

## MODULE 2: INTERNATIONAL LEGAL DIMENSIONS OF THE PROTECTION OF CIVILIANS (POC)

### Preparatory Notes to Instructors

#### AIM

To familiarize peacekeeping personnel with:

- The international legal foundation for POC
- Rights and obligations of peacekeepers in POC

#### AUDIENCE

This module was designed for an operational level audience who has solid knowledge on the field mission organization and functioning, and how it interacts with mission partners on the ground. For a tactical level audience (for example, Contingent and Battalion Commanders and Battalion staff), this subject is also highly relevant; however, learning outcomes and content should be suited to the trainees` profile.

Specific Participant Profile:

- Military - Battalion level and above
- Police – FPU Commanders and above
- Civilian – Heads of Substantive Sections and above

#### LEARNING OUTCOMES

***On completion of Module 2, participants will be able to:***

1. Identify the range of legal rules, authorities and obligations that govern the actions of peacekeepers with regards to the protection of civilians.
2. Describe the rights and obligations of peacekeepers (particularly with regards to the use of force) as they pertain to the protection of civilians.

3. Explain the meaning of critical language in UN POC mandates
4. Describe how and where to seek legal guidance.

## TRAINING SEQUENCE

Modules 1-4 are to be delivered in sequence, followed by Scenario based exercises.

## DURATION

|                 |                             |  |
|-----------------|-----------------------------|--|
| <b>Module 2</b> | <b>Lecture/Presentation</b> | <b>Questions/Discussion<br/>&amp; Session Assessment</b> |
| <b>Timing</b>   | 50 min.                     | 30 min.  |

## METHODOLOGY

- The following points outline a suggested methodology. Experienced instructors may choose to use alternative methods and activities to present the material and key messages in this unit.
- Training takes 45 minutes in total.
- This module will include lecture issues followed by group questions/discussion and learning activities as appropriate.

**Part 1:** Presentations using the provided PowerPoint slides.

**Part 2:** Informal question and answer periods (as determined by instructor)

## INSTRUCTOR PROFILE

Module 2 is best presented by an instructor who has personal experience in a peacekeeping operation with a Protection of Civilian (POC) mandate, with a solid understanding of the operational concept of POC and how it's implemented in the mission(s). The Instructor should have undergone a formal training course on POC at

national or international level. For module 2 it's preferred that the instructor has a thorough understanding of international humanitarian and human rights law, including refugee law. Where possible, the instructor should have practical experience with the application of human rights.

## INSTRUCTOR PREPARATIONS

### Required Readings:

- Charter of the United Nations
- United Nations Peacekeeping Operations Principles and Guidelines (also known as the Capstone Doctrine)
- OCHA/DPKO Study on the Protection of Civilians in the Context of UN Peacekeeping Operations: Successes, Setbacks and Remaining Challenges (2009)
- DPKO/DFS Operational Concept on the Protection of Civilians in United Nations Peacekeeping Operations
- DPKO/DFS (Draft) Framework for Drafting Mission-wide Protection of Civilians (POC) Strategies in UN Peacekeeping Operations
- OCHA Aide Memoire for the Consideration of Issues Pertaining to the Protection of Civilians
- DPKO/DFS Lessons Learned Note on the Protection of Civilians in UN Peacekeeping Operations
- Carana Case Study and Scenario materials
  - Carana Training Pack
  - Country Study Overview
  - Scenarios

### Equipment

- Computer and provided session slides
- Projector and screen for slides

## Materials:

- Copies of the *Draft Framework for Drafting Mission-wide Protection of Civilians (POC) strategies in UN Peacekeeping Operations* (one per participant). For copies, please download the electronic file at:  
<http://www.peacekeepingbestpractices.unlb.org/PBPS/Pages/Public/Home.aspx>
- Selected Carana Mission Materials – Mandate, Rules of Engagement, and Concept of Operations (Students should be provided with copies of these well in advance of POC training)

## PARTICIPANT PREPARATIONS

All participants must have a strong familiarity with the following:

- POC Pre-Deployment Training: Participant Handbook
- Carana Case Study Materials provided
- DPKO/DFS Operational Concept on the Protection of Civilians in United Nations Peacekeeping Operations
- DPKO/DFS (Draft) Framework for Drafting Mission-wide Protection of Civilians (POC) Strategies in UN Peacekeeping Operations

## ADDITIONAL RESOURCES

Security Council Resolutions (please download from <http://www.un.org/en/documents/>):

- Concerning Children and Armed Conflict, (S/RES/1612), 2005
- Protection of Civilians in Armed Conflict, (S/RES/1674), 2006
- Protection of Civilians in Armed Conflict, (S/RES/1894), 2009
- Women and Peace and Security, (S/RES/1325), 2000
- Women and Peace and Security, (S/RES/1960), 2010

