

Chapter Six

International Engagement

The aims of this chapter are to

- Examine the role of international assistance in enacting the legal and institutional reforms necessary to combat serious crimes
- Discuss general guidelines for such international assistance, focusing in particular on the need to promote sustainable national capacity
- Describe the variety of roles that international actors may play in combating serious crimes, and discuss how best to determine the appropriate type and degree of international engagement
- Provide guidance on how to make effective use of international personnel, including selection and training, and how to ensure accountability

Previous chapters of this book have commented on the role that international assistance providers can play in the effort to tackle serious crimes in postconflict situations. Indeed, because of the fragile nature of postconflict societies and the destabilizing effects of serious crimes, some form of international assistance is invariably necessary if the societies are to be rebuilt. In some situations, robust intervention, in the form of international personnel substituting for and/or working alongside national justice actors, may be warranted; in other situations, a less intrusive level of international monitoring and supervision may be adequate; and, in yet others, technical assistance and foreign funding may be sufficient or all that is feasible. Whatever the degree of involvement, making international assistance effective requires careful consideration of the aims of such assistance, its practicability, and the best means of delivering it.

This chapter begins by exploring a number of preliminary considerations that should guide any international intervention, including the importance of adopting holistic and coordinated approaches and fashioning built-in strategies to transfer skills to national authorities. Next, it discusses the need for authorization for international engagement and then examines factors that determine the appropriate type of intervention. Finally, it discusses a set of practical issues that surround the deployment

of international personnel to postconflict societies to engage in efforts to combat serious crimes. Throughout, this chapter recognizes the inherently complex and improvisational nature of international engagement, but it also seeks to offer pragmatic advice and general guidelines for effective action.

General Considerations

A Serious Crimes Strategy Must Be Holistic

Each situation that calls for international intervention is unique and dynamic, subject to the shifting politics and social realities of the host country, as well as to changing attitudes both within the country and among those international agencies providing assistance. Typically, at the onset of a postconflict intervention, numerous international and bilateral actors are at work, each with its own governing body, budget cycle, and institutional priorities.

Any effort to deal with serious crimes must adopt a holistic strategy that integrates various crime-fighting components within a coordinated plan. Focusing on police capacity, for example, while ignoring prosecution, the judiciary, or prisons will guarantee failure. Similarly, mentoring or training prosecutors will lead nowhere if the legal framework is significantly flawed. A synergistic approach must be taken; the international actors' engagement with the postconflict country must be total, embracing issues of governance, economic development, security, and reconciliation. All of these issues will affect the way in which serious crimes are approached. For example, the creation of job opportunities in legitimate areas of the economy may help to weaken an illegal economy dominated by organized crime. Ideally, the relevant international actors should develop a shared assessment of needs and reach agreement on the key components of a serious crimes strategy. If this is not possible, they should at least share their assessments and strategies and coordinate programming efforts.

The Ultimate Goal Should Be to Build National Capacity

As noted in chapter 1, unless early efforts are made to bring serious crimes under control, they may destabilize the fragile peace and reignite the conflict. As the experience of peace operations in the Balkans has shown, a serious crimes strategy should be an integral part of an international postconflict peace operation. Tackling serious crimes cases early on is important both to remove destabilizing elements from the scene and to demonstrate the effectiveness of the new administration. Such short-term gains are important. However, it is equally important, if not more so, to build the long-term capacity of the host country to handle the serious crimes problem by itself. Great tension often exists among

planners and policymakers over the respective importance of achieving early success versus focusing on long-term institution building. Expending resources to target high-profile serious crimes perpetrators may not in fact help to build domestic capacity; indeed, it may divert resources from doing so.

Those planning the international intervention must, from the very beginning of their work, create a design for long-term effectiveness that takes account of the following considerations.

