Article

International Public Order and Human Rights: Foundations, Scope and Limits of Transnational Protection.



Fernando Salazar Ortega

PhD of Law from the International Institute of Aguascalientes, Master of Laws in Amparo (Constitutional Protection) from the University of Durango, Aguascalientes campus; Member of the State Judiciary Council from 2020 to 2023; Research Coordinator at the Judicial University of the state of Aguascalientes https://orcid.org/0009-0002-9607-2078. Email: ferso83@hotmail.com

Received 13 February 2026, Accepted 31 March 2026

KEYWORDS:

International public order; human rights; international law; human dignity.

ABSTRACT:

International public order constitutes one of the traditional institutions of private international law, particularly regarding conflict of laws and the recognition and enforcement of foreign judgments. However, the evolution of contemporary international law reveals that its material foundations and function are not confined to this sphere. The progressive internationalization of human rights, the recognition of peremptory norms of general international law (*ius cogens*), the consolidation of *erga omnes* obligations and the expansion of specialized international regimes have generated a growing interaction between different branches of international law.

This article analyses this transformation and argues that, although international public order retains its technical nature as an exception specific to private international law, its contemporary content can be significantly influenced by international human rights law and general international law. In this way, it can act as a protective mechanism against the legal effects of norms, acts, or decisions that are manifestly incompatible with fundamental rights or essential principles recognized by the international legal order.

Based on an analysis of international instruments and the jurisprudence of the International Court of Justice, the Inter-American Court of Human Rights, the European Court of Human Rights, and the Court of Justice of the European Union, the possibilities and limitations of this protective function are

examined. Particular attention is paid to the relationship between public order and the *ius cogens* and *erga omnes* obligations, as well as the risk of using public order as an instrument of legal unilateralism.

PALABRAS CLAVES:

Orden público internacional; derechos humanos; Derecho internacional; dignidad humana.

RESUMEN:

El orden público internacional constituye una de las instituciones tradicionales del Derecho internacional privado, particularmente en materia de conflicto de leyes y reconocimiento y ejecución de decisiones extranjeras. Sin embargo, la evolución del Derecho internacional contemporáneo permite advertir que sus fundamentos materiales y su función no permanecen confinados a ese ámbito. La progresiva internacionalización de los derechos humanos, el reconocimiento de normas imperativas de Derecho internacional general (*ius cogens*), la consolidación de obligaciones *erga omnes* y la expansión de los regímenes internacionales especializados han generado una interacción creciente entre distintas ramas del Derecho internacional.

El presente artículo analiza esa transformación y sostiene que, aunque el orden público internacional conserva su naturaleza técnica como excepción propia del Derecho internacional privado, su contenido contemporáneo puede recibir una importante influencia del Derecho internacional de los derechos humanos y del Derecho internacional general. De esta manera, puede actuar como un mecanismo de protección frente a los efectos jurídicos de normas, actos o decisiones que resulten manifiestamente incompatibles con derechos fundamentales o principios esenciales reconocidos por el ordenamiento internacional.

A partir del análisis de instrumentos internacionales y de jurisprudencia de la Corte Internacional de Justicia, la Corte Interamericana de Derechos Humanos, el Tribunal Europeo de Derechos Humanos y el Tribunal de Justicia de la Unión Europea, se examinan las posibilidades y límites de esta función protectora. Se presta particular atención a la relación entre orden público, *ius cogens* y obligaciones *erga omnes*, así como al riesgo de utilizar el orden público como instrumento de unilateralismo jurídico.

MOTS CLES :

Ordre public international; droits de l'homme ; droit international ; dignité humaine.

RESUME :

L'ordre public international constitue l'une des institutions traditionnelles du droit international privé, notamment en matière de conflits de lois ainsi que de reconnaissance et d'exécution des décisions étrangères. Toutefois, l'évolution du droit international contemporain montre que ses fondements matériels et sa fonction ne se limitent pas à ce seul domaine. L'internationalisation progressive des droits de l'homme, la reconnaissance de normes impératives du droit international général (*ius cogens*), la consolidation des obligations *erga omnes* et l'expansion des régimes internationaux spécialisés ont engendré une interaction croissante entre les différentes branches du droit international.

Le présent article analyse cette transformation et soutient que, bien que l'ordre public international conserve sa nature technique d'exception propre au droit international privé, son contenu contemporain peut être fortement influencé par le droit international des droits de l'homme et le droit international général. Il peut ainsi agir comme un mécanisme de protection face aux effets juridiques de normes, d'actes ou de décisions manifestement incompatibles avec des droits fondamentaux ou des principes essentiels reconnus par l'ordre juridique international.

À partir de l'analyse d'instruments internationaux et de la jurisprudence de la Cour internationale de Justice, de la Cour interaméricaine des droits de l'homme, de la Cour européenne des droits de l'homme et de la Cour de justice de l'Union européenne, les possibilités et les limites de cette fonction protectrice sont examinées. Une attention particulière est portée à la relation entre l'ordre public, le *ius cogens* et les obligations *erga omnes*, ainsi qu'au risque d'utiliser l'ordre public comme instrument d'unilatéralisme juridique.

CREATIVE COMMONS LICENSE

This work is licensed under a Creative Commons Attribution 4.0 International License.

Contents:

1 INTRODUCTION; 2 GENERAL CONCEPTS; 3 INTERNATIONAL PUBLIC ORDER IN PRIVATE INTERNATIONAL LAW AND PUBLIC INTERNATIONAL LAW.; 3.1 INTERNAL PUBLIC ORDER AND INTERNATIONAL PUBLIC ORDER.; 4 NORMATIVE INTERRELATION: IUS COGENS AND ERGA OMNES OBLIGATIONS; 4.1 THE IUS COGENS; 4.2 OBLIGATIONS ERGA OMNES.; 5 HUMAN RIGHTS AS THE MATERIAL CONTENT OF PUBLIC ORDER; 5.1 HUMAN DIGNITY.; 5.1.1 ILLUSTRATIVE CASES; 5.2 EQUALITY AND NON-DISCRIMINATION.; 5.2.1 ILLUSTRATIVE CASES; 5.3 THE PROHIBITION OF TORTURE.; 5.3.1 ILLUSTRATIVE CASES; 5.4 THE PROHIBITION OF SLAVERY.; 5.4.1 ILLUSTRATIVE CASES.; 5.5 THE RIGHT TO A FAIR TRIAL.; 5.5.1 ILLUSTRATIVE CASES.; 5.6 THE RIGHT TO PRIVATE AND FAMILY LIFE.; 5.6.1 ILLUSTRATIVE CASES.; 5.7 THE RIGHT TO IDENTITY.; 5.7.1 ILLUSTRATIVE CASES.; 5.8 THE RIGHTS OF CHILDREN AND ADOLESCENTS.; 5.8.1 ILLUSTRATIVE CASES.; 6 CURRENT TENSIONS, LIMITS AND CHALLENGES; 6.1 THE UNIVERSALITY OF HUMAN RIGHTS AND STATE SOVEREIGNTY; 6.2 NATIONAL SECURITY, STATES OF EMERGENCY, AND NON-DEROGABLE LIMITS; 6.3 ARTIFICIAL INTELLIGENCE, SURVEILLANCE, AND THE TRANSFORMATION OF HUMAN RIGHTS; 6.4 INEQUALITY, CHILDHOOD, AND VULNERABLE GROUPS; 6.5 DEFINING THE CATEGORY AND PREVENTING ITS OVERUSE; 7 CONCLUSIONS; 8 REFERENCES

1 INTRODUCTION

Contemporary international law is distinguished by a remarkable diversification of its subject matter, actors, and legal regimes. Far from being limited to state coexistence and traditional diplomacy, the discipline now encompasses areas as diverse as human rights, global trade, environmental protection, the responsibility of international organizations, and transnational relations.

The United Nations International Law Commission has identified this process as one of the causes of the growing diversification and specialization of international law, a phenomenon that can generate problems of coordination and normative fragmentation (International Law Commission [ILC], 2006).

In this context, the concept of international public policy is particularly relevant. Diego Guzmán and Martha Millán (as cited in Roldán Pardo, 2010) define public policy in private international law as an exception to the application of the substantive law designated by a conflict-of-laws rule, or to the recognition and enforcement of a foreign judgment, where the relevant law or judgment conflicts with the principles on which the forum State is founded.

Traditionally, this doctrine has served to limit the otherwise open reception of foreign rules and decisions.

