



Threshold of Criminalizing of Discriminatory Acts under International Criminal Law

¹Fatemeh Beigi Mirazizi, ²Sattar Azizi, ³Farid Azadbakht, ⁴Mohammad Javad Jafari

¹PhD Student in Public International Law, Department of Law, Kermanshah Branch, Islamic Azad University, Kermanshah, Iran.

²Professor of International Law, Department of Law, Faculty of Humanities, Bu-Ali Sina University, Hamedan, Iran.

³ Assistant Professor, Department of Law, Kermanshah branch, Islamic Azad University, Kermanshah, Iran

⁴ Assistant Professor, Department of Law, Kermanshah branch, Islamic Azad University, Kermanshah, Iran

*Corresponding author E-mail: s.azizi@basu.ac.ir

Abstract

Discriminatory acts are considered violations of human rights, and their commission may result in international responsibility for states and, in some cases, criminal liability for individuals. Numerous international documents explicitly condemn discrimination and declare it prohibited. Due to the diversity of discrimination and its occurrence in various parts of the world, as well as the lack of precise criteria for criminalizing discriminatory acts in the international legal system, only certain discriminatory behaviors that significantly harm global sentiments have been criminalized. Based on this, the international community has recognized racial discrimination and apartheid as egregious violations of established norms, imposing not only international responsibility on states but also criminal liability on individuals committing such discriminatory acts. Therefore, identifying internationally recognized criteria for criminalizing discrimination in its various forms is necessary. This research, conducted through a descriptive-analytical method, provides a comprehensive overview of major legal regulations at the global and regional levels. It aims to examine the circumstances under which discrimination is criminalized in the international legal system and concludes that only those discriminatory acts reaching the level of violating established norms have been criminalized.

Keywords: Discrimination, Criminalization, Established Norms, Apartheid, Racial Discrimination

Received: 08 May 2024 **Revised:** 10 June 2024 **Accepted:** 25 June 2024

1. Introduction

One of the important issues in the field of international law is the consideration of the individual as a key element in the formulation of laws. Nowadays, there is talk of the humanization of international law. The increased importance accorded to individuals in modern international law has led to the perception that human rights violations can, in some cases, be regarded as gross violations of international law and, in other instances, as threats to international peace and security. Discrimination is one of the issues that can be placed within this category.

The term discrimination is consistently used in human rights documents. However, in the International Covenant on Civil and Political Rights (ICCPR), the first international human rights convention under the framework of the United Nations, no definition of the term is provided. Interestingly, the Human Rights

Committee itself acknowledges that the ICCPR not only fails to define the term discrimination, but also does not specify its elements (CCPR, 1990). The only international conventions that provide a specific definition are the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). These conventions define discrimination as any distinction, exclusion, restriction, or preference based on a number of grounds, the purpose or effect of which is to nullify or impair the recognition, enjoyment, or exercise of human rights and fundamental freedoms on an equal footing in the political, economic, social, cultural, or any other field of public life (Wouter Vandenhoe, 2005).

Discrimination among citizens in the enjoyment of human rights constitutes a violation of that state's international obligations and creates international responsibility for that state. In this study, we will examine the circumstances under which acts of discrimination, in addition to establishing international responsibility for the state (which is a civil liability), also incur criminal liability for the perpetrators of discrimination. In other words, we will investigate the critical issue of which types of discrimination and distinctions among citizens have reached such a degree and threshold that they are criminalized under international law, subjecting the perpetrators of discrimination to punishment and prosecution by domestic and international criminal authorities.

One of the egregious manifestations of discrimination that has been criminalized in the criminal justice system is the persecution of a group of people on political, racial, religious, and other grounds, which is codified as a crime in the Statute of the International Criminal Court. The concept of "crimes against humanity" is a significant aspect of punishing those who violate fundamental human rights. For example, the crime of "persecution" is one of the most critical instances of crimes against humanity, criminalized under paragraph h, section 1, article 7 of the Rome Statute of the International Criminal Court. This crime involves the persistent persecution of any identifiable group or collectivity based on political, racial, national, ethnic, cultural, religious, gender, or other grounds, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court, recognized as illegal under international law worldwide.

