

Lesson 2.3 - Status of Forces Agreement (SOFA) and Memoranda of Understanding (MOU)



The Lesson

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Lesson 2.3 Status of Forces Agreement (SOFA) and Memoranda of Understanding (MOU)

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Getting Started



While preparing for this session, trainers need to be aware that majority of the learners, despite being from legal background, may not be familiar with SOFA and MOU, specially in the context of UN. It is important to note that the knowledge and understanding of SOFA and MOU 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 in general.



Note to instructor – recommend that lesson 2.3 be presented by an instructor with legal background, preferably military-legal, who is well versed with the international and UN legal

framework including SOFA and MOU. NIO trainers with past field experience of investigation in peacekeeping are likely to have the knowledge and experience to explain this subject and how those 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 colored 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 SOFA and MOU which will be repeated in subsequent lessons. Print out the titles on individual sheets of paper. These include the MOU, Article 7, key elements of SOFA etc.

Aim

To explain the Status of Forces Agreement (SOFA) and Memoranda of Understanding (MOU) to National Investigative Officers (NIO) to carry out their functions 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 clearly understand SOFA and MOU, two documents of legal significance to carry out your functions as NIOs.

Learning Outcomes

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Learning Outcomes

- Explain purpose of SOFA and MOU
- List key elements of these two documents
- Explain how MOU relates to conduct, discipline and investigation

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You as NIO trainers will:

- Explain purpose of SOFA and MOU
- List key elements of these two documents
- Explain how MOU relates to conduct, discipline and investigation

Recommended Lesson Duration: 45 minutes total

1-2 minutes per slide

Use short option learning activity

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Starting the Lesson	Intro Slides 1-3
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Introduction to SOFA

There are several very important legal documents that set out the duties, responsibilities, obligations and privileges for your contingents and the personnel that comprise them. Two are very significant and merit some discussion because they are relevant to your duties as a NIO in terms of understanding your nation's responsibilities with respect to misconduct matters. The first is the SOFA (between the host country and the UN) and the other is the MOU (between the UN and your country).

What is a SOFA?

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What is a SOFA?

- An International Agreement Between
 - a State or International Organization sending military and other forces
 - and a State which has consented to receive those forces
- Defines Obligations of Forces Sent
- Defines Immunities from Receiving State Law & Privileges Receiving State Will Provide

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A Status-of-Forces Agreement (SOFA) is an international agreement between a State (or international organization) which is sending military and other forces AND a State which has consented to receive those forces. It defines the obligations of the forces being sent, as well as the immunities from receiving State law as well as privileges the receiving State will provide those forces.

Forces being sent serve different purposes and missions in a receiving state. As a result, the content of every SOFA is most likely to be somewhat unique. In other words, there is no standard SOFA text that will fit all cases. Even a model SOFA, like the one we will discuss shortly, will need to be amended to fulfill the specific requirements of the particular sending state (or international organization), and the receiving (or host) state.

Why Establish a SOFA?

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Why Establish a SOFA?



- Receiving State Interests
- Sending State / International Organization Interests
- SOFA Purposes

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A SOFA is intended to clarify the terms under which the foreign military (in this case UN military units and personnel contributed by a Member State) are allowed to operate. A SOFA is more concerned with the legal issues associated with military individuals and property. A **receiving state (or host state)** is the country who gives consent to have foreign military and other forces in its territory to conduct operations on agreed terms and conditions. In the UN context, this includes peace operations to provide peace support or post-conflict peace building. Additionally, and within the framework of peace operations, other states may offer their infrastructure for the transit of foreign troops.

“Sending State” refers to a country (in this case a UN Member State) who gives consent to deploy its military and other forces for conduct of UN peace operations in another country (A receiving state or host state- It is today generally agreed that customary international law does not provide sending state any immunity from the criminal and other laws of the receiving state. Because full application of receiving state laws could have significant negative effects on the ability of sending states to timely and effectively conduct their operations, as well as increase the costs of doing so, sending states and international organizations have a strong motive to insist on a Status of Forces Agreement from the receiving state.

Because both the receiving state and the sending state (or international organization) share a common interest in facilitating the success of the operations conducted by the foreign forces for the purposes they have mutually agreed upon, both parties gain from entering into a Status of Forces Agreement.

Nonetheless, the **receiving state** also has a **conflicting interest** in ensuring all foreign nationals in its territory comply with its laws designed to control and manage their presence. Which of these conflicting interests a receiving state ultimately considers to be of greatest importance will depend upon its determination of its most important national interests.

