

Position of the Individual and Absolute Monism: Case Study on the Children in Hatcliffe Extension

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Abstract

The position of the individual has transformed and gained meaning in this decade. This significance is assessed in relation to international human rights norms existing under international and domestic law, by using the United Nations Report on the Position of the Individual in Society and a case study on Hatcliffe Extension. The study elaborates on the development and convergence of transnational norms to prevent state aggression. Essentially, the position of the individual in society has gained recognition as a specific subject matter that requires attention separate from attachment to a group or to the state.

Introduction

Part.I As Laws Derive from a Normative Source

In this study, the evolution of the position of the individual¹ is assessed in relation to international human rights norms within the development of society. The essence of the paper is to establish how social norms and legal norms may converge in order to provide preventative measures for state aggression against individuals. United Nations Special Rapporteur Erica-Irene Daes (Daes, 1990) held that Paragraph 1 of Article 29 of the Universal Declaration of Human Rights contains a provision that explicitly establishes duties for individuals and it is only within the community that the free and full development of his or her personality is possible.² Moreover, it is the belief of the Special Rapporteur that States parties to the International Covenant on Civil and Political Rights and State Parties to the International Covenant on Economic, Social and Cultural Rights, realize that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the Covenants.³ Furthermore, norms governing the duties of the individual to the community are found in article 29 and article 30 of the Universal Declaration of Human Rights. Meaning that article 29 makes explicit the notion of 'human duty', whereas article 30 contains the universally applicable norm governing interpretation.⁴

¹ In classical international law the individual was merely an object without rights and without duties. Although, the position of the individual had been studied by many theorist, apart from individuals sui juris in authority positions such as Head of State , the ordinary individual remained alieni juris.

² Daes Erica-Irene, Special Rapporteur the United Nations, Freedom of the Individual Under Law, (NY, UD Documents 1990)

³ Id. Daes p.3

⁴ Id.p.3

Part II.

Ideology:⁵Transfer of Socio-Legal Norms

In order to explain the concept of a legal norm as it relates to the above paragraph, it may be said that a legal rule is a socially recognized standard, or a socially acceptable standard. It derives out of normative growth. Once a norm is accepted as a standard, it sets in motion its own course into becoming a legal norm, perhaps a policy, a rule and then a codified law. Hans Kelsen wrote on validity of a legal norm. That is, how is it that a norm becomes recognized as a legal norm, then crystallises into a law (Kelsen, 1960). He said that, “law is not only a dynamic system of norms, but also a coercive order”.⁶ It is inseparable and bound with the state or government in its role of regulating society. ‘Ought’ usually expresses the idea of being commanded, not that of being authorised or permitted. The legal ‘ought’, that is the copula connecting condition with consequence in the statement of the law, embraces all three meanings: that of being commanded, that of being authorized, and that of being permitted the consequence. The ‘ought’ which is set forth in the statement of the law, designates all three normative functions.⁷ Kelsen⁸ holds that speaking in terms of sources of law is a figurative and highly ambiguous expression.⁹ He argues that the term sources of law is used to designate the different methods of creating law as well as to identify the reason for the validity of the law. Kelsen suggests that a legal norm prescribes or permits a certain human behaviour and a set of norms form a unit we call a normative order. He held that the law is a normative order, and legal norms provide sanctions thereby making law a coercive order (Kelsen, 1960). It is the coercive character of law, which makes it different from morality and custom. The emphasis here is on the point that legal norms are separate from other types of norms. In his discussion of the sources of law, Kelsen contends that every legal norm is a source of the next norm, the creation of which it regulates. It is an attribute of a legal norm that it directs its own creation into forming a law (Kelsen, 1960). Those norms which have the character of legal norms and which make certain acts legal or illegal are the objects of the science of law. The legal order is the normative order of human behaviour: a system of norms regulating human behaviour. As mentioned earlier, a legal norm is an ought statement. By the term ‘norm’ is meant that a certain behaviour ought to be or ought to happen (Kelsen, 1960).

Individuals in society ought to direct their behavior in a certain way. If they do not, they will suffer sanctions that their society will create for ignoring, dismissing or not following the regulated

⁵ Transfer of ideas: Andrez Lubbe

The inspiration for this article came from an economics professor Andrez Lubbe who presented a paper at the Oxford Round Table conference in 2008 on the movement of ideas via trade of goods and services. Since the 2011 uprisings in the Middle East, it is clear that norms also transfer via communication. From a historical perspective, during the eighteenth and nineteenth centuries, with the expansion of the commercial activities of the inhabitants of certain European States, these States found it necessary to make specific provisions in their treaties for the protection of particular groups of nationals. This is the case for the United Kingdom, when it entered into several treaties with Morocco whereby the latter agreed, inter alia, to treat all its nationals alike, whether they were Christian or not. The individual was subsumed as an object under the State from the perspective that Daes takes in the evolution of the protection of the individual from the end of the Middle Ages to the time of the League of Nations.

⁶Hans Kelsen, *Pure Theory of Law: Essays in Legal and Moral Philosophy* (UC Press, LA 1960) p.17

⁷Id Kelsen Hans p.17

⁸ Kelsen Hans *Principles of International Law* (New York, Holt, Rinehart and Winston,1966)p.437

⁹Id. Kelsen p. 437

behavior – the rule.¹⁰ In other words, individuals in society ought to direct their behavior in a way that connects one to their community and the international community at large, in order to benefit from rights owed to them by their State. Currently the social sciences are converging in an interdisciplinary manner.¹¹ Social relations leading to policy, rules, systems of rules, are conceptions of what law is to a particular society. Most theories claim a universal conception of policy that may not exist. Theorists, who studied the history and development of policy, inadvertently come to the conclusion that all systems are affected by ideology. This similar conclusion is based on observations about social stratification, the rise of the bourgeoisie, the protection of workers, the unionization of teachers, and other social relations expressed in: administrative policy and administrative rules. Ideology plays a central role in all normative development of policy. Legal rules are constructions of society at given stages of a societies' development. There is nothing natural or basic about law, legislation, legal systems. Laws are agreed sets of normative decisions made within society about how we must conduct ourselves in our specific society.

It appears that the role of ordinary individuals in society is where a strong source of information on capturing change exists. Referring back to Erica-Irene Daes, the entire scope of human duties and the problems which arise from them are bound together in article 29 and article 30 of the Universal Declaration(Daes,1990). These two articles provide the key to understanding individual human rights and individual duty in situations of revolution and change. Social relations leading to policy, rules, systems of laws, are conceptions of what law is to a particular society.¹² In 1990, during her tenure as a Special Rapporteur for the United Nations Professor Daes wrote a

¹⁰ Norm is the meaning of an act by which a certain behavior is commanded, permitted, or, authorized. The norm is the specific meaning of an act directed toward the behavior of another person in society. A norm is to be differentiated, from an act of will. The norm is an ought and act of will is an is. Kelsen uses the word validity to designate the existence of a norm. To describe the meaning or significance of a norm creating act or statute one can say: through this statute a particular human behavior is ordered; commanded; prescribed; forbidden; permitted; allowed; or authorized. If 'ought' is used to comprise all of these meanings, as has been suggested, the validity of a norm may be described as such: something ought to be done; or something ought to happen. Hence, to say that a norm is valid, means that it is applied and obeyed. It means that it ought to be obeyed. A general legal norm is regarded as valid if the human behavior that it is regulating actually conforms with it, to some degree. A norm that is not obeyed anywhere, at any time, is not regarded as a valid legal norm. A minimum of effectiveness is a condition of validity. Effectiveness of a legal norms, has a sanction attached to it, thus qualifying the behavior as illegal.

