

**INTERNATIONAL HUMAN RIGHTS**  
**LouvainX online course [Louv2.01x] - prof. Olivier De Schutter**

**READING MATERIAL**

**Related to: section 2, sub-section 3, unit 5: Non-derogable rights (exercise)**

**Human Rights Committee, General Comment No. 29, *Derogations during a State of Emergency* (Art. 4), (CCPR/C/21/Rev.1/Add. 11) (24 July 2001), paras. 11–13:**

11. The enumeration of non-derogable provisions in article 4 is related to, but not identical with, the question whether certain human rights obligations bear the nature of peremptory norms of international law. The proclamation of certain provisions of the Covenant as being of a non-derogable nature, in article 4, paragraph 2, is to be seen partly as recognition of the peremptory nature of some fundamental rights ensured in treaty form in the Covenant (e.g. arts. 6 [right to life] and 7 [prohibition of torture or cruel, inhuman or degrading treatment or punishment]). However, it is apparent that some other provisions of the Covenant were included in the list of non-derogable provisions because it can never become necessary to derogate from these rights during a state of emergency (e.g. arts. 11 [no imprisonment for inability to fulfil a contractual obligation] and 18 [freedom of religion]). Furthermore, the category of peremptory norms extends beyond the list of non-derogable provisions as given in article 4, paragraph 2. States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence.

12. In assessing the scope of legitimate derogation from the Covenant, one criterion can be found in the definition of certain human rights violations as crimes against humanity. If an act conducted under the authority of a State constitutes a basis for individual criminal responsibility for a crime against humanity by the persons involved in that action, article 4 of the Covenant cannot be used as justification that a state of emergency exempted the State in question from its responsibility in relation to the same conduct. Therefore, the recent codification of crimes against humanity, for jurisdictional purposes, in the Rome Statute of the International Criminal Court is of relevance in the interpretation of article 4 of the Covenant [see articles 6 (genocide) and 7 (crimes against humanity) of the Statute ... While many of the specific forms of conduct listed in article 7 of the Statute are directly linked to violations against those human rights that are listed as non-derogable provisions in article 4, paragraph 2 of the Covenant, the category of crimes against humanity as defined in that provision covers also violations of some provisions of the Covenant that have not been mentioned in the said provision of the Covenant. For example, certain grave violations of article 27 [rights of minorities] may at the same time constitute genocide under article 6 of the Rome Statute, and

article 7, in turn, covers practices that are related to, besides articles 6, 7 and 8 of the Covenant, also articles 9, 12, 26 and 27].

13. In those provisions of the Covenant that are not listed in article 4, paragraph 2, there are elements that in the Committee's opinion cannot be made subject to lawful derogation under article 4.

Some illustrative examples are presented below.

(a) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Although this right, prescribed in article 10 of the Covenant, is not separately mentioned in the list of non-derogable rights in article 4, paragraph 2, the Committee believes that here the Covenant expresses a norm of general international law not subject to derogation. This is supported by the reference to the inherent dignity of the human person in the preamble to the Covenant and by the close connection between articles 7 and 10.

(b) The prohibitions against taking of hostages, abductions or unacknowledged detention are not subject to derogation. The absolute nature of these prohibitions, even in times of emergency, is justified by their status as norms of general international law.

(c) The Committee is of the opinion that the international protection of the rights of persons belonging to minorities includes elements that must be respected in all circumstances. This is reflected in the prohibition against genocide in international law, in the inclusion of a non-discrimination clause in article 4 itself (paragraph 1), as well as in the non-derogable nature of article 18.

(d) As confirmed by the Rome Statute of the International Criminal Court, deportation or forcible transfer of population without grounds permitted under international law, in the form of forced displacement by expulsion or other coercive means from the area in which the persons concerned are lawfully present, constitutes a crime against humanity. The legitimate right to derogate from article 12 of the Covenant during a state of emergency can never be accepted as justifying such measures.

(e) No declaration of a state of emergency made pursuant to article 4, paragraph 1, may be invoked as justification for a State party to engage itself, contrary to article 20, in propaganda for war, or in advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence.