

A Critical Examination of the Humanitarian Consequence of The United States of America's Use of Emergency Powers

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International Probono Legal Services Association

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Introduction

1. The United States of America (U.S.) has frequently invoked emergency powers under the National Emergencies Act (NEA) and the International Emergency Economic Powers Act (IEEPA) to impose sanctions. These sanctions encompass a range of measures, including asset freezes, travel bans, and undue influence on international judicial proceedings. The U.S. justifies these actions as responses to perceived threats to national security and foreign policy. Although such measures can sometimes reflect legitimate security objectives, the prolonged and unchecked application of these powers raises significant concerns regarding compliance with international law and human rights standards, particularly the International Covenant on Civil and Political Rights (ICCPR).
2. Recent and notable examples of this overreach are the U.S. Executive Orders (EO) sanctioning the International Criminal Court (ICC), which United Nations experts have condemned as a direct assault on global justice. The U.S. has set a concerning precedent by imposing sanctions on the ICC and its personnel, as evidenced by EO 14203 issued on 6 February 2025. This order opposes “any effort by the ICC to investigate, arrest, detain, or prosecute protected persons” in relation to the U.S., Israel, or any other ally that is not a party to the ICC or the Rome Statute.ⁱⁱ This follows EO 13928, issued on 11 June 2020, which designated ICC Prosecutor Fatou Bensouda for engaging in efforts to investigate alleged U.S. war crimes in Afghanistan, as well as Phakiso Mochochoko, the ICC’s Head of Jurisdiction, for assisting the prosecutor.ⁱⁱⁱ Such instances of U.S. sanctions represent a direct challenge to international law and human rights standards, demanding urgent attention and intervention from other State Parties, particularly those that are also signatories to the Rome Statute of the International Criminal Court.

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3. This report will critically examine the aforementioned issues in four sections. The first section will explore the mechanisms by which U.S. emergency declarations are issued. The second section will highlight how these emergency declarations diverge from ICCPR standards and are often enacted without judicial oversight. The third section will assess the resulting human rights infringements stemming from non-compliance with established human rights standards under the ICCPR and beyond. Finally, the fourth section will conclude with recommendations aimed at realigning U.S. practices with its international legal obligations.

I. The Legal Framework of the NEA and IEEPA

4. The President of the United States is empowered to declare emergencies in response to unusual and extraordinary threats, allowing for the imposition of sanctions without the need for congressional approval under the NEA (50 U.S.C. §§ 1601–1651) and the IEEPA (50 U.S.C. §§ 1701–1706). These powers are often further supported by Section 301 of Title 3 of the United States Code (3 U.S.C. § 301), which permits agencies such as the Office of Foreign Assets Control (OFAC) to regulate financial institutions in order to execute sanctions. This includes the publication of lists of individuals, companies, or programmes that U.S. citizens and permanent residents are prohibited from engaging with, such as the Specially Designated Nationals (SDNs).
5. However, the primary concern surrounding the U.S. declaration of emergencies lies in the overly broad definition of what constitutes a "threat," which contradicts the spirit of the ICCPR. For clarity, we emphasise in bold and with an asterisk the three conditions necessary for a proper invocation of an emergency declaration as outlined in Article 4 of the ICCPR:

(a) **In times of public emergency which threatens the life of the nation and whose existence is officially proclaimed***, States Parties to the present Covenant **may take measures derogating from their obligations under the Covenant to the extent strictly required by the exigencies of the situation***, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the grounds of race, colour, sex, language, religion, or social origin.

(b) No derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16, and 18 may be made under this provision.

