

Lesson 2.1



Legal Framework

The Lesson



Starting Module 2: Legal Framework and Lesson 2.1

OVERVIEW

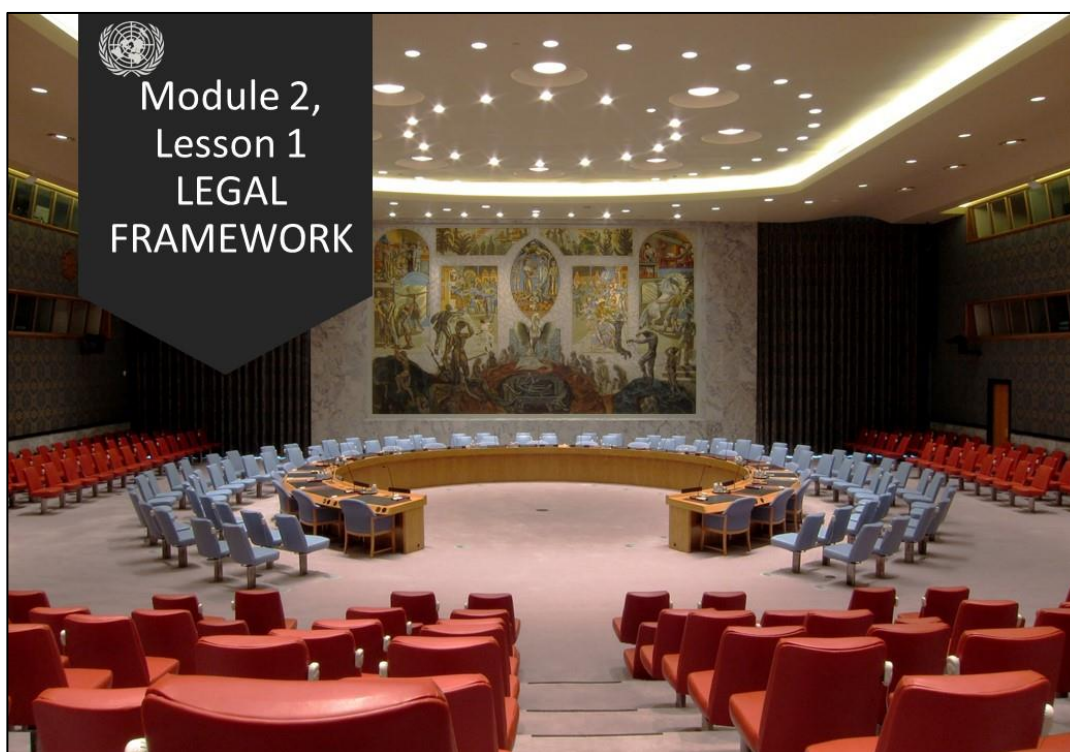
Module 2 provides an overview of the legal framework governing the work of United Nations peace operations and authorizing the child protection mandate and key policies that United Nations mission personnel must respect. Lesson 2.1 conveys the key aspects of the legal framework governing peace operations.

LEARNING OBJECTIVES

- Identify the key components of international law governing mandated tasks in United Nations peace operations;
- Understand core legal concepts and norms;
- Clarify what the legal framework enables or obliges peacekeepers to do and what it prevents peacekeepers from doing.

ACTIVITIES

- Case 1: Help wanted (slide 7)
- Case 2: Plan of attack (slide 13)
- Case 3: "Go back home" (slide 16)
- Case 4: Irresponsible command (slide 20)
- Video: Military and human rights (slide 24)
- Case 5: Mandate interpretation (slide 25)
- Case 6: A new armed group (slide 32)



NOTES (FOR TRAINER)

- Module 2 begins with an overview of how international law, including the Charter of the United Nations, guide the work of United Nations missions.

The term “international law” commonly refers to the body of law that governs relations between States, and between States and international organizations. These training materials consider international law as a combination of binding obligations (“hard law”) and non-binding instruments (“soft law”). Binding obligations refer to rules that are legally binding and that all States must apply, such as treaty law (i.e., conventions, protocols, agreements) and customary law.

The areas of international law most relevant for the work of peacekeepers are the Charter of the United Nations, international human rights law, international humanitarian law, international criminal law and international refugee law.

Dedicate at least 120 minutes (2 hours) to the presentation of the material, including the interactive discussion of the cases (see slides 7, 13, 16, 20, 25, 32).

SLIDE 2: LEARNING OBJECTIVES



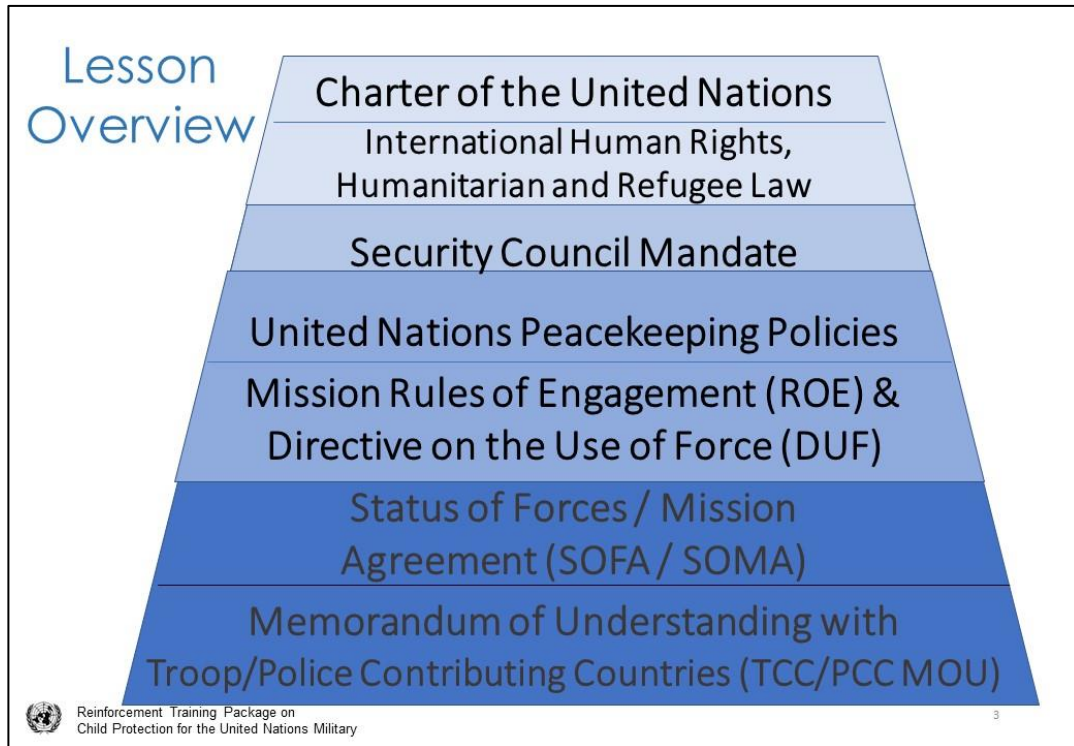
Learning
Objectives

Identify the key components of international law governing mandated tasks in United Nations peace operations

Understand core legal concepts and norms

Clarify what the legal framework enables/obliges peacekeepers to do, and what it prevents peacekeepers from doing

