In the case of the Chorzów factory, the order of the Permanent Court was that the parties to the dispute will bear the costs of the expert[7].

2.2. The Judicial Procedure of the Court Regarding Testimony

Since 1922, the governments present in the lawsuits brought before the court have used witnesses and expert witnesses on several occasions. It is interesting to note that the court has not summoned witnesses in any case and all the witnesses and expert witnesses have been called by the litigants. And in a number of cases, witnesses have refused to appear.[4]The experience of the Permanent Court of International Justice in connection with the hearing of witnesses and experts is very limited. In one of the cases (*Eastern Greenland* Case: 4123 and4126), one of the parties reserved his right to call an expert witness, but he never did so, and in a number of other cases, the witnesses refused to participate. In the case (Germany's interests in Upper Silesia), one of the facts raised was whether it is necessary to control the adjacent land for the exploitation of mineral interests to prevent soil subsidence. The court requested the litigants to present evidence related to this issue in the oral stage. Germany announced to the court that it will call 4 expert witnesses. The witnesses appeared in the court on April 13 to 15, 1926[8].In that case, the head of the Permanent Court declared that the witnesses should be limited in expressing their opinions to the substantive matters and should not address the rights governing the case. The liaison representatives of the parties and some judges asked questions to the witnesses. Testimony was given in German and Polish languages, and subsequently the translation of their testimony was approved by them. Also, in the case of "Personal Activity of Employers in 1926", the Court allowed the International Federation of Trade Unions to call experts to answer questions and not as Introduce a witness. In the International Court of Justice, on several occasions, people have been present in the court to present their personal considerations and expert opinions. Since 1946, expert witnesses or expert witnesses have been used in more than ten cases in the court:
"England's Corfu Channel v. Albania", "Temple of Pere Vihyar" (Cambodia v. Thailand, South West Africa, Ethiopia) v. South West Africa, and Liberia v. South West Africa, Continental Shelf" (Tunisia v. Libya, delimitation of the maritime boundary in the Gulf of Maine, Canada) and United States Continental Shelf (Libyan Arab Republic v. Malta Military and paramilitary activities in and against Nicaragua) Nicaragua v. United States Electronica Scicola S.P.A. Prevention and Punishment of the Genocide Crime of Bosnia and Herzegovina against Serbia and

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[5]Speech by H.E. Judge Rosalyn Higgins, 2 November 2007
[6]Yearbook of 1936-1937: at 150-151 P.C.I.J. Ser. A, No.13,
[7]*Chorzów Factory* (Indimnity) 1928: 99-103.
[8]Personal Work of Employers, Ser. E, No. 3: 213.

Montenegro and Implementation of the Convention on the Prevention and Punishment of the "Genocide Crime of Croatia and Herzegovina against Serbia and Montenegro"[9]

Of course, in addition to oral testimony, governments have always attached "written testimony" (Affidavit) to their bills, and this statistic is limited to the personal presence of individuals in court. However, in most of these cases, the court did not pay much attention to this category of evidence and only in a few limited cases, it tried to prove the disputed facts by referring to the statements of witnesses. In the "Corfu Channel" case, Albania and England introduced several people as witnesses to the court. The hearing of the witnesses was held from November 22, 1948 to December 14, 1948. In that case, the translation of the witnesses' materials encountered problems, especially because the witnesses and expert witnesses used specialized maritime terms.[6] However, as a result of the case, the Corfu Tribunal developed its basic mechanisms regarding the holding of witness hearings, the efficiency of the testimony and the protection of the recording of the testimonies was contrary to the experience of the Tribunal in the case of German interests in "Upper" Silesia. In that case, the court stated about the testimonies that were not obtained through direct and personal observation of the witness: Statements attributed to a third party by the witness, for which the court did not receive his direct and personal confirmation, are merely claims. come that they have the effect of few definitive proofs.