Additionally, paragraph j, section 1, article 7 recognizes "the crime of apartheid" as another criminal act.

In the description and definition of the crime of racial discrimination, it is stated that the commission of inhumane acts of the type mentioned in paragraph 1, through an institutionalized regime, creates systematic oppression and domination by one racial group over another racial group or groups and commits these acts with the intent to maintain that regime. Therefore, although individual and non-systematic acts of discrimination are prohibited, they are not criminalized.

Given the diversity of discrimination and its manifestations in various parts of the world over the years, some of these acts have been criminalized while others have not, often due to the varying severity of the discrimination involved. The ambiguity and generality of the definitions of discrimination, along with the lack of precise criteria for measuring the threshold severity of discriminatory acts necessary for criminalization, present a significant challenge that must be addressed. For instance, discrimination between men and women in the enjoyment of political and economic rights, although contrary to international conventions such as the International Covenants on Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women, has not reached a degree and threshold of severity that would necessitate criminalization from the perspective of undermining the foundations of international public order.

www.KurdishStudies.net

In this study, a general study of major legal regulations at the global and regional levels has been conducted in the form of a descriptive-analytical method, and the aim is to investigate the circumstances in which discrimination is considered in the international criminal law system.

The descriptive-analytical method is a research method that focuses on analyzing and describing facts and events, and it has been used in many research studies (S. Raeisizadeh; 2023) (H. Alidoost; 2019).

2. Concept and Elements of Discrimination in the International Human Rights System

2.1. Principle of Non-Discrimination

The Charter of the United Nations is the first universal document that emphasizes the prohibition of discrimination in the enjoyment of human rights. Paragraph 3 of Article 1 of the Charter, in stating the purposes of the organization, declares:

"To achieve international cooperation 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."

In the first paragraph of Article 2 of the Universal Declaration of Human Rights, it is stated: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status." The notion that people are "equal" may give rise to claims for different forms of equality. At one end of the spectrum, it might be interpreted as "equality of consideration," meaning that everyone's claims should be regarded equally without discrimination. The principle of non-discrimination views equality from a negative perspective (South West Africa Cases, 1966). This principle is primarily a legal technicality used to counteract unjustified inequality (Partsch K., 1957).

However, the concept of non-discrimination is merely a limited tool in the pursuit of equality. First, the principle is based on the assumption that differential treatment is only impermissible if it is based on prohibited grounds. Even in such cases, differential treatment is only presumptively discriminatory. Second, the concept of non-discrimination is merely a procedural principle (or an obligation to behave) that governs treating people as equals (Klerk Y., 1987). Non-discrimination can be constrained by a broader concept of equality that takes into account actual social inequalities (Cf. Meron T., 1985). However, the principle itself does not encompass such a concept. In summary, non-discrimination is more focused on prohibiting differential treatment than on identifying the types of actions necessary to achieve substantive equality (Cf. MacKinnon C., 1987).

In the following sections, we will explain the definition and interpretation of the principle of non-discrimination in international documents.

2.2. Definition and Interpretation of the Principle of Non-Discrimination

The Universal Declaration of Human Rights, the Covenants, and the International Bill of Human Rights do not provide a definition of the concept of discrimination. The Human Rights Committee, in its General Comment No. 18, offers a definition similar to Article 1 of the "International Convention on the Elimination of All Forms of Racial Discrimination" and the "Convention on the Elimination of All Forms of Discrimination Against Women:"

"Any distinction, exclusion, restriction, or preference based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status, which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life" (CCPR, 1993).

It is worth mentioning that, in addition to Article 2, Article 26 of the International Covenant on Civil and Political Rights also reiterates the principle of non-discrimination:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. The law must prohibit any discrimination and guarantee to all individuals equal and effective

protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status."

When interpreting this principle, it is important to note that the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) includes groups such as ethnic and linguistic groups, and is not limited solely to racial groups. The International Court of Justice (ICJ) has, in principle, accepted complaints by states such as Qatar against the UAE and Ukraine against Russia under this convention, acknowledging that violations of the ICERD can pertain to non-racial groups as well, even if it did not find all instances of alleged violations to be substantiated.

