

The Status of Children's Right to Education in the Normative Hierarchy of International Law

Farhang. Larijani^{1*} 

¹ Assistant Professor, Department of Law and Political Sciences, Mazandaran University, Mazandaran, Iran

* Corresponding author email address: f.larijani@umz.ac.ir

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The right to education has various aspects in international law. One of the significant aspects of the right to education is children's education. Children's education and primary education are temporally aligned; in other words, the right to children's education logically constitutes an instance of the right to primary education, which is imposed as a mandatory and free obligation on states in most domestic and international legal systems. The present study, conducted using a descriptive-analytical method with library research tools, aims to assess the status of the right to children's education in the normative hierarchy of international law. The findings indicate that fundamental human rights have a peremptory character. However, the right to children's education has not been recognized as an instance of fundamental human rights in any international instruments or judicial practices of international courts. Consequently, this right lacks a peremptory character and is considered an ordinary norm in the normative hierarchy of international law.

Keywords: Human Rights, Fundamental Human Rights, Peremptory Norms, Right to Education.

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1. Introduction

One of the foundations of any government is its educational system, as it is through this system that individuals undergo the process of socialization and develop a social identity. In the constitutions of most countries, the issue of citizens' education, provided free of charge up to a certain level of schooling, is emphasized and guaranteed by the state. For the efficient and proper implementation of public education systems in countries, it is first necessary to recognize these rights and then address the existing shortcomings. This requires not only identifying international obligations and distinguishing the achieved aspects but also understanding the legal obligations that have not yet been fulfilled or cannot be fulfilled for certain reasons.

Obligations in international law refer to a set of binding rules and regulations arising from international relations among members of the international community, with primary sources being treaties, conventions, and agreements. Therefore, the main characteristic of international agreements is their binding nature. Education, defined as the acquisition of scientific knowledge in educational institutions, is considered one of the human rights. International legal obligations regarding education are highlighted in instruments such as the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, the Convention against Discrimination in Education, the Charter of the United Nations, the Universal Declaration of Human Rights, the 2030



Agenda, and others. Among the educational obligations in international law is the right to education. The term education is often used in two senses: a specific sense referring to formal education at primary, secondary, and academic levels, and a broader sense referring to all activities through which parents or social groups impart knowledge, skills, and moral principles to children or future generations. This study adopts the broader sense, encompassing all such educational activities. The right to education is a fundamental human right that must be applied to individuals regardless of time, place, gender, language, race, religion, or ethnicity.

In international law, there exists a hierarchy of norms, meaning that various norms and rules exist within international law, each with different levels of status and authority. The present study seeks to answer the question: What is the status of children's right to education in the normative hierarchy of the international legal system? The hypothesis evaluated in response to this question is that the right to children's education lacks a peremptory character and does not occupy the top of the normative hierarchy of the international legal system. In other words, this right falls within the category of ordinary norms.

Regarding the background of the present study, it should be noted that the right to children's education has been independently addressed in some research. For instance, Niavarani's article titled *The Status of the Right to Education in the International Human Rights System* argues that the right to education is one of the rights whose fundamental importance has often been overlooked. International human rights instruments have categorized this right as a cultural human right, and most legal scholars, relying on the principle of textual interpretation, have also considered it within this realm. However, they have neglected the status and rank of this right within the hierarchy of international legal norms. The right to education, as the foundation for human understanding and the channel for realizing other intellectual rights, such as freedom of thought, expression, and religion, holds a very high status among other human rights. The right to education cannot be conceptualized without the minimum right to elementary education. Initiating the educational process without creating a foundation for the empowerment of thought regarding the correctness or incorrectness of education's form and nature, and disregarding the

necessity of rational and systematic education in tolerance, can lead to highly undesirable consequences (Niavarani, 2010).

2. Findings

The findings of the study indicate that not all instances of human rights possess a fundamental character. In fact, the fundamental character is a specific legal status that cannot be attributed to every instance of human rights. Fundamental human rights have a peremptory character. However, the right to children's education has not been recognized as an instance of fundamental human rights in any international legal instruments or judicial practices of international courts. Consequently, this right lacks a peremptory character and is considered an ordinary norm within the normative hierarchy of international law.

