

United Nations Police and Different Legal Systems

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Preparatory Notes to Instructor

Background

The mandate of the United Nations to bring peace and stability and to reinforce the rule of law to nations in crisis will often require operating in regions with different laws and legal practices amongst a variety of cultures. For UN Police to carry out their mandated functions within the UN Police framework it is important that they be aware of these differences and the necessity of being familiar with the host country legal system. Furthermore, they must be sensitive to the fact that UN Police is composed of police officers from countries representing various legal systems as well.

Aim

To provide participants with an understanding of:

- the basic concepts, characteristics and peculiarities of the different main legal systems
- the practical aspects of working within those particular legal systems in a UN mission.

Learning Outcomes

On completion of Different Legal Systems Module, participants will be able to:

1. List the three most common Legal Systems in mission areas
2. List the three pillars of the Criminal Justice System and describe their roles
3. Describe the importance for peacekeepers to have a common knowledge of the legal systems of the world

Training Sequence

It is suggested that the material contained in this module be delivered over two training periods; however, it is designed in such a way it can be condensed according to the needs of individual nation's training requirements.

This module is intended to highlight the differences in various legal systems and to provide guidance to police officers working within those systems in the various mission areas. As such it is not projected to give detailed instruction about the legal systems. It is recommended to be delivered in conjunction with the specialized training modules for police on human rights standards in use of force and arrest and detention.

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Duration

Minimum Session Time	Lecture/Presentation	Questions/Assessment	Session Activities
100 minutes	20 min	15 min.	65 min. activity
Additional Options	Mission Specific	Optional Film	Optional Activity
	as needed		

Methodology

This module contains a variety of suggested learning activities to keep adult learners engaged. The facilitation team should use as many of the learning activities as time allows and keep them tailored to the target audience. Participants should be fully involved in the learning process through practical exercises, brainstorming sessions, discussion of case studies, working in small groups on specific tasks, etc.

The instructor should inform participants of the content, format and timing. Knowing what to expect, participants can improve their ability to focus on the subject and benefit from the session.

- Legal Systems
- Common Law, Civil Law, Islamic (Shari 'a) Law, Mixed & Customary (Traditional) Legal Systems
- Models of Policing
- Fair Trial
- Exercises
- Conclusion
- Learning Outcome Assessment

* **Please Note:** It is up to the learning institution to decide whether the learning assessment questions are used informally in a group question and answer session, or if they are provided to the participants as a written quiz. In either case, it is recommended that the correct answers are provided at the end of the assessment in order to ensure participants are clear on the key messages.

Instructors are encouraged to add examples and mission-specific information related to the specific deployment of participants, if known.

Instructor Profile

This module is best presented by a police instructor with mission experience. It is not intended that the topic be delivered by a legal expert or lawyer. If there is more than one instructor, at least one should have practical experience.

Instructors should encourage questions from the participants and aim for an interactive discussion. All participants should be encouraged to contribute to the group discussions, case study discussions and in any other activity. Further 'mission specific pre-deployment' or 'in mission' training will address the specifics of the legal system of the particular country of deployment.

Instructor Preparations

Required Readings

- Universal Declaration of Human Rights
- Covenant on Civil and Political Rights
- African Charter
- American Convention on Human Rights
- European Convention on Human Rights
- Islam & Justice Lawyers Committee for Human Rights
- UNODC, Cross Cutting Issues, Criminal Justice Assessment Toolkit, NY 2006
- Guidelines for United Nations Police Officers on Assignment with Peacekeeping Operations, UN DPKO 2007
- "Human Right and Law Enforcement: a package on human right training for the police", Office of the High Commissioner for Human Rights, UN, 1997
- Nader Aspects of Saudi Arabian Law
- United Nations Police Handbook" Police Division, DPKO, UN, 2005

General Preparations

Equipment:











1. Computer and PowerPoint slides
2. Projector and Screen
3. Flip Chart

Materials:

1. Copies of handouts...etc.

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Symbols Legend

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

Session Notes

United Nations Police and Different Legal Systems

Slide 1



Note to Instructor: Give the participants a brief explanation why they should pay special attention to this module. Refer to: Background in the Preparatory Notes to the Instructor

Aim

Slide 2

To provide participants with an understanding of:

- the basic concepts, characteristics and peculiarities of the different main legal systems
- the practical aspects of working within those particular legal systems in a UN mission.