## MATERIALS REFERENCED IN THIS MODULE

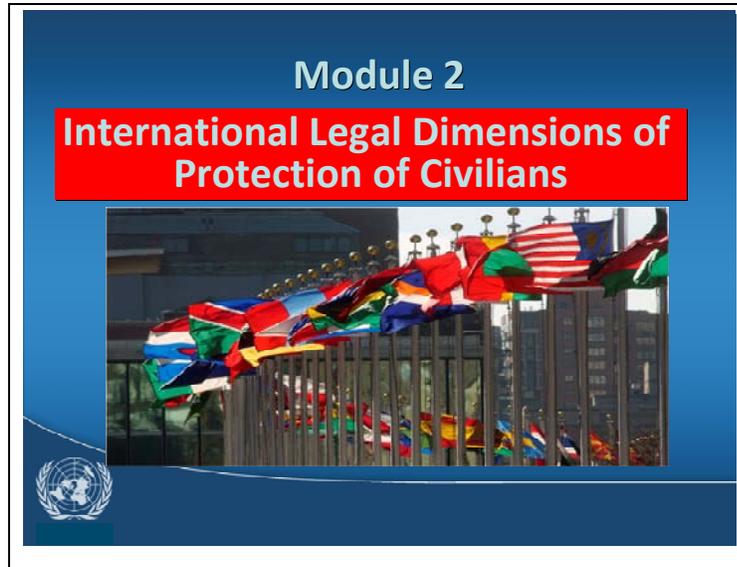
- DPKO/DFS Draft Framework for Drafting Mission-wide Protection of Civilians (POC) strategies in UN Peacekeeping *Operations* (2010)
- DPKO/DFS Operational Concept on the Protection of Civilians in United Nations Peacekeeping Operations (2009)
- DRAFT Explanatory Note on Protection of Civilians Language in Security Council Mandates for Peacekeeping Missions
- Henry L Stimson Center, *Military Planning to Protect Civilians: Proposed Guidance for United Nations Peacekeeping Operations*, Washington, D.C, (2011)
- Integrated Mission Planning Process Guidelines: Role of the Field; Integrated Planning for UN Field Presences
- Mission Start-up Field Guide for Senior Mission Managers of United Nations Peacekeeping Operations (2008)
- OCHA Aide Memoire for the Consideration of Issues Pertaining to the Protection of Civilians
- OCHA/DPKO Study on the Protection of Civilians in UN Peacekeeping Operations (2009)
- DPKO/DFS Guidelines for Integrating a Gender Perspective into the Work of the United Nations Military in Peacekeeping

## SYMBOLS LEGEND

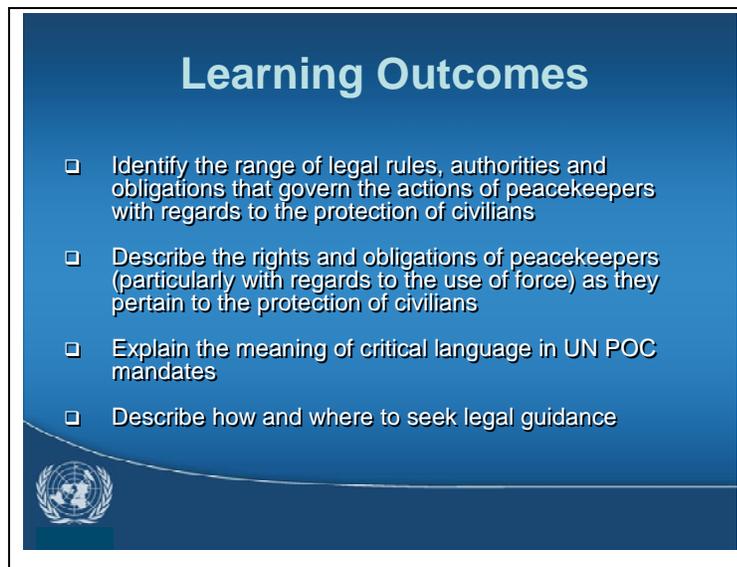
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|    | Note to the Instructor (Some background information for consideration and mention)  |
|    | Speaking Points (The main points to cover on the topic. Ideally the speaking points are presented in the instructor's own words versus being read to participants. Please note, text in the slides is highlighted in bold, blue fonts in the associated speaking points.) |
|    | Mission Specific (A point where the session will benefit from mission specific information)   |
|    | Example (Stories that illustrate a point or key message)  |
|   | Sample questions (A list of potential questions to pose to participants)  |
|  | Handout (Indicates a handout is provided to participants at this point)   |
|  | Film (A film that is suggested as either a core or optional activity)   |
|  | Core Learning Activity (An activity that is strongly recommended for inclusion)   |
|  | Optional Learning Activity (An activity that can be used if there is time and it is appropriate for the participant group. Guidelines for these activities are provided at the end of the unit or part – as indicated in the text)  |
|  | Key summary points (Key messages that are worth repeating at the end of the session. Alternatively, the instructor can ask participants what are the main messages they are taking from the session. Instructors can then fill in any points that have been missed.)      |

## Session Notes

### 1. INTRODUCTION



Slide 1



Slide 2



Slide 3

## 2. OVERVIEW OF RELEVANT SOURCES OF INTERNATIONAL RULES, OBLIGATIONS AND AUTHORITIES



Slide 4

- These are the instruments of international law that UN peacekeeping missions base their legal authority on. These instruments constitute the normative framework of peace operations and guide the work and priorities of peacekeepers and the protection of civilians.

**CHART 2.1: International Legal Instruments**

|  | <b>What Is It</b>   | <b>How it Relates to UN Peacekeeping</b>  |
|--|---|---|
| <b>UN Charter</b>  | The UN Charter is the basis of all UN authority and activity. It states that one of the main purposes of the UN and the core responsibility of the UN Security Council is to “maintain international peace and security” and lays the foundations of the UN commitment to human rights. | <p>Chapters VI and VII provide the legal basis for the establishment of UN peacekeeping operations.</p> <ul style="list-style-type: none"> <li>• <b>VI – “Pacific Settlement of Disputes”</b> is the foundation of traditional peacekeeping operations</li> <li>• <b>VII – “Action with respect to the Peace, Breaches of the Peace and Acts of Aggression”</b> relate to robust peacekeeping, in that this clause gives the UN SC the right to authorize the use of force when international peace and security is threatened</li> </ul> |
| <b>International Humanitarian Law;</b><br>Includes,<br>- <i>Geneva Conventions of 1949 and</i> | This is the Law of Armed Conflict. International Humanitarian Law is a set of international (conventional and customary) rules specifically designed to govern the humanitarian issues stemming from armed conflict (whether  | Though peacekeepers are not generally considered parties to armed conflict (i.e. as fighters or combatants), the <i>Secretary General’s Bulletin on the Observance by United Nations forces of International Humanitarian Law (ST/SGB/1999/13)</i> stipulates   |

