

Chapter Five

Strategies for Addressing Serious Crimes

The aims of this chapter are to

- Present a variety of strategies that will enhance the investigation and prosecution of serious crimes perpetrators
- Consider the role played by criminal intelligence gathering in the investigation and prosecution of serious crimes
- Consider the issue of “targeting” serious crimes perpetrators in a post-conflict state and the practical and political considerations involved in this endeavor
- Highlight the necessity of public awareness campaigns in combating serious crimes
- Discuss the role of international military forces in combating serious crimes in a postconflict society

This chapter discusses four diverse strategies for addressing serious crimes: criminal intelligence gathering, targeting, public awareness campaigns, and the participation of international military forces. *Criminal intelligence gathering* involves collecting information on general crime trends, specific criminal activity, and preparatory acts (i.e., acts that are not crimes themselves but indicate that a crime is being planned). *Targeting* involves focusing efforts and resources on certain crimes that are particularly destabilizing in a postconflict environment or focusing investigation and prosecution efforts on specific individuals who commit serious crimes. These two strategies are interrelated (the results of criminal intelligence gathering can be used to inform the development of targeting strategies) and, as discussed below, both are invaluable tools in criminal investigations and in determining which serious criminal activities should be accorded the highest priority. The third strategy outlined in this chapter involves the use of *public awareness campaigns* to curb serious crimes, manage information about them, and generate public support for serious crimes initiatives. The fourth strategy, *military participation*, involves using international military personnel to combat serious crimes.

Criminal Intelligence

“Intelligence” is not just another term for “information.” Information becomes intelligence when it has been processed and given meaning. Decision makers in police organizations need intelligence to make operational and strategic decisions and to act upon them. Thus intelligence is sometimes defined as “information designed for action.”

The term “intelligence” refers both to the intelligence process and to pieces of intelligence. The intelligence process is often described as a cycle, starting with tasking and then moving through collection, evaluation, collation, and analysis of information, to dissemination, and then back to tasking again. In practice, the intelligence cycle is a dynamic process responsive to situational changes and immediate needs.

Different intelligence functions work in different ways. For the purposes of this section, “intelligence function” refers to the personnel responsible for handling the intelligence process. For example, the function may be a designated criminal intelligence agency or a unit within a police department. Some functions choose to have different people responsible for collection and analysis, while others employ the same people throughout the entire cycle. The best approach for a given situation depends on a range of factors, including the task at hand, available resources, and the skills of the staff.

In policing, a distinction is often made between operational, or tactical, intelligence and strategic intelligence. Operational intelligence is a tool used to provide investigators with hypotheses, assessments, and inferences concerning illegal activities and the persons or groups committing them. It can be used either to support an ongoing investigation or as a tool to initiate investigations or adopt countermeasures. Strategic intelligence focuses on the environment of police activities in the context of the police agency’s aims. Strategic intelligence provides information and assessments on current and emerging trends, threats from different types of crimes or criminals, opportunities for counteractions, and so forth. Based on this information, decisions can be made on how best to allocate operational resources (time, money, personnel, and equipment). Strategic intelligence also allows the agency to develop indicators and warning signals with which to assess different kinds of situations.

The skillful use of intelligence allows police to be proactive, rather than just reactive, to crimes as they happen. Being proactive lies at the center of any effective strategy to combat serious crimes, as the effects of such crimes are often too grave to allow a reactive approach. A proactive approach necessarily emphasizes the prevention of crime. It also stimulates recognition of the importance, when confronting complex criminal networks, of disrupting and dismantling the networks themselves, rather than just arresting individual criminals, whose place within the network will soon be taken by someone else.

The term “intelligence” often has a negative connotation in postconflict states. In many such states, the public is accustomed to regarding intelligence agencies as the tools of those in power; far from combating serious crimes, the agencies are seen as being above the law and being tied to or even engaged in serious crimes activities. Consequently, preexisting intelligence services may need to be reformed or disbanded in the aftermath of a conflict. Any intelligence service—whether a preexisting, reformed, or entirely new one—should behave in a manner consistent with the principles of a state governed by rule of law and should adhere to international standards and norms.

A vital step in separating the intelligence service from memories of an oppressive regime is to devise and implement legislation that closely governs the use and activities of an intelligence function and creates a mechanism to address sensitive issues as they arise. Those issues are likely to concern methods of collection of information, the sharing of intelligence, protection of personal data, storage of information, and the need for additional or amended legislation either to empower intelligence services or to restrict their working methods.

The Intelligence Process

As noted above, the intelligence process has the following components: tasking, collection, evaluation, collation, analysis, and dissemination. The art of intelligence is to identify the essential in a mountain of information. For an intelligence function to be successful, it cannot aimlessly collect. Rather, it must have a focus and a clear task and must know what it needs and where to get it. How this focus is set can vary, but it has to be based on a conscious decision. For this reason, targeted collection is an essential element in the intelligence cycle. If collection is not managed properly, the intelligence function will find itself drowning in information and will struggle to produce anything useful.

Of course, the craft of intelligence can be performed without the assistance of software. But in today’s information age, personnel often collect more information than can be manually processed, and modern technology is therefore extremely useful. A number of companies have developed software packages for use by law enforcement. Many of these can be invaluable in a postconflict state with the resources and infrastructure to employ such technology, but the state must carefully research the available software tools to determine which best suits the state’s needs. If time and resources permit, software should be developed or customized to meet a state’s specific requirements. A criminal intelligence function must have on its staff officers skilled in information technology, particularly database design and maintenance. Given the sensitive nature of much of the information collected and shared, all databases—and, indeed, all information in whatever form—must be secure and accessible only by those with the requisite level of clearance.

Analysis, the hub of the intelligence process, involves synthesizing and assessing the information that has been collected. The analysis phase gives meaning to the information and puts it into context. In the intelligence process, analysis is a separate component, but it is also used when determining the larger goal of the intelligence process, devising a collection plan, designing the storage of information, and determining how information should be packaged for dissemination. Analysis may generate inferences or assessments, which often come in the form of hypotheses that need to be tested. Analysts can make recommendations to investigation teams or to managers, depending on whether the analysis is operational or strategic. If the information at hand does not lead the analyst to a firm conclusion, the analyst can identify the gaps or weaknesses in the information and make recommendations or set up new intelligence requirements for further collection.

