

Training course on Human Rights at International Borders

Session 3

Ensuring human rights in interception, rescue and immediate assistance

Session 3 content

- 3.1 Human rights considerations in interception, rescue and assistance
- 3.2 When and how may force be used at international borders?

Session 3 learning objectives

After this session, learners will be able to:

- Appreciate the key steps to be taken during
 - Planning and preparation
 - Interception, rescue
 - Immediate assistance
- Identify core considerations for the use of force

3.1. Human rights considerations in interception, rescue and immediate assistance

Human rights principles at interception and rescue

- Primacy of the obligation to protect human rights
 - Provide assistance and protection from harm
 - Framework of “legality, necessity and proportionality” to determine permissible use of force, including firearms and restraints
 - Principle of non-refoulment, including *chain or indirect* refoulement
 - Prohibition of collective expulsion
- These principles will be discussed in Session 6, Human rights-based return*

3.1.1. What is meant by interception, rescue and immediate assistance?

Interception: Operations by a State, **outside or within its national territory, to stop individuals or groups of individuals** for law enforcement (e.g., examination of their documentation, vehicles/vessels) or counter-terrorism purposes.

Rescue: Operation to **retrieve persons in distress**, provide for their initial medical or other needs, and deliver them to a **place of safety** at an international border.

Immediate assistance: Provision of assistance to any person in distress to provide for their initial medical or other needs.

3.1.2. Human rights particularly at risk in interception, rescue and immediate assistance

- a) Right to life
- b) Right to liberty and security of person
- c) Right to privacy
- d) Right to freedom of movement
- e) Right to family life
- f) Right to health
- g) Right to food
- h) Right to water
- i) Right to shelter
- j) Right to information
- k) Right to defend human rights

3.1.3. Planning and preparing for interception, rescue and immediate assistance

- a) Human rights-based **planning**
- b) Clarify the **objective** and **assess** the **rights** that may be **at risk**
- c) Plan the **methodology**
- d) Prepare the **team** and **equipment**

3.1.4. Human rights considerations in interception

- a) Avoid **dangerous interception methods**
- b) Ensure the **safety** of the officials and others
- c) Respect the inherent **human dignity and privacy** of the individual when conducting **searches**
- d) Identify **persons in vulnerable situations**

3.1.5 Human rights considerations in rescue

- a) Prioritize saving lives
- b) Search and rescue at international borders
- c) Provide and maintain rescue beacons along dangerous migration routes

→ *Rescued persons should be taken to a **place of safety** and offered **immediate assistance**.*

3.1.6. Human rights considerations with regard to immediate assistance

- a) Provide individual **health and medical screenings**
- b) Provide **temporary accommodation** that meets human rights standards
- c) **Cooperate** with other bodies, including **human rights defenders**
- d) Provide basic **information**, including on migrants' rights, asylum and other procedures, and effective referral pathways
- e) Protect the **right to privacy** and the **right to security of person**

3.1.7. Gender considerations in interception, rescue and immediate assistance

- a) “Dignity kits” should be available at arrival points
- b) All reception centres should be gender-responsive
- c) Safe water, sanitation and hygiene (WASH) facilities that are gender-segregated, well-lit and private
- d) Safe and culturally-appropriate women-only spaces, where women can rest and seek/receive information and other services
- e) Specialized support should be available to survivors of sexual and gender-based violence and other trauma

3.1.8. Missing and deceased migrants

- Designate **contact points for families** looking for missing migrants, through which families can be **kept informed** on the status of the search and obtain other relevant information, in line with the right to privacy and protection of personal data.
- Facilitate the **recovery, identification and transfer of the remains** of migrants who have died during the journey; and ensure that the remains of deceased migrants are treated in a dignified, respectful and proper manner.

Questions?

3.2.

When and how may force be used at international borders?

3.2.1. Exercise: What is meant by use of force?

In your groups, briefly discuss and note your responses to the following:

1. Give examples of “use of force” by border officials.
2. When is such “use of force” appropriate?

3.2.2. Definition of “use of force”

Use of force refers to the use of physical means that may harm a person or cause damage to property, including the use of:

- Hands or other parts of the body (by officials)
- Instruments, weapons or equipment, including less lethal weapons such as batons or water cannons
- Chemical irritants, such as tear gas or pepper spray
- Restraints, such as handcuffs
- Dogs
- Firearms

3.2.3. Exercise (true/false): Legal framework on the use of force

1. The legal framework mainly concerns the use of firearms and other lethal force.
2. The legal framework does not limit the use of restraining measures, such as handcuffs.
3. The use of torture is never justified and always prohibited.



