



Module 2: LEGAL FRAMEWORK





Learning Objectives

Identify the key components of international law governing the UN's mandated tasks in peacekeeping

Understand the relevance of the core legal concepts and norms

Understand what the legal framework enables/obliges peacekeepers to do and what it prevents peacekeepers from doing



Overview

International Law

UN Legal and Policy Framework

Mission Specific Legal Framework



International Law



International Law

- **International Human Rights Law (IHRL)**
- International Humanitarian Law (IHL)
- International Refugee Law (IRL)
- International Criminal Law (ICL)
- Regional legal regimes



What is International Human Rights Law (IHRL)?

- Designed to protect inherent rights of all human beings
- Obliges states to respect, protect and fulfil those rights
- Human Rights are universal and cannot be taken away
- IHRL applies
 - in times of peace and war
 - primarily to governments

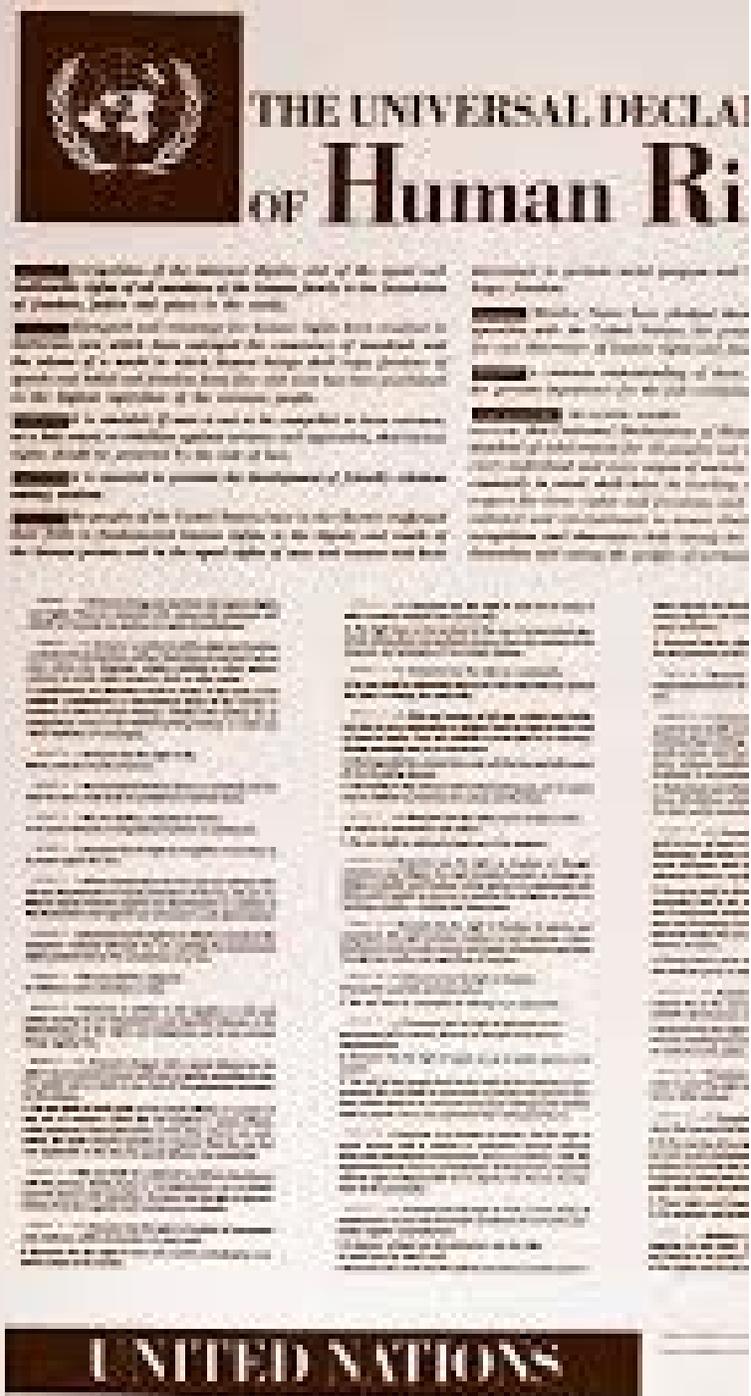




Universal Declaration of Human Rights, 1948

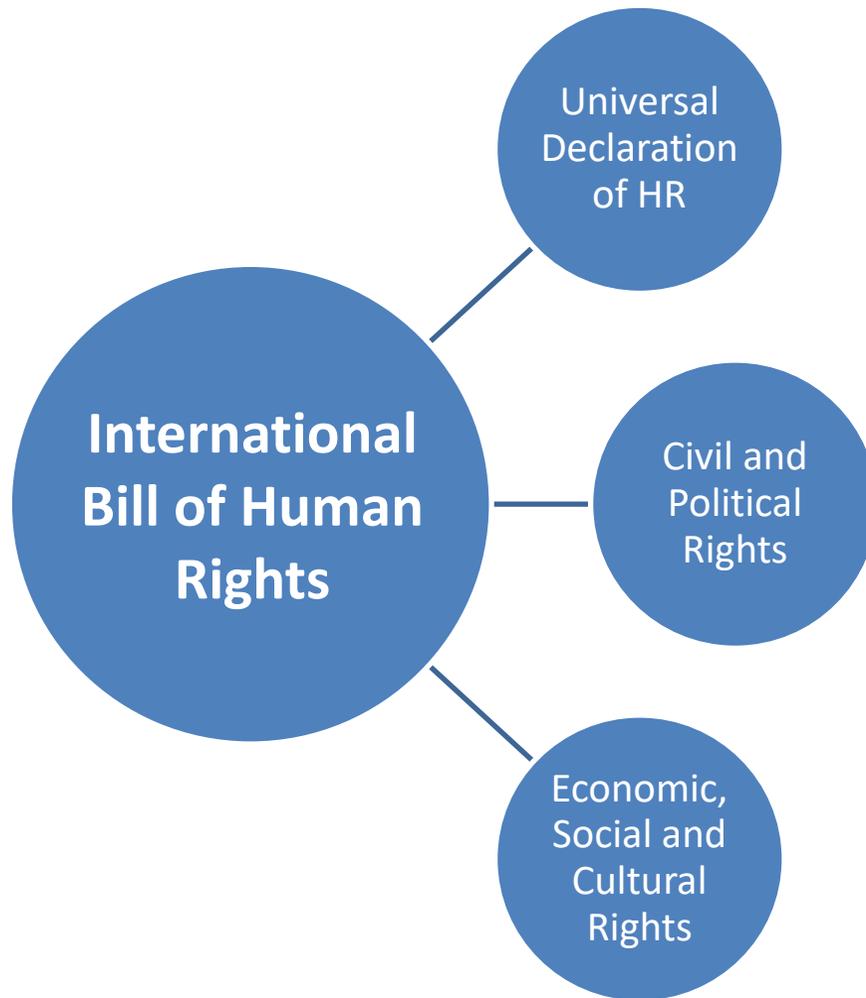
“All human beings are born free and equal in dignity and rights.”

- Right to life, liberty & security of person
- Prohibition of slavery
- Prohibition of torture
- Prohibition of arbitrary arrest
- Fair trial
- Freedom of expression
- Freedom of movement





International Bill of Human Rights





IHRL on Child Protection

- Convention on the Rights of the Child (1989) and its Optional Protocols
 - Most rapidly and widely ratified HR treaty in history
 - Sets out civil, political, economic, social, health and cultural rights of children
 - Prohibits direct participation in hostilities under age of 18
- Paris Principles on Children and Armed Groups (2007)
 - Prevent recruitment, protect children, and support their release from armed forces/groups