Contemporary international law presents a further challenge. Principles now regarded as essential do not necessarily derive solely from a State's domestic legislation; they may also be grounded in international human rights treaties, customary international law, general principles of law, or, in certain cases, peremptory norms of general international law (*ius cogens*).

Human dignity, equality, the prohibition of discrimination, the prohibition of torture and slavery, the right to a fair trial and the protection of private and family life are examples of rights and principles that have acquired an international dimension.

This raises a central question: to what extent can contemporary international law shape the content of international public policy and turn it into an effective tool for protecting human rights?

The central hypothesis of this article is that international public policy, although formally an institution of private international law, has acquired a cross-cutting dimension as a result of the internationalization of human rights and the consolidation of fundamental principles of general international law.

This proposition nevertheless requires important qualifications: not every human right automatically triggers the public policy exception, and not every rule of international law is a peremptory norm (*ius cogens*). Nor may States invoke this concept to impose their own values unilaterally on the international community.

The main challenge is therefore to reconcile three fundamental requirements: international cooperation, the protection of human rights, and respect for legal pluralism.

2 GENERAL CONCEPTS

To understand the concept and function of international public policy, it is useful to begin with a basic premise. In its traditional form, a conflict-of-laws rule may involve what has been described as a "leap into the dark": it refers the regulation of a private relationship with an international element to the law of a State whose substantive rules may be unfamiliar to the forum (Carrascosas González, 2008).

According to Hoffmeister and Kleinlein (2019), the concept of international public order may refer to a set of norms protecting the fundamental interests and values of the international community as a whole. Breaches of international public order may also give rise to duties of non-recognition and non-assistance, and reservations incompatible with international public order may be invalid.

Savigny, as cited by Mansilla and Mejía (2014), regarded public policy as a safeguard against applying foreign law that would otherwise govern the case. It is an exception that must be narrowly construed: where applying a foreign rule would produce a result that the legislature considers destructive of social order or morality, that application cannot be tolerated; therefore, public policy is considered an exception, a reservation to the application of the foreign rule.

Miaja de la Muela, as cited by Mansilla and Mejía (2014), likewise treats the non-application of foreign law as exceptional. He accepts that foreign laws may be set aside when they reflect moral, religious, or economic conceptions that conflict with those prevailing in the forum. Even apart from such considerations, however, a State may have legal principles so closely connected with its fundamental values that they preclude the application of a contrary rule.

In essence, the public policy exception allows a court to refuse to apply a foreign rule, or to recognize a foreign decision, where its effects would be incompatible with the forum State's fundamental legal principles.

3 INTERNATIONAL PUBLIC ORDER IN PRIVATE INTERNATIONAL LAW AND PUBLIC INTERNATIONAL LAW.

Any examination of the relationship between international public policy and human rights must begin by distinguishing international public policy as an institution of private international law from the fundamental principles of public international law. Although both may contribute to protecting essential values of individuals and the international community, they are distinct legal categories and do not necessarily produce the same legal consequences.

Public international law is the branch of law governing relations among States and other subjects of international law, as well as the rights, obligations, and responsibilities arising under international rules. Its principal sources include treaties, customary international law, and general principles of law, as reflected in Article 38 of the Statute of the International Court of Justice (López Zamora, 2014).

In private international law, the international public policy exception traditionally allows a court to refuse to apply foreign law, or to deny recognition or enforcement of a foreign judgment, when the resulting effects would conflict with the forum's fundamental legal principles. It thus limits coordination among legal systems by preventing foreign law or a foreign decision from producing results that the forum regards as legally unacceptable.

The fundamental difference lies in the nature and function of these concepts. Public international law establishes rules governing international legal relations and may impose binding obligations on States. By contrast, the public policy exception in private international law is a legal mechanism for determining whether particular effects of applying foreign law or recognizing a foreign decision are acceptable in the case before the forum court.

The two categories may nevertheless intersect in the protection of human rights. A State's international obligations may influence the identification and interpretation of the fundamental principles that its courts must consider in disputes involving foreign elements. It is important, however, to distinguish the substantive international obligation from the private international law mechanism used to prevent outcomes incompatible with that obligation. The influence of human rights does not merge the two categories, nor does it

mean that every international human rights rule automatically becomes a universal public policy rule.

This exceptional function should be considered in light of the central objectives of private international law: resolving cross-border legal relationships by determining jurisdiction, identifying the applicable law, and regulating the recognition of foreign judgments.

The fact that the exception is international in character does not mean that its content is identical or universal in every State. Its scope depends substantially on the forum's fundamental legal principles, subject to the limits imposed by that State's international commitments, particularly those concerning human rights. In this field, international public policy therefore lies at the intersection of legal diversity and the fundamental values of the forum State.

3.1 *INTERNAL PUBLIC ORDER AND INTERNATIONAL PUBLIC ORDER.*

A technical distinction must be drawn between domestic public policy and international public policy:

- Domestic public policy consists of a State's mandatory rules, including rules that apply immediately where the law so provides. Private parties may not contract out of such rules when they protect the country's fundamental social, economic, or political structures.
- International public policy, in the private international law context, identifies fundamental principles of the forum that may justify refusing to apply foreign law or to recognize or enforce a foreign judgment. The expression should not be taken to mean that every such principle is universally shared or operates identically across all States.

The distinction can be expressed in terms of legal effect. International public policy may prevent the application of foreign law or the recognition of a foreign judgment. Domestic public policy, by contrast, may invalidate or prohibit private agreements that depart from mandatory domestic rules. Thus, in private international law, public policy operates as an exception, whereas in domestic law it commonly functions as a mandatory limit (Roldán Pardo, 2010).

This distinction is essential. If every mandatory domestic rule could trigger the international public policy exception, the exception would lose its exceptional character and private international law would become little more than an extension of domestic law.

Oster (2015) notes that human rights protection may justify invoking the public policy clause but emphasizes the need for proportionality to prevent the clause from becoming a means of imposing domestic values on foreign situations.

The distinction is particularly important when courts consider whether to recognize or enforce foreign judgments. International judicial cooperation rests on mutual trust and the cross-border effectiveness of judgments, but that trust is not unlimited.

The 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, adopted under the auspices of The Hague Conference on Private International Law (HCCH), includes public policy among the grounds for refusing recognition or enforcement, alongside procedural safeguards and other protections. The Convention establishes a framework that does not prevent other instruments or domestic law from allowing broader recognition.

As Aguilar Navarro (1956) explains, public policy becomes relevant after the conflict-of-laws rule has identified the applicable foreign substantive law. The foreign law may then be subject to an additional review under the forum's public policy, and its application may be governed by a procedure different from that used when the forum's own law applies.

4 NORMATIVE INTERRELATION: *IUS COGENS AND ERGA OMNES* OBLIGATIONS

A full understanding of international protection requires examining the relationship between two closely related but doctrinally distinct concepts: *ius cogens* and obligations *erga omnes*.

4.1 THE *IUS COGENS*

Recognition of and compliance with peremptory norms of general international law (*ius cogens*) are fundamental to the international legal order because such norms protect values from which no derogation is permitted.

Strictly speaking, *ius cogens* refers to peremptory norms of general international law. These norms have become increasingly prominent in the international community's legal agenda and are contributing to qualitative changes in contemporary international law for both conceptual and systemic reasons. This development has unfolded over time through the work of legal scholars, international courts and tribunals, and, more recently, the International Law Commission (Gutiérrez Espada, 2021).

The Vienna Convention on the Law of Treaties (1969, art. 53) states: *"For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which may be modified only by a subsequent norm of general international law having the same character."*

Peremptory norms of general international law (*ius cogens*) occupy a special position in the international legal order. Under Articles 53 and 64 of the Vienna Convention on the Law of Treaties, a treaty that conflicts with a peremptory norm may be void or become void, depending on the circumstances specified in those provisions. The consequences of violations involving other conduct or acts must be determined under the applicable international rules and the relevant regime of responsibility.

The practice of the Inter-American Court of Human Rights, the United Nations Human Rights Committee, and the European Court of Human Rights also demonstrates that international bodies may assess the validity of reservations to human rights instruments. A reservation does not become legally valid merely because other States parties have accepted it; its validity must be assessed under the applicable legal standards, including any relevant rules of *ius cogens* (Rojas Amandi, 2022).

Quispe Remón (2010) emphasizes that respect for the person and human dignity lies at the heart of international human rights law and forms part of the values considered fundamental to the international community, including in discussions of *ius cogens*.

