REDUCING HARM IN MILITARY SECURITY OPERATIONS:
A LAW ENFORCEMENT HANDBOOK FOR MILITARY COMMANDERS
Soldiers from the Kosovo Force provide security for a field visit by the UN Special Representative in Kosovo, Bernard Kouchner. The photo shows at least three security organizations operating in close proximity to each other. Who is in overall command and how is communication managed? Such situations require clear delineation of responsibility and an understanding of who does what if security challenges arise that might result in humanitarian concerns.
REDUCING HARM IN MILITARY SECURITY OPERATIONS: A LAW ENFORCEMENT HANDBOOK FOR MILITARY COMMANDERS
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# LIST OF ABBREVIATIONS

<table>
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<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>BPUFF</td>
<td>Basic Principles on the Use of Force and Firearms</td>
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<td>CCLEO</td>
<td>Code of Conduct for Law Enforcement Officials</td>
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<td>COH</td>
<td>Conduct of hostilities</td>
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<td>CWC</td>
<td>Chemical Weapons Convention</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<td>IHL</td>
<td>International humanitarian law</td>
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<td>IHRL</td>
<td>International human rights law</td>
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<td>LOAC</td>
<td>Law of armed conflict</td>
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<td>MiSO</td>
<td>Military in security operations</td>
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<tr>
<td>NIAC</td>
<td>Non-international armed conflict</td>
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<td>ROE</td>
<td>Rules of engagement</td>
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<tr>
<td>RUF</td>
<td>Rules governing the use of force</td>
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PREFACE

Responsibility for maintaining law and order generally falls to civil authorities such as the police and other law enforcement agencies that are equipped, organized and trained for such operations. The primary role of most state armed forces, by contrast, is to protect their country against external threats (international armed conflict, IAC) and to deal with internal, non-international armed conflict (NIAC). However, armed forces may be called upon to support civil authorities where the level of threat, the degree of violence or the scale of the challenge exceeds the capabilities of traditional law enforcement agencies.

Tasks in such situations could include:
- enforcing a curfew during a state of emergency
- securing government buildings or polling stations
- reinforcing law enforcement agencies during disturbances
- operating checkpoints
- patrolling the streets
- searching for and seizing illegal goods
- arresting and detaining criminals.

There is no “enemy” in law enforcement operations, which we shall also refer to as “security operations” in this handbook. The purpose of such operations is to “serve and protect” – serving the community and citizens and protecting them against unlawful acts.

In particular, this means protecting life, security and property and maintaining the rule of law. Because military forces are often not equipped, organized or trained for such missions, there is a risk they could cause harm to citizens and unnecessary damage to possessions and property. The aim of this handbook is to reduce that risk.
The International Committee of the Red Cross (ICRC) often uses the term military in security operations (MiSO) to refer to the use of military forces in law enforcement operations with a law enforcement mandate, in which international human rights law (IHRL) and domestic law regulate their operations. This contrasts with traditional combat roles, in which international humanitarian law (IHL) (also known as the law of armed conflict (LOAC))\(^1\) regulates how armed forces operate.

This handbook provides military commanders with basic guidance on preparing for and conducting security operations in such a way as to reduce harm to people affected by them. These security operations include those peacekeeping operations in which IHRL and national laws apply.

This handbook is a companion to a previous ICRC publication on integrating the law into decision-making for military security operations.\(^2\) The present publication is designed for military commanders and staff planners tasked with supporting law enforcement agencies, and for writers of staff procedures for these operations. It is aimed principally at the level of battalion and company command but will also be helpful for those operating at brigade level.

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1 “LOAC” is the term most commonly used by the armed forces to refer to international humanitarian law, along with “the law of war”.

INTRODUCTION

What is the nature of harm in military security operations?
The role of law enforcement officials is to serve the public and to protect their lives and property. In the majority of situations worldwide, they do so in such a way that people can go about their lives in a safe, secure environment. However, where there are tensions and disagreements within and between communities, and law enforcement officials are directed to intervene – potentially with the use of force – the risk of harm increases, both to the public and to those officials. If military forces are part of that intervention, the risk of physical or psychological harm is likely to further increase.

Military intervention can result in injury and even loss of life. While this is particularly the case when lethal force is used, death and injury may also occur when less-lethal weapons are used, such as baton rounds, irritant agents and water cannon. In addition to those at whom the force is directed, bystanders may also suffer harm. The risk of harm increases significantly when personnel fail to follow security instructions and procedures. If crowd violence occurs, people may be killed or injured by members of the crowd and by soldiers in their response. Violence can cause physical harm and/or enduring psychological trauma. This can be exacerbated if property is damaged or stolen. Failure to follow correct procedures regarding arrest, detention and searching of persons and property can result in emotional harm for those detained and their families.

Soldiers conducting law enforcement operations can also suffer harm, depending on their involvement and their preparation in terms of training and equipment. They may be killed or injured, and can suffer psychological harm because of what they have done or witnessed, particularly where the potential for such harm is not recognized and acted upon.

Finally, the public may lose trust in those who are empowered to protect them, and the armed forces may suffer reputational damage. This can lead to recurring unrest and can take many years to repair.
Why does MiSO present a challenge for military forces?

Security operations are often conducted in densely populated areas around the world, and military forces are often ill-equipped and poorly prepared for such tasks. Military doctrine is based on LOAC, the rules governing the conduct of hostilities, because that is the law that applies in armed conflict. However, many military forces are deployed in response to other situations of violence\(^3\) in which IHRL and domestic law are the applicable legal frameworks. The armed forces are generally less familiar with these bodies of law. Moreover, a soldier may face both combat situations and law enforcement duties within a short span of time and space. The doctrine and rules of engagement (ROE) for a specific operation must reflect the applicable law if it is to be effective, and it must be communicated clearly to those involved. Not knowing what rules apply can lead to unintended violations of the law and consequently to human suffering.

Secondly, military education and training are still generally oriented towards armed conflict and traditional military operations. Soldiers learn how and when to use their rifles and they are prepared for combat, but they are often ill-prepared to perform law enforcement tasks and to interact with the civilian population. Military personnel are not routinely trained in this role and there is a risk that they become a liability to themselves, to their colleagues and thus to the authorities. They may also be a threat to the very people they are supposed to protect – the people under a state’s jurisdiction caught up in the violence – and may well jeopardize the very purpose of their action, i.e. the restoration of peace and order and a reduction in harm.

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\(^3\) Other situation of violence: A situation of collective violence in which the level of violence has not reached the threshold of armed conflict. This includes situations of internal disturbances, internal tensions such as such as riots, isolated and sporadic acts of violence and other acts of a similar nature, together with other forms of collective violence below the threshold of armed conflict. See “The International Committee of the Red Cross’s (ICRC’s) role in situations of violence below the threshold of armed conflict: Policy document”, International Review of the Red Cross, No. 893, February 2014, pp. 275–304: https://www.cambridge.org/core/journals/international-review-of-the-red-cross/article/international-committee-of-the-red-crossss-icrcs-role-in-situations-of-violence-below-the-threshold-of-armed-conflict/64183418A12D456A04D7BB59529547D5.
Thirdly, members of the public may be killed or injured because those conducting security operations have no suitable equipment. Soldiers who are carrying firearms may be more inclined to use them if they lack equipment such as shields, helmets, body protection and less-lethal weapons.

Fourthly, not only are those personnel who use force accountable for the consequences, but so are those at headquarters who are responsible for planning operations and those giving the orders. Such accountability implies a need for prior planning, sound procedures, good leadership and an effective sanctions regime.

Lastly, law enforcement is principally the task of police and gendarmerie forces. Military forces may be called on to reinforce or substitute for them during specific operations or when they cannot cope with the situation. Different doctrines and approaches to planning, incompatible communications and other equipment and multiple on-scene commanders can all lead to confusion and hence to unnecessary harm. Coordination between military, police and other agencies is therefore essential.

The doctrine, equipment, education and training that military forces require for security operations differ substantially from those they need for their warfighting role, and it is critically important to so choose and design these as to ensure that the military force operates in a legal, professional and effective manner.

The aim of this document is to highlight key aspects of security operations, so that military commanders and their staff have the information and guidance they need to best prepare the troops under their command, and so reduce the risk of harm.

**STRUCTURE OF THIS HANDBOOK**

Chapter 1:  The legal framework governing the use of force in law enforcement operations
Chapter 2:  Doctrine for armed forces involved in law enforcement operations
Chapter 3:  The education, training and preparation of soldiers who will be taking part in security operations
Chapter 4:  The equipment required, including a non-exhaustive table of equipment that could be useful
Chapter 5:  The planning of security operations, drawing heavily on the ICRC publication *Decision-Making in Security Operations*
Chapter 6:  A brief introduction to the conduct of security operations
CHAPTER 1: THE LEGAL FRAMEWORK

THE LEGAL FRAMEWORK

The first step in reducing the risk of harm to people subject to the use of force is for all troops to know and understand the rules under which they are operating and to be able to apply the principles of the legal framework that applies.

Military forces are typically organized, trained and equipped for combat operations (conduct of hostilities (COH)), which are governed by LOAC, centred on the Geneva Conventions and their Additional Protocols. LOAC is only applicable in an international or non-international armed conflict and governs the conduct of hostilities.

Law enforcement/military security operations are governed by domestic law and IHRL, even when they are conducted during an armed conflict. These two bodies of law are profoundly different from LOAC, especially concerning the right to life.

1.1 LEGAL CLASSIFICATION

The legal classification of a situation, which determines how security forces are legally empowered to respond to different situations, will be particularly sensitive during a transition – in time and/or space – from law enforcement to COH, and vice versa. At such inflection points, commanders must remain mindful of the clear differences and interplay, if any, between the two legal frameworks and how they impact the conduct of operations, especially if both paradigms exist side by side (i.e. when conducting law enforcement tasks during armed conflict). Once LOAC gives way to the law enforcement paradigm (IHRL rules and standards), the restrictions on the use of force become much tighter.

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It is not always easy to assess which legal framework applies, including during the transition from conflict (where both COH and law enforcement operations paradigms may apply)\textsuperscript{6} to a “peaceful” situation (where only the law enforcement operations paradigm applies). Indeed, the situation on the ground may not always be consistent across the same area of operations.\textsuperscript{7} In most cases, such assessments are left to senior legal staff at the strategic or political level, and the final decision rests with political leaders. Nevertheless, commanders and their staff must understand the applicable legal frameworks. Commanders will need to provide the clearest possible guidance to subordinates, to ensure that the level of force and other operational procedures and actions are in accordance with those frameworks. They can provide this guidance by amending the ROE, or by any other means. The legal classification must remain under constant review at this stage, and the commander will need regular advice from their legal adviser or superior commander.

In some cases, military forces are deployed in a purely law enforcement capacity during a NIAC. Where the mission of the force is separate from the conflict itself, the commander must remain mindful that elements of domestic law and IHRL will apply. Some troops may be required to conduct combat operations and so operate in accordance with LOAC, in which the rules governing the use of force towards certain individuals are more permissive than those applying to personnel operating only under IHRL and domestic law. The commander must make clear to their troops how they expect them to behave. Situations like these can be legally complex. Soldiers and junior commanders will need guidance and appropriate training to ensure they are clear on the issues. Force must be directed in a way that minimizes the impact on those who pose no threat to law and order, and the use of force by military forces must be appropriately regulated.

1.2 BASIC PRINCIPLES

The level of protection for certain persons differs in the different legal paradigms, so commanders and subordinates must understand how the principles apply in each situation, how they affect the level of force permissible and


\textsuperscript{7} US Marine General Charles Krulak illustrated this complexity with the Three Block War concept in the late 1990s. In Krulak’s example, soldiers may be required to conduct full scale military action, peacekeeping operations and humanitarian aid within the space of three contiguous city blocks.
how it may be lawfully directed. Commanders and their staff must remember that, in law enforcement operations, the use of force is no longer governed by the principles of LOAC (distinction, proportionality and precaution). However, those words may be used in a law enforcement operations paradigm, with important differences in meaning.

