Kurdish Studies
Jan 2024
Volume: 12, No: 1, pp. 433-447
ISSN: 2051-4883 (Print) | ISSN 2051-4891 (Online)
www.KurdishStudies.net

Received: October 2023 Accepted: December 2023
DOI: https://doi.org/10.58262/ks.v12i1.029

# Problems of Resorting to the Experts in International Criminal Courts

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***Abstract***

*.The use of experts in international courts has a multitude of benefits. Nevertheless, it is crucial to recognize the possible concerns linked to this phenomenon. A significant issue arises over the possible inadvertent transfer of court responsibilities to these experts. Furthermore, it is possible that experts may take on the responsibility of providing evidence on behalf of the parties, which contradicts the established principles of evidentiary norms. The assessment of the authenticity and trustworthiness of scientific evidence provided by experts presents a considerable obstacle for courts throughout the adjudication process in international disputes. In some circumstances, courts may need the participation of experts to evaluate matters that go beyond their realm of knowledge, therefore surpassing the authority of the courts. The principal duty of experts in international courts is to engage in a rigorous evaluation of the scientific subject matter being examined and provide recommendations based on their specialized knowledge and thorough analysis. In order to minimize the potential for awarding excessive power during dispute resolution, it is advisable to refrain from expanding the present limitations of their work scope. This condition may arise in two distinct scenarios: In the first situation, the court tries to solicit the expertise of professionals in order to get elucidations of specific language used inside international agreements. The interpretation described above is the key aspect of the legal concept being examined in the current dispute, as well as in the succeeding case where the Court advertises expert viewpoints on subjects that clearly belong within its jurisdiction*

***Key words:*** *International experts- judicial function- scientific evidence- court's jurisdiction- litigation process.*

## 1-Introduction

Experts are individuals who have specialized knowledge, skills, or training that enable them to assist in recognizing and understanding the factual aspects of disputes related to scientific, technical, or artistic matters. The use of expert advice can be traced back to Roman law, specifically within land litigation procedures and in the form of amicus curiae letters. Furthermore, during the Middle Ages, there was a notable demand for technical expertise. In the context of court proceedings in France and the development of contemporary nations, the inclusion of expert aid has been included and formalized within the civil laws of different jurisdictions. (L.Carlos,2020)

Experts in international courts might be beneficial, but they can also present difficulties, such as delegating judicial functions and bearing the burden of evidence on behalf of parties. Courts may struggle to evaluate the quality of scientific evidence offered by experts and see it as a step

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in conflict resolution. The function of experts should not go beyond interpreting terminology in international treaties, since this is at the heart of the legal norm to be defined. The idea of essential environmental actions requires a mix of scientific understanding and applicable legal requirements.

Most legal systems assume that court bodies are aware of the law that applies to the disputes before them, and when facts of an illegal nature, such as science, technology, or art, are brought before courts, international judges and arbitrators are obligated to understand and evaluate them, even if they are outside their knowledge. Understanding these factors may alter the resolution of conflicts or the identification of what may be termed carelessness, a gross mistake, or illegal behavior. In this case, the role of specialized experts, who assist the bodies of international tribunals in carrying out their functions, has emerged in recognition of the scientific nature of the facts of the dispute, so that judgements that are not contrary to reality and are more visible are rendered.

Experts are described as those who, via their specialized knowledge, skill, or training, aid in the identification and comprehension of scientific, technical, or technical facts in disputes. The first kind of expert assistance may be returned to Romanian law in land litigation processes, as well as via letters from court friends. In France throughout the Middle Ages, expertise was employed in judicial procedures. Experts have been appointed and codified in the civil laws of numerous jurisdictions since the advent of modern states. The study found that the inclusion of provisions for the use of expertise in international arbitration dates back to the Hague Convention on the Peaceful Settlement of Disputes, which established the PCA Permanent Court of Arbitration, and its article No. 50, which stated that the Court "had the right to seek oral explanations from agents of the parties, as well as experts and witnesses whose appearance before the Court might be useful. International court specialists started to appear in international criminal tribunals and trials. Nuremberg and Tokyo, where experts in a variety of fields, including forensics and fire-bombs, have been engaged, and, more recently, the International Criminal Tribunals for Rwanda, the former Yugoslavia, and the International Criminal Court have frequently used experts in a variety of fields, including natural sciences, financial transactions of leaders and presidents, documentation, human rights and social research, and indigenous language experts.(B.Simma,2012)

- The Statute of the International Permanent Court of Justice was adopted in the year 2000. Article 50 states that the Court may appoint experts on its own initiative to examine a matter or express an opinion on an order as an expert professional. In 1945, this Statute was transferred to become the Statute of the International Court of Justice, and it also decides on the authority to appoint experts to the International Court of Justice under Article 50. Many post-Second World War historians have acted as experts in instances involving international crimes, notably in European courts, in what may be regarded as the globalization of the employment of experts in the courts. Experts in history have played an important role in sentencing both convictions and acquittals, where the courts based their decisions on their assurance of their reports and testimony as a science that supports the standards of proof, the evaluation of facts, and documentary authenticity, drawing attention to details that have not been taken into account.

