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Distinguishing Interpretation and Revision Proceedings at the International Court of Justice

By Jessica Joly Hébert

Associate Legal Officer, International Court of Justice (All views expressed are entirely my own and do not engage the International Court of Justice.)

Contact details

Van Speijkstraat 162-2, 2518GH, The Hague, the Netherlands

jessica.joly.hebert@gmail.com; +31 6 19827094

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Abstract

There is a need – both conceptual and practical – to distinguish clearly the procedures applicable to interpretation and revision at the ICJ. To do so, the article first undertakes an analysis of the relevant provisions of the Statute – Articles 60 and 61 – and of the Rules of Court. The differences between both proceedings with regard to their introduction before the Court, the ICJ’s jurisdiction to consider them, and their different admissibility requirements will be addressed. Then, it considers issues pertaining to the relationship between an original judgment – the one to be interpreted or revised – and the judgment in interpretation or revision. The pivotal role of the principle of *res judicata* is taken into account. Furthermore, the piece attempts to attribute a proper

characterisation to interpretation and revision proceedings, as either new cases, incidental proceedings, or a hybrid conception between those two more conventional denominations.

Keywords

International Court of Justice – Statute of the ICJ – Rules of Court – Interpretation – Revision –
Notion of Dispute – *Res judicata*

Distinguishing Interpretation and Revision Proceedings at the International Court of Justice

1 Introduction

In February 2017, Malaysia filed an application for revision of the judgment rendered by the International Court of Justice (hereinafter the “ICJ” or “the Court”) in 2008 in the *Pedra Branca* case against Singapore.¹ Shortly afterwards, in June 2017, Malaysia also filed a request for interpretation of the same judgment.² In each filing, Malaysia sought a modification of the Court’s conclusion with regard to Singapore’s sovereign territory, the first in relation to the alleged discovery of new facts and therefore via revision proceedings, the second through a request for interpretation of the relevant parts of the *dispositif* of the judgment.³ These filings raised issues relating to the distinction between these types of proceedings and to their potential applicability to the same facts and with regard to the same parts of the *dispositif* of the 2008 judgment. On the basis of the parties’ agreement, both proceedings were discontinued by Order of 29 May 2018, and thus the Court did not have the opportunity to rule upon the complex issues they presented.⁴ Nonetheless, given their potential importance in future proceedings, certain unresolved questions regarding interpretation and revision deserve further scrutiny.

The Statute of the ICJ, and before it, the Statute of the Permanent Court of International Justice (hereinafter the “PCIJ”), as well as the Rules of Court, provide for interpretation and revision

¹ *Application for Revision of the Judgment of 23 May 2008 in the case concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore) (Malaysia v. Singapore), Application of 2 February 2017.*

² *Request for Interpretation of the Judgment of 23 May 2008 in the case concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore) (Malaysia v. Singapore), Request of 30 June 2017.*

³ *Revision of Malaysia v. Singapore, supra note 1, at 30, paras. 53–54 and Request for Interpretation of Malaysia v. Singapore, supra note 2, at 42, paras. 53–56.*

⁴ *Interpretation and Revision of Malaysia v. Singapore, supra notes 1 and 2, Order of 29 May 2008.*

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4 proceedings. Recourse to these proceedings before the ICJ has nonetheless been scarce, which
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6 explains the limited amount of literature on the subject. This rare occurrence might be due to
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8 various factors. The Court has not adopted an attitude that is overtly reticent to the introduction of
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10 interpretation and revision cases, but the many procedural requirements contained in its Statute
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12 and Rules with regard to the admissibility of these proceedings restrain the possibility for states to
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14 introduce such types of cases. There is also some element of uncertainty related to the practice of
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16 the Court with regard to these proceedings, considering the limited case law on which to rely.
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18 Moreover, the *res judicata* character of judgments might also explain a certain reluctance from
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20 both states parties and the Court to seek a “reopening” of original cases. While interpretation and
21
22 revision proceedings do exist before other courts and tribunals,⁵ the specificities of the rules of
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24 procedure governing these proceedings at the ICJ make it difficult to compare them to those of
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26 other judicial bodies. For this reason, this article will focus solely on the ICJ.
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36 Interpretation and revision proceedings are often treated together.⁶ To some extent, this is
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38 understandable, as both procedures consist of recourses against an original judgment. Provisions
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40 concerning revision follow immediately those concerning interpretation in both the Statute and the
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42 Rules and both intend to deal with potential inflexions to the first part of Article 60 of the Statute,
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51 ⁵ For example, see Article 33 of the Statute of the International Tribunal for the Law of the Sea and Articles 126–129
52 of the Rules of the Tribunal; Article 12 of the Statute of the Administrative Tribunal of the United Nations; Article 13
53 of the Statute of the World Bank Administrative Tribunal; Article 51 of the ICSID Convention; Rule 80 of the Rules
54 of Court of the European Court of Human Rights; Article 26 of the Updated Statute of the International Criminal
55 Tribunal for the former Yugoslavia; and Article 84 of the Rome Statute of the International Criminal Court. See also
56 Santiago Torres Bernárdez, “À propos de l’interprétation et de la révision des arrêts de la Cour internationale de
57 Justice”, in P. Lamberti Zanardi et al. (eds.), *Études en l’honneur de Roberto Ago* (1987), 443, 448.

58 ⁶ See, for instance, volumes by Shabtai Rosenne, *Interpretation, Revision and Other Recourse from International*
59 *Judgments and Awards* (2007) and Kaiyan H. Kaikobad, *Interpretation and Revision of International Boundary*
60 *Decisions* (2007) in which the authors have chosen to address jointly both types of procedures.
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4 according to which “[t]he judgment is final and without appeal.”⁷ More than their mere placement
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6 in the Statute and Rules of Court, both proceedings can be considered as entailing a potential
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8 modification of an “original judgment”.⁸ Nonetheless, there is a need – both conceptual and
9
10 practical – to distinguish in a clear manner the procedure applicable to interpretation and the one
11
12 pertinent for revision, as well as the different potential effects these proceedings may have on an
13
14 original judgment. The nature of the ties between an interpretation or a revision judgment and the
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16 original judgment that it intends to construe or revise also needs to be clarified. These are the
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18 questions this article seeks to answer. This article analyses both types of proceedings, highlighting
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20 the similarities they present and pointing out their differences. In doing so, it hopes to provide
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22 clarity, and thus be of benefit both to the Court and to parties.
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31 With this in mind, the present contribution will be divided as follows. Section 2 will undertake an
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33 analysis of the relevant provisions of the Statute and Rules of Court with regard, first, to
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35 interpretation, and then, to revision. This will shed light on all procedural considerations relevant
36
37 to interpretation and revision, namely their introduction in front of the Court, the ICJ’s jurisdiction
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39 to consider them and their admissibility, and the appropriate procedure to be followed in each case.
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41 Section 3 will address issues pertaining to the relationship between an original judgment and one
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43 in interpretation or revision. Issues arising out of the pivotal role of the principle of *res judicata*
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45 need to be considered in order to identify which parts of an original judgment may be subject to
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52 ⁷ For instance, the explanatory note concerning the Draft Rules of Court of 1922 in the PCIJ indicates the following:
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54 “The agreement or judgment brings the litigation to an end; but the Statute allows of the subject matter being brought
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56 before the Court once again in the form of an application for revision” (*Series D, No. 2*, at 452).

57 ⁸ The terms “original judgment” or “original proceedings” will be used throughout the article to designate the judgment
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59 the parties aim to construe or revise. Moreover, Rosenne is correct in pointing out that the provisions on revision and
60
61 interpretation have been “couched and placed in the Statute in such a way as to emphasise the exceptional nature of
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63 proceedings for interpretation or revision, as possibly impairing the stability of the jural relations established by the
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65 *res judicata*” (Shabtai Rosenne, *Procedure in the International Court: A Commentary on the 1978 Rules of the
International Court of Justice* (1983), 201).

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4 interpretation or revision and how this impacts the stability of judgments. Then, in Section 4, the
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6 article will attempt to attribute a proper characterisation to interpretation and revision proceedings,
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9 as either new cases or incidental proceedings, or else a hybrid conception between those two
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11 categories. This will be done in light of all substantive and procedural considerations addressed
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13 earlier in the article. Characterising such proceedings does not only bear academic relevance; it
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15 allows for a complete understanding of the peculiarities pertaining to each proceeding. An
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17 appropriate characterisation may also orient the Court in its discussions and consideration of
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19 certain procedural issues pertaining to interpretation and revision in the future. Section 5
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21 concludes.
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29 **2 Procedural Considerations Pertaining to Interpretation and Revision Proceedings**

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31 Both interpretation and revision have an exceptional character.⁹ This can be observed in the rare
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33 occurrence of such cases. In fact, only two interpretation requests were filed in front of the PCIJ¹⁰
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35 and four at the ICJ.¹¹ With regard to revision, the ICJ issued two judgments on the admissibility
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37 of applications for revision, and none on the merits of such applications.¹² One case was also filed
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42 ⁹ See e.g. Kazimiekz Grzybowski, “Interpretation of Decisions of International Tribunals”, 35 *American Journal of*
43 *International Law* (1941), 482, 495; Kaikobad, *supra* note 6, at 257; Leonardo Nemer Caldeira Brant, “L’*autorité de*
44 *la chose jugée et la révision devant la Cour internationale de Justice à la lumière des derniers arrêts de celle-ci*
45 *(Yougoslavie c. Bosnie et El Salvador c. Honduras)*”, 49 *Annuaire français de droit international* (2003), 248 and
46 Andreas Zimmermann, *The Interpretation of judgments of the International Court of Justice under Article 60 of the*
47 *Statute*, LL.M. thesis (1989), 46–47.