3.2.4. General principles on the use of force

Six principles

- **Legality**
- **Proportionality**
- **Precaution**
- **Non-discrimination**
- **Necessity**
- **Accountability**

All six principles must be met

(a) The principle of legality

Requires that force is:

- Only used to **achieve a legitimate objective**
- In accordance with the **rules and regulations** adopted by the State, which must, in turn, be **compliant with international norms and standards**
- Used only to the extent **necessary** to achieve a legitimate purpose

The principle of legality (contd.)

- **Legitimate purposes** include:
- To **defend oneself or others** against the imminent threat of death or serious injuries
- To **prevent** the perpetration of **a particularly serious crime** involving grave threat to life, to ensure compliance with lawful police instructions
- To arrest **non-cooperative or dangerous suspects**
- To disperse a **violent crowd**

(b) The principle of precaution

All necessary precautions should be taken:

- to **avoid** or at least **minimize** the **risk** of recourse to force – in advance of any escalation of events
- to **minimize** the severity of any **injury** that may be caused by the use of force

Precaution includes prior planning, training of officials, knowledge of standards relating to the use of force

(c) The principle of necessity

- When **strictly necessary and only to the extent required** (e.g., when non-violent means remain ineffective or without any promise of achieving a legitimate law enforcement objective)
- **Minimum** force required to achieve objective
- Applied only **temporarily** – must stop as soon as the objective is achieved or when it becomes clear that it cannot be met

The use of torture is **never necessary or proportionate**
and **always prohibited**

(d) The principle of proportionality

- Sets a ceiling on the use of force based on the threat posed by the person
- Type and level of force applied and resulting harm must be proportionate to the threat
- If the harm caused by the use of force outweighs the advantages of its use (i.e., the achievement of the objective), the use of force becomes **disproportionate** and, therefore, **unlawful**
- The proportionality requirement of using potentially lethal force can be met only if such force is used in order to save life

Harm > advantage of using force = disproportionate

(e) The principle of non-discrimination

- **Prohibition** of direct or indirect discrimination based on a person or group's race, color, national, ethnic or social origin, language, sex, religion, political or other opinion, descent, birth, caste, age, disability, health status, migration status, sexual orientation, gender identity, or other grounds
- **Integral component** of the assessment of **necessity and proportionality** of the use of force in order to avoid excessive or arbitrary force being used against a person owing to prejudice or with discriminatory intent

