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A number of human rights instruments contain provisions which allow States to adopt measures suspending the enjoyment of these rights to the extent strictly required by situations of emergency, for instance in the event of an armed conflict, or following a natural disaster. The relevant provisions of the International Covenant on Civil and Political Rights (ICCPR) (Art. 4), the American Convention on Human Rights (ACHR) (Art. 27) and the European Convention on Human Rights (ECHR) (Art. 15) are reproduced here (/c4x/LouvainX/Louv2.01x/asset/_Materials__Provisions_on_Derogations_Final_.pdf). Take a look at these provisions and, based on your reading and your understanding of human rights, try to answer the following questions, before looking at the answers:

Help

EXERCISE - RESTRICTIONS TO HUMAN RIGHTS (2/2 points)

1. Major and widely ratified human rights treaties, such as the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, have no provision allowing a State to suspend the enjoyment of human rights in times of public emergency. Where these treaties overlap with instruments allowing for derogations (such as the ICCPR, the ECHR, or the ACHR), what are the implications for the State?

- ☒ In such a situation, the State may not suspend the guarantees listed in both treaties; ✓
- ☐ In such a situation, the State may derogate from the overlapping guarantees, since one treaty authorizes the State to do so;
- ☐ In such a situation, the State may derogate from the overlapping guarantees, provided it informs the other parties to the treaty concerned.

EXPLANATION

Among the conditions that Article 4 ICCPR, Article 27 ACHR and Article 15 ECHR list specifying when a State may derogate from certain human rights to face an emergency, is the condition that the measures adopted under the regime of derogation may only be allowed to the extent that they are not inconsistent with the other obligations of the State concerned under international law. Therefore, while the State may, in principle, declare its intention to derogate from certain rights that are also protected under treaties that do not allow for any derogation (such as the Convention on the Rights of the Child), this will in fact be of limited or no benefit to the State: it will still have to guarantee the enjoyment of the right that it may have intended to derogate from. In other terms, Article 4 ICCPR,

Article 27 ACHR and Article 15 ECHR should not be construed as authorizing the State to limit the scope of any obligations imposed on it under other human rights instruments.

2. Article 4 ICCPR, Article 27 ACHR and Article 15 ECHR list six conditions for a State to be authorized to adopt measures derogating from their obligations under the cited instruments: a public emergency threatening the life of the nation must exist; the measures adopted must be strictly required by the exigencies of the situation; they must not entail a discrimination 'on the ground of race, colour, sex, language, religion, or social origin' (Art. 4(1) ICCPR and Article 27(1) ACHR, although the ECHR is silent on this condition); the measures derogating from these instruments may only be allowed to the extent that they are not inconsistent with the other obligations of the State concerned under international law; the derogation may not justify the suspension of certain guarantees, which are defined as 'non-derogable'; and the derogation must be notified to the other States parties to the instrument concerned. Consider the first of these conditions. What is a "public emergency threatening the life of the nation"?

- ☐ A public emergency threatening the life of the nation is one that is a threat to its independence;
- ☐ A public emergency threatening the life of the nation is one that affects the whole national territory;
- ☐ A public emergency threatening the life of the nation is one that threatens to result in the death of a large number of people;
- ☒ A public emergency threatening the life of the nation is a particularly severe crisis that the State can only respond to by measures of an exceptional nature. ✓

EXPLANATION

Although derogations are allowed only under strict conditions (the possibility for the State to resort to a derogation must thus be interpreted restrictively), it is now accepted that the "public emergency threatening the life of the nation" may affect only part of the territory. It is true that the influential *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* (UN doc. E/CN.4/1985/4), the result of the work of independent experts, initially suggested a more restrictive interpretation: these Principles define the "public emergency threatening the life of the nation" as "a situation of exceptional and actual or imminent danger which threatens the life of the nation", a "threat to the life of the nation" being understood as one that: (a) affects the whole of the population and either the whole or part of the territory of the State; and, (b) threatens the physical integrity of the population, the political independence or the territorial integrity of the State or the existence or basic functioning of institutions indispensable to ensure and protect the rights recognised in the Covenant. However, this demanding interpretation may be in contradiction with the later statement by the Human Rights Committee, expressed in its *General Comment No. 29, Derogations during a State of Emergency* (Art. 4) (adopted on 24 July 2001) that derogation measures must be limited in scope, also as regards "geographical coverage... of the state of emergency and any measures of derogation resorted to because of the emergency". This latter reading, allowing for the "threat" justifying the derogation to be limited to one part of the territory and for the emergency measures adopted in response to only cover that area, is also the one followed by the European Court of Human Rights in its more recent interpretation of Article 15 ECHR. In its initial jurisprudence, the Court adopted the more demanding approach. In the very first case it decided on the merits, *Lawless v. Ireland*, the Court was faced with very low-level IRA terrorist activity in Ireland and Northern Ireland in 1954–57. The Irish Government derogated from Article 5 ECHR in July 1957 in order to permit detention without charge or trial and the applicant was detained between July and December 1957. The Court accepted that, but it gave a strict definition of the words "other public emergency threatening the life of the nation": these words, the Court said, "refer to an exceptional situation of crisis or emergency which affects the whole

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population and constitutes a threat to the organised life of the community of which the State is composed". However, in more recent cases, beginning with the famous case of *Ireland v. United Kingdom* on which it delivered a judgment on 18 January 1978, the Court considered that the 'public emergency' justifying a derogation could affect only part of the national territory, referring in that case to 'a particularly far-reaching and acute danger for the territorial integrity of the United Kingdom, the institutions of the six counties (of Northern Ireland) and the lives of the province's inhabitants' (para. 212).

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