Once the analysis has been completed, the results need to be disseminated. What form the dissemination takes depends on the type of material and the importance and speed with which the information has to be assimilated. Written reports may be combined with oral briefings. Before disseminating results, personnel must consider the sensitivity of the information and decide whether a report should be classified or not. Different versions of a report can be prepared and disseminated; for instance, sensitive information in a classified report can be removed so that the remaining information can be shared with a wider group. However, sensitive sources must always be protected and their identities kept secret, not least so that they (both individuals and agencies) will feel sufficiently confident to supply more information in the future.

The role of the intelligence function is to give the best analysis and explanation of the available information. There are, however, limits to what any intelligence function can achieve. For instance, if information is deliberately withheld from the intelligence function by, say, another intelligence function, then it may be difficult or impossible to offer any warning of an impending crime. Nonetheless, despite its limitations, an effective intelligence process is critical to the success of efforts to combat serious crimes.

To be effective, the intelligence function must have a well-defined mandate, decision makers who know the benefits and limitations of intelligence and understand how to make the best use of it, sufficient and competent staff with expertise in collection and analysis, and adequate resources. The intelligence function must also be an integral part of or closely connected to the wider police organization.

Intelligence Compared to Evidence

Intelligence is not the same as evidence, which is intended to be used in court and will be admissible provided that it has been collected in accordance with applicable law. Of course, intelligence, by leading police to the discovery of admissible evidence, can be used as a tool to collect evidence. And sometimes information comes to the intelligence unit in such a form and from such a source that it can be used as admissible evidence. Usually, however, intelligence cannot be used in court, either because it is insufficiently reliable or detailed or because it comes from sensitive sources. Presenting intelligence from sensitive sources in court may jeopardize the security of those sources and make it impossible to use them again. However, sensitive and/or unconfirmed information can be invaluable in giving the intelligence unit a lead as to how to determine its accuracy or how to obtain the same information in a form that *can* be introduced in court.

Sharing Intelligence

In combating serious crimes, it is generally useful—and often crucial—to share information across intelligence functions or between organizations. This can, however, pose problems. In some instances, an organization is not allowed to share intelligence or information with other organizations; in other cases, the information that is shared was originally produced for a different purpose, meaning it cannot be immediately used by another agency.

Given the often transborder nature of serious crimes, it is important to establish a methodology, procedures, and data-protection mechanisms for the sharing of intelligence and analysis with other countries and organizations. The latter are likely to include the International Criminal Police Organization (Interpol) and, within Europe, the European Police Office (Europol), both of which were established to improve cooperation of member states in the prevention and combating of crimes including terrorism, organized crime, trafficking in human beings, drug trafficking, and other crimes with transnational impact or involvement.

Nongovernmental organizations (NGOs) in a postconflict state often come across information that could be valuable to a criminal intelligence function. Sometimes, however, NGOs are reluctant to associate themselves with a criminal intelligence function, because if they do so they may jeopardize their neutrality in the eyes of the parties to the conflict, thereby making it more difficult to carry out their mandate. But it is important for a criminal intelligence function to explore the possibilities of cooperation with NGOs that might discover important information. The fact that there may be obstacles to such cooperation does not necessarily make it impossible to achieve.

Where a peace operation is present in the postconflict state, international personnel engaged in efforts to confront serious crimes may try to obtain the security clearances that would enable them to access intelligence from their home states. However, even if personnel obtain such clearance, they may not be allowed to share the intelligence from their home states with others or with people of different nationalities, even with people who work for the same intelligence function. This difficulty can be overcome in part by negotiating agreements to share information between specific organizations. Even so, a bilateral agreement does not automatically allow a receiving organization to pass the information on to a third party. Often, shared information or intelligence comes with a handling code, which specifies what the sending agency allows the recipient to do with the information—for example, the code may indicate whether the recipient can share the information with another agency, use it in court, or include it in a report without first consulting with the sender.

Occasionally, states will supply information and intelligence to peace operations directly. Such assistance is invaluable, particularly when the intelligence function in a mission is not working well on its own; but, even when a mission's intelligence unit is performing efficiently, states are likely to have more sophisticated means of collecting and analyzing intelligence at their disposal than peace operations have.

In peace operations, the existence of international military forces presents challenges and opportunities in relation to intelligence sharing. A distinction is often made between military and criminal intelligence, but in postconflict societies, although military intelligence may not focus its efforts on criminal activity, some of the information collected is almost certain to be directly relevant to combating serious crimes. The overlap between military and criminal intelligence becomes very clear when investigating serious crimes and war crimes. In postconflict societies, therefore, it is important to have a flow of information between police and military intelligence functions. This process is not always without its challenges, however, as evidenced in the following sidebars.

Inability to Share Intelligence Results in Release of Terrorist Suspect

In Bosnia and Herzegovina, SFOR (the NATO Stabilization Force) detained a suspect for alleged involvement in terrorist activity. Ultimately, SFOR turned the suspect over to local law enforcement, which had to release him, since SFOR was not able to share its intelligence or provide evidence that could be used to sustain charges.

Problems with Detention Based on Intelligence

Detention based upon information from intelligence sources can pose difficulties. For the first few years after the start of the peace operation in Kosovo, the special representative of the UN secretary-general (SRSG) issued executive orders for detention of individuals, even after the courts—including in some cases a court composed entirely of international judges—had ordered an individual released for lack of evidence, and even when the release had been proposed by the international prosecutor on the case. In some of these cases, the SRSG relied on intelligence from KFOR, which did not want the source of that intelligence disclosed in court. The international judges and prosecutor had the ability under Regulation 2001/20 to ensure that witnesses were not identified publicly, but the procedure required disclosure of intelligence to the international jurists. Intelligence sources were not willing to make such disclosures.