The study will clarify the problems that can arise when experts are used in international tribunals. The first problem had an effect on the judicial function, specifically the unintended delegation of the judicial function and the responsibility to decide on the dispute to experts in cases where experts interpreted legal terms that were at the heart of the dispute adjudication or were questioned by courts that were within the court's jurisdiction. The study will clarify the impact

on the course of litigation, such as the burden of proof on behalf of the parties, the provision of expertise to courts in cases of scientific uncertainty, and illustrate the third problem of ways for judges to verify the quality of scientific evidence without delving into scientific matters.

## 1-1-Literature Review

(Davies, G., & Monti, G. 2019).discussed that The use of 'experts by the Court is deemed as an unacceptable practice when dealing with disputes that involve intricate scientific elements. In contrast, other international bodies responsible for resolving disputes have employed scientific expertise in a more persuasive manner. some Courts, in the current case, have adopted an excessively limited interpretation of its role, ignoring the potential for a forward-thinking and proactive strategy ( Clarke, & Goodale, 2010). The Court should to have optimized its utilization of the many opportunities afforded to it according to the Statute and Rules. —The Court should have either selected its own experts or allowed for cross-examination of experts nominated by the parties. Engaging with experts as legal representatives hinders the Court's capacity to thoroughly evaluate the facts presented to it. (Elhaw ,2023 ) discussed that The Court's understanding of some cases has been lacking in recognizing its innovative and progressive nature. Additionally, the Court has not sufficiently acknowledged the interdependence of procedural and substantive obligations. In essence, the Court has missed an important chance to demonstrate its capacity to handle scientifically intricate disputes using contemporary methods.and he concluded that in order to prevent To the inadvertent delegation of the international judicial function, expert consultation must be limited to clarifying and disputing questions and controversial scientific or technical opinions, and court bodies must carefully formulate questions on which experts are asked to express an opinion, clarify their orders, provide for their refusal to comment, or express their legal views.

## 2: Problems related to the impact on the judicial function of international courts

### 2-1: Experts interpretation of some legal terms

In Mox plant case Ireland Reactor vs. United Kingdom, the former claimed, among other things, that the United Kingdom's license and operation of the reactor violated the United Kingdom's obligation to cooperate for the protection of the marine environment under articles 64 and 119 of the Convention on the Law of the Sea and thus required the Tribunal to establish a criterion for assessing whether the required cooperation for the protection of the marine environment was met (Jasanoff, 1991).

Argentina argued in the Pulp Mills lawsuit that Uruguay had broken its duties under the 1975 Uruguay River Convention by failing to take the essential steps to safeguard the aquatic environment and cooperating adequately on the optimal use of the river. It should be noted that the concept of necessary environmental measures, or the extent of appropriate cooperation, necessitates a combination of scientific appreciation and the relevant legal norms, as stated by Judges Alkhaswaneh" and "Simma in their joint dissenting opinion in the case, in which they argued that the opinion of scientific experts was indispensable to extract the substance of those terms, as well as some legal concepts, such as damage or reasonable.These emerged in instances presented before the WTO Dispute Settlement Body. Problems in disputes involving exclusions in article (20) (b) of the GATT Agreement, measures to preserve human, animal, or plant life, and conformity with article (22) of the SPS Agreement, for example:

In the Australia-Salmon dispute, the Settlement Committee examined its authorized experts on Australia's handling of possible food risks as well as whether its practices were discriminatory. Based on the guidance, the Committee established a difference between salmon imports, herring imports, and live decorations. 2 The Committee also asked experts to define SPS risk assessment and whether, in their opinion, each type of risk should be assessed separately, whether this should be considered a minimum risk assessment requirement, and whether the assessment would vary from case to case depending on the method used and whether it was quantitative or qualitative (Bermann and Mavroidis, 2006).

Experts also participated in the assessment of the extent to which European Union measures were "essential," the protection of human life or its plate in accordance with article 20/b) of the GATT Convention, including the assessment of the availability of alternatives to asbestos," as requested by the Women's Committee of Experts, in order to compare the risks arising from France's policy on the use of alternative asbestos products. One expert found that chrysotile was extremely successful, that none of the other fibers had proved the possibility of cancer in humans, and that using them as alternatives to protecting public health would be beneficial. In the case of European biotechnology products and their marketing, the Committee I. requested experts to examine the scientific reasons and technical grounds put forward by the European Union for justifying the delay, as well as the appropriate time that states might allow. The expert's statement was strictly scientific, and there was no ambiguity between the facts and the legislation (Golsan, 2000).

