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Securitisation, sectorisation and goal displacement: Rule of law assistance in UN peace operations

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Dr. Richard Zajac Sannerholm
Securitisation, Sectorisation and Goal Displacement: Rule of Law Assistance in UN Peace Operations

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Abstract
This paper draws on new systematic data on UN’s rule of law assistance, covering two decades of peacekeeping and peacebuilding in Africa (1989-2010). The paper examines what type of rule of law assistance the UN is providing, differences and similarities between peacekeeping and peacebuilding missions, and the relationship between policy and practice.

Over the years the UN has accumulated a wealth of experience in helping countries establish the rule of law. And yet, providing rule of law assistance that is comprehensive, flexible, and context-adjusted in environments where national institutions have broken down, resources are exhausted and the population is divided and traumatized is a daunting, often overwhelming task.

A significant increase in rule of law assistance can be observed since the early 1990s. This concentration covers both peacekeeping and peace-building missions. The fact that the UN is now, more than ever, called upon to help countries re-establish the rule of law raises issues of the organisation’s capacity to effectively and timely respond to the demand. Moreover, while the UN (particularly the DPKO) has demonstrated an accumulation of experiences and knowledge on rule of law assistance, the type of assistance provided is primarily confined to a select set of institutions, challenges and processes. The practical application of rule of law initiatives in peacekeeping and peacebuilding suggests a form of path dependency where assistance is provided in relation to the criminal justice sector and in response to (physical) integrity and security threats. These and other observations give rise to a number of critical questions on the relevance of UN’s rule of law commitment in war-torn societies, the capacity and preparedness of the UN, the importance and use of mechanisms and tools for cooperation and joint initiatives between different UN entities, and the quality and coherence of policy and practical guidance.

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INTRODUCTION

The whole question of rule of law assistance in war-torn societies, and its construction by a combination of parts or in accordance with a design or plan, is the function of law itself. This plainly varies depending on a number of general factors. History, culture, tradition, and social norms tend to leave a mark on legal and administrative systems. War-damaged societies also typically display a layered complexity of law: 'formal' state law exist together with customary and or religious law. Moreover, the formal legal system is often disputed and disrupted. The deleterious effects of conflict run wide and deep and the legal and administrative systems of these devastated countries often suffer from a lack of the most simple and basic equipment, like typewriters, pens, paper and legal texts, as well as more serious difficulties such as educated personnel.

War-torn societies are often described as lacking rule of law, or failing to uphold certain rule of law principles. The concept of the rule of law has come to be a central marker in foreign policy and international crisis management whereby the severity of war-torn societies is assessed. For the UN, the rule of law has emerged as a central element in the maintenance of peace and security.\(^1\) Justice and the rule of law are together, with security and democracy, seen to be mutually reinforcing imperatives in fragile post-conflict, peace, and state-building processes.

While recent years have witnessed increased concentration by the UN on matters such as the rule of law and justice, the assistance accorded to states emerging from civil war has been fraught with difficulty. Rule of law assistance is often criticised for being supply and donor-driven and for

failing to meet the specific demands, concerns and problems of different crisis, conflict and post-conflict societies. In the 2004 report, Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, the Secretary-General emphasised that UN entities and international partners should avoid employing ready-made models to address national rule of law problems. The 2008 Guidance Note of the Secretary-General: UN Approach to Rule of Law Assistance makes clear that when rule of law assistance is donor-driven, it results in the uneven and contradictory development of rule of law institutions and short-term, superficial gains. In much the same way the 2011 thematic debate on the rule of law in the General Assembly concludes that assistance remains fragmented, that greater coordination and coherence is needed, and that efforts to strengthen the rule of law must be centred more consistently on national perspectives of host countries.

The helping of states to achieve the institution of the rule of law is challenging for the UN as a whole, not least in those environments where peace operations are deployed. Such operations are deployed in situations where the rule of law is severely contested. In these environments, UN staff (UN police, judicial affairs officers, civilian affairs officers, and so on) perform many critical functions, including developing national rule of law plans and strategies, coordinating national and international stakeholders, advising on justice matters and providing technical expertise on specific topics. Furthermore, peace operations are often hampered by financial, logistical and staff constraints and operate within short time-frames.

This paper explores the relationship between policy

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3 UN Secretary-General, Guidance Note of the Secretary-General: UN Approach to Rule of Law Assistance, April 2008.

4 UN General Assembly, Thematic Debate of the 65th Session of the General Assembly on the Rule of Law and Global Challenges 11 April 2011.

5 See, UN Department of Peacekeeping Operations and Department of Political Affairs, Operational Guidance Note: Addressing the Rule of Law and the Administration of Justice in Peace Processes and Peace Agreements, June 2006.
guidance and practice, and examines what type of rule of law assistance that the UN provides in peacekeeping and peace-building missions. Drawing on new and systematic data collected for the Folke Bernadotte Academy’s research project on UN and rule of law assistance in Africa between 1989 and 2010⁶, the paper argues that there is a goal displacement between how the rule of law is formulated in strategic guidance, and the concretisation and application of the concept in practice. This goal displacement reveals a problem on behalf of the UN to adequately assess, understand and deliver rule of law assistance that is varied and situational and that can address long-term peace-building and development priorities early on in peace operations.