One purported reason for holding suspects under executive orders for detention was to provide enough time for the investigation to continue so that evidence admissible in court could be obtained. Ultimately, however, suspects would have to be tried in court, and the issuance of an executive order to detain was intended to be a temporary measure.

The Legal Systems Monitoring Section of the OSCE, international human rights organizations, and the UNMIK ombudsman argued that executive orders for detention violated the principle of judicial independence by interfering with the criminal justice system. Further, when they failed to provide for judicial review, executive orders

for detention lacked a basis in local or international law. A Council of Europe report acknowledged that while such a measure could arguably be appropriate in the immediate aftermath of an ethnic conflict, when peace and order is a priority and an administrative vacuum exists, the measure's appropriateness is questionable a few years into the mission.

As criticism of executive orders for detention mounted, UNMIK convened a special panel of international judges, with appropriate security clearances, to review sensitive evidence and determine whether continued detention was warranted in one particular bombing case involving four suspects. Special judges were flown in for the express purpose of deciding on the issue of detention in this one case. The reason cited for using outside judges was that they all had security clearances already and would be reviewing classified material. OSCE and the ombudsperson institution in Kosovo argued that establishing the special panel did not remedy the situation and that detention by executive order was still contrary to international standards because the defense was unable to challenge the undisclosed intelligence/evidence. The special panel determined that there was sufficient evidence to justify holding the suspects for a specified amount of time. Eventually, the investigation failed to obtain enough admissible evidence to try the suspects in court, so three of the four were released. The fourth, however, was linked to the bombing charged in the case through DNA evidence found on a cigarette butt at the ignition point.

Difficulties in Using Military Intelligence in a Civilian Case

In Kosovo, a Kosovo Albanian suspect was arrested for the murder of three Kosovo Serbs, including a four-year-old child, standing in front of a small store. One factor that led to the eventual acquittal of the suspect was the segmenting and compartmentalization of inculpatory evidence, some of which was classified as military intelligence. When the suspect—who was known to military intelligence as a provocateur—was first arrested, KFOR interviewed both the suspect and a suspected accomplice. Both provided an alibi claim (involving their presence at a pizzeria), which was then classified by KFOR as military intelligence and, accordingly, was not provided to UNMIK international police, the Kosovo prosecutor, or the international prosecutor appointed later. Subsequent examinations of the suspect and his friend by the international judge and

UNMIK international police resulted in a second alibi claim that differed from the first as to place and time, among other details. With five defense witnesses corroborating this second alibi claim, and only one Serb victim able to identify the suspect, the Kosovo prosecutor dismissed the case. The international prosecutor, after learning of the existence of the first alibi, managed to resurrect the case after a year of procedural battles. Unfortunately, by that time there had been a unit rotation of KFOR personnel back to their home countries, leaving none of the original military interrogators in Kosovo. Moreover, the identities and contemporaneous notes of the military interrogators had not been preserved—only anonymous notes in the computerized military intelligence database remained. Thus the first alibi could not be used to impeach the second.

MOU Assists in Civilian-Military Sharing of Intelligence

A functioning intelligence-sharing system depends not only on the existence of mutual trust between the police and the military but also on an agreement that lays out what can be shared, how it can be shared, and under what circumstances. In Kosovo, the UNMIK international police and the Military Police Unit of KFOR developed a memorandum of understanding (MOU), stating that each would provide information and investigation support to the other by gathering, disclosing, and exchanging relevant intelligence to facilitate exchange of security- and crime-related information. UNMIK and KFOR each appointed a point of contact responsible for information exchanges and for determining what information could be shared. UNMIK and KFOR also agreed to keep secure the information received from the other.

Establishing Criminal Intelligence Units to Address Serious Crimes

As mentioned in chapter 4, a postconflict state will need to establish a criminal intelligence unit (CIU) within the national police force to coordinate intelligence collection, storage, analysis, and sharing; to act as a central repository for intelligence information; and to handle informants. Decentralized units may also be considered for different regions. In addition, in some

Creation of an Intelligence Unit in Kosovo

In Kosovo, various agencies were carefully designed to bridge the gap between UNMIK, with its police, prosecutors, and courts, and KFOR, with its military intelligence units, and to turn intelligence, including sensitive military intelligence, into admissible courtroom evidence. For example, in early 2000, a CIU associated with UNMIK international police was established and located in the KFOR main base. It was meant to pool police information on organized crime with relevant KFOR intelligence, perform analysis, spot trends, and recommend targeting strategies that would make best use of scarce police resources. While this process was slow to develop on the ground, it precipitated the eventual establishment of the Kosovo Organized Crime Bureau (KOCB), which in turn became the police analysis and investigating body for organized crime. KOCB received intelligence from the CIU and other UNMIK international police units. KOCB was also the designated technical operator for all UNMIK international police technical and covert surveillance and for undercover agent and informant handling. By mid-2002, the nascent KOCB had developed an effective working

relationship with KFOR, CIU, and international prosecutors in the UNMIK Department of Justice, resulting in prosecutable arrests due to a combination of priority targeting and covert and technical surveillance. The process of targeting was made more effective by the U.S. Department of Justice's establishment of a Sensitive Information and Operations Unit (SIOU). Ultimately, SIOU used the military and police intelligence shared by KFOR, CIU, and the KOCB to target key serious crimes actors, and then used police investigations and covert and technical surveillance to gather admissible evidence for court proceedings.

Despite the fairly elaborate system established in Kosovo, UNMIK still discovered that converting intelligence into evidence is not easily accomplished. UNMIK's efforts to follow up the receipt of intelligence with covert and technical monitoring and surveillance did not usually yield sufficient evidence to make a successful, prosecutable case. It was not until 2005 that UNMIK had its first conviction in an organized crime narcotics case that depended heavily on covert monitoring of telephone conversations.

peace operations, international organizations and military forces may set up mechanisms to share and coordinate intelligence. As discussed in the above sidebar, in Kosovo, UNMIK set up a CIU staffed by international police and stationed inside KFOR's headquarters. The unit was linked with the UNMIK police commissioner and the Kosovo Organized Crime Bureau. In Bosnia and Herzegovina, the Office of the High Representative set up a similar unit, operated by international personnel.