- In some situations, more intervention is not necessarily better than less and can in fact be counterproductive. An executive mandate under which international actors perform all major anti-serious crimes functions does not always guarantee success. International personnel, as outsiders, may have difficulty operating in a foreign environment; they often lack language skills, are unfamiliar with the host country's legal framework, and are not part of the society and may, indeed, be physically isolated from the local community. To counter this, international actors need the willing cooperation of vetted, trusted, and protected national actors to work alongside them. Furthermore, relying exclusively on international actors to perform police, prosecution, and judicial functions may undermine the ability of the host country to develop its own capacity to fight serious crimes. It is important to define the appropriate roles for both international and national personnel.
- Resources to fund the provision of equipment and personnel must be sustainable. It is not sufficient merely to determine appropriate equipment and supply it; international donors must also provide instruction in its use, infrastructure to support it, and training for its maintenance. Examples abound of wasted donor resources, such as expensive computers that lie unused because of a lack either of electricity or of the ability to use, maintain, and repair them. Also, donor supplements of salaries for some serious crimes personnel may be required for an extended period if a program is to be sustained until the national government can fund it completely.
- Where either a mentoring or substitution program is instituted, a strategy must be established for a transfer of skills from international experts to their national counterparts, who will ultimately be responsible for tackling serious crimes when the international actors depart. Mentoring is most successful among police, prosecutors, judges, defense counsel, and prison officials when it involves international and national actors working together on the job, which may require individual interpreters for the international actors, who most likely will not know the national language or languages. The transfer of responsibility from international to national actors should be planned in advance and consciously prepared for, but it should be planned to occur not at a specific time but when specific conditions have been met. In the absence of such a plan, international personnel are likely to turn over

their duties at an arbitrary point, such as when budget cuts make it necessary for the international actors to depart even though the national environment and personnel are not yet ready. The timing of the transfer should not be determined simply by statistics (e.g., the number of people trained), but by a qualitative evaluation of whether the host country is able to assume responsibility for serious crimes efforts. Moreover, the transfer of responsibilities should be gradual, with the ability to revise the downsizing of particular personnel if plans turn out to be overoptimistic as to the capacity of national institutions to effectively take over functions previously performed by international actors.

- The starting point for international intervention to combat serious crimes should be the existing human and legal capacity of the national criminal justice system. While in some cases, such as in Kosovo when all the Serbian police and justice officials left the province, there is an effective vacuum of legal authority, there is never a blank slate. International actors tend to want to start from scratch and import their own criminal judicial system or to establish a new abbreviated system based upon their own criminal procedure, but this system may be inappropriate and unworkable. When multiple international agencies with preferences for their own legal traditions (e.g., inquisitorial civil law or adversarial common law systems) are involved, the problem is compounded. International actors might reform a damaged or corrupt system but should not attempt simply to superimpose laws that are alien to the national justice personnel and do not fit local conditions. Doing so will inevitably lead to loopholes and gaps in the law and to confusion among implementers.
- Where a system is used by international actors to achieve convictions and hand down imprisonment sentences, that system should accord as closely as possible with the legal framework of the host state. The further that procedural and substantive criminal code imports are from the existing national legal framework, the more likely it is that those imports will be viewed by national actors as illegitimate and the less likely that they will be preserved in future legal frameworks. Convictions secured under an “illegitimate” system may well be set aside as soon as the international actors leave.
- To the fullest extent possible and as early as possible, national personnel should be included in planning an international intervention. Plans to change the legal framework, in particular, should be drawn up in close consultation with national lawyers. Such consultation will produce a system that is more effective because it provides continuity with national legal traditions. Moreover, the cooperative process will foster a sense of ownership of the reforms among national actors, boosting the prospects for those reforms remaining in place when the international engagement ends. Process matters; engaging in a consultative process can mean the difference between a program that succeeds and one that fails.

- Despite the perceived need to produce quick results, international interventions to combat serious crimes should adhere to recognized rule of law standards. Especially where executive peace operations are under way, there may be a tendency to take shortcuts by giving unchecked power to international personnel and to allow political considerations to guide outcomes. This approach not only undermines the effort to establish the rule of law but also leaves in place a reliance on ad hoc methods. Thus safeguards to ensure the separation of political and judicial powers and a respect for due process and human rights should be put in place.

Challenges of Transferring Equipment from UN to National Authorities

Throughout the UN operation in Kosovo, all the equipment, computers, vehicles, and other materials used by UNMIK international police could not, by UN rules, be handed over to Kosovo institutions. The need to identify bilateral donations to supplement Kosovo's poorly financed budget delayed efforts to transfer authority from international police to Kosovo police. Ironically, in 2005, when UNMIK was in the midst of downsizing, UNMIK international police sought to add Kosovo Police Service officers to its special units so that equipment used by the units could be funded by the Kosovo Consolidated Budget (i.e., Kosovo's own budget, raised from taxes and other revenue, including funds from donors), which was permitted to fund the cost of computers, covert equipment, and the like, whereas the UNMIK budget could not.