Learning Outcome

Slide 3

On completion of this module participants will be able to:

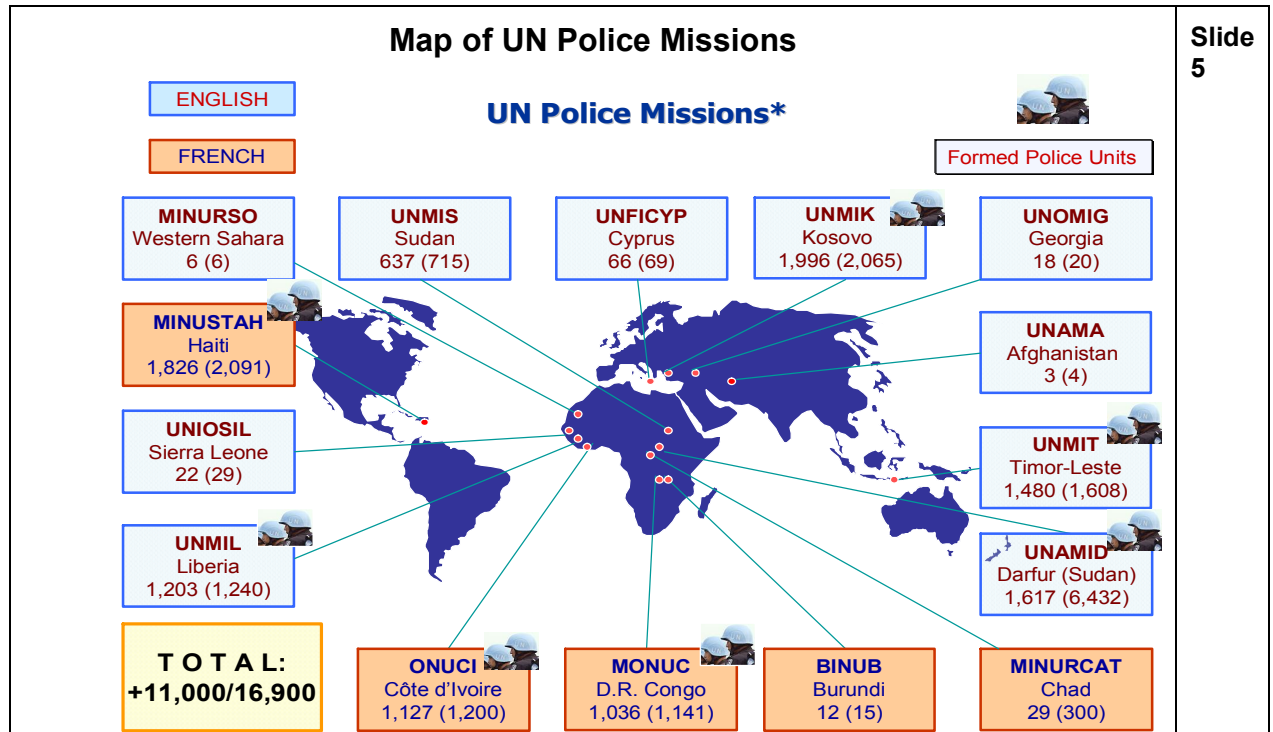
- List the three most common Legal Systems in mission areas
- List the three pillars of the Criminal Justice System and describe their roles
- Describe the importance for peacekeepers to have a common knowledge of the legal systems of the world

Structure of the Presentation

Slide 4

- Legal Systems
- Common Law, Civil Law, Islamic (Shari 'a) Law, Mixed & Customary (Traditional) Legal Systems
- Models of Policing
- Fair Trial
- Learning Outcome Assessment
- Conclusion

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June 2008 – For map updates go to www.un.org/Depts/dpko/police/map.pdf