RULE OF LAW IN DEMAND

Rule of law has gradually emerged as a key objective in crisis management, and a more defined policy starting to form after 2000, influenced by practices developed and competencies earned in peace operations during the 1990s.

Since 1989 there has been a general increase in UN peace operations. Parallel with this growth has been the corresponding and significant expansion of rule of law assistance (Figure 1).

During the 1990s, more than half (12 out of 21) of the peace operations in Africa were involved to a varying degree in rule of law assistance. From 2000 and onwards, the proportion of peace operations providing rule of law assistance increased to a large majority (19 of 24). It is notable that in 2006, and 2008-2010, all peace operations in Africa were involved in one or several rule of law areas.

Figure 1 Number of total UN Peace Operations and number of

⁶ Richard Zajac Sannerholm, Frida Möller, Kristina Simion and Hanna Hallonsten, UN Peace Operations and Rule of Law Assistance in Africa 1989-2010: Data, Patterns and Questions for the Future, Folke Bernadotte Academy, 2012. The dataset covers seven broad reform areas of UN rule of law assistance: (1) judicial reform, (2) constitutional reform, (3) law reform, (4) rule of law in public administration reform, (5) legal awareness and access to justice reform, (6) law enforcement reform, and (7) reform of detentions, and prisons. The seven reform areas describe different aspects of rule of law assistance, but also instances where rule of law form part of parallel initiatives such as security sector reform.
The high number of peace operations engaged in rule of law assistance demonstrates a comprehensive commitment on behalf of the UN, and the prominent part that the rule of law has come to assume in conflict management. The relatively large increase in volume over the past decade corresponds with organisational changes within the UN; for example, the establishment of OROLSI, the Rule of Law Coordination and Resource Group and the Standing Police Capacity and the Justice and Corrections Standing Capacity.

The steady and significant increase in volume after 2000 raises several questions for future rule of law assistance. If the past five years offer any projection for the future, there are no indications that calls for rule of law assistance in Africa or elsewhere will decrease. This might present a serious challenge for the UN. As the inventory on UN capacity in peace-building observed in 2006, there is generally limited capacity with regard to human resources with rule of law expertise within the UN and that in some areas, such as constitutional reform, the scarcity of capacity is striking. According to the 2011 report on UN civilian capacity in the aftermath of conflict, this situation in many ways appears to prevail today.

Thus, the increase in demand raises critical questions -
for example, is there sufficient capacity to handle simultaneously the high volume of rule of law assistance in many different conflict and post-conflict environments? More specifically: What is the capacity of the DPKO and DPA to provide rule of law assistance that is comprehensive, timely and adjusted to country specifics? It is also unclear what the increase in demand means for the UN’s capacity to effectively, and with sustained quality, ensures policy coherence and take on new responsibilities in rule of law assistance.

UN AND THE RULE OF LAW

Following the UN’s increased responsibility for rule of law assistance in peace operations, and particularly after the experience as an international administrator in Kosovo and East Timor, the need grew for a comprehensive and guiding definition. In 2004 the Secretary-General launched a common rule of law definition for the whole organisation in his report Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, defining the concept thus: ‘a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws’. The definition also lays down that laws should be publicly promulgated, equally enforced and independently adjudicated, and be consistent with international human rights standards.9

The definition is ends-based and generally in accord with how the rule of law is portrayed in legal doctrine and scholarly works.10 Rule of law is, typically, is seen as having two primary attributes (or functions) in legal doctrine. One is the protection against arbitrary rule by imposing certain limitations, checks and balances, on the

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exercise of state power and. The second concern the capacity of the concept to guide human conduct - that is, by providing a framework of law which facilitates human interaction in terms of protecting against arbitrary interference from the state and predictability of a system of rules in order to calculate the legal consequences of one’s actions.\textsuperscript{11}

Portrayed in this fashion the rule of law discourse attempts to answer two long-standing questions. The first is what to do about unruly peoples of states (Hobbes’s question) and the second, what to do about unruly states (Locke’s question). The first attribute establishes restraints with the requirement that public officials must abide by the law, and through legal limits to the law-making power (constitutional or other). The second attribute seeks compliance with established rules. Further, it enables interactions between individuals.\textsuperscript{12} Both of these attributes are desirable for their enhancement of predictability, certainty and legal security, both between state and individuals (vertical) and between individuals (horizontal).