Establishing a specialized criminal intelligence unit in the national system requires legislation specifying the unit's competencies and power, in addition to standard operating procedures to govern numerous issues, including policies for the prevention of unauthorized access to or disclosure of information, name- and password-identification controls, and oversight. Given the highly specialized and technical nature of intelligence

gathering and analysis, personnel must undergo a thorough vetting process and be fully trained. Substantial funds are necessary to provide the office with necessary resources—everything from pens and paper to intelligence-gathering equipment, vehicles, computers, and computer experts. The unit also needs policies and procedures for cooperation, communication, and coordination with other organizations in the criminal justice system.

Targeting Strategies

“Targeting” refers to the process whereby the police or the prosecution wing of the criminal justice system determine potential targets for investigation or prosecution. Targets may be specific individuals, criminal organizations, or criminal activities. Factors such as the target’s destabilizing effect or danger to the public, availability of resources, and desired outcome often inform the choice of targets. Once a target has been identified, a tactical strategy is then created. Targeting strategies are shaped by criminal intelligence information. For example, strategic criminal intelligence information will give the police an idea of crime trends and patterns in the state and of what crimes should be prioritized in terms of strategic responses. Operational criminal intelligence may inform police or prosecutorial strategies regarding which suspects to pursue. It will also help identify targets for covert surveillance and undercover operations that may lead to the discovery of evidence admissible in court, or at least evidence that could prompt a judicial or prosecution investigation. In a postconflict state, depending on the circumstances, military intelligence from international forces may also assist police and prosecutors in developing targeting strategies.

All targeting strategies require choices, such as how best to allocate resources or whether to focus on a particular type of crime or a particular criminal network. In the postconflict context, an additional issue often arises: whether immediate political considerations and fears of generating social unrest should override pursuing prosecutions of certain serious crimes perpetrators. This is a very sensitive issue and one that is often left unaddressed.

Political considerations could come into play in a variety of situations. For example

- **An arrest of someone who is politically powerful or regarded as a war or resistance hero by segments of the public could provoke protest demonstrations and civil unrest—possibly even riots and serious violence. The arrest may serve as a rallying point for political extremists, who will**

stoke fear, dissatisfaction, and unrest. Even if civil unrest does not occur, the apprehension that it might occur could result in a decision to not investigate, arrest, or prosecute.

- Perhaps as part of a peace agreement, a political deal may deliberately co-opt into the government a leader who is alleged to have been involved, or to still be involved, in criminal activities. Such a deal may not even be explicit.
- A leader may deliver an implied threat that unrest will occur if he is investigated, arrested, or prosecuted—a threat which the international community or new government heeds.
- The security situation may be so fragile that pursuing politically well-connected perpetrators of serious crimes could reignite the conflict itself. Even if the situation is not so fragile, the fear that it may become so could prompt a political decision to prevent an arrest or prosecution.
- Efforts to arrest or prosecute certain individuals may be perceived as evidence of discrimination against a particular ethnic or religious group or as an attempt to further the interests of one or more political factions.
- Pursuing criminal cases against certain individuals may undermine broader military or intelligence objectives.

Whether and to what extent such political considerations should be taken into account is a matter of debate. Some observers argue that political considerations should *not* be factored into legal calculations—that those who commit crimes should be held accountable no matter who they are or what the possible short-term consequences of their prosecution might be. These observers argue that to do otherwise undermines the fundamental principles of the rule of law, undermines other efforts at establishing postconflict stability, and demonstrates acceptance of impunity. Others argue that political considerations should be given primacy over investigations, arrests, and prosecutions because serious crimes efforts are themselves primarily part of a political strategy aimed at preserving stability, and a postconflict environment may not be able to withstand the fallout of certain prosecutions. Still others contend that each decision over whether or not to act should be based on the situation at hand and that efforts to stabilize a postconflict environment call for a careful balancing of interests. Proponents of this view advocate first assessing both the situation and the possible consequences of taking (or not taking) action and then determining whether delaying action would be harmful or helpful to the goal of establishing a secure environment based upon the rule of law. The precedent-setting consequences of political control over police and prosecution must also be taken into account.

Public Awareness Campaigns

Popular understanding and support for, or at the very least acceptance of, any serious crimes strategy is essential in a postconflict state. To win such support, it is vital to conduct public and community outreach and awareness campaigns, or, to use the military term, “information operations.” For purposes of this section, the term “public awareness campaign” will be used to cover both civilian and military public information, awareness, and outreach efforts. Whether conducted by military or civilian authorities, public awareness campaigns should have four main objectives: to let the public know what is being done to tackle serious crimes; to manage information about arrests and operations; to win popular legitimacy for the fight against serious crimes; and to garner the active support of the local population.

The first and foremost objective of a public awareness campaign should be to keep the public apprised of the strategies and approaches being employed with regard to serious criminal activity and police. Any amendments to the legal framework designed to curb serious criminal activity (either in general or of a specific kind) should be well publicized, with particular emphasis being given to the benefits those measures are likely to bring to the local community. Where new measures (such as covert surveillance, the use of cooperative witnesses, or the establishment of criminal intelligence agencies) may be associated with oppressive acts of a prior regime, it is important that the public fully understand the extent and nature of the measures and how they will differ from those of the past. It is also important to explain how the rights of those subject to the new measures will be protected. Failure to take these steps could lead to public misunderstanding of the new laws and spark unrest. Rising levels of “legal literacy,” as the public learns of its rights under the law and asserts those rights, may lead to a decline in incidences of police misconduct.

