



Lesson 2.1

International Law for MSOs in Field Missions

Content



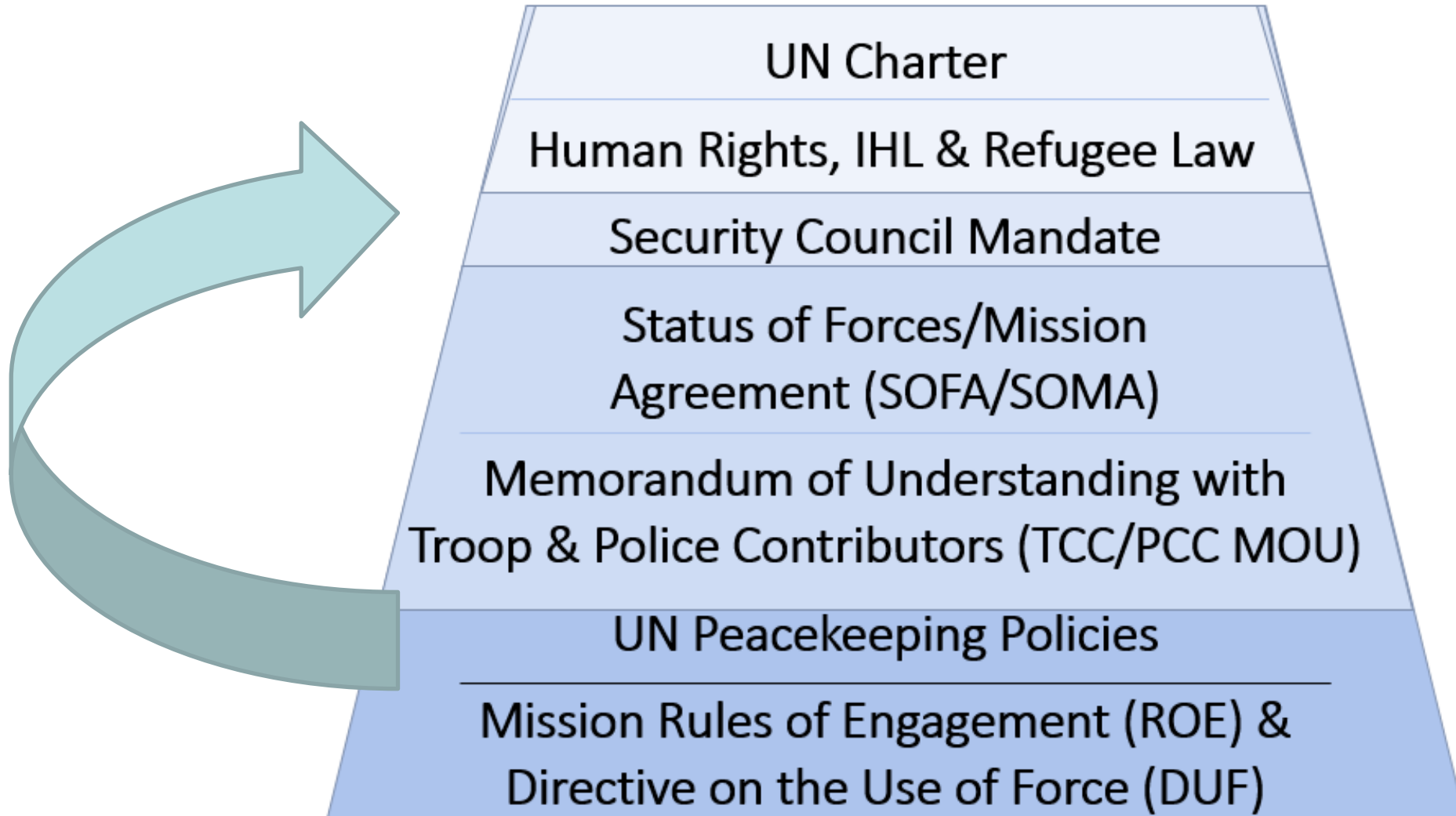
- International Human Rights Law (IHRL)
- International Humanitarian Law (IHL)
- International Criminal Law (ICL)
- International Refugee Law (IRL)
- UN Policies
- Mission Specific Law, policies and guidelines



Learning Outcomes

- Identify the key international law obligations and protections guiding UN missions and their military
- Identify typical violations of international human rights law, humanitarian, refugee, and criminal law
- Explain the course of action to be followed in line with UN obligations

