



Module 2.2

Applicable Legal Framework for Peacekeeping:
Peacekeeping mission-specific legal framework

Learning Objectives

- Confidently apply the peacekeeping specific legal framework, including rules of key UN policies
- Empowered to insist on essential privileges and immunities that peacekeepers enjoy so as to protect their work, while also being aware of the legal framework to ensure their accountability, good conduct and discipline

Hierarchy of norms

UN Charter

Human Rights, IHL & Refugee Law

Security Council Mandate

Status of Forces/Mission
Agreement (SOFA/SOMA)

Memorandum of Understanding with
Troop & Police Contributors (TCC/PCC MOU)

UN Peacekeeping Policies

Mission Rules of Engagement (ROE) &
Directive on the Use of Force (DUF)

Security Council Mandate

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



Typical mandates requiring UNMOs

- Observe and verify violations of ceasefires, armistices, withdrawal agreements etc.
- Monitor security and humanitarian situation
- Observe in areas contaminated by mines & UXOs
- Assist & monitor disarmament, demobilization and reintegration processes



Protection-orientated mandates

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



Whole-of-mission responsibilities

Agreement with Host State (SOMA/SOFA)

- Legal agreement signed by UN and the host state
- Regulates privileges & immunities of mission and its personnel
- May be supplemented by special agreements (e.g. on handover of persons detained by mission)



Important Privileges & Immunities 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 & fly UN flag
- Unhindered entry & departure (international staff)
- Freedom of movement within the mission area

For United Nations interest; not personal benefit.
Can be waived by United Nations without prejudice

Case study discussion: Roadblock

Unarmed UNMOs, accompanied by an armed UN force protection platoon, are conducting a long range patrol to implement the mission's mandate to verify reports of ceasefire violations.

An armed group has set up a roadblock and refuses to let the peacekeepers pass. The fighters at the roadblock argue that the peacekeepers have not sought prior authorization to access the area under its control.



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

May they **force their way through** the roadblock?

When may they use **force against the armed group**?

Freedom of Movement

- Mission personnel enjoy freedom of movement through territory of host-state
- No prior authorization or notification for travel (exception e.g. for air traffic control purposes)
- Government must ensure safety, security and freedom of movement (e.g. clear illegal roadblocks)
- Mission may forcibly assert freedom of movement under defence of mandate authority

UNMOs' Functional Immunity

- As experts on mission for the United Nations, UNMOs 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 can be waived by the Secretary-General (notably for prosecution by the contributing country)
- Disciplinary action may be taken by their home state
- Sending state has legal commitment to UN to ensure discipline and accountability

Immunity never means impunity for U.N. peacekeepers

Authority to Use of Force

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

Details depend on mandate, CONOPS & ROE

Rules of Engagement

- 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



Guidelines on the Use of Force by Military Components in UN Peacekeeping Missions

Restrained force paradigm (default)

- Force as a last resort
- Proactive de-escalation
- Graduation of means
- Lethal force to protect life

Rationale:

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

Military engagement paradigm

- Distinction of civilians
- Precaution to minimize risk for civilians
- Proportionality of incidental civilian harm

Use to the extent necessary for:

- ✓ self-defence,
- ✓ defence of mandate
- ✓ protection of civilians

UN Policy Framework: Secretary-General Policies & Bulletins

- 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

Compliance with U.N. policy is mandatory for all peacekeepers

UN Policy Framework: DPO-DOS Policies and Guidelines

- Military Observers in United Nations Peacekeeping Missions
- 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

Compliance with U.N. policy is mandatory for all peacekeepers

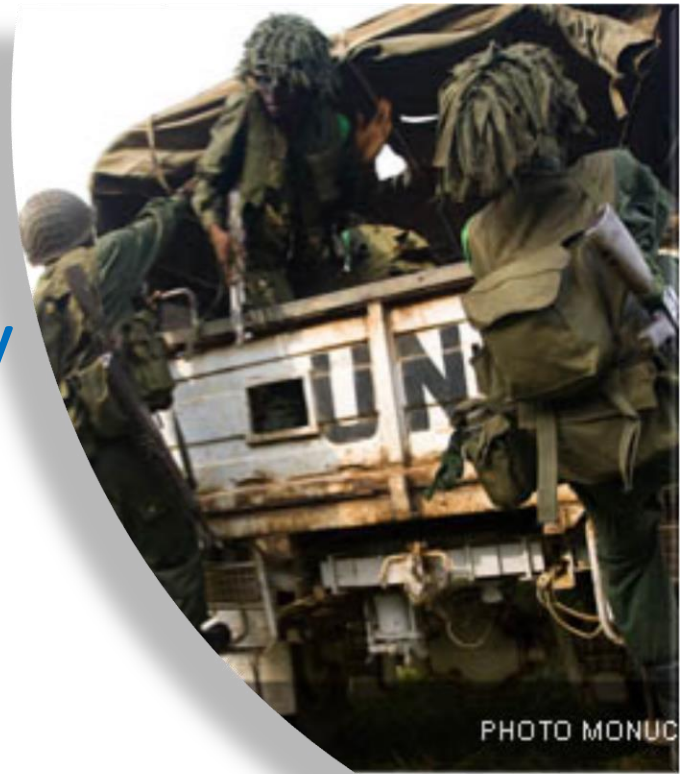
Human Rights Due Diligence Policy

on UN Support to non-UN Security Forces

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

- *if 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**”*

Prevents legal liability for aiding violations
and protects U.N. reputation and impartiality





- ✓ Applies to **all types to support** to states and regional organisations (exceptions for human rights & mediation work)
- ✓ Supporting entity must initiate risk assessment & **monitor** compliance
- ✓ **Risk mitigation & engagement**, not blunt conditionality
- ✓ Suspension or withdrawal of support is **last resort**



Application of the

HRDDP

Peacekeeping Intelligence: Legal limits

- Must fully respect human rights
- No clandestine activities
- No exposure of sources to harm
- Must remain independent
- Cooperation with states subject to conditions



Legal limits of Peacekeeping Intelligence : Practical Examples

UNMO want to find out more about an armed group that controls part of their sector. Are the ideas below in line with the UN legal framework?

- Ask UNMO's language assistant to infiltrate the group as a recruit

Prohibited clandestine activity. Places assistant at risk of serious harm

- Pay children who already cook for the group to secretly gather information

No child recruitment for military intelligence activities.

- Ask the notorious state intelligence agency, which is known to "break its detainees", to share testimony from captured armed group fighters

May incite unlawful interrogation and make UN complicit to torture.

- In return for receiving information from state intelligence, UNMO will share information on opposition politicians hiding in the area

May make UN complicit to arbitrary arrest & torture. Contrary to HRDDP.

Lesson Take Away

- UNMO must understand the mission's mandate
- SOFA/SOMA protects freedom of movement, privileges and (functional) immunity of UNMOs. Functional immunity protects UN personnel, but does not give them impunity
- Rules of engagement establish limits on the use of force; often more restrained than for other military operations
- Secretary-General and DPO-DOS policies set binding rules that all peacekeeping personnel must know and abide by

Questions?

Optional Learning Activity: Group Discussion

The Mission's mandate authorises it to take '**all necessary measures to protect civilians from physical violence**, within capabilities and without prejudice to the responsibility of the host state to protect its population'

A local community has captured **three 16-year olds** whom they accuse of being **fighters of an armed group** that is involved in crimes against humanity, including extrajudicial killings and rape.

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

What is the mission **legally** allowed to do under its protection of civilians mandate? What is not **legally** entitled to do?