

ANNEX 3 – OVERVIEW OF THE CHAPTERS OF THE LEUVEN MANUAL

The first Chapter details the scope of the Leuven Manual. It explains that Peace Operations are based on three basic principles: consent of the parties, impartiality and limited use of force. The principles have evolved along with the evolution of complex multi-dimensional mandates and increasingly volatile operating environments.

The second chapter gives a short history of Peace Operations. The Law of Peace Operations has developed during conflict situations with various operational requirements. Identifying three phases of UN Peace Operations during the Cold War, in the transitional period from 1987-1991, and the much more numerous and more robust missions that have followed thereafter, the Chapter explains the development of applicable terms, fundamental principles, and their legal basis. New challenges and responses are highlighted and important milestones are critically assessed. Furthermore, proposals for a UN Standby Arrangements or Peacekeeping Capability Readiness System, the cooperation with other international and regional organizations, and the role of Host States and Transit States are reviewed.

The third Chapter discusses the mandate as a legal basis for Peace Operations. Any mandate for the conduct of Peace Operations will have two main functions: firstly, to provide a legal basis for the operation; and secondly, to set out mission objectives and tasks, which will explicitly or implicitly include the parameters for the use of force within the context of the mission. This Chapter provides that a mandate must be issued by the Host State or a competent international organization, and that in most cases it will be issued by both. The Chapter then looks at mandates issued by the UN Security Council as providing either a complementary legal basis alongside Host State consent, or the sole legal basis in the absence of such consent.

Chapter 4 discusses organization-specific legal frameworks and procedures which are relevant to setting up a Peace Operation. The Chapter consists of six subchapters. 4.1 addresses the need for a mandate which is issued by a competent organ, in accordance with the law of the organization or arrangement. 4.2 focuses on the division and transfer of operational command and control, tactical control and administrative control in Peace Operations. The remaining subchapters deal with regional organizations and arrangements. They discuss with respect to the AU (4.3), EU (4.4), and NATO (4.5) how their internal laws provide the competence and decision-making procedures to carry out Peace Operations in accordance with international law. The last part (4.6) offers a general rule for other regional and sub-regional organizations and arrangements. It also analyses competences and decision-making procedures in the internal laws of several African sub-regional organizations. Finally, it describes how African sub-regional organizations cooperate in achieving the objectives of the AU's peace and security architecture.

Chapter 5 discusses the applicability of human rights treaties in Peace Operations. While there are several unresolved legal questions with regard to such applicability, the Chapter identifies black letter rules relating to human rights obligations of Troop Contributing Countries and of international organizations, based on treaty law as well as customary international law. The Chapter explains that the human rights law obligations of a State participating in Peace Operations apply towards all persons who are within the jurisdiction of that State, insofar as the obligations are relevant to the operation. The Chapter further explains that international organizations shall comply with their international human rights law obligations, and that a Peace Operation has an obligation to respect international human rights law applicable to the Host State.

Chapter 6 discusses the applicability of IHL in Peace Operations. Starting from the premise that the conditions for the application of IHL are not different for Peace Operations than they are for States - as set out in IHL itself and established by practice -it goes on to discuss those conditions. This entails an analysis of when there is an 'armed conflict', and of relevant factors in determining when a Peace Operation becomes a party to such a conflict. The Chapter then looks at when members of a Peace Operation lose the protection from direct attack afforded to civilians. Next, the question is addressed of which actors involved in a Peace Operation must be considered as 'party to' the conflict. The Troop Contributing Countries and/or an international organization? The questions of the geographical and temporal scope of application of IHL are then considered. The Chapter closes with a discussion of which categories of personnel in a Peace Operation enjoy protection under IHL.

Chapter 7 is all about gender. Since the adoption of UNSCR 1325 in October 2000, much has been done to raise awareness of gender in the broader peace and security agenda, and in Peace Operations in particular. This Chapter explains how mainstreaming gender considerations into Peace Operations cuts through all bodies of law, and engages with every stage of Peace Operations. It means recognizing that conflict and violence affect men and women differently, and that this should be addressed accordingly in the planning and conduct of all Peace Operations. Troop Contributing Countries should be aware of gender considerations in areas of primary national responsibility such as force generation, training, and discipline, and strive to ensure that the appropriate level of capacity and competence is met prior to deploying to Peace Operations.