SLIDE 3: LESSON OVERVIEW

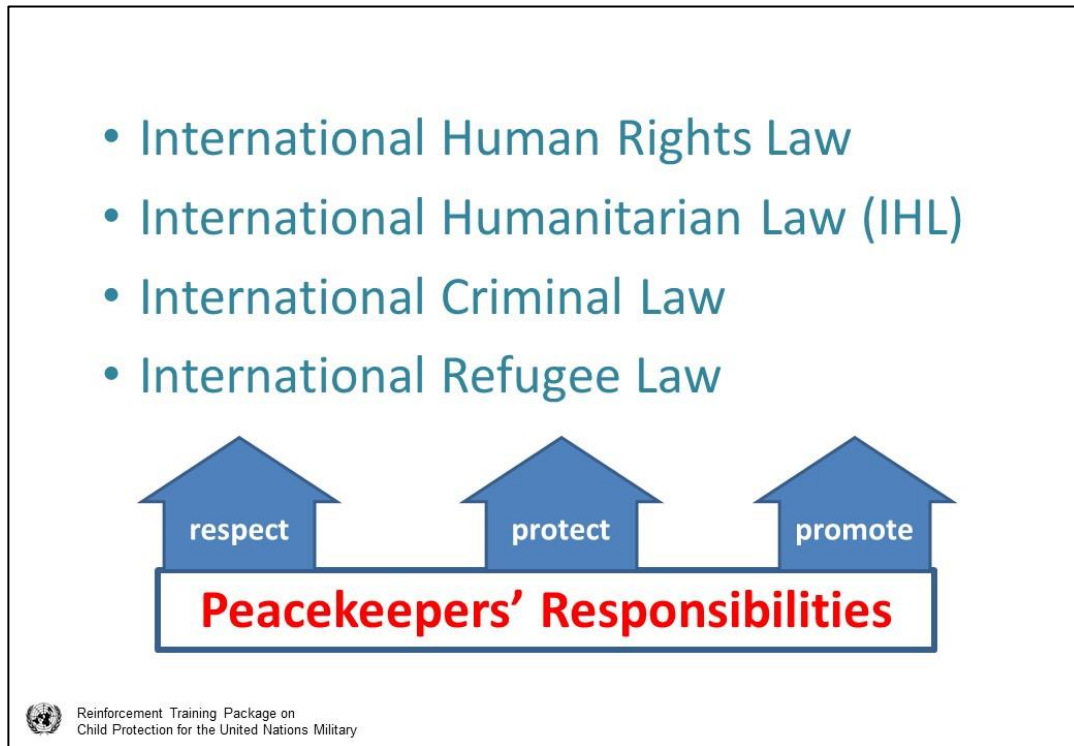


The Charter of the United Nations Charter – the “United Nations Constitution” – is at the top of the hierarchy of norms governing peace operations, followed by the fundamental norms of international law. The Security Council is bound by the Charter to respect those norms. For instance, the Council cannot issue a mandate to a peacekeeping mission to attack civilians, hire children for hazardous work, or push back refugees to places/countries where their lives may be at risk, since that would entail breaches of the fundamental norms of international human rights, humanitarian and refugee law.

SLIDE 4: INTERNATIONAL LAW



SLIDE 5: PEACEKEEPERS' RESPONSIBILITIES



All personnel serving under the United Nations must respect, at all times, the tenets of international human rights, humanitarian, criminal and refugee law. Furthermore, all personnel have a duty to ensure protection against violations of these fundamental norms and to promote them in their daily interaction with other actors, including the forces of the host State and any armed groups with whom they may engage under their mandate.

SLIDE 6: WHAT IS INTERNATIONAL HUMAN RIGHTS LAW (IHRL)?



What is International Human Rights Law (IHRL)?

- Protect inherent rights of all human beings
- Obligations mainly for States
- Universal and cannot be taken away
- Civil, political, economic, social & cultural rights
- IHRL applies
 - in times of peace and war
 - primarily to Governments

Peacekeepers must respect, protect and promote human rights.



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☞ Before showing the slide, ask learners:

Who is entitled to human rights, and whose responsibility is it to protect human rights?

Answer: Every human being is entitled to enjoy human rights, and State authorities are primarily responsible for upholding human rights.

- ☛ Human rights are universal. Everyone is entitled to the same fundamental rights. Some groups may have specific needs or may be particularly at risk of discrimination and rights violations. Specific rights protections are given to those groups (e.g., children, women, indigenous people, persons with disabilities).

International human rights law always applies, including during armed conflict and other national emergencies, because that is when human rights are most under threat. Human rights especially relevant to peace operations include the right to life, the right not to be tortured, the right not to be discriminated against, the rights to food, water, health and education.

First and foremost, States must respect the human rights of everyone and protect their populations from threats/violations by private actors (e.g., by diligently arresting and prosecuting perpetrators of rape). Armed groups with effective control over a territory also have an obligation to respect and protect human rights. The United Nations considers armed groups that commit atrocities, such as summary execution, rape, torture or looting, to be engaging in human rights abuses and violations.

United Nations policy requires that United Nations and mission personnel respect the human rights of all in their work. For example, the United Nations shall not discriminate

on the basis of religion in its hiring practices (right to religion or belief), nor use excessive force that may result in serious injury or death (right to life).

Human rights cover a wide range of areas and are also enjoyed by children. Children may exercise civil and political rights such as freedom of expression, and economic, social and cultural rights, such as the right to education, are particularly important for their development and well-being.


SLIDE 7: CASE 1: HELP WANTED

Case 1: Help wanted

A political opposition party calls on entire families to attend peaceful protests. The Government prohibits the protests and sends in its army to disperse the demonstrators.

A local army commander asks UN Forces to provide additional troops to help disperse the demonstrations and “restore law and order”.

Is the United Nations allowed to provide such help?


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Learners may discuss this case in plenary or, if time permits, in small groups.



Key points to emphasize:

- Peaceful political protests are protected by the right to peaceful assembly and to freedom of expression. A Government prohibiting such protests and sending in its army to disperse the protesters would be violating human rights. Children's rights to freedom of peaceful assembly and of expression are guaranteed under the Convention on the Rights of the Child.
- The United Nations shall not aid and assist human rights violations. A United Nations mission therefore shall not support national forces that are violating human rights, even if the mission has a general mandate to assist in maintaining law and order. In order to manage the risks of aiding in violations by others, the United Nations

has put in place the Human Rights Due Diligence Policy on United Nations Support to non-United Nations Security Forces (HRDDP), which sets out the procedure to assess and mitigate risk before any security support is provided (see slides 8 and 9).

- In such situations, the United Nations Force Commander should raise concerns with relevant counterparts in the host State's army about possible human rights violations. If the mission has a protection of civilians mandate, it is legally entitled to take measures to physically protect (civilian) demonstrators from any violence directed against them by the host State's forces (although, in practice, this would require consultation with mission headquarters, which could take time).

SLIDE 8: HUMAN RIGHTS DUE DILIGENCE POLICY ON UNITED NATIONS SUPPORT TO NON-UNITED NATIONS SECURITY FORCES

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

The United Nations cannot provide support to non-UN Security Forces:

- *if there is a real risk of the receiving entities committing **grave violations** of international humanitarian, human rights or refugee law, and*
- *the relevant authorities fail to take the necessary **corrective or mitigating measures***

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



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Photo on slide: MONUC providing transport to national army units in the Democratic Republic of the Congo.

- Upon realizing that some national army units that had received United Nations support were violating human rights, the Security Council made further support by MONUC conditional upon the army's compliance with human rights. The Human Rights Due Diligence Policy (HRDDP) was established against the backdrop of MONUC's conditionality.