48 ¹⁰ *Interpretation of Judgments Nos. 7 and 8 (The Chorzów Factory) (Germany v. Poland)*, P.C.I.J. Reports, Series A,
49 No. 13 and *Interpretation of Judgment No. 3 (Treaty of Neuilly) (Bulgaria v. Greece)*, P.C.I.J. Reports, Series A, No.
50 4.

51 ¹¹ *Request for Interpretation of the Judgment of November 20th, 1950, in the asylum case, Judgment of November 27*
52 *1950*, I.C.J. Reports 1950, p. 395; *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning*
53 *the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, Preliminary Objections,
54 *(Nigeria v. Cameroon)*, Judgment, I.C.J. Reports 1999, p. 31; *Request for Interpretation of the Judgment of 31 March*
55 *2004 in the case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Mexico v.*
56 *United States of America)*, Judgment, I.C.J. Reports 2009, p. 3; and *Request for Interpretation of the Judgment of 15*
57 *June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand)*,
58 *Judgment*, I.C.J. Reports 2013, p. 281.

59 ¹² *Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on*
60 *the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia) (Yugoslavia v.*
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4 both in interpretation and revision.¹³ Some uncertainty with regard to the elements of the procedure
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6 regarding each type of proceeding may explain states' reluctance to embark on such fairly
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8 unknown, and apparently strictly regulated, proceedings. This section sets out all procedural
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10 considerations in the relevant articles of the Statute – Articles 60 and 61¹⁴ – and in the Rules of
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12 Court – Articles 98 and 99. It does so in order to properly understand interpretation and revision
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14 proceedings and be able to compare and contrast them.
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21 **2.1 Interpretation**

22 **2.1.1 Introduction of Interpretation Proceedings**

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24 Article 60 of the Statute indicates that “[i]n the event of dispute as to the meaning or scope of the
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26 judgment, the Court shall construe it upon the request of any party”. This provision sets the
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28 foundation for the Court to interpret its own judgments, but provides very few details as to the
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30 procedure to be followed by a party seeking interpretation. As can be observed from practice and
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32 as mentioned in that provision, interpretation proceedings are introduced by a party through a
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34 “request” for interpretation, and not by an application. A party introducing a “normal” contentious
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36 procedure must indicate the “subject of the dispute”, while for interpretation, Article 98 of the
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38 Rules specifies that a party must state the “precise point or points in dispute as to the meaning or
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51 *Bosnia and Herzegovina*), *Preliminary Objections, Judgment, I.C.J. Reports 2003*, p. 7 and *Application for Revision*
52 *of the Judgment of 11 September 1992 in the case concerning the Land, Island and Maritime Frontier Dispute (El*
53 *Salvador/Honduras: Nicaragua intervening) (El Salvador v. Honduras), Judgment, I.C.J. Reports 2003*, p. 392.

54 ¹³ *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the*
55 *Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Tunisia v. Libyan Arab Jamahiriya), Judgment, I.C.J. Reports*
56 *1985*, p. 192. There again, the revision was declared inadmissible.

57 ¹⁴ For a comprehensive analysis of the requirements under each article, see Andreas Zimmermann and Tobias Thienel,
58 “Article 60” and Andreas Zimmermann and Robin Geiss, “Article 61”, in A. Zimmermann, C. Tams, K. Oellers-
59 Frahm and C. Tomuschat (eds.), *The Statute of the International Court of Justice (3rd edition): A Commentary* (2019),
60 1617–1685.
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4 scope of the judgment”.¹⁵ Despite the fact that this provision is silent on the proper method to be
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6 followed, the Court’s practice, so far, has been to consider the admissibility of a request for
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8 interpretation at the same time as the merits of such request, in one single judgment.¹⁶ This reflects
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10 considerations of judicial economy.
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16 2.1.2 *Jurisdiction of the Court*

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18 Contrary to “normal” contentious proceedings, the Court’s jurisdiction to interpret its own
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20 judgments “is not preconditioned by the existence of any other basis of jurisdiction as between the
21
22 parties to the original case”;¹⁷ its jurisdiction flows directly from Article 60 of the Statute of the
23
24 Court.¹⁸ Jurisdiction in such cases could be qualified as “accessory” or “derivative”, as it depends
25
26 upon the jurisdictional basis established in the original proceedings.¹⁹ This was illustrated by the
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28 interpretation proceedings in *Avena*. In that case, the original proceedings were based on the
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30 Optional Protocol to the Vienna Convention on Consular Relations Concerning the Compulsory
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32 Settlement of Disputes. In the context of the request for interpretation filed by Mexico, the United
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34 States, following its withdrawal from that instrument after the Court’s rendering of its judgment
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36 on the merits, argued that the Court’s jurisdiction could no longer be founded on that basis. Those
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38 arguments were dismissed by the Court on the basis that “even if the basis of jurisdiction lapses,
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52 ¹⁵ See additionally Articles 40 and 60 of the Statute. See *Interpretation of Chorzów*, *supra* note 10, at 16 and Rosenne,
53 *supra* note 6, at 171.

54 ¹⁶ Rosenne, *supra* note 6, at 68.

55 ¹⁷ *Interpretation of Avena*, *supra* note 11, *Order of 16 July 2008*, at 323, para. 44.

56 ¹⁸ Dapo Akande, “Application for Revision of the International Court of Justice Judgments: The Curious ‘Case’ for
57 Revision of the *Bosnian Genocide* Judgment”, *EJIL: Talk!*, www.ejiltalk.org/applications-for-revision-of-the-international-court-of-justice-judgments-the-curious-case-for-revision-of-the-bosnian-genocide-judgment/. See also
58 Kaikobad, *supra* note 6, at 225.
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60 ¹⁹ Torres Bernárdez, *supra* note 5, at 459.
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4 the Court, nevertheless, by virtue of Article 60 of the Statute, may entertain a request for
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6 interpretation”.²⁰
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10 11 2.1.3 Relevant Provisions 12

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14 As noted above, Article 60 of the Statute provides that “[i]n the event of dispute as to the meaning
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16 or scope of the judgment, the Court shall construe it upon the request of any party”. A few terms
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18 taken from that provision deserve closer attention: “dispute as to the meaning or scope”,
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20 “judgment” and “shall construe”.
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26 First, the Court must determine whether there exists a “dispute as to the meaning or scope of the
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28 judgment”. As early as in the *Chorzów* judgment in interpretation, the PCIJ provided some
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30 explanation of the notion of dispute in interpretation proceedings.²¹ The PCIJ defined a dispute as
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32 a “difference of opinion between the Parties as to those points in the judgment in question which
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34 have been decided with binding force”.²² With regard to “meaning or scope” of the dispute, the
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36 Court many times specified that the dispute must concern the scope of the *dispositif* of the
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38 judgment, but may also relate to the reasons contained in the judgment only “in so far as these are
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40 inseparable from the operative part”.²³ The Permanent Court noted that the dispute does not need
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42 to arise in any formal way and that it could also concern the question of whether a particular point
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44 has been decided with binding force in the original judgment.²⁴
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55 ²⁰ *Interpretation of Avena*, *supra* note 11, *Order of 16 July 2008*, at 323, para. 44.

56 ²¹ Article 60 of the PCIJ Statute is identical to Article 60 of the current Statute of the Court.

57 ²² *Interpretation of Chorzów*, *supra* note 10, at 11.

58 ²³ This was specified in these exact terms in *Interpretation of Avena*, *supra* note 11, *Order of 16 July 2008*, at 323,
59 para. 47. This point will be explored in more detail under Section 3.1.1.

60 ²⁴ *Interpretation of Chorzów*, *supra* note 10, at 10–12.
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4 In the interpretation of the *Asylum* case, the ICJ added that:

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6 [O]ne cannot treat as a dispute, in the sense of [Article 60], the mere fact that one Party
7 finds the judgment obscure when the other considers it to be perfectly clear. A dispute
8 requires a divergence of views between the parties on definite points.²⁵
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11 In that case, Colombia made a request to the Court to clarify the judgment the Court had given on
12 that very same day. The original judgment concerned the diplomatic asylum of a Peruvian national
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14 – Mr. Haya de la Torre – in the Colombian embassy, and more specifically whether Colombia
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16 could unilaterally qualify the criminal offence committed by him and whether Peru had to ensure
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18 the safe return of the asylum seeker. The Court answered both questions in the negative.²⁶ In its
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20 interpretation request, Colombia asked the Court a number of questions related to whether it was
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22 obliged to surrender Mr. Haya de la Torre to the Peruvian authorities.²⁷ This question was not the
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24 subject of the original proceedings; it was a new point raised by Colombia. The Court concluded
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26 that the existence of a dispute had never been brought to the attention of the Court and that it could
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28 not have arisen between the parties.²⁸
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38 Up until that point, the Court, in determining the meaning of “dispute” under Article 60, had not
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40 drawn a comparison between the notion of dispute specific to interpretation proceedings and the
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42 notion of dispute applicable with regard to Articles 36 and 38 of the Statute. The latter provision
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44 lays out the function of the Court to decide on the disputes submitted to it by state parties. Article
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46 36, for its part, sets out the Court’s jurisdiction to decide legal disputes when states have deposited
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48 declarations under that provision. Under those articles, a dispute has been fairly consistently
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57 ²⁵ *Interpretation of Asylum*, *supra* note 11, at 403.

58 ²⁶ *Colombian-Peruvian asylum case, Judgment of November 20th, 1950: I.C.J. Reports 1950*, pp. 270 and 288.

59 ²⁷ *Interpretation of Asylum*, *supra* note 11, *Request for the interpretation of the Judgment of November 20th, 1950*, at
60 468–469.

61 ²⁸ *Interpretation of Asylum*, *supra* note 11, at 402–403.

