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The Persistence of Racism in International Law: Historical Roots, Contemporary Barriers, and the Role of Global Institutions

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ABSTRACT

This study investigates the enduring issue of racism within the context of international law, analyzing its historical origins and assessing current approaches. Notwithstanding the fundamental tenets of international law, including jus cogens and the duty erga omnes, as well as the creation of significant instruments like ICERD, racism persists profoundly within global cultures. The paper examines the reasons for the persistence of implementation gaps despite several treaties and declarations, frequently attributed to states' reluctance to address local racial issues and the constraints of legal definitions. The issues of white racism, global economic disparities, and the enduring impacts of colonialism are examined as persistent obstacles to racial equality. The document evaluates the efficacy of international frameworks, including the CERD and notable declarations such as the Durban Declaration and UNESCO's initiatives, in addressing racism. Modern international law has the significant difficulty of harmonizing its universal aspirations with the enduring realities of racial hierarchies and inequality. The research emphasizes that addressing racism necessitates not only strong legal frameworks but also aggressive enforcement, comprehensive policy reforms, and intercultural engagement. The international community must consistently evolve and enhance its strategies to fully achieve the promise of universal human rights and racial equality.

***Keywords**: Racism, Elimination, Discrimination, Human Rights, Challenges, Enforcement Implementation, Int. Law*

Introduction and Background

In international law, the prohibition against racial bias is a key component that is deeply ingrained (ICERD, 1965; Donnelly, 2013). All of these sources support this assertion. The distinctive nature of jus cogens, which renders duties erga omnes, a duty from which no derogation is suitable, has been observed to be present in it (Hannum, 1998; Tomuschat, 2003; Robertson & Merrills, 2017; Ssenyonjo, 2016). This has been observed to be the case. The International Convention on the Elimination of every kind of Racial Discrimination (hereinafter referred to as "ICERD" or "the Convention") is the foundation of the global organization that is responsible for the protection and implementation of the right to be free from racial bias (United Nations, 1965; Thornberry, 2016; Reiter & Simpson, 2017). Henkin (1999) and Steiner et al. (2008) identified the global protection of human rights as a distinct

and fundamental branch of global law. This branch was established as a separate and fundamental fork. The human rights rise did not appear to be sudden, like Minerva jumping following Jupiter's control (Robertson & Merrills, 2017; Ssenyonjo, 2016). This is despite the fact that a limited set of legal standards that have been established to protect individuals from abuse has been in existence ever since the Law of Nations was introduced. From the beginning of global law itself, its major substantive guidelines and its practical protections can be traced back several years (Hannum, 1998; Donnelly, 2013; Tomuschat, 2003; ICERD, 1965). This can be done by following the development of global law.

According to a number of studies (Fredrickson, 2002; Feagin, 2013; Bonilla-Silva, 2017; Smedley & Smedley, 2005), racism, in all of its manifestations, is a worldwide human rights catastrophe that we are currently facing. When viewed from a different perspective, racism poses a threat to the lives and human rights of a significant number of individuals all over the world (Williams & Mohammed, 2009; Essed, 1991; Pager & Shepherd, 2008; Alexander, 2010). Governments continue to implement and license racism, and specific acts of racism remain prevalent (Human Rights Watch, 2021; Feagin & Bennefield, 2014). This is the case despite the fact that laws forbidding racial bias through mutual agreements have been passed. According to Pogge (2002), Fraser (2000), Nussbaum (2001), and the United Nations (1948), the eradication of this behavior is yet an unmet objective of universal human rights. Currently, the sins that have been caused by a wide range of damages, such as slavery, massacre, colonization, apartheid, and racism, are coming to light as new tones that are restoring old stories (Stefancic (2017) Mutua (2000), and Hall (1996) have all demonstrated that grave race philosophy, Third World Approaches to International Law, and other seminaries of thought have shed light on the significant juris multiplicative roles that race, discrimination, and racial thought have played in the development of human rights and in the expansion of global regulation in general.

