

JURISPRUDENTIAL FUNCTION OF INTERNATIONAL COURT OF JUSTICE AND ITS CONTRIBUTION IN DEVELOPMENT OF INTERNATIONAL LAW

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Abstract. The necessities derived from modern era require ICJ to harmonize its law of evidence proving claims with the last scientific gains concerning the fact-finding process. Such a legal harmonization can play a major role in development of international law boundaries and subsequently can evolve the mechanisms of evidence proving before the international tribunals. Through the descriptive method, this article examines some emerging aspects of abovementioned process and presents some new results which are necessarily in association with tenets of rules governing on law of evidence. Finally, this paper argues that development in jurisprudential processes of judicial tribunals generally and ICJ specifically is inevitable, but the centrality of State sovereignty still remains and underlies this development.

Keywords: Development of International Law, Jurisprudence, International Court of Justice, Law of Evidence

1 Introduction

Due to various reasons, addressing issues related to the Jurisprudence of International Court of Justice has increasingly become important. In recent years, because of growing number of international disputes -specifically *Matter of Fact*- on one hand and posing disputes related to the highly technical issues on the other, the importance of issues concerning the Court's jurisprudence has been doubled. With regard to the unique peculiarities of international adjudication, the policy of international tribunals is usually based on the investing on non-controversial evidence, instead of addressing parties' controversial facts and evidence. Similar to Permanent Court of International Justice (Manely, 1992), ICJ has always tried to build his judgements based on the facts which are agreed by litigants (Valencia-Ospina, 1999). However in adjudications within national courts, the judicial authorities usually action more actively concerning facts discovery. However, this policy of Court has not been always practical and in some cases that litigants have had a remarkable disagreements concerning the facts and evidence, Court has encountered serious challenges. In Court history, ICJ has faced some cases in which the determination of dispute's fact and evidence was primarily needed or basically the fact discovery has been posed. In this respect, both cases can be referred, including cases concerning "*Military and Paramilitary activities in and against Nicaragua*" (1986) and "*Corfu Channel*" (1949). Increasing wave of States tendencies in resorting to ICJ contentious jurisdiction for settlement of disputes- especially among the developing countries- in recent years, it is explicitly observed that, the number of international disputes in which decision making concerning *matter of fact* is considered prior to application of governing rule on *matter of law* have been remarkably increased. Such a transformation necessarily led to growing rate of attention paying to law of evidence before the Court. In this respect some cases can be referred, including Oil Platforms (Islamic Republic of Iran v. United States of America), 2003; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), 2005 and Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), 2007. In this regard, cases concerning territorial issues like the case concerning (2007) Maritime Delimitation and Territorial Questions between Qatar and Bahrain can be added to the abovementioned cases as well, in which the role of evidence as the basis of possession proving is notably significant, so that in proceeding process great deal of evidence is provided.

This article tries to indicate some developing dimensions of judicial jurisprudence through the study of ICJ proceeding

procedures. To achieve this purpose, addressing the collection of methods and tools governing on fact-finding process has been put on the agenda. The current article attempts to respond this question that how Court has applied the rules governing on law of evidence in its proceedings towards States disputes. Since only States are capable to litigate before the Court, a large extent of attention has been dedicated to the element of States sovereignty. On the other words, that part of developing mechanisms are investigated that are in association with States behavior. To this end, referring to some primary foundations as the starting points of discussion will be inevitable. There should be a distinction between two concepts of legislation and the development of international law. Article 24 of the Statute of the International Law Commission refers to the role of government policy in the development of international law as well as other factors and variables such as international courts decisions, especially the International Court of Justice opinion, as positive reasons or evidences of the existence of a rule of customary international law. In other words, International Court attempts to extract and identify international law through its decisions. Controversies exist among the international legal experts in this regard. Broadly speaking, there have been two approaches in relation to this issue.

1.1 Traditional Approach

According to this approach, Article 38 of the Statute of the International Court of Justice includes the most recognized sources of international law. It refers to acts and not the creation of law. Article 38 of the Statute is faced some restrictions regarding the judicial decisions as a subsidiary source of international law. First, judicial decisions along with the "teachings of prominent writers of different nations" enjoy the subdominant feature. Accordingly, judicial decisions' duty is a tool which enables International Court to identify and apply the rules of customary international law. Secondly, it seems that this article allusion to Article 59 of the Statute, which is at the end of the 1 (d) of Article 38, eliminated the possibility of resorting to the doctrine of jurisprudence in international law. Therefore, judicial decisions have no value genuinely. However, as will be shown, there is no such restriction in practice.

