



## Module 2

# International Legal Framework

# Module 2 Content

- Legal Framework for Peace Operations:  
General international law.
- Legal Framework for Peace Operations:  
Mission Specific



# Lesson 2.1

## Legal Framework for Peace Operations: General International Law

# Learning Outcomes

- Apply key rules of international law relevant for peacekeeping intelligence
- Explain what are the host state authorities in line with international humanitarian and human rights law

# **Hierarchy of norms**

UN Charter

Human Rights, IHL, Refugee Law

Security Council Mandate

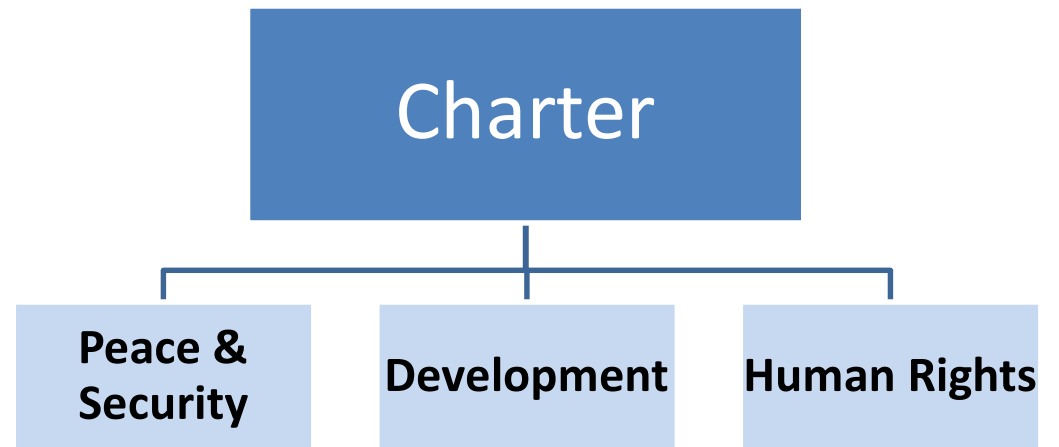
Status of Forces/Mission  
Agreement (SOFA/SOMA)

Memorandum of Understanding with  
Troop & Police Contributors (MOU)

UN Peacekeeping Policies

Rules of Engagement (ROE) &  
other mission specific rules

# Peacekeeping under the UN Charter



- Prohibits force by states, except in self-defense or Security Council approval
- Basis for Chapter VI and VII missions
- UN supports international law / human rights



# International Human Rights Law (IHRL)



- Protects dignity, freedom and equality
- Establishes obligations of states.
- Continues to apply during war & national emergencies
- UN must respect & protect human rights (regardless of mandate)

***PKI "must be conducted with full respect for human rights, including in particular the rights to privacy, freedom of expression , peaceful assembly and association"***  
**(UN PKI Policy)**

# Human Rights affected by ISR in peacekeeping

- Right to privacy and family
- Freedom of thought, expression, information, assembly and association
- Fair trial and due process rights in the criminal process
- Protection from arbitrary detention, torture and extrajudicial killing
- Right to an effective remedy for human rights violations



# Human rights safeguards in ISR

- Publicly defined mandate and powers, limited to national security.
- Organisational separation between intelligence and law enforcement services, and clear legal framework for cooperation.
- Procedures for acquiring, storing and sharing intelligence
- Limits on untargeted interception of intelligence/mass surveillance.
- Approval and warranted processes for invasive ISR measures.
- All ISR must be based on legitimate aim, necessary and proportional.
- Intelligence agencies subject to effective internal and external oversight.
- Accountable and effective remedies available.

