



## Lesson 2

# Legal Framework for United Nations Force Protection

# Aim

Convey key aspects of the international legal framework regulating force protection by United Nations Peacekeeping Missions

# Relevance

Empower UN peacekeepers to effectively use defensive force and peacekeeping intelligence with confidence in its legality to keep themselves and other UN mission personnel and installations secure.

# Learning Objectives

- Understand when and how uniformed personnel may use force to protect themselves or other mission personnel against attacks of a military or non-military nature.
- Know the UN legal framework for the collection of peacekeeping intelligence related to force protection.

# Overview

Authority to use defensive force

Use of force against non-military threats

Use of force against threats of military nature

Legal limits of peacekeeping intelligence

# Legality of Force by Peacekeepers

## 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")

- Minimal necessary force against non-military threats (*human rights limits*)
- Escalate force as necessary against military threats (*IHL & human rights limits*)

## Case 1: Return fire

Host state military shoots at UN mission platoon to prevent the platoon from accessing an area the host government considers to be off limits.



- 1. Does the UN platoon have the legal right to fire back?*
- 2. Must the UN platoon try to avoid force by withdrawing?*

# Freedom of Movement (FOM)

- SOFA/SOMA provides FOM through host-state
- No prior authorization or notification needed
- Government ensures safety, security, FOM
- UN can forcibly assert FOM as defence of mandate



# Right to Self-defense

- Attacks on peacekeepers are unlawful
- Regardless of mandate, Peacekeepers may use force in self-defence
- Defensive force against state or non-state attackers
- UN may stand ground against unlawful attack. No requirement to withdraw to avoid force
- Defensive force must be necessary to end attack and proportional to threat

## Case 2a: Drones



An armed group plants remote-controlled improvised explosive devices (IEDs) to target civilians & UN personnel. Several civilians and peacekeepers have been killed.

The mission has spotted small surveillance drones over one of its compounds. Peacekeeping intelligence indicates that the armed group uses the drones to identify movement patterns of UN convoys coming and going to the compound.

*May the UN shoot down such drones in self-defence?*

## Case 2b: Counter IED



After collecting and analysing peacekeeping intelligence for two months, the mission identifies the base where the armed group builds the IEDs and trains the operatives who attack local civilians and UN personnel.

*May the UN attack & destroy the armed group base?*

# Legality of proactive force to protect

## **Protection of civilians**

- Force to protect civilians against unlawful violence
- Force against attacker only
- Force against ongoing, imminent or as mandated, recurrent attacks
- Force necessary & proportional

## **UN's right to self-defence**

- Force in response armed attack on peacekeepers or mission
- Force against attacker only
- Forces against ongoing, imminent, or as mandated, recurrent attacks
- Force necessary & proportional



**Proactive force to protect civilians or UN  
against recurrent attacks**

## Case 2b: FPU vs IEDs



The armed group responsible for the IED attacks is based in a heavily guarded compound. The compound is secured by guards with heavy machine guns and rocket propelled grenade launchers.

The mission considers to assign the mission to destroy the base to the Special Weapons and Tactics (SWAT) team of one of its Formed Police Units (FPUs).

*Is this approach in line with UN rules?*

# UNPOL FPU in Force Protection

(United Nations Formed Police Units Policy)



- Equipped & trained for restrained force in line with UN Basic Principles of Use of Force and Firearms
- Not deployed where sustained use of firearms or military weaponry
- FPU involved in protection of unarmed military, convoys, relocation or evacuation of staff within capabilities
- Intentional lethal use of firearms when strictly unavoidable to protect life against imminent threat (e.g., sudden attack against FPUs)



## Case 3: Retaliation against Rocks

Disgruntled young men from a local village regularly throw rocks at UN vehicles. Several UNPOL were injured.



Right before the harvest, UNPOL confiscates the village's only tractor and tell village elders that they will return it only once the attacks stop.

**Is this action legal? Is there a better approach?**

**Force Protection measures must always respect human rights**



## Restrained defensive force against non-military threats

- Respect for human rights – no excessive force
- Proactive de-escalation to avoid use of force
- Minimal force necessary to end the attack
- Graduated force, focus on less lethal means
- Force against attacker. No collective punishment





# Case 4a: Stoned

Angry local people break into a UN base. They throw stones at the UN military and formed police units stationed at the base.

*How may the UN respond?*



## Case 4b: Surrounded

During the incursion of the UN compound, a UN military officer gets separated from her colleagues and surrounded by several youth (ages 14-17) armed with clubs. The UN military officer pulls her only weapon, a pistol, and warns that she will shoot if the youth come closer. Two youth continue to advance in a menacing manner. When they are about 2 meter from her, the officer shoots them both in the legs.

*Is the UN military officer's conduct lawful?*

## Case 4c: Vehicle theft

During the turmoil, a local man steals the keys to a UN truck and is about to drive off. A UN soldier sees it but is too far away to catch up to the man before he drives off.

- 1. May the soldier shoot the man in the legs to defend UN property?*
- 2. What if the vehicle was the UN base's only ambulance, loaded with lifesaving medical equipment?*



## Exceptional use of firearms against non-military threats

- Use of firearms to defend against imminent threat of death or serious injury
- Prior verbal warning unless this would create risk
- Deliberately lethal force (targeted kill shot) where absolutely necessary to protect life
- Defense of UN property by less lethal means only.  
No use of firearms. Exceptions:
  - Defence of lifesaving equipment
  - Defence against theft of firearms and other lethal weapons
  - Imminent threat of death or serious injury for UN personnel guarding property
- Follow up medical care. Report & investigate incident

# Use of force against military threats

- Defensive force necessary to end attacks
- When engaged in hostilities, UN must respect IHL:
  - **Distinction** between civilians and military targets
  - **Precaution** to minimize risk for civilians
  - **Proportionality** of incidental civilian harm



## Case 5: Mortal mortars

During the night, an armed group shells a UN compound with two small caliber mortars.

