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# **THE EVIDENTIAL WEIGHT OF COURT-APPOINTED EXPERTS BY THE ICJ**

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## **ABSTRACT**

The International Court of Justice has increasingly been called upon to adjudicate disputes that require the evaluation of complex scientific evidence. At the same time, the Court is increasingly paying attention to defining general criteria for weighing the evidence adduced before it. Under Article 50 of its Statute, the court may at any time entrust any individual, body, bureau, commission, or other organisation that it may select with the task of carrying out an enquiry or giving an expert's opinion. Historically, the ICJ has treated expert opinions as auxiliary tools rather than determinative evidence. Even when experts are appointed under the Court's authority, their conclusions do not bind the judges; instead, they contribute to the Court's "free evaluation of evidence." This doctrinal stance reflects the Court's commitment to maintaining judicial sovereignty over factual determinations while ensuring informed decision-making in highly technical disputes. The evidential weight of court-appointed experts by the ICJ is significant but not conclusive, carefully modulated by procedural safeguards and judicial interpretation. It reflects a cautious yet pragmatic approach to integrating technical expertise into the legal adjudicative process, wherein the Court values expert input as a tool for comprehension rather than as a substitute for judgment.

Keywords: International Court of Justice, Article 50, evidential weight, court-appointed experts.

## **INTRODUCTION**

The International Court of Justice (ICJ), as the principal judicial organ of the United Nations, is at a juncture, often adjudicates disputes involving complex technical, scientific, or territorial questions that fall beyond the direct expertise of judges. To address such challenges, the ICJ has developed a practice of appointing independent experts ex officio or relying on joint expert commissions proposed by the parties. These court-appointed experts play a critical role in assisting the Court in fact-finding, particularly in cases involving boundary delimitation,

environmental harm, hydrology, cartography, and forensic analysis. Technological advancements and the subdivision of international law into complex legal fields present new challenges that threaten the court's place as the United Nations' principal judicial organ. The court on its own is not in a position to adequately assess and weigh complex scientific evidence of the type presented by the parties, stated judges Simma and Al-Khasawneh in their Joint Dissenting Opinion in the Pulp Mills case before the ICJ.

Historically, the ICJ has treated expert opinions as auxiliary tools rather than determinative evidence. Even when experts are appointed under the Court's authority, their conclusions do not bind the judges; instead, they contribute to the Court's "free evaluation of evidence." This doctrinal stance reflects the Court's commitment to maintaining judicial sovereignty over factual determinations while ensuring informed decision-making in highly technical disputes. The criticism evident in this statement reflects the very essence of the modern debate on how a court of law, such as the ICJ, can accurately determine facts that require an understanding and knowledge of specialized issues, such as highly complex scientific evidence. Theoretically, when technical evidence underlies a dispute, experts are called upon to translate such scientific knowledge into the legal context; their function in a legal dispute is essentially to clarify the facts to which judges to 'determine the relevant facts', at the same time 'it remains for the court to discharge exclusively judicial functions, such as interpretation of legal terms, legal categorization of factual issues, and assessment of the burden of proof. One of the fundamental functions to be discharged by a court of law is to weigh the evidence presented before it, and that includes expert evidence.

In the past few decades, the ICJ has increasingly taken care to clarify its position about the criteria that it adopts to evaluate evidence. By way of one of the cases of this approach, in the Application of the Convention on the Prevention and Punishment of the Crime of Genocide Cases, the court for the first time drew a clear distinction between three distinct types of issues relating to evidence by examining separately the burden of proof, the standard of proof and the methods of proof.<sup>1</sup> The part regarding the methods of proof was dedicated to the assessment of the evidential value of the different types of proof introduced by the parties.

The first part of this work will address some general aspects of the court's assessment of

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<sup>1</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia Herzegovina v. Serbia and Montenegro) (Judgment) [2007] ICJ Rep 43, paras 202- 30

evidence and identify some general criteria used by the court to weigh the evidence presented before it. The second part is an analysis of the criteria offered so far by the court in regard to weighing the experts appointed by the ICJ in its procedure.

## THE COURTS' ASSESSMENT OF EVIDENCE

In many legal systems, courts have the power to appoint independent experts to assist in resolving technical or scientific questions. The evidential weight of such expert testimony depends on several factors, and while court-appointed experts are generally regarded as more neutral than party-appointed experts, their opinions are not automatically conclusive. Judges remain the ultimate arbiters of fact.

