The 2014 judgment of the International Court of Justice, regarding Whaling in the Antarctic, brought into focus scientific fact-finding in disputes before the Court. This article examines the Court's practice with respect to first, the mode of appointment and method of examining experts assisting the Court in fact-finding; and second, the standard of review employed in analysing a scientific fact to arrive at a judicial decision. In doing so, the article also refers to jurisprudence of the World Trade Organization to draw parallels and best practices therefrom. This analysis is aimed at Public international law; International View Item

The law and practice of fact-finding before the International Court of Justice

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Abstract:
This thesis takes as its starting point a number of significant recent criticisms of the way in which the International Court of Justice (the Court) deals with facts. After examining the Court's substantial fact-finding powers as set out in its Statute and Rules, it is noted that the Court has not made significant use of the fact-finding powers that it possesses, instead preferring to take a reactive approach to fact-finding. It is this reactive approach, largely relying on the parties to put evidence before the Court, which is the subject of recent criticisms both from within the Court itself and from international legal scholarship. Having assessed the merits of these arguments, the thesis takes the position that such criticisms are indeed warranted and that the Court's reactive approach to fact-finding falls short of adequacy both in cases involving abundant, particularly complex or technical facts and in those cases involving a scarcity of facts, such as cases of non-appearance. Subsequently, the thesis undertakes a comparative exercise in order to examine how other relevant inter-state tribunals conduct fact-finding. Drawing on the practice of other tribunals, namely the adjudicative bodies of the World Trade Organization and a number of recent inter-state arbitrations, the thesis then makes a number of select proposals for reform which, it is argued, will enable the Court to address some of the current weaknesses in its approach to fact-finding and better ensure factual determinations that are as accurate as they can possibly be within the judicial process. Such proposals include (but are not limited to) the development of a power to compel the disclosure of information, greater use of provisional measures and a clear strategy for the use of expert evidence.

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Court of Justice; evidence; burden of proof; procedure; documentary evidence; witness testimony; international judicial proceedings. 2 See eg. Luigi Fumagalli, ‘Evidence before the International Court of Justice: Issues of Fact and Questions of Law in the Determination of International Custom’ in Nerina Boshiero et al (eds), International Courts and the Development of International Law: Essays in Honour of Tullio Treves (The Hague, Asser Press, 2013) 137-48; Jacques-Michel Grossen, ‘A propos du degré de la preuve dans. voting procedure in the Security Council, or the relationship between the Council and the International Court of Justice, these issues being part and parcel of the everlasting controversy between law and politics. First, with regard to the question of the relationship between the Security Council and the Court, consideration will, primarily, be given to the implications of. * Professor of Diplomatic and Consular Law on annual term at the University of Florence and Lecturer in International Law at the University of Perugia. I would like to thank Professors Marina Spinedi, Bruno Simma. Giorgio