

Shabtai Rosenne. ***Interpretation, Revision and Other Recourses from International Judgments and Awards***. Boston: Martinus Nijhoff Publishers, 2007. Pp. 200. \$133.00. ISBN 9789004157279

Review procedures, such as appeal, cassation or revision, are known from national judicial systems which make use of a hierarchical court order. Although settlement by judicial bodies has significantly developed in international law disputes, there is not and there will not be, at least in the foreseeable future, a comparable hierarchical court system. But this does not mean that reasons underlying review procedures are lacking in international law; it only means that providing for the relevant procedures is more problematic. This is particularly true with a view to the fact that international adjudication is firmly linked to the maintenance of international peace and security so that the tension between *res iudicata* of a decision and any review procedure constitutes a very particular challenge. However, in international law, as in all legal systems, the adage is valid that 'nothing is settled until it is settled right'.

Cases concerning review procedures have gained importance over the last two decades. Therefore, a monograph on this issue, by one of the most prominent and informed experts in international jurisdiction, is highly welcome. At the same time, this book constitutes a promising start for the new series published by Martinus Nijhoff on 'International Litigation in Practice'.

Rosenne concentrates his research on inter-state dispute settlement, leaving aside the huge field of commercial and other not necessarily inter-state adjudication. Moreover, he concentrates on arbitration and on the only universal international court, the International Court of Justice (ICJ) and its predecessor, the Permanent Court of International Justice (PCIJ), as well as on the International Tribunal for the Law of the Sea (ITLOS), which serve as models for procedures on recourse for other international courts and tribunals.

The accent of the research is on interpretation and revision, while correction of typographical and other errors in decisions, a rather unproblematic issue, is not treated in detail. Due to the structure of international jurisdiction, appeal procedures also play a rather secondary role; they were of some relevance only in the context of arbitration. Cases such as those which came to the ICJ concerning nullity or invalidity of arbitral awards are, in contrast, clearly not cases of appeal because the decision as such is not reviewed.

Rosenne proceeds systematically, starting from the basic texts, passing through the rules and then coming to the relevant case law. The first draft, concerning recourse against international decisions, the Institute of International Law's 1875 resolution on arbitral procedure, only addressed correction and interpretation of awards, without touching on revision which poses greater problems because it affects the finality of the decision. The second step in this context was represented by the Hague Conventions of 1899 and 1907, which elaborated on rules for interpretation and revision. These provisions constituted the basis for the relevant provisions of the Permanent Court of Arbitration, the Statute of the PCIJ and the ICJ and also ITLOS which, as with the rules governing the subject-matter today, are meticulously analysed. For the convenience of the reader the relevant provisions are reproduced.

In the following two chapters, the case law on interpretation and revision as well as the rare cases of appeal and similar review practice are reproduced. The presentation of the cases is most instructive and elaborates on details and

comparative aspects which reflect the struggle of bringing into balance the importance of the *res iudicata* of international judgments and the prevention of miscarriage of justice. The practice demonstrates that interpretation, which does not touch on the *res iudicata* effect, is easier to handle than revision. Interpretation requests are decided in a one-stage procedure, while revision takes two stages, the first being devoted merely to questions of admissibility and the second, which until today has never been reached, concerning the merits. The case law, although still rather rare, elucidates the problems that recourse against international binding decisions raise in contrast to national law. The author highlights a series of problematic issues such as whether the application can be brought unilaterally even in cases originally brought before the Court by special agreement, whether the implementation of the original judgment is stayed, whether a request for interpretation or revision opens a new case or constitutes 'incidental proceedings' in the original case, or what should be the composition of the bench, what are the time-limits for bringing a request, etc. The author underlines the relevant particularities of each case and devotes particular attention to the extremely complicated situation in the *Genocide* case before the ICJ, which raised the question of decisions reached with the *res iudicata* effect precluding any reopening and its effect on related cases. In addition, reference is also made to the rather strange power of the ICJ as a court of cassation in staff member disputes from the UN Administrative Tribunal and the ILO Administrative Tribunal; this function was consistently criticized and finally abolished in 1995. This case-law review will be very helpful for parties envisaging recourse procedures.

The last chapter concerns general procedural matters and partially constitutes a conclusion, without however giving the author's evaluation or critical remarks.

The strength of the book under review lies in its comprehensive and instructive portrayal of the relevant material; at the same time, this is also its weakness because general questions (e.g., whether the power for interpretation and revision is inherent in judicial

competence) are explicitly left aside. This stands to reason, however, particularly with regard to the special situation of ITLOS, where only the rules of procedure, but not the constitutive texts, the Convention or the Statute, provide for revision. As international adjudication is based on consent, the rules of procedure adopted by an international body itself have to remain within the framework of the constitutive instruments. From this perspective, the author's explanation for the case of ITLOS, namely that 'a party to the Statute or the related treaty has given its consent to the exercise of ITLOS of all the powers set out in the basic texts' (at 192) – including the rules of procedure – is less convincing than would have been an approach regarding the competence for revision as inherent power of any international court or tribunal due to its function to 'settle things right'.

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