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Keeping and Building Peace: **Ensuring a Right Fit for Rule of Law in UN Peace Operations**

Rule of law is a fundamental part of the United Nations (UN) peace operations and a core element for the maintenance of international peace and security and sustainable development. Past practice shows that for interventions to be successful, they have to be flexible, timely and adjustable to the constantly changing environment in fragile and conflict states. This has proven problematic for the UN, particularly in the transition from a peacekeeping operation to a special political mission or office. The recent High Level Independent Panel of Peace Operations (HIPPO) took note of this challenge and emphasized in its recommendations the need for the UN to deliver more flexible “right fit” rather than “template” missions.

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SUMMARY

- › *This brief examines UN rule of law assistance when peacekeeping becomes peacebuilding. Previous experience of UN rule of law assistance shows a clear path dependency between peacekeeping operations and special political missions, meaning that there is little difference in the support provided between keeping and building peace. The difference is primarily found in the resources and political weight allocated to the two types of interventions.*
- › *The identified differences, and in particular the identified path dependency, point to a fundamental challenge in the UN system to adapt to changing country contexts and political circumstances that can seriously impede peacebuilding efforts.*
- › *Strengthening rule of law and restoring state functions will likely continue to remain as an immediate peacebuilding priority and a central component in peace operations. At the same time, FBA's research reveals a number of issues that should be addressed in order to ensure a “right fit” for UN peace operations and rule of law assistance.*

RULE OF LAW AND PEACE OPERATIONS

Even though the UN has faced a number of reforms and reviews since its earliest days, HIPPO was the first review of both peacekeeping operations and special political missions. The HIPPO report highlights rule of law, together with justice and human rights, as “mutually reinforcing elements of the work of UN peace operations”.¹ In reinforcing the need for the UN to deliver more flexible and “right fit” assistance, HIPPO also encouraged the use of the term “peace operations” to signify the whole spectrum of UN peace and security missions and initiatives to avoid the bureaucratic resistance between different UN entities.²

This approach was echoed in the UN Secretary-General's implementation report³ and the Advisory Group of Experts for the 2015 review of the UN peacebuilding architecture.⁴ A number of issues of particular importance for UN transitions were considered by HIPPO, such as exit and transition strategies, strategic planning, peacebuilding roles and responsibilities, and how to ensure sufficient funding and personnel covering the whole spectrum of peace operations.

The UN Security Council has, since the beginning of 2000, regularly included rule of law in both its thematic and country-specific resolutions.⁵ Rule of law and justice are described as essential elements for development and the rebuilding of societies after crisis and conflict.⁶ Moreover, the adoption of the Sustainable Development Goal (SDG) 16 is a clear expression of rule of law as indispensable for reaching the goal of building sustainable peace.⁷ With the increased policy emphasis on rule of law, in combination with the continued demand for rule of law assistance to fragile states, it is essential to take stock of past experiences of the UN and analyse ways in which rule of law assistance can - and should - improve.

Issues related to transitions have challenged the UN for quite some time. Already in 2000, the Security Council called upon the Secretary-General to write a report on exit strategies and transitions which set out important aspects that should be taken into consideration when launching, closing or altering a peacekeeping operation, as well as the objectives for successful peacebuilding.⁸ Rule of law, together with institution-building and good governance, is referred to in the report from the Secretary-General as essential elements of a mission mandate to facilitate transition.

The UN published its first policy on transitions in 2013, after the topic had been given additional attention due to the increasing number of mission drawdowns, reconfigurations and mission transitions in countries such as Liberia, Timor Leste, Haiti, Burundi and Sierra Leone.⁹ According to the policy UN Transitions in the context of mission drawdown or withdrawal, transitions are “a response to significant change in a country's political and security situation and its economic and social development”. The importance of adequate responses to these changes is paramount. The policy also calls upon the organization to make use of its range of tools, including peacekeeping and peacebuilding, with sufficient flexibility.