Chapter 8 deals with status of forces and status of mission. The immunity of personnel deployed in the Host State and any Transit State in Peace Operations is based on customary international law and treaty law. It is usually confirmed in SOFAs or SOMAs. Where SOFAs or SOMAs cannot be concluded or are not yet in force, the Security Council may decide that the UN Model SOFA be applied provisionally. Matters pertaining to entry and exit, freedom of movement, exemption from customs and taxes, the right to operate equipment and to engage in communications, logistic support, and safety and security of the personnel involved should be addressed in the SOFA or SOMA and in associated arrangements with the Host State. Members of Peace Operations should (and generally do) remain exempt from jurisdiction in the Host State and any Transit State, so that the Sending State has exclusive jurisdiction over such personnel. This principle is generally confirmed in SOFAs or SOMAs.

Chapter 9 provides an overview of the applicability of the Host State's domestic law to Peace Operations. The first part of the Chapter explains the significance of the principle of territorial sovereignty. While the principle of territorial sovereignty constitutes the most comprehensive basis of jurisdiction amongst the different principles of State jurisdiction recognized by international law, Host States must nevertheless exercise their jurisdiction in accordance with other applicable rules of international law, in particular conventional or customary rules bestowing Peace Operations and their members with jurisdictional immunities. The second part of the Chapter discusses the duty to respect local law. It notes the existence of two opposing schools of thought regarding the scope of this duty and suggests how they may be reconciled. Finally, it also offers some guidance on how to deal with situations where local law is found to be incompatible with generally recognized international standards, in particular with the requirements of international human rights law.

Chapter 10 provides an overview of the applicability of the law of Sending States to Peace Operations. The Chapter begins by noting that the rights and duties of Peace Operations are determined primarily at the international level, for example in the form of relevant Security Council resolutions. However, the law of Sending States is relevant. In particular, Sending States retain certain powers and responsibilities that

directly relate to the conduct of their national contingents. Criminal and disciplinary investigations of members of national contingents, for example, will follow the national law of the Sending State. The second part of the Chapter explains the scope of applicability of Sending State law in the territory of the Host State. While international law permits the exercise of prescriptive jurisdiction by Sending States in the territory of third States, the exercise of enforcement jurisdiction is permissible only on the basis of permissive rules to this effect. Such rules may be found in applicable international agreements or under customary international law.

Chapter 11 deals with TCC MOUs and other instruments and regulations. Each Peace Operation requires instruments and regulations which set out the administrative, logistical and financial terms and conditions that govern such an operation. Apart from these mission-specific arrangements, non-mission specific policies, guidelines and instruments providing operational and technical standards are employed to secure interoperability.

Chapter 12 on the use of force starts with a recognition that a Peace Force may use force when this is strictly necessary to achieve the tasks provided for in the mandate or in self-defense. The right to use force in personal self-defense or in defense of others is inherent. The meanings of necessity and of proportionality and the relevance of Sending State and Host State law are explained. A specific rule notes that the mandate, or applicable domestic law, may permit members of a Peace Force to use force in defense of mission-essential property or to maintain freedom of movement. Where human rights law is applicable, it will determine the circumstances and manner in which force may lawfully be used. If the Peace Force becomes involved as a party in an armed conflict it must comply with IHL when conducting operations in connection with that conflict. A Peace Operation should be equipped to enable it to adjust the degree and nature of the force that it uses to suit the needs of foreseeable security situations. Where force is authorized beyond self-defense in accordance with the law of the Sending State(s), Rules of Engagement should be issued that contain limitations on the use of force.

Chapter 13 addresses the rules that apply to detention in Peace Operations, drawing upon several existing guidelines and standards. These rules are primarily determined by human rights law and, to a lesser extent by IHL. The first basic rule is that detention may not be arbitrary. The Chapter specifies what this means in terms of permissible grounds for detention and procedural safeguards. Another fundamental rule is that detainees must always be treated humanely and without discrimination. Furthermore, detainees must be held in adequate conditions of detention [(including food, water, hygiene, etc.)] and must receive the necessary medical care. Moreover, the Chapter contains substantive and procedural rules on the transfer of detainees.

Chapter 14 deals with the protection of civilians. Its first subchapter contains general rules related to activities undertaken to improve the security of the population and people at risk. The responsibility of the Host State is emphasized, recommendations are made for formulating realistic mandates and additional rules are devoted to vulnerable groups. Subchapter 14.2 focuses on children and how they are to be shielded from the direct and indirect impact of armed conflict. Sexual exploitation and abuse (SEA) is addressed in subchapter 14.3. It details the legal sources on which the prohibition of SEA is based. Best practices deal with the integration of prevention in strategies of Peace Operations, the enforcement of standards of conduct and remedial action. Subchapter 14.4 concerns refugees and internally displaced persons (IDP).