¹¹Jensen Klaus and Jankowski Nicolas A Handbook of Qualitative Methodologies for Mass Communication Research 2002 Edition by Taylor and Francis e-Library, Master e-book Routledge

¹² Toda Institute: Peace and Policy Vol.13 2008. See: Dov Shinar on Coverage of the 2006 Lebanon War in Canadian and Israeli Media "Peace Journalism came into the world in the 1970's as a slogan and a set of ideas developed by Norwegian scholar Johan Galtung in order to criticize the preference given to mainstream journalism around the world to war, violence, and propaganda, to causes promoted by elite establishments. Advocating a change of attitudes and behaviors in the coverage and framing of war and peace, Galtung's concepts developed within three decades into a philosophical framework and an arsenal of professional techniques."(Dov Shinar) See:Susan Dente Ross Peace Journalism "Broadening our examination of war and peace communication beyond news coverage to encompass as newer, entertainment media, Rune Ottosen investigates how concepts of peace communication apply with the environment of conflict-rife video games. Outlining processes through which the development costs of expensive simulators for training military personnel are defrayed through commercialization, including the spin-off of video war games from US military projects, Ottosen uncovers the massive influence of the global military industrial complex upon the 'games' our children play." Qualitative research by Annabel McGoldrick complements Ottosen's empirical study with a discussion of the personal and social effects of conflict-rife communication. Also extending this volume beyond the confines of news media, McGoldrick draws on the fields of cognition and psychology to apply concepts from reception theory and psychotherapy to the content of in-depth interviews about televised violence." (Susan Dente Ross) See also: R. Hackett and B.Schroeder Does Anybody Practice Peace Journalism: a Cross-National Comparison of Press Coverage "Media are participants, not detached observers, in conflict situations. This article comprises a content analysis of 522 articles from newspapers and online news outlets in Canada, the United States, Israel and al-Jazeera online, concerning the Afghan and Hezbollah-Israeli wars during 2006."

report for the United Nations on the Freedom of the Individual Under Law.¹³ The study was based on Article 29 of the Universal Declaration on Human Rights. (Daes, 1990). It is an intellectual exercise on the complex humanitarian, sociological, legal, political, economic, and social questions relating to Article 29. The foundations upon which this study rests are¹⁴: the basic concept of freedom in a real democratic community; the fundamental principles of respect for human dignity, the rule of law, justice, equality and non-discrimination. “The moral, political, legal and jurisprudential principles relating to the right of the individual to develop his or her personality freely and fully in a democratic community; the concept of the moral, legal, and general responsibility of the individual.”¹⁵ Meaning of the concept ‘freedom under law’ in her study means that in relation to rights or interests, the freedom of the individual shall prevail. The concept ‘personal freedom’ means the freedom of every law abiding individual to think what he or she will, to express his or her views freely, and to go where he or she will without let or hindrance from any other individuals.¹⁶ This freedom should be justly balanced with the recognition of and respect for the rights and freedoms of others and the requirements of morality, public order and general welfare in a democratic society. The law, which protects individuals one against the other, also defends the right of individualism against the power of the State, and the State against the exercise of individualism.¹⁷

To present a comparative review of the constitutional, legislative and regulatory provisions relating to the individuals duty to the community, Professor Daes, first examines the term ‘duty’. She refers to the individual duty to conform to the rules of the community and reciprocal relationship between the community and its members (Daes, 1990). “In its use in jurisprudence of the United States courts, the term ‘duty’ is the correlative of the word ‘right’. Thus wherever there exists a right for any person, there also rests a corresponding ‘duty’ upon some other person.”¹⁸ “In this meaning ‘duty’ is the equivalent of ‘moral obligation’ as distinguished from a ‘legal obligation’.

Part III.

Monism and Dualism

Monism is a conceptual theory which holds that domestic law, that is national law, and international law, are part of the same body of law. Here, two separate legal systems are applied to relevant situations as one legal order. Dualism results in the maintenance of two separate legal systems, existing completely independent of the other. This is due to the question of whether one legal system, must be categorized as superior, or supreme over the other. Transnational Legal Systems are a shared, collective field of law where both legal systems emerge to combine into a new legal order, applicable to issues that are commonly found under situations arising out of transnational

¹³ Daes Erica-Irene, Special Rapporteur the United Nations, Freedom of the Individual Under Law, (UN NY, 1990)

¹⁴ Id.p.3

¹⁵ Id.p3

¹⁶ Id.p.3

¹⁷ Id.p.3

¹⁸ Id.p.39

activity. Kelsen has developed monist principles on the basis of formal methods of analysis dependent on a theory of knowledge.¹⁹ According to the fundamentals of Kelsen's thought, monism is scientifically established if international and municipal laws are part of the same system of norms receiving their validity and substantive content, by an operative basic norm which is entitled the grundnorm (Kelsen in Brownlie, 1998). This basic norm he formulates as follows: 'States ought to behave as they have customarily behaved.' 'Since the basic norms of national legal orders are determined by a norm of international law, they are basic norms only in a relative sense. It is the basic norm of the international legal order which is the ultimate reason of validity of the national legal order as well.' These areas of legal norms come together to form a dynamic process which is described as convergence²⁰. In this theoretical perspective: law; policy; international customary law; common general principles found in all legal systems; and public international law; all reflect in unison the transnational normative changes happening across the world.

Convergence

The phenomena of convergence may be analyzed in terms of three categories:²¹

- i) imitation and interpenetration
- ii) simultaneous development
- iii) supranational regulation.

Universality of norms occurs in a transnational format in all parts of the world and particularly in all aspects of the international criminal procedures. In the latter half of the nineteenth century, the Japanese based their civil code, their criminal code, and their police organization on European models. Today, police departments in countries as varied as Singapore, the United States, Australia, and Norway are borrowing Japanese police structural practices. Numerous countries in Africa, South Asia, South East Asia, as well as political sub-divisions such as Quebec and Louisiana, adopted the French Civil Penal Code, while others have chosen the German Civil Code. The United States criminal procedure is directly from the English procedure, or colonial procedure from England. Nineteenth century United States innovations with prisons were promoted in Europe. The Scandinavian system of day fines as an alternative to conventional fines has been widely adopted, including in Germany and in the United States.²²

Supranational bodies are especially important in fostering convergence.²³ Most important here, are the organizations which have direct power over the legal process of member nations. In the European Court of Human rights, the International Court of Justice in the Hague, and the recent criminal court, tribunals, established for the former Yugoslavia, and Rwanda, attempts were made to ensure conformity with transnational conventions and treaties. The United Nations supports the protection of human rights, including the rights of the accused. Organizations such as Amnesty

¹⁹ Brownlie Ian, *Principles of International Law*, (Oxford University Press, Oxford 1998) p.33

²⁰ Dammer Frank, *Comparative Criminal Justice Systems* (Wadsworth, Belmont 2003) p.322

²¹ Id.p.322

²² Id.p.322

²³ Id.p323

International, Human Rights Watch, and Lawyers Committee for Human Rights pressure governments to adhere to human rights standards in treating ‘prisoners of conscience’, that is political prisoners who have committed no crimes of violence.²⁴ Inevitably this results in a convergence of Common Law and Civil Law. International police organizations²⁵ facilitate convergence among criminal justice systems. International compacts are another force for convergence of systems.²⁶ These compacts may address particular problems, such as terrorism, drug trafficking, human trafficking, extradition, and prison conditions. Their main goal is to impose an international standard for dealing with international problems.