3. Discussion

This section will first address the concept of the right to education and its aspects, followed by an examination of the concept of peremptory norms, the normative hierarchy of international law, and finally, the instances of fundamental human rights.

3.1. The Concept of the Right to Education

The right to education is one of the rights that has often been overlooked in terms of its fundamental importance. "The right to education, in one sense, can serve as a gateway and prerequisite for the realization of other rights. International human rights instruments have categorized this right as part of cultural human rights, and most legal scholars, relying on the principle of textual interpretation, have also considered it within this domain, neglecting its status and rank within the hierarchy of international legal norms. The right to education, as the foundational element for human understanding and comprehension and the channel for determining and realizing other intellectual rights (based on human psyche), such as freedom of thought, expression, and religion, holds a highly esteemed status among other human rights. On the other hand, this education cannot and should not be devoid of human rights obligations. The right to education cannot be conceptualized without the minimum right to elementary education. Initiating the educational process

without establishing a foundation for empowering thought about the correctness or incorrectness of the form and nature of education, and neglecting the necessity of rational and systematic education in tolerance, can lead to highly undesirable outcomes. Cultural justice, of which education is a part, has unfortunately often been violated, with discrimination in access to and exercise of this right for all people, regardless of racial, linguistic, religious, and ideological differences, not being properly ensured. It was on this basis that the Convention against Discrimination in Education was adopted in 1960 in Paris. Additionally, the prohibition of discrimination is subtly embedded in international human rights instruments. Education in childhood is more enduring, hence the emphasis on human rights education at the primary level. However, this education is not limited to the period from elementary school to university; it also encompasses individuals and social groups such as women, judges, lawyers, teachers, doctors, nurses, and others. Education is not limited to civil institutions alone; besides the nation, the state also needs education. Individuals in state institutions and organizations must also be trained to promote and respect citizens' rights" (Khani Valizadeh & Lotfi, 2017).

The right to education is a universal right to education. This right is recognized in the International Covenant on Economic, Social and Cultural Rights as a human right that includes the right to compulsory and free primary education for all, the obligation to provide accessible secondary education, particularly by progressively introducing free secondary education, and the obligation to ensure equal access to higher education, ideally through the provision of free higher education.

The right to education is defined as: "The right to education includes acquiring knowledge through primary and general education and practical skills through vocational training, such as technical and professional education. The right to education can serve as the foundation for all rights" (Qari Seyyed Fatemi, 2009). "Humans, by being aware of their inherent and acquired rights, can claim those rights and accept duties; just as in civil law, a person lacking maturity and reason cannot have the capacity to exercise rights. The right to education and learning seeks the same objective of knowledge and awareness, with no distinction between men and women, young and old. Some rights entail the

capacity to enjoy them, while others entail the capacity to exercise them; in other words, education and learning constitute both the right to enjoyment and the right to exercise, as education for all humans is a primary right, while the continuation of education falls under the rights of exercise and acquisition. Education, in a broad sense, encompasses all activities through which parents or a group in society transmit a set of knowledge, skills, and moral principles to children or future generations" (Kaproos & Koutsombogera, 2018). In this broad sense, education refers to the physical, psychological, spiritual, civic, and social development of the child, leading to the full flourishing of the child's personality. This broad definition of education is emphasized in various instruments on education for peace, human rights, democracy, tolerance, and citizenship. In fact, the right to education includes the responsibility to provide basic education for those who have not completed primary education. Additionally, beyond access to educational considerations, the right to education entails the obligation to eliminate discrimination at all levels of the education system and to improve the quality of education (Aghaei, 2004).

In Iran, the Constitution, as the supreme law guaranteeing the rights and freedoms of the nation, is a legal and political document, and all laws and regulations in every field must be enacted in accordance with it and its provisions. The Iranian Constitution dedicates a chapter to the rights of the nation, including the explicitly stated right to education; in other words, fundamental rights are the foundation for all other rights, and individuals' other rights are determined only when their fundamental rights are guaranteed. The right to education is one of these fundamental rights (Mohammadi-Gorgani, 2014).

