THE LINKAGE BETWEEN INTERNATIONAL LAWS AND INTERNATIONAL HUMAN RIGHTS LAW

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1.0 INTRODUCTION

The concept of protection is an ancient one, cited liberally in the Hebrew Scriptures and later in the New Testament, the Koran, and other religious writings. The word "protect" comes from the Latin protegere, meaning to shield, cover, protect, and defend. Over the ages in Western civilization, the term has been used in various ways: God's protection, royal protection, diplomatic protection, self-protection, protection under the law, and, more recently, equal protection, trade protection, consumer protection, social protection, environmental protection, copyright protection, and so on. "Protection" is a nice word, a noble word. It is used by historians, political scientists, anthropologists, lawyers, politicians, and even theologians with somewhat different meanings. But it always has a positive connotation.

International law is the term used to refer to all legally binding rules that apply at the international level. International law, which concerns the way in which States behave towards one another, has a primarily regulatory function for the purpose of facilitating international cooperation and giving it a predictable pattern on the basis of binding rules. One of the main objectives of international law is to create the conditions for international peace and stability.[1]

As to the protection of the rights and freedoms of the individual at the international level, work began in the nineteenth century to outlaw slavery and to improve the situation of the sick and wounded in times of war.[2] At the end of the First World War, several treaties were concluded with the allied or newly created States for the purpose of providing special protection for minorities. At about the same time, in 1919, the International Labour Organization (ILO) was founded for the purpose of improving the conditions of workers. Although the initial motivation of the ILO was humanitarian, there were also, inter alia, political reasons for its creation, it being feared that, unless the conditions of the ever-increasing number of workers were improved, the workers would create social unrest, even revolution, thereby also imperiling the peace and harmony of the world.[3]

[1] https://www.eda.admin.ch/dam/eda/en/documents/publications/Voelkerrecht/ABC-des-Voelkerrechts_en accessed on 9 May 2019.
[2] A.H. Robertson, Human Rights in the World (Manchester, Manchester University Press, 1972), pp. 15-20.
[3] For the history of the ILO, see the ILO web site: www.ilo.org/public/english/about/history.htm.

This paper intends to discuss how the principle of international law recognizes international human rights law.

2.0 INTERNATIONAL LAW

Before now, there is customary international law that recognizes some individual protection greater than that which state could affords such as a duty of care to strangers traversing over their land and right of passage of official state messengers from their territories to another. International laws have acquired greater importance as a result of increasing globalization, and have also become more complex. Since many of the problems which individual States face today cannot easily be solved at the national level, modern international law is of growing relevance in areas that were once the exclusive domain of national law. These include individual rights, environmental protection and efforts to combat crime. The range of norms and standards of international law extends from core peremptory rules (such as the prohibition of the use of force and the fundamental human rights guarantees), to basic institutional regulations (the law on treaties or the law on international organisations), operational norms for cooperation (for example in the area of judicial assistance), and provisions of a technical-administrative nature (for example air travel safety, radio frequency allocations and food). The provisions of international law apply in a wide range of areas, as illustrated by the following:

1. Prohibition of the use of force: States must settle their disputes by peaceful means.
2. Human rights: Every individual may claim certain fundamental rights (right to life, physical integrity, individual freedom, freedom of opinion, freedom of conscience, etc.).
3. Protection of persons in armed conflicts: International humanitarian law contains rules that apply in times of armed conflict, in particular for the protection of civilians, the wounded and prisoners of war.
4. Fight against terrorism and other serious crimes: This can only be prosecuted effectively through international cooperation.
5. Environment: Regulations for the protection of the climate and the conservation of natural resources will be more effective if universally applied.
6. Trade and development: Switzerland earns half of its income abroad. This is possible only thanks to the existence of a functioning, stable international legal environment.

7. Telecommunications: Without international regulations it would be impossible to telephone abroad.
8. Transport: Ensuring that train and airplane passengers arrive safely at their destinations requires international treaties.