4.2 OBLIGATIONS *ERGA OMNES*.

The Latin expression *erga omnes* means "toward all." In international law, obligations *erga omnes* are obligations owed to the international community as a whole, rather than solely to a particular State. They should not be confused with the procedural rights or standing that may allow States to invoke responsibility for breaches of such obligations.

Olvera Amado (2025) explains that the concept responds to the need to address breaches of obligations owed to the international community, rather than obligations operating only on a bilateral basis. Such obligations protect collective interests and may arise from multilateral treaties or from rules binding on the international community as a whole.

When discussing *erga omnes obligations within the framework of international law, the obiter* is often used as a reference. The International Court of Justice (ICJ) *issued a ruling* in the Barcelona Traction case. In this ruling, the ICJ characterizes the *erga omnes* obligation by

enumerating two constitutive elements: they are contracted before the entire international community, and they incorporate values essential to the international community (they protect essential rights), this being the feature that justifies that all States have a legal interest in their fulfillment (Cebada Romero, 2002).

When dealing with an *erga omnes* obligation, the protected legal interest does not belong exclusively to a particular State, but rather concerns the entire international community. This concept allows us to link the phenomenon to international public order: if international law recognizes certain values as essential to that community, these become a key source for defining the material content of a public order focused on the protection of the individual.

Drnas de Clément (2002) distinguishes obligations *erga omnes* from peremptory norms of *ius cogens*. Although the concepts are related, they are not identical: obligations *erga omnes* are owed to the international community, while *ius cogens* norms have a peremptory character from which no derogation is permitted.

The International Law Commission (2022) stated in Conclusion 17 of its report on the work of its 73rd session that peremptory norms of general international law (*ius cogens*) generate obligations towards the international community as a whole (*erga omnes* obligations), in relation to which all States have a legal interest.

5 HUMAN RIGHTS AS THE MATERIAL CONTENT OF PUBLIC ORDER

The relationship between public policy and human rights becomes particularly apparent because many internationally protected rights reflect fundamental values of the contemporary legal order.

There is no universally agreed, exhaustive list of rights that automatically form part of every State's international public policy. Nevertheless, several rights are especially relevant, including:

human dignity;

equality;

the prohibition of discrimination;

the prohibition of torture;

the prohibition of slavery;

the right to a fair trial;

the right to private and family life;

the right to identity;

the rights of children and adolescents.

This does not imply that all these rights operate in the same way, nor that any conflict related to them automatically triggers the public policy exception. The key lies in determining when a violation reaches sufficient gravity to justify an exception to an ordinary obligation to recognize, cooperate with, or apply foreign law. In this analysis, the principle of proportionality is fundamental.

The table below links the human rights identified above with selected international instruments that protect them.

Human right	International legal instruments	Relevant provisions	Protection afforded
Human dignity	Universal Declaration of Human Rights (UDHR); International Covenant on Civil and Political Rights (ICCPR); American Convention on Human Rights (ACHR); European Convention on Human Rights (ECHR); Charter of Fundamental Rights of the European Union.	UDHR, arts. 1 and 22; ICCPR, Preamble and art. 10; ACHR, arts. 5(2) and 11(1); ECHR, arts. 3 and 8; EU Charter, arts. 1 and 3.	These instruments recognize the inherent dignity of every person and require respect for human integrity and human worth.
Equality	UDHR; ICCPR; ACHR; ECHR and Protocol No. 12; Charter of Fundamental Rights of the European Union.	UDHR, arts. 1 and 7; ICCPR, arts. 3 and 26; ACHR, arts. 1(1) and 24; ECHR, art. 14 and Protocol No. 12, art. 1; EU Charter, art. 20.	These instruments recognize equality in dignity and rights and equal protection under the law.
Prohibition of discrimination	UDHR; ICCPR; International Convention on the Elimination of All Forms of Racial Discrimination; ACHR ; ECHR, art. 14 and Protocol No. 12, art. 1; Charter of Fundamental Rights of the EU, art. 21; Revised European Social Charter, art. E.	UDHR, art. 2; ICCPR, arts. 2.1 and 26; Convention against Racial Discrimination, arts. 1 and 2; ACHR, art. 1.1; ECHR, art. 14 and Protocol No. 12, art. 1; Charter of the EU, art. 21; Revised European Social Charter, art. E.	They prohibit discriminatory distinctions and establish obligations to guarantee the exercise of rights without discrimination.
Prohibition of torture	UDHR; ICCPR; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; ACHR; Inter-American Convention to Prevent and Punish Torture. ECHR, art. 3; Charter of Fundamental Rights of the EU, art. 4.	UDHR, art. 5; ICCPR, art. 7; Convention against Torture, arts. 1, 2 and 16; ACHR, art. 5.2; ECHR, art. 3; Charter of the EU, art. 4.	They prohibit torture and cruel, inhuman or degrading treatment or punishment, and establish duties of prevention and punishment.

Human right	International legal instruments	Relevant provisions	Protection afforded
Prohibition of slavery	UDHR; ICCPR; ACHR; Slavery Convention and Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery. ECHR, art. 4; Charter of Fundamental Rights of the EU, art. 5.	UDHR, art. 4; ICCPR, art. 8; ACHR, art. 6; Slavery Convention, arts. 1 and 2; ECHR, art. 4; EU Charter, art. 5.	They prohibit slavery, servitude, and various forms of exploitation linked to these practices.
Right to a fair trial	UDHR; ICCPR; ACHR. ECHR, arts. 6 and 7; Charter of Fundamental Rights of the EU, art. 47.	UDHR, arts. 10 and 11; ICCPR, arts. 14 and 15; ACHR, arts. 8 and 25; ECHR, arts. 6 and 7; Charter of the EU, art. 47.	They guarantee access to competent and impartial courts, judicial guarantees, the presumption of innocence and effective remedies.
Right to private and family life	UDHR; ICCPR; ACHR; Convention on the Rights of the Child (CRC). ECHR, art. 8; Charter of Fundamental Rights of the EU, art. 7.	UDHR, art. 12; ICCPR, art. 17; ACHR, arts. 11 and 17; CRC, art. 16. ECHR, art. 8; EU Charter, art. 7.	They protect against arbitrary interference with private life, family, home and correspondence, and recognize the protection of the family.
Right to identity	Convention on the Rights of the Child; ACHR; ICCPR. Charter of Fundamental Rights of the EU, arts. 7 and 24; European Convention on Nationality (1997), arts. 4 and 6, where relevant.	CRC, arts. 7 and 8; ACHR, art. 18; ICCPR, art. 24.2. Charter of the EU, arts. 7 and 24; European Convention on Nationality, arts. 4 and 6.	They protect birth registration, name, nationality and, especially in childhood, the preservation of identity.
Rights of children and adolescents	Convention on the Rights of the Child; ICCPR; International Covenant on Economic, Social and Cultural Rights (ICESCR); ECHR, art. 8; Charter of Fundamental Rights of the EU, arts. 24 and 32; Revised European Social Charter, art. 17.	CRC, arts. 2, 3, 6, 12, 19, 28 and 31; ICCPR, art. 24; ICESCR, art. 10.3. ECHR, art. 8; EU Charter, arts. 24 and 32; Revised European Social Charter, art. 17.	They recognize the special protection of children, the best interests of the child, the right to be heard, and rights related to life, development, education, and protection against violence.

Source. - Information obtained from the official pages of the Conventions and Treaties, which can be consulted in the list of references.

Because the relevant scholarship, legislation, and treaties are extensive and warrant specialized treatment, this article provides only a brief overview and discusses selected illustrative cases. A more detailed analysis is left for research devoted specifically to these fundamental rights.

5.1 HUMAN DIGNITY.

Human dignity is one of the principal foundations of the contemporary conception of human rights.

This principle provides a normative basis for rejecting the justification of certain violations merely because they occur under a foreign legal system. Human dignity does not, by itself, turn every difference between legal rules into a public policy issue. Rather, it helps identify areas in which international law affords individuals special protection and provides a criterion for determining when a legal consequence is intolerable from the standpoint of individual rights.

Dignity is particularly relevant in cases involving exploitation, slavery, human trafficking, torture, certain forms of discrimination, and practices that reduce a person to a mere object of legal relations.

In the theory of values, natural values are understood as values inherent in human nature, irrespective of whether they serve another value. Within the contemporary rule of law, such values may include physical integrity, dignity, honor, and life, together with the conditions needed for security (Elgul, 2014).