Additionally, "Article 3 of the Constitution, in pursuit of its stated goals, obligates the state to raise the level of public awareness in all areas through the proper use of the press, mass media, and other means. Clause 3 of this article emphasizes the necessity of free education for all at all levels and the facilitation and expansion of higher education. Clause 4 stresses the need to strengthen the spirit of inquiry, research, and innovation in all scientific fields through the establishment of research centers and encouragement of researchers. Clause 11 highlights the necessity of strengthening national defense through public military training to preserve the independence,

territorial integrity, and Islamic system of the country. In the same context, Article 30 mandates the state to provide free education for all citizens up to the end of secondary education and to expand free higher education to the extent of national self-sufficiency. Since the right to education is a human right, not merely a citizenship right, the provision in Article 3 that this right is guaranteed for all individuals is highly appropriate, as this right pertains to all of humanity, not just those associated with a specific geographical boundary such as the people of a particular country" (Khani Valizadeh & Lotfi, 2017).

3.2. *The Right to Education in the Universal Declaration of Human Rights*

The first instrument to recognize the right to education was the Universal Declaration of Human Rights in 1948. Article 26 of this Declaration addresses the right to education. According to the first paragraph of this article, everyone has the right to education. Additionally, within this right, distinctions must be made between primary and fundamental education, vocational education, and higher education. Primary and fundamental education must be free and compulsory for all. This education aims to eradicate illiteracy in its specific sense (i.e., the inability to read, write, and perform basic arithmetic). Regarding vocational education, states are obligated to promote and expand it to the extent that it becomes widespread (Pendergast & Main, 2019). Furthermore, concerning higher (university) education, states are required to ensure that "access" to higher education institutions and the enjoyment of higher education are provided equally for all. Paragraph 2 of Article 26 defines the overall framework and direction of the educational process in a very general and flexible manner. According to this provision, the educational process must promote respect for human rights and freedoms, respect for diverse opinions and views, and friendship among all nations and various racial, ethnic, and cultural groups (Rostami & Soleimanzadeh Afshar, 2020).

3.3. *The Right to Children's Education in the International Covenant on Economic, Social and Cultural Rights*

The right to education is addressed in Article 13 of the International Covenant on Economic, Social and Cultural Rights. In fact, this instrument does not explicitly

mention the right to education for children. "Regarding Article 13 of the Covenant, a distinction must be made between the provisions of its first and second paragraphs. According to the first paragraph, the aim of the education process is the full development of the human personality and dignity, the strengthening of respect for human rights and freedoms, the preparation of individuals to play a useful role in society, and the promotion of tolerance, understanding, and friendship among all people. The framework of the first paragraph of Article 13 retains the generality and flexibility characteristic of the provisions of the Universal Declaration of Human Rights. In other words, this paragraph outlines the overall orientation and long-term vision of the education process. However, the second paragraph imposes more specific and detailed obligations on states. According to the second paragraph of Article 13, states must provide free primary education accessible to all, and various forms of secondary education, including technical and vocational education, must be made available to all through appropriate means. Given the significant financial burden of providing free higher education, states are required to establish it progressively for all. An important point here is that states must actively pursue and encourage primary education for those who have not received or completed it. Additionally, state obligations are not limited to ensuring individuals' right to education but extend to developing educational institutions and continuously improving the working conditions, benefits, and salaries of teachers and instructors" (Rostami & Soleimanzadeh Afshar, 2020).

As a result, Article 13 of the International Covenant on Economic, Social and Cultural Rights contains two key elements: the first is the obligation of state parties to respect the freedom of parents and guardians to provide religious and moral education for their children in accordance with their beliefs. The second element is the freedom of parents and guardians to choose schools other than public schools for their children, provided that these schools comply with the minimum educational standards that may be set or approved by the state (Hatami & Zahedi, 2013).

3.4. *The Right to Children's Education in the Convention on the Rights of the Child*

The vital role of education in modern life and its impact on the child's future and the overall development of society was not overlooked by the drafters of the Convention on the Rights of the Child. Therefore, Articles 28 and 29 of the Convention are dedicated to this issue, which will be discussed below (Smith, 2012).