The Policy is binding on the entire United Nations (not only peacekeepers). It was established by the Secretary-General, and the Security Council has repeatedly endorsed it.

According to the Policy, support to non-United Nations security forces cannot be provided:

- Where there are substantial grounds for believing there is a real risk of the receiving entities committing grave violations of international humanitarian, human rights, or refugee law; and
- Where the relevant authorities fail to take the necessary corrective or mitigating measures.

All United Nations entities that are contemplating or already providing support to non-United Nations security forces must therefore conduct an assessment of the risks involved in providing (or not) such support. The assessment should in particular consider the risk of the recipient entity committing grave violations of international humanitarian law, human rights law, or refugee law. Furthermore, the United Nations must consider whether there are any mitigating measures that can reduce the risk of violations (e.g., enhanced training or suspending support to offending units).

The Policy serves to ensure that the United Nations does not support or collaborate with host-State elements that are involved in grave violations of human rights, or of international humanitarian or refugee law, and to protect the United Nations from added legal liability for inadvertently aiding in violations committed by others. Maintaining its distance from State forces involved in grave violations also protects the reputation and perceived impartiality of the United Nations.

SLIDE 9: APPLICATION OF THE HUMAN RIGHTS DUE DILIGENCE POLICY



- ✓ **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 **task forces** & standard operating procedures**

Application of the

HRDDP

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Photo on slide: United Nations police officer providing training to Haitian National Police.

☞ *Any support provided by the United Nations to non-United Nations security forces must adhere to the Human Rights Due Diligence Policy. Support by peace operations includes conducting joint operations, planning, sharing of intelligence, training, capacity-building, mentoring, technical cooperation and financial support.*

The following areas are exempt from Policy assessment:

- Training and engagement on international humanitarian law and human rights,
- Mediation-related support (e.g., transporting officers to peace negotiations),
- Medical evacuation.

The Policy also covers support provided to regional organizations, for example, African Union peace and security operations, such as the African Union Mission in Somalia (AMISOM).

Missions have established task forces and standard operating procedures (SOPs) to help assess risks, coordinate engagement with supported entities and develop measures to mitigate the risks. The mission will work with host-State partners to bring the risk of violations down to an acceptable level. However, where support recipients continue to commit grave violations, the mission may temporarily suspend or withdraw its support.

SLIDE 10: INTERNATIONAL HUMANITARIAN LAW (IHL)




International Humanitarian Law (IHL)

- Regulates the conduct of hostilities, and protects those not engaged in conflict
- Applies to international and non-international armed conflict
- Geneva Conventions and Additional Protocols
- IHL applies
 - to armed conflict only
 - to all parties in a conflict
 - to military peacekeepers for the duration of hostilities



 *The International Committee of the Red Cross (ICRC) remains the neutral guardian of international humanitarian law in conflict areas throughout the world.*

 International humanitarian law (IHL) must be respected by all parties to armed conflict, including the national forces in an international armed conflict. In a non-international armed conflict, State military forces and non-State armed groups must abide by international humanitarian law.

International humanitarian law regulates the conduct of hostilities. For example, it requires parties to conflict to minimize, to the extent possible, harm to civilians not participating in the hostilities. It also outlaws certain means of combat in order to reduce unnecessary suffering by civilians or combatants; for example, the prohibition of the use of chemical or poisonous weapons of warfare. International humanitarian law provides special protections for those who are not, or no longer, engaged in the hostilities, including civilians.

The 1949 Geneva Conventions and their Additional Protocols spell out the basic principles of international humanitarian law. Today, their authority is universally accepted and most of their provisions are regarded as customary international humanitarian law that is binding on all parties to conflict, regardless of whether they are a Party to the Conventions and Protocols.

States must respect international humanitarian law and ensure that others respect it as well. For example, in accordance with its obligation to ensure respect for international humanitarian law, a State has the duty to prosecute and punish

members of a non-State armed group who commit serious violations amounting to war crimes.

Since impartiality is a central principle of peacekeeping, United Nations military forces are generally not a party to conflict. However, international humanitarian law may apply temporarily to them for as long as they engage as combatants in armed conflict, as is also recognized in the Secretary-General's Bulletin on observance by United Nations forces of international humanitarian law (ST/SGB/199/13). For example, a United Nations force carrying out an offensive operation against an armed group that poses a grave threat to civilians.

SLIDE 11: PROTECTED PERSONS UNDER INTERNATIONAL HUMANITARIAN LAW

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 hostilities)

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☞ Ask learners: Who is a civilian in the two photographs?

☞ *The armed herder on the right may be a civilian who is only armed to protect himself and his cattle from marauders. In many mission settings, armed civilians are a common sight; because a person is carrying a weapon like an assault rifle does not necessarily mean that they are participants in hostilities between militarily organized parties to conflict. Children (assuming the herder is younger than 18 years of age) can also be active participants in hostilities. However, once they have been captured, have surrendered or are no longer engaged in hostilities, they are entitled to special protection and must be treated as victims of a grave violation and helped to reintegrate (see lesson 2.2 for more details).*

☛ Under international humanitarian law, any person who is not/no longer directly participating in hostilities shall be considered a civilian, unless he/she is a member of an armed force or armed group. In case of doubt, the individual or group of individuals shall be considered civilians and afforded the protection owed to civilians, until determined otherwise. Civilians may be in possession of arms without necessarily being combatants. Under international humanitarian law, civilians who are in possession of arms, for example, for the purpose of self-defence and protection of their property, but who have not been, or are not currently, engaged in hostilities are entitled to protection.

Members of armed forces or armed groups who are hors de combat (out of action) also enjoy protection under international humanitarian law. Notably, those who are no longer able to continue fighting because they are wounded or sick shall not be attacked, but rather collected and medically cared for.

Prisoners of war (POWs) and interned or detained armed group fighters enjoy special protection. They must be treated humanely in all circumstances and must not be subjected to any humiliating and degrading treatment. Unlike regular soldiers who become POWs, captured rebel fighters may be prosecuted for participating in armed conflict. However, prosecution must be done before “a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples” (see common article 3 of the Geneva Conventions).

Peacekeepers, regardless of whether they are military, police or civilian, are protected under international law. Directing attacks against them may amount to a war crime.

SLIDE 12: CONDUCT OF HOSTILITIES: BASIC PRINCIPLES

Conduct of Hostilities: Basic Principles

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



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☞ *In the conduct of hostilities, parties to conflict must abide by basic principles to minimize harm to civilians and civilian objects, such as homes, hospitals, places of worship, etc.*

The protection of civilians in the conduct of hostilities builds on three basic principles of international humanitarian law:

- *Distinction*: In order to ensure respect for and protection of the civilian population and civilian objects, parties to conflict must, at all times, distinguish between civilians and combatants, and between civilian and military objects. Operations may only be directed against military objects; and indiscriminate attacks that do not distinguish between civilians and combatants are prohibited. An example of violation is shelling an entire village with heavy artillery without distinguish between military targets and civilian homes.
- *Precaution*: In the conduct of military operations, constant care must be taken to spare civilians and civilian objects. All feasible precautions must be taken to avoid and, in any event, minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. Examples of violations include:
 - Not making an effort to verify that the target is actually a military target before launching an assault;
 - Soldiers taking positions too close to civilians, thereby placing them at risk of being caught in crossfire.


- *Proportionality*: Incidental loss of life and damage to property owing to attacks must not be excessive in relation to the concrete and direct military advantage that is expected to be gained. This means that, when deciding to attack a target, consider whether the damage to civilians and civilian property would be excessive in relation to the military advantage that would be gained. Proportionality is not an issue if the target is a purely military one and no civilians are nearby. An example of violation is bombing a school and killing dozens of children when the target is to kill one soldier who established a fighting position in the school compound.