It is even rarer to find specific provisions concerning the weighing of evidence in the statutes and rules of international courts and tribunals. The question gained the attention of the Institut de Droit International in 1997, when a commission was established to study 'Selected Principles of International Legislation' and later, focused on the question of evidence. The Draft includes two provisions; Article 16 expressly excludes the common law rule of 'best evidence' when it states that there is no rule applicable in international litigation corresponding to the "best" or "direct" evidence rule applied in some national jurisdictions. Furthermore, Article 17 elaborates on the main rule regarding the weighing of evidence, as the general principle is that it is entirely within the tribunals' discretion what weight it attaches to any evidence adduced.<sup>2</sup>

Despite the non-adoption of the resolution, these two general provisions reflect the absence of any legal constraints imposed on international judges when they weigh evidence. Their formulation reinforces the principle of the 'free assessment' of evidence as one of the main principles of international adjudication.

In the same way, neither the statute nor the rules of the ICJ provide rules or criteria for the assessment of the evidence presented before the court, with all the rules and criteria for weighing the evidence instead being developed by the court through its case laws.<sup>3</sup>

The court emphasized the principles of free assessment of evidence in the Nicaragua case when

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<sup>2</sup> 'Principles of Evidence in International Litigation' (2003) 70 Yearbook Institute of Int L 397.

<sup>3</sup> *ibid*

it established that ‘within the limits of its statute and rules, it has freedom in estimating the value of the various elements of evidence.’<sup>4</sup> Similarly, in the *DRC v. Uganda*, the court explained that to rule on the facts alleged, the court must assess the relevance and probative value of the evidence proffered by the parties in support of their versions of the facts<sup>5</sup> and to do so, it will identify the documents relied on and make its own clear assessment of their weight, reliability, and value.

In the *Nicaragua Case*, the court observed that weight must be given to declarations made by the state’s officials when these declarations are unfavorable to the state. When analyzing the testimonies presented, the court developed the notion of testimony regarded as ‘Prima Facie of Superior Credibility’. It can be suggested that the rationale behind the ‘prima facie’ idea is that the evidential value could be countered by evidence to the contrary that meets a high standard of proof.<sup>6</sup>

This judgment also revealed two particular elements that appear to be important when one assesses the evidential weight related to experts. The first concerns the fact that evidence of a ‘technical nature’ would gain a greater evidential weight when it has been submitted to appropriate cross-examination. The second is that the court gave importance to the existence of an agreement between the parties on the reliability of specific sources of evidence. This agreement was regarded as an element that enhanced the evidential weight of a certain method of proof.<sup>7</sup>

## **EVIDENTIAL WEIGHT OF COURT-APPOINTED EXPERTS**

It is not clear to what extent the ‘ordinary’ criteria that the court uses to weigh evidence also apply to expert evidence. The court has never addressed this question in its case law. Little attention has been dedicated to it in legal literature, and the views expressed on the matter to date remain far from providing a clear answer. Thus, Riddle and Plant suggested that when assessing expert evidence, the ‘general principle of weighing evidence apply.’<sup>8</sup> At the same

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<sup>4</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. USA) (Judgement) [1986] ICJ Rep 14 para 60*

<sup>5</sup> *Democratic Republic of the Congo v. Uganda (Judgement) [2005] ICJ Rep 168*

<sup>6</sup> *K Del Mar: Weight of Evidence Generated through Intra-Institutional Fact-Finding- finding before the International Court of Justice (2011) 2 JIDS 393.*

<sup>7</sup> *ibid*

<sup>8</sup> *A Riddell and B Plant: Evidence Before the International Court of Justice (BIICL 2009) 123-201*

time, however, they warned that ‘it is evidence of opinion rather than fact’,<sup>9</sup> thereby promoting the view that differentiation in the criteria for assessment could be justified.

While the ICJ primarily relies on written and oral submissions from states and their appointed legal representatives, Article 50 of the ICJ Statute allows the Court to appoint experts when it deems necessary to provide impartial assistance on matters of technical or scientific complexity. The evidential weight of such expert opinions, however, is neither absolute nor automatic; it depends on a confluence of factors, including the credibility of the expert, the objectivity of the methodology used, the extent to which the findings align or conflict with other evidence, and the receptiveness of the judges to independent technical assessments in what is essentially a legal framework.