1. Report of the High Level Independent Panel of Peace Operations, *Uniting our strengths for peace: politics, partnership and people*, 16 June 2015.

2. For the purpose of this brief, the term “peace operations” will be used when referring to both peacekeeping operations and special political missions and offices.

3. UN Doc. A/70/357-S/2015/682, Report of the Secretary-General, *The future of United Nations peace operations: implementation of the recommendations of the High-level Independent Panel on Peace Operations*, 2 September 2015.

4. Report of the Advisory Group of Experts for the 2015 Review of the United Nations Peacebuilding Architecture, *The Challenge of Sustaining Peace*, 29 June 2015.

5. For an overview, see Security Council Report: *Cross-Cutting Report No.3: Rule of Law*, 28 October 2011 and UN Security Council Field Mission Mandate Table as of 1 February 2016, [found here](#).

6. UN Doc. A/69/700, UN Secretary-General Synthesis Report on the Post 2015 Agenda: *The road to dignity by 2030: ending poverty, transforming all lives and protecting the planet*, 4 December 2014.

7. Goal 16 of the Sustainable Development Goals is dedicated to the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable institutions at all levels.

8. UN Doc. S/2001/394, UN Secretary-General Report, *No exit without strategy: Security Council decision-making and the closure or transition of United Nations peacekeeping operations*, 20 April 2001.

9. *Policy on UN Transitions in the context of mission drawdown or withdrawal*, endorsed by the Secretary-General, 4 February 2013.

UN'S DEFINITION OF RULE OF LAW AS A PRINCIPLE OF GOVERNANCE

The rule of law “refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”

Ultimately, the UN should ensure smooth transitions between its different engagements in a country to ensure the desired “right fit” approach. However, past practices show that delivering adequate rule of law assistance in times of transition remains a key challenge for the organization.

UN APPROACHES TO KEEPING AND BUILDING PEACE

UN rule of law assistance in post-conflict and fragile states has increased considerably during the past two decades.¹⁰ This significant growth in volume corresponds with the growing complexity of peace operations. These are often mandated to keep or build peace where there is no peace to build, nor either to keep, resulting in volatile security situations and a growing set of challenges, not least with regard to rule of law. Traditionally, the two main approaches to operational conflict management within the UN are peacekeeping and peacebuilding. The former is traditionally established to ensure peace, security and stability, and where necessary together with military means. Meanwhile, peacebuilding has usually been established in less violent environments, and in a smaller scale than peacekeeping operations.

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The nexus between peacekeeping and peacebuilding has long been recognized and discussed. Today’s comprehensive or multidimensional peace operations have evolved to include a whole spectrum of peacebuilding tasks, which used to be unorthodox for traditional peacekeeping. Currently, both peacekeeping operations and special political missions are expected to be peacebuilders, and some even argue that peacekeeping operations have “become peacebuilding missions in all but name”.¹¹ The Advisory Group of Experts for the peacebuilding review also called for a redefinition of peacebuilding as something that “runs through the complete cycle of UN engagement, from preventive action, through deployment and subsequent drawdown of peace operations”. This would also liberate the term “peacebuilding” from the strict limitation to post-conflict context.

Outwardly, the traditional approach to a one-dimensional or sequenced way of thinking in operational conflict management (conflict prevention, peace-making, peacekeeping and peacebuilding) is fading away. It is perceived to be both insufficient and sometimes non-applicable in relation to today’s increasingly complex conflicts. In the same spirit, the HIPPO report underlines that “terms such as ‘special political missions’ and ‘peacekeeping operations’ are ingrained in mindsets and the bureaucracy of the United Nations, but should not constrain the Organization’s ability to respond more flexibly to the needs on the ground”. Thus, the use of the term “peace operations” would, by signifying the whole spectrum of the organization’s peace and security engagements, also facilitate a smoother transitioning between different UN configurations in the field. Ideally, such an approach would pave the way for more flexible and “right fit” responses, irrespective of the division of responsibility between different UN entities.