Dualism

Under dualism spheres of competence claimed by States included state territory including the landmass, territorial waters, nationality and citizenship of nationals and others within the realms of jurisdiction. Dualist regimes restrict and limit their own level of competence within implementation of domestic legal jurisdiction and domestic law. If a situation involving human rights is brought to bear on a matter falling under domestic law, national courts would refer to internal law. Issues relating to human rights obligations are determined by national courts. If the case is admissible and heard in an international court, reference is made to a ruling that would take account the domestic internal law and possible exhaustion of local remedies under the respective legal system. This is due to the assumption that a national of a State has status exclusively under the internal law of that State. Also, those treaties have standing in domestic law as far as the State regime will allow the content of the treaty to be a part of the domestic legal system. Furthermore, “international tribunals cannot declare the internal invalidity of rules of national law since the international legal order must respect the reserved domain of domestic jurisdiction”.²⁷ Then again, “certain judges {...} have stated as a corollary of the proposition that ‘municipal laws are merely facts, that an international tribunal does not interpret national laws as such.’”²⁸

Monist States

Monist States such as England maintain the same level of respect for both international law as well as domestic law. “English courts take judicial notice of international law: once a court has ascertained that there are no bars within the internal system of law to applying the rules of international law or provisions of treaty, the rules are accepted as rules of law and are not required to be established by formal proof, as in the case of matters of fact and foreign law.”²⁹ The evidence of this inclusion and formation is evident in cases such as Regina v. Keyn. In this case, a German ship Franconia collided with a British ship which sank. The German captain was indicted for

²⁴ Id.p.323

²⁵ INTERPOL and other international policing, for example encourage standardization of information, international meetings for criminal justice personnel, and development of educational materials.

²⁶ Id.p.323

²⁷ Brownlie Ian, Principles of Public International Law (Oxford University Press 2002) p.36-37

²⁸ Id.p.40

²⁹ Id. Brownlie p.41

manslaughter for the loss of one passenger. The question of jurisdiction³⁰ was decided on the basis of whether there were grounds under statutes governing the Central Criminal Court, of which there were none. The Court found the relevant rule in international law of the sea. The jurisdiction to try offences by foreigners on board foreign ships, outside of the limits of territorial waters. It was concluded that the littoral sea beyond low water points was not a part of British territorial jurisdiction. Consequently, the exercise of criminal jurisdiction as a corollary of the territorial status of the littoral sea, is where the answer lay.³¹

In the absence of monism, Mark Schapiro and Helke Ferrie (Ferrie, 2008) wrote³² on the normative effect of the precautionary principle³³ in Europe, found that industry has been affected just before the start of the economic downfall in the United States in 2008. “In 2002, the European Union put this ideal into practice and formally asserted that sustainable and environmentally sound principles would have to be as important for all industry as competitiveness, and by 2004 drafted the world’s most comprehensive environmental laws, most of which came into force last year. The United States and the rest of the world will have to obey, if they wish to trade with 480 million of the wealthiest and best-educated consumers and producers in the world.”³⁴ This is the finest example of a transnational norm and the development of multiple levels of normative activity within an intergovernmental organization of nation States. Here, we see the emergence of new norms to swift, immediate incorporation through transnational movement in the form of ideas with roots in already existing constitutions. To the extent that “...when the first French court dealt with farmers who had destroyed vast tracts of Monsanto’s test fields growing genetically engineered corn: they were all acquitted on grounds of ‘self-defence’. The court accepted the reason provided by the farmers who all had pleaded guilty. They argued correctly as it has since turned out – that there is no earthly way to prevent cross-pollination with the natural corn grown everywhere else, which would ruin their livelihood because genetically modified crops are not permitted to be sold in Europe.”³⁵

Part V. The impact and influence of rights that have emerged from historical struggles.

Hersch Lauterpacht wrote that human rights “in the fullness of time, ought to become principles of law generally recognized and acted upon by the States members of the United Nations.”³⁶ In contemporary international law, general principles³⁷ contain great importance as a source of rule making (Lauterpacht,1950). General principles are found in all legal systems, hence their

³⁰ Id.p43

³¹ Regina v. Keyn Court for Crown Cases Reserved (1876) 2 Ex.D 63

³² Helke Ferrie, The New Green Superpower in the Canadian Center for Policy Alternatives (Ottawa, Ontario 1 March 2008) p.1-2 See also: Connie Singh, Law and Public policy in the United States(Kendall-Hunt 2008)

³³ Id. The normative emergence of this norm entitled the Precautionary Principle was formulated in Germany in the early 1930’s. It later emerged in the Montreal Protocol on Landmines and the Rio Declaration on Environment and Development. “Where there are reasonable grounds for concern for the possibility of adverse effects, but scientific uncertainty persists, priority will be given to human health and the environment, without having to wait until the reality and seriousness of those adverse effects become apparent.”

³⁴Op.Cit. Ferrie.p.3

³⁵ Id.p.3

³⁶ Hersch Lauterpacht, International Law and Human Rights (London, Stevens 1950) p.410

³⁷ Wolfgang Friedmann, The Uses of General principles in the Development of International Law American Journal of International Law Vol. 57 AJIL 1963

function in international relations is to provide a theoretical analytical foundation for international jurisprudence. Jurisprudence which originates from general principles can be used for legal decision making at the international level. General principles are particularly relevant today, in the field of international human rights law. The progressive development of human rights law requires giving attention to the relation between customary international law and general principles. In finding general principles in all of the legal systems in every region, creates a new category for the rule that has gained general acceptance. What is true about the law in the nation-state is also true about international law: it rests on specific axioms. Jurists find it necessary to fortify their decisions by speculating on the premises at the base of international law, as in the cases of *The United States v. the Schooner La Jeune Eugenie* and *The Antelope*³⁸. This case is about the illegal slave trade which flourished in the eighteenth and nineteenth centuries until international humanitarian movements brought pressure upon governments to bring it to an end. The United States could not act on the matter for more than two decades because according to the United States Constitution, Congress may not interfere with the ‘Importation of Such Persons as any of the States ... shall think proper to admit ... prior to the year one thousand eight hundred and eight’³⁹. In that year, Congress did prohibit further importation of slaves. Great Britain had outlawed the slave trade in 1807; Sweden in 1813; Holland in 1814; and the United States went further in 1820 by denouncing as a pirate any person within the jurisdiction of the United States who engaged in the slave trade. The illicit trade persisted, however, under the flags of nations who had not declared the traffic illegal. Great Britain at first attempted to fight it single handed by ordering her cruisers to visit suspected vessels and at the Congress of Vienna, it was the British who proposed an economic boycott against countries which refused to abolish the slave trade. Since the British fleet would have had to enforce the boycott, and since the other European nations did not desire to support measures to strengthen Britain’s maritime supremacy, the governments merely adopted a general declaration⁴⁰.