Both attributes also approach the rule of law as a principle applicable to all state and individual interactions. Rule of law is in this sense a systemic concept that applies to different areas of state-individual interaction as well as to private legal entities and other forms of association outside a state government structure.\textsuperscript{13}

The institutional scope of the UN’s definition is also systemic in accordance with legal doctrine and set out to not only encompass legal and judicial institutions, but also law enforcement, corrections institutions and administrative agencies. The definition includes both substantive justice (i.e., the aims and outcomes of justice) and procedural justice (i.e., the process by which

\textsuperscript{13} See, Otto Kirchheimer, ‘The Rechtsstaat as a Magic Wall’, p. 429, in Frederic Burin and Kurt L. Shell, eds, Politics, Law and Social Change: Selected Essays of Otto Kirchheimer, 1969: ‘for all the differences in historical roots and particular legal traditions their common denominator lies in the simple thought that the security of individuals is better served when specific claims can be addressed to institutions counting rules and permanency among their stock-in-trade’. 
those aims and outcomes are achieved). In this sense the UN definition is ‘thick’ or ‘material’.\(^{14}\) The emphasis is not only on having proper procedural guarantees, but also that the content and meaning of laws and regulations adhere to certain international standards.

The normative foundation on rule of law assistance is elucidated in the Secretary-General’s 2004 report Rule of Law and Transitional Justice. Apart from the UN Charter, the normative foundation is said to consist of international human rights law, international criminal law, international refugee law, and international humanitarian law. While the legal implications are unclear, it is argued in the report that the framework creates certain normative boundaries. The UN cannot, for example, assist in the establishment of a tribunal with the authority to impose the death penalty or to broker a peace agreement that would include amnesties for war crimes and crimes against humanity.\(^{15}\) The normative framework also includes UN human rights and justice standards developed over the last half-century. These are seen as representing ‘universally applicable standards adopted under the auspices of the United Nations and must therefore serve as the normative basis for all United Nations activities in support of justice and the rule of law’\(^{16}\). The standards also function as models in rule of law assistance and, as stated by the Secretary-General: ‘bring a legitimacy that cannot be said to attach to exported national models’.\(^{17}\)

Overall, the UN policy that has evolved - as stated in reports of the Secretary-General, supported by extensive sets of standards - is comprehensive and positions the rule of law as a means for sustainable peace and security, as well as an end in (and of) itself. In this way the UN’s rule of law agenda comprises many different elements, from law and order to economic development and democratic governance, while accentuating the systemic relevance of

\(^{14}\) For a discussion on thin or thick interpretations of the rule of law, see, Brian Tamanaha, On the Rule of law: History, Politics, Theory, 2004 pp. 91f.

\(^{15}\) UN Secretary-General, Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, p. 5.

\(^{16}\) Ibid., p. 5

\(^{17}\) Ibid., p. 5 Most of these standards relate to substantive areas of concern to the justice chain (judiciary, law enforcement, detentions and corrections); for example, UN Basic Principles on the Independence of the Judiciary, 1985; United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985; and Guidelines on the Role of Prosecutors, 1990.

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rule of law in all state and individual interactions.

PROFESSIONALISATION OF RULE OF LAW ASSISTANCE

Following the formulation of policy, several attempts by the Secretary-General and different UN entities have been made to provide concrete guidance by describing specific justice components, tasks and functions in rule of law assistance.

Operational guidance is provided in the 2008 Guidance Note of the Secretary-General: UN Approach to Rule of Law Assistance where, for the first time, a framework for strengthening the rule of law is introduced. The framework identifies a number of substantive and procedural elements in relation to constitutions, legal frameworks, and the implementation thereof.\(^{18}\)

Influenced by the 2004 report and subsequent policy guidance from the Secretary-General, the DPKO has elaborated on practical entry-points for justice components in peace operations and in 2009 a framework for rule of law programming was introduced.\(^{19}\)

At the most practical level, and dealing directly with how to assess, programme, monitor and evaluate rule of law assistance, UN staff have at their disposal a number of guidelines and manuals on different rule of law areas. Not all of the guidelines and manuals concern peace operations. Instead, they contain guidance on UN rule of law assistance on a global level, including long-term development.\(^{20}\) In 2006 and 2008, the Office of the High Commissioner for Human Rights (OHCHR) established a tool-kit consisting of seven sets of instruments.\(^{21}\) The different tools are each

\(^{18}\) UN Secretary-General, *Guidance Note of the Secretary-General: UN Approach to Rule of Law Assistance* pp. 4-7.

\(^{19}\) DPKO, *Policy: Justice Components in United Nations Peace Operations*, 2009 pp. 6-9. Programme areas include: a) immediate effectiveness of criminal justice systems; b) basic justice infrastructure; c) legal framework; d) law schools; e) professional training; f) judicial independence; g) integrity, professionalism, accountability and transparency of justice actors; h) public administration; i) court administration and management; j) access to justice and victims' rights; k) gender justice and; l) justice for children.

\(^{20}\) Most are developed by a specific entity or at the level of the Secretariat. Some, however, are developed by specific peace operations. See, for example, United Nations Verification Mission in Guatemala, ‘Manual for Public Prosecutors’, October 1996.