3.4.1. *Compulsory Primary Education*

Compulsory primary education, along with encouragement for further education and the creation of necessary conditions for children to benefit from education, while ensuring that the education process respects the dignity of the child, is among the principles affirmed by the Convention. Accordingly, the Convention supports compulsory primary education as a means to achieve its objectives.

3.4.2. *Utilizing Education for Social Integration*

Paragraph 5 of Article 29 of the Convention calls for using education to prepare children to assume responsibilities in a free society governed by respect, peace, gender equality, and friendship among people, ethnic groups, nations, and religious communities.

3.5. *The Right to Children's Education After the International Covenant on Economic, Social and Cultural Rights*

After the International Covenant on Economic, Social and Cultural Rights, the right to education, particularly children's education, has not been comprehensively addressed in any other international instrument. This right has only been considered in certain specific and limited aspects within international treaties and instruments related to special topics. In this regard, references can be made to the 1960 UNESCO Convention against Discrimination in Education, Articles 5 and 7 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, Article 10 of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, Articles 17, 28, 29, and 30 of the 1989 Convention on the Rights of the Child, and Articles 12, 30, 43, and 45 of the 1990 International Convention on the Protection of the Rights of All Migrant

Workers and Members of Their Families, as well as the 1990 World Declaration on Education for All.

These instruments emphasize the necessity of providing free and compulsory primary education and ensuring that states uphold the principle of non-discrimination in children's education. For example, one of the most critical issues addressed by UNESCO through its conventions and recommendations is the elimination of discrimination in education. Article 3 of the 1960 UNESCO Convention against Discrimination in Education obligates state parties to ensure that foreigners residing in their territory have access to education on an equal footing with nationals. This Convention explicitly requires state parties to adopt measures not only against active discrimination but also against passive discrimination (Hatami & Zahedi, 2013).

3.6. *The Concept of Peremptory Norms*

Historically, the moral principles arising from the fight against fascism during World War II, the process of decolonization, and the recognition of good morals formed the initial foundations for the establishment of the concept of peremptory norms in the modern international community after World War II. This is because, for the concept of peremptory norms to be established, the principle of sovereign equality among states had to be accepted by the international community. In contrast, the existence of colonialism, fascism, and Nazism during World War II reflected a belief in the superiority of certain sovereignties over others. The fight against fascism and Nazism, along with the recognition of the independence of colonized states, laid the moral and initial foundations for peremptory norms. The roots of the concept of peremptory norms in international law can be traced to the notion of public order in domestic legal systems. Simply put, the function of peremptory norms is to align the agreements of subjects of international law with the fundamental principles of the international legal order, considering the interests and morals of the international community (Tomuschat, 2006).

The concept of peremptory norms was first introduced into positive international law through the 1969 Vienna Convention on the Law of Treaties. However, the Convention does not specify which rules in international law qualify as peremptory norms. In other words, the Convention does not provide a list of peremptory norms;

rather, such norms are identified by states and through their practices in various contexts, including conflicts and cooperation (Arechaga, 1978). As indicated in the drafts of the International Law Commission, the primary intention of the Commission was merely to recognize the existence of peremptory norms and incorporate them into positive international law, leaving the identification of specific norms to state practice and the jurisprudence of international courts and arbitral tribunals.

The Vienna Convention recognizes peremptory norms as legal rules that serve as grounds for the invalidity of treaties. Article 53 of the Convention states: "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of this Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as one from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

Seventeen years after the adoption of the 1969 Vienna Convention, the International Law Commission repeated this exact definition of peremptory norms, word for word, in Article 53 of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. The structure of the 1986 Vienna Convention is very similar to that of the 1969 Convention, with the primary difference being that the treaty-making powers of international organizations are limited to their functions and objectives, unlike states (Zamani, 2009).

Article 64 of the Convention further provides: "If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates." It is clear that the Convention offers a general definition of peremptory norms. According to the aforementioned provisions, a peremptory norm consists of two essential elements: (1) it pertains to general international law, and (2) it is recognized as a non-derogable norm by the international community of states as a whole. Although peremptory norms are at the apex of the hierarchy of international legal norms, an examination of these two essential elements reveals their consent-based nature (Villiger, 2009).