Experience shows that the success of a sending state or international organization mission often depends on whether its personnel's rights and obligations have been well-defined, procedures of cooperation are clearly established, and effective dispute settlement mechanisms are in place. A carefully drafted SOFA is therefore be key to achieving the objectives of both the sending and receiving parties.

What does a SOFA Provide?

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What Does a SOFA Provide?



- **Legal Framework for Foreign Force**
- **Immunities & Privileges**
 - Criminal Jurisdiction
 - Civil Jurisdiction
 - Claims for Injury & Damage
 - Operational Issues

A SOFA provides a legal framework for the deployment of the foreign visiting force. It limits disagreements between the parties by defining rights and obligations and establishing principles and procedures for dispute settlement.

It often begins by setting out what the parties hope to achieve from the deployment, such as the re-establishment of peace and the rule of law. In a UN peacekeeping context, it usually defines the mandate of the mission, its purpose, and even its anticipated length.

The principal purpose of a SOFA is to establish in a practical and reliable form for the receiving state to provide sending state forces with immunities and privileges.

It often includes immunities from the civil jurisdiction of the receiving state, usually in return for the sending state or international organization providing a means to pay claims for certain injuries and damages suffered by receiving state nationals and caused by the foreign forces during their operations.

A SOFA usually also includes immunities from receiving state customs and taxes. Operational privileges such as the right to wear uniforms and to carry weapons, freedom of movement, and the use of land areas and radio frequencies are also usually included.

But most importantly, and relevant to your work as a NIO, these include immunity or exclusion from the criminal jurisdiction of the receiving state.

The UN Model SOFA

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The UN Model SOFA

- Model provided by Secretary General in 1990 Report to the General Assembly
- A Key Document Governing UN Peace Operations



With the end of the Cold War in 1989, greater cooperation among the permanent members of the Security Council led to a dramatic expansion of UN-led peacekeeping operations. Recognizing the need for developing a draft agreement concerning the status of UN peacekeeping forces in host countries, the UN General Assembly requested the Secretary-General to prepare a model status of forces agreement (SOFA).

In 1990, the Secretary-General responded with a report to the General Assembly on this topic, which included a model SOFA in its annex.

SOFAs are one of the key documents that govern a UN peace operation. Other significant documents include the Security Council resolution establishing the peace operations mandate

and the Memorandum of Understanding (MOU) concluded between the UN and each troop or police contributing state. We will discuss relevant portions of the MOU later.

UN Model SOFA: In General

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UN Model SOFA: In General

- Basis for Negotiating Mission-Specific SOFAs with Host States
- Security Council Recent Practice: Apply Model SOFA Until Agreement Reached with Host State
- Convention on Privileges and Immunities of the UN

The UN Model SOFA serves as a basis for negotiating individual mission-specific SOFAs to be concluded between the UN and host receiving states and is subject to modification as agreed to between the parties in each individual case. The 1990 model is still used today by the UN as the starting point when negotiating a specific SOFA with a host state, although certain new provisions are typically added based on experience gained since 1990.

Additionally, the Security Council has made clear in several recent resolutions that the model SOFA applies until a specific SOFA is agreed to by the receiving state. In fact, in recent years the Security Council has included a paragraph to this effect in some resolutions establishing UN peace operations.

When neither a SOFA has been concluded by the receiving state, nor a Security Council Resolution provides for application of the model SOFA, then the status of the operation and most of the members of the operation, except for the military contingent, will be governed by the Convention on the Privileges and Immunities of the United Nations.

UN Model SOFA: Organizational Privileges & Immunities (Organizational)

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UN Model SOFA: Organizational Privileges & Immunities

- Develops Charter Principles on UN Legal Status
- Builds on Convention on Privileges & Immunities of UN
- Matters Included



B. Privileges & Immunities (Organizational)

The model SOFA develops the principles of law in the Charter of the United Nations concerning the legal status of the UN. The Charter provides that the UN has legal capacity in the territory of Member States and such privileges and immunities there as necessary to exercise its functions and purposes. The model SOFA also builds on the Convention on the Privileges and Immunities of the United Nations by providing a whole set of facilities for the peace operation.

In light of the Charter and the Convention, the privileges and immunities granted to the peace operation and its members by the SOFA is for the purpose of carrying out the functions authorized by the mandate for the particular operation. In other words, privileges and immunities are granted in the interests of the UN and the particular peace operation, and not in the interests of the individual member serving on the operation.