<table>
<thead>
<tr>
<th><strong>LAW ENFORCEMENT OPERATIONS</strong></th>
<th><strong>CONDUCT OF HOSTILITIES</strong></th>
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<tbody>
<tr>
<td><strong>Use of force</strong></td>
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<tr>
<td>Use of force as an exceptional measure against individual(s) posing a concrete threat to law and order and public security.</td>
<td>Collective resort to force between parties to an armed conflict.</td>
</tr>
<tr>
<td>Use of firearms as an extreme measure of last resort against individual(s) posing an imminent threat to life.</td>
<td>Aim: defeat/overpower the enemy militarily.</td>
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<tr>
<td>Aim: maintain law and order and public security.</td>
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<tr>
<td><strong>Necessity</strong></td>
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<tr>
<td><strong>Strict necessity</strong></td>
<td><strong>Military necessity</strong></td>
</tr>
<tr>
<td>• Based on individual conduct and threat.</td>
<td>• Presumed against lawful targets:</td>
</tr>
<tr>
<td>• In pursuit of a legitimate law enforcement objective.</td>
<td>– based on status or function</td>
</tr>
<tr>
<td>• Firearms as a last resort, arrest rather than kill, differentiated use of force.</td>
<td>– based on conduct (direct participation in hostilities).</td>
</tr>
<tr>
<td>• Minimum amount of force necessary.</td>
<td>• Not based on individual threat.</td>
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<td></td>
<td>• First resort; no general obligation to capture rather than kill a person constituting a lawful target.</td>
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<td></td>
<td>• Amount of force higher than the minimum is tolerated, unless it would violate the prohibition of superfluous injury or unnecessary suffering.</td>
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<td><strong>LAW ENFORCEMENT OPERATIONS</strong></td>
<td><strong>CONDUCT OF HOSTILITIES</strong></td>
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<tr>
<td><strong>Proportionality</strong></td>
<td><strong>Proportionality</strong></td>
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| *Strict proportionality*        | • Proportionality protects civilians and other protected persons against direct attack and against excessive incidental harm during attacks on lawful targets.  
• This principle does not limit the right to harm a person constituting a lawful target. |
| • Force used and potential harm (including to the person against whom force is used) must be strictly proportionate to:  
  - the seriousness of the offence  
  - the law enforcement objective to be achieved.  
Harm to bystanders must be avoided as far as possible. | |
| **Precaution**                  | **Precaution**              |
| *Precaution*                    | Take all feasible measures to minimize incidental civilian harm. |
| If possible, plan operations to avoid the need to use force. | |
| **Before operations**           | • Training traditionally does not include de-escalation of force, reflecting conduct of hostilities.  
• Personnel must not be equipped with weapons prohibited under IHL, e.g. riot control agents as means and method of warfare, or expanding bullets. |
| • Training in de-escalation of use of force and alternatives to using force.  
• Equipment must allow differentiated use of force:  
  - protective equipment  
  - alternative (less-lethal) weapons. | |
| **After operations**            | • Investigation into alleged war crimes.  
• Obligation to punish IHL violations. |
| • Investigation into every death or injury caused by the use of force. | |
Two international United Nations (UN) human rights documents provide specific guidance for MiSO doctrine:

- The *Code of Conduct for Law Enforcement Officials* (CCLEO)*8*
- The *Basic Principles on the Use of Force and Firearms* (BPUFF).*9*

Although these are soft law standards, they have been widely used by human rights bodies to determine whether use of force in a particular case was unlawful or excessive, and thus arbitrary. In addition, while domestic legislation around the world differs significantly in its interpretation of the principles in the BPUFF and CCLEO, the core principles of legality, necessity and proportionality are generally recognized as customary international law. These instruments are hence important both because of their normative value and because they constitute technical standards regarding good practice in the use of force. They are appended to this handbook.

The basic principles for security operations are, in order of consideration:

- legality
- necessity
- proportionality
- precaution
- accountability.

These are often grouped under the mnemonic PLAN + P.

### 1.2.1 LEGALITY

States must adopt domestic laws, regulations, decrees, directives, manuals, etc. that regulate the use of force and firearms in law enforcement operations. This framework needs to define, through standard operating procedures, the circumstances in which law enforcement officials are allowed to use force (in terms of “who, when, how”) and in particular, the legitimate law enforcement objectives for which force can be used.

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10 BPUFF Principle 5.
Domestic law, in accordance with applicable international or regional legal frameworks, also needs to set the parameters for the use of weapons and ammunition by law enforcement officials, and detail the circumstances under which they may use them. To prevent misinterpretation and abuse, such rules must be written in a clear and unambiguous manner. Law enforcement agencies must implement the national legal framework regulating the use of force and firearms. In particular, law enforcement officials may resort to the use of force only to achieve legitimate law enforcement objectives, and in accordance with the circumstances specified in domestic legislation.\textsuperscript{11}

According to international law (IHRL), military personnel can conduct law enforcement operations as long as they follow the principles linked to the different paradigms. However, in domestic law, states have different rules regarding the deployment of armed forces in law enforcement operations, in such areas as arrest, detention, search and seizure and, in particular, the use of force. National and local authorities need to know in which situations they can request military support for law enforcement tasks. It should be made explicit for civilian, armed and security forces how this support is requested, who takes responsibility and how this support should be planned, coordinated, and conducted.

Any use of force that lacks sufficient legal basis or would serve a purpose that cannot be justified as a legitimate law enforcement purpose is unlawful by definition, without even examining whether the type and/or level of force is in accordance with the principles of necessity and proportionality.

\textbf{1.2.2 NECESSITY}\textsuperscript{12}

In law enforcement operations, the use of force must be an exceptional measure taken in pursuance of a legitimate law enforcement objective. This means that law enforcement officials may resort to the use of force only if other means prove ineffective or would not achieve the legitimate law enforcement objective.\textsuperscript{13} The use of self-defensive equipment and techniques, (e.g. shields, helmets, bullet-proof vests and bullet-proof means of transportation) may obviate the need to use force.

If the use of force is absolutely necessary, law enforcement officials may only use the minimum amount of force needed to achieve a legitimate law enforcement objective.

\textsuperscript{11} BPUFF Principle 1.  
\textsuperscript{12} BPUFF Principles 4 and 9.  
\textsuperscript{13} BPUFF Principle 4, CCLEO Article 3.
objective. If available, less-lethal and less-harmful measures must therefore be used first whenever possible, ensuring a differentiated use of force. The possibility of choosing between different weapons should enable an appropriate use of force in response to a given situation, allowing authorities to effectively pursue a legitimate law enforcement objective while minimizing the risk of death and injury.

Finally, force may only be used for as long as it is necessary to achieve the legitimate law enforcement objective.

The use of firearms by law enforcement officials must be seen as an extreme measure of last resort. Law enforcement officials may only use firearms when other less violent means available are not or would not be effective, and only in the following limited situations:

- To defend themselves or others against the imminent threat of death or serious injury.
- To prevent a particularly serious crime involving grave threat to life.
- To arrest a person presenting such a danger and resisting the officials’ authority.
- To prevent the escape of a person presenting such a danger.\(^\text{14}\)

In the situations above, law enforcement officials might use a firearm without the direct intention of killing (i.e. still hoping that their action may only result in injury and not in death). However, the BPUFF also set clear and absolute limits for situations in which law enforcement officials use their firearms with the intention of killing another person. They impose the highest possible threshold for use of firearms, (e.g. in hostage situations or suicide bombings), requiring there to be a direct and immediate, almost instant, threat to life. The intentional lethal use of firearms is permissible only if strictly unavoidable to protect against an imminent threat to life.\(^\text{15}\)

As part of the “last resort” requirement, law enforcement officials must, wherever possible, give a clear warning of their intention to use firearms or other potentially lethal force, and sufficient time for the warning to be observed,

\(^{14}\) BPUFF Principle 9.

unless such warning would unduly place the law enforcement officials or other persons at risk of death or serious injury, or would be clearly inappropriate or pointless in the specific circumstances.\textsuperscript{16}

\textbf{1.2.3 PROPORTIONALITY}\textsuperscript{17}

Even if the legality and necessity criteria are satisfied – i.e. the use of force has a basis under domestic law and is absolutely necessary to achieve a legitimate law enforcement objective – law enforcement officials must still exercise restraint in using force and act in proportion to the seriousness of the offence and the legitimate objective to be achieved.\textsuperscript{18}

The type and level of force used and the harm that it can cause to the subject posing the threat must be weighed against the gravity of the threat the subject poses and the law enforcement objective to be achieved. In other words, the law enforcement official must balance the anticipated harm, including harm to the person(s) posing the threat, against the benefit of averting harm to other people and the importance of the law enforcement objective.

If the expected harm outweighs the anticipated benefit, the use of force becomes disproportionate.

This can mean that pursuing a legitimate law enforcement objective must be aborted or suspended even if the type or level of force is the only means of achieving that objective (rendering it justifiable under the principle of necessity).

For instance, the risk of taking a life or causing serious injury is only proportional if it results from action intended to avert a lethal or similarly serious threat. Intentional use of lethal force is only proportional if it saves another life. BPUFF Principle 9 states this clearly. Using potentially lethal force in self-defence or the defence of others is only permitted in response to imminent or serious threat of death or serious injury, and not in response to the threat of lesser harm, e.g. in defence of property.

\textsuperscript{16} BPUFF Principle 10.  
\textsuperscript{17} BPUFF Principle 5a.  
\textsuperscript{18} BPUFF Principle 5 (b).
1.2.4 PRECAUTION

Law enforcement operations must be planned in such a way as to avoid or minimize the use of force as far as possible. Responsibility for taking the necessary precautionary measures is shared between all levels of law enforcement, the higher command level maintaining overall responsibility.

States and law enforcement agencies should develop a broad range of means, weapons and munitions to provide alternatives to the use of firearms.

Law enforcement officials must be equipped with such alternatives and trained in their use to apply a differentiated use of force. They must also have self-defensive equipment and techniques at their disposal, to minimize the need to use any kind of weapon for self-defence.

The right to life must be preserved during a law enforcement operations. This includes not only the right to life of law enforcement officials and bystanders, but also that of people who pose a threat.

1.2.5 ACCOUNTABILITY

IHRL requires states to protect the right to life. A state therefore bears legal liability when its agents – including law enforcement officials – use unlawful and/or excessive force.

States must therefore ensure that law enforcement agencies are subjected to effective external oversight, and that law enforcement officials are held accountable for their conduct in the fulfilment of their duties, including the use of force. Both superior officers and state officials under their command can be held individually responsible, incurring criminal and administrative sanctions for wrongful conduct.

Any arbitrary or abusive use of force or firearms by law enforcement officials must be punished as a criminal offence under domestic law. Any use of force that causes death or injury must be reported promptly. A system should be established to promptly report any use of firearms by law enforcement officials in the performance of their duty.

19 BPUFF Principles 2, 3 and 5(b).
20 BPUFF Principles 2 and 10.
21 BPUFF Principles 7 and 22–24.
State authorities – and military commanders – should set up a process to review incident reports, under the jurisdiction of independent administrative or prosecutorial authorities. To be effective, these investigations must be conducted promptly and in an independent and impartial manner. They must involve the victims and/or their next of kin, whose right to an effective remedy must be upheld.\textsuperscript{22}

Following the use of force, medical care must be provided for any casualties, and their families or friends must be informed.\textsuperscript{23}

\section*{1.3 Rules of Engagement and Rules Governing the Use of Force}

ROE are issued by the competent authorities and lay down the policy and legal limits on the use of military forces. They combine operational, policy and legal constraints into a single reference source for military commanders and their subordinates. ROE provide authorization for and limits on the use of force, the positioning and posturing of forces, the employment of certain specific capabilities and other aspects. For military and policy reasons, they are likely to be more restrictive than the law requires – especially if military forces are carrying out law enforcement operations in a situation where LOAC also applies, but where the commander can clearly separate the security task from the combat task.

As a minimum, the ROE for a military force conducting security operations should give guidance on self-defence, arrest and the use of force – especially lethal force. For each operation, a new set of ROE should be drafted, and passed all the way down to the lowest level of command.

Military forces will often operate alongside law enforcement agencies. Police officers are trained and empowered to make decisions on the use of force under rules governing the use of force (RUF), which are based on domestic law or international guidelines. Military and police commanders should discuss and understand the implications of ROE and RUF applying in the same area of operations.

\textsuperscript{22} See UN, \textit{International Covenant on Civil and Political Rights}, Art. 2(3): https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights; BPUFF Principles 6, 7, 11, 22, 23, 24, 26; CCLEO Article 3 (Commentary (c)).