Convention on the Rights of the Child

- Rights guaranteed under the Convention include:
 - Non-Discrimination
 - Best interests
 - Right to life
 - Participation
- Additional stipulations under Optional Protocols
 - No recruitment or use of children
 - Prohibition of sale of children, child prostitution and child pornography





Paris Principles on Children and Armed Groups

- Intend to guide international interventions to
 - Prevent child recruitment
 - Facilitate release and reintegration of children
 - Ensure most protective environment for children
- Provide definitions and overarching principles for engagement with children associated with armed groups or armed forces
- Address the specific situation of girls



IHRL on Sexual Violence

- Sexual violence against women is a violation of basic human rights
- Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms equal to men





Why does Human Rights Law matter to UN Peacekeeping?

- Human rights are a core pillar of the UN
- Human rights are essential for peace and stability
- Human rights are part of missions' mandate and structure
- Human rights violations can be indicators of threats
- Peacekeepers have a responsibility to ensure the protection and promotion of human rights
- Peacekeepers must be able to recognize and respond to human rights violations



Human Rights Due Diligence Policy

- Peacekeeping support must be consistent with UN principles
- HRDDP Policy ensures peacekeepers do not support or collaborate with Host State entities if there are grounds to believe they have violated human rights
- Assessments must be conducted



Take Away

- IHRL is an integral part of the applicable legal framework for peace operations
- Human rights apply to all human beings, they are non-negotiable and their core content does not change
- Human rights are a core pillar of the United Nations and all peacekeepers are obligated to promote and protect them
- Peacekeepers must recognize and respond to human rights violations and abuses



Questions?



International Law

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What is International Humanitarian Law (IHL)?

- "Law of War"
- Establishes the responsibilities of actors in armed conflict
- Distinguishes between international and non-international armed conflict
- IHL applies
 - only to situations of armed conflict
 - to all parties of a conflict





Core Instruments of IHL

- 1907 Hague Regulations respecting the laws and customs of war on land
- 1949 Geneva Conventions and Additional Protocols
- 1981 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons





What does IHL do?

- Governs the conduct of hostilities and restricts means of warfare
- Protects those who do not engage in hostilities, or who are no longer doing so



Basic Principles of IHL

- Distinction of civilians
- Proportionality
- Military necessity
- Unnecessary suffering





IHL Special Protections

Medical and Religious Personnel

Members of the Armed Forces for Civil Defense

Special Categories of Persons

- Women
- Children
- Journalists and War Correspondents
- Refugees, the stateless and the internally displaced
- Peacekeepers

Specially Protected Objects



IHL on the protection of children

- Children should not be the target of attacks
- Entitled to special protection, care and aid
- When interned, held in separate quarters
- Must be evacuated from besieged or encircled areas
- Prohibits child recruitment and participation in hostilities under 18 years of age



IHL on the protection of women

- Women are especially protected from sexual violence, including rape and enforced prostitution
- Women are given special protection while detained





Why does IHL
matter to
UN
Peacekeeping?

- Special protection for Peacekeepers
- IHL applicable to peacekeepers?
- SG Bulletin: *“Fundamental principles and rules of IHL [...] are applicable to UN forces when in situations of armed conflict they are actively engaged therein as combatants, to the extent and for the duration of their engagement.”*



Scenario

- There is an armed group within your AOR which has been carrying out attacks on civilians in isolated villages. The armed group live amongst the civilian population who are of the same ethnic group as them and do not always wear uniforms or carry their weapons openly.
- You are aware that the state security forces are planning to launch operations against the group.



Take Away

- IHL prescribes means and methods of combat and demands the protection of the civilian population
- IHL prescribes the treatment of civilians, persons not active in combat, and detained persons
- IHL demands the protection of certain categories of persons (e.g. the sick and wounded)
- Peacekeepers can be prosecuted in national courts for violations of IHL



Questions?



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What is International Refugee Law (IRL)?