II. Second, the Committee requested that the experts identify the protection measures adopted by Union States to assess and protect against the potential risks of biotechnology products, as well as the extent to which such measures conformed to established international standards (Code Alimentarius IPSM)and the Cartagena Protocol on Biosafety, with the definition of risk assessment, in light of articles 5 and 2 and 5 and 3 of the SPS Agreement III. The third request is for help figuring out if there are big differences between the risks posed by the banned biotechnology products, their previously discussed isotopes meant for biotechnology products adopted in the European Union before October, new and non-technical comparable products, and food made using biotechnology treatments like genetically modified fermentments, bacteria, and enzymes. The final verdict contained frequent references to the experts' counsel since they had supplied crucial scientific information that helped the committee appreciate the concerns addressed by the parties. For example, the rule said that the Settlement Committee defined the term pain based on expert opinion and accordingly. It considered genetically modified plants to be "favourable" in a variety of ways, including the possibility of causing human health hazards, mutations of certain organisms after their use, where they became resistant to insecticides, and the production of undesirable plant breeds when they spread non-multiple in cultivated areas. In the case of investment disputes, the determination of legal issues may be based on realistic issues such as an assessment of a state's motives for enacting measures affecting investment, and to a large extent, accepted and documented science may be used as an objective mechanism for presenting such motives, determining whether the action taken by the supply state is in the public interest, meets the requirements of the control authority, or represents discriminatory treason. In the Methanex case, for example, the Court determined that scientific evidence did not show that the US policies in issue were intended to harm international methanol manufacturers or to assist domestic producers in a discriminatory way. (Clarke and Goodale, 2010)

**2-2: Experts intervene in some matters related to the court's jurisdiction.**

In practice, certain adjustment committees may ask specialists questions that are important to their competence and responsibilities. In the "Japan" case, for example, the Women's

Committee asked specialists to establish if there was an objective or logical link between the requirements set by "Japan" for agricultural product testing and any data given by the parties (Grando, 2009)

- In the case of "Hermons," the Settlement Committee asked experts to answer questions about the cost-effectiveness of various regulatory alternatives, and the experts responded that because they were physicists and chemists, they could not answer questions about regulatory or economic policies, and the expert, Dr. Ritter, objected to a question about whether the remaining hormones in beef would have a biological effect on consumers. He emphasizes that it was a question before the conflict's resolution.

The arbitral tribunal in North Atlantic Coast fisheries, Great Britain v. United States of America, gave a committee of experts the job of finding certain factual fisheries problems and deciding the appropriateness, necessity, and reasonableness of the disputed legislation. This includes legal analyses and evaluations of a legal system, which are the responsibility of the court and are impossible for experts to perform. In practice, the dominant concept has been that expert evidence is inadmissible except in subjects outside of the courts' authority, and experts are forced to make legal, conclusive, or final conclusions before the court. However, it is now recognized in both the international and domestic systems that courts may seek help in carrying out their tasks, including seeking an expert to interpret a legal or technical word included in a statute, where appropriate. The reports of experts appointed by the court are frequently crucial in the French system, and judges are allowed to request expert statements on how legal concepts apply to their facts or on matters relating to the legal interpretation of facts, provided that this is limited to matters that judges cannot be aware of without assistance.

One part of the law was that experts should only help understand illegal facts and that it was the tribunal's job to adapt, evaluate, and decide on facts. This was done so that the Tribunal wouldn't accidentally lose its authority over experts, even when experts on the Tribunal's panel took part in discussions, as was the case under Article 289 of the UN Convention on the Law of the Sea (Whittaker, 1998)

As Judge Yusuf stated in the Pulp Mills case, the experts' task is to clarify the facts of the dispute, after which the Court assesses these facts and decides the case; the Court will not require the assistance of experts in all aspects of the case but only in respect of certain facts. There is no reason to be concerned that expert evidence is specialized rather than general or that it is private rather than universal, as recognized in national legislation and which has not resulted in the delegation of powers to those courts. It is the same point of view expressed by a jurist when the procedure for using experts is similar to that of providing adequate information to political decision makers, which is independent of decision-making and policy application, and it cannot be said that a specialized technique can make decisions, is qualified to plan for public interests, is familiar with all the details of official decisions, or is an expert in its strategies (Chinkin, 2011)

The aforementioned perspective aligns with a jurisprudential standpoint that draws a parallel between the act of obtaining assistance from experts and the act of providing comprehensive information to political decision-makers. This process is distinct from the actual decision-making and subsequent policy execution. It is not possible to assert that a specialized specialist has the authority to make judgements, possesses the qualifications to devise plans that serve the public interest, possesses comprehensive knowledge of all the intricacies of official decisions, or is an expert in their strategic implementation. In order to prevent inadvertent delegation of

the international judicial function, it is essential to consider the following factors while requesting the help of experts:

1. Establish the parameters of expert consultation to ensure its focus remains on the primary objective of elucidating contentious scientific or technical matters and countering the scientific viewpoints put forth, thereby enabling judges to render decisions on disputes without their intervention in the scientific aspects.