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| <p><i>Additional Protocols of 1977</i></p>   | <p>international or internal conflict). IHL establishes the responsibilities of armed actors, restricting the use of certain methods and means of warfare, striking a balance between military necessity and the principle of humanity (the protection of persons affected by armed conflict).</p> <p>All parties to conflict – including government forces, rebels and other armed groups – are bound by IHL.</p> | <p>that peacekeepers will, when involved in hostilities, adhere to the principles of IHL as it relates to the use of force and the treatment of civilians and other non-combatants, as well as persons placed <i>hors de combat</i>.</p> <p><b>NOTE – In exceptional circumstances peacekeepers may in fact become full parties to the conflict. In these circumstances UN Peacekeepers will become subject to the full extent of International Humanitarian Law.</b></p> |
| <p><b>International Human Rights Law;</b></p> <p><b>Includes,</b></p> <ul style="list-style-type: none"> <li>- <i>Universal Declaration of Human Rights (1948)</i></li> <li>- <i>Convention against Torture (1984)</i></li> <li>- <i>Genocide</i></li> </ul> | <p>International Human Rights law applies to times of peace and war and is made up of an accumulated body of international instruments including treaties, declarations and standards that are aimed at establishing the basic rights of all people.</p>   | <p>International human rights law is an integral part of the normative framework for United Nations peacekeeping operations.</p> <p>United Nations peacekeeping personnel -- whether military, police or civilian -- shall act in accordance with international human rights law, should ensure that they do not become perpetrators of human rights abuses and are expected to understand how the</p>  |

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| <p><i>Convention (1948)</i></p> <p>- <i>Convention on the Rights of the Child (1989)</i></p> <p>- <i>Covenant on Civil and Political Rights (1966)...</i></p> <p><i>etc.</i></p>             |   | <p>implementation of their tasks intersects with human rights to 'be able to recognize human rights violations or abuse and be prepared to respond appropriately within the limits of their mandate and their competence'.</p> <p>The UN maintains a zero tolerance policy for human rights violations, including sexual exploitation and abuse.</p>  |
| <p><b>Refugee Law</b></p> <p><b>Consists of,</b></p> <p>- <i>Convention relating to the status of refugees (1951)</i></p> <p>- <i>Protocol relating to the status of refugees (1967)</i></p> | <p>The Convention consolidates previous international instruments relating to refugees and establishes the legal definition of refugee and minimum standards for their treatment.</p> | <p>Peacekeepers often operate in environments where large numbers of refugees and IDPs may be present as a result of forced displacement and overarching instability and political upheaval. Although IDPs are not covered by the conventions under refugee law, all displaced people, especially elderly, female head households and children, are particularly vulnerable and may require special consideration by the peacekeepers in order to ensure their protection and to create safe conditions for refugees and IDPs to return home.</p> |

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| <p><b>Rome Statute of the ICC (International Criminal Court)</b></p> | <p>Derived from other international instruments, including the Geneva Conventions, the Universal Declaration of Human Rights. International Human Rights Law e.g. Convention against Torture, the Genocide Convention, etc.</p> <p>The ICC prosecutor can initiate an investigation in a country which has ratified the statute or where a national of the state that has ratified it is suspected of crimes included in the statute.</p> | <ul style="list-style-type: none"> <li>• Crimes covered by the Rome Statute, and prosecuted by the ICC – broadly defined as genocide, war crimes (including rape and other sexual violence) and crimes against humanity – are often described as crimes of “concern to the international community as a whole” for which there should be no safe haven.</li> <li>• The definition of these crimes is enshrined in the various international instruments described above, and can be prosecuted by national courts.</li> <li>• The ICC prosecutes these crimes where no national or regional court is able or willing to prosecute, when the Security Council refers the case to the Court, or when the ICC prosecutor chooses to initiate their own investigation.</li> <li>• An attack on a peacekeeper is a war crime under the Rome Statute (except in situations</li> </ul> |
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|  |  | where peacekeepers are considered to be parties to the conflict). |
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-  **Note to Instructor:** Discuss *International Humanitarian Law* with reference to the *OCHA Aide Memoire for the Consideration of Issues Pertaining to the Protection of Civilians*
-  The *Aide Memoire* is a practical guide to be consulted when considering protection issues and priorities, written with a view to the humanitarian, “rights based” approach to protection (further discussed in Module 3). It includes practical steps to be taken in case of protection crises and references the UN resolutions and statements relevant to the consideration of various protection objectives.
-  The *SG’s Bulletin* was written in order to clarify the core rules and principles of international humanitarian law applicable to armed forces conducting operations under the command and control of the United Nations. The *SG’s Bulletin* provides useful guidance, but it cannot be considered an exhaustive list of obligations binding on UN forces.
-  Discuss with reference to the Secretary General’s Decision on Human Rights in Integrated Missions (October 2005)
-  Discuss refugee law with reference to the *Guiding Principles on Internal Displacement*. “The *Guiding Principles* are based on international humanitarian and human rights law and analogous refugee law. They are intended to serve as an international standard to guide governments, international organizations and all other relevant actors in providing assistance and protection to IDPs. The *Principles* identify the rights and guarantees relevant to the protection of the internally displaced in all phases of displacement. They provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement, and set out

*guarantees for safe return, resettlement and reintegration.*” (OCHA Guiding Principles on Internal Displacement, Introductions)

### 3. CORE LEGAL FRAMEWORK FOR UN PEACEKEEPING OPERATIONS



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🗨️ These are the specific documents that shape UN peacekeeping operations and that specify the authorities, immunities and operational behavior of UN peacekeepers.

