

Lesson 2.4 – National-Level Considerations for NIO



The Lesson

Slide 1



Lesson 2.4 National-Level considerations for NIO

This Lesson explores national-level considerations that NIO must be aware of in order to undertake effective investigations. This includes issues of the exclusive jurisdiction of the relevant Member State over their contingent personnel, agreed procedures between the UN and Member States with respect to serious misconduct investigations, contingent command-and-control arrangements, NIO obligations under both international law and national legal systems and the impacts and consequences of SEA.

The audience for this Lesson includes personnel identified as an NIO and staff officers who during their UN deployment may be assigned the duty of NIO.

Slide 2

Lesson 2.4 Content

- Jurisdictional considerations
- General considerations for misconduct investigations
- NIO investigations
- Accountability for SEA
- Impacts and consequences of SEA

These are the subject areas this Lesson will cover:

- * Jurisdictional considerations.
- * General considerations for misconduct investigations.
- * NIO investigations.
- * Accountability for SEA.
- * Impacts and consequences of SEA.

Lesson 2.4 Learning Outcomes

- Explain jurisdictional considerations for serious misconduct investigations
- Explain the general considerations for misconduct investigations in the UN
- Explain the key considerations of NIO investigations
- Describe accountability for SEA
- List the impacts and consequences of SEA
- List the key takeaways for the Lesson

As is good training practice, let's review the learning outcomes.

At the end of the lesson the aim is for NIO to be able to:

- * Explain jurisdictional considerations for serious misconduct investigations.
- * Explain the general considerations for misconduct investigations in the UN.
- * Explain the key considerations of NIO investigations.
- * Describe accountability for SEA.
- * List the impacts and consequences of SEA.
- * List the key takeaways for the Lesson.

Jurisdictional Considerations

- TCC personnel are subject to the exclusive jurisdiction of the contributing Member State
 - Article 7 of the revised draft model MOU for TCC (2007), A/61/19 (Part III)
- NIO investigations are the primary function through which Member States exercise exclusive jurisdiction with respect to serious misconduct allegation(s)

In accordance with Article 7 of the revised draft model MOU for TCC (2007), A/61/19 (Part III), Member States retain exclusive jurisdiction over their contingent personnel. Because jurisdiction over contingents lies with the Member State, the Member State is thus charged with making efforts to prevent such misconduct, properly investigating and addressing it if it occurs, and reporting the outcome.

In this regard, the UN Security Council, through UN Security Council Resolution 2272 (2016), urges all TCC to take the steps necessary to conduct investigations of allegations of SEA by their personnel, to conclude such investigations as expeditiously as possible, to take appropriate steps to hold accountable those personnel responsible for SEA and to report to the UN fully and promptly on actions undertaken.

A very important part of this process lies in the proper and timely investigation of allegations of SEA. The deployment of NIO within contingents supports these efforts, as NIO led investigations are the primary function through which Member States exercise exclusive jurisdiction and take the steps necessary to conduct investigations and to hold accountable those personnel responsible for SEA.

Misconduct Investigations (1)

- Member States have primary responsibility for investigating alleged misconduct by their TCC, owing to exclusive jurisdiction
- Member States must inform the UN without delay if they have prima facie grounds indicating serious misconduct
- The UN must inform the Member States without delay if it has prima facie grounds indicating serious misconduct
- The UN may initiate preliminary fact-finding inquiries to preserve evidence under certain circumstances – normally this will be an OIOS-led investigation

Member States have the primary responsibility for investigating any alleged acts of misconduct or serious misconduct by a member(s) of its national contingent.

In the event that Member States has prima facie grounds indicating that any member(s) 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. The appropriate national authority will more often than not be the deployed NIO.

In the event that the UN has prima facie grounds indicating that any member of Member States' national contingent has committed an act of misconduct or serious misconduct, the UN shall without delay inform Member States.

If necessary, to preserve evidence and where the Member State does not conduct fact-finding proceedings, the UN may initiate a preliminary factfinding inquiry in cases of serious misconduct until such time as the Member State starts its own investigation. Any such preliminary fact-finding inquiry will be conducted by the appropriate UN investigative office, most likely OIOS.

Misconduct Investigations (2)

- The UN may investigate allegation(s) of serious misconduct if the Member State is unable or unwilling
- In UN-led investigations, Member States agree to instruct their contingent to cooperate
- When a Member State decides to undertake an NIO-led investigation it shall inform the UN – including the identity of the NIO
- The UN agrees to cooperate fully with appropriate Member State authorities (NIO) investigating allegation(s) of serious misconduct

Key Message: SEA represents serious misconduct and will always be investigated, irrespective of whether an allegation constitutes an illegal act or not.