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4 defined by the Court. The PCIJ first defined a dispute as “a disagreement on a point of law or fact,
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6 a conflict of legal views or of interests” between the parties.²⁹ The parties must hold “clearly
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8 opposite views”.³⁰ The Court also unfailingly considered it insufficient that a party simply affirms
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10 that a dispute exists while the other party denies it.³¹ In the recent *Marshall Islands* cases, the Court
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12 also affirmed with more conviction the existence of an “awareness” criterion, meaning that for a
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14 dispute to exist, the respondent must have been “aware, or could not have been unaware, that its
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16 views were ‘positively opposed’ by the applicant”.³²
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24 In considering Mexico’s request to interpret its judgment in *Avena*, the Court had once again to
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26 determine whether there was a dispute between the parties, and in doing so, it drew a distinction
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28 between the notion of dispute under Article 60 of the Statute and dispute under Articles 36 and 38.
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30 The Court pointed out that the English text of Article 60 uses the word “dispute”, while the term
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32 “*contestation*” is used in the French text. Under Article 36, the term “dispute” is rendered as
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34 “*différend*”. The Court indicated that a “dispute” or “*contestation*” in French under Article 60 was
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36 not subject to the same criteria as that of a “dispute” or “*différend*” under Article 36. More
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38 specifically, the Court identified that, in their ordinary meanings, both the French terms
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50 ²⁹ *The Mavrommatis Palestine Concessions (Greece v. Great Britain)*, P.C.I.J. Reports, Series A, No. 2, p. 11.

51 ³⁰ More recently, *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear*
52 *Disarmament (Marshall Islands v. India)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016, p. 270, para.
53 34.

54 ³¹ *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J.
55 *Reports 1996*, p. 810, para. 16 and *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary
56 *Objections, Judgment of 21 December 1962: I.C.J. Reports 1962*, p. 328.

57 ³² Since the *Marshall Islands* cases, it has been argued, however, that the Court has now adopted a stricter notion of
58 dispute, namely by imposing that the respondent be “aware” of the dispute (*supra* note 30, at 271, para. 38; see also
59 Beatrice Bonafé, “Establishing the existence of a dispute before the International Court of Justice: Drawbacks and
60 implications”, 45 *Questions of International Law* (2017), 3, 6, para. 7).
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4 “*contestation*” and “*différend*” “denote opposing views”, but that “*contestation*” could be
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6 understood as being wider in scope and as a more flexible concept.³³
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11 On reflection, the Court could have seized the opportunity in *Avena* to properly circumscribe the
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13 notion of dispute in interpretation proceedings. In that case, the Court adopted a flexible
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15 conception of “dispute” under Article 60, but a flexible approach is already generally followed by
16
17 the Court when it comes to deciding whether a dispute exists under Articles 36 and 38.³⁴ Indeed,
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19 the distinction between the notion of dispute under Article 60 and under other provisions of the
20
21 Statute remains unclear.³⁵ Rather than simply pointing out the divergent translations of the term
22
23 “dispute”, it ought to have recalled its prior decisions concerning the notion of dispute outside
24
25 interpretation proceedings, before highlighting that, following Article 98 of the Rules of Court,
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27 points of contention must be *specifically identified* when a dispute is addressed in the context of
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29 interpretation.
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38 Turning now to the second term in Article 60, the word “judgment”, used without any specification
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40 as to the phase in which it would have been rendered, suggests that *any* judgment is subject to
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42 interpretation. A judgment concerning the jurisdiction of the Court or the admissibility of a case,
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52 ³³ *Interpretation of Avena*, *supra* note 11, *Order of 16 July 2008*, at 325, para. 53 and *Judgment*, at 9, para. 17. See
53 also Baptiste Tranchant, “L’arrêt rendu par la Cour internationale de Justice sur la demande en interprétation de l’arrêt
54 *Avena* (Mexique c. Etats-Unis d’Amérique)”, 55 *Annuaire français de droit international* (2009), 191, 197.

55 ³⁴ Without getting into the details of the academic debate relating to the existence of a dispute, the notion applied by
56 the Court appears to be very broad. See Robert Kolb, *The International Court of Justice* (2013), 300–312, more
57 specifically 303.

58 ³⁵ Whether the recent developments related to the notion of dispute for ordinary contentious proceedings would also
59 be transposed to the notion of dispute under Article 60 is also unclear (see reference to the *Marshall Islands* cases
60 above, *supra* note 30).
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4 the merits or even one providing for reparations may be subject to interpretation. This has been
5 confirmed by the Court and does not appear to raise any particular issue.³⁶
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9 Thirdly, the use of the expression “shall construe” is also instructive, as it implies a certain lack of
10 discretion from the Court to provide such an interpretation when requested to do so by one of the
11 parties and when the procedural conditions are met.³⁷ Moreover, following the explanation
12 provided by the PCIJ, “to construe” equates “to give a precise definition of the meaning and scope
13 which the Court intended to give to the judgment in question”.³⁸ Interestingly, the terms
14 “interpretation” or “interpret” cannot be found in Article 60, even though there is no doubt that
15 interpretation proceedings are the ones covered by that provision.
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28 Beyond the criteria laid out in the Statute of the Court, procedural rules relating to interpretation
29 are also found in Article 98 of the Rules of Court. Notably, paragraphs 3 and 4 allow the Court
30 discretion with regard to the provision of written and oral observations by the parties.³⁹ As a matter
31 of practice, neither the PCIJ nor the ICJ in its early years (for example in the *Asylum* case) included
32 an oral phase in interpretation proceedings.⁴⁰ The oral proceedings between Nigeria and Cameroon
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44 ³⁶ For instance, there was a request for the interpretation of a judgment on preliminary objections in *Interpretation of*
45 *Land and Maritime Boundary between Cameroon and Nigeria*, *supra* note 11. The Court affirmed that, under Article
46 60 of its Statute, it “ha[d] jurisdiction to entertain requests for interpretation of any judgment rendered by it [...] a
47 judgment on preliminary objections, just as well as a judgment on the merits” (at 35, para. 10). This also means that
48 orders, by definition, are not subject to interpretation. Other procedures are open to parties to proceed to a re-evaluation
49 of such types of procedures. For instance, parties may submit additional requests for the indication of provisional
50 measures, if they believe the first set has not been complied with or if new facts arise. See, for example, the request
51 for the modification of the Order of 8 March 2011 indicating provisional measures in the case concerning *Certain*
52 *Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road along*
53 *the San Juan River (Nicaragua v. Costa Rica)*, where the Court had to assess whether a change of situation had
54 occurred which would call for new provisional measures (p. 18, para. 18).

55 ³⁷ See, for instance, Grzybowski, *supra* note 9, at 482.

56 ³⁸ *Interpretation of Chorzów*, *supra* note 10, at 10.

57 ³⁹ Article 98(4) reads as follows: “[...] the Court may, if necessary, afford the parties the opportunity of furnishing
58 further written or oral explanations.” (emphasis added)

59 ⁴⁰ *Interpretation of Treaty of Neuilly* and *Interpretation of Chorzów*, *supra* note 10 and *Interpretation of Asylum*, *supra*
60 note 11.
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4 took place in one single sitting,⁴¹ which was mainly planned for the pronouncement by judges *ad*
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6 *hoc* of their solemn declarations. More recently, in the interpretation proceedings in the case
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8 concerning the *Temple of Preah Vihear*, the Court observed a more extensive oral phase. The
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10 decision whether to hold an oral phase appears to depend on the specificities of the case.
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16 **2.2 Revision**

17 **2.2.1 Introduction of Revision Proceedings (the “Two-step” Procedure)**

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19 When compared with Article 60, Article 61 on revision provides for a much more detailed
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21 procedure and stricter admissibility criteria. Paragraph 1 indicates that revision proceedings are
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23 introduced by “application” and paragraph 2 envisages a two-step procedure according to which
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25 revision “shall be opened by a judgment of the Court” on the admissibility of the proceedings
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27 before the merits of the application can be addressed. This procedure has been strictly followed by
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29 the Court,⁴² although it never had the occasion to assess the merits of a revision, having found
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31 inadmissible all three applications for revision submitted to it. As the Court specified in the
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33 revision of the case between El Salvador and Honduras, revision proceedings cannot be opened by
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35 simple consent from the parties, but require the Court’s strict assessment of the conditions for
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37 admissibility laid out in Article 61 of the Statute.⁴³
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48 It has been suggested in the literature that the two-step procedure was introduced in order to clearly
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50 distinguish between issues of fact, to be assessed at a preliminary stage, and issues of law, to follow
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54 ⁴¹ The verbatim record of the sitting makes up only four pages. The whole procedure was probably over in a matter of
55 minutes (*Interpretation of Land and Maritime Boundary between Cameroon and Nigeria, supra* note 11, CR 99/3,
56 public sitting of 17 February 1999).

57 ⁴² As indicated by the Court, the first stage of a revision proceeding should be “limited to the question of admissibility
58 of that request” (*Revision and Interpretation of Continental Shelf, supra* note 13, at 197, para. 10).

59 ⁴³ *Revision of Land, Island and Maritime Frontier between El Salvador and Honduras, supra* note 12, at 400, para.
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4 at the merits stage.⁴⁴ It seems doubtful, however, that the Court and its predecessor were solely
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6 concerned with a clear division between factual and legal considerations, not to mention the
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8 difficulty in drawing such a line. More had to be at stake to impose a stricter two-step procedure.
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10 It is more likely that this approach, of a more formal nature in comparison to its counterpart in
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12 interpretation proceedings, was introduced in order to ensure greater respect for the *res judicata*
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14 of the principal judgment.⁴⁵
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21 2.2.2 *Jurisdiction of the Court*

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23 Like its jurisdiction to interpret its own judgments, the Court's competence to revise them flows
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25 from Article 61, independently of any other basis of jurisdiction on which the original case may
26
27 have been found.⁴⁶
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33 2.2.3 *Relevant Provisions*

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35 Article 61(1) sets out the conditions to be met for a revision application to be admissible:
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38 only when it is based upon the discovery of some fact of such a nature as to be a decisive
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40 factor, which fact was, when the judgment was given, unknown to the Court and also to
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42 the party claiming revision, always provided that such ignorance was not due to negligence.