Also, Judge Azevedo stated in his opposing theory in that case that"In any case, we are obliged to declare the insufficiency of a reason, which is almost generally based on the statements of a witness, and the statements of this witness are insufficient regarding many main points."In addition, during the substantive proceedings of the "South West Africa" cases, the defendant requested the presence of 15 witnesses who were heard from June 18 to July 14, 1965 and September 20 to October 21, 1965.In addition, in the course of this case, the petitioners requested the court to issue an order for the respondent to provide explanations regarding the statements and statements of the witnesses.[7]In this regard, the court stated that "the statutes and rules of proceedings have intended that a party to a lawsuit in arbitral proceedings be given the right to present all the evidence to the court through witnesses and experts, of course, the party who uses this right deems itself appropriate, in its application, it is subject to the provisions of the statute and the rules of court proceedings. It is worth mentioning that the court never evaluated this type of evidence in its judgment and did not pay any attention to them in reaching the final decision.14It is worth mentioning that the court never evaluated this type of evidence in its judgment and did not pay any attention to them in reaching the final decision. In the "Continental Plateau" case of Tunisia v. Libya, the court once again had the opportunity to deal with the issue of hearsay evidence in the court. In this case, the court listened to the words of the expert members of each of the boards and the testimony of an expert (geomorphologist). In this case, conflicting opinions were raised about one of the main issues. The question was whether the continental plateau north of the border point of Tunisia and Libya in Ras, Ajdir should be considered the natural extension of the east of the Tunisian land or the north of the Libyan land? This matter constituted a major part of the bills and claims of the parties, however, the court found basically no convincing reason to favor either of these two views[10].In the case of the border dispute, which was handled by one of the branches of the court, some statements obtained through official interrogation summations interpolative were used,[5] but their value was doubted. The question was this, what is the nature of these statements? Should they be called affidavits, or are they merely the statements of persons who are presented as witnesses? In this case, most of the official interrogations presented by the relevant people were based on hearsay. Out of the 18 people who signed the testimonies, only a few of them stated the facts that they personally witnessed and most of the people who were called to testify, limited themselves to

[9]I.C.J. Press Release 2006/10, 16 March 2006. Available

[10]Continental Shelf, I.C.J. Reports 1982: at 117-118

prove the facts that were requested from them, such statements cannot help in establishing the real proof. In the case of military and paramilitary activities in and against Nicaragua, the government of Nicaragua introduced five witnesses to the court to provide oral evidence, and a number of written testimonies were also presented to the court, one of the testimonies belonged to the Secretary of State of the United States, as well as one of the Nicaraguan witnesses from It was the citizens of America, which was done confidentially and with certain restrictions. Regarding these arguments, the court stated:

Regarding the evidence related to the testimony of the defendant government's failure to attend the substantive hearing of this case, the court faced a problem:

First, the absence of the United States means that the testimony presented by the petitioner in the hearing was not challenged by direct questioning of the witness in order to discover and prove the authenticity of the testimony (Cross-Examination), however, the court asked these people several questions. Secondly, the fact that the defendant has not introduced any witnesses on his behalf, the aforementioned defect is only one aspect of the unfavorable situation caused by the absence of the defendant and is relatively a side issue. The court did not give evidence value to any part of the testimonies that were presented that did not state the facts, but in the opinion of the court, these testimonies are merely the opinions of people regarding the possibility or the existence of facts that the witness is not directly aware of. As a result, such testimonies, which may have many subjective aspects, cannot find the place of reason. The testimony of the witness is merely his personal and subjective analysis of the probability of its compatibility with a fact. These testimonies, together with other sources, may help the court in determining an issue, but they are not evidence in themselves Regarding the testimony about the issues that the witness did not have direct knowledge of and only obtained for him through hearsay cannot be overestimated.

After a 14-year break in the case of the implementation of the Convention on the Prevention and Punishment of the Crime of Genocide, the parties announced to the court that they decided to summon several hundred witnesses, expert witnesses and experts to the court. This issue could have created problems for the court, for example how It is possible to ask and answer the witnesses, or how the confidentiality of the testimony can be guaranteed, or how the contents of the witnesses and the court should be translated, or how equality can be established between the litigants, and what measures should be taken to protect Intuition took place[11].