In the event that Member States do not notify the UN as soon as possible, but no later than 10 working days from the time of notification of an allegation of serious misconduct by the UN, that it will start its own investigation of the alleged serious misconduct, the Member State may be 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.

In the case of a UN administrative investigation into possible serious misconduct by any member of the national contingent, Member States agrees to instruct their contingent commander(s) to cooperate and to share documentation and information, subject to applicable national laws, including military laws. Member States also undertake, through their contingent commander(s), to instruct the members of their national contingent(s) to cooperate with a UN-led investigation(s), subject to applicable national laws, including military laws.

When a Member State decides to start its own investigation and to identify or send one or more NIO to investigate the matter, it shall immediately inform the UN of that decision, including the identities of the NIO.

The UN agrees to cooperate fully and to share documentation and information with NIO investigating serious misconduct by any member of a national contingent.

NIO Investigations (1)

- NIO have a key role in supporting the UN Secretary-General's zero-tolerance policy on SEA
- NIO are special assets and the primary investigatory function for Member States to respond to serious misconduct allegation(s) constituting SEA
- NIO are in the lead, UN are in support
- UN investigators will assist NIO, as appropriate, to undertake investigations
- Upon request the UN can provide administrative and logistic support to NIO investigations
- Field Victims' Rights Advocates may accompany victims during national investigations to offer support and reassurance

Key Message: NIO have a key role in implementation of the UN Secretary-General's zero-tolerance policy on SEA. Personnel deployed to operations under UN command-and-control are prohibited from committing acts of SEA. SEA violates universally recognised international legal norms and standards and represents unacceptable behaviour and prohibited conduct (See: Secretary-General's Bulletin on Special measures for protection from SEA ST/SGB/2003/13).

It is important to understand up front that, NIO do not operate in total isolation but work in close coordination with their chain of command and other UN stakeholders. That said, they are required to undertake impartial investigations to ensure probity, transparency, good practice and accountability for misconduct. It is important that investigations into allegations of possible serious misconduct are thorough and conducted in a timely manner with sensitivity to any potential victims.

The main goal of the investigation is to gather evidence that proves or disproves the allegation on the balance of probabilities. NIO are not prosecutors. The role of NIO is to gather all relevant evidence so as to enable an authority to determine objectively whether an allegation of serious misconduct is substantiated.

Depending on the nature and seriousness of the alleged misconduct, establishing a multi-disciplinary team around the NIO may be advisable, and consideration of using a professional with relevant experience and skills in counselling may also make sense. Other UN investigation personnel will be able to assist the NIO in the conduct of their investigation, including the identification and interviewing of witnesses, the recording of witness statements, and the collection of documentary and forensic evidence. Other UN personnel may also be involved in the provision of administrative and logistical assistance. Field Victims' Rights Advocates may accompany victims during national investigations to offer support and reassurance.

NIO Investigations (2)

- NIO must apply applicable international laws and UN policies and procedures for undertaking investigations, including:
 - UN conduct and discipline standards
 - Zero-tolerance for SEA
 - UN principles of good practice for investigations
 - Victim-centred approach
 - Human rights protections
- NIO must be experts in their own national laws, policies and procedures for undertaking investigations, including:
 - National-level military laws and discipline procedures
 - Investigation manuals
 - Rules of evidence
 - Search authorities
 - Legal rights to ensure due process and procedural fairness

The primary aim of the UN is to assist Member States and their NIO to investigate serious misconduct to promote probity, transparency and accountability. This supports 'prevention' through discouraging others who may intend to commit such acts, and 'response' by ensuring those responsible for acts of serious misconduct are held accountable through administrative and disciplinary measures, as well as, when applicable, through referral for criminal accountability within military or national justice systems. This in turn supports Member States and contingent commanders to ensure probity, transparency, good practice and accountability.

NIO must apply both the relevant aspects of UN legal framework and international law that affect peace operations, the relevant national laws of their Member State. National-level considerations include national-level laws / policies / procedures / reference manuals / documents / regulations covering investigations, crucial national-level evidentiary rules that govern the use (or exclusion) of certain types of evidence, national-level search authorities and national-level processes to ensure due process and procedural fairness in investigations.