43 Under that provision, the Court must determine what can amount to “some new fact” and assess
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45 how decisive this fact may be. A fact will be considered “new” if it was unknown by the party
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47 applying for revision at the time of the original judgment, but it must have nonetheless existed at
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49 that time.⁴⁷ In the revision proceedings of the *Bosnian Genocide* case, the Court was asked to
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54 ⁴⁴ That is Kaikobad's view, *supra* note 6, at 292.

55 ⁴⁵ According to Kolb, the main reason to adopt a two-step procedure was to guarantee the implementation of the
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57 original judgment through Article 61(3), under which the Court may require prior compliance with the original
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59 judgment before declaring proceedings in revision admissible (*supra* note 34, at 823). See in more detail below under
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61 Section 3.1.2.

62 ⁴⁶ Kaikobad, *supra* note 6, at 319.

63 ⁴⁷ *Revision of Genocide*, *supra* note 12, at 30, para. 67. See also Rosenne, *supra* note 6, at 37.
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4 revise the findings of its 1996 original judgment on preliminary objections, where it declared itself
5 competent to deal with the alleged violations under the Genocide Convention,⁴⁸ in light of the
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7 admission of the Federal Republic of Yugoslavia (the “FRY”) as a new member state to the United
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9 Nations in the year 2000 only. In its application for revision, the FRY considered this admission
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11 to be a new fact of a decisive character.⁴⁹ The Court concluded that the admission of the FRY to
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13 the United Nations could not be considered as a “new fact”. The admission occurred in 2000, four
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15 years after the 1996 judgment was rendered. It was a situation that did not exist at the time the
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17 original proceedings occurred and therefore did not comply with the requirements under Article
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19 61 of the Statute.⁵⁰
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28 Moreover, a fact will not be considered “of such a nature as to be a decisive factor” if it only
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30 permits the Court to be more specific or precise in its original reasoning.⁵¹ Indeed, new facts must
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32 be able to concretely influence the decision taken by the Court in a judgment. Facts “which were
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34 merely tangential to the *dispositif*” of a judgment would not allow the Court to declare a revision
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36 proceeding admissible.⁵² Although that criterion appears clear and is generally undisputed,
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38 applying it in practice may not be devoid of difficulty. Linking a specific fact to its potential impact
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40 on the Court’s conclusions in the original judgment may involve extensively reconsidering the
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42 factual background pertaining to the initial case.⁵³ Furthermore, the Court has not had the occasion
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50 ⁴⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections,*
51 *Judgment, I.C.J. Reports 1996*, p. 623, para. 47.

52 ⁴⁹ *Revision of Genocide, supra* note 12, *Application of 24 April 2001*, at 38.

53 ⁵⁰ *Revision of Genocide, supra* note 9, at 30, para. 68. For a detailed analysis of that case, see Brant, *supra* note 9, at 250–257.

54 ⁵¹ *Revision and Interpretation of Continental Shelf, supra* note 13, at 213–214, para. 39.

55 ⁵² *Kaikobad, supra* note 6, at 278.

56 ⁵³ In *Revision and Interpretation of Continental Shelf*, the Court concluded that the new fact which provided the details
57 of the correct co-ordinates of the Concession was not decisive, as it would have had no effect on the Court’s
58 delimitation of the first sector (*supra* note 13, at 213–214, paras. 38–39). In *Revision of Land, Island and Maritime*
59 *Frontier between El Salvador and Honduras*, new maps were provided, but those proved not to be substantially
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4 to determine whether a fact was left out of an original case owing to the negligence of one of the
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6 parties. A failure of due diligence by a party would be likely to meet this criterion and would render
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8 an application for revision inadmissible.⁵⁴
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11 In addition, Article 61(4) and (5) set up two time-limits for the Court to be able to address the
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13 admissibility of a revision proceeding: the application must be filed within six months of the
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15 discovery of the new fact and no later than ten years after the original judgment was given. Such
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17 time-limits demonstrate the restrictive approach of the ICJ Statute when it comes to revision,
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19 stricter than for interpretation proceedings which can be brought at any moment without any
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21 temporal limitation. Additionally, Article 99 of the Rules of Court sets up the details related to an
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23 application for revision as well as the observations that may be required by the Court from the
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25 parties. Once again, the planning of oral hearings remains within the Court's discretion.
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33 **3 Relationship with the Original Judgment**

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36 As mentioned earlier, interpretation and revision proceedings remain exceptional and this may be
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38 warranted in order to ensure greater stability of the Court's judgments.⁵⁵ Interpretation and revision
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40 proceedings may have considerable effects on an original judgment, and hence, on the obligations
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42 imposed on the parties. Contrary to revision, interpretation proceedings are not usually envisaged
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44 as affecting the finality of an original judgment, but are perceived mainly in terms of clarification.⁵⁶
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50 different from the ones furnished in the original proceedings (*supra* note 12, at 409–410, paras. 51–55). In both those
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52 cases, the conclusion following which these new elements of evidence were not decisive appears fairly clear, but more
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54 ambiguous situations are to be envisaged.

55 ⁵⁴ In *Revision of Malaysia v. Singapore*, *supra* note 1, the lack of diligence of Malaysia was argued in the written
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57 pleadings of Singapore. In Singapore's opinion, the ignorance of Malaysia with regard to the documents it was seeking
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59 to invoke as new facts in front of the Court was due to its negligence, as those existed and were obtainable before the
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61 Court rendered its original judgment (Written Observations of Singapore of 24 May 2017, paras. 5.7 and 5.8). It
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63 remains impossible, however, to know what would have been the Court's conclusion on that argument.

64 ⁵⁵ See Andreas Kulick, "Article 60 ICJ Statute, Interpretation Proceedings, and the Competing Concepts of *Res*
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66 *Judicata*", 28 *Leiden Journal of International Law* (2015), 73, 87.

67 ⁵⁶ Rosenne, *supra* note 6, at 171.

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4 Nonetheless, such lines may often be blurred, “especially when the interpretation leads to the
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6 replacement of the *dispositif* of the impeached judgment or any part of it”.⁵⁷
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11 A major conceptual and practical problem lies in the relationship between a judgment in
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13 interpretation or revision and the original judgment. The following section shows that the
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15 relationship is different in each case.
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21 **3.1 Res judicata Considerations**

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23 The general principle of *res judicata* is the notion according to which “a final adjudication by a
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25 court or tribunal is conclusive”.⁵⁸ Interpretation and revision proceedings, in that they aim to
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27 readdress questions settled with binding force in an original judgment, therefore raise issues of *res*
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29 *judicata* of relevance for the stability of international decisions, more specifically with regard to
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31 the original judgments they intend to construe or revise. The Court recently reaffirmed that the
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33 principle of *res judicata* “requires an identity between the parties (*personae*), the object (*petitum*)
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35 and the legal ground (*causa petendi*)” and specified that the Court “must determine whether and
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37 to what extent the first claim has already been definitively settled”.⁵⁹ As Articles 59 and 60 of the
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39 Statute indicate, a judgment of the Court has binding force between the parties and is “final and
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41 without appeal”. In the context of interpretation proceedings, the Court has affirmed that “[t]he
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43 language and structure of Article 60 reflect the primacy of the principle of *res judicata*”.⁶⁰
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54 ⁵⁷ *Ibid.*, at 175. See also Kaikobad, *supra* note 6, at 144, where the author makes observations about the potential
55 impact on maritime boundaries of an interpretation in a case concerning maritime delimitation.

56 ⁵⁸ William S. Dodge, “Res judicata”, MPEPIL (2006).

57 ⁵⁹ *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles
58 from the Nicaraguan Coast (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 124,
59 para. 55 and p. 126, para. 59.

60 ⁶⁰ *Interpretation of Land and Maritime Boundary between Cameroon and Nigeria, supra* note 11, at 36, para. 12.

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4 When the Court faces a request for interpretation or an application for revision between the same
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6 parties seeking to reopen some of the questions that have been previously settled by an original
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8 judgment – whether factual determinations or pertaining to the merits or issues of jurisdiction or
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10 admissibility – concerns with regard to the principle of *res judicata* will necessarily arise. As
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12 Kaikobad notes, interpretation “cannot be a *pretext for the revision* of the decision”.⁶¹ From this,
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14 it can also be said that revision proceedings cannot aim at a complete re-evaluation of an original
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16 case. As both types of proceedings present different characteristics, their impact with regard to the
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18 *res judicata* findings in an original judgment will differ.
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26 3.1.1 *In Interpretation Proceedings*

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28 In the judgment in interpretation of the *Asylum* case, the Court affirmed that:
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31 The real purpose of the request must be to obtain an interpretation of the judgment. This
32 signifies that its object must be solely to obtain clarification of the meaning and the scope
33 of what the Court has decided with binding force, and not to obtain an answer to questions
34 not so decided. Any other construction of Article 60 of the Statute would nullify the
35 provision of the article that the judgment is final and without appeal.⁶²
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39 The Court further held that “interpretation cannot go beyond the limits of the judgment. That
40 derives from the basic notion of *res judicata*”.⁶³ Before an interpretation judgment is actually
41 delivered, the *res judicata* effects of the original judgment remain unaffected. Following the
42 issuance of the “new” judgment, a “parallel deployment” of the effects of both the original and
43 interpretation judgments may occur, as the interpretation judgment will probably not concern all
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57 ⁶¹ Kaikobad, *supra* note 6, at 135.