A second objective of a campaign should be to “manage” information about any high-profile arrests or serious crimes operations. Misinformation

Lack of Public Information Results in Riots

In Kosovo, discontent over sales tax issues sparked several riots. UNMIK lacked the ability to impose a point-of-sale tax, and so instead decided to collect sales tax on goods imported into the territory. Little information was provided to the general public about this decision, however, and the Kosovo Serbian community perceived the tax as an import tax and the first step in declaring an independent state. Had an information campaign been launched prior to the start of sales tax collection, many misunderstandings and difficulties could have been avoided.

about and misunderstanding of such arrests can lead to widespread discontent that escalates into violence. This situation is particularly likely to develop in a fragile postconflict state, where ethnic or other group divisions may have been at the heart of the conflict or where serious crimes, including revenge attacks or ethnically or politically

motivated murders, may be seen as justified on partisan grounds. The arrest of a member of an ethnic or other group who is suspected of a serious crime may be viewed unfavorably by other members of the group. To counteract any potential discord in the community, the reasons behind any arrest or indictment should be made public as soon as possible. This step will help to counter any misinformation offered

by the media or associates of a high-profile figure. Of course, care must be taken to not violate the presumption-of-innocence standard and to ensure that the public awareness campaign is focused on providing accurate information, rather than on conducting a trial by media. Codes of ethics should be in place to provide guidelines on what information prosecutors and defense lawyers can disclose to the public in a criminal case. This precaution is important for a number of reasons, including avoiding materially prejudicing an adjudicative proceeding, disparaging the court or criminal justice system, or inciting negative public reactions.

A third objective of public awareness and outreach campaigns should be to gain wider legitimacy among the local community for the fight against serious crimes. It may take years for the criminal justice system and police in a postconflict state to gain legitimacy with the local population, especially where they have been the perpetrators of gross violations of human rights in the past. However, while engendering trust in the criminal justice system is a long-term venture, something as simple as explaining publicly the reasons for making an arrest or why serious crimes threaten the peace will do much to persuade the community of the legitimacy of serious crimes initiatives. Furthermore, public awareness campaigns can help convey both the gravity of serious crimes to a public that may not fully appreciate their adverse impact on reconstruction efforts, and the progress made in combating them—progress that may otherwise go unrecognized by the public.

A fourth objective of public awareness and outreach campaigns should be to garner the active support and participation of the local population. One of the biggest barriers to the successful prosecution of serious crimes in postconflict societies is the reluctance of witnesses to provide information and their unwillingness, because of intimidation or a fear of retribution, to testify at the trial of persons accused of serious crimes. The

Inadequate Public Awareness of Witness Protection Options

UNMIK Regulation 2001/20 provides for a number of witness protection measures, including closed sessions of court proceedings, the use of pseudonyms, the temporary removal of the accused from the courtroom, and the establishment a Witness Protection Unit. However, boosting public confidence in these programs remains a challenge for Kosovo's criminal justice system—a challenge that underscores the important role public information campaigns must play in providing clear and precise information about measures available to witnesses who qualify for protective assistance.

establishment and publicizing of programs such as secure, anonymous, twenty-four-hour hotlines and drop boxes for anonymous tips to the police can help to overcome this reluctance. Similarly, witnesses may be encouraged to testify at trial if they hear of changes to the legal framework such as the creation of witness protection and relocation programs. Additionally, when a system of full or partial immunity from prosecution is introduced (as detailed in chapter 3), the public should be told of the rationale behind and the benefits of such a step.

All public awareness campaigns should be carefully designed and spearheaded by a public information officer or other appropriate specialist. When international or regional organizations become involved in a postconflict state, whether in assistance or executive roles, they should ensure that public information becomes a core aspect of their mission. When conceptualizing and planning a public awareness campaign, it is important to find answers to questions such as, What message is being conveyed? To whom should it be conveyed? How should it be conveyed?

Care will always need to be taken in relaying such messages. Many police activities related to serious crimes are physically dangerous and politically sensitive and may not be suitable for public discussion. While informing the public of important developments, public outreach campaigns must not jeopardize ongoing investigations. Whom the message is being conveyed to will also affect how the message is being conveyed. If the majority of the local population is illiterate, written campaigns are a waste of resources and the message should be spread instead by radio, theater, dance, or public meetings. It is also imperative, no matter what the message is or how it is delivered, to engage the support of local leaders, community chiefs, elders, or prominent members of civil society. In terms of where the message will be conveyed, it is important to remember that serious crimes initiatives need to be publicized far

Integrating a Public Information Campaign into Afghanistan's Counternarcotics Strategy

Acknowledging the importance of public information in reducing the cultivation of opium poppy and the use of illegal drugs, Afghanistan has launched an information campaign that stresses the importance of establishing the rule of law, the illegality of poppy growing, the damage that opium does to Afghanistan's international reputation, and the need to offer farmers alternative ways of making a living. Antidrug messages have

appeared on a wide variety of media, including not only radio and television but also comic books, billboards, booklets, matchbooks, stickers, banners, transit advertising, and calendars. During late 2005 and early 2006, President Karzai underlined the message in several public speeches against opium cultivation and in a series of meetings with local political and tribal leaders to gain support for counternarcotics efforts.

beyond capitals and major population centers. How the message is delivered relates not only to the physical mode of delivery (for instance, written campaigns, radio campaigns, or public meetings) but also to the tenor and content of the message. Any public awareness campaigns conducted by foreign assistance providers should take into account local culture, customs, and history and how they might impact the content of the message, its manner of delivery, and its reception.

Failure to Dispel Misinformation Contributed to Rioting

In January 2002, UNMIK international police arrested three former Kosovo Liberation Army members who were viewed as war heroes by many Kosovo Albanians but who were strongly suspected by UNMIK of having committed war crimes. Supporters of the three men exploited political sentiments in the region and claimed in the media that the arrests had been made at the behest of Belgrade, because the men were believed to have killed Kosovo Serbs. In fact, the three were being investigated for killing other Kosovo Albanians. The allegations prompted an outbreak of rioting, requiring the deployment of special police units to quell the disturbance. This episode illustrates the importance of establishing transparent and persuasive public information campaigns to counter misinformation and rumor with accurate and reliable information.