It is extremely important that NIO have extensive experience in conducting investigations. Moreover, they should be extremely knowledgeable about UN and national policies in relation to SEA conduct and discipline, and protection, and have knowledge of other thematic areas of UN peacekeeping such as WPS, CAAC/CP, POC and humanitarian action.

Accountability for SEA

- Member States shall ensure that substantiated misconduct allegation(s) are forwarded for appropriate action / consequences
- Member States agree to notify the UN of the progress and outcome(s) of NIO investigations
- Contingent commanders are responsible for the maintenance of discipline and good order
- NIO support commanders through advising on SEA policy and procedures
- NIO support commanders to ensure probity, transparency, good practice and accountability through their investigations

If either a UN administrative investigation or an NIO investigation substantiates an allegation of serious misconduct amounting to SEA by a member of a national contingent, Member States shall ensure that the case is forwarded to its appropriate authorities for due action.

Member States agrees to notify the UN of progress on a regular basis, including the outcome of the case. Subject to its national laws and regulations, Member States shall provide the UN with the findings of NIO investigations.

Member States acknowledge that the contingent commander is responsible for the discipline and good order of all members of the contingent while assigned to a UN peacekeeping mission. The Member State undertakes to ensure that the contingent commander is vested with the necessary authority and takes all reasonable measures to maintain discipline and good order among all members of the contingent and to ensure compliance with the UN standards of conduct, mission-specific rules and regulations and the obligations under international law and their respective national law.

NIO undertake investigations in the field, supporting their contingent commander in response to allegations of serious misconduct amounting to SEA. The role of the NIO is to undertake impartial investigations into serious misconduct allegations, to a UN standard, and in compliance with relevant national-level laws and regulations, in terms of investigation planning, processes and reporting, to determine if an allegation of serious misconduct is substantiated. This supports 'prevention' through discouraging others who may intend to commit such acts, and 'response' by ensuring those responsible for acts of serious misconduct are held accountable through administrative and disciplinary measures, as well as, when applicable, through referral for criminal accountability within military or national justice systems. This in turn supports member states and contingent commanders to ensure probity, transparency, good practice and accountability. Field Victims' Rights Advocates may advise and assist the NIO in identifying and taking measures for the protection of victims and witnesses during investigations and judicial proceedings, as well as in facilitating child- and victim-sensitive investigations.

Impacts and Consequences of SEA

- Impacts of SEA:
 - Devastating for victims
 - Undermines the legitimacy and credibility of UN / Member State efforts towards peace and security and human rights
 - Breaks the trust between the UN / Member State and the communities they serve
 - Impacts the achievement / success of the mission
 - Impacts the status and security of other UN / Member State personnel
- Consequences for substantiated SEA allegation(s):
 - Repatriation
 - Barring from future service
 - Disciplinary action
 - Summary dismissal / administrative separation
 - Criminal liability
 - Financial liability
 - Paternity claims

Key Message: As an NIO you are a special asset responsible for investigating allegations of SEA. SEA is unacceptable and your work in this area supports the Secretary-General's zero-tolerance policy. SEA disproportionately and profoundly impacts women and girls although men and boys can also be victims of SEA, with profound impacts around their masculinity. Moreover, SEA undermines the legitimacy and *raison d'être* for UN Peace Operations and UN efforts to ensure peace and security, to provide POC, and to advance human rights and gender equality.

SEA constitutes a form of SGBV and predatory behaviour, can amount to a violation of fundamental human rights, has devastating consequences for victims and undermines the legitimacy and credibility of UN efforts towards peace and security, gender equality and protection. SEA represents an ever-present challenge to delivering strategic, operational and tactical effects towards and end state of peace and security because it breaks the trust between the UN and the communities it serves.

As per the Secretary-General's Bulletin ST/SGB/2003/13 the UN has a zero-tolerance policy with respect to SEA. Contingents deployed under UN command and control are prohibited from committing acts of sexual exploitation and sexual abuse and have a particular duty of care towards women and children. This includes the exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour. Sexual exploitation and sexual abuse violate universally recognised international legal norms and standards and have always been unacceptable behaviour and prohibited conduct. SEA constitutes serious misconduct and is therefore grounds for disciplinary measures, including summary dismissal. Those responsible for acts of SEA are to be held accountable through administrative and disciplinary measures, as well as, when applicable, through referral for criminal accountability within military or national justice systems.