SLIDE 13: CASE 2: PLAN OF ATTACK

Case 2: Plan of attack

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

The army asks the UN Mission for advice on how to conduct its operation in line with IHL rules.


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Learners may discuss this case in plenary or, if time permits, in small groups.



Key points to emphasize:

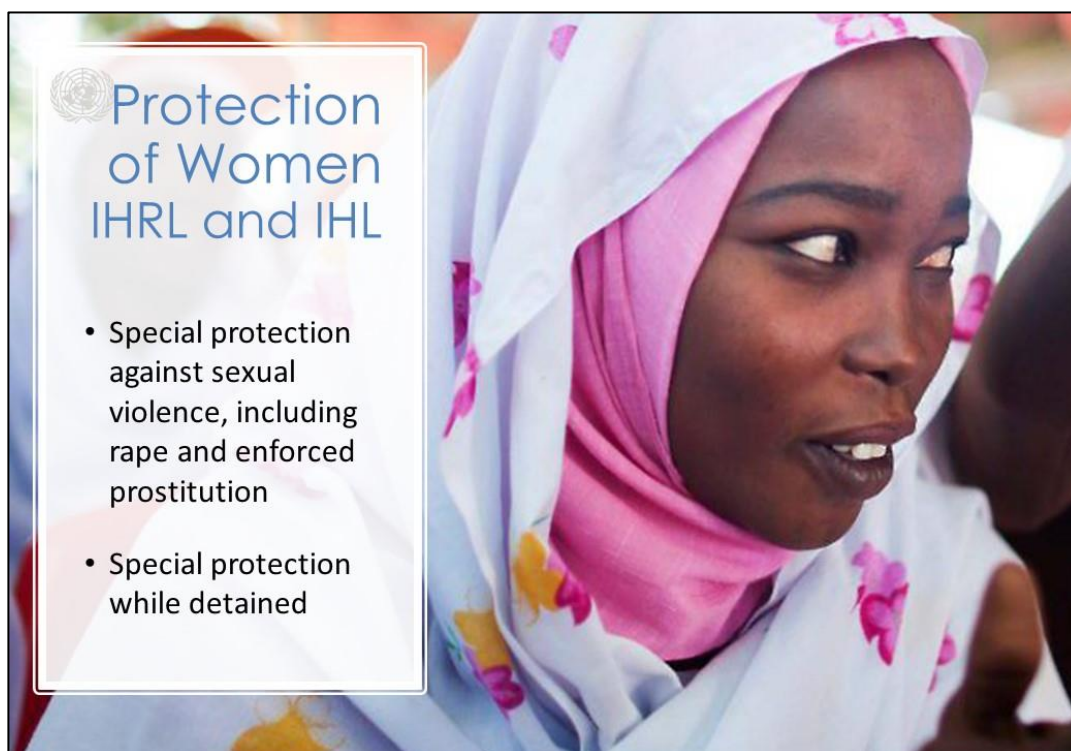
- The armed group is committing a serious violation of international humanitarian law by attacking civilians; its fighters are violating the principle of precaution, because they have positions close to civilian homes; and they fail to distinguish themselves because they do not wear uniforms.
- The State authorities have the duty under international human rights and humanitarian law to protect the population in its territory from such violations. Pursuing an operation to neutralize the group would be in line with this duty.

- Regarding advice from the mission: The mission would normally encourage the State security forces to conduct the operation. However, the operation must be conducted in compliance with international humanitarian and human rights law, so as not to place other civilians at risk of death or injury.
- Although the armed (enemy) group fails to respect international humanitarian law, State forces are obliged to respect both humanitarian and human rights law.

Principles that the State forces should consider include, in particular:

- *Precaution* to minimize harm/injury to civilian villagers and civilian objects. In practice, State forces should gather intelligence to know exactly where the armed group fighters are positioned and where civilians live. They should also consider how civilians not engaged as fighters in the group can be evacuated from the village so as to avoid incidental harm to them.
- *Distinction* between civilians and military targets. In practice, the State forces could surround the village, demand that the armed group surrender; failing that, they should give civilians a chance to evacuate before launching their operations. Those exiting the area would have to be carefully screened to ensure that no armed group fighters are escaping.
It must be borne in mind that the hospital, although it treats wounded fighters, is not a military target; indeed, hospitals enjoy special protection. The State army shall not attack the hospital. Wounded fighters in hospital are also protected persons and cannot be targeted (e.g., they must not be shot at in the hospital beds). However, the State army can surround the hospital and move in to detain the wounded fighters, but must continue to provide them with the necessary medical care. The State army must plan for that contingency.
- *Proportionality* to ensure that civilian losses do not outweigh (i.e., are not excessive in relation to) the military advantage to be gained. State forces should not use explosive weapons that have a large and imprecise impact radius in their operations (e.g., large mortars or heavy artillery), as they may incidentally kill a disproportional number of civilians.

SLIDE 14: PROTECTION OF WOMEN – INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW



Within their ambit of application, both international human rights and humanitarian law regard any form of sexual violence during conflict, including rape and enforced prostitution, as serious violations. Individuals responsible for those violations may also incur criminal responsibility for war crimes or crimes against humanity.

Women enjoy special protection in detention. Human rights law requires, among other things, that women be detained separately from men.


SLIDE 15: INTERNATIONAL REFUGEE LAW

International Refugee Law

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







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When Governments are unwilling or unable to protect their citizens, individuals may suffer such serious violations of their rights that they are compelled to flee their country and seek refuge in another country. Since the Governments of their home countries no longer protect the basic rights of their citizens, it is the international community that must ensure that the basic rights of those seeking refuge in another country are respected.

The 1951 Convention Relating to the Status of Refugees is the foundation of international refugee law. The term “refugee” under the Refugee Convention refers to any person who has fled their country owing to a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”. Individuals suspected of war crimes or crimes against humanity are excluded from refugee status.

A person fleeing a country where an armed conflict is taking place may qualify for refugee status in another country only if specific requirements are met: notably, evidence of the individual's “well-founded fear of being persecuted”). Regional instruments have expanded the scope of the definition of “refugee”. Under the Organisation of African Unity 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (African Refugee Convention), a refugee is any person who, owing to... “events seriously disturbing public order in either part of the whole of his country of origin”, such as armed conflict, seeks refuge in another country.

The Latin American 1984 Cartagena Declaration on Refugees expanded the concept of a refugee to include persons who have fled their country because their lives, safety and

freedom have been threatened by generalized violence, internal conflicts, among others, “which have seriously disturbed public order” in their country.


Refugees are generally civilians, therefore the mission has a duty to provide protection to refugees under its protection of civilians mandate. In addition, peace operations are often tasked with creating conditions conducive to the voluntary, safe, dignified and sustainable return or local integration of refugees and internally displaced persons.

SLIDE 16: CASE 3: GO BACK HOME


Case 3: Go back home

The host State’s army is forcing refugees to go back to their home countries.

The refugees will be imprisoned in their home countries for “having left the country illegally”. In the prisons, woman and girls are often raped by the guards.



What legal concerns should the UN raise with the army?

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Learners may discuss this case in plenary or, if time permits, in small groups.