\textsuperscript{23} BPUFF Principle 5 (c) and (d).
For each operation, ROE can be summarized on soldiers’ cards and should be distributed to, explained to and practiced by all who are to be deployed as law enforcement officials. The *Sanremo Handbook on Rules of Engagement*\(^\text{24}\) contains clear and simple guidelines for drafting ROE, including examples of soldiers’ cards for self-defence and peace operations.

### 1.4 STATES OF EMERGENCY

A state of emergency is a situation in which a government is empowered to limit certain fundamental rights – provided they are derogable under IHRL – for the safety and protection of the population under its jurisdiction.

A government can declare a state of emergency during a natural disaster, civil unrest, armed conflict, pandemic or epidemic. This allows the government to derogate from (i.e. limit or suspend) some of the human rights and freedoms normally enjoyed by the persons under its jurisdiction. That could involve imposing a curfew or limiting freedom of movement or peaceful gatherings. In some situations, martial law may also be declared, allowing the military greater authority to act. However, universal IHRL treaties prohibit derogation from certain rights, especially the right to life, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and the right not to be retrospectively punished for a criminal offence.

MiSO doctrine should make it clear that a state of emergency does not give the military unlimited power. The non-derogable fundamental rights always apply, even during a state of emergency.

The following principles should be kept in mind when limiting human rights and freedoms:

- legality
- proclamation
- notification
- time limitation
- exceptional threat
- proportionality
- non-discrimination
- compatibility with other norms of international law.

CHAPTER 2

MILITARY IN SECURITY OPERATIONS DOCTRINE

2.1 GENERAL CONSIDERATIONS

This chapter offers guidance on what information to incorporate in national MiSO doctrine. It includes specific law enforcement tasks, but this does not mean that a military force is necessarily permitted to carry out all these tasks in every national context.

While we make frequent reference to the use of force in law enforcement operations, doctrine should emphasize the centrality of employing a graduated response to any situation, with communication as its starting point. From there, the response should be adjusted to reflect the level of threat, in a series of steps set out in the diagram below and amplified in Chapters 3 and 4. Commanders and subordinates should be familiar with these steps and practiced in their application, in order to achieve their aims while avoiding excessive force.

2.1.1 GRADUATED/DIFFERENTIATED RESPONSE

The level of force applied is in direct response to the behaviour and threat presented by an individual or group, described as the “offender” in the diagram below.

- A compliant individual should encounter no force.
- An individual who is resisting should encounter moderate/limited force.
- One who is physically aggressive should encounter less-lethal force.
- Deadly/lethal force should only be used where there is reasonable belief that there is an immediate threat of death or serious physical injury.

Throughout the event, law enforcement officials must seek to de-escalate the situation, while being prepared for escalation.
2.1.2 LEGAL BASIS, LIMITATIONS AND COMMAND RELATIONSHIPS

As a first step, national MiSO doctrine should clearly stipulate:

- the legal basis for deploying military forces as law enforcement officials, both nationally and – if appropriate – internationally
- the limitations on their employment
- the command relationships under which they might operate.
As highlighted in Chapter 1 under the principle of legality, states must adopt domestic laws, regulations, decrees, directives, manuals, etc. that regulate the use of force and firearms when military forces are involved in law enforcement operations. To prevent misinterpretation or abuse, such rules must be written in a clear and unambiguous manner.

2.1.3 REFERENCE TO IHRL AND STANDARDS, INCLUDING BPUFF AND CCLEO

As explained in Chapter 1, BPUFF and CCLEO provide specific guidelines to law enforcement officials on their conduct and on the use of force. These guidelines are well established and generally recognized by law enforcement officials as the applicable international standards. They have been widely used by human rights bodies to determine whether the use of force was arbitrary in a particular case. Those responsible for drafting military doctrine for law enforcement operations should use these documents as a basis.

2.1.4 CONDUCT OF SOLDIERS DEPLOYED ON LAW ENFORCEMENT OPERATIONS

Law enforcement operations place certain demands upon soldiers who are more accustomed to combat. They will be operating among the civilian population, at comparatively close quarters and often in small teams where decisions are needed swiftly and can have significant consequences. This all requires judgement and restraint. Commanders at all levels must give clear direction and guidance to their subordinates, and monitor their actions carefully. CCLEO Article 5 lists prohibited behaviour, such as torture and any other cruel, inhuman or degrading treatment or punishment. Article 6 states that law enforcement officials must ensure full protection for the health of persons in their custody and secure medical attention whenever required. Article 7 prohibits corruption on the part of law enforcement officials.

2.1.5 LEGAL AUTHORITY FOR LAW ENFORCEMENT OFFICIALS

CCLEO Article 1 and its commentaries define the term law enforcement official and describe their duties as being to serve the community and to protect all persons against illegal acts, “consistent with the high degree of responsibility required by their profession”. This clearly tells military commanders how soldiers acting as law enforcement officials must behave, and that point should be included in doctrine. Options for a graduated response, extending to the use of force and firearms, should be clearly identified and used as a basis for training.
Doctrine should reflect BPUFF Principle 11, which stipulates that rules and regulations should regulate:

- the conditions under which law enforcement officials may carry firearms
- the types of firearms and ammunition they may use (see Chapter 3 of this handbook)
- the control and storage of firearms
- the issuing of warnings before firing
- reporting when law enforcement officials use firearms in the performance of their duties.

### 2.1.6 THE USE OF FORCE

Guidance on the use of force in response to different situations should be a central feature of national MiSO doctrine. Doctrine should stipulate that the use of force should be an exceptional act, guided by the principle of necessity, as identified in CCLEO Article 3. This is further developed by BPUFF Principle 4, which requires law enforcement officials to apply the minimum force necessary, using non-violent means such as verbal communication as far as possible and only resorting to force and firearms if other means prove ineffective.

### 2.1.7 USE OF FIREARMS

Military doctrine regarding firearms and law enforcement operations should clearly state that their use is considered an extreme measure. Every effort should be made to avoid using them, especially against children and other vulnerable groups. In general, they should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend them. These provisions are set out in BPUFF Principles 9 and 10, the latter requiring law enforcement officials to issue clear warnings unless the circumstances do not allow. BPUFF Principle 5 requires that if the use of force and firearms is unavoidable, law enforcement officials must exercise restraint and must take immediate action regarding casualties and notification; whenever a firearm is discharged, a report should be submitted promptly to the competent authorities.

Law enforcement officials must follow certain principles after opening fire, to minimize damage and loss of life. Principle 6 requires personnel to report injury or death caused by the use of force and firearms promptly, in accordance with Principle 22. BPUFF Principle 7 stipulates that governments must punish arbitrary or abusive use of force and firearms as a criminal offence under national law.
2.1.8 DOCTRINE GOVERNING COMMAND, CONTROL AND COMMUNICATIONS, AND THE GENERATION OF INTELLIGENCE

Military forces will rarely conduct security operations in isolation:

- They may be supporting or working with police forces or other agencies.
- They may be controlled by their host government ministry (often the ministry of defence) while being subordinate to another ministry (such as the ministry of the interior).
- Other security agencies may be operating alongside them.
- A number of first responders will be involved (such as ambulance or fire and rescue) and maybe international organizations.
- Where the force is a multinational force, command relationships and accountability will be further complicated.

MiSO doctrine should consider the following questions:

- Which organization, and which appointment, holds overall authority for deployment of the military force?
- Which appointment has issued the orders to the force?
- What is the command relationship between the above two?
- How will changes in orders be passed from one level to another?
- How will organizations operating in the same space communicate with each other?

In many situations, police forces and military units will operate jointly alongside each other under their own respective chains of command. It is critical that this joint arrangement does not develop into independent operation, where forces conduct operations in the same space but fail to inform, cooperate or coordinate. That increases the risk of harm, both to the public and to members of the respective forces.

There must be a clear and workable plan for communicating between organizations operating in the same space.

This applies to each level of the chain of command, e.g.:

- between brigade headquarters and the police equivalent
- between battalion headquarters and the police equivalent
- between companies operating on the ground and police equivalents.
The communications systems of the various organizations may not be inter-operable. If this is the case, a system of liaison officers should be considered, together with a series of coordination meetings to ensure that everyone is informed of planned activities that could have an impact on the situation and possibly require intervention involving use of force.

It is equally important to share information between organizations and to generate intelligence, both to feed operations and to distinguish potential offenders from bystanders. This will often be sensitive and there may be a reluctance to share information, possibly to protect sources. Doctrine should highlight the need to establish protocols and procedures regarding the sharing of information. This will not necessarily involve details of those who might be involved in crime and/or fomenting disorder. A military unit arriving in an unfamiliar area will need to rapidly build up a picture of the physical makeup and social dynamics of that area, helped by existing law enforcement relationships and experience.

The following questions might be helpful in building up such a picture:
- Where do people gather at particular times of day? E.g. social clubs and community centres.
- When do high levels of movement occur, leading to choke points?
- Who are the influencers, both in support of and in opposition to the security forces?
- How do people receive their information – radio, internet, newspapers or gatherings and rallies?
- How can law enforcement officials best communicate with the population and their influencers?

### 2.2 SPECIFIC LAW ENFORCEMENT TASKS

A military force preparing for security operations should anticipate conducting a range of tasks, jointly or in isolation. The governing doctrine should highlight some of the generic aspects of these tasks, to assist in preparation. Some of these tasks are outlined below.

#### 2.2.1 SURVEILLANCE

In an increasingly technical and globalized world, law enforcement agencies are resorting to a wide range of surveillance methods such as photography, camera surveillance and the interception of letters, telephone and internet communications. The technical means of invading a person’s privacy without being noticed are becoming increasingly powerful and easy to use.
Military forces could be asked to assist police in shadowing a group or individuals. The use of body cameras or the filming of individuals in a crowd, for example, can both help to hold law enforcement officials accountable and discourage violence by individuals under observation. This implies a greater need for legal safeguards, to ensure that use of surveillance methods conforms to the principles of legality, necessity and proportionality. Military doctrine should make it clear which surveillance methods are allowed, with or without a search/surveillance warrant. Domestic legislation and military doctrine for MiSO should be formulated in such a way as to prevent random surveillance or violation of the presumption of innocence.

**2.2.2 ARREST AND DETENTION**

The right to liberty and security is one of the oldest basic human rights and is enshrined in numerous universal and regional human rights documents.

*Detention* covers all deprivation of liberty and includes arrest.

*Arrest* involves apprehending a person for the alleged commission of an offence or by action of an authority; the reason for the arrest must be lawful and the arrest must be carried out according to the law and by authorized persons. Strict procedures should be followed, and fundamental judicial guarantees must be upheld if states restrict the right to liberty. Deprivation of liberty affects the rights of an individual beyond personal liberty and freedom of movement, and any such restriction must be subject to judicial control.

**2.2.2.1 Arrest**

Soldiers may be familiar with procedures for detaining enemy combatants in conflict but not with their powers of arrest. Doctrine should cover the importance of understanding the legal basis for arrest, and the procedures to be followed to ensure that the conduct of the arrest is lawful.

The power of arrest is a very strong power. A law enforcement official may arrest a person only under certain circumstances and according to procedures established by law. Law enforcement officials must exercise the discretion afforded to them in compliance with the principles governing all law enforcement actions: legality, necessity, proportionality and accountability.
Domestic law usually allows for arrest on the following grounds:

- conviction of an offence
- to ensure compliance with a court order or other legal obligation
- to bring a person before the competent legal authority if they are suspected of having committed an offence or being about to do so.

The law may permit arrest on additional grounds, such as protecting people from harming themselves or for deportation purposes. However, such provisions need to be justified by legitimate public order or security concerns and must not be discriminatory.

The UN has issued *Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules).25 The *International Covenant on Civil and Political Rights* (ICCPR)26 also contains important guidance on these issues.

An arrest must comply with the following provisions:

- *International Covenant on Civil and Political Rights*, Article 9(1) “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”
- *Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules)

If military personnel with the role and mandate of law enforcement officials have established that there may be grounds for arrest, they must still verify that there is an actual need to carry out the arrest.

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Preference must always be given to less restrictive means of achieving the objective of the law enforcement action. For instance, while it might be tactically sound to briefly detain individuals acting as agitators towards others in a crowd, or who have failed to comply with a curfew, commanders should make a judgement as to whether formally arresting them is necessary in the circumstances, or whether the long-term objective might be better achieved through a warning.

