



## TRANSCRIPT

Source: [Louv2.01x] The duty to protect

So the duty to protect is really a duty of the State to intervene in private relationships in contexts where human rights are being threatened by private conduct, conduct by non-state actors. And that duty poses specific questions in international human rights law. And the reason for this is very simple.

In a free society in which individuals may, in principle, act as they choose, states are not in a position to prevent all violations from occurring. They must, of course, do whatever they can to prevent such events from occurring. But there are some events which they would not be in a position to avoid. And that, if you wish, is a price we pay for living in free societies. These societies are almost by definition risky for individuals. Only a totalitarian state would be able to prevent entirely all human rights violations from occurring. And even then, the control of the state would never be able to be complete.

So this section of the course is about that issue. And essentially, we will see that there are three key limitations to what can be expected from the state. First, there are resource limitations. States may not prevent any events that might lead to a violation of human rights from occurring because the resources at the disposal of the states are limited. So the state, for example, cannot post a police officer in front of any house where people feel that they're threatened by their neighbors. And that's the first important limitation.

A second limitation is that there are other competing human rights that must be taken into account when states intervene in private relationships. For example, the right to privacy, the right to respect for family life that may make it difficult for states to intervene within families to protect children from being abused or freedom of association or freedom of religion may also be rights invoked by private actors to justify that they may exercise certain freedoms even if this may occur at the expense of others' human rights.

And the third limitation is that human conduct is unpredictable. There are certain events that the state would not be able to anticipate. It would be taken by surprise. And although then, the state has a duty to provide remedies, to prosecute, to investigate, events having led to human rights violations. Depending on the gravity, the state may generally assert or plea that it has been taken by surprise by the human conduct, that it could not anticipate entirely.

One good example of this is the Osman versus United Kingdom case of 1998, presented to the European Court of Human Rights, where the Osman family was complaining that the police in the UK had not been reactive enough when they felt threatened by the acts of some schoolteacher called Paget-Lewis. And the UK could, in that event, argue that it was impossible for the police to react to all the information it received, that it was not possible to arrest or put Paget-Lewis under surveillance because this would have meant a violation of the right to respect for private life or his rights to liberty and security.

And therefore, the UK could argue that there was no violation of the right to life even though the father of the Osman family had been killed by Paget-Lewis, the behavior of the police in the UK was not one that could be reproached and was not one that could be considered to amount to a violation of right to life. The UK was found in breach of another provision of the convention in that case but not of Article 2 of the convention that protects the right to life.

Now, one way to summarize this issue is by saying that the duty to protect is an obligation of means rather than an obligation of results. In other terms, the responsibilities of the state shall not be engaged simply because one human right has been violated in the course of interpersonal relationships. One also would have to prove that the state can have been expected to do more, that it was reasonable to expect the states to do more, that certain measures that could have been expected from the state were not adopted when the state was in a position to do better.

So, in other terms, what is required for the violation to be established is not simply that the human rights has been infringed but also that the state has not adopted certain measures that it could reasonably have been expected to adopt. And of course, what is reasonable in particular circumstances is a matter for deliberation, and will require to examine the range of options available to the state and reasons why it had not taken certain measures that could have been expected from it.

Now, in this section, we will not, of course, be able to examine the full range of issues that arise under the duty to protect. We will focus on, perhaps, three key topics. One is the waiver of right. In many cases that concern a duty to protect, individuals have actually chosen to find themselves in particular situations or to, for example, conclude certain contractual agreements resulting in a breach of their human rights. So, the question there that arises, is to which extent may individuals waive their human rights, may they renounce the protection that human rights in principle should confer upon them, and may the state invoke the fact that individuals have exercised certain freedoms to escape its responsibility. That's the first question we shall examine.

The second question we'll examine is that of conflicting human rights or conflicts between human rights that are invoked in inter-individual relationships. For example, if one organization, in the name of freedom of association, seeks to exclude certain members from the association because the association wishes to preserve a particular identity, the freedom of association, then, may

conflict with the right of individuals to join the association and to benefit from certain services provided as a result of this membership by the organization. And that raises the issue of conflict in human rights that is extremely delicate and difficult to address for human rights problems.

And a third topic we will discuss in this section is that of transnational corporations and human rights. There's been a very important debate at international level, in particular, on what states must do to control transnational corporations and whether corporations have human rights duties that can be imposed on them. And I will try to explain what the state of this debate is in 2014.