However, there are still significant operational and practical differences between peacekeeping operations and special political missions, in particular with regard to the provision of civilian capacity and funding. While the Department for Peacekeeping Operations (DPKO) is responsible for the deployment of peacekeeping operations, the Department of Political Affairs (DPA) is the focal point for special political missions.

The division of responsibility between the DPA and the DPKO is of particular importance with regard to rule of law capacities, since the DPA does not have access to the same roster of expertise as the DPKO. Thus, the DPA often rely on personnel from other UN actors such as the UN Development Programme

10. For an overview, see *UN peace operations and rule of law assistance in Africa 1989-2010*, Richard Zajac Sannerholm, Frida Möller, Kristina Simion, Hanna Hallonsten, Folke Bernadotte Academy, 2012.

11. *Rethinking peacebuilding: transforming the UN approach*, International Peace Institute, September 2014.

(UNDP), UN Entity for Gender Equality and the Empowerment of Women (UN Women), Office of the High Commissioner for Human Rights (OHCHR) or UN Office on Drugs and Crime (UNODC).

Another highly significant difference between the two mission types is within the ability to receive funding. DPKO has its own budget in place, which is managed and approved by the General Assembly and can easily receive back-stopping resources at the head quarter-level. Special political missions however, which are paid for out of the regular programme budget of the UN, often lack access to funds and cannot easily draw on the resources of the DPKO. Moreover, the financial period for special political missions (January to December, runs bi-annually), differs from the one for peacekeeping operations (1 July to 30 June, runs annually). This further complicates the administrative and budgetary aspects of transitions from peacekeeping operations to special political missions.¹² Similar to DPKO, the DPA can also today apply for Peacebuilding Fund funding to support activities to fill peacebuilding gaps as well as the possibility of “pooling of resources”.

In both peacekeeping and peacebuilding, drawing on the comparative strength of the UN system in terms of rule of law capacities has proven difficult. The Global Focal Point for Police, Justice and Corrections Areas in the Rule of Law in Post-Conflict and other Crisis Situations (GFP) was established to provide better informed and integrated support in terms of mandates, resources, analysis, planning and coordination.¹³ Since 2012, the DPKO and UNDP are jointly responsible for the operational country support in conflict and crisis settings within the area of police, justice and corrections. The GFP is neither a merger of the different UN entities, nor a new entity. It is a support function established to achieve greater impact through joint approaches with other GFP partners – such as UN Women, OHCHR, and UNODC – both at the head quarter and the field level. To date, the GFP has successfully resulted in joint assessment and programming in countries such as Somalia, Central African Republic, Yemen, Afghanistan and Haiti, but still face challenges when it comes to administrative hurdles and differences between the agencies in how support is delivered.¹⁴ Moreover, it has not been put to the test in relation to transitions between keeping peace and building peace.

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ABOUT THE FBA PROJECT ON UN RULE OF LAW ASSISTANCE IN PEACE OPERATIONS

This brief covers the activities of six peacekeeping operations that have been followed by a special political mission. These interventions took place in Burundi (ONUB-BINUB), Central African Republic (MINURCA-BONUCA), Liberia (UNOMIL-UNOL), Sierra Leone (UNAMSIL-UNIOSIL), Somalia (UNSOM II-UNPOS), and Timor Leste (UNMISSET-UNOTIL). The brief draws on FBA's ongoing research project “UN Rule of Law assistance in Peace Operations”, a global mapping of rule of law activities in peace operations between 1989 and 2014. The mapping covers seven broad reform areas of UN rule of law assistance: (1) justice reform, (2) constitutional reform, (3) legislative/law reform, (4) rule of law in public administration reform, (5) legal awareness and access to justice reform, (6) police reform, and (7) corrections reform. The project will result in a synthesis report that will be published in 2016. For more information about the project [read here](#).