The model SOFA deals with matters such as the status of the peace operation, the status of the members of that operation, responsibility for criminal and civil jurisdiction over the members of the operation, and the settlement of disputes or claims. It outlines the privileges and immunities that apply to both the peace operation itself as well as to the differing types of personnel involved in the operation.

UN Model SOFA: Organizational Privileges & Immunities (Individual)

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UN Model SOFA: Individual Privileges & Immunities					
Privileges & Immunities	SRSG CMC HCP	Civ. Comp Official	Mil. Comp PKer	MO CP OCP	Local Civ. Recruit
Arrest Detention	Yes	Yes**	YES**	Yes	No
Criminal- All	Yes	--	YES+	--	--
Criminal- Official	--	Yes	--	Yes	Yes
Civil- All	Yes*	--	--	--	--
Civil- Official	--	Yes	YES	Yes	Yes
Immigration	Yes	Yes	YES	Yes	No
Baggage	Yes	No	NO	Yes	No
Taxation	Yes	Yes	YES	Yes	Yes
Personal Effects	Yes	Yes	YES	Yes	No

The chart on the slide outlines the privileges and immunities given to each category of members of a UN peacekeeping operation. Examine the sections pertaining to arrest and criminal matters:

- **Arrest & Detention:** All members except locally recruited civilians are immune from arrest and detention by officials of the host/receiving state. However (**), Civilian Component Officials and Military Component Peacekeepers may be arrested if discovered in the commission or attempted commission of an offense but must then be immediately delivered to a UN peacekeeping operation representative.
- **Criminal All or Criminal Official:** Only the Special Representative, Commander of the Military Component, Head of the UN Civilian Police, other agreed upon senior staff, and most importantly, military personnel who are part of the Military Component Peacekeepers are given complete criminal immunity from host/receiving state laws. All the other categories of members of the peacekeeping operation are given criminal immunity only when performing official duties.

The basis for granting absolute immunity to military personnel of national contingents assigned to the military component of a peacekeeping operation is that they are subject to their own civilian or military judicial systems for acts committed by them while serving outside their home country on peace operations.

However, as an administrative measure, the Secretary-General may order the repatriation of any national contingent member who has been found culpable of serious misconduct. Recent revisions to the model Memorandum of Understanding between the UN and the contributing State include explicit assurances that the contributing state will exercise the required criminal and disciplinary jurisdiction over their military personnel.

The UNSG also has the ability to WAIVE this jurisdictional provision and permit the host State to proceed under local law.

UN Model SOFA: Obligations

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UN Model SOFA: Obligations

- Refrain from actions not compatible with the impartial & international nature of the operations or inconsistent with the spirit of the SOFA
- Respect all local laws & regulations



In addition to privileges and immunities for the peacekeeping operation and its members, the UN Model SOFA also includes certain obligations the UN agrees to on behalf of its mission forces while in the receiving/host state. And that is to:


- Refrain from any action that is not compatible with the impartial and international nature of UN peacekeeping duties or inconsistent with the spirit of the SOFA.
- Respect all local laws and regulations of the receiving/host country.

Specific Provisions of Particular Relevance to the NIO

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**Specific Provisions of Particular
Relevance to the NIO**

- Arrest and transfer of custody
- Mutual Assistance
- Jurisdiction



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There are some specific provisions in the SOFA that bear directly on NIO responsibilities, and are worth drawing your attention to.

E. Specific Provisions of Particular Relevance to the NIO.

Military Police, Arrest and Transfer of Custody, and Mutual Assistance

The Special Representative must take all appropriate measures to ensure the maintenance of discipline and good order among members of the UN peace-keeping operation. UN personnel shall police the premises of the UN peace-keeping operation and such areas where its members are deployed. Elsewhere such personnel shall be employed only subject to arrangements with the Government and in liaison with it in so far as such employment is necessary to maintain discipline and order among members of the UN PKO. [40]

Officials of the Government may take into custody any member of the UN PKO:

- (a) When so requested by the Special Representative/Commander; or
- (b) When such a member of the UN PKO is apprehended in the commission or attempted commission of a criminal offence. Such person shall be delivered immediately, together with any weapons or other item seized, to the nearest appropriate representative of the UN peace-keeping operation. [42]

When a person is taken into custody, the UN peace-keeping operation or the Government, as the case may be, may make a preliminary interrogation but may not delay the transfer of custody. Following such transfer, the person concerned shall be made available upon request to the arresting authority for further interrogation. [43]

The UN PKO and the Government shall assist each other in carrying out all necessary investigations into offences in respect of which either or both have an interest, in the production of witnesses and in the collection and production of evidence, including the seizure of and, if appropriate, the handing over of items connected with an offence. The handing over of any such items may be made subject to their return within the terms specified by the authority delivering them. Each shall notify the other of the disposition of any case in the outcome of which the other may have an interest or in which there has been a transfer of custody. [44] Regarding the handover from the United Nations to national authorities, the limits and protections on handover established by the DPO SOPs on Detention apply to ensure that the UN does not hand over anyone to a jurisdiction where the person may face torture or similarly serious human rights violations.