However, in the end, in this case, the court heard only 7 witnesses and expert witnesses introduced by Serbia and 2 experts from Bosnia and Herzegovina.[8] However, the court did not pay much attention to this group of arguments of the parties. In this case, the president of the court announced the procedure for the presence of witnesses and experts in the court: "After the invitation of the president, an expert witness or an expert witness entered the courtroom and After taking his place, the chairman asks the expert witness or the expert witness to:

According to paragraph 6 of Article 64 of the Rules of Procedure of the Court, take an oath. The witness of the oath mentioned in paragraph 4 (a) of article 6 will read the rules of proceedings, although the experts and witnesses will say the oath mentioned in paragraph (b) of the same article. mentioned in paragraph (b) will express the same article Then the representative or consultant of the related party will ask the expert witness or expert witness. An expert witness or an expert witness can present his evidence in the form of a statement or in response to questions raised by the litigant who called him, according to the litigant's choice.[9] The other side of the lawsuit can ask opposing questions to the expert witness or expert witness, and for this purpose, time will be given to that side according to the question time.[10] Subsequently, the president of

[11]Speech by H.E. Judge Rosalyn Higgins, 2 November 2007

the court will ask the party who called the expert witness or the expert witness to ask him questions if he wishes.[11] The litigants should note that such questions should be brief and limited to the issues that have been addressed in the counter questions, after which the court session will end, but the expert witness and the expert witness should be present near the courtroom. If the court or any of the judges wish to ask questions to the expert witness or the expert witness, the court will reconvene and the questions will be raised by the president on behalf of the court or by any of the judges.[12] If the court does not have such a desire, the clerk of the court will inform the litigants about this matter. The witness, expert or expert witness cannot be present in the court session before or after their testimony or statements.

According to Article 71, paragraph 5 of the rules of procedure, the relevant parts of the minutes of the court will be translated into one of the official languages of the court and will be available to the expert witness or expert witness. These people can point out corrections and any mistakes. Of course, their amendment cannot affect the text and content of testimony or statements of individuals and must be submitted to the court clerk within 24 hours after the date of receipt. During the consultative investigation of the legitimacy of the threat and use of nuclear weapons, the mayors of Hiroshima and Nagasaki appeared to explain the destructive effects and human suffering caused by the use of nuclear bombs against these two cities.

First, the court was requested that the mayors of these two cities be present as experts in the court, but this issue was not agreed to and they participated in the form of a Japanese delegation. For example, are these people subject to the ritual of testimony in arbitration proceedings or not?[12]

3. Probative Value of Testimony

3.1. Validity of Testimony

The court has always had a special reservation regarding this category of evidence, whether it is in the form of oral testimony or written testimony, generally testimony is classified as secondary evidence. This means that it can only be used to confirm the facts when the facts have been sufficiently verified by other means, basically, the affidavit alone and independently is not able to prove the facts from the point of view of the court of witness statements attributed to a third party.[13] It has not been achieved personally and directly, it is just claims that do not have the characteristics of definitive evidence[13].The issue was developed in the same way in the case of Nicaragua, in the case of the rights of US citizens in Morocco, military and paramilitary activities in and against Nicaragua, the court confirmed the same point of view.