1.2 Realistic Approach

According to this approach, one cannot deny that jurisprudence of the International Court of Justice is recognized as one of the sources of international law in practice. Side views of the Court on the interpretation of the rules are accepted as the best available understanding base of international law. They are also used as certain reasons. This issue has been accepted not only by writers, but also by governments and international courts. One of the trends in international investigations is that governments refer to previous judgments of the Court in order to prove their claims. In fact, they do not have any doubt about the validity. Governments may object to the issue in terms of lack of applicability of past decisions and not the lack of credibility. Articles 38 and 59 have never been cited. The other side claim has not been rejected. Fitzmaurice (2005) stated that, over time, court decisions gain value and credit which separate opinions of dissenting judges do not have it. Lauterpacht (1966) also cites several reasons for the court referring to his previous decisions. He states that previous decisions of the Court are the factor of stability which affects future decisions in terms of legal and practical experience. These decisions are regarded to be the reason for what the court considers as law. It will be a reliable statistics for the future position of the Court. Therefore, for practical reasons, these decisions show what international law is. In fact, they are largely similar to legal resources which have been mentioned in the first three paragraph of Article 38. In terms of form, they may only be considered as a subordinated instrument to determine the sources of law. However, the effect is the same (Ibid). The Court is also aware of the effects of its

decisions beyond the parties. In the case of the Aegean Sea (1978) continental shelf, the Court stated that, however, under Article 59 of the Statute, court decisions have no binding effect beyond the parties and they are considered only in that specific case. Obviously, any comment of the Court in the case of 1928 law will also have consequences with respect to relations with other governments, with the exception of Greece and Turkey.

In the case of "Anglo-Iranian Oil Company", Alvarez also pointed to the Court's role in the development of international law. According to him, if the statute of the Court wants to limit his authority to the resolution of conflicts, the states will state it clearly. In that case, Court was considered merely the Court of International Arbitration, but the current Court is a Court of Justice. Given the dynamicity of international life, it has a dual role of rule declaration and development of rights. The first task is to settle disputes between states, as well as protecting the rights of the states in accordance with the Law of Nations. With regard to the second task of rights development, these tasks include deciding on existing rights, adjusting them, creating new concepts if needed. The second special task is justified by the dynamic character of international life. Moreover, one cannot deny that the main sources of international law and judicial decisions branches are completely separated. They are very complex and affect each other. In many cases, judicial decisions establish the compilation basis of treaties. For example, Court decision of 1951 in the case of fishing (explaining the fact that drawing straight lines is the criteria to determine the width of the territorial sea) and the North Sea Continental Shelf decision of 1969 affected the formulation of Law of the Sea. Basic concepts such as armed attack and legitimate defense have crystallized in court procedures (for example, the case of Nicaragua) (Ruda, 1991). Therefore, it can be stated that court decisions have a very important role in the development of international rights. In some cases, they determine and interpret other sources of international law as well. This is done in two ways. First, one of the tasks of the International Court of Justice is the identification of rules of customary international and their application toward the mentioned specific case. This task makes the court to identify a customary rule in the first step and introduce it. With this action, it can take part in the development of general international law. Secondly, in addition to international treaties and conventions, court may decide on the basis of general principles of international law.

In this case, to impose a general principle of law in a particular case, the Court will have to describe different aspects of the general legal principle. As a result, the scope of legal interpretation of that principle will be developed. This issue is more important especially when the Court is faced with the silence of the international treaties and customs.