58 ⁶² *Interpretation of Asylum*, *supra* note 11, at 402.

59 ⁶³ *Ibid.*, p. 403. See also, Rosenne, *The Law and Practice of the International Court 1920-2005*, Vol. III *Procedure*
60 (2006), 1612.
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4 aspects of the *dispositif* of an original judgment.⁶⁴ It therefore allows for the possibility of both
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6 judgments being applicable, to some extent, at the same time.
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11 Different approaches have been adopted when it comes to determining which parts of an original
12 judgment may be subject to interpretation. It makes sense that an interpretation judgment would
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14 be limited to parts of an original judgment which have acquired the status of *res judicata*, namely
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16 the operative part (the “*dispositif*”). Indeed, as interpretation can be seen as a derogation from the
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18 principle of the finality and stability of judgments, it is warranted to limit its effects to the parts of
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20 a judgment that are explicit to the solution imposed on the parties. However, consideration may
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22 also be given to some of the reasons comprised in the judgment. In the interpretation of *Chorzów*,
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24 the PCIJ decided that it could also construe some aspects of the original judgment which pertained
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26 to the reasoning, and not to the *dispositif*, since those findings “constitute[d] a condition essential
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28 to the Court’s decision”.⁶⁵ The ICJ later indicated that beyond the operative part of a judgment,
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30 the reasons laid out in the judgment, “in so far as these are inseparable from the operative part”,
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32 also amount to *res judicata* and may therefore be interpreted.⁶⁶
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43 The Court further indicated in its interpretation of the *Temple of Preah Vihear* judgment that:

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46 In determining the meaning and scope of the operative clause of the original Judgment, the
47 Court, in accordance with its practice, will have regard to the reasoning of that Judgment
48 to the extent that it sheds light on the proper interpretation of the operative clause.⁶⁷
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51 ⁶⁴ Torres Bernárdez, *supra* note 5, at 495. See, for instance, *Revision and Interpretation of Continental Shelf*, *supra*
52 note 13, at 230. In that case, only specific parts of the original judgment were interpreted. See also Rosenne, *supra*
53 note 6, at 169. This would, according to Rosenne, be the case for both interpretation and revision proceedings.

54 ⁶⁵ *Interpretation of Chorzów*, *supra* note 10, at 20.

55 ⁶⁶ *Interpretation of Land and Maritime Boundary between Cameroon and Nigeria*, *supra* note 11, at 35, para. 10. See
56 also Kaikobad, *supra* note 6, at 119: “The reality is that, on most occasions, uncertainties in the relatively brief
57 operative part of the decision will only be susceptible to clarification by referring to the reasons, the general *ratio*
58 *decidendi* of the case.”

59 ⁶⁷ *Interpretation of Chorzów*, *supra* note 10, Dissenting Opinion of M. Anzilotti, at 24 and *Interpretation of Temple*
60 *of Preah Vihear*, *supra* note 11, at 306, para. 68.
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7 In that case, the Court was called upon to interpret the first two paragraphs of the *dispositif* of the
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9 1962 judgment⁶⁸ which found that the Temple was located in territory under Cambodian
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11 sovereignty, and that Thailand was to withdraw its military presence at the Temple or in its
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13 vicinity.⁶⁹ However, in paragraph 34 of the interpretation judgment, the Court appeared to confuse
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15 “essential” and “inseparable” reasons, which prompted Judges Owada, Bennouna and Gaja to
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17 clarify this distinction in their Joint Declaration. The Judges specified that “inseparable” reasons
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19 from the *dispositif* found in the original judgment can be construed, and those will be considered
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21 as such “when the operative part of the Judgment is not self-standing and contains an express
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23 reference to these reasons”.⁷⁰ They indicated that those “inseparable” reasons may not be
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25 assimilated to “essential reasons”, as identified by the PCIJ in *Chorzów*. Those “essential reasons”
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27 may sustain a *dispositif* even if the latter is self-standing, meaning that it does not contain any
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29 express references to reasons contained in the judgment.⁷¹ In their declaration, the Judges warned
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31 about assimilating both types of reasons. Essential reasons, in their view, may not be the subject
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33 of interpretation, as the Court is only competent to interpret binding parts of a judgment in order
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35 to ensure that its jurisdiction is not extended and remains within the boundaries of what was
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37 conferred to it by the parties.⁷²
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48 The three judges opted for a cautious approach in their declaration in order to limit the parts of a
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50 judgment that the Court can construe. In their view, and in order to preserve the stability of
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54 ⁶⁸ *Interpretation of Temple of Preah Vihear*, *supra* note 11, at 288, para. 12.

55 ⁶⁹ *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment of 15 June 1962: I.C.J. Reports 1962*, pp. 36–37.

56 ⁷⁰ *Interpretation of Temple of Preah Vihear*, *supra* note 11, Joint Declaration of Judges Owada, Bennouna and Gaja, at 320, para. 1.

57 ⁷¹ *Ibid.*, p. 320, para. 2, citing *Interpretation of Chorzów*, *supra* note 10, at 20.

58 ⁷² *Ibid.*, p. 320, para. 2 and p. 321, paras. 3–4.
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4 judgments to the extent possible, only the *dispositif* of a judgment may be interpreted and the
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6 reasons contained in the judgment that are inseparable from it.⁷³ The admissibility of interpretation
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8 proceedings is however already restricted by strict procedural requirements, and so it may not be
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10 necessary to unduly restrict the Court’s ability to construe its *dispositif* once it has decided it was
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12 competent to do so. Whether the reasons tied to parts of the *dispositif* are “essential” or
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14 “inseparable”, or even irrespectively of any qualification one could grant to these reasons, if they
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16 are deemed to be of relevance for the Court’s interpretation, they should be considered.
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24 When examining a request for interpretation, the Court will also refrain from looking at facts other
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26 than the ones pertaining to the original judgment.⁷⁴ Consequently, all facts that arose after the
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28 delivery of that judgment, including the subsequent conduct of the parties, will not be considered.⁷⁵
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31 The original judgment examines the facts and the law at a precise point in time, and allows the
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33 parties to receive settlement for their dispute based on that picture at that exact moment. Further
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35 developments cannot come into play in an interpretation.
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41 Nonetheless, the approach in the interpretation proceedings in *Avena* may contradict slightly these
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43 earlier statements by the Court. The original case in *Avena* concerned the pronouncement of death
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45 sentences against a number of Mexican nationals without their being afforded the protections of
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47 the Vienna Convention on Consular Relations by the authorities of the United States prior to their
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53 ⁷³ Similarly, Kaikobad affirms that “a tribunal will tend to interpret a decision of an arbitral or judicial tribunal in a
54 way which gives maximum effect to the judgment or award” (*supra* note 6, at 210).

55 ⁷⁴ In the interpretation of the *Temple of Preah Vihear*, the Court affirmed the relevance of the evidence submitted in
56 1962 at the initial stage “as [it] show[s] what evidence was, or was not, before the Court and how the issues before it
57 were formulated by each Party”, *supra* note 11, at 306, para. 69.

58 ⁷⁵ *Interpretation of Chorzów*, *supra* note 10, at 21 and *Interpretation of Temple of Preah Vihear*, *supra* note 11, at
59 307, para. 75. See also Robin Geiss, “Revision Proceedings before the International Court of Justice”, 63 *Zeitschrift*
60 *für ausländisches öffentliches Recht und Völkerrecht* (2003), 167, 172.
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4 conviction. In its original judgment, the Court found that, in light of the violations of the
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6 Convention, the respondent State had an obligation to review and reconsider the convictions and
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8 sentences of the Mexican nationals.⁷⁶ Mexico further filed a request for interpretation of this
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10 judgment asking the Court to clarify that this obligation to review and reconsider imposed an
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12 obligation of result on the United States.⁷⁷ In Mexico's view, the conduct of the respondent State
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14 since the issuing of the original judgment demonstrated that the United States considered its
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16 obligation to be only one of means.⁷⁸
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24 The Court had to determine if there was a dispute between the parties, in accordance with the
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26 meaning of dispute found in Article 60. In its judgment on interpretation, it concluded that both
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28 states were of the view that the United States' obligation was one of result,⁷⁹ even if the specific
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30 means to implement it were left to the respondent's discretion. Therefore, no dispute existed
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32 between the parties on the meaning or scope of paragraph 9 of the *dispositif* of the original
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34 judgment.⁸⁰ To reach this conclusion, however, the Court did take into account the facts presented
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36 by the parties in their arguments, which were subsequent to the judgment of 2004.⁸¹
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43 The approach taken by the Court in this case can be both questioned and applauded – questioned
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45 in that it appears to have found part of its reasoning on subsequent facts to the original judgment,
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47 which goes against its previous jurisprudence – and applauded because it offers a good
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49 demonstration of the role of interpretation proceedings which are not aimed at ensuring control of
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54 ⁷⁶ *Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, I.C.J. Reports 2004, p. 72,
55 para. (9).

56 ⁷⁷ *Interpretation of Avena*, supra note 11, Request for interpretation of 5 June 2008, para. 5.

57 ⁷⁸ *Ibid.*, paras. 12 and ff. See also Tranchant, supra note 33, at 204.

58 ⁷⁹ *Interpretation of Avena*, supra note 11, at 9, para. 14.

59 ⁸⁰ *Ibid.*, p. 17, para. 45.