Jurisdiction

All members of the UN PKO including locally recruited personnel shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue even after they cease to be members of or employed by the UN PKO. [46]

Should the government consider that any member of the UN PKO has committed a criminal offence, it shall promptly inform the Special Representative/Commander and present to him any evidence available to it: [47]

(a) If the accused person is a member of the civilian component or a civilian member of the military component, the Special Representative/Commander shall conduct any necessary supplementary inquiry and then agree with the Government whether or not criminal proceedings should be instituted. Failing such agreement, the question shall be resolved as provided in paragraph 53 of the present Agreement.

(b) Military members of the military component of the UN PKO shall be subject to the exclusive jurisdiction of their respective participating States in respect of any criminal offences which may be committed by them in [host country/territory].

This (above) provision is why your investigation is so very important! The UN has made assurances (and in fact an international legal agreement) that allows your soldiers to avoid host State prosecution for crimes they may commit in the host country – if, and only if, your country agrees and has the capacity to properly exercise such jurisdiction and to ensure proper measures of accountability. Your investigation is a big part of that internationally agreed to accountability.

The Secretary-General of the UN will obtain assurances from Governments of participating States that they will be prepared to exercise jurisdiction with respect to crimes or offences

which may be committed by members of their national contingents serving with the peace-keeping operation. [48]

SOFA Conclusion

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SOFA in UN Peacekeeping: Conclusion

- Key document that governs the operation
- International agreement that defines status, rights, obligations
- Crucial to management and credibility of the operation
- Basis for drafting a more specific agreement



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SOFAs are one of the key documents that govern a UN peace operation. They are negotiated international agreements between the UN and the receiving/host state that define the legal status of both the peace operation and the individual peacekeepers.

Because the UN has negotiated for exclusive jurisdiction of military forces by their sending home countries, and because sending States have agreed to assume this responsibility (in the MOU), NIOs must do their part to ensure that a proper, timely and comprehensive investigation is completed to facilitate the proper administration of justice and accountability.

Memorandum of Understanding (MOU)

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What is Memorandum of Understanding (MOU)?

- Agreement between the UN and a Troop Contributing Country
- Establishes terms and conditions of contribution
- Helps ensure accountability, control and performance to established standards
- Article 7: Standards of conduct, discipline, investigations, jurisdiction & accountability
- NIO needs to know Article 7

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At the request of the United Nations, various States (like yours) agree to contribute personnel (forces), equipment and services to assist the UN to carry out its mandate. In doing so, there is a need to establish and agree to the terms and conditions of such contributions.

This agreement is manifested in a document known as the Memorandum of Understanding (MOU) between the United Nations and the Government of (the contributing state) contributing resources to the UN Peacekeeping Operation. It is a legal document that is signed by and agreed to by both parties in advance of deployment.

A generic model for this MOU for military contingent operations is contained in a larger document known as the Contingent-Owned Equipment manual. This larger document, the COE manual, sets out in great detail and comprehensive policy and procedures, concerning the reimbursement and control of contingent-owned equipment.

A detailed discussion about the COE process is beyond the scope of this lesson, but the MOU portion of this process is highly relevant to the duties of the NIO.

As a part of the need to establish such policy and procedures for contingent support of a UN PKO, accountability and control are ensured by the system of relying on a prior agreement between the UN and the contributing State for this provision of equipment and personnel. The MOU is this agreement.

The UN responsibility is to ensure that the peacekeeping mission has the personnel and equipment required to fulfil its mandate, that the troop/police contributors provide personnel, equipment and services as detailed in the specific MOU, and that the contingents perform according to the established standards.

Of great relevance to the NIO is a recently amended and significantly modified and augmented provision of this MOU that pertains to standards of expected conduct, maintaining discipline in the forces, the requirement of and conduct of investigations, the exercise of jurisdiction and the requirement for accountability. Detailed in Article 7 to the most recently amended model MOU are these duties, responsibilities and requirements for both the UN and the contributing State.