- With respect to refugees and asylum seekers, IRL regulates their
 - Definition
 - Status and
 - Rights
- IRL applies
 - In times of peace, war and occupation
 - Primarily to state governments





Refugee Convention

The term refugee applies to any person, who...

- Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of her/his nationality; and
- Is unable or unwilling to avail herself/himself of the protection of the country of her/his nationality; or
- Does not have a nationality and is outside the country of her/his former habitual residence and unable or unwilling to return to it.



Rights of Refugees

- Prohibition of discrimination for race, religion or country
- Prohibition of Expulsion or Return (“Refoulement”)
- Freedom to practice religion
- Right to acquire property
- Access to courts
- Public education
- Assistance
- Freedom of Movement





Internally Displaced Persons (IDPs)

- Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence
- who have not crossed an internationally recognized state border.
- No separate body of law
 - 2004 Guiding Principles on Internal Displacement



Rights of IDPs

Human Rights as for any other person

Once displaced they retain broad range of rights

- Economic, social, cultural, civil and political rights
- Right to be protected from physical violence
- Right to education
- Right to freedom of movement and residence
- Right to assistance from competent authorities in voluntary, dignified and safe return, resettlement or integration
- When restitution not possible, the right to compensation or just reparation



Why does Refugee Law matter to UN Peacekeeping?

- Most peacekeeping missions are mandated with the protection of civilians – refugees and displaced persons are particularly vulnerable
- Missions are often tasked to contribute to conditions conducive for the safe return of displaced persons





Take Away

- Refugees are protected by International Refugee Law, in particular the 1951 Refugee Convention
- While there is no particular body of international law dedicated to IDPs, they are protected by IHRL and IHL
- The POC mandate in UN peacekeeping requires missions to protect refugees and IDPs



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What is International Criminal Law (ICL)?

- Deals with the criminal responsibility of individuals for international crimes
- No generally accepted definition of international crimes
- Allows for the establishment of international tribunals and courts to prosecute perpetrators guilty of the gravest crimes of concern to the international community



International Criminal Court (ICC)

- Established by the Rome Statute (1998) effective 2002
- Investigates and, where warranted, tries individuals charged with four core crimes:
 - Genocide
 - Crimes against humanity
 - War crimes
 - Crime of aggression





Fundamental principles of the ICC

- Deals with the most serious crimes if individual states are unable or unwilling to prosecute
 - principle of complementarity
- Aimed to end impunity
 - irrelevance of official capacity
- Establishment of a permanent and independent body
 - not within the UN system





ICL on Child Protection and Sexual Violence

- Seeks to end impunity for all international crimes, including those against children
- CRSV as crime under the Rome Statute
- War Crime
- Crime against humanity
- Act of genocide





Why does ICL matter to UN Peacekeeping?

An individual person is responsible and liable under the Rome Statute if that person:

- Commits such a crime [...];
- Orders, solicits or induces the commission [...];
- Aids, abets or otherwise assists [...];
- In any other way contributes [...];
- In respect of the crime of genocide, directly and publicly incites others to commit genocide.



Why does ICL matter to UN Peacekeeping?

Commanders are responsible for crimes under their command if s/he:

- knew or should have known about the crimes

AND

- failed to take all necessary and reasonable measures to prevent or repress the crimes or to take action for investigation and prosecution



Take Away

- ICL is part of the legal framework for peacekeeping
- ICC deals with the four international core crimes
- Individuals can be held responsible for their actions under the Rome Statute
- Commanders carry responsibility for actions of their subordinates



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Regional Legal Regimes

Complement international law

Signatory bound by treaties and conventions and subject to regional oversight mechanisms

Apply to peacekeeping missions if deployed in respective region

Focus on human rights and refugee/IDP rights



Questions?