Over the course of several decades, international law has been confronted with a problem involving racism (Banton, 1998; Thornberry, 2016; OHCHR, 2021). After the year 1950, in response to significant international developments, the global society has been consistently aware that discrimination does not have any roots in ecology or skill, and that prejudice openly touches many human lives and allows for an uncountable number of battles (UNESCO, 2017; Smedley & Smedley, 2005; Williams & Mohammed, 2009). On the other hand, the response of the international legal community to racism has been generally ineffectual (Fredrickson, 2002; Essed, 1991; Human Rights Watch, 2021). Despite the fact that governments signed the International Convention on the Elimination of Racial Discrimination in 1965, which sought to eliminate all types of racial discrimination, a number of states chose to avoid addressing concerns that occurred within their own boundaries (Thornberry, 2016; Reiter & Simpson, 2017; Alexander, 2010). According to Feagin (2013), Bonilla-Silva (2017), and Pager (2007), they essentially denied or downplayed the fact that ethnic prejudice against indigenous or racial groups and native people was a problem in their particular nation. Despite all of its groundbreaking solutions, the final transcript of the 1965

accord failed to choose or define techniques of racial bias prior to apartheid and ethnic discrimination (ICERD, 1965; United Nations, 1965; Banton, 1998; Thornberry, 2016). This was the case despite the fact that the accord was a landmark in its own right. However, the Convention does not prohibit any concept of racial discrimination or supremacy that is now in place in the legal system (OHCHR, 2021; Pogge, 2002; Thornberry, 2016). It does, however, condemn any policy of dominance that is based on racial difference. What differentiates the two structures is that the Convention only touches on the theory of racial supremacy, rather than the whole theory of race, which represents a departure from the previous perspective (Thornberry, 2016; UNESCO, 2017; Goldberg, 2009). This is the difference between the two structures.

Research Methodology

This study employs a qualitative, doctrinal methodology, examining significant international treaties, legal instruments, and relevant case law regarding racism. It entails a critical examination of scholarly literature, NGO reports, and historical documents to evaluate the efficacy of international legal frameworks. Comparative and intersectional analysis is employed to elucidate implementation deficiencies and structural obstacles. All results are based on well-known theoretical points of view, and the research was done with care for ethical standards.

White Racism

Perry (2001), Human Rights Watch (2021), and DiAngelo (2018) have all pointed out that recent tragedies have brought to light the urgent need for individuals to take serious measures to avoid engaging in racist behavior. Several outbreaks, such those that occurred in Norway, New Zealand, and Texas, have brought the issue of white supremacist violence to the forefront of public consciousness and are igniting conversations on the nature of this threat (Feagin & Bennefield, 2014; Perry, 2001; Alexander, 2010). According to Roediger (2007), Bonilla-Silva (2017), Frankenberg (1993), and Feagin (2013), the perpetrators of the harsh and lethal assaults were motivated by a philosophy of white domination, which may be described in a variety of ways at the same time. Due to the fact that this is considered to be terrorism, which is a term that is not well defined in international law, it becomes a matter of concern for states (Dovidio et al., 2010). Not only does racism present itself in actions of bias, but it also manifests in other ways (Essed, 1991; Delgado & Stefancic, 2017; Sue et al., 2007). This is a fundamental understanding. According to Frederickson (2002), Goldberg (2009), and Thornberry (2016), it is rooted in a hostile ideology that promotes behavior and, if left unchecked, constitutes a fundamental challenge to the goals and philosophy of global law, particularly with regard to harmony, safety, fairness, and human seriousness. Racism is a system that operates by degrading individuals and groups. It does this not only by denying their inherent equality and self-respect, but also by doing so based on a constructed class of race that is designed to separate humans into a hierarchy that is destined to elevate some and subjugate many (Feagin, 2013; Smedley & Smedley, 2005; Williams & Mohammed, 2009; Robinson, 2000). According to Roediger (2007), Robinson (2000), and Anthias (1998), these

words provide a story about a social order that functions according to a framework of race. Different nations have different ways of establishing this order (Telles, 2014; Hall, 1996; Banton, 1998), and these ways vary from country to country. The failure to acknowledge whiteness as a racial and ethnic category is a primary although elusive indicator of white bias (Frankenberg, 1993; DiAngelo, 2018; Roediger, 2007). This is among the most important indicators of white bias. Instead, whiteness serves as the benchmark from which other racial and cultural groups are measured (Bonilla-Silva, 2017; Sue et al., 2007). This is where whiteness is discreetly acting as the standard. According to this method, the very act of classifying non-white groups and individuals causes them to exhibit characteristics that are considered abnormal (Sue et al., 2007; Delgado & Stefancic, 2017). According to Feagin (2013) and Frankenberg (1993), the recognition of whiteness as a group that is in every manner equivalent to other groups opens the door to the possibility of contemplating the complexities of whiteness, including the ways in which persons who are classed as white may benefit from the freedoms of whiteness while also suffering from the responsibilities of whiteness.