Key Takeaways

- SEA constitutes serious misconduct, for which there is zero tolerance
- SEA has serious impacts and consequences for victims, the mission and personnel
- NIO support their contingent commanders
- NIO are the primary investigatory function for Member States to exercise their exclusive jurisdiction in responding to SEA allegation(s)
- NIO must be aware of the applicable international law and national laws, including their own military laws and discipline procedures

The UN has a zero-tolerance policy with respect to SEA and defines it as serious misconduct that will always be investigated, irrespective of whether an allegation constitutes an illegal act or not.

SEA constitutes a form of SGBV and predatory behaviour, can amount to a violation of fundamental human rights, has devastating consequences for victims and communities and undermines the legitimacy and credibility of UN efforts towards peace and security, gender equality and protection. SEA represents an ever-present challenge to delivering strategic, operational and tactical effects towards and end state of peace and security because it breaks the trust between the UN and the communities it serves.

NIO support their contingent commanders to ensure probity, transparency, good practice and accountability for SEA. They are the primary function through which Member States exercise their exclusive jurisdiction in conducting investigations into allegations of SEA within their contingents.

The role of the NIO is to undertake impartial investigations into serious misconduct allegations, to a UN standard, and in compliance with relevant national-level laws and regulations, in terms of investigation planning, processes (response, search, evidence, interviewing, victim-centred and human rights-based approach etc.) and reporting, to determine if an allegation of serious misconduct is substantiated. This supports 'prevention' through discouraging others who may intend to commit such acts, and 'response' by ensuring those responsible for acts of serious misconduct are held accountable through administrative and disciplinary measures, as well as, when applicable, through referral for criminal accountability within military or national justice systems.

Conclusion

- This concludes the e-learning modules of the NIO ToT course
- Modules 3-5 of the NIO ToT course are delivered in a two week residential / in-person mode, covering the following Lessons:
 - Principles of Investigation
 - Incident Response and Investigation
 - Investigatory Equipment
 - How to Conduct a Search
 - Evidence Collection, Handling and Storage
 - Investigation Report Writing
 - Interviewing Witnesses and Vulnerable Witnesses
 - Interviewing the Subject of a Complaint
 - Field Training Exercise (FTX)

This concludes the e-learning component of the NIO ToT course.

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- * Investigatory Equipment.
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Questions?

Evaluation

Notes on Use: An example of learning evaluation questions for this lesson may be found below.

There are different types of learning evaluation questions for the instructor to choose from (See Options). The types of learning evaluation questions are:

- 1) Narrative
- 2) True-False

Combine in different ways for pre-assessment and post-assessment. Each evaluation type covers different content. No sub-set covers all learning outcomes. Make sure you include learning evaluation questions for each learning outcome when you combine them.

Three main uses of evaluation questions are: a) informally ask the whole group, b) semi-formally assign to small groups or c) formally give to individuals for written responses.

Evaluation Questions for Lesson 1.1	
Questions	Answers
Narrative	
<i>Note: Frame narrative evaluations as questions, requests or directions</i>	
1. UN Security Council, through UN Security Council Resolution 2272 (2016), urges all TCC to?	Take the steps necessary to conduct investigations of allegations of SEA by their personnel, to conclude such investigations as expeditiously as possible, to take appropriate steps to hold accountable those personnel responsible for SEA and to report to the UN fully and promptly on actions undertaken.
2. A Member State may be considered to be unwilling or unable to conduct such an investigation when?	In the event that Member States do not notify the UN as soon as possible, but no later than 10 working days from the time of notification of an allegation of serious misconduct by the UN, that it will start its own investigation of the alleged serious misconduct, the Member State may be 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.

3. The main goal of the investigation is to?	The main goal of the investigation is to gather evidence that proves or disproves the allegation on the balance of probabilities. NIO are not prosecutors. The role of NIO is to gather all relevant evidence so as to enable an authority to determine objectively whether an allegation of serious misconduct is substantiated.
4. The primary aim of the UN is to assist Member States and their NIO to investigate serious misconduct to promote?	Probity, transparency and accountability.
5. In addition to relevant aspects of UN legal framework and international law, national-level considerations include?	National-level laws / policies / procedures / reference manuals / documents / regulations covering investigations, crucial national-level evidentiary rules that govern the use (or exclusion) of certain types of evidence, national-level search authorities and national-level processes to ensure due process and procedural fairness in investigations
6. What document specifies the UN zero-tolerance policy with respect to SEA?	The Secretary-General's Bulletin ST/SGB/2003/13 on special measure for protection from SEA. The UN has a zero-tolerance policy with respect to SEA and defines it as serious misconduct that will always be investigated, irrespective of whether an allegation constitutes an illegal act or not.
7. How does the NIO support the contingent commander?	NIO support their contingent commanders to ensure probity, transparency, good practice and accountability for SEA. They are the primary function through which Member States exercise their exclusive jurisdiction in conducting investigations into allegations of SEA within their contingents.
8. The role of the NIO is to do what?	The role of the NIO is to undertake impartial investigations into serious misconduct allegations, to a UN standard, and in compliance with relevant national-level laws and regulations, in terms of investigation planning, processes (response, search, evidence, interviewing, victim-centred and human rights-based approach etc.) and reporting, to determine if an allegation of serious misconduct is