Historically, the ICJ has exercised restraint in invoking Article 50, preferring to maintain its judicial neutrality and relying instead on party-submitted evidence. This reluctance stems in part from concerns over perceptions of bias, the sovereignty of states, and the potential blurring of the line between judicial fact-finding and adjudication.

Nevertheless, in cases where it has been used, such as the Corfu Channel case<sup>10</sup> or the Pulp Mills case<sup>11</sup> the deployment of court-appointed experts has served to illuminate complex factual matrices and assisted the Court in navigating contentious or technical domains, including environmental science, maritime delimitation, and military forensics.

In *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, for instance, the ICJ’s reliance on expert reports facilitated its evaluation of scientific claims surrounding environmental damage and transboundary pollution, underscoring the importance of neutral expertise in understanding the factual substratum of legal arguments. Yet, even in such cases, the ICJ has carefully circumscribed the influence of expert opinions, treating them as informative rather than determinative. The Court retains ultimate discretion in assessing how much weight to attach to such evidence, often comparing and contrasting it with the submissions from both parties. This methodological conservatism reinforces the ICJ’s identity as a legal, rather than an investigative, body.

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<sup>9</sup> *ibid*

<sup>10</sup> *Corfu Channel Case (UK v. Albania) (Merits) [1949] ICJ Rep 4, 21.*

<sup>11</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay) (Merits) [2010] CJ Rep 14*

Moreover, the weight afforded to court-appointed experts can also vary depending on whether the expert acts as a technical adviser to the Court (under Article 50) or as an expert witness nominated by a party, with the former generally presumed to be more impartial and thus potentially carrying greater evidential authority. Nonetheless, the procedural transparency of the expert's appointment, the availability of cross-examination by the parties, and the clarity of the expert's findings all factor into how much weight the Court ultimately assigns to the expert's conclusions. The evidential role of experts is thus not merely a function of their technical expertise but of their procedural embedding within the legal framework of the Court.

Critics have argued that this approach dilutes the potential of expert evidence to decisively influence outcomes in fact-intensive cases, especially where scientific uncertainty or conflicting data prevails. However, proponents counter that the ICJ's cautious integration of expert input preserves its impartiality and upholds the procedural rights of the parties, ensuring that technical knowledge informs but does not overshadow legal reasoning. The interplay between law and science, especially in domains such as environmental law, human rights, and the use of force, makes the evidential contributions of experts increasingly significant, even if not dispositive. The evolution of international law into more specialized and scientifically nuanced areas suggests that the ICJ may in the future lean more heavily on expert advice, though still within the framework of judicial discretion and state consent. The ICJ's handling of expert evidence thus reflects a delicate balance between judicial independence, the sovereignty of states, and the need for informed adjudication. As such, while court-appointed experts can substantively enrich the Court's understanding of technical issues, their evidential weight is ultimately mediated through the Court's legal analysis, judicial temperament, and institutional commitment to impartial adjudication.<sup>12</sup>

## CONCLUSION

The evidential practices of the International Court of Justice reflect a careful balance between flexibility and judicial discipline. Unlike domestic courts that often rely on codified rules of evidence, the ICJ is guided by the principle of free evaluation of proof, granting it wide discretion in determining the relevance and probative value of all materials submitted. This approach allows the Court to adapt to the complexities of interstate disputes, which often involve historical treaties, cartographic materials, environmental analyses, scientific data, and

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<sup>12</sup> C Brown: *Common Law of International Adjudication* (OUP 2007) 84-86

geopolitical context. In exercising this evaluative freedom, the Court does not merely aggregate evidence but critically interrogates it, examining its coherence, consistency, and compatibility with legal arguments.

Within this evaluative framework, the role of court-appointed experts under Article 50 of the ICJ Statute emerges as a significant, though not dominant, evidentiary tool. Experts are called upon when the Court is confronted with issues of technical complexity, such as hydrology, environmental science, maritime delimitation, or forensic analysis. Their principal function is to illuminate rather than to decide. The ICJ deliberately maintains a distinction between expert assistance and judicial authority, ensuring that expertise informs but does not override judicial reasoning.

