

Types of Evidence Before the International Criminal Court

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Abstract

Evidence for proof that the international courts relied on varies, including the International Criminal Court. There is direct evidence to prove, and there is indirect evidence for proof, and direct evidence is intended to be evidence that is directly focused on the incident to be proven, and if the judge acquires his knowledge of the incident to be proven directly, it may be This evidence is anecdotal, and it may be material, and anecdotal evidence is known as the kind of deductive or inductive evidence that the mind perceives or that the thought concludes from its analysis of the facts, circumstances, or motives that cover the commission of the crime or the occurrence of the accident, it is what emanates from personal elements represented in what comes from others From sayings, which are represented in testimony and recognition, as for material evidence, it means everything that has an entity that can be perceived and disclosed, whether by human senses, that is, directly, or by means of modern scientific technology, that is, indirectly, and is represented in written evidence and electronic evidence, while indirect evidence is Evidence that is not focused directly on the incident to be proven, that is, it is focused on another incident with a close logical connection to it, so it requires the application of reason and For logic to deduce the event on which the evidence is directed and which it is intended to prove, when the event that embodies the content of the evidence requires some intellectual processes of examination, analysis, extrapolation and deduction, then here the evidence is indirect, and this evidence is represented in experience and evidence, and as for the authority of all kinds of evidence evidence or the legal value of it, then Most of them are subject to the principle of judicial conviction that is adopted by all international courts, including the International Criminal Court, and which allows the court to reach the truth by any legitimate means.

Keywords: Evidence, Types, Criminal Court.

Introduction

Evidence generally represents the elements of criminal proof in the criminal case, and is embodied by the facts or things that the evidentiary procedures reveal and transfer them to the field of the case¹. The principle of judicial conviction which is adopted by all international courts, including the International Criminal Court. The judge has the right to take any evidence that he is comfortable with, meaning that the judge is not bound by a specific evidence, especially since there are multiple divisions of evidence, but the most important of these divisions is the division that is based on the relationship of evidence.² With the incident to be proven, which is the division of the evidence evidence into direct evidences and indirect evidence, so the evidence of proof shall be direct if the judge obtained his knowledge from him directly of the incident in question, the example of

which is anecdotal evidence and physical evidence such as testimony, confession, written evidence and electronic evidence, but if the incident that represents ³ The content of the evidence requires some intellectual and intellectual practical examination, scrutiny, analysis, extrapolation and deduction. Here the evidence is indirect. Experience and clues.

Research Importance: The importance of research shows that the issue of the types of evidence before the International Criminal Court has not been adequately studied and researched, and its importance in reaching the truth by helping the judge build his judgment, which he will issue on sound and correct foundations.

Research Problem: The problem of research is to know the legal basis of the evidence before the International Criminal Court, and the authenticity of this

evidence. Therefore, our study raises the extent of the legal value of evidence before the International Criminal Court.

Research Methodology

This research relied on the analytical and descriptive method, through which we analyze the legal texts that came in the Rome Statute, and from which it is inferred that the International Criminal Court relies on these evidence in issuing its rulings.

The First Section:

Types of evidence before the International Criminal Court

Evidence for evidence relied on by international courts, including the International Criminal Court, in issuing their judgments, some of which are direct evidence, and some are indirect evidence, and to clarify the types of these evidence we will divide this topic into the following two requirements: -

The first requirement: direct evidence before the International Criminal Court.

The second requirement: indirect proof of evidence before the International Criminal Court.

The first requirement

Direct evidence before the International Criminal Court: Evidence shall be direct if it is directed directly to the incident to be proven, and if the judge acquires his knowledge of it directly of the incident to be proven. This evidence may be anecdotal, or it may be material, and this is what we will discuss in the following two sections as follows: -

The first branch: anecdotal evidence.

The second branch: physical evidence.

First branch

Anecdotal Evidence: Anecdotal evidence means the kind of deductive or inductive evidence that the mind perceives or that the thought concludes from its analysis of the facts, circumstances, or motives that pertain to the commission⁴ of the crime or the occurrence of the accident, it is that which emanates from personal elements represented by the sayings of others, that is, they are non-moral matters Materialism

needs clarification, and it bears a lot of interpretation and interpretation, and it does not necessarily relate to fixed material facts. It indicates it and the statements of another person who may be a witness or an accused if the evidence is a confession. The anecdotal evidence is represented in testimony and confession, and this is what we will discuss in turn: -

First: Testifying: Testifying means giving a person the information he has about the crime and which he perceives with one of his senses, whether that information is related to proving the crime, the circumstances of its occurrence, or the circumstances surrounding it. She is reassured about her and rejects her when she becomes suspicious and suspicious of her, for the matter in the end is due to the court's conviction and reassurance. With regard to a specific incident, and do not take it into account in another incident or with regard to a specific accused, nor take it into account in relation to another accused.