The effects of the invalidity of a treaty conflicting with a peremptory norm (as per Article 53) are set out in the

first paragraph of Article 71 of the Convention. This paragraph stipulates: "In the case of a treaty which is void under Article 53, the parties to the treaty are obliged: (a) to eliminate as far as possible the consequences of any act performed in reliance on the provisions of the treaty that is in conflict with the peremptory norm of general international law, and (b) to bring their mutual relations into conformity with the peremptory norm of general international law."

3.7. *Peremptory Norms in International Responsibility Law*

International responsibility law is "one of the main and essential branches of international law, closely interconnected with other branches of international law. International responsibility law consists of a set of international rules and regulations concerning the responsibility of states and international organizations. Therefore, any matter related to the responsibility of states and international organizations falls within the scope of international responsibility law" (EbrahimGol, 2023).

In simpler terms, the existence of responsibility rules in international law is considered essential to the international legal system, ensuring that any breach of an obligation entails the responsibility of the breaching party and the reparation of damages caused. Given that any breach of an obligation leads to international responsibility, international responsibility law interacts with the entire body of international law, forming a broad and significant domain.

The rules of state responsibility in international law are essentially uncodified, requiring reference to judicial decisions of international courts and tribunals, customary international law, and scholarly doctrines to identify them. The International Law Commission (ILC) began drafting articles on state responsibility in 1969, culminating in their final adoption in November 2001. Although the ILC's draft articles on state responsibility have not yet been signed or ratified by states as an international treaty, the extensive reference to international judicial decisions, arbitral awards, and state practice in the commentary makes them a recognized source of international responsibility law. This section will examine the status of peremptory norms within this framework.

The first reference to peremptory norms in the ILC's Draft Articles on State Responsibility is found in Article 26, titled "Compliance with Peremptory Norms." Chapter V of Part One of the draft addresses circumstances precluding the wrongfulness of an act. This chapter lists six circumstances under which the wrongful nature of a state's act is precluded: consent, self-defense, countermeasures in response to an internationally wrongful act, force majeure, distress, and necessity.

These six circumstances are elaborated in Articles 20 to 25 of the ILC draft. Following their enumeration, Article 26 explicitly states: "Nothing in this chapter precludes the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law."

The ILC's commentary on Article 26 clarifies that none of the circumstances precluding wrongfulness in Chapter V of Part One justify a breach of a peremptory norm of general international law (ILC, 2001). For instance, a state resorting to countermeasures cannot justify a breach of such a norm. Genocide, for example, cannot be justified by reciprocal acts of genocide (ICJ, 2007). Similarly, invoking necessity or other precluding circumstances cannot justify violating a peremptory norm. However, state consent may influence the application of certain peremptory norms. For example, a state may validly consent to the presence of foreign military forces within its territory for a legitimate purpose. This consent must be given for a lawful objective; otherwise, consent to foreign military aggression would not preclude the wrongfulness of the aggressor state's actions.

The second reference to peremptory norms in the ILC draft is found in Chapter III of Part Two, titled "Serious Breaches of Obligations under Peremptory Norms of General International Law." Article 40(2) defines a serious breach of a peremptory norm as one involving gross or systematic failure. A breach is considered systematic if it is deliberate and organized, while "gross" refers to the scale or impact of the breach, indicating overt violations that constitute direct and blatant attacks on values protected by peremptory norms. Serious breaches are typically both systematic and gross. Certain peremptory norms, such as the prohibitions of aggression and genocide, inherently entail extensive and comprehensive violations (ILC, 1976).

Article 41 outlines the consequences of a serious breach of obligations under peremptory norms, imposing two negative obligations and one positive obligation on states in cases of such breaches. The positive obligation requires states to cooperate to bring an end to any situation resulting from a breach of peremptory norms. This cooperation can take place within the framework of United Nations initiatives or through mechanisms outside the UN, provided that such mechanisms do not obstruct UN efforts.