2: The directives given to experts are characterized by their clarity and directness, particularly in terms of abstaining from offering or articulating their viewpoints on legal matters. Additionally, judicial entities demonstrate a strong commitment to precision when drafting the specific questions that experts are tasked with addressing in their opinions.

3-Courts ought to prioritize transparency when providing justifications for their rulings in cases involving scientific matters, particularly in terms of elucidating the degree to which they rely on expert perspectives in shaping their legal doctrine, especially when such contributions play a significant role in resolving certain legal issues (Rousso, 2000)

### 2-3: The court's responsibility for its issued rulings with the assistance of experts

The degree to which the court bears responsibility for decisions made with the assistance of experts is debatable. Do the experts share this obligation? There is little question that international courts alone bear complete responsibility for the verdicts and conclusions given in disputes in all situations. Prior to that, they are responsible for assessing the facts of the dispute, no matter how complex or requiring specialized knowledge they may be, as well as the implications of understanding and applying legal terms, understanding and adapting facts, and applying relevant legal rules to them, even with the assistance of experts in the understanding and interpretation of facts or terminology (Wautelet et al., 2012)

Because the court's role is to evaluate the parties' accusations to determine whether they are scientifically justified as proof of a violation of a legal duty, if the experts offer advice to the court, it is not obligatory on it, and it may put it aside or use it to build its legal convictions based on the facts. Finally, professional counsel is one method of comprehending the facts of the disagreement. The judges then begin their work on the application of the law and the final judgement, as requested by the Hungarian State in the Gabkovo Najimaros case, which stated that the International Court of Justice should not make a final judgement on scientific problems but rather decide whether there are serious scientific concerns about the project's impact.

## 3: Problems related to the impact on the stages of the litigation process

### 3-1: The experts may bear the burden of proof on behalf of the parties.

One of the biggest problems is that experts have to prove things for both sides, which goes against the rule that the one making the claim is the one with the burden of proof. Other problems include giving experts to courts when there is scientific uncertainty and how much using experts is seen as part of the process of resolving international disputes, as shown in the second

The basic rule of evidence requires the claimant to prove his or her claim, and defense tactics always take the burden of proof into consideration, while the claimant strives to find and show aspects of fact and law that may merit a verdict in his or her favor. 2 The International Permanent Court of Justice has historically used the substance of burden of evidence rule 3, and the

International Court of Justice has adhered to the same content. - Thus, international courts hear disputes based on the parties' requests and the evidence they provide, and it is not within their functions to seek evidence that may support or refute any party's claims or to apply any criteria to compensate for any deficiencies in the parties' evidence (Rousso, 1991)

For example, in the Gabkovo Najimarus case, Hungary bore the burden of proof on the availability of environmental necessity, preventing it from determining its responsibility for the violation of the 1977 Treaty with Slovakia and its suspension of work on the construction of dams on the Danube River, but it could not prove that situation because it concerned a different scientific problem and a research site, and the Court found that the failure of the Hungarian deputies to prove that situation

In the "Hermons" case, the European Union Settlement Committee required the European Union to demonstrate that the trade restrictions it had imposed to address potential health risks were for beef treated with hormones and did not violate the SPS Agreement. This issue arose in the "Japan" case involving agricultural goods, where the Settlement Committee utilized evidence given by independent experts in an unexpected way when it determined that the complaints stated by the claimant state were not prima facie. 1 It relied on scientific data and found that "an alternative mechanism for detecting plant health, namely the analysis of the absorption rate," which was less trade restrictive but was not implemented by Japan, existed. The Commission determined that Japan could have done the required tests on American fruit using that system but that neglecting to do so breached the requirements of the SPS Agreement and highlighted that the Commission had utilized exceptionally high levels of expert opinion. In terms of the burden of evidence (Chalmers et al., 2019)

The engagement of experts by international courts might be seen as a potential infringement of the burden of proof principle. This is because these experts assume the responsibility of providing evidence on behalf of the parties involved in the dispute and attempt to substantiate the perspective of any party. The issue at hand was raised in the context of the "Japan" case pertaining to agricultural products. In this case, the settlement committee deviated from conventional practice by utilizing the information provided by independent experts in an unconventional manner. This deviation was prompted by the committee's observation that the allegations put forth by the plaintiff did not appear to be evident at first glance. Consequently, the committee turned to the scientific evidence presented and deduced: It is worth mentioning that the committee has used unconventional methods in seeking expert guidance pertaining to the allocation of the burden of evidence or the establishment of innocence (Whittaker, 1998)

In an attempt to tackle this issue, a group of scholars throughout the discipline of jurisprudence has proposed that the courts ascertain the stage at which the plaintiff has successfully established a prima facie case and met the burden of proof. At this juncture, the courts would possess unrestricted discretion to consider the expert opinions and evidence that bolster the position of the aforementioned party. In the case involving asbestos, the Settlement Committee determined that the burden of proof for the claiming party's first assertions should be established automatically. Regarding the information provided by the experts consulted by the Commission to inform its comprehension and assessment of the imams of the parties, it is imperative to note that such material cannot, under any circumstances, be used to favor a party whose claim remains unsubstantiated.