A foreign law should therefore not be applied where its specific effects would violate a person's dignity. The challenge is to avoid invoking dignity in an excessively subjective way; its application should be grounded in constitutional provisions, international treaties, and established case law.

5.1.1 *ILLUSTRATIVE CASES*

A) Tyrer v. the United Kingdom (European Court of Human Rights, 1978).

In this case, a teenager was subjected to judicial corporal punishment. The Court held that the punishment amounted to degrading treatment contrary to Article 3 of the European Convention on Human Rights. The case illustrates how human dignity limits State punishment and how standards of protection may evolve with changing social conditions.

The Court's reasoning made clear that a violation of Article 3 does not necessarily require severe physical pain; treatment may also violate the provision by humiliating a person or undermining their physical or moral integrity and dignity.

B) González et al. ("Cotton Field") v. Mexico (Inter-American Court of Human Rights, 2009).

The case concerned the disappearance and murder of three women in Ciudad Juárez and deficiencies in the authorities' search and investigation. The Court examined gender-based violence, stereotypes, and the lack of effective protection, illustrating how the protection of dignity requires measures to prevent violence and combat impunity.

The Court found that extreme violence against women was not an isolated phenomenon but reflected a pattern of structural discrimination based on gender, which violated their dignity as human beings.

The judgment became an important precedent in the Inter-American system by strengthening the protection of human dignity in the context of gender-based violence and structural discrimination.

5.2 EQUALITY AND NON-DISCRIMINATION.

The Inter-American Court of Human Rights has recognized equality and non-discrimination as fundamental principles of human rights protection in both international and domestic law. States must refrain from adopting discriminatory rules, eliminate discriminatory provisions from their legal systems, and combat discriminatory practices.

In Advisory Opinion OC-18/03, the Inter-American Court of Human Rights emphasized the fundamental character of equality and non-discrimination and addressed their status under international law, including their relationship to *ius cogens* and obligations *erga omnes* (Inter-American Court of Human Rights, 2003).

This principle is relevant to private international law when a court must determine whether to recognize a legal situation created abroad. A difference between foreign and domestic rules does not, in itself, constitute discrimination. However, if applying or recognizing the foreign rule would produce discriminatory treatment incompatible with fundamental human rights standards, the public policy exception may be justified.

Sánchez-Cordero (2013) argues that equality follows from the unity of human nature and is inseparable from human dignity. Treating a group as superior and granting it privileges, or treating a group as inferior and denying it equal enjoyment of rights, is incompatible with that dignity. Differences in treatment must not be based on distinctions that have no legitimate justification.

Equality therefore helps prevent the acceptance of foreign legal effects that impose arbitrary or disproportionate distinctions.

Non-discrimination is particularly relevant in cross-border disputes involving personal status, marriage, parentage, succession, religion, nationality, and other aspects of personal status.

5.2.1 *ILLUSTRATIVE CASES*

A) D.H. and Others v. the Czech Republic (European Court of Human Rights, 2007).

The Grand Chamber of the European Court of Human Rights examined whether placing Roma children in special schools amounted to indirect discrimination. It found that formally neutral arrangements had a disproportionate adverse impact on Roma children (Carrasco Berge, n.d.).

Although the special-school system was intended to address educational needs, the Court questioned the simplified curriculum and resulting segregation. The assessment tests did not adequately account for the cultural circumstances of Roma children and risked being biased. In light of the community's disadvantaged position, the Court also questioned whether the parents could fully understand the consequences of their consent and held that the right to be free from racial discrimination could not be waived in those circumstances.

The case illustrates how an apparently neutral policy can undermine substantive equality through exclusionary and segregating effects.

B) Atala Riffo and Daughters v. Chile (Inter-American Court of Human Rights, 2012).

The case of Atala Riffo and Daughters v. Chile is a landmark judgment of the Inter-American Court of Human Rights. It concerned discrimination based on sexual orientation and arbitrary interference with Ms. Atala Riffo's private and family life. Chilean courts relied on

prejudicial assumptions about her sexual orientation when deciding custody of her daughters (Palacios Valencia, 2016).

The Inter-American Court held Chile internationally responsible, finding that the domestic courts had relied on prejudices and stereotypes and had violated, among other rights, the right to equality and non-discrimination.

Because the mother's sexual orientation had been used as a reason to alter custody, the Court held that sexual orientation was protected by the American Convention and that prejudice alone could not justify an adverse State decision.

5.3 THE PROHIBITION OF TORTURE.

The prohibition of torture and of inhuman or degrading treatment is one of the most firmly established principles of international human rights law.

In its case law, the European Court of Human Rights has distinguished among torture, inhuman treatment, and degrading treatment (Nash Rojas, 2009).

Cecilia Medina, as cited by Nash Rojas (2009), observes that the European Court's case law reveals the difficulty of identifying the precise criteria used to determine whether conduct is sufficiently severe to constitute torture. The victim's circumstances and the consequences of the acts may be relevant to that assessment.

The prohibition of torture is especially significant in this context because the International Law Commission has identified it as a peremptory norm of general international law. It is therefore not subject to the differing domestic conceptions of individual States and is recognized as a rule of *ius cogens.*

The non-derogable character of the prohibition has been reaffirmed by treaty-monitoring bodies, human rights courts, and international criminal tribunals. The prohibition of torture and other ill-treatment cannot be justified by political or social necessity, and national security cannot override the right not to be subjected to torture or ill-treatment (Pino Gamero, 2017).

5.3.1 *ILLUSTRATIVE CASES*

A) Ireland v. the United Kingdom (European Court of Human Rights, 1978).

The Court examined interrogation techniques used against detainees, including hooding, prolonged forced standing, exposure to continuous loud noise, sleep deprivation, and restrictions on food and water. Under the standards applied at the time, it classified the techniques as inhuman and degrading treatment rather than torture.

In 2014, Ireland sought revision of the judgment following the broadcast of the documentary *The Torture Files*. In 2018, the Court refused to reopen the case by a vote of six to one, relying on the standards reflected in its 1970s case law. In 2021, the UK Supreme Court unanimously stated that the treatment in question would be regarded as torture under contemporary standards, illustrating the evolution of the distinction between torture and inhuman or degrading treatment.

B) Cantoral Benavides v. Peru (Inter-American Court of Human Rights, 2000).

Luis Alberto Cantoral Benavides was arrested, mistreated, and convicted in proceedings that failed to meet basic guarantees. He was held incommunicado for several days and subjected to severe physical and psychological abuse in an effort to force him to sign a self-incriminating statement concerning terrorism charges.

The Court found the State internationally responsible for violations of personal integrity and due process. The case reaffirms the incompatibility of torture with human dignity and the rule of law.

5.4 THE PROHIBITION OF SLAVERY.

Traditional slavery was described as "reducing a person to the status of a commodity," since slave owners could treat them as part of their property, like livestock or furniture, and sell or transfer them to third parties. In the modern context, the conditions of a person subjected to slavery are fundamental in determining the practices that constitute slavery, including: i) the degree of restriction of the person's inherent right to freedom of movement; ii) the degree of control over the person's personal belongings; and iii) the existence of informed consent and full understanding of the nature of the relationship between the parties (Weissbrodt, 2002).

Contemporary protection against slavery must also be understood in conjunction with international efforts to combat human trafficking and other forms of exploitation.

These protections are of fundamental importance. States must protect not only identified victims but also people at risk, including through appropriate measures addressing businesses and regulatory frameworks that facilitate or tolerate trafficking and exploitation (Lucea Sáenz, 2016).

5.4.1 *ILLUSTRATIVE CASES.*

A) Siliadin v. France (European Court of Human Rights, 2005).

A young Togolese woman was subjected to domestic exploitation for years, without genuine freedom or adequate remuneration. The Court found a violation of Article 4 of the European Convention on Human Rights and emphasized the State's obligation to maintain effective legal mechanisms against servitude and forced labor.

The Court did not find that the circumstances amounted to slavery in a strict sense, because the applicant was not treated as an object of ownership; rather, the facts constituted servitude and forced labor (International Training Centre of the ILO, 2005).

B) Rantsev v. Cyprus and Russia (European Court of Human Rights, 2010).

