

Lesson 2.1- United Nations Peace Operations Specific Legal Framework



The Lesson

Slide 1



Lesson 2.1 United Nations Peace Operations Specific Legal Framework

Getting Started



While preparing for this session, trainers need to be aware that majority of the learners are supposed to come with legal background; as such, are familiar with the international and UN legal framework. It is important to note that the knowledge and understanding of international laws have direct relevance to the work of the NIOs in the field. For an interactive start to this Lesson, ask the trainees a few questions related to UN legal framework to ascertain their level of background knowledge on the subject.



Note to instructor – recommend that lesson 2.1 be presented by an instructor with legal background, who is well versed with the international and UN legal framework. NIO trainers

with past field experience of investigation in peacekeeping are likely to have the knowledge and experience to explain different international laws and how they impact the NIO's work of investigation. The instructor should encourage questions from the trainees and aim for an interactive discussion. All trainees should be encouraged to contribute to the group discussions and learning activities.

Introduce the following (using the Introductory Slides):

- Lesson Topic
- Relevance
- Learning Outcomes
- Lesson Overview

The topic and language can be difficult for NIO trainees. As you move through the lesson remind learners of the relevance of this lesson to their specific functions as NIOs. Review the definitions of key words for the lesson. A suggestion is to present each key word and its definition on individual sheets of different coloured paper and post on the wall for learners to easily refer to during the course of the training.

You may wish to print out examples of international law which will be repeated in subsequent lessons. Print out the titles on individual sheets of paper. These include the UN Charter, the Geneva Conventions and their Additional Protocols, as well as the International Bill of Human Rights.

Aim

To explain the legal framework pertinent to National Investigative Officers (NIO) to carry out their investigation tasks in UN peacekeeping operations and emphasize parts of international law important to them.

Relevance

As NIO practitioners and trainers, it is important for you to **know relevant aspects of UN legal framework and international law that affect peace operations**, and more precisely to carry out your investigation functions. This lesson of legal framework provides such knowledge.

This lesson focuses on international law as an important part of the legal framework. **You must have complete understanding of international human rights law and international humanitarian law to carry out your functions as NIOs.**

Learning Outcomes

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Learning Outcomes

- List key documents in International Law
- Explain human rights and list examples in International Human Rights Law (IHRL)
- Identify who is protected by International Humanitarian Law (IHL)
- Explain why all armed UN peacekeeping personnel must know the rules of engagement (ROE) or directive on use of force (DUF)

You as NIO trainers will:

- List key documents included in the legal framework for UN peacekeeping operations
- Explain human rights and list examples in International Human Rights Law (IHRL)
- Identify who is protected by International Humanitarian Law (IHL)
- Explain why all armed UN peacekeeping personnel must know the rules of engagement (ROE) or directive on use of force (DUF)

Recommended Lesson Duration: 45 minutes total

1-2 minutes per slide

Use short option learning activity

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Learning Activity 1 (Experiences of Rules and Laws)

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Learning Activity 1

Experiences of Rules and Laws

- **Instructions:**
 - Give examples of rules and laws in society
 - Why are they important?
 - Compare with International Law
- **Time:** 5 minutes
 - Brainstorming: 3 minutes
 - Discussion: 2 minutes

Method

Visuals, brainstorm

Purpose

To understand the importance of International Law

Time


5 minutes

- Brainstorming: 3 minutes
- Discussion: 2 minutes

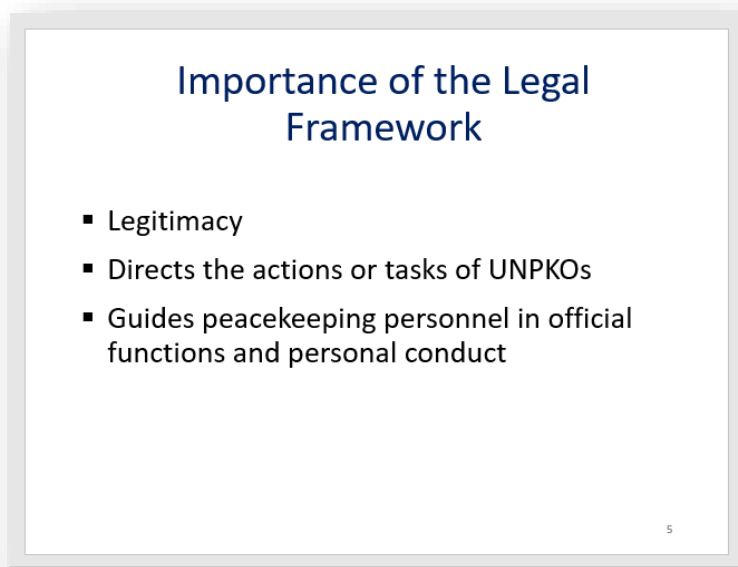
Instructions

- Give examples of rules and laws in society.
- Why are they important?
- Compare with International Laws.

Importance of the Legal Framework

 Remind learners that the Basic Principles provide a navigational aid or a compass for UN peacekeeping, and inform them that the legal framework is an additional source, indicating how UN peacekeeping “should” be practiced.

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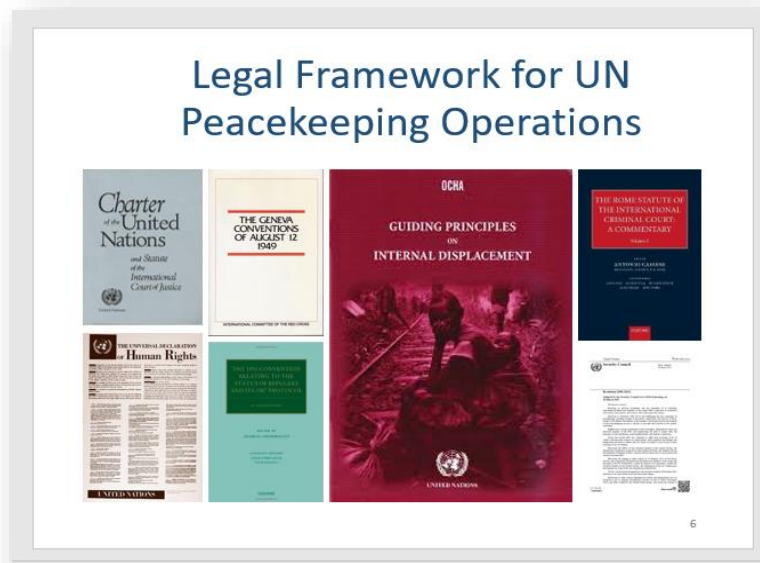
Key Message: The legal framework is the set of rules or laws that regulate the actions, tasks and conduct of the peacekeeping operation and its personnel.