Authorization

Legal authority must be given to international actors before they can draft laws, send in police or judicial system actors, and provide technical assistance.

Authority may derive from a direct request for assistance from the host country. This authority could be in the form of a ratified international agreement or legislation passed by the host country authorizing international judges and prosecutors to try certain types of cases; many countries have specific laws prohibiting foreigners from doing so. Efforts by external specialists to assist in investigating a serious crimes case may also be foiled if those efforts contravene national procedural laws requiring admissible evidence to be collected by national authorities. Even programs such as training and advising will require consent by recipient authorities. For example, in Afghanistan, even with its budget problems, officials refused training offered by international actors when they believed the training was unnecessary or redundant.

Alternatively, authority may derive from a mandate of the UN Security Council or a regional organization such as the Organization for Security

and Cooperation in Europe, the European Union, or the African Union, acting either on its own initiative or in response to a peace agreement or invitation by the host country.

Ideally, the authorizing provisions of such mandates and peace agreements will reflect serious crimes needs as determined by a comprehensive assessment and will correspond to the willingness of international actors to take on such tasks. In practice, however, authorizing provisions are often the product of a mix of political interests, compromises, and opportunities. As a result, statements of authority are often (and sometimes deliberately) broad and vague, which causes confusion regarding implementation by different actors with various rule of law–related mandates. Moreover, to the extent that mandates include performance timelines, those timelines may be unrealistically short and preclude the development of a long-term strategy needed to tackle serious crimes problems. While some of these flaws are inevitable, an increased awareness on the part of policymakers of the serious crimes threat and of options to address it could help alleviate problems either at the outset of the planning process, when mandates and peace agreements are drafted, or at least when it becomes necessary to interpret or amend the mandate or to seek other sources of authorization, such as agreement from the host country.

Types of Intervention

There are many variations on the role that international assistance providers can play in combating serious crimes, from assuming actual responsibility for investigating and trying serious crimes, to advising and mentoring national justice actors, to providing technical assistance on legal and institutional reform, to providing funds and equipment. The variety of functions that international actors can perform is considerable, and includes the following:

- Reforming the legal framework
- Monitoring investigations and court proceedings
- Designing, conducting, or assisting in the vetting and selection of judicial personnel
- Deploying international police, judges, prosecutors, defense attorneys, and prison officials to substitute for national actors
- Mentoring police, judges, prosecutors, defense attorneys, and prison officials in the performance of their duties
- Establishing or reforming accountability mechanisms, such as internal affairs departments, professional standards offices, codes of conduct, and mechanisms for discipline or removal from office, for the national police, prosecutors, defense attorneys, and judges

Monitoring the Legal System in Kosovo

In Kosovo, the mandate of OSCE's Legal Systems Monitoring Section (LSMS) is to monitor the justice system in Kosovo for its compliance with domestic and international human rights standards and to make recommendations for ways to ensure that these standards are met. LSMS monitors the criminal justice system and reviews the legal framework. LSMS monitors both national and international actors and institutions and releases quarterly public reports on the criminal justice system that are intended to assist authorities by identifying reform priorities. Unlawful detention, inadequate defense representation, interference with judicial independence, and failure to comply with fair trial and due pro-

cess rights are among the issues addressed in the reports.

In a number of cases, recommendations in LSMS reports have prompted concrete reforms. For example, LSMS had expressed concern over the lack of human rights screening of UNMIK regulations. In a subsequent report, LSMS noted that a clear improvement had taken place with the creation of the Human Rights Oversight Committee and a joint OSCE-UNMIK working group on human rights. LSMS recommendations were also influential in spurring efforts to integrate minorities into the judiciary through the employment of minority judges and prosecutors and the creation of courts in minority communities.

- Advising and/or assisting on court administration and management
- Assisting in the establishment and training of specialized police units
- Establishing and/or operating witness protection programs, asset forfeiture programs, and surveillance mechanisms
- Designing and establishing special jurisdictions to try serious crimes cases
- Providing advisers who are colocated with national authorities engaged in addressing serious crimes, including the ministries of justice and interior, various police offices and stations, and the prosecutor's office and courts
- Providing skills training for police, prosecutors, judges, and other expert personnel
- Providing logistical support and specialized equipment, including secure transport, computers, forensics material, and communications equipment and networks (e.g., mobile phones, satellite phones, and secure Internet and e-mail linkups)
- Building and/or funding infrastructure, including courthouses, prosecution offices, police headquarters, and prisons