Key points to emphasize:

- One of the fundamental principles of refugee law is the prohibition of *refoulement* (i.e., *non-refoulement*). This principle states that no one shall be returned to a country where there is substantial grounds for believing that they would face a real and personal risk of persecution, torture (including rape as a form of torture) or other grave human rights violations.
- Under international law, *refoulement* of refugees may amount to deportation – as a crime against humanity (if widespread or systematic) and as a war crime (if committed in the context of an armed conflict).

- In this case, the host State's army is committing grave violations. The United Nations mission shall not assist in such operations. Instead, the mission should raise concern by reporting the issue to UNHCR. In line with the "One United Nations" principle and their role to promote respect for international law, United Nations military commanders should echo such concerns in their engagement with counterparts in the host State's army.

SLIDE 17: RIGHTS OF REFUGEES



Rights of Refugees

- Prohibition of expulsion or return (*"refoulement"*)
- Prohibition of discrimination on grounds of race, religion or country of origin
- Freedom to practice religion
- Right to acquire property
- Access to courts
- Public education
- Assistance
- Freedom of movement

The UNHCR logo, featuring a blue circle with a white icon of a person under a roof, surrounded by olive branches, with the text 'UNHCR The UN Refugee Agency' below it.

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The rights of refugees are set out in the 1951 Refugee Convention that most States are party to; those rights are also guaranteed by international customary law which all States must respect.

International refugee law also contains important provisions to protect children. For instance, with regard to elementary education, refugee children must receive the same treatment as the host State's children.


SLIDE 18: INTERNALLY DISPLACED PERSONS (IDPs)


Internally Displaced Persons (IDPs)

- **Forced** to flee their homes (e.g. owing to war or natural disaster), but **have not crossed an international border**.
- **Maintain** human rights and citizens' rights
- **Must be protected** by their home State

Protected under:

- United Nations Guiding Principles on Internal Displacement
- African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa



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Internally displaced persons (IDPs) are people who have been compelled to leave their place of habitual residence owing to armed conflict, generalized violence, human rights violations, natural or human-made disasters that have threatened their lives and safety. Unlike refugees, they have not crossed an international border, but have remained in their own country. The protection of internally displaced persons and other affected populations in their own country is primarily the responsibility of national authorities as they are civilians. Unlike refugees, internally displaced persons do not enjoy special legal status under international law. However, the international community has a role to play in promoting and reinforcing efforts to ensure protection, assistance and solutions for internally displaced persons. UNHCR generally considers internally displaced persons to be persons of concern under its mandate, and the mission often makes special efforts to protect internally displaced persons' sites under its protection of civilians mandate. United Nations military will often be tasked with securing the perimeter of camps housing internally displaced persons, while United Nations police may work with the local police to ensure law and order within the camp.

Internally displaced persons maintain all their human rights as citizens of the country, such as the right to vote in elections. Therefore, the State must make arrangement for all eligible persons to be able to vote at the site of their displacement.

In 1998, the Representative of the Secretary-General on the human rights of internally displaced persons issued the Guiding Principles on Internal Displacement. The principles, which have been repeatedly endorsed by the international community of States, reflect,

and are consistent with, the binding legal obligations set out in international humanitarian and human rights law.

Leading the way at the regional level, in 2009, the African Union adopted the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). The Convention reinforces States' obligation to protect internally displaced persons.

SLIDE 19: INTERNATIONAL CRIMINAL LAW

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)


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Some violations of international human rights, refugee law and humanitarian law are considered so grave by the international community of States that they are regarded as international crimes. Those are war crimes, crimes against humanity and genocide.

All States have a duty to prosecute and punish such crimes if they are committed within their territory. The international community may set up international tribunals and courts to prosecute and punish international crimes. For example, in response to international crimes committed during conflicts, the Security Council set up the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993, and International Criminal Tribunal for Rwanda (ICTR) in 1995. The International Criminal Court, established in 2002, is the first and only permanent international court with jurisdiction to prosecute individuals for international crimes committed in States that have accepted its jurisdiction (more than 120 States so far), and in places that are referred to the Court by the Security Council (e.g., Darfur, Libya, among others).

Military personnel should be aware of the following three categories of international crimes that are within the International Criminal Court's jurisdiction:

War crimes: Violations of the provisions of the Geneva Conventions of 1949; also breaches of other sources of international humanitarian law may entail war crimes on the part of the individuals who commit such crimes during an armed conflict;

Crimes against humanity: Inhumane acts committed by State authorities or non-State armed groups in a widespread or systematic manner against any civilian population, such as murder, rape, torture, among others. Such crimes are typically the outcome of an underlying policy to commit the crimes and/or elaborate planning at a high level of authority;

Genocide: In accordance with the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), committing acts, such as killing, causing serious bodily or mental harm to or imposing measures on members of a national, ethnic, racial or religious group with the "intent, to destroy, in whole or in part, the group, as such" may amount to genocide. The killing of some individuals because of their religion or race does not constitute genocide. It is the "intent to annihilate the entire group, either in a specific area or globally" that determines the international crime of genocide.

The historic example that precipitated the concept of genocide as an international crime was the Holocaust, the result of Nazi Germany's attempt to annihilate the entire Jewish population of Europe.

SLIDE 20: CASE 4: IRRESPONSIBLE COMMAND

Case 4: Irresponsible command

- The military systematically looted a city, and soldiers raped hundreds of women and girls.
- The military commander 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?



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Learners may discuss this case in plenary or, if time permits, in small groups.



Key points to be emphasized:

- Military commanders must have command responsibility; they cannot close their eyes to grave violations committed by their subordinates.
- Regardless of whether a commander has ordered soldiers to carry out an act, commanders will be held responsible for all international crimes committed by the troops under their command and for failing to prevent or repress the commission of such crimes (see slide 21).
- United Nations military commanders should consider invoking the principle of responsibility in their engagement with national forces, if they find that national military commanders are not effectively controlling their troops. Discussion of the principle of command responsibility in a peer-to-peer dialogue between military professionals may have a significant positive impact and may enhance human rights and humanitarian compliance on the part of national forces.

SLIDE 21: COMMAND RESPONSIBILITY

Command responsibility

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

- They **knew or should have known** about the commission of 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
direct participation in the crime**



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As demonstrated by case 4 (slide 20), command responsibility is an important principle for military commanders. Indeed, a military commander can incur criminal responsibility for grave international crimes by simply doing nothing to prevent the commission of the crime, even without actively participating in the crime.

SLIDE 22: PEACEKEEPING-SPECIFIC LAW



The rules that apply specifically to peace operations will be discussed in the rest of this lesson (2.1).