	substantiated. This supports 'prevention' through discouraging others who may intend to commit such acts, and 'response' by ensuring those responsible for acts of serious misconduct are held accountable through administrative and disciplinary measures, as well as, when applicable, through referral for criminal accountability within military or national justice systems.
True-False	
1. In accordance with Article 7 of the revised draft model MOU for TCC (2007), A/61/19 (Part III), Member States retain exclusive jurisdiction over their contingent personnel?	True
2. NIO led investigations are the primary function through which Member States exercise exclusive jurisdiction and take the steps necessary to conduct investigations and to hold accountable those personnel responsible for SEA?	True
3. The UN is not permitted to initiate a preliminary factfinding inquiry?	False. If necessary, to preserve evidence and where the Member State does not conduct fact-finding proceedings, the UN may initiate a preliminary factfinding inquiry in cases of serious misconduct until such time as the Member State starts its own investigation.
4. When a Member State decides to start its own investigation and to identify or send one or more NIO to investigate the matter, it shall immediately inform the UN of that decision, including the identities of the NIO?	True
5. NIO have a key role in implementation of the UN Secretary-General's zero-tolerance policy on SEA. Personnel deployed to operations under UN command-and-control are prohibited from committing acts of SEA. SEA violates universally recognised international legal norms and standards and represents unacceptable behaviour and prohibited conduct?	True

6. If either a UN administrative investigation or an NIO investigation substantiates an allegation of serious misconduct amounting to SEA by a member of a national contingent, Member States shall ensure that the case is forwarded to its appropriate authorities for due action?	True
7. SEA constitutes a form of SGBV and predatory behaviour, can amount to a violation of fundamental human rights, has devastating consequences for victims and undermines the legitimacy and credibility of UN efforts towards peace and security, gender equality and protection. SEA represents an ever-present challenge to delivering strategic, operational and tactical effects towards and end state of peace and security because it breaks the trust between the UN and the communities it serves?	True
8. SEA constitutes serious misconduct and is therefore grounds for disciplinary measures, including summary dismissal. Those responsible for acts of SEA are to be held accountable through administrative and disciplinary measures, as well as, when applicable, through referral for criminal accountability within military or national justice systems?	True
9. Field Victims' Rights Advocates may accompany victims during national investigations to offer support and reassurance?	True

Reference Materials

1. United Nations Peacekeeping Resource Hub:
<https://research.un.org/en/peacekeeping-community>
2. Conduct in Field United Nations Field Missions:
<https://conduct.unmissions.org/>
3. United Nations Preventing Sexual Exploitation and Abuse:
<https://www.un.org/preventing-sexual-exploitation-and-abuse/>
4. UN Security Council Resolution 2272 (2016)

5. Secretary-General's Bulletin - ST-SGB-2003-13 - Special measures for protection from Sexual Exploitation and Abuse (2003)
6. ST-SGB-1999-13 - Observance by United Nations forces of international humanitarian law
7. Military Aide Memoire - United Nations Measures against Sexual Exploitation and Abuse
8. Revised draft model MOU for Troop Contributing Countries – Annex to A/61/19 (Part III)
9. United Nations Standard Operating Procedure – Implementation of amendments on conduct and discipline in the model Memorandum of Understanding between the United Nations and Troop Contributing Countries
10. United Nations Glossary on Sexual Exploitation and Abuse
11. United Nations Policy - Accountability for Conduct and Discipline in Field Missions
12. United Nations Protocol on the provision of assistance to victims of Sexual Exploitation and Abuse
13. United Nations Office of Internal Oversight Services Investigations Manual
14. Military Aide Memoire: United Nations Measures against Sexual Exploitation and Abuse