Racism and Global Economy

According to Castles et al. (2014), Vertovec (2007), and Sassen (2007), society is currently going through a period of significant change in the nature of the economy and common life. These developments necessitate a reevaluation of the political standards that have been in place for a long time. Massive changes are occurring as a result of the globalization of economics and innovation, new skills in communication and information, new approaches in the organization of work, and the weakening of location-specific concepts of society (Wallerstein, 1997; Wilson, 2012; Pogge, 2002; Fraser, 2000). These changes have the potential to disadvantage a large number of people, particularly people of color, both in the United States and around the world. In this era of inconsistency, some people are experiencing opportunities that have never been better than they are right now, while others are finding that life is becoming increasingly harder (Pogge, 2002; Fraser, 2000; Sen, 1999). Bell (1980), Hall (1996), and Gillborn (2008) all point out that the rhetoric of civil rights, which appeared to be significantly transformational a generation ago, is now frequently utilized for cautious reasons. According to Roediger (2007), Robinson (2000), and Reskin (2012), a significant number of individuals who are considered to be reformists appear to be apathetic about the effects that the disruptions of the global economy have on the lives and communities of marginalized people. According to Banks (2008), Modood and Ahmad (2007), and Nieto (2017), identity politics and multiculturalism seem to have very little to say about the tremendous changes that have occurred in social connections.

Based on research conducted by Bonilla-Silva (2017), Feagin and Bennefield (2014), Reskin (2012), and Smedley and Smedley (2005), it has been established that racism is not a natural phenomena but rather is produced through economic and social ties. While this is going on, it is necessary to racialize these economic ties (Roediger, 2007; Robinson, 2000; Feagin, 2013). According to Roediger (2007) and Reskin (2012), the history of private enterprise has

been strengthened by the introduction of racialization. Discrimination is a threat that haunts international law (International Convention on Economic, Social, and Cultural Rights, 1965; United Nations, 2001; Human Rights Watch, 2021). Despite the fact that gaps in wealth and opportunities have received a large amount of attention, the roles that international law has played in contributing to this inequality have frequently been disregarded (Pogge, 2002; Wallerstein, 1997; Sassen, 2007). According to Sen (1999), Pogge (2002), and Fraser (2000), the legal framework of the global economy has been a contributing factor in the increasing levels of injustice. While the extremely poor have been excluded from development and the salaries of the middle class in industrialized nations have decreased, the wealthiest one percent have accumulated the majority of their wealth during the past few decades (Pogge, 2002; Sassen, 2007; ILO, 2011; Cook, 2020). It is important to note that the very poor have been left out of development. According to Williams and Mohammed (2009) and Essed (1991), high levels of discrimination have contributed to a feeling of alienation and helplessness in the face of impersonal forces. According to the International Labor Organization (2011) and Cook 2020, major international institutions such as the International Monetary Fund, the World Bank, and the World Trade Organization have, for the most part, abdicated their responsibilities for the distributive issues of these global economic systems. In spite of the fact that other areas of international law, such as human rights and labor law, appear to be more receptive to the matter, they have frequently been insufficiently strong and slow to provide an effective response (Henkin, 1999; Donnelly, 2013). Several studies (Ssenyonjo, 2016; Tomuschat, 2003; Pogge, 2002; Fraser, 2000) have found that the impact of law on inequality has been obscured by the fact that it is divided into sectoral regimes and different levels of governance. As a consequence of this, responsibility is frequently transferred to another party, and issues are not ultimately resolved (Gillborn, 2008; Pogge, 2002).