2 Sources of Law of evidence Proving Claim in International Court of Justice

In this article, those sources of international law which are used by International Court of Justice in the course of judicial duties in connection with fact-finding and proving the claims will be investigated. In the domestic (Iranian) legal system, there are usually compiled codes which are employed by judicial institutions to play their roles. For example, Articles 194 to 294 of the Civil Procedure Code of the Islamic Republic of Iran specify the rules governing the proof of claim. In international law, there are no compiled codes which can be used by the International Court. Moreover, international investigations are not equal in terms of procedure code. This means that each investigation is subject to its own conditions and requirements. For example, international arbitrations are different from international judicial investigations. Each international investigation depends largely on litigants. Dispute parties also affect investigation issues. However, over time, it was seen that rules and regulations have been gradually formed in jurisprudence and international arbitration in connection with matters of procedure generally and in connection with fact-finding and proving the case specifically. Procedures of the

Permanent Court and the International Court are parts of these procedures. Generally, sources of evidence proving the disputes in the international investigation can be divided into two main groups of written sources and unwritten sources. The main written source is founding documents and, in other words, the Statute of the International Courts and their investigation rules. The provisions contained in this resource usually express the general principles. They assign the details determination to the International Court. In addition to these resources, International Court must consider other unwritten sources. The most important unwritten sources are general principles of law and international jurisprudence.

2.1 Written Sources:

The main written regulations related to rules of evidence proving the claim can be found in Statutes and investigation rules of the International Court of Justice. However, the court has created written sources in other forms. Civil judicial procedures and administrative guidelines of the Court are among them. All these sources will be introduced in the following.

2.1.1 Principle Sources:

A. Statute of the International Court of Justice

The Statute of the International Court of Justice is the most important and most original document for duties of the Court. This Statute determines organizational issues, procedure and court powers. Broadly speaking, in the Statute, there are not many regulations related to the rules of evidence proving the claim. It contains Court general issues and power. However, the Statute is most important resource for decision-making on matters. It is a mother document. Therefore, other resources should be interpreted with respect to the provisions of the Statute. The provisions of the Statute are broad and flexible (Hygt, 1987). With the division of the investigation procedure into two written and oral stages, the Statute regards the issues related to the Procedure Code such as rules of evidence proving the claim in two ways. Paragraph 5 of Article 43 has predicted the witnesses and experts hearings. In Article 44, the Court is allowed to visit the place to gain the reason. In a general prescription, Article 48 of the Statute has allowed the Court to issue some arrangements in order to handle the case. The court can decide on form and time of presentation of the arguments of each party. Moreover, this article authorizes the Court to make all the necessary arrangements related to finding the reason. Article 49 allows the Court to ask any document and explanation before court hearing of representatives. This Article specifies that, in case of failure, Court can formally consider the issue. Article 50 has made it possible to appoint an expert or expert group by the Court. Article 53 also specifies the conditions of the investigation in which one of the parties is absent. As it can be seen, Statute of the Court did not express significant provisions about rules of evidence proving the claim. This legislative gap regarding the proving issues such as standard proof of the claim and general issues can be seen more in the court.

2.1.2 Secondary Sources:

A. International Judicial Practice:

Article 19 of the Rules of proceedings allows the Court to determine its "internal judicial practice" by notices. Under this Article, the court civil judicial procedures should be determined according to the Statute through declaration that will be adopted by the Court. Accordingly, the court has approved its civil judicial procedures on 5th of July 1968. On April 12, 1976, in another statement, it has modified its civil judicial procedures. The declaration has 10 articles. Prior to these two announcements, the court has regulated its civil judicial procedures in accordance to resolution of 20 February 1931 and amendment of 17 March 1936 of the Permanent Court. In the introduction of the Declaration of 1976, the Court states that if

the Court finds the circumstances so required, it is free under certain conditions to deviate the resolution.

In the rules approved, the way of handling the issue is not mentioned. There are just the regulations addressing the issues raised by a case. According to Article 1 of this Declaration, Court judges can hold meeting on the sidelines of hearings. They can exchange their information and inform each other about their possible questions in order to apply paragraph 3 of Article 61 of the Rules of Court proceedings.

