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In this section, we have examined the *scope* of the duty of the State to protect human rights: in other terms, *when* and *under which conditions* the State should intervene in relationships between private actors in order to ensure that their conduct will not lead to human rights being infringed.

The State's duty to protect is not absolute, because its control over society is never complete. Therefore, the *duty to protect* of the State must be understood as a duty to take *any measures that it can reasonably be expected to adopt in order to prevent the violation from occurring*. It is an *obligation of means*, rather than an *obligation of result*.

There are a number of limitations to the duty of protection of the State. They include

- (i) **budgetary considerations**, as the State faces different priorities and may not be able to pursue them all at once;
- (ii) the **freedom of individuals**, which results in their conduct being in many cases unpredictable, so that the State may be taken by surprise;
- (iii) **conflicting human rights**, imposing limitations to what the State may do in order to protect the human rights of others (for instance, whereas the State should protect the child from abuse within the family, it must do so taking into account the right to respect for family life).

This section has developed **two examples** to illustrate these general considerations.

- The **first example** is when individuals choose to *waive their rights*: to which extent may the State impose a protection that individuals may prefer not to be encumbered by, for instance when they choose a lifestyle that is dangerous to their health or when they enter into contractual relationships by which they prefer to sacrifice certain rights against the promise of rewards to which they attach greater value? And if the State may be "paternalistic" in imposing such protection, is it under a *duty* to do so? In general, the choice of the individual to renounce certain rights, while *relevant* to assess whether the State has gone far enough in discharging its duty to protect rights, is not *decisive*: the State may still seek to protect rights despite the individual having expressed his or her desire not to benefit from such protection; and the State may have to protect the individual's rights even where the individual has "freely" chosen to waive a right, for instance, when such waiver was encouraged by the promise of financial rewards exercising undue pressure on the individual.
- The **second example** we have examined is that of *conflicting rights*, as often arises in inter-individual relationships. Where rights happen to collide, human rights courts and expert bodies have typically deferred to the assessment made by States (or, in domestic settings, by the Legislature or the Executive), and have recognized a broad "*margin of appreciation*". But they have also developed some "tests" to address situations of conflicting rights, including techniques broadly referred to as "*balancing*".

Key Points from Section 4 | Summing-up Sect...

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Finally, this section has provided an introduction to how international human rights law has addressed **the question of transnational corporations**. Important developments have taken place in this area, in two successive phases: in the 1970s, where certain initiatives were taken within the OECD (the Organisation of Economic Co-operation and Development, composed of industrialized countries) or the International Labour Organisation; and since the turn of the Millennium, when renewed attempts were made within the United Nations to address the issue. The *Guiding Principles on Business and Human Rights*, endorsed by the Human Rights Council on 16 June 2011, are the most significant outcome of these attempts.



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