Nikolay Rantsev, the father of Oxana Rantseva, argued that the circumstances of his daughter's death had not been properly investigated and that the Cypriot authorities had failed to protect her while she was alive. He also alleged that the authorities had failed to hold accountable those responsible for her sexual exploitation and ill-treatment. The European Court of Human Rights found that Cyprus had failed to protect her adequately from trafficking and unlawful detention and had not properly investigated her death. It also found that Russia had failed to investigate adequately the circumstances in which she had been trafficked from Russia to Cyprus (The Open University, n.d.).

The Court interpreted Article 4 of the Convention as encompassing human trafficking and recognized positive obligations to prevent trafficking, investigate suspected cases, and cooperate across borders.

5.5 THE RIGHT TO A FAIR TRIAL.

In private international law, the right to a fair trial is particularly relevant when a court is asked to recognize or enforce a foreign judgment. International judicial cooperation presupposes a degree of trust in other States' courts, but that trust is not absolute.

If foreign proceedings fail to respect essential procedural guarantees—for example, the right to be heard, the right to a defense, or the requirement of an impartial tribunal—the requested State may face a conflict with its public policy.

Cifuentes Muñoz, as cited by Paredes Montiel (2022), emphasizes that judicial and administrative procedures should be conducted rationally and on an equal footing. This requires due process, appropriate interim measures, reasoned decisions, and effective enforcement. The State must resolve claims impartially, within a reasonable time, and through reasoned decisions based on the applicable legal framework.

5.5.1 *Illustrative cases.*

A) Barberà, Messegué and Jabardo v. Spain (European Court of Human Rights, 1988).

The case arose after Catalan businessman Josep Maria Bultó Marqués died in Barcelona in an explosion. Josep Barberà, Antoni Messegué, and Ferran Jabardo were arrested and convicted. They challenged the fairness of the proceedings, arguing that the convictions relied heavily on extrajudicial statements allegedly obtained through torture or ill-treatment and that the evidence had not been adequately tested at trial.

The applicants argued that defects in the assessment of evidence and other procedural irregularities had compromised the fairness of the trial and left them without an effective opportunity to defend themselves. The Court found a violation of the right to a fair trial.

B) Castillo Petruzzi et al. v. Peru (Inter-American Court of Human Rights, 1999).

Four Chilean nationals were tried by military courts in terrorism-related proceedings without adequate guarantees of independence and impartiality. The Court held that the proceedings violated judicial guarantees and the right to a defense.

The Court found that trying civilians before military courts, using so-called "faceless judges," restricting access to counsel, and applying the offense of treason against the homeland ambiguously to foreign nationals violated the right to a fair trial.

5.6 The Right to Private and Family Life.

The rights to private and family life protect personal autonomy, identity, intimacy, and family relationships from arbitrary interference. International recognition of these rights requires States, depending on the circumstances, both to refrain from unjustified interference and to take appropriate protective measures.

Public policy has sometimes been used as an instrument of State control. When asked to recognize family or personal situations created abroad—such as polygamous marriages, surrogacy arrangements, or international adoptions—courts may invoke public policy to refuse recognition if they consider the situation incompatible with fundamental legal principles. Such decisions must nevertheless be assessed in light of the rights and interests involved.

Private autonomy—the ability to shape one's legal sphere and manage one's own affairs—is an important condition for personal self-realization. As Díez-Picazo, cited by Barrio Gallardo (2016), argues, a person's dignity is recognized in part by allowing them to regulate their own sphere of interests.

5.6.1 *Illustrative cases.*

A) Niemietz v. Germany (European Court of Human Rights, 1992).

A judge in Bavaria received a threatening or insulting letter signed with the pseudonym "Klaus Wegner." The authorities suspected that the author might be connected to a criminal case and ordered a search of lawyer Gottfried Niemietz's office in Freiburg to find documents that could identify the sender. During the search, the police examined client files and professional correspondence.

The Court held that private life is not confined to the home and may include professional activities and relationships. Although the search had a legal basis and pursued a legitimate aim, the judgment clarified the scope of Article 8 of the European Convention on Human Rights.

B) Schalk and Kopf v. Austria (European Court of Human Rights, 2010).

A same-sex couple sought recognition of their relationship as a marriage. The Court acknowledged that a same-sex couple may enjoy family life protected by Article 8, but found no violation of the Convention in the circumstances before it concerning access to marriage.

The judgment marked an important step in the development of international protection for family relationships by recognizing that a stable same-sex couple may enjoy "family life" for the purposes of Article 8.

5.7 THE RIGHT TO IDENTITY.

The right to identity is a fundamental human right whose legal protection has developed in a particular historical context. Identity develops throughout a person's life, beginning at birth and continuing until death. Social relationships help shape and consolidate individual identity. Identity may therefore be understood as a basic assumption of human interaction: in everyday life, we generally take for granted that both we and the people with whom we interact have our own identities (UNICEF, 2009).

Identity may include a person's name, nationality, parentage, personal characteristics, and, in some circumstances, elements of family and personal history.

Identity is not merely a consequence of birth registration; it develops over time. Children construct their identities through relationships with their families, their histories, and the cultural environments in which they grow up.

Álvarez (2016) explains that the right to identity is connected with the effective enjoyment of civil and political rights recognized in domestic law and international instruments, including rights relating to nationality, name, birth registration, and legal personality. These elements of identity support people's ability to exercise other rights and assume legal obligations.

A human-rights-oriented international public policy should not operate as a barrier to personal identity. Rather, it should be capable of protecting dignity, parentage, and a person's name in a globalized world. An absolute refusal to recognize elements of identity may create legal uncertainty incompatible with fundamental rights.

5.7.1 *ILLUSTRATIVE CASES.*

A) The Yean and Bosico Girls v. the Dominican Republic (Inter-American Court of Human Rights, 2005).

Dominican authorities refused to issue birth certificates to two girls of Haitian descent, leaving them at risk of statelessness and obstructing the exercise of other rights. The Court found the State responsible for violations relating to nationality, legal personality, name, and equality.

The State was ordered to adopt simple, accessible, and non-discriminatory birth-registration procedures, including procedures for late registration. The judgment also illustrates how the lack of legal identity can impede access to other rights, including education, health care, freedom of movement, and judicial protection.

B) Gelman v. Uruguay (Inter-American Court of Human Rights, 2011).

María Claudia García was detained and disappeared during Uruguay's dictatorship; her daughter was abducted and raised under a different identity. The Court examined the enforced disappearance, the falsification of the child's identity, and the failure to conduct an effective investigation.

The Inter-American Court treated identity as connected with name, nationality, family relationships, and legal recognition. The case also highlights the importance of knowing one's origins and family ties, and the continuing consequences of concealing or distorting a person's identity.

The case demonstrates the importance of identity and knowledge of family origins in securing reparation and justice.

5.8 THE RIGHTS OF CHILDREN AND ADOLESCENTS.

The best-interests-of-the-child principle is a fundamental consideration in decisions affecting children and adolescents. Its relevance to international public policy depends on the legal context, the rights at issue, and the applicable international obligations. It should not be characterized as a peremptory norm of general international law without specific legal support.

The best interests of the child must be a primary consideration in decisions affecting children and adolescents. The principle's implications for international public policy depend on the circumstances and the international obligations applicable to the State concerned.

The United Nations Committee on the Rights of the Child has explained that child development is a holistic concept encompassing physical, mental, spiritual, moral, psychological, and social development.

Cançado-Trindade, as cited by Rea-Granados (2016), emphasizes that children's rights complement other branches of public international law. Their interaction with international human rights law and other fields supports recognition of the special character of human rights treaties. Interpretation has played a significant role in the development of international human rights law and in keeping these instruments effective and relevant.

In this area, international public policy must consider not only adults' interests or the abstract compatibility of national laws, but also the effective protection of children and adolescents.

5.8.1 *ILLUSTRATIVE CASES.*

A) Villagrán Morales et al. v. Guatemala (Inter-American Court of Human Rights, 1999).

Known as the "Street Children" case, this case concerned the abduction, torture, and killing of young people by State agents.

Five young people living on the streets of Guatemala City, three of whom were minors, were kidnapped, tortured, and extrajudicially executed by State security agents.

The Inter-American Court made important contributions to the protection of children's rights by interpreting the right to life broadly, beyond the prohibition of arbitrary deprivation of life. It held that States must also ensure the conditions necessary for a dignified life, including

conditions that support the physical, mental, spiritual, moral, and social development of vulnerable or homeless children and young people.

The judgment also clarified the scope of Article 19 of the American Convention on Human Rights: children are entitled to special protection, which gives rise to heightened positive obligations on the State. Authorities must not only refrain from abuse but also adopt measures to prevent threats to the integrity and survival of marginalized or vulnerable children.