SLIDE 23: SECURITY COUNCIL MANDATE

Security Council Mandate

- A Security Council resolution is the highest legal basis for the deployment of a mission
- It outlines the tasks and responsibilities that the mission is expected to accomplish



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Child Protection for the United Nations Military

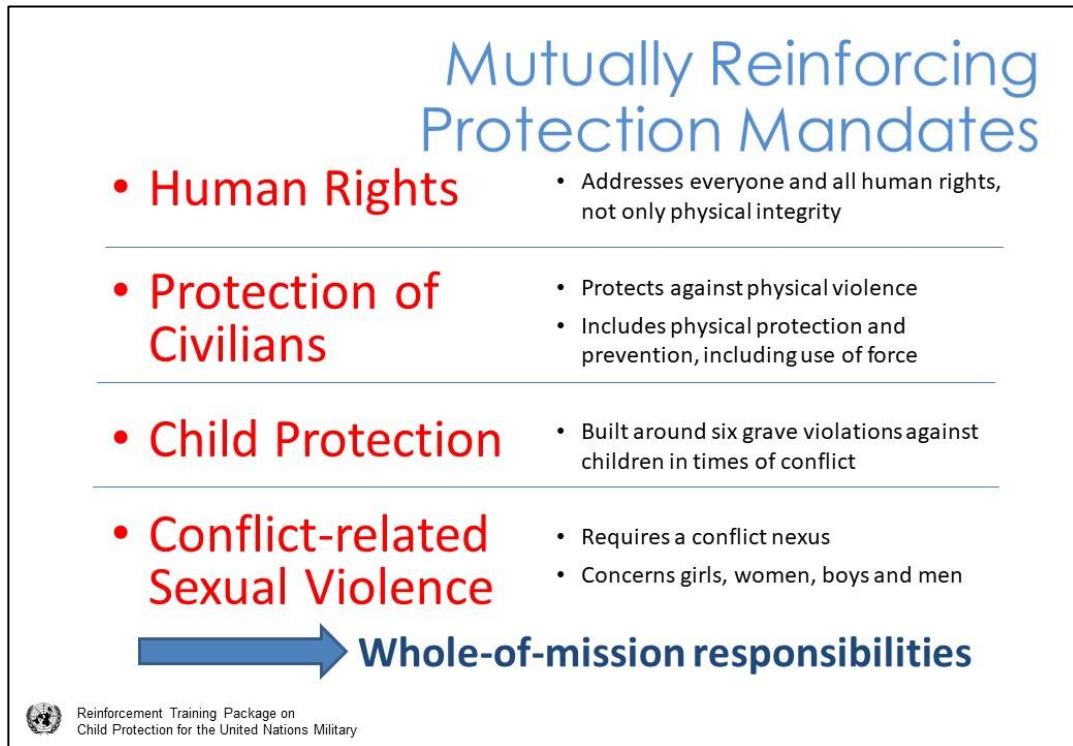
Photo on slide: The Security Council in session in New York.

Every peacekeeping operation begins with the adoption by the Security Council of a resolution to establish the mission. The Council seeks to establish a mission with the consent of the host State. Depending on the mission's mandate and role, the Council will want to obtain the consent of the parties to the conflict.

The Security Council resolution defines the mandate of the mission, that is, the tasks assigned to it, including any explicit authorization to use force. Mandates and/or tasks, differ from mission to mission. The range of mandated tasks differs between peace operations based on the conflict environment, challenges on the ground and other factors. Security Council mandates may also set cross-cutting thematic tasks for all missions, for example, prevention of conflict-related sexual violence.

Resolutions that authorize the deployment of a peace operation also establish the maximum strength of the uniformed components (i.e., military and police). The Security Council mandate is typically established for a fixed period (usually one year), after which it may be renewed. At this stage, the Council will review the authorized strength of the mission and make any adjustments it deems necessary.

SLIDE 24: MUTUALLY REINFORCING PROTECTION MANDATES



Before presenting the slide, show the United Nations training video on military components and their work to protect human rights (8 minutes).

Based on real mission examples, the video shows how military components contribute to upholding human rights, protecting civilians and preventing conflict-related sexual violence.

The video is available in English at <http://webtv.un.org/search/military-human-rights-cooperation/6214386490001/?term=2020-12-05&sort=date;> and in French at <http://webtv.un.org/search/composantes-militaires-%E2%80%93-coop%C3%A9ration-en-mati%C3%A8re-de-droits-de-l%E2%80%99homme/6214384098001/?term=2020-12-05&sort=date&lan=french.>



More and more, peace operations are placed in situations in which there is no firm peace to be kept, and with the expectation that their presence will protect the most vulnerable. Therefore, multidimensional peacekeeping missions are regularly assigned protection mandates. Although specialized civilian staff, including Human Rights Officers, Civilian Protection Advisers, Women Protection Advisers and Child Protection Advisers, work on these mandates, they nonetheless remain whole-of-mission responsibilities to which the United Nations must contribute.



Protection mandates may overlap as they complement and reinforce each other:

- The human rights mandate seeks to protect the entire population and the full range of human rights. The mission advocates peaceful means, such as reporting to Headquarters, and other advocacy or capacity-building measures, to advance this mandate;
- The *protection of civilians mandate* is more limited, in that it is only concerned with physical violence and protects civilians only (as opposed to detained fighters, for example). However, it goes deeper than the human rights mandate because it authorizes the mission to use force where necessary to protect civilians;
- The *child protection mandate* focuses on the six categories of grave violations against children in armed conflict, namely, killing and maiming, recruitment or use, rape and other grave sexual violence, abduction, attacks on schools and hospitals, and denial of humanitarian access. See module 1 and lesson 2.2 for more details;
- The *conflict-related sexual violence (CRSV) mandate* requires the existence of a nexus between sexual violence and conflict (e.g., domestic violence would typically not be covered).

☞ Provide examples of how protection mandates overlap or differ:

- If State authorities order the closure of a newspaper criticizing the Government, that would be a violation of the human rights to freedom of expression, media and information. However, the protection of civilians mandate is not triggered unless there is physical violence. For example, if State agents physically assault journalists, the mission may intervene under its protection of civilians mandate, which includes the use of force, where necessary;
- If an armed group traffics underage girls for purposes of child prostitution (commercial sexual exploitation) in order to finance its armed activities, that would amount to abuse under the human rights mandate. The mission must take action under its protection of civilians mandate to protect the girls. Such sexual violence against children is of grave concern to both the child protection and the conflict-related sexual violence mandates.

SLIDE 25: CASE 5: MANDATE INTERPRETATION


Case 5: Mandate interpretation

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

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

The Mayor of the town wants the United Nations Mission to **send Blue Helmet peacekeepers to detain the three youths and put them on trial**. The Mayor fears that riots may break out or the three may be lynched if not detained and tried.

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



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The discussion of this case should show that the mission's protection of civilians mandate determines its action:

Civilians: The population of the town are civilians who are not participating in hostilities (see definition, discussed above, under international humanitarian law). If the three 16-year-olds are indeed armed fighters, then they are not civilians, but rather combatants in the conflict. However, as children (under 18 years), they deserve special protection because they are victims of a grave violation against children, namely recruitment and use. Moreover, maybe they are being wrongly accused of being fighters in an armed group, therefore the mission has a duty to protect them, in any case;

Threat of physical violence: The local community faces constant threat of physical violence owing to the presence of an armed group committing crimes against humanity. The threat of physical violence does not have to be imminent (i.e., about to happen). The captured 16-year-old children also face a risk of physical violence (i.e., summary execution by lynching);

Protection without prejudice to the responsibility of the host State: The mission should first assess whether the local police can manage the situation. However, it is likely that the local police cannot deploy officers with the necessary strength and urgency. Therefore, the mission must act;

All necessary measures: Under its protection of civilians mandate, the mission may use force, if deemed necessary, to protect civilians. Using graduated force, it would first seek


to show authoritative physical presence to contain the situation. The mission may also apprehend and temporarily detain the teenagers (including for purposes of protecting them).


However, the protection of civilians mandate does not give the mission prosecutorial or judicial powers. These remain the sovereign prerogative of the host State. Instead, the mission would seek to promptly hand over the children to the local authorities, provided that the authorities can guarantee that they will be treated humanely. The mission has 96 hours to carry out a risk assessment and hand over the detainees (see DPO/DPPA/DSS, revised Standard Operating Procedures: The Handling of Detention in United Nations Peacekeeping Operations and Special Missions, 2021). If the teenagers were indeed used in armed conflict, they should be referred to a reintegration programme, which the mission's Child Protection Unit and UNICEF can usually arrange (see lesson 1.2, slide 14: Child protection coordination, and subsequent lessons for details).