B. Practice Directions:

With regard to the increase of cases in the agenda of the International Criminal Court, the court has attempted to approve a set of rules known as "Practice Direction" in 2001 to solve practical problems in the course of investigations. Gradually, the Court has attempted to complete this set. Court added other rules to this set for the last time on December 13, 2006. These rules have been developed with the aim to accelerate and facilitate the investigations of the Court. In connection with the legal basis for issuing these instructions, there is no clear conclusion. These rules can be justified according to the Court authority in Article 30 of the Statute. They can be considered as part of the Court's inherent powers. Accordingly, it can be noted that the governments of both sides are required to follow these rules. Among 12 practice directions issued by the Court, in some cases, there are some of the issues related to evidence and proof of the claim. In practice direction 1, it was stated that special agreement has no effect on the proof of claim. The practice direction number 2 asks the litigants to bring a summary of their arguments. The practice direction number 3 asks the litigants to bring a limited number of documents. In practice direction 6, recalling the paragraph 1 of Article 60 of the rules of proceedings, it was stated that the oral hearing will be limited only to complain. The reason for this is that the competence and capability of lawsuit is the issue which should be investigated by the court itself. There is no need to hear the arguments of both sides. Practice direction number 9 implies the issue related to the documents registration with delay. This issue exists in paragraphs 1 and 2 of Article 56 of the Court proceeding rules as well. In connection with the registration of these documents, the Court has stated some restrictions. Practice direction No. 9 has determined the method of Implementation of paragraph 4 of Article 56 of the proceeding rules on the basis of oral hearings and documents which were not provided according to Article 43 of the Statute. Practice direction number 11 implies the limitations of telling the issue related to the issuance of temporary safeguarding in hearings. It can be stated that the Court has sought further restrictions to provide evidence and documents by governments. As it can be seen, in International Court written sources, there are not many minor issues related to rules of evidence proving the claim. Only the general issues were highlighted. The main topics covered by these written sources are the evidence issues and the method to provide it. Basically, a lot of issues were not considered. For example, in these regulations, there is no article about proving, standard of proving or judicial value of any of the evidence. As will be shown in other parts of the research, the court has investigated such issues relying on other unwritten sources.

2.2 Unwritten Sources:

In addition to written sources, International Court of Justice uses other sources in investigation of issues related to rules of evidence proving the crime. The general principles of international law and international judicial procedure are among these sources.

2.2.1 General Principles of International law:

Paragraph (c) of Article 38 of the Statute of the Court implies "the general principles of law recognized by civilized nations". During the investigation of claims, the Court uses this resource. However, topics have been proposed concerning the scope and

meaning (Bin Cheng, 1953, p. 536). Placing the general principles of law as a source of international law in Article 38 of the Statute of the Court has been done to "complete the international legal system". International law is more uncertain compared to domestic law. Most international lawyers agree that the purpose of insertion of the general principles of law is to prevent the legal gap. In practice, Court pays no attention to the "civilized nations". It can be stated that, in the view of the Court, all countries are civilized nations. These principles do not belong to any specific legal system. They are common in all systems. Bin Chang, in one of the most famous written works related to the general principles of law, considers three special tasks for this legal source. First, the general principles of law are the source of many legal rules which express these principles. Second, the general principles of law are considered to be the guidance of legal orders which inspire the interpretation and implementation of legal rules. Third, in the absence of law, the facts of the case are applied. In legal systems, such as international law in which the written rules are limited, the third special task of the general legal principles is very important. It plays an important part in defining the legal relations between states (Ibid., P. 390). Permanent Court and International court of Justice pay attention to the general legal principles contained in Article 38 of the Statute of the Court. Permanent Court never mentioned this Article. It always spoke about it in a vague and ambiguous form. In some cases, Permanent Court Citations can be classified in the principles of customary international law and the general principles of law of the paragraph (c) of Article 38 of the Statute. International Court pays attention to this resource in several cases explicitly, but it pays attention to this resource in a lot of cases without any citations. Although there was no hierarchy between sources of international law and the issues of contractual rights and customary law are paid much attention, international rights (international treaties and conventions) have a secondary character. However, in connection with the rules of evidence proving the claim, the general principles of law must be considered one of the main sources. In the case of "some German interests in Upper Church" when dealing with a matter of procedure, the Permanent Court put the general principles of law near the provisions of the Statute and Rules of Court proceedings.