Determining the Type of Assistance

In deciding what type and what degree of international engagement is appropriate, a wide range of factors need to be weighed and a number

of political and practical realities taken into account. These include the following:

- The capacities of the domestic criminal justice system and personnel to handle serious crimes cases
- Whether the safety of the personnel of the domestic criminal justice system is at risk and whether they are subject to threats by serious crimes perpetrators
- The existence of ethnic, religious, or other bias, perceived or real, among domestic criminal justice personnel
- Whether domestic criminal justice personnel are free from undue influence or control by political actors
- Whether domestic criminal justice personnel are implicated, or perceived to be implicated, in abuses by a repressive regime or abuses that occurred during the conflict
- Whether domestic criminal justice personnel adhere to international standards in handling serious crimes cases
- Whether domestic political actors are committed to fighting serious crime, or whether they are implicated in it
- Whether domestic political actors or criminal justice personnel have requested international assistance in order to provide political cover for themselves
- Whether the national population will perceive a particular type of international engagement as desirable and credible (i.e., likely to be competent and effective) or as an unwanted intrusion
- Whether the national population perceives a particular foreign assistance provider (e.g., an international or regional organization or a specific country) as credible
- The willingness and commitment of outside assistance providers to supply sufficient resources to follow through on their initial efforts
- The ability of outside assistance providers to identify, train, and support qualified personnel (this is discussed later in the chapter)
- The degree to which the serious crimes problem has transnational implications
- Differences and similarities between the cultures, legal traditions, and histories of the host country and the provider countries

To discover all the pertinent factors, international actors need to conduct an objective analysis of what the postconflict society needs, what the host country is prepared to accept, and what resources are available.

Needs Assessment

Chapter 2 discusses in detail the set of issues that must be assessed prior to designing a serious crimes strategy. The international assistance component of such a strategy should be directly responsive to the particular weaknesses of the criminal justice system and to factors in the post-conflict environment (e.g., a politically weak or corrupt government) that may impair the ability of national actors to do the job themselves.

The use of international personnel to provide justice may be critical where the host country lacks personnel qualified to handle serious crimes cases; where host country personnel may be at risk or subject to coercion; or where national jurists are biased against or biased in favor of the accused due to ethnic, religious, or other factors. Ideally, immediately after a conflict, national judges, prosecutors, defense attorneys, and police would still be available and prepared to begin work. However, in some circumstances, national personnel who have survived what may have been years of repressive rule or serious ethnic conflict may not have the resources, experience, credibility, or impartiality to operate court and prison systems that comport with internationally recognized norms of human rights and due process. In cases where national personnel do have appropriate resources, experience, and/or ability, they may still want international assistance to help them operate in what might be an unstable security environment.

Postconflict societies that lack the capacity, know-how, and resources to take on serious crimes will require, at a minimum, outside assistance in the form of training, technical assistance, and funding. Given the destabilizing nature of serious crimes and the fragility of postconflict environments, however, this sort of assistance is unlikely to be sufficient. For example, justice institutions in postconflict societies are often perceived to be, or in fact are, tainted by or implicated in abuses related to the conflict. Likewise,

Ethnic Bias Affects Judiciary in Kosovo

After the establishment of UNMIK in 1999, the international community made an initial determination to empower the local Kosovo Albanian judicial community to administer justice. This monoethnic judiciary thus found itself deciding upon cases of interethnic violence and war crimes involving Kosovo Serbs—and doing so, moreover, in the immediate aftermath of a violent struggle between Slobodan Milosevic's Serbian and Yugoslav security forces and the ethnic Albanian Kosovo Liberation Army. As might have been expected, equal justice was not dispensed: war trauma, real and perceived bias, and intimidation and threats of violence combined to create a system biased against Kosovo Serbs (see the sidebar on pages 86–87 in chapter 4). Faced with this realization, the international community reversed its initial decision and opted to deploy international judges and prosecutors to supplement Kosovo Albanian personnel in sensitive cases. In retrospect, many experts argue that if international personnel had been inserted earlier, an effective and impartial system of justice would have developed sooner and would have prevented criminal power structures from cementing their dominance over the political economy.

national personnel who may have experienced trauma in the conflict, or who may be part of a particular ethnic, religious, or other factional group that experienced such trauma, may be unable to be impartial or may be perceived as biased by an opposing faction. In such situations, additional external assistance may be warranted, such as confidence-building measures, including oversight mechanisms and safeguards.

