

CHAPTER TWO

LITERATURE REVIEW

A. State Responsibility

In the 20th century, the world was shocked because of tens of millions of people had been killed. There were mass extermination, war crimes, crimes against humanity and ethnic cleansing. In the World War One, more than one million Armenians were killed. And in the World War Two, 11 million people were killed by Nazi.

In 1945, when United Nations (UN) was formed, the international community stated that they will never allow any crimes against humanity to be committed again. However, in the 1990s the case of mass murders occurred in Bosnia and Rwanda. It means that the international community has failed to prevent crimes against humanity. More than a million people including man, women, and children were killed.¹⁵

The international community was failed to prevent humanitarian cases because the countries that established the UN were divided into two beliefs regarding whether the intervention is important or not. One side believed that the international community must do an intervention if crimes against humanity occurred. On the other hand, other side stated that there was no right to interfere other states matters based on the state sovereignty where

¹⁵ Outreach Programme on the Rwanda Genocide and the United Nations, 2014, “The Responsibility to Protect”, available at www.un.org/en/preventgenocide/rwanda, accessed on Friday, March 22nd, 2019 at 09:15 PM.

state sovereignty, in that the state sovereignty refers to the rights of the state regarding political independence.

After various humanitarian cases that cannot be prevented by international community, the principle of the Responsibility to Protect (R2P) was created. The idea of Responsibility to Protect comes from Francis Deng, who was a diplomat from South Sudan and the UN Representative for Internally Displaced Persons. Deng and other experts stated that sovereignty means responsibility.¹⁶ At the time the Secretary General, Kofi Annan challenged member states to agree with the idea of collective international action.¹⁷

The idea of state sovereignty is not about the rights of every state to do what they want, instead, the state sovereignty must be based on the protection towards the people who live in that state. The idea of Deng's idea that sovereignty is responsibility is used by International Commission on Intervention and State Sovereignty (ICISS) to create Responsibility to Protect principle.¹⁸

ICISS was established to find solution regarding dissent between those who support humanitarian intervention and those who supported the traditional understanding of state sovereignty. In 2002, African Union's Charter included Article regarding intervention into its member's territory

¹⁶ Global Centre for the Responsibility to Protect, 2017, "The Responsibility to Protect: A Background Briefing", available at <http://www.globalr2p.org/media/files/r2p-background-briefing-2017.pdf>, accessed on Thursday, March 21st, 2019 at 11:04 AM.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

when war crimes, mass destruction or crimes against humanity occurred. African Commission on Human and People's Rights adopted a resolution on strengthening the Responsibility to Protect principle in Africa in 2007.¹⁹

B. Racial Discrimination

International human rights law began to protect discriminated groups, particularly religious minorities through initial emphasis on tolerance more than on rights. Since the 17th century, several treaties incorporated clauses ensuring certain rights to individuals or groups with a religion that is different from the majority. For example, the Treaty of Westphalia 1648 which gave religious rights to the Protestants in Germany, the Treaty of Oliva 1660 which supported the Roman Catholics in Livonia, the Treaty of Ryswick 1697 that protected Catholics in territories ceded by France to Holland, and etc.²⁰

Racial discrimination is any distinction, exclusion, or restriction based on race, color, descent or national ethnic origin where they are distinguished on human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. According to the International Court of Justice, the prohibition of racial discrimination constitutes an *erga omnes* obligation.²¹ Racial discrimination can be a direct

¹⁹ Outreach Programme on the Rwanda Genocide and the United Nations, *Loc. Cit.*

²⁰ Natan Lerner, 2003, *Group Rights and Discrimination in International Law*, Second Edition, The Hague, Martinus Nijhoff Publishers, p. 7.

²¹ M. Cherif Bassiouni, 1996, "International Crimes: Jus Cogens and Obligatio Erga Omnes", *Law and Contemporary Problems*, Vol. 59, No. 4, Durham, Duke University School of Law, p. 63-74.

discrimination or an indirect discrimination, the example of direct discrimination is someone refused to employ other people because they are black, female or because of their sexual orientation. While, indirect discrimination can occur when employer set age qualifications which discriminate against women who have had periods away from work because of family responsibilities.

The International Convention on the Elimination of All Forms of Racial Discrimination is one of the general instruments that develop the fundamental norm of the United Nations Charter that has been accepted as customary international law requiring respect for human rights and fundamental freedoms for all without race distinction.²² It is one of the tools for combating racial discrimination; also, it has been universal, comprehensive in scope, legally binding in character, and equipped with built in measures of implementation. Past actions of discriminations have created systematic patterns of discrimination in society; the effects of past discriminations may be continued or getting worse.

Racial violence, hate speech, and other stereotypes still exist in daily life and spread in many regions of the world, while the minorities are silenced. Racial discrimination also inhibits the progress of people. Every state faces racial discrimination issue and every state tries to eliminate it. It

²² Office of the High Commissioner for Human Rights, 2011, “Countering Discrimination, in Particular Racial Discrimination, Discrimination on the Grounds of Sex, Religion and Against Others Who Are Marginalized”, available at https://www2.ohchr.org/english/ohchrreport2011/web-version/ohchr_report2011_web/allegati/9_Discrimination.pdf, accessed on Sunday, March 31st, 2019 at 8:13 AM.

is not easy to eliminate because it needs a comprehensive approach such as a good strategy and special measure to eliminate various form of racial discrimination.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) concluded that racial discrimination must be eliminated in national level which required comprehensive approach with comprehensive measure and strict measure.²³

²³ *Ibid.*