**Alternatively, his defense might be considered prima facie**

Furthermore, in compliance with Article 35 of the United Nations Compensation Commission Rules pertaining to Iraq's incursion into Kuwait (UNCC), it was incumbent upon each claimant

to furnish substantiating documentation and evidence that sufficiently established the eligibility of their claim for compensation in accordance with Security Council Resolution 687 of 1991. The Committee relies on reports prepared by specialized consultants, seeks information from international organizations, and occasionally engages in discussions with representatives of claimants to gather supplementary information for its decision-making processes. In the company of knowledgeable individuals (Chalmers et al., 2019)

The implementation of this suggestion encounters a practical challenge, namely that international courts and settlement committees render their verdicts on dispute resolution based on the comprehensive information presented to them during the proceedings. This information includes contributions from the involved parties and experts and is evaluated as a whole, taking into account the evidence and information provided. It is challenging to determine the appropriate significance of the evidence that the parties have presented as well as the expert opinions about its outcomes.

In the context of WTO dispute settlement, the link between expert advice and the application of burden of evidence standards is a point of contention. This is because the resolution of such disputes depends on how happy the members are with the settlement process. At the same time, the settlement procedure in scientific matters gains validity from the involvement of expert scientists. According to Article No. 11 of the DSU system, WTO members are aware that the settlement process does not take place in a vacuum. This article says that settlement committees must make a full assessment of the facts, which includes getting information from experts and having rival teams evaluate the facts objectively (Amerasinghe, 2005)

**3-2: Providing expertise in cases of scientific uncertainty**

In some cases, experts are asked to assess the appropriateness of some of the precautionary measures taken by states confronted with potential risks, the realization of which involves sientific uncertainty, including an examination of the doubts on which states have based their actions, reservations about the scientific hypotheses offered to explain these risks, and the optimal scientific method of dealing with them, which is difficult and may raise the - The case of EC-Biotech, where expert Ando" at the oral conference of experts put out his position on mutations that rendered insects resistant to pesticides, was one example of an international dispute in which this subject was mentioned. He noted that every time a new insecticide was introduced, scientists believed that insects could not develop resistance, and by the 1980s, insect scientists had overturned their belief because they were always wrong, and thus scientific uncertainties must be treated with caution, as agreed by Dr. Square, who determined that current knowledge was insufficient in many cases to model, identify, or predict the extent of a potential problem (Hodgkinson and James, 1990)

The experts hired by the Settlement Body in the Japan Measures case to look at how altruism affects apple imports agreed that Japan should keep enforcing some of its rules about importing American apples, such as the rule that the apples can't have apple bacteria and that they shouldn't be cut down as a way to deal with possible biosecurity risks, the science of which is still uncertain

In the Rubian and asbestos cases, expert Henderson first found that when the government had to make a decision on a matter where there was scientific uncertainty, the potential environmental effects of not making a decision were serious and irreversible. In the second case, he found that many neutral scientists believed that chrysotile was a carcinogen, but they could not prove it conclusively at the time, and that, scientifically speaking, chrysotile was a carcinogen. To avoid this problem, experts shouldn't give firm or definitive opinions or answer value-based

questions. This is due to the fact that the conflict as a whole is the result of scientific uncertainty, so it would be preferable to resolve it by clarifying scientific issues in general and advising actions and measures appropriate to potential risks in accordance with the precautionary principle.This tendency was shown in the instance of "South Bluefin Tuna," in which Australian scientists inserted passages from the Scientific Committee's tuna conservation studies from 1991 to 1991 and even 2001, which advised no growth of tuna fishing. Otherwise, losses would be considerable and impossible to assess at this time. Expert Paddington produced a report that incorporated the perspectives of certain Australian and New Zealand scientists. He emphasized the need for the precautionary principle in dealing with scientific uncertainty in fisheries management. He also mentioned the FAO Guidelines on Precautionary Measures in Overfished Fisheries. He determined that tuna stocks in the area had definitely been surpassed, had reached their lowest historical levels, and that recovery signs were difficult to anticipate due to a lack of knowledge on their mode of movement at such levels. (Romano, 2009)

## 4: Problems related to the evaluation of the scientific evidence

Among these problems, the Court establishes the limits of the scientific expertise of the experts, its failure to request advice that does not fall within their competence, as well as the Court's assessment of the quality of the scientific evidence provided without going into the scientific aspects, as shown below

### 4-1: Non-specialization of Experts on the Subject of Disputes

When using experts, international courts must identify the scope and limits of their expertise, particularly their exact scientific specialization, where practice has shown that in some cases, and then the use of experts in disciplines unrelated to the subject matter of the dispute, such as asbestos, in which some experts appointed in writing during a joint meeting with the settlement body have demonstrated that the subject matter of the dispute does not fall within the scope of their expertise. In other cases, the parties to the dispute raised objections to the specialization of experts, such as in the Thailand-Cigarettes case, in which the Settlement Committee adopted an assessment of the legality of Thailand's restrictions on the import of American cigarettes based on the advice of World Health Organization (WHO) experts, who stated that prohibiting cigarette advertising might limit demand and that the entry of large tobacco companies might limit demand.