The arrest must be proportionate to the objective; there must be justification for it. Proportionality is often ensured through provisions in domestic law that allow arrest only for offences of a certain gravity. Judicial control is necessary to ensure that military forces are accountable for any arrest they carry out.

The arresting party must present the arrested person promptly to a judicial authority, to determine the lawfulness of the arrest. Domestic legislation usually stipulates the period allowed (often between 24 and 48 hours) but it should in any case not exceed a few days (Committee on Civil and Political Rights (CCPR), General Comment No. 35 on ICCPR, Article 9).  

Doctrine should also include procedures for the transfer and formal handover of the arrested person to the police/gendarmerie.

When carrying out an arrest, soldiers acting as law enforcement officials must respect the fundamental rights of the arrested person, which includes informing them of the reasons for the arrest and of their rights as a result of the arrest, presenting the person to the judicial authority, ensuring access to legal counsel, notifying the family, treating the person with humanity, etc. Where security operations are conducted jointly with a police force, these tasks normally fall to the police; however, military forces must be mindful of the legal requirements.

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28 For peacekeeping operations, it is also very important to know to which agencies personnel can hand over arrested persons, and more importantly, to which agencies they cannot. For example, if a host country’s security forces are likely to execute, ill-treat or torture arrestees, there may be national caveats for troop-contributing countries, specifying that they will not hand over arrestees if there is a risk of such abuse.
Where soldiers acting as law enforcement officials encounter resistance from the person whom they are attempting to arrest, they must decide whether and how to resort to the use of force or even firearms. The use of firearms needs to be carefully assessed and is only justified if the person to be arrested presents an imminent or grave danger to the life of others (including that of the soldier or his colleagues; see BPUFF Principles 9, 15 and 16). Where the possible damage and harm caused by using force outweigh the legitimate interest of the arrest, soldiers should refrain from carrying it out. Such situations often occur unexpectedly, and thorough, regular training of soldiers based on realistic scenarios is required to enable them to take instantaneous, almost instinctive, decisions in line with the standards.

In the case of a planned arrest, the principle of precaution should be reflected in careful preparation, based on sound intelligence (regarding the location, possible risks for others, etc.) and with all possible precautions being taken to protect bystanders, soldiers and the person to be arrested.

Anyone who has been subjected to unlawful arrest or detention has an enforceable right to compensation (ICCPR, Article 9(5)).

### 2.2.2.2 Detention

*International Covenant on Civil and Political Rights, Article 10(1)* “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

Humane treatment of detainees includes observing the prohibition of torture and cruel, inhuman or degrading treatment – including corporal punishment – and providing adequate conditions of detention that do not amount to ill-treatment.\(^29\) The basic conditions of detention must ensure that a person’s health is not affected merely by being deprived of liberty.

Only officially recognized places of detention should be used. These might include temporary holding facilities at army bases, police stations, ordinary prisons or remand prisons. Temporary holding facilities at army bases and

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police stations are generally used for short periods and are not designed to detain large numbers of people for longer periods. If that occurs, conditions of detention tend to deteriorate quickly, leading to overcrowding, poor hygiene and a lack of water, food and health care. Swift decisions on release, or transfer to a remand prison, can prevent such problems. If the situation makes it necessary to detain individuals away from suitable facilities – which should only occur for the shortest time possible – the requirements for humane treatment and respect for dignity should be observed.

See the Nelson Mandela Rules.

**Disciplinary and punitive measures**

These must follow clear, pre-established rules and regulations; the measures and their application in the specific situation must be subject to control and may not be inhumane or degrading. The use of force in detention facilities should be limited to situations of self-defence, escape and resistance to lawful orders (Body of Principles No. 30; SMR Nos 27–33 and 54(1)) and is subject to the general principles governing the use of force (BPUFF Principle 15).

**Women**

Women deprived of their liberty may not be subjected to discriminatory treatment; they must be kept separate from male detainees (Mandela Rules, No. 11)), supervised by female officials and protected against sexual violence. For further guidance regarding the treatment of women detainees, please see the Bangkok Rules.³⁰

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Juveniles

Juveniles should only be detained as a last resort and with specific care for their needs and vulnerabilities, as specified in the Beijing Rules.³¹

Under the Beijing Rules, those detaining juveniles must:
- respect the basic rights of any person deprived of their liberty
- involve parents and guardians in the process
- detain juveniles separately from adults
- promote the juvenile’s overall well-being.

Interviewing

Interviews of arrested persons must fully comply with:
- the presumption of innocence
- the right not to be compelled to testify against oneself or to confess guilt
- the prohibition of torture or other forms of ill-treatment.

The proper recording of all relevant details of the interview (duration, intervals, identity of all those present) constitutes one means of safeguarding such rights. Please see the Mendez Principles for guidance.³²

Role of the ICRC

As part of its mandate, the ICRC visits people deprived of their liberty in situations of armed conflict and – based on its right of humanitarian initiative – in other situations of violence. The purposes of these visits are purely humanitarian, and the aim is to ensure that detainees are treated with dignity and humanity and in accordance with international norms and standards. The ICRC conducts its visits with the agreement of detaining authorities and in accordance with its specific working procedures. It then shares its findings with the authorities concerned through constructive and confidential bilateral dialogue, with a view to improving treatment and conditions of detention.


2.2.3 SEARCH AND SEIZURE

Search and seizure are two important powers available to law enforcement officials. They are defined as follows:

Search: Deliberately looking for a person, an object or information, for a legitimate law enforcement purpose.

Seizure: Taking possession of an object for a legitimate law enforcement purpose.

These powers cover a wide range of measures often used in criminal investigations. Compared to other powers of the police or the military – such as the use of force and firearms, or arrest and detention – search and seizure might appear less significant in terms of human rights – a routine police activity. However, one should not underestimate their impact on the individual affected, and search or seizure measures must comply with the principles of legality, necessity, proportionality and accountability. Everyone has the right to a protected private sphere without arbitrary external interference or fear of negative consequences. Interference by the state and its agents must therefore be regulated by law, and police may only carry out a search on legal grounds and in accordance with procedures established by law.

Military personnel conducting law enforcement operations may need to carry out searches in connection with various tasks.

For example:

- personal searches, such as:
  - spot-checks on suspicious persons
  - routine searching of people entering restricted areas
  - routine searching of arrestees
  - searching of people at vehicle checkpoints
  - identity checks
- vehicles (e.g. at checkpoints)
- property (e.g. homes, business premises or goods containers)
- cordonning off an entire neighbourhood and seizing all military-related equipment, to prevent further unrest.

Doctrine should include a likely division of tasks between the military and police forces, where appropriate. There should be well-defined limitations on the roles of the military.
Doctrine should specify the following:
- whether, in accordance with domestic law, the military have the authority to conduct searches and seizure (e.g. is there a need for a warrant?)
- if a warrant is required, whether it stipulates:
  - the reason for the search (e.g. strong suspicion of an offence or searching as a justifiable deterrent, perhaps to dissuade potential offenders from entering an area)
  - the procedures for the search, including the need to preserve the dignity of those being searched – e.g. conducting the search quickly and efficiently, by a person of the same gender, observing specific rules for women and children.

Risks may be reduced if a military force is tasked primarily to maintain the security cordon. Where possible, the police/gendarmerie should execute the actual search and seizure of material. If the seized goods are likely to be used as evidence in court, handling and registration should be performed by specialists.

Doctrine should establish specific control mechanisms and directives:
- Who can order search and seizure?
- Who takes the lead?
- What procedures must be followed to gain access to property?
- Who can arrest people?
- Where do arrested persons go once detained?
- Who can seize material, what material can be seized and where does the material go afterwards?
- What details should be recorded on bags containing material?
- Who collects images of the scene?
- Who is in charge of follow-up?
- Who pays for any damage to private property?
(In the above list, “who” refers to the appointment or agency.)

Doctrine should clearly regulate these points and they should be made clear to everyone who is to take part in the search and seizure operation. Details may vary from one operation to another; doctrine should establish general rules, and the operational order for a specific operation should fill in those details.
Doctrine should specify measures to both prevent abuse of power and protect military personnel against false allegations thereof, such as:

- ensuring the presence and cooperation of the owner
- issuing search certificates and receipts (in case of seizure), countersigned by the owner
- searching the searchers before and after the event
- making photo and video records.

Searches should be properly supervised by a superior officer or a judicial authority, depending on the type of search.

Body searches encompass a wide range of measures such as simple pat-down searches, strip searches, body cavity searches and taking fingerprints, blood or DNA samples. These all affect a person’s dignity and privacy, albeit to varying degrees, and none of them should be carried out without justification. Body searches should be carried out professionally by a person who is trained for the task and of the same sex as the person, and in the least intrusive manner possible, thus limiting as far as possible the inherently humiliating character of the search.

Searches of premises can also be perceived as intrusive and embarrassing, as they will provide a deep insight into the way of living and/or working of the people concerned. In most countries, searches of premises require a search warrant issued by a judicial authority; searches without a warrant are usually restricted to exceptional circumstances. Additional procedural requirements must be respected, such as ensuring the presence of witnesses and recording the facts of a search, and law enforcement officials must avoid causing unnecessary disorder, damage or destruction when carrying out a search.

### 2.2.4 PUBLIC ORDER MANAGEMENT

Whatever name is given to an assembly (gathering, demonstration, protest, etc.), it is not normally against the law. In most situations, people have the right to gather peacefully. This should be expressed in national law and reflected in military doctrine.

States can place limits on the right of assembly by, for example, requiring prior notification, without which a demonstration would be unlawful. But even if a peaceful assembly is considered unlawful under domestic law, its peaceful
nature should be considered before taking any action. When dispersing such assemblies, law enforcement officials should avoid the use of force or limit force to the minimum necessary.

Dispersing a peaceful assembly using force may violate the right of peaceful assembly and requires legal justification (e.g. public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others). States have a duty to facilitate and protect those exercising the right of peaceful assembly, and this should be reflected in legislation and in law enforcement regulations and practice.

BPUFF Principles 12, 13 and 14 provide useful guidance regarding the differentiated use of force in handling such situations. If an assembly is unlawful but non-violent, operations should be carefully planned and executed, to ensure that the actions of the security forces do not cause it to become violent. If members of an assembly are threatening or using violence, any force used should be the minimum required to achieve the objective and should conform to the principles of PLAN + P.

### 2.2.5 BORDER MANAGEMENT

Military forces may be deployed to provide border security. The rules for law enforcement apply just as much in situations of border management as elsewhere; force must be an exceptional measure, taken when other means remain ineffective or without any promise of achieving the intended result, and any use of force must be consistent with the principles and requirements of legality, necessity, proportionality, precaution and accountability. Because observing the principle of non-refoulement\(^{33}\) can be a matter of life and death, denial of access to territory cannot be arbitrary. Authorities should establish doctrine to manage the arrival of asylum-seekers in a manner that is safe and respects the state’s international obligations.

\(^{33}\) Under IHRL, the principle of non-refoulement stipulates that no one may be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment, or other irreparable harm.
Summary of key points concerning MiSO doctrine

• IHL rules on the conduct of hostilities do not apply in situations where military forces are deployed solely on security operations. This should be stated clearly in doctrine.

• All military personnel should understand the applicable legal framework (IHRL/domestic law) and how it impacts their operations. Legal advisers should be involved in training and operational planning, and available to commanders during the conduct of security operations and investigation of incidents where appropriate.

• Military terms that are only valid in situations of armed conflict should be avoided as far as possible. For example, use threat rather than enemy; protect or support rather than attack or defend; detain rather than capture.

• Military forces should not be considered in isolation but should contribute to creating a safe environment, alongside other agencies. Doctrine should clearly reflect the need for effective coordination and set out the measures required to achieve it.

• Doctrine should list only those law enforcement tasks that the military force is legally authorized to perform in the host country.

• Doctrine should stipulate that the use of lethal force in security operations is restricted to situations in which there is an imminent or grave threat to life.

• Doctrine should reflect international standards relevant to the use of force and firearms in law enforcement (e.g. the principles of legality, necessity, proportionality, precaution and accountability) and offer guidance on alternatives to the use of force and firearms in response to an escalation of violence.