International law is created by States and above all concerns the affairs of States. Thus, for a long time only States were the subjects of international law. In international law each State is sovereign and equal under the law – big and small, rich and poor. International organisations such as the United Nations have played an increasingly important role in the past few decades. These organizations were created by the international community to respond to specific needs that are beyond the power of individual States.

Today, there are considerably more international organisations than there are States. Only a relatively small number however are of truly global significance, and many of them are part of the United Nations System or affiliated with it. These international organisations are of considerable importance for international law because they are taking on an increasing number of tasks that traditionally belong to sovereign States. Furthermore, multilateral instruments of law are almost without exception negotiated in the framework of these organizations, which have thus become the "incubator" of international law.

Modern international law increasingly focuses on the protection and well-being of individuals. This inevitably has an influence on the meaning of national sovereignty, which can no longer be seen as merely the (passive) right to defend the State against foreign interference but also has an active aspect: the sovereignty of a State includes responsibility to provide for the safety and well-being of its citizens.

As the influence of international law on the domestic affairs of States steadily grows so its democratic legitimacy is increasingly being called into question. The fact is that international law is created entirely differently than national law. Whereas domestic laws are created by elected or appointed national representatives, international treaties are the result of negotiations between government representatives. Unlike in national legislative procedures, hardly ever will there be a vote in treaty making. Negotiations usually continue until a compromise acceptable to all States is found. The democratic element at the international level lies in the principle of the equality of all States, big and small. Moreover, it is the sovereign right of each State to decide freely whether to accept the treaty that results from negotiations or not.

3.0 INTERNATIONAL HUMANITARIAN LAW

International humanitarian law (IHL) is also known as the Law of Armed Conflict, the International Law of War and "ius in bello". It applies to all armed conflicts, whether lawful or not. IHL makes an effort to balance humanitarian and military interests. If total war and complete annihilation of the opponent is to be prevented, the parties to a conflict must not be left free to wage war by all the means and methods at their disposal. IHL is not only addressed to States, it also contains numerous provisions that must be complied with by individuals including civilians).

In addition to Customary international law, the main sources of IHL are the universally ratified Geneva Conventions of 1949, their two Additional Protocols of 1977, guarantee certain fundamental rights to the individual in the specifically defined situations of international and internal armed conflicts, neither the personal, temporal nor material fields of applicability of international humanitarian law are as wide as those afforded by international human rights law.[4] In that sense, humanitarian law is also less egalitarian in nature, although the principle of non-discrimination is guaranteed with regard to the enjoyment of the rights afforded by this law.[5] The Hague Regulation of 1907 (Hague Convention), together with various other Conventions prohibiting or restricting the use of specific weapons. Most of the provisions of the Geneva Conventions, their Additional Protocols, or other provisions on the conduct of hostilities have become part of customary international law. [6]

It is worthy to note that there is a relationship that exists between International humanitarian law and International human rights law though both seeks to protections of individual. International humanitarian law, on the other hand, is aimed at ensuring a minimum of protection to victims of armed conflicts, such as the sick, injured, shipwrecked and prisoners of war, by outlawing excessive human suffering and material destruction in the light of military

[4] J. Patrnogic and B. Jakovljevic, International Humanitarian Law in the Contemporary World, Sanremo, Italy, International Institute of Humanitarian Law (Collection of Publications 10), 1991, p. 28

[5] e.g. article 3 common to the Four Geneva Conventions of 12 August 1949; article 75 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); and article 2(1) of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

[6] Supra, 22

necessity. On the other hands, International human rights law provides non-discriminatory treatment to everybody at all times, whether in peacetime or in times of war or other upheaval.[7]

4.0 HOLOCAUST

Holocaust was a 12-year historical event that is defined by the international community and the United State Holocaust Museum as "the systematic, bureaucratic, state-sponsored persecution and murder of 6 million Jews by the Nazi regime and its collaborators (United States Holocaust Memorial Museum 2018)." "Holocaust" literally means a sacrifice by fire.[8]

Holocaust grew from a series of unjust laws and practices during 1933 to 1945 within Germany into an unparalleled catastrophe in Europe that shook the world. Discriminatory laws developed by the Nazi German governmental systems were combined with violent industrial military forces and used to fuel persecution and the mass murder of Jewish and several other populations throughout central Europe. International law has developed ever since. The abuses of power and national policies that enabled mass violence were profoundly unjust. Nazis came to power through both violence and law; the global community has worked ever since to ensure human rights and to make sure that the Holocaust was a warning, not a precedent.

