



UNIBAT

Module 2: Applicable Legal Framework

Overview



Learning Objectives

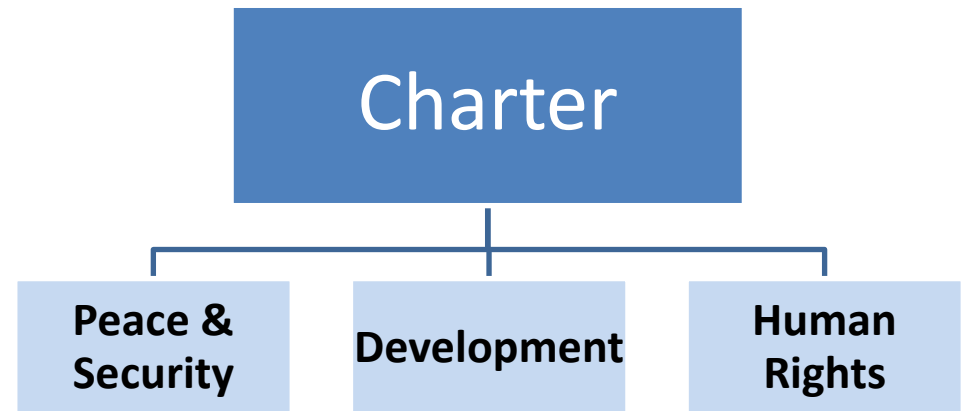
- Apply rules of international law that provide framework for UNIBAT's work
- Invoke legal rules that protect UNIBAT and the mission as a whole
- Identify and raise concerns about violations of human rights, humanitarian and refugee law that UNIBAT may see



Lesson 2-1

Legal Framework for Peace Operations: General International Law

Peacekeeping under the UN Charter



- Prohibits force by states, except in self-defense or Security Council approval
- Basis for Chapter VI and VII missions
- UN supports international law / human rights

- International Human Rights Law
- International Humanitarian Law (IHL)
- International Criminal Law
- International Refugee Law





International Human Rights Law

- Dignity, freedom and equality
- Obligations mainly for states
- Also during war or other national emergencies
- Peacekeepers: respect, protect & promote human rights



Case 1: Help wanted

A political opposition party calls for peaceful protests. The government prohibits the protests and sends in its army to disperse the demonstrators.

The local army commander asks UNIBAT to provide additional troops to help disperse the demonstrations and “restore law and order”.

Is UNIBAT allowed to provide help?

Human Rights Due Diligence Policy on UN Support to non-UN Security Forces

United Nations support to non-UN Security Forces cannot be provided:

- If risk of the receiving entities committing **grave violations** of international humanitarian, human rights or refugee law
- Relevant authorities fail to take the necessary **corrective or mitigating measures**”



**Protects and promotes credibility,
impartiality & legal interests of the mission!**



- ✓ **Risk mitigation & engagement, not blunt conditionality**
- ✓ **Suspension or withdrawal of support: measure of last resort**
- ✓ **Applies to all types to support**
- ✓ **Includes support to states and regional organizations**
- ✓ **HRDDP senior-level taskforces & standard operating procedures**

Application of the HRDDP

Mitigating risks of joint security operations



- ✓ Joint planning, including for contingencies
- ✓ After action reviews
- ✓ Background checks. Exclusion of problematic units & commanders
- ✓ Insistence on individual accountability & case referral

International Humanitarian Law (IHL)



- Geneva Conventions & Protocols



- IHL applies:
 - in international and non-international armed conflict
 - to all parties of an armed conflict
 - to peacekeepers as long as they participate in hostilities

Objectives of IHL

- Regulates conduct of hostilities & means of warfare
- Protects those not engaged in hostilities
- Parties respect and ensure respect for IHL



Protected Persons under IHL



- Civilians not directly participating in hostilities
- Medical and religious personnel of armed forces
- Wounded, sick and others *hors combat*
- Prisoners of war & interned armed group fighters
- Peacekeepers (unless engaged in military hostilities)

Conduct of hostilities

- **Distinction** between civilians and military targets
- **Precaution** to avoid civilian losses
- **Proportionality** between military advantage & civilian loss



Case 2: plan of attack

- An armed group regularly attacks local civilians. The armed group fighters live in a village among civilians of the same ethnic group. They do not always wear uniforms or carry weapons openly. The village has a hospital where many wounded fighters are treated.
- The host state army is planning to launch armed operations against the group in the village.