It is important that the NIO be aware of and thoroughly understand the provisions of Article 7. Not only will the NIOs work be guided by these requirements, but there may be occasions where the NIO (as a subject matter expert) may need to advise and brief the contingent commander and other leadership on these requirements that their government has agreed to – so as not to run afoul of an international legal commitment.

We will walk through some of these provisions now and discuss their applicability to your responsibilities. Feel free to follow along with your copy of Article 7 to the MOU.

MOU, Article 7 Standards and Requirements (Standards of Conduct)

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UN Standards of Conduct

- Government (GOV) to ensure contingent complies with UN Standards of Conduct
- GOV to ensure contingent receives effective pre-deployment training and fully understands standards
- UN to provide contingents mission-specific training on standards, regulations and relevant local laws – both initially and throughout the mission

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7.2 The Government shall ensure that all members of the Government's national contingent are required to comply with the UN standards of conduct (set out in annex H to the present MOU).

7.3 The Government shall ensure that all members of its national contingent are made familiar with and fully understand the UN standards of conduct. The Government shall ensure that all members of its national contingent receive adequate and effective pre-deployment training in those standards.

7.4 The UN shall continue to provide to national contingents mission-specific training material on UN standards of conduct, mission-specific rules and regulations, and relevant local laws and regulations. Further, the UN shall conduct adequate and effective induction training and training during mission assignment to complement pre-deployment training.

Slide 14: [Discipline]

Article 7 – Discipline

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Discipline

- GOV acknowledges that the Contingent Commander (CC) is responsible for good order and discipline (GO&D)
- GOV ensures that CC is vested with necessary authority
- GOV to ensure that CC notifies Force Commander of any serious matters involving GO&D
- GOV ensures that CC receives pre-deployment training on duties (UN to assist by providing CC training upon arrival to mission)

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7.5 The Government acknowledges that the Commander of its national contingent is responsible for the discipline and good order of all members of the contingent while assigned to [UN peacekeeping operation]. The Government undertakes to ensure that the Commander of its national contingent is vested with the necessary authority and takes all reasonable measures to maintain discipline and good order among all members of the national contingent to ensure compliance with the UN standards of conduct, mission-specific rules and regulations and the obligations towards national and local laws and regulations in accordance with the status-of-forces agreement.

7.6 The Government undertakes to ensure, subject to any applicable national laws, that the Commander of its national contingent regularly informs the Force Commander of any serious matters involving the discipline and good order of members of its national contingent, including any disciplinary action taken for violations of the United Nations standards of conduct or mission-specific rules and regulations or for failure to respect the local laws and regulations.

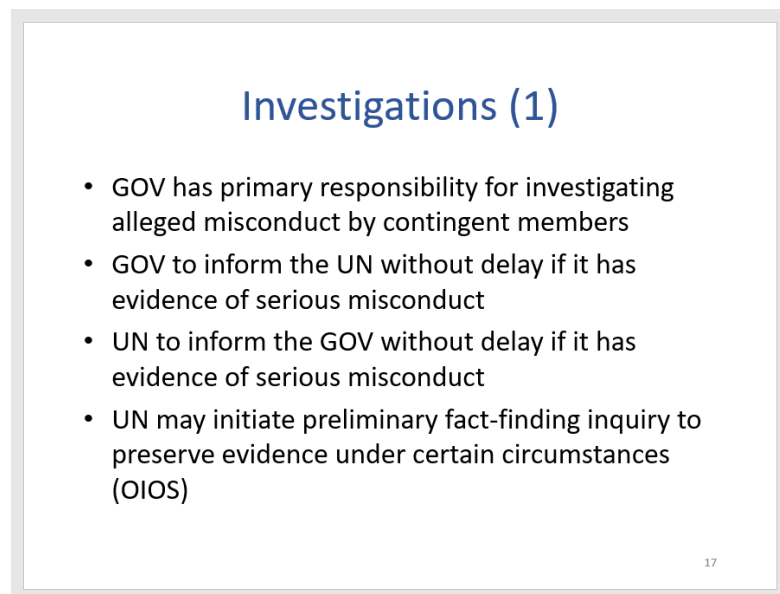
7.7 The Government shall ensure that the Commander of its national contingent receives adequate and effective pre-deployment training in the proper discharge of his or her responsibility for maintaining discipline and good order among all members of the contingent.