👉 **Note to Instructor** Discuss each mission document in the chart below with reference to the Mandate and ROE and Force Commander’s Directive provided in the Carana case study material.

**CHART 2.2: Mission-Specific Legal Parameters and Guidance for UN Peacekeeping Missions**

|                                 | <b>What it is</b>   | <b>Associated Authorities and Obligations</b>  |
|---------------------------------|---|--|
| <b>Security Council Mandate</b> | <p>This is the legal basis for the deployment of any mission. A Security Council mandate is the result of a political process at UN HQ which ends in the adoption of a Security Council resolution authorizing the mission and outlining the tasks and responsibilities that the SC wishes the mission to accomplish.</p> | <p>A so called “Protection of Civilians” mandates will include clauses, authorized under Chapter VII of the UN Charter, stating that the peacekeepers are authorized to use “all means” or “all necessary means” to “protect civilians under imminent threat of violence,” and in “self-defense and defense of the mandate.” This gives peacekeepers the authority to take all necessary measures – up to and including the use of force- to protect civilians from violence, to protect themselves, other mission and UN staff, and mission property, and to carry out their mandate (e.g. to enforce freedom of movement within the mission area, etc.)<br/>(Further discussion of this in Module 3)</p> |
| <b>Rules of Engagement</b>      | <p>These legal documents give specific guidance to military</p>   | <ul style="list-style-type: none"> <li>• The ROEs and DUFs are mission specific and written in</li> </ul>  |

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| <p><b>(ROE) for Military peacekeepers, and the Directives on the Use of Force (DUF) for UN Police</b></p> | <p>peacekeepers and UN Police as to when and how the use of force can be used and when it cannot. This includes the use of force in self-defense, in defense of UN staff, facilities and property, and – in the case of a Chapter VII POC mandate – the protection of civilians under imminent threat of physical violence. It also guides the use of unarmed force, detention and restraint.</p> | <p>accordance with the mission mandate, as well as International Human Rights and Humanitarian Law and the Laws of Armed Conflict.</p> <ul style="list-style-type: none"> <li>• In addition to issuing the Soldier Card, it is the <b>responsibility of each Contingent and FPU Commander</b> to ensure that all of the officers, soldiers and UN police under their command have a clear understanding of the ROEs and DUFs, as well as any applicable customary IHL or IHRL. It is critical that the Force Commander’s and Police Commissioner’s Intent is clearly expressed and disseminated to all commanders.</li> <li>• Note that UN peacekeepers may have additional obligations under customary IHL and/or customary IHRL, dependent upon the particular activities of the mission. Military commanders and Police commissioners should seek specific guidance from legal advisers and provide clear and timely guidance to their subordinates in this regard.</li> </ul> |
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| <p><b>Status of Forces Agreement (SOFA)</b></p> | <ul style="list-style-type: none"> <li>• The 'SOFA' is negotiated between the UN and the host state government and establishes the privileges, immunities, exemptions etc. that the peacekeeping operation and its personnel will have in order to carry out their mandate.</li> <li>• Conclusion of the SOFA by the host government is a legal statement that the peacekeeping mission has the consent of the host state to deploy and to implement their mandate.</li> </ul> | <ul style="list-style-type: none"> <li>• The SRSG, the FC and sometimes other Senior officials enjoy diplomatic immunity.</li> <li>• All UN peacekeepers (that is the whole mission and all categories of personnel, including locally recruited full-time staff) enjoy immunity and freedom of movement in all the official functions they perform.</li> <li>• UNPOL &amp; MILOBS enjoy the status of experts on mission, and enjoy immunity from arrest, detention and legal process.             <p style="margin-left: 40px;">UN Military personnel of national contingents enjoy immunity in their official functions and immunity from criminal prosecution in the host state. It is typically stipulated that it is the responsibility of the TCC to prosecute their own soldiers for criminal acts that take place in the mission area of responsibility.</p> </li> </ul> |
|---|--|---|

|                              |  |   |
|------------------------------|--|---|
| <p><b>Host State Law</b></p> | <p>Peacekeepers are responsible for observing the laws and regulations in the host state in which they are deployed as long as they comply with international human rights and IHL standards).</p> | <p>It is the responsibility of the Special Representative to the Secretary General (SRSG) to take the necessary steps to ensure that host-state laws are observed (as long as those laws comply with international human rights and IHL standards).</p> |
|------------------------------|--|---|

 **Notes to Instructor:** Refer also to SC Resolutions 1325/1820/1888/1889 and 1960 – Women, Peace and Security (2000, 2008, 2009, 2009 and 2010), Children (1261, 1314, 1379, 1460, 1539, 1612, 1882, 1998) Children (1999, 2000, 2001, 2003, 2005, 2009, 2011), 1674/1894 POC (2006, 2009).

 Security Council Resolution 1983 provides the link between HIV/AIDS, the maintenance of international peace and security, the prevention and response to sexual violence related to conflict, and post-conflict building.

 The Security Council and the different political positions of the SC member states can have a significant impact on the nature of the mandate, as well as the response to, and support of SC members for actions taken by peacekeepers in the field. At the conceptual level Security Council members tend to show strong support for the inclusion of POC clauses in UN Peacekeeping mandates. However, it is critical that Senior Mission Leaders develop a clear, operational plan to execute the POC mandate, and that this course of action is articulated clearly to SC members in order to ensure both understanding, and continue to support the protection activities undertaken by the mission.