Contemporary International Law

Angie (2007), Fanon (1963), Goldberg (2009), and Mamdani (2001) all point to the fact that the principle of society has historically been associated with formal colonization and the explicit kinds of racialization that it incorporates. When viewed from this perspective, however, international law does not appear to be exactly the same (Thornberry, 2016; Mutua, 2000). According to Henkin (1999) and Donnelly (2013), there are a lot of people who believe that international law was a significant factor in putting an end to this condition of affairs. According to Anghie (2007), Goldberg (2009), and Hall (1996), contemporary international law continues to have a strong connection to behaviors that are associated with racialization. They have claimed that economic exploitation and inequality can exist outside of formal political control (Wallerstein, 1997; Robinson, 2000). Marxists have made this argument more than once. Neocolonialism, which is characterized by economic dependency rather than political dominance, has thus supplanted formal imperialism in the postcolonial globe (Fanon, 1963; Mamdani, 2001; Anghie, 2007). Neocolonialism has succeeded formal imperialism at the same time. According to Bonilla-Silva (2017), Goldberg (2009), and Smedley and Smedley (2005), the existence of such a state has not resulted in the

disappearance of racism but rather has enabled it to take on more subtle forms. These concepts are ingrained in legal systems as a result of the operational relationship that exists between international law, racialization, and capitalism (Anghie, 2007; Tomuschat, 2003). According to Thornberry (2016) and Ssenyonjo (2016), the worldwide legal system of decolonization, for instance, was responsible for maintaining the foreign boundaries that were already in place and necessitated the realization of self-determination within the framework of the state, which had been formed during the period of colonialism. Consequently, anti-imperialist movements were redirected into forms that were consistent with capitalism, which resulted in the maintenance of a racialized division of the world (Wallerstein, 1997; Mamdani, 2001).

Angie (2007), Fanon (1963), and Thornberry (2016) all agree that international law has not only been responsible for the preservation of a legacy of racialization, but it has also played a significant role in the formation of various types of postcolonial racism. These forms of racism continue to exist even when postcolonial governments acquire formal legal power. According to Martin (2017) and the International Labor Organization (2011), this is obvious in the operations of international organizations such as the World Bank and the International Monetary Fund, both of which have played key roles in reallocating the wealth of nations located in the Global South. These organizations have utilized racialized narratives to explain their policies, attributing underdevelopment to the purported faults of those countries (Cook, 2020; Sassen, 2007; Goldberg, 2009). These narratives have been used to justify their actions. As a result of these narratives, political and economic decisions are recast as technocratic exercises rather than social democratic policies (Robinson, 2000; Roediger, 2007). According to Wallerstein (1997) and Sassen (2007), the belief that economic failures are caused by the inability of non-European countries to manage their affairs prevails. This is in contrast to the notion that the structure of the global economy itself is the cause of economic failures. Consequently, racialized expectations bolster the implementation of economic changes in countries that are located in the Global South (Anghie, 2007; Mamdani, 2001). According to Thornberry (2016) and Tomuschat (2003), the law of self-determination did not bring about a significant shift in the existing international legal system. However, it was expected of newly independent states that they would follow the rules that had been formed during the time that they were under subjection (Mutua, 2000; Anghie, 2007). Any attempt to undermine the established order of international law must be made through the establishment of new conventions or the signing of treaties, both of which require the consent of the governments that hold the dominant position (Henkin, 1999; Donnelly, 2013).

Challenges the Enforcement and Implementation

The enforcement and implementation of anti-racist principles are met with major challenges, despite the fact that there are comprehensive legal frameworks and normative commitments at the international level. It is common for international organizations to be restricted in their ability to intervene in domestic racial matters due to the idea of state sovereignty, which is one of the fundamental obstacles. According to Thornberry (2016) and Ssenyonjo (2016), states frequently place a higher priority on their own national interests and political concerns

than they do on their international duties. This usually leads to selective compliance or open non-compliance with anti-racism initiatives and resolutions. Many human rights instruments, which rely primarily on state participation and voluntary reporting, do not have any obligatory enforcement measures, which makes this reluctance even more pronounced (Office of the United Nations High Commissioner for Human Rights, 2021; Reiter & Simpson, 2017). Consequently, international organizations such as the Committee on the Elimination of Racial Discrimination (CERD) have the ability to offer recommendations; however, these recommendations are frequently ignored or delayed, which undermines the effectiveness of these recommendations (Henkin, 1999; Donnelly, 2013).