7.8 The UN shall assist the Government in fulfilling its requirements under paragraph 7.3 above by organizing training sessions for commanders upon their arrival in the mission on the UN standards of conduct, mission- specific rules and regulations and the local laws and regulations.

7.9 The Government shall use its welfare payments to provide adequate welfare and recreation facilities to its contingent members in the mission.

Article 7 - Investigations

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Investigations (1)

- GOV has primary responsibility for investigating alleged misconduct by contingent members
- GOV to inform the UN without delay if it has evidence of serious misconduct
- UN to inform the GOV without delay if it has evidence of serious misconduct
- UN may initiate preliminary fact-finding inquiry to preserve evidence under certain circumstances (OIOS)

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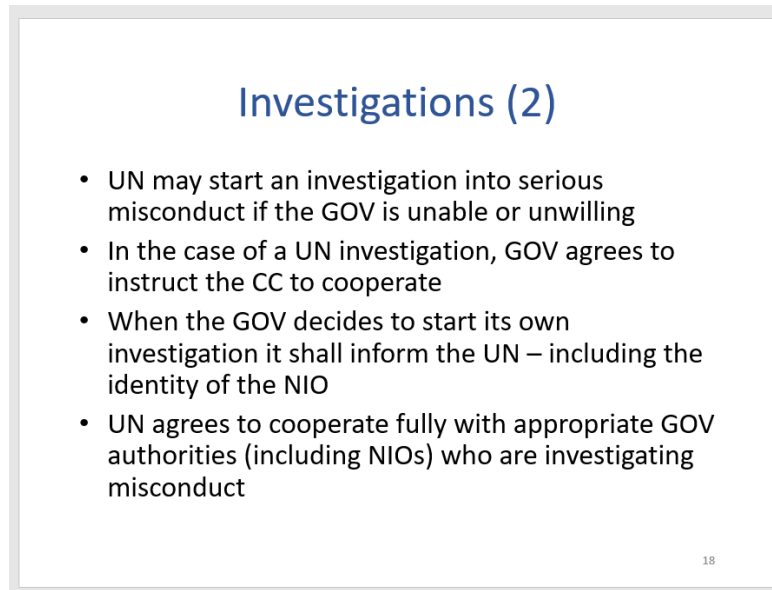
7.10 The Government has the primary responsibility for investigating any acts of misconduct or serious misconduct committed by a member of its national contingent.

7.11 In the event that the Government has prima facie grounds indicating that any member of its national contingent has committed an act of serious misconduct, it shall without delay inform the UN and forward the case to its appropriate national authorities for the purposes of investigation.

7.12 In the event that the UN has prima facie grounds indicating that any member of the Government's national contingent has committed an act of misconduct or serious misconduct, the UN shall without delay inform the Government. If necessary to preserve evidence and

where the Government does not conduct fact-finding proceedings, the UN may, in cases of serious misconduct, as appropriate, where the UN has informed the Government of the allegation, initiate a preliminary fact-finding inquiry of the matter, until the Government starts its own investigation. It is understood in this connection that any such preliminary fact-finding inquiry will be conducted by the appropriate UN investigative office, including the Office of Internal Oversight Services, in accordance with the rules of the Organization. Any such preliminary fact-finding inquiry shall include as part of the investigation team a representative of the Government. The UN shall provide a complete report of its preliminary fact-finding inquiry to the Government at its request without delay.

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Investigations (2)

- UN may start an investigation into serious misconduct if the GOV is unable or unwilling
- In the case of a UN investigation, GOV agrees to instruct the CC to cooperate
- When the GOV decides to start its own investigation it shall inform the UN – including the identity of the NIO
- UN agrees to cooperate fully with appropriate GOV authorities (including NIOs) who are investigating misconduct

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7.13 In the event that the Government does not notify the UN as soon as possible, but no later than 10 working days from the time of notification by the UN that it will start its own investigation of the alleged serious misconduct, the Government is considered to be unwilling or unable to conduct such an investigation and the UN may, as appropriate, initiate an administrative investigation of alleged serious misconduct without delay. The administrative investigation conducted by the UN in regard to any member of the national contingent shall respect those legal rights of due process that are provided to him or her by national and international law. Any such administrative investigation includes as part of the investigation team a representative of the Government if the Government provides one. In case the Government nevertheless decides to start its own investigation, the UN provides all available materials of the case to the Government without delay. In cases where a UN administrative investigation is completed, the UN shall provide the Government with the findings of the investigation, and the evidence gathered in the course of said investigation.