\(^{21}\) Truth Commissions, 2006; Mapping the Justice Sector, 2006; Prosecution Initiatives, 2006; Monitoring Legal Systems, 2006; Vetting, 2006; Reparations, 2008; and Hybrid Courts, 2008.
considered to respond to some of the supreme tests and demands that UN entities typically face in crisis, conflict, and post-conflict societies, and are intended to be employed as practical guidelines in rule of law assistance. The respective devices specify 'best practices' regarding monitoring court proceedings, on lessons learned from prosecuting contraventions of international humanitarian law, and how best to conduct overall assessments of the capacity and function of a legal system in a country in transition from war to peace. The DPKO has also developed a similar set of guidelines and manuals.

There is no apparent hierarchy between the different guidelines and manuals, and it is difficult to assess to what extent they are actually used in peace operations. The fact that some of the guidelines and manuals are formulated for development cooperation, and others for post-conflict peace operations, might well impede ready access and use between the two fields. Making the guidelines and manuals part of daily operations requires not only knowledge of their existence, but the training and capacity-building of UN judicial officers, UN police and other staff categories involved in rule of law assistance.

Thematically the guidelines and manuals chiefly cover justice chain actors (e.g. police, judiciary and prisons), and leave other rule of law areas in want of practical guidance. Where such guidance has been developed, for example on access to justice or legislative reform, the topical orientation is often on criminal justice matters. The predominant focus on a select set of institutions and themes is noted by the Executive Committee on Peace and Security (ECPS) Task Force for Development of Comprehensive Rule of Law Strategies for Peace Operations. In 2002 the ECPS Task Force identified several gaps in UN guidance on rule of law assistance, specifically in relation to support for dispute resolution outside the judicial system by ombudsperson institutions, on how to analyse penal and criminal laws, civil service laws, parliamentary procedures, property laws, and assistance on how to support

Constitutional reform is an area where there are both limited staff resources and policy guidance. The Secretary-General’s Guidance Note on United Nations Assistance to Constitution-Making Processes covers the area only superficially while highlighting the pressing need to develop strategic guidance on methods to support national actors. As observed in the UN inventory on the organisation’s capacity in peace-building: ‘the UN lacks a dedicated focal point for constitution-making, in-house technical expertise, training and a debriefing/retention of institutional knowledge system, overall policy framework and standards, practical toolsimplementation guidelines, and dedicated financial resources’. Similarly, public administration is another area where staff shortage and weak policy guidance exist.

Practical guidelines and manuals represent further concretisations of UN rule of law policy and frameworks. It is interesting to note that in the practical translation of the comprehensive rule of law policy provided by the Secretary-General, there is selectivity in terms of institutions and justice components. Most of the practical guidelines and manuals attend to problems and challenges that actors within the justice chain are confronted with, and deal with non-justice sector institutions and problems only superficially. Similarly, the main assessment tools address primarily questions relevant for national actors within the justice chain.

Thus, in the concretisation of UN rule of law policy it is possible to observe a pattern of both ‘sectorisation’ and ‘securitisation’ - that is, rule of law is presented as a concept with specific relevance for criminal justice, law and order and security. From the comprehensive UN rule of law policy, where the concept is put forward as a ‘principle of governance’, the rule of law gradually assumes a specific institutional orientation and focus as

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25 Guidance Note of the Secretary-General, United Nations Assistance to Constitution-making Processes, April 2009, p. 3.
26 UN Executive Office of the Secretary-General, Inventory, 2006, p. 76.
it becomes linked with programmatic entry-points for criminal justice components in peace operations.

PATTERNS AND TRAJECTORIES

Considering the increase of the rule of law in peace operations, and the recent growth of policy guidance, frameworks and practical guidelines, it is important to identify those areas where assistance is provided and coherence with overall policy. While the type of rule of law assistance has varied over time, the trend is one where justice chain institutions (e.g. judiciary, law enforcement and detentions and corrections) stand for a significant portion of rule of law assistance in peacekeeping and peace-building (Figure 2).

The justice chain includes rule of law actors such as judges, prosecutors, defence lawyers, law clerks, court bailiffs, police and law enforcement personnel, together with detention and correction personnel. Much of the support to the justice chain takes the form of mentoring, monitoring, and advice - sometimes through co-location programmes. Common activities also include technical assistance for the development of national justice plans and strategies and conducting assessments of justice chain actors and institutions, or capacity-building and professionalization through training. Law enforcement personnel are the recipients of most training initiatives, followed by judicial personnel and prison and corrections officers.

The justice chain pattern is possible to identify over time and between different missions, starting with the early peace operations in Namibia, Angola and Mozambique and reinforced by more recent peace operations in countries such as Liberia, Sierra Leone and Sudan. A focus on reform outside the justice chain, in fields such as legislative, constitutional or access and awareness, was infrequent and less prevalent during the 1990s.