Example of the Correlation Between Custom and General Principles

Slavery is an example of a human rights violation which has the status of being a *jus cogens* norm, from which no derogation is possible. The Vienna Convention on the Law of Treaties 1969 defines *jus cogens* norms as having peremptory status, recognized *erga omnes* by the international community as a whole. A *jus cogens* norm may be derived from custom or from treaty. According to Rebecca Wallace, the International Court of Justice upheld the illegality of the use of force as a *jus cogens* norm in the Nicaragua Case. In *Siederman de Blake v. Republic of Argentina*⁴¹ the Court held that the right to be free from official torture is fundamental and universal, a right deserving of the highest status under international law: a norm

³⁸ 2 Mason US 409 (1 Circuit 1822) in Hersch Lauterpacht, *International Law and Human Rights* (London, Stevens 1950) p.400

³⁹ *Id.* Article 1 Section 9

⁴⁰ Swift Richard, *International Law* (Wiley Inc. NY) 1969 France, Denmark, Sardinia, and Sweden made such bilateral arrangements, but other States including Spain, and much later, Brazil and the United States, refused to foreign ships to search their merchant vessels. Slave traders could therefore fly the Spanish flag and continue to operate.

⁴¹ *Id.* 965 F2d 699 717 (9th Circuit 1992) in Richard Swift, *International Law* (Wiley Inc. NY) 1969

of jus cogens (Wallace, 2001). In *The Lotus Case*⁴², the Court reasoned how international law binds States through the sources of law. The rules of law binding upon States ... emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law. This means that what is practiced by States as a rule in international law, is found in domestic legal systems of States. The growth and development of customary rules may therefore be found in general principles, which exist as domestic law.

Interpretation of International Law

In the last century, the established rule of international law recognized that duty, obligation, responsibility, is owed by each State member of the League of Nations later the United Nations, by virtue of being a member of the United Nations. The only organization created in 1919 which has upheld this rule strictly is the International Labour Organization. This organization requires each State member to ratify hundreds of Conventions by virtue of being a member. It encourages dialogue between governments with international organizations, unions, and non-governmental organizations on Recommendations containing progressive norms on labour legislation. For example, *Eastern Extension, Australasia, and China Telegraph 1912* involves a claim for damages resulting from acts of war committed by the United States. The tribunal was confronted with the necessity of formulating a rule by deduction from general principles. "International law, as well as domestic law, may not contain, and generally does not contain, express rules decisive of particular cases; but the function of jurisprudence is to resolve the conflict of opposing rights and interests by applying in default of any specific provision of law, the corollaries of general principles, and so to find - exactly as in the mathematical sciences - the solution of the problem. This is the method of jurisprudence. It is the method by which the law has been gradually evolved in every country resulting in the definition and settlement of legal relations between States, and as between private individuals."⁴³ *United States v. Schooner*⁴⁴ is a case about a schooner called *La Jeune Eugenie* which was a carrier of slaves. It was seized on the coast of Africa. The offence was based on the allegation that the schooner was being employed in the slave trade against the slave trade Acts. Also, that the schooner was acting against the law of nation states. France had objected on the grounds that the slave traders were French nationals, the schooner was registered in France, and that legal jurisdiction pertained to French tribunals. As is the case of human trafficking today involving children for the purposes of illegal labour practices, this case is quite remarkable. It brought to light issues such as: enslavement which is a human rights violation of the right to life; breach of duty to protect citizens of nations; crimes against humanity; illegal smuggling of captives; and desolation of villages. The legal norm which surfaced in this case was that illegal traffic of persons must be eliminated as prescribed in the Annex of the Treaty of Versailles, 1915. This case crystallized a legal fact. The slave trade being repugnant to the international community as a whole erga

⁴² PCIJ Series A No.10 1927

⁴³ Great Britain and the United States, Claims Arbitrations Tribunal, 18 August 1910, 1923 (United Nations Treaty Series UN NY)

⁴⁴ United States, First Circuit Court Circuit Vol. 2 p. 409 1822

omnes, then sets the norm that no nation can rightfully permit its citizens to commit an act that is a crime under international law, regardless of domestic legislation ignoring this issue. For example in *The Antelope*, the Vice-Consuls of Spain and Portugal, Libellants⁴⁵ the Vice Consul of Spain and Portugal claimed certain Africans as the property of nationals of their countries. The facts are as follows. A privateer, called the *Colombia*, sailing under a Venezuelan Commission, entered the port of Baltimore in 1819; clandestinely shipped a crew of thirty or forty men, assuming the name *Arraganta*, proceeded a voyage along the coast of Africa, her officers and crew being nationals of the United States. Traveling off the coast of Africa, they captured an American vessel from Rhode Island, where twenty-five Africans were taken, captured several Portuguese vessels from which Africans were taken, then captured a Spanish vessel and took a considerable number of Africans. The United States filed a claim granting freedom to the Africans based on domestic laws and the law of nations,⁴⁶ stating that trade could not be considered as contrary to the law of nations which was authorized and protected as a commercial activity.⁴⁷ According to Hans Kelsen, at this point the law itself would be deemed unlawful. The query, whether general principles of international law and customary international law would need to arrive at a similar extent, would be discarded on a matter that has now been recognized as *jus cogens*.

Part VI.

Evolution of Transnational Legal Norms Into Ideas of Revolution for the Purpose of Embracing Human Rights

‘One of the most important tasks in promoting human progress is to main a proper balance between the interests of the individual and those of a democratic society and between individual verses collective rights. Individual freedom has to be balanced with the freedom of other individuals and with the reasonable demands of the community. It is axiomatic that the rights of the individual are limited by the rights of other individuals. Similarly, the rights and freedoms of individuals must in certain cases yield to such vital necessities of the State as, for example, the necessity, mentioned in the Universal Declaration of Human rights, of ‘meeting the just requirements of morality, public order and the general welfare in a democratic society. Thus in an organized society such as a State there is an absolute necessity for harmonizing the rights of the individual on the one hand with the requirements of the community on the other.’⁴⁸

Transnational norms are standards and sets of standards which permeate cultures from transnational interactions which arise from the expansion of social, economic, cultural, and scientific transactions which is a direct result of the post-industrial order of the last century. As a result of major technological, scientific, and economic innovations, transnational interdependence has reduced the value of national boundaries. This section contains a structural paradigm for normative development that begins at the domestic level and extends into the

⁴⁵ United States, Supreme Court Vol.10 p.66 1825

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Op.Cit. Daes p.69

international arena influencing normative changes in other regions of the world. Any case study in this article contain the same formulated paradigm.