• Doctrine should explain how the mindset of a military force can be changed from conduct of hostilities to the carrying out of security operations. Options include thorough training and scenario-based table-top exercises. This might provide the basis for some form of certification that troops must acquire before they can be deployed on security operations, particularly where training is conducted on less-lethal weapons. Military units that have been designated for security operations should retain that status.

• Doctrine should emphasize that people breaking the law are not “the enemy” – they are persons under a state’s jurisdiction who are doing something wrong and require an appropriate response.
A military force transitioning from combat to a law enforcement role will probably have to acquire, train with and use different, role-specific equipment corresponding to the applicable legal framework. Law enforcement officials must ensure that their choice and use of weapons and other equipment are compatible with international legal standards on the use of force.

3.1 LEGAL CONSIDERATIONS

Each country has its own regulations and procedures regarding the weapons and equipment it uses. However, governments are obliged to give their troops the weapons and protective equipment they need to apply the law. See BPUFF Principle 2.

While there are international standards on the use of force, there are no international standards or guidelines for assessing the effects of particular firearms or other weapons in law enforcement operations. States must establish national processes for assessing and testing each weapon before acquisition and deployment, to assess risks to life and health and to ensure compliance with international human rights norms, and with standards such as BPUFF.

3.2 TYPES OF EQUIPMENT

The types and quantities of equipment procured and issued to soldiers preparing to conduct a law enforcement role should enable them to carry out their duties effectively in accordance with the principles of law enforcement operations (PLAN + P). In particular, their equipment should enable them to adopt a graduated/differentiated response to the situations they encounter.
3.2.1 PROTECTIVE EQUIPMENT

BPUFF Principle 2 requires that law enforcement officials be equipped with self-defensive and protective equipment, such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, to decrease the need to use weapons of any kind, notably by reducing the risk of injury to law enforcement officials. The equipment should be accompanied by training and tactics for de-escalation, to reduce the need to resort to force – including the use of weapons.

Protective equipment and vehicles must be suitable for the situation; law enforcement officials should not appear overly aggressive or threatening. For example, wearing riot gear and using dogs, horses and tear gas during a peaceful demonstration may convey a hostile impression and create a sense of fear among the demonstrators, making it difficult for law enforcement officials to convince them of their peaceful intentions. Such an approach may increase tension and aggression, lead to panic and cause the situation to escalate.

To protect law enforcement officials and thereby reduce the need for force, one should consider issuing shields (both half- and full-length), leg and knee protection and non-flammable clothing. Marking soldiers’ helmets and equipment with their individual designator allows identification and makes it possible to hold personnel accountable for their actions, reducing the risk of harm to the public.

3.2.2 OTHER EQUIPMENT

Megaphones can help law enforcement officials communicate with the public and reduce the risk of actions being misinterpreted. Photographic equipment, including helmet and body cameras, can both render law enforcement officials more accountable and reduce the risk of violence towards them. Equipment such as plasticuffs will enable personnel to apply restraint with a minimum of force.

3.2.3 LESS-LETHAL WEAPONS

To limit the use of firearms, and to limit the use of force to what is necessary and proportionate, BPUFF Principles 2 and 3 require governments and law enforcement agencies to develop or acquire non-lethal incapacitating weapons for use as alternatives to firearms with conventional ammunition, to equip law enforcement officials with such weapons and to train them in their use. These weapons are now commonly known as less-lethal weapons.
Although there is no internationally agreed definition of a less-lethal weapon, the term is generally used to describe weapons designed to carry a lower risk of death or serious injury than firearms, if used within strict constraints.

Weapons with a wide variety of mechanisms of injury have been described as less lethal, for example:

- those causing injury by blunt impact (e.g. hand-held batons and plastic, rubber or foam bullets)
- irritant toxic chemicals (e.g. riot control agents, such as pepper spray and tear gas)
- electric shock weapons such as tasers.

In the interests of legibility, this handbook will not generally place the expression *less-lethal* in scare quotes. However, one should bear in mind that, depending on the specific injury mechanism of the weapon and the circumstances in which it is used, a less-lethal weapon can still cause serious injury or even death. The injury risks of the specific weapon must therefore be assessed before use and its use strictly controlled accordingly.34

Alternatives to firearms, including less-lethal weapons, may only be used with the aim of reducing the amount of force used by law enforcement officials, and their use should be carefully controlled (BPUFF Principle 3). In accordance with BPUFF Principles 4 and 5 and CCLEO Article 3, such weapons may only be used when strictly necessary and proportionate, and only if other, less harmful, means are ineffective to achieve a legitimate law enforcement objective. They must be deployed and used in such a manner as to minimize injury and damage. In any case, law enforcement officials should always use the least harmful means that are necessary and proportionate to a legitimate law enforcement objective. If the use of a particular weapon amounts to potentially lethal force in the specific circumstances, even if it is described as a “less-lethal weapon”, then its use should be limited in the same strict manner as a firearm.

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Riot control agents
The use of riot control agents, as defined in the Chemical Weapons Convention (CWC), is permitted for law enforcement, including domestic riot control purposes. However, any such use must be consistent with international standards on the use of force. The CWC also requires that the types and quantities of riot control agents and delivery systems held by states for law enforcement be consistent with those purposes.

The commonly used riot control agents are the sensory irritant chemicals CS (tear gas), oleoresin capsicum (OC) (pepper spray), and PAVA (a synthetic chemical similar to OC). Malodourants (foul smelling chemicals causing sensory irritation) also constitute riot control agents.

The ICRC’s position is that the use of toxic chemicals as weapons for law enforcement operations should be limited to riot control agents only. Toxic chemicals that do not fit the CWC definition of riot control agents (such as anaesthetic and sedative chemicals) should not be used. This is because of the risk of death and permanent disability posed by the use of highly toxic chemicals as weapons for law enforcement, the risk of undermining the prohibition of chemical weapons and the constraints imposed by the applicable legal framework, including IHRL.

3.2.4 FIREARMS AND AMMUNITION
In international law, a firearm is defined as “any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive”. Ammunition is defined as

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35 UN, Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC), Art. II.7, “Any chemical not listed in a [CWC] Schedule, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure.” Riot control agents are also “toxic chemicals” as per the CWC definition, Art. II.2, “Any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals.”: https://www.opcw.org/chemical-weapons-convention/download-convention.


“the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm”. This includes ammunition of all calibres, including shotgun ammunition containing metal shot, and metal bullets coated in plastic or rubber. Such weapons, in their expected or reasonably foreseen use in combination with their specific design, have kinetic and penetrating effects that are likely to cause serious injury or death. This constitutes potentially lethal force.

Weapons are sometimes used with ammunition that is designed to cause blunt trauma injury, such as rubber, plastic or foam bullets. Although such projectiles are commonly described as “less lethal” in comparison with conventional ammunition, they can cause serious injury or death, depending on the circumstances.

 Weapons should not be used in law enforcement operations if their effects cannot be strictly controlled so as to be:
• necessary
• proportionate to the seriousness of the offence and the legitimate law enforcement objective
• consistent with the principle of precaution.

Weapons that should not be used in law enforcement operations include, in particular:
• Assault weapons in fully automatic (multiple-shot/burst) mode and other fully automatic weapons. This is because automatic fire lacks the accuracy required of weapons in law enforcement operations and cannot be strictly controlled and directed at the specific person(s) posing an imminent threat, while minimizing the risk to them and to bystanders.
• Explosive weapons, such as fragmentation grenades, mortars, rockets, bombs and missiles. This is because their effects cannot be considered necessary or proportionate in law enforcement operations. In particular, they are not compatible with the obligation to minimize damage and injury, both to the specific persons(s) posing an imminent threat and to bystanders.39

38 Ibid., Art 3(c).
39 However, it may be legitimate, depending on the circumstances, to use certain explosive devices against objects, such as doors and barricades. Though some devices such as stun grenades or flash-bangs contain a small amount of explosive, they do not produce fragmentation effects and are not designed to injure or damage by means of explosive forces. They are therefore not explosive weapons.
Commanders of troops deploying on security operations with firearms are responsible for ensuring that they understand and observe the rules governing the deployment of firearms and are familiar with the effects of those weapons.

**Expanding bullets**

Expanding bullets are, generally, open-tipped bullets that expand or flatten easily when they enter the body, so increasing wound size and creating more severe tissue damage when compared to equivalent non-expanding (full metal jacket) bullets. The use of expanding bullets in armed conflict is prohibited by the Hague Declaration of 1899 and customary IHL and stems from the prohibition of weapons that cause superfluous injury or unnecessary suffering.

However, expanding ammunition is not prohibited in law enforcement operations, as long as the use of firearms is itself legitimate. Indeed, expanding bullets are used in law enforcement operations to minimize the risk of the bullet passing through the individual posing an imminent threat and endangering bystanders. However, expanding bullets should only be used when strictly necessary and proportionate, when less extreme means are insufficient, and keeping in mind the obligation to limit injury or damage, including injury to the person against whom force is used.41

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41 For more background, see *The Use of Weapons and Equipment in Law Enforcement Operations*, op. cit.
Summary of key points regarding MiSO equipment

- Equipment should be made available to troops preparing to conduct law enforcement operations that is legally compliant and enables a range of responses to different levels of threat.

- Law enforcement officials should be equipped with self-defensive and protective equipment, such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, to decrease the need to use weapons of any kind, notably by reducing the risk of injury for law enforcement officials in carrying out their duties.

- A range of less-lethal weapons should be made available, to offer alternatives to lethal force; their use should be strictly controlled.

- Expanding bullets should only be used when strictly necessary and proportionate, when less extreme means are insufficient, and keeping in mind the obligation to limit injury or damage, including injury to the person against whom force is used.

- Weapons whose effects cannot be strictly controlled should not be employed in law enforcement operations. These include fully automatic weapons in burst mode and explosive weapons, such as fragmentation grenades, mortars, rockets, bombs and missiles.

- All weapons and equipment issued specifically for law enforcement operations should be accompanied by suitable training, to ensure that troops are familiar with their specific capabilities and the risks involved in their use.
CHAPTER 4: TRAINING FOR SECURITY OPERATIONS

This chapter offers guidance to those responsible for preparing troops to conduct security operations.

All elements of the force are likely to require some training, depending on their role, not only to refresh their small-team military skills, but also to understand the constraints and requirements of the law enforcement role and to familiarize them with new equipment and techniques. Headquarters staff may need to be trained on law enforcement principles and techniques, such as accountability (record keeping of search and seizure operations, and incidents involving the use of firearms or other potentially lethal force). Existing law enforcement agencies are often a valuable source of local knowledge and could deliver training directly or support a military training programme in an advisory capacity, while military legal advisers should be involved whenever possible.

Training prior to a specific security operation must be appropriate and comprehensive, ideally addressing both theory and practice, and must be based on the legal provisions identified in earlier chapters. Where relevant and feasible, training should be conducted with agencies likely to be involved in security operations alongside military forces, such as police and gendarmerie, fire and medical services and representatives of local government.

4.1 THEORETICAL TRAINING

Soldiers must understand the major differences between warfighting and security operations, in particular the different legal paradigms. While there should be no need to go into legal depth, the basic provisions highlighted in BPUFF and CCLEO should serve as the minimum standard for all those involved.

Theoretical training might include lectures, the use of audiovisual aids and virtual reality tools and – for commanders in particular – group discussions on how to apply doctrine.
This training could include the following:
• the different legal frameworks and their relevance to the nature of operations
• a comparison of roles between police forces and armed forces
• the different mindset/philosophy required for the two roles
• restrictions on the use of force and firearms
• techniques for the escalation and de-escalation of violence and use of force
• discipline
• the main lessons learned.

The audiovisual aids and group discussions might cover (real life) examples and scenarios in which the military must react to a law enforcement situation. The instructor should give the class the opportunity to discuss and present their solutions.

Such examples might include:
• a drunk, aggressive individual threatening a third party
• an aggressive individual threatening a military patrol, possibly seizing a patrol member and/or a weapon
• an individual attempting to break into a military facility
• an individual attempting to escape after having been detained (both unarmed and armed).

The ICRC supports training for military and police personnel at the Rwandan Peace Academy. The ICRC often supports such training worldwide. There is a clear benefit to training police and military personnel alongside each other so that both parties can share experience and perspectives.
4.2 PRACTICAL TRAINING

The purpose of practical training is for soldiers, both individually and collectively, to become familiar with the principles and techniques involved in security operations and able to apply them in realistic and challenging situations. Soldiers should learn to use a graduated/differentiated response that starts with communication, how to de-escalate a situation and how to use less-lethal equipment.

