Lesson 2-2
Legal Framework for Peace Operations - Mission Specific (UNPKI)
Learning Objectives

• Describe the legal framework and UN policies for UN Missions

• Explain essential privileges and immunities and the legal framework to ensure their accountability, good conduct and discipline

• Explain the importance of protecting sources
Security Council Mandate

• Security Council Resolution: highest legal basis for the mission
• Outlines tasks and responsibilities
• What the Security Council expects Mission to accomplish
Observer mandates requiring PKI

- Observe and verify violations of ceasefires, armistices, withdrawal agreements
- Monitor security and humanitarian situation
- Monitor disarmament, demobilization and reintegration processes
Protection-orientated Mandates

- Human Rights
- Protection of Civilians
- Child Protection
- Conflict-related Sexual Violence

Protection mandates are a PKI priority
Host State Agreements  
(SOMA/SOFA)

• Legal doc signed by UN and host state
• Privileges and immunities for UN mission / personnel
• Example: freedom of movement, customs exemptions, visa requirements
• Supplemented by special agreements (example-handover of persons detained by mission)
Important Privileges & Immunities under SOMA/SOFA

• 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 United Nations interest; not personal benefit.
Can be waived by United Nations without prejudice
Case Study 6 – Leaked Documents:

The mission obtained secret government plans to violently cleanse an area of a minority ethnic group. To contain the leak, the host government:

- Prosecutes the JMAC national officer who obtained the plans from a government official
- Prohibits UN officials from leaving the country unless they agree to have their bags searched
- Jams the mission's code cable correspondence
- Declares the JMAC chief persona non grata

Is the mission legally protected against these steps?
United Nations Functional Immunity

• Troop contingents under jurisdiction of their state, they may not be arrested, prosecuted etc. by the host state

• UN civilians, UNMOs and all UNPOL have it for official acts:
  – Status of Forces Agreement/Status of Mission Agreement

• Protects UN staff from intimidation and reprisals. Can be waived by Secretary-General in interest of UN

• Actual misconduct (e.g. sexual exploitation and abuse) is always subject to disciplinary & criminal action relevant personnel

Immunity never means impunity for U.N. peacekeepers
DPO-DOS PKI Policies and Guidelines

- Human Rights Due Diligence Policy
- Peacekeeping Intelligence Policy Guidelines on Acquisition of Intelligence
- Guidelines on the Exchange of Intelligence/Peacekeeping-Intelligence with Non-UN and Non-Mission UN Entities
- PKI, Surveillance and Reconnaissance Staff Handbook
- Military Peacekeeping Intelligence Handbook

Compliance with U.N. policy is mandatory for all peacekeepers
PKI legal limits, as established or reaffirmed by DPO Peacekeeping Intelligence Policy

- Full respect for human rights & international law
- No clandestine activities
- No exposure of sources to harm
- Independence of UN's peacekeeping intelligence
- Cooperation with states subject to conditions
Case Study 7 – armed group:

To obtain information on an armed group, the mission considers to:

• Pool its PKI resources with host authorities in a joint intelligence cell
• Infiltrate UN language assistant as a recruit into the armed group
• Pay an armed group fighter for copies of the group's battle plans
• Recruit as informants children who the armed group employs as cooks

What are relevant legal obligations?
Source protection - Intelligence Acquisition Plan

1. **Who faces protection risks?**
   - Sources and persons suspected to be sources
   - Family members; others close to sources
   - Mission staff, national staff

2. **What protection risks must be considered?**
   - Reprisals and intimidation
   - Prosecution of sources
   - Community stigmatization

3. **How can protection risks be mitigated?**
   - Individual risk assessment before source contact
   - No recruitment if risks too high
   - Confidentiality of all contact with source
   - If exposed: advocacy, relocation, physical protection, coping mechanisms

*A mission that does not protect its sources, will not have sources*
Lesson 2.2 Take Aways

• Protection mandates rely on good PKI and must be made a PKI priority, as per UN policy

• PKI personnel enjoy privileges and immunities protecting them from any host state reprisals related to their official duties

• Protecting PKI sources from harm is a priority from a legal, policy, ethical & operational perspective. Protection must be ensured before sources are approached