Case study paradigm:

- (1) emergence of a norm
- (2) observation of the norm
- (3) effect of normative development
- (4) establishment of the norm

General normative propositions that exist in general principles of law, may be formulated and even codified. However, the connection and the distinguishing factor of the evolution of a transnational legal norm is not always visible. Hence, unless the legal norm in legal basis is clearly seen, it is often ignored. This evaluation of a general principle in the form of a legal norm is particularly warranted in law in the absence of legislative power. The growth of a legal norm emerges from practice, treaty law, international relations and from the general principles found in domestic legal systems. Within the framework of normative international rights and duties pertaining to the individual, can it be said that these have been transformed and projected to a level where the individual bears more status under international law. Without taking this study into the realm of international criminal law, or protection of refugees and stateless persons, child soldiers, and child labour, can we say that the individual herself or himself, has willingly received the rights owed in order to have what it required to live a moderately healthy, happy, fulfilling life. “International law provides a system of rules governing the conduct of inter-state relations. International law can offer an answer to the majority of international disputes, though in some cases the dispute may not be susceptible to settlement by the application of legal rules.”⁴⁹ Has the individual in the Middle Eastern revolutions become a de facto subject of international law, thereby carving out a new position of the individual in society that was formerly filled with entities granted that status by law: domestic and international. The real position of the private individual then, has been relegated to a direct subject of international law only in relation to international human rights law, exclusively. “The Romans summarized the duties of the individual towards other individuals as: *Iuris praecepta sunt haec; honeste vivere, alterum non laedere, suum cuique tribere*. Human duty can be summed up as such. It is not, as it appears at first sight, an empty formula. It entails an attitude of tolerance and of acting and forbearing to act. It does not permit indifference. It is a positive duty requiring the individual’s interest in his fellow men. The individual must help others to develop their personality, without compelling them to do so.”⁵⁰

⁴⁹ Op.Cit. Daes p.40

⁵⁰ Id. 41

Part VII.

Absolute Monism: Conceptualization of Society Today As A Paradigm of the Sub-Systems.

The word society reflects a social system composed of subsystems of human action. Other subsystems are based on human behavior, human personality, group culture, and ethnicity. Four sub-systems of human action form a general paradigm: organism, personality, social systems and cultural system. This paradigm may be used to reflect upon the field of human action,⁵¹ and to analyze any human action system in terms of the following four functional categories: i).that concerned with the maintenance of the highest ‘governing’ function of the legal system; ii). internal integration of the legal system; iii). acceptance of the normative legal order for the attainment of goals of created by the government; iv). more general adaptation to the broad conditions of the environment in a structural-functionalist formation. “Law is usually associated with legitimacy, understood in terms of justice, fairness, accountability, consistency, representation of societal members, and other normative values as recognized by societal members. Legitimacy has substantive, procedural, historical and genealogical dimensions.”⁵² In most societies, when we refer to law it is assumed that law is valid and effective and recognized as legitimate.⁵³ “Law has generally been considered as a prescriptive norm seeking to regulate the conduct of its addressee, who comprises all members of a society. Law can, and should, be enforced against the will of the addressee. If law is not recognized legitimate by its addressee as a whole, it would be difficult for the law to function as an enforceable prescriptive norm regulating the conduct of the societal members. Without a normative consciousness of the society as a whole recognizing the legitimacy of the law addressed to the them, the law can neither be effective not even be valid in the society. We certainly know that there are cases in which a law that is perceived as unjust or illegitimate is enforced by some power against the will of the addressee. But we also know that this situation cannot last eternally. At some point such as regime is replaced by a new ruler and a new law. History is full of such examples.”⁵⁴ According to Noam Chomsky’s writings on alternate conceptions of democracy (Chomsky 2002), theories of democracy that uphold concepts of a specialized group of responsible thinkers who can lead the way to attain the common interests of the general public also seen in the works of Lenin who spoke of a vanguard of revolutionary intellectuals fall to the wayside as we view the initiatives taken by the most simplest and humble individuals leading revolutions in the world today, particularly the Middle East.⁵⁵ That is why, Chomsky asserts, in the historical past, “large masses have found it easy to drift from one position to another without any particular sense of change”, until 2011 (Chomsky,2002). “It is generally said that the organized power of the ruler or the State guarantees law. This is so-called enforcement mechanism or organized violence guaranteeing the effectiveness of the law. However, this ‘organized violence’ is a group of humans who ultimately behave as societal members with a human mind. Changes of political

⁵¹ Parsons Talcott, *Societies* (Prentice-Hall, NY 1966) p.4-7

⁵² Yasuaki Onuma A Transcivilization Perspective on International Law(Hague Academy of International Law, the Hague 2010) p.110-111

⁵³ Id.p.111

⁵⁴ Id.p111

⁵⁵ Chomsky Noam, *Media Control* (Seven Stories Press NY 2002)p.14

regimes, including revolutions are possible and have actually occurred, because ‘this organized violence’ is not a mindless mechanism. It is composed of humans, who sometimes act against the will of its patron: the ruler or the government. Thus we can see that it is the normative consciousness of the addressee of the law as a whole that constitutes the ultimate basis of law.”⁵⁶ Hence, the consequence of the force of change contains a deepening desire for individuals to belong to new groupings that are not based on ideology as the essential bond, nor culture, tradition or patriotism. This forms the essence of a new aspect to transnational convergence that leads to a fractal style of human rights awareness connected by incidents and situations in various places affected by socio-economic issues. However, historically western States, in particular the United States, based their governmental policy and international strategy on systems of analysis which adopted: geographical proximity of peoples; proximity of regions; concepts of institutionalism rather than legal-organizational, and trade liberalization. Instead, there is a new emphasis in the nations experiencing revolutions based on human rights, which is energized by the formation of a functional system consisting of broad guidelines of action and straightforward institutions with no permanent elaborate bureaucratic structures.⁵⁷ If compelled to take a monist approach, then regional security arrangements would take into consideration local cultural variables without referring to past models for security architecture. The needs of the individual in society would be addressed here, as a component of regional security concerns.

Part VII.

Case Study on the Position of the Individual: Internally Displaced Children in Hatcliffe Extension⁵⁸

According to Amnesty International, Zimbabwean authorities are proceeding with evictions of up to 20,000 people from an informal settlement on the outskirts of Harare for failure to pay the high lease renewal fees charged by the State. “Most of the residents of Hatcliffe Extension were allocated plots of land for new homes after they were forcibly evicted by the authorities under the country's 2005 mass forced evictions programme. Operation Murambatsvina saw approximately 700,000 people lose their homes and their livelihoods.”⁵⁹

⁵⁶ Op.Cit.Yasuaki p.112

⁵⁷ Selim El-Sayed, *Regional Security in the Middle East in Challenges to Global Security* (Palgrave Macmillan NY 2008) p.194

⁵⁸ A Study by Dr. Calisto Mudizingwa adapted from his work: *Forgotten Victims of Internal Displacement In Zimbabwe, Internally Displaced Children In Hatcliffe Extension 2010* (Completed as his Dissertation for the Human Security and Peacebuilding Degree at Royal Roads University, Victoria BC Canada 2010)