The army asks UNIBAT for advice on how to conduct its operation in line with IHL rules

IHL to protect children

- Entitled to special protection, care and aid
- Children must not be the target of attacks, except if they directly participate in hostilities and in self-defense
- When interned, held in separate quarters
- Evacuation from besieged or encircled areas
- No child recruitment and participation in hostilities (18 years limit under CRC Protocol)



International Criminal Law

- **War crimes:**
grave breaches of Geneva Conventions and other serious violations of IHL
- **Crimes against humanity:**
systematic or widespread inhumane acts
- **Genocide:**
intent to destroy ethnic or religious group
- **State duty to prosecute**
perpetrators of war crimes, crimes against humanity and genocide
- **International tribunals & courts** can prosecute (e.g. International Criminal Court)

Case 3: irresponsible command

- The military systematically looted a city and soldiers raped hundreds of women and girls.
- The military commander of the troops never ordered her troops to commit such atrocities. However, she knew about them and did nothing to stop the troops under her command.

Has she committed an international crime?

Command responsibility

Commanders are responsible for war crimes and crimes against humanity under their command if :

- They **knew or should have known** about the crimes

AND

- failed to take all necessary and reasonable measures to **prevent or repress** the crimes, including by investigating and prosecuting the perpetrators

Criminal responsibility without participation in crime itself!

International Refugee Law



- Refugees usually need special protection. Missions may have mandate to assist with their return
- 1951 Refugee Convention:
 - Definition: Fear of **persecution** due to race, religion etc.
 - International protected status / under UNHCR mandate
 - Refugee rights (e.g. freedom of movement)
- 1969 African Refugee Convention
 - Refugee status also to those fleeing **armed conflict** and other major violence



Case 4: “go back home”

The host state army is forcing refugees to go back to their own country.

The refugees will be imprisoned at home for “having illegally left the country.” In prison, women are often raped by the guards.



What legal concerns should the UN raise with the army?

Internally Displaced Persons (IDPs)

- **Forced to flee** (e.g. due to war or natural disaster) but have **not crossed an international border**
- Maintain human rights and citizens rights
- Home state must protect them

Protected by:

- UN Guiding Principles on Internal Displacement
- AU Convention on Internal Displacement in Africa





Lesson 2-2
Peace Operations Specific
Legal Framework
Mission Specific

Security Council Mandate

- Security Council Resolution:
Highest legal basis for the deployment of any mission
- Outlines the tasks and responsibilities that the Council expects the mission to accomplish



Security Council's protection mandates

- **Human Rights**

- Addresses everyone and all human rights, not only physical integrity
- Protection and prevention based on law, advocacy and capacity-building

- **Protection of Civilians**

- Protect against physical violence
- Includes physical protection and prevention, including use of force

- **Child Protection**

- Built around six conflict-related grave violations against children
- Consolidation in HR component

- **Conflict-related Sexual Violence**

- Focuses on women, girls, boys & men
- Consolidation in HR component



Whole-of-mission responsibilities

Case 5: mandate interpretation

The Mission's mandate authorises it to take **'all necessary measures to protect civilians'**

Local villagers captured **three 16-year olds** whom they accuse of being **fighters of an armed group** involved in crimes against humanity.

The town's mayor wants UNIBAT to **send blue helmet soldiers, detain the three persons and put them on trial**. The mayor fears that otherwise riots may break out or the three may be lynched.

What is the mission legally allowed to do? What is it not allowed to do?

Protection of Civilians Mandate: “All Necessary Action”

- Includes military, civilian and police action
- Does not replace sovereign responsibilities of host state
- Authority to use deadly force (as a last resort) to protect civilians under threat
- Action must comply with human rights and IHL, as spelt out in Rules of Engagement



Rules of Engagement

- Guidance on authority and limits to use force, and base for accountability
- Covers weapons use, detention, searches
- Abide by human rights at all times.
- When military engaged in hostilities, must also comply with international humanitarian law



Use of Force by Peacekeepers

Authority to Use Force

- Self-defence
- Defence of mandate, including freedom of movement
- Protection of civilians
- Other mandates given by Security Council

Limits of Use of Force

- Generally minimal use of force:
HR/policing rules
- Military can escalate to combat-level force when necessary:
IHL/military rules

DPO Guidelines on Military Use of Force: Minimal Force where possible

- Minimal force to reach objective
- Graduated force
- Proportionality (lethal force to protect life)



Note: United Nations Police will only use non-military force!

