



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

Learning Outcomes

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

Content

- Definition and purpose of SOFA
- The UN Model SOFA
- Definition and purpose of MOU
- Key Elements of MOU
 - Standards of Conduct
 - Discipline
 - Investigations
 - Jurisdiction
 - Accountability

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

Why Establish a SOFA?



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

What Does a SOFA Provide?



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

The UN Model SOFA

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



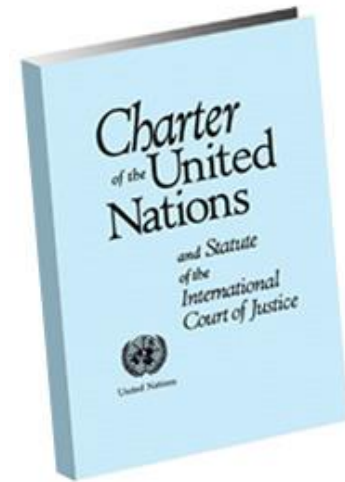
UN Model SOFA: In General

- 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



UN Model SOFA: Organizational Privileges & Immunities

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



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 |

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



Specific Provisions of Particular Relevance to the NIO

- Arrest and transfer of custody
- Mutual Assistance
- Jurisdiction



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



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

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

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)

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)

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

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

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

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

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

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



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



Questions?