From the mid-2000s, rule of law assistance increased dramatically in terms of the number of peace operations with reported rule of law assistance. This also coincides with an expansion of rule of law areas, thus increasing the

prevalence primarily of access and awareness and legislative reforms.

Figure 2 UN Peace Operations involved in Rule of Law Reform Areas, Africa 1989-2010

A general pattern that emerges on examining the different reform areas over time is that the rule of law in relation to public administration is only reported in isolated instances, thus lacking in levels of consistency, detail and prevalence compared with rule of law assistance found in other areas. In Sudan, for instance, UNMIS supported training initiatives organised by the Ombudsman office and provided logistical support to harmonise administrative divisions, while the UN in Sierra Leone assisted the Anti-Corruption Commission. Besides these, and a few other reported instances, reform of public administration receives limited attention in UN rule of law assistance.

While access and awareness and legislative reform increased around 2000, projects and programmes in these areas tend to underpin initiatives in the justice sector. For instance, typical activities undertaken in the area of legislative reform encompass technical assistance and advice on legislative topics, analysis of specific areas of law, or advice on the process of law-making.
Thematically, legislative reform supported by peace operations is primarily focused on criminal justice, including criminal law and criminal procedure law and specific initiatives such as human trafficking and narcotics. Other subject-matter areas related to the justice chain cover counter terrorism, national intelligence and security, and laws on juries, bail, legal aid, prisons and law enforcement agencies.

On access and awareness, public events, workshops and seminars either seek to inform the broader public on proposed or recent changes in the legal and administrative framework, build trust and confidence, or explain and facilitate discussions on the role of certain actors in the criminal justice sector.

When examining the scope of rule of law assistance on the basis of the number of missions that have been engaged in a specific activity, this demonstrates that law enforcement is the single reform area that most peace operations have supported over time (Table 1). Viewing all UN operations, 28 out of 36 (78%) were at some point during their deployment engaged in law enforcement reform.

If the data is disaggregated further, variations between peacekeeping and peace-building emerge. For example, a number of political missions or offices have engaged in constitutional reform and public administration, while only one out of 22 peacekeeping missions focused on constitutional reform (MONUC in the Democratic Republic of Congo) and one on public administration (UNMIS in Sudan).
Table 1  Number and Percentage of Peace Operations in Relation to Rule of Law Reform Areas

<table>
<thead>
<tr>
<th>Rule of law areas</th>
<th>All UN operations (36 missions)</th>
<th>PKO operations (22 missions)</th>
<th>Political missions &amp; offices (14 missions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police &amp; law enforcement</td>
<td>28 (78%)</td>
<td>17 (77%)</td>
<td>11 (79%)</td>
</tr>
<tr>
<td>Prison &amp; detention</td>
<td>22 (61%)</td>
<td>14 (64%)</td>
<td>8 (57%)</td>
</tr>
<tr>
<td>Legal access &amp; awareness</td>
<td>21 (58%)</td>
<td>11 (48%)</td>
<td>10 (77%)</td>
</tr>
<tr>
<td>Judicial</td>
<td>20 (56%)</td>
<td>12 (55%)</td>
<td>8 (57%)</td>
</tr>
<tr>
<td>Legislative</td>
<td>15 (42%)</td>
<td>7 (30%)</td>
<td>8 (62%)</td>
</tr>
<tr>
<td>Constitutional</td>
<td>7 (19%)</td>
<td>1 (4%)</td>
<td>6 (46%)</td>
</tr>
<tr>
<td>Public administration</td>
<td>5 (14%)</td>
<td>1 (4%)</td>
<td>4 (31%)</td>
</tr>
</tbody>
</table>


When comparing the scope of rule of law assistance in peacekeeping and political missions and offices (Figure 3) with regard to deployment years, it is clear that law enforcement is the single most common reform area.

It is also possible to observe that legislative reform and reform of detentions and prisons are also pursued to an equal degree in both peacekeeping and peace-building.

Figure 3  Scope of Engagement of UN Peace Operations. Peacekeeping and Political Missions and Offices Separately

A: Activities of UN Peacekeeping missions, Africa 1989-2010

B: Activities of UN Political missions and offices, Africa 1989-2010
Reforms on access and awareness are more widely supported in political missions and offices than peacekeeping missions. Constitutional reforms are also more common in political missions and offices. At the same time, reform areas outside the justice chain are less frequent. This may signify a weaker commitment to non-justice chain areas or indicate that the implementation of projects and programmes in these areas is more focused on quick impact and single events rather than on more long-term processes.

The infrequent support means that there are fewer chances of building extensive accumulated practices and the learning of lessons, or to motivate and influence the development of policy, standard-setting documents, practical guidelines and manuals in non-justice chain areas.

TRANSITIONS BETWEEN MISSIONS

While the justice chain receive the most support in peacekeeping and political offices and missions, it is important to examine if there is a difference when there are successive missions in one country.