SLIDE 26: PROTECTION OF CIVILIANS MANDATE: "TAKE ALL NECESSARY ACTION"

Protection of Civilians Mandate: "Take all necessary action"

- Includes military, civilian and police action
- Does not replace the sovereign responsibilities of the host State
- Authority to use deadly force (as a last resort) to protect civilians under threat
- Must comply with IHRL and IHL as spelled out in the rules of engagement




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The protection of civilians mandate is the strongest protection mandate in the sense that it authorizes "all necessary measures", including the use of deadly force, to be taken as a measure of last resort.

This authority can be invoked where the host State is not willing or is unable to protect civilians on its own.

Any action to protect civilians, including the use of force, must comply with human rights principles and with international humanitarian law, if United Nations military forces use combat-level force. The military component's rules of engagement will provide details specific to the mission.

SLIDE 27: RULES OF ENGAGEMENT

Rules of Engagement

- Provides guidance on **authority** and **limits** to use force, and basis for accountability
- Covers weapons use, detention, searches
- Must abide by international human rights law at all times
- When the military is engaged in hostilities, must also comply with international humanitarian law





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Guidance as to when and how the mission may use force can be found in the rules of engagement applicable to the military component and the directives on the use of force by the police component.

Rules of engagement provide mission-specific guidance that builds on the mandate assigned to the particular mission by the Security Council, international human rights and humanitarian law, as well as DPKO/DFS, Guidelines on the Use of Force by Military Components in United Nations Peacekeeping Operations (2017).

The rules of engagement not only cover “force” in the narrow sense of the word (i.e., kinetic force), but also forcible measures such as detention, searches and seizures of materials.

Rules of engagement commonly cover:

- Use of force
- Use of weapons systems
- Authority to carry weapons

- Authority to detain, search, disarm
- Reactions to civil actions or unrest

Troop-/Police-contributing countries are not permitted to modify the rules of engagement according to national interpretation(s), nor to impose any caveats on the authorizations on the use of force contained in the rules of engagement without formal consultation with United Nations Headquarters and the express written agreement of DPO.

Troop-contributing countries must prepare and train personnel on the rules of engagement of United Nations military peacekeepers.

SLIDE 28: USE OF FORCE BY PEACEKEEPERS

Use of Force by Peacekeepers

<u>Authority to Use Force</u>	<u>Limits on Use of Force</u>
<ul style="list-style-type: none"> • Self-defence • Defence of mandate, including freedom of movement • Protection of civilians • Other mandates given by the Security Council 	<ul style="list-style-type: none"> • Generally minimal use of force: IHRL/ policing rules • Military can escalate to combat-level force when necessary: IHL/ military rules

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The rules of engagement set out when the mission has authority to use force, and the mission always has the authority to use force in self-defence. The use of force beyond self-defence is defined in the mandate. Multidimensional missions may be authorized to use force in defence of the mandate, including for purposes of asserting their freedom of movement. Furthermore, missions are generally mandated to use all necessary means to protect civilians against physical violence. In some cases, the mandate may further extend the mission's authority to use force. Some mandates may give authority to use force to neutralize armed groups in support of the host State.

The rules of engagement and the directives on the use of force establish limitations on the use of force. Under the directives on the use of force, uniformed police may use force within the limits of international law enforcement and human rights standards.

The rules of engagement for the military limits the use of force to the minimum necessary to achieve the aim. However, military personnel may resort to combat-level military force when necessary to effectively implement mandates authorizing the use of force. In such situations, military peacekeepers are bound primarily by the international humanitarian rules governing the conduct of hostilities.


Missions have a responsibility to make full use of their authority to use force to the extent that is appropriate and necessary to effectively implement their mandate. United Nations Blue Helmets (peacekeepers) may be held accountable and face disciplinary measures and criminal sanctions under the jurisdiction of their home country if they use excessive force beyond what international human rights or humanitarian law permit. It should be pointed out, however, that findings of use of excessive force have rarely, if ever, been made against United Nations peacekeepers. Rather, there may be instances in which peacekeepers fail to use the force necessary to protect the mission or civilians. Since all United Nations troops are under the command of the Force Commander, any failure to follow lawful orders issued by the Force Commander would constitute insubordination, which is subject to the jurisdiction of the respective contingent's home country.

SLIDE 29: DPO GUIDELINES ON MILITARY USE OF FORCE: MINIMUM FORCE NECESSARY

DPO Guidelines on Military Use of Force


Minimum Force Necessary

- Minimum force to achieve objective
- Graduated force
- Proportionality (lethal force only to protect life)



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

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



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DPO has established guidelines on the use of force by the military, which also shape the rules of engagement of the specific missions. The guidelines emphasize that missions should use the minimum force necessary to achieve their objective. In particular, the use of firearms and other potentially lethal weapons may only be used to protect persons from physical violence, and not solely to protect mission property. This is a deliberate policy decision that serves to:

- Avoid escalation of violence;
- Avoid the possibility of military components become participants in armed conflict;
- Minimize the risk of harm to civilians that any escalation of force entails.

United Nations police (UNPOL) must never go beyond the minimum force necessary to carry out their duty, United Nations military may apply combat-level force whenever it has the authority to use force and such force is necessary. For example:


- The military component may deploy helicopter gunships to protect civilians living in a city that is being attacked by an armed group;
- United Nations forces may launch a military assault to dismantle an armed group's heavily guarded, but illegal, roadblocks in order to defend its mandate and assert freedom of movement.

When using this level of force, United Nations military forces must respect international humanitarian law, including the fundamental principles of distinction, precaution and proportionality.

SLIDE 30: UNITED NATIONS POLICIES AND GUIDANCE

United Nations Policies and Guidance

- The Secretary-General's policies apply to all United Nations work.
- The Department of Peace Operations' policies apply specifically to peace operations.
- Details of the policies are transmitted through guidelines, standard operating procedures and standing orders
- Guidance issued by the Secretary-General or by the Department of Peace Operations is legally binding.



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United Nations internal regulations are binding on United Nations infantry battalions and other peace operations personnel. The Secretary-General issues policies containing basic principles that are applicable to all United Nations staff (see, for example, the Human Rights Due Diligence Policy discussed in slides 8 and 9); while DPO and DPPA adopt policies specifically for peace operations. The details for implementing the policies are laid out in guidelines, standard operating procedures or mission-specific guidance.

The following slides present two particularly important DPO policies that establish binding rules on how United Nations personnel, in particular uniformed personnel, should handle issues relating to peacekeeping intelligence and human rights violations.

SLIDE 31: DPO POLICY ON PEACEPEEKING INTELLIGENCE – LIMITS ON
UNITED NATIONS INTELLIGENCE ACTIVITIES

DPO Policy on Peacekeeping Intelligence – Limits on UN Intelligence Activities

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

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Also, with a view, in particular, to better protecting the mission and civilians from security threats, United Nations peace operations may collect, process and share peacekeeping intelligence. However, this work is subject to strict rules that are laid out in DPO Policy on Peacekeeping Intelligence and underlying peacekeeping intelligence (PKI) guidelines. Some guidelines are based on international human rights standards; others have been established by the United Nations to protect the independence and impartiality of the missions.

Intelligence gathering must fully respect human rights. For example, United Nations personnel shall not physically abuse captured armed group fighters nor deny them water, food or necessary medical care as a means of forcing them to provide information.