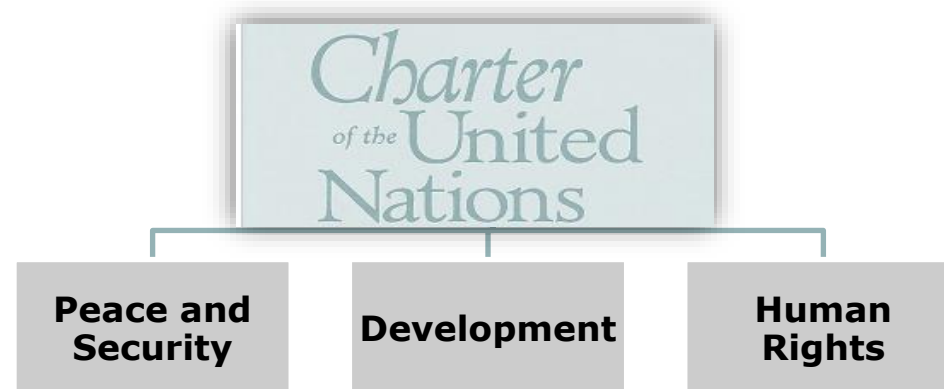
Hierarchy of UN Laws and Policies Relevant to Peace Operations



Peace Operations under UN Charter



- The Charter is the legal basis for the deployment of missions and commits UN to promote respect for human rights and uphold international law
- Chapter VI prohibits force by states, except in self-defence or with SC approval
- Chapter VII enables SC to take coercive action with respect to threats to the peace, breaches of the peace and acts of aggression





UN Peacekeepers Responsibilities

- International Human Rights Law (IHRL)
- International Humanitarian Law (IHL)
- International Refugee Law (IRL)
- International Criminal Law (ICL)



- UN Charter Principles:**
- Conformity with International Law
 - Encourage respect for Human Rights



International Human Rights Law (IHRL)



- Protects everyone's dignity, freedom and equality
Human rights are universal and cannot be taken away
- Still apply during war or other national emergencies
- Primarily establishes obligations of states
Non-state armed groups have been known to violate or abuse human rights



UN Code of Conduct for Blue Helmets:

Respect and regard the human rights of all



Case 1: Cattle herding boy



“A militia came to steal our cows. We had to flee into the swamps. They were shooting at everyone. We survived on wild plants and swamp water.”

What violations have occurred?

Violations to consider:

- Intentional attack against civilians (or) Indiscriminate attack
- Right to life
- Pillaging
- Arbitrary displacement
- Right to housing and freedom of movement
- Right to food, water and health



Case 2: Joint Operation

- The UN military is planning a joint operation with the host state military against an armed group that often attacks civilians.
- The host state army insists on including a private military company in the operation. International human rights organisations have repeatedly reported war crimes committed by that private military company. However, no contractor of that company has ever been prosecuted.



What course of action should the UN military take?

Human Rights Due Diligence Policy (HRDDP)



- Relates to UN support to non-UN Security Forces
- UN Support **cannot** be provided if:
 - There is a real risk of the receiving entities committing grave violations of international humanitarian, human rights or refugee law, and
 - Relevant authorities fail to take the necessary corrective or mitigating measures



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

Application of the Human Rights Due Diligence Policy (HRDDP)



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



Mitigating risks in Joint Security Operations



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

International Humanitarian Law (IHL)



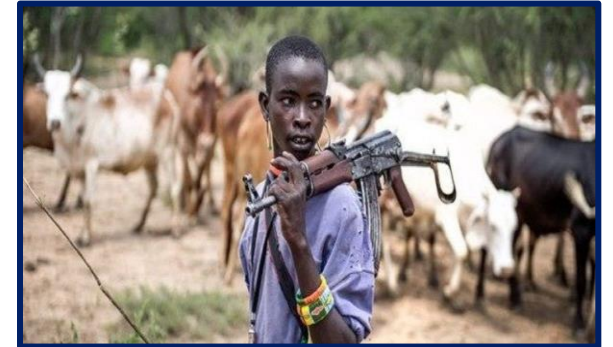
- Applies to conflict parties in international and non-international armed conflict (IAC/NIAC)
- Military peacekeepers must abide as long as engaged in military hostilities (SG's Bulletin on IHL)
- Regulates conduct of hostilities and restricts means of warfare
- Protects those who do not, or no longer, engage in hostilities