This might take a different turn if the court seeks opinions from experts who are not specialists in their fields. During the joint meeting with experts in the hormones case, for example, the Chairman of the Settlement Committee asked them questions that were not within their specialties and were not scientifically defined, such as assessing certain conduct of the parties to the conflict, the social and legal comparison of the risks of growth hormones and appropriate measures in response to them, or the extent to which the use of those hormones is excessively widespread. The settlement committee also asked experts in the case of "Hermons" whether the effect of karabadox, an indirect growth catalyst, on intestinal bacteria could be compared to that of direct growth stimulus hormones or if there was a clear distinction between them. The experts appeared hesitant to respond, with some believing that such a comparison might necessitate an assessment based on considerations outside of their scientific disciplines, and then one of them responded in a very brief and conservative manner, saying that "Carbadox is carcinogenic and affects genes, while there is much debate as to whether growth hormones are carcinogenic to genes (Hwang, 2010)

The Expert Settlement Committee in the asbestos case questioned the efficiency of monitoring programmers or population training to avoid the hazards of chrysotile, and one expert said that there were other variables (White, 1965)

Intersecting factors include human mistakes, willful noncompliance, inadequate evaluation, and accidents, as well as the difficulties of educating the population to avoid exposure to such compounds or maintain a set level of exposure to such substances. In general, the human environment is a social and public health concern. The expert went on to say that he intended to prove that the advice he offered was based on his general knowledge and wellbeing rather than his scientific specialization.

Because of this, it is important for international courts to know what scientific and technical disciplines are needed to understand the facts of a scientific or technical dispute, to know the difference between scientific and social issues, to listen to expert advice in this area, and to give parties and experts a chance to say whether or not certain issues are within the expertise of experts (Grando, 2009)

**4-2-Evaluation of the quality of scientific evidence by judges**

To address this issue, the courts can ascertain the quality of scientific evidence in ways that do not interfere with or subject it to scientific aspects, such as requiring that the scientific opinion be published in a specialized magazine with a high impact factor so that it is assured that it is firmly established and has a place in the scientific community, as required by the Settlement Committee. The Union has objected to this because, despite the fact that it is based on scientific studies, it prohibits states from taking rapid precautionary action since it is not published in scientific journals and assumes that it takes time to publish. - In the Australasian-Salmon case, one of the experts appointed in his report noted that the parties to the conflict had provided evidence from personal contacts with non-expert scientists, specifically the scientific views of a leading fish pathologist, which were not documented by scientific publication and thus represented only the author's views and assumptions. While acknowledging that the quick updating of public scientific views was an issue, the parties, particularly "Canada," had access to up-to-date material from research initiatives, veterinarian reports, and monitoring and observation programmers (Gressman et al., 2007)

The tests submitted in the Japan-Apples case, which demonstrate that the spreading apples, which do not display symptoms, do not contain a fireplace bacterium, are an example of scientific data that is not adequate for the formulation of a court conclusion. However, "Japan" referenced research published by the globe Van der Zoet that documented the presence of bacteria as a plague in mature apples. The research did not assess the amount of this osmosis or the level of bacterial infection. The United States of America requested clarification from the study's authors and publishers. However, the result was ambiguous, and further questions were raised concerning the notion that bacteria were present in the fruits of mature and widely sold apples. As a result, the Commission judged the Van der study's findings to be ambiguous and contentious

The work of institutional knowledge given by specialized international organizations was also subjected to quality inspection and evaluation. In the instance of Australia-Salmon, for example, the Settlement Committee was interested in evaluating the OIE consultations. Dr. Winton, the Board's authorized expert, emphasized that the FAO Fish Disease Committee relied on information collection via its collective networks of agencies and institutions. It did not consider all of the risks associated with disease transmission between potential trading partners and relied

on the opinions of experts in certain fields who were unfamiliar with them. It tended to focus on uncontrollable diseases that spread in limited geographical areas, are accurately diagnosed, are not formalized, and are based on the consensus of its members, who were no more than five experts. (Rosenne, 2007)