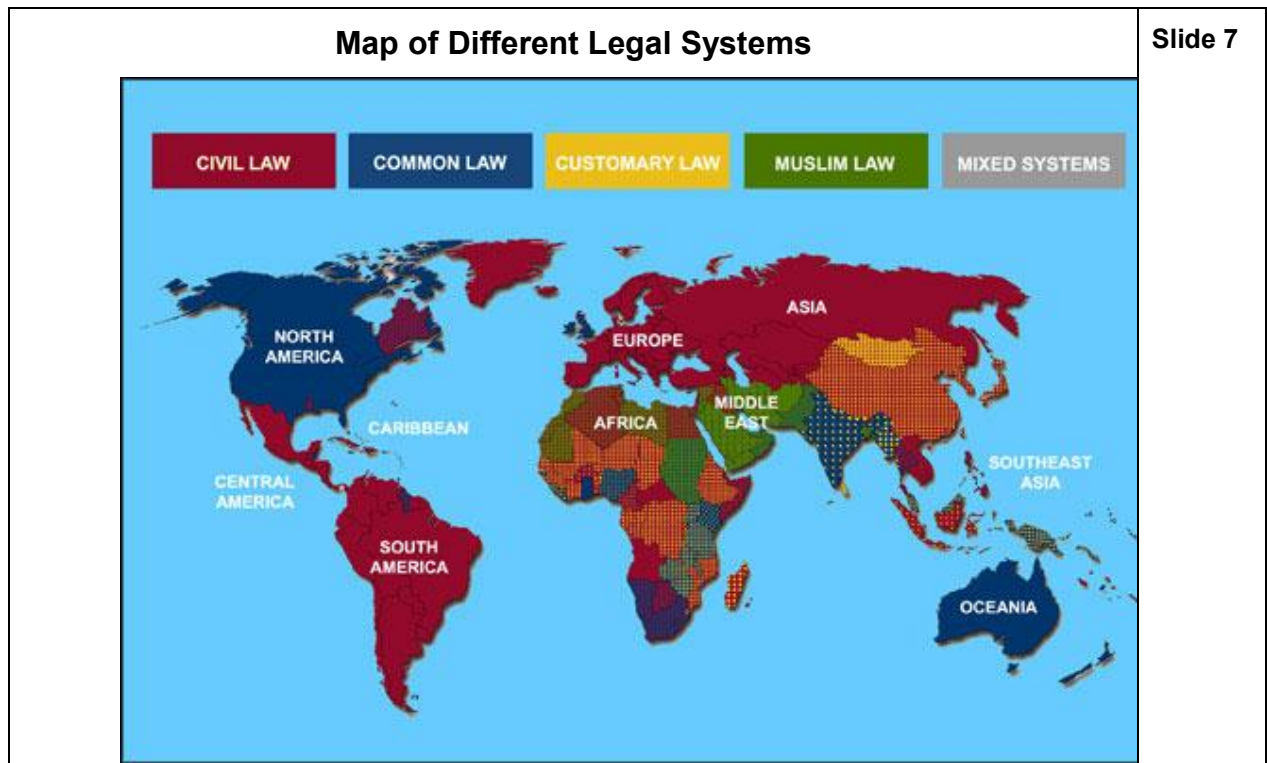
Note to instructor: After showing the map, ask the participants for their ideas on how many different legal systems are operating in the mission countries (as shown on the map) and ask them to outline which problems they might encounter working within the legal systems of these countries.


Different Legal Systems	Slide 6
<ul style="list-style-type: none"> • Civil Law • Common Law • Islamic Law • Customary Law (Traditional) • Mixed Legal Systems 	

• Civil Law and Common Law systems in mission host-countries generally result from a colonial past. Customary Law (Traditional) systems are usually locally grown forms of administration of justice.


• In addition to the Islamic legal system, in some countries religion also plays an important part in the administration of justice.

• In many mission host-countries, Mixed Legal Systems combine elements of several legal traditions.



 **Note to Instructor:** The map shows participants where the different legal systems are applied and allow them to identify which system is present in the various missions.

Different Legal Systems - General Remarks	Slide 8
<ul style="list-style-type: none"> • Parallel existence of sets of international norms and diverse national legal systems. • Trend towards globalisation • Reflect culture and history of the country 	

-  Despite an ever-increasing body of international law (e.g. treaties, resolutions of international organisations, covenants, declarations and agreements), there is no universal legal system that replaces the various national legal systems worldwide. The regime of international norms taking effect in a country depends on the nature of the international norm (binding or not, self-executory or not), on the set of norms accepted by the State (ratification of treaties, declarations), as well as on the methods of application and realities of implementation of international law in the country. Very often, the obligations that exist for a State under international law are not satisfied on the national level.

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- The roles of culture and history are indispensable to understand a country's legal system. Cultural influence on a legal system exists no matter what kind of legal system.

The Function of the Law	Slide 9
Law serves two functions: <ul style="list-style-type: none">• Governs the activity of private individuals, the State and legal subjects such as corporations, associations, etc.• Provides standards of conduct and regulates behaviour	



Learning Activity: Functions of the Law

The purpose of this group discussion activity is for participants to identify the functions of the law and the factors that affect it.



Learning Activity Time Required:

5 minutes	for activity introduction and instructions
10 minutes	for work small groups discussions
10 minutes	for small group reports in large group*
Total time:	25 minutes *total time dependent number of groups



Activity Guidelines:

1. Divide the participants into groups to discuss and report back on the following:
 - What do they consider are the functions of the law?
 - What are the factors that influence the law?
2. Ask participants to present their results in the plenary (the large group).
3. Complement the results of the participants with the expected outcome.