Of specific interest is the question of whether there has been progression in rule of law assistance with regard to scope - that is, do the activities of missions that are first on the ground differ from subsequent missions? One assumption is that there would be a complementary relationship between peace operations building on one another - for example, that the same type of activities are carried out in order to continue and complete previous initiatives. But it is also reasonable to assume that as the situation changes in the host country concerned (e.g. in terms of stability, political maturity etc) the type of rule of law assistance would also change from a more narrow and initial justice and security sector focus to include aspects of legislative and constitutional reform, access and awareness, and public administration.

About half of all peace operations (peacekeeping, political missions and offices) follow on a previous operation. Ten out of 22 peacekeeping missions and 11 out
of 14 political missions and offices were built on previous ones or were deployed during an existing mission.

Of the 15 peace operations that were the first to be deployed in a country, 12 were peacekeeping missions and only three were political missions or offices. During their deployment, first-time peace operations concentrated primarily on rule of law assistance to the justice chain. More modest assistance was directed towards legislative reform and enhancing legal access and awareness. Very little or no attention was accorded to constitutional reform or public administration.

The transition from peacekeeping to peace-building is also of particular interest. Political missions and offices are rarely deployed as the first peace operations on the ground but follow on a peacekeeping mission in several cases. The transition from peacekeeping to peace-building is problematic for practical and financial reasons. As noted in the Secretary-General’s 2011 report on funding for political missions, there is currently an inability to scale up back-stopping capacity for peacekeeping missions transitions to a political missions.29 This means that peace-building often lacks access to funds, staff and expertise in the area of rule of law, and cannot easily draw on the resources of the DPKO.

In 1989-2010 six political missions and offices were deployed in Africa, building on previous peacekeeping operations.30 Of interest here is whether the DPA-led operations provide a different type of rule of law assistance from those of the peacekeeping missions that they replaced. Figure 9 illustrates the division of activities in these missions.

Figure 4 Transitions Between Missions, Africa 1989-2010

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29 Report of the Secretary-General, Review of Arrangements for Funding and Back-stopping Special Political Missions, 12 October 2011, p. 10.
30 UNOA after MONUA (Angola), BINUB after ONUB (Burundi), UNOL after UNOMIL (Liberia), BONUCA after MINURCA (Central African Republic), UNAMSIL after UNOMSIL (Sierra Leone), UNPOS after UNSOM II (Somalia).
There are interesting differences in the transition from peacekeeping to peace-building. Reform areas on access and awareness, and law enforcement, detention and prison, and the judicial sector are pursued in both, with some variations. A major difference, however, is that peacekeeping operations provide very little or no attention to constitutional, legislative, or public administration reforms compared with political missions and offices. This indicates that political missions and offices continue in large part the rule of law assistance of peacekeeping missions, but also that there exists a broader scope of assistance in terms of the number of reform areas included.

The differences between peacekeeping and peace-building might imply a conscious transition strategy. Moreover, the DPKO does not have an explicit mandate to work on constitutional reform, whereas this reform area is typically seen to fall within the responsibilities of the DPA. Differences in transitions might also be a reflection of peace operation realities. Political missions and offices lack the financial strength, the capacity to deploy personnel rapidly, and the logistics of peacekeeping missions. In consequence, political missions and offices...
are more dependent on support from UN Country Teams and other UN entities present in the host country, which might explain the broader scope of rule of law assistance to include areas outside the justice chain.

RULE OF LAW ASSISTANCE OR CRIMINAL JUSTICE REFORM

When examining UN rule of law assistance in Africa over time, what emerges is an orientation of a sectorised and securitised rule of law with specific ‘core’ rule of law areas - law enforcement, judiciary and prisons. Here, the UN seems to have accumulated a considerable amount of practice and policy, and also devoted substantial commitment in terms of overall deployment. For example, the Standing Police Capacity and the Justice and Corrections Standing Capacity testify to an increased preparedness in relation to these areas. The three major reform areas in the justice chain also correspond to the burgeoning set of UN standards and practical guidelines and manuals that are now available for rule of law reformers.

While the justice chain account for a majority of rule of law assistance in Africa during the 1990s, it is possible to identify a pattern of broader rule of law assistance from 2000 and onwards. Around this time there is an increase in peace operations working on access and awareness and legislative reforms. It is also in this timeframe that a majority of constitutional reforms are supported, and all public administration reforms are implemented. The predominant focus on justice chain until 2000 might be explained by the fact that political missions and offices were not in effect until the late 1990s and that a more comprehensive policy on rule of law was in the making (e.g. the 2004 UN rule of law definition) as well as organisational changes such as the Peacebuilding Commission.

Between peacekeeping and political missions and offices there is a general pattern of coherence, but also significant differences in the type of rule of law assistance provided. Political missions and offices tend to undertake the same type of activities as peacekeeping missions. At the same time, it is in political missions and offices, primarily, where legislative reform, access and awareness and constitutional reform are found, and where more elements of a comprehensive rule of law agenda are
catered to. This might suggest a division of labour by default between different mission types, where long-term, structural and political activities are more feasible in less unstable environments and under peace-building mandates.