⁵⁹ www.amnesty.org/en 2010-09-03 “Residents of Hatcliffe Extension are among the poorest and most marginalized in Zimbabwean society and many households have no means of paying the lease renewal fee, especially as a lump sum,” said Michelle Kagari, Amnesty International's Deputy Director for Africa. Hatcliffe Extension is one of a number of settlements set up under Operation Garikai - the government programme that was initiated to resettle those left homeless after Operation Murambatsvina. In reality, only a small number were resettled. The majority were forced into overcrowded existing housing stock while others were forcibly relocated to rural areas by the government. Five years after the mass forced evictions, residents at Operation Garikayi settlements are surviving in deplorable conditions in plastic shacks without access to basic essential services. “Residents of Hatcliffe have been utterly let down by the government. It is therefore all the more shocking that instead of taking steps to improve their current situation, the government is threatening action that will certainly increase suffering and deprivation,” said Michelle Kagari. “Instead of threatening vulnerable people with eviction, the government must provide protection from the cycle of insecurity and further violations by providing security of tenure and affordable payment plans for

This is a classic example of a situation which is left to appear as being so far removed and soaked in poverty that it is of no harm to us in western society. The emphasis in this paper is to show that situations such as the Hatcliffe Extension breeds minds capable of terrorist activity within domestic jurisdiction, then into other jurisdictions. Francis Deng in *Human Rights and Southern Voices*, writes that “ there are both positive and negative implications in the way people are classified or perceive themselves (Deng, 2009). To be labeled poor is to establish a case for corrective measures toward poverty alleviation, which is positive, but it could also breed apathy, self-pity and dependency.”⁶⁰ This point was taken further by Yasuaki (Yasuaki,2010)⁶¹ who found that equality and international law were very separate due to an illusion that international law brought about the status of equality to all nations including those who had experienced colonial domination. He questioned whether international law also contained ideological references, “thereby becoming a companion of imperialism and colonialism”.⁶² Although, he did affirm that after the latter half of the twentieth century, that “human rights ... and international law had become global ... winning the gradual acceptance and recognition of those who were not originally familiar with it.”⁶³ “ International terrorist groups prey on weak States for sanctuary. Their recruitment is aided by grievances nurtured by poverty, foreign occupation and the absence of human rights and democracy; by religious and other intolerance; and by civil violence common to those areas where civil war and regional conflict intersect. In recent years, terrorists have helped to finance their activities and moved large sums of money by

leases." In June, the authorities posted notices at Hatcliffe Extension saying that all leaseholders should pay for the renewal of their agreements by 30 September. Failure to pay would result in residents losing their land which would then be allocated to others on the housing list. There has been no consultation with the residents on the renewal process and the fee set by the authorities. Many of the settlement's 3,000 households have no means of meeting the fee of up to US\$140 set by the government. Operation Murambatsvina, as well as destroying homes, also destroyed the informal employment sector, depriving thousands of reliable income. The unemployment rate in Zimbabwe stands at around 90 per cent. Since June, the residents have made several unsuccessful attempts to engage with the relevant authorities. The problem of excessive lease fees is not restricted to Hatcliffe Extension. Residents of other informal settlements set up under Operation Garikai are also under threat of eviction. Earlier this month, police burnt down shacks at an informal settlement in Harare's Borrowdale suburb, making over 200 survivors of Operation Murambatsvina homeless. "The government of Zimbabwe must review and revise Operation Garikayi, in genuine consultation with survivors, to address the housing needs of all survivors of Operation Murambatsvina," said Michelle Kagari. Through the Demand Dignity campaign, launched in May 2009, Amnesty International is calling on governments globally to take all necessary measures, including the adoption of laws and policies that comply with international human rights law, to prohibit and prevent forced evictions.

⁶⁰ Francis Deng in William Twining *Human Rights and Southern Voices*, (Cambridge University Press, Cambridge 2009)p.9

⁶¹ Yasuaki, Onuma A *Transnational Perspective on International Law* (Hague Academy, The Hague 2010) p.348-349

⁶² Id.p349-350 “A large number of {African and Asian nations rising out of colonial domination to} to attain independence during the post-Second World War period, utilized international legal norms in their struggles for national liberation. The equality of nations and the self-determination of peoples were leading examples of such norms.” “Symbolic in this respect is the fact that when African and Asian States were recovered independence, they resorted to the idea of self-determination which is a modern Western construct. They attained independence within ‘national’ boundaries which are basically defined by Western powers (the *uti possidetis* principle).” “International law {and all related terms of reference} are born in Europe. It is natural for European experts dealing with any subject of international law to see it, interpret it, and construct it from a perspective which takes the European or Eurocentric point of view for granted. Until the late twentieth century, the study of international law regarded the history of modern European international law as the history of international law *per se*.” Universal validity was not limited to Europeans. Muslims regarded the *Siyar* as universally valid, and South East Asians regarded the *Sinocentric* system as universally valid. See: footnote 224 on page 351.

⁶³ Id.p.350-351

gaining access to such valuable commodities as drugs in countries beset by civil war.”⁶⁴ “Transnational organized crime facilitates many of the most serious threats to international peace and security. Corruption, illicit trade and money –laundering contribute to State weakness, impede economic growth and undermine democracy.”⁶⁵ Duty to protect falls upon the responsibility of States to protect: Security exists not only within the jurisdiction of the State experiencing the problem. Security is erga omnes, rights owed to the international community as a whole. Similarly, general principles as a source of law is evidence of existing principles that are held to be valid by all State Members of the United Nations and substantiated by viewing the location of a specific general principle in any domestic legal system. All State Members have acceded to international multilateral instruments, have ratified international instruments and have secured general principles into their national body of legal jurisprudence. These general principles are included in national civil law or common law legislation of all of these States, thereby carrying the strength of *opinio juris*. General principles are held to be recognized legal obligations. Many of these principles are believed to be international obligations. States feel psychologically obliged to follow these rules behaviorally as if *opinio juris*. Therefore it must be questioned as to how general principles are identifiably separate from customary international law. Custom, it is debated, may suddenly appear and exist instantaneously without State practice, perhaps only within the realm of activity in a forum such as the United Nations General Assembly. Similarly and simultaneously general principles clearly exist in the positive law of all States. Moreover, they have had the duration in time and exercise by States so that may be referred to as established State practice. The most significant contribution of general principles in international law has been in the area of international trade and multinational business, mainly private international law.⁶⁶ International contractual agreements between governments, international organizations and private companies had to refer to established principles of general principles to fill the lacunae in public international law. This includes general principles dealing with the subject matter of contract law, restitution and tort. The International Monetary Fund and the World Bank, when granting loans to governments, use private international law in combination with general principles of public international law.⁶⁷ General principles of private international law can be categorized as falling under: a) principles of approach; b) minimum standards of procedural fairness; and c) substantive principles of law recognized in the leading legal systems of the world.⁶⁸ In the Nationality Decrees in Tunis and Morocco, the general principle that all questions relating to the acquisition or loss of a specific nationality shall be governed by the laws of the State whose nationality was claimed... was admitted.⁶⁹ In *Chorzow Factory (Indemnity)*⁷⁰ the International Court upheld that ‘..it is a

⁶⁴Op.Cit A/59/565

⁶⁵What we seek to protect reflects what we value. The Charter of the United Nations seeks to protect all States, not because they are intrinsically good but because they are necessary to achieve the dignity, justice, worth and safety of their citizens. These are the values that should be at the heart of any collective security system for the twenty -first century, but too often States have failed to respect and promote them. The collective security we seek to build today asserts a shared responsibility on the part of all States and international institutions, and those who lead them, to do just that.