## Case Study 1 – Wiretap:

*The host state police wants to wiretap a political dissident but fails to obtain the necessary judicial warrant. Instead, they ask the UN Mission's military intelligence branch (U2) to carry out the electronic monitoring and pass on relevant information (in exchange for information to keep the mission secure).*



**What are relevant legal obligations?**

# Human Rights Due Diligence Policy

## UN Support to non-UN Security Forces

*UN support to non-UN Forces cannot be provided:*

- *Risk of entities committing **grave violations** of Int. humanitarian, human rights or refugee law*
- *relevant authorities fail to take necessary **corrective or mitigating measures***



**Prevents legal liability for aiding violations,  
promotes human rights & protects U.N.  
credibility**



- ✓ Applies to **all types of support** to states and regional organizations, including intelligence sharing (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**

**HRDDP**

## Case Study 2 – Information Request:

*The U2 requests the host state's national military intelligence agency to obtain certain information from armed group fighters detained by the agency. It is well known that the national military intelligence agency systematically uses violence to "break" its detainees and make them speak.*

What are the relevant legal obligations?

# International Humanitarian law (IHL)

- Applies to parties to armed conflict
- Military peacekeepers engaged in hostilities
- Regulates conduct of hostilities
- Restricts means of warfare
- Protects those who do not or no longer engaged in hostilities



# 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 military hostilities)



## Case Study 3 – Injured Fighter:

*UN forces capture a badly injured armed group fighter. UN interrogators tell him that he will receive medical care once he discloses where his group placed improvised explosive devises (IEDs) that may harm the mission.*



***What are the legal obligations?***

# International Humanitarian Law: Conduct of Hostilities

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



## Case Study 4 – Allies:

*The mission's joint intelligence cell shares aerial images of enemy positions in densely populated areas with a regional peace enforcement mission.*

*As was foreseeable, the regional force shells entire neighbourhoods without taking any measures to protect the civilian population.*

**What are the  
legal  
Obligations?**

# International Criminal Law

- **War crimes**

Grave breaches -Geneva Conventions / serious IHL violations

- **Crimes against humanity**

key feature: systematic or widespread inhumane acts

- **Genocide:**

Intent to destroy national, ethnic, racial, religious groups

- **State duty to prosecute**

- **International tribunals**  
(e.g. International Criminal Court)



# Sources of International Law

## International Human Rights Law

- UN Charter
- Human rights treaties
- Universal Declaration of HRL

## International Criminal Law

- Int. criminal court
- Customary Int. law

## International Humanitarian Law

### **International armed conflict:**

Geneva Conventions  
Protocol I

### **Non-international armed conflict:**

Art. 3 Geneva Conventions  
Protocol II



# International Refugee Law



- 1951 Refugee Convention:
  - Fear of **persecution** due to race, religion, political opinion
  - International protected status
  - Protected under UNHCR mandate
  - Refugee rights
- 1969 African Refugee Convention-  
Refugees also persons fleeing **armed conflict**
- 1984 Cartagena Declaration on Refugees-  
Persons fleeing internal conflicts & generalized violence



## Case Study 5 – Refugees:

*JMAC obtains intelligence that the host government plans to force refugees to return to their home country where political oppression and armed conflict continues to persist. The JMAC chief wonders how that information is relevant.*

Are there concerns here and appropriate cause for action?



# Rights of Refugees

- Prohibition of expulsion or return if real risk (“*Refoulement*”)
- Prohibition of discrimination for race, religion or country
- Freedom to practice religion
- Right to acquire property
- Access to courts
- Public education
- Freedom of Movement



# Internally Displaced Persons (IDPs)

- **Forced to flee** (due to war or natural disaster)
- Have **not crossed an international border**
- No special international status; Home state must protect
- Keep human rights & rights as citizens
- Protection reinforced by:
  - UN Guiding Principles on Internal Displacement
  - AU Convention on Internal Displacement in Africa

# Take Away

- PKI personnel must assess how their work impacts on human rights and IHL. Compliance with the HRDDP ensures that they do not become complicit to violations of international law
- Like other civilians, refugees and internally displaced persons are of concern to the mission and hence its PKI priorities