Furthermore, the confines of the definitional extent of racial discrimination within the framework of international law have been criticized for their limits. According to Bonilla-Silva (2017) and Feagin (2013), the Convention on the Elimination of All Forms of Racial Discrimination (ICERD) does not include certain types of structural and systemic racism that are ingrained in social, economic, and political institutions. According to Pager and Shepherd (2008) and Alexander (2010), the focus on overt acts of prejudice allows for the disregard of more subtle and institutionalized forms of discrimination that perpetuate inequity over generations. Because of this lack of legal legitimacy, the creation of comprehensive strategies to combat racism in all of its manifestations is hampered (Thornberry, 2016; UNESCO, 2017).

The Role of Global Institutions and Civil Society

Global institutions, such as the United Nations and the United Nations Educational, Scientific, and Cultural Organization (UNESCO), as well as regional entities, such as the Organization of American States and the African Union, play crucial roles in the formation of international norms and the promotion of collaboration in the fight against racism. Notable initiatives such as the Durban Declaration and Programme of Action (2001) are significant milestones that reaffirm the global commitment to combating racial discrimination and promote a multidimensional approach that includes education, legal reform, and economic justice (United Nations, 2001; United Nations Educational, Scientific, and Cultural Organization, 2017). On the other hand, the implementation of these statements continues to be inconsistent, and it is frequently hampered by political opposition and restrictions on available resources (Human Rights Watch, 2021; Thornberry, 2016). Civil society organizations and grassroots movements have emerged as essential actors in the process of keeping states accountable and advocating for anti-racist measures that are more inclusive and effective. According to Feagin and Bennefield (2014) and Human Rights Watch (2021), their activism has helped to bring attention to the realities of racialized groups and has brought attention to the voices of those who are marginalized. This has served as a complement to formal legal systems. Bonilla-Silva (2017) and Alexander (2010) highlight the significance of participatory techniques in the fight against racism and the promotion of global solidarity. This junction of international law and social movements highlights the importance of these approaches.

Emerging paradigms and intersectionality

It is necessary to adopt an intersectional perspective in order to acknowledge the multifaceted nature of racism. This perspective takes into account the ways in which race intersects with other identities, such as gender, class, ethnicity, and migrant status (Crenshaw, 1989; Collins, 2000). This perspective is rapidly being incorporated into international law, which acknowledges that discrimination is frequently complex and compounded (Ssenyonjo, 2016; Modood & Ahmad, 2007). According to the Office of the United Nations High Commissioner for Human Rights (2021) and Nieto (2017), the experiences of indigenous peoples, women of color, and refugees demonstrate distinct forms of exclusion that call for individualized legal safeguards and governmental solutions. In addition, emergent paradigms such as restorative justice and decolonial methods pose a challenge to the conventional frameworks of international law by advocating for the implementation of reparations, the disclosure of truths, and the restructuring of structures (Mamdani, 2001; Fanon, 1963). The necessity to confront the past and ongoing repercussions of colonialism and racial domination is brought to light by these approaches, which place an emphasis on healing and empowerment rather than punitive measures (Anghie, 2007; Thornberry, 2016). (Mutua, 2000; Hall, 1996) asserts that the incorporation of these ideas into international legal discourse is absolutely necessary in order to accomplish the implementation of substantive racial justice.

Conclusion

The fact that racism continues to exist inside the realm of international law is a reflection of the profound structural and ideological issues that go beyond the realm of legal codification. The effectiveness of foundational treaties and global institutions in combating racial discrimination is hindered by limitations in enforcement, definitional gaps, and persistent power imbalances that have their roots in colonial histories and economic inequalities (Pogge, 2002; Wallerstein, 1997; Fraser, 2000). Despite the fact that these legal frameworks provide a necessary framework for combating racial discrimination, their effectiveness is compromised. In order to effectively address these concerns, a multidimensional strategy is required, one that includes strengthened legal processes, increased political will, inclusive policymaking, and persistent interaction with civil society and communities that are impacted (Gillborn, 2008; Human Rights Watch, 2021). Crenshaw (1989) and Bonilla-Silva (2017) argue that international law must continue to develop in order to address the intricacies of modern racism. This requires the adoption of intersectional and restorative paradigms that go beyond nominal equality and seek transformational justice. The commitment of the international community to racial equality needs to be dynamic and flexible in order to guarantee that the promise of universal human rights is not only realized in principle but also in practice. At the international level, the curse of racism can only be truly eradicated through the implementation of an all-encompassing and flexible strategy (Henkin, 1999; Donnelly, 2013).

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