The Role of International Military Forces in Combating Serious Crimes

In a postconflict society, civilian police bodies, whether domestic or (where executive authority exists) international, should ideally be responsible for all law and order duties, including handling serious crimes. Past experience has shown, however, that civilian police bodies, domestic or international, are unlikely to be able to deal with serious crimes in the early stages of international engagement in a postconflict environment. In some places, a functioning police force simply does not exist—as was the case in peace operations in Somalia, Congo (during the first UN mission, in the 1960s), Western Papua, and Haiti. In other places, even if a police force exists, it may not be prepared to tackle serious crimes. Further, in many postconflict environments, the state may lack one or (more often) many of the resources necessary to deal with serious crimes, such as a viable judicial system with functioning courts and detention facilities that meet international human rights standards.

While acknowledging that international military forces are not police forces, in the early stages of international efforts to stabilize and build lasting peace in a postconflict environment such forces may be the only bodies capable of combating serious crimes and maintaining at least some aspects of law and order on a daily basis. In some cases, it may be part of their mission to do so, particularly where the mission involves establishing security or protecting civilians. In the early stages of the

mission in Kosovo, for example, in the absence of domestic and international police forces, international military forces were mandated to confront interethnic violence in the form of murder, kidnapping, looting, and arson. They were mandated to address such violence under Security Council Resolution 1244, Paragraphs 9(c) and 9(d), which empowered the international security presence “to establish a secure environment in which refugees and displaced persons can return home safely” and to ensure public safety and order “until the international civil presence can take responsibility for this task.”

The ability of international military forces to perform such functions is limited both by the terms of their mandate and by the resource and political constraints imposed by the lead organization in a peace operation, such as the United Nations, the African Union, or NATO. Additionally, troop-contributing nations have the ability to limit at any time the extent of their involvement in a mission, which can significantly affect the extent to which the military commander can deal with serious crimes. For example, while the forces of one nation may be able to arrest and detain serious crimes perpetrators, the forces of another may be constrained from doing so by legal, economic, and political constraints.

Another rule of law function in which international military forces have played a role in past peace operations is the establishment and administration of detention facilities. In the case of Kosovo, the province was divided into five sectors, each run by military forces from a different nation. Some nations serving within the NATO force, KFOR, however, refused to detain arrestees or set up detention facilities of their own. Those nations that did establish detention facilities in their respective sectors were responsible—legally, financially, and politically—for the detention facilities they established, even though they were operating as part of KFOR. In East Timor, the security presence, INTERFET, under Australian command, built and ran a detention center. It established procedures for the review of detention and held suspects until the civilian authorities, in this case the United Nations Transitional Administration in East Timor (UNTAET), assumed responsibility for law and order.

It has been standard practice in peace operations where the international military has engaged in law and order functions that arrests be made only for specifically defined “serious offenses.” Thus, in the early stages of international military involvement, due to lack of resources, mandate, or prioritization, some serious crimes may be dealt with while others may not. In addition to resource concerns, certain types of criminality may not be addressed because of concerns that doing so may inflame an already volatile situation. Some form of prioritization may have to take place. In Bosnia, the task of apprehending war criminals was not at the top of the agenda of NATO’s Implementation Force (IFOR) during the first six months after the Dayton agreement ended the war. The Stabilization Force (SFOR) that followed IFOR showed more interest

Rules of Engagement Are Crucial

The need for well-crafted rules of engagement (ROE) for military units undertaking law enforcement duties cannot be overstated. ROE are essential for the success of a peace operation. For example, ROE were developed to great effect in both East Timor and, at least initially, in the 1992–5 international military intervention in Somalia.

In East Timor, in the absence of a functioning civilian criminal justice system to address serious crimes being perpetrated in the aftermath of the conflict, the commander of the multinational INTERFET force (established under Security Council Resolution 1264) enacted the COMINTERFET Interim Detainee and Disarmament Policy, which empowered INTERFET to apprehend, disarm, and detain persons who had committed “a serious offence” under the provisions of the policy. A detainee ordinance provided for the handling of detainees within East Timor and for establishment of a Detainee Management Unit. The ordi-

nance outlined procedures for detaining persons and reviewing the legality of their detention. The subsequently enacted Order for Force Detention Centres regulated the administration of detention centers and set out various rights of detainees (the right to visits, meals, exercise, cleanliness, medical treatment, religious practice, and so forth) and how these rights would be maintained.

In Somalia, UNITAF (the U.S.-led Unified Task Force) was empowered by its ROE to detain civilians who committed criminal acts and turn them over to local authorities and to disarm people carrying weaponry in the streets. UNITAF’s use of these powers played a large role in fostering some degree of peace and order within the country, at least initially. These ROE were developed in line with the Somali Code of 1962, and the drafters worked closely with domestic legal experts in an effort to complement the military’s rules with local Somali law.

in apprehending alleged war criminals, although it was some years before SFOR made the task a priority. As the peace operation progressed, it became clear that stability in Bosnia and Herzegovina, as well as other Balkan countries, depended upon war criminals being held accountable. Thus, it also became clear that SFOR needed to apprehend alleged war criminals.

International military forces are often called upon to undertake some tasks associated with maintaining law and order, particularly where (as in Kosovo) the mission involves establishing a secure environment and ensuring public safety and order. The very fact of providing an armed and militarily capable presence may in itself assist in deterring serious crimes and providing an overall sense of security within the country. This benefit will be enhanced by international military forces having the ability to establish checkpoints, search vehicles and persons for weapons and ammunition, and, where appropriate, deal with serious crimes as they occur. For example, in Bosnia, IFOR actively sought to ensure freedom of movement, as mandated by the Dayton agreement, by stopping the former warring factions from establishing checkpoints designed to intimidate and create opportunities for extortion and kidnapping.

Stability Police Units: Terminology and Use

Constabulary forces have been part of both military and police forces in peace operations. Initially, these units were given different names: NATO called them “special police units,” the United Nations called them “formed police units,” and the European Union called them “integrated police units.” Fortunately, the resulting confusion over names seems set to diminish, for many organizations are now using the same term, “stability police units.” These units are modeled on constabulary forces such as the French Gendarmerie and the Italian Carabinieri. They are trained and equipped to perform a range of law and order functions, from riot control to criminal investigations. Some tasks performed by SPUs are similar to those conducted by special weapons and tactics (SWAT) teams, civil disturbance units, or rapid-response units in police forces in the United States and other countries.