Chapter 15 considers the law relating to aircraft and vessels participating in or directly supporting Peace Operations and, in particular, to the rules of conventional and customary international law relating to

aerial and maritime passage in international and national waters and airspace and the rights of third States in relation to vessels and aircraft bearing their nationality. The Chapter explores the navigational rights that apply in and above the high seas and the exclusive economic zone and in the territorial sea, archipelagic waters and international straits. Other rules flesh out the legal duty to obtain the consent of the coastal or Host State if Peace Operations wish to operate in internal waters, national airspace or the territorial sea (should the envisaged activities not be covered by the right of innocent passage). The Chapter further discusses when and under what conditions a Peace Operation may board a ship without the consent of the flag State. Attention is also devoted to how the rules as to the use of force apply to the maritime and aerial dimensions of such operations.

Chapter 16 addresses the field of conduct and discipline. The blue helmets of the United Nations represent a universally recognized symbol of peace. Wherever the United Nations flag flies, it stands for the highest ideals of humanity and dedicated service by men and women operating in deeply troubled and often extremely violent circumstances around the world. Yet, the terrible acts of misconduct of a few can effectively erase an untold number of noble sacrifices. This Chapter explains the responsibilities of the United Nations, Troop Contributing Countries and Police Contributing Countries in the areas of prevention, enforcement and remedial action.

Chapter 17 discusses the promotion of the Rule of Law. Where a Peace Operation is deployed to a country in which either the rule of law has broken down or respect for it is otherwise impaired, taking action to establish and thereafter maintain the proper functioning of the essential rule of law institutions and to foster respect for them and for the laws, procedures and proceedings associated with them is critical to the success of the Peace Operation. All personnel engaged in Peace Operations, and the Peace Force itself, must demonstrate respect for the rule of law at all times. As in a civil society the military is not involved in rule of law activities, an active role of the Peace Operation in rule of law activities will be limited or even inappropriate. So the emphasis here should be on providing the necessary security for civil actors inside and outside the Peace Operation to perform those types of task.

Chapter 18 discusses what responsibility a Peace Force has to remove explosive ordnances or otherwise to protect civilians against the danger they represent. The Chapter explains that the primary responsibility for demining and removal of explosive remnants lies with the Host State, and that any responsibilities of a Peace Operation for demining and removal of explosive remnants must be stipulated in the mandate.

Chapter 19 addresses the accountability and responsibility of Peace Operations. Given the broad meaning of these concepts, the introduction begins by defining the notion of accountability and responsibility in general terms and by explaining their relevance in the specific context of Peace Operations. Based on the work of the International Law Association in this area, the chapter distinguishes between different forms of accountability, in particular between internal and external scrutiny, civil liability and legal responsibility. As the first two forms of accountability are discussed in greater detail in other Chapters, Chapter 19 focuses on the question of legal responsibility. In doing so, it offers a synthesis of the most relevant aspects of the International Law Commission's articles on State responsibility and the responsibility of international organizations, with a particular emphasis on the rules of attribution. It recognizes that conduct may be attributed both to the international organization conducting the Peace Operation and to Troop Contributing Countries, based either on what may be called the institutional or the agency paradigm of attribution.

Chapter 20 deals with the civil liability of Sending States and international organizations regarding damage caused to third parties in Peace Operations. In principle, international organizations are responsible for

damages caused by their injurious acts. However, in establishing its liability practice, the international organization can transfer responsibility for settling claims to its Member States, to a claims commission or an arbitration court. These alternative dispute settlements arrangements are translated in the SOFA with the Host State and function as counterpart to the immunities of jurisdiction granted to the international organization and the Troop Contributing Countries. The different claims procedures in UN, EU, NATO and AU operations are described in detail.

The purpose and scope of Chapter 21 is to set out the law relating to individual criminal responsibility under international law in relation to Peace Operations. It takes the crimes listed under the Rome Statute of the ICC as a starting point for the examination of individual criminal responsibility under international law. It additionally sets out a number of legal considerations relating to the exercise of international criminal justice in relation to Peace Operations. This includes the conditions under which persons connected with a Peace Operation or commanders and civilian superiors can incur individual criminal responsibility. This last chapter also addresses attacks on a member of a Peace Operation, and the assistance of Peace Operations in the administration of international justice.