The legal framework is important because:

- **It gives legitimacy.** The UN does not undertake any peacekeeping operation without clear authority to do so – in other words, without the “power” or “right”.
- **It directs the actions or tasks of the peacekeeping operation.** UN peacekeeping operations are directed to promote and protect human rights and other international law. Respect for and fulfilment of human rights has direct positive effects on peace. Peacekeeping personnel have a responsibility to ensure special protection of certain groups who are vulnerable or who suffer discrimination, such as women, minorities, children, refugees, internally displaced persons (IDPs) and people living with disabilities.
- **It guides peacekeeping personnel in their official functions and personal conduct.** The UN expects the same high standards in the private behaviour of peacekeeping personnel as in professional life. Authorities deal with cases of misconduct firmly, fairly and quickly. This includes cases of serious misconduct such as sexual exploitation and abuse.

Legal Framework for UN Peacekeeping Operations

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Key Message: The legal framework for UN peacekeeping operations includes:

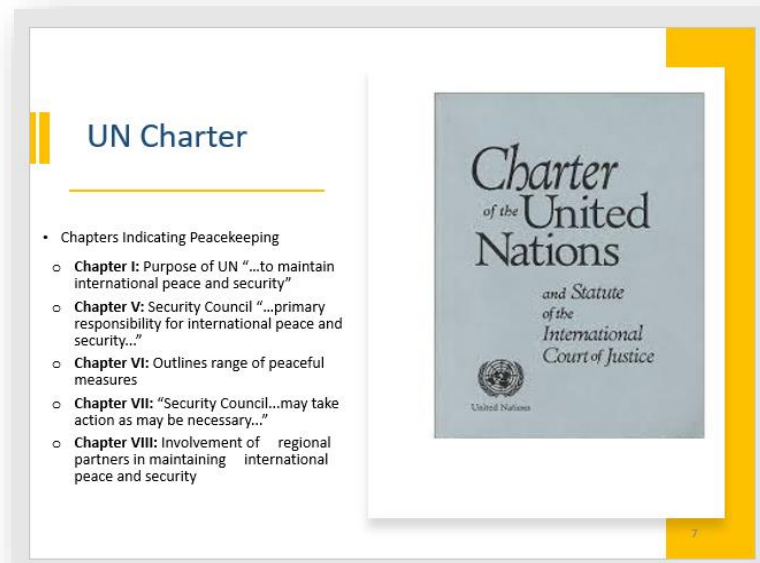
- International Law, including the UN Charter, International Human Rights Law, International Humanitarian Law, International Refugee Law and International Criminal Law
- Security Council mandate

- National law of the host country
- Memorandum of Understanding (MOU) between the UN and the Troop/Police Contributing Countries (TCCs/PCCs)
- Status of Mission Agreement (SOMA) or Status of Force Agreement (SOFA)
- Convention on the Privileges and Immunities of the United Nations of 1946
- UN Internal Rules, Regulations and Guidance
- Rules of Engagement (ROE) and Directive on the Use of Force (DUF)

UN Charter

 Remind learners that the UN Charter is the foundation for all UN work and is a source of authority and legitimacy for UN peacekeeping.

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Key Message: The UN Charter is a source of authority and legitimacy for UN peacekeeping. It does not use the word “peacekeeping”. Some articles and chapters link to it. The legal basis for UN peacekeeping is in chapters VI and VII.

The UN Charter chapters linked to UN peacekeeping include Chapters I, V, VI, VII and VIII.

Chapter I is “Purposes and Principles” of the UN. Article 1 says that **one purpose of the UN is “to maintain international peace and security”**.

Chapter V covers “The Security Council”. The **Security Council has “...primary responsibility for the maintenance of international peace and security.** “...The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII...”.

Chapter VI deals with “Pacific Settlement of Disputes”. This chapter outlines **peaceful measures** available to the UN for settling disputes and dealing with armed conflict.

Chapter VII provides for “Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression.” “...The Security Council ... **may take such action by air, sea or land forces as may be necessary** to maintain or restore international peace and security...”. This chapter outlines **coercive measures**.

Chapter VIII deals with “Regional Arrangements”. It involves **regional partners** in maintaining international peace and security, consistent with the Charter’s principles and purposes.

Chapters VI and VII of the UN Charter

Traditional peacekeeping operations have been called “Chapter VI” missions. Multi-dimensional operations, which are oriented towards the use of force, have been called “Chapter VII” missions. These references to chapters are inaccurate and misleading. The UN discourages their use.

When the Security Council authorizes a peacekeeping operation, it does not have to refer to a specific chapter of the UN Charter.

As the instructor, you may have to dispel misperceptions that a peacekeeping operation’s authority to use force is linked primarily to an explicit reference to Chapter VII of the UN Charter in the Security Council mandate. Some TCCs may feel that reference to Chapter VII by the Security Council provides important political and legal cover within the context of their domestic jurisdictions for the use of force by their military personnel deployed to a UN peacekeeping operation.

The Security Council has begun to refer to Chapter VII of the UN Charter when authorizing robust peacekeeping operations in volatile post-conflict settings. This shows the political commitment of the Security Council. It also reminds UN Member States and parties to a conflict of their obligation to Security Council resolutions.

A peacekeeping operation’s authority to use force is not linked primarily to an explicit reference to Chapter VII of the UN Charter in the Security Council mandate. No matter which Chapter is referenced, an appropriately worded Security Council mandate provides the true basis for the legitimate use of force by personnel serving in a UN peacekeeping operation.