⁶⁶ Op.Cit.Friedmann p.149

⁶⁷ Id.p.150

⁶⁸ Id.p.152

⁶⁹ PCIJ Ser.B No.4(1923)p.24 In the reply of the German Government.

principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation'. In the South West Africa Cases,⁷¹ the Court held general principles to be a basis for human rights concepts and even natural law concepts. In the Corfu Channel Cases (Merits)⁷² the Court pointed to the fact that general principles as evidence are admitted in all systems of law and its use is recognized by international decisions. Its predecessor, the Permanent Court referred to general principles in cases such as: Mosul Boundary⁷³ Free Zones⁷⁴; and German Interests in Upper Silesia Case.⁷⁵ Weis⁷⁶, according to Brownlie would disagree with the above statements (Weis in Brownlie,2002) . He held the opinion that "Concordance of municipal law does not yet create customary international law; a universal consensus of opinion of States is equally necessary. It is erroneous to attempt to establish rules of international law by methods of comparative law, or even to declare that rules of municipal law of different States which show a certain degree of uniformity are rules of international law." Brownlie, on this point believed that Weis generally did not give much weight to domestic legislation as evidence of State practice (Weis in Brownlie 2002). The legal history on the growth of the territorial sea due to national legislation would seem to counter the opinion of Weis. Furthermore, present day international law would indicate that there has to be a certain amount of opinio juris for rapidly developing customary practice to become established international rules. Brownlie holds, that [t]he rubric may refer to rules of customary law, to general principles of law as in Article 38(1)c, or to logical propositions resulting from judicial reasoning on the basis of existing pieces of international law and municipal analogies (Brownlie, 2002). What is clear is the inappropriateness of rigid categorization of the sources. He expands this analysis to include the argument that general principles such as the principles of consent, reciprocity, equality of States, finality of awards and settlements, the legal validity of agreements, good faith, domestic jurisdiction, and the freedom of the seas, are derived from state practice⁷⁷. State practice accepted as custom or State practice exemplified by a general principle can contain the same normative force and effectiveness. A norm is more than a reflection of State practice, it continues to guide the actions of a State.⁷⁸

The plight of internally displaced children staying with their families in Hatcliffe Extension⁷⁹, in Zimbabwe. Hatcliffe Extension is a residential area that started off as a holding camp for

⁷⁰ In Chorzow Factory (Indemnity) PCIJ Ser.A (1928)No.17 p.29

⁷¹ ICJ Reports (1966)p.294

⁷² ICJ Reports (1949)p.18

⁷³ PCIJ (1925) Ser.B 12 p.32

⁷⁴ PCIJ (1930) Ser.A 24 p.12

⁷⁵ PCIJ (1925) Ser.A 6 p.20

⁷⁶ Op.Cit.Weis in Brownlie, Legal Status of the General Principles in Principles of Public International Law (Oxford, University Press 2002) p.393

⁷⁷Id.p.19

⁷⁸Bothe M. Legal and Non-legal Norms – A Meaningful Distinction in International Relations in Netherlands Yearbook of Legal International Law Vol. XI (1980) p. 65-66

⁷⁹ Weiss, T.G. (in Human Rights Review 2005) p.285 There is little research focusing on the internally displaced. "Among the topics scrutinized in books, documents and articles, one has been short changed: internally displaced people. This case study investigates the plight of internally displaced Children in Hatcliffe Extension (Zimbabwe) with the hope of contributing to the

internally displaced persons, and still bears all the characteristics of a holding camp. The study focuses on the human security challenges faced by these children, including their needs and highlights the government of Zimbabwe's responses to the needs of these internally displaced children. Internally displaced persons are persons who have been forced to flee or to leave their homes in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border.⁸⁰ Hatcliffe Extension is home to more than 3 000 families, and these are former squatters who stayed at the Churu Farm, in the area that is now known as Glen View⁸¹. These persons were forcibly removed from Churu Farm in 1992, and moved to a holding camp in the Hatcliffe area. They were later moved to the present site.⁸² What is apparent is that these people have been internally displaced multiple times, thereby creating a myriad of human security challenges for them. Third, internally displaced persons remain legally under the protection of their home country. In Zimbabwe, international humanitarian access and long term development aid to the displaced persons has been effectively blocked by the government, which has a propensity to invoke its sovereignty when it comes to sensitive issues such as internal displacement and human rights violations.

Internally displaced persons are protected by the United Nations Guiding Principles on Internal Displacement, 1998. This is a legal international document that is not a treaty but provides normative

literature on the plight of the internally displaced, particularly children. Data was collected using the semi-structured interview and the non-participant observation. The research was conducted against the backdrop of the Zimbabwean Laws and Policies pertaining to children, the international instruments relating to internally displaced people and those relating to children in particular. The findings of the study are that the children's rights are grossly violated—the right to housing, the right to health and the right to education. The government of Zimbabwe is in contravention of its own laws and policies as well as international treaties.

⁸⁰ Guiding Principles on Internally Displaced Persons, 1998. Internally displaced persons are those who have been forced or obliged to flee or to leave their homes in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border. (www.unhcr.org)

⁸¹ Kachere P, Writing for the Sunday Mail Zimbabwe August 22, 2010

⁸² Id. Regarding the situation in Hatcliffe Extension, Kachere (2010), writing in the Sunday Mail Zimbabwe observes:

Although the government has tried to formalize the settlement and given some of the tenants leases, the residents still live in squalor as the untarred dirt roads become too dusty during the dry season and too muddy and impassable during the rainy season. With no running water, electricity, proper sanitation, residents accuse politicians of cashing in on their plight with empty promises of improved infrastructure and sanitation. Like in any difficult situation such as, armed conflict, civil strife, natural or man-made disasters, it is the most vulnerable groups that suffer the most—the women and children. Several factors make the situation in Zimbabwe challenging or even dire for these groups. First, the internal displacement crisis in Zimbabwe is hidden from the outside world. “Zimbabwe does not have any of the outward signs of other large displacement crises, such as camps for internally displaced persons [except for a few]; the crisis is to a large extent hidden” (IDMC 2008, p.5). As a result, there are no official government statistics relating to these displaced populations. Equally disturbing, no agency has been able to conduct a comprehensive survey of displacement in the whole country to determine the number of internally displaced persons. Consequently, the magnitude of the crisis remains unknown. Second, all the internal displacements, are a direct result of government policies. Mindful of this observation, it is not surprising that the government has consistently failed to acknowledge both the reality of internal displacement and that its policies have caused massive internal displacements. In fact, in Zimbabwe, this issue is so sensitive that displaced populations in Zimbabwe are referred to as ‘mobile vulnerable populations’ (The many faces of displacement in Zimbabwe. Geneva: Internal Displacement Monitoring Center 2008 p.4) Meredith, J Mugabe: power, plunder, and the struggle for Zimbabwe. (Johannesburg: Jonathan Ball 2008)