Protected Persons Under IHL



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



Case 3: Wounded Fighter



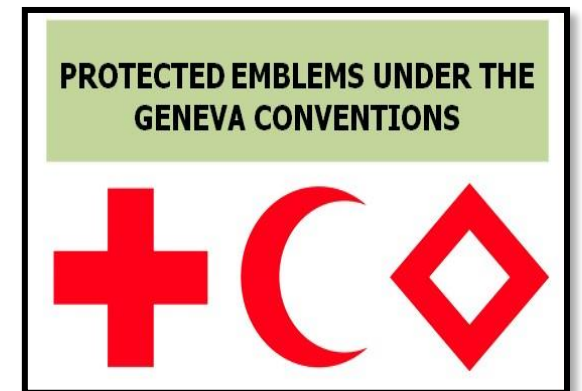
- A UN Military patrol visiting a host state army camp finds a detained armed group fighter. The man is injured and in great pain.
- The camp's military commander informs the UN patrol that the man will receive medical assistance as soon as he reveals where the armed group produces its improvised explosive devices.

What are the UN Military patrols' responsibilities in this situation?

Legal Protection of Medical Care in Armed Conflict



- Conflict parties must provide wounded and sick with medical care, promptly and without distinction
- Civilian and **military** personnel, facilities and transports exclusively assigned to medical duties are protected in all circumstances. Attacks on them are war crimes
- No improper use of Red Cross distinctive emblems, especially for military purposes



International Humanitarian Law: Conduct of Hostilities



- Distinction between civilians and combatants
- Precaution to minimize risks for civilians
- Proportionality to limit incidental harm to civilians





Case 4: Mortal mortars

- During the night, an armed group shells a UN military compound with a mortar placed within the densely populated village located in the immediate vicinity of the UN.
- The UN infantry battalion in the compound is armed with its own mortars and rifles.



How may the UN military defend itself?

How could IHL compliant UN planning have made it easier for the UN to defend itself?



Authority to Use Force ("when")

- Self-defence
- Defence of mandate, including freedom of movement
- Protection of civilians
- Special mandates

Limits of Use of Force ("how")

- Minimum necessary force against non-military threats (human rights limits)
- Escalate force as necessary against military threats (IHL and human rights limits)

Precaution and Proportionality



- All feasible precautions to avoid and minimize incidental losses of civilians and damage to civilian objects
- Choice of means and methods of warfare to avoid/minimize civilian losses
- Incidental civilian losses must not be excessive to concrete and direct military advantage
- Avoid placing military objects next to densely populated civilian areas

Note: Adversary's use of "human shields" does not erase precaution duty

Distinction between Military Targets and Civilians



Lawful Military Target

- Members of state armed forces (except wounded, medical & religious personnel)
- Civilians for such time as directly participating in hostilities
- Armed group members in continuous combat function (i.e. continuous function of direct participation)

Protected Civilians:

- Civilians not directly participating in hostilities
- Includes:
 - Rioters
 - Ordinary criminals
 - Civilians indirectly involved in hostilities **(but they can still be apprehended as non-military threats!)**

Use of cultural property for military purposes or incidental damage to such property is prohibited under IHL rules

Direct participation in hostilities: Three cumulative requirements



Threshold of Harm	+	Direct Causation	+	Belligerent Nexus
<p>Act directly affects military operations of conflict party or Act inflicts death, injury or destruction on protected person</p>		<p>Direct causal link between act and harm</p> <p>Includes acts that are integral part of coordinated military operations</p>		<p>Act specifically designed to directly cause harm in support of one party to the conflict to the detriment of another</p>
<p><u>Relevant harm examples:</u></p> <ul style="list-style-type: none"> • Killing military personnel • Transmitting targeting information • Shooting civilians 		<p><u>Direct causation examples:</u></p> <ul style="list-style-type: none"> • Identification and marking of targets • Laying mines 		<p><u>No belligerent nexus:</u></p> <ul style="list-style-type: none"> • criminal activities that unintentionally harm a conflict party (fuel theft from military for personal profit)



Case 5: Target Person

- An armed group has attacked civilians and UN personnel with deadly improvised explosive devices (IEDs). The UN military has identified the man who is financing the IED attacks
- The UN military wants to launch a targeted operation against him

Is the man a military target?

What rules of engagement would be lawful?