- ☞ *Discuss with reference to the 2010 ISOP on Detention by Peacekeepers*
- ☞ *If there is no SOFA, or if the SOFA has yet to be agreed/signed then Model SOFA (A/45/594) applies.*
- ☞ *The privileges and immunities of civilian, police (UNPOL) and military observers are covered in the Convention on the Privileges and Immunities of the United Nations (1946) whereas the privileges and immunities of Military personnel are covered only in the SOFA.*

## 4. AUTHORITIES, OBLIGATIONS AND PROHIBITIONS

**Authorities, Obligations and Prohibitions**

- ☐ Authorities
- ☐ Obligations
- ☐ Prohibitions



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**Authorities**

- ❑ **ALL UN Peacekeepers** (including UN civilian staff) have an **INHERENT RIGHT** to defend themselves, if necessary, by using force - up to and including deadly force.
- ❑ Chapter VII mandate, **AUTHORIZED** to use all means - up to and including the use of force – to prevent, pre-empt, and respond effectively to acts of or imminent threat of violence against civilians.


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- **ALL UN Peacekeepers** (including UN civilian staff) have an **INHERENT RIGHT** to defend themselves, if necessary, by using force - up to and including deadly force. (Although UN civilian staff, UN police and UN military observers, are usually unarmed, they are nevertheless allowed to use force in self-defence if they are facing an imminent threat of physical violence). Violations targeted on the basis of opportunity – Indiscriminate violence resulting from the lack of law and order that is prevalent in conflict, and early post conflict situations. This includes (but is not limited to) indiscriminate looting and illegal taxation, rape, sexual violence and – in some cases – forced recruitment and forced labor.
- **Peacekeepers who are authorized under a Chapter VII mandate** to use force to implement the mandate, including to protect civilians under imminent threat of violence are **AUTHORIZED to use all means - up to and including the use of force – to prevent, pre-empt, and respond effectively to acts of or imminent threat of violence against civilians from any source, including host state bodies or authorities.**

## Obligations

- ❑ Protect civilians under imminent threat of violence (within capabilities and within the area of responsibility);
- ❑ Provide protection impartially and according to need; without reference to ethnicity, race, religion, social or economic status, sex, or political affiliation;
- ❑ Act without prejudice to the responsibility of the host state to protect civilians within its borders;



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## Obligations cont...

- ❑ Conduct themselves in a professional and disciplined manner at all times;
- ❑ Understand the mandate and mission and comply with their provisions;
- ❑ Respect the law of the host country;
- ❑ Treat the inhabitants of the host country with respect, courtesy and consideration;
- ❑ Act with impartiality, integrity, tact and discretion;
- ❑ Obey UN superiors and respect the chain of command

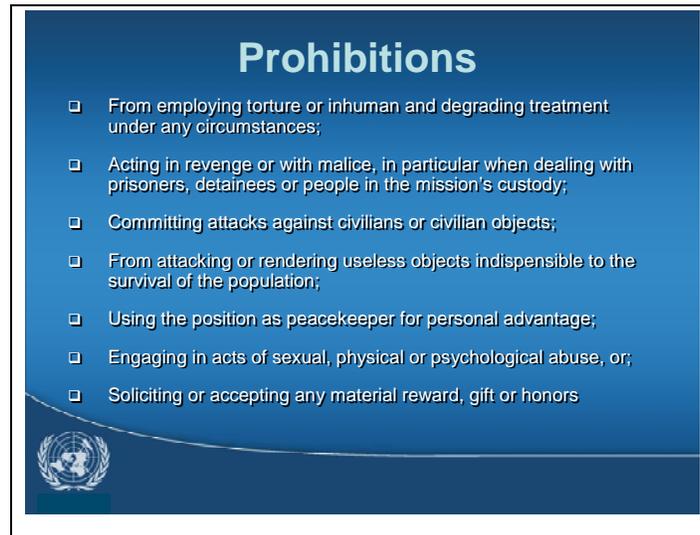


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### POSITIVE OBLIGATIONS OF UN Peacekeepers;

- 🗨️ Protect civilians under imminent threat of violence (within capabilities and within the area of responsibility);
- 🗨️ Provide protection impartially and according to need; without reference to ethnicity, race, religion, social or economic status, sex, or political affiliation;
- 🗨️ Act without prejudice to the responsibility of the host state to protect civilians within its borders;
- 🗨️ Conduct themselves in a professional and disciplined manner at all times;
- 🗨️ Understand the mandate and mission and comply with their provisions;
- 🗨️ Respect the law of the host country;

- Treat the inhabitants of the host country with respect, courtesy and consideration;
- Act with impartiality, integrity, tact and discretion;
- Obey UN superiors and respect the chain of command.