3.2.5. Application of the general principles on the use of force

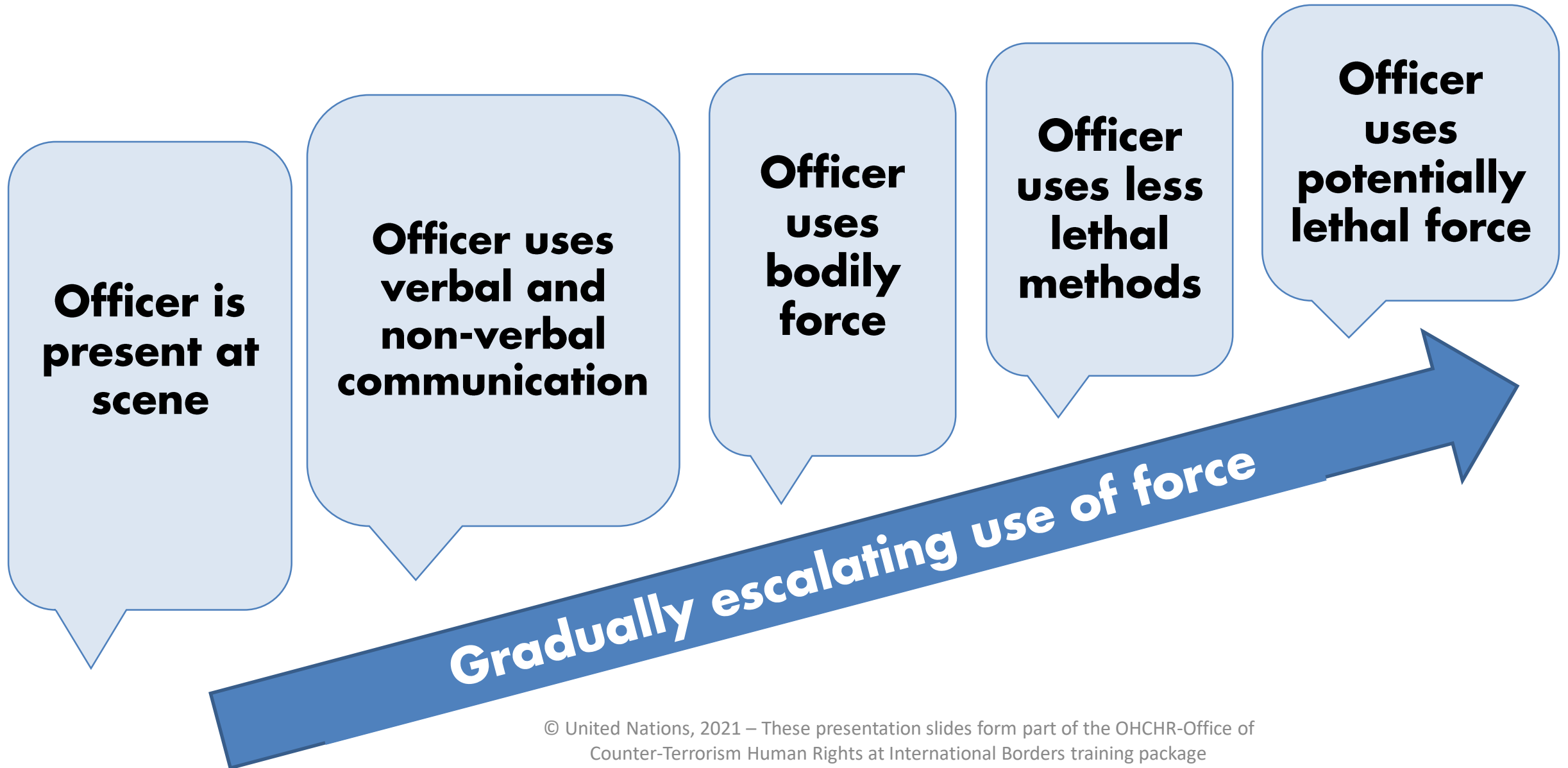
(a) The use-of-force continuum

does not take into account:

- The requirement to apply the tests of **necessity** and **proportionality**
- Nor does it assess whether the use of force can be **de-escalated**

But you must!

Example of the use-of-force continuum



(b) Aim to de-escalate the situation

- Always look for **any possibility to de-escalate** the use of force
- Officers should be **trained on de-escalation strategies** such as:
 - *tactical disengagement*
 - *verbal de-escalation communication* (e.g., mediation, negotiation)

Such strategies can contribute to slowing down the situation to **gain time** until more specialized crisis intervention units or supervisors arrive.

(c) Human rights considerations relating to the use of restraints

DO NOT USE

- Instruments of restraint **as a punishment**
- **Chains and irons** as restraints
- **Non-medically-justified measures** or treatment, such as tranquillizers, sedatives or other medication
- On **pregnant women**, especially during labour, delivery or immediately after delivery

Human rights considerations relating to the use of restraints (contd.)

Use ONLY

- If **the person is a threat** to themselves or others (third person(s))
- As a **precaution against escape** during transfer – and for *no longer* than strictly necessary

Human rights considerations relating to the use of handcuffs

When the use of handcuffs cannot be avoided:

- **Safe and non-harmful materials** should be available
- **Regularly check** that handcuffs are not cutting into the skin or blocking the blood circulation of the person
- **Never handcuff a person to fixed points** or solid infrastructure such as walls, ceilings, floors, heating radiators, etc.
- **Remove** the handcuffs as soon as possible
- **Monitor the condition of the person** to ensure no particular risk of injury or death

Human rights considerations relating to the use of restraints in the context of migration

- Under international norms and standards, unauthorized entry into a country, attempt to enter a country in an irregular manner or irregular stay in general, **should not be considered a criminal offence**

How does this impact the use of restraints in the context of migration?

Also consider the principles of necessity and proportionality, and the perception of punishment in the context of migration.

(d) The principle of accountability

States are obligated to ensure that

- **Border officials are accountable** for their actions, including any decision to use force
- **Redress is available** for those affected by the use of force by State officials
- An **independent, external oversight mechanism** that is gender-responsive is established to receive and address complaints/reports

The principle of accountability (contd.)

- The use of force, including any use of restraints, should be **reported** for purposes of accountability
- States should establish **effective complaint mechanisms** that border officials can use without fear of losing their jobs (retaliation) or reprisals from their colleagues
- Criminal, administrative and disciplinary **sanctions** should be in place, with adequate measures to ensure that those in authority are held responsible for their actions

The principle of accountability: best practices

- States should establish **independent, external oversight mechanisms** with the necessary
 - powers
 - resources
 - independence
 - transparency and reporting obligations
 - community and political support
 - civil society involvement
- **Periodic and unannounced checks** should be carried out by supervisory officials at borders and other areas where immigration control is exercised

Questions?