The first mortar fires from a secluded area south of the compound. The second is placed in a nearby orphanage where 80 children are sleeping.

The UN military in the compound is armed with its own mortars, armored personnel carriers and rifles.



*How may the UN military defend itself?*



# Precaution and proportionality

- All feasible precautions to avoid & minimize incidental losses of civilians & damage to civilian objects
- Choice of means & 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 in densely populated civilian areas. But: Adversary's use of "human shields" does not erase precaution duty

# Distinction between Military Targets & Civilians

## Lawful Military Target:

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

## Protected Civilians:

- Civilians not directly participating in hostilities
- Includes:
  - Rioters
  - Ordinary criminals
  - Civilians giving indirect support to armed group attacks

***Can still be apprehended as non-military threats***



# Direct participation in hostilities:

three cumulative requirements

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

# Case 6a: Commando operations

The mission plans commando operations against five persons linked to remote controlled IED attacks against UN personnel:

- **A** builds the IEDs. He trains & instructs others where to put them.
- **B** operates drones to spot when UN passes an IED site.
- **C** produces propaganda broadcasts to recruit more fighters.
- **D** administers supplies of food & water to armed group base.
- **E** finances group & purchases the explosives used.

1. Who is a lawful military target? Who is a non-military threat?
2. How would the rules of engagement change for each commando operations depending on that classification?

# Handling indirect supporters of armed group attacks against the United Nations

## 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 & trainer)

## 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 6b: Detainee

During its commando operations against the armed group's IED factory, the United Nations apprehend the armed group's IED builder. The man is badly injured and winces in pain.

The leader of the UN commando tells the man that he will receive medical care as soon as he provides information on other members of the IED network.



*Is that approach lawful?*

*What would be the proper course of action?*

# Legal protection of medical care in armed conflict

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

PROTECTED EMBLEMS UNDER THE  
GENEVA CONVENTIONS



# 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 Rules of Engagement (UN Military)/ Directive on Use of Force (UNPOL)

## Treatment & due process (“how”)

- 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)

# Due Process in UN Apprehension & Detention: stage I- immediate duties on-scene



**No torture or inhumane treatment**

- 1**  
Apply restraints safely. First aid
- 2**  
Conduct search. Secure evidence if host state does not
- 3**  
Ask about identity, age, medical needs
- 4**  
Inform command about apprehension



# Due Process in UN Apprehension & Detention: stage II – transfer and initial processing



5

Inform about  
reasons for  
detention

6

Humane  
transport to  
detention place

7

If necessary,  
treatment at UN  
medical facility

8

Detention report  
& inform Joint  
Operations  
Centre



# Due Process in UN Apprehension & Detention: stage III – at UNPOL detention facility



9

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

10

Medical  
examination, water,  
food, bedding,  
hygiene

11

If detainee wants,  
inform family &  
lawyer.  
Provide access

12

Questioning  
without  
compelling  
answers

# Questioning of detainees



- United Nations personnel may question detained persons under 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
- Questioning of children by UN Child Protection Officers
- No torture, inhumane treatment or other methods that violate international law (e.g., withholding water, food, medical care, sleep).

## Case 6c: Handover



The local commander of the host state military demands that the United Nations immediately hand over the captured IED builder. The commander's battalion has suffered several casualties in IED blasts.

***How should the UN handle the request?***

# Handover to host state authorities

- Handover within **96h (48h for children)**, or release
- Advance agreement on general handover modalities and guarantees of humane treatments
- Individual handover risk assessment for each case
- Head of Mission to decide on each handover
- Post-handover monitoring of detainee treatment.



# Prohibition of Refoulement

No handover if real risk of:

- Arbitrary killing or disappearance
- Torture/ inhumane treatment
- Sexual violence
- Death penalty
- Grossly unfair trial
- For children:  
Participation in hostilities



# Peacekeeping Intelligence in Force Protection

## SOPs on Serious Crimes against UN Peacekeepers

- Intelligence Acquisition Plan prioritizes serious crimes against UN personnel
- Systematic analysis of threats against UN missions
- Cooperative framework with host state

## Peacekeeping Intelligence Policy

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

## Case 7: intelligent ideas?



*To obtain intelligence on an armed group that has attacked UN peacekeepers, the mission considers to:*

- a. Pool its PKI resources with host authorities in a joint intelligence cell*
- b. Exchange information with host state intelligence agency that regularly tortures its detainees*
- c. Infiltrate UN language assistant as a recruit into the armed group*
- d. Pay one armed group fighters for info (using only TCC funds, not UN)*
- e. Recruit as unpaid informants children who cook for armed group*



# DPO Peacekeeping Intelligence Guidelines on Human Sources and PKI Sharing

## Permissible Sources

- Host state intelligence, unless real risk of being tainted by torture/other grave violations
- Confidential recruitment of unpaid human sources allowed
- Source protection based on individual risk assessment
- No covert UN operations with UN personnel or third parties under false identity
- Children must never be recruited as informants

## Prohibition of incentives

- No money or other incentives in remuneration for information
- No “workarounds” (e.g., using TCC money or paying relatives)
- Facilitation of meetings can be covered (e.g., transport costs)





## Lesson Take Aways

- Mission can use necessary and proportional force in self-defence against ongoing or recurrent attacks
- Defensive force to respect human rights (non-military threats) or IHL & human rights law (military threats)
- Peacekeeping intelligence prioritizes protection of mission, but has clear legal & policy limits