As the Holocaust grew in Europe, some in the international community were incredulous or even doubtful about the true extent or nature of this crime. Some were uninformed, and some were resistant to accepting the growing evidence for this evolving atrocity. Prior to German occupation of neighboring nations and subsequent declarations of war, democracy was eliminated, antisemitic and eugenic laws were established, and a Nazi police state created a growing system of concentration camps.[9] The international community nonetheless attended the Berlin Olympics. International public protest was limited, though there was a rabbinical march on Washington by Jewish leaders in the United States designed to spur assistance.

[7] Seguridad del Estado, Derecho Humanitario y Derechos Humanos, Informe Final, San José, Costa Rica, Comité Internacional de laCruz Roja/Instituto Interamericano de Derechos Humanos, 1984, p. 7

[8] Micheal Polgar, 'Holocaust and Human Rights Education' https://books.emeraldinsight.com/resources/pdfs/chapters/9781787544994-TYPE23-NR2 accessed on 3 May 2019.

[9] Holocaust and Human Rights Education,

Military efforts, starting in 1939, were the most powerful and ultimately successful response to escalating Nazi German aggressions and totalitarian state violence. Only after the war, when the scope of the carnage was visible to all, was the Holocaust fully revealed, named, and recognized as a central tragedy of the twentieth century. Once revealed, it became a symbol of human suffering and moral evil, the first internationally recognized case of genocide, the symbol of our need for nations to establish and preserve human rights.

During the Holocaust, atrocity "stories" in the press were at times viewed by some people as a kind of Jewish moral panic. Some who learned of atrocities considered them unbelievable, exaggerated reports similar to discredited stories from the World War I and met with some degree of public doubt. International assistance was initiated and sometimes coordinated but not always successful in slowing the rapid genocide that took place from 1933 to 1945. Immigration policies, including those in the United States, were not open or particularly helpful during wartime attempts to escape the Shoah; Wyman calls this an "abandonment" of Jewish people.

In the spring of 1945, with the end of the war in Europe and the public revelation of systematic and genocidal mass murders, the scope and truth of the Holocaust was revealed to all. Doubts and uncertainties were replaced by shock, horror, and recognition. A collective and corrective public sentiment developed as postwar reconstruction took place; the perpetration of the Holocaust became fully revealed as an absolute evil, and then it became a benchmark for state-sanctioned immorality, a lesson in moral education, and a symbol of a collective trauma that has cast a shadow on modern culture.

5.0 INTERNATIONAL HUMAN RIGHTS LAW

International human rights law refers to the overarching mission to protect universal features of the human being from the exercise of sovereign.[10] He posited that human rights possess international legal significance 'because they monitor the distributive justice of the

[10] Patrick Machlem, *What is International Human Rights Law? Three Applications of a Distributive Account* (Texas: Bernard and Andre Rapoport Center for Human Rights and Justice University of Texas School of Law, 19 November 2007).

structure and operation of the international legal order itself'.[11] International human rights law emerged as a distinct field of international law only in the aftermath of the Second World War. The end of the Second World War paved way for the development of international human right law. Before then, most authors of international law restrict themselves to the traditional subjects of international law. Some of the areas treated then are the source of international law as well as the relationship between municipal and international law, territorial sovereignty, personality and recognition, recognition of states government, territorial integrity, law of sea including continent shelf and the governing regime on high seas.[12]

The idea of human rights emerged stronger after World War II. The extermination by Nazi Germany of over six million Jews, Sinti and Romani (gypsies), homosexuals, and persons with disabilities horrified the world. Trials were held in Nuremberg and Tokyo after World War II, and officials from the defeated countries were punished for committing war crimes, "crimes against peace," and "crimes against humanity."