The practice of transferring the responsibility for non-justice chain areas to peacebuilding means that many rule of law areas are not addressed immediately after a conflict settlement has been brokered and an international force is deployed, but rather depend upon a would-be future transition to a political mission, or that structures and mechanisms to ensure support from the UN Country Team are in place while the peacekeeping mission attend to justice chain challenges. The differences in logistical, financial and human resource capacity between DPA and DPKO missions should also be acknowledged when discussing responsibilities for different rule of law areas.

Figure 5 Scope and Reach of UN Rule of Law Assistance in Africa

Illustrated in Figure 5, UN rule of law assistance has developed a path dependency in relation to particular sectors and institutions. It is important to recognise that this is a practice that has spurred the development of practical guidelines and manuals. While this might ensure a
higher level of quality, it might also make it harder to depart from a well-established trajectory.

The path dependency suggests that the UN employs a ready-made model of rule of law, rather than being informed by rule of law challenges and demands in specific post-conflict environments, and it represents a misconception of the overarching UN policy. The limited attention paid to rule of law as a 'principle of governance', for instance in relation to public administration and to constitutional rule, is also a striking contrast to growing insights that such institutions and normative frameworks have a key role to play in overcoming civil strife and conflict. Public administration and governance is included in a majority of peace agreements, including issues such as civil service reform, reorganisation of public administration, anti-corruption policies and strategies for revenue collection.\(^{31}\)

The 2011 World Development Report, *Conflict, Security and Development*, emphasise the need to ensure rule-based, accessible and accountable administrative organisations, particularly at the local level - both for conflict prevention and for recovering from conflict.\(^{32}\) The need to extend rule of law assistance to other areas outside the justice sector is not unknown for UN agencies working in post-conflict environments, but it seems difficult to realize this insight. In the 2006 OHCHR tool for mapping the justice sector the critical importance of addressing rule of law concerns in the public administration is noted 'since even more people have contact with these agencies (and their history of discriminatory practices and corruption) than they do with the formal judiciary'.\(^{33}\)

The 2012 UN Secretary-General’s report, *Delivering Justice: Programme of Action to Strengthen the Rule of Law at the National and International Levels*, raises the importance of attending also to rule of law challenges in relation to property and housing, civic records and to

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fight corruption. Broadening the present rule of law focus to move beyond law and order, however, depends on the organisational capacity of UN entities involved in post-conflict rule of law assistance, primarily the DPKO and DPA. To that end the Secretary-General’s proposed programme of action includes a call to member states to nominate civilian justice experts to support UN rule of law assistance.

To seize on this opportunity, it should also be considered to what extent there is a need to develop a standing capacity in the UN on legislative, public administrative and constitutional reform areas similar to that of standing capacities for police, justice and corrections. A broadening of present day rule of law assistance to take in governance areas might also necessitate additional or specific guidance (manuals, tools etc) on how to work on rule of law areas outside the justice chain in order to ensure consistency of policy and practice?

The key focus on law and order and justice chain institutions leads to a situation of discrepancy between UN rule of law policy (rule of law as a ‘principle of governance’) and UN rule of law in practice. While such accumulated practice indicates a positive resource mobilisation and growing knowledge repository, the justice chain focus reflects only one part of the UN’s rule of law policy. Looking at where most UN assistance ends up prompts a number of questions on its flexibility and ability both to adapt and to context-adjust rule of law assistance.

In part, the difficulty of extending rule of law assistance to more reform areas may be because of the cross-cutting nature of legislative support, constitutional reform, public administration and other such areas. In his 2009 report, United Nations Assistance to Constitution-Making Processes, the Secretary General notes that ‘constitution-making requires an address in the UN system’. The lack of ‘address’, but also lack of capacity in terms of practical guidance and manuals for non-justice rule of law areas, constitutes a serious challenge for the

34 Report of the Secretary-General, Delivering Justice: Programme of Action to Strengthen the Rule of Law at the National and International Levels, A/66/749 16 March 2012, p. 8f.
UN’s rule of law commitment in conflict and post-conflict environments.

The Security Council has stressed the importance of clarity of roles and responsibilities between peace operations and UN country teams ‘for the delivery of prioritized support to a country consistent with its specific peace-building needs’. Nevertheless, there are tensions between DPKO and ‘development’ entities within the UN system, particularly the UNDP which might affect assistance to rule of law areas without a clear entity-address. As the 2006 report, United Nations Capacity in Peacebuilding, revealed there are considerable overlaps in many rule of law reform areas between DPKO, DPA and other UN entities, most notably with regard to law enforcement, judicial and legal reform and corrections.