Expected Outcome:

1. In contemporary society the law has two functions:
 - Governs the activity of individuals, corporations and governments
 - Provides standards of conduct and regulates behaviour.

2. Influencing Factors

Legal systems reflect a country’s form of government, its economy, its religious and cultural beliefs and practices, and its history. As a result legal systems can vary greatly between countries and sometimes within countries.

 Legislative Guidelines for Police

Police officers must work within the framework of the legal system in the country they serve. Legislation determines the extent of police powers and these can vary from country to country.

A functioning legal system provides important checks and balances to ensure the protection of individual rights and guide public officials in their duties.

Three Pillars of the Criminal Justice System	Slide 10
<ul style="list-style-type: none"> • Police Enforcement • Justice sector Legislation and administration of justice • Corrections Incarceration, Rehabilitation 	



Learning Activity: Criminal Justice System

The purpose of this group discussion activity is for participants to determine the imbalances within the three pillars of the criminal justice system.



Learning Activity Time Required:

	5 minutes	for activity introduction and instructions
	15 minutes	for work small groups discussions
	15 minutes	for small group reports in large group*
Total time:	35 minutes	*total time dependent number of groups



Activity Guidelines:

1. Divide the participants into groups to discuss what could be the consequences if there is an imbalance between the police, the justice sector and correction facilities.
2. Ask participants to present their results in the plenary (the large group).
3. Complement the results of the participants with the expected outcome.

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Expected Outcome:

- UN Police must operate within the legal framework of the country to which they are deployed. An individual UN Police officer does not have any influence regarding the host country's legal system, but he/she has to understand the national law in order to be able to operate accordingly.
- To operate effectively, UN Police must work in partnership with the justice sector and corrections personnel. The law will not be adequately served without co-operation between these agencies. There must be balance and capacity so that arrested persons can be processed in the justice system in a timely manner. Adequate detention facilities must also be available.
- A detainee may be incarcerated; however, without adequate prison records and a system that provides due process, the detainee could remain in prison for a prolonged period without the benefit of bail or the prospect of a fair trial.
- Inadequacies in the justice system can lead to Human Rights abuses.
- In implementing the mission mandate, UN Police shall respect the legislation applicable in the mission area, insofar as it is not in conflict with internationally recognised Human Rights Standards or United Nations Rules and Regulations.
- In exercising their functions, UN Police shall observe internationally recognised Human Rights Standards, and shall not discriminate against any person on any grounds, such as gender, ethnicity, language, religion, political or other opinion, national, ethnic, or social origin, sexual orientation, association with a national community, property, birth or other status. They must uphold International Criminal Justice Standards in all aspects of their work. They should report Human Rights violations they witness to their superiors for transmission to the Human Rights component, or equivalent, of the peacekeeping operation.

Civil Law System	Slide 11
<p>Also referred to as:</p> <ul style="list-style-type: none">• Most commonly found in current mission areas• Predominantly based on written legal codes• Judges take an active role in establishing the facts of a case and seek to obtain all incriminating and exculpatory evidence	

- 🗨️ The Civil Law System is one of the oldest systems in the world as it has its origins in the Roman Empire.
 - The Civil Law System is considered the most common legal system in the world and is found in Western Europe, Latin America, French speaking Africa and parts of the Far East. It is also the system most commonly found in current mission areas.
 - It is a legal system predominantly based on written legal codes like the extensive “Code Napoleon” developed in Europe.
 - Cases are considered by a judge based on the law and only secondarily based on prior judicial decisions if the law does not provide a clear answer or was interpreted in a particular way by precedent.
 - Judges have an active part in establishing the facts of a case, questioning witnesses and soliciting or collecting evidence – it is an inquisitorial system (typically with an investigative judge who carries out or supervises criminal investigations carried out by the so-called judicial police). However, the pure inquisitorial system is rare. In most cases adversarial elements such as the questioning of witnesses and presentations of arguments by defence lawyers and prosecutors are important parts of the criminal procedure.