(c) Any State Party to the present Covenant **availing itself of the right of derogation shall immediately inform the other States Parties, through the intermediary of the Secretary-General of the United Nations***, of the

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provisions from which it has derogated and the reasons for doing so. A further communication shall be made, through the same intermediary, on the date on which such derogation is terminated.^{iv}

6. We underscore these conditions because there is irrefutable evidence that U.S. declarations of emergencies fail to adhere to the standards espoused in Article 4 of the ICCPR. In essence, the U.S. employs a vague standard that permits emergencies to be declared for issues like perceived instability or foreign parties that have done something in opposition to the U.S.’ domestic interests or foreign policy objectives—situations far removed from what should constitute as existential threats to a nation.
7. Moreover, these declarations of emergencies are not isolated incidents, as one might expect given the significant weight, responsibility, and requirements typically associated with such declarations. U.S. emergency declarations often extend beyond their original parameters, frequently renewed annually without reassessment of the current geopolitical contexts, thereby creating *de facto* perpetual states of emergency. For example, the U.S. has maintained two continuous emergencies in parallel against Iran since 1979 (EO 12170)^v and 1995 (EO 12957),^{vi} with their most recent renewal occurring, respectively, on or around 1 November 2024^{vii} and 7 March 2025.^{viii}
8. Concerningly, these emergency declarations can be exploited for both international and domestic political objectives, allowing the U.S. President to impose orders in conjunction with these declarations without consultation with the legislative or judicial branches. This executive overreach undermines the rule of law by circumventing the courts and exploiting the inefficiencies or ineffectiveness of Congress to terminate these undue emergencies. Because of this, by declaring emergencies without the consult of the legislative or judicial branches, the U.S.’ executive branch ultimately erodes the separation of powers.

II. Misalignment with ICCPR Standards

9. As previously outlined, derogation from the provisions of the ICCPR is only permissible under three strict conditions. Firstly, a State Party must be experiencing a form of distress, such as war or large-scale civil unrest, which poses an existential threat to the nation—where the key requirement hinges on the phrase "existential threat." Secondly, any measures implemented in response to such a declaration must be temporary and highly tailored to the specific circumstances that the nation is facing. The third condition requires that the State Party notify the UN Secretary-General of its intent to derogate from its international commitments to human rights instruments.
10. Since the last report from the Working Group on the Universal Periodic Review of the United States, published on 12 December 2020, there have been approximately or around 42 declarations of national emergencies, 14 of which were enacted since President Trump took office on 20 January 2025 (with eight if we disregard amendments to responses to existing emergencies). None of these declarations were ever communicated to the UN Secretary-General, nor were the reasons for derogation from international commitments ever reasoned out or disclosed in an appropriate manner to relevant parties. Furthermore, the emergencies cited by the U.S. rely on an extremely loose definition of what constitutes an existential threat, failing to meet two of the three stringent requirements outlined in Article 4 of the ICCPR.
11. While some measures may occasionally appear specific to the "emergencies" claimed by the State Party, the rationale behind these declarations is based on an unsound understanding of what qualifies as an existential threat. This implies that even if the measures prescribed in response to an emergency are valid, if the emergency itself is invalid, then the resultant response will also lack legitimacy. Instead, this specificity ultimately reflects how such declarations can be tailored to advance foreign policy objectives rather than accurately depicting the state of distress the nation is purportedly experiencing.

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12. To illustrate this misalignment with ICCPR standards, consider the case study of Hong Kong SAR:

- (a) **Hong Kong SAR:** The context of Hong Kong enacting its own National Security Laws, as well as the one implemented by the People Republic of China via Annex III of the Basic Law of the HKSAR, bears no existential threat to the United States of America in any shape or form, and withal a standard practice expected of any democratic countries that follows an international rules-based order.
- (b) Yet The Hong Kong Normalization Executive Order 13936,^{ix} with its latest renumeration on 10 July 2024,^x represents disproportionate measures that target individuals based on unverified threat, bypassing judicial review. These sanctions, enacted under the Global Magnitsky Act (EO 13818),^{xi} constitute an attempt by the U.S. to expand its jurisdiction, depriving designated individuals of their right to a fair trial and undermining the presumption of innocence.
- (c) It is evident that the declaration of emergency associated with EO 13936 serves not as a response to a genuine existential-level national security threat but as a means to advance U.S. foreign policy objectives. By inflating financial risks for banks and firms operating in or associated with the Hong Kong SAR, the U.S. seeks to impose economic pressure, thereby influencing political and economic behaviour in the region. Furthermore, this strategy includes coordinating with allied nations to enforce similar measures, reinforcing the perception of collective economic coercion rather than legitimate security concerns.
- (d) IPLSA's concerns are further heightened by the United States' continued assertion that the ICCPR does not apply to individuals under its jurisdiction but outside its territory. This position directly contradicts the ICCPR's interpretation, as affirmed by the Human Rights Committee's jurisprudence,

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the International Court of Justice (ICJ), and widespread State practice.