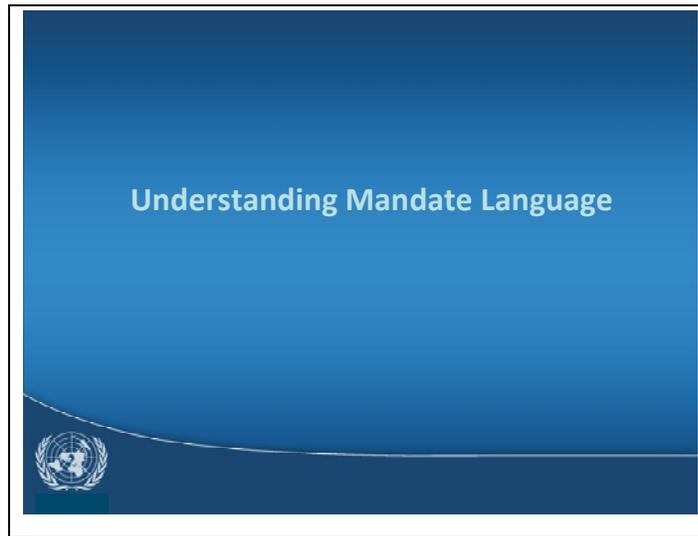
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### UN Peacekeepers are PROHIBITED;

- From employing torture or inhuman and degrading treatment under any circumstances;
- Acting in revenge or with malice, in particular when dealing with prisoners, detainees or people in the mission's custody;
- Committing attacks against civilians or civilian objects;
- From attacking or rendering useless objects indispensable to the survival of the population;
- Using the position as peacekeeper for personal advantage;
- Engaging in acts of sexual, physical or psychological abuse,
- Employing children for labour or other services, including sexual exploitation and abuse, or;
- Soliciting or accepting any material reward, gift or honors.

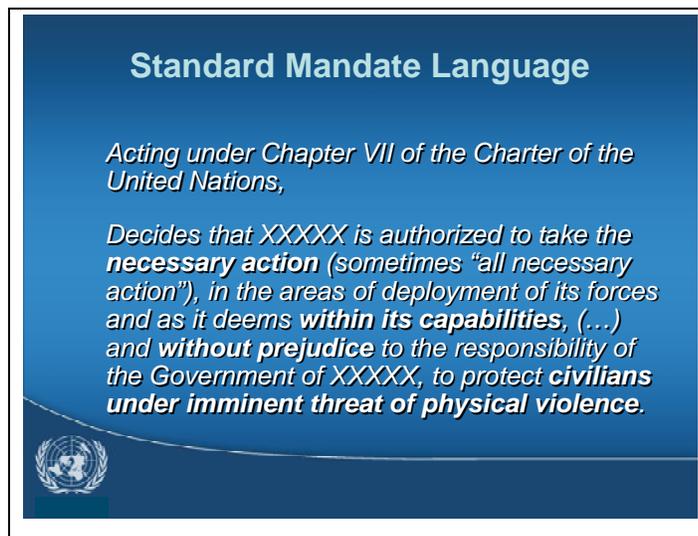
-  **Notes to Instructor:** *These Authorities, Obligations and Prohibitions are only HIGHLIGHTS and should not be presented as an exhaustive list. For further details with regards to the rights, authorities, obligations and prohibitions, UN peacekeeping staff should consult with their superiors within their chain of command.*
-  *IHL is binding upon UN forces only when they are engaged in military operation reaching IHL threshold of applicability (i.e. where UN Peacekeepers are considered to be parties to the conflict). When UN forces are deployed in a context of armed conflict but are not themselves involved in hostilities, they are considered as civilians under IHL and benefit from the protections afforded by this body of law. While not involved in hostilities, UN forces' actions are governed by other bodies of law, such as human rights law.*
-  *Many of the Obligations and Prohibitions listed here have their foundation in international Humanitarian Law, however these (listed) are also reflected in the Secretary General's Bulletin and as such they must always be observed by UN Peacekeepers.*
-  *More details on obligations and prohibitions related to children will be included in a separate module on protecting children.*

## 5. UNDERSTANDING MANDATE LANGUAGE



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### Standard Mandate Language:



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- This does not only refer to the use of force, but it is where the mission derived its authority to use force. However, different interpretations of this mandate language (for example, "without prejudice," "within capabilities," and "imminent threat") as well as political contradictions and challenges have led to inconsistent planning and protection responses at the field level.

*Acting under Chapter VII of the Charter of the United Nations,*

*Decides that XXXXX is authorized to take the **necessary action** (sometimes “all necessary action”), in the areas of deployment of its forces and as it deems **within its capabilities**, (...) and **without prejudice** to the responsibility of the Government of XXXXX, to protect **civilians under imminent threat of physical violence**.*

### “Necessary action,” “Imminent threat” and the Use of Force:



**“Necessary action,” “Imminent threat” and the use of force**

- ❑ Gives the mission authority to take all steps, up to and including the use of deadly force (as a last resort) to protect civilians under “imminent threat.”
- ❑ “Necessary actions” are not only military actions (civilian and police actions as well)
- ❑ **A threat is imminent from the moment it is identified as a threat, until such a time that mission analysis determines that the threat no longer exists.**
- ❑ **The determination of “imminence” is NOT bound by time or geographic proximity.**
- ❑ Peacekeepers with a POC mandate are authorized to use force in any circumstance in which they believe that a threat of violence against civilians exists.

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- Mandate language that authorizes the mission to take “necessary action” (or, as with some mandates, to “use all necessary means” or “all necessary measures”) give the mission authority to take all steps, **up to and including the use of deadly force (as a last resort)** to protect civilians under “imminent threat.”
- “Necessary actions” are not only military actions. They include a full range of civilian, police and military actions.
- As such, the range of “necessary actions” may include any preventive, pre-emptive, or responsive actions taken to avert, mitigate or respond to an identified threat.
- Effective prevention and pre-emption activities do not necessarily require the use of force. However, credible deterrence – including visible patrolling, preventive tactical

redeployments, conduct of visible military exercises; regular monitoring of hotspot areas, etc – is based on the readiness to use force.