The authority to **use force** in certain situations is also guided by:

- **The Mission's Concept of Operations (CONOPs)**
- **The Rules of Engagement (ROE)**
- **The Directive on the Use of Force (DUF)**

Referring to a UN peacekeeping operation as a “Chapter VI” or “Chapter VII” operation is inaccurate. It is also misleading. Peacekeeping personnel should avoid these references to prevent misunderstanding.

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When serving in the United Nations, all UN military personnel must always respect, international human rights, humanitarian, criminal and refugee law. Furthermore, they must protect people against violations of these fundamental norms, and they must promote them in their daily interaction with other actors, including with the host state forces and any armed groups they may engage with under their mandate.

NIOs should, as a matter of priority, follow up on any serious misconduct that would entail violations or abuses of these basic norms of international law.

Learning Activity 2 (International Human Rights Law)

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Learning Activity 2

International Human Rights Law

Instructions:

- What are “human rights”?
- Give examples
- List examples of international human rights law

Time: 5 minutes

- Brainstorming: 3 minutes
- Discussion: 2 minutes

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Method - Brainstorm

Purpose -To establish basic knowledge of a) what human rights are and b) examples of human rights as part of international law as it applies to peacekeeping.

Time

Short option: 5 minutes

- Brainstorming: 3 minutes
- Discussion: 2 minutes

Longer option: 20 minutes

- Brainstorming: 12 minutes
- Discussion: 8 minutes

Instructions

- What are “human rights”?
- Give examples.

- List examples of international human rights law.

International Human Rights Law

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International Human Rights Law

What are Human Rights?

- “Human rights” are rights inherent to all human beings, whatever our nationality, place of residence, sex, sexual orientation and gender identity, national or ethnic origin, colour, religion, language or any other status
- We are all equally entitled to our human rights without discrimination



Key Message: UN peacekeeping seeks to promote and protect human rights. **Human rights are universal.**

“Human rights” are rights inherent to all human beings, whatever our nationality, residence, sex, sexual orientation and gender identity, national or ethnic origin, colour, religion, language or any other status. We are all equally entitled to our human rights without discrimination.

These **rights are universal**, which means that every person holds them, and they are **indivisible**, which means that different rights support each other and cannot be separated. No one can take away a person’s human rights.

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Examples of Human Rights

Examples of **civil and political rights** include the right to:

- Life
- Freedom from torture
- Protection from discrimination
- Freedom of expression
- A fair trial
- Not be held in slavery



Key Message: Examples of human rights include civil and political rights.

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Examples of Human Rights

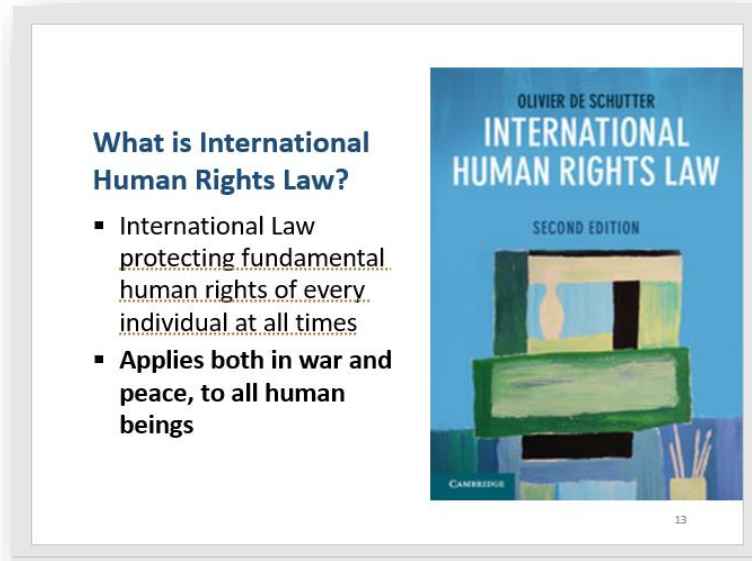
Examples of **economic, social and cultural rights** include the right to:

- Join a trade union
- Education
- Food
- Housing and medical care
- Social security and work
- Equal pay for equal work



Key Message: Examples of human rights include economic, social and cultural rights.

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Key Message: International Human Rights Law (IHRL) is international law that protects the fundamental human rights of every individual, always, including in armed conflict. It applies to all human beings in war and peace.

IHRL protects certain types of human rights and groups of people who may need additional and specific protection because they are in a vulnerable situation or are discriminated against. Women and children are two groups with special protection measures, and individuals may suffer from multiple discrimination when they are part of more than one such categories. It should be noted that, the vulnerability of individuals may change over time and places and is not necessarily inherent to a group of categories, but a result of the social structure. Their needs should not be considered as "special" but as different from the contextual "norm", which usually relates to those of an adult male that is not discriminated against.

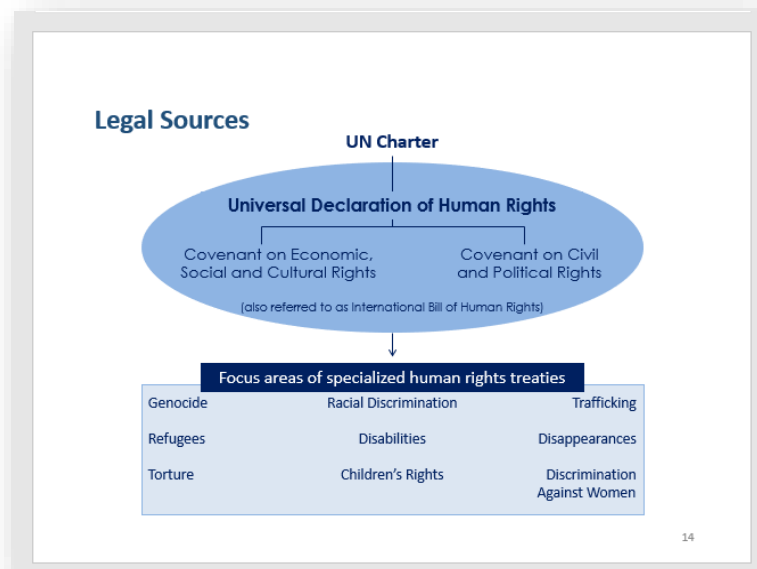
Groups with specific protection needs usually include:

- **Refugees**
- **Internally displaced persons** – people who have fled from their homes because of armed conflict, persecution, human rights violations or natural disasters
- **Minorities** - groups with common ethnicity, religion or language different from the majority population
- **Detainees** - persons in detention, awaiting trial or serving a judicial sentence
- **Persons with disabilities** - people injured or maimed, or with physical or mental disabilities
- **Migrant workers**

- **Women, children and the elderly**

Human rights obligations remain applicable to military contingents that serve under the command of the United Nations. Often peacekeeping military contingents violates (knowingly or unknowingly) certain basic human rights of civilians, more commonly among these is 'unlawful detention' of arrested/apprehended people. Unlawful Detention occurs when a law enforcing officer or in the context of UN peacekeeping, the UN military or police, deprive an individual of their Constitutional right to be free from illegal searches and seizures. In other words, an unlawful detention occurs when a law enforcing, or security officer detains a person for an unreasonable amount of time without probable cause to do so. This detention does not necessarily mean an actual arrest. Unlawful detention may occur if an individual is detained for an unreasonable amount of time.

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Key Message: IHRL is in the UN Charter and other international treaties and conventions.

The International Bill of Human Rights is the cornerstone document for human rights. It is made up of:

1. **The Universal Declaration of Human Rights (UDHR) - adopted in 1948.**
2. **The Covenant on Economic, Social and Cultural Rights.**
3. **The Covenant on Civil and Political Rights.**

Together, the UN Charter and the International Bill of Human Rights underscore that human rights and fundamental freedoms are universal, guaranteed to everybody. All human beings are:

- Born free and equal
- Endowed with reason and conscience
- To act towards one another in a spirit of brotherhood

The Charter commits all Member States to promote, respect and follow human rights and fundamental freedoms for all, without distinction by race, sex, language or religion (Articles 1 and 55).

Other human rights treaties supplement the International Bill of Human Rights. These focus on specialized areas, for example, the prevention of genocide and torture and protection of vulnerable groups.

Examples of human rights instruments that address specific issues are:


- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Rights of the Child (1989)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990). It is to be noted that, as per International Covenant on Civil and Political Rights (ICCPR), even in emergency situations, there are rights that are non—derogable, as below:
 - Right to life (art 6);
 - Prohibition of torture, cruel, inhuman and degrading treatment (art 7);
 - Prohibition of medical or scientific experimentation without consent (art 7);
 - Prohibition of slavery, slave trade and servitude (art 8);
 - Prohibition of imprisonment because of inability to fulfil contractual obligation (art 11);
 - Principle of legality in criminal law i.e. the requirement that criminal liability and punishment is limited to clear and precise provisions in the law, that was in force at the time the act or omission took place, except in cases where a later law imposes a lighter penalty (art 15);
 - Recognition everywhere as a person before the law (art 16);
 - Freedom of thought, conscience and religion (art 18).

DPO Guidelines on Detention

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**DPO Standard Operating Procedures
on Detention in UN Peace Operations (I)**

- Arrest & detention powers based on Security Council Mandate and ROE
- SOP triggered once UN has target person under its effective control.
- Due process: Inform person about reason for detention, inventory of items taken from detainees, notification of their family etc.
- Mission's Detention Focal Point must be immediately notified.
- ICRC notified within 36 hours and given access to detainees.
- Foreigners may demand that their consulate is alerted.



[UN Photo shows UN forces arresting former Liberian President Charles Taylor in order to hand him over to the International Criminal Court, which later convicted him of crimes against humanity and war crimes.]

The United Nations Secretary-General and DPO adopt a number of binding policies that establish binding rules to ensure that UN mission conduct follows international human rights standards. For example, the Standard Operating Procedures on Detention by Peacekeepers is one such policy document that NIOs should study and familiar with as breaches of fundamental rules in these SOPs would also regularly entail serious misconduct and criminal conduct.


- Their mandate and the Rules of Engagement elaborating it may give a peace operation the power to apprehend and temporarily detain individuals. Example: In exercise of its protection of civilians' mandate, a battalion patrol apprehends three men as they are attempting to rape a woman.
- The procedures to be followed in such cases is laid out by the DPO Standard Operating Procedures on Detention. They set out a process on how the UN can temporarily detain persons with a view to handing them over to the host state authorities or releasing them again, as appropriate.

- The military contingents are responsible to familiarize themselves with the SOPs and mission-specific rule. Every mission will also nominate a detention focal point (a civilian who is neither military nor police) will monitor compliance with the SOP under the overall responsibility of the head of mission and who can provide advice as needed.
- The SOPs apply once the UN has the target persons under its effective control, even for very short periods. This applies even if some local officials may accompany the UN during operations if the contingent effectively controls the apprehension. Compliance with the SOPs cannot be evaded by introducing evasive concepts like “temporary holding” or the like.
- Once the UN contingent have effective control over a person, the SOPs set out detailed guidance on how to proceed. They must inform the detainee about the reason for the detention, make an inventory of any items temporarily taken or seized from the detainee, give the person the option to inform their family or third parties etc.
- Furthermore, the Detention Focal must be immediately notified. The SOPs also require to notify, within 36 hours, the International Committee of the Red Cross (ICRC). As per the SOPs, the ICRC has a right to get access to detainees and conduct confidential interviews with them. Foreign nationals may demand that their consulate is alerted (the choice is with the detainee).

