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**THE ABSOLUTE NATURE OF NON-DEROGABLE RIGHTS IN
INTERNATIONAL HUMAN RIGHTS LAW: A STUDY OF THE
ICCPR**



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Abstract

Although non-derogable rights under the International Covenant on Civil and Political Rights remain applicable during a public emergency threatening the life of a nation, the protection of human dignity remains an unresolved domain. Despite substantial scholarship on Article 4(2) and Article 7 of the ICCPR, human dignity has not been theorized as an operational, non-derogable legal constraint, particularly in contexts of armed conflict and counter-terrorism. This article adopts a doctrinal methodology to address this gap and argues that human dignity must be defined and its threshold articulated by international bodies. Grounding this argument in Article 2 of the Universal Declaration of Human Rights, the study contends that dignity should function as a binding normative limit even during emergencies of a public nature. By establishing such a threshold, the article seeks to strengthen the enforceability and integrity of non-derogable rights under international law. The analysis contributes to the discourse on balancing state emergency powers with the absolute protection of human dignity.

Keywords: *Non-Derogation, Armed Conflict, ICCPR, UDHR, GCs, Human Dignity, NIAC.*

1. Introduction

The notion of non-derogable rights holds a unique significance within the context of international rights and human rights law. These rights, which a nation cannot suspend even during public emergencies that jeopardize national survival, embody the essential core of human dignity and the absolute boundaries of acceptable governmental behavior. The International Covenant on Rights, Civil and Political (ICCPR), adopted in 1966 and put into effect a decade later, enshrines this concept in Article 4, which specifies a definite set of rights from which no deviation is permitted. The rights encompassed include the right to existence, the prohibition of torturing and cruel, inhuman, or degrading treatment or punishment, the prohibition of servitude and slavery, and the principle of legality in criminal law¹.

The current significance of these protections has been highlighted by the increase in armed conflicts and the escalation of counter-terrorism efforts worldwide. From the protracted conflicts in the Middle East to the ongoing struggle against transnational terrorist networks, States have repeatedly invoked national security imperatives to justify encroachments upon fundamental liberties. The tension between security and liberty is neither novel nor inherently illegitimate; what demands rigorous scrutiny, however, is the extent to which such encroachments respect the inviolable boundaries established by non-derogable rights.

In addition to investigating the juridical content, doctrinal foundations, and practical consequences of non-derogatory rights under the International Covenant on Civil and Political Rights (ICCPR), the purpose of the current research project is to investigate the protective function of these rights in contexts of armed conflict and the fight against terrorism. Whether it be through explicit derogation or intentional interpretation with the intention of evading their protective scope, the erosion of non-derogable rights puts not only individual victims in jeopardy but also the fundamental credibility of the global human rights framework. This is the primary concern that drives the study.

It is on design that the International Covenant on Civil and Political Rights (ICCPR) serves as the primary legal basis. Governments have signed the Covenant, making it the most important and broadly applicable international convention on rights in civil and political life. It is also the most internationally recognised convention on rights. Forming itself under Article 28 of the Covenant, the Committee for Human

¹[Article 4(2) of the International Covenant on Civil and Political Rights (ICCPR) (signed on December 16, 1966, and officially implemented on March 23, 1976) (999 UNTS 171)"]

Rights has gathered a plethora of interpretative help in the shape of General Comments and Views in particular communications. This guidance is very helpful in comprehending the breadth and depth of non-derogable responsibilities. In addition, there is a lack of adequate theory in the field on the complicated issues of normative interaction that arise when the ICCPR and IHL collide in armed conflict scenarios.²

By explaining the proposed thesis's structure, defining the inquiry's scope, and placing it within larger disputes in international legal theory, this introductory chapter prepares the groundwork for the research. The central argument advanced herein is that non-derogable rights function as constitutional constraints upon state power, and that their effective protection in emergencies requires both doctrinal clarity and institutional vigilance.

This research addresses a central issue: despite the formal acknowledgement of not-derogatory rights in Article 4(2) of the International Criminal Court (ICCPR) and their status as fundamental to global human rights law, these protections encounter ongoing and systemic challenges in contexts of armed conflict and counter-terrorism, jeopardising their practical effectiveness and normative consistency.