Clandestine activities are outside the boundaries of peacekeeping intelligence and shall not be undertaken as they undermine the reputation of the mission and may place United Nations personnel at risk. United Nations policy defines clandestine activities as:

“the acquisition of information or intelligence conducted in such a way as to assure secrecy or concealment of the activities, because they are illicit and/or are inconsistent with the legal framework, principles, policies and mandates of United Nations peacekeeping operations”.

For example, United Nations staff must never hack into the database of a government authority or a non-governmental organization in order to seek information.

However, the limitation on using non-clandestine means to seek information does not mean that the mission has to reveal its sources to the host State or others. On the contrary, all mission personnel are required to apply particular care not to expose any sources or potential sources of information to harm. Before approaching human sources, careful assessment must be carried out to determine whether contact with the United Nations would place the source at risk and whether confidentiality can be ensured. For example, United Nations military observers (UNMO) decided not to ask villagers about armed group activity in the region, because they were aware that armed group informants were closely watching the village, and anyone merely suspected of providing information to the United Nations could have been subject to reprisals from the armed group. When interviewing sources, military observers should always ensure confidentiality, for example, by meeting sources away from their place of residence.

United Nations peacekeeping intelligence activities must be fully autonomous and independent of all aspects of any national intelligence system or other operations, and must maintain their exclusively international character. The mission's independence and perceived impartiality may be compromised if United Nations personnel are viewed as being an intelligence arm of the host Government or third States. Information may be shared with State authorities but must be subject to the conditions and limitations of international human rights law. In particular, the United Nations shall not invite the provision of any information if there is a real risk that such information was obtained under torture or other serious human rights violations.

Similarly, the United Nations shall not share information with intelligence actors if there is a real risk that such information would be used to further violations of international human rights or humanitarian law. For instance, the United Nations Mission shall not share the location of an armed group with the army of the host country if such information would incite an airstrike, conducted without regard to civilian casualties, in contravention of international humanitarian law principles of distinction, precaution and proportionality.

SLIDE 32: CASE 6: A NEW ARMED GROUP

Case 6: A new armed group

To obtain information about a new armed group, United Nations military observers are considering approaching children who work for the group as porters and cooks. They do not intend to pay the children for any information provided.

Is this course of action allowed?



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Learners should discuss in plenary whether this course of action is allowed under United Nations rules.


DPO Guideline on Acquisition of Information from Human Sources for Peacekeeping Intelligence specify that missions must never recruit children as sources of intelligence, because they cannot give free and informed consent to assume the grave risks involved in an informant's role. Paying children for military information may also violate the prohibition from recruiting children for military activities under international human rights and humanitarian law.

SLIDE 33: POLICY ON HUMAN RIGHTS IN PEACE OPERATIONS: RESPONSIBILITIES OF UNITED NATIONS INFANTRY BATTALION TROOPS

Policy on Human Rights in Peace Operations – Responsibilities of UNIBAT troops

- **Identify**
- **Record**
- **Report**
- **Confidentiality**
- **Refer victims (support)**
- **Protect**
- **Follow up situation**





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The Policy on Human Rights in United Nations Peace Operations establish specific responsibilities for United Nations military and police personnel when the encounter violations of human rights and international humanitarian law.

As United Nations mission personnel you may be required to observe, monitor and report on developments that have an impact on the human rights situation, including ceasefire and human rights violations, abuses against children associated with armed forces or patterns of conflict-related sexual violence. You should actively identify issues by reaching out to all sectors of society.


Peacekeepers must promptly record and share with the Human Rights component all allegations of violations received or observed for follow-up. Child Protection Advisers/Officers will deal with cases specifically involving grave violations against children. Formal mechanisms such as standard of procedures (SOP) will address such information-sharing.

Respect for the principle of confidentiality must always be maintained; names of victims and witnesses should not be included in reports with broad circulation.

Based on referral systems established by the mission or United Nations agencies, victims must be promptly referred to appropriate providers of medical assistance, psychosocial support and protection.


In some cases, intervention such as raising an urgent concern with the party concerned or more robust action under the protection of civilians mandate may be appropriate.

SLIDE 34: TAKEAWAYS



Takeaways

- All mission work must respect, promote and protect international human rights, humanitarian and refugee law.
- The Security Council has issued several mutually reinforcing mandates that protect children and establish priorities for missions.
- DPO and other UN policies establish binding rules by which all staff must abide, including rules to protect children.



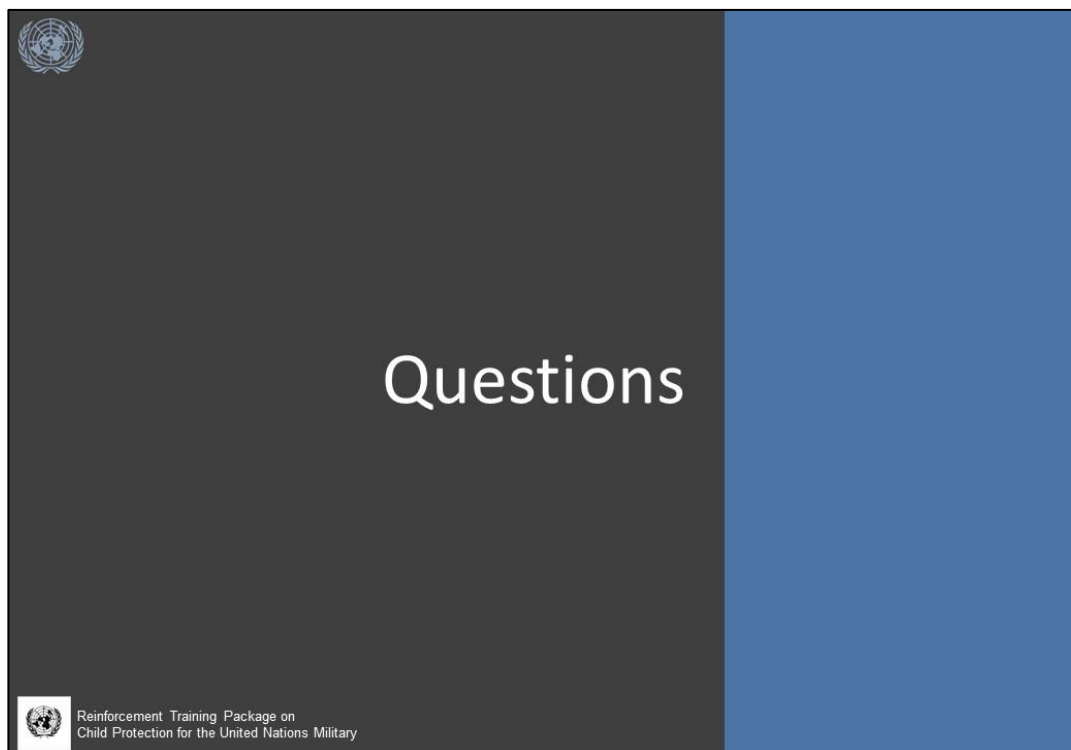
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Summary

Takeaways from Lesson 2.1:

- All mission work must respect, promote and protect international human rights, humanitarian and refugee law.
- The Security Council has issued several mutually reinforcing mandates that protect children and establish priorities for missions.
- DPO and other United Nations policies establish binding rules by which all staff must abide, including rules to protect children.

SLIDE 35: QUESTIONS



NOTES (FOR TRAINER)

- ☞ Allow sufficient time for questions to be asked/answered. Actively encourage questions from learners.

