



## Lesson 2.2

# Peace Operations-specific International Law

# Content

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- Security Council Mandate
- Status of Mission/Forces Agreements (SOMA/SOFA)
- Privileges, Immunities and exclusive TCC jurisdiction
- UN Peacekeeping Policy Framework
- UN Policy of detention in peacekeeping
- Use of Force in Peacekeeping



# Learning Outcomes

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- Explain the key mission-specific legal framework
- Explain how peacekeeping mission-specific legal framework guides and protects the work

# Security Council Mandate



- SC Resolution is the highest legal basis for the deployment of any mission
- Outlines tasks and responsibilities that SC expects the mission to accomplish
- The range of tasks outlined in a mandate differs between peace operations, based on the conflict environment, the challenges on the ground and other factors



# Mandates to protect at-risk populations



- **Human Rights**
  - Addresses everyone and all human rights, not only physical integrity
  - Involves advocacy & capacity-building
- **Protection of Civilians**
  - Protect civilians from physical violence
  - Includes physical protection and prevention, including use of force
- **Child Protection**
  - Built around six conflict-related grave violations against children
- **Conflict-related Sexual Violence**
  - Prevention and response to CRSV
  - Focuses on women, girls, boys & men

**Whole-of-mission responsibilities**

# Host State Agreements: Status of Mission/Force Agreement (SOMA/SOFA)



- Legal document signed by UN and host state
- Regulation of questions concerning the presence of forces
  - Provision of water, electricity and other public utilities
  - Provision of certain facilities (e.g. premises for the operation's HQs) free of charge
- Privileges and immunities for UN mission/personnel
  - Responsibility for criminal and civil jurisdiction over the members of the operation
  - Taxation and customs exemptions
  - Freedom of movement
- Supplemented by special agreements
  - E.g. Handover of detainees/intelligence sharing





# Important Privileges & Immunities for mission staff under SOMA/SOFA



- Functional immunity from arrest, detention, seizure
- Immunity from legal process for official actions & words
- Inviolability of papers and documents
- Correspondence by code, courier & sealed bags
- Wear military uniform, UN insignia, & fly UN flag
- Unhindered entry & departure (international staff)
- Freedom of movement within the mission area

**For UN interest; not personal benefit.  
Can be waived by UN without prejudice**



# Case 10: Roadblock

- An armed group has set up a roadblock and refuses to let the peacekeepers pass. The fighters at the roadblock argue that the UN Engagement Team (UN-ET) has not sought prior authorization to access the area under its control.
- The armed group also insists on searching the UN-ET vehicles.



*What are the peacekeepers **legally** allowed to do under their mandate?*

*Are they legally allowed to **force their way through** the roadblock?*



# Freedom of Movement (FOM)

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- SOFA/SOMA provides FOM through host-state
- No prior authorization or notification needed – except for normal air traffic control requirements
- Government ensures safety, security, FOM
- UN authority to assert FOM in defence of the mandate

# Case 11: Leaked Documents



JMAC obtained documents proving the importation of weapons contrary to a UN arms embargo.

The Host state:

- Prosecutes the UN national officer who obtained the documents
- Prohibits UN officials from leaving the country unless they agree to have their bags searched
- Declares the JMAC chief persona non grata

**Is the mission legally protected against these steps?**

# United Nations Functional Immunity



- Troops/contingents remain under exclusive jurisdiction of their state. May only be arrested, prosecuted, etc. by their own state
- UN civilians, MSOs, UNMOs and all UNPOL enjoy functional immunity for official acts as per:
  - Status of Forces Agreement/Status of Mission Agreement
  - 1946 Convention on the Privileges & Immunity of the United Nations
- Immunity protects UN staff from intimidation and reprisals. Can be waived by the Secretary-General in interest of UN
- Actual misconduct (e.g., sexual exploitation and abuse) is always subject to disciplinary & criminal action relevant personnel

**Immunity never means impunity for UN peacekeepers**

# Peacekeeping Policy Framework

## Compliance with UN policy is mandatory for all peacekeepers

### Relevant Secretary-General Policies and Bulletins (examples):

- Special measures for protection from sexual exploitation and abuse
- Observance by United Nations Forces of International Humanitarian Law
- Human Rights Screening Policy
- Human Rights Due Diligence Policy on UN Support to non-UN Security Forces

