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Compare the following situations :

- A police officer violently hits a person detained in the cell of a police station.
- A private security agent, recruited by a municipality to maintain order during a sporting event, violently hits a person for refusing the mandatory security check at the entrance of a stadium.
- A father violently hits his child in the family home.

For the victims, the damage may be same in each of each of these cases. But the legal issues raised are very different.

Help

In the **first case**, there is no doubt that the police officer, as an agent of the State, may engage the State's responsibility: it would be no more plausible for the State to deny that it has acted through the police officer, than for a thief to argue that it is his arm, rather than the thief himself, that has stolen from a store shelf.

In the **second case**, the private security agent is not a "State agent". In international law, the first question that arises is therefore whether the State (the municipality is simply a decentralized component of the State) may be said to be directly responsible for that private security agent's conduct -- in other terms, whether the conduct of that agent may be treated as State conduct, or "attributed" to the State. The international law on State responsibility has developed rules to distinguish situations that are "purely private" from those where private agents are considered to be acting as "State agents", but some situations are on the borderline and remain contested. In our example, the conduct of the private security agent will be attributed to the State if, in acting as he did, the private security agent was "acting on the instructions of, or under the direction or control of, [the] State in carrying out the conduct"; or if he was "empowered by the law of that State to exercise elements of the governmental authority" and was acting in that capacity in the instance concerned; or if the State has acknowledged and adopted the conduct in question as its own. Though the State cannot in principle be attributed acts of private parties, such attribution shall be possible in any of these scenarios (see, respectively, articles 8, 5 and 11 of the Articles on Responsibility of States for Internationally Wrongful Acts (http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf), adopted in 2001 by the International Law Commission).

The **third case**, where a father violently hits his child in the family home, is the one we will focus on in this section. As we will see, the State may have "positive" obligations to "protect": even though it may not be directly responsible for the acts of private parties, it may be duty-bound to intervene, wherever reasonably possible, to prevent violations from occurring as a result of private conduct, and to provide remedies to the victims where preventive measures fail. The video in the next unit explains what is specific about this situation.



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