



Lesson 2.1

Applicable Legal Framework for Peace Operations

Content



- Hierarchy of norms and peacekeeping under the UN Charter
- International Human Rights, Humanitarian, Criminal and Refugee Law
- Security Council Mandate, SOMA/SOFA and privileges and immunities
- Authority to use force and Rules of Engagement

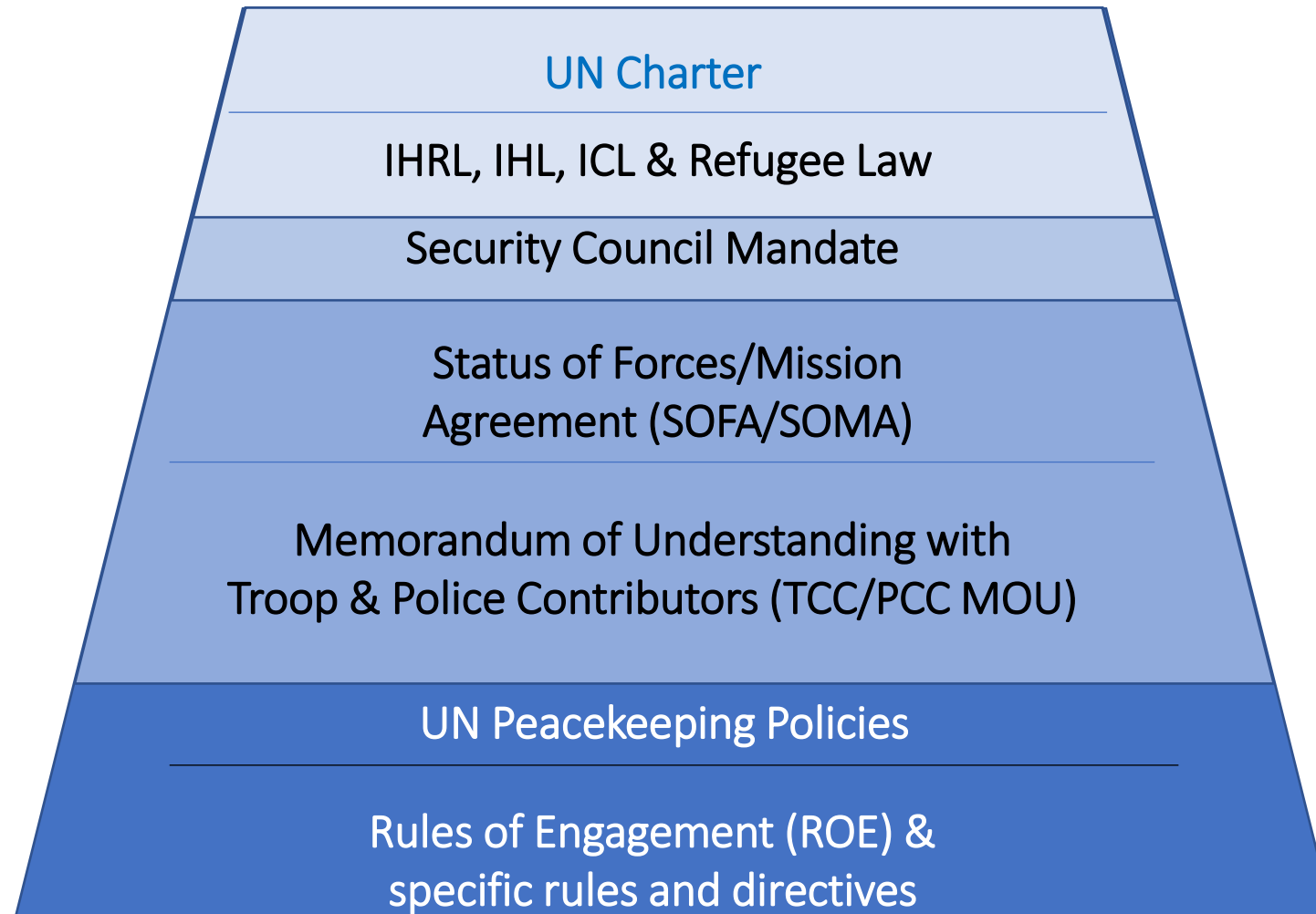
Learning Outcomes



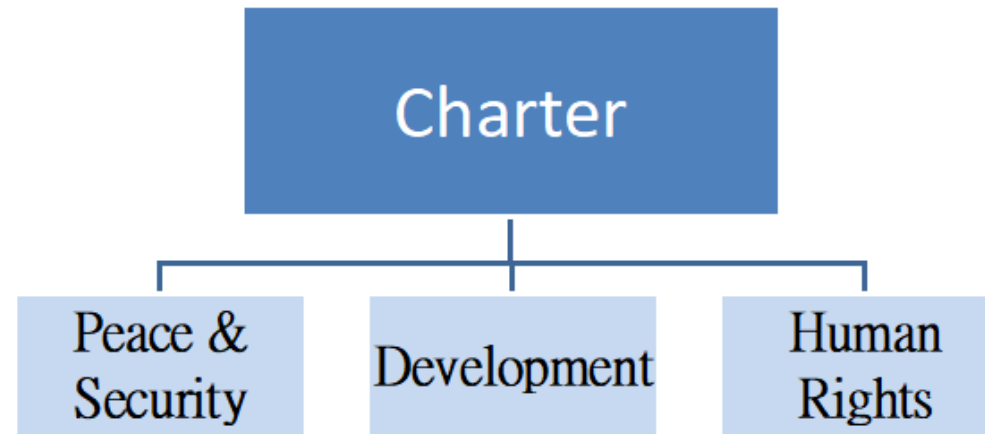
- Identify the applicable legal frameworks for UNPKO
- Develop a general understanding about UNPKO authority to Use Force, the Rules of Engagement, and the conduct of hostilities
- Describe the immunities and privileges of UN personnel
- Explain the rights and responsibilities of UNMO in maintaining operational integrity



Hierarchy of Norms



Peacekeeping under the UN Charter



- Charter prohibits force by states, except in self-defence or with SC approval
- Legal basis for the deployment of UNPKO in Chapter VI, VII and VIII
- UN to encourage respect for human rights & uphold international law

International Human Rights Law (IHRL)



- Human rights are **obligations of states** to protect and promote dignity, freedom, and equality of all individuals
- Non-state armed groups are expected to respect human rights standards, especially in areas they control



- Continues to apply during **war or other national emergencies**
- UNMO must ensure human rights are promoted, respected, protected and advanced” - UNMEM Guidelines

International Humanitarian Law (IHL)



- Applies to **parties to armed conflict**
- Regulates **conduct of hostilities** and restricts **means of warfare**
- Protects those who **do not or no longer engage in hostilities**, including peacekeepers
- Parties must **respect and ensure respect** for IHL
- Applies to UN peacekeepers if they **directly participate in hostilities**

International Humanitarian Law: Conduct of Hostilities



- **Distinction** between civilians & combatants
- **Precaution** to minimize risks for protected persons and objects
- **Proportionality** to limit incidental harm to civilians





International Criminal Law

- **War crimes:** grave breaches of Geneva Conventions and other **serious violations of IHL**
- **Crimes against humanity:** key feature: **systematic or widespread** inhumane acts (murder, rape, torture etc.)
- **Genocide:** requires **intent to destroy** national, ethnical, racial or religious group