As highlighted in BPUFF Principle 20, commanders should practice the use of alternatives to the use of force, including:

- verbal intervention
- peaceful settlement of conflicts
- understanding of crowd behaviour
- methods of persuasion, negotiation and mediation.

Where possible, a realistic and representative population should be used to challenge the troops under training and comprehensive debriefs should be conducted.

4.2.1 VERBAL INTERVENTION AND NEGOTIATION SKILLS

External communication (sharing information and opening channels of communication with members of the community) is a necessary part of a graduated/differentiated response but is not normally a feature of conventional military operations. Law enforcement agencies approach this in a number of ways, such as designating specially trained liaison officers or using contact points, public address systems or pre-arranged meetings with people of influence.

A useful discipline is the ability to map a community and understand levels of power and influence, perhaps to identify potential allies who could moderate crowd behaviour. The military commander should weigh up the means at their disposal for communicating with those in their area of responsibility, including the use of interpreters if necessary. All military personnel must understand their role in communicating with members of the public and how their approach can influence the public’s response – and hence the prevailing atmosphere.
To prevent escalation of a calm situation or to de-escalate a violent one, verbal intervention should be the first technique. Soldiers are generally not taught to communicate with opponents. During training it should become clear who is best at doing so, and this will not always be the most senior person present.

Concepts that soldiers need to learn might include the following:
• Explaining why an intervention is taking place and why the military is involved is a first step.
• Identifying and negotiating with the spokesperson of an angry crowd could make them feel heard and so ease tensions.
• Persuading someone not to proceed with a criminal act or to lay down their weapon (with or without the threat to use force against them otherwise) is a skill that needs practice.

The following should be considered under the heading of “negotiation skills”:
• With an individual (a “counterpart”)
  – If possible, try to speak to the counterpart away from others, so that they are not influenced by them.
  – Separate yourself from your colleagues so as not to appear threatening; consider two people to be the maximum, one if possible.
  – Adopt an open stance, with hands visible and open. If you are carrying a weapon, hold it by your side.
  – Look clearly at the counterpart but avoid staring. Speak clearly and slowly. Take time to listen to your counterpart and if necessary reflect back the points they have been making, so that they know you have heard and understood their points. Let them propose solutions and listen to these carefully.
  – Try to reduce tension through non-verbal communication, nodding to reflect comprehension/agreement and smiling if the situation justifies it. Consider offering refreshment as a means of easing the tension.
  – At the end of the exchange, take time to summarize the discussion and if there is a conclusion or agreement, state your understanding of this clearly.
  – Remain calm throughout; avoid showing frustration or anger. Try to conclude on a positive note, even if points of disagreement remain.
  – Allow the counterpart to leave first, only moving away once they have departed.
• With a crowd
  – Try to identify a person or persons of influence (not necessarily the most voluble person(s)); try to draw them away from the crowd and follow the steps above. Ensure that the negotiation is conducted in sight of but unaffected by the crowd, to avoid the sense that the influencer has been detained.
  – If no one suitable can be identified, try using a loud hailer or megaphone.
  – Try to avoid wearing protective equipment such as a helmet or body armour unless the situation necessitates it. A less defensive posture might ease the tension and assist engagement.

After training, it should be clear in which cases verbal intervention is likely to be the most successful option, who will be the spokesperson and what could be said.

In situations that could involve a differentiated use of force, the lawful procedures should always be followed, such as issuing warnings, safeguarding bystanders and treating casualties. If weapons are fired, the correct recording procedures should be followed. If anyone is detained, the correct procedures should again be followed, and violations highlighted and debriefed.

4.3 TRAINING WITH NEW EQUIPMENT AND TESTING ADAPTED TECHNIQUES

There is a range of equipment specifically suited to law enforcement operations that is designed to enable law enforcement officials to conduct their roles more effectively and lawfully. Soldiers should be able to train with equipment that is likely to be used on a particular mission – including protective equipment and less-lethal weapons – and learn to use firearms lawfully in specific situations. During training, it is important to stress that “less-lethal” weapons can be lethal if used incorrectly.

4.3.1 PROTECTIVE EQUIPMENT

Soldiers must be familiar with protective equipment – such as shields, helmet visors and fire extinguishers – and know how to use it to provide maximum protection for themselves and their colleagues. This equipment should be fully incorporated into training as far as possible, and not issued just before operations.
4.3.2 LESS-LETHAL WEAPONS
Guidance on using less-lethal weapons is provided in the UN Guidance on Less-Lethal Weapons in Law Enforcement and the ICRC publication The Use of Weapons and Equipment in Law Enforcement Operations already mentioned.

Baton rounds and plastic bullets
These are designed to incapacitate rather than kill or injure. Training should allow soldiers to become familiar with the minimum distance to the person or object that they must observe to avoid excessive harm. Rounds should not be directed towards the face or head. Training should enable soldiers to fire the weapon with sufficient accuracy to strike a safe area on a person from the required distance. A soldier should not fire multiple projectiles at the same time because they cannot be accurately directed solely at the person posing a threat and may present unacceptable risks to bystanders.

Batons
Using (telescopic) batons against certain parts of the body – notably the head, neck or spine – while not unlawful, should only be done in a controlled manner and in order to achieve a legitimate law enforcement objective. This should be clearly demonstrated during training, ideally using dummies or protective equipment.

Pepper spray and tear gas
These are irritants that can be used to disperse a crowd. Training should ensure that they are used in a lawful manner, without affecting bystanders. Troops should be exposed to such irritants prior to operations, so that they understand what effect these agents have on the person and will recognize the effects if they are inadvertently exposed to them.

Water cannons
When used appropriately, these are less-lethal weapons that can be effective in crowd management. However, they can also pose the risk of serious injury or death if used in an uncontrolled manner. Training for crews should stress that water under high pressure must not be aimed directly at individuals at short range, especially if those persons are in elevated positions. Training

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should enable crews to control the pressure and direction of the jet in such a way as not to affect persons other than those targeted. Vehicle drivers should also be trained to negotiate confined spaces at low speeds, so they do not hit anyone while manoeuvring.

4.3.3 FIREARMS

If the situation justifies the carrying of firearms, pistols or single-shot rifles are recommended, as their use can be better controlled and their lethal effect limited.

Since these weapons are not necessarily those with which combat soldiers are familiar, training must be conducted to enable safe handling and use in challenging situations. Soldiers should be trained to carry and handle their weapons in such a way as to appear less threatening, while having them available for use if required.

They should be made familiar with how weapon states should change on order, both in escalation and de-escalation.

Warning shots are not normally considered acceptable practice in law enforcement operations because their effects are unpredictable:
• People may perceive the shot not as a warning but as an attack, and overreact accordingly, leading to escalation.
• A bullet fired as a warning shot can kill or injure a bystander.

Personnel should practice the firing of single, aimed shots and all weapons should be zeroed before deployment.

There may be soldiers who deploy on law enforcement operations whose personal or allocated weapon is a semi-automatic or fully automatic weapon. Such weapons should not generally be carried, or at least should not be used in fully automatic mode, as the firing of bursts would in most cases be inconsistent with international standards on the use of force in law enforcement operations. Training with semi-automatic weapons should therefore be conducted in single-shot mode.

Whenever firearms are carried by soldiers on security operations, they should be fully trained in their safe handling and confident in their use, so that this becomes a reflex in even the most stressful of situations.
4.4 TRAINING IN SPECIFIC LAW ENFORCEMENT TASKS

4.4.1 SECURING A PERSON, AN AREA OR A SPECIFIC PLACE

Securing a person, area or place will bring soldiers into contact with members of the public, often in tense situations, and training should focus on preparing individuals and groups to conduct such activities in accordance with the law and without escalating the situation unnecessarily.

The sequence for such a graduated/differentiated response might be as follows:

<table>
<thead>
<tr>
<th><strong>Communication</strong></th>
<th><strong>Limited force</strong></th>
<th><strong>Greater force</strong></th>
<th><strong>Lethal force</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Every soldier should learn how to ask for a person’s identity, ask their reason for passing a certain point, ask them what they intend to do in the near future and ask them to show any items in their possession.</td>
<td>If the individual is not responding to verbal instructions, limited force may be used, but without seeking to inflict injury. The individual might not understand the instruction, or a guard might need to restrict access by detaining a person, or to conduct a body search if an individual refuses to show what they are carrying.</td>
<td>If an individual poses a threat or deliberately disobeys instructions, the soldier may use greater force, but without risk to life. They could use a baton, plastic straps, handcuffs or unarmed combat techniques to restrain the person until arrest by colleagues or police.</td>
<td>If a person’s life is in imminent or grave danger, lethal force may be used, after a clear warning that such force will be used. Lethal force is the last resort, to be used only if all other means have failed to achieve the lawful aim and the situation justifies it.</td>
</tr>
</tbody>
</table>

All personnel should practice this type of graduated response, until it becomes a reflex.
4.4.2 ARREST AND DETENTION
All troops who may need to arrest and detain members of the public – for whatever reason – should be given basic practical training in how to conduct the arrest in accordance with the law, including the precise wording to be used, how to conduct a search of the individual and what to do with possessions. Different scenarios in terms of the individual’s reaction to arrest should be considered. This should be coupled with training in the lawful transfer of individuals to detention, what records of the transfer should be made, and who should hold those records.

ICRC staff support training for members of the Moldovan army, prior to their deployment on UN–mandated peacekeeping missions in Kosovo and Lebanon.

Interviewing
Where individuals are held in detention by military personnel acting as law enforcement officials, clear, unequivocal and lawful procedures should be drafted regarding interviewing (often referred to as “tactical questioning”) of detainees, using the Mendez Principles as a basis, and communicated to all personnel. Interviewing should only be conducted by trained personnel operating in accordance with those procedures. A clear roster for the supervision and visiting of detainees by commanders should be compiled and implemented.

43 Principles on Effective Interviewing for Investigations and Information Gathering, op. cit.
4.4.3 SEARCH AND SEIZURE
All soldiers should be trained in the basic skills of individual search and the correct handling of possessions.

Military forces warned for security operations may elect to allocate some troops to undergo specialist training in search and seizure so that there is a capacity to conduct detailed searches of sensitive objects and locations in accordance with the law. This training will include evidence handling and how to conduct the search while causing minimum distress to occupants of a dwelling.

Personnel should undergo training on preserving the chain of evidence, which includes recording:
- events
- date and time of search
- number of troops involved
- area searched
- motives and circumstances
- warning given
- number of displaced people
- actions taken in respect of those displaced or arrested, and of property confiscated.

They should also be trained on how to report to their chain of command using technical assets such as photos or videos.

4.4.4 PUBLIC ORDER MANAGEMENT
Training for public order management tasks should focus on the need to avoid escalating tension, using a range of methods to reduce or de-escalate tension. This often presents a challenge for a military force, as their presence and actions may well increase tensions at an otherwise peaceful gathering. Soldiers require realistic training if they are to deal correctly with a potentially hostile and violent gathering.

Such training should include:
- an understanding of crowd dynamics
- verbal intervention and the procedures of negotiation and persuasion
- swift deployment of troops equipped for the task
- awareness of the sequence of escalatory and de-escalatory procedures to be followed, the orders to be given and how to carry out those tasks
• communication with troops and a clear understanding of the chain of command
• actions to be carried out in reaction to “what ifs”, in order that soldiers react in a controlled and pre-arranged manner without using unnecessary force; such “what ifs” might include:
  – a sudden change in the atmosphere of the crowd
  – members of the crowd producing weapons
  – a soldier being seized by the crowd, with or without a weapon
  – a soldier firing their weapon, either deliberately or unintentionally.