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**DPO Standard Operating Procedures
on Detention in UN Peace Operations (II)**

- Detainees(s) must be treated humanely
- Detainees must be separated in line with international standards
- If UN receives any allegations of detainees being subjected to torture or ill-treatment such concerns should be immediately transmitted
- Detainees can't be held for more than 96 hours
- The UN is prohibited from handing over a person to the host state if there is a real risk of that person being subjected to persecution, torture or ill-treatment
- Mission must carry out a conduct an individual risk assessment before any handover



- Anyone detained by the United Nations must be treated humanely. The mission must plan ahead to ensure that detainees are kept in adequate holding cells, receive water, food, hygiene facilities, medical care as required by international standards (these are detailed in an international document called the Mandela Rules, named after the famous Anti-Apartheid campaigner, political prisoner and later South African President).
- Detainees must be separated in line with international standards. Men and women as well as adults and children must be kept apart (except children and their parents who should not be separated from each other). In order to ensure compliance, relevant needs and resources must be factored in at the mission planning and budget stage already.
- If UN receives any allegations of detainees being subjected to torture or ill-treatment such concerns should be immediately transmitted to the Detention Focal Point and the mission's conduct & discipline team.
- The SOPs envisage that the UN will only hold detainees for 96 hours. After 96 hours, the person has to be handed over to state authorities (usually the host state authorities, although exceptionally a handover to a third state presence may be carried out). If no handover is possible or appropriate, the person must be released.
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- The UN is prohibited from handing over a person to the host state if there is a real risk of that person being subjected to persecution, torture or ill-treatment, disappearance or summary execution. Consistent with the UN policy of opposing the death penalty, a person must also not be handed over if there is a real risk of the person being subjected to the death penalty.
- In order to implement these non-refoulement guarantees, every mission must strike a legal agreement on handover and related guarantees with the host government. In addition, the mission must carry out a conduct an individual risk assessment before any handover and closely monitor the subsequent treatment of the person who was handed over.

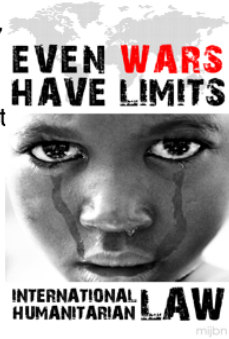
International Humanitarian Law

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International Humanitarian Law

What is IHL?

- “Law of war” or “law of armed conflict”
- **Applies in times of armed conflict**
- Limits negative impact of armed conflict and reduces suffering during war
- Individuals are protected under IHL if they do not engage in hostilities, or are no longer doing so




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Key Message: International Humanitarian Law (IHL) is known as the “law of war” or the “law of armed conflict”. The goal is to limit the negative impact of armed conflict and to lessen suffering during war. It applies in times of armed conflict and is complementary to International Human Rights Law, which applies at all times.

“Armed conflict” refers to **both international and non-international armed conflicts**.

International armed conflict involves two or more opposing states. **Non-international or internal armed conflict** involves one or more states against organized non-state armed groups, or conflict between such groups.

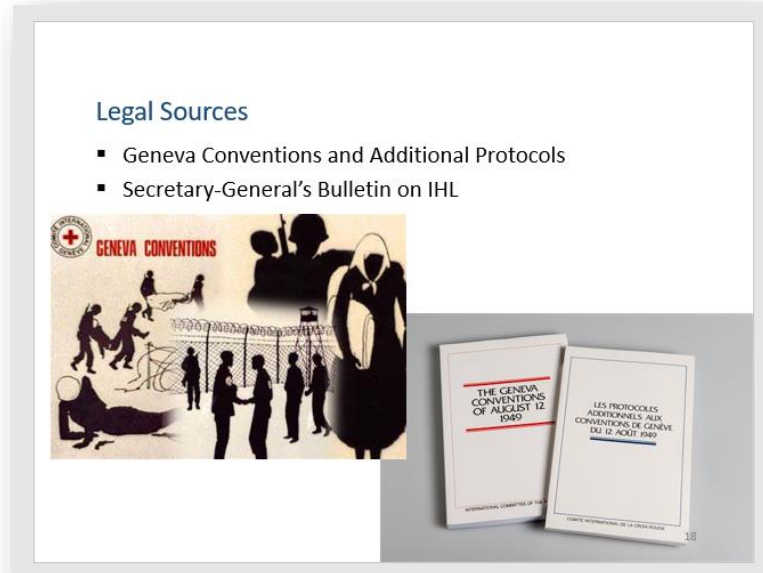
 **Note to Instructor** Remind learners of the terms “inter-state conflict” and “intra-state conflict”. Point out similarity of these terms with the terms “international armed conflict” and “non-international or internal armed conflict”, which are specific to IHL.

IHL protects those who do not engage in hostilities, or who are no longer doing so. This includes civilians, the wounded, prisoners, medical personnel and humanitarian workers. It **upholds fundamental rights** of civilians, victims and non-combatants in an armed conflict.

IHL also restricts the means and methods of warfare. IHL does not allow use of certain weapons because they cause superfluous injury or unnecessary suffering. An example is incendiary weapons – weapons that cause fire. IHL outlaws certain methods of warfare, such as pretending to be a Red Cross or Red Crescent humanitarian worker, who are protected by IHL, to trick enemies.

Rules of IHL bind all parties to a conflict. IHL applies only in armed conflict. It does not cover internal tensions or disturbances such as isolated acts of violence. The law applies when a conflict starts, and then equally to all sides, regardless of who started fighting.

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Key Message: The main rules of IHL are in the Geneva Conventions of 1949 and two Additional Protocols of 1977, as well as in rules regulating means and methods of combat.

The Geneva Conventions lay out points of agreement about how states and people will behave in times of war and conflict.

IHL also contains conventions and treaties on protection of cultural property and the environment during armed conflict.

IHL is complex. Principles and rules that apply to UN peacekeeping personnel are collected in one document. This is *The Secretary-General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law* of 6 August 1999 (ST/SGB/1999/13).

Note to instructor - Particularly for training with contingent commanders, instructors should consider providing participants with a copy of this Secretary-General's bulletin.

Learning Activity 3

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Learning Activity 3

International Humanitarian Law – Who should be Protected?

Instructions:

- Consider the images
- Identify “civilians” and “combatants”
- Who should be protected? Why?

Time: 10 minutes

- Group work: 5 minutes
- Discussion: 5 minutes

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Method - Visuals

Purpose

To deepen learner understanding of how IHL is used to protect civilians in armed conflict, focusing on the principle of distinction between a) combatants and civilians and b) civilian objects and military objectives.