RULE OF LAW ASSISTANCE AND TRANSITIONS

FBA's research on how the UN operationalizes rule of law in peace operations reveals three significant findings with regard to a “right fit” in transitions from peacekeeping to building peace. Firstly, both the peacekeeping operations and special political missions seem to focus mainly on assistance to the criminal justice chain. Secondly, a path dependency between the two mission types emerges, both thematically (different rule of law areas) and methodologically (the way assistance is being conducted). Thirdly, the special political missions seem to have a slightly broader scope of assistance with regard to legislative, constitutional and access to justice reform areas.

A focus on criminal justice

The UN defines rule of law as “a principle of governance”.¹⁵ This definition, together with the subsequently developed rule of law-policy, goes beyond the traditional criminal justice chain of police, justice and corrections. Activities related to access to justice, legislative- and constitutional reform areas, in addition to rule of law in public administration, all form part of the UN's broader rule of law agenda.

12. UN Doc. A/66/340, Report of the Secretary-General, *Review of arrangements for funding and back-stopping special political missions*, 12 October 2011.

13. UN Doc. Decision No. 2012/13, *Rule of law arrangements*, 11 September 2012.

14. For a more detailed examination of the GFP, see *The UN Global Focal Point for police, justice and corrections is at the crossroads*, Lisa Ejelöv and Richard Sannerholm, Folke Bernadotte Academy, brief 05/2015.

15. UN Doc. S/2004/616, Report of the Secretary-General, *The rule of law and transitional justice in conflict and post-conflict societies*, 23 August 2004, paragraph 6.

Yet, FBA's research (described in the figures below), reveals that rule of law assistance follow a much more narrow approach – that is, the focus is dominated by police, justice and corrections reforms. This suggests a discrepancy between how rule of law is defined at the level of policy, and the operationalization and application of the concept in practice. Altogether, the justice chain accounts for a principal part of all rule of law reform areas in peace operations, both in peacekeeping and in special political missions. In both mission types police reform is the single most common reform area of all rule of law activities pursued. Within the judicial and corrections reform area, there is a minor reduction in the sequencing from a peacekeeping operation to a special political mission. Thus, when looking into the main part of UN rule of law assistance in peace operations, a pattern of coherence between the two mission types emerges.

Methods of doing business: same but less

When it comes to how rule of law is supported, it is predominantly through capacity building in terms of training, technical assistance, and monitoring, mentoring and advising. Support to infrastructure and logistical matters such as rebuilding of courts and correction facilities, and provision of basic equipment, as well as recruitment and awareness raising, are other quite commonly used methods. Technical assistance includes conducting assessments of sectors, actors and institutions, in addition to advising and analysing specific topics or areas. Monitoring, mentoring and advising includes visits to courts and correction facilities, mentoring of key counterparts in national institutions, and general advice to key institutions typically delivered through meetings.

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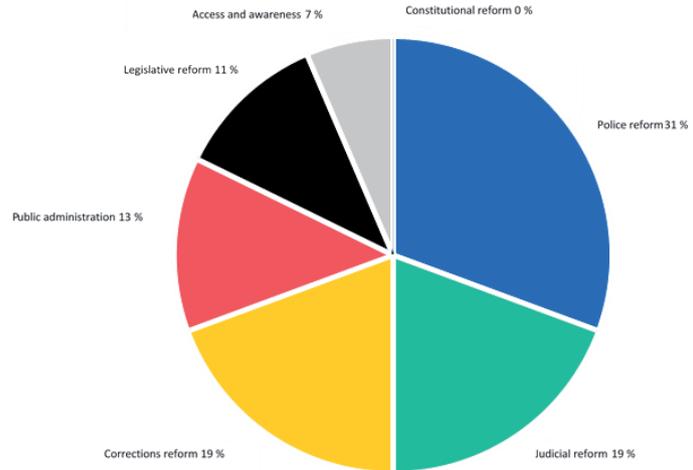
When examining the area of police reform, research shows that capacity building is the most frequently used method. Thus, police personnel are the main recipients of most training initiatives, followed by judicial personnel and corrections officers. Both types of peace operation in three of the countries studied have conducted a range of trainings. In peacebuilding missions it is done on a noticeable smaller scale than in the peacekeeping operations. Another method used within police reform area is monitoring, mentoring and advising, often conducted through joint patrols or community policing. Monitoring and mentoring is conducted in almost all countries and by both mission types, though to a lesser extent than capacity building initiatives.