Summary of key points regarding training for MiSO
• Training in all aspects of MiSO plays a key role in preparing troops for their role and so reducing the risk of harm. Such training should be both theoretical and practical.
• Theoretical training should focus on the differences between warfighting and law enforcement operations, particularly the legal paradigms, the principles of law enforcement operations and how they might be applied in different situations.
• Practical training should focus on law enforcement operations techniques and likely tasks, such as search and seizure, arrest and detention and crowd management.
• During practical training, personnel should:
  – learn how to respond effectively and lawfully to different situations, and specifically how to de-escalate tensions through techniques including verbal intervention
  – learn how to use role-specific equipment, less-lethal weapons and alternatives to the use of lethal force
  – rehearse the use of lethal force as a last resort, including the procedures to be followed once firearms have been used and injuries may have resulted; this should include the debrief to highlight where appropriate procedures have been followed and where mistakes were made.
• Where relevant and feasible, training should be conducted with agencies likely to be involved in security operations alongside military forces, such as police and gendarmerie, fire and medical services and representatives of local government.
This chapter is a summary of the ICRC handbook *Decision-Making in Military Security Operations*. It is based on the generic military operational planning process, which should be familiar to most military planners.

### 5.1 OPERATIONAL PLANNING PROCESS

**UNDERSTANDING THE PROBLEM**
- Legal framework
- Command relationships
- Commander’s direction

**EVALUATION OF FACTORS**
- Intelligence preparation of the environment
- Environment
- The community
- Opponents, spoilers, likely offenders
- Own forces
- Time
- Rules of engagement

**DEVELOPMENT AND EVALUATION OF THE COURSE OF ACTION**
- Deployment
- Influence
- Wargaming

**COMMANDER’S DECISION**

Generic format of the operational planning process, adapted for law enforcement operations.
STEP 1: FRAME THE PROBLEM
The first step is to understand or “frame” the problem. To do this, we must go back to Chapter 1 and identify the legal framework(s) under which the military force will be operating. In law enforcement operations, the predominant legal frameworks will be IHRL and domestic law.

STEP 2: ANALYSE THE MISSION
In security operations, the task may originate from a law enforcement official or other civil authority, and not necessarily from the military chain of command. The commander must assess whether they can lawfully execute the given mission within the applicable law. They should therefore be conscious of their obligations under the relevant legal frameworks and the potential impact of their actions in human terms.

The commander must be very clear on command relationships, particularly in relation to other law enforcement agencies; is the force supporting – and possibly subordinate to – civilian authorities or police command, for example, or operating independently in the same area of operations?

The commander should analyse both specified tasks (tasks stated in the directives or orders received from their superior) and implied tasks (other tasks that the commander identifies as necessary to achieving the mission).

During this process, the commander and staff also check the legality of each task and determine what measures are needed to ensure it is executed in accordance with the law. These measures come in two forms: actions (expressed as missions to subordinates) and constraints (which shape planning and might subsequently be expressed as ROE or other coordination measures). The commander’s planning guidance to staff should ensure that they incorporate legal and humanitarian factors into their analysis.

STEP 3: EVALUATE THE FACTORS
For the intelligence preparation of the environment, the commander and staff need to develop or continuously monitor the following elements:

- Population locations and concentrations (towns, villages, hamlets, shelters, camps for refugees and displaced people, demonstrators, hostages and bystanders).
- Channels of communication with local representatives and community leaders, where appropriate.
• Channels of communication with other local military and law enforcement agencies, in order better to understand local law enforcement opportunities, challenges and risks.
• Existing policing and law enforcement measures and their effect on the population, including displacement.
• Potential offenders within the population.
• Patterns of offending behaviour that military forces may be able to counter (bearing in mind that military forces are not typically trained or equipped to carry out investigative or other specialized law enforcement functions).
• The most likely and worst-case scenarios for development of the situation.
• The risk, potential location and direction of future population displacement.
• The approach towards internally displaced people, refugees and others entering or crossing the area of operations.
• Cultural and customary patterns and their impact on community behaviour (such as regular places of worship, known protester hot-spots and historically sensitive locations).
• Local health-care and humanitarian services (such as the ambulance service), along with details of their personnel and capacities.
• The presence, location, situation and movements of any humanitarian organizations or UN personnel (civilian or military).
• The coordination mechanism required to update and share this information, promptly and routinely, with relevant staff cells throughout the planning and conduct of the operation.

While the intelligence branch will have a lead role in the above, this is not exclusively their task.

In most cases, the mission will take place in a highly populated area, not an isolated operating environment. It is therefore important to understand weather, physical terrain and especially human terrain.

While there is no enemy in law enforcement operations, one must understand the capabilities, intentions and modi operandi of potential opponents, spoilers and likely offenders. This information may be available from law enforcement agencies with past or current experience of the situation, which is one reason why effective sharing of information and intelligence between the police and the military is so important at this stage of the planning process.
The commander and their staff will need to assess, effectively and objectively, whether the force is adequately equipped and trained for the mission assigned.

Analysis of the factors will lead to a first draft of the ROE. That analysis also requires an understanding and analysis of existing police RUF (if any) and the implications of differences between these RUF and military ROE.

**STEP 4: DEVELOP AND EVALUATE COURSES OF ACTION**

Several courses of action need to be developed, based on the skills, equipment and availability of the military forces. This will probably pose a particular challenge, as there are likely to be other forces operating in the same environment, with similar tasks. Planners should consider ways of influencing different components of the target population – opponents, likely offenders, members of the community, etc. – and their likely effects. It is very important to consider the risk to members of the community at this stage, and that will guide the commander’s decision in the next step.

The aim of wargaming is not only to test the opponent’s capabilities against the strength of one’s own resources, but also and above all to evaluate the impact on the population. The wargaming exercise may also reveal potential problems with command and lines of communication.

**STEP 5: TAKE A DECISION**

Finally, the commander will take a decision. A course of action will be selected, and will be further refined until the commander agrees with its potential outcome. Staff will draft the operational orders, and all orders will be issued, right down to the lowest level, before the operation begins.

**5.2 COORDINATION AND COMMUNICATION**

One key difference between military combat operations and law enforcement operations is that there are likely to be at least two – and potentially many more – security forces or agencies operating in the same space, such as:

- regular law enforcement agencies
- military, armed or other security forces
- national security or intelligence agencies
- humanitarian organizations.
The authority for law enforcement operations may sit with civil leadership in the form of a magistrate, a local political leader such as a mayor, or a law enforcement official, rather than a military officer.

As the plan develops, the commander will begin to see the operational shape of their action and how it could potentially interact with, support or impede the work of the other agencies.

Military security operations will usually be conducted alongside law enforcement agencies such as national gendarmerie and police. Commanders must be clear that when conducting security operations in support of law enforcement agencies, their role will usually be to support civil authorities. The position of such authorities in the chain of command must therefore be clarified if it is not already defined in national law or military doctrine. Soldiers, police officers and others must understand the chain through which they are receiving direction. If they are engaged on the same mission as other law enforcement agencies (controlling the same crowd, for instance), that direction must be coordinated, and a means to achieve that coordination must be devised. Since soldiers and police officers operate to different guidelines on the use of force, chains of command – both downward (authority) and upward (reporting and responsibility) – must be clear and unambiguous.

Police and military headquarters will need to coordinate closely, to ensure that everyone involved in the management of an incident understands the tactical approach to take. For instance, if a police commander withdraws a police cordon to de-escalate the situation but the military is unaware of the reason why, a military commander might order riot-trained troops to advance into a crowd to try to re-establish the cordon, producing the exact opposite of the intended effect. Similarly, intentions to engage or negotiate with the population should be communicated to other agencies, to minimize the risk of those agencies’ actions undermining such efforts. It will often fall to the commander to negotiate their command status and command relationships. They must do so with a solid understanding of the legal responsibilities as well as the operational role.

Effective command and control requires coordination between law enforcement agencies and military forces working in close proximity. However, law enforcement and military communications systems are generally designed for different purposes and may not be compatible. The designated military staff
will need to cooperate with law enforcement counterparts to achieve adequate communications interoperability, possibly involving liaison officers, to allow the rapid, clear and unambiguous passage of key commands that will directly affect public safety (such as commands concerning the use of force and firearms, or a decision to lift crowd movement restrictions in order to avoid injuries from overcrowding).

In an exclusively military context, the usual response to complex situations like these is to establish a framework under which the designated commander can achieve unity of command. This may be more difficult to achieve in a security operation, especially if it involves multinational forces. In some cases, but not always, a unified chain of command may have been established under the original operational directive. In any event, the command relationships must facilitate legal compliance, reduce the risk of excessive use of force or other violations, and respect the long-term outcome, which will include a return to civilian law enforcement.

**LIAISON OFFICERS**

Liaison officers fulfil an important role in fostering mutual understanding and ensuring the smooth flow of information between commanders. In military security operations, commanders must prioritize any measure that reduces the risk of unnecessary impact on the community or unlawful use of force, and increases the options for reducing offending behaviour.

By clarifying operational responses between agencies, liaison officers (military to other agencies and civil authorities, and other agencies to military headquarters) offer a means of mitigating risks and enhancing the benefits of mutual support. Additional personnel familiar with legal standards applicable to law enforcement in the likely area of operations (managing opponents and potential offenders) may be required, to support planning staff. Police liaison officers or advisers can provide this capability. It will be important for all troops to understand the different policies regarding the use of force by other forces, particularly where international agencies are involved.
OTHER ORGANIZATIONS
Commanders may be unfamiliar with working alongside government agencies and international organizations, including humanitarian agencies, which requires a different approach to engagement during combat. Prior to the operation, it would be helpful to map such organizations according to their aims and objectives, areas of working and different expectations regarding assistance.

There is also a need to identify options for communicating with members of police forces, international organizations and health-care providers. These options might include holding routine meetings, meeting at short notice and communicating at a distance. Different organizations will follow different principles regarding neutrality, impartiality and independence, which will affect their preparedness to engage with military forces and to accept physical protection (escorts). Commanders should be mindful of such principles and troops should be directed accordingly.

COMMUNICATION WITH THE PUBLIC, OFFENDERS AND THE MEDIA
Commanders will also need to consider how to communicate with the general public and with (suspected) offenders, noting that communication is a two-way process that includes listening. It is important not to duplicate channels, to reduce the risk of sending mixed messages or causing confusion about police or military law enforcement actions.

The media may be present in a law enforcement situation, potentially in greater numbers than in conflict, where access challenges and personal risk may reduce the presence of media representatives. In law enforcement operations, the media can provide important means of communication, both inwards and outwards. Effective media relations can allow clear messages regarding the aims of the security operations to be passed on to the general population and potential offenders alike. At the same time, the media act as an informal accountability mechanism, providing commanders with feedback on the performance and perception of the operation and highlighting areas where the behaviour of offenders or their own forces may require their attention. It is therefore important to manage media relations properly, as regards both the sending and the receiving of messages.
French and British troops meet while conducting security patrols on the streets of southern Mitrovica. In multinational operations, communications are critical to ensure de-confliction and avoid misunderstandings among armed forces operating in the same space, possibly with different roles and ROE. As radio systems were incompatible, liaison officers were posted in the operations rooms of the various forces, to coordinate activities on the ground.
CHAPTER 6

CONDUCT

6.1 GENERAL

Prior to embarking on security operations, and in order to have the best chance of reducing the risk of harm to all involved, a commander might seek answers to the following questions:

**Legal framework**
- Has the legal framework for the deployment been clearly articulated, including reference to any derogations?
- Has the legal framework been clearly translated into ROE and RUF and conveyed to all elements of the force?
- If this is a multinational force, is there an understanding of national caveats and how they might affect the conduct of operations?

**Doctrine**
- Does the doctrine explain the different command relationships that might exist between in-place law enforcement agencies and a military force deployed either in support or substitution, and how these command relationships might be underpinned by effective means of communication, both technical and human (liaison officers and coordination meetings)?
- Does the national military doctrine clearly explain what means and methods might be available to meet force with an appropriate response?
- Does the doctrine clearly emphasize the importance of soldiers understanding the need to take a different approach during law enforcement operations than in combat, in particular that there are no “enemies” in law enforcement operations, and that they should only use lethal force as a last resort?

**Equipment**
- Does the issued equipment comply with the legal framework?
- Does the equipment enable a graduated/differentiated response to different levels of threat?
- Have weapons unsuitable for law enforcement operations been withdrawn?
### Training
- Have all soldiers likely to deploy on the law enforcement operations undergone training, including on the implications of the legal framework, ROE and RUF?
- Have soldiers received training on those weapons that are specific to the operation?
- Have all soldiers received training in the use of alternatives to the use of force?

### Planning
- Have the command relationships between security organizations been clearly laid down and understood by all agencies?
- Has a communications framework been established that enables the sharing of key information regarding the physical makeup of the area of operations and the social dynamics at play?
- Does the plan allow for tensions to be defused and the level of force to be differentiated in response to the threat on the ground?