Time

Short option: 10 minutes

- Group work: 5 minutes
- Discussion: 5 minutes

Longer option: 30 minutes

- Group work: 15 minutes
- Discussion: 15 minutes

Instructions

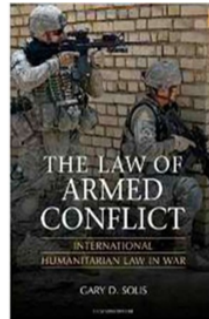
- Instructors should display images that include military soldiers, armed people, unarmed people etc
- Consider the images
- Identify “civilians” and “combatants”.
- Who should be protected? Why?

Essential Rules of IHL

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Essential Rules of IHL

1. Civilian targets cannot be attacked. Attacks only against military objectives.
2. Civilians and anyone no longer taking part in hostilities must be respected and treated humanely.
3. Anyone who surrenders or stops fighting (e.g., wounded) cannot be killed.
4. Torture is prohibited at all times and in all circumstances.



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Essential Rules of IHL (cont.)

5. Captured combatants and civilians must be respected and protected.
6. It is forbidden to use weapons or methods of warfare that are likely to cause excessive injury or unnecessary suffering.
7. Wounded and sick must be collected and cared for.
8. Medical personnel and medical establishments, transport and equipment must be respected and protected.



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Essential Rules of IHL (cont.)

9. The Red Cross, Red Crescent and Red Crystal emblems are signs of protection and must be respected.
10. Prevention and prosecution of war crimes covers attacking civilians, recruiting children as soldiers, torturing prisoners and sexual violence.



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Key Message: These are the Essential Rules of IHL.

The rules make reference to the “Red Cross, Red Crescent and Red Crystal emblems”. Depending on the knowledge of the learners, they may benefit from a quick reminder about what this means. Be ready to quickly clarify details on the International Red Cross and Red Crescent Movement and the emblems.

Case Study

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Case Study - IHL

“The army used heavy artillery to shell our military field hospital. Many of my wounded comrades were killed. Those who survived were captured and were not given any medical care by the army.”



Violations to consider:

- Attack directed against hospital/place to care for wounded & sick
- Attack directed against protected persons *hors combat*/wounded
- Duty to collect and care for the wounded and sick
- Human rights to life, health and physical integrity

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Here is a case study. Take some time to read over the slide and we will discuss. Working in syndicate groups, have participants review the slide and then discuss. Then have syndicate groups report back brief the plenary. Here are a few areas to assist facilitating the discussions.

Key areas / violations to consider:

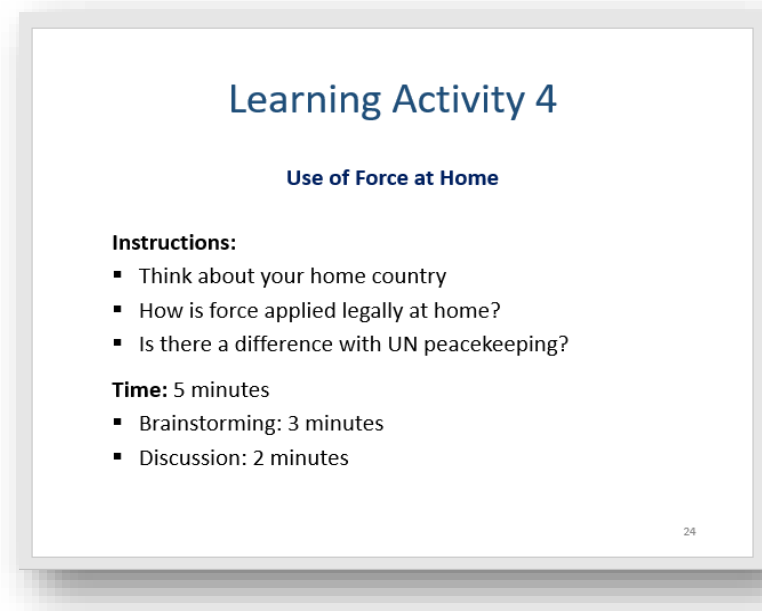
- Attack directed against hospital/place to care for wounded & sick
- Attack directed against protected persons hors combat/wounded
- Duty to collect and care for the wounded and sick

Human rights to life, health and physical integrity Facilitation notes: more specifically and in detail; the following can be used to add to the discussion:

- IHL humanitarian law prohibits attacking hospitals and other places that take care of wounded or sick persons. This applies, even if the hospital in question treats only enemy combatants and no civilians. Directing an attack against enemies who are wounded or can for other reasons no longer fight (persons hors combat) is prohibited. The shelling of the enemy's hospital may therefore entail a war crime. In contrast, it would have been allowed to take control of the hospital and arrest all the wounded fighters kept there.
- The failure to provide medical care to those captured violates IHL. Common Article 3 Geneva Conventions that applies to non-international armed conflict requires parties to the conflict to collect and medically care for all wounded and sick, including enemy combatants.
- Along with the violations of IHL, the army would have also violated the human rights to life and health of the wounded fighters. Human rights pertain not only to civilians but also to soldiers and other combatants.

Learning Activity 4

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Learning Activity 4

Use of Force at Home

Instructions:

- Think about your home country
- How is force applied legally at home?
- Is there a difference with UN peacekeeping?

Time: 5 minutes

- Brainstorming: 3 minutes
- Discussion: 2 minutes

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Method - Brainstorm

Purpose

To deepen understanding of legal restrictions to the use of force in UN peacekeeping

Time

Short option: 5 minutes

- Brainstorming: 3 minutes
- Discussion: 2 minutes

Longer option: 30 minutes

- Brainstorming: 15 minutes
- Discussion: 15 minutes

Instructions

- Think about your home country
- How is force applied legally at home?

- Is there a difference with UN peacekeeping?

