



Lesson 2.2

Legal Framework for Peace Operations- Mission Specific

Learning Outcomes

- Describe the legal framework and UN policies for UN Missions
- Explain essential privileges and immunities and the legal framework to ensure their accountability, good conduct and discipline
- Explain the importance of protecting sources

Security Council Mandate

- Security Council Resolution:
highest legal basis for the mission
- Outlines tasks
and responsibilities
- What the Security
Council expects
Mission to accomplish



Observer mandates requiring PKI

- Observe and verify violations of ceasefires, armistices, withdrawal agreements
- Monitor security and humanitarian situation
- Monitor disarmament, demobilization and reintegration processes



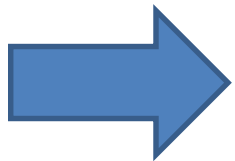
Protection-orientated Mandates

Human Rights

Protection of Civilians

Child Protection

Conflict-related Sexual Violence



Protection mandates are a PKI priority

Slide 5

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William Norman, 18/01/2020

Host State Agreements (SOMA/SOFA)

- Legal document signed by UN and host state
- Privileges and immunities for UN mission / personnel
- Example: freedom of movement, customs exemptions, visa requirements
- Supplemented by special agreements (example-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 6 – Leaked Documents:

The mission obtained secret government plans to violently cleanse an area of a minority ethnic group. To contain the leak, the host government:

- Prosecutes the JMAC national officer who obtained the plans from a government official.
- Prohibits UN officials from leaving the country unless they agree to have their bags searched.
- Jams the mission's code cable correspondence.
- Declares the JMAC chief persona non grata.

Is the mission legally protected against these steps?

United Nations Functional Immunity

- Troop contingents under jurisdiction of their state, they may not be arrested, prosecuted etc. by the host state.
- UN civilians, UNMOs and all UNPOL have it for official acts:
 - Status of Forces Agreement/Status of Mission Agreement.
 - 1946 Convention on the Privileges & Immunity of the United Nations.
- Protects UN staff from intimidation and reprisals. Can be waived by Secretary-General in interest of UN.
- Actual misconduct (e.g. sexual exploitation and abuse) is always subject to disciplinary & criminal action relevant personnel.

Immunity never means impunity for UN peacekeepers

DPO-DOS PKI Policies and Guidelines

- Human Rights Due Diligence Policy.
- Peacekeeping Intelligence Policy Guidelines on Acquisition of Intelligence.
- Guidelines on the Exchange of Intelligence/Peacekeeping-Intelligence with Non-UN and Non-Mission UN Entities.
- PKI, Surveillance and Reconnaissance Staff Handbook.
- Military Peacekeeping Intelligence Handbook.

Compliance with UN policy is mandatory for all peacekeepers

PKI legal limits, as established or reaffirmed by DPO Peacekeeping Intelligence Policy

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

Case Study 7 – armed group

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

- Pool its PKI resources with host authorities in a joint intelligence cell.
- Infiltrate UN language assistant into the armed group.
- Pay an armed group fighter for copies of the group's battle plans.
- Recruit as informants children who the armed group employs as cooks.

What are relevant legal obligations?

Prohibition of incentives for human sources

- DPO guidelines on information from human sources for PKI:

‘The incentive approach implies trading something that the source wants for information. This method of acquisition is strictly forbidden under the Peacekeeping-Intelligence policy.

No amount of money will be paid, nor gifts offered, to HPKI sources, or their relatives, in remuneration for information.’

Case study 8: keeping a human source

To facilitate meetings with an important human source who lives far from the mission, the mission's intelligence cell wants to:

- Provide her meals on the day of her debriefings.
- Reimburse the source for the transport costs, ideally through a 150 USD lump sum for every meeting.
- Offer to hire her brother as a cafeteria assistant.
- Pass on a request for a quick impact project (building of a well) in her village to the military's engineering company.

Which of these measures would be prohibited incentives?

Source protection- Intelligence Acquisition Plan

1. Who faces protection risks?

- Sources and persons suspected to be sources.
- Family members; others close to sources.
- Mission staff, national staff.

2. What protection risks must be considered?

- Reprisals and intimidation.
- Prosecution of sources.
- Community stigmatization .

3. How can protection risks be mitigated?

- Individual risk assessment before source contact.
- No recruitment if risks too high.
- Confidentiality of all contact with source.
- If exposed: advocacy, relocation, physical protection, coping mechanisms.

**A mission that
does not protect its
sources, will not
have sources**

Handling of detention in PKO: DPO Standard Operating Procedures (2020)

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

Complemented by mission specific guidance, appropriate orders and training for all concerned staff

Case study 9: debriefing a detainee

- A patrol apprehends a man as he is planting an improvised explosive device (IED) on a road that is regularly used by civilian and UN vehicles. Several UN staff have been killed and maimed by IEDs in recent weeks.
- The mission wants to debrief the man about the other IEDs that he or others have planted and the source of the bombs. The interrogation plan foresees to:
 - To keep him detained without contact to any other persons.
 - Question him for 8 hours per day over the next 7 days.
 - Provide him with food as soon as he starts providing information.
 - Promise to release him if he fully cooperates – instead of handing him over to the host state authorities, which regularly torture suspected terrorists.

Does the interrogation plan comply with international standards and UN rules?

DPO detention SOPs: questioning of detainees

- UN personnel may question detained persons within ambit of their protection of civilians and self-defence mandates.
- Record must be kept of UN personnel present and detainee responses.
- Detainees may not be compelled to answer, but must be informed about that right.
- No torture, inhumane treatment or other methods of questioning that would violate international law.
- Questioning of children only in the presence of a Child Protection Advisor.

Take Away

- Protection mandates rely on good PKI and must be made a PKI priority, as per UN policy.
- PKI personnel enjoy privileges and immunities protecting them from any host state reprisals related to their official duties.
- Protecting PKI sources from harm is a priority from a legal, policy, ethical & operational perspective. Protection must be ensured before sources are approached.