- A threat of violence against a civilian is considered imminent from the time it is identified as a threat, until such a time that mission analysis (a combination of military intelligence, human rights and humanitarian findings, and political analysis) can determine that the threat no longer exists. Peacekeepers with a POC mandate are authorized to use force in any circumstance in which they believe that a threat of violence against civilians exists.
- This explanation of “imminence” should be understood to be an assertion of the range of mission authorities and NOT prescriptive on the decisions of peacekeepers.
- The determination of “imminence” is NOT bound by time or geographic proximity.

 **Notes to Instructor: Readiness to Use Force: A strong unwavering peacekeeping mission, backed by a credible threat of the use of the use of force, can deter spoilers.**

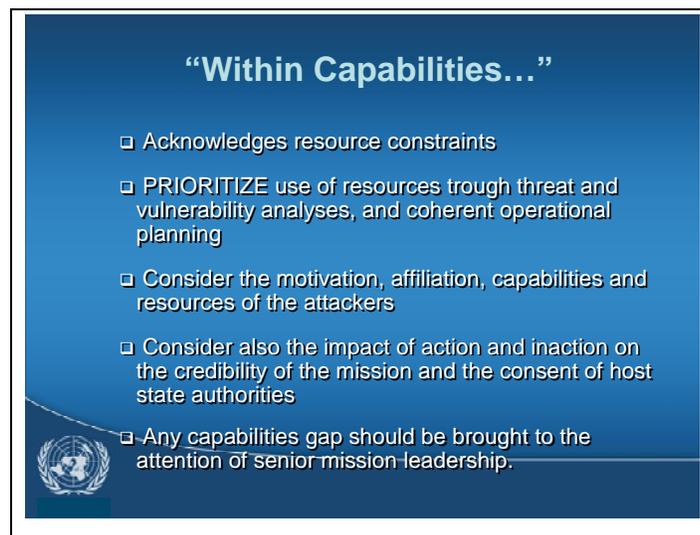
 *A targeted and finite robust operation by military or police peacekeepers can positively change the situation and dynamic on the ground and prevent an escalation in violence or the potential unraveling of a peace process.*

 *Conversely a perceived weakness in a mission can result in a loss of credibility and in turn undermine operational effectiveness. **If spoilers test the resolve of a mission and find it wanting, this can have an impact on the mission’s freedom of movement and its ability to implement its mandate. It can increase the vulnerability of both civilians and peacekeepers, increasing the likelihood that both will be targeted.***

 *It is NOT necessary for a mission to have an “executive” mandate (the establishment of an interim UN administration in the country in question) in order to authorize the use of “all necessary action” to protect civilians.*

- ☞ **Threat of Violence:** *This can apply to a belligerent individual or group (including from host state forces) known or reasonably suspected to have the intent to employ violence against a group of civilians, against an individual, or against the peacekeepers themselves.*
- ☞ *See also the Draft Presentation on the implementation of the Analytical Inventory of Peacekeeping Practice for addressing conflict-related sexual violence: For audiences at the operational level (October 2010)*

### “Within Capabilities”:

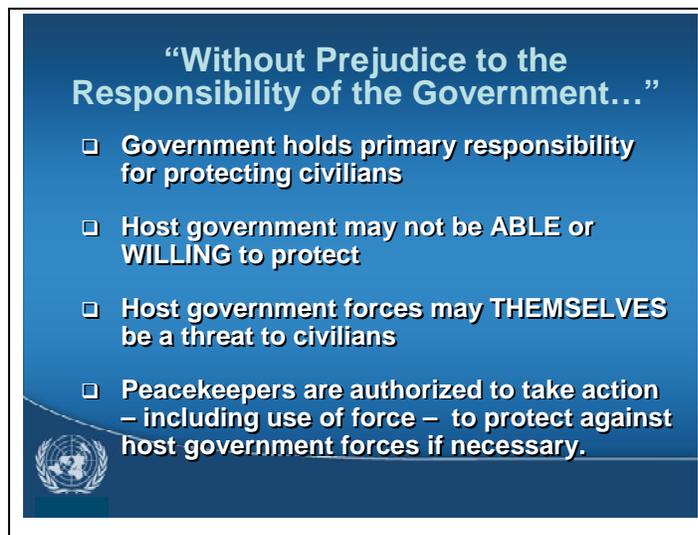


- ☞ This language acknowledges that resource constraints and operational challenges associated with the area of operations mean that no peacekeeping force will be able to address all protection threats at all times.
  - It should be noted, however, that many tasks related to the protection of civilians, which may at first seem beyond the capability of the force, can be accomplished by sound military practice, such as a rapid concentration of force, deployment of reserves, and the effective use of force multipliers.
  - Peacekeepers need to employ accurate threat and vulnerability analyses, and coherent operational planning, to identify and prioritize protection threats and to

determine exactly what protection activities are possible and which will be the most effective use of scarce mission resources.

- The “capability” of peacekeepers to respond should be determined on the basis of an assessment of the motivation, affiliation, capabilities and resources of the attackers, the likelihood of a retaliatory attack (on peacekeepers and on civilians) and the impact of action and inaction on the credibility of the mission and the consent of host state authorities.
- Where protection efforts are deemed to be beyond the capabilities of the peacekeeping mission, the capabilities gap should be brought to the attention of senior mission leadership. Where the gap cannot be addressed within existing mission resources, senior leadership should notify DPKO/DFS headquarters.

**“Without Prejudice to the Responsibility of the Government”:**



- Sovereign governments hold the primary responsibility to protect civilians inside their borders;
- In conflict and post-conflict situations the capacity of governments to live up to this responsibility may be limited, and in some cases elements of government forces may themselves pose a threat to civilians.