Australia agreed with the expert "Winton" and cited an example of the OIE's advice's inaccuracy: its recommendation to states to devastate fish as a standard measure against the transmission of fish diseases, which reflected no importance to "Australia," because endemic diseases in major aquaculture states were not. The implementation of the OECD Code Guidelines is inappropriate for the conditions of the war since they are under significant evaluation in terms of their representativeness and openness to global situations. According to the Settlement Committee, the SPS Agreement is clearly geared towards the adoption of the OIE Standards, Guidelines, and Recommendations. The OECD Code's terms of reference have not been amended for the purposes of the Board as a result of its review or the way in which it is approved (Reisman, 1971)

The recurrent complexities of issues related to the standards and quality of scientific evidence are anticipated, particularly in relation to the relative importance of conflicting studies based on their recency and reliability. Additionally, the significance of publication as an indicator of reliability, as well as the weight assigned to reports of personal communications with scientists, is subject to debate due to the intricate and varied nature of disputes that may arise. It is important for courts to evaluate the probative value of evidence in a case-specific manner. The implementation of explicit regulations on the evidentiary weight assigned to various types of evidence may prove counterproductive, particularly if these regulations extend beyond simply advisory principles.

## 5: Problems related to resorting to experts in one of the stages of deciding the lawsuit

### 5-1: The stage of fact-finding

The question of how much the request for expert help is considered one of the stages of deciding the relevant international dispute comes up. The second stage is the court's attempt to decide on legal issues by figuring out how important and effective the stage of investigating complex scientific issues is in some disputes, like border demarcation disputes, that need expert help. The experts do independent work, such as applying authorized maps, pool work, and measurement, and then the court decides the disagreement.Given the importance of the fact-finding stage in international disputes in general, provisions relating to the work of investigation committees were included in Articles 9:14 and 9:35 of the 1899 Hague Convention on the peaceful settlement of disputes. The Permanent Court of Arbitration issued alternative rules of procedure addressing fact-finding and investigative commissions in 1997, based on the 1907 Hague Convention on the Peaceful Settlement of Disputes.

Article (29) of the United Nations Agreement on the Conservation and Management of Straddling and Highly Migratory Fish Stocks also allowed states to form specialized expert committees to assist in resolving disputes quickly, in accordance with Article (5) of Annex VIII to the 1982 United Nations Convention on the Law of the Sea, so that the Court could rule on them. Special authorities may order an inquiry to determine what circumstances led to the disagreement (Verbeeck, 2001)

Article 33/3 of the 1977 Convention on the Non-Navigational Uses of International Watercourses says that if something illegal happens, the parties must use a fair way to find out what happened, unless they agree to use a different method.

In a comparable manner, the work of the Committee on the Limits of the Continental Shelf, which was established under Article 76/8 of the United Nations Convention on the Law of the Sea to provide recommendations on the renewal of countries' external limits of the continental shelf, consisted of 21 elected members, a majority of whom are experienced in geological sciences. In compliance with the 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context, "Geophysics" and "Hydrography" issued their first report in 2006 in a dispute between Ukraine and Romania. The committee decided that the "Ukraine" project may have a detrimental cross-border effect and suggested that the two nations organize a second research program on the subject. As Ukraine's actions persisted, the Convention Implementation Committee determined that Ukraine "had not complied with its established obligations," and this decision was approved by the Meeting of the Parties to the Convention in May 2008.

subsequently also regarded the investigation mechanism in the competition to decide post-conflict claims as a work of scientific expertise (Nappert and Fortese, 2014).

with the UN Compensation Commission investigating and assessing claims submitted to it according to scientific standards and with the assistance of experts from a variety of fields, including biology, medicine, economics, and accounting; geology; atmospheric sciences; epidemiology; and point spill assessment and response. The first batch of those claims related to environmental damage, which necessitated verifying the occurrence of damage, estimating the resulting loss, and evaluating the cost of damage mitigation methodologies.

**5-2-- side of some disputes in international courts**

In some disputes brought before international courts, investigations regarding the interpretation of the facts in light of the rules of law were required, such as Singapore's assertion in the land reclamation case that Malaysia did not Whether or not Singapore's charges are valid, they underscore a significant issue regarding the need for legal analysis in circumstances where the facts before the court are complicated. In the Warsaw Electric Company case, the Polish government proposed that disagreements over the interpretation of the relevant agreement be sent to a legal arbitrator, with the exception of the application of Articles (5) and (11), which must be evaluated by an arbitration specialist. However, despite its ability to consult experts, the court in this instance did not see the need to take any action that may ensue. This leads to duality of jurisdiction and the attendant procedural and substantive flaws, such as the issue staying unresolved owing to expert disagreement or delaying the case's conclusion. In the 2005 case of the Iron Rhine Railway, the arbitral tribunal utilized its power and obligation to handle legal concerns, leaving the burden of analyzing scientific questions to the parties (Bell et al., 2008)

It assembled a team of independent experts to evaluate the entire cost of reactivating this facility, the amount paid by the Netherlands, and the advantages that would flow to it as a consequence of the reactivation, according to the experts. Because it is not the court's responsibility to examine matters, the court thought it was proper to leave these problems to the experts. Scientifically complex measures, such as measures that could be sufficient to achieve compliance with environmental protection requirements, and expert work will make the court's decision consistent with reality. The arbitration decision specified that the costs of revitalizing

this facility, including the required environmental measures, must be borne in a balanced manner by both parties, in accordance with Article (12) of the Treaty of Separation of Territories "The right of passage through the Netherlands, which is activated by the construction of this line, so that the Netherlands bears costs corresponding to the economic benefits, and any other benefits it will reap due to reactivating the facility, and Belgium covers the rest, and with regard to the project's need to build several facilities in the two regions of Minueh," Limburg, the two parties will share equally in the costs of these constructions."