Rules of Engagement and Directive on the Use of Force

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

- Guide use of force
- ROE for military personnel, DUF for police personnel
- Guidance in accordance with mandate, UN Charter, International Law



Key Message: The Rules of Engagement (ROE) and Directive on the Use of Force (DUF) guide the use of force according to the UN Charter and the Security Council mandate. They also comply with IHL and IHRL. They are legally binding documents internal to the UN.

The ROE is for the military component and the DUF is for the police component, where Formed Police Units (FPUs) are authorized to carry arms.

The ROE and DUF:

- Apply specifically to military and police personnel
- Detail how and when to use force – details include constraints and latitudes (scope) in using force and the right of self-defense
- Clarify different levels of force to use in different circumstances
- Provide practical guidance to commanders, including on needed authorizations
- Are mission-specific documents that apply to a particular mission and mandate

ROE:

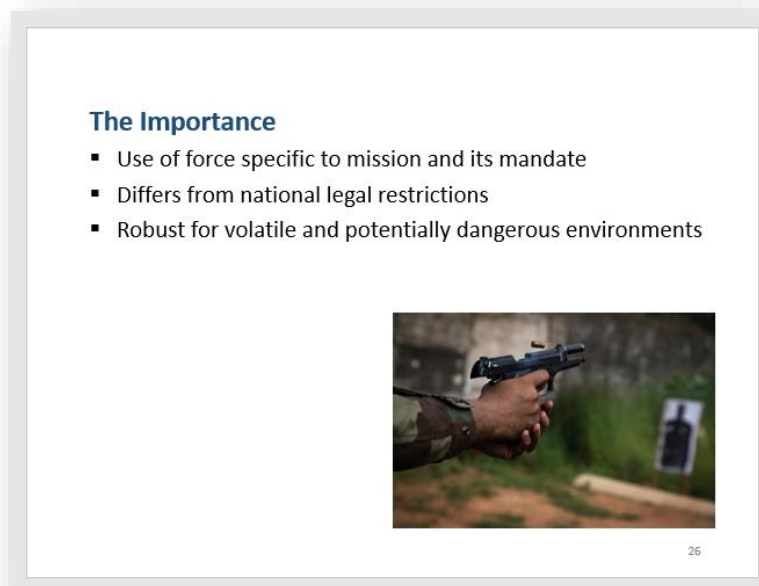
- Outlines the authority of armed UN military personnel to use force in mandate implementation
- States when force may not be used by armed UN military personnel

- Applies to all armed military personnel and units in the mission

DUF:

- Indicates whether UN police are armed
- States when they have legal authority to use force
- Applies to all armed police personnel and units (such as FPU) in the mission

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Key Message: Armed UN military and police must be very clear on the rules for use of force. They need to know the ROE and DUF. The use of force may differ from national legal restrictions.

It is important to **clearly understand** the ROE and DUF because:

- The **use of force is specific to the mission and its mandate**, and armed military and police personnel **must be aware of how such force should be applied in the field**.
- Contemporary peacekeeping operations are often deployed to **volatile and potentially dangerous environments**. The ROE and DUF will be robust enough for a UN peacekeeping operation to a) retain credibility and b) have freedom of action to implement the mandate.

- Troop and Police contributing countries (TCCs/PCCs) may have **national legal restrictions on the use of force**. They must inform DPKO and the military/police commander of restrictions to avoid problems.

Mission leadership ensures that all relevant personnel in a mission know the ROE and DUF and apply them uniformly. UN military and police commanders are responsible for all personnel under their command knowing the ROE or DUF.

DPKO briefs TCCs/PCCs. It provides key documents (the Concept of Operations (CONOPS), ROE, DUF) through Permanent Missions in New York. Permanent Missions are diplomatic representatives of a country to the UN.

Additional Aspects of the Legal Framework

Depending on the particular group of learners who form your audience also make a decision on the level of detail to which you want to discuss the following material. Conduct and Discipline is covered in later lessons.

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A presentation slide titled "Additional Aspects of the Legal Framework" in blue text. Below the title is a bulleted list of seven items. The slide is set against a light gray background with a subtle drop shadow.

- International Law – International Refugee Law, Guiding Principles on Internal Displacement, International Criminal Law
- Security Council mandate
- National law of host country
- MOU between UN and T/PCCs
- SOMA or SOFA
- The Convention on the Privileges and Immunities of the UN of 1946
- UN Internal Rules, Regulations and Guidance

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Key Message: Additional legal documents include:

- Additional International Law – International Refugee Law, Guiding Principles on Internal Displacement and International Criminal Law

- Security Council mandate
- National law of the host country
- Memorandum of Understanding (MOU) between the UN and the TCC/PCC
- Status of Mission Agreement (SOMA) or Status of Force Agreement (SOFA)
- The Convention on the Privileges and Immunities of the UN of 1946
- UN Internal Rules, Regulations and Guidance – including conduct and discipline

International Refugee Law: International Refugee Law defines a “refugee” as a person who has:

- Fled his or her country
- Crossed an international border
- Lives in a different country and
- Cannot return home because of probable persecution – based on race, religion, nationality, political opinion or membership in a particular group

International Refugee Law guarantees the human rights of refugees and spells out states’ obligations to protect refugees living in their territory.

The Guiding Principles on Internal Displacement: “Internally displaced persons” (IDPs) have also fled their homes and cannot return, but they have not crossed an international boundary. The Guiding Principles of Internally Displaced Persons identify rights and guarantees for protection of IDPs.


International Criminal Law: International Criminal Law governs prosecution of individuals for international crimes. The Rome Statute of the International Criminal Court (ICC) came into force on 1 July 2002 and defines the most serious crimes of international concern – genocide, crimes against humanity, war crimes and the crime of aggression.