However, in the court's procedure, two types of certificates are apparently very valid:

"Firstly, the evidence of well-known witnesses - who are not parties to the lawsuit and will not gain or lose anything from the outcome of the proceedings, and secondly, also the evidence of an individual against his own interests or his government."In the "territorial and border dispute between Nicaragua and Honduras in the Caribbean Sea" case, the court tried to express the evidentiary value of various testimonies. The Court stated in this regard:

(The court points out that it should be cautious in relation to this category of evidence, that is, witness statements in the form of affidavits) In evaluating such testimonials, the court must take into account various factors, including:

[13](United Kingdom v. Albania), I.C.J. Reports 1949: 17. Corfu channel

Are they provided by the authorities? Or private individuals who will not have any interest in the official outcome of the proceedings? And are these testimonials proof of facts? Or they are simply expressing their opinion on some events. The court points out that in some cases, the evidence that coincides with the relevant period can be of special value, as well as the affidavits that were subsequently given by a government official with the purpose of presenting in the proceedings related to the previous facts, are of value. They are less than the testimonials that were given at the time of the occurrence of the relevant facts. In other situations, where there is no reason to provide testimony earlier by private individuals, the affidavits prepared for the trial are scrutinized by the court to determine whether what was testified was influenced by the people who took the testimony. And do they benefit from what they have said?

Therefore, it does not consider it inappropriate to accept affidavits as evidence of a particular person's personal knowledge of the facts presented for the purpose of the proceedings. The court will also pay attention to the competence of the witness to certify certain facts, for example, the statements of an official government official in the field of border lines can be more valuable than the statements of a private person. In this case, Honduras presented the testimony of a number of fishermen in which it was certified that the 15th latitude between this country and Nicaragua forms the maritime border. In the opinion of the court, although all these affidavits were presented for the purpose of this case, the court does not question their validity. However, after examining their content, the Court found that none of them can be considered as the existence of a historical maritime border on both sides of the 15th parallel, which is recognized by Nicaragua and Honduras. From the court's point of view, these testimonies are only considered (personal opinion) and not knowledge of the facts.

This part of the court's opinion about the probative value of the affidavits can be seen as a guide for litigants in future disputes before the court, Of course, expert testimony on scientific or other specialized issues is a different matter. In these cases, experts play a very important role, even if the evidence and materials presented depend on the approach of the litigants in court. In the case of GabchikovoNagimaros, the parties independently decided to present expert theories in the relevant sections of their bills as scientific advisors. One reason for this decision was that it was not clear how much time would be required for questions and answers from experts. And in addition, to what extent is this beneficial? With this, each litigant had control over his own content, Although the court was very cautious in reaching a conclusion regarding scientific issues, the scientific content from both sides The litigant was skillfully presented, and there is no doubt that the court's overall assessment of the situation was based on the scientific materials presented by the litigants.[14]The issue of the form and conditions of written testimony in the recent judgment of the International Court of Justice in the case of "Application of the Convention on the Prevention and Punishment of the Crime of Genocide" was also the subject of dispute between the parties of the case, Croatia and Serbia. He added that some of these documents were not initially signed by the witnesses or the people who were involved in their preparation. Also, the conditions leading to the preparation of these statements were not clear and it was even claimed that these documents were not recognized as admissible in the Croatian court.

All this was apart from the fact that apparently the people on whose behalf the statements were prepared did not have "direct knowledge" of the events in question and expressed their opinions mostly based on hearsay. The sum of these factors caused doubts in the minds of the court judges regarding the admissibility of these statements on the one hand and their probative value on the other hand. After hearing the opinions of the parties, the judges of the court come to the conclusion that neither the statutes nor the rules of the court have specific requirements for the admissibility of statements made by parties involved in the dispute during arbitration proceedings. Whether the people who expressed these statements were invited to give oral

testimony or not is not available; Rather, the court leaves the surrounding dispute in determining the form of presentation of such evidence to the discretion of the court, for this reason, the court believes that the lack of signatures of the people who made or prepared these statements does not, in principle, cause these documents to be discarded, however, the court should Ensure that the documents report in good faith the evidence provided by these people. Considering these general principles and while acknowledging the difficulty of studying evidence in the relevant case, the court concluded that "many of the statements presented by Croatia are incomplete". Regarding the lack of signature, the court accepts that in case of subsequent signature, these documents will be treated as statements that were signed from the beginning.In addition, the Court attaches special value to those statements that have been accepted in the form of criminal proceedings of the International Criminal Tribunal for the former Yugoslavia.