Even where national personnel are unbiased, they may well be vulnerable to threats and violent attacks by criminal groups and “spoilers” (those who do not want to see peace prevail because they benefit from an unstable environment), making it impossible for such personnel to carry out their duties effectively. Various forms of assistance may be required, such as providing personal protection; establishing special police units or specialized courts, chambers, or departments; and/or deploying international judges, prosecutors, and police in executive roles.

The top levels of a fragile host governing authority may be unable to tackle serious crimes without risking political collapse. Alternatively, host authorities may lack the commitment to tackle serious crimes because power structures have been penetrated by criminal networks. Here, robust international intervention, including assuming an executive role in policing and adjudicating serious crimes, may be needed.

Most postconflict societies will feature some combination of the above scenarios, as well as other, unique challenges. Accurate identification of the precise shortcomings of a postconflict situation is crucial to determining the right international assistance package.

Host Country Factors

It is imperative to take into account social, cultural, and historical factors that may bear on the effectiveness of external assistance. Some societies may welcome international intervention, while others may regard it with deep suspicion. Personnel from certain countries may be more readily accepted than personnel from others. The host country may reject the idea of international personnel acting in an executive capacity but may be enthusiastic about colocated advisers, trainers, and providers of technical assistance. Because postconflict societies may be fractured along ethnic, religious, or other lines, different groups within the state may have different reactions to international intervention. Most often it is the vulnerable group that welcomes robust international intervention, whereas those who hold power may oppose it because it threatens their control. In any event, international intervention should be tailored to such factors while taking into consideration the nature of the serious crimes threat. Absent legitimacy and acceptance by the postconflict society, international intervention may backfire.

Since each country is unique, it is important to resist the inclination to automatically apply what has been done elsewhere. Success in one place is determined by a complex array of factors, including the nature of the conflict and the history of the country in relation to foreign involvement. That array is very unlikely to be repeated in another country. In short, different situations demand different approaches. For instance, while the use of international judges and prosecutors was generally welcomed in Kosovo and was consented to in Bosnia and Herzegovina after more than six years of international supervision, it was not even considered in Afghanistan, which otherwise has welcomed collocated international police and counternarcotics advisers and collocated prosecution, court, and prison advisers from a wide variety of countries and organizations.

Commitment and Resources

The political and financial commitment of the providers must match the needs of a postconflict situation. Serious crimes assistance, especially when involving the use of international personnel, is an expensive, long-term, and logistically demanding endeavor. There are no quick fixes to a serious crimes problem. Even in countries with a sophisticated and seasoned approach to crime fighting, sustained commitment and ample resources are required. In some circumstances, individual cases—especially complex organized crime and war crimes cases—can take as long as five years to investigate, prosecute, and try; breaking criminal networks can take much longer. International assistance providers must be prepared for a potentially prolonged period of engagement and be willing to provide personnel and resources to match needs as they change over time. For example, international judges may initially be required to substitute for domestic judges in serious crimes cases, but over time the role of the international may change to one of mentoring and monitoring.

Many practitioners have adopted the attitude that if sufficient resources are not forthcoming, it is better not to undertake the engagement in the first place. Certainly, in some cases, unfulfilled promises and expectations can undermine the credibility of both international assistance and, sometimes by extension, the host government, further encouraging criminal elements. While postconflict assistance operations are perhaps necessarily improvised, with commitments being made before resources are identified, it is important to recognize the likely limits on the resources that will be made available, and to plan an assistance package accordingly.

Issues Related to the Use of International Personnel

Whatever role international personnel may play, it goes without saying that the right people in the right functions with the right organization with sufficient supporting resources can make the difference in controlling the serious crimes problem. However, the experience of past peace operations has shown that one or more of a range of factors—poor selection of personnel, cumbersome employment procedures, a lack of training, and a lack of accountability and oversight mechanisms—can result in programs that at best are ineffective and that at worst actually undermine the very purpose of assistance.

Recruitment and Length of Deployment

To be effective, international personnel must have both a set of professional skills appropriate for the role they are playing and a character suited to the particular challenges of a postconflict environment. This admonition may seem obvious, but in practice one often finds personnel with neither the skills nor the character to perform the tasks they have been assigned. This mismatch is in no small part a result of the many difficulties faced by bilateral and multilateral assistance providers in recruiting qualified personnel. The number of candidates with the right skills and experience is small to begin with. Notoriously cumbersome hiring procedures employed by many multilateral organizations make finding qualified people even more difficult and create inordinate delays in filling positions. Reliance on government secondments and (for those states and international organizations that outsource) private contracting firms further reduces the control assistance providers have over the qualifications of selected personnel.