Common Law System	Slide 12
<ul style="list-style-type: none"> • Originally derives its force and authority from the universal consent and immemorial practice of the people • Importance of the interpretation of laws by judicial decision making 	

- 🗨️ The common law system:
 - Originates in the Anglo-Saxon legal tradition.
 - Serious offences are considered indictable and the accused is able to elect a trial by judge or jury,
 - Trials are conducted through an adversarial process where the prosecutor and the defence counsel (lawyer) present evidence, make argument and question witnesses. The judge has very little investigative power and refers to the presented arguments of both sides in order to make a decision, but the judge is able to make certain inquiries that are considered part of the collection of evidence.
 - A minor offence is often heard and decided by a judge sitting alone

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Islamic Law (Shari'a Law)	Slide 13
<ul style="list-style-type: none">• Fundamental basis of Islamic Law - manifested will of God• Source of this law is the Qur'an, the Muslim Holy Book, Hadith & Sunnah	

Islamic Law

- Described by Nader in Aspects of Saudi Arabian Law as “the body or rules of conduct revealed by God to his Prophet whereby the people are directed to lead their life in this world.”
- The most important source of this law is the Qur'an, the Muslim Holy Book and the Hadith, which is what the prophet Mohammad said and Sunnah, what was practiced by him.
- The fundamental basis of Islamic law is that it is the manifested will of God and does not depend on the authority of any earthly lawgiver.

Mixed Legal System and Customary (or Traditional) Law	Slide 14
<p>A Mixed System combines elements of:</p> <ul style="list-style-type: none">• Civil Law• Common Law• Customary Law• Islamic Law	

Mixed legal system and customary (or traditional) law

- Sudan is an example of Islamic, Common Law and Customary law.
- Botswana, Mauritius, Namibia, South Africa are examples of mixed Common and Civil laws.
- Ghana, Liberia, Malawi, Sierra Leone, Uganda, Zambia are examples of mixed common and Customary law. (Reference to Slide 8 “Map of Different Legal Systems”).
- Iran adopted the Civil Law system, but rejected it in 1979 in favour of a return to Islamic Law; however, in some areas of Iran Civil Law remains, relating in particular to trade and commerce.

Fair Trial	Slide 15
<ul style="list-style-type: none"> • Appeal System • Importance of Human Rights 	

- 🗨 The right to a fair trial is a norm of international human rights law designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms, the most prominent of which are the right to life and liberty of the person. It is guaranteed under Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”
- 🗨 Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law” [Article 14(5)].¹⁰⁹ The right to appeal is aimed at ensuring at least two levels of judicial scrutiny of a case, the second of which must take place before a higher tribunal.
- 🗨 The following international and regional Human Rights Treaties addresses this issue:

 - *Article 10 of the Universal Declaration of Human Rights*
 - *Article 15 of the Covenant on Civil and Political Rights*
 - *Article 7 of the African Charter*
 - *Article 8 of the American Convention on Human Rights*
 - *Article 6 of the European Convention on Human Rights*
 - *Islam & Justice Lawyers Committee for Human Rights, 1997, p.127*

Conclusion	Slide 16
Expect Differences	

- 🗨 Expect differences:

 - Every country has differences in their legal procedures. These differences will manifest themselves in the performance of the host country police. Some systems allow the police wide ranges of authority and the right to take actions, i.e. in relation to crime investigation. Other systems require investigating judges or prosecutors to direct specific actions from the police.

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- It is important that you carefully follow the induction training on this issue and adapt your mentoring and advising (and executive) roles to the host country's legal system.

Learning Outcome Assessment

It is up to the learning institution to decide whether the learning assessment questions are used informally in a group question and answer session, or if they are provided to the participants as a written quiz. In either case, it is recommended that the correct answers are provided at the end of the assessment in order to ensure participants are clear on the key messages.

At the end of the entire unit and/or the conclusion of the STMs instructors may want to choose some of the following questions for review.

Questions

1. What are the three most common Legal Systems in mission areas?
2. What are the three pillars of the Criminal Justice System?
3. Describe the main role of the three pillars.
4. Why is it important for Peacekeepers to have a common knowledge of the legal systems of the world?
5. What does it require to make UN Police work effectively in the rule of law context?
6. To what extent does local law influence police operations in the mission area?



Expected Outcome

1. The three most common Legal Systems are Civil Law, Mixed Legal System and Islamic Law.
2. The three pillars of the Criminal Justice System are the Police, the Justice Sector and Corrections.
3. The Justice Sector interprets the laws, hold trials and hears appeals; the police enforce the laws and corrections incarcerate, rehabilitate and punish offenders.
4. It is important for UN Police to have common knowledge of the legal systems of the world because once in mission, they must adapt to the legal framework of the host country. Furthermore, they must be sensitive to the fact that UN Police is composed of police officers from countries representing various legal systems as well.
5. To operate effectively they must work in partnership with the justice sector and corrections personnel. The law will not be adequately served without co-operation between these agencies. There must be balance and capacity so that arrested persons can be processed in the justice system a timely manner.

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6. Local law influences UN Police operations in the mission area because of differences in the various legal systems throughout the world. UN Police may have to adapt their investigative techniques, arrest and detention procedures and court preparation accordingly.