3.2. Existing Challenges

Three factors have influenced the court's ability to properly deal with the presentation of evidence by witnesses:

First, according to Article 62 of the Rules, the court hearing has the authority to summon the witness to present evidence, however, it is not clear that in case the witness of the court refuses, what enforcement guarantee exists to require the attendance, Article 41 (1) of the statute stipulates At least the court is not able to call a witness directly. Second, in international law, there are no provisions on perjury before the International Court of Justice. Thirdly, all the members of the court are not from legal cultures who are very inclined towards presenting testimony as oral evidence or have experience in evaluating these oral evidence through the interrogation of witnesses by legal advisors. In addition, in most countries, there is no special law to oblige people to testify in an international court, including the Court. The court cannot punish a person for defamation or false testimony.[15] There is no immunity for people who testify against the interests of their government in their country. For this reason, the court does not make any attempt to force people to testify.

Of course, witnesses in the Netherlands have immunity regarding their testimony. In 1946, the General Assembly recommended that witnesses, experts and persons who perform their duties by order of the Court, during their mission, including the period of their stay in connection with the mission, in the territory of the Netherlands from the benefits and immunities listed in Article VI, Part 22 Convention on the benefits and immunities of the United Nations.[14]

The court may not resort to its own experiences and assets, although it seems that the court is committed to following the Anglo-American system in examining testimonies. However, it may be flexible during the examination of testimonies. The Court's flexibility during the examination of Kovacic's testimony in the Corfu Channel case was quite clear. Cases that lead to the improvement of the efficiency of the use of testimony, require amendments to the statute or the conclusion of a special convention. The court needs to have the authority to require testimony or at least the governments are obliged to enact national laws regarding the testimony or required documents. It is also desirable to give immunity to the people who testify in court.If immunity cannot be fully guaranteed, at least immunity should be extended to criminal prosecution.

[14](N. H. Alford, op. cit., Vol. 4:13).

4. CRITICISMS AND CORRECTIONS OF ICJ PROCEDURES FOR ACCURACY

Addressing the criticisms and reforming the ICJ's (International Court of Justice) procedures for fairness and accuracy are paramount to upholding the rule of law in international disputes. While the ICJ has played an important role in resolving conflicts between states, legitimate concerns have been raised about the court's bias and inefficiency. To ensure fairness, clear and comprehensive guidelines for judicial independence and impartiality must be established to ensure that judges are selected on the basis of their competence and not their nationality or political affiliation.[16] In addition, measures should be taken to increase transparency in ICJ proceedings, including improved public access to documents and records.In addition, efforts must be made to expedite the disposition of cases by streamlining procedures and minimizing unnecessary delays caused by excessive briefs or written submissions. By directly addressing these criticisms and implementing reforms that promote fairness, accuracy, and efficiency in the resolution of international disputes, the credibility of the ICJ as a preeminent judicial body serving justice on a global scale can be enhanced.

4.1. Inadequate Procedural Mechanisms for Addressing Conflicts of Interest

The ICJ is considered the supreme court for international disputes, but its inadequate procedural mechanisms for dealing with conflicts of interest raise doubts about its impartiality and credibility. The lack of clear guidelines or protocols for recusing judges and disclosing potential conflicts creates a grey area where personal biases and self-interest can influence its decisions. Moreover, there is no independent body responsible for assessing the impartiality of judges or investigating allegations of conflicts of interest, which compromises the transparency and accountability of the court's proceedings. The ICJ's reliance on judges to self-assess their ability to render unbiased judgments is insufficient to ensure fair outcomes. To strengthen the legitimacy and integrity of the ICJ, it is imperative that more robust mechanisms be put in place, including mandatory disclosure requirements, detailed rules for the removal of judges, an independent ethics committee to assess potential conflicts, and public reporting on the steps taken to resolve such issues. Only through these measures can the ICJ regain trust as an impartial arbiter of international disputes. In addition, it is critical for the ICJ to prioritize diversity among its judges. By ensuring a broad range of backgrounds, experiences, and perspectives, the ICJ can minimize the risk of unconscious bias influencing judgments. This can be achieved through proactive measures such as actively seeking candidates from underrepresented regions and promoting gender and ethnic diversity within the court. Emphasizing diversity will not only enhance the legitimacy of the ICJ, but also contribute to the overall fairness and effectiveness of its decisions.