- In practical terms, this phrase stipulates that the military component should allow state authorities to take appropriate action whenever they demonstrate the intent and are capable of doing so.
- UN peacekeepers are responsible for undertaking protection activities in support of or in parallel with government actors. In the absence of an effective host government effort peacekeepers may act independently to protect civilians within the mission's area of operations.
- Bearing in mind that missions operate within the principles of peacekeeping, missions are authorized to use force against elements of government forces where such forces are themselves engaging in physical violence against civilians.

 **Note to Instructor:** *It is important to distinguish between empty government claims that they are taking effective action to protect civilians, and genuine efforts to provide protection. In some situations a host government may have the intention to protect civilians but lacks the means to do so. In other situations the government may lack the intention altogether. It is also possible that the intentions and/or capabilities of the national authorities differ from regional or local authorities.*



## Learning Activity 2.1: Group Discussion

### Activity 4.1: Group discussion on the understanding of “necessary means”



Learning Activity Time Required:

15 minutes for small group discussion and preparation

10 minutes for presentation of the findings (responses to the questions)

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Total time: **25 minutes**



#### **Activity Guidelines:**

- Divide the participants into groups of five or less (giving them 15 minutes to discuss)
- Tell participants to refer to the mandate provided in the Carana case study package to provide them with hints as to the scope of UN protection-related activities
- Each group should nominate a representative to present their list
- Allocate 10 minutes of presentation/discussion of the group findings

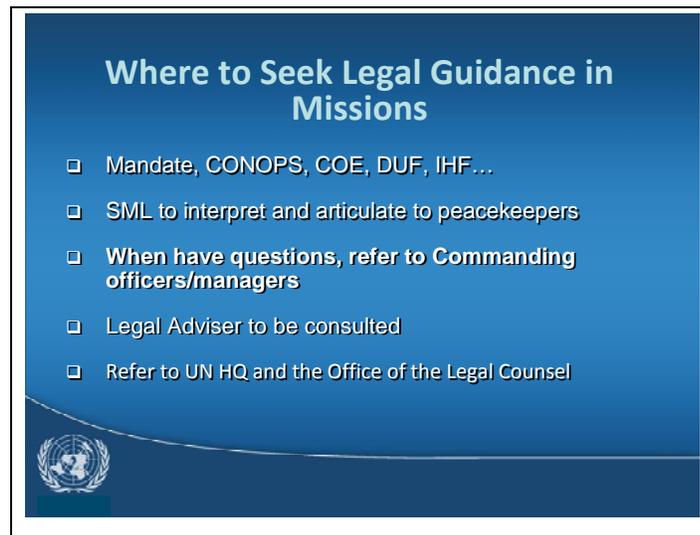


**Question:** What do “all necessary means” constitute in the context of a UN

**Peacekeeping Operation?** (What sorts of roles can peacekeepers – military, civilian and police – play to protect civilians? What specific capabilities do peacekeepers – military, civilian and police- have at their disposal to protect civilians under imminent threat – keeping in mind the fact that “imminence” is not defined by time or geographic proximity.

**Sample Answers (not exhaustive):**

- Political engagement
- Good offices
- Human rights monitoring
- Specific monitoring of violations related to children
- Reporting and advocacy
- Facilitate reconciliation processes (national and local conflict mitigation activities).
- Advocacy with armed groups, host state institutions, and civil society, etc.
- Engagement and consultation with civil society organizations
- Monitoring ceasefire agreements
- Military or police presence/deterrence (establishment of wide area security, establishment of protective cordons around refugee and IDP sites, patrols)
- Proactive use of force, etc.

**6. WHERE TO SEEK LEGAL GUIDANCE IN THE MISSION****Slide 16**

- Peacekeepers should refer to the mandate, the Concept of Operations (Con Ops), the Rules of Engagement (ROEs) or the Directives on the Use of Force (DUFs), and IHL instruments when making decisions about their activities in the field.

- 🗨️ It is the responsibility of Senior Mission Leadership to interpret these documents and clearly articulate their intent —through documents such as the Force Commander’s Directive or the SRSG’s Directives— to peacekeepers in the field.
- 🗨️ If peacekeepers have questions about the application of the ROEs, DUFs or any other the legal questions while fulfilling their responsibilities in the field, these questions should be referred to their commanding officers through the normal chain of command. Civilians should refer questions to their managers through the normal reporting lines.
- 🗨️ Each mission has a Legal Adviser posted at mission headquarters that can be consulted by senior leadership.
- 🗨️ In some circumstances it may be necessary for Senior Leaders to refer their questions to UN Headquarters—and the Office of the Legal Counsel— for guidance.

## 7. SUMMARY OF KEY MESSAGES

👉 **Note to Instructor:** *Outline the main points that have been covered during the session.*

- 🔑 International legal instruments pertaining to protection of civilians include UN charter, International Humanitarian Law, International Human Rights Law, Refugee Law and Rome Statute of the International Criminal Court.
- 🔑 The core legal framework for UN peacekeeping operations encompasses Security Council mandate, ROE & DUF, SOFA and Host state law.
- 🔑 ALL UN Peacekeepers (including UN civilian staff) have an **INHERENT RIGHT** to defend themselves, if necessary, by using force - up to and including deadly force.
- 🔑 Under Chapter VII mandate, peacekeepers are **authorized to use all means - up to and including the use of force – to prevent, pre-empt, and respond effectively to acts of or imminent threat of violence against civilians from any source, including host state bodies or authorities.**

- 🔑 Peacekeepers must understand the critical concept in POC mandate language, i.e. “Necessary action”, “Imminent threat” and the use of force “Within Capabilities...”and “Without Prejudice to the Responsibility of the Government...”
- 🔑 To seek legal guidance within the mission, peacekeepers should refer to their commanding officers within the chain of command.