7.14 In the case of a UN administrative investigation into possible serious misconduct by any member of the national contingent, the Government agrees to instruct the Commander of its national contingent to cooperate and to share documentation and information, subject to

applicable national laws, including military laws. The Government also undertakes, through the Commander of its national contingent, to instruct the members of its national contingent to cooperate with such a UN investigation, subject to applicable national laws, including military laws.

7.15 When the Government decides to start its own investigation and to identify or send one or more officials to investigate the matter, it shall immediately inform the UN of that decision, including the identities of the official or officials concerned (hereafter “National Investigations Officers (NIO)”).

7.16 The UN agrees to cooperate fully and to share documentation and information with appropriate authorities of the Government, including any NIOs, who are investigating possible misconduct or serious misconduct by any member of the national contingent of the Government.

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Investigations (3)

- UN to assist the GOV by liaising with other contingent GOVs as well as authorities in mission area to facilitate investigations
- NIOs are in the lead, UN in support
- GOV to provide UN results of investigation
- Upon request of GOV, UN will provide administrative and logistic support to NIOs
- SECGEN may provide financial support in certain circumstances

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7.17 Upon the request of the Government, the UN shall cooperate with the competent authorities of the Government, including any NIOs, that are investigating possible misconduct or serious misconduct by any members of its national contingent, by liaising with other Governments that are contributing personnel in support of [a UN PKO], as well as with the competent authorities in the mission area, with a view to facilitating the conduct of those investigations. To this end, the UN shall take all possible measures to obtain consent from the host authorities. The competent authorities of the Government shall ensure that prior authorization for access to any victim or witness who is not a member of the national contingent, as well as for the collection or securing of evidence not under the ownership and control of the national contingent, is obtained from the host nation competent authorities.

7.18 In cases where NIOs are dispatched to the mission areas, they lead the investigations. The role of the UN investigators in such cases will be to assist the NIOs, if necessary, in the conduct of their investigations in terms of identification and interviewing of witnesses, recording witness statements, collection of documentary and forensic evidence and provision of administrative as well as logistical assistance.

7.19 Subject to its national laws and regulations, the Government shall provide the UN with the findings of investigations conducted by its competent authorities, including any NIOs, into possible misconduct or serious misconduct by any member of its national contingent.

7.20 When NIOs are deployed in the mission area, they will enjoy the same legal status as if they were members of their respective contingent while they are in the mission area, or host country.

7.21 Upon the request of the Government, the UN shall provide administrative and logistics support to the NIOs while they are in the mission area or host country. The Secretary-General will provide, in accordance with his authority, financial support as appropriate for the deployment of NIOs in situations where their presence is requested by the UN, normally the DPKO, and where financial support is requested by the Government. The UN will request the Government to deploy NIOs in high-risk, complex matters and in cases of serious misconduct. This paragraph is without prejudice to the sovereign right of the Government to investigate any misconduct of its contingent members.

Article 7 - Exercise of jurisdiction by the Government

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Jurisdiction

- Military members are subject to GOV's exclusive jurisdiction for any alleged crimes while assigned to military component
- GOV assures UN that it shall exercise such jurisdiction with respect to such crimes
- NIO's investigation is the first major step in compliance with this agreement by the GOV

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7.22 Military (and any civilian

members subject to national military law of the national contingent provided by the Government) are subject to the sending state's exclusive jurisdiction in respect of any crimes or offences that

members
members

might be committed by them while they are assigned to the military component of [UN PKO]. The Government assures the UN that it shall exercise such jurisdiction with respect to such crimes or offences.

This is why your investigation is so important. It is the first step, and a major step, in complying with this international legal obligation that your country has agreed to.

7.23 The Government further assures the UN that it shall exercise such disciplinary jurisdiction as might be necessary with respect to all other acts of misconduct committed by any members of the Government's national contingent while they are assigned to the military component of [UN PKO] that do not amount to crimes or offences.