Governments then committed themselves to establishing the United Nations, with the primary goal of bolstering international peace and preventing conflict. People wanted to ensure that never again would anyone be unjustly denied life, freedom, food, shelter, and nationality. The essence of these emerging human rights principles was captured in President Franklin Delano Roosevelt's 1941 State of the Union Address when he spoke of a world founded on four essential freedoms: freedom of speech and religion and freedom from want and fear. The calls came from across the globe for human rights standards to protect citizens from abuses by their governments, standards against which nations could be held accountable for the treatment of those living within their borders. These voices played a critical role in the San Francisco meeting that drafted the ***United Nations Charter*** in 1945.

Following the atrocities committed during the Second World War, the acute need to maintain peace and justice for humankind precipitated a search for ways of strengthening international cooperation, including cooperation aimed both at protecting the human person

[11] Michelo Hansungule, 'The Historical Development of International Human Rights' https://therights.files.wordpress.com/2012/07/an_introduction_to_international accessed on 3 May 2019.
[12] International Human Rights Law and The Role of the Legal Professions: A General Introduction, www.ohchr.org/documents/publications/training9chapter1en/pdf accessed 9 May 2019.

against the arbitrary exercise of State power and at improving standards of living. The foundations of a new international legal order based on certain fundamental purposes and principles were thus laid in San Francisco on 26 June 1945 with the adoption of the Charter of the United Nations. In the Preamble to the Charter, faith is first reaffirmed "in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". Secondly, the Preamble also, inter alia, expresses the determination "to promote social progress and better standards of life in larger freedom". Thirdly, one of the four purposes of the United Nations is, according to Article 1(3) of the Charter,

> To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

Other Charter provisions containing references to human rights are: Articles 13(1)(b), 55(c), 62(2), 68, and 76(c). It is of particular significance to point out that, according to Articles 56 and 55(c) read in conjunction, United Nations Member States have a legal obligation "to take joint and separate action in co-operation with the Organization for the achievement of" "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". This important legal duty conditions Member States' participation throughout the United Nations human rights programme.

With the adoption by the United Nations General Assembly of the Universal Declaration of Human Rights on 10 December 1948, the rather terse references to "human rights and fundamental freedoms" in the Charter acquired an authoritative interpretation. The Universal Declaration recognizes civil, cultural, economic, political and social rights, and, although it is not a legally binding document per se, since it was adopted by a resolution of the General Assembly, the principles contained therein are now considered to be legally binding on States either as customary international law, general principles of law, or as fundamental principles of humanity. In its dictum in the case concerning the hostages in Tehran, the International Court of Justice clearly invoked "the fundamental principles enunciated in the ... Declaration" as being legally

binding on Iran in particular with regard to the wrongful deprivation of liberty and the imposition of "physical constraint in conditions of hardship".[13]

5.1 The ethical dimension of human rights

The very specificity of the concept of "human rights" is that they belong to the individual in his or her quality as a human being, who cannot be deprived of their substance in any circumstances; these rights are thus intrinsic to the human condition. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights all give expression to this fundamental ethical basis in their first preamble paragraphs by recognizing "the inherent dignity and ... the equal and inalienable rights of all members of the human family". Here, then, is an expression of the principle of universality of rights, including the right to equal protection before the law and by the law, which is a fundamental principle conditioning the entire field of international human rights law.

As to the regional level, the second preamble paragraph to the American Convention on Human Rights also expressly recognizes "that the essential rights of man are not derived from one's being a national of a certain State, but are based upon attributes of the human personality". As stated by the Inter-American Court of Human Rights in its Advisory Opinion on Habeas Corpus in Emergency Situations , the rights protected by the Convention cannot, per se, be suspended even in emergency situations, because they are "inherent to man".[14]

It follows, in the view of the Court, that "what may only be suspended or limited" under the Convention is the "full and effective exercise" of the rights contained therein. Finally, the African Charter on Human and Peoples' Rights, in its fifth preambular paragraph, also recognizes "that fundamental human rights stem from the attributes of human beings, which justifies their national and international protection".