This overall issue consists of several interrelated aspects. At the doctrinal level, ambiguity remains over the exact extent of several non-derogatory rights, such as the right to life and the ban on torture. The acceptability for fatal force in warfare, the difference between torture and inhumane, degrading, or cruel treatment, and relevance of these concepts to new kinds of state behaviour continue to be areas of significant interpretative contention. The Human Rights Committee's recent efforts to elucidate these issues in General Comment No. 36 have not settled all disputes and have faced criticism from many State parties.

The lack of a mandatory judicial procedure for enforcing the ICCPR against individual States at the institutional level results in considerable accountability deficiencies. Human Rights Committee's authority to hear individual communications is contingent upon the adoption of optional procedures; furthermore, even when such authority is present, the Committee's Views do not possess legally binding effect. The hesitance of some States to actively participate in the Committee's proceedings diminishes the efficacy of the supervisory mechanism.

At the practical level, States engaged in armed conflict or counter-terrorism operations have demonstrated a persistent tendency to circumvent or reinterpret non-derogable obligations rather than formally derogate from them. This practice of constructive non-compliance, whereby States maintain the formal applicability of rights while construing their content so narrowly as to permit virtually any conduct, represents a particularly insidious threat to the integrity of the non-derogation regime.³

The problem is further compounded by the phenomenon of permanent emergency, whereby exceptional powers initially justified by reference to temporary crises become normalised features of the legal landscape. This phenomenon, seen in several jurisdictions during the post-9/11 era, undermines the clear demarcation between normality and emergency that the derogation system relies upon. When crises become chronic, the notion of non-derogable rights as constraints in exceptional situations loses its functional relevance.

2. Significance of the Research

This research is significant at multiple levels. At the theoretical level, the study contributes to the ongoing elaboration of a coherent jurisprudence of non-derogable rights, addressing interpretive questions that have divided scholars and institutions. The examination of the connection between non-derogable rights and respect for human dignity provides an ethical framework that has the potential to guide the formation of future interpretative advancements.

The report provides guidance to nations, international organisations, and non-governmental entities engaged in the protection of human rights during emergencies. At the final chapters, proposals are created

² [“The 'Status of Ratification Interactive Dashboard' <<https://indicators.ohchr.org>> was viewed on 15 June 2026 by the Office of the High Commissioner for Human Rights”.]

³[For more information, see” Joan Fitzpatrick's Human Rights in Crisis: The International System for Protecting Rights during States of Emergency (University of Pennsylvania Press 1994)”, 45–78].

with the intention of being actionable. These recommendations address institutional improvements and interpretative clarifications that would increase the efficiency of the safeguarding of non-derogable rights.

3. Research Methodology

This study employs a doctrinal legal approach supplemented by interdisciplinary insights from political philosophy and international relations. The doctrinal approach, defined by methodical analysis of legal standards, judicial rulings, and institutional practices, constitutes the methodological foundation of the inquiry. This method is suitable considering the main emphasis on the interpretation and implementation of treaty terms and customary global law.

The research advances over multiple interrelated methodological phases. The initial phase entails an exhaustive examination of primary legal sources, encompassing the text compiled by the ICCPR and its travaux préparatoires, the legal precedent of the Committee on Human Rights, rulings of International Court of Justice and local human rights judicial bodies, as well as decisions from worldwide criminal tribunals.

The sources are examined using traditional legal interpretation methodologies, such as textual, structured, teleological, and historical techniques.

Second stage engages with secondary literature across multiple disciplines. Legal scholarship on human rights, IHL, and constitutional emergency powers provides the principal reference point, supplemented by philosophical work on rights theory and political science research on security governance. This interdisciplinary engagement serves to contextualise doctrinal analysis within broader theoretical frameworks and to identify practical constraints upon legal regulation.

The third step employs comparative research to analyse governmental practices and judicial rulings across various jurisdictions. Special focus is given to the actions of the nations that have officially deviated from the ICCPR, along with the legal precedents established by regional systems addressing similar issues⁴.

The fourth stage entails a critical assessment of current counter-terrorism policies in relation to non-derogable rights. This evaluation component utilises documentation sources, such as official reports, parliamentary enquiries, and non-governmental organization investigations, to evaluate the alignment of specific activities with relevant legal norms. The study design blends normative and empirical components, merging doctrinal analysis with fact-sensitive assessment.