The judicial and corrections reform areas are the second largest reform area in peacekeeping. There is a minor reduction in scope in the sequencing from a peacekeeping operation to a special political mission. Within both of the reform areas, assistance relies on capacity building, monitoring, mentoring and advising and technical assistance. Accordingly, throughout the whole justice chain reform area, peacekeeping and special political missions provide similar type of assistance with the same methods, but to a less extent in special political missions than peacekeeping operations. This clearly illustrates a path dependency of the reform areas and methods used in peacekeeping operations and ensuing special political missions.

A slightly different scope of assistance

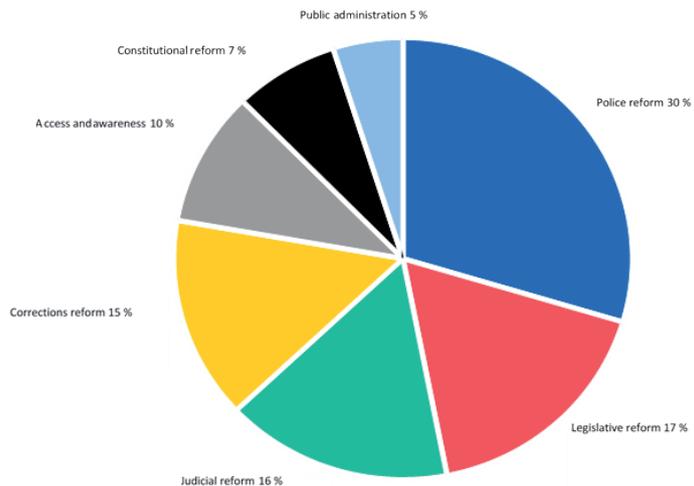
While peacekeeping operations and special political missions both mainly target justice chain reform, special political missions seem to pay a little more attention towards areas such as constitutional and legislative reform and access to justice. The area of legislative reform receives less attention in peacekeeping, while it is the second largest reform area within special political missions. The biggest difference lies within the constitutional reform area where the assistance from peacekeeping operations is absent, and is instead solely provided for in special political missions. This development departs somewhat from the path dependency mentioned above.

DPKO missions that were followed by DPA missions, globally 1989-2014



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DPA missions that were preceded by DPKO missions, globally 1989-2014



“RIGHT FIT” OR “TEMPLATE” FOR RULE OF LAW ASSISTANCE?

UN peace operations and peacebuilding

It is clear that both types of UN crisis management tools, peacekeeping operations and special political missions, contribute directly to peacebuilding. Strengthening rule of law and restoring state functions will likely continue to remain as an immediate peacebuilding priority and a core element in peace operations. According to the Advisory Group of Experts for the peacebuilding review, the majority of the UN's peacebuilding mandates are entrusted to peacekeeping operations and special political missions. At the same time, the traditional way of looking at peacekeeping and peacebuilding as a linear process is also criticized for being insufficient and inflexible. This raises a central question – what are the different

roles and responsibilities of peacekeeping operations and special political missions to contribute to peacebuilding through the provision of adequate, timely and “right fit” rule of law assistance?

The still undefined role of peacekeepers in peacebuilding and the unclear division of responsibilities in relation to the wide range of peacebuilding tasks is one explanation to the identified path dependency between the two mission types. Without clear roles and responsibilities, a peacebuilding mission following a peacekeeping operation is likely to continue in the same tracks and fall into “ready-made” assistance. This runs the risk of missing the goal of a politically adapted transition, and thereby the provision of an adequate and tailor-made rule of law assistance. This challenge is also identified in the HIPPO report, emphasizing the need to review mission progress and adapt mandates to reduce the risk of creating patterns of dependency that might hamper transition or exit processes.

