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THE LEGITIMACY OF LIMITATIONS TO RIGHTS - EXERCISE 3 (1/1 point)

3. May certain forms of expression be prohibited because they advocate values that run counter to human rights? May certain organisations be outlawed because they are set up for purposes that are hostile to human rights?

- ☐ No, freedom of speech and of assembly should always be protected, under whatever circumstances. Speech causes no harm, and incitement to take action can never be equated to actually carrying out illegal acts, such as hate or racist crimes.
- ☒ Yes, some forms of expression may be prohibited, and some organizations outlawed because one cannot rely on human rights in order to attack and deny the human rights of others. ✓
- ☐ No, even disturbing forms of expression or association cannot be prohibited, since there can be no 'neutral arbiter' of what categories of speech or organization are contrary to human rights.
- ☐ Yes, certain forms of expression might be contrary to public order and public morals, as defined by the majority opinion, and can therefore be banned.

EXPLANATION

A State seeking to ban forms of expression or association that profess objectives that are hostile to human rights would probably be able to justify such restrictions in the name of the protection of the rights of others.

However, another possibility is that the State will rely on a provision that prohibits the 'abuse of rights'. The model of such a clause is Article 30 of the Universal Declaration of Human Rights which provides that: 'Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.' A number of human rights instruments contain similar provisions: examples are Article 5 of the International Covenant on Civil and Political Rights, Article 5 of the International Covenant on Economic, Social and Cultural Rights, Article 29 of the American Convention on Human Rights, or Article 17 of the European Convention on Human Rights.

In recent years, such clauses have been applied in particular to deny the protection of certain rights to groups disseminating racist ideas, or questioning the reality of the genocide against the Jewish population of Europe during the Second World War. However, it is unclear whether the "abuse of rights" clause truly adds much to the possibilities the State has to restrict such forms of speech. For instance, when a revisionist "historian" -- in fact a professor of literature -- was prosecuted for denying the reality of gas chambers for the extermination of the Jews during World War II, he sought to challenge making it a criminal offence to deny the existence of the crimes committed by the

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Nazis as judged by the International Military Tribunal at Nuremberg in 1945-1946 (France had made denying the reality of such crimes a criminal offence in 1990). To reject this communication, the Human Rights Committee simply relied on the normal "restriction" clause of Article 19 of the International Covenant on Civil and Political Rights, which guarantees freedom of expression. Indeed, Article 19(3) ICCPR states that freedom of expression "carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals." The Human Rights Committee considered: "To assess whether the restrictions placed on the author's freedom of expression by his criminal conviction were applied for the purposes provided for by the Covenant, the Committee (notes) that the rights for the protection of which restrictions on the freedom of expression are permitted by article 19, paragraph 3, may relate to the interests of other persons or to those of the community as a whole. Since the statements made by the author, read in their full context, were of a nature as to raise or strengthen anti-Semitic feelings, the restriction served the respect of the Jewish community to live free from fear of an atmosphere of anti-Semitism. The Committee therefore concludes that the restriction of the author's freedom of expression was permissible under article 19, paragraph 3 (a), of the Covenant." (Human Rights Committee, *Faurisson v. France*, Communication No. 550/1993, final views of 16 December 1996 (UN doc. CCPR/C/58/D/550/1993(1996))).

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