The research is qualitative in character, eschewing quantitative methods in favour of interpretive and evaluative approaches appropriate to legal inquiry. The study is desk-based, relying upon published sources and electronic databases, and does not involve empirical fieldwork or human subjects research.

4. Non-Derogable Rights in the ICCPR:

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At the practical level, States engaged in armed conflict or counter-terrorism operations have demonstrated a persistent tendency to circumvent or reinterpret non-derogable obligations rather than

⁴See: [[Eva Brems, 'The Margin of Appreciation Doctrine in the Case-Law of the European Court of Human Rights' (1996) 56 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 240.]]

formally derogate from them. This practice of constructive non-compliance, whereby States maintain the formal applicability of rights while construing their content so narrowly as to permit virtually any conduct, represents a particularly insidious threat to the integrity of the non-derogation regime.⁵

The problem is further compounded by the phenomenon of permanent emergency, whereby exceptional powers initially justified by reference to temporary crises become normalised features of the legal landscape. This phenomenon, seen in several jurisdictions during the post-9/11 era, undermines the clear demarcation between normality and emergency that the derogation system relies upon. When crises become chronic, the notion of non-derogable rights as constraints in exceptional situations loses its functional relevance.

5.Implications for the Protection of Human Dignity in Situations of Armed Conflict and Counter-Terrorism

Despite the extensive evidence reviewed above, significant deficiencies in academic comprehension remain. Initially, there exists inadequate integration between the logical examination of non-derogable rights and the actual conditions of modern armed disputes. A significant portion of current discourse operates at a high level of abstraction, addressing treaty texts and court rulings without a thorough examination of the practical situations in which these standards are to be implemented. The unique issues presented by asymmetrical warfare, urban conflict, and the rise of non-state players need a more detailed study than has hitherto been offered.

Second, the counter-terrorism literature, while extensive, tends to focus upon particular jurisdictions or specific practices rather than offering a systematic evaluation of non-derogable rights across the full spectrum of contemporary threats. The connections among targeted killing and the freedom of life, enhanced interrogation and the removal of torture, and preventative detention and the ban of arbitrary deprivation of freedom have been examined separately rather than as parts of a cohesive protective framework.

Third, The normative interplay among the ICCPR and global humanitarian law is insufficiently theorised. The notion of concurrent application is widely known, although the actual mechanisms of its cohabitation remain poorly understood. The issue of whether World wide Humanitarian Law alters the substance for Covenant commitments instead of just the methods for their execution has significant ramifications for the safeguarding of non-derogable rights during armed disputes. In GCC No. 36, the Committee on Human Rights makes several contentious claims about the right to life's extraterritorial scope, and these claims need to be carefully considered⁶.

Fourth, The institutional aspect of safeguarding rights that are not derogatory has been inadequately addressed. The efficacy of absolute restrictions significantly relies on the presence of strong monitoring and enforcement systems. A comparative examination of the respective strengths and shortcomings of the Human Rights Committee, local human rights courts, local judiciaries, and global criminal tribunals in the protection of non-derogable rights is necessary.

The primary objective of this research is to conduct a comprehensive and critical analysis of non-derogable rights under the ICCPR, investigating its theoretical foundations, legal content, and practical application in scenarios of armed conflict and counter-terrorism. This primary purpose is subdivided into the following particular aims:

- I. To examine the drafting history, textual interpretation, and jurisprudential evolution of Article 4(2) of the ICCPR, delineating the breadth and substance of the specified non-derogable rights.
- II. To analyse the correlation between rights that are not derogatory and global humanitarian law, elucidating the mechanisms of normative interaction in contexts of armed conflict.

⁵[For more information, see” Joan Fitzpatrick's Human Rights in Crisis: The International System for Protecting Rights during States of Emergency (University of Pennsylvania Press 1994)”, 45–78].

⁶[Page numbers 216-245 from Marko Milanovic's "The Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy" (OUP 2011)].

III. To assess the efficacy of institutional frameworks for safeguarding non-derogable rights, including the Human Rights Committee, regional courts, and national judiciaries.