The negative obligations require states not to recognize as lawful any situation created by a breach of peremptory norms and not to aid or assist in maintaining such a situation. The obligation of non-recognition includes both explicit and implicit recognition and has been upheld by international tribunals and states in various cases. The second negative obligation prohibits states from providing assistance to maintain a situation resulting from a breach of peremptory norms. Two elements are necessary for a state to be held responsible for assistance: awareness of the wrongful nature of the act and the fact that the act in question would be wrongful if committed by the assisting state itself (which is inherently true for peremptory norms) (Khazaei et al., 2019).

The final reference to peremptory norms in the ILC draft is found in Article 50. After outlining the conditions for resorting to countermeasures in Article 49, Article 50 specifies obligations unaffected by countermeasures: "1) Countermeasures shall not affect obligations: (a) to refrain from the threat or use of force as enshrined in the Charter of the United Nations; (b) to protect fundamental human rights; (c) of a humanitarian character prohibiting reprisals; (d) arising under peremptory norms of general international law. 2) A State taking countermeasures is not relieved from: (a) fulfilling obligations concerning dispute settlement procedures in force between it and the responsible State; (b) respecting the inviolability of diplomatic and consular agents, premises, archives, and documents."

Paragraph 1(d) prohibits countermeasures that affect obligations arising from peremptory norms of general international law. A peremptory norm, which cannot be derogated from even by treaty, cannot be violated through unilateral countermeasures. This provision reinforces the principle stated in Article 26 that circumstances precluding wrongfulness cannot justify

breaches of obligations under peremptory norms. The reference to "other" obligations arising under peremptory norms indicates that paragraph 1(d) does not limit previously mentioned obligations, some of which are peremptory in nature, particularly those in paragraphs 1(b) and 1(c) (ILC, 2001).

3.8. *The Normative Hierarchy of International Legal Rules*

The classical view of international law originates from the Peace of Westphalia in 1648. From this perspective, the core principles of classical international law are state sovereignty and the consent of states in accepting international obligations, as referenced in the preamble to the Vienna Convention on the Law of Treaties and the principles of the United Nations (Albi, 2019). Recognizing the existence of normativity in international legal rules logically leads to the existence of a normative hierarchy in international law. If legal rules vary (such as peremptory norms and the erga omnes obligations arising from them, along with other non-peremptory rules), then the legal weight of the obligations they impose must also differ, necessitating a classification among them (Thirlway, 2019).

The normative hierarchy differs from the hierarchy of sources of international law, as outlined in Article 38 of the Statute of the International Court of Justice. Additionally, a distinction must be made between the normative hierarchy within international treaties and that within customary international law. There is disagreement among legal scholars regarding the normative hierarchy in international law. Positivist or voluntarist legal scholars view the normative hierarchy as a product of treaty law and the introduction of peremptory norms, thus limiting the concept to treaty law. The normative hierarchy in treaty law manifests in various forms, such as treaties that prohibit reservations to certain provisions, indicating a hierarchy within the treaty itself, or treaties that declare certain provisions as non-derogable under any circumstances. For instance, the International Covenant on Civil and Political Rights (ICCPR) designates certain rights as non-derogable in all circumstances under Article 4. These rights, often referred to as "fundamental human rights," cannot be infringed upon by states under any conditions. Another example of the normative hierarchy is found in the concept of peremptory norms. However, some legal

scholars argue that the normative hierarchy extends beyond treaty law to other areas of international law as well (Meron, 1986).

3.9. *Instances of Fundamental Human Rights and Peremptory Norms*

The instances of fundamental human rights, also known as non-derogable rights in all circumstances (both in times of peace and war), are enumerated in the ICCPR. According to Article 4 of the ICCPR, certain rights are recognized as non-derogable under all conditions, meaning states cannot suspend or infringe upon these rights under any circumstances. These non-derogable rights include:

1. The prohibition of all forms of racial discrimination, including discrimination based on race, color, sex, language, religion, or social origin. Some forms of discrimination, due to their significance, have been separately prohibited in international declarations and treaties, such as the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Suppression and Punishment of the Crime of Apartheid, the Discrimination (Employment and Occupation) Convention, and the Declaration on the Elimination of Discrimination Against Women.
2. The right to life, which is an inherent human right. This right must be protected by law, and no one shall be arbitrarily deprived of life. In states that have not abolished the death penalty, its imposition is permissible only for the most serious crimes under the law in force at the time of the offense, provided it does not conflict with the provisions of the ICCPR or the Convention on the Prevention and Punishment of the Crime of Genocide. Additionally, anyone sentenced to death has the right to seek pardon or commutation of the sentence. Under Article 6 of the ICCPR, the death penalty shall not be imposed on persons under 18 years of age or on pregnant women.
3. The prohibition of torture and cruel, inhuman, or degrading treatment or punishment, including subjecting individuals to medical or scientific experimentation. This prohibition is

not only recognized in the ICCPR but also affirmed in various declarations and conventions, such as the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN General Assembly Resolution 30/3452), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention on Human Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the Inter-American Convention to Prevent and Punish Torture.

4. The prohibition of slavery and the slave trade. Prior to the ICCPR, several conventions had already declared the prohibition of slavery and the slave trade, such as the 1919 Saint Germain Convention on the Complete Abolition of Slavery and the Slave Trade by Land and Sea, and the 1926 Slavery Convention. Subsequent conventions have also addressed this prohibition, such as the 1982 United Nations Convention on the Law of the Sea, which in Article 99 mandates that every state shall take effective measures to prevent and punish the transport of slaves on ships flying its flag and to prevent the misuse of its flag for that purpose. Any slave who takes refuge on any ship, regardless of its flag, shall thereby be free.
5. The prohibition of imprisonment for inability to fulfill a contractual obligation.
6. The principle of non-retroactivity of criminal laws. According to Article 15(1) of the ICCPR, no one shall be held guilty of any criminal offense for an act or omission that did not constitute a criminal offense under national or international law at the time it was committed, nor shall a heavier penalty be imposed than the one applicable at the time the criminal offense was committed.
7. The obligation to recognize the legal personality of individuals.
8. The right to freedom of thought, conscience, and religion, which includes the freedom to have or adopt a religion or belief of one's choice,

individually or in community with others, publicly or privately, through worship, observance, practice, and teaching. No one shall be subjected to coercion that would impair their freedom to have or adopt a religion or belief of their choice. The freedom to manifest one's religion or beliefs may be subject only to limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.

A distinctive feature of fundamental human rights is their non-derogable nature, which is a shared characteristic with peremptory norms. For this reason, many international law scholars consider fundamental human rights to be a prime example of peremptory norms (Criddle, 2016; Green, 2015; Weatherall, 2015).

4. Conclusion

In the literature of positive international law, the term "fundamental" is not a non-academic or merely literary descriptor used to express the importance of a concept. In other words, the mere repetition of a right in various instruments does not render that right a fundamental right. The designation of a right as fundamental carries legal implications. There is a hierarchy among human rights norms and rules. Simply put, human rights norms and rules do not exist as a disorganized and unstructured collection. Some human rights norms and rules are deemed fundamental due to their paramount importance and necessity, placing them at the apex of the normative hierarchy. Other norms and rules, however, lack this designation and are positioned at the lower levels of the normative hierarchy. This classification is unrelated to issues such as binding force or inviolability, as all human rights norms and rules possess binding force and are inviolable.

The critical point is the non-derogable nature of fundamental rights. Non-derogability means that obligations related to fundamental norms cannot be disregarded under any circumstances or on any grounds. It is precisely this characteristic that elevates fundamental human rights to the status of peremptory norms. In other words, it is this very attribute that has led international law scholars and international practice to consider fundamental human rights as a prime example of peremptory norms.

A review of the International Covenant on Civil and Political Rights and other sources of international law reveals that there is no explicit provision designating the right to children's education as a non-derogable right. The use of the term "fundamental" in certain books and articles concerning the right to education often overlooks the issue of fundamental human rights and their non-derogable nature. Therefore, it can be concluded that while some legal scholars have recognized the right to children's education as an instance of peremptory norms and fundamental human rights, placing it at the top of the normative hierarchy in international law, this recognition lacks legal validity in positive international law. Consequently, despite the significant emphasis placed on the right to children's education, it remains a non-peremptory or ordinary human rights norm within international law, positioned at the lower end of the normative hierarchy.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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