Qualified candidates face a variety of disincentives to their participation in international assistance operations: active judges, prosecutors, police, and other professionals find it hard to secure even unpaid leave

from their regular posts; there are few professional incentives to undertake foreign assignments; it is often impossible or (given the dangers of insecure environments) unwise for families to accompany personnel abroad; and many potential donor countries are reluctant to send top

International Judges and Prosecutors Sign Longer Contracts

Unlike the renewable six-month contracts routinely offered to international judges and prosecutors in Kosovo, with no disincentives for leaving in mid-contract, as of November 2005, the Bosnian State Court Registrar requires two-year contracts of international prosecutors, and offers a bonus of ten thousand euros if the entire term is completed.

Challenges in Securing Qualified International Personnel

In Kosovo, the United Nations' efforts to fulfill its ambitious goal of assuming full control over policing within three months of the signing of its authorizing mandate was hampered by chronic difficulties in recruiting capable international police officers. Almost a year later, fewer than half the authorized posts had been filled. Furthermore, despite UN screening, some international police officers proved unqualified and had to be repatriated to their home countries. Kosovo Albanians and Kosovo Serbs freely commented on the disparity between those international police officers they viewed as dedicated and helpful and those regarded as incompetent or unresponsive. While there were many qualified individuals, some UN international police involved in high-profile organized crime and war crimes investigations had little experience in basic criminal investigation, crime-scene management, and evidence gathering. Moreover, the initial training for international police did not adequately address Kosovo criminal procedure, and the international police did not make use of the international prosecutors and judges who might have helped in this regard. As a result, poorly con-

ducted investigations, improperly executed search warrants, and cases ill prepared for prosecution led to dangerous criminals being freed for lack of admissible evidence.

The effort to fill positions of international judges and prosecutors was similarly impeded by the lack of an identifiable pool of qualified personnel and by inefficient and bureaucratically burdensome UN hiring procedures (UNMIK did not even advertise vacancies on the universal UN website Galaxy, which, however, listed vacancies in other UN peace operations). The dearth of candidates meant that some international judges with only commercial and noncriminal court experience were hired and then expected to handle complex and sophisticated organized crime cases. Linguistic ability was also sometimes at a premium. In one case, an international judge was insufficiently fluent in English to be able to write decisions and verdicts in the mission's language. Gradually, hiring practices improved. UNMIK created a panel, including an international judge to perform the final interview for international judges and an international prosecutor to perform the final interview for international prosecutors.

personnel to assignments abroad. Furthermore, even when qualified professionals do serve, they often serve for relatively short periods (a typical rotation in a host state is just six months because of bureaucratic limitations and the unwillingness of candidates to commit to long-term positions), which means that the recruitment of new personnel is an unending endeavor.

These problems are well recognized, and some progress has been made to overcome them. Efforts by the international community to combat serious crimes and bolster criminal justice systems over the past several years, in particular in Bosnia and Kosovo, have produced a growing cadre of experienced international professionals. A number of donor countries, multilateral bodies, and NGOs have instituted new mechanisms to improve recruitment, including the establishment of "ready rosters," or reserve corps: pools of preselected and trained personnel.

Efforts should be made to ensure that personnel with experience and skills germane to combating serious crimes are included in these mechanisms.

Even if international personnel commit to serve a minimum of one to two years, their actual period of effectiveness will be limited. It takes time to adjust to a postconflict environment, to learn the local legal framework, to get a grasp of the local culture, and to make the personal connections necessary to function efficiently within a bureaucracy. In the area of serious crimes, investigations and trials can take several years to complete. Changing personnel midway through an investigation or trial can create serious problems, not least in terms of a loss of institutional memory; after all, not all important knowledge about a case can be reduced to notes in a case file, especially in a hectic, crisis-driven environment where there often is too little time to document every step thoroughly. Where long-term rotations are not possible, the introduction of new personnel should be staggered, records should be carefully maintained, and responsibilities should be transferred in as seamless a manner as possible (for example, by pairing an incoming prosecutor or judge with the outgoing incumbent for several weeks).

Selecting Qualified Personnel

International personnel should have three different sorts of skills and knowledge: substantive expertise related to their specific function; knowledge of the host state, including its legal framework, judicial system, history, politics and, ideally, the language(s); and knowledge and interpersonal skills that will enable them to function effectively in what may well be a stressful and chaotic environment.