Since peace operations have a central part to play in peacebuilding, and also considering the unclear division of responsibilities, there is an urgent need for improved coordination and cooperation within the larger peacebuilding architecture at the UN. At the head quarter-level, the main actors are the Security Council, the General Assembly, DPKO, DPA, Department of Field Support, Peacebuilding Fund, Peacebuilding Commission, and Peacebuilding Support Office. At the field-level, essential peacebuilding actors are the UN Country Teams, heads of missions and national governments. The Peacebuilding Commission is responsible for the planning for transitions between conflict and post-conflict peacebuilding, facilitating peacebuilding strategies, and for mobilizing resources. Thus, the Commission is a key actor for addressing the challenges of providing timely, “right fit” and context specific peacebuilding support in times of mission transitions.

Since the Security Council has not always been understood as a key peacebuilding actor, there are mixed experiences of the coordination between the Peacebuilding Commission and peace operations. In order to improve the collaboration, and thereby also address the peacebuilding dimensions of peace operations, the Advisory Group of Experts for the review of the peacebuilding architecture, underlined the possibility for the Security Council to draw upon the Peacebuilding Commission for advice on peacebuilding tasks of mission mandates. This, in combination with the suggested establishment of “peacebuilding compacts” between the Security Council, Secretary-General (through mission leadership on the ground) and the national authorities would enable the UN to focus more attention to both the timing and management of transitions between different kinds of missions, keeping in mind the need to adapt to the changing dynamics of the conflict. If the UN manages to deal with the “blurred lines” between peacekeeping and peacebuilding by implementing these recommendations, it would set the ground for the development of a “right fit” rule of law assistance tailored for the specific context in question.

Human and financial resources

The fact that the UN suffers from a lack of financial and human resources with regard to peacekeeping and peacebuilding has been known for many years. So too has the urgent need for adequate funding and civilian capacity in the area of rule of law that has remained a core concern for a long time. The problem is recognized by the Advisory Group of Experts for the peacebuilding review, stating that Security Council mandates calling for support in critical sectors such as rule of law reform, often come without any of the necessary resources for programming.

As a response to address the financial hurdles facing peace operations today, both HIPPO, and the Advisory Group of Experts for the peacebuilding review, emphasizes the need to reinforce the recommendations provided in the 2011 report on funding and back-stopping of UN special political missions. The HIPPO report

“Without clear roles and responsibilities, a peacebuilding mission following a peacekeeping operation is likely to continue in the same tracks”

also suggests a creation of one single “peace operation account” to help close the gap between mandates and programming resources.¹⁶ The peace operation account was however not supported in the Secretary-General’s follow-up report on the implementation of the HIPPO recommendations.

It is evident that the lack of resources is severely hampering the DPKO’s and DPA’s capacity to provide rule of law assistance that is comprehensive, timely and adjusted to country specific needs. One could argue that, with fewer resources than peacekeeping operations, resulting in an inability to adapt to the new circumstance, subsequent special political missions can do nothing else but to continue providing the same type of assistance but to a lesser extent, confirming the path dependency. This development would not be a result of the adaption to the changing circumstances, but rather a continuation of an already predetermined pattern based on outdated context analyses.

Because of the fact that special political missions often lack both human and financial resources in comparison to peacekeeping operations, they are also more dependent on support and expertise from other UN entities present in the country. This could be a possible explanation to the broader scope of assistance outside the justice chain provided by special political missions. Another explanation could be that legislative and constitutional reform are both politically sensitive areas that requires more efforts on the political arena and thus better suit the mandate of a special political mission. Political solutions and the “primacy of politics” is another thread that is reemphasized in HIPPO and its related reports. There are currently specific requests for monitoring, mentoring and advising skills among rule of law actors, since these are often seen as successful when it comes to the central objective of building confidence and align within the political dimensions of rule of law reforms. The lack of sufficient resources is an obstacle not only impeding transitions but the entire effectiveness of rule of law assistance.