- **Aggression:** use of armed force by a state **against the sovereignty, territorial integrity** of another state



International Refugee Law



- **1951 Refugee Convention:**

- Fear of **persecution** due to race, religion, political opinion etc.
- International protected status
- Protected under UNHCR mandate
- Refugee rights



- **1969 African Refugee Convention Refugees:**

- Refugees also persons fleeing **armed conflict**



- **1984 Cartagena Declaration on Refugees:**

- Refugees also persons fleeing internal conflicts & generalized violence



Rights of Refugees



- Prohibition of expulsion or return if real risk (*"Refoulement"*)
- Prohibition of discrimination for race, religion or country
- Freedom to practice religion
- Right to acquire property
- Access to courts
- Public education
- Freedom of Movement





Case 1 – Refugee Woman

*“They are forcing us to go home.
But our government will harshly punish us
as soon as we cross the border. Our political
police often rapes women who are deported”*





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Violations to consider:

- Freedom from torture (in the form of rape)
- Prohibition of *non-refoulement* under 1951 Refugee Convention and Convention against Torture
- Deportation as a war crime or crime against humanity



Internally Displaced Persons (IDPs)



- **Forced to flee** (e.g. due to war or natural disaster)
- Have **not crossed an international border**
- No special international status. Home state must protect
- Keep human rights & rights as citizens (e.g. right to vote)
- Protection reinforced by:
 - UN Guiding Principles on Internal Displacement
 - AU Convention on Internal Displacement in Africa

Main sources of International Law



International Human Rights Law

United Nations Charter
Human rights treaties
Universal Declaration
of Human Rights

International Criminal Law

Rome Statute of the
International Criminal Court

International Refugee Law

Convention relating to the Status of
Refugees

International Humanitarian Law

International armed conflict:

Geneva Conventions
Additional Protocol I

Non-international armed conflict:

Art. 3 Geneva Conventions
Additional Protocol II

Security Council Mandate



- Highest legal basis for the deployment of any mission
- Outlines the tasks and responsibilities that the Council expects the mission to accomplish

Agreements with Host State (SOMA/SOFA)