Dealing with serious crimes requires specialized skills. International prosecutors and judges deployed to a postconflict society must have substantial experience handling complex and sophisticated crimes. They should have experience with a diverse range of suspects and witnesses, preferably with reluctant witnesses and cases involving witness intimidation. Professional experience in a small, ethnically homogeneous town with little or no organized crime or gang violence may not prepare a judge or prosecutor as well as experience in a large metropolitan city in which witnesses and suspects are drawn from a wide range of ethnic, religious, and socioeconomic groups. Prosecutors should have experience in dealing effectively with the particular type of serious crime prevalent in the postconflict society, be it terrorism, narcotics trafficking, criminal enterprises that operate globally, or loosely knit gangs engaging in intimidation and racketeering. They should be well versed in coordinating with foreign prosecutors and police, conducting or guiding investigations, dealing with reluctant and vulnerable witnesses and victims, and employing the full range of laws, tools, and techniques discussed in chapters 3, 4, and 5.

Similarly, international police officers assigned to conduct serious crimes investigations or to mentor or train national actors to do so must have proven skills in, for example, cultivating and debriefing witnesses; developing investigative strategies; gathering evidence through surveillance, wiretapping, and other special investigative techniques; targeting illegal financial and money laundering operations; conducting searches; coordinating investigations with foreign law enforcement agencies; and witness protection. It may also be necessary to recruit police with specific expertise in particular types of crime—such as trafficking in humans, juvenile crime, and financial crime—or with particular investigative abilities, such as forensic analysis and auditing. This list is not exhaustive but illustrates the need for specialists. Unfortunately, all too often this need is overlooked as a result of haste and a desire to field the first available person. The problem is further compounded by evolving mandates and programs, which often require personnel deployed for one task to subsequently take on a different or more specialized serious crimes task.

Knowledge of the particularities of the legal system of the host country, or at least a willingness to learn and respect them, is another prerequisite. Whatever the state of disrepair of the legal system in a postconflict country, it is rarely entirely demolished. International personnel will be ineffective and more likely a hindrance unless they become comfortable with and well versed in the domestic legal system. Familiarity with the nature of the conflict, the region's or country's history, and its politics, especially as they bear on the serious crimes situation, is necessary to enable one to see one's work in a wider context and to appreciate local sensitivities. Knowledge of the national language is highly desirable, for obvious reasons. At a minimum, personnel must be fluent in the language in which the international community operates. Predeployment training in all these areas will enable international personnel to be more effective as soon as they enter the host country.

Beyond professional qualifications, personnel must possess a range of other skills and knowledge if they are to work effectively in a foreign and often challenging environment. Almost invariably, the postconflict environments into which international personnel are deployed lack the basic institutional structure, resources, and infrastructure necessary for serious crimes work. International personnel may be required not only to apply their particular professional skills (e.g., investigating, prosecuting, or judging) but also to assist in building the institutions in which they work, create policies and operating procedures, manage budgets, and establish oversight mechanisms. Furthermore, the ability to work closely with interpreters and to adjust the cadence and complexity of questions and discussions to the skill level of the interpreter is essential. An ability to socialize in the culture of the host state is also essential. For this reason, previous experience working and living in postconflict states should be greatly valued in the selection process.

Many veterans of international serious crimes efforts rank interpersonal skills and humility as highly as professional skills as determinants of success. Arrogance, high-handedness, and condescension are counterproductive, undermining credibility in the eyes of local actors and even other international actors. Respect for the national culture and sensitivity to one's place as a foreigner are critical to gaining the trust of the population and to working effectively with national actors.

Supporting Resources

For the most part, international personnel will require financial and material support in order to function in postconflict states, where basic supplies and infrastructure are likely to be lacking. In previous peace operations, some international efforts have been stymied by the failure to promptly provide funding and vehicles, communications equipment, office furniture, and training materials. International personnel will also require skilled interpreters, translators, and administrative (e.g., clerical) support. These resources should be planned for from the start as part of the assessment process (see chapter 2) to avoid delays in the ability of personnel to operate.

In some peace operations, donor nations and international organizations have worked together to provide needed resources. For example, at the beginning of the international judge and prosecutor program in

Kosovo, OSCE and a donor country provided furniture, equipment, and computers until the UNMIK bureaucracy was able to determine how to budget for international UN employees working in local courts.