### Relevant DPO-DOS Policies, Guidelines and SOPs (examples):

- Use of Force by Military Components
- Accountability for Conduct and Discipline in Field Missions
- Detention by United Nations Peacekeepers
- Human Rights in UN Peace Operations and Political Missions
- Protection of Civilians in UN Peace Operations

# Accountability and Jurisdiction over UN Peacekeepers



- Peacekeepers are accountable to their contingents and ultimately to the HOM through the chain of command for implementing UN legal frameworks/policies and guidelines.
- TCCs maintain exclusive jurisdiction over peacekeepers from their country. Host state cannot prosecute them.
- Criminal prosecution and/or other disciplinary action can and must be taken by TCC if UN peacekeepers engages in serious misconduct/crimes
- UN can repatriate contingents that fail to ensure discipline & accountability (mandatory for sexual exploitation and abuse)

**Immunity never means impunity for UN peacekeepers**

# Peacekeeper Responsibilities: Human Rights and IHL Violations

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1. Proactively identify human rights and IHL concerns
2. Diligently record information on human rights/IHL violations
3. Report to chain of command, human rights component, protection of civilian's coordinator (based on SOPs)
4. Keep confidential sensitive information on victims & witnesses
5. Refer victims to urgent support
6. Promptly make appropriate intervention to protect from further harm
7. Continue to follow the situation



# RoE for Military & DUF for Police



- RoE developed and authorized by OMA
- DUF developed and authorized by PD
- Guidance on **authority** and **limits** to use force, and base for accountability
- Covers use of kinetic force, detention, search and seizure
- Abide by human rights at all times
- When military exceptionally engaged in hostilities, must also comply with international humanitarian law





## Case 12: Detainee

- During another attack on a UN compound, a local man throws a “Molotov cocktail” (burning bottle filled with gasoline) at the compound. The UN military captures the man. The UN sector commander is considering to:
  1. Detain him in a UN storage container for 7 days until he learned his lesson, or
  2. Immediately hand him over to the local host state police.



**What course of action would you advise to the UN sector commander?**

# Legal Framework for Detention by UN Peacekeepers



## Authority to detain ("when")

- Security Council mandate:
  - Self-Defence
  - Protection of Civilians
  - Other mandated tasks
- Elaborated by mission-specific RoE  
UN (Military)/DUF (UNPOL)

## Treatment and due process ("how")

- Temporary & humane detention only
- United Nations Standard Operating Procedures on Detention in Peace Operations (based on international human rights standards)
- Further elaborated in mission-specific detention rules & processes

**UN detention rules apply as soon as mission has effective control over individual (even briefly)**

# Handling of Detention in Peacekeeping: DPO Standard Operating Procedures (2020)



- Detention powers based on Security Council Mandate and RoE
- Humane treatment in detention. Mission responsible for water, food, hygiene, medical care etc.
- Mission's Detention Focal Point must be immediately notified
- Due process: Inform person about reason for detention, inventory of items taken from detainees, notification of their family. ICRC notified within 36 hours and given access
- Foreigners may demand that their consulate is alerted
- Temporary detention (96h) only. Then handover to authorities or release
- No handover if risks of persecution, torture/ill-treatment, disappearance, summary execution or death penalty exist. Missions must assess risk prior to handover and monitor persons handed-over



**DPO SOP complements mission-specific guidance, appropriate orders & training for all concerned staff**

# DPO Detention: Questioning of Detainees

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- United Nations personnel may question persons detained within their protection of civilians and self-defence mandates
- Record must be kept of UN personnel present & detainee responses
- Detainees may not be compelled to answer questions, and must be informed about that right
- Torture, inhumane treatment or other methods of questioning that would violate international law are not permitted
- Questioning of children by Child Protection Officers only