Handling indirect supporters of armed group attacks against UN



Not direct participant in hostilities:

- Propaganda producers
- Armed group recruiters
- Financers
- Suppliers of food
- Providers of weapons
(unless integral part of military operation, e.g. IED maker & instructor)

Permissible action against these persons:

- Apprehend as non-military threat & handover to state for prosecution
- Right to use defensive force if target person resists capture, including lethal force if necessary to protect life

Case 6: No more Quick Impact



- Much of the local population in Mission Sector B, who belongs to a minority ethnic group, is opposing the presence of the UN military. Some locals have gone as far as throwing stones at UN military compounds
- A UN Staff Officer in Sector B proposes to inform local leaders that all UN quick impact projects in Sector B are suspended until the attacks against the UN compounds stop

Is that lawful?

What would be a better course of action?



Case 7: Diversion

- An armed group secretly diverts some of the humanitarian aid delivered to areas under its control to supply to its own fighters.



- In response, the host state army prohibits any deliveries of humanitarian aid into the area where the armed group operates. This policy is classified as a military secret and journalists who report on it will be prosecuted.

- **Discuss...**

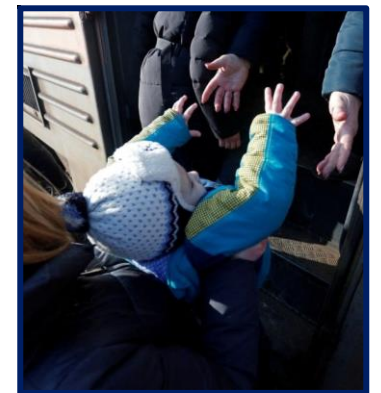
Violations to consider:

- Rapid and unimpeded passage of humanitarian relief for civilians in need
- Human right to food, including freedom from hunger
- No discrimination on grounds of ethnicity
- War crime of intentional starvation of civilians
- Human rights to freedom of expression, media and information.

Right to Humanitarian Assistance



- Authorities must ensure humanitarian essentials, including by requesting international humanitarian aid
- Authorities & conflict parties must not divert assistance or discriminate between populations in need
- Authorities & conflict parties facilitate free & safe passage of humanitarian aid & access to populations in need
- Intentional starvation of civilians is a war crime



International Criminal Law (ICL)



- **War crimes:**
key feature: serious violations of IHL
in armed conflict
- **Crimes against humanity:**
key feature: **systematic or widespread** inhumane acts
(murder, rape, torture etc.)
- **Genocide:**
key feature: intent to destroy
national, ethnic, racial or religious
groups **as such**
- **State duty to prosecute**
perpetrators of war crimes, crimes
against humanity and genocide
- **International tribunals** may have
jurisdiction to prosecute
(e.g. International Criminal Court)



Case 8: Ignorant Commander



- Soldiers of a particular host state army battalion are regularly looting civilian property and raping local women.
- The UN Sector Commander informs the battalion's commander about this. The Commander responds that they never gave orders to commit such acts and cannot be held criminally responsible for their subordinates' misconduct.

Is the local battalion commander, right?

What advice of caution should the UN Sector Commander provide?

Command Responsibility



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

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

AND

- They **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 the crime itself!

Protection of Displaced Persons under International Law



1951 Refugee Convention

- Refugee Definition:
 - fled across international border
 - fear of persecution due to race, religion, political opinion, social group etc.
- Protection by host state & UNHCR
- Refugee rights & non-refoulement
- AU Refugee Convention & Cartagena Protocol extend protection to conflict refugees



UN Guiding Principles on Internal Displacement

- Internally Displaced Persons (IDPs):
 - did not cross international border
 - Forced to move (conflict or disaster)
- Protection by home state
- Keep human rights & citizens rights
- AU Convention on Internal Displacement in Africa builds on UN Guiding Principles





Case 9: Go home

- The Joint Mission Analysis Centre (JMAC) learns that the host state has ordered refugees from the neighbouring state to go home because the rebels across the border have surrendered and major fighting there has stopped.



- Many refugees are afraid to go because the government has been rounding up anyone of the rebels' ethnicity and detained them in internment camps.

Is this a concern to the mission and its mandate?

Summary of Key Messages



- The UN Charter is the foundation and basis for all UN work across the Organization. In the area of peace and security, Security Council resolutions give important guidance to the work of peacekeeping operations.
- IHL (and the UN's HRDDP), IRL and ICL must be observed by peacekeepers in all peace operations.
- The Convention on Privileges and Immunities of UN personnel does not mean peacekeepers can break laws with impunity.
- Commanders can incur criminal responsibility for international crimes simply by standing by and doing nothing, even without actively participating in such crimes.