The Court also emphasized the duty to prevent and investigate violations and found Guatemala responsible for failing to exercise due diligence in responding to crimes against disadvantaged children. Impunity for such crimes aggravates the State's international responsibility.

B) Fornerón and Daughter v. Argentina (Inter-American Court of Human Rights, 2012).

After the child's birth, her mother placed her with a prospective adoptive family without the consent of her biological father, Leonardo Fornerón. After learning of the arrangement and establishing paternity through DNA testing, Fornerón began a lengthy legal effort to regain custody. For more than 12 years, the Argentine authorities denied his request and obstructed visitation, while procedural delays helped entrench the child's de facto relationship with the adoptive family.

The Court found violations of due process, judicial protection, and protection of family life, as well as violations affecting the child's rights. It held that the State had relied on an abstract application of the child's best interests to validate irregularities concerning her origins and had allowed socioeconomic stereotypes to disadvantage the biological father. The delays prevented the child from fully exercising her right to identity and family life and made restoration of the father-daughter relationship increasingly difficult.

6 CURRENT TENSIONS, LIMITS AND CHALLENGES

International public order is a relevant legal concept for understanding limits on State power and the autonomy of States in their relations with one another. Its relationship with human rights nevertheless raises conceptual and practical tensions. Although certain fundamental principles impose non-derogable limits on State action, they operate within an international system characterized by State sovereignty, fragmented jurisdiction, and unequal capacities to fulfill international obligations.

In private international law, the international public policy exception limits the application of foreign law where its effects conflict with the forum's fundamental principles. The challenge is to ensure that this legitimate safeguard does not become a pretext for legal isolation, arbitrariness, or human rights violations.

Contemporary challenges include distinguishing international public policy from *ius cogens*; addressing national security and emergency powers; responding to artificial intelligence and digital technologies; and protecting future generations.

6.1 THE UNIVERSALITY OF HUMAN RIGHTS AND STATE SOVEREIGNTY

The tension between State sovereignty and international oversight is one of the most persistent debates in the international order. Sovereignty is essential to the organization of the international community, but it does not exempt States from performing treaties in good faith or from complying with international law.

Friction arises when governments consider external demands to interfere with their autonomy in sensitive areas such as criminal justice, immigration, family law, education, or

public safety. Such disputes do not always pit legality against illegality; they may reflect genuine disagreements about how overlapping obligations should be interpreted and reconciled.

Inter-American case law illustrates this development. In Almonacid Arellano et al. v. Chile (Inter-American Court of Human Rights, 2006), the Court examined an amnesty that prevented the investigation of serious human rights violations. The case contributed to the development of the doctrine of conventionality control and the principle that domestic judicial authorities must take the State's international obligations into account.

Conventionality control does not eliminate the jurisdiction of domestic courts, nor does it automatically turn every international judgment or advisory opinion into a universally and immediately applicable rule. Its scope must be assessed by examining the relevant treaty, the powers of the international body, and the circumstances of the domestic legal system.

6.2 National Security, States of Emergency, and Non-Derogable Limits

Armed conflict, terrorism, public-health crises, and other emergencies may require extraordinary measures. An emergency, however, does not create a law-free zone.

Article 4 of the International Covenant on Civil and Political Rights permits derogations from certain obligations only under strict conditions. There must be a public emergency threatening the life of the nation; the emergency must be officially proclaimed; measures must be strictly required by the situation and consistent with other international obligations; and they must not involve discrimination solely on specified grounds. Article 4 also identifies rights from which no derogation is permitted under the Covenant, including the prohibition of torture and slavery and the prohibition on imprisonment merely for inability to fulfill a contractual obligation, as well as other rights listed in the provision.

The prohibition of torture imposes an especially strict limit: it cannot be justified by a terrorist threat, armed conflict, or a need to obtain information.

6.3 Artificial Intelligence, Surveillance, and the Transformation of Human Rights

Digital technologies and artificial intelligence create challenges that cross national borders. Facial-recognition systems, mass surveillance, profiling and classification algorithms, automated content moderation, and data-driven decision-making can affect privacy, freedom of expression, equality, access to justice, and protection against discrimination.

The Office of the United Nations High Commissioner for Human Rights has identified risks associated with new and emerging digital technologies, including artificial intelligence, internet restrictions, and discrimination, and has emphasized the need to ensure that digital transformation remains compatible with human rights (OHCHR, 2024).

The central legal question is not whether technology is inherently good or bad for human rights, but what concrete safeguards should govern its development, use, and oversight.

Artificial intelligence systems are often developed and used through complex networks involving States, technology providers, private companies, intermediaries, and users. This distribution of roles can make it difficult to identify responsibility when harm occurs. A State's international responsibility will depend on the applicable rules, including attribution and any obligations to prevent, regulate, or protect.

The growth of the digital environment requires renewed consideration of the balance between technological innovation and individual freedom. Constant connectivity may facilitate many activities, but it can also enable surveillance, increase work-related pressure, and undermine privacy.

The protection of privacy, decent working conditions, health, and personal freedom may support legal guarantees of disconnection. Those foundations do not, by themselves, establish an autonomous universal right to digital disconnection with identical content in every legal system.

The international challenge is to develop common principles of protection without reaching conclusions that should depend on the evolution of legal rules, State practice, and judicial decisions.

6.4 Inequality, Childhood, and Vulnerable Groups

The effects of international public policy are not felt equally by everyone. Poverty, discrimination, disability, gender, age, displacement, and digital exclusion may increase exposure to human rights violations and reduce access to remedies. Formal equality is insufficient where social barriers prevent some groups from effectively exercising their rights.

The protection of international public order cannot therefore be assessed solely by reference to the abstract recognition of rights. It is also necessary to consider whether institutions provide effective protection to people who face the greatest barriers to exercising those rights.

An adequate legal response combines clear prohibitions, positive protective measures, access to justice, and policies designed to reduce structural barriers. The universality of human rights requires effective protection, including for people with limited influence over public decision-making.

6.5 Defining the Category and Preventing Its Overuse

A human-rights-oriented conception of international public order carries risks of its own. A concept designed to protect fundamental principles may be used too broadly to justify disproportionate restrictions, arbitrary interference, or interpretations without a sufficient legal basis.

The work of the International Law Commission (2022) helps clarify the legal criteria for identifying peremptory norms. Such criteria can help prevent the concept from becoming a rhetorical label applied indiscriminately to any dispute. The distinction matters when considering emerging rights, such as a right to disconnect, and developing issues, such as obligations relating to artificial intelligence. The fact that an interest deserves legal protection does not necessarily mean that it already has the status of a peremptory norm.

The selective invocation of human rights to justify political pressure or sanctions against particular States, while overlooking comparable abuses elsewhere, may undermine the legitimacy of international protection. This does not mean that every differentiated international response is unlawful or that all responses must be identical. Rather, each intervention must be assessed in light of its legal basis, aims, effects, and the applicable international obligations. Political argument must remain distinct from the legal determination of responsibility, and the rhetoric of protection must not replace legal analysis.

7 CONCLUSIONS

This analysis shows that international public policy has acquired renewed significance in contemporary international law. It retains its technical character as an exceptional mechanism of private international law, particularly in relation to the application of foreign law and the recognition and enforcement of foreign judgments, while its substantive content is increasingly influenced by international human rights law. This development gives the

concept a cross-cutting dimension, but it cannot be understood solely through the traditional objective of protecting the forum State's fundamental legal principles.

The international instruments and case law considered here show that protecting fundamental rights requires attention not only to the formal content of legal rules but also to their practical effects on individuals. Cases involving gender-based violence, discrimination, torture, slavery and human trafficking, judicial guarantees, identity, and child protection demonstrate that a situation recognized as lawful in one legal system is not automatically compatible with international human rights standards. The public policy exception can help prevent cross-border cooperation from producing, perpetuating, or legitimizing serious violations.

For this mechanism to remain effective, its exceptional character must be preserved and its use justified by legality, necessity, and proportionality. Not every difference between national laws, or every possible interference with a human right, justifies refusing to apply foreign law or to recognize a judgment. Intervention requires a sufficiently serious incompatibility with clearly identified fundamental principles. Otherwise, international public policy may become an instrument of legal unilateralism through which States project their own political, social, or moral views onto foreign situations, undermining cooperation, legal certainty, and respect for legal pluralism.

