

Module 2: Legal Framework

Lesson 2.2



Peacekeeping-specific
International Law



Learning Outcome

- Understand how peacekeeping-specific legal framework guides and protects the work of UN-EP



Lesson Content

- Security Council Mandate
- Status of Mission/Forces Agreements (SOFA/SOMA)
- Privileges, Immunities and exclusive TCC jurisdiction
- Use of Force in Peacekeeping
- Human Rights Due Diligence Policy (HRDDP)



Security Council Mandate

- Security Council Resolution is the highest legal basis for the deployment of any mission
- Outlines tasks and responsibilities the Council expects the mission to accomplish
- UN-EP task to “*map demography of human terrain to identify vulnerable areas and at risk-populations*” directly supports mission’s protection mandates





Mandates to protect at-risk populations

Human Rights

Addresses everyone and all human rights, not only physical integrity

Involves advocacy & capacity-building

Protection of Civilians

Protect civilians from physical violence

Includes physical protection and prevention, including use of force

Child Protection

Built around six conflict-related grave violations against children

Conflict-related Sexual Violence

Prevention and response to CRSV

Focuses on women, girls, boys & men

****Whole-of-mission responsibilities****



Case 9 – Girl Associated with Armed Group

“When I was 14 years old, I wanted to join the rebels. First, they gave me a gun to fight the army. One year later, I was forced to become the wife of a rebel commander”

Which of the four protection mandates are concerned by this case?



Six Grave Violations Against Children in Armed Conflict



1. Killing or Maiming
2. Recruitment or use
3. Abduction of children
4. Sexual violence
5. Attacks on schools & hospitals
6. Denial of humanitarian access

Child: Anyone under
18 years

Annual UN Secretary- General Report on Children & Armed Conflict

- Tracks grave child violations in countries of concern
- Blacklists state forces and armed groups that commit child violations



Status of Mission/Status of Forces Agreement with Host State (SOMA/SOFA)

- Legal agreement signed by UN and the host state
- Reaffirms and strengthens privileges, immunities and other protections for UN mission and its personnel





Case 10 - Roadblock

- UN-ET is conducting a long range patrol to identify at-risk populations
- An armed group has set up a roadblock and refuses to let the peacekeepers pass. The fighters at the roadblock argue that the UN-ET has not sought prior authorization to access the area under its control.
- The armed group also insists to search the UN-ET vehicles.



What are the peacekeepers **legally** allowed to do under their mandate?

Are they legally allowed to **force their way through** the roadblock?



Freedom of Movement

- Mission personnel enjoy freedom of movement through territory of host-state
- No prior authorization or notification for travel (by exception, for example for air traffic purposes)
- Government must ensure safety, security and freedom of movement (e.g. clear illegal roadblocks)
- Mission may forcibly assert freedom of movement under defence of mandate authority



Important Privileges & Immunities under SOMA/SOFA

- Functional immunity from arrest, detention, seizure
- Inviolability of premises, vehicles & documents
- Correspondence by code, courier & sealed bags
- Wear military uniform & fly UN flag
- Unhindered entry & departure (international staff)

For United Nations' interest; not personal benefit.
Can be waived by the UN without prejudice



TCC Exclusive Jurisdiction over UN-EP

- Troop Contributing Countries maintain exclusive jurisdiction over EP personnel from their country. Host state cannot prosecute them.
- Criminal and disciplinary action can and must be taken by TCC if EP personnel engages in serious misconduct/crimes
- UN can repatriate contingents that fail to ensure discipline & accountability (mandatory for sexual exploitation and abuse)

Immunity never means impunity for U.N. peacekeepers



UN-EP Use of Force – Mission's Mandate & Rules of Engagement

Authority to Use Force

- Self-defence
- Defence of mandate, including freedom of movement
- Protection of civilians
- Other mandates given by Security Council

responsibility

Limits of Use of Force

- Generally restrained use of force:
- Human rights/policing rules
- Military can escalate to military engagement when necessary:
- IHL/military rules

accountability



Case 11: Force Protection

Scenario 1:

A small group of children starts throwing stones at an UN-ET as their vehicles enter a village.

Scenario 2:

The next night, the same UN-ET is ambushed by armed group fighters who fire at their vehicles with assault rifles.

What force may the United Nations use in each scenario to defend themselves?



Guidelines on Use of Force by UN Military Components in Peacekeeping Missions

Restrained force paradigm (default)

- Force as a last resort
- Proactive de-escalation
- Graduation of means
- Lethal force to protect life

Rationale:

- Avoids escalation of violence
- Avoids participation in conflict
- Minimize harm to civilians

Military engagement paradigm

- Distinction of civilians
- Precaution to minimize civilian risk
- Proportionality of incidental civilian harm

Use to the Extent Necessary For:

- self-defence,
- defence of mandate
- protection of civilians



Human Rights Due Diligence Policy (HRDDP) on UN Support to non-UN Security Forces

United Nations support to non-UN Security Forces cannot be provided:

- if real risk of the receiving entities committing **grave violations** of international humanitarian, human rights or refugee law, and
- relevant authorities fail to take the necessary **corrective or mitigating measures**”

Protects and promotes credibility, impartiality & legal interests of the mission!





Application of HRDDP



- **Risk mitigation & engagement**, not blunt conditionality
- Suspension or withdrawal of support: measure of **last resort**
- Applies to **all types to support**, including intelligence sharing
- Includes support to states & **regional organizations**
- HRDDP **taskforces** in missions & standard operating procedures



Take Away

- UN-EP primary mission is to support the mission's protection mandates
- SOFA/SOMA protects UN-EP freedom of movement, privileges and immunity. Exclusive jurisdiction further protects UN-EP from host state reprisals but does not give them impunity
- Rules of engagement establish limits on the use of force; often more restrained than for other military operations
- Secretary-General and DPO-DOS policies set binding rules that all peacekeeping personnel must know and abide by



QUESTIONS?