2.2.2 International Jurisprudence:

Observing Article 59, paragraph 1 (d) of Article 38 of the Statute, has introduced judicial decisions as incidental tools for setting the rules. In the past, justifying the use of previous judicial decisions (including the decisions of the Court) was very difficult. Today, their important position has been identified by the Court and writers. This regulation does not show the Court commitment to the doctrine of judicial procedures as it is in the common-law legal system. In the Statute of the Permanent Court, there is exactly the same regulation. However, this regulation does not prevent the court to use its previous findings in reaching its decisions. In any case, the existence of convincing reason of the Permanent Court can deviate from its previous practice. Accordingly, in many cases, the Permanent Court cited the principles of jurisdiction, procedure and substantive in its previous opinions. Hereby, the Permanent Court created the organized approaches in connection with many legal fields. In this regard, judicial decisions considered by the Court can be divided into three categories; the Permanent Court judicial procedure, Court procedure and procedures of other international courts. Among these cases, Court usually pays much attention to its judicial decisions and Permanent Court judicial procedure. It rarely refers to the decisions of other international courts.

A. Jurisprudence of Other International Tribunals:

In practice, the Court has no tendency to rely on judicial procedure of other international courts. A former employee of the Court claims that, in the Court, there are unwritten rules according to which Court should only refer to its judicial procedure. However, in some cases, the Court also refers to procedures of other courts. In addition to cases in which another

court decision forms the topic, Court on various occasions has referred to other international opinions. In some cases, in general, Court refers to them using some terms such as "procedures," "arbitration court decisions", "international decisions" or "international judicial procedures". In some cases, Court specifically referred to these ideas. 56. In the case of "land, sea and border's dispute", the Court Branch considered decision of 1917 of the Central American Court of Justice as a supplementary tool. On several occasions, the Court cited ALamaba's arbitration vote of 1872 and Britain and France arbitration of 1977. Moreover, recently, in the case of the Convention on Genocide, the Court finds no shame in reference to the International Criminal Court of Yugoslavia. In the case, reference to Yugoslavia court decisions was conducted as the reason, not as a substantive judicial procedure. In one case, Yugoslavia court procedure was criticized.

B. Jurisprudence of Permanent Court of International Justice:

In connection with court reference to past decisions of the Permanent Court, there is no obstacle. The Court has repeatedly endorsed the Permanent Court judicial procedure. The court position is different from the Permanent Court's from an organizational perspective, but their judicial procedures are considered to be the same. The Court had considered the past decisions of the Permanent Court. In order to prevent confusion in appealing to the Permanent Court judicial procedure in San Francisco conference, it was tried to reinstate the numbering of the Statute of the Permanent Court. In this regard, in 1984, in the case of Nicaragua, the Court stated that "the primary concern of the Statute draft producers to maintain the integrity between the Court and the former Court as much as possible". Therefore, the Court made no distinction between its decisions and the Permanent Court's. In this regard, Winiarski (judge) has stated that "since starting to work, the Court had considered the continuity of tradition, judicial procedure and practices". Guerrero, the last chairman of the former Court, was the first chairman of the Court. With limited and insignificant reforms, the court has adopted the investigation rules of the former Court. Most importantly, without commitment to the Stare Decisis as a principle or rule, the court usually uses the former Court decisions. The result has been the remarkable unity of procedure which is an important factor in the development of international law. Accordingly, the Court repeatedly referred to the Permanent Court judicial procedure in its decisions. The main reason for this is the official successor of the Permanent Court.

C. Jurisprudence of International Court of Justice:

In reference to its previous decisions, the Court does not hesitate. These decisions have gradually become one of the main documents of the Court. In other words, in addition to various factors, the court paid attention to "Case-Law of the Court ". It has repeatedly cited this procedure. These decisions include pleading votes and advices. The results of an investigation show that the International Court of Justice referred to its previous decisions in 26 percent of cases between 1948 and 2002. For example, the court referred to its previous decisions more than 28 times only in 3 pages of advisory theory of 2004.