Overview

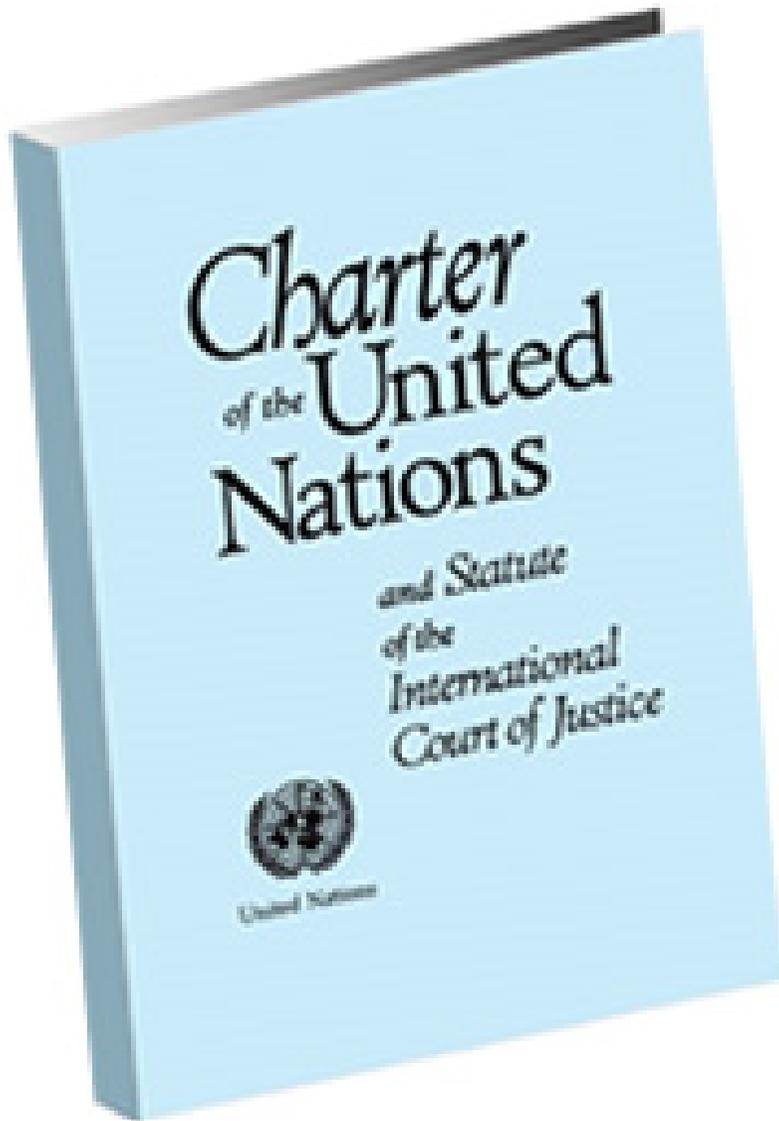
International Law

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Mission Specific Legal Framework