Article 7 - Accountability

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Accountability (1)

- If UN or NIO investigation reveals that misconduct is founded, GOV shall ensure that case is forwarded for appropriate action
- The standard of proof to forward a case to the authorities is less than what is required for an indictment.
- If the evidence suggests that a crime has been committed and further investigations are appropriate, the case must be forwarded for criminal investigation.
- It is important for NIOs to know that they are not expected to replace criminal justice authorities

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7.24 If either a UN investigation or an investigation conducted by the competent authorities of the Government concludes that suspicions of misconduct by any member of the Government's national contingent are well founded, the Government shall ensure that the case is forwarded to its appropriate law enforcement and justice authorities for due action. The standard of proof to forward a case to the authorities is less than what is requirement for an indictment, let alone a conviction. Instead, if the evidence suggests reasonable grounds to conclude that a crime has been committed and that hence further investigations of a criminal nature are appropriate, the case must be forwarded for a proper criminal investigation. It is important for NIOs to know that they are not expected to replace criminal justice authorities, but theirs is an initial investigation of an administrative nature that prepares the ground for a full criminal investigation where that initial investigation establishes reasonable grounds.

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Accountability (2)

- GOV agrees to notify the Secretary General of progress/outcome
- If investigation concludes failure by the Contingent Commander to fulfill responsibilities, GOV shall forward to appropriate authorities (and ref in appraisal)
- UN to ensure that contingent is deployed in mission area in accordance with MOU. Any change to require consent of GOV

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The Government agrees that those authorities shall take their decision in the same manner as they would in respect of any other offence or disciplinary infraction of a similar nature under its laws or relevant disciplinary code. The Government agrees to notify the Secretary-General of progress on a regular basis, including the outcome of the case.

7.25 If a UN investigation, in accordance with appropriate procedures, or the Government's investigation concludes that suspicions of failure by the contingent Commander to:

- (a) Cooperate with a UN investigation (IAW 7.14), it being understood that the Commander will not have failed to cooperate merely by complying with his or her national laws and regulations, or the Government's investigation; or
- (b) Exercise effective command and control; or
- (c) Immediately report to appropriate authorities or take action in respect of allegations of misconduct that are reported to him are well founded;

The Government shall ensure that the case is forwarded to its appropriate authorities for due action. The fulfilment of these aspects shall be evaluated in the contingent Commander's performance appraisal.


7.27 Bearing in mind the contingent Commander's obligation to maintain the discipline and good order of the contingent, the UN, through the Force Commander, shall ensure that the contingent is deployed in the mission in accordance with the agreement between the UN and the Government. Any redeployment outside the agreement will be made with the consent of the Government or contingent Commander, in accordance with applicable national procedures.

Conclusion - MOU

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MOU Conclusion

- Modified and augmented provision of this MOU
- Most recently amended model MOU are these duties, responsibilities and requirements for both the UN and the contributing State
- NIO be aware of and thoroughly understand the provisions of Article 7.
- NIO may need to advise and brief the contingent commander and other leadership on these requirements



Of great relevance to the NIO is a recently amended and significantly modified and augmented provision of this MOU that pertains to standards of expected conduct, maintaining discipline in the forces, the requirement of and conduct of investigations, the exercise of jurisdiction and the requirement for accountability. Detailed in Article 7 to the most recently amended model MOU are these duties, responsibilities and requirements for both the UN and the contributing State.

It is important that the NIO be aware of and thoroughly understand the provisions of Article 7. Not only will the NIOs work be guided by these requirements, but there may be occasions where the NIO (as a subject matter expert) may need to advise and brief the contingent commander and other leadership on these requirements that their government has agreed to – so as not to run afoul of an international legal commitment.

Summary of Key Messages

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Summary of Key Messages

- SOFA defines rights and obligations and establishing principles and procedures for dispute settlement.
- All members except locally recruited civilians are immune from arrest and detention.
- It is important that the NIO be aware of and thoroughly understand the provisions of MOU (Article 7).
- Standards of conduct, discipline, investigations, jurisdictions and accountability are key elements of MOU, to be understood clearly by NIOs

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A SOFA provides a legal framework for the deployment of the foreign visiting force. It limits disagreements between the parties by defining rights and obligations and establishing principles and procedures for dispute settlement.

The UN Model SOFA serves as a basis for negotiating individual mission-specific SOFAs to be concluded between the UN and host receiving states and is subject to modification as agreed to between the parties in each individual case. The 1990 model is still used today by the UN as the starting point.

All members except locally recruited civilians are immune from arrest and detention by officials of the host/receiving state.

It is important that the NIO be aware of and thoroughly understand the provisions of Article 7. Not only will the NIOs work be guided by these requirements, but there may be occasions where the NIO (as a subject matter expert) may need to advise and brief the contingent commander and other leadership on these requirements that their government has agreed to – so as not to run afoul of an international legal commitment.

Annexes:

1. Draft Model Status of Forces Agreement between the United Nations and Host Countries
2. Model Memorandum of Understanding between the United Nations and Contributing Countries