- ✓ Avoids escalation of violence
- ✓ Avoids participation in conflict
- ✓ Minimize harm to civilian population

Case 6: force protection

Scenario 1:

A group of angry villagers starts throwing stones at the UNIBAT and UN formed police units guarding a UN compound.

Scenario 2:

The next night, the same compound is shelled with mortars by unknown attackers.

What force may the United Nations use in each scenario to defend themselves?

Host State Agreements (SOMA/SOFA)

- Legal doc signed by UN and host state
- Privileges and immunities for UN mission / personnel
- Examples: freedom of movement, customs exemptions, visa requirements
- Supplemented by special agreements (example: handover of detainees to host state)



Immunities and Exclusive Jurisdiction

- Troop contingents under exclusive disciplinary and criminal jurisdiction of their own states.
Promise under TCC MOU to ensure accountability
 - UNMOs and Police have functional immunity for official acts. Can be waived by Secretary-General
- Immunity does not mean impunity for peacekeepers

Case 7: Roadblock

A UNIBAT platoon conducts a patrol to implement its mandate to verify ceasefire violations

An armed group has set up a roadblock and refuses to let UNIBAT pass.

The armed group argues that peacekeepers did not get prior authorization to access the area under its control



What is UNIBAT legally authorized to do?

United Nations Policies & Guidance

- SG policies apply to all UN work
DPO policies are specifically for peace operations
- Details of policies are elaborated through guidelines, standard operating procedures & standing orders
- SG & DPO Guidance is legally binding



DPO Standard Operating Procedures on Detention in UN Peace Operations (I)

- Arrest & detention powers based on Security Council Mandate and ROE
- SOP triggered once UN has target person under its effective control
- Due process: Inform person about reason for detention, inventory of items taken from detainees, notification of their family etc.
- Mission's Detention Focal Point must be immediately notified
- ICRC notified within 36 hours and given access to detainees
- Foreigners may demand that their consulate is alerted





DPO Standard Operating Procedures on Detention in UN Peace Operations (II)

- Humane treatment during detention. Mission responsible for water, food, hygiene, medical care etc.
- Separation of male and female detainees; adults & children
- Temporary detention (96h) only. Then handover to authorities or release
- No handover if risk of persecution, torture/ill-treatment, disappearance, summary execution or death penalty. Mission must assess risk prior to handover and monitor handed-over persons

DPO Standard Operating Procedures complemented by mission specific guidance, appropriate orders & training for all concerned staff.

DPO Policy on Peacekeeping Intelligence (PKI): Limits on UN intelligence activities

- ✓ Full respect for human rights & international law
- ✓ No clandestine activities
- ✓ No exposure of sources to harm
- ✓ Independence of UN's peacekeeping intelligence
- ✓ Cooperation with states subject to conditions

Case 8: who is this armed group?

To obtain information on a new armed group, UNIBAT considers to:

- *Establish a joint intelligence cell with the host state's military intelligence*
- *Infiltrate UN language assistant as a recruit into the armed group*
- *Pay an armed group fighter for copies of the group's battle plans*
- *Speak to children who cook for the group*

Relevant PKO principles:

- Independence of UN intelligence
- Protect sources from harm
- No covert action
- No paid informants
- No children as sources



Policy on Human Rights in Peace Operations: Responsibilities for all UNIBAT members

- **Identify**
- **Record**
- **Report**
- **Confidential**
- **Refer victims (support)**
- **Intervention to protect**
- **Follow situation**



Lesson Take Aways

- UNIBAT must respect human rights and IHL, and also help ensure that local forces respect them
- SOFA / SOMA give UNIBAT freedom of movement and other legal protections
- ROE regulate UNIBAT use of force. May use as much force as needed to defend mission, protect civilians and achieve mandate
- Secretary-General and DPO policies set binding rules for UNIBAT, e.g. on detention & intelligence