When troops have been trained and equipped and operational orders have been issued, it is time for deployment, and execution of the mission. Commanders must satisfy themselves that troops understand that their role is to protect the population (and property, if necessary), but not to “defeat the enemy”.

A commander might consider the following:
- What force posture to adopt on deployment:
  - A visible presence, to demonstrate capability and give reassurance?
  - A discreet presence, with the majority of the force kept out of sight, to avoid inflaming tensions and provoking the community?
- What actions on the ground might prompt a change in this posture, in either direction?
- The local culture of public order, the lessons learned in that field, and the usual courses of action of hardliners, where and when they exist.
- How best to engage with representatives of the community, to understand their perspectives, to share information, to avoid misunderstandings and to reassure.
- The tempo of operations over the short term (days), medium term (weeks) and longer term (months); a high tempo of operations can demonstrate intent and resolve, but tired troops can become frustrated and can vent these frustrations on the local community, while a slow pace of operations can result in boredom, routine and similar frustration.
- How frequently to rotate troops between tasks, such as patrol, guard, quick reaction force and rest.
• What continuation training is required? This might include weapon handling, differentiation in the use of force and crowd control techniques.
• How often to meet representatives of other organizations such as police forces and first responders.

Escalation and de-escalation. An increase in violence should be met by an appropriate amount of force, but every effort should be made to reduce the amount of force used, to encourage and reflect a reduction in violence and return to “normality”.

A law enforcement response is a gradual/differentiated response to a given but evolving situation. If the situation is relatively calm and broadly under control, simply monitoring the situation is enough. Military forces might be present but perhaps only patrolling with weapons in a non-aggressive manner, or soldiers might not even be visible but the military is observing, possibly from the air.

If the situation requires more overt intervention, commanders at all levels should judge what might be appropriate and should be prepared to escalate if necessary, but always with a view to reducing the amount of force applied. The key is to anticipate the possible next steps, be aware of the various tools at the commander’s disposal, and be mindful of the likely reactions to each military action. Again, the principles apply: is it necessary to carry out a particular action at that time and in that manner, for example? Such questions should be asked when considering such measures as imposing a curfew, conducting house searches or restricting freedom of movement through roadblocks and check points.
Where violence is encountered, commanders should be constantly reviewing how the level of violence can be reduced through law enforcement action, and whether such action could inadvertently inflame the situation. The aim in each situation will be to identify and select opportunities to de-escalate the situation.

Soldiers can suffer physical and mental harm during MiSO, particularly in situations of tension and violence. To reduce this risk, commanders should ensure that they have a mechanism for remaining aware of the emotional state of the troops under their command and should ensure that subordinate commanders also take this approach. A policy for identifying soldiers under stress should be communicated down the chain of command, along with measures to address such situations. These might include rotating troops from patrols, or discussions with colleagues and commanders after a particularly demanding event.

Women should form part of each detachment. Their presence can often de-escalate a situation and they may more easily relate to women and children.

British troops conduct a joint patrol in Kosovo with officers from the UN International Police Task Force, the Kosovo Police Service and a local interpreter. The soldiers have adopted a non-threatening posture, with weapons slung and helmets carried, but they remain responsible for the protection of the civilian members of the patrol. Clear responsibilities among patrol members must be discussed and understood before the patrol sets out.
6.2 RULES OF ENGAGEMENT AND WEAPON STATES

Commanders must ensure that in addition to defining the ROE for an operation and ensuring that they are communicated to all levels of command, they give clear direction regarding the carrying of weapons and ammunition. Only those weapons and ammunition should be carried that it would be lawful to use in the situation. Troops must also understand weapon states.

There are three possible weapon states for magazine-fed weapons:
- Unloaded: Magazine in pouch or pocket
- Loaded: Magazine on the weapon but no round chambered
- Ready to fire: Magazine on the weapon and a round chambered, safety catch applied (on)
  The safety catch should only be released when the weapon is to be fired
  As noted above, weapons capable of fully automatic fire should only be used in single-shot mode

We shall not cover belt-fed automatic weapons in this handbook, as it would be very hard to justify their use for MiSO in urban areas.

As a rule, commanders and soldiers should deploy with a very clear understanding of the state of their weapons and of who has the authority to order a change of weapon state. It is not unusual to deploy with weapons in the loaded state (i.e. not made ready), and they should remain in this state for the duration of the operation. Personnel should only make ready when ordered to do so, or when faced with imminent threat of death or serious injury with no other way of averting the danger. To make a weapon ready is a significant escalation of force posture, and a soldier and commander should be prepared to justify this action or command. Considerable care should be taken to unload weapons at the end of the action if they have been made ready, and commanders should direct that this be carried out as part of a standardized procedure.

Soldiers may deploy away from their bases overnight or for an extended period. Commanders should consider how weapons are to be stored to ensure they are not taken and used by others who are not trained or familiar with the law.
**WARNING SHOTS**

Some military forces have adopted as policy the firing of a warning shot as an escalatory step, possibly to deter attacks or suicide bombing and in order to avoid or delay the use of lethal force.

As indicated above, warning shots are not normally considered acceptable practice in law enforcement operations, because their effects are unpredictable:

- People may perceive the shot not as a warning but as an attack, and overreact accordingly, leading to escalation.
- A bullet fired as a warning shot can kill or injure a bystander.

Warning shots should only be fired if ROE indicate that the next lawful step would be the use of lethal force. If a decision is taken to fire a round as a warning, care must be taken to ensure that all involved understand that a warning shot is being fired (and that there is no intention to kill or injure), and to avoid casualties. The weapon must be safely returned to its previous state (unloaded or loaded) once the threat has passed. The ROE must give clear direction on the recording and reporting of warning shots.

**6.3 ACCOUNTABILITY**

The role of the military force commander is pivotal. They must use patience, anticipation and foresight to try to identify the next move of the population, and how to counter it in order to reduce the level of disorder. There may be a need to explain to the population the reasons for the military deployment or specific actions (during or after), to limit hostile reactions.

During an armed conflict, military forces are not accountable for their use of force and firearms so long as their actions remain within the bounds of LOAC. It is therefore not necessary for them to record and report every use of force during a combat mission, although it is normal procedure to review operations, to identify lessons learned and prevent the repetition of possible mishaps.

In law enforcement operations, the use of force or firearms by troops (including lethal force as a last resort) may have a significant effect on the overall situation. It is therefore both a legal obligation and an operational necessity to record and report the use of force and firearms, to inform an after-action review. This also helps protect personnel, by establishing the conditions under which fire was opened. Such a review will identify good practices and prevent the recurrence of mishaps.
To be effective, this obligation to record and report must be translated into practical measures and mechanisms that are readily understood by all who are authorized to use force and firearms. Commanders are encouraged to ensure that a register is kept of decisions made and actions taken, so that they can later explain why particular decisions were taken during what may well be intense operations.

Law enforcement missions place a considerable burden on commanders. Responsibility often rests at very junior levels of command. A wrong decision or action by a corporal or platoon commander can have consequences at national or even international level. Arbitrary or abusive use of force and firearms by soldiers is generally punishable as a criminal offence under national law. It is the duty of the military commander to ensure that there are mechanisms in place for such events to be reported swiftly, accurately and effectively. Commanders at all levels must be prepared to take the necessary actions to prevent, halt and punish any violations of which they are aware.

**6.4 MISCONDUCT**

It is fundamental that soldiers embarking upon law enforcement operations understand their responsibility to uphold the law. There may be occasions when soldiers conduct unlawful acts, owing to a lack of effective training, a reaction to intense pressure or perhaps ill-discipline. It is essential that military personnel be held accountable for their acts, and that there be an understanding across the command that this will be so. Superior officers who order human rights violations or fail to prevent them are also responsible and accountable. This is explained in BPUFF Principle 24, which states that superior officers are to be held responsible if they know of unlawful acts by their subordinates but fail to “prevent, suppress or report” them.

**RESPONDING TO MISCONDUCT**

Depending on the nature of a human rights violation, competences, procedures and possible remedies for addressing it will differ; an effective system of checks and balances involves a combination of mechanisms. Authorities should not see this as a threat. In addition, scrutiny should help to detect where improvement is needed and how to achieve it, and have a preventive effect within the whole organization. It is therefore in the interests of the military to play an active part in any investigation of human rights violations.
Where a human rights violation also constitutes a criminal offence, the military commander will have to investigate, or request the police or gendarmerie to do so. This needs to be carried out promptly, thoroughly and impartially. However, it is psychologically difficult to investigate a colleague’s behaviour, and close supervision is needed to ensure that the investigation is not biased. Some militaries have established specialized departments responsible for carrying out such investigations.

Success in this area depends on the existence of an institutional culture in which unlawful behaviour is clearly unacceptable and in which whistleblowing is not perceived as treason. It is within the remit of the commander to establish a code of conduct, but appropriate safeguards must also be created through close supervision of such investigations. External oversight remains indispensable in all cases.

Finally, where a human rights violation committed by a soldier does not amount to a criminal offence (e.g. failure to respect certain procedural safeguards), the military still needs to investigate the matter thoroughly and to ensure respect for the rights of victims regarding remedy and compensation.
• There is no enemy in law enforcement operations, simply members of the population who may or may not be intent on breaking the law. The objective of soldiers operating as law enforcement officials is to restore law and order to a given situation.
• In law enforcement operations, IHL/LOAC does not apply: the actions of law enforcement officials – including soldiers acting in that capacity – are governed by IHRL and domestic law.
• When performing security operations, military personnel should at all times be mindful of the main principles of law enforcement:
  - Legality: all action should be based on legal provisions.
  - Necessity: even when legal, an action must only be undertaken when it is necessary in order to maintain or restore public order.
  - Proportionality: law enforcement officials should use the minimum level of force necessary to perform a lawful and necessary action. The action should not affect human rights in a way that is disproportionate to the aim.
  - Accountability: those carrying out the action should be fully accountable to all relevant instances (the judiciary, the public, the government and the internal chain of command).
  - Precaution: commanders and troops should take all measures in terms of training, equipment allocation, planning and conduct of operations that are necessary for application of the aforementioned principles
• Personnel responsible for law enforcement should be familiar with the United Nations Code of Conduct for Law Enforcement Officials (CCLEO) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF). Because these two documents do not set legally binding obligations, they are part of what is commonly known as “soft law.” However, they give useful guidance on specific issues related to the maintenance of law and order.
• Military forces likely to conduct law enforcement operations should have clear and simple doctrine that enables a smooth transition from combat to law enforcement operations and from the IHL “conduct of hostilities” paradigm to that of operations conducted under IHRL and domestic law.
• The authorities should ensure that forces likely to conduct law enforcement operations have equipment that affords suitable protection to law enforcement officials and enables them to respond to tension and violence using an appropriate and lawful amount of force. Such equipment should be made available for training prior to deployment.

• Before conducting law enforcement operations, a force should receive theoretical training to highlight the differences between combat and law enforcement operations and the principles to be adopted when conducting law enforcement operations. This should be complemented by practical training that enables soldiers to handle the range of situations they are likely to encounter and to practice all measures available to them before using lethal force. Training should also cover the procedures to be followed when lethal force is used and involve agencies that are likely to operate alongside military forces.

• Planning for law enforcement operations should adapt the generic planning format for military operations to enable a focus on the physical and social fabric of the likely area of operations that will influence – and will be influenced by – the conduct of operations. Planning should consider likely offenders and spoilers, but should also take account of citizens who are likely to be affected by operations. Planning should consider other agencies likely to be involved in the operation and how communications and coordination can best be conducted.

• Immediately before and during operations, commanders should satisfy themselves that soldiers fully understand the principles of law enforcement operations and how force can be adjusted and adapted to ensure that operations are both lawful and achieve the ultimate goal of restoring order. Commanders should understand the areas of risk and how to address them.
The ICRC helps people around the world affected by armed conflict and other violence, doing everything it can to protect their lives and dignity and to relieve their suffering, often with its Red Cross and Red Crescent partners. The organization also seeks to prevent hardship by promoting and strengthening humanitarian law and championing universal humanitarian principles.

People know they can count on the ICRC to carry out a range of life-saving activities in conflict zones and to work closely with the communities there to understand and meet their needs. The organization’s experience and expertise enables it to respond quickly and effectively, without taking sides.