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Congratulations for concluding the content of this section!

Many human rights treaties state that they may be invoked by individuals **under the "jurisdiction" or the "competence"** of the State parties. This should *not be confused* with a reference to national territory; nor does it restrict the application of human rights treaties to *situations which States can regulate* consistent with general international law. Rather, it refers to the *factual relationship* that must exist between the situation concerned and the State: human rights treaties can be invoked whenever a State **effectively controls** a *situation* or an *individual*.

This may extend to **situations outside the State's national territory**: in recent years, States have increasingly been expected to respect, protect and fulfil human rights also in extraterritorial situations, and the *Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* are an attempt to provide a progressive restatement of the state of international human rights in this regard. Conversely, in exceptional cases, it may imply that a State shall *not be held* responsible for situation occurring on its territory but which, for instance in situations of civil conflict, it is *unable to control*. The case-law on this issue, however, is in flux, and the solutions adopted by human rights bodies not always consistent.

Provided they exercise effective control over a situation, **States are expected to do more** than simply abstain from taking measures that might result in a violation of human rights. In the early 1980s, the idea emerged that they should (i) **respect**, (ii) **protect**, and (iii) **fulfil human rights**, respectively by (i) *abstaining from interfering* with existing levels of enjoyment of human rights, (ii) *intervening in inter-individual relationships to protect* human rights that might be threatened by private actors, and (iii) *designing and implementing policies that facilitate and promote* human rights, or exceptionally provide certain social goods that are not adequately delivered through market mechanisms. Attempts have also been made to *clarify the essential characteristics* that social goods such as housing, education or food should present, in order for the State to discharge its human rights duties towards those who should be guaranteed access to such goods and thus enjoy the right to adequate housing, education or food.

In **situations of emergency**, for instance in the event of an *armed conflict*, or following a *natural disaster*, States may notify that they intend to *derogate* from some provisions of the International Covenant on Civil and Political Rights, the European Convention on Human Rights, or the American Convention on Human Rights. Not all human rights instruments provide for this possibility, however; indeed, no derogation is allowed to the Convention on the Rights of the Child or to the International Covenant on Economic, Social and Cultural Rights, for instance. Where derogations are allowed, they are **subject to strict conditions**: 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* *discriminatory*.

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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.

The second of these conditions in particular is worth emphasizing. What the **condition of necessity** shows, is that even where a State faces a serious threat, it may not ignore the requirement to *refrain from imposing restrictions to human rights beyond what the situation requires*. The State is not given a blank check simply because of the proclamation of a state of emergency. In other terms, the *function* of derogation clauses in the three human rights instruments which include them is not to exonerate the State from complying with human rights in the face of certain emergency situations.



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