Second: Recognition: The confession is known as the defendant's admission that he has committed the accusation against him, and he is the master and the most influential of the same judge, and he claimed it towards his direction of conviction. If the conditions of its validity have been fulfilled, the court must verify its truthfulness and conformity with reality, and it is an objective matter that enters the authority of the court, so it may take it if it is satisfied with it. Taking into account its manifestations. This is what the legislation of the Latin system adopted, but the legislation of the Anglo-Saxon system deviated from this rule. In English legislation, if the accused⁵ made a confession that meets the conditions, it is considered legal evidence of the conviction that exempts the judge from searching for any other evidence, and the consideration begins. In assessing the punishment, this exception does not change the principle of judicial conviction, and there are criminal legislation in some countries, such as France and the United States of America. Confession alone is not sufficient for a conviction, and other evidence must be present. She supports him, while in other countries, such as Britain, relies on confession alone to convict him, without the need for other evidence to support him.

The second branch

Physical Evidence: Physical evidence is defined as everything that has an entity that can be perceived and disclosed, whether by human senses, that is, directly,

or by means of modern scientific technology, that is, indirectly, and thus it is not required to disclose physical evidence through vision or directly through touch, as the evidence is material. Even if it is disclosed by scientific means and method. The physical evidence is represented in the written evidence and electronic evidence, and this is what we will discuss in succession: -

First: Written evidence: Written evidence is defined as a paper that carries data regarding an incident of importance in proving the commission of the crime and attributing it to the accused. The written evidence may be documentary, and writing may be by hand, typewriter, printing, copies, pictures, or recording sounds or symbols, and this evidence. In order for it to be suitable to prove the incident⁶, it must be true in itself, meaning that the document is real and not forged. Its statutes give certain documents authentic before it. All documents and papers in the eyes of these courts are the same, as they are all subject to the conviction of the same court.

Second: Electronic Evidence: Electronic evidence, in general, is either paper output produced by printers or plotters, or it is paperless output or it is electronic, such as tapes, magnetic disks, video discs and other non-traditional electronic forms, or it is represented in the presentation of the outputs of computer-mediated processing. On its own screen, or the Internet through screens or a visual display unit. These evidence are digital evidence and open source evidence, as for the authenticity of digital evidence in criminal proof, this authenticity differs according to the evidentiary systems adopted by the legislation in terms of the restricted proof system. And the free proof system in particular, under the restricted evidence system, the legislation that follows the Anglo-Saxon approach goes to the application of the best evidence rule, which necessarily requires submitting the origins of the document and not contenting itself with a copy of it. Thus, the writing on the computer disk in its electromagnetic form can be considered the original copy, and this does not clash with the base of the best evidence. At that time, the electronic documents are provided as an original copy, and as a result, the value of the computer output appears as an acceptable evidence for proof in criminal matters. As for the free evidence system, in which the judge⁷ has broad authority in evaluating the evidence in terms of its probative, so the judge may accept or reject the evidence according to his conviction. With regard to the authenticity of open source evidence, although there is no comprehensive

international standard for the admission of video and photo evidence in international courts, the information is often accepted as evidence if it is proven that it is relevant remotely.

The second requirement:

Indirect proof of evidence before the International Criminal Court: Indirect evidence is defined as evidence that is not focused directly on the incident to be proven, meaning that it is focused on another incident with a close logical connection to it, so the introduction of this type of evidence requires the use of reason and logic to deduce the fact on which the evidence is directed and which it wants to prove, and then it is considered the lowest level of direct evidence, including evidence obtained by scientific method and means from the reality of the effects that are left behind at the crime scene, that is, those that emanate from technical expertise based on scientific and practical method. The following two are as follows:

The first branch: experience.

The second branch: the clues.

First branch

Experience: Experience is defined as a physical or mental estimate expressed by art or specialist owners in a technical matter that the person investigating the crime cannot know with his own information, whether that technical issue is related to the person of the accused, the object of the crime, the materials used in its commission or its effects. Criminal evidence, if a matter appeared during the proceedings⁸ and its course of the case that requires a scientific or technical opinion to clarify its truth, and the judge was not able to express his opinion on it, because it requires knowledge and knowledge of a scientific or technical field in the scope of certain sciences such as medicine, engineering, chemistry, social and psychological sciences, or a specific profession such as drafting and construction and mechanics and electricity, as is the case with knowledge of fingerprints and footprints, the real cause of death, the effects of firearms, the nature of stains and their analysis⁹, as the experience is represented in specialized technical reports issued by the expert regarding his scientific opinion in certain facts, it is a scientific and technical assessment of a specific incident, Based on scientific criteria, and the judge touches this incident through technical appreciation of it, and through the judge's assessment

of the expert's opinion, he reaches the formation of his conviction.

The Nuremberg Tribunal has used medical expertise to clarify the health status of some of the defendants, despite the lack of legal texts regulating it.

As for the courts of the former Yugoslavia and Rwanda, the procedural and evidence rules for each of them included some judgments related to experience. The experience was taken before these two courts in many matters¹⁰, including forensic medicine, ballistics, the accused's medical health, historical conflicts, military matters and others.