The Human Rights Committee in General Comment No. 18 (1989) and the Committee on the Elimination of Racial Discrimination in General Recommendation No. 14 (1993) both highlight the fundamental importance of this rule with a shared expression:

"The principle of non-discrimination, alongside equality before the law and equal protection of the law for all, is a fundamental and general principle in the protection of human rights."

Despite what might appear in the text, particularly Article 2 of the Universal Declaration of Human Rights and Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR), it is crucial to understand that not all distinctions between individuals and groups can be literally considered as discrimination. This understanding stems from the permanent supervisory bodies, which assert that distinctions between individuals are justified as long as they are generally reasonable and serve a legitimate international objective.

Regarding the term "discrimination" in the ICCPR, the Human Rights Committee expresses its view as follows: The term discrimination, as used in the Covenant, should be understood to mean any distinction, exclusion, restriction, or preference based on grounds such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status, which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise by all persons, on an equal footing, of all rights and freedoms.

However, as the Committee notes, "the enjoyment of rights and freedoms on an equal footing ... does not mean identical treatment in every instance." For example, certain provisions of the Covenant contain distinctions between individuals, such as Article 6(5), which stipulates that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

Of course, given the shameful policies of the South African regime during apartheid, the international community placed significant emphasis on one aspect of discrimination, namely racial discrimination. The fight against this form of discrimination gained a prominent position on the international stage. Consequently, one of the first United Nations human rights conventions titled the "International Convention on the Elimination of All Forms of Racial Discrimination" (ICERD) was drafted by the United Nations in 1965 and ratified by a large number of states. The Committee on the Elimination of Racial Discrimination, in light of developments in the international community, has declared that the provisions of this convention are not limited to racial groups alone but encompass all different racial, national, ethnic groups, and indigenous peoples.

There is no doubt that the principle of non-discrimination occupies the highest position within the hierarchy of legal rules. The International Court of Justice (ICJ), in the "Barcelona Traction" case, included the principle of "non-discrimination" among the examples used to illustrate jus cogens norms, also known as peremptory norms of general international law.

Furthermore, the Human Rights Committee in its General Comment No. 29, which elaborates on the scope and limits of state obligations during "public emergency situations," regards the prohibition of discrimination as an absolute right:

"One of the conditions for the legitimacy of suspending Covenant provisions is that such measures do not entail discrimination based solely on race, color, sex, language, religion, or social origin. While the list of non-derogable provisions in paragraph 2 of Article 4 does not explicitly mention Article 26 or other related provisions (Articles 2, 3, paragraph 1 of Article 14, paragraph 4 of Article 23, paragraph 1 of Article 24, and Article 25), these elements or aspects of the right to non-discrimination cannot be suspended under any circumstances. Particularly, if discrimination is practiced against individuals during resort to emergency measures, paragraph 1 of Article 4 will apply."

The importance of the prohibition of racial discrimination in the current international legal system is such that in the Statute of the International Criminal Court, racial discrimination (apartheid) is listed as one of the criminal offenses within the category of crimes against humanity (Azizi Sattar, 2015).

3. Discrimination, While Recognized as A Prohibited Act, Is Not Uniformly Criminalized Under International Law

Discrimination, while universally recognized as prohibited, is not uniformly treated as a crime in international law. Despite unprecedented progress internationally in increasing legal protections for individuals and groups against discrimination, reports from all corners of the world confirm that discriminatory practices are still prevalent today and not merely relics of the past. Discrimination is multifaceted and exists not only within governmental or public structures but pervades civil society as well. Consequently, discrimination, to varying extents, may impact how people are treated across all sectors of society, including politics, education, employment, social services, healthcare, housing, law enforcement, and justice. This discrimination can stem from various reasons and affect individuals based on factors such as race, ethnicity, culture, language, or religion. Additionally, individuals may face discrimination due to their sexual orientation or preferences.