rules. These Guiding Principles, present the standards for protection during displacement and reintegration, adapting the full range of civil, political, economic, social and cultural rights to the needs of internally displaced persons,⁸³ who remain under the legal jurisdiction of their home country. In Zimbabwe, international humanitarian access and long term development aid to the displaced persons, has been blocked by the government, which invokes its sovereignty when it comes to sensitive issues such as internal displacement and human rights violations. The issue of displaced persons, cuts across several areas of international concern: human rights, human security, millennium development goals, and international relations. This study is therefore significant to a wide spectrum of human security issues. The human security challenges faced by the children in Hatcliffe Extension and the effect on their fundamental human rights in terms of : economic security; food security; health security; environmental security; security of the individual-personal security; political security; security of the community; security of culture.⁸⁴ Historically, at the end of the Cold War, the issue of internally displaced persons became topical on the international agenda. Unlike refugees who had the International Refugee Law, displaced person did not have an international legal instrument dedicated to their protection. Several reasons are advanced for the need to draw greater attention to the plight of displaced persons. First, the number of people uprooted within their own countries by armed conflict, ethnic strife and human rights abuses soared after the Cold War (Cohen 2006). Then, internally displaced persons lived in deplorable conditions and this compelled an international response to the unfolding humanitarian disaster. Internally displaced persons were often deprived of food, shelter and health services than other members of the population and more vulnerable to assault and human rights abuses.⁸⁵ Access to the internally displaced people became easier after the end of the Cold War, since there was more fear of retaliation from superpowers, thus opening up borders. In addition, there was greater acceptance of the idea that events taking place within a country were legitimate concerns of the

⁸³ Cohen, R. and Deng, F. *Masses in flight: The global crisis of internal displacement*. (Brookings Institution Press. Washington, D.C. 1998)

⁸⁴ There are two definitions of security; the broad and the narrow. In the narrow definition, which is often called the ‘traditional’ definition, security is defined as “[defence]...of territory from external aggression, or as protection of national interests in foreign policy or as global security from threat of a nuclear holocaust”. The broader definition is people-centered. It is concerned with how people live in society, including the amount of freedom they have. Human security involves freedom from fear and freedom from want. Human security encompasses two main aspects: safety from such chronic threats as hunger, disease and repression; protection from sudden and hurtful disruptions in the patterns of daily life, in homes, in jobs, or in communities. Economic security requires an assured basic income, from productive and remunerative work, or from safety net. Food security demands all people have both physical and economic access to food all the time. This means that people have an “entitlement” to food, by growing it for themselves, by buying it for themselves, or by taking advantage of a public food distribution system. (Human Development Report 1994, p.27). Health security includes proper nutrition; safe environment, for example clean water, proper sanitation; access to public health; freedom from diseases through either prevention or treatment. Threats to health security are usually greater for the poorest people, women and particularly children. Environmental security means threat on the environment such as, the pollution of the sources of drinking water and threats to the land through deforestation. Personal security aims to protect people from physical violence, whether from the state or external states, from violent individuals and sub-state actors, from domestic or from predatory adults. Community security aims to protect people from the loss of traditional relationships and values and from sectarian and ethnic violence. Political security is concerned with whether people live in a society that honours their basic human rights. Acts such as political repression, systematic torture and ill treatment, are examples of activities that compromise the political security of people. Human Development Report 1994 p.22

⁸⁵ Cohen points out that the highest mortality rates ever recorded during humanitarian emergencies involved the internally displaced.

international community.⁸⁶ Fourth, it became clear that effective reintegration of displaced persons was crucial for durable peace, and reconstruction in war-ravaged countries.⁸⁷ The observation that internally displaced persons remain in the jurisdiction of their own government has changed. This has changed in terms of norms of jus cogens through the Rome Statute of the International Criminal Court. In many cases, when there is internal displacement, the government is the cause of the displacement. Within this category of persons suffering from lack consideration are children who are the most vulnerable. Hence, it is the states' responsibly to protect and safe guard the rights of displaced children as defined and designated under humanitarian law, and in the Convention on the Rights of the Child, as well as the Guiding Principles. For example, the Guiding Principles on Internal Displacement states in Principle 4(2) that "certain internally displaced persons, such as children and unaccompanied minors...shall be entitled to protection and assistance by their condition and to treatment which takes into account their special needs." Although every child deserves the right to health, education and shelter as enshrined in the UN Convention on Rights of the Child and the African Charter, displaced children are often denied these rights. Furthermore, displaced children often lack access to basic necessities such as shelter and food, and their education can be disrupted or even terminated, violating one of their fundamental human right.⁸⁸

Conclusion

The conclusion reached in this study by using the United Nations Report on the Position of the Individual in Society and the case study on Hatcliffe Extension is that essentially, the position of the individual in society has gained recognition as a specific subject matter that requires attention separate from attachment to a group or to the state. The most important aspect elaborates on the development and convergence of transnational norms to prevent state aggression against human beings acting in the interest of others. This has been done by showing the connection between peace and security within state jurisdiction after international law is accepted as a part of domestic law. Moreover, international concern over the vulnerability of displaced persons led the UN Commission on Human Rights to appoint Francis Deng to examine the extent to which existing international laws provided protective measures in this realm. In 1996, he was tasked with the responsibility of developing an appropriate legal framework for displaced persons. Accordingly, Deng, and his team of international legal experts, formulated the United Nations Guiding Principles on Internal Displacement (UN 1998), which were presented to the Commission. The United Nations Guiding Principles on Internally

⁸⁶ Id.

⁸⁷ Internally displaced people are the most vulnerable population. According to Annan, "internally displaced people .. are among the most vulnerable of the human family" (Annan, K. United Nations Office of the Coordination of Humanitarian Affairs, No refuge: The challenge of internal displacement. New York: United Nations p.vi) Reasons for their' vulnerability are categorized as follows: displacement exacerbates poverty, and frequently causes the breakdown of family and community structures and the disintegration of traditional social norms, leaving particularly children very vulnerable (Cohen and Deng 1998); displacement seriously affects the security and well-being of people who are forced out of their homes into a future of uncertainty; are denial of basic human rights and the necessities of life such as water, food, shelter, as well as health services; the international legal instrument meant to protect internally displaced persons is not a treaty, and consequently not as binding as the international treaty that governs the refugees; internally displaced persons remain in the jurisdiction of their own government and accordingly, are the responsibility of their own State.

⁸⁸ Weiss, T.G. and Korn. D.A Internal Displacement: Conceptualizations and Consequences. (London, Rutledge,2006) p.15

Displaced Persons (UN 1998), which are based upon existing international humanitarian law and human rights instruments, are to serve as an international standard to guide governments as well as international humanitarian and development agencies in providing assistance and protection to internally displaced persons.⁸⁹ Although these Guiding Principles have not been formally endorsed by states in the manner of a treaty, they are enjoying growing recognition as transnational legal norms at the international, regional and national levels.

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