III. Human Rights Violations Stemming from Emergency Measures

13. Sanctions imposed by the U.S. under emergency powers routinely infringe upon fundamental rights, including due process (ICCPR Article 14), the right to a fair trial (ICCPR Article 14), intimidation of judicial officials (Article 70 of the Rome Statute), property rights (ICCPR Article 17), freedom of movement (ICCPR Article 12), and the basic legal principle of the presumption of innocence.
14. The designations made by the OFAC lack transparency, denying individuals the right to challenge the evidence against them. This is evident in cases such as the sanctions imposed on Hong Kong, as well as the asset freezes targeting ICC Prosecutor Fatou Bensouda and ICC Head of Jurisdiction Phakiso Mochochoko. These actions are direct violations of the ICCPR and represent a clear obstruction of international justice.
15. Regarding the U.S. treatment of Hong Kong, the potential damage to Chinese entities and businesses involved in international development and humanitarian projects can have detrimental spillover effects on disadvantaged populations in other countries that benefit from such initiatives. The humanitarian impact of U.S. sanctions is well documented in the preliminary findings from the visit of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, presented on 17 May 2024.^{xii}
16. In relation to the sanctions on ICC personnel, the 2020 and 2025 Executive Orders against the ICC—justified as responses to investigations into U.S. and allied conduct—constitute a flagrant attack on judicial independence. As noted by UN experts, this move "makes a mockery of the decades-long quest to place law above force and atrocity," gravely undermining the legacy of accountability established by the Nuremberg Trials.^{xiii}

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17. The declaration of emergencies and the subsequent sanctions effectively undermine the horrors perpetuated by the U.S. and its allies in war, particularly concerning the war crimes and crimes against humanity perpetuated against of the Palestinian people under the leadership of Prime Minister Netanyahu^{xiv} and former Defence Minister Yoav Gallant.^{xv} The U.S. describes Israel as a “thriving democracy” with a military that “strictly adheres to the laws of war,” despite the documented war crimes and acts that amount to genocide that the ICC has rigorously investigated,^{xvi} which include issuing arrest warrants deemed “without a legitimate basis,” “baseless,” and an abuse of the ICC’s power.^{xvii}
18. Such patterns of behaviour by the State Party, especially its leniency towards ongoing war crimes committed by its close allies, specifically the Israeli State, amount to war propaganda, characterised by typical features such as demonising the opposition, suppressing dissent, oversimplification of complex issues, and the repetition of false narratives.
19. Finally, we note that there are numerous other human rights violations arise from the illegal use of emergency powers and sanctions affecting various personnel, states, organisations, and more. However, given the limitations of this report, a comprehensive examination of these issues cannot be undertaken at this time.

III. Human Rights Violations Stemming from Emergency Measures

20. To align with the ICCPR and international law, IPLSA recommends the following reforms for the State Party under examination:

- (a) **Narrow Emergency Criteria:** Adopt the ICCPR's threshold of threat "to the life of the nation" for declaring emergencies.
- (b) **Comply with ICCPR Reporting:** Ensure timely notification to the UN of any derogations from the ICCPR, accompanied by sound and valid justifications for such measures.
- (c) **Introduce Judicial Review:** Establish judicial mechanisms to scrutinise sanctions designations, ensuring accountability and transparency.
- (d) **End Perpetual Emergencies:** Implement mandatory expiration of emergency declarations unless reauthorised by Congress, preventing indefinite states of emergency under the behest of the President of the U.S. that bypasses congressional and/or judicial review.
- (e) **Recognise Extraterritorial Obligations:** Apply ICCPR protections to individuals outside U.S. territory, affirming the commitment to human rights globally.
- (f) **Remove Reservations to Article 20:** Eliminate reservations to Article 20 of the ICCPR, which prohibits war propaganda, thereby upholding the integrity of international human rights standards.

ⁱ 2,557 / 2815 Words

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