Enhancing Human Rights Protection through Procedure: Procedural Rights and Guarantees Derived from Substantial Norms in Human Rights Treaties

By María Pía Carazo

A. International Organization, International Legal Development and Human Rights

Professor Manley O. Hudson firmly believed that the development of international law was crucial for the maintenance of peace. According to Professor Hudson, each human generation contributes in its own way to the process of the creation of international organizations and, thus, in the development of international law.

Nothing being eternal, Professor Hudson foresaw the possibility that an international organization may cease to exist, be altered, reconstructed or given wholly different purposes. He knew, however, that even in the face of change “institutions have a strange way of keeping themselves alive … [and] once they become established they may influence the thought of men in ways not dreamed of by their founders.”

The United Nations, successor of the League of Nations, clearly proves Professor Hudson’s point: the idea of peace through international cooperation

---

1 All judgments and decisions are cited with volume number and page number whenever possible. In the case of new or unpublished decisions or judgments, an internet link is provided. In the case of judgments by the European Court of Human Rights, the link leads to HUDOC, the main searching machine of the Court’s jurisprudence. The link provided for the decisions of the Human Rights Committee leads to the Committee’s jurisprudence portal, where the desired document can be searched in light of the number of the decision provided in the footnote. Electronic versions of the judgments of the Inter American Court of Human Rights all have a direct link.

2 See Manley O. Hudson, Progress in International Organization 88 (1932).

3 Hudson, supra note 2, at 121.

4 “No one can say that any of our current conceptions … will not be discarded by a later generation …” Hudson, supra note 2, at 120.

5 Hudson, supra note 2, at 120-21. Institutions, according to Hudson “develop a hardiness which carries them through strain and stress … Habits form around them, loyalties cling to them, methods evolve from their use, order springs from their existence.”
survived the destructive force of the Second World War and resurfaced as the organization we know today. With the contribution of the (at least) three generations that have taken up an active role in public life after World War II, the United Nations has seen great changes and furthered the development of International Law well beyond its classical inter-state roots.

Moreover, the events between 1933 and 1945 taught humankind that world peace may not be achieved without true protection of the rights of peoples and individuals. As a result, international law underwent a revolutionary expansion into a new field: human rights treaties were born and a new era of individual empowerment began. Today, there is no doubt that securing and guaranteeing the rights of individuals and peoples, alongside the prevention of inter-state conflict, constitutes a vital pillar in the maintenance of peace.

International organizations dealing with issues concerning human rights have done commendable work in promoting human rights protection. The courts and other bodies in charge of adjudicating these rights perform the daily task of interpreting the treaties by which they are governed. These bodies are, using Professor Hudson’s words, certainly “influenced by the thought[s] of men;” men and women who adapt the judicial understanding of human rights norms to suit the needs of their generation.

This chapter will focus on the jurisprudential development of international human rights law. One main purpose of the chapter is to show the existence of a minimum common standard in relation to procedural rights and guarantees present in the jurisprudence and case-law of the three most important human rights protection bodies: the European Court of Human Rights (ECtHR), the Inter-American Court of Human Rights (IACtHR) and the United Nations Human Rights Committee (HRC). Additionally, this chapter intends to exemplify how the aforementioned jurisprudence and case-law has expanded the sphere of protection of material provisions through interpretation.

B. Effective and Evolutive Interpretation of Human Rights Treaties

The world is experiencing a revolution in human rights jurisprudence. The number of individual petitions dealt with by international human rights courts and bodies has risen dramatically in the past ten years and with it the intricacy of the cases presented.

6 See Sadat, in this volume.
7 Hudson, supra note 2, at 120.
8 For example, whereas the former European Human Rights Commission and the former ECtHR gave a total of 38,389 decisions and judgments in the 44 years up to 1998, the single permanent ECtHR gave no less than 61,633 judgments in 5 years (1999-2003). In 2003 alone the Court adopted some 18,000 decisions and 700 judgments. In 2005 this figure rose to 1105 judgments.