IV. To evaluate current counter-terrorism activities in relation to the norms set by non-derogable rights, pinpointing areas of adherence and infringement.

V. To provide proposals for enhancing the safeguarding of non-derogable rights in urgent circumstances, using comparative and multidisciplinary approaches.

6.Recommendations.

The lack of a mandatory judicial procedure for enforcing the ICCPR against individual States at the institutional level results in considerable accountability deficiencies. Human Right Committee's authority to hear individual communications is contingent upon the adoption of optional procedures; furthermore, even when such authority is present, the Committee's Views do not possess legally binding effect. The hesitance of some States to actively participate in the Committee's proceedings diminishes the efficacy of the supervisory mechanism.

At the practical level, States engaged in armed conflict or counter-terrorism operations have demonstrated a persistent tendency to circumvent or reinterpret non-derogable obligations rather than formally derogate from them. This practice of constructive non-compliance, whereby States maintain the formal applicability of rights while construing their content so narrowly as to permit virtually any conduct, represents a particularly insidious threat to the integrity of the non-derogation regime.⁷

The problem is further compounded by the phenomenon of permanent emergency, whereby exceptional powers initially justified by reference to temporary crises become normalised features of the legal landscape. This phenomenon, seen in several jurisdictions during the post-9/11 era, undermines the clear demarcation between normality and emergency that the derogation system relies upon. When crises become chronic, the notion of non-derogable rights as constraints in exceptional situations loses its functional relevance.

7.Conclusion.

This research is significant at multiple levels. At the theoretical level, the study contributes to the ongoing elaboration of a coherent jurisprudence of non-derivable rights, addressing interpretive questions that have divided scholars and institutions. The examination of the connection between non-derogable rights and respect for human dignity provides an ethical framework that has the potential to guide the formation of future interpretative advancements.

The report provides guidance to nations, international organisations, and non-governmental entities engaged in the protection of human rights during emergencies. At the final chapters, proposals are created with the intention of being actionable. These recommendations address institutional improvements and interpretative clarifications that would increase the efficiency of the safeguarding of non-derogable rights.

At this level for policy, the research contributes to the ongoing discussions that are taking place about the optimal balance that should be struck between freedom and security in democratic society. The era after the attacks of September 11, 2001 has been marked by a persistent growth of security authorities across a variety of jurisdictions, sometimes with little attention paid to the consequences these capabilities have for human rights. Based on the authoritative framework of the World wide Covenant on Civil and Political Rights ICCPR, the present research offers a legally founded criticism of such expansions.

At academic level, this research covers the gaps that were found in the literature evaluation. It provides the first complete examination of non-derogable rights that includes a systematic integration of viewpoints on armed conflict and counter-terrorism. By engaging with political theory and international relations from a variety of disciplines, this work differentiates itself from just doctrinal interpretations and strengthens its capacity to explain things.

The study is pertinent to the current context. The protracted wars in Ukraine, Gaza, Sudan, and Myanmar, together with the continuous menace of transnational terrorism, keep issues of emergency powers

⁷[For more information, see” Joan Fitzpatrick's Human Rights in Crisis: The International System for Protecting Rights during States of Emergency (University of Pennsylvania Press 1994)”, 45–78].

and non-derogable rights at the forefront of international legal discourse. The findings of this research are designed to be directly relevant to policymakers, practitioners, and academics addressing these pressing issues.