UN Legal and Policy Framework

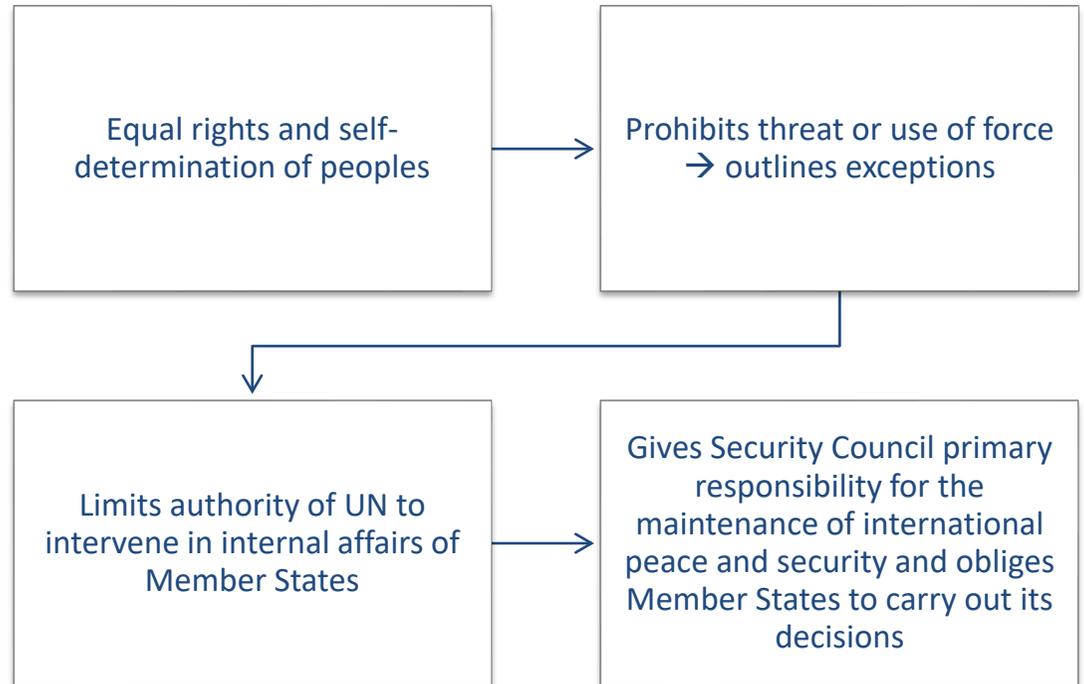


What is the UN Charter?

- Established UN “to save succeeding generations from the scourge of war”
- Foundation for all UN work
- Does not mention peacekeeping specifically but provides the legal basis for the deployment of missions in Chapters VI, VII and VIII



What does the UN Charter say?





Convention on Privileges and Immunities

- Gives UN legal personality in Member States
- Provides immunity for UN from any form of legal process
- May and will be waived by the Secretary-General when in the interest of the Organization
 - Privileges and immunities do not protect from individual responsibilities of peacekeepers



Agreement with Host State

SOFA/SOMA is a tailored legal agreement between the UN and the Host Government

- Regulates privileges and immunities for the UN mission and its personnel (functional immunity)
- Regulates application of Host State laws
- Other key provisions typically include exemptions from customs/excise laws and visa requirements



Agreement with Sending State

- T/PCC Memorandum of Understanding (MoU)
 - Legal agreement between the UN and T/PCCs
 - Regulates financial and administrative issues
 - Legal basis for the transfer of command and control
 - Code of conduct and obligations regarding SEA
- General rule: Disciplinary power and criminal jurisdiction over military personnel lies with the sending State



TEN RULES CODE OF PERSONAL CONDUCT FOR BLUE HELMETS

- 1** Dress, think, talk, act and behave in a manner befitting the dignity of a disciplined, caring, considerate, mature, respected and trusted soldier, displaying the highest integrity and impartiality. Have pride in your position as a peace-keeper and do not abuse or misuse your authority.
- 2** Respect the law of the land of the host country, their local culture, traditions, customs and practices.
- 3** Treat the inhabitants of the host country with respect, courtesy and consideration. You are there as a guest to help them and in so doing will be welcomed with admiration. Neither solicit or accept any material reward, honor or gift.
- 4** Do not indulge in immoral acts of sexual, physical or psychological abuse or exploitation of the local population or United Nations staff, especially women and children.

Code of Conduct

- Key rules governing how peacekeepers should conduct themselves
- Full Version part of the T/PCC MoU requiring State acknowledgment
- Short version of 10 rules available as pocket card



DPO-DOS Policy Framework

- Compliance with DPO-DOS policies is mandatory for all peacekeepers
- Examples of relevant policies include:
 - OHCHR-DPKO-DPA-DFS Policy on Human Rights in UN Peace Operations and Political Missions (2011)
 - DPO Policy on POC in UN Peace Operations (2019)
 - DPKO-DFS-DPA Policy on Child Protection in UN Peace Operations (2017)
 - DPKO-DFS Guidelines on the role of UNPOL in protection of civilians (2017)



Take Away

- UN Charter is the basis for all activities of the Organization
- UN privileges and immunities do not mean impunity for peacekeepers
- Peacekeepers must observe Host State and sending State laws
- Compliance with UN policies is mandatory for all peacekeepers



Questions?