4.2. Perceived Bias in the Selection of Judges

The perceived bias in the selection of arbitrators at the ICJ is a major issue that raises concerns about the fairness and impartiality of its proceedings. The composition of the ICJ arbitral tribunal is based on a system of nomination and appointment by member states that has been criticized for potentially leading to biased decisions. Critics argue that powerful states may use their political influence to secure the appointment of arbitrators more likely to represent their interests, which undermines the principles of judicial independence and equality before the law, and that there have been cases in which certain regions or groups have felt underrepresented in the selection process, fueling suspicions of bias.[17] However, the ICJ has taken steps to address these concerns by establishing transparent procedures for nomination and appointment and by promoting diversity among the members of its bench. Despite efforts to be objective, vigilance must be maintained to ensure fair and unbiased outcomes in ICJ arbitrations. One way to address the problem of underrepresentation and bias in the selection process is to actively seek input and

feedback from all regions and groups. This can be done through open consultations and working with stakeholders to ensure that diverse perspectives are considered. In addition, the ICJ can further increase transparency by providing regular updates on the progress of nominations and appointments and the criteria used in the selection process. By continuously striving for inclusivity and transparency, the ICJ can strengthen its credibility and maintain public trust in its arbitration processes.

4.3. Lack of Diversity and Representation

The ICJ is considered the principal judicial organ of the United Nations and plays a central role in the fair and impartial resolution of international disputes. However, the composition of its membership does not reflect the diversity of our global community, undermining its credibility and legitimacy. Currently, most judges at the ICJ are from Europe and North America, resulting in voices from Africa, Asia, Latin America, and the Middle East being significantly underrepresented. This lack of diversity limits perspectives and hinders the court's ability to understand complex regional dynamics and cultural contexts when deciding cases. Moreover, more balanced representation would help build trust among member states by demonstrating fairness and inclusivity within the institution. It is important that the ICJ prioritize efforts to promote diversity by actively seeking nominations from underrepresented regions in elections, including gender balance to ensure broad representation. Moreover, a diverse composition of ICJ judges would also lead to more informed decisions.[18] Diverse backgrounds and experiences would bring unique perspectives, allowing for a more thorough examination of cases and a deeper understanding of the complexities involved. This would ultimately lead to more effective and equitable judgments that take into account the different regional dynamics and cultural contexts at play. By actively promoting diversity and inclusivity, the ICJ can strengthen its credibility and legitimacy as a global institution working for justice and equality.

5. Solutions to Improve the Acceptability and Credibility of Witnesses and Experts in the Proceedings of the ICJ

5.1. Striving for Fairness and Accuracy in icj Proceedings

The International Court of Justice (ICJ) is an important institution that plays a critical role in resolving disputes between nations, ranging from territorial disputes to human rights violations. For these proceedings to be effective and credible, it is imperative that the ICJ strive for fairness and accuracy. Fairness means that all parties have an equal opportunity to present their case, with sufficient access to evidence, legal representation, and procedural safeguards. Judges must be impartial and consider all arguments objectively, regardless of the parties involved. Accuracy is equally important. The court must base its decisions on reliable and verifiable evidence presented by the parties involved or obtained through thorough investigation. Judicial independence, procedural transparency, rigorous fact-checking, adherence to legal principles, and compliance with international norms are critical to the credibility of the ICJ and the maintenance of justice in international affairs. The pursuit of fairness and accuracy requires continuous improvements in the training of judges, enhancement of research capacity, promotion of diversity among staff, and close monitoring of proceedings to correct any biases or inaccuracies that may arise in the course of deliberations. The Court's commitment to reliable and verifiable evidence ensures that its decisions are soundly based. [19]By upholding the independence of judges and the transparency of its procedures, the ICJ promotes confidence in its judgments. In addition, the Court's rigorous fact-checking procedures and adherence to legal principles contribute to its credibility and ability to dispense justice in international affairs. To further strengthen its effectiveness, the ICJ must

continue to invest in training judges, improving research capacity, promoting diversity among staff, and closely monitoring procedures to eliminate potential bias or inaccuracies.