- Legal agreements signed by UN and the host state
- Regulates privileges & immunities of mission and its personnel
- May be supplemented by special agreements (e.g. on handover of persons detained by mission)



UNMO Functional Immunity



- As experts on mission for the UN, UNMO have functional immunity for official acts as per:
 - Status of Forces Agreement/Status of Mission Agreement
 - 1946 Convention on the Privileges & Immunity of the UN
- **This includes:**
 - Functional immunity from arrest, detention, seizure
 - Immunity from legal process for official actions & words
 - Inviolability of papers and documents
 - Correspondence by code, courier & sealed bags
 - Wear military uniform & fly UN flag
 - Unhindered entry & departure (international staff)
 - Freedom of movement within the mission area

For UN interest; not personal benefit



Case 2 - Roadblock

Unarmed UNMO, accompanied by an armed UN force protection platoon, are conducting a long-range patrol to implement the mission's mandate to verify reports of ceasefire violations.

An armed group has set up a roadblock and Refuses to let the peacekeepers pass.



The fighters at the roadblock argue that the peacekeepers have not sought prior authorization to access the area under its control.

- What are the peacekeepers legally allowed to do under their mandate?
- May they force their way through the roadblock?
- When may they use force against the armed group?



Freedom of Movement

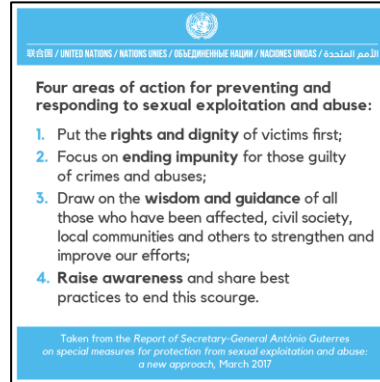
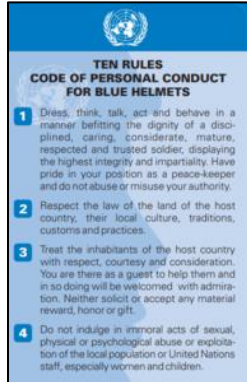


- Mission personnel have freedom of movement through territory of host-state
- No prior authorization or notification for travel (exception e.g. for air traffic control purposes)
- Government must ensure safety, security and freedom of movement (e.g. clear illegal roadblocks)
- Mission may forcibly assert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





UNMO Functional Immunity



- Immunity can be waived by the Secretary-General
- Disciplinary and criminal action may be taken by T/PCCs
- T/PCCs have legal obligation to ensure UNMO discipline and accountability
- The UN has a zero-tolerance policy for Sexual Exploitation and Abuse (SEA)
- T/PCCs are responsible for investigating and prosecuting SEA allegations

Immunity never means impunity for UN peacekeepers

Case 3: Sexual Exploitation and Abuse



An UNMO is stationed in a conflict-affected region finds himself drawn to a local woman who often visits the area.

She shows interest in him, and he feels a mutual attraction.

The UNMO is unsure of her age, and there is a possibility that she might be vulnerable due to the ongoing conflict in the region“.

How should the UNMO behave and what should he do?



Authority to Use Force



- The use of force by military components in UNPKO is generally authorized in the following situations:
 - Self-defence
 - Protection of civilians
 - Defence of the mandate (e.g. Freedom of Movement)
- Details depend on mandate, CONOPS and ROE



UNMO are generally unarmed and do not directly engage in the use of force



Rules of Engagement



- Guidance on **authority** and **limits** to use force, and base for accountability



- Covers use of kinetic force, detention, search and seizure
- Abide by human rights at all times

Guidelines on the Use of Force by the Military Component in UNPKO



Restrained force paradigm (default)

- Force as a last resort
- Proactive de-escalation
- Graduation of force
- 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 risk for civilians
- Proportionality of incidental civilian harm

Use to the extent necessary for:

- Self-defence
- Defence of mandate
- Protection of civilians



Summary of Key Messages

- UNMO should have an understanding of the UN Charter and the primary sources of international law, as this knowledge equips them to effectively safeguard human rights and enhance the quality and impact of their work
- UNMO should recognise the immunities and privileges of UN personnel, as well as understand their rights and responsibilities
- Although UNMO are generally unarmed, they must understand the principles of the use of force, ROE, and conduct of hostilities that guide missions

Learning Activity: Threats to Civilians



Group discussion

Total Time: 15 mins

Preparation: 8 min

Discussion: 7 min

In Carana, UNMO monitoring a ceasefire observed signs of an imminent attack on a Village by rebel fighters.

Civilians were fleeing, and armed rebels were seen moving into strategic positions near the village.

Bound by their unarmed mandate, the UNMO were unable to intervene directly, but they recognised the potential for significant civilian harm if the attack proceeded.

What actions should UNMO take to support the POC in such high-risk situations while adhering to their mandate?