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GFP for police, justice and corrections – one potential problem solver?

FBA’s research indicate a number of issues that are significant for ensuring a “right fit” of peace operations and rule of law assistance. If the identified differences and similarities between peacekeeping operations and special political missions are the result of a conscious transition strategy designed to suit a specific context, then the UN must do more to make this explicit, institutionalize the response more clearly, and supply the resources necessary to implement it in practice. Unfortunately, the differences, and in particular the identified path dependency, instead point to a fundamental challenge in the UN system to adapt to changing political and security circumstances.

There are high expectations on the GFP for police, justice and corrections to target these challenges by providing an integrated and informed rule of law assistance through better resource mobilization, analysis, planning and coordination. The Secretary-General recently also expressed his intentions for enhancing the GFP arrangement and strengthen its capacity for joint programme design and implementation. Through the GFP arrangement, the mission leadership is responsible for the implementation of rule of law activities, and are accommodating a full range of UN peacebuilding entities (from peacekeepers to development actors) present in conflict. Through early and strategic long-term planning among these actors, arrangements such as the GFP have the potential to address unclear peacebuilding roles and responsibilities. It will also have the potential to address the identified path dependency by addressing both the lack of civilian capacity and expertise between peace operations and to mobilize resources in peace operations transitions. The GFP would thus ensure that transitions become flexible reactions to changing country circumstances, “right fit”, rather than just a transfer

16. Besides, the Advisory Group for the peacebuilding review requested a provision of core funding to the Peacebuilding Fund which would constitute 1 percent of the value of the total UN budgets for peace operations.

of tasks into ready-made templates. Alongside the implementation of the recommendations from the HIPPO report, the review of the peacebuilding architecture and the Global Study of resolution 1325, the GFP arrangement could be given an even greater role in times of transitions and mission drawdowns.

Even though the thematic orientation of the GFP reinforces a justice chain-focused rule of law assistance, it possesses great potential for including cross-cutting issues such as human rights and gender. Providing long-term cooperation and partnership with entities like UN Women, brings about the expertise needed to ensure a gender perspective into rule of law reform. To address the discrepancy between UN rule of law assistance in practice and the broader rule of law agenda, the GFP could serve as a potential model for other forms of assistance outside the justice chain.

CONCLUSION

The tendency to fall back on ready-made templates, the bureaucratic resistance and the lack of sufficient resources are all obstacles that not only impede rule of law assistance but all types of peacebuilding support provided by peace operations. To properly address these challenges in the words of the HIPPO report, requires a “change in mindset” of the whole organization.

Assuming that the UN would succeed in tackling the “blurred lines” between peacekeeping and peacebuilding, enhance the cooperation and coordination within the larger peacebuilding architecture, implement the bureaucratic and budgetary parts of the recommendations from HIPPO – and consequently create a seamless transition between peacekeeping and peacebuilding in the field, one major challenge for rule of law assistance remains. It is the frequently used technical approach, often disconnected from the political dimensions that has most bearing for rule of law reforms. The need to work more “politically smart” is not new to the rule of law field, but it is receiving more and more attention in the peace operations and peacebuilding arenas. Rule of law reform practice in UN peace operations is, as the FBA’s research shows, full of examples of what look like template-made assistance of drafting laws, training police and correction officers and building new institutions with a lack of attention on the specific context. For rule of law reforms to be successful, there is a need to align them with political approaches in order to ensure a “right fit” and context specific rule of law assistance.

Accordingly, there is an urgent need for the UN to fill the terms “right fit” and “change in mindset” with a content, to ensure they do not only remain as empty buzzwords.