Discrimination based on gender remains commonplace despite advancements in many countries. There still exist laws that deprive women of rights such as property ownership, equal inheritance rights with men, and the freedom to work and travel without spousal permission. Women also face particularly pervasive acts of violence and indignity that continue unabated in many countries, resulting in compounded discrimination due to both their gender and ethnicity. Another significant form of discrimination prevalent today affects many individuals, especially women and children, who are exposed to severe poverty. These conditions may compel them to migrate, contributing to an increase in human trafficking, especially of women and children who are often subjected to physical constraints, violence, and intimidation. Particularly concerning in recent years has been the alarming rise in xenophobic and anti-immigrant attacks by neo-Nazi and other predominantly youth-based groups in many European countries, targeting asylum seekers and foreigners in general.

However, such attacks have not only targeted individuals of foreign origin but also those daring to assert their rights committed by groups and ideologies advocating discriminatory or supremacist philosophies. These philosophies and other forms of discriminatory behavior have been among the primary reasons for the appalling upsurge in recent decades among refugees and internally displaced persons. As demonstrated at the World Conference Against Racism in Durban, South Africa, in 2001, the challenge faced by governments, non-governmental organizations, and civil society in combating discrimination is significant and necessitates concerted, effective efforts from all stakeholders.

Judges, prosecutors, and lawyers naturally play a fundamental role in protecting individuals against discrimination. Their duty is to ensure that existing laws and regulations prohibiting discrimination are upheld during legal proceedings. In some countries, discrimination is legally prohibited but laws are not effectively enforced. Judges, prosecutors, and lawyers have a crucial role in reforming these conditions to ensure that discriminatory actions do not go unpunished, are properly investigated, and perpetrators are held accountable. Victims should also be effectively compensated through available means.

In situations where domestic law lacks clarity or does not address discrimination adequately, legal professionals may refer to international legal documents for guidance, including relatively robust judicial precedents that are examined below.

4. Criminalized examples of discrimination in the international law system

The International Court of Justice (ICJ) has utilized principles of general legal norms that bind all states regardless of their consent in numerous instances. The Court has emphasized the existence of principles in contemporary international law that are obligatory irrespective of the will of governing states. Therefore, there are situations where a state may be legally obligated to fulfill a commitment without declaring its consent, or even against its will.

In its Advisory Opinion of 18 May 1951 regarding the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the ICJ declared that certain conditions of the Convention on the Prevention and Punishment of the Crime of Genocide are precisely adopted for a humanitarian and civilization-building purpose. It aims to preserve the existence of certain human groups and declares and ensures the enforcement of the most fundamental ethical principles. Such a broad global recognition of its purpose makes the Convention mandatory, accepting the reality that its fundamental principles, recognized as acceptable norms by civilized nations, bind all states without any contractual obligation. (C.1, J. Reports 1951)

The International Court of Justice (ICJ), in the Case Concerning Diplomatic and Consular Staff in Tehran (United States of America v. Iran), has affirmed that "deprivation of human liberty and subjecting individuals to undue hardships accompanied by physical pressures clearly contravenes the principles of the United Nations Charter and fundamental international law as set forth in the Universal Declaration of Human Rights."

Subsequently, in its Advisory Opinion of 8 July 1996 regarding the Legality of the Threat or Use of Nuclear Weapons, the ICJ declared:

The International Court of Justice (ICJ) has acknowledged that "without doubt, a large number of rules of humanitarian law applicable in armed conflicts are among the fundamental rules for the respect of human beings and constitute essential requirements of humanity." This recognition has led to widespread acceptance of conventions such as the Fourth Hague Convention and the Geneva Conventions by many states. Moreover, these fundamental rules are obligatory for all states, whether or not they have ratified conventions containing these rules, because they are constitutive principles of jus cogens in international law, which cannot be derogated from.

The ICJ has also accepted the existence of obligations erga omnes partes in this regard, stating: "A fundamental distinction must be made between the obligations of States towards the international community as a whole and those arising vis-à-vis other States within the framework of diplomatic protection. Primary obligations are owed by States towards the international community as a whole. Given the importance of these rights, all States can be held to have a legal interest in their protection; such obligations are referred to as obligations erga omnes."