3 Principles Governing the Production, Admissibility and Evaluation of the Evidence in the International Court of Justice:

In the knowledge of law, speaking about the reason is possible when an event leads the mind to reality. In other words, when the mind becomes able to reach the unknown through its findings, that sign is called reason whether an external event or a provision of law. Therefore, reason is sometimes used synonymously with cause and analogy. It was said that whatever persuade the spirit for the existence of truth is reason. In this way, the legal and judicial mean of proof is not taken away. Reason is the signs of the existence of truth which is disputed. In international investigations, dealing with reason is slightly different from internal law. In internal systems, there are certain

rules and regulations in connection with reason according to which the accepted formats of a document are defined as reason. In international investigations, there is no specific and precise definition for reason. "The flexibility of international investigations, the tendency for resistance against the special rules of applicable evidence in domestic legal systems makes the concept of reason much wider in international investigation (Kazzazi, 1996). The International Court, generally, reason is "the documents which are presented by one of the parties in accordance with his initiative or the Court request to prove a claimed fact or a claimed legal right". Another point is that the detailed categories in the domestic legal systems have no important role in International proceedings especially in claims of International Court of Justice. The term reason is referred to as all the tools and templates to prove a fact.

3.1 Principles Governing the Process of Fact-finding in International Court of Justice:

Generally, two basic principles can be introduced in relation with offering, accepting and evaluating the evidence in International Court of Justice. They are also applicable in other international courts. First, unlike national courts, the government can provide any evidence or reason. In other words, there is no acceptable evidence and unacceptable evidence in particular sense (Principle of freedom of the parties in presenting the reason). Secondly, in acceptance and evaluation of the evidence presented, the Court enjoys an extensive freedom (Principle of Court freedom in reception and assessment of the reason). Gradually, in practice, it can be seen that all these principles have accepted restrictions as follows.

3.1.1 The Parties Freedom to Produce Evidence:

In all provisions of the Statute and rules of Court proceedings, the kind of evidence confirmed by the Court is not specified. The entire form of the evidence is assigned to the governments. Evidence may include the governments' official documents, national legislation, map, report of international organizations, the United Nations resolution, media and newspapers content and government officials and individuals' comments. International Court of Justice has interpreted the lake of the rules defined in the Statute in relation to the type and form of evidence in a way that a litigant can present any suitable reason within the time specified by the Court. In practice, the Court considers few restrictions for litigants, but, in some cases, it uses its power to reject the proposed reason (Duward V, 1999, p. 184).

3.1.2 Court Freedom to Accept and Evaluate Evidence:

The freedom of parties to provide evidence has the analogy of the freedom of court to accept and evaluate the evidence presented by parties. Court is not limited to any specific evidence system. It is considered to be the final authority to accept and evaluate the evidence. It has an extensive power. This does not mean that the Court can act arbitrarily. The Court has developed a set of rules which needs to be developed based on the mentioned issues and problems of evidence in some cases. When assessing the evidence, Court even acts freer compared to Admission stage. This is largely similar to the internal regulations of countries. This means that, to determine the burden of proof, it didn't determine any rule and criteria. It makes decision according to the conditions of each reason.

4 Statements by Officials or Governmental Institutions:

In the last decades, we have witnessed a revolution in the field of international trade tools. This has led to facilitate the access to high-ranking representatives of the government (Watts, 2004). These groups of data such as press conference, joint statement, Radio and TV interviews and lecture at the national, regional and international institutions are used to confirm the interpretations and claims. .70 Referring to these statements is based on the fact that no one can benefit from his contradictory behavior toward others. In other words, a litigant cannot deny the truth after

confessing it (Estoppel Rule). Confession is a truth or a possible right. It is performed by an international document such as treaty, specific agreements and exchange of notes. It can be understood by representatives' behavior and speech. However, the only time to consider an issue as a confession is, first, when it is expressed explicitly. Secondly, confession should be voluntarily and unconditionally. Finally, referring to the confession must be made in accordance with the principle of good faith. The statements which don't have all or some of these elements cannot be referred according to the Estoppel rule. There are no definitive binding. They can have a degree of proving value (Bowett, 1957). Officials' statements are presented before the International Court of Justice in two ways. Statements made by government officials were referred before the dispute. This statement is used as a supporting reason for a fact. For example, an official involved in the conclusion of an international treaty states his understanding of the regulation of the treaty. In fact, he explains the inherent obligations of his country according to that treaty. In the International Court of Justice, appealing to government officials' statements is done with two goals. With referring to officials of other governments, governments are seeking to prove the facts which have been disputed. 73 In some cases, officials' statements are referred to as the reason of a commitment or an International right in terms of the sea area or territory. In this section, the Court Procedure will be investigated in relation to both groups.

