



## TRANSCRIPT

Source: [Louv2.01x] The Typology of Human Rights Obligations

Sometimes, legal doctrine really matters. And one good example of this is the very impressive progress that was made in the area of economic, social, and cultural rights in the 1980s, thanks to the tool that was provided to understand and think about the significance of economic and social rights by a Norwegian jurist, Asbjorn Eide, who in the early 1980s was requested by the Norwegian ministry of foreign affairs to help them understand what human rights requirements implied in the area of development cooperation. And Asbjorn Eide, writing initially in Norwegian for the Ministry, thought about a typology that would define the relationship between human rights and states obligations and the duty of states to intervene in market relationships.

Essentially the reasoning of Asbjorn Eide was that states had a first duty, which was to abstain from interfering with the existing levels of enjoyment of human rights. And that he called the obligation to respect human rights as they were already implemented, if you wish.

But then he said states also must intervene sometimes in market relationships in inter-individual relationships to protect weak parties from their rights being interfered with by more powerful parties. The state may not remain passive when the conduct of private actors results in human rights violations. And that means that there's a second duty that states must comply with, which is a duty to protect human rights by actively intervening on the market.

And then thirdly, states should shape markets, develop policies that lead to the full realization of human rights by ensuring that they would gradually make progress and that the enjoyment of the rights of the individual would gradually become more effective. And so that was a duty to fulfill the third level of states' obligations that Asbjorn Eide put forward and that duty to fulfill included, in some exceptional cases, duty for the state to provide individuals with some goods or some benefits such as food parcels or health care or housing, education. But in some cases, it may mean simply to ensure that the market relationships function well enough that the markets deliver these goods that are essential for the enjoyment of the rights of the individual.

So this topology of duties – the duty to respect, to protect, and to fulfill – was put forward in the early 1980s. And at the same time in the United States, a philosopher, Henry Shue from the University of Princeton, was thinking along the same lines in a book published in 1980 on the human rights policy of the United States. And gradually, the idea penetrated in the UN human rights system, not least because Asbjorn Eide became a member of the sub-commission for human rights – the body of experts advising the Human Rights Commission in Geneva – and published in the mid 1980s, the late 1980s, a few reports on the right to food in which this typology was put forward and made known to a broader public.

And so this typology of states' obligations was quite naturally the one that the Committee on Economic, Social, and Cultural Rights was then inspired to use in developing the content of the right to food as it did in a general comment that it adopted in 1999 – General Comment number 12 on the right to food in which the Committee on Economic, Social, and Cultural Rights interprets the otherwise quite vague wording of Article 11 of the International Covenant on Economic, Social, and Cultural Rights that refers to an adequate standard of living and that refers to the basic freedom from hunger that should be guaranteed by states. But that right to food, that freedom from hunger, was until the late 1980s and even the 1990s relatively vague and probably too abstract for states to understand exactly which implications it had for them. So the typology introduced by Asbjorn Eide had an important impact. It resulted in making more concrete otherwise abstract obligations in giving operational content to otherwise very vague rights.

And I believe that to a large extent, this typology – respect, protect, fulfill – is one that also is extremely useful to understand the implications of civil and political rights such as the right of access to courts, the right to vote, freedom of expression, even that also requires some states that they abstain from interfering that they protect private actors from conduct that might lead to violations of that right and may require from states that they adopt policies that in time will improve the level of enjoyment of those classically civil and political rights that I've mentioned.

So this typology – respect, protect, fulfill – which is largely structuring this course on international human rights is one that cuts across all rights and allows human rights lawyers to identify very concrete consequences that follow from the guarantee or the enunciation of human rights in human rights instruments. And it is this typology that you will be using in the next phases of this course.