The evidential role of court-appointed experts within the International Court of Justice strikes a deliberate equilibrium between the demands of technical precision and the preservation of judicial independence. Article 50 of the ICJ Statute grants the Court expansive authority to seek expert assistance from individuals, bodies, or institutions of its choosing whenever the factual matrix of a dispute exceeds the bounds of conventional legal assessment. This procedural mechanism acknowledges a critical truth of modern international adjudication: interstate controversies increasingly hinge on specialised knowledge, whether in environmental science, marine geography, climate modelling, epidemiology, or digital forensics. Yet, despite recognising the indispensability of such input, the Court remains cautious not to delegate its adjudicative responsibility to external authorities.

What emerges from the ICJ's jurisprudence is a model of expertise that is instrumental rather than determinative. Experts are not surrogate judges. Their conclusions neither bind the Court nor replace the sovereign function of judicial interpretation. Instead, their reports function as structured illumination, helping the Court to decode technical material, contextualise data, and navigate methodological debates that would otherwise be inaccessible within a strictly legal framework. The ICJ's insistence on treating expert evidence as persuasive rather than conclusive reflects an essential safeguard against epistemic asymmetry, which is the risk that scientific or technical authority might eclipse legal reasoning. Importantly, the Court's treatment of expert reports is not deferential by default. The ICJ systematically interrogates expert findings against criteria such as methodological transparency, internal consistency, alignment with corroborating evidence, and proportionality of inference. This critical scrutiny

ensures that expertise does not enter the courtroom as unexamined truth. Rather than accepting expert conclusions as definitive, the Court subjects them to a process of juridical translation. Only when an expert's reasoning coalesces with the broader evidential and legal record does it significantly reinforce the Court's conclusions.

The evidential weight of such court-appointed experts is therefore persuasive rather than conclusive. While their neutrality as agents of the Court rather than of either party lends inherent credibility, the ICJ does not automatically accept their opinions at face value. Instead, it subjects them to the same scrutiny as any other evidence, examining the methodology employed, the transparency of assumptions, and the objectivity of conclusions. Where expert reports align with the broader evidentiary record, they can significantly strengthen the Court's findings. Conversely, where expert conclusions conflict with established materials or appear speculative or methodologically weak, the Court does not hesitate to qualify, limit, or even reject them.

This approach reinforces the primacy of judicial independence. The Court's role is not to defer to expertise but to translate technical knowledge into legally relevant findings. In cases such as *Pulp Mills and Whaling in the Antarctic*, the Court demonstrated its willingness to acknowledge expert insights while retaining the final interpretative authority. By integrating expert input into a larger matrix of legal and factual considerations, the ICJ avoids the risk of technocracy while preserving the integrity of its judicial character.

The evidential weight of court-appointed experts by the ICJ is significant but not conclusive, carefully modulated by procedural safeguards and judicial interpretation. It reflects a cautious yet pragmatic approach to integrating technical expertise into the legal adjudicative process, wherein the Court values expert input as a tool for comprehension rather than as a substitute for judgment. Under Article 50 of its Statute, the court may at any time entrust any individual, body, bureau, commission, or other organisation that it may select with the task of carrying out an enquiry or giving an expert's opinion. The minimal practice relating to the use of this kind of expert does not allow greater digression on its evidential weight. The ICJ's practice underscores the principle that while expertise can illuminate facts, it is the judicial function to evaluate them within the legal framework, ensuring that the sanctity of legal reasoning is preserved even in the face of complex factual controversies. The current practice, though limited in frequency, signals a maturing evidential philosophy: the ICJ acknowledges that law

cannot operate in isolation from specialised domains, yet it refuses to become subordinate to them. A more structured procedural framework for expert engagement—perhaps with clearer provisions for cross-examination, standardised reporting formats, or comparative appointment procedures—could enhance transparency and consistency in future cases. However, such reforms must remain anchored in the foundational principle that the judge, not the expert, delivers the final word.

Therefore, the evidential weight of court-appointed experts in ICJ proceedings is best understood as *contextually powerful yet structurally contained*. Their influence derives not from authority but from coherence. Their legitimacy lies not in expertise alone but in its successful integration into legal reasoning. Ultimately, Article 50 operates not as a mechanism of delegation but of informed adjudication—ensuring that while science may illuminate the path, it is law that determines the direction.