Where international military forces are required to carry out such tasks, they will invariably have rules of engagement (ROE) defining the limit of their authority and the circumstances in which they can act.

In addition to performing such tasks, international military forces may be able to call upon additional capabilities to combat serious crimes. Some international military forces may have significant intelligence-gathering capability as well as internal military police forces. In some

larger contingents, military police units may have criminal investigators experienced in dealing with crime scenes and equipped to do so. Although the primary function of the military’s criminal investigators is to deal with internal disciplinary matters, their expertise could help in addressing serious crimes, particularly in the gathering of evidence that might later be used in criminal justice proceedings.

International military forces in Bosnia, Kosovo, and more recently Afghanistan have included constabulary forces. Generally speaking, constabulary forces are trained to function during war as part of their country’s military forces. Examples of such forces include the French Gendarmerie, Italian Carabinieri, Netherlands Royal Marechaussee, Spanish Guardia Civil, and Argentine National Gendarmerie. In peace operations, these forces are often attached to the military; however, some forces also have been attached to international civilian police missions. These units have handled tasks such as making high-risk arrests, providing perimeter security for high-risk searches or arrests, and protecting buildings and vulnerable persons. Constabulary forces often have riot-control capability and equipment, as well as experience combating organized crime and other serious crimes in their own countries. They may also have access to forensic expertise and databases in their own countries, which could enable them to obtain information and intelligence about the identities of local criminals and the scope of their illegal activities from national investigation units. International military commanders may be able to call upon these resources in certain situations. They may also have this capacity within their own military police units.

Where international military forces engage in combating serious crimes, it is vital that they know the applicable criminal laws and procedures; have clear ROE delineating the procedures for investigations, arrests, and detention; receive adequate training; and have in place an oversight and accountability system to prevent abuses and hold responsible those who commit abuses. The involvement of military lawyers early on in the planning process (prior to the start of operations and in the early stages of deployment) can facilitate the development of strategies and tactics to counter serious crimes that comply with applicable military procedures and international human rights standards. Additionally, consideration should be given to the creation and early deployment of a civilian team—composed of local and international police and criminal justice experts such as prosecutors, judges, and defense attorneys—to work with and advise the military as it deals with serious crimes. To the extent possible, local civilian police or other local criminal justice experts should assist the military by contributing knowledge of the local serious crimes situation, criminal justice system, language, and culture.

International military forces will need to work within the applicable legal framework regarding the prosecution and adjudication of criminal cases and will have to coordinate with the prosecutor and judicial system in accordance with the applicable law. Failure to do so may result in serious crimes offenders going unpunished or securing release from pretrial detention. (Discussion of mechanisms to bolster prosecutorial and judicial arms so that they can handle serious crimes is found in chapter 4.)

Where this has not already occurred, soldiers must be trained to perform basic law and order tasks, in accordance with appropriate ROE and procedures, as they execute their normal patrols. Ideally, police and legal experts should conduct this training before soldiers are deployed. If such training is not given, local and international experts should train soldiers immediately upon their arrival in country. This training should include lessons in the applicable law, making arrests, crime scene protection and preservation, conducting and documenting searches of persons and premises, evidence gathering, documenting and preserving evidence (including maintaining the integrity of the chain of custody of evidence), and

The Many Forms of Military Assistance

International military forces have rendered many kinds of assistance to the criminal justice system. To take just two examples:

- In Bosnia, military engineers helped build a detention facility.
- When INTERFET first landed in East Timor in September 1999, the Australian military police took on the job of finding the graves of those killed during the conflict and exhuming the bodies. They had the help of military doctors, video recording equipment, and local Red Cross workers, and they greatly assisted the international civilian police assigned to conduct the investigations.

Military Personnel as Witnesses in Civilian Courts

The international military, with its ability to provide soldiers as witnesses, is often essential to the successful prosecution of serious crimes. Agreements with the host country usually immunize soldiers from being required to testify in a civilian court, and thus the military must agree to allow such testimony. As soldiers often rotate in and out of theater within four or six months, the military is usually called upon to provide transportation back to the host country. In one case, UK KFOR flew two eyewitnesses from the United Kingdom back to Kosovo to testify about a massive arms seizure on the Macedonian border. In another case, US KFOR flew two soldiers from Guam and Hawaii back to Kosovo to testify about seeing a suspect at a checkpoint to disprove alibi testimony in a terrorist murder case.

Without the military allowing its medical doctors to testify regarding the emergency treatment of civilian gunshot and bombing wounds, some cases could not be adequately proven. The military is also called upon to provide expert witnesses regarding bombings and other Explosive Ordnance Disposal (EOD) matters. In Kosovo, without the testimony of UK EOD experts, a terrorist bombing and murder prosecution might not have succeeded. In contrast, the refusal of two other KFOR nations to allow psychiatry experts to testify obliged the prosecution to use only Kosovo psychiatrists to examine a suspect. The international experts might not have been as favorable to the defense as were the Kosovo psychiatrists, who may have been pressured to give testimony helpful to the defense. The court mitigated the sentence of the accused accordingly.

interviewing and debriefing witnesses. Most important is training in the permanent recording and storage of evidence. Evidence should be handed over to competent civilian authorities as soon as possible but, until that is possible, evidence must be stored and mechanisms for maintaining evidence put into place so that when subsequent military units arrive, they can continue to maintain the evidence. (In Kosovo, when the four- or six-month terms of international military units expired, units sometimes left without documenting or preserving evidence and at times even took evidence with them.) To ensure that initial training efforts are not wasted, those initiatives should be made part of a standard curriculum that is taught to all newly arriving military units by a team of national and international trainers (who might be police, prosecutors, and judges as well as military officers). Training materials should be reviewed and updated periodically to enable international forces to deal with evolving security challenges.

The Transition from International Military Forces to Civilian Police

Although it may be necessary for the international military forces to deal initially with serious crimes in a postconflict environment, the military will want to transfer its role to civilian police as soon as possible. As already discussed, civilian police will rarely be operational and effective at the outset. As the civilian police force gradually builds itself up and establishes operational capability, power will have to be transferred to it from the international military in a way that least disrupts the fight against serious crimes.

As conditions stabilize, the ability of the civilian police to handle the different tasks being performed by international military personnel should be regularly reevaluated, and responsibility for those tasks transferred as and when appropriate. This transition process is likely to involve a phased transfer of functions over time. Tailoring a clear-cut framework for civil-military cooperation may be difficult and will require clear and concise memoranda of understanding (MOU) that detail respective roles and procedures. For example, an MOU might formalize specific areas of military assistance, such as military protection for police conducting high-risk arrests, or specify areas of potential intelligence sharing. (Other forms of assistance are discussed below.) Of course, building trust and relationships between the military and the police is no less important than drafting carefully worded MOUs.

Civilian police and international military authorities can facilitate their coordination by designating representatives to serve as liaisons or even by establishing a transition team. The liaisons or team can help to accomplish several tasks: encouraging joint coordination in law and order operations; coordinating the sharing of intelligence and establishing the necessary mechanisms and protocols to do so; making sure that proper procedures are followed for arrests, searches, interviewing, and

The Value of MOUs

In Kosovo, an MOU governed cooperation between UNMIK international police and KFOR military police units. It covered mechanisms for coordinating and planning activities, including covert intelligence-gathering activities, organized crime and terrorism investigations, close protection operations, crowd-management and high-risk operational support, and exchange of criminal intelligence information. It established points of contact within each organization and defined whether the international military or the international police had primacy in particular areas.

In contrast, in East Timor, the international transitional civilian authorities and the military failed to establish any guidelines for cooperation, including guidelines for the transfer of evidence and records. The result was confusion when the military handed over cases to the civilian authorities.

debriefing of witnesses and defendants; facilitating coordination between the international military and the judicial system in the prosecution and adjudication of cases, including ensuring that international military witnesses are available for trials; and ensuring that evidence gathered during investigations will be admissible at trial.

The duration and extent of international military participation will depend, of course, upon the situation. The transition is unlikely to be swift and clear-cut, and even after some functions have been transferred from international military forces to the civilian police, the police may find themselves obliged to call on the international military to again render assistance in extreme situations.

The international military's role in combating serious crimes should not be regarded as separate from its responsibility for protecting borders and providing a safe and secure environment in a postconflict situation. Indeed, the traditional mandate to provide border and regional security goes hand in hand with efforts of civilian police to control trafficking and other serious criminal activities. The international military and the civilian police should coordinate their efforts to identify cross-border illegal activity and its relationship to local and transnational organized crime. [↗](#)

International Military Support for Civilian Authorities in Kosovo

On June 28, 1999, two weeks after KFOR arrived, the first international police contingent arrived in Kosovo. It was an advance team designed to prepare for the arrival of a larger international police force. The first joint KFOR–international police operation did not take place until the first week of August 1999, and the international police did not assume primacy for law and order functions in the capital, Pristina, until the end of that month. KFOR continued to have primacy over other regions. As late as 2002, international police continued to need substantial support from KFOR. Additionally, in 2001, KFOR patrols frequently encountered individuals who were illegally crossing from Kosovo into Macedonia to engage in an ethnic Albanian insurrection in that country. These would-be

insurgents often carried supplies, including weapons. Fears rose that the fighting in Macedonia would profoundly destabilize Kosovo and the wider region by bringing Bulgaria, Greece, Serbia, and Albania into the conflict. Accordingly, the movement of individuals and the transportation of supplies and weapons across the border into Macedonia fell under the definition of serious crimes, because of the threat to regional stability. As part of its mandate to provide a safe and secure environment in Kosovo, KFOR began to arrest individuals seeking to cross the border and turned them over to the civilian authorities in Kosovo, who prosecuted them. It was impossible in this situation to draw a clear line between KFOR's duties and civilian police authority.

International Military Assist in Training Iraqi Police

In Iraq, civilian primacy for police matters was overturned in March 2004, when responsibility for organizing, equipping, training, and mentoring the Iraqi police and border forces was moved from the Coalition Provisional Authority (CPA) to the international military force. This decision was made in response to growing frustration with the perceived slow progress of efforts to increase police capacity and with an apparent emphasis on the quantity of people trained rather than on the quality of training. This change led to the creation of the Multi National Security Transition Command–Iraq, which had overarching responsibility for

both the Coalition Military Assistance Training Team (CMATT) and the Civilian Police Assistance Training Team (CPATT). Although CPATT was predominantly staffed by former U.S. police officers, its commanders were military personnel with considerable experience in providing advice and assistance to civilian authorities. There was considerable unease with the military assuming this role, but there was no doubting the momentum and coherence that was then injected into rebuilding the Iraqi police force. Only the U.S. military had the organization and the human and materiel resources to manage such a large-scale project.

Military Assistance to the Civilian Police: A Multifaceted Role

International military forces can assist civilian police in combating serious crimes in many ways, some of them commonly seen in peace operations, others rarely witnessed. For example, international military forces can provide

- Logistical and material support such as armored vehicles, heavy weapons, air support, and communications equipment
- Intelligence
- Forensics assistance and specialized personnel, including military police officers and doctors trained to work at the scene of crimes
- Military engineers and construction units who can help build or repair facilities
- Military prison guards to assist in guarding high-risk prisoners
- Tactical assistance or perimeter security during the execution of search warrants
- and high-risk arrests of serious crimes perpetrators
- Court security when high-profile cases are tried
- Escort protection for routine movements of high-risk individuals and groups (e.g., prosecutors, judges, and defense attorneys)
- Close protection of high-risk individuals and groups
- Transportation and protection of witnesses
- Civil disorder assistance, such as evacuating courthouses and prosecutors' offices during violent protests
- Border patrol and control
- Disarmament, demobilization, and reintegration programs aimed at disarming former combatants, removing weapons from circulation, and reintegrating combatants into the community
- Joint patrols for high-risk areas