8. References

- Ali, A. (2021). Executive authority and emergency rule in Pakistan. *Journal of South Asian Governance*, 12(2), 45–67.
- Bishop, C. (2019). Emergencies and fundamental rights: A comparative study. *Human Rights Quarterly*, 41(3), 521–548.
- Bowen, G. A. (2009). Document analysis as a qualitative research method. *Qualitative Research Journal*, 9(2), 27–40.
- Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2), 77–101.
- Chaudhry, S. (2019). The politics of emergency powers in South Asia. Oxford University Press.
- Creswell, J. W., & Poth, C. N. (2018). *Qualitative inquiry and research design: Choosing among five approaches* (4th ed.). Sage.
- Denzin, N. K., & Lincoln, Y. S. (2018). *The Sage handbook of qualitative research* (5th ed.). Sage.
- Fitzgerald, J. (2010). State emergencies and legal constraints. Cambridge University Press.
- Harris, D. (2015). Cases and materials on international law and human rights. Routledge.
- Human Rights Watch. (2020). World report 2020: Pakistan chapter. Human Rights Watch.
- Khan, M. (2018). Constitutional law in Pakistan: Emergency powers and separation of powers. Islamabad
- Binder C, 'Human Rights in Times of Emergency' (2025) 12 Oslo Law Review 1
- Greer S, 'Is the Prohibition against Torture, Cruel, Inhuman and Degrading Treatment Really "Absolute" in International Human Rights Law?' (2015) 15 Human Rights Law Review 1
- Saraswati AAN and Simbolon MAH, 'The Evidentiary Basis of the Prohibition of Torture as Jus Cogens and its Legal Implications for Indonesian National Law' (2025) 9 Jurnal Bina Mulia Hukum 207
- Wentker A, 'The Armed Attack Exception to Neutrality in International Peace and Security Law' (2024) 73 International and Comparative Law Quarterly 967
- Grušić U, 'The Law Governing United Kingdom Government Tort Liability in the "War On Terror"' (2024) 73 International and Comparative Law Quarterly 1059
- Papachristodoulou A, 'The Exercise of State Power Over Migrants at Sea Through Technologies of Remote Control: Reconceptualizing Human Rights Jurisdiction' (2024) 73 International and Comparative Law Quarterly 891
- Keller H and Ganesan P, 'The Use of Scientific Experts in Environmental Cases Before the European Court of Human Rights' (2024) 73 International and Comparative Law Quarterly 937
- Besson S, 'Comparative Law and Human Rights' in M Reimann and R Zimmermann (eds), *The Oxford Handbook of Comparative Law* (OUP 2024) 1222
- Antoniazzi CT, 'Extraterritorial Human Rights Obligations in the Area of Climate Change' (2024) 9 European Papers 119
- Faria Coracini CE, 'Targeted Killing of Suspected Terrorists During Armed Conflicts' (2024) 47 Revista de Direito Internacional 1
- Oette L, *The Transformation of the Prohibition of Torture in International Law* (CUP 2024)
- Gearty C, *Homeland Insecurity: The Rise and Rise of Global Anti-Terrorism Law* (OUP 2025)
- Gherbaoui T, *Europe's Foreign Fighter Conundrum* (TMC Asser Press 2025)
- Van Ark R, Prabhat D and Gordon F, *Children's Rights, 'Foreign Fighters', Counter-Terrorism* (Edward Elgar 2024)
- Cocq CC, *Mutual Trust in Regional and Interregional Cooperation on Counterterrorism* (Springer 2024)
- Krieger H and others (eds), *International Humanitarian Law under Pressure* (Springer 2026)
- Rocha I, Seatzu F and Akestoridi K (eds), *Organized Criminal Terrorism* (Brill Nijhoff 2024)
- Scheffer DJ and Ellis MS, *The UN Charter: Five Pillars for Humankind* (Springer 2025)
- Almutawa A and Magliveras KD (eds), *A Comparison of the European, Inter-American, African and Arab Human Rights Courts* (Springer 2025)
- Cliquennois G, *The Impact of European Human Rights Bodies on Penal Policies* (Springer 2025)

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Print ISSN: 3006-5887

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Greek Case (1969) 12 YB Eur Conv on HR
Ireland v United Kingdom (1978) 25 EHRR 137
Lawless v Ireland (No 3) (1961) 1 EHRR 15
Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136
Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996] ICJ Rep 226
International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171
Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3
ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law (2009)
Office of the High Commissioner for Human Rights, 'Status of Ratification Interactive Dashboard' <<https://indicators.ohchr.org>> accessed 15 June 2026
U -United Nations Documents
UN Human Rights Committee, General Comment No 29: Article 4 (States of Emergency) (2001) UN Doc CCPR/C/21/Rev.1/Add.11
UN Human Rights Committee, General Comment No 36: Article 6 (Right to Life) (2018) UN Doc CCPR/C/GC/36
UN Human Rights Office, 'Global Update: Human Rights in Times of Conflict and Crisis' (Report, 2024) UN Doc A/HRC/55/2