60 ⁸¹ *Ibid.*, pp. 13–15, paras. 31–37 and more specifically p. 14, para. 35.
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4 the execution of previous judgments.⁸² Indeed, when it affirmed that in the context of interpretation
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6 proceedings it is “not allow[ed] [...] to consider possible violations of the Judgment which it is
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8 called upon to interpret”, it acted in strict conformity with the precepts of Article 60.
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11 Interpretation proceedings have been qualified as a “confirmation procedure” aiming to endorse
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13 the *res judicata* effect of an original judgment instead of contesting it.⁸³ It has been said that while
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15 a judgment in interpretation will also have binding force and its *dispositif* will become, itself, *res*
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17 *judicata*, it “cannot add anything new” and must remain within the “strict limits of the principal
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19 judgment”.⁸⁴ Interpretation may be perceived as “a procedure of clarification”, whose aim is “not
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21 the questioning of the findings of the original judgment, but rather instead the confirmation of its
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23 *res judicata* effect”.⁸⁵
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31 The interpretation concerning the preliminary objections judgment in *Land and Maritime*
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33 *Boundary between Cameroon and Nigeria* is a good example of the Court’s perception of
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35 interpretation procedures as playing a limited role of confirmation.⁸⁶ In the original proceedings,
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37 Cameroon invoked a series of cross-border incidents that would have impinged on its sovereignty
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46 ⁸² Tranchant, *supra* note 33, at 205.

47 ⁸³ Zimmermann, *supra* note 9, at 5. See also Pablo Antonio Fernández-Sánchez, “The interpretation of international
48 judgments in the framework of the International Court of Justice”, *Pacific settlement of disputes (diplomatic, judicial,*
49 *political, etc.)* Thessaloniki: Institute of International Public Law and International Relations of –Thessaloniki (1991),
50 517, 525, where the author cites A/CN.4/18, Procédure arbitrale : rapport de Georges Scelle, Rapporteur spécial, 1950
51 YILC, Vol. II, 143–144, where it is said, in the wider context of arbitral proceedings, that “[l]e recours en interprétation
52 n’est pas, à proprement parler, un recours contre la sentence : c’est plutôt une procédure de confirmation”.

53 ⁸⁴ Fernández-Sánchez, *supra* note 83, at 527.

54 ⁸⁵ Kulick, *supra* note 55, at 75, citing Andreas Zimmermann, “Interpretation of Judgments in the International Court
55 of Justice under Art. 60 of the Statute of the ICJ”, in F. Zehetner (ed.), *Festschrift für Hans-Ernst Folz* (2003), 407,
56 408. Zimmermann has also previously affirmed that interpretation “is not really a recourse *against* the judgment but
57 serves as a procedure of clarification” (*supra* note 9, at 5).

58 ⁸⁶ For an interesting critique on that limited role, see Baptiste Tranchant, “Une clarification partielle : l’arrêt sur la
59 demande en interprétation de l’arrêt du 15 juin 1962 en l’affaire du *Temple de Preah Vihear*”, 60 *Annuaire français*
60 *de droit international* (2014), 21.
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4 and asked the Court to draw the maritime boundary between the parties.⁸⁷ In its request for
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6 interpretation of the preliminary objections judgment, Nigeria expressed the view that some of the
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8 incidents that could engage its own responsibility had not been appropriately dealt with by the
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10 Court at the preliminary objections stage of the original proceedings.⁸⁸ In Nigeria’s opinion,
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12 paragraphs 99 and 100 of the original judgment of 1998 required interpretation, in that the Court
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14 had been unclear in its identification of the relevant categories of incidents that could be considered
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16 at a later stage of the proceedings.⁸⁹ In its judgment on interpretation, the Court concluded that this
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18 submission raised by Nigeria had already been dealt with by the Court in the original judgment on
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20 preliminary objections. In the Court’s view, there was nothing unclear that would require it to
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22 readdress such a point without endangering the *res judicata* quality of its findings, and so it refused
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24 to do so.⁹⁰ This demonstrates that the Court will allow interpretation requests to follow their course
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26 only in limited and circumscribed circumstances in order to preserve the finality of its judgments
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28 to the extent possible.
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38 Nevertheless, perceiving interpretation simply as a “confirmation procedure” may not be exactly
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40 true in light of the jurisprudence of the Court. In the interpretation proceedings in the *Temple of*
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42 *Preah Vihear* case, the scope of the interpretation provided by the Court went beyond simply
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44 confirming or clarifying the terms of the original judgment. Even though the Court reiterated that
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46 its role was to “clarify the meaning and scope of what [it] decided”⁹¹ in 1962, in effect, it did
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52 ⁸⁷ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria; Equatorial Guinea*
53 *intervening)*, Application of 29 March 1994, paras. 1–3.

54 ⁸⁸ *Interpretation of Land and Maritime Boundary between Cameroon and Nigeria*, *supra* note 11, Application of 28
55 October 1998, at para. 5.

56 ⁸⁹ *Ibid.*, para. 11.

57 ⁹⁰ *Interpretation of Land and Maritime Boundary between Cameroon and Nigeria*, *supra* note 11, at 38–39, paras. 15–
58 17. That one submission concerned the possibility for the Court to deal with alleged incidents other than those
59 submitted in Cameroon’s Application and to the distinction between “incidents” and “facts”.

60 ⁹¹ *Interpretation of Temple of Preah Vihear*, *supra* note 11, at 306, para. 66.
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4 considerably more than that. In its judgment on the merits in the original case, the Court had
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6 declared the Temple of Preah Vihear to be situated in Cambodian territory and, consequently,
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8 ordered Thailand to withdraw its military forces “stationed by her at the Temple, or in its
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10 vicinity”.⁹² Cambodia filed a request for interpretation, in light of the uncertainties related to the
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12 term “vicinity”.⁹³ In its judgment on interpretation, the Court concluded that “vicinity” applied to
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14 the whole area of the promontory on which the Temple is located, thereby rewriting, in effect, the
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16 boundary between the parties.⁹⁴
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24 The request for the indication of provisional measures filed by Cambodia at the same time as its
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26 interpretation request also remains an unusual procedural step.⁹⁵ In it, Cambodia requested
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28 measures to “cause [the] incursions onto its territory [by Thailand] to cease”,⁹⁶ thereby
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30 highlighting the fact that the area under its sovereignty had not been clearly enough circumscribed
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32 in the original judgment. In its order, the Court concluded that “all armed forces should be
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34 provisionally excluded from a zone around the area of the Temple” where clashes occurred, and
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36 drew, provisionally, a line for a demilitarized zone.⁹⁷ In the interpretation judgment, the Court
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38 provided clearer indications to delimit the area of the promontory under Cambodian sovereignty
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40 and such conclusions may have been pre-empted by the findings of the Court in its provisional
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42 measures order. All in all, the interpretation proceedings allowed the Court to specify what it meant
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50 ⁹² *Temple of Preah Vihear*, *supra* note 69, at 36–37.

51 ⁹³ *Interpretation of Temple of Preah Vihear*, *supra* note 11, at 298, para. 41.

52 ⁹⁴ *Ibid.*, p. 315, para. 98 and p. 318, paras. 107 and 108. A similar conclusion can be reached with regard to the
53 judgment of the Court in *Revision and Interpretation of Continental Shelf*, where the Court may be said to have
54 effectively corrected by way of interpretation the delimitation between the parties by redirecting the parties’ experts
55 to determine the exact co-ordinates of certain points (*supra* note 13, at 230, para. 69).

56 ⁹⁵ An order on provisional measures was also rendered in *Interpretation of Avena*, *supra* note 11, *Order of 16 July*
57 *2008*.

58 ⁹⁶ *Interpretation of Temple of Preah Vihear*, *supra* note 11, *Request for the Indication of Provisional Measures*, para.
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60 ⁹⁷ *Ibid.*, *Order of 18 July 2011*, p. 552, paras. 61–62.
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4 in its original proceedings, but arguably, it went beyond the mere confirmation of a meaning as it
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6 had a clear impact on the specific location of the boundary.
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11 Seeing interpretation proceedings as merely confirming an original judgment may also undervalue
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13 the actual function played by this type of proceeding. Such a cautionary approach has worth, as it
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15 aims to disrupt to a minimum the previous findings of the Court having acquired *res judicata* force.
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17 It also serves to reaffirm the distinction between a revision and an interpretation procedure, the
18
19 latter not swayed by the discovery of any new fact but triggered only by uncertainty as to the exact
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21 meaning of the Court’s conclusions. Nonetheless, the “confirmation procedure” approach
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23 dismisses the possibility that an interpretation judgment may, in reality, have more than a simply
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25 “declaratory” function.⁹⁸ In clarifying its findings, the Court sheds light on aspects of a judgment
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27 that were insufficiently dealt with and therefore goes beyond a simple declaratory statement.
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36 Once rendered, an interpretation judgment will itself amount to *res judicata* and may have a
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38 concrete impact on the parties’ rights and obligations; it will provide the only valid interpretation
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40 binding them on those exact points that were interpreted, notwithstanding its presumed
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42 “declaratory” quality.⁹⁹
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48 3.1.2 *In Revision Proceedings*

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50 As seen above, the Court assesses the admissibility of revision proceedings in a separate judgment.
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52 This stage serves as an additional assurance that the Court’s findings in an original judgment could
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54 only be affected following compliance with all admissibility requirements laid out in Article 61 of
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59 ⁹⁸ Zimmermann, *supra* note 9, at 5.

60 ⁹⁹ Torres Bernárdez, *supra* note 5, at 490.