# Due Process in UN Detention: Transfer & Processing at UN detention facility



**No torture  
or  
Inhumane  
Treatment**



Inform  
about  
reasons for  
detention

Humane  
transport to  
detention  
place

If necessary,  
treatment at  
UN medical  
facility

inform JOC &  
Detention Focal  
Point



# Due Process in Apprehensions: Temporary Detention



**Plan ahead for  
detention  
cases**



**Detain in safe place.  
Separate  
men/women &  
adults/children**

**Medical examination,  
water, food, bedding,  
hygiene**

**If detainee wants,  
inform family &  
lawyer.  
Provide access**

**Prepare handover,  
incl. risk assessment**



# Case 13: Hiring local

To keep their base clean, a UN base is locally hiring new staff. As a contribution to building peace, it wants to hire demobilized fighters from an armed group



a) Mr. A is a demobilized fighter. A credible local NGO has accused him of having raped a girl during the conflict

b) Ms. B, 17 years old, was sexually enslaved by the armed group. She is eligible for UN reinsertion support as a child formerly associated with an armed group

c) Cleaning Company C is owned by the armed group's former commander. According to NGO reports, the commander remains involved in illegal mining using forced labour. He has also been indicted (but not yet prosecuted) for sexually assaulting one of his employees

**May the troop contingent hire Mr. A and Ms. B or contract Company C?**

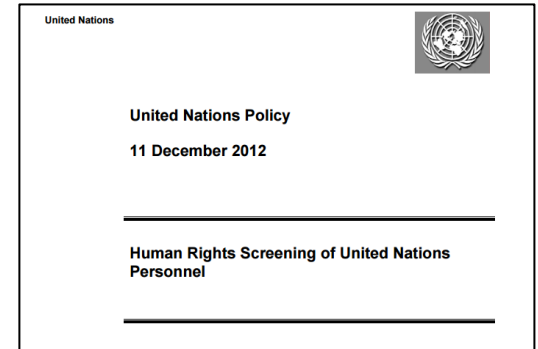
# UN Policy on Human Rights Screening of UN Personnel



UN will **not employ/deploy** anyone involved in violations of international human rights or humanitarian law. Credible allegations are enough (reasonable grounds standard)

**Recruiting entity** must ensure screening on three levels:

1. Where **States** provide personnel to UN, they must screen and certify
2. Every **Individual** who seek to serve with the UN must provide self-attestation
3. The **UN Secretariat** will undertake proactive screening (and must take action if credible allegations are received)



## UN Child Protection Policy:

**UN peacekeepers must NOT employ anyone under 18 years**

# UN Supplier Code of Conduct



- The UN expects its suppliers (and their subcontractors) not to be complicit in human rights abuses
- Detailed expectations on labour rights (freedom of unions/association, no forced/child labour, non-discrimination)
- Mission-specific guidelines to ensure due diligence checks before contracting



## UN Protocol on Allegations of SEA involving Implementing Partners:

**All suppliers and other implementing partners must be checked for compliance with zero tolerance for SEA**

# UN Peacekeeping-Intelligence



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## **UN PK-I legal limits, as established or reaffirmed by DPO Peacekeeping-Intelligence Policy**

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

# Case 14: Intelligence ideas



To obtain information on an armed group, the mission considers to:

- Exchange information with host state intelligence that regularly tortures detained armed group fighters
- Infiltrate UN language assistant as a recruit into the armed group
- Use troop contingent's money to pay informants
- Recruit children who cook for armed group as unpaid informants



**Discuss:**



# Environmental Law in Peace Operations



- **2018 OHCHR Framework Principles:**
  - Environmental harm interferes with enjoyment of human rights
  - Obligation to provide Safe, clean, healthy, and sustainable environment
- **2019 DOS SOP on Impact Assessments:**
  - Missions must respect all national laws, or when weak or lacking, must comply with international 'best practice' standards
- **2022 DOS Environmental Policy - Principles**
  - Stewardship of the environment
  - Efficiency in resource use and operations
  - Continuous improvement of environmental performance
  - Stakeholder engagement at all levels
  - Adaptation and resilience

# Summary of Key Messages



- Military Staff Officers must ensure that the UN respects International Law and UN Policy in its operations, regarding the use of force, detention, peacekeeping intelligence and the environment
- The UN Military must be prepared to use the necessary force to protect civilians and the mission, but not more than necessary
- The Missions privileges and immunities legally protect the mission and all its staff against reprisals and attacks, but UN personnel can always be held responsible for genuine criminal conducts