This acknowledgment underscores the universal applicability and enforceability of these foundational principles in international law, reinforcing their status as non-derogable rights essential for the global community.

www.KurdishStudies.net

Members of the International Law Institute at the San Jacinto Conference in Compostela in September 1989 adopted a resolution titled "Support for Human Rights and the Principle of Non-Intervention in the Internal Affairs of States," with Article 1 formulated as follows:

"Human rights represent a prominent manifestation of human dignity. The obligation of states to ensure their observance arises from the recognition of this dignity, as previously declared by the United Nations Charter and the Universal Declaration of Human Rights. This international commitment, as articulated by the International Court of Justice, constitutes a commitment of universality. It imposes an obligation on all

states vis-à-vis the global community, with each state having a legal interest in safeguarding human rights. Furthermore, this commitment necessitates solidarity among all states to ensure the most expeditious and effective global support for human rights."

The resolution was adopted with 32 affirmative votes against 3 abstentions. The International Court of Justice, in the Barcelona Traction case, declares commitments as "universal obligations" that prevent the most severe violations of human rights.

"These commitments stem from the prohibition of genocide and other principles and rules related to fundamental human rights, including the prohibition of slavery and racial discrimination." However, the Court argues that "commitments guaranteed within the framework of diplomatic protection do not fall under universal obligations," because "a state cannot seek compensation for a breach of a diplomatic protection obligation before proving it has a right to it, as diplomatic protection rules have two conditions: first, that the defendant state violated a commitment towards the claimant state concerning its nationals, and second, only the party benefiting from such commitment can bring a claim for its breach."

The resolution of the International Law Commission not only categorizes commitments preventing the most severe violations of human rights among peremptory norms but also includes general commitments of states to ensure respect for human rights without distinction among the norms or the extent of their violation. This resolution introduces new dimensions within the framework of human rights that can be considered as steps forward in encouraging and supporting human rights.

However, this resolution also raises legitimate concerns. By declaring respect for human rights as a peremptory obligation, it authorizes states to unilaterally take measures, sanctions, or reciprocal actions to uphold human rights.

5. The threshold of criminalizing discrimination in international law

Peremptory norms are labels for what essentially constitute rules of general international law. As expected, there is significant debate regarding the scope and content of peremptory norms. The prohibition of the use of force as articulated in the UN Charter, for example, has been described by the International Law Commission as a prominent example of a norm of international law possessing the nature of a peremptory norm (*jus cogens*) (Rikavalas).

All subjects of international law are affected by adherence to or violation of peremptory norms. Adherence to these norms ensures the general interests of the international community are safeguarded, whereas failure to do so results in harm and damages affecting all members.

Peremptory norms are rules that in both criminal and civil law, deviation from them entails specific penalties specified in the domestic laws of countries. In international law, this issue has received attention, and a key point about peremptory norms is their universal desirability—they are accepted globally across all human societies. These norms, also known collectively as *jus cogens* or natural laws, are crucial for maintaining order in any community, which is why every society values their support and ensures their preservation. Any deviation from these norms is swiftly recognized and rectified, with adjustments and revisions made based on their origins. This dynamic is highly significant domestically and is a locus of ongoing innovation and renewal of peremptory laws at the international level. Therefore, peremptory norms are indispensable rules that every global community, regardless of size, requires. Originating from human nature itself, they enjoy widespread acceptance and will continue to be supported and upheld (Mirkamali, S.A., 2016).

The recent report of the International Law Commission lists 8 examples of peremptory norms (*jus cogens*), highlighting the fifth one as "prohibition of racial discrimination and apartheid":

- A) Prohibition of aggression
- B) Prohibition of genocide
- C) Prohibition of crimes against humanity

- D) Fundamental principles of international human rights law
- E) Prohibition of racial discrimination and apartheid
- F) Prohibition of slavery
- G) Prohibition of torture
- H) Right to self-determination

These instances of discrimination are recognized as violations of peremptory norms (*jus cogens*), which, in other words, guarantee the preservation of international order and security. Just as threatening actions against public order and security are treated as crimes in domestic legal systems, these instances are similarly criminalized in international law.