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4 the Statute and Article 99 of the Rules. This additional step, which does not find its counterpart in
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6 case of interpretation proceedings, was likely included to protect “the integrity of the *res*
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8 *judicata*”¹⁰⁰ of an original judgment. Three revision cases have been filed before the Court and all
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10 three were found inadmissible.¹⁰¹ As revision entails a modification of the original judgment, it is
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12 envisaged that the Court would act with great caution if a revision case ever reaches the merits
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14 stage. As discussed earlier, in comparison, a more relaxed approach may be justified for an
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16 interpretation as it “should not disturb the finality of the impeached judgment but clarifies it”.
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23 Article 61 of the Statute has been perceived as “capable of disapplying the principle of *res*
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25 *judicata*”.¹⁰² Undoubtedly, revision proceedings on the merits would have the potential of
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27 considerably affecting an original judgment and its *res judicata* effects. This is dependent on how
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29 significant a new fact discovered may be to the legal reasoning adopted by the Court in its original
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31 proceedings. The approach to be taken by the Court at the merits stage remains to be seen.
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34 Considering the higher threshold of admissibility for revision proceedings, one may anticipate
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36 more flexibility from the Court when reaching the merits phase of a revision. The Court has already
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38 affirmed that it could construe reasons “inseparable from the operative part”.¹⁰³ It should be
39
40 assumed that the same principle, following which only the parts of a judgment that have acquired
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42 the status of *res judicata* can be interpreted, would be applicable *mutatis mutandis* to revision
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50 ¹⁰⁰ Rosenne, *supra* note 6, at 174.

51 ¹⁰¹ See *supra* notes 12 and 13. Moreover, applications for revision were introduced in *Interpretation and Revision of*
52 *Malaysia v. Singapore*, *supra* notes 1 and 2 and *Application for revision of the Judgment of 26 February 2007 in the*
53 *case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide*
54 *(Bosnia and Herzegovina v. Serbia)*. The latter was never entered on the docket, the Court having considered that it
55 was “not properly seised of the matter” (see Statement by the President, online: [https://www.icj-cij.org/files/press-](https://www.icj-cij.org/files/press-releases/0/000-20170309-PRE-01-00-EN.pdf)
56 [releases/0/000-20170309-PRE-01-00-EN.pdf](https://www.icj-cij.org/files/press-releases/0/000-20170309-PRE-01-00-EN.pdf)). The *Malaysia v. Singapore* cases were discontinued, based on the
57 agreement of the parties. It is also to be noted that the PCIJ was presented with no application for revision.

58 ¹⁰² Geiss, *supra* note 75, at 172 and 187. See also Zimmermann and Geiss, *supra* note 14, at 1658.

59 ¹⁰³ The Court has affirmed this in the context of interpretation proceedings, but it may be extended to revision as well.
60 See *Interpretation of Land and Maritime Boundary between Cameroon and Nigeria*, *supra* note 11, at 35, para. 10.

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4 proceedings.¹⁰⁴ However, in order to properly *revise* a judgment, and depending on the nature of
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6 the new fact discovered by the requesting party, the Court could allow for a broader reconsideration
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8 of certain parts of the original judgment or may even be more inclined to refer to a set of elements
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10 peripheral to the reasoning comprised in the original judgment. As suggested by Geiss:

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12 [it is] questionable whether the Court, once the case is opened for revision, is bound by its
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14 legal reasoning in the principal judgment in the context of which the discovered fact has to
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16 be implemented or if it may refer to reasons not mentioned in its prior judgment.¹⁰⁵
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20 In spite of valid concerns, revision proceedings would allow a judgment to be corrected, in view
21
22 of the revealing of important information that was left undisclosed at the time of the original
23
24 judgment. They should not be seen as a threat to the stability of original judgments.
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27 28 29 **4 New Cases or Incidental Proceedings? Toward a More Accurate Characterisation of** 30 31 **Interpretation and Revision** 32

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34 The undeniable links between interpretation and revision proceedings and their original
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36 proceedings have prompted scholars to define such proceedings in a number of ways. Nonetheless,
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38 an adequate characterisation, which clearly takes into account the distinctions between
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40 interpretation and revision proceedings, remains lacking. Appropriately characterising
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42 interpretation and revision proceedings is important in understanding all facets pertaining to these
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44 proceedings. It may also inform the Court in its task as it may have to address in the future further
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46 procedural issues pertaining to either interpretation or revision proceedings. This section will
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48 attempt to determine whether these exceptional proceedings should be considered as new cases, as
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50 incidental proceedings, or as a hybrid concept between those two notions, and whether the same
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58 ¹⁰⁴ As affirmed by Geiss, “the findings to be revised must fall within the scope of the *res judicata* created by the
59 original judgment” (*supra* note 75, at 172).

60 ¹⁰⁵ Geiss, *supra* note 75, at 184–185.
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4 characterisation applies to both interpretation and revision. It will do so by considering procedural
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6 and substantive elements related to each of them.
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8 9 **4.1 Procedural Considerations**

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11 A number of procedural aspects pertaining to either interpretation or revision proceedings tend to
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13 indicate that such proceedings should be considered as new cases, distinct and independent from
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15 their original proceedings. An interpretation is brought up by request, while revision is introduced
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17 via application. While the term “application” may more strongly be associated with the
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19 introduction of a new case than the term “request”, the mere change of vocabulary, barring
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21 evidence of an impact on the actual procedure to be followed to introduce a case in front of the
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23 ICJ, cannot be granted much weight.
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31 When a request for interpretation or an application for revision is introduced, the Court places it
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33 on its docket as a separate entry.¹⁰⁶ Agents are then appointed¹⁰⁷ and judges *ad hoc* installed.
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35 Judges *ad hoc* nominated in interpretation or revision proceedings have to pronounce a solemn
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37 declaration, even though they might have been sitting on the original case. For practical and
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39 strategic reasons, parties may want to select, if possible, the judge *ad hoc* who sat in the original
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41 proceedings as he or she would be familiar with the factual and legal issues of the case, but there
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43 is no rule imposing such a choice.¹⁰⁸
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54 ¹⁰⁶ Nonetheless, as it can be observed in *Revision of Land, Island and Maritime Frontier between El Salvador and*
55 *Honduras*, *supra* note 12, the link to the revision case is clearly highlighted: [https://www.icj-](https://www.icj-cij.org/en/case/75/judgments)
56 [cij.org/en/case/75/judgments](https://www.icj-cij.org/en/case/75/judgments).

57 ¹⁰⁷ In *Revision of Land, Island and Maritime Frontier between El Salvador and Honduras*, *supra* note 12, the agents
58 of both parties were not the same in the original and revision proceedings.

59 ¹⁰⁸ See, for instance, *Revision of Malaysia v. Singapore*, *supra* note 1, at 32, para. 55, in which the same judge *ad hoc*
60 was appointed in both original and revision proceedings.
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4 Moreover, the Court will sit in its composition as it stands when interpretation or revision
5 proceedings take place. In the context of the interpretation proceedings in *Chorzów*, the question
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7 was raised as to whether the PCIJ would have to “summon” the judges who had sat for either of
8
9 the two previous judgments.¹⁰⁹ In deciding that recalling them would not be necessary, the PCIJ
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11 emphasized the distinction between original and interpretation proceedings and indicated that
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13 interpretation “was in the nature of a summary procedure” and “not a continuation of the original
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15 suit, but a new action distinct from it”.¹¹⁰ When the Rules of Court were revised in 1926, the PCIJ
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17 discussed whether to adopt a normal or an expeditious procedure for interpretation procedures.
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19 Judge Finlay argued in favour of a normal procedure which, in Hill’s opinion, was consistent with
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21 the view following which “a dispute over the interpretation of a judgment is to be regarded as
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23 separate from the original controversy”.¹¹¹
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33 It has been said, in the context of the PCIJ, that if a Chamber was constituted to hear the original
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35 case, it may also be formed to hear an interpretation or revision, in its same composition, to the
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37 extent that this is possible.¹¹² However, no strict requirement has emerged from these discussions,
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39 and arguments also favour the full court to sit, so as to allow the revision or interpretation
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41 proceedings a fresh start, free from perceptions and biases that may stem from the consideration
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43 of the original case. In any case, considering that an interpretation request is not subject to any
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45 time limits and that revision proceedings may be filed up to ten years after the delivery of the
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47 original judgment, it is to be expected that the composition of the Court will have changed
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54 ¹⁰⁹ See *Series E, No. 4, Fourth Annual Report of the Permanent Court of International Justice*, at 295. Pointed out by
55 Norman L. Hill, “The Interpretation of the Decisions of International Courts”, 22 *Georgetown Law Journal* (1933–
56 34), 535, 546.

57 ¹¹⁰ *Ibid.* This was said in the context of interpretation and may not necessarily be transposed to revision proceedings.

58 ¹¹¹ Hill, *supra* note 109, at 543–544, with regard to *Series D, addendum to No. 2*, at 313–314.

59 ¹¹² This is confirmed by the preparatory work of the Rules of the PCIJ. See comment by Weiss, First meeting of 30
60 January 1922, *Series D, No. 2*, at 155, para. 207.
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4 considerably.¹¹³ This reality also supports considering revision and interpretation as new cases.
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6 One disadvantage of the proceedings being considered by an entirely different bench is that the
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8 members of the Court will not be as acute to the findings of the original case.
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14 In the interpretation proceedings relating to the *Cameroon v. Nigeria* case, Judge Schwebel, then
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16 President of the Court, stated at the beginning of the oral proceedings that:
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19 A request for interpretation, inasmuch as it is submitted in an instrument instituting
20 proceedings, does not fall within the category of incidental proceedings: it gives rise to a
21 new case. Nigeria's request is therefore *procedurally* independent from the case concerning
22 the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*,
23 currently pending before the Court.¹¹⁴
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27 President Schwebel's assertion that an interpretation cannot be considered as an incidental
28 proceeding appears justified. By definition, incidental proceedings are taking place "*pendente lite*,
29 that is while mainline proceedings are in progress".¹¹⁵ The Rules of Court provide an exhaustive
30 list of this particular type of proceeding, and rightly so, do not include interpretation or revision
31 proceedings.¹¹⁶ As demonstrated above, it is also true that interpretation proceedings – and
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¹¹³ *Interpretation of Treaty of Neuilly*, *supra* note 10, where the Chamber of Summary Procedure was constituted of the same members. On the other hand, in *Revision of Land, Island and Maritime Frontier between El Salvador and Honduras*, *supra* note 12, the chambers formed by the Court were different during the original and revision proceedings. See also Hill, *supra* note 109, at 545 and Rosenne, *supra* note 6, at 19.

