Revision of Judgments

Revision in international adjudication has been defined as “[t]he procedure for reopening a case upon the ground of the discovery of new facts, that is, facts previously unknown.”¹ When the International Law Commission was preparing a draft on the topic of arbitral procedure its Special Rapporteur stated the following with regard to the role that the procedure of revision plays in the working of arbitral tribunals:

There is an adage which runs: “Nothing is settled until it is settled right”; in the interest of the system of arbitration itself, this must be taken to heart if the system is to be preserved as an instrument of pacification. Furthermore the authority of res judicata is not in question here, for there is no case for revision unless a “new fact” has come to light since the award was rendered and makes it appear that, had the judges known it, they would have made a different award. Lastly, revision cannot be regarded either as an appeal procedure or as a cassation, for both the new fact and the second decision will be dealt with by the same tribunal as rendered the award. There is consequently no question of a judicial hierarchy being established in this case.²

In the case of the Statute of the ICJ, Article 61 contemplates proceedings on revision of the judgments issued by the Court.³ It is important to stress that Article 61 is fully integrated with the provisions in the Statute that embody the res judicata principle (Article 59) and that ensures that the judgments of the Court are “final and without appeal” (Article 60).⁴

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¹ ILC Draft Convention, p. 101. See also the comments included in the opening section of Chapter 16, dealing with proceedings on the interpretation of judgments.
³ Although it is clear that Article 61 applies only to judgments, the PCIJ briefly discussed the possibility of also providing for the revision of orders of the Court (PCIJ D 2, Add. 3 (1936), p. 330). See also Hudson’s PCIJ, p. 543, fn 27.
The relationship of the procedure of revision with the concept of *res judicata* was highlighted by the Inter-American Court of Human Rights as follows:

There are innumerable references in legal writings to the remedy of revision as an exceptional recourse for preventing a *res judicata* from maintaining a patently unjust situation resulting from the discovery of a fact which, had it been known at the time the judgment was delivered, would have altered its outcome, or which would demonstrate the existence of a substantive defect in the judgment.


Article 61 of the Statute plays a variety of roles with regard to the procedure of revision of judgments. Apart from providing the legal basis for the Court’s jurisdiction to resolve on any application for revision that may be made by one party to a case, it lays down the conditions that must be fulfilled for such an application to be admissible. It also establishes an outline for the procedure to be followed, which is considerably more complex than that provided for in Article 60 for dealing with requests for the interpretation of a judgment.

**BOX # 17-1  Conceptual approaches towards revision**

The process of revision is sometimes perceived as doing some violence to the *res judicata* principle and as a reflection of this international tribunals have been in general somewhat reticent in exercising their power of revision.5

As for the general attitude of individual judges toward the procedure of revision, it has not been uniform. While some defend the need for a cautious approach, given what is at stake, others emphasize that revision as such does not represent a challenge to the initial decision and should be entertained whenever the conditions in Article 61 are present.

The first of these approaches can be seen in the separate opinion of judge *ad hoc* Bastid in the *Application for Revision and Interpretation-Tunisia/Libya Continental Shelf* case, in the following terms:

2. There is a clear distinction to be made as between revision and interpretation in respect of the circumstances in which the Court may in

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