Four treaties addressed in this paragraph contain provisions allowing member states to derogate from their international legal obligations under specified conditions. The relevant provisions include:

According to Article 4(1) of the International Covenant, degrading acts should not be "solely based on race, color, sex, language, religion, or social origin." Therefore, this provision does not cover the following cases as stated in Articles 2(1) and 26 of the Covenant:

- Political beliefs or other beliefs
- National origin
- Property
- Birth or other status

In drafting Article 4(1), Chile proposed that "social origin and birth should be prohibited as additional grounds for discrimination even in emergency situations (UN doc. E/CN.4/SR.330)." Uruguay also suggested deleting the word "solely," indicating that while discrimination based on the listed grounds in this article is prohibited, it might allow for discrimination on other grounds not explicitly mentioned.

The United Kingdom, which presented the draft proposal, accepted the inclusion of "social origin" but did not mention "birth," noting that legal restrictions might apply to individuals based on their birth in a foreign country even if they are no longer citizens there. The UK also inferred that in emergency situations, a country might impose restrictions on a specific national group, which may simultaneously be a racial group, and this wording prevents the group from claiming they were discriminated against solely on racial grounds. Following the UK's statements, both Chile and Uruguay agreed that referring to birth in the article was not desirable.

To align with Article 27(1) of the American Convention, actions deemed discriminatory must not include discrimination "based on race, color, sex, language, religion, or social origin." The only difference in Article 4(1) of the International Covenant in this regard is the absence of the term "solely." However, Article 15(1) of the European Convention on Human Rights makes no explicit reference to prohibiting discrimination. Nevertheless, this does not imply that, in the face of a public emergency, States parties are allowed to turn a blind eye to preventing discrimination if they wish. Other conditions, including strict legality and proportionality, make such scenarios highly unlikely.

Furthermore, as observed below, for instance, the interpretation of the term "discrimination" in Article 14 excludes any differentiation that cannot be logically justified for a legitimate aim. Ultimately, neither Article 30 of the European Social Charter 1961 nor Article F of its amended version make any reference to the principle of non-discrimination.

Considering the absence of provisions allowing deviation in the African Charter on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights has stated that the Charter "does not permit member states to derogate from their obligations under the treaty in times of emergency. Therefore, even during internal armed conflict, a government cannot justify violating or suspending the rights enshrined in

the African Charter" (ACHPR, 1995). This means that the non-discrimination provisions in Articles 2, 3, and 19 of the Charter must be fully upheld at all times.

It is noteworthy that the principle of non-discrimination, akin to a red thread, has been implemented through the four Geneva Conventions of 1949 and their two Additional Protocols since 1977.

Here are the translations of the legal provisions you provided:

1. Article 3 Common to the Four Geneva Conventions:

- This article outlines the general principle of humane treatment of individuals who are not or are no longer taking part in hostilities during armed conflict.

2. Article 16 of the Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention), 1949:

- This article details the specific protections afforded to prisoners of war, ensuring their humane treatment and outlining permissible and impermissible actions towards them.

3. Article 27 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 1949:

- This article focuses on the protections granted to civilians in times of war, specifying rights and ensuring their safety from various forms of harm.

4. Articles 9(1) and 75(1) of the Additional Protocol to the Geneva Conventions of 12 August 1949, concerning the Protection of Victims of International Armed Conflicts (Protocol I):

- These articles detail additional protections for individuals affected by international armed conflicts, including rules governing their treatment and access to humanitarian aid.

5. Articles 2(1), 4(1), and 7(2) of the Additional Protocol to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II):

- These articles extend protections to individuals affected by non-international armed conflicts, outlining humanitarian standards and measures to safeguard their rights and well-being.

These provisions collectively establish comprehensive legal frameworks aimed at protecting individuals involved in armed conflicts, whether they are combatants, prisoners of war, civilians, or victims of international or non-international armed conflicts.