¹¹⁴ *Interpretation of Land and Maritime Boundary between Cameroon and Nigeria*, *supra* note 11, Verbatim record 99/3, at 5 (emphasis added). This citation was pointed out by Rosenne, *supra* note 6, at 169 and would apply, in the author's view, to revision proceedings as well. Judge Schwebel affirmed that the case was "currently pending" because the interpretation was requested with regard to a judgment on preliminary objections.

¹¹⁵ Rosenne, *supra* note 6, at 190. In civil law, an "incidental demand" will be defined as such: "A plea by which a party other than the plaintiff asserts a claim that is related to the plaintiff's suit" (*Black Law's Dictionary* (8th edition, 2004), 462). While that definition would differ in the context of the ICJ – for instance, a request for the indication of provisional measures will, most of the time, be filed by the applicant State – the core principle applies.

¹¹⁶ See Section D of the Rules of Court, Articles 73 and ff.

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4 proceedings as “new cases”, falls short of analysing the substantive elements that may tend toward
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6 a more nuanced qualification.
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10 11 ***4.2 Substantive Considerations*** 12 13

14 Other authors have attempted to characterise interpretation and revision proceedings. Kaikobad
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16 argues that interpretation and revision proceedings are incidental “in the sense that the
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18 interpretative process and subsequent decision is supplementary to the main proceedings” and
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20 because they are “ancillary to the main judgment”.¹¹⁷ This remark presents an obvious issue,
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22 namely the exclusion of interpretation and revision from the section of the Rules of Court dealing
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24 with incidental proceedings. Instead of “incidental”, a more appropriate term to define those
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26 proceedings might have been “additional” or “supplementary”. Moreover, in Rosenne’s view,
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28 interpretation and revision proceedings cannot be considered as “incidental”, as they do not arise
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30 “while the mainline proceedings are in progress”. This makes sense. On the other hand, he argues
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32 that they could be characterised as “derivative proceedings” as they are “tak[ing] place after the
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34 principal judgment on the merits of the case or a final judgment terminating a particular phase of
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36 a case, and arising out of that or otherwise dependent on that judgment”.¹¹⁸ This characterisation
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38 has some merit, as it provides a middle-ground qualification. However, the author appears to
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40 consider interpretation and revision proceedings as constituting a new phase in one single case.
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42 The procedural aspects laid out earlier do not support this vision. Nonetheless, it is certainly true
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44 that interpretation and revision proceedings “arise out” of an original judgment or are, to some
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46 extent, “dependent” on it.
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58 ¹¹⁷ Kaikobad, *supra* note 6, at 95–96. It is to be noted that Kaikobad was, at the time, not speaking exclusively of the
59 ICJ.

60 ¹¹⁸ Rosenne, *supra* note 6, at 190.
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7 Some factors of a more substantive nature apply equally to interpretation and revision proceedings.
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9 As detailed above, the Court has jurisdiction to entertain proceedings based on Articles 60 and 61
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11 of its Statute independently of the validity or effects of the initial basis of jurisdiction relied upon
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13 originally. On this aspect, interpretation or revision proceedings may be seen as new cases,
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15 jurisdictionally distinct from their original proceedings. The links with the initial basis for
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17 jurisdiction remain, however indisputable.
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24 There is a view in the literature according to which an original judgment is not affected by the
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26 subsequent judgments either in interpretation or revision; only the rights or obligations of the
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28 parties can be construed or revised.¹¹⁹ However, this distinction between the judgment and the
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30 rights and obligations it contains may not be so evident. As mentioned earlier, the *res judicata*
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32 effects of an original judgment will continue to operate until an interpretation or revision is deemed
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34 admissible and the judgment is actually interpreted or revised. All the parts of the original
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36 judgment that are not targeted by interpretation or revision proceedings will remain applicable
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38 despite the rendering of a further judgment. Considering that both judgments remain, at least
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40 partly, applicable, the two proceedings – the original and the interpretation or revision one – are
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42 distinct, and hence, interpretation or revision may be seen as “new cases”.
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51 When it comes to interpretation specifically, the most prevalent factor is assuredly the requirement
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53 under Article 60 of the Statute that a “dispute as to the meaning or scope of the judgment” must
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55 exist between the parties for an interpretation case to be admissible. Despite the remaining
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60 ¹¹⁹ See, for instance, Torres Bernárdez, *supra* note 5, at 495.
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4 uncertainties with regard to the specific definition of “dispute” in the context of that provision,¹²⁰
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6 the requirement of an existing dispute opposing the parties offers a clear indication that
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8 interpretation proceedings should be regarded as new cases. This is true in the same way that all
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10 other contentious cases introduced under Article 40 of the Statute, and for which the existence of
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12 a dispute is one of the first requirements scrutinized by the Court when assessing its jurisdiction,
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14 are unambiguously considered as new cases.¹²¹
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21 With regard to revision, and as seen above, some procedural elements may allow to conclude that
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23 these proceedings should also be considered as new cases. On the other hand, the links between a
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25 revision and the original case are indisputably sturdier. While both proceedings are distinct,
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27 arguably they are not easily separable.
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33 As specifically stated in Article 61(3), “[t]he Court may require previous compliance with the
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35 terms of the judgment before it admits proceedings in revision”, which indication reinforces the
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37 ties with the original judgment. Moreover, as opposed to interpretation, a new dispute is not
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39 required for revision proceedings to be admitted, as long as the conditions listed in Article 61 are
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41 met.¹²² The objective to introduce such proceedings is to “correct” a judgment or to modify it in
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43 light of the discovery of a new fact of importance. Consequently, one cannot deny the strong
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45 connection that continues to operate between original and revision proceedings.
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57 ¹²⁰ See the discussion above, Section 2.1.3.

58 ¹²¹ See, for instance, Kolb, *supra* note 34, at 300 and ff., which demonstrates that the existence of the dispute is often
59 at the core of the Court’s determination of its jurisdiction.

60 ¹²² Rosenne, *supra* note 6, at 173.
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4 Revision proceedings, no more than interpretation proceedings, cannot be considered to be merely
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6 “continuations of a previous case”.¹²³ If they were, the Court would face difficulty in distancing
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8 itself from its findings in the original case and from allowing parts of the *dispositif* to be modified.
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10 However, due to firmer admissibility requirements in Article 61, to the lack of dispute required for
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12 revision proceedings to be introduced, and all in all, to the numerous links to the original judgment
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14 aimed to be corrected, qualifying revision proceedings as strictly new cases does not seem
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16 warranted. A middle qualification, such as “additional proceedings”, appears more appropriate for
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18 revision proceedings.
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26 Establishing a characterisation that would apply to all interpretation and all revision proceedings
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28 may not always account for the elements that each specific case may present. It may be that, in a
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30 case where an interpretation or revision is more dependent on the factual conclusions reached in
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32 the original case, the characterisation may change. Nonetheless, concluding that interpretation
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34 proceedings should, in principle, be considered as “new cases”, and that, accounting for their
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36 stronger ties to the original cases, revision proceedings should be given a middle-ground
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38 qualification such as “additional proceedings”, has many benefits. From a theoretical stance, it
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40 allows for a deeper understanding of both procedures and their links to their original case.
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42 Practitioners may have to make a choice in the future between both types of proceedings, if a State
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44 is facing uncertainties about an original judgment and is seeking a solution to remedy this situation.
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46 Both interpretation and revision aim to reopen and re-examine certain aspects of original
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48 proceedings, but they present their own particularities. On the one hand, practitioners may decide
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50 to request an interpretation, if their objective is only to clarify a point settled with binding effect
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60 ¹²³ Akande, *supra* note 18.
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4 by the Court. On the other hand, they may apply for revision, if they have discovered new factual
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6 elements that existed at the time of the original proceedings but that had been left undisclosed. In
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8 making their choice, they need to be aware of the limitations of an interpretation, which is often
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10 perceived only as a confirmation procedure, and as a new case more detached from original
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12 proceedings. On the contrary, revision, as additional proceedings, will allow delving into more
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14 detail into the findings of an original judgment; however, issues of admissibility of revision remain
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16 more stringent. Through an appropriate understanding of the differences between both types of
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18 proceedings, their selection can be made consciously and with consideration for all procedural and
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20 substantive requirements pertaining to either interpretation or revision.
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28 **5 Conclusion**

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31 Accurate characterisation is certainly important, as it may guide the Court in its future
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33 understanding of how it should perceive an interpretation or revision in relation to the original
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35 proceedings. But first and foremost, this article aimed to demonstrate that while interpretation and
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37 revision do present similarities, they are, in fact, quite different. This is true with regard to the
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39 admissibility of such proceedings, to the distinct procedure established in Articles 60 and 61 of the
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41 Statute and in the Rules of Court, to the relationship with the original case and the impact on the
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43 *res judicata* effects of an original judgment. The Court will, most likely, be faced again with a
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45 request for interpretation and application for revision in relation to the same original judgment, as
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47 in the *Pedra Branca (Malaysia v. Singapore)* case. In that event, the Court will have to properly
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49 compare and contrast the proceedings. A clear understanding of the procedure to be followed will
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51 assist it in its task.
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