International criminal courts consider experience a kind of testimony of opinion, influenced by the Anglo-Saxon system, which considers the expert as a witness, so he is subject, like other witnesses, to taking an oath, as they call the experts (expert witnesses).

As for the International Criminal Court, there are no texts related to experience, neither in the statute nor in the procedural and evidence rules, but according to the principle of judicial conviction that all international criminal¹¹ courts adopt, it is possible to resort to experience whenever they find the court's judges necessary, i.e. Whether or not to take experience within the authority of the discretionary court, as the statute of the International Criminal Court indicated that the court may order the submission of evidence in addition to evidence already collected before the trial or presented by the parties during the trial. Request the submission of all evidence deemed necessary for truth determination¹²⁻¹⁵.

The expert is required to be neutral and impartial. The principle is that the expert is a neutral person who does not have a special interest in the lawsuit, but he may be biased towards the party of the case who requested and paid his fees, and this leads to a breach of justice, so what is followed in the international judiciary is the need to appoint Honorable witnesses are through the court, provided that they are subject to the protections established before the international criminal courts that protect them from any influences or pressures that affect their technical work and their testimony before the court¹⁶⁻²¹. The expert also requires the availability of experience in the expert, as the person is not an expert in a specific field without being He possesses what qualifies him to be an expert, and this matter is appreciated by the court, as the competence of the expert is what leads

to confidence in the evidence and its legitimacy, so the expert must have experience of a special kind and training at a certain level, so that the evidence has a great degree of credibility and then reassurance about it .

The international criminal courts require that the expert submit a report that includes his actions and the results he has reached, and the report is discussed in the presence of the expert by the parties to the case, and this is what is applied in the Latin system, in contrast to what is followed under the Anglo-Saxon system, especially in English law, whereby the expert is not allowed to submit a written report, but the expert is subject, like other witnesses, to the questioning system. As for the authenticity of the expert opinion, it is subject, like the rest of the evidence, to the court's discretion, as international courts are not bound by the opinions of experts. To take it, it has the right to reject it completely, and it has the right to rely on parts of it only. Although the procedural rules and the rules of evidence of the International Criminal Court have emphasized that the court is obligated to explain the reasons for the decision it makes on matters of evidence.

The international criminal courts follow the rule of (expert expert judge) according to the nomenclature used in the Latin system. Or (expert judge in the case) according to the designation used in the Anglo-Saxon system.

In this, the former Yugoslavia court decided that expert reports are used to prove technical matters, and not to determine the incrimination of a particular accused.

The second branch

Clues: Clues are defined as the deduction of an unchanging matter from a fixed matter. Likewise, it is known as a link between an event and its outcome, in which the evidence of the incident is evidence of the occurrence of its result. It has a rule stipulated in an abstract form, and these are the legal presumptions, and in terms of their authority in evidence, they are divided into conclusive legal evidence whose opposite may not be proven. The clues are one of the technical means aimed at clarifying the truth and achieving justice between the conflicting parties, and at the same time it is one of the rational tools that the international judge uses in the matter of translating the mental legal principles into a reality that settles the parties' disputes, and despite this importance, the dispute arose . In international

jurisprudence on the existence of legal presumptions in international law. As an opinion tended to deny their existence in international law on the grounds that there is no authority superior to states that can determine the legal presumptions and impose their application, in When another opinion went to the contrary, based on the fact that the evidence represents one of the method of proof before the international judiciary, and it is possible to find its sources in the original and reserve sources of international law. The Range to a conclusive legal presumption.

Through our review of the legal texts of the international criminal courts, it became clear to us that they lack any text that includes a legal presumption.

As for the second type of evidence, which is what the trial judge deduces from the circumstances of the case, and individual conclusions are considered in special cases, and these are the judicial evidence. And that there is not the slightest suspicion, otherwise they are signs and Emirates that do not rise to the level of evidence, and therefore it is not permissible to rely on them.

Judicial evidence is considered evidence before the international criminal courts, as there are no legal texts in their statutes preventing it, as long as it falls within the principle of judicial conviction that allows the court to reach the truth by any legitimate means.

It is worth noting that judicial evidence finds its place before international criminal courts in proving the moral element in the crime of genocide, as there is great difficulty in proving this element .

The court of the former Yugoslavia decided that the private intent of the crime of genocide can be proven in the absence of clear and direct evidence from the circumstances of the case, such as the general context or the commission of other criminal acts systematically directed against the group itself, or the extent of atrocities committed, or the systematic targeting of victims because of Their affiliation with a specific group, or repeated destructive and discriminatory acts.

The Tribunal of Rwanda also decided that the intent of genocide can be deduced from material acts and, in particular, the massive, widespread and systematic nature of the atrocities ... in the absence of an explicit confession by the accused, his intention can be inferred from a number of factual assumptions.

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