It can be said that considering the utilization of expertise as a stage in the adjudication process is both illogical and unrealistic. This approach fails to deviate from the overarching principle of employing expert knowledge to enhance the comprehension of scientific and technical matters by judicial bodies. For instance, in all pre-existing disputes, experts have been sought after, albeit through various methods such as scientific investigation, the requirement for parties to employ an illicit fact-finding mechanism, or the assessment of quantifiable costs or benefits. These are all pertinent matters in which the utilization of expertise is deemed appropriate. Scholars or specialists in the field

Finally, there is a basic challenge in offering expert advice as one of the phases of advocacy in instances involving scientific ambiguity and possible damage, where factual and legal concerns cannot be clearly separated.

## Limitation

The limitations of this paper can be addressed in the future that There is a fundamental challenge in suggesting that expert guidance should be seen as a component of advocacy in situations characterized by scientific ambiguity and possible damage, whereby factual and legal inquiries are inherently intertwined and not readily disentangled.in developing research competence is examined in this paper. The participation of an arbitration expert should be taken into account, and although the court has the power to seek expert advice, it did not deem this step essential due to the potential drawbacks associated with it. These drawbacks include the establishment of a dual jurisdiction and the emergence of procedural and substantive deficiencies, such as the failure to resolve the dispute or the postponement of case adjudication due to differences among experts. in the development of research competence can be investigated by scholars for future reference

## Conclusion

The study focused on the use of experts by other international dispute settlement tribunals, bodies, and commissions, such as the International Tribunal for the Law of the Sea, whose dispute settlement system required parties to settle their disputes, including through the formation of a special arbitral tribunal made up entirely of experts to settle certain maritime disputes. Each party names two experts and a president from a neutral state acceptable to both parties. The formed expert panel is tasked with reaching binding findings on the parties and granting them complete authority to judge the issue.

The study emphasizes the important role of experts in international courts, noting the International Court of Justice's and the International Permanent Court of Justice's reluctance to use experts only to the most limited extent, as both Tribunals have resorted to it only four times in their history, despite the fact that this procedure is provided for in their Statutes and

Rules of Procedure. In such cases, the Tribunals have had to assess certain scientific issues, disregard scientific views, and simply examine the extent to which the relevant legal obligations have been breached, which may cause States to refrain from resorting to judicial settlement of their international disputes or to fail to comply promptly with the judgements handed down if they see that decisions of international courts are devoid of reality or are not compliant.

The study clarify how the use of experts in international courts changed from total rejection to non-prosecutable scientific issues. It also looked at the tendency of international courts to engage in scientific fact-finding, the approach that was most common in practice, which was the acceptance by international courts of disputes that involved scientific issues, and how to look at and understand these issues.

## Recommendations

In order to prevent the appointment of experts whose knowledge is incompatible with the dispute at hand, the kind and breadth of expertise necessary, as well as the particular scientific specialization of each expert, should be defined in order to avoid the appointment of experts whose expertise is incompatible with the conflict at hand. Courts should also adopt criteria for evaluating the quality of expert evidence, with one of the best mechanisms requiring the publication of the scientific point of view in an ad hoc scientific journal to ensure that it is established and sufficient in the relevant scientific community. To avoid unintended delegation of the international judicial function, the scope of expert consultation must be limited to clarifying and disputing questions and controversial scientific or technical opinions, and court bodies must carefully formulate questions on which experts are asked to express an opinion, as well as clarify their orders, provide for their refusal to comment, or express their views on legal matters.

Pre-trial procedures, or a distinct pre-trial phase, may be launched by tribunal judges who are tasked with assessing facts outside the judges' understanding and who have the authority to engage credible experts, notably from specialized international organizations. In other situations, at the request of either party to the dispute, such a method may be implemented to guarantee that the tribunal makes frequent use of external expertise in scientific and technological issues, with judicial direction and control at all levels of this kind of expert usage. The development of a system of expert use, drawing on independent experts, could be reflected in the examination of studies submitted by European Commission institutions and their scientific committees, as well as national scientific opinions submitted by each party, for European Union courts. A method like this would help judges check the minimal scientific merit of the research provided by the parties and prevent the situation where the same world that issued a scientific opinion supporting the disputed technique would be required to assess the same study later.

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