In an attempt to introduce clear roles and responsibilities, and in order to enhance coordination of UN rule of law assistance, the Secretary-General established a division of labour and a system of lead entities through the Decision 2006/47. The DPKO is the lead agency in conflict and post-conflict environments with a thematic mandate covering the strengthening of national justice systems and institutions, working with police and law enforcement, prisons, interim law enforcement agencies, and security support to national law enforcement agencies. The UNDP is described as the lead agency on strengthening national justice systems and institutions where DPKO-led mission do not exist, with a thematic focus on court administration, civil and customary law, traditional and community-based justice, training, and land and property rights.

The basket of long-term development is instructed to ‘closely mirror those activities being undertaken in the context of conflict and post-conflict societies’. Thus,

37 Camino Kavanagh and Bruce Jones, p. 61, though over the years the DPKO and UNDP have attempted to enhance their joint programming, see, UN Secretary-General, Strengthening and Coordinating United Nations Rule of Law Activities, A/66/133, 8 August 2011 p. 17.
38 UN Executive Office of the Secretary-General, ‘Inventory’, pp. 9f.
39 UN Secretary-General, Uniting Our Strengths: Enhancing United Nations Support for the Rule of Law, S/2006/980 14 December 2006, pp. 13-16. The decision is controversial and has been rather problematic to put into effect.
40 Ibid., p. 13.
41 Ibid., p. 13.
while seeking to maximise UN rule of law assistance by delineating thematic responsibilities and situational responses, the division embeds a securitisation of rule of law reform in peace operations, and for long-term development as well. This leaves the main challenge for rule of law assistance in peace operations unaddressed; peace operations are often the most visible presences on the ground, but are ill-equipped to deal with long-term peace-building and development priorities.42

There also seems to be a deeper conceptual difference between UN entities on peacekeeping and peace-building. As the recent DPKO and DFS study notes: ‘peacekeepers approach early peace-building tasks as technical responses occurring in long-term, development context, where peace generally prevails’, instead of framing peace-building initiatives within peacekeeping operations’ general priorities.43 Sometimes Security Council mandates explicitly try to address and ensure that integrated missions and the UN’s ‘Delivering as One’ agenda goes some way towards enhanced cooperation and coherence of field activities. For post-conflict peace operations specifically, planning tools such as the Integrated Mission Planning Process and other similar mechanisms have also been developed to further integration and ‘One UN’ approaches, but their implementation seems to be inconsistent.44

CONCLUDING REMARKS

The last ten years have witnessed several changes within the UN rule of law system – for example, the establishment of a Rule of Law and Resource Coordination Group, supported by a Rule of Law Unit in the Executive Office of the Secretary-General, and the Office of Rule of Law and Security Institutions at DPKO. Moreover, a Police Standing Capacity and a Justice and Corrections Standing Capacity have been set up.

There is also an ongoing debate on capacity, roles and responsibilities in rule of law assistance. Several recent

44 Kavanagh and Jones, pp. 63-64. See, also, UN, United Nations Integrated Mission Planning Process (IMPP)’ Guidelines Endorsed by the Secretary-General, 13 June 2006.
strategic reviews, for instance the Senior Advisory Group’s Independent Report on Civilian Capacity and DPKO’s and DFS’s Peace: Keep it. Build it, confirm the importance of rule of law in peacekeeping and peacebuilding while highlighting the attended difficulties of carrying out successful programmes and reforms.

Although considerable efforts and progress have been made in terms of policy formulation, organisational restructuring and development of tools, manuals and frameworks, the comprehensive data describing what type of assistance UN provides raises serious questions on comprehensiveness, adaptability, capacity and demand-driven support. This paper demonstrates that public administration, legislative reform, constitutional reform and access and awareness play a small part in UN rule of law assistance in peace operations. When these areas do form part of rule of law assistance, they are addressed only to a relatively low extent in peacekeeping and peacebuilding. The key focus on the justice chain leads to a situation where there is a discrepancy between UN rule of law policy (rule of law as a principle of governance) and UN rule of law in practice.

While the accumulated practice indicates a positive resource mobilisation and growing knowledge repository, the justice chain focus reflect only one part of UN’s rule of law policy. Owing to the way in which most donor agencies conceptualise the rule of law, in policy documents and operational instruments, a great many rule of law issues are discarded. As suggested by one observer, the current heavy emphasis on judges, lawyers, and courts, is analogous to a health service that concerns itself only with centralised hospitals and doctors and ignores rural areas and ancillary services. The rule of law concept in war-torn societies could be described as that of a ‘rule of lawyers’ – with courts, litigation, criminal law, and criminal procedure law as its central features.

The UN is now, more than ever, called upon to provide rule of law assistance to countries emerging from crisis and conflict. This confirms that the rule of law is today firmly established as a means and end in UN’s maintenance of international peace and security. At the same time, the

fact that more peace operations are engaged in rule of law assistance than ever before in Africa raises several questions on what the intensification of rule of law assistance means for the organisations and its responsibilities in peace operations. Most importantly is if the UN has the institutional and human resources to handle the increase, the capacity to maintain a high level of quality, and the ability to adapt to new challenges and demands in post-conflict transitions.