4.1 Political Officials' Statements as Proving Evidence of Fact or International Responsibility of States:

As stated, in some cases, the litigants refer to other side government. There are always these documents in Court. In fact, one of the common ways in Court is referring to such statements. However, the method of dealing with these evidences is not always the same. It depends on the conditions and circumstances of each case. The existence of such statements does not indicate a fact. It can be stated that there is a kind of direct relationship between the level of official and the degree of transparency of statements. In other words, the higher level of official causes clearer expression. The relationship between the expressed issue and administrative tasks of official is important. In the case of Minco, in order to prove its sovereignty over Minco, England referred to the French ambassador's note of June 12, 1820. At one of the tables, the letter of Maritime Minister is presented as English. France claimed that Britain cannot rely on this letter. First, it was presented during the negotiations between the parties. Secondly, negotiations did not lead to any agreement. However, the Court rejected the France argument. According to Court, this document is not an offer or a compromise during negotiations. This is the facts presented by the ambassador of France. Therefore, this statement should be considered as reason of official views. In the case of "military and paramilitary activities in and against Nicaragua", the value of officials' statements was presented. The Court stated that the contents of the Court include the statements of governments' representatives and high ranking officials. Some of the statements are presented at the formal institutions of government or a regional or international organization. Other comments were presented during press conferences or interviews which are reported by local and international press. The Court opinion is that such statements by senior political figures have special value if they are confirmed by the highest authority.

However, it is natural that such statements shall be treated with caution. Article 53 and other basis cannot justify the selective approach which ruins the conformance of court procedure and primary task of equality between the parties. The court should consider the situation according to which the statements have been express publicly. The Court cannot value them equally without considering the way of their presentation. The statements in a national or international official publication are not the same. It should be considered that whether the text of the official statements is in the native language of the speaker or it is based on the presented translation. It should be considered that whether these statements are presented through recorded official

correspondence or not. In some cases, the court should interpret these statements to ensure the confirmation of a fact. The Court also stated that "the court considers the statements to be very important". The Court should scrutinize the declaration. In this case, two witnesses were Nicaraguan officials.

The United States registered the testimony of the foreign minister. Court classified these evidences in "special groups" (ibid). In connection with the legal effects of such declarations, the Court stated some points. First, according to Court, such statements can be considered as the reason of the accuracy of the facts. Secondly, such statements indicate that these reasons are related to the government which its officials stated them. Thirdly, they can be considered as the reason for description of the facts. The Court considers the statements which are contrary to the views of the government very important (ibid). The important point stated by the court in this case is that the Court is not limited to contents that mentioned by litigants. In its path, in search of truth, the Court may consider the statements by representatives of the claim in international organizations and resolutions adopted or discussed in these organizations in the case of thematic relationship (ibid).

It is not clear that this conclusion of the Court has the general feature. In fact, in order to perform its task, the court acted upon the Article 53 of the Statute to ensure the reasonableness of the subject.

5 Conclusions

Accepting the major role of Court in international community has increased the necessity of investigations on law of evidence, since equipping and resorting to the meticulous legal tools of fact-finding has provided better grounds for more active participation of ICJ in international community. Since ICJ is the only judicial arm of UN, has to comply with UN Charter and provisions. However, Court did not find itself independent of developing in some legal approaches that are directly in connection with justice realization. As a well-established principle, it can be stated that ICJ enjoys the remarkable level of authority in acceptance and assessing the provided evidence by litigants. However, realizing the Court authority must not be applied in a way that breach the fundamental principle of impartiality. Various parameters are effective in utilization of ICJ flexible policies in connection with methods and tools determination concerning fact-finding process. Surely, the principle of State sovereignty must be considered as the first cause of these policies acknowledgement. Furthermore, in recent years, Court has considered the issued instruments by international organization as confirming evidence of fact. Generally one of obvious instance of development in this ground is recognition of issued documents of UN organs as definitive evidence. Accordingly, it seems that some variations in Court approach concerning law of evidence are evident-especially compared to 70th decade-. The best way for promoting the Court Status is development of its fact-finding mechanisms. Consequently, the expansion of fact-finding mechanisms will face less objection compared to increasing the domain of Court compulsory jurisdiction or widen the statutory authorities.

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