- “War crimes” are serious violations of IHL, committed as part of a plan or policy on a large scale. These occur in international and non-international armed conflict. War crimes include:
 - Murder
 - Torture or inhumane treatment
 - Taking of hostages
 - Intentionally directing attacks against the civilian population
 - Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historical monuments or hospitals
 - Pillaging – in other words, robbery using violence
 - Rape, sexual slavery, forced pregnancy or any other form of sexual violence

- Conscripting or enlisting children under the age of 15 years into armed forces or armed groups to participate in hostilities
- “Crimes against humanity” are serious crimes committed as part of a widespread or systematic attack against civilians where the perpetrator has knowledge of the attack. Crimes against humanity occur in and out of armed conflict. Crimes against humanity include:
 - Murder
 - Torture
 - Rape or other sexual violence
 - Enforced disappearances
 - Extermination
 - Slavery
 - Forced transfer of populations
- “Genocide” refers to any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group:
 - Killing members of the group
 - Causing serious bodily or mental harm to members of the group
 - Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
 - Imposing measures intended to prevent births within the group
 - Forcibly transferring children of the group to another group

The Rome Statute also set up the ICC. The ICC is a permanent, treaty-based, international criminal court. It complements the state’s obligation to prosecute individuals for international crimes of genocide, crimes against humanity and war crimes. It has the mandate to prosecute perpetrators of these most serious crimes if they occurred after 1 July 2002. The ICC is a court of last resort.

However, international criminal law must first and foremost be enforced by individual states. In particular, every state has an obligation to investigate, prosecute and sanction war crimes or crimes against humanity perpetrated by any of their troops.

 **Note to instructor** *Learners may require clarification on the difference between the UN and the UN principal organ, the International Court of Justice (ICJ). Be prepared to explain the difference.*

Security Council Mandate:

- A Security Council mandate gives international legitimacy to the presence of a peacekeeping operation in a country
- The mandate is the legal basis for all actions or tasks the operation undertakes, including the use of force
- The mandate sets out the tasks of a UN peacekeeping operation and the total number of personnel for completing the tasks
- Mandated tasks link with international law and peace agreements

National law of the host country: It is important that peacekeeping personnel respect and follow the national laws of the host country, as well as local customs and culture.

MOU between the UN and the TCC/PCC: The MOU is a legal agreement. It details:

- How the UN will reimburse governments for troops, FPU's or equipment loaned to a peacekeeping operation
- The obligations of contributing governments to ensure appropriate quality personnel and equipment
- Obligations of TCCs/PCCs, commanders, troops and police for prevention of sexual exploitation and abuse in UN peacekeeping operations (since 2007)

Status of Mission Agreement (SOMA) or Status of Force Agreement (SOFA):

- In peacekeeping operations with armed personnel, the UN has a SOFA with the host country. SOFA applies to all military, civilian and police.
- For UN peacekeeping operations (or SPMs) with only unarmed personnel, the UN has a SOMA, which also applies to all mission personnel.
- These legal agreements give “functional immunity” to all peacekeeping personnel on the basis of the *Convention on the Privileges and Immunities of the UN*. They cover military and police who are not technically known as “UN staff”. It is to be noted that, the military contingents, where NIOs are embedded, they actually remain as per the SOFA under the exclusive jurisdiction of their home country. That jurisdiction protects them and cannot also not be waived by the UN.
- The agreements define the legal status and arrangements for:
 - The UN's use of facilities, transportation and other equipment and communications
 - Freedom of movement in the country
- They include a mechanism to resolve disagreements on these issues between the host country and the UN

The Convention on the Privileges and Immunities of the UN of 1946:

- The *Convention on the Privileges and Immunities of the UN of 1946* gives legal status to the UN and subsidiary bodies. It provides certain privileges and immunities to the UN and its officials to fulfil the Organization's purpose and allow personnel to do their jobs without interference.
- The Convention covers immunity from the legal process for words spoken or written and actions taken in an official capacity. It also covers immunity from personal arrest or detention.
- Privileges and Immunities are granted in the interests of the UN, not for personal benefit of individuals.
- The Secretary-General has the right and the duty to waive the immunity of any official or expert in any case where, in her or his opinion, the immunity would impede the course of justice and could be waived without prejudice to the interests of the UN. There are serious consequences to all involved when it comes to misconduct.

UN Internal Rules, Regulations and Guidance:

- More detailed guidance to peacekeeping personnel is in UN and mission directives and rules. These include UN rules and regulations on conduct and discipline of peacekeeping personnel.

Summary of Key Messages

Slide 28



Summary of Key Messages

- Legal framework includes International Law – UN Charter, IHRL, IHL
- Human rights are universal – “civil and political rights”, “economic, social and cultural rights”
- Individuals are protected under IHL if they do not engage in hostilities, or are no longer doing so
- Know ROE, DUF – use of force is mission-specific, different from national legal restrictions, may be robust

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The legal framework for UN peacekeeping operations includes International Law: the UN Charter, IHRL and IHL

- The legal framework for UN peacekeeping operations includes:
 - International Law, including the UN Charter, International Human Rights Law (IHRL), International Humanitarian Law (IHL), International Refugee Law and International Criminal Law
 - Security Council mandates
 - National law of the host country
 - MOU between the UN and the TCCs/PCCs
 - SOMA or SOFA
- Examples of economic, social and cultural rights include the right to:
 - Join a trade union
 - Education
 - Food
 - Housing and medical care
 - Social security and work
 - Equal pay for equal work

Individuals are protected under IHL if they do not engage in hostilities or are no longer doing so.

- IHL protects those who do not engage in hostilities, or who are no longer doing so. This includes civilians, the wounded, prisoners, medical personnel and humanitarian workers. It upholds fundamental rights of civilians, victims and non-combatants in an armed conflict.

All armed peacekeeping personnel must know the ROE and DUF because the use of force is specific to the mission's mandate, may be robust and may be different from national legal restrictions.

- The Rules of Engagement (ROE) and Directive on the Use of Force (DUF) guide armed UN military and police on the use of force.
- The ROE and DUF:
 - Detail how and when to use force; details include constraints and latitudes (scope) in using force and the right of self-defense
 - Clarify different levels of force to use in different circumstances
 - Provide practical guidance to commanders, including on needed authorizations
- It is important to **clearly understand** the ROE and DUF because the use of force:

Module 2 – Lesson 2.1: United Nations Peace Operations Specific Legal Framework

- Is specific to the mission and its mandate
- May be robust for volatile and potentially dangerous environments
- May differ from national legal restrictions on the use of force