Overview

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Mission Specific Legal Framework



Operational Legal Framework

- Security Council Mandate
- Mission Concept
- Concept of Operations (CONOPS)
- Rules of Engagement (ROE) and Directives on the Use of Force (DUF)
- Status of Forces Agreement (SOFA)
- T/PCC Memorandum of Understanding – Code of Conduct



Security Council Mandate

- Highest legal basis for the deployment of any mission
- Outlines the tasks and responsibilities that the Council wishes the mission to accomplish
- Includes uniformed strength



POC Mandate Language

UNSCR 2295 (2016):

- Authorizes MINUSMA to take all necessary means to carry out its mandate, within its capabilities and its areas of deployment
- To protect, without prejudice to the primary responsibility of the Malian authorities, civilians under threat of physical violence
- To provide specific protection for women and children affected by armed conflict, including through Child Protection Advisors and Women Protection Advisors, and address the needs of victims of sexual and gender-based violence in armed conflict



Mandate Language “All Necessary Action”

- Authority to take all steps, up to and including the use of deadly force (as a last resort) to protect civilians under threat
- Includes military, civilian and police action





Mandate Language “Within capabilities”

- Acknowledges existing resource constraints
- Necessary to prioritize the use of resources
- Decisions based on thorough analysis and coordinated planning
- Any capabilities gap should be brought to the attention of senior mission leadership



Mandate Language “Without prejudice...”

- The Host Government holds the primary responsibility for protecting civilians
- Host Government may not be able or willing to protect its civilians
- Host Government forces may themselves be a threat to civilians
 - Peacekeepers are authorized to take action to protect civilians against Host Government forces if necessary



Mandate Language “Specific protection for...”

- Recognition of the importance of taking particular protection needs of women and children into account
- Security Council can request the deployment of Women Protection and Child Protection Advisors



11 November 2005

**DIRECTIVE ON DETENTION, SEARCHES AND USE
OF FORCE FOR MEMBERS OF FORMED POLICE
UNITS ON ASSIGNMENT WITH THE UNITED
NATIONS MISSION IN LIBERIA (UNMIL)**

ROE & DUF

- Guidance on the use of force
- Includes the use of force in: self-defense; defense of UN staff, facilities and property; and in defense of the mandate
- Guidance on the use of unarmed force, detention, search and seizure
- Defines the weapon state
- Command responsibility



Principles of the Use of Force

- Necessity
- Proportionality
- Legality
- Accountability





Consequences of Failure to Act

- Preventable loss of life or damage to property
- Failure to follow orders may be treated as insubordination
- Repatriation of commanders or whole contingents with associated harm to national reputation

→ Failure to act is NOT an option



Available Legal Guidance

Seek advice or
clarification from Unit
Legal Adviser

Refer to commanding
officers / civilian
experts / Force Legal
Officers

Consult with the
Legal Adviser through
the Senior Mission
Leadership

Refer to UN
Headquarters and the
Office of the Legal
Council



Take Away

- Mission specific legal framework takes operational environment into account and outlines in detail what a mission is expected to do
- Security Council mandate establishes and tasks a mission
- ROE and DUF govern central aspects of peacekeeping work, such as the use of force



Questions?

Module 2:
LEGAL
FRAMEWORK
– Wrap up





Module 2 – Conclusions

- Legal frameworks govern human rights, IHL and peacekeeping more broadly
- International law provides special protection for vulnerable groups (women, children, refugees...)
- Peacekeepers must monitor and report violations of human rights and IHL
- Peacekeepers can be held accountable for unlawful actions
- Turn to higher command, Legal Officer, POC Adviser or civilian Legal Officer for clarification