5.2. Implementing Stringent Criteria for Expert Witness Selection

Given the increasing complexity of cases, it is essential that experts have extensive knowledge and expertise in their respective fields. Therefore, a careful vetting process must be conducted to ensure the credibility and reliability of potential witnesses. This process should include a thorough evaluation of qualifications, such as academic degrees, professional experience, and relevant publications. In addition, evaluating an expert's track record of prior court appearances or testimony can provide insight into his or her ability to withstand rigorous cross-examination. In addition, it is important to consider potential biases or conflicts of interest that could affect an expert's impartiality.By establishing rigorous criteria for the selection of expert witnesses, jurisdictions can mitigate the risks associated with unreliable or biased testimony and increase public confidence in the justice system. In addition, it is critical for jurisdictions to establish clear guidelines for expert witness qualifications and credentials. This will ensure that only individuals with the necessary expertise and knowledge are allowed to testify in court. In addition, ongoing education and training of expert witnesses should be encouraged to keep them abreast of the latest developments in their respective fields. By adhering to these standards, the judicial system can maintain the integrity and credibility of expert testimony, ultimately leading to fair and equitable outcomes.

5.3. Promoting Transparency and Disclosure of Potential Bias

Promoting transparency and disclosing potential biases are critical to maintaining trust and integrity in various professional fields. By openly admitting potential biases, individuals and organizations can mitigate the negative impact they may have on decision-making processes. Transparency allows stakeholders to make informed judgments, fostering a more fair and balanced environment.[20] Professionals must ensure that they disclose conflicts of interest, financial ties, or personal relationships that could influence their actions or decisions. This transparent approach serves to build credibility, improve accountability, and protect against compromising ethical standards. In addition, promoting transparency requires the establishment of comprehensive mechanisms, such as clear disclosure policies, conflict resolution mechanisms, and independent review systems. It is essential for professionals to engage in the ongoing process of self-reflection and self-assessment in order to continuously identify possible biases. In this way, they not only maintain the public's trust, but also contribute to a more inclusive and equitable professional world. In addition, fostering a culture of accountability is critical to promoting transparency. This includes holding individuals and organizations accountable for their actions and ensuring that they must meet high ethical standards. By putting in place robust accountability measures, we can create an environment where transparency is the norm rather than the exception. This, in turn, helps to build trust among stakeholders and strengthen the overall integrity of the professional community.

6. CONCLUSION

Although there is no specific classification of documents and evidence presented in the statutes and rules of the International Court of Justice to prove the claims of the litigants, in practice, governments have used specific formats for this purpose and the Court has gradually established a place in its jurisprudence. It has determined the evidentiary value of each of them. This is also true for the use of witnesses and expert witnesses. In the procedure of the court, two types of certificates have a lot of credibility on the surface:

First, the evidence of famous witnesses - who are not parties to the lawsuit and will not gain anything from the outcome of the proceedings, nor will they lose anything, and secondly, individual arguments against their own interests or government. In addition to these cases, expert testimony related to scientific issues or specialized issues is also important and in some cases, it has played an essential role in shaping the judges' knowledge of the dispute. Also, the court has recently introduced conditions for accepting testimonials. The jurisprudence of the court in recent years indicates that the court is trying to somehow define the general framework of its expected testimonies, so that governments pay attention to this framework when preparing and presenting evidence and documents, and as a result, the truth-finding process is facilitated. This action should be considered as an admirable effort of the court to regularize the handling of evidence.

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