Contemporary challenges require the content and limits of international public policy to be assessed dynamically but with conceptual precision. Tensions between sovereignty and the universality of human rights, emergency measures adopted in the name of national security, artificial intelligence, digital surveillance, and the protection of vulnerable groups all raise new questions. Digital technologies make it particularly important to strengthen safeguards for privacy, equality, freedom, and access to justice. Yet a legally protectable interest is not, for that reason alone, a peremptory norm of international law or a universally established component of international public policy. The same caution applies to emerging rights and proposed guarantees of digital disconnection.

International human rights protection must be distinguished from the selective use of human rights for political legitimation. Invoking international public policy requires identifying the applicable rules, specifying the obligations binding on States, and justifying the legal consequences of intervention. Serious violations may call for differentiated responses, but those responses must rest on verifiable legal grounds rather than discretionary assessments or political expediency. Such rigor is essential to preserve the legitimacy of the international human rights system and prevent arbitrary application of its principles.

Ultimately, international public policy can play an important role in the transnational protection of human rights without abandoning its legal nature or expanding its scope indiscriminately. Its legitimacy depends on reconciling three requirements: international legal cooperation, effective protection of human dignity and human rights, and respect for legal pluralism. The aim is not to turn international public policy into a general instrument through which States claim normative superiority, but to preserve it as an exceptional, legally grounded, and proportionate safeguard against cross-border legal effects that are manifestly incompatible with the essential principles protecting individuals and the international community.

8 REFERENCES

Aguilar Navarro, M. (1956). Public order in private international law. Spanish Journal of International Law, 9(1/2), 335–380. Available at https://fernandezrozas.com/wp-content/uploads/2019/07/mariano-aguilar-navarro-el-orden-publi...-el-derecho-internacional-privado-2.pdf

Álvarez, RM (2016). Right to identity. In Institute of Legal Research of the UNAM (Ed.), Selected topics on vulnerability and violence against children and adolescents (pp. 115-130). National Autonomous University of Mexico. Available at https://archivos.juridicas.unam.mx/www/bjv/libros/9/4242/8.pdf

American Convention on Human Rights. (1969). Organization of American States. Available at https://www.oas.org/dil/esp/tratados_B-32_Convencion_Americana_sobre_Derechos_Humanos.htm

Barrio Gallardo, A. (2016). Private autonomy and marriage. Reus Publishing House. Available at https://www.editorialreus.es/media/pdf/9788429019490_pp_autonomia-privada-y-matrimonio.pdf

Carrasco Bergé, D. (n.d.). Continental protection systems: A comparative overview. Supreme Court of Justice of the Nation. Available at https://www.scjn.gob.mx/sites/default/files/transparencia/documentos/becarios/Daniela-Carrasco-Berge.pdf

Carrascosa González, J. (2008). International public order and negative externalities. Bulletin of the Ministry of the Presidency, Justice and Relations with the Courts, 62(2065), 2351–2378. Available at https://revistas.mjusticia.gob.es/index.php/BMJ/article/view/2705

Cebada Romero, A. (2002). The concepts of obligation erga omnes, jus cogens and grave violation in light of the ILC's new draft on State responsibility for wrongful acts. Electronic Journal of International Studies (REEI), (4). Available at https://reei.tirant.com/reei/es/article/view/4610

Committee on the Rights of the Child. (2003). General comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (UN Document CRC/GC/2003/5). United Nations. Available at https://www.refworld.org/es/leg/coment/crc/2003/36435

Council of Europe. (1999). Criminal Law Convention on Corruption (ETS No. 173). Available at https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=173

Inter-American Court of Human Rights. (2016). Inter-American Court of Human Rights Case Law Booklet No. 14: Equality and Non-Discrimination Available at https://www.corteidh.or.cr/sitios/libros/todos/docs/cuadernillo14.pdf

Drnas de Clément, Z. (2002). The mandatory rules of general international law (jus cogens): Substantive dimension. In Z. Drnas de Clément (Coord.), Studies in international law in homage to Professor Ernesto J. Rey Caro. Available at https://www.corteidh.or.cr/tablas/31463.pdf

Elgul, Gabriela Noemí. (2014). A trialist view of the IACHR ruling on gender violence: Analysis of the "IACHR. Case: "González et al. ("cotton field") v. Mexico. Judgment of November 16, 2009, based on the theory, the legal world and its horizons, of Werner Goldschmidt. Enfoques, 26(1), 129-145. Available at https://www.scielo.org.ar/scielo.php?script=sci_arttext&pid=S1669-27212014000100007&lng=es&tlng=es.

European Convention on Human Rights, as amended by Protocols Nos. 11 and 14, supplemented by Protocol No. 1 and Protocols Nos. 4, 6, 7, 12, 13, 15 and 16. (1950). Council of Europe. Available at https://www.echr.coe.int/documents/d/echr/convention_eng

European Court of Human Rights. (1978). Ireland v. the United Kingdom (Plenary, Application no. 5310/71). Available at https://hudoc.echr.coe.int/eng?i=001-165150

European Court of Human Rights. (1978). Tyrer v. the United Kingdom (Application no. 5856/72). Available at https://archive.crin.org/en/library/legal-database/tyrer-v-united-kingdom.html

European Court of Human Rights. (1988). Barberà, Messegué and Jabardo v. Spain (Plenary, Applications nos. 10588/83, 10589/83 and 10590/83). Available at https://hudoc.echr.coe.int/eng?i=001-164751

European Court of Human Rights. (1992). Niemietz v. Germany (Chamber, Application no. 13710/88). Available at https://hudoc.echr.coe.int/eng?i=001-57887

European Court of Human Rights. (2005). Siliadin v. France (Section II, Application no. 73316/01). Available at https://hudoc.echr.coe.int/eng?i=002-3763

European Court of Human Rights. (2007). DH and Others v. the Czech Republic (Grand Chamber, Application no. 57325/00). Available at https://hudoc.echr.coe.int/eng?i=001-139015

European Court of Human Rights. (2010). Rantsev v. Cyprus and Russia (Section First, Application no. 25965/04). Available at https://hudoc.echr.coe.int/spa?i=001-139059

European Court of Human Rights. (2010). Schalk and Kopf v. Austria (First Section, Application no. 30141/04). Available at https://hudoc.echr.coe.int/?i=001-139406

European Parliament. (2000). Charter of Fundamental Rights of the European Union. Available at https://www.europarl.europa.eu/charter/pdf/text_es.pdf

European Union. (2016). Charter of Fundamental Rights of the European Union. Official Journal of the European Union, C 202/389. Available at https://eur-lex.europa.eu/eli/treaty/char_2016/oj/spa

Gutiérrez Espada, C. (2021). From the long shadow of the « jus cogens. Editorial Comares. Transnational Law Notebooks, 14(1), 1248–1250. Available at https://dialnet.unirioja.es/servlet/articulo?codigo=8354446

Hoffmeister, F., and Kleinlein, T. (2019). International public order. A. Peters and R. Wolfrum (Eds.), Max Planck Encyclopedia of Public International Law. Oxford University Press. Available at https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1430

International Court of Justice. (n.d.). Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (New Application: 1962) – Case 50. Available at https://www.icj-cij.org/case/50

Inter-American Court of Human Rights. (1999). Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations, and Costs (Series C No. 52). Available at https://www.corteidh.or.cr/ver_ficha_tecnica.cfm?nId_Ficha=367&lang=es

Inter-American Court of Human Rights. (1999). Case of the "Street Children" (Villagrán -Morales et al.) v. Guatemala. Merits [Judgment]. Series C No. 63. Available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_63_esp.pdf

Inter-American Court of Human Rights. (2000). Case of Cantoral Benavides v. Peru. Merits (Series C No. 69). Available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_69_esp.pdf

Inter-American Court of Human Rights. (2003). Legal Status and Rights of Undocumented Migrants. (Advisory Opinion OC-18/03). Available at https://corteidh.scjn.gob.mx/buscador/doc?doc=opinionesConsultivas/OC_18.html

Inter-American Court of Human Rights. (2005). Case of the Girls Yean and Bosico v. Dominican Republic. Preliminary Objections, Merits, Reparations, and Costs (Series C No. 130). Available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_130_esp.pdf

Inter-American Court of Human Rights. (2006). Case of Almonacid Arellano et al. v. Chile (Preliminary Objections, Merits, Reparations, and Costs) [Judgment]. Series C No. 154. Available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_154_esp.pdf