[13] See United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Judgment, ICJ Reports 1980, p. 42, para. 91

[14] I-A Court HR, Habeas Corpus in Emergency Situations (arts. 27(2), 25(1) and 7(6), Advisory Opinion OC-8/87 of January 30, 1987, Series A, No. 8, para. 18 at p. 37

Consequently, human rights are owed by States to all individuals within their jurisdiction and in some situations also to groups of individuals. The principle of universal and inalienable rights of all human beings is thus solidly anchored in international human rights law.

6.0 INTERNATIONAL HUMAN RIGHTS LAW AT THE DOMESTIC LEVEL

Article 27 of the Vienna Convention on the Law of Treaties, a State "may not invoke the provisions of its internal law as justification for its failure to perform a treaty". On the other hand, States are free to choose their own modalities for effectively implementing their international legal obligations, and for bringing national law into compliance with these obligations. Since domestic legal systems differ considerably in this respect, albeit also having some similarities, it will be for each domestic judge, prosecutor and lawyer concerned to keep himself or herself informed as to the manner of incorporation of the State's international legal obligations into national law. Below, a mere general account will be given of the various ways in which a State can modify its municipal law so as to bring it into conformity with its international legal obligations.

1. First, according to the monist theory, of which there are in fact several divergent versions,[15] international law and domestic law can in general terms be described as forming one legal system. This means that once a State has ratified a treaty for the protection of the human person, for instance, the terms of that treaty automatically become binding rules of domestic law.
2. Secondly, according to the dualist theory, municipal law and international law are different legal systems. Municipal law is supreme, and for municipal judges to be competent to apply international treaty rules, for instance, these have to be specifically adopted or transposed into domestic law. It follows that a human rights treaty ratified by the State concerned cannot in principle be invoked by local judges unless the treaty is incorporated into municipal law, a process which normally requires an Act of Parliament.

However, these theories have been criticized for not reflecting the conduct of national and international organs, and they are gradually losing ground. For legal practitioners it is

[15] Suggested reading on the question of business corporations and human rights: Michael Addo, Human Rights Standards and the Responsibility of Transnational Corporations (The Hague, Kluwer Law International, 1999); and Alan Dignam and David Allen, Company Law and the Human Rights Act 1998 (London, Butterworth, 2000).

therefore more important to emphasize practice rather than theory.[16] Changes in the role and in domestic perception and understanding of international law in general, and of international human rights law in particular, have led to an increased use of such law in domestic courts. One of the purposes of this Manual is therefore to prepare judges, prosecutors and lawyers to adapt and contribute to these fundamental changes. The following is a list of some of the principal means through which international human rights norms can be contained in municipal law or otherwise applied by domestic courts and other competent authorities;

1. Constitutions: Many constitutions actually contain numerous human rights provisions, which may follow the text of, for instance, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights or the regional human rights conventions. The use of such common language enables judges, prosecutors and lawyers to draw upon the jurisprudence of, in particular, international courts and other monitoring organs in interpreting the meaning of their own constitutional or other provisions;
2. Other national legislation: Many States adopt specific legislation either to clarify or elaborate on their constitutional provisions, or in order to adapt their domestic laws to their international legal obligations. When transforming international law into municipal law, the same legal terms are often used, thus allowing the legal professions to draw inspiration from international jurisprudence or the jurisprudence of other States;
3. Incorporation: It is also common for States to incorporate international human rights treaties into their domestic law by enacting a national law. This is for instance the case with the European Convention on Human Rights in the United Kingdom, where that Convention was incorporated into British law by virtue of the Human Rights Act 1998, which entered into force on 2 October 2000;
4. Automatic applicability: In some States treaties take precedence over domestic law and are thus automatically applicable in domestic courts as soon as they have been ratified by the State concerned;

[16] As to monism and dualism Higgins states that of "course, whichever view you take, there is still the problem of which system prevails when there is a clash between the two"; and that "in the real world the answer often depends upon the tribunal answering it (whether it is a tribunal of international or domestic law) and upon the question asked"; in her view different "courts do address that problem differently", see Rosalyn Higgins, Problems and Process: International Law and How We Use It (Oxford, Clarendon Press, 1994), p. 205.

5. Interpretation of common law: In interpreting common-law principles, judges may be governed by international human rights law and international jurisprudence interpreting that law;

6. When there is a legal vacuum: In some countries there may be an absence of national legislation with regard, inter alia, to human rights; but, depending on the circumstances, judges and lawyers may be able to rely on international human rights law as well as relevant international case-law – or domestic case-law from other countries – in order to apply some basic legal principles for the protection of the human person.

Numerous efforts have been made in recent years – both through the technical assistance programmes of the United Nations, and through various training programmes provided by regional organizations such as the Organization of American States, the Council of Europe and the Organization for Security and Cooperation in Europe – to help States adjust their laws to their international legal obligations, and also to train the legal professions so as to enable them to make human rights a living reality within their specific jurisdictions. Numerous independent human rights institutes and non-governmental organizations (NGOs) also have extensive training programmes for the various legal professions.

6.1 The application of international human rights law in domestic courts

A growing number of domestic courts in both common-law and civil-law countries now regularly interpret and apply international human rights standards. The following cases show how such standards can influence decisions taken by domestic courts. Germany: In a case involving an American pianist belonging to the Church of Scientology and the Government of Baden-Württemberg, the Administrative Court of Appeal of Baden-Württemberg considered the grounds of appeal of the plaintiff in the light not only of the German Basic Law but also of article 9 of the European Convention on Human Rights and articles 18 and 26 of the International Covenant on Civil and Political Rights.

The complaint originated in negotiations between an agent acting on behalf of the Government and the pianist, regarding the latter's participation in a concert to be held in connection with the presentation to the public of the framework programme for the World Athletics Championship. The negotiations were broken off when it became known that the pianist concerned was a member of the Church of Scientology. In a written reply to a question

put by the Parliament of Baden-Württemberg, the Ministry of Culture and Sport, acting in concertation with the Ministry of the Family, Women, Education and Art, explained that the promotion by the State of cultural events must be questioned when the persons performing are active and self-avowed members of the Church of Scientology or other similar groups; for this reason they had declined to engage the pianist as originally envisaged. The pianist argued that his right to freedom of religion had been violated by the written reply from the Ministries.

However, the Administrative Court of Appeal concluded that the protection afforded by article 9 of the European Convention and article 18 of the International Covenant had not been infringed. As to the alleged violation of article 26 of the International Covenant, the Court likewise found that it had not been violated, since the ministerial reply did not result in discriminatory treatment of the pianist on the basis of his beliefs or religious convictions, the reply being limited to the announcement of a specific procedure to be followed in the future with regard to the allocation of grants made available for the organization of events by third persons/agents. For this reason, and considering that the plaintiff in this case was not himself a recipient of any grant, it was not necessary to clarify whether he could base himself inter alia on the protection afforded by article of the International Covenant, were an application for a grant to be rejected on the above mentioned ground.

New Zealand: The 1994 *Simpson v. Attorney General*,[17] one of the most famous human rights cases in New Zealand, originated in an allegedly unreasonable search of the plaintiff's home which, it was claimed, violated the New Zealand Bill of Rights Act 1990. In its decision, the Court of Appeal emphasized that the purposes of the Bill of Rights were to "affirm, protect, and promote human rights and fundamental freedoms in New Zealand and to affirm New Zealand's commitment to the International Covenant on Civil and Political Rights. From these purposes, it was implicit that effective remedies should be available to any person whose Bill of Rights guarantees were alleged to have been violated".

When there had "been an infringement of the rights of an innocent person", "monetary compensation was", in the view of the Court, "an appropriate and proper, indeed the only effective, remedy". As observed by the Court, that "was consistent with a rights-centered

[17] Simpson v. Attorney General (1994) 1 HRNZ at 42-43

approach to the Bill of Rights and international jurisprudence on remedies for human rights violations", and reference was in this respect, inter alia, made to the jurisprudence on remedies of both the Human Rights Committee and the Inter-American Court of Human Rights.

United Kingdom: The most prominent case decided in recent years in which international human rights law played an important role is the case of Pinochet, which was decided by the House of Lords on 24 March 1999, and which originated in a request that the Chilean Senator – and former Head of the Chilean State – be extradited from the United Kingdom to Spain to be tried for crimes of torture and conspiracy to torture, hostage-taking and conspiracy to take hostages, as well as conspiracy to commit murder – acts committed whilst he was still in power. The obligations, to which the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment gave rise, were incorporated into United Kingdom law by Section 134 of the Criminal Justice Act 1988, which entered into force on 29 September 1988.

The Convention against Torture as such was ratified on 8 December 1988. By virtue of these changes, torture, wherever it takes place in the world, became a triable criminal offence in the United Kingdom. The question before the House of Lords on second appeal turned on whether there were any extraditable offences and, in the affirmative, whether Senator Pinochet was immune from trial for committing those crimes.[18] The question of double criminality became an important issue, with a majority of the Lords being of the view that Senator Pinochet could be extradited only on charges concerning acts which were criminal in the United Kingdom when they took place. A majority of the law Lords concluded that State immunity in respect of torture had been excluded by the Convention against Torture, and that the offences of torture and conspiracy to torture committed after 8 December 1988 were extraditable, with a minority of the House of Lords holding that English courts had extraterritorial jurisdiction as from 29 September 1988 when Section 134 of the Criminal Justice Act 1988 entered into force.

[18] See definition of question by Lord Brown Wilkinson, House of Lords, Judgment of 24 March 1999 – *Regina v. Bartle* and the Commissioner of Police for the Metropolis and Others Ex Parte Pinochet; Regina v. Evans and Another and the Commissioner of Police for the Metropolis and Others Ex Parte Pinochet (On Appeal from a Divisional Court of the Queen's Bench Division); this Judgment is found on the following web site: http://www.publications.parliament.uk

This decision allowed the United Kingdom Home Secretary to go ahead with the proceedings relating to the relevant parts of the Spanish request for Senator Pinochet's extradition. However, on 2 March 2000, after medical experts had concluded that the former Head of State of Chile was unfit to stand trial, the Home Secretary decided that he would not be extradited to Spain but was free to leave Britain. In spite of its final outcome, this case is a landmark in the international law of human rights in that it confirmed the erosion of the notion of State immunity for international crimes as a result of the entry into force of the Convention against Torture.

South Africa: The example of South Africa is significant in that, after the collapse of the apartheid regime, it drafted a constitution which was heavily influenced by international human rights standards and which contains, in its Chapter 2, a detailed Bill of Rights, which includes a wide range of rights, such as the right to equality, the right to freedom and security of the person, the freedoms of expression, assembly and association, political rights, environmental rights, the right to property, the right of access to adequate housing, the right to health care services, sufficient food and water, social security, the rights of the child, the right to basic education, the right of access to courts and the rights of arrested, detained and accused persons.

7.0 CONCLUSION

International law as discuss is the laws of nations. The international law never interfered with relationship that exist between a state and its citizen and what a state does to its citizen does not concerned the international community until state begins to commits several atrocities with their citizen which led to war. International human rights law seeks to protect the universal rights of human being. It emerges as a distinct field of international law after the World War II with the creation of the United Nations in 1945.

The primary goal of the United Nation is fostering international peace and preventing conflict. Subsequently, the Universal Declaration of Human Rights was adopted in 1949 and 2 conventions that is International Covenant on Civil and Political Right and International Covenant of Economic, Social and Cultural Rights all of which was adopted in 1966 known as the International Bill of Rights.

International Human rights law have restrained many dictatorial powers and had established criteria for democracy transition and the rule of law. Its success could be linked to

the fact that human right is aided by its moral and ethical dimensions and innate desire of every human being from protection of abuse. Though, there had been failures to prevent or halt massive abuse such as genocide. Human rights has been hampered by traditional concepts of state sovereignty and domestic jurisdiction as well as by the consent-based nature of international obligations that prevents enforcement of norms against non-consenting states.