The regulations demonstrate that even in the most severe conditions, during the turmoil of an international or non-international armed conflict, involved countries are fully obligated to adhere to certain humanitarian legal standards, including the right to equal treatment and the principle of non-discrimination. Essentially, equality before the law and non-discrimination must be observed under all circumstances, including in times of public emergency and during international and non-international armed conflicts. Therefore, identifying elements and components of discriminatory acts as criminalized includes the principle that discrimination should not occur even in cases of public emergency.

The principle of equality and non-discrimination does not mean that all distinctions between individuals under international law are illegal. Distinctions are permissible under certain conditions, namely:

- They pursue a legitimate aim, such as affirmative actions to address actual inequalities. www.KurdishStudies.net
- They are rational in light of their legitimate aim.

Discrimination is prohibited in all areas of international human rights law, whether political, economic, cultural, etc. However, under international criminal law, specific behaviors resulting in discrimination based on recognized grounds such as race, ethnicity, religion, which lead to deprivation of the right to life, or infliction of harm and suffering on individuals belonging to those categories, are subject to criminal penalties.

Two critical elements in determining the threshold for criminalizing discrimination under international criminal law are:

1. The necessity for there to be a pattern of gross and systematic human rights violations, which necessitates international community intervention through criminalizing discriminatory acts.
2. Discriminatory acts must be sufficiently egregious to shock the conscience of humanity and be categorized as crimes such as genocide or crimes against humanity.

6. Conclusion

The negation of discrimination and its eradication are among the most important instances of human rights and are considered fundamental principles and values of human rights in societies. International documents, national constitutions, and religious teachings have always emphasized the negation and elimination of discrimination and the equality of all individuals and peoples. Individual and human differences in terms of race, gender, language, ethnicity, etc., have been analyzed and explained solely for the purpose of understanding and recognizing each other in the direction of the evolution of human society. Relevant international conventions explicitly condemn and prohibit discrimination. However, unfortunately, despite the existence of international human rights documents and legislative enactments, the negation of discrimination has not practically been established and has not received attention in the implementation phase.

Generally, individuals and groups, whether ethnic or religious, act to deprive each other of their rights without making any effort to prevent it, leading to the emergence of more religious, racial, ethnic, and tribal conflicts and human rights abuses. Most of these controversies and conflicts arise from the pursuit of superiority and the elimination of others and discrimination, which sometimes manifest in religious and sometimes in racial, ethnic, and linguistic forms. Therefore, identifying internationally recognized criteria for criminalizing discrimination in various forms seems necessary and essential.

The principle of non-discrimination holds the highest position among the hierarchy of legal norms. It is widely accepted that "human rights are a prominent manifestation of human dignity, and the obligation of governments to ensure their observance arises from the recognition of this dignity, as previously proclaimed by the United Nations Charter and the Universal Declaration of Human Rights".

If human rights are indeed imbued with human dignity, if they are linked to the recognition of this dignity, then the observance of these rights should be considered a duty incumbent upon states as derived from an imperative rule of international law.

In fact, most human rights norms are generally recognized as peremptory rules. Particularly, the global community regards racial discrimination and apartheid as violations of peremptory rules and has accepted the international responsibility of states, even when they are not parties to conventions related to these crimes.

As evidenced by the recent report of the International Law Commission on peremptory rules, eight examples of peremptory rules have been cited, with the fifth being the "prohibition of racial discrimination and apartheid".

Given the diversity of discrimination and its practices in different parts of the world over the years, some have been criminalized while others have not, due to various reasons, with one of the most important being the issue of the severity of discrimination. Ambiguities and the lack of precise criteria for measuring the severity threshold of discriminatory acts for criminalization pose a serious challenge that needs to be addressed. For instance, discrimination between women and men in enjoying political and economic rights, although contrary to the provisions of international conventions such as the Human Rights Covenants and the Convention on the Elimination of All Forms of Discrimination against Women, has not reached such a degree and threshold from the perspective of undermining the foundations of international public order to be criminalized.

References

- <https://philolinginvestigations.com>