Inter-American Court of Human Rights. (2011). Case of Gelman v. Uruguay. Merits and Reparations (Series C No. 221). Available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_221_esp1.pdf

Inter-American Court of Human Rights. (2012). Case of Atala Riffo and Daughters v. Chile. Merits, Reparations, and Costs (Series C No. 239). Available at https://corteidh.or.cr/docs/casos/articulos/seriec_239_esp.pdf

Inter-American Court of Human Rights. (2012). Case of Fornerón and Daughter v. Argentina. Merits, Reparations, and Costs [Judgment]. Series C No. 242. Available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_242_esp.pdf

International Law Commission. (2022). Chapter IV: Peremptory norms of general international law (jus cogens). In Report of the International Law Commission on the work of its seventy-third session (A/77/10, pp. 10–69). United Nations. Available at https://legal.un.org/ilc/reports/2022/english/chp4.pdf

International Training Center of the ILO. (2005). Siliadin v. France (Application No. 73316/01; European Court of Human Rights). Compendium of Court Decisions. Available at https://compendium.itcilo.org/es/compendium-decisions/tribunal-europeo-de-derechos-humanos-siliadin-c-francia-26-de-octubre-de-2005-solicitud-num-73316-01

López Zamora, L. (2014). Historia del Derecho Internacional y Orden Público Internacional. *Annuaire Brésilien de Droit International*, X, 11–38. Available at https://ssrn.com/abstract=2451720

Lucea Sáenz, A. (2016). Human trafficking or modern slavery: The importance of the European Court of Human Rights and the trafficking of women in the Rantsev case. Claves jurídicas. Aequalitas: Revista Jurídica de Igualdad de Género, 38, 6–19. Available at https://dialnet.unirioja.es/servlet/articulo?codigo=5601246

Mansilla y Mejía, ME (2014). Legal nature of public order in private international law. Annals of Jurisprudence, (261). National Autonomous University of Mexico, Institute for Legal Research. Available at https://revistas-colaboracion.juridicas.unam.mx/index.php/anales-jurisprudencia/article/view/1906

Nash Rojas, C. (2009). Scope of the concept of torture and other cruel, inhuman and degrading treatment. Yearbook of Latin American Constitutional Law, 15. Available at https://www.corteidh.or.cr/tablas/r23545.pdf

Office of the United Nations High Commissioner for Human Rights. (2024). Mapping the work and recommendations of the Human Rights Council, OHCHR, the treaty bodies and the special procedures of the Human Rights Council in the field of human rights and new and emerging digital technologies, including artificial intelligence (Report A/HRC/56/45). United Nations. Available at https://www.ohchr.org/es/documents/thematic-reports/ahrc5645-mapping-report-human-rights-and-new-and-emerging-digital

Organization of American States [OAS]. (1985). Inter-American Convention to Prevent and Punish Torture (Treaty Series, No. 67). Available at https://www.oas.org/juridico/spanish/tratados/a-51.html

Olvera Amado, José María. (2025). The defense of collective rights with obligations erga omnes in international law: a new paradigm of international responsibility. Mexican Yearbook of International Law, 25, e19148. Epub May 22, 2026. Available at https://doi.org/10.22201/iij.24487872e.2025.25.19148

Organization of American States [OAS]. (1969). American Convention on Human Rights (Pact of San José). Available at https://www.oas.org/es/cidh/mandato/documentos-basicos/convencion-americana-derechos-humanos.pdf

Oster, J. (2015). Public policy and human rights. Journal of Private International Law, 11 (3), 542–567. Available at https://doi.org/10.1080/17441048.2015.1096144

Palacios Valencia, Yennesit. (2016). Regarding the Atala case Riffo and girls versus Chile. A milestone in the jurisprudence of the Inter-American Court of Human Rights. La ventana. Journal of gender studies, 5(43), 174-216. Retrieved October 12, 2026, from Available at http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1405-94362016000100174&lng=es&tlng=es.

Paredes Montiel, M. (2022). Access to justice and due process. In A.M. Ibarra Olguín (Ed.), Course on human rights (pp. 327–343). Supreme Court of Justice of the Nation; Tirant lo Blanch. Available at https://www.sitios.scjn.gob.mx/cec/sites/default/files/publication/documents/2022-10/9788411474894.pdf

Pino Gamero, E. (2017). The prohibition of torture in international human rights law. In E. Pino Gamero, The fight against torture in the international order: Contemporary excuses to justify torture in the Western world (pp. 47–90). Supreme Court of Justice of the Nation. Available at https://www.sitios.scjn.gob.mx/cec/sites/default/files/publication/documents/2019-03/07_cap2_PINO_La-lucha-contra-la-tortura_DC03-74-90.pdf

Quispe Remón, F. (2010). Ius Cogens in the Inter-American System: Its relationship with due process. Revista de Derecho (Universidad del Norte), (34), 42-78. Available at https://www.redalyc.org/pdf/851/85120102004.pdf

Rea-Granados, SA (2016). Evolution of international law on children. International Law : Colombian Journal of International Law, (29), 147–192. Available at https://www.redalyc.org/pdf/824/82451835004.pdf

Roldán Pardo, JF (2010). The state of the art of the concept of international public order in the field of private international law and international arbitration. Revista de Derecho Privado, (44), p. 8. Universidad de los Andes. Available at https://www.redalyc.org/articulo.oa?id=360033193003

Rojas Amandi, VM (2022). The new legal status of the jus cogens, reflections on the reports of the International Law Commission. Mexican Yearbook of International Law, 22(22), 343–389. Available at https://doi.org/10.22201/iij.24487872e.2022.22.16956

Sánchez-Cordero, O. (2013). Standards on equality and non-discrimination. In P. Salazar Ugarte & CE Alonso Beltrán (Eds.), International human rights standards: Comments on the rulings of the Supreme Court of Justice of the Nation (pp. 385–408). National Autonomous University of Mexico, Institute for Legal Research. Available at https://archivos.juridicas.unam.mx/www/bjv/libros/8/3567/14.pdf

Santos, EA (2026). Ireland v. United Kingdom case. Diplomacy and Law. Available at https://www.diplomacyandlaw.com/post/ireland-v-united-kingdom-case

UNICEF. (2009). Rights of children and adolescents. Right to identity: Dimensions, experiences and public policies. United Nations Children's Fund. Available at https://www.corteidh.or.cr/tablas/r26889.pdf

United Nations [UN]. (1984). Convention against torture and other cruel, inhuman or degrading treatment or punishment. Office of the High Commissioner for Human Rights (OHCHR). Available at https://www.ohchr.org/es/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading

United Nations. (1926). Slavery Convention, signed at Geneva on 25 September 1926 and amended by the Protocol (Chapter XVIII-2). United Nations Treaty Collection. Available at https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=xviii-2&chapter=18&clang=_en

United Nations General Assembly. (1948). Universal Declaration of Human Rights (217 [III] A). Available at https://www.un.org/es/about-us/universal-declaration-of-human-rights

United Nations General Assembly. (1965). International Convention on the Elimination of All Forms of Racial Discrimination (Resolution 2106 [XX]). United Nations. Available at https://www.ohchr.org/es/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial

United Nations General Assembly. (1966). International Covenant on Civil and Political Rights (Resolution 2200A [XXI]). United Nations. Available at https://www.ohchr.org/es/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

United Nations General Assembly. (1966). International Covenant on Economic, Social and Cultural Rights (Resolution 2200A [XXI]). United Nations. Available at https://www.ohchr.org/es/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

United Nations General Assembly. (1989). Convention on the Rights of the Child (Resolution 44/25). United Nations. Available at https://www.ohchr.org/es/instruments-mechanisms/instruments/convention-rights-child

United Nations, International Law Commission. (2006). *Fragmentation of international law: Difficulties arising from the diversification and expansion of international law: Report of the Study Group of the International Law Commission* (UN Doc. A/CN.4/L.682). Prepared by Martti Koskenniemi. Available at https://legal.un.org/ilc/documentation/spanish/a_cn4_l682.pdf

Vienna Convention on the Law of Treaties, May 23, 1969, 1155 UNTS 331. Available at https://www.oas.org/36ag/espanol/doc_rereference/convencion_viena.pdf

Weissbrodt, D., & Anti-Slavery International. (2002). The abolition of slavery and its contemporary forms. Office of the High Commissioner for Human Rights (OHCHR). Available at https://www.ohchr.org/sites/default/files/Documents/Publications/slaverysp.pdf