Personal security is another area in which supporting resources may well be vital. For their safety, international personnel may need anything from body armor vests, secure communications, and secure facilities to armored vehicles. In some cases, international personnel may require a close protection team to accompany them whenever they

Misconduct by International Actors in Peace Operations

Misconduct by international personnel has been found in peace operations, including those in Bosnia and Herzegovina, Burundi, Côte d'Ivoire, the Democratic Republic of the Congo, Haiti, Kosovo, and Liberia. In Kosovo, the influx of international actors was followed by a proliferation of brothels and increased trafficking in women. Given that the criminals who controlled the brothels and trafficking were closely linked to political extremists opposed to the international presence, members of the international community were effectively contributing to black-market revenue that fed their antagonists. UNMIK police established a code of conduct, an internal investigative unit, and a disciplinary regime at the beginning of the peace operation. The police commissioner regularly took disciplinary action, including repatriation of personnel. Member states, however, occasionally thwarted disciplinary action against their personnel, and this seriously undermined UNMIK's credibility with the national population.

leave their secure housing or, if secure housing is not available, to protect them around the clock. The cost of such measures is extremely high but may be the price of being able to operate effectively.

Accountability

While the vast majority of international personnel behave with integrity, some do abuse their position and many others are accused of doing so. To guard against such temptations and accusations, international actors involved in confronting serious crimes must be held to transparent accountability procedures. In some past peace operations, a perceived or actual lack of accountability has limited their effectiveness and credibility with the local populations. Furthermore, criminal actors may try to bribe international actors, especially in the absence of a transparent system of accountability. Considering that the general public is usually the primary victim of serious crimes, and an essential ally in the form of witnesses and informants if serious crimes are to be brought under control, a failure to establish accountability can be fatal. Transparency and accountability procedures, including legal and disciplinary measures, must be included in a serious crimes strategy at the outset of an operation and made clear both to international personnel and to the public.

International personnel deployed to postconflict societies by international or regional organizations are generally covered by immunity provisions deriving from international conventions or bilateral agreements. These provisions are essential for shielding international personnel against frivolous claims made by spoilers—for example, accusations of defamation leveled against international police, prosecutors, and judges and other trumped-up charges designed to discredit the integrity of justice officials. Immunity is not absolute, however. It is usually limited to acts performed in the course of official duties, and even here waivers of immunity are possible when they serve the cause of justice. It is essential that international personnel who commit crimes or are guilty of misconduct while on peace operations be subject to prosecution and/or disciplinary procedures, depending on the significance and magnitude of the improper acts. Impunity is unacceptable, particularly when international

UN Peacekeeper Abuses

Repeated allegations of abuse by UN peacekeepers, both civilian and military, prompted the UN secretary-general to commission a report to look into the issue and make recommendations on how to ensure accountability. The secretary-general's adviser on sexual exploitation and abuse by UN peacekeeping personnel, HRH Prince Zeid Ra'ad Zeid Al-Hussein, Jordan's ambassador to the United Nations, issued the report in March 2005. The report found that current efforts to curb abuses were inadequate and that exploitative behavior, including sexual exploitation and abuse, was widespread. It made broad recommendations aimed at the UN Secretariat and member states to curb abuse and strengthen accountability mechanisms, including disciplinary action and criminal prosecution of offenders.

forces are being deployed to a situation where human rights have been violated and impunity of officials has been the norm. The process of establishing a system of rule of law begins by holding accountable those who are tasked with its creation. If the citizens of the postconflict state are to be held accountable for their actions, so, too, must international actors. Unequal treatment in this respect hampers efforts to establish the notion of equality before the law and weakens the credibility of international personnel as a whole.

International and regional organizations, as well as each donor state, must have an articulated policy and set of guidelines to determine when waivers of immunity should be recommended. Furthermore, each contributing nation must ensure that the international personnel it deploys are held accountable for their misconduct and criminal activities and that their training includes an understanding of the rules and consequences of such behavior.

The fact that international personnel are generally employed by the country or organization that sent them and that pays their salaries and determines their terms of service may generate conflicts of interest or ethical dilemmas. For instance, the situation may arise that the political interests of an employing organization run counter to the outcome of a case arrived at through the impartial application of laws and legal procedures. In this case, the international official's primary loyalties should be to the